

## **Title 63E. Independent Entities Code**

### **Chapter 1 Independent Entities Act**

#### **Part 1 General Provisions**

##### **63E-1-101 Title.**

- (1) This title is known as the "Independent Entities Code."
- (2) This chapter is known as the "Independent Entities Act."

Enacted by Chapter 201, 2001 General Session

##### **63E-1-102 Definitions -- List of independent entities.**

As used in this title:

- (1) "Authorizing statute" means the statute creating an entity as an independent entity.
- (2) "Committee" means the Retirement and Independent Entities Committee created by Section 63E-1-201.
- (3) "Independent corporation" means a corporation incorporated in accordance with Chapter 2, Independent Corporations Act.
- (4)
  - (a) "Independent entity" means an entity having a public purpose relating to the state or its citizens that is individually created by the state or is given by the state the right to exist and conduct its affairs as an:
    - (i) independent state agency; or
    - (ii) independent corporation.
  - (b) For purposes of this title, the independent entities are the:
    - (i) Utah Beef Council, created by Section 4-21-103;
    - (ii) Utah Dairy Commission created by Section 4-22-103;
    - (iii) Heber Valley Historic Railroad Authority created by Section 63H-4-102;
    - (iv) Utah Housing Corporation created by Section 63H-8-201;
    - (v) Utah State Retirement Office created by Section 49-11-201;
    - (vi) School and Institutional Trust Lands Administration created by Section 53C-1-201;
    - (vii) School and Institutional Trust Fund Office created by Section 53D-1-201;
    - (viii) Utah Communications Authority created by Section 63H-7a-201;
    - (ix) Utah Capital Investment Corporation created by Section 63N-6-301;
    - (x) Military Installation Development Authority created by Section 63H-1-201; and
    - (xi) Public Service Commission of Utah created by Section 54-1-1.
  - (c) Notwithstanding this Subsection (4), "independent entity" does not include:
    - (i) an institution within the state system of higher education;
    - (ii) a city, county, or town;
    - (iii) a local school district;
    - (iv) a special district under Title 17B, Limited Purpose Local Government Entities - Special Districts; or
    - (v) a special service district under Title 17D, Chapter 1, Special Service District Act.

- (5) "Independent state agency" means an entity that is created by the state, but is independent of the governor's direct supervisory control.
- (6) "Money held in trust" means money maintained for the benefit of:
  - (a) one or more private individuals, including public employees;
  - (b) one or more public or private entities; or
  - (c) the owners of a quasi-public corporation.
- (7) "Public corporation" means an artificial person, public in ownership, individually created by the state as a body politic and corporate for the administration of a public purpose relating to the state or its citizens.
- (8) "Quasi-public corporation" means an artificial person, private in ownership, individually created as a corporation by the state, which has accepted from the state the grant of a franchise or contract involving the performance of a public purpose relating to the state or its citizens.

Amended by Chapter 16, 2023 General Session  
Amended by Chapter 431, 2023 General Session  
Amended by Chapter 502, 2023 General Session

**63E-1-103 Registration as a limited purpose entity.**

- (1) Each independent entity shall register and maintain the independent entity's registration as a limited purpose entity, in accordance with Section 67-1a-15.
- (2) An independent entity that fails to comply with Subsection (1) or Section 67-1a-15 is subject to enforcement by the state auditor, in accordance with Section 67-3-1.

Enacted by Chapter 256, 2018 General Session

**Part 2**  
**Retirement and Independent Entities Committee**

**63E-1-201 Retirement and Independent Entities Committee creation.**

- (1) There is created the Retirement and Independent Entities Committee composed of 15 legislators appointed as follows:
  - (a) six senators, appointed by the president of the Senate, with at least two senators from the minority party; and
  - (b) nine representatives, appointed by the speaker of the House of Representatives, with at least three representatives from the minority party.
- (2)
  - (a) The president of the Senate shall designate one of the Senate appointees as a cochair of the committee.
  - (b) The speaker of the House of Representatives shall designate one of the House of Representatives appointees as a cochair of the committee.
- (3) Committee members serve for two years, but may be reappointed by the speaker or the president.
- (4)
  - (a) The committee shall meet at least twice each year, but may meet more frequently if the chairs determine that additional meetings are needed.

- (b) At the committee chairs' discretion, the committee may meet during the period that begins on the first Thursday in December and ends on the day before the beginning of the annual general session to review pending or proposed legislation related to:
  - (i) an existing independent entity;
  - (ii) the creation of a new independent entity; or
  - (iii) Title 49, Utah State Retirement and Insurance Benefit Act.
- (5) Except as provided in Subsection (4), the committee shall comply with the rules of legislative interim committees.
- (6) The Office of Legislative Research and General Counsel shall provide staff services to the committee.
- (7) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Amended by Chapter 431, 2023 General Session

**63E-1-202 Duties of the committee.**

- (1) The committee shall:
  - (a) study the scope of this title and determine what entities should be treated under this title as independent entities;
  - (b) review annually new entities created by the state and entities registered as independent entities pursuant to Section 67-1a-15 to determine if any entities should be added to the list of independent entities in Section 63E-1-102;
  - (c) study the provisions of the Utah Code that govern each independent entity, including whether or not there should be consistency in these provisions;
  - (d) study what provisions of the Utah Code, if any, from which each independent entity should be exempted;
  - (e) study whether or not the state should receive services from or provide services to each independent entity;
  - (f) request and hear reports from each independent entity;
  - (g) review the annual audit of each independent entity that is performed in accordance with the statutes governing the independent entity;
  - (h) comply with Part 3, Creation of Independent Entities, in reviewing a proposal to create a new independent entity;
  - (i) if the committee recommends a change in the organizational status of an independent entity as provided in Subsection (2) and subject to Part 4, Privatization of Independent Entities, recommend the appropriate method of changing the organizational status of the independent entity; and
  - (j) study pending and proposed legislation, funding, and other issues related to Title 49, Utah State Retirement and Insurance Benefit Act.
- (2) The committee may:
  - (a) establish a form for any report required under Subsection (1);
  - (b) make recommendations to the Legislature concerning the organizational status of an independent entity; and
  - (c) advise the Legislature concerning issues involving independent entities.
- (3)
  - (a) By the November 2023 Legislative Management Committee meeting, the committee shall provide specific recommendations to the Legislative Management Committee for the Utah Communications Authority.

- (b) The report described in Subsection (3)(a) shall include recommendations regarding:
  - (i) the Utah Communication Authority's:
    - (A) administration;
    - (B) financial accountability;
    - (C) current and future needs;
    - (D) assets;
    - (E) history; and
    - (F) organizational status as an independent entity; and
  - (ii) any need to modify statutes related to the entity.

Amended by Chapter 431, 2023 General Session

Amended by Chapter 507, 2023 General Session

### **Part 3**

## **Creation of Independent Entities**

#### **63E-1-301 Definitions.**

As used in this part, "government requestor" means:

- (1) the governor;
- (2) an executive branch officer other than the governor;
- (3) an executive branch agency;
- (4) a legislator, including a legislative sponsor of legislation creating an independent entity; or
- (5) a legislative committee.

Enacted by Chapter 201, 2001 General Session

#### **63E-1-302 Review by committee required for creating an independent entity.**

- (1) If a government requestor proposes that the Legislature create an independent entity, that government requestor shall request that the committee review the proposal.
- (2) After receiving a request for review under Subsection (1), the chairs of the committee:
  - (a) shall schedule a meeting of the committee to review the proposal; and
  - (b) may request information from executive and legislative branch entities and officers concerning the proposal including:
    - (i) whether or not the proposed independent entity should be exempt from any state statute;
    - (ii) the need for oversight of the proposed independent entity by an executive branch agency;
    - (iii) the need for and requirements of audits of the proposed independent entity;
    - (iv) the custody of the proposed independent entity's funds;
    - (v) the legal representation of the proposed independent entity;
    - (vi) whether or not the state should receive services from or provide services to the proposed independent entity; and
    - (vii) the legal liability, if any, to the state if the proposed independent entity is created.
- (3) In requesting information from executive and legislative branch entities or officers under Subsection (2), the committee should specifically consider seeking information from:
  - (a) the state auditor;
  - (b) the state treasurer;
  - (c) the attorney general;

- (d) the risk manager; and
- (e) the executive director of the Department of Government Operations.

Amended by Chapter 344, 2021 General Session

**63E-1-303 Recommendations of the committee.**

After the committee has reviewed a proposal to create an independent entity in accordance with Section 63E-1-302, the committee shall make a report to the Legislature stating whether the committee:

- (1) recommends creation of the proposed independent entity;
- (2) recommends that the proposed independent entity not be created; or
- (3) makes no recommendation regarding the creation of the proposed independent entity.

Amended by Chapter 46, 2006 General Session

**63E-1-304 Limitations on risk management coverage.**

- (1) Except as specifically modified in its authorizing statute, an independent entity is not eligible to receive coverage under the Risk Management Fund created by Section 63A-4-201 or any captive insurance company created by the risk manager.
- (2) If an independent entity that receives coverage under the Risk Management Fund or any captive insurance company created by the risk manager is involved in a commercial activity, the state risk manager may require that the entity:
  - (a) procure commercial insurance coverage or provide proof of vendor's insurance coverage for the commercial activity; and
  - (b) comply with loss prevention measures specified by the state risk manager.

Amended by Chapter 33, 2021 General Session

**Part 4  
Privatization of Independent Entities**

**63E-1-401 Definitions.**

As used in this part:

- (1) "Asset" means property of all kinds, real and personal, tangible and intangible, and includes:
  - (a) cash, except reasonable compensation or salary for services rendered;
  - (b) stock or other investments;
  - (c) goodwill;
  - (d) real property;
  - (e) an ownership interest;
  - (f) a license;
  - (g) a cause of action; and
  - (h) any similar property.
- (2) "Business interest" means:
  - (a) holding the position of trustee, director, officer, or other similar position with a business entity;or

- (b) the ownership, either legally or equitably, of at least 10% of the outstanding shares of a corporation or 10% interest in any other business entity, being held by:
  - (i) an individual;
  - (ii) the individual's spouse;
  - (iii) a minor child of the individual; or
  - (iv) any combination of Subsections (2)(b)(i) through (iii).
- (3) "Interested party" means a person that held or holds the position of trustee, director, officer, or other similar position with an independent entity within:
  - (a) five years prior to the date of an action described in Subsection (5); or
  - (b) during the privatization of an independent entity.
- (4) "Lobbyist" is a person that provided or provides services as a lobbyist, as defined in Section 36-11-102, within:
  - (a) five years prior to the date of an action described in Subsection (5); or
  - (b) during the privatization of an independent entity.
- (5)
  - (a) "Privatized" means an action described in Subsection (5)(b) taken under circumstances in which the operations of the independent entity are continued by a successor entity that:
    - (i) is privately owned;
    - (ii) is unaffiliated to the state; and
    - (iii) receives any asset of the independent entity.
  - (b) An action referred to in Subsection (5)(a) includes:
    - (i) the repeal of the authorizing statute of an independent entity and the revision to state laws to terminate the relationship between the state and the independent entity;
    - (ii) the dissolution of the independent entity;
    - (iii) the merger or consolidation of the independent entity with another entity; or
    - (iv) the sale of all or substantially all of the assets of the independent entity.

Amended by Chapter 125, 2022 General Session

**63E-1-402 Benefits to interested parties of an independent entity -- Disposition of unused appropriations.**

- (1) If an independent entity is privatized, the following may not receive any benefit prohibited under Subsection (2):
  - (a) an interested party of the independent entity;
  - (b) an entity in which an interested party holds a business interest;
  - (c) a lobbyist of the independent entity; or
  - (d) an entity in which a lobbyist of the independent entity holds a business interest.
- (2) If an independent entity is privatized:
  - (a) a person described in Subsection (1)(a) or (b) may not receive:
    - (i) compensation from an independent entity that is conditioned in whole or in part on:
      - (A) the passage, defeat, or amendment of legislative action related to privatization; or
      - (B) the approval, modification, or denial of an executive action related to privatization; or
    - (ii) any asset of the independent entity or its successor; and
  - (b) a person described in Subsection (1)(c) or (d) may not receive any:
    - (i) compensation that if received by the lobbyist would be in violation of Section 36-11-301; or
    - (ii) asset of the independent entity or its successor.
- (3) Subsection (2)(a)(ii) does not apply to funds in a loan program administered by an independent entity if:

- (a) the funds were provided by an entity other than the state or were derived from those funds, including loan payments, interest, and other charges paid by borrowers;
  - (b) the person described in Subsection (1)(a) or (b) who receives the funds assumes all duties and obligations of the independent entity:
    - (i) under the contract with the entity that provided the initial funding; and
    - (ii) relating to the loan program;
  - (c) separate records have been maintained regarding the use of the funds;
  - (d) the funds may only be used for purposes specified in an agreement with the entity that provided the initial funding; and
  - (e) the funds may only be transferred to a person described in Subsection (1)(a) or (b) if the transfer is approved by the entity that provided the initial funding.
- (4)
- (a) If an action described in Subsection 63E-1-401(5)(b)(i) or (ii) is taken under circumstances in which the independent entity is no longer functioning, the independent entity shall return to the Division of Finance any unused appropriations made to the independent entity by the Legislature.
  - (b) The Division of Finance shall deposit funds received under Subsection (4)(a) into the General Fund.

Amended by Chapter 431, 2023 General Session

**63E-1-403 Privatization process -- Audit.**

- (1) If an independent entity seeks to privatize the independent entity, it shall:
  - (a) submit to the Legislature recommended legislation to:
    - (i) repeal the authorizing statute and revise state law as necessary to terminate its relationship to the state; and
    - (ii) address the value of any interests the state holds in the independent entity and whether the state should receive compensation for those interests as part of privatization; and
  - (b) be audited by the state auditor:
    - (i) within one year prior to the effective date of legislation that repeals the authorizing statute to terminate the relationship between the independent entity and the state; and
    - (ii) to determine the amount, nature, and source of revenues and assets of the independent entity.
- (2) The relationship between the state and an independent entity may not be terminated except by the repeal of the authorizing statute of the independent entity.

Enacted by Chapter 201, 2001 General Session

**63E-1-404 Penalties for violation.**

- (1) A person who knowingly violates this part:
  - (a) is guilty of a third degree felony if the combined value of any compensation or assets received by the person as a result of the violation is equal to or greater than \$10,000; or
  - (b) is guilty of a class A misdemeanor if the combined value of any compensation or assets received by the person as a result of the violation is less than \$10,000.
- (2)
  - (a) In addition to any penalty imposed under Subsection (1), a person that violates this part shall return to the successor of the independent entity any compensation or assets received in violation of this part.

- (b) If the assets received by the person in violation of this part are no longer in the possession of the person, the person shall pay the successor of the independent entity an amount equal to the fair market value of the asset at the time the person received the asset.
- (3) Notwithstanding Subsection 36-11-401(3), if a lobbyist violates Subsection 63E-1-402(2)(b)(i), the lobbyist is guilty of the crime outlined in Subsection (1), which crime shall be determined by the value of compensation or assets received by the lobbyist.

Amended by Chapter 125, 2022 General Session

## **Chapter 2 Independent Corporations Act**

### **63E-2-101 Title.**

This chapter is known as the "Independent Corporations Act."

Enacted by Chapter 201, 2001 General Session

### **63E-2-102 Independent corporations.**

An independent corporation is granted a franchise to incorporate in this state in accordance with this title and its authorizing statute.

Enacted by Chapter 201, 2001 General Session

### **63E-2-103 Public purpose -- Legislative findings.**

- (1) Each independent corporation shall have a specific public purpose related to the state or its citizens stated in its authorizing statute.
- (2) Prior to enacting its authorizing statute, the Legislature shall make a finding that the independent corporation needs to be created by the state or be given by the state the right to exist and conduct its affairs as an independent corporation to serve its public purpose.
- (3) Prior to enacting an authorizing statute, the Legislature shall also make a finding that:
  - (a) if the independent corporation receives ongoing state funding for operations, it:
    - (i) performs a public purpose that is not performed by private entities; or
    - (ii) acts as a trustee over money held in trust;
  - (b) if the independent corporation does not receive ongoing state funding for operations, it requires:
    - (i) exemption from federal or state income tax to meet its public purpose; or
    - (ii) the interest on its indebtedness to be exempt from federal or state income tax to meet its public purpose; or
  - (c) the independent corporation is created by the Utah Constitution.

Enacted by Chapter 201, 2001 General Session

### **63E-2-104 Legislative review.**

- (1) Each independent corporation is subject to:



- (a) review by the Retirement and Independent Entities Committee in accordance with Chapter 1, Independent Entities Act; and
  - (b) the authority of the legislative auditor general in accordance with Utah Constitution, Article VI, Section 33, and Section 36-12-15.
- (2) Each independent corporation shall report, as requested, to the committee on matters related to audits.

Amended by Chapter 21, 2023 General Session

**63E-2-105 Boards.**

- (1) As used in this section, "director" includes a trustee or other board member.
- (2) Each independent corporation shall be governed by a board of directors.
- (3) The authorizing statute of each independent corporation shall specify:
  - (a) the process for appointing, removing, and replacing directors;
  - (b) the number and terms of office for directors;
  - (c) the board chair selection procedure;
  - (d) board quorum requirements;
  - (e) director qualifications; and
  - (f) the duties and fiduciary responsibilities of directors.

Enacted by Chapter 201, 2001 General Session

**63E-2-106 Powers.**

Except as specifically modified in its authorizing statute, each independent corporation shall have the power to:

- (1) exist as a:
  - (a) public corporation; or
  - (b) quasi-public corporation;
- (2) perform its stated public purpose;
- (3) sue and be sued in its own name;
- (4) retain and be represented by legal counsel independent of the attorney general;
- (5) create foundations or subsidiaries;
- (6) act in accordance with all other powers granted in its authorizing statute and by duly issued license or franchise;
- (7) act in all ways as a nonprofit corporation established under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, that do not conflict with:
  - (a) this title;
  - (b) the authorizing statute of the independent corporation; or
  - (c) statutes and regulations to which the independent corporation is subject.

Enacted by Chapter 201, 2001 General Session

**63E-2-107 Prohibited participation.**

Except as specifically modified in its authorizing statute, each independent corporation may not participate in the:

- (1) issuance of bonds that are the obligation of the state; or
- (2) services provided to state agencies, including:
  - (a) fuel dispensing;

- (b) motor pool services;
- (c) surplus property services;
- (d) information technology services; or
- (e) archive services.

Amended by Chapter 220, 2013 General Session

**63E-2-108 Eligible participation.**

Except as specifically modified in its authorizing statute, each independent corporation may participate in the state retirement system.

Enacted by Chapter 201, 2001 General Session

**63E-2-109 State statutes.**

- (1) Except as specifically modified in its authorizing statute, each independent corporation shall be exempt from the statutes governing state agencies, including:
  - (a) Title 51, Chapter 5, Funds Consolidation Act;
  - (b) Title 51, Chapter 7, State Money Management Act;
  - (c) Title 63A, Utah Government Operations Code;
  - (d) Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
  - (e) Title 63G, Chapter 4, Administrative Procedures Act;
  - (f) Title 63G, Chapter 6a, Utah Procurement Code;
  - (g) Title 63J, Chapter 1, Budgetary Procedures Act;
  - (h) Title 63J, Chapter 2, Revenue Procedures and Control Act; and
  - (i) Title 63A, Chapter 17, Utah State Personnel Management Act.
- (2) Except as specifically modified in its authorizing statute, each independent corporation shall be subject to:
  - (a) Title 52, Chapter 4, Open and Public Meetings Act;
  - (b) Section 67-3-12; and
  - (c) Title 63G, Chapter 2, Government Records Access and Management Act.
- (3) Each independent corporation board may adopt its own policies and procedures governing its:
  - (a) funds management;
  - (b) audits; and
  - (c) personnel.

Amended by Chapter 84, 2021 General Session

Amended by Chapter 345, 2021 General Session

**63E-2-110 Budgetary and fiscal requirements.**

- (1) The board of each independent corporation shall annually adopt a budget.
- (2)
  - (a) All money held in trust by an independent corporation is not public funds, even if they were public funds before the money was received by the independent corporation.
  - (b) The money of an independent corporation is not required to be held in the custody of the state treasurer.

Amended by Chapter 342, 2011 General Session

**63E-2-111 State liability.**

Except as expressly provided in this title or in an authorizing statute, the state is not liable for any independent corporation's obligations, expenses, debts, and liabilities.

Enacted by Chapter 201, 2001 General Session