

1                                   **PUBLIC MENTAL HEALTH AND SUBSTANCE**

2   **ABUSE SYSTEM REFORM**

3   1999 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Nora B. Stephens**

6 AN ACT RELATING TO THE PUBLIC MENTAL HEALTH AND SUBSTANCE ABUSE  
7 SYSTEMS; INCREASING ACCOUNTABILITY, RESPONSIBILITY, AND LIABILITY OF  
8 COUNTY GOVERNING BODIES WITH REGARD TO PUBLIC FUNDS; DEFINING PUBLIC  
9 FUNDS; PROVIDING CONTRACT AND AUDIT REQUIREMENTS; INCREASING  
10 AUTHORITY AND RESPONSIBILITY OF THE DIVISIONS OF MENTAL HEALTH AND  
11 SUBSTANCE ABUSE OVER SPECIFIED FEDERAL AND STATE FUNDS ALLOCATED  
12 FOR LOCAL MENTAL HEALTH AND SUBSTANCE ABUSE PROGRAMS AND SERVICES;  
13 MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

15 AMENDS:

16           **17A-1-403**, as last amended by Chapter 30, Laws of Utah 1992

17           **17A-3-602**, as enacted by Chapter 181, Laws of Utah 1990

18           **17A-3-701**, as last amended by Chapter 30, Laws of Utah 1992

19           **62A-1-111**, as last amended by Chapters 34 and 254, Laws of Utah 1998

20           **62A-8-101**, as last amended by Chapter 227, Laws of Utah 1993

21           **62A-8-103**, as last amended by Chapter 68, Laws of Utah 1997

22           **62A-8-104**, as last amended by Chapter 181, Laws of Utah 1990

23           **62A-8-109**, as enacted by Chapter 1, Laws of Utah 1988

24           **62A-8-112**, as enacted by Chapter 181, Laws of Utah 1990

25           **62A-12-101**, as last amended by Chapter 227, Laws of Utah 1993

26           **62A-12-102**, as last amended by Chapter 181, Laws of Utah 1990

27           **62A-12-102.5**, as renumbered and amended by Chapter 181, Laws of Utah 1990

28           **62A-12-105**, as last amended by Chapter 30, Laws of Utah 1992  
 29           **62A-12-289**, as last amended by Chapter 13, Laws of Utah 1998  
 30           **67-3-1**, as last amended by Chapter 169, Laws of Utah 1997  
 31           **76-8-401**, as last amended by Chapter 232, Laws of Utah 1995  
 32           **76-8-402**, as last amended by Chapter 232, Laws of Utah 1995  
 33           **76-8-404**, as last amended by Chapter 232, Laws of Utah 1995

34 ENACTS:

35           **17A-3-603.5**, Utah Code Annotated 1953  
 36           **17A-3-703**, Utah Code Annotated 1953  
 37           **62A-8-110.1**, Utah Code Annotated 1953  
 38           **62A-12-289.1**, Utah Code Annotated 1953

39 REPEALS AND REENACTS:

40           **62A-8-110.5**, as enacted by Chapter 181, Laws of Utah 1990

41 REPEALS:

42           **17A-3-612**, as renumbered and amended by Chapter 186, Laws of Utah 1990

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

44           Section 1. Section **17A-1-403** is amended to read:

45           **17A-1-403. Applicability to special districts -- Exceptions.**

46           This part applies to all special districts under Subsection 17A-1-404(19) except the  
 47 following districts which are specifically excluded from this part:

- 48           (1) redevelopment agencies created under Chapter 2, Part ~~[11 or]~~ 12;
- 49           (2) public transit districts created under Chapter 2, Part 10;
- 50           (3) health departments created under Title 26A, Chapter 1; and
- 51           ~~[(4) mental health districts created under Chapter 3, Part 6; and]~~
- 52           ~~[(5)]~~ (4) entities created under Title 11, Chapter 13, Interlocal Cooperation Act, unless the
- 53 entity is also a mental health district created under Chapter 3, Part 6.

54           Section 2. Section **17A-3-602** is amended to read:

55           **17A-3-602. Local mental health authorities -- Responsibilities.**

56           (1) All county governing bodies in this state are local mental health authorities. Within  
 57 legislative appropriations and county matching funds required by this section, under the policy  
 58 direction of the ~~[board]~~ state Board of Mental Health and the administrative direction of the

59 [division] Division of Mental Health within the Department of Human Services, local mental  
60 health authorities shall provide mental health services to persons within their respective counties.  
61 Two or more county governing bodies may join to provide mental health prevention and treatment  
62 services.

63 (2) The governing bodies may establish acceptable ways of apportioning the cost of mental  
64 health services. Any agreement for joint mental health services may designate the treasurer of one  
65 of the participating counties as the custodian of moneys available for those joint services, and that  
66 the designated treasurer, or other disbursing officer, may make payments from those moneys for  
67 such purposes upon audit of the appropriate auditing officer or officers representing the  
68 participating counties. The agreement may provide for:

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

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

74 (3) (a) All county governing bodies, as local mental health authorities, are accountable to  
75 the Department of Human Services, the Department of Health, and the state with regard to the use  
76 of state and federal funds received from those departments for mental health services, regardless  
77 of whether the services are provided by a private contract provider.

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

85 [(3)] (4) Local mental health authorities shall:

86 (a) review and evaluate mental health needs and services;

87 (b) annually prepare and submit to the division a plan for mental health funding and  
88 service delivery. The plan shall include[-] services for adults, youth, and children, including, but  
89 [is] not limited to, the following:

- 90 (i) inpatient care and services;
- 91 (ii) residential care and services;
- 92 [~~(iii) day treatment and psychosocial rehabilitation;~~]
- 93 [~~(iv)~~] (iii) outpatient care and services;
- 94 [~~(v)~~] (iv) 24-hour crisis care and services;
- 95 [~~(vi) outreach care and services;~~]
- 96 [~~(vii) follow-up care and services;~~]
- 97 [~~(viii) screening for referral services;~~]
- 98 (v) psychotropic medication management;
- 99 (vi) psychosocial rehabilitation including vocational training and skills development;
- 100 (vii) case management;
- 101 (viii) community supports including in-home services, housing, family support services,
- 102 and respite services; and
- 103 (ix) consultation and education services, including but not limited to, case consultation,
- 104 collaboration with other service agencies, public education, and public information; [and]
- 105 [~~(x) case management;~~]
- 106 (c) establish and maintain, either directly or by contract, programs licensed under Title
- 107 62A, Chapter 2, Licensure of Programs and Facilities;
- 108 (d) appoint directly or by contract a full-time or part-time director for mental health
- 109 programs and prescribe his duties;
- 110 (e) provide input and comment on new and revised policies established by the [board] state
- 111 Board of Mental Health;
- 112 (f) establish [or] and require [contractors] contract providers to establish administrative,
- 113 clinical, personnel, financial, and management policies regarding mental health services and
- 114 facilities, in accordance with the policies of the [board] state Board of Mental Health, the Division
- 115 of Mental Health, and state and federal law;
- 116 (g) establish mechanisms [~~to provide~~] allowing for direct citizen input; [and]
- 117 (h) annually contract with the Division of Mental Health to provide mental health
- 118 programs and services in accordance with the provisions of Title 62A, Chapter 12, Mental Health;
- 119 [~~(h)~~] (i) comply with all applicable state and federal statutes, policies, audit requirements,
- 120 contract requirements, and any directives resulting from those audits[;] and contract requirements;

121            [(i)] (j) provide funding equal to at least 20% of the state funds that it receives to fund  
122 services described in the plan; and

123            [(j)] (k) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal  
124 Cooperation Act, [~~and with the requirements and procedures of~~] Title 51, Chapter 2, Audits of  
125 Political Subdivisions, Interlocal Organizations and Other Local Entities, and Title 17A, Chapter  
126 1, Part 4, Uniform Fiscal Procedures for Special Districts Act.

127            [(4)] (5) Before disbursing any public funds, local mental health authorities shall require  
128 that all entities that receive any public funds from a local mental health authority agree in writing  
129 that:

130            (a) the division may examine the entity's financial records; [~~and]~~

131            (b) the county auditor may examine and audit the entity's financial records [~~if requested~~  
132 ~~to do so by the local mental health authority.~~]; and

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

134            [(5)] (6) Local mental health authorities may receive property, grants, gifts, supplies,  
135 materials, contributions, and any benefit derived therefrom, for mental health services. If those  
136 gifts are conditioned upon their use for a specified service or program, they shall be so used.

137            (7) (a) For purposes of this section "public funds" means the same as that term is defined  
138 in Section 17A-3-603.5.

139            (b) Nothing in this section limits or prohibits an organization exempt under Section  
140 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any  
141 financial arrangement that is otherwise lawful for that organization.

142            Section 3. Section **17A-3-603.5** is enacted to read:

143            **17A-3-603.5. Responsibility for oversight of public funds -- Mental health programs**  
144 **and services.**

145            (1) As used in this section, "public funds" means federal monies received from the  
146 Department of Human Services or the Department of Health, and state monies appropriated by the  
147 Legislature to the Department of Human Services, the Department of Health, a county governing  
148 body, or local mental health authority for the purposes of providing mental health programs or  
149 services. "Public funds" includes those federal and state monies that have been transferred by a  
150 local mental health authority to a private provider under an annual or otherwise ongoing contract  
151 to provide comprehensive mental health programs or services for the local mental health authority.

152 Those monies maintain the nature of "public funds" while in the possession of the private entity  
153 that has an annual or otherwise ongoing contract with a local mental health authority to provide  
154 comprehensive mental health programs or services for the local mental health authority.

155 (2) Each local mental health authority is responsible for oversight of all public funds  
156 received by it, to determine that those public funds are utilized in accordance with federal and state  
157 law, the rules and policies of the Department of Human Services and the Department of Health,  
158 and the provisions of any contract between the local mental health authority and the Department  
159 of Human Services, the Department of Health, or a private provider. That oversight includes  
160 requiring that neither the contract provider, as described in Subsection (1), nor any of its  
161 employees:

162 (a) violate any applicable federal or state criminal law;

163 (b) knowingly violate, on more than one occasion, any applicable rule or policy of the  
164 Department of Human Services or Department of Health, or any provision of contract between the  
165 local mental health authority and the Department of Human Services, the Department of Health,  
166 or the private provider;

167 (c) knowingly keep any false account or make any false entry or erasure in any account of  
168 or relating to the public funds;

169 (d) fraudulently alter, falsify, conceal, destroy, or obliterate any account of or relating to  
170 public funds;

171 (e) fail to ensure competent oversight for lawful disbursement of public funds;

172 (f) appropriate public funds for an unlawful use or for a use that is not in compliance with  
173 contract provisions; or

174 (g) knowingly or intentionally use public funds unlawfully or in violation of a  
175 governmental contract provision, or in violation of state policy.

176 (3) Nothing in this section limits or prohibits an organization exempt under Section  
177 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any  
178 financial arrangement that is otherwise lawful for that organization.

179 (4) A local mental health authority that knew or reasonably should have known of any of  
180 the circumstances described in Subsection (2), and that fails or refuses to take timely corrective  
181 action in good faith shall, in addition to any other penalties provided by law, be required to make  
182 full and complete repayment to the state of all public funds improperly used or expended.

183           (5) Any public funds required to be repaid to the state by a local mental health authority  
184 pursuant to Subsection (4), based upon the actions or failure of the contract provider, may be  
185 recovered by the local mental health authority from its contract provider, in addition to the local  
186 mental health authority's costs and attorney's fees.

187           Section 4. Section **17A-3-701** is amended to read:

188           **17A-3-701. Local substance abuse authorities -- Responsibilities.**

189           (1) All county governing bodies in this state are local substance abuse authorities. Within  
190 legislative appropriations and county matching funds required by this section, and under the policy  
191 direction of the [board] state Board of Substance Abuse and the administrative direction of the  
192 [division] Division of Substance Abuse within the Department of Human Services, local substance  
193 abuse authorities shall provide substance abuse services to residents of their respective counties.  
194 Two or more county governing bodies may join to provide substance abuse prevention and  
195 treatment services.

196           (2) The governing bodies may establish acceptable ways of apportioning the cost of  
197 substance abuse services. Any agreement for joint substance abuse services may designate the  
198 treasurer of one of the participating counties as the custodian of moneys available for those joint  
199 services, and that the designated treasurer, or other disbursing officer, may make payments from  
200 those moneys for such purposes upon audit of the appropriate auditing officer or officers  
201 representing the participating counties. The agreement may provide for joint operation of services  
202 and facilities or for operation of services and facilities under contract by one participating local  
203 substance abuse authority for other participating local substance abuse authorities.

204           (3) (a) All county governing bodies, as local substance abuse authorities, are accountable  
205 to the Department of Human Services, the Department of Health, and the state with regard to the  
206 use of state and federal funds received from those departments for substance abuse services,  
207 regardless of whether the services are provided by a private contract provider.

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

214 to programs and services.

215 [~~3~~] (4) Local substance abuse authorities shall:

216 (a) review and evaluate substance abuse prevention and treatment needs and services;

217 (b) annually prepare and submit a plan to the division for funding and service delivery; the  
218 plan shall include, but is not limited to, primary prevention, targeted prevention, early intervention,  
219 and treatment services;

220 (c) establish and maintain, either directly or by contract, programs licensed under Title  
221 62A, Chapter 2;

222 (d) appoint directly or by contract, a full or part time director for substance abuse  
223 programs, and prescribe his duties;

224 (e) provide input and comment on new and revised policies established by the [~~board~~] state  
225 Board of Substance Abuse;

226 (f) establish [~~or~~] and require [~~contractors~~] contract providers to establish administrative,  
227 clinical, personnel, financial, and management policies regarding substance abuse services and  
228 facilities, in accordance with the policies of the [~~board~~] state Board of Substance Abuse, and state  
229 and federal law;

230 (g) establish mechanisms [~~to provide~~] allowing for direct citizen input;

231 (h) annually contract with the Division of Substance Abuse to provide substance abuse  
232 programs and services in accordance with the provisions of Title 62A, Chapter 8, Substance  
233 Abuse;

234 [~~h~~] (i) comply with all applicable state and federal statutes, policies, audit requirements,  
235 contract requirements, and any directives resulting from those audits and contract requirements;

236 [~~i~~] (j) promote or establish programs for the prevention of substance abuse within the  
237 community setting through community-based prevention programs;

238 [~~j~~] (k) provide funding equal to at least 20% of the state funds that it receives to fund  
239 services described in the plan; and

240 [~~k~~] (l) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal  
241 Cooperation Act, [~~and with the requirements and procedures of~~] Title 51, Chapter 2, Audits of  
242 Political Subdivisions, Interlocal Organizations and Other Local Entities, and Title 17A, Chapter  
243 1, Part 4, Uniform Fiscal Procedures for Special Districts Act.

244 [~~4~~] (5) Before disbursing any public funds, local substance abuse authorities shall require

245 that all entities that receive any public funds from a local substance abuse authority agree in  
246 writing that:

247 (a) the division may examine the entity's financial records; [and]

248 (b) the county auditor may examine and audit the entity's financial records [~~if requested~~  
249 ~~to do so by the local substance abuse authority.~~]; and

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

251 [(5)] (6) Local substance abuse authorities may receive property, grants, gifts, supplies,  
252 materials, contributions, and any benefit derived therefrom, for substance abuse services. If those  
253 gifts are conditioned upon their use for a specified service or program, they shall be so used.

254 (7) (a) For purposes of this section "public funds" means the same as that term is defined  
255 in Section 17A-3-703.

256 (b) Nothing in this section limits or prohibits an organization exempt under Section  
257 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any  
258 financial arrangement that is otherwise lawful for that organization.

259 Section 5. Section **17A-3-703** is enacted to read:

260 **17A-3-703. Responsibility for oversight of public funds -- Substance abuse programs**  
261 **and services.**

262 (1) As used in this section, "public funds" means federal monies received from the  
263 Department of Human Services or the Department of Health, and state monies appropriated by the  
264 Legislature to the Department of Human Services, the Department of Health, a county governing  
265 body, or local substance abuse authority for the purposes of providing substance abuse programs  
266 or services. "Public funds" includes those federal and state monies that have been transferred by  
267 a local substance abuse authority to a private provider under an annual or otherwise ongoing  
268 contract to provide comprehensive substance abuse programs or services for the local substance  
269 abuse authority. Those monies maintain the nature of "public funds" while in the possession of  
270 the private entity that has an annual or otherwise ongoing contract with a local substance abuse  
271 authority to provide comprehensive substance abuse programs or services for the local substance  
272 abuse authority.

273 (2) Each local substance abuse authority is responsible for oversight of all public funds  
274 received by it, to determine that those public funds are utilized in accordance with federal and state  
275 law, the rules and policies of the Department of Human Services and the Department of Health,

276 and the provisions of any contract between the local substance abuse authority and the Department  
277 of Human Services, the Department of Health, or a private provider. That oversight includes  
278 requiring that neither the contract provider, as described in Subsection (1), nor any of its  
279 employees:

280 (a) violate any applicable federal or state criminal law;

281 (b) knowingly violate, on more than one occasion, any applicable rule or policy of the  
282 Department of Human Services or Department of Health, or any provision of contract between the  
283 local substance abuse authority and the Department of Human Services, the Department of Health,  
284 or the private provider;

285 (c) knowingly keep any false account or make any false entry or erasure in any account of  
286 or relating to the public funds;

287 (d) fraudulently alter, falsify, conceal, destroy, or obliterate any account of or relating to  
288 public funds;

289 (e) fail to ensure competent oversight for lawful disbursement of public funds;

290 (f) appropriate public funds for an unlawful use or for a use that is not in compliance with  
291 contract provisions; or

292 (g) knowingly or intentionally use public funds unlawfully or in violation of a  
293 governmental contract provision, or in violation of state policy.

294 (3) Nothing in this section limits or prohibits an organization exempt under Section  
295 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any  
296 financial arrangement that is otherwise lawful for that organization.

297 (4) A local substance abuse authority that knew or reasonably should have known of any  
298 of the circumstances described in Subsection (2), and that fails or refuses to take timely corrective  
299 action in good faith shall, in addition to any other penalties provided by law, be required to make  
300 full and complete repayment to the state of all public funds improperly used or expended.

301 (5) Any public funds required to be repaid to the state by a local substance abuse authority  
302 pursuant to Subsection (4), based upon the actions or failure of the contract provider, may be  
303 recovered by the local substance abuse authority from its contract provider, in addition to the local  
304 substance abuse authority's costs and attorney's fees.

305 Section 6. Section **62A-1-111** is amended to read:

306 **62A-1-111. Department authority.**

307           The department has authority, in addition to all other authority and responsibility granted  
308 to it by law, to:

309           (1) adopt rules, not inconsistent with law, as the department may consider necessary or  
310 desirable for providing social services to the people of this state;

311           (2) establish and manage client trust accounts in the department's institutions and  
312 community programs, at the request of the client or his legal guardian or representative, or in  
313 accordance with federal law;

314           (3) purchase, as authorized or required by law, services that the department is responsible  
315 to provide for legally eligible persons;

316           (4) conduct adjudicative proceedings for clients and providers in accordance with the  
317 procedures of Title 63, Chapter 46b, Administrative Procedures Act;

318           (5) establish eligibility standards for its programs, not inconsistent with state or federal law  
319 or regulations;

320           (6) take necessary steps, including legal action, to recover money or the monetary value  
321 of services provided to a recipient who was not eligible;

322           (7) set and collect fees for its services;

323           (8) license agencies, facilities, and programs, except as otherwise allowed, prohibited, or  
324 limited by law;

325           (9) acquire, manage, and dispose of any real or personal property needed or owned by the  
326 department, not inconsistent with state law;

327           (10) receive gifts, grants, devises, and donations; gifts, grants, devises, donations, or the  
328 proceeds thereof, may be credited to the program designated by the donor, and may be used for the  
329 purposes requested by the donor, as long as the request conforms to state and federal policy; all  
330 donated funds shall be considered private, nonlapsing funds and may be invested under guidelines  
331 established by the state treasurer;

332           (11) accept and employ volunteer labor or services; the department is authorized to  
333 reimburse volunteers for necessary expenses, when the department considers that reimbursement  
334 to be appropriate;

335           (12) carry out the responsibility assigned in the Workforce Services Plan by the State  
336 Council on Workforce Services;

337           (13) carry out the responsibility assigned by Section 9-4-802 with respect to coordination

338 of services for the homeless;

339 (14) carry out the responsibility assigned by Section 62A-5a-105 with respect to  
340 coordination of services for handicapped students;

341 (15) provide training and educational opportunities for its staff;

342 (16) collect child support payments and any other monies due to the department;

343 ~~[(17) examine and audit the expenditures of any public funds provided to local substance~~  
344 ~~abuse authorities, local mental health authorities, local area agencies established under Chapter 3,~~  
345 ~~and any agency or organization that contracts with or receives funds from those authorities or~~  
346 ~~agencies. Those local authorities, area agencies, and any person or entity that contracts with or~~  
347 ~~receives funds from those authorities or area agencies, shall provide the department with any~~  
348 ~~information it deems necessary to complete its audit;]~~

349 [(18)] (17) apply the provisions of Title 78, Chapter 45, Uniform Civil Liability for  
350 Support Act, to parents whose child lives out of the home in a department licensed or certified  
351 setting;

352 [(19)] (18) establish policy and procedures in cases where the department is given custody  
353 of a minor by the juvenile court pursuant to Section 78-3a-118; any policy and procedures shall  
354 include:

355 (a) designation of interagency teams for each juvenile court district in the state;

356 (b) delineation of assessment criteria and procedures;

357 (c) minimum requirements, and timeframes, for the development and implementation of  
358 a collaborative service plan for each minor placed in department custody; and

359 (d) provisions for submittal of the plan and periodic progress reports to the court; [and]

360 ~~[(20)] (19) carry out the responsibilities assigned to it by statute[-]; and~~

361 (20) examine and audit the expenditures of any public funds provided to local substance  
362 abuse authorities, local mental health authorities, local area agencies on aging, and any person,  
363 agency, or organization that contracts with or receives funds from those authorities or agencies.

364 Those local authorities, area agencies, and any person or entity that contracts with or receives funds  
365 from those authorities or area agencies, shall provide the department with any information the  
366 department considers necessary. The department is further authorized to issue directives resulting  
367 from any examination or audit to local authorities, area agencies, and persons or entities that  
368 contract with or receive funds from those authorities with regard to any public funds. If the

369 department determines that it is necessary to withhold funds from a local mental health authority  
370 or local substance abuse authority based on failure to comply with state or federal law, policy, or  
371 contract provisions, it may take steps necessary to ensure continuity of services. For purposes of  
372 this Subsection (20) "public funds" means the same as that term is defined in Sections 62A-8-101  
373 and 62A-12-101.

374 Section 7. Section **62A-8-101** is amended to read:

375 **62A-8-101. Definitions.**

376 As used in this chapter:

377 (1) "Board" means the Board of Substance Abuse established in accordance with Section  
378 62A-1-105.

379 (2) "Director" means the director of the Division of Substance Abuse.

380 (3) "Division" means the Division of Substance Abuse established in Section 62A-8-103.

381 (4) "Local substance abuse authority" means a county legislative body.

382 (5) (a) "Public funds" means federal monies received from the Department of Human  
383 Services or the Department of Health, and state monies appropriated by the Legislature to the  
384 Department of Human Services, the Department of Health, a county governing body, or local  
385 substance abuse authority for the purposes of providing substance abuse programs or services.  
386 "Public funds" includes those federal and state monies that have been transferred by a local  
387 substance abuse authority to a private provider under an annual or otherwise ongoing contract to  
388 provide comprehensive substance abuse programs or services for the local substance abuse  
389 authority. Those monies maintain the nature of "public funds" while in the possession of the  
390 private entity that has an annual or otherwise ongoing contract with a local substance abuse  
391 authority to provide comprehensive substance abuse programs or services for the local substance  
392 abuse authority.

393 (b) This definition of "public funds" does not limit or prohibit an organization exempt  
394 under Section 501(c)(3), Internal Revenue Code, from using public funds for any business purpose  
395 or in any financial arrangement that is otherwise lawful for that organization.

396 Section 8. Section **62A-8-103** is amended to read:

397 **62A-8-103. Division -- Creation -- Responsibilities.**

398 (1) There is created the Division of Substance Abuse within the department, under the  
399 administration and general supervision of the executive director, and, with regard to its programs,

400 under the policy direction of the board. The division is the substance abuse authority for this state.

401 (2) The division shall:

402 (a) educate the general public regarding the nature and consequences of substance abuse  
403 by promoting school and community-based prevention programs;

404 (b) render support and assistance to public schools through approved school-based  
405 substance abuse education programs aimed at prevention of substance abuse;

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

408 (d) promote or establish cooperative relationships with courts, hospitals, clinics, medical  
409 and social agencies, public health authorities, law enforcement agencies, education and research  
410 organizations, and other related groups;

411 (e) provide consultation and other assistance to public and private agencies and groups;

412 (f) cooperate and assist other organizations and private treatment centers for substance  
413 abusers, by providing them with essential materials for furthering programs of prevention and  
414 rehabilitation of actual and potential substance abusers;

415 (g) promote or conduct research on substance abuse issues, and submit to the governor and  
416 the Legislature recommendations for changes in policy and legislation;

417 (h) receive [~~and disburse state and federal~~], distribute, and provide direction over public  
418 funds for substance abuse services;

419 (i) consult and coordinate with local substance abuse authorities regarding substance abuse  
420 programs and services;

421 ~~[(i)]~~ (j) promote or establish programs for education and certification of instructors to  
422 educate persons convicted of driving under the influence of alcohol or drugs or driving with any  
423 measurable controlled substance in the body;

424 ~~[(j)]~~ (k) monitor and evaluate programs provided by local substance abuse authorities[;  
425 and];

426 (l) examine expenditures of any local, state, and federal funds;

427 (m) monitor the expenditure of public funds by:

428 (i) local substance abuse authorities; and

429 (ii) in counties where they exist, the private contract provider that has an annual or  
430 otherwise ongoing contract to provide comprehensive substance abuse programs or services for

431 the local substance abuse authority;

432        ~~[(k)]~~ (n) contract with local substance abuse authorities to provide a comprehensive  
433 continuum of services in accordance with board and division policy, contract provisions, and the  
434 local plan;

435        ~~[(h)]~~ (o) contract with private and public entities for special statewide or nonclinical  
436 services according to board and division policy;

437        ~~[(m)]~~ (p) review and approve ~~[plans submitted by]~~ each local substance abuse ~~[authorities]~~  
438 authority's plan in order to assure:

439            (i) a statewide comprehensive continuum of substance abuse services; and

440            (ii) appropriate expenditure of public funds;

441            (q) review and make recommendations regarding each local substance abuse authority's  
442 contract with its provider of substance abuse programs and services to assure compliance with state  
443 and federal law and policy;

444        ~~[(n)]~~ (r) monitor and assure compliance with board and division policy and contract  
445 requirements; and

446        ~~[(o)]~~ (s) withhold funds from local substance abuse authorities and public and private  
447 providers for contract noncompliance, failure to comply with division directives regarding the use  
448 of public funds, or for misuse of public funds or monies.

449            (3) (a) The division may refuse to contract with and may pursue its legal remedies against  
450 any local substance abuse authority that fails, or has failed, to expend public funds in accordance  
451 with state law, policy, contract provisions, or directives issued in accordance with state law.

452            (b) The division may withhold funds from a local substance abuse authority if the  
453 authority's contract with its provider of substance abuse services fails to comply with state and  
454 federal law or policy.

455            (4) Before reissuing or renewing a contract with any local substance abuse authority, the  
456 division shall review and determine whether the local substance abuse authority is complying with  
457 its oversight and management responsibilities described in Sections 17A-3-701 and 17A-3-703.  
458 Nothing in this Subsection (4) may be used as a defense to the responsibility and liability described  
459 in Section 17A-3-703.

460        ~~[(3)]~~ (5) In carrying out its duties and responsibilities, the division may not duplicate  
461 treatment or educational facilities that exist in other divisions or departments of the state, but shall

462 work in conjunction with those divisions and departments in rendering the treatment or educational  
463 services that those divisions and departments are competent and able to provide.

464 ~~[(4)]~~ (6) (a) The division may accept in the name of and on behalf of the state donations,  
465 gifts, devises, or bequests of real or personal property or services to be used as specified by the  
466 donor.

467 (b) Those donations, gifts, devises, or bequests shall be used by the division in performing  
468 its powers and duties. Any money so obtained shall be considered private nonlapsing funds and  
469 shall be deposited into an interest-bearing expendable trust fund to be used by the division for  
470 substance abuse services. The state treasurer may invest the fund and all interest shall remain with  
471 the fund.

472 (7) The division shall annually review with each local substance abuse authority the  
473 authority's statutory and contract responsibilities regarding:

474 (a) the use of public funds;

475 (b) oversight responsibilities regarding public funds; and

476 (c) governance of substance abuse programs and services.

477 Section 9. Section **62A-8-104** is amended to read:

478 **62A-8-104. Authority to assess fees.**

479 (1) The division may, with the approval of the Legislature, the executive director, and the  
480 board, establish fee schedules and assess fees for services rendered by the division.

481 (2) Fees shall be charged for substance abuse treatment services, but services may not be  
482 refused to any person because of his ~~[ability or]~~ inability to pay.

483 Section 10. Section **62A-8-109** is amended to read:

484 **62A-8-109. Formula for allocation of funds to local substance abuse authorities.**

485 (1) The board shall establish, by rule, a formula for allocating funds to local substance  
486 abuse authorities through contracts, to provide substance abuse prevention and treatment services  
487 in accordance with the provisions of this chapter and of Title 17A, Chapter 3, Part 7, Local  
488 Substance Abuse Authorities. That formula shall provide for allocation of funds based on need.  
489 Determination of need shall be based on population unless the board establishes, by valid and  
490 accepted data, that other defined factors are relevant and reliable indicators of need. The formula  
491 shall include a differential to compensate for additional costs of providing services in rural areas.

492 (2) The formula established under Subsection (1) ~~[shall be in effect on or before July 1,~~

493 1990, and] applies to all state and federal funds appropriated by the Legislature to the division for  
494 local substance abuse authorities, but does not apply to:

495 (a) funds that local substance abuse authorities receive from sources other than the  
496 division;

497 (b) funds that local substance abuse authorities receive from the division to operate a  
498 specific program within its jurisdiction which is available to all residents of the state;

499 (c) funds that local substance abuse authorities receive from the division to meet a need  
500 that exists only within that local area; and

501 (d) funds that local substance abuse authorities receive from the division for research  
502 projects.

503 (3) Contracts with local substance abuse authorities shall provide that the division may  
504 withhold funds otherwise allocated pursuant to this section to cover the costs of audits, attorneys'  
505 fees, and other expenditures associated with reviewing the expenditure of public funds by a local  
506 substance abuse authority or its contract provider, if there has been an audit finding or judicial  
507 determination that public funds have been misused by the local substance abuse authority or its  
508 contract provider.

509 Section 11. Section **62A-8-110.1** is enacted to read:

510 **62A-8-110.1. Responsibilities of the Division of Substance Abuse.**

511 (1) It is the responsibility of the division to assure that the requirements of this part are met  
512 and applied uniformly by local substance abuse authorities across the state.

513 (2) Since it is the division's responsibility to contract with, review, approve, and oversee  
514 local substance abuse authority plans, and to withhold funds from local substance abuse authorities  
515 and public and private providers for contract noncompliance or misuse of public funds, the  
516 division shall:

517 (a) require each local substance abuse authority to submit its plan to the division by May  
518 1 of each year;

519 (b) conduct an annual program audit and review of each local substance abuse authority  
520 in the state, and its contract provider; and

521 (c) provide a written report to the Health and Human Services Interim Committee on July  
522 1, 1999, and each year thereafter, and provide an oral report to that committee, as requested. That  
523 report shall provide information regarding:

- 524 (i) the annual audit and review;  
525 (ii) the financial expenditures of each local substance abuse authority and its contract  
526 provider;  
527 (iii) the status of each local authority's and its contract provider's compliance with its plan,  
528 state statutes, and with the provisions of the contract awarded; and  
529 (iv) whether audit guidelines established pursuant to Section 62A-8-110.5 and Subsection  
530 67-3-1(2)(o) provide the division with sufficient criteria and assurances of appropriate  
531 expenditures of public funds.
- 532 (3) The annual audit and review described in Subsection (2)(b) shall, in addition to items  
533 determined by the division to be necessary and appropriate, include a review and determination  
534 regarding whether public funds allocated to local substance abuse authorities are consistent with  
535 services rendered and outcomes reported by it or its contract provider, and whether each local  
536 substance abuse authority is exercising sufficient oversight and control over public funds allocated  
537 for substance abuse programs and services.
- 538 (4) The Legislature may refuse to appropriate funds to the division upon the division's  
539 failure to comply with the provisions of this part.

540 Section 12. Section **62A-8-110.5** is repealed and reenacted to read:

541 **62A-8-110.5. Contracts for substance abuse services provided by local substance**  
542 **abuse authorities.**

543 When the division contracts with a local substance abuse authority to provide substance  
544 abuse programs and services in accordance with the provision of this chapter and Title 17A,  
545 Chapter 3, Part 7, Local Substance Abuse Authorities, it shall ensure that those contracts include  
546 at least the following provisions:

547 (1) that an independent auditor shall conduct any audit of the local substance abuse  
548 authority or its contract provider's programs or services, pursuant to the provisions of Title 51,  
549 Chapter 2;

550 (2) in addition to the requirements described in Title 51, Chapter 2, the division:

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

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

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

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

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

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

569 Section 13. Section **62A-8-112** is amended to read:

570 **62A-8-112. Receipt of funds.**

571 Local substance abuse authorities and entities that contract with these authorities to provide  
572 substance abuse services may receive funds made available by federal, state, or local health,  
573 substance abuse, education, welfare, or other agencies, in accordance with the provisions of this  
574 chapter and Title 17A, Chapter 3, Part 7.

575 Section 14. Section **62A-12-101** is amended to read:

576 **62A-12-101. Definitions.**

577 As used in this chapter:

578 (1) "Board" means the Board of Mental Health established in accordance with Sections  
579 62A-1-105 and 62A-1-107.

580 (2) "Director" means the director of the Division of Mental Health.

581 (3) "Division" means the Division of Mental Health.

582 (4) "Local mental health authority" means a county legislative body.

583 (5) (a) "Public funds" means federal monies received from the Department of Human  
584 Services or the Department of Health, and state monies appropriated by the Legislature to the  
585 Department of Human Services, the Department of Health, a county governing body, or local

586 mental health authority for the purposes of providing mental health programs or services. "Public  
587 funds" includes those federal and state monies that have been transferred by a local mental health  
588 authority to a private provider under an annual or otherwise ongoing contract to provide  
589 comprehensive mental health programs or services for the local mental health authority. Those  
590 monies maintain the nature of "public funds" while in the possession of the private entity that has  
591 an annual or otherwise ongoing contract with a local mental health authority to provide  
592 comprehensive mental health programs or services for the local mental health authority.

593 (b) This definition of "public funds" does not limit or prohibit an organization exempt  
594 under Section 501(c)(3), Internal Revenue Code, from using public funds for any business purpose  
595 or in any financial arrangement that is otherwise lawful for that organization.

596 [(5)] (6) "Severe mental disorder" means schizophrenia, major depression, bipolar  
597 disorders, delusional disorders, psychotic disorders, and other mental disorders as defined by the  
598 board.

599 Section 15. Section **62A-12-102** is amended to read:

600 **62A-12-102. Division of Mental Health -- Creation -- Responsibilities.**

601 (1) There is created the Division of Mental Health within the department, under the  
602 administration and general supervision of the executive director, and, with regard to its programs,  
603 under the policy direction of the board. The division is the mental health authority for this state.

604 (2) The division shall:

605 (a) collect and disseminate information pertaining to mental health;

606 (b) develop, administer, and supervise a comprehensive state mental health program;

607 (c) provide direction over the state hospital including approval of its budget, administrative  
608 policy, and coordination of services with local service plans;

609 (d) promote and establish cooperative relationships with courts, hospitals, clinics, medical  
610 and social agencies, public health authorities, law enforcement agencies, education and research  
611 organizations, and other related groups;

612 (e) receive [~~and~~], distribute [~~state and federal~~], and provide direction over public funds for  
613 mental health services;

614 (f) consult and coordinate with local mental health authorities regarding mental health  
615 programs and services;

616 [(f)] (g) monitor and evaluate programs provided by local mental health authorities[~~, and~~]

617 with public funds;

618       (h) examine expenditures of any local, state, and federal funds;

619       (i) monitor the expenditure of public funds by local mental health authorities and their  
620 contract providers;

621       ~~[(g)]~~ (j) contract with local mental health authorities to provide or arrange for a  
622 comprehensive continuum of services in accordance with board and division policy, contract  
623 provisions, and the local plan;

624       ~~[(h)]~~ (k) contract with private and public entities for special statewide or nonclinical  
625 services in accordance with board and division policy;

626       ~~[(i)]~~ (l) review and approve each local mental health ~~[authority plans and in order]~~  
627 authority's plan, to assure;

628       (i) a statewide comprehensive continuum of mental health services; and

629       (ii) appropriate expenditure of public funds;

630       (m) review and make recommendations regarding each local mental health authority's  
631 contract with its provider of mental health programs and services to assure compliance with state  
632 and federal law and policy;

633       ~~[(j)]~~ (n) promote or conduct research on mental health issues and submit any  
634 recommendations for changes in policy and legislation to the Legislature and the governor;

635       ~~[(k)]~~ (o) withhold funds from local mental health authorities and public and private  
636 providers for contract noncompliance, failure to comply with division directives regarding the use  
637 of public funds, or for misuse of public funds or monies;

638       ~~[(l)]~~ (p) cooperate with other state, county, nonprofit, and other private entities to prevent  
639 duplication of services;

640       ~~[(m)]~~ (q) monitor and assure compliance with board and division policy and contract  
641 requirements; and

642       ~~[(n)]~~ (r) perform such other acts as are necessary to promote mental health in the state.

643       (3) (a) The division may refuse to contract with and may pursue its legal remedies against  
644 any local mental health authority that fails, or has failed, to expend public funds in accordance with  
645 state law, policy, contract provisions, or directives issued in accordance with state law.

646       (b) The division may withhold funds from a local mental health authority if the authority's  
647 contract with its provider of mental health programs and services fails to comply with state and

648 federal law or policy.

649 (4) Before reissuing or renewing a contract with any local mental health authority, the  
650 division shall review and determine whether the local mental health authority is complying with  
651 its oversight and management responsibilities described in Sections 17A-3-602 and 17A-3-603.5.  
652 Nothing in this Subsection (4) may be used as a defense to the responsibility and liability described  
653 in Section 17A-3-603.5.

654 [~~3~~] (5) (a) The division may accept, in the name of and on behalf of the state, donations,  
655 gifts, devises, or bequests of real or personal property or services to be used as specified by the  
656 donor.

657 (b) Those donations, gifts, devises, or bequests shall be used by the division in the  
658 performance of its powers and duties. Any money so obtained shall be considered private  
659 nonlapsing funds and shall be deposited into an interest-bearing expendable trust fund to be used  
660 by the division for mental health services. The state treasurer may invest the fund and all interest  
661 shall remain with the fund.

662 (6) The division shall annually review with each local mental health authority the  
663 authority's statutory and contract responsibilities regarding:

664 (a) the use of public funds;

665 (b) oversight responsibilities regarding public funds; and

666 (c) governance of mental health programs and services.

667 Section 16. Section **62A-12-102.5** is amended to read:

668 **62A-12-102.5. Fees for mental health services.**

669 (1) The division may, with the approval of the Legislature, the executive director, and the  
670 board establish fee schedules and assess fees for services rendered by the division.

671 (2) Fees shall be charged for mental health services, but services may not be refused to any  
672 person because of his [ability or] inability to pay. Any person who is unable to obtain private care  
673 for financial, geographical, or other sufficient reason may be accepted for community mental  
674 health services.

675 Section 17. Section **62A-12-105** is amended to read:

676 **62A-12-105. Allocation of funds to local mental health authorities -- Formula.**

677 (1) The board shall establish, by rule, a formula for allocating funds to local mental health  
678 authorities through contracts, to provide mental health services in accordance with [Section

679 17A-3-606] the provisions of this chapter and of Title 17A, Chapter 3, Part 6, Local Mental Health  
680 Authorities. That formula shall provide for allocation of funds based on need. Determination of  
681 need shall be based on population, unless the board establishes, by valid and accepted data, that  
682 other defined factors are relevant and reliable indicators of need. The formula shall include a  
683 differential to compensate for additional costs of providing services in rural areas.

684 (2) The formula established under Subsection (1) [~~shall be in effect on or before July 1,~~  
685 ~~1990, and]~~ applies to all state and federal funds appropriated by the Legislature to the division for  
686 local mental health authorities, but does not apply to:

- 687 (a) funds that local mental health authorities receive from sources other than the division;  
688 (b) funds that local mental health authorities receive from the division to operate a specific  
689 program within its jurisdiction that is available to all residents of the state;  
690 (c) funds that local mental health authorities receive from the division to meet a need that  
691 exists only within the jurisdiction of that local mental health authority; and  
692 (d) funds that local mental health authorities receive from the division for research  
693 projects.

694 (3) Contracts with local mental health authorities shall provide that the division may  
695 withhold funds otherwise allocated pursuant to this section to cover the costs of audits, attorneys'  
696 fees, and other expenses associated with reviewing the expenditure of public funds by a local  
697 mental health authority or its contract provider, if there has been an audit finding or judicial  
698 determination that public funds have been misused by the local mental health authority or its  
699 contract provider.

700 Section 18. Section **62A-12-289** is amended to read:

701 **62A-12-289. Responsibilities of the Division of Mental Health.**

702 (1) It is the responsibility of the division to assure that the requirements of this part are met  
703 and applied uniformly by local mental health authorities across the state.

704 (2) Since it is the division's responsibility, under Section 62A-12-102, to contract with,  
705 review, [~~and] approve, and oversee~~ local mental health authority plans, and to withhold funds from  
706 local mental health authorities and public and private providers for contract noncompliance or  
707 misuse of public funds, the division shall:

- 708 (a) require each local mental health authority to submit its plan to the division by May 1  
709 of each year;

710 ~~[(b) forward a copy of each local mental health authority's written plan to the Office of~~  
711 ~~Legislative Research and General Counsel, for review by the Health and Human Services Interim~~  
712 ~~Committee, within ten days after receiving the plan;]~~

713 ~~[(e)] (b) conduct an annual program audit and review of each local mental health authority~~  
714 ~~in the state, and its contract provider; and~~

715 ~~[(d)] (c) provide a written report to the Health and Human Services Interim Committee on~~  
716 ~~July 1, 1996, and each year thereafter, and provide an oral report to that committee, as [scheduled]~~  
717 ~~requested. That report shall provide information regarding:~~

718 ~~(i) the annual [program] audit[;] and review;~~

719 ~~(ii) the financial [status] expenditures of each local mental health authority and its contract~~  
720 ~~provider[;];~~

721 ~~(iii) the status of each local authority's and its contract provider's compliance with its plan,~~  
722 ~~state statutes, and with the provisions of the contract awarded[;]; and~~

723 ~~(iv) whether audit guidelines established pursuant to Subsection 62A-12-289.1(2)(a) and~~  
724 ~~Subsection 67-3-1(2)(o) provide the division with sufficient criteria and assurances of appropriate~~  
725 ~~expenditures of public funds.~~

726 ~~(3) The annual audit and review described in Subsection (2)(b) shall, in addition to items~~  
727 ~~determined by the division to be necessary and appropriate, include a review and determination~~  
728 ~~regarding whether public funds allocated to local mental health authorities are consistent with~~  
729 ~~services rendered and outcomes reported by it or its contract provider, and whether each local~~  
730 ~~mental health authority is exercising sufficient oversight and control over public funds allocated~~  
731 ~~for mental health programs and services.~~

732 ~~(4) The Legislature may refuse to appropriate funds to the division upon the division's~~  
733 ~~failure to comply with the provisions of this part.~~

734 Section 19. Section **62A-12-289.1** is enacted to read:

735 **62A-12-289.1. Contracts with local mental health authorities -- Provisions.**

736 When the division contracts with a local mental health authority to provide mental health  
737 programs and services in accordance with the provision of this chapter and Title 17A, Chapter 3,  
738 Part 6, it shall ensure that those contracts include at least the following provisions:

739 (1) that an independent auditor shall conduct any audit of the local mental health authority  
740 or its contract provider's programs or services, pursuant to the provisions of Title 51, Chapter 2;

741 (2) in addition to the requirements described in Title 51, Chapter 2, the division:

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

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

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

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

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

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

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

763 Section 20. Section **67-3-1** is amended to read:

764 **67-3-1. Functions and duties.**

765 (1) (a) The state auditor shall be the auditor of public accounts and as such shall be  
766 independent of any executive or administrative officers of the state.

767 (b) He is not limited in the selection of his personnel or in the determination of the  
768 reasonable and necessary expenses of his office.

769 (2) The state auditor shall:

770 (a) examine and certify annually in respect to each fiscal year, financial statements  
771 showing the condition of the state's finances, the revenues received or accrued, expenditures paid

772 or accrued, and the amount of unexpended or unencumbered balances of the appropriations to the  
773 agencies, departments, divisions, commissions, and institutions and the cash balances of the funds  
774 in the custody of the state treasurer. The Division of Finance shall prepare the foregoing financial  
775 statements and other reports in accordance with legal requirements and generally-accepted  
776 accounting principles for the state auditor's examination and certification, as requested and not  
777 later than 60 days following such requests or the end of each fiscal year. The auditor shall file the  
778 statements with the governor and the Legislature[-];

779 (b) (i) audit each permanent fund, each special fund, the General Fund, and the accounts  
780 of any department of state government or any independent agency or public corporation on a  
781 regular basis as the auditor shall determine necessary or upon request of the governor or the  
782 Legislature. These audits are to be performed in accordance with generally accepted auditing  
783 standards and other auditing procedures as promulgated by recognized authoritative bodies. The  
784 audits shall be conducted to determine honesty and integrity in fiscal affairs, accuracy and  
785 reliability of financial statements, effectiveness and adequacy of financial controls, and compliance  
786 with the law, as the auditor shall determine necessary[-];

787 (ii) in the event that any state entity receives federal funding, the audit shall be performed  
788 in accordance with federal audit requirements under the direction of the state auditor. The costs  
789 of the federal compliance portion of the audit may be paid from an appropriation to the state  
790 auditor from the General Fund. If an appropriation is not provided, or if the federal government  
791 does not specifically provide for payment of audit costs, the costs of the federal compliance  
792 portions of the audit shall be allocated on the basis of the percentage that each state entity's federal  
793 funding bears to the total federal funds received by the state. The allocation shall be adjusted to  
794 reflect any reduced audit time required to audit funds passed through the state to local governments  
795 and to reflect any reduction in audit time obtained through the use of internal auditors working  
796 under the direction of the state auditor[-];

797 (c) present to the governor on October 1st of each year and to the Legislature on the first  
798 day of each annual general session, a statement of his appropriation expenditures segregated as to  
799 cost of salaries, travel, office and other expenses, and capital outlay for equipment, together with  
800 his recommendations as to new legislation and a complete record of the accomplishments of his  
801 office for the preceding year[-];

802 (d) issue subpoenas requiring any person who has had financial transactions with the state

803 to appear before him and to answer under oath, orally or in writing, as to any facts concerning  
804 these transactions; and for the purpose of obtaining any such facts the state auditor is empowered  
805 to administer oaths[-];

806 (e) require, in his discretion, all persons who have had the disposition or management of  
807 any property of this state to render statements regarding it to him, and each of these persons must  
808 render the statements at such times and in such form as the auditor may require[-];

809 (f) except where otherwise provided by law, institute suits in relation to the assessment,  
810 collection, and payment of its revenues against persons who by any means have become entrusted  
811 with public monies or property and have failed to pay over or deliver the same and against all  
812 debtors of the state, all of which suits of the courts of the county in which the seat of government  
813 may be located shall have jurisdiction without regard to the residence of the defendants[-];

814 (g) authenticate with his official seal all copies of papers issued from his office as he  
815 considers necessary[-];

816 (h) collect and pay into the state treasury all fees received by him[-];

817 (i) perform the duties of a member of all boards of which he is or may be made a member  
818 by the constitution or laws of the state, and such other duties as are prescribed by the constitution  
819 and by law[-];

820 (j) stop the payment of the salary of any state official or state employee who refuses to  
821 settle his accounts or render such statements as may be required with respect to the custody and  
822 disposition of public funds or other state property or who refuses, neglects, or ignores the  
823 instruction of the state auditor or any controlling board or department head with respect to the  
824 manner of keeping prescribed accounts or funds or who fails to correct any delinquencies,  
825 improper procedures, and errors brought to his attention[-];

826 (k) establish accounting systems, methods, and forms for public accounts in all taxing units  
827 of the state in the interest of uniformity, efficiency, and economy[-];

828 (l) superintend the contractual auditing of all state accounts[-];

829 (m) withhold state allocated funds or the disbursement of property taxes from any state  
830 taxing unit, if necessary, to ensure that officials and employees in those taxing units of the state  
831 comply with state laws and procedures in the budgeting, expenditures, and financial reporting of  
832 public funds. Except as otherwise specified in the law, funds may not be withheld until a taxing  
833 unit has received formal written notice of noncompliance from the auditor and has been given 60

834 days to make the specified corrections[-];

835 (n) withhold the disbursement of tax monies from any county, if necessary, to ensure that  
836 officials and employees in the county comply with Section 59-2-303.1. For purposes of this  
837 subsection, funds may not be withheld until a county has received formal written notice of  
838 noncompliance from the auditor and has been given 60 days to make the specified corrections[-];  
839 and

840 (o) establish audit guidelines and procedures for audits of local mental health and  
841 substance abuse authorities and their contract providers, conducted pursuant to Title 17A, Chapter  
842 3, Parts 6 and 7, Title 62A, Chapters 8 and 12, and Title 51, Chapter 2. Those guidelines and  
843 procedures shall be established for the purpose of providing assurances to the state that:

844 (i) state and federal funds appropriated to local mental health authorities are used for  
845 mental health purposes;

846 (ii) a private provider under an annual or otherwise ongoing contract to provide  
847 comprehensive mental health programs or services for a local mental health authority is in  
848 compliance with state and local contract requirements, and state and federal law;

849 (iii) state and federal funds appropriated to local substance abuse authorities are used for  
850 substance abuse programs and services; and

851 (iv) a private provider under an annual or otherwise ongoing contract to provide  
852 comprehensive substance abuse programs or services for a local substance abuse authority is in  
853 compliance with state and local contract requirements, and state and federal law.

854 (3) The state auditor may not audit work he performed before becoming state auditor. In  
855 the event that the state auditor has previously been a responsible official in state government whose  
856 work has not yet been audited, the Legislature shall designate how such work shall be audited and  
857 shall provide additional funding for such audits, if necessary.

858 (4) The following records in the custody or control of the state auditor shall be protected  
859 records under Title 63, Chapter 2, Government Records Access and Management Act:

860 (a) records that would disclose information relating to allegations of personal misconduct,  
861 gross mismanagement, or illegal activity of a past or present governmental employee if the  
862 information or allegation cannot be corroborated by the state auditor through other documents or  
863 evidence, and the records relating to the allegation are not relied upon by the state auditor in  
864 preparing a final audit report;

865 (b) records and audit workpapers to the extent they would disclose the identity of a person  
866 who during the course of an audit, communicated the existence of any waste of public funds,  
867 property, or manpower, or a violation or suspected violation of a law, rule, or regulation adopted  
868 under the laws of this state, a political subdivision of the state, or any recognized entity of the  
869 United States, if the information was disclosed on the condition that the identity of the person be  
870 protected;

871 (c) prior to the time that an audit is completed and the final audit report is released, records  
872 or drafts circulated to a person who is not an employee or head of a governmental entity for their  
873 response or information;

874 (d) records that would disclose an outline or part of any audit survey plans or audit  
875 program;

876 (e) requests for audits, if disclosure would risk circumvention of an audit;

877 (f) the provisions of Subsections (a), (b), and (c) do not prohibit the disclosure of records  
878 or information that relate to a violation of the law by a governmental entity or employee to a  
879 government prosecutor or peace officer; and

880 (g) the provisions of this section do not limit the authority otherwise given to the state  
881 auditor to classify a document as public, private, controlled, or protected under Title 63, Chapter  
882 2, Government Records Access and Management Act.

883 Section 21. Section **76-8-401** is amended to read:

884 **76-8-401. "Public monies" and "public officer" defined.**

885 As used in this title:

886 (1) "Public monies" [means] and "public funds" [as defined in Section 51-7-3] mean  
887 monies, funds, and accounts, regardless of the source from which they are derived, that are owned,  
888 held, or administered by the state or any of its boards, commissions, institutions, departments,  
889 divisions, agencies, bureaus, laboratories, or other similar instrumentalities, or any county, city,  
890 school district, political subdivision, or other public body. "Public monies" also includes monies,  
891 funds, or accounts that have been transferred by any of those public entities to a private contract  
892 provider of programs or services. Those monies, funds, or accounts maintain the nature of public  
893 monies while in the possession of the private entity that has contracted with a public entity to  
894 provide programs or services.

895 (2) "Public officer" means:

896 (a) all elected officials of the state, a political subdivision of the state, a county, town, city,  
897 precinct, or district;

898 (b) a person appointed to or serving an unexpired term of an elected office;

899 (c) a judge of a court of record and not of record including justice court judges; and

900 (d) a member of the Board of Pardons and Parole.

901 Section 22. Section **76-8-402** is amended to read:

902 **76-8-402. Misusing public monies.**

903 (1) Every public officer of this state or a political subdivision, or of any county, city, town,  
904 precinct, or district of this state, and every other person charged, either by law or under contract,  
905 with the receipt, safekeeping, transfer [or], disbursement, or use of public monies commits an  
906 offense if the officer or other charged person:

907 (a) appropriates the money or any portion of it to his own use or benefit or to the use or  
908 benefit of another without authority of law;

909 (b) loans or transfers the money or any portion of it without authority of law;

910 (c) fails to keep the money in his possession until disbursed or paid out by authority of  
911 law;

912 (d) unlawfully deposits the money or any portion in any bank or with any other person;

913 (e) knowingly keeps any false account or makes any false entry or erasure in any account  
914 of or relating to the money;

915 (f) fraudulently alters, falsifies, conceals, destroys, or obliterates any such account;

916 (g) willfully refuses or omits to pay over, on demand, any public monies in his hands, upon  
917 the presentation of a draft, order, or warrant drawn upon such monies by competent authority;

918 (h) willfully omits to transfer the money when the transfer is required by law; or

919 (i) willfully omits or refuses to pay over, to any officer or person authorized by law to  
920 receive it, any money received by him under any duty imposed by law so to pay over the same.

921 (2) A violation of Subsection (1) is a felony of the third degree, except it is a felony of the  
922 second degree if:

923 (a) the value of the money exceeds \$5,000;

924 (b) the amount of the false account exceeds \$5,000;

925 (c) the amount falsely entered exceeds \$5,000;

926 (d) the amount that is the difference between the original amount and the fraudulently

927 altered amount exceeds \$5,000; or

928 (e) the amount falsely erased, fraudulently concealed, destroyed, obliterated, or falsified  
929 in the account exceeds \$5,000.

930 (3) In addition to the penalty described in Subsection (2), a public officer who violates  
931 Subsection (1) is subject to the penalties described in Section 76-8-404.

932 Section 23. Section **76-8-404** is amended to read:

933 **76-8-404. Making profit from or misusing public monies -- Knowledge of another's**  
934 **profit or misuse -- Disqualification from office -- Criminal penalty.**

935 A public officer, regardless of whether or not the officer receives, safekeeps, transfers,  
936 disburses, or has a fiduciary relationship with public monies, who [~~shall make~~] makes a profit from  
937 or out of public monies, or [~~shall use the same~~] who uses public monies in a manner or for a  
938 purpose not authorized by law, is guilty of a felony as provided in Section 76-8-402 and shall, in  
939 addition to the punishment provided by law, be disqualified to hold public office.

940 Section 24. **Repealer.**

941 This act repeals:

942 Section **17A-3-612, Continuation of existing services or facilities.**

943 Section 25. **Effective date.**

944 This act takes effect on July 1, 1999.

**Legislative Review Note**  
**as of 1-20-99 1:49 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**