

**AMENDMENTS TO UTAH TECHNOLOGY
FINANCE CORPORATION**

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: L. Steven Poulton

AN ACT RELATING TO COMMUNITY AND ECONOMIC DEVELOPMENT;
RECODIFYING THE UTAH TECHNOLOGY FINANCE CORPORATION ACT;
ADDRESSING THE CORPORATION'S ADMINISTRATION OF THE CAPITAL ACCESS
FUND; PROVIDING LEGISLATIVE INTENT; PROVIDING DEFINITIONS; ADDRESSING
THE CREATION OF THE CORPORATION; ADDRESSING THE MEMBERSHIP OF THE
BOARD OF TRUSTEES; PROVIDING FOR OFFICERS AND EMPLOYEES; ADDRESSING
POWERS; ADDRESSING CHANGES IN ORGANIZATION; ADDRESSING DUTIES AND
LIMITATIONS; ADDRESSING ISSUANCE OF LOANS TO QUALIFYING BUSINESSES;
ADDRESSING CONFLICTS OF INTEREST; ADDRESSING CONFIDENTIALITY OF
INFORMATION; ADDRESSING LIABILITY OF THE STATE; ADDRESSING HOLDING OF
FUNDS BY STATE TREASURER; ADDRESSING ANNUAL REPORTS AND AUDITS;
PROVIDING EXEMPTIONS FROM CERTAIN STATUTES; ADDRESSING STANDING OF
ATTORNEY GENERAL TO SUE; AND MAKING TECHNICAL CHANGES.

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

AMENDS:

9-2-1303, as last amended by Chapter 206, Laws of Utah 1993

9-2-1306, as last amended by Chapter 6, Laws of Utah 1996

9-2-1311, as last amended by Chapter 6, Laws of Utah 1996

11-37-101, as last amended by Chapter 200, Laws of Utah 1995

63-55-209, as last amended by Chapter 13, Laws of Utah 1998

63-95-102, as enacted by Chapter 152, Laws of Utah 1998

ENACTS:

9-13-101, Utah Code Annotated 1953

9-13-102, Utah Code Annotated 1953

- 9-13-103, Utah Code Annotated 1953
- 9-13-201, Utah Code Annotated 1953
- 9-13-202, Utah Code Annotated 1953
- 9-13-203, Utah Code Annotated 1953
- 9-13-204, Utah Code Annotated 1953
- 9-13-301, Utah Code Annotated 1953
- 9-13-302, Utah Code Annotated 1953
- 9-13-303, Utah Code Annotated 1953
- 9-13-304, Utah Code Annotated 1953
- 9-13-305, Utah Code Annotated 1953
- 9-13-401, Utah Code Annotated 1953
- 9-13-402, Utah Code Annotated 1953
- 9-13-403, Utah Code Annotated 1953
- 9-13-404, Utah Code Annotated 1953
- 9-13-405, Utah Code Annotated 1953
- 9-13-406, Utah Code Annotated 1953

REPEALS:

- 9-2-701, as renumbered and amended by Chapter 241, Laws of Utah 1992
- 9-2-702, as renumbered and amended by Chapter 241, Laws of Utah 1992
- 9-2-703, as renumbered and amended by Chapter 241, Laws of Utah 1992
- 9-2-704, as last amended by Chapter 243, Laws of Utah 1996
- 9-2-705, as renumbered and amended by Chapter 241, Laws of Utah 1992
- 9-2-706, as last amended by Chapter 10, Laws of Utah 1997
- 9-2-707, as last amended by Chapter 4, Laws of Utah 1993

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

Section 1. Section **9-2-1303** is amended to read:

9-2-1303. Utah Capital Access Fund.

- (1) (a) There is created within the office of the state treasurer the Utah Capital Access Fund.

(b) The purpose of the fund created under Subsection (1)(a) shall be to encourage lending institutions to make debt capital more readily available to small businesses in Utah of a size that may be eligible for Small Business Administration loans under 13 C.F.R. Sec. 121.1.

(c) The fund shall consist of any money appropriated by the Legislature, fees and premiums paid by participating lenders and borrowers, any other money from any other source, public or private, and interest and income earned on these monies.

(2) The Utah Technology Finance Corporation created in [~~Part 7 of this chapter~~] Chapter 13 shall administer and supervise the fund in all aspects and shall market the availability of the fund to lending institutions and to any business in Utah of a size that may be eligible for Small Business Administration loans under 13 C.F.R. Sec. 121.1.

Section 2. Section **9-2-1306** is amended to read:

9-2-1306. Premiums -- Administrative costs -- Transfers.

(1) (a) When a participating lender makes a loan that qualifies it to be placed within a special loan portfolio, the premium charges payable to the lender's fund reserve account by the participating lender and the borrower shall be prescribed by the participating lender.

(b) The amount paid by the borrower may not be less than 0.5% of the principal amount of the loan nor more than 6% of the principal amount of the loan.

(c) The amount paid by the participating lender shall be equal to the amount paid by the borrower.

(d) This amount shall then be deposited into the lender's fund reserve account.

(e) (i) Except as provided in Subsection (ii), the participating lender may recover from the borrower the cost of the participating lender's payment in any manner agreed to by the participating lender and the borrower.

(ii) Notwithstanding Subsection (i), the total premium charge paid by the borrower to the lender's fund reserve account may not exceed 6% of the principal amount of the loan.

(2) (a) [~~The Utah Technology Finance Corporation may use the interest earned on money in the state fund reserve account for~~] To pay for costs incurred in administering the fund, the Utah Technology Finance Corporation may use:

- (i) money in the state fund reserve account; and
- (ii) interest earned on the money in the state fund reserve account.

(b) Any interest remaining in the lender's fund reserve account shall remain in the account until a claim is filed in accordance with Section 9-2-1308 or until it is withdrawn under Section 9-2-1310.

(3) When enrolling a loan, the Utah Technology Finance Corporation shall request the treasurer to transfer into the state fund reserve account an amount determined as follows:

(a) if the amount of any loan made by a participating lender, plus the amount of loans previously enrolled by that participating lender, is less than \$750,000, the Utah Technology Finance Corporation shall request the state treasurer to deposit into the state fund reserve account in each case an amount equal to:

- (i) 250% of the combined amounts paid into the lender's fund reserve account in all areas of the state except those designated as enterprise zones under Title 9, Chapter 2, Part 4; or
- (ii) 300% of the combined amounts paid into the lender's fund reserve account in areas designated as enterprise zones under Title 9, Chapter 2;

(b) if, before the enrollment of the loan, the amount of loans previously enrolled equals or exceeds \$750,000, the Utah Technology Finance Corporation shall request the state treasurer to transfer into the state fund reserve account an amount equal to the amounts paid into the lender's fund reserve account; and

(c) if the amount of loans previously enrolled by a participating lender is less than \$750,000 but the enrollment of a loan will cause the aggregate amount of all loans enrolled by that participating lender to exceed \$750,000, the Utah Technology Finance Corporation shall request the state treasurer to transfer into the state fund reserve account an amount equal to a percentage of the amount paid into the lender's fund reserve account, determined by:

- (i) multiplying by 250% for loans in areas described in Subsection (3)(a)(i), and by 300% for loans in areas described in Subsection (3)(a)(ii) that portion of the loan which when added to the amount of all previously enrolled loans totals \$750,000;
- (ii) multiplying the balance of the loan by 100%; and

(iii) adding together the products of such computations and dividing the sum by the total amount of the loan.

(4) In any three-year period, the Utah Technology Finance Corporation may not request the treasurer to transfer more than \$100,000 from the fund into any state fund reserve account for any one borrower.

Section 3. Section **9-2-1311** is amended to read:

9-2-1311. Reports -- Audits.

(1) (a) The Utah Technology Finance Corporation shall report to the Legislature at least quarterly on the activities of the fund.

(b) The report shall include:

- (i) information on location of all borrowers and participating lenders;
- (ii) the amount and type of financial assistance being requested; and
- (iii) the type of project or product being financed.

(2) (a) The Utah Technology Finance Corporation shall provide monthly transaction reports to each participating lender that identify:

- (i) the balance in the lender's state fund reserve account;
- (ii) payments and transfers into that account; and
- (iii) withdrawals from that account.

(b) Participating lenders may review the records of the Utah Technology Finance Corporation that account for payments and transfers into the account and withdrawals from the account at the office of the Utah Technology Finance Corporation during normal business hours.

(3) (a) Each participating lender shall provide monthly transaction reports to the Utah Technology Finance Corporation that identify:

- (i) the balance in the lender's fund reserve account;
- (ii) payments and transfers into the account; and
- (iii) withdrawals from the account.

(b) Each participating lender shall allow the Utah Technology Finance Corporation to review, during normal business hours, its records that account for:

- (i) payments and transfers into the account;
- (ii) withdrawals from the account; and
- (iii) interest or income earned on the monies credited to the account.

(4) (a) The state auditor, or a certified public accountant appointed by the state auditor, annually shall conduct and remit to the Legislature a program and financial audit of the fund [~~and~~, ~~in~~] conducted in conjunction with the audit of the Utah Technology Finance Corporation under Section 9-13-404.

(b) In the conduct of the audit, the auditor shall have access to all records of the fund at any time, whether or not confidential.

~~(b)~~ (c) Each audit required by this section shall include a determination of whether the fund is likely to be able to continue to meet its obligations, including a report on the status of outstanding loans and agreements made by the fund.

Section 4. Section **9-13-101** is enacted to read:

CHAPTER 13. UTAH TECHNOLOGY AND SMALL BUSINESS FINANCE ACT

Part 1. General Provisions

9-13-101. Title.

This chapter is known as the "Utah Technology and Small Business Finance Act."

Section 5. Section **9-13-102** is enacted to read:

9-13-102. Legislative findings.

(1) (a) The corporation is created with the primary purpose of supporting the development of qualifying businesses with loans through a revolving loan fund which includes corporate monies.

(b) The corporation is created for this purpose because the Legislature finds that:

(i) the growth of small businesses that develop qualifying products and services is necessary to ensure:

(A) adequate employment for the state's citizens;

(B) growth and vitality of the state's economy; and

(C) diversity critical to the health and strength of the economy throughout the state; and

(ii) financial resources in this state are not adequate to support small businesses developing

qualifying products or services.

(2) (a) In addition to the primary purpose described in Subsection (1)(a) and from monies other than corporate monies, the corporation may support the development of small businesses in Utah through:

(i) helping small businesses obtain loans, grants, and other forms of assistance from private and other public sources;

(ii) administering funds and programs on behalf of other public entities; and

(iii) qualifying for grants and loans from public and private entities to be used to provide financing for small businesses.

(b) The corporation is permitted to engage in the activities described in Subsection (2)(a) because the Legislature finds:

(i) (A) funds are available to help finance economic development loan programs;

(B) the state may not be eligible to receive the funds described in Subsection (2)(b)(i)(A);

and

(C) an organization such as an independent public corporation permits the state and its citizens to receive the full benefit from the funds described in Subsection (2)(b)(i)(A); and

(ii) (A) many political subdivisions and other public entities qualify for funds for loan programs, but lack the resources and expertise to administer a loan program in the most efficient and cost-effective manner; and

(B) the entities described in Subsection (2)(b)(ii)(A) are aided by establishing an independent public corporation that can assist with the administration of those loan programs.

(3) By creating the corporation as an independent public corporation:

(a) the Legislature intends that the state be protected from potential liability for claims against the corporation; and

(b) the corporation can qualify for certain grants, loans, and other forms of assistance from the federal government and other sources for which the state itself is not eligible.

Section 6. Section **9-13-103** is enacted to read:

9-13-103. Definitions.

As used in this chapter:

(1) "Board" means the board of trustees created by Section 9-13-202.

(2) "Business partner" means a person that controls an entity in which a trustee, officer, or employee of the corporation:

(a) holds a controlling interest; or

(b) serves as director, trustee, officer, or employee.

(3) (a) "Corporate monies" means any monies received or held by the corporation except:

(i) monies received from the federal government; or

(ii) monies received by the corporation for the purpose of the corporation administering a publicly funded program on behalf of the agency providing the monies.

(b) "Corporate monies" include:

(i) monies appropriated to the corporation by the Legislature;

(ii) monies provided to the corporation by a state agency; and

(iii) any interest earned on the monies described in Subsections (3)(b)(i) and (ii).

(4) "Corporation" means the Utah Technology Finance Corporation created in Section 9-13-201.

(5) "Proprietary information" means:

(a) a trade secret;

(b) commercial or financial information that if disclosed may result in an unfair competitive injury to the person submitting the information to the corporation; and

(c) information supplied to the corporation if:

(i) the person supplying the information requests that it not be disclosed; and

(ii) the corporation reasonably determines that the disclosure is not in the public interest.

(6) "Qualifying business" means a person determined to be a qualifying business by the corporation in accordance with Section 9-13-303.

(7) "Qualifying product" means equipment, goods, software, or other tangible, intangible, or intellectual property:

(a) (i) that increases effectiveness, efficiency, or durability; or

(ii) reduces costs; and

(b) (i) that is primarily designed to perform one or more of the following functions:

(A) computing;

(B) telecommunications or other transmission of information;

(C) aerospace or other aeronautical travel, exploration, or research; or

(D) pollution control or other environmental services; or

(ii) that primarily consists of:

(A) a medical product or treatment; or

(B) a genetically engineered product.

(8) "Qualifying services" means a service provided through a computer network including the Internet.

(9) "Relative" or "relation" means a:

(a) direct ancestor or descendent;

(b) spouse;

(c) sibling; or

(d) direct ancestor, descendent, or sibling of a spouse.

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

(b) "State agency" does not include a county, city, town, or other political subdivision of the state.

Section 7. Section **9-13-201** is enacted to read:

Part 2. Organization of Corporation

9-13-201. Utah Technology Finance Corporation -- Independent public corporation.

(1) There is created an independent public corporation known as the "Utah Technology Finance Corporation."

(2) (a) The corporation shall operate as a nonprofit corporation in accordance with Title 16, Chapter 6, Utah Nonprofit Corporation and Cooperative Association Act, to the extent that Title 16,

Chapter 6, does not conflict with this chapter.

(b) The corporation shall file with the Division of Corporations and Commercial Code:

(i) articles of incorporation; and

(ii) any amendment to its articles of incorporation.

(c) In addition to the articles of incorporation, the corporation may adopt bylaws and operational policies that are consistent with this chapter.

(3) This chapter is a recodification of the repealed Title 9, Chapter 2, Part 7, Utah Technology Finance Corporation Act, and does not create a new corporation. The corporation referred to in this chapter is the ongoing enterprise of the Utah Technology Finance Corporation and this recodification does not impair any existing contractual relationships of the corporation.

Section 8. Section **9-13-202** is enacted to read:

9-13-202. Board of trustees.

(1) (a) The corporation shall be governed by a board of trustees consisting of the following members:

(i) the executive director of the Department of Community and Economic Development or the executive director's designee;

(ii) the commissioner of the Department of Financial Institutions or the commissioner's designee; and

(iii) at least five but not more than nine trustees appointed by the governor with the consent of the Senate.

(b) A trustee appointed under Subsection (1)(a)(iii) shall be appointed:

(i) for a staggered four-year term; and

(ii) from:

(A) representatives of the business, banking and finance, venture capital, engineering, scientific, academic, legal, and accounting communities; and

(B) the general public.

(c) The chief executive officer of the corporation may not be a trustee.

(d) (i) If the executive director of the Department of Community and Economic

Development or the commissioner of the Department of Financial Institutions appoints a designee, the executive director or the commissioner shall notify the corporation in writing of the appointment of the designee prior to the designee serving on the board.

(ii) The term of a designee appointed in accordance with Subsection (1)(d)(i) terminates when the designee:

(A) resigns;

(B) is unable to serve; or

(C) is replaced by the executive director or commissioner.

(2) (a) A trustee appointed under Subsection (1)(a)(iii) may be removed for cause, by the board, by an affirmative vote of not less than two-thirds of all voting members of the board.

(b) A person appointed to replace a trustee appointed under Subsection (1)(a)(iii) who does not serve a full term shall serve the remainder of the original term.

(c) A trustee appointed under Subsection (1)(a)(iii) shall serve until a successor is appointed by the governor with the consent of the Senate unless the trustee:

(i) resigns;

(ii) resides outside the state;

(iii) is removed under Subsection (2)(a); or

(iv) is unable to serve on the board.

(3) Notwithstanding the requirement of Subsection (1), the governor shall, at the time of appointment or reappointment of a trustee, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(4) Unless the articles of incorporation or bylaws of the corporation or statute requires a higher number of trustees:

(a) a majority of the board of trustees constitutes a quorum; and

(b) if a quorum is present when a vote is taken, the affirmative vote of a majority of trustees present constitutes an action of the board.

(5) (a) (i) A trustee who is not a government employee shall receive no compensation or benefits for serving as a trustee, but may receive per diem and expenses incurred in the performance

of the trustee's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A trustee may decline to receive per diem and expenses.

(b) (i) A trustee who is employed by the state or any political subdivision of the state and does not receive salary, per diem, or expenses for serving as a trustee may receive per diem and expenses from the corporation at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A state government trustee may decline to receive per diem and expenses.

(c) (i) A higher education trustee who does not receive salary, per diem, or expenses from the institution where the trustee is employed for service as a trustee may receive per diem and expenses from the corporation at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A higher education trustee may decline to receive per diem and expenses.

Section 9. Section **9-13-203** is enacted to read:

9-13-203. Chief executive officer -- Officers and employees -- Independent legal counsel.

The board shall:

(1) appoint a chief executive officer to administer the corporation under the direction of the board;

(2) appoint other officers as necessary;

(3) employ necessary staff:

(a) within the limitations of the budget; and

(b) as the board determines necessary for the conduct of the business of the corporation;

(4) determine compensation and other benefits for each officer and employee of the corporation;

(5) compensate officers and employees from:

(a) the funds of the corporation; or

(b) other resources available to the corporation; and

(6) hire and retain independent legal counsel.

Section 10. Section **9-13-204** is enacted to read:

9-13-204. Property considered public -- Change in organizational structure --

Dissolution of corporation.

(1) Except funds held on behalf of another entity or subject to provisions of a grant or loan requiring return of the funds if the corporation ceases to be a public entity, all funds, property, or other assets of the corporation are public property and may not be disposed of except in compliance with this chapter.

(2) (a) The corporation may not be privatized or take any of the actions described in Subsection (2)(b) unless it complies with the process described in Section 63-95-104.

(b) Subsection (2)(a) applies to the following actions:

(i) changing the corporation's status as an independent public corporation;

(ii) granting or conveying all or substantially all of the corporation's funds to any private entity; or

(iii) selling, assigning, conveying, hypothecating, pledging, or otherwise transferring control or ownership of all or substantially all of its assets, including all or substantially all of its loan receivables, to any private entity.

(3) The Legislature may provide for the dissolution of the corporation and the return of any monies or property to the state.

Section 11. Section **9-13-301** is enacted to read:

Part 3. Operations of the Corporation

9-13-301. Powers of the corporation.

Except as limited by this chapter, the Utah Constitution, or any state law applicable to an independent or quasi-governmental entity, the corporation has all the rights, authorities, privileges, and immunities of a nonprofit corporation including:

(1) providing from its funds direct loans to qualifying businesses in accordance with Section 9-13-303;

(2) compromising claims and entering into work-out or settlement agreements with a

borrower, guarantor, or other person;

(3) writing-off all or any portion of a loan in default if the corporation determines that:

(a) the borrower is not able to repay all or any portion of the loan; or

(b) it is unlikely that collection of all or any portion of the loan can be economically pursued;

(4) appointing or seeking appointment of a receiver or conservator of a borrower in default;

(5) (a) applying for, soliciting, contracting for, and accepting loans, grants, and other types

of funding from federal, state, and other government entities; and

(b) lending the funds described in Subsection (5)(a) in compliance with the terms and

conditions of the program through or from which the funds are obtained;

(6) applying for, soliciting, contracting for, and agreeing to administer funds and provide other services on behalf of and to federal, state, and other government entities;

(7) receiving:

(a) appropriations from the Legislature;

(b) other public monies; and

(c) contributions from private or public entities; and

(8) seeking federal and state tax exemptions.

Section 12. Section **9-13-302** is enacted to read:

9-13-302. Limitations.

(1) The corporation, either with corporate monies or monies from any other source, may provide financial assistance only to a person that:

(a) is a small business as defined by the United States Small Business Administration; and

(b) has located within Utah:

(i) its primary place of business; and

(ii) its primary business operations.

(2) The corporation may not:

(a) acquire or hold a controlling interest in or exercise control over any other entity; or

(b) invest in or hold stock or any other equity interest in a person, except that the corporation may acquire and hold stock or an equity interest if it is acquired in satisfaction of or on account of

a loan that is:

(i) contracted for by the corporation:

(A) in the course of the corporation's business; and

(B) before the stock or equity interest is acquired by the corporation; and

(ii) defaulted on before the stock or equity interest is acquired by the corporation.

Section 13. Section **9-13-303** is enacted to read:

9-13-303. Loans to qualifying businesses.

(1) (a) Before extending to a person a loan funded in whole or in part by corporate monies, the corporation shall determine whether or not that person is a qualifying business under Subsection (1)(b).

(b) To be a qualifying business under this section, a person shall file an application with the corporation that demonstrates to the satisfaction of the corporation that the person:

(i) is a small business as defined by the United States Small Business Administration;

(ii) is seeking financing to develop or market:

(A) a qualifying product or service; or

(B) an innovation of an existing qualifying product or service;

(iii) has located within Utah:

(A) its primary place of business; and

(B) its primary business operations; and

(iv) cannot obtain financing from a private or other public source.

(c) For purposes of determining whether a person is a qualifying business:

(i) the length of time the person has operated as a business is not determinative; and

(ii) a qualifying product or service can be innovative even if it is offered by more than one person in the marketplace.

(2) In determining whether to extend a loan to a qualifying business, the corporation shall consider effects of the activities of the qualifying business on the quality of the land, air, water, and general environment of the state.

(3) The corporation shall collect all loans unless:

(a) the borrower is not able to repay all or any portion of the loan; or

(b) it is unlikely that collection of all or any portion of the loan can be economically pursued.

(4) (a) If the corporation extends a loan to a qualifying business, the corporation shall enter into a written contract with the qualifying business.

(b) The written contract required under Subsection (4)(a) shall contain the specific terms and conditions of the loan, including a requirement that the qualifying business give the corporation regular reports on the financial condition of the qualifying business.

Section 14. Section **9-13-304** is enacted to read:

9-13-304. Conflict of interests.

The corporation may not make a loan, otherwise assist, or contract to purchase goods or services from, any of the following:

(1) a trustee, officer, or employee of the corporation, except for salary, benefits, indemnities, and other forms of compensation pertaining to the individual's employment or service for the corporation;

(2) an individual who is related to a trustee, officer, or employee of the corporation;

(3) an individual who is a business partner of a trustee, officer, or employee of the corporation;

(4) an entity in which a trustee, officer, or employee of the corporation:

(a) serves as a trustee, director, officer, employee, or representative; or

(b) owns or beneficially controls:

(i) more than 5% of the voting stock of a corporation; or

(ii) if the entity is not a corporation, exercises an interest equivalent to Subsection (4)(b)(i);

(5) an entity in which a relative, business partner, or relative of a business partner of a trustee, officer, or employee of the corporation:

(a) serves as a trustee, director, officer, employee, or representative; or

(b) owns or beneficially controls:

(i) more than 5% of the voting stock of a corporation; or

(ii) if the entity is not a corporation, exercises an interest equivalent to Subsection (5)(b)(i);

(6) a person that has made or has received an application to extend a loan to:
(a) a trustee, officer, or employee of the corporation; or
(b) a person described in Subsections (1) through (5); or
(7) a person where a conflict of interest may reasonably exist affecting any trustee, officer,
or employee of the corporation.

Section 15. Section **9-13-305** is enacted to read:

9-13-305. Confidentiality of information received by corporation -- Availability of information.

(1) Proprietary information obtained by the corporation under this chapter from any person applying for a loan or from a financial, governmental, educational, and other source is protected and not available for public inspection except as provided in Subsection (2).

(2) The following records and information are open to the public:

(a) an annual report published by the corporation under this chapter;

(b) a record that:

(i) contains data on an individual; and

(ii) is classified as public under Title 63, Chapter 2, Government Records Access and Management Act; and

(c) a record that:

(i) does not contain data on an individual or proprietary information; and

(ii) is open to the public under Title 63, Chapter 2, Government Records Access and Management Act.

Section 16. Section **9-13-401** is enacted to read:

Part 4. Relationship to the State

9-13-401. State has no liability for claims against corporation -- Immunity of corporation.

(1) Notwithstanding whether a governmental entity or governmental employee could otherwise be held liable under Title 63, Chapter 30, Utah Governmental Immunity Act, the following are immune from suit based on, derived from, or otherwise pertaining to any contract, act, omission,

obligation, duty, or responsibility of, or any claim, judgment, or penalty against the corporation or any of its trustees, officers, employees, representatives, or agents:

- (a) a governmental entity, as defined in Subsection 63-30-2(3), except the corporation; or
- (b) a government employee, as defined in Subsection 63-30-2(2), except the corporation.

(2) The corporation, its trustees, officers, employees, agents, and representatives are immune from suit and shall be entitled to indemnification as provided in Title 63, Chapter 30, Utah Governmental Immunity Act.

Section 17. Section **9-13-402** is enacted to read:

9-13-402. Monies held by state treasurer -- Limitation on use of corporate monies.

(1) Notwithstanding that the corporation is exempted from Title 51, Chapter 7, State Money Management Act, the corporation shall submit to the custody of the state treasurer:

- (a) all corporate monies; or
- (b) other monies made available to the corporation from:
 - (i) any governmental agency; or
 - (ii) any person public or private.

(2) As necessary, the state treasurer may establish separate funds and accounts for the monies submitted under Subsection (1).

(3) (a) The corporation shall use the monies described in Subsection (1) and all interest earned on those funds in accordance with this chapter.

- (b) Notwithstanding Subsection (3)(a), the corporation may use corporate monies only to:
 - (i) extend loans to qualified persons as provided in Section 9-13-303; and
 - (ii) to pay for:
 - (A) compensation and other benefits for officers and employees of the corporation;
 - (B) costs incurred by the board for per diem and expenses of trustees;
 - (C) debts of the corporation; and
 - (D) other corporation expenses.

Section 18. Section **9-13-403** is enacted to read:

9-13-403. Annual reports.

(1) Following the close of each fiscal year, the corporation shall submit an annual report of its activities for the preceding year to the governor and the Legislature.

(2) A report required by Subsection (1) shall include:

(a) a complete operating report;

(b) a statement of loan delinquencies as of the end of the fiscal year; and

(c) a statement of net loan write-offs during the fiscal year.

Section 19. Section **9-13-404** is enacted to read:

9-13-404. Annual audit.

(1) The state auditor shall at least once in each year:

(a) audit the books and accounts of the corporation; or

(b) contract with a licensed independent certified public accountant to perform an audit that shall be submitted for review to the state auditor within 90 calendar days after the end of the fiscal year covered by the audit.

(2) The corporation shall reimburse the state auditor from available monies of the corporation for the actual and necessary costs of the audit required by Subsection (1).

Section 20. Section **9-13-405** is enacted to read:

9-13-405. Exemptions from certain statutes.

The corporation is exempt from:

(1) Title 51, Chapter 5, Funds Consolidation Act;

(2) Title 51, Chapter 7, State Money Management Act;

(3) Title 63, Chapter 38, Budgetary Procedures Act;

(4) Title 63, Chapter 56, Utah Procurement Code;

(5) Title 63A, Department of Administrative Services; and

(6) Title 67, Chapter 19, Utah State Personnel Management Act.

Section 21. Section **9-13-406** is enacted to read:

9-13-406. Standing of attorney general to sue.

The attorney general has standing to sue the corporation and its trustees, officers, and employees to enjoin any:

- (1) violation of the Utah Constitution;
- (2) any violation of any applicable law of this state or the United States; or
- (3) breach of any duty or responsibility of a trustee, officer, or employee of the corporation.

Section 22. Section **11-37-101** is amended to read:

11-37-101. Definition -- Procurement -- Use of recycled goods.

(1) "Local government entity" means:

- (a) municipalities, cities, and counties;
- (b) entities created under Title 26A, Chapter 1, Local Health Department [~~Act~~]; and
- (c) political subdivisions created by cities or counties, including entities created under:
 - (i) Title 11, Chapter 13, Interlocal Cooperation Act;
 - (ii) Title 9, Chapter 4, Part 9, Utah Housing Finance Agency Act; and
 - (iii) Title 9, Chapter [~~2, Part 7~~] 13, Utah Technology and Small Business Finance

[~~Corporation~~] Act.

(2) The procurement officer or other person responsible for purchasing supplies for each local government entity shall:

- (a) maintain for reference a copy of the current listing of recycled items available on state contract as issued by the chief procurement officer under Section 63-56-9; and
- (b) give recycled items consideration when inviting bids and purchasing supplies.

Section 23. Section **63-55-209** is amended to read:

63-55-209. Repeal dates, Title 9.

- (1) Title 9, Chapter 1, Part 8, Commission on National and Community Service Act, is repealed July 1, 1999.
- (2) Title 9, Chapter 2, Part 3, Small Business Advisory Council, is repealed July 1, 1999.
- (3) Title 9, Chapter 2, Part 4, Enterprise Zone Act, is repealed July 1, 2008.
- (4) Title 9, Chapter [~~2, Part 7~~] 13, Utah Technology Finance [~~Corporation~~] and Small Business Act, is repealed July 1, 2002.
- (5) Section 9-2-1208 regarding waste tire recycling loans is repealed July 1, 2000.
- (6) Title 9, Chapter 2, Part 16, Recycling Market Development Zone Act, is repealed July

1, 2000, Sections 59-7-608 and 59-10-108.7 are repealed for tax years beginning on or after January 1, 2001.

(7) Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority, is repealed July 1, 1999.

(8) Title 9, Chapter 4, Part 4, Disaster Relief, is repealed July 1, 1999.

(9) Title 9, Chapter 4, Part 9, Utah Housing Finance Agency Act, is repealed July 1, 2006.

Section 24. Section **63-95-102** is amended to read:

63-95-102. Definitions.

For purposes of this chapter:

(1) "Asset" means property of all kind, 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) "Authorizing statutes" means the statutes creating an entity as a quasi-governmental entity.

(3) "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 ~~[Subsection]~~ Subsections (3)(b)(i) through (iii).
- (4) "Interested party" means a person that held or holds the position of trustee, director, officer, or other similar position with a quasi-governmental entity within:
 - (a) five years prior to the date of an action described in Subsection (6); or
 - (b) during the privatization of a quasi-governmental entity.
- (5) "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 (6); or
 - (b) during the privatization of a quasi-governmental entity.
- (6) (a) "Privatized" means an action described in Subsection (6)(b) taken under circumstances in which the operations of the quasi-governmental 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 quasi-governmental entity.
- (b) An action referred to in Subsection (6)(a) includes:
 - (i) the repeal of the authorizing statute of a quasi-governmental entity and the revision to state laws to terminate the relationship between the state and the quasi-governmental entity;
 - (ii) the dissolution of the quasi-governmental entity;
 - (iii) the merger or consolidation of the quasi-governmental entity with another entity; or
 - (iv) the sale of all or substantially all of the assets of the quasi-governmental entity.
- (7) "Quasi-governmental entity" means the:
 - (a) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;
 - (b) Utah Technology Finance Corporation created in Title 9, Chapter ~~[2, Part 7]~~ 13, Utah Technology and Small Business Finance ~~[Corporation]~~ Act;
 - (c) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority;

(d) Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah Science Center Authority;

(e) Utah Housing Finance Agency created in Title 9, Chapter 4, Part 9, Utah Housing Finance Agency;

(f) Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State Fair Corporation Act;

(g) Workers' Compensation Fund of Utah created in Title 31A, Chapter 33, Workers' Compensation Fund of Utah;

(h) Utah State Retirement Office created in Title 49, Chapter 1, Part 2, Retirement Office and Board;

(i) School and Institutional Trust Lands Administration created in Title 53C, Chapter 1, Part 2, School and Institutional Trust Lands Administration;

(j) Crime Victims' Reparations Office created in Title 63, Chapter 25a, Part 4, Crime Victims' Reparations Act; and

(k) Utah Communications Agency Network created in Title 63C, Chapter 7, Utah Communications Agency Network Act.

Section 25. Repealer.

This act repeals:

Section 9-2-701, Short title.

Section 9-2-702, Definitions.

Section 9-2-703, Declarations and purpose.

Section 9-2-704, Utah Technology Finance Corporation -- Nonprofit corporation -- Powers and duties -- Board of trustees -- Appointment of members by governor -- Rulemaking authority-- Employees -- Legal counsel -- Advisory board -- Expenses.

Section 9-2-705, Criteria governing operations -- Annual report -- Audits.

Section 9-2-706, Exemption from certain statutes.

Section 9-2-707, Confidentiality of information received by corporation -- Availability of information.

