

Senator L. Steven Poulton proposes to substitute the following bill:

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 QUALIFIED 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

26 **63-95-102**, as enacted by Chapter 152, Laws of Utah 1998

27 ENACTS:

28 **9-13-101**, Utah Code Annotated 1953

29 **9-13-102**, Utah Code Annotated 1953

30 **9-13-103**, Utah Code Annotated 1953

31 **9-13-201**, Utah Code Annotated 1953

32 **9-13-202**, Utah Code Annotated 1953

33 **9-13-203**, Utah Code Annotated 1953

34 **9-13-204**, Utah Code Annotated 1953

35 **9-13-301**, Utah Code Annotated 1953

36 **9-13-302**, Utah Code Annotated 1953

37 **9-13-303**, Utah Code Annotated 1953

38 **9-13-304**, Utah Code Annotated 1953

39 **9-13-305**, Utah Code Annotated 1953

40 **9-13-401**, Utah Code Annotated 1953

41 **9-13-402**, Utah Code Annotated 1953

42 **9-13-403**, Utah Code Annotated 1953

43 **9-13-404**, Utah Code Annotated 1953

44 **9-13-405**, Utah Code Annotated 1953

45 **9-13-406**, Utah Code Annotated 1953

46 REPEALS:

47 **9-2-701**, as renumbered and amended by Chapter 241, Laws of Utah 1992

48 **9-2-702**, as renumbered and amended by Chapter 241, Laws of Utah 1992

49 **9-2-703**, as renumbered and amended by Chapter 241, Laws of Utah 1992

50 **9-2-704**, as last amended by Chapter 243, Laws of Utah 1996

51 **9-2-705**, as renumbered and amended by Chapter 241, Laws of Utah 1992

52 **9-2-706**, as last amended by Chapter 10, Laws of Utah 1997

53 **9-2-707**, as last amended by Chapter 4, Laws of Utah 1993

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

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

56 **9-2-1303. Utah Capital Access Fund.**

57 (1) There is created within the office of the state treasurer the Utah Capital Access Fund.
58 The purpose of the fund shall be to encourage lending institutions to make debt capital more
59 readily available to small businesses in Utah of a size that may be eligible for Small Business
60 Administration loans under 13 C.F.R. Sec. 121.1. The fund shall consist of any money
61 appropriated by the Legislature, fees and premiums paid by participating lenders and borrowers,
62 any other money from any other source, public or private, and interest and income earned on these
63 monies.

64 (2) The Utah Technology Finance Corporation created in [~~Part 7 of this chapter~~] Chapter
65 13 shall administer and supervise the fund in all aspects and shall market the availability of the
66 fund to lending institutions and to any business in Utah of a size that may be eligible for Small
67 Business Administration loans under 13 C.F.R. Sec. 121.1.

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

69 **9-2-1306. Premiums -- Administrative costs -- Transfers.**

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

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

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

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

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

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

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

86 (i) money in the state fund reserve account; and

87 (ii) interest earned on the money in the state fund reserve account.

88 (b) Any interest remaining in the lender's fund reserve account shall remain in the account
89 until a claim is filed in accordance with Section 9-2-1308 or until it is withdrawn under Section
90 9-2-1310.

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

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

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

99 (ii) 300% of the combined amounts paid into the lender's fund reserve account in areas
100 designated as enterprise zones under Title 9, Chapter 2;

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

105 (c) if the amount of loans previously enrolled by a participating lender is less than
106 \$750,000 but the enrollment of a loan will cause the aggregate amount of all loans enrolled by that
107 participating lender to exceed \$750,000, the Utah Technology Finance Corporation shall request
108 the state treasurer to transfer into the state fund reserve account an amount equal to a percentage
109 of the amount paid into the lender's fund reserve account, determined by:

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

113 (ii) multiplying the balance of the loan by 100%; and

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

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

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

120 **9-2-1311. Reports -- Audits.**

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

123 (b) The report shall include:

124 (i) information on location of all borrowers and participating lenders;

125 (ii) the amount and type of financial assistance being requested; and

126 (iii) the type of project or product being financed.

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

129 (i) the balance in the lender's state fund reserve account;

130 (ii) payments and transfers into that account; and

131 (iii) withdrawals from that account.

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

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

137 (i) the balance in the lender's fund reserve account;

138 (ii) payments and transfers into the account; and

139 (iii) withdrawals from the account.

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

142 (i) payments and transfers into the account;

143 (ii) withdrawals from the account; and

144 (iii) interest or income earned on the monies credited to the account.

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

149 (b) In the conduct of the audit, the auditor shall have access to all records of the fund at

181 because the Legislature finds:

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

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

184 and

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

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

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

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

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

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

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

198 **9-13-103. Definitions.**

199 As used in this chapter:

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

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

203 (a) holds a controlling interest; or

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

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

206 (i) monies received from the federal government; or

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

209 (b) "Corporate monies" include:

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

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

- 212 (iii) any interest earned on the monies described in Subsections (3)(b)(i) and (ii).
- 213 (4) "Corporation" means the Utah Technology Finance Corporation created in Section
- 214 9-13-201.
- 215 (5) "Proprietary information" means:
- 216 (a) a trade secret;
- 217 (b) commercial or financial information that if disclosed may result in an unfair
- 218 competitive injury to the person submitting the information to the corporation; and
- 219 (c) information supplied to the corporation if:
- 220 (i) the person supplying the information requests that it not be disclosed; and
- 221 (ii) the corporation reasonably determines that the disclosure is not in the public interest.
- 222 (6) "Qualifying business" means a person determined to be a qualifying business by the
- 223 corporation in accordance with Section 9-13-303.
- 224 (7) "Qualifying product" means equipment, goods, software, or other tangible, intangible,
- 225 or intellectual property:
- 226 (a) (i) that increases effectiveness, efficiency, or durability; or
- 227 (ii) reduces costs; and
- 228 (b) (i) that is primarily designed to perform one or more of the following functions:
- 229 (A) computing;
- 230 (B) telecommunications or other transmission of information;
- 231 (C) aerospace or other aeronautical travel, exploration, or research; or
- 232 (D) pollution control or other environmental services; or
- 233 (ii) that primarily consists of:
- 234 (A) a medical product or treatment;
- 235 (B) a genetically engineered product; or
- 236 (C) a product using new materials or designs.
- 237 (8) "Qualifying services" means a service provided through a computer network including
- 238 the Internet.
- 239 (9) "Relative" or "relation" means a:
- 240 (a) direct ancestor or descendent;
- 241 (b) spouse;
- 242 (c) sibling; or

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

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

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

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

250 **Part 2. Organization of Corporation**

251 **9-13-201. Utah Technology Finance Corporation -- Nonprofit corporation.**

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

254 (2) (a) The corporation shall operate as a nonprofit corporation in accordance with Title
255 16, Chapter 6, Utah Nonprofit Corporation and Cooperative Association Act, to the extent that
256 Title 16, Chapter 6, does not conflict with this chapter.

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

258 (i) articles of incorporation; and

259 (ii) any amendment to its articles of incorporation.

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

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

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

267 **9-13-202. Board of trustees.**

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

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

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

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

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

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

278 (ii) from:

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

281 (B) the general public.

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

283 (d) (i) If the executive director of the Department of Community and Economic
284 Development or the commissioner of the Department of Financial Institutions appoints a designee,
285 the executive director or the commissioner shall notify the corporation in writing of the
286 appointment of the designee prior to the designee serving on the board.

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

289 (A) resigns;

290 (B) is unable to serve; or

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

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

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

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

298 (i) resigns;

299 (ii) resides outside the state;

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

301 (iv) is unable to serve on the board.

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

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

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

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

310 (5) (a) (i) A trustee who is not a government employee shall receive no compensation or
311 benefits for serving as a trustee, but may receive per diem and expenses incurred in the
312 performance of the trustee's official duties at the rates established by the Division of Finance under
313 Sections 63A-3-106 and 63A-3-107.

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

315 (b) (i) A trustee who is employed by the state or any political subdivision of the state and
316 does not receive salary, per diem, or expenses for serving as a trustee may receive per diem and
317 expenses from the corporation at the rates established by the Division of Finance under Sections
318 63A-3-106 and 63A-3-107.

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

320 (c) (i) A higher education trustee who does not receive salary, per diem, or expenses from
321 the institution where the trustee is employed for service as a trustee may receive per diem and
322 expenses from the corporation at the rates established by the Division of Finance under Sections
323 63A-3-106 and 63A-3-107.

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

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

326 **9-13-203. Chief executive officer -- Officers and employees -- Independent legal**
327 **counsel.**

328 The board shall:

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

331 (2) appoint other officers as necessary;

332 (3) employ necessary staff;

333 (a) within the limitations of the budget; and

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

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

336 corporation:

337 (5) compensate officers and employees from:

338 (a) the funds of the corporation; or

339 (b) other resources available to the corporation; and

340 (6) hire and retain independent legal counsel.

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

342 **9-13-204. Change in organizational structure -- Sell of all or substantially all of the**
343 **corporation's assets -- Terminate operations.**

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

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

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

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

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

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

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

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

360 **Part 3. Operations of the Corporation**

361 **9-13-301. Powers of the corporation.**

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

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

- 367 (2) compromising claims and entering into work-out or settlement agreements with a
368 borrower, guarantor, or other person;
- 369 (3) writing-off all or any portion of a loan in default if the corporation determines that:
370 (a) the borrower is not able to repay all or any portion of the loan; or
371 (b) it is unlikely that collection of all or any portion of the loan can be economically
372 pursued;
- 373 (4) appointing or seeking appointment of a receiver or conservator of a borrower in
374 default;
- 375 (5) (a) applying for, soliciting, contracting for, and accepting loans, grants, and other types
376 of funding from federal, state, and other government entities; and
- 377 (b) lending the funds described in Subsection (5)(a) in compliance with the terms and
378 conditions of the program through or from which the funds are obtained;
- 379 (6) applying for, soliciting, contracting for, and agreeing to administer funds and provide
380 other services on behalf of and to federal, state, and other government entities;
- 381 (7) receiving:
- 382 (a) appropriations from the Legislature;
- 383 (b) other public monies; and
- 384 (c) contributions from private or public entities; and
- 385 (8) seeking federal and state tax exemptions.
- 386 Section 12. Section **9-13-302** is enacted to read:
- 387 **9-13-302. Limitations.**
- 388 (1) The corporation, either with corporate monies or monies from any other source, may
389 provide financial assistance only to a person that:
- 390 (a) is a small business as defined by the United States Small Business Administration; and
391 (b) has located within Utah:
- 392 (i) its primary place of business; and
393 (ii) its primary business operations.
- 394 (2) The corporation may not:
- 395 (a) acquire or hold a controlling interest in or exercise control over any other entity; or
396 (b) invest in or hold stock or any other equity interest in a person, except that the
397 corporation may acquire and hold stock or an equity interest if it is acquired in satisfaction of or

398 on account of a loan that is:

399 (i) contracted for by the corporation:

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

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

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

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

404 **9-13-303. Loans to qualified businesses.**

405 (1) (a) Before extending to a person a loan funded in whole or in part by corporate monies,

406 the corporation shall determine whether or not that person is a qualified business under Subsection

407 (1)(b).

408 (b) To be a qualified business under this section, a person shall file an application with the

409 corporation that demonstrates to the satisfaction of the corporation that the person:

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

411 (ii) is seeking financing to develop or market:

412 (A) a qualifying product or service; or

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

414 (iii) has located within Utah:

415 (A) its primary place of business; and

416 (B) its primary business operations; and

417 (iv) cannot obtain financing from a private source.

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

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

420 (ii) a qualifying product or service can be innovative even if it is offered by more than one

421 person in the marketplace.

422 (2) In determining whether to extend a loan to a qualified business, the corporation shall

423 consider effects of the activities of the qualified business on the quality of the land, air, water, and

424 general environment of the state.

425 (3) The corporation shall collect all loans unless:

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

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

428 pursued;

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

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

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

435 **9-13-304. Conflict of interests.**

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

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

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

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

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

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

446 (b) owns or beneficially controls:

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

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

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

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

452 (b) owns or beneficially controls:

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

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

455 (6) a person that has made or has received an application to extend a loan to:

456 (a) a trustee, officer, or employee of the corporation; or

457 (b) a person described in Subsections (1) through (5); or

458 (7) a person where a conflict of interest may reasonably exist affecting any trustee, officer,
459 or employee of the corporation.

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

461 **9-13-305. Confidentiality of information received by corporation -- Availability of**
462 **information.**

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

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

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

468 (b) a record that:

469 (i) contains data on an individual; and

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

472 (c) a record that:

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

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

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

477 **Part 4. Relationship to the State**

478 **9-13-401. Liability of state for claims against corporation -- Immunity of corporation.**

479 (1) Notwithstanding whether a governmental entity or governmental employee could
480 otherwise be held liable under Title 63, Chapter 30, Utah Governmental Immunity Act, the
481 following are immune from suit based on, derived from, or otherwise pertaining to any contract,
482 act, omission, obligation, duty, or responsibility of, or any claim, judgment, or penalty against the
483 corporation or any of its trustees, officers, employees, representatives, or agents:

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

485 (b) a government employee, as defined in Subsection 63-30-2(2), except the corporation.

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

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

490 **9-13-402. Monies held by state treasurer -- Limitation on use of state funds.**

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

493 (a) all corporate monies; or

494 (b) other monies made available to the corporation from:

495 (i) any governmental agency; or

496 (ii) any person public or private.

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

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

501 (b) Notwithstanding Subsection (3)(a), the corporation may use corporate monies only to:

502 (i) extend loans to qualified persons as provided in Section 9-13-303; and

503 (ii) to pay for:

504 (A) compensation and other benefits for officers and employees of the corporation;

505 (B) costs incurred by the board for per diem and expenses of trustees;

506 (C) debts of the corporation; and

507 (D) other corporation expenses.

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

509 **9-13-403. Annual reports.**

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

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

513 (a) a complete operating report;

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

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

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

517 **9-13-404. Annual audit.**

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

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

520 (b) contract with a licensed independent certified public accountant to perform an audit

521 that shall be submitted for review to the state auditor within 90 calendar days after the end of the

522 fiscal year covered by the audit.

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

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

526 **9-13-405. Exemptions from certain statutes.**

527 The corporation is exempt from:

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

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

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

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

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

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

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

535 **9-13-406. Standing of attorney general to sue.**

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

538 (1) violation of the Utah Constitution;

539 (2) any violation of any applicable law of this state or the United States; or

540 (3) breach of any duty or responsibility of a trustee, officer, or employee of the corporation.

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

542 **11-37-101. Definition -- Procurement -- Use of recycled goods.**

543 (1) "Local government entity" means:

544 (a) municipalities, cities, and counties;

545 (b) entities created under Title 26A, Chapter 1, Local Health Department [Act]; and

546 (c) political subdivisions created by cities or counties, including entities created under:

547 (i) Title 11, Chapter 13, Interlocal Cooperation Act;

548 (ii) Title 9, Chapter 4, Part 9, Utah Housing Finance Agency Act; and

549 (iii) Title 9, Chapter [~~2, Part 7~~] 13, Utah Technology and Small Business Finance

550 [~~Corporation~~] Act.

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

553 (a) maintain for reference a copy of the current listing of recycled items available on state
554 contract as issued by the chief procurement officer under Section 63-56-9; and

555 (b) give recycled items consideration when inviting bids and purchasing supplies.

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

557 **63-55-209. Repeal dates, Title 9.**

558 (1) Title 9, Chapter 1, Part 8, Commission on National and Community Service Act, is
559 repealed July 1, 1999.

560 (2) Title 9, Chapter 2, Part 3, Small Business Advisory Council, is repealed July 1, 1999.

561 (3) Title 9, Chapter 2, Part 4, Enterprise Zone Act, is repealed July 1, 2008.

562 (4) Title 9, Chapter [~~2, Part 7~~] 13, Utah Technology Finance [~~Corporation~~] and Small
563 Business Act, is repealed July 1, 2002.

564 (5) Section 9-2-1208 regarding waste tire recycling loans is repealed July 1, 2000.

565 (6) Title 9, Chapter 2, Part 16, Recycling Market Development Zone Act, is repealed July
566 1, 2000, Sections 59-7-608 and 59-10-108.7 are repealed for tax years beginning on or after
567 January 1, 2001.

568 (7) Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority, is repealed July
569 1, 1999.

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

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

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

573 **63-95-102. Definitions.**

574 For purposes of this chapter:

575 (1) "Asset" means property of all kind, real and personal, tangible and intangible, and
576 includes:

577 (a) cash, except reasonable compensation or salary for services rendered;

578 (b) stock or other investments;

579 (c) goodwill;

580 (d) real property;

581 (e) an ownership interest;

582 (f) a license;

583 (g) a cause of action; and

- 584 (h) any similar property.
- 585 (2) "Authorizing statutes" means the statutes creating an entity as a quasi-governmental
586 entity.
- 587 (3) "Business interest" means:
- 588 (a) holding the position of trustee, director, officer, or other similar position with a
589 business entity; or
- 590 (b) the ownership, either legally or equitably, of at least 10% of the outstanding shares of
591 a corporation or 10% interest in any other business entity, being held by:
- 592 (i) an individual;
- 593 (ii) the individual's spouse;
- 594 (iii) a minor child of the individual; or
- 595 (iv) any combination of [Subsection] Subsections (3)(b)(i) through (iii).
- 596 (4) "Interested party" means a person that held or holds the position of trustee, director,
597 officer, or other similar position with a quasi-governmental entity within:
- 598 (a) five years prior to the date of an action described in Subsection (6); or
- 599 (b) during the privatization of a quasi-governmental entity.
- 600 (5) "Lobbyist" is a person that provided or provides services as a lobbyist, as defined in
601 Section 36-11-102, within:
- 602 (a) five years prior to the date of an action described in Subsection (6); or
- 603 (b) during the privatization of a quasi-governmental entity.
- 604 (6) (a) "Privatized" means an action described in Subsection (6)(b) taken under
605 circumstances in which the operations of the quasi-governmental entity are continued by a
606 successor entity that:
- 607 (i) is privately owned;
- 608 (ii) is unaffiliated to the state; and
- 609 (iii) receives any asset of the quasi-governmental entity.
- 610 (b) An action referred to in Subsection (6)(a) includes:
- 611 (i) the repeal of the authorizing statute of a quasi-governmental entity and the revision to
612 state laws to terminate the relationship between the state and the quasi-governmental entity;
- 613 (ii) the dissolution of the quasi-governmental entity;
- 614 (iii) the merger or consolidation of the quasi-governmental entity with another entity; or

- 615 (iv) the sale of all or substantially all of the assets of the quasi-governmental entity.
- 616 (7) "Quasi-governmental entity" means the:
- 617 (a) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;
- 618 (b) Utah Technology Finance Corporation created in Title 9, Chapter ~~[2, Part 7]~~ 13, Utah
- 619 Technology and Small Business Finance [~~Corporation~~] Act;
- 620 (c) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber Valley
- 621 Historic Railroad Authority;
- 622 (d) Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah Science
- 623 Center Authority;
- 624 (e) Utah Housing Finance Agency created in Title 9, Chapter 4, Part 9, Utah Housing
- 625 Finance Agency;
- 626 (f) Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State Fair
- 627 Corporation Act;
- 628 (g) Workers' Compensation Fund of Utah created in Title 31A, Chapter 33, Workers'
- 629 Compensation Fund of Utah;
- 630 (h) Utah State Retirement Office created in Title 49, Chapter 1, Part 2, Retirement Office
- 631 and Board;
- 632 (i) School and Institutional Trust Lands Administration created in Title 53C, Chapter 1,
- 633 Part 2, School and Institutional Trust Lands Administration;
- 634 (j) Crime Victims' Reparations Office created in Title 63, Chapter 25a, Part 4, Crime
- 635 Victims' Reparations Act; and
- 636 (k) Utah Communications Agency Network created in Title 63C, Chapter 7, Utah
- 637 Communications Agency Network Act.

638 **Section 25. Repealer.**

639 This act repeals:

640 Section **9-2-701, Short title.**

641 Section **9-2-702, Definitions.**

642 Section **9-2-703, Declarations and purpose.**

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

- 646 Section **9-2-705, Criteria governing operations -- Annual report -- Audits.**
- 647 Section **9-2-706, Exemption from certain statutes.**
- 648 Section **9-2-707, Confidentiality of information received by corporation -- Availability**
- 649 **of information.**

Legislative Review Note
as of 2-23-99 5:33 PM

This legislation raises the following constitutional or statutory concerns:

In recodifying the law creating the Utah Technology Finance Corporation ("UTFC"), this bill permits privatization and dissolution, characterizes UTFC's property as public, and prohibits ownership of a controlling interest in other entities. If UTFC were viewed more like a private entity, it is possible that the bill could be challenged as violating constitutional provisions such as due process and impairing contracts. It is unclear whether or not a court might limit the Legislature's authority to take any such actions. However, the legislation is consistent with the Legislature's power to create and set the operating parameters of quasi-governmental entities and with the fact that a primary source of funding of UTFC has been state appropriations.

Office of Legislative Research and General Counsel