

QUASI-GOVERNMENTAL ENTITIES AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: David Ure

AN ACT RELATING TO STATE AFFAIRS; AMENDING DEFINITIONS; CREATING THE LEGISLATIVE QUASI-GOVERNMENTAL ENTITIES COMMITTEE; ESTABLISHING DUTIES OF THAT COMMITTEE; PROVIDING EXEMPTIONS FROM THE STUDY; PROVIDING A PROCESS FOR REVIEWING THE CREATION OF A QUASI-GOVERNMENTAL ENTITY; REMOVING REFERENCES TO THE LEGISLATIVE RETIREMENT COMMITTEE; AND MAKING TECHNICAL CHANGES.

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

AMENDS:

49-1-201, as last amended by Chapter 231, Laws of Utah 1996

63-55b-163, as renumbered and amended by Chapter 21, Laws of Utah 1999

63-95-101, as enacted by Chapter 152, Laws of Utah 1998

63-95-102, as last amended by Chapter 76, Laws of Utah 1999

ENACTS:

63-95-201, Utah Code Annotated 1953

63-95-202, Utah Code Annotated 1953

63-95-203, Utah Code Annotated 1953

63-95-301, Utah Code Annotated 1953

63-95-302, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

63-95-401, (Renumbered from 63-95-103, as enacted by Chapter 152, Laws of Utah 1998)

63-95-402, (Renumbered from 63-95-104, as enacted by Chapter 152, Laws of Utah 1998)

63-95-403, (Renumbered from 63-95-105, as enacted by Chapter 152, Laws of Utah 1998)

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

Section 1. Section **49-1-201** is amended to read:

49-1-201. Establishment of retirement office -- An independent state agency --

Adoption of programs and policies.

(1) There is established the Utah State Retirement Office. The office shall administer the state retirement systems and perform all other functions assigned to it by law.

(2) The office is an independent state agency. It is subject to legislative and executive department budgetary examination and comment.

(3) The office shall be housed in Salt Lake City, but branches of the office may be established in other areas of the state upon approval of the board.

(4) (a) The board is exempt from those acts which are applicable to state and other governmental entities under this code. ~~[However,]~~

(b) Notwithstanding Subsection (4)(a), the board shall:

(i) adopt, where not in conflict with its trust and fiduciary responsibilities or other law, rules governing the operation of the retirement office ~~[which]~~ that are substantially similar to those governing other public agencies; and ~~[shall]~~

(ii) report ~~[these]~~ the rules~~;~~ and any amendments to ~~[them,]~~ the rules adopted under Subsection (4)(b)(i) to the Legislative ~~[Retirement]~~ Quasi-Governmental Entities Committee on an annual basis or as otherwise requested by the Legislative Quasi-Governmental Entities Committee.

Section 2. Section **63-55b-163** is amended to read:

63-55b-163. Repeal dates -- Title 63, Title 63D.

(1) Title 63, Chapter 95, Parts 2 and 3 are repealed July 1, 2004.

~~[(1)]~~ (2) Sections 63-63b-101 and 63-63b-102 are repealed on July 1, 2002.

~~[(2) Section 63D-1-301.6 is repealed January 1, 1999.]~~

Section 3. Section **63-95-101** is amended to read:

CHAPTER 95. QUASI-GOVERNMENTAL ENTITIES ACT

Part 1. General Provisions

63-95-101. Title.

This chapter ~~[shall be]~~ is known as the "~~[Privatization of]~~ Quasi-Governmental Entities Act."

Section 4. 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 Subsections (3)(b)(i) through (iii).

(4) "Committee" means the Legislative Quasi-Governmental Entities Committee created in Section 63-95-201.

(5) "Government requestor" means:

- (a) the governor;
- (b) an executive branch officer other than the governor;
- (c) an executive branch agency;

(d) a legislator, including a legislative sponsor of legislation creating a quasi-governmental entity; or

(e) a legislative committee.

~~[(4)]~~ (6) "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)]~~ (8); or

(b) during the privatization of a quasi-governmental entity.

~~[(5)]~~ (7) "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)]~~ (8); or

(b) during the privatization of a quasi-governmental entity.

~~[(6)]~~ (8) (a) "Privatized" means an action described in Subsection ~~[(6)]~~ (8)(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)]~~ (8)(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)]~~ (9) (a) "Quasi-governmental entity" means ~~[the]~~ an entity that:

(i) is created by the state or is given by the state the right to exist and conduct its affairs as a quasi-governmental entity:

(A) to serve a public purpose; and

(B) to meet a need that cannot be met through a private business; and

(ii) is designated by the state as:

(A) an independent state agency;

(B) an independent public corporation;

(C) a quasi-public corporation; or

(D) a term similar to that described in Subsections (9)(a)(iv)(A) through (C).

(b) "Quasi-governmental entity" includes the:

~~[(a)]~~ (i) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;

~~[(b)]~~ (ii) Utah Technology Finance Corporation created in Title 9, Chapter 13, Utah Technology and Small Business Finance Act;

~~[(c)]~~ (iii) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority;

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

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

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

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

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

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

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

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

(c) Notwithstanding Subsection (9)(a), "quasi-governmental entity" does not include:

- (i) the Public Service Commission of Utah created in Section 54-1-1;
- (ii) an institution within the state system of higher education;
- (iii) a city, county, or town;
- (iv) a local school district;
- (v) a special district created under the authority of Title 17A, Special Districts; or
- (vi) a local district created under the authority of Title 17B, Limited Purpose Local

Government Entities.

Section 5. Section **63-95-201** is enacted to read:

Part 2. Legislative Committee

63-95-201. Legislative Quasi-Governmental Entities Committee creation.

(1) There is created a Legislative Quasi-Governmental Entities Committee composed of 14 legislators appointed as follows:

(a) five senators, appointed by the president of the Senate, with at least two senators from the minority party; and

(b) nine representatives, appointed by the speaker of the House of Representatives, with at least three representatives from the minority party.

(2) (a) The president of the Senate shall designate one of the Senate appointees as a cochair of the committee.

(b) The speaker of the House of Representatives shall designate one of the House of Representatives appointees as a cochair of the committee.

(3) Committee members serve for two years, but may be reappointed by the speaker or the president.

(4) The committee shall meet at least twice each year, but may meet more frequently if the chairs determine that additional meetings are needed.

(5) In conducting all of its business, the committee shall comply with the rules of legislative interim committees.

(6) The Office of Legislative Research and General Counsel shall provide staff services to the committee.

(7) Salaries and expenses of legislative committee members shall be paid in accordance with:

(a) Section 36-2-2; and

(b) Legislative Joint Rule 15.03.

Section 6. Section **63-95-202** is enacted to read:

63-95-202. Duties of the committee.

(1) The committee shall:

(a) study the scope of this chapter and determine what entities should be treated under this chapter as quasi-governmental entities;

(b) study the provisions of the Utah Code that govern each quasi-governmental entity including whether or not there should be consistency in these provisions;

(c) study what provisions of the Utah Code, if any, from which each quasi-governmental entity should be exempted;

(d) study whether or not the state should receive services from or provide services to each quasi-governmental entity;

(e) request and hear reports from each quasi-governmental entity;

(f) review the annual audit of each quasi-governmental entity that is performed in accordance with the statutes governing the quasi-governmental entity;

(g) comply with Part 3, Creation of Quasi-Governmental Entity, in reviewing a proposal to create a new quasi-governmental entity;

(h) if the committee recommends a change in the organizational status of a quasi-governmental entity as provided in Subsection (2) and subject to Part 4, Privatization of Quasi-Governmental Entities, recommend the appropriate method of changing the organizational status of the quasi-governmental entity;

(i) study the following concerning an entity created by local agreement under Title 11, Chapter 13, Interlocal Cooperation Act, if the state is a party to the agreement creating the entity:

(i) whether or not the entity should be subject to this chapter;

(ii) whether or not the state should receive services from or provide services to the entity;

(iii) reporting and audit requirements for the entity; and

(iv) the need, if any, to modify statutes related to the entity; and
(j) report annually to the Legislative Management Committee by no later than the Legislative Management Committee's November meeting.

(2) The committee may:

(a) establish a form for any report required under Subsection (1);
(b) make recommendations to the Legislature concerning the organizational status of a quasi-governmental entity;

(c) advise the Legislature concerning issues involving quasi-governmental entities; and

(d) study issues related to the implementation of Title 49, Utah State Retirement Act.

Section 7. Section **63-95-203** is enacted to read:

63-95-203. Exemptions from committee activities.

Notwithstanding the other provisions of this Part 2 and Subsection 63-95-102(9), the following quasi-governmental entities are exempt from the study by the committee under Section 63-95-202:

(1) the Utah Housing Finance Agency created in Title 9, Chapter 4, Part 9; and

(2) the Workers' Compensation Fund of Utah created in Title 31A, Chapter 33.

Section 8. Section **63-95-301** is enacted to read:

Part 3. Creation of a Quasi-Governmental Entity

63-95-301. Review by committee required for creating a quasi-governmental entity.

(1) If a government requestor proposes that the Legislature create a quasi-governmental entity, that government requestor shall request that the committee review the proposal.

(2) After receiving a request for review under Subsection (1), the chairs of the committee:

(a) shall schedule a meeting of the committee to review the proposal; and

(b) may request information from executive and legislative branch entities and officers concerning the proposal including:

(i) whether or not the proposed quasi-governmental entity should be exempt from any state statute;

(ii) the need for oversight of the proposed quasi-governmental entity by an executive branch

agency;

(iii) the need for and requirements of audits of the proposed quasi-governmental entity;

(iv) the custody of the proposed quasi-governmental entity's funds;

(v) the legal representation of the proposed quasi-governmental entity;

(vi) whether or not the state should receive services from or provide services to the proposed quasi-governmental entity; and

(vii) the legal liability, if any, to the state if the proposed quasi-governmental entity is created.

(3) In requesting information from executive and legislative branch entities or officers under Subsection (2), the committee should specifically consider seeking information from:

(a) the state auditor;

(b) the state treasurer;

(c) the attorney general;

(d) the risk manager; and

(e) the executive director of the Department of Administrative Services.

Section 9. Section **63-95-302** is enacted to read:

63-95-302. Recommendations of the committee.

After the committee has reviewed a proposal to create a quasi-governmental entity in accordance with Section 63-95-301, the committee shall make a report to the Legislature stating whether the committee:

(1) recommends creation of the proposed quasi-governmental entity;

(2) recommends that the proposed quasi-governmental entity not be created; or

(3) makes no recommendation regarding the creation of the proposed quasi-governmental entity.

Section 10. Section **63-95-401**, which is renumbered from Section 63-95-103 is renumbered and amended to read:

Part 4. Privatization of Quasi-Governmental Entities

[~~63-95-103~~]. 63-95-401. Benefits to interested parties of a quasi-governmental entity.

(1) If a quasi-governmental entity is privatized, the following may not receive any benefit prohibited under Subsection (2):

- (a) an interested party of the quasi-governmental entity;
- (b) an entity in which an interested party holds a business interest;
- (c) a lobbyist of the quasi-governmental entity; or
- (d) an entity in which a lobbyist of the quasi-governmental entity holds a business interest.

(2) If a quasi-governmental entity is privatized:

- (a) a person described in Subsection (1)(a) or (b) may not receive:
 - (i) compensation from a quasi-governmental entity that is conditioned in whole or in part on:
 - (A) the passage, defeat, or amendment of legislative action related to privatization; or
 - (B) the approval, modification, or denial of an executive action related to privatization; or
 - (ii) any asset of the quasi-governmental entity or its successor; and
- (b) a person described in Subsection (1)(c) or (d) may not receive any:
 - (i) compensation that if received by the lobbyist would be in violation of Section 36-11-301;

or

- (ii) asset of the quasi-governmental entity or its successor.

Section 11. Section **63-95-402**, which is renumbered from Section 63-95-104 is renumbered and amended to read:

~~[63-95-104].~~ 63-95-402. Privatization process -- Audit.

(1) If a quasi-governmental entity seeks to privatize the quasi-governmental entity, it shall:

(a) submit to the Legislature recommended legislation to:

(i) repeal the authorizing statute and revise state law as necessary to terminate its relationship to the state; and

(ii) address the value of any interests the state holds in the quasi-governmental entity and whether the state should receive compensation for those interests as part of privatization; and

(b) be audited by the state auditor:

(i) within one year prior to the effective date of legislation that repeals the authorizing statute to terminate the relationship between the quasi-governmental entity and the state; and

(ii) to determine the amount, nature, and source of revenues and assets of the quasi-governmental entity.

(2) The relationship between the state and a quasi-governmental entity may not be terminated except by the repeal of the authorizing statute of the quasi-governmental entity.

Section 12. Section **63-95-403**, which is renumbered from Section 63-95-105 is renumbered and amended to read:

~~[63-95-105]~~. **63-95-403. Penalties for violation.**

(1) A person who knowingly violates this [chapter] part:

(a) is guilty of a third degree felony if the combined value of any compensation or assets received by the person as a result of the violation is equal to or greater than \$10,000; or

(b) is guilty of a class A misdemeanor if the combined value of any compensation or assets received by the person as a result of the violation is less than \$10,000.

(2) (a) In addition to any penalty imposed under Subsection (1), a person that violates this [chapter] part shall return to the successor of the quasi-governmental entity any compensation or assets received in violation of this [chapter] part.

(b) If the assets received by the person in violation of this [chapter] part are no longer in the possession of the person, the person shall pay the successor of the quasi-governmental entity an amount equal to the fair market value of the asset at the time the person received the asset.

(3) Notwithstanding Subsection 36-11-401(3)(a), if a lobbyist violates Subsection ~~[63-95-103]~~ 63-95-401(2)(b)(i), the lobbyist is guilty the crime outlined in Subsection (1), which crime shall be determined by the value of compensation or assets received by the lobbyist.