

INDEPENDENT ENTITIES ACT

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Ron Bigelow

This act creates the Independent Entities Code, including definitions. This act recodifies certain existing provisions and creates additional regulations relating to independent entities.

This act creates an Independent Corporations Act. This act takes effect on July 1, 2002.

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

ENACTS:

63E-1-101, Utah Code Annotated 1953

63E-1-102, Utah Code Annotated 1953

63E-1-201, Utah Code Annotated 1953

63E-1-202, Utah Code Annotated 1953

63E-1-203, Utah Code Annotated 1953

63E-1-301, Utah Code Annotated 1953

63E-1-302, Utah Code Annotated 1953

63E-1-303, Utah Code Annotated 1953

63E-1-401, Utah Code Annotated 1953

63E-1-402, Utah Code Annotated 1953

63E-1-403, Utah Code Annotated 1953

63E-1-404, Utah Code Annotated 1953

63E-2-101, Utah Code Annotated 1953

63E-2-102, Utah Code Annotated 1953

63E-2-103, Utah Code Annotated 1953

63E-2-104, Utah Code Annotated 1953

63E-2-105, Utah Code Annotated 1953

63E-2-106, Utah Code Annotated 1953

63E-2-107, Utah Code Annotated 1953

63E-2-108, Utah Code Annotated 1953

63E-2-109, Utah Code Annotated 1953

63E-2-110, Utah Code Annotated 1953

63E-2-111, Utah Code Annotated 1953

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

Section 1. Section **63E-1-101** is enacted to read:

TITLE 63E. INDEPENDENT ENTITIES CODE

CHAPTER 1. INDEPENDENT ENTITIES ACT

Part 1. General Provisions

63E-1-101. Title.

(1) This title is known as the "Independent Entities Code."

(2) This chapter is known as the "Independent Entities Act."

Section 2. Section **63E-1-102** is enacted to read:

63E-1-102. Definitions.

As used in this title:

(1) "Authorizing statute" means the statute creating an entity as an independent entity.

(2) "Committee" means the Legislative Independent Entities Committee created in Section 63E-1-201.

(3) "Independent corporation" means a corporation incorporated in accordance with Chapter 2, Independent Corporations Act.

(4) (a) "Independent entity" means an entity having a public purpose relating to the state or its citizens that is individually created by the state or is given by the state the right to exist and conduct its affairs as an:

(i) independent state agency; or

(ii) independent corporation.

(b) "Independent entity" includes the:

(i) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;

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

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

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

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

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

(vii) Workers' Compensation Fund created in Title 31A, Chapter 33, Workers' Compensation Fund;

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

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

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

(c) Notwithstanding this Subsection (4), "independent 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.

(5) "Independent state agency" means an entity that is created by the state, but is independent of the governor's direct supervisory control.

(6) "Monies held in trust" means monies maintained for the benefit of:

(a) one or more private individuals, including public employees;

(b) one or more public or private entities; or

(c) the owners of a quasi-public corporation.

(7) "Public corporation" means an artificial person, public in ownership, individually created by the state as a body politic and corporate for the administration of a public purpose relating to the state or its citizens.

(8) "Quasi-public corporation" means an artificial person, private in ownership, individually created as a corporation by the state which has accepted from the state the grant of a franchise or contract involving the performance of a public purpose relating to the state or its citizens.

Section 3. Section **63E-1-201** is enacted to read:

Part 2. Legislative Committee

63E-1-201. Legislative Independent Entities Committee creation.

(1) There is created a Legislative Independent 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 4. Section **63E-1-202** is enacted to read:

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

(1) The committee shall:

(a) study the scope of this title and determine what entities should be treated under this title as independent entities;

(b) study the provisions of the Utah Code that govern each independent 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 independent entity should be exempted;

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

(e) request and hear reports from each independent entity;

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

(g) comply with Part 3, Creation of Independent Entities, in reviewing a proposal to create a new independent entity;

(h) if the committee recommends a change in the organizational status of an independent entity as provided in Subsection (2) and subject to Part 4, Privatization of Independent Entities, recommend the appropriate method of changing the organizational status of the independent entity;

(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;
(j) make a recommendation on the organizational status of each independent entity prior to the 2002 General Session; and
(k) 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 an independent entity;

(c) advise the Legislature concerning issues involving independent entities; and

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

Section 5. Section **63E-1-203** is enacted to read:

63E-1-203. Exemptions from committee activities.

Notwithstanding the other provisions of this Part 2 and Subsection 63E-1-102(4), the following independent entities are exempt from the study by the committee under Section 63E-1-202:

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

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

Section 6. Section **63E-1-301** is enacted to read:

Part 3. Creation of Independent Entities

63E-1-301. Definitions.

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

(1) the governor;

(2) an executive branch officer other than the governor;

(3) an executive branch agency;

(4) a legislator, including a legislative sponsor of legislation creating an independent entity;

or

(5) a legislative committee.

Section 7. Section **63E-1-302** is enacted to read:

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

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

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

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

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

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

(ii) the need for oversight of the proposed independent entity by an executive branch agency;

(iii) the need for and requirements of audits of the proposed independent entity;

(iv) the custody of the proposed independent entity's funds;

(v) the legal representation of the proposed independent entity;

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

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

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

(a) the state auditor;

(b) the state treasurer;

(c) the attorney general;

(d) the risk manager; and

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

Section 8. Section **63E-1-303** is enacted to read:

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

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

committee:

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

Section 9. Section **63E-1-401** is enacted to read:

Part 4. Privatization of Independent Entities

63E-1-401. Definitions.

As used in this part:

- (1) "Asset" means property of all kinds, real and personal, tangible and intangible, and

includes:

- (a) cash, except reasonable compensation or salary for services rendered;
- (b) stock or other investments;
- (c) goodwill;
- (d) real property;
- (e) an ownership interest;
- (f) a license;
- (g) a cause of action; and
- (h) any similar property.

- (2) "Business interest" means:

(a) holding the position of trustee, director, officer, or other similar position with a business entity; or

(b) the ownership, either legally or equitably, of at least 10% of the outstanding shares of a corporation or 10% interest in any other business entity, being held by:

- (i) an individual;
- (ii) the individual's spouse;
- (iii) a minor child of the individual; or
- (iv) any combination of Subsections (2)(b)(i) through (iii).

- (3) "Interested party" means a person that held or holds the position of trustee, director,

officer, or other similar position with an independent entity within:

(a) five years prior to the date of an action described in Subsection (5); or

(b) during the privatization of an independent entity.

(4) "Lobbyist" is a person that provided or provides services as a lobbyist, as defined in

Section 36-11-102, within:

(a) five years prior to the date of an action described in Subsection (5); or

(b) during the privatization of an independent entity.

(5) (a) "Privatized" means an action described in Subsection (5)(b) taken under circumstances in which the operations of the independent entity are continued by a successor entity that:

(i) is privately owned;

(ii) is unaffiliated to the state; and

(iii) receives any asset of the independent entity.

(b) An action referred to in Subsection (5)(a) includes:

(i) the repeal of the authorizing statute of an independent entity and the revision to state laws to terminate the relationship between the state and the independent entity;

(ii) the dissolution of the independent entity;

(iii) the merger or consolidation of the independent entity with another entity; or

(iv) the sale of all or substantially all of the assets of the independent entity.

Section 10. Section **63E-1-402** is enacted to read:

63E-1-402. Benefits to interested parties of an independent entity.

(1) If an independent entity is privatized, the following may not receive any benefit prohibited under Subsection (2):

(a) an interested party of the independent entity;

(b) an entity in which an interested party holds a business interest;

(c) a lobbyist of the independent entity; or

(d) an entity in which a lobbyist of the independent entity holds a business interest.

(2) If an independent entity is privatized:

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

or

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

Section 11. Section **63E-1-403** is enacted to read:

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

(1) If an independent entity seeks to privatize the independent entity, it shall:

(a) submit to the Legislature recommended legislation to:

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

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

(b) be audited by the state auditor:

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

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

(2) The relationship between the state and an independent entity may not be terminated except by the repeal of the authorizing statute of the independent entity.

Section 12. Section **63E-1-404** is enacted to read:

63E-1-404. Penalties for violation.

(1) A person who knowingly violates this part:

(a) is guilty of a third degree felony if the combined value of any compensation or assets

received by the person as a result of the violation is equal to or greater than \$10,000; or

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

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

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

(3) Notwithstanding Subsection 36-11-401(3), if a lobbyist violates Subsection 63E-1-402(2)(b)(i), the lobbyist is guilty of the crime outlined in Subsection (1), which crime shall be determined by the value of compensation or assets received by the lobbyist.

Section 13. Section **63E-2-101** is enacted to read:

CHAPTER 2. INDEPENDENT CORPORATIONS ACT

63E-2-101. Title.

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

Section 14. Section **63E-2-102** is enacted to read:

63E-2-102. Independent corporations.

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

Section 15. Section **63E-2-103** is enacted to read:

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

(1) Each independent corporation shall have a specific public purpose related to the state or its citizens stated in its authorizing statute.

(2) Prior to enacting its authorizing statute, the Legislature shall make a finding that the independent corporation needs to be created by the state or be given by the state the right to exist and conduct its affairs as an independent corporation to serve its public purpose.

(3) Prior to enacting an authorizing statute, the Legislature shall also make a finding that:

(a) if the independent corporation receives ongoing state funding for operations, it:

(i) performs a public purpose that is not performed by private entities; or

(ii) acts as a trustee over monies held in trust;

(b) if the independent corporation does not receive ongoing state funding for operations, it

requires:

(i) exemption from federal or state income tax to meet its public purpose; or

(ii) the interest on its indebtedness to be exempt from federal or state income tax to meet its

public purpose; or

(c) the independent corporation is created by the Utah Constitution.

Section 16. Section **63E-2-104** is enacted to read:

63E-2-104. Legislative review.

(1) Each independent corporation is subject to review by the Legislative Independent Entities Committee in accordance with Chapter 1, Independent Entities Act.

(2) Notwithstanding Section 36-12-15, the Office of Legislative Auditor General may conduct comprehensive and special purpose audits, examinations, and reviews of any independent corporation.

(3) Each independent corporation shall report, as requested, to the committee on matters related to audits.

Section 17. Section **63E-2-105** is enacted to read:

63E-2-105. Boards.

(1) As used in this section, "director" includes a trustee or other board member.

(2) Each independent corporation shall be governed by a board of directors.

(3) The authorizing statute of each independent corporation shall specify:

(a) the process for appointing, removing, and replacing directors;

(b) the number and terms of office for directors;

(c) the board chair selection procedure;

(d) board quorum requirements;

(e) director qualifications; and

(f) the duties and fiduciary responsibilities of directors.

Section 18. Section **63E-2-106** is enacted to read:

63E-2-106. Powers.

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

(1) exist as a:

(a) public corporation; or

(b) quasi-public corporation;

(2) perform its stated public purpose;

(3) sue and be sued in its own name;

(4) retain and be represented by legal counsel independent of the attorney general;

(5) create foundations or subsidiaries;

(6) act in accordance with all other powers granted in its authorizing statute and by duly issued license or franchise;

(7) act in all ways as a nonprofit corporation established under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, that do not conflict with:

(a) this title;

(b) the authorizing statute of the independent corporation; or

(c) statutes and regulations to which the independent corporation is subject.

Section 19. Section **63E-2-107** is enacted to read:

63E-2-107. Prohibited participation.

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

(1) issuance of bonds that are the obligation of the state; or

(2) services provided to state agencies, including:

(a) fuel dispensing;

(b) motor pool services;

(c) surplus property services;

- (d) risk management coverage;
- (e) information technology services; or
- (f) archive services.

Section 20. Section **63E-2-108** is enacted to read:

63E-2-108. Eligible participation.

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

Section 21. Section **63E-2-109** is enacted to read:

63E-2-109. State statutes.

(1) Except as specifically modified in its authorizing statute, each independent corporation shall be exempt from the statutes governing state agencies, including:

- (a) Title 51, Chapter 5, Funds Consolidation Act;
- (b) Title 51, Chapter 7, State Money Management Act;
- (c) Title 63, Chapter 38, Budgetary Procedures Act;
- (d) Title 63, Chapter 38a, Revenue Procedures and Control Act;
- (e) Title 63, Chapter 46a, Utah Administrative Rulemaking Act;
- (f) Title 63, Chapter 46b, Administrative Procedures Act;
- (g) Title 63, Chapter 56, Utah Procurement Code;
- (h) Title 63A, Utah Administrative Services Code; and
- (i) Title 67, Chapter 19, Utah Personnel Management Act.

(2) Except as specifically modified in its authorizing statute, each independent corporation shall be subject to:

- (a) Title 52, Chapter 4, Open and Public Meetings; and
- (b) Title 63, Chapter 2, Government Records Access and Management Act.

(3) Each independent corporation board may adopt its own policies and procedures governing its:

- (a) funds management;
- (b) audits; and

(c) personnel.

Section 22. Section **63E-2-110** is enacted to read:

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

(1) The board of each independent corporation shall annually adopt a budget.

(2) (a) All monies held in trust by an independent corporation are not public funds, even if they were public funds before those monies were received by the independent corporation.

(b) The monies of an independent corporation are not required to be held in the custody of the state treasurer.

Section 23. Section **63E-2-111** is enacted to read:

63E-2-111. State liability.

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

Section 24. **Effective date.**

This act takes effect on July 1, 2002.