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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

- 28 **63E-2-107**, Utah Code Annotated 1953
- 29 **63E-2-108**, Utah Code Annotated 1953
- 30 **63E-2-109**, Utah Code Annotated 1953
- 31 **63E-2-110**, Utah Code Annotated 1953
- 32 **63E-2-111**, Utah Code Annotated 1953

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

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

35 **TITLE 63E. INDEPENDENT ENTITIES CODE**

36 **CHAPTER 1. INDEPENDENT ENTITIES ACT**

37 **Part 1. General Provisions**

38 **63E-1-101. Title.**

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

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

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

42 **63E-1-102. Definitions.**

43 As used in this title:

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

45 (2) "Committee" means the Legislative Independent Entities Committee created in Section
46 63E-1-201.

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

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

52 (i) independent state agency; or

53 (ii) independent corporation.

54 (b) "Independent entity" includes the:

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

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

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

59 Historic Railroad Authority;

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

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

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

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

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

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

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

74 (c) Notwithstanding this Subsection (4), "independent entity" does not include:

75 (i) the Public Service Commission of Utah created in Section 54-1-1;

76 (ii) an institution within the state system of higher education;

77 (iii) a city, county, or town;

78 (iv) a local school district;

79 (v) a special district created under the authority of Title 17A, Special Districts; or

80 (vi) a local district created under the authority of Title 17B, Limited Purpose Local

81 Government Entities.

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

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

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

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

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

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

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

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

94 **Part 2. Legislative Committee**

95 **63E-1-201. Legislative Independent Entities Committee creation.**

96 (1) There is created a Legislative Independent Entities Committee composed of 14
97 legislators appointed as follows:

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

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

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

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

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

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

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

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

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

116 (a) Section 36-2-2; and

117 (b) Legislative Joint Rule 15.03.

118 Section 4. Section **63E-1-202** is enacted to read:

119 **63E-1-202. Duties of the committee.**

120 (1) The committee shall:

- 121 (a) study the scope of this title and determine what entities should be treated under this title
122 as independent entities;
- 123 (b) study the provisions of the Utah Code that govern each independent entity, including
124 whether or not there should be consistency in these provisions;
- 125 (c) study what provisions of the Utah Code, if any, from which each independent entity
126 should be exempted;
- 127 (d) study whether or not the state should receive services from or provide services to each
128 independent entity;
- 129 (e) request and hear reports from each independent entity;
- 130 (f) review the annual audit of each independent entity that is performed in accordance with
131 the statutes governing the independent entity;
- 132 (g) comply with Part 3, Creation of Independent Entities, in reviewing a proposal to create
133 a new independent entity;
- 134 (h) if the committee recommends a change in the organizational status of an independent
135 entity as provided in Subsection (2) and subject to Part 4, Privatization of Independent Entities,
136 recommend the appropriate method of changing the organizational status of the independent entity;
- 137 (i) study the following concerning an entity created by local agreement under Title 11,
138 Chapter 13, Interlocal Cooperation Act, if the state is a party to the agreement creating the entity:
- 139 (i) whether or not the entity should be subject to this chapter;
140 (ii) whether or not the state should receive services from or provide services to the entity;
141 (iii) reporting and audit requirements for the entity; and
142 (iv) the need, if any, to modify statutes related to the entity;
- 143 (j) make a recommendation on the organizational status of each independent entity prior
144 to the 2002 General Session; and
- 145 (k) report annually to the Legislative Management Committee by no later than the
146 Legislative Management Committee's November meeting.
- 147 (2) The committee may:
- 148 (a) establish a form for any report required under Subsection (1);
149 (b) make recommendations to the Legislature concerning the organizational status of an
150 independent entity;
- 151 (c) advise the Legislature concerning issues involving independent entities; and

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

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

154 **63E-1-203. Exemptions from committee activities.**

155 Notwithstanding the other provisions of this Part 2 and Subsection 63E-1-102(4), the
156 following independent entities are exempt from the study by the committee under Section
157 63E-1-202:

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

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

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

161 **Part 3. Creation of Independent Entities**

162 **63E-1-301. Definitions.**

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

164 (1) the governor;

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

166 (3) an executive branch agency;

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

169 (5) a legislative committee.

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

171 **63E-1-302. Review by committee required for creating an independent entity.**

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

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

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

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

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

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

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

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

- 183 (v) the legal representation of the proposed independent entity;
184 (vi) whether or not the state should receive services from or provide services to the
185 proposed independent entity; and
186 (vii) the legal liability, if any, to the state if the proposed independent entity is created.
187 (3) In requesting information from executive and legislative branch entities or officers
188 under Subsection (2), the committee should specifically consider seeking information from:
189 (a) the state auditor;
190 (b) the state treasurer;
191 (c) the attorney general;
192 (d) the risk manager; and
193 (e) the executive director of the Department of Administrative Services.

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

195 **63E-1-303. Recommendations of the committee.**

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

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

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

203 **Part 4. Privatization of Independent Entities**

204 **63E-1-401. Definitions.**

205 As used in this part:

- 206 (1) "Asset" means property of all kinds, real and personal, tangible and intangible, and
207 includes:
208 (a) cash, except reasonable compensation or salary for services rendered;
209 (b) stock or other investments;
210 (c) goodwill;
211 (d) real property;
212 (e) an ownership interest;
213 (f) a license;

214 (g) a cause of action; and
215 (h) any similar property.
216 (2) "Business interest" means:
217 (a) holding the position of trustee, director, officer, or other similar position with a
218 business entity; or
219 (b) the ownership, either legally or equitably, of at least 10% of the outstanding shares of
220 a corporation or 10% interest in any other business entity, being held by:
221 (i) an individual;
222 (ii) the individual's spouse;
223 (iii) a minor child of the individual; or
224 (iv) any combination of Subsections (2)(b)(i) through (iii).
225 (3) "Interested party" means a person that held or holds the position of trustee, director,
226 officer, or other similar position with an independent entity within:
227 (a) five years prior to the date of an action described in Subsection (5); or
228 (b) during the privatization of an independent entity.
229 (4) "Lobbyist" is a person that provided or provides services as a lobbyist, as defined in
230 Section 36-11-102, within:
231 (a) five years prior to the date of an action described in Subsection (5); or
232 (b) during the privatization of an independent entity.
233 (5) (a) "Privatized" means an action described in Subsection (5)(b) taken under
234 circumstances in which the operations of the independent entity are continued by a successor entity
235 that:
236 (i) is privately owned;
237 (ii) is unaffiliated to the state; and
238 (iii) receives any asset of the independent entity.
239 (b) An action referred to in Subsection (5)(a) includes:
240 (i) the repeal of the authorizing statute of an independent entity and the revision to state
241 laws to terminate the relationship between the state and the independent entity;
242 (ii) the dissolution of the independent entity;
243 (iii) the merger or consolidation of the independent entity with another entity; or
244 (iv) the sale of all or substantially all of the assets of the independent entity.

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

246 **63E-1-402. Benefits to interested parties of an independent entity.**

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

249 (a) an interested party of the independent entity;

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

251 (c) a lobbyist of the independent entity; or

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

253 (2) If an independent entity is privatized:

254 (a) a person described in Subsection (1)(a) or (b) may not receive:

255 (i) compensation from an independent entity that is conditioned in whole or in part on:

256 (A) the passage, defeat, or amendment of legislative action related to privatization; or

257 (B) the approval, modification, or denial of an executive action related to privatization;

258 or

259 (ii) any asset of the independent entity or its successor; and

260 (b) a person described in Subsection (1)(c) or (d) may not receive any:

261 (i) compensation that if received by the lobbyist would be in violation of Section
262 36-11-301; or

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

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

265 **63E-1-403. Privatization process -- Audit.**

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

267 (a) submit to the Legislature recommended legislation to:

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

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

272 (b) be audited by the state auditor:

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

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

276 entity.

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

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

280 **63E-1-404. Penalties for violation.**

281 (1) A person who knowingly violates this part:

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

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

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

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

292 (3) Notwithstanding Subsection 36-11-401(3), if a lobbyist violates Subsection
293 63E-1-402(2)(b)(i), the lobbyist is guilty of the crime outlined in Subsection (1), which crime shall
294 be determined by the value of compensation or assets received by the lobbyist.

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

296 **CHAPTER 2. INDEPENDENT CORPORATIONS ACT**

297 **63E-2-101. Title.**

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

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

300 **63E-2-102. Independent corporations.**

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

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

304 **63E-2-103. Public purpose -- Legislative findings.**

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

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

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

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

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

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

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

315 it requires:

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

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

318 its public purpose; or

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

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

321 **63E-2-104. Legislative review.**

322 Each independent corporation is subject to review by the Legislative Independent Entities

323 Committee in accordance with Chapter 1 of this title.

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

325 **63E-2-105. Boards.**

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

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

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

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

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

331 (c) the board chair selection procedure;

332 (d) board quorum requirements;

333 (e) director qualifications; and

334 (f) the duties and fiduciary responsibilities of directors.

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

336 **63E-2-106. Powers.**

337 Except as specifically modified in its authorizing statute each independent corporation shall

338 have the power to:

339 (1) exist as a:

340 (a) public corporation; or

341 (b) quasi-public corporation;

342 (2) perform its stated public purpose;

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

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

345 (5) create foundations or subsidiaries;

346 (6) act in accordance with all other powers granted in its authorizing statute and by duly

347 issued license or franchise;

348 (7) act in all ways as a nonprofit corporation established under Title 16, Chapter 6a, Utah

349 Revised Nonprofit Corporation Act, that do not conflict with:

350 (a) this title;

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

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

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

354 **63E-2-107. Prohibited participation.**

355 Except as specifically modified in its authorizing statute, each independent corporation may

356 not participate in the:

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

358 (2) services provided to state agencies, including:

359 (a) fuel dispensing;

360 (b) motor pool services;

361 (c) surplus property services;

362 (d) risk management coverage;

363 (e) information technology services; or

364 (f) archive services.

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

366 **63E-2-108. Eligible participation.**

367 Except as specifically modified in its authorizing statute, each independent corporation may

368 participate in the state retirement system.

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

370 **63E-2-109. State statutes.**

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

373 (a) Title 51, Chapter 5, Funds Consolidation Act;

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

375 (c) Title 63, Chapter 38, Budgetary Procedures Act;

376 (d) Title 63, Chapter 38a, Revenue Procedures and Control Act;

377 (e) Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

378 (f) Title 63, Chapter 46b, Administrative Procedures Act;

379 (g) Title 63, Chapter 56, Utah Procurement Code;

380 (h) Title 63A, Utah Administrative Services Code; and

381 (i) Title 67, Chapter 19, Utah Personnel Management Act.

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

384 (a) Title 52, Chapter 4, Open and Public Meetings; and

385 (b) Title 63, Chapter 2, Government Records Access and Management Act.

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

388 (a) funds management;

389 (b) audits; and

390 (c) personnel.

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

392 **63E-2-110. Budgetary and fiscal requirements.**

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

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

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

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

399 **63E-2-111. State liability.**

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

402 Section 24. **Effective date.**

403 This act takes effect on July 1, 2002.

Legislative Review Note
as of 11-30-00 9:34 AM

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

Office of Legislative Research and General Counsel

Committee Note

The Quasi-Governmental Entities Committee recommended this bill.