REVISOR'S STATUTE

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

D. Chris Buttars
David L. Gladwell
Parley Hellewell
Peter C. Knudson
Ed P. Mayne
Terry R. Spencer
Pete Suazo

This act modifies parts of the Utah Code to make technical corrections including wording, cross references, numbering changes, and repealing the Utah Sesquicentennial Coordinating Council.

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

AMENDS:

4-37-503, as last amended by Chapter 302, Laws of Utah 1998

7-5-5, as last amended by Chapter 260, Laws of Utah 2000

7-15-1, as last amended by Chapters 100 and 171, Laws of Utah 1999

7-15-3, as last amended by Chapter 171, Laws of Utah 1999

8-5-5, as enacted by Chapter 132, Laws of Utah 1985

10-6-151, as last amended by Chapter 20, Laws of Utah 1995

10-7-3, as last amended by Chapter 269, Laws of Utah 1991

10-7-8, as last amended by Chapter 2, Laws of Utah 1970

10-8-62, as last amended by Chapter 285, Laws of Utah 1992

10-8-63, as last amended by Chapter 132, Laws of Utah 1985

11-13-1, as enacted by Chapter 14, Laws of Utah 1965

11-13-2, as last amended by Chapter 47, Laws of Utah 1977

11-13-5.6, as last amended by Chapter 337, Laws of Utah 1998

11-26-1, as last amended by Chapter 262, Laws of Utah 2000

13-8-5, as last amended by Chapter 238, Laws of Utah 2000

15-7-12, as enacted by Chapter 62, Laws of Utah 1983

16-4-12, as last amended by Chapter 75, Laws of Utah 2000

16-6a-809 (Effective 04/30/01), as enacted by Chapter 300, Laws of Utah 2000

17-18-1, as last amended by Chapter 149, Laws of Utah 2000

17-18-1.5, as last amended by Chapters 279 and 372, Laws of Utah 1999

17A-2-306, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-307, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-309, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-423, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-543, as last amended by Chapter 254, Laws of Utah 2000

17A-2-556, as last amended by Chapters 75 and 254, Laws of Utah 2000

17A-2-712, as last amended by Chapter 254, Laws of Utah 2000

17A-2-747, as last amended by Chapter 254, Laws of Utah 2000

17A-2-826, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-1037, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-1038, as last amended by Chapters 254 and 318, Laws of Utah 2000

17A-2-1058, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-1225, as last amended by Chapter 349, Laws of Utah 2000

17A-2-1236, as last amended by Chapter 349, Laws of Utah 2000

17A-2-1264, as last amended by Chapters 348 and 349, Laws of Utah 2000

17A-2-1312, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-1316, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-1322, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-1413, as last amended by Chapter 254, Laws of Utah 2000

17A-2-1414, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-1439, as last amended by Chapter 254, Laws of Utah 2000

17A-2-1448, as last amended by Chapter 254, Laws of Utah 2000

17A-2-1449, as last amended by Chapter 254, Laws of Utah 2000

19-6-505, as renumbered and amended by Chapter 112, Laws of Utah 1991

19-6-804, as renumbered and amended by Chapter 51, Laws of Utah 2000

20A-3-304, as last amended by Chapters 75 and 328, Laws of Utah 2000

20A-5-404, as last amended by Chapter 75, Laws of Utah 2000

21-2-8, as renumbered and amended by Chapter 133, Laws of Utah 2000

23-13-2, as last amended by Chapters 44 and 195, Laws of Utah 2000

30-3-35, as last amended by Chapter 97, Laws of Utah 2000

30-6-1, as last amended by Chapter 170, Laws of Utah 2000

31A-22-625, as enacted by Chapter 267, Laws of Utah 2000

31A-23-102, as last amended by Chapter 1, Laws of Utah 2000

31A-29-103, as enacted by Chapter 232, Laws of Utah 1990

31A-35-608, as last amended by Chapter 259, Laws of Utah 2000

34A-1-309, as last amended by Chapter 205 and renumbered and amended by Chapter 375, Laws of Utah 1997

34A-2-105, as last amended by Chapter 199, Laws of Utah 1999

35A-3-102, as last amended by Chapter 161, Laws of Utah 2000

36-12-8, as last amended by Chapter 165, Laws of Utah 2000

41-22-2 (Effective 04/30/01), as last amended by Chapter 300, Laws of Utah 2000

41-22-2 (Superseded 04/30/01), as last amended by Chapter 73, Laws of Utah 1999

46-4-105, as enacted by Chapter 74, Laws of Utah 2000

52-4-7.8, as enacted by Chapter 25, Laws of Utah 1997

53A-2-206, as last amended by Chapter 103, Laws of Utah 1994

53A-15-305, as last amended by Chapter 215, Laws of Utah 2000

53A-18-101, as enacted by Chapter 2, Laws of Utah 1988

53A-18-102, as last amended by Chapter 78, Laws of Utah 1990

53A-28-302, as enacted by Chapter 62, Laws of Utah 1996

54-4-28, Utah Code Annotated 1953

54-4-29, Utah Code Annotated 1953

54-4-30, Utah Code Annotated 1953

54-9-5, as last amended by Chapter 3, Laws of Utah 1988

54-13-1, as enacted by Chapter 131, Laws of Utah 1989

55-3-2.5, as enacted by Chapter 115, Laws of Utah 1975

55-5-6, as last amended by Chapter 285, Laws of Utah 1998

57-1-5, as last amended by Chapter 124, Laws of Utah 1997

59-1-503, as last amended by Chapter 86, Laws of Utah 2000

59-1-703, as last amended by Chapter 169, Laws of Utah 1993

59-1-704, as renumbered and amended by Chapter 3, Laws of Utah 1987

59-1-1005, as enacted by Chapter 35, Laws of Utah 1991

59-2-507, as renumbered and amended by Chapter 4, Laws of Utah 1987

59-2-509, as last amended by Chapter 74, Laws of Utah 1987

59-2-704, as last amended by Chapter 271, Laws of Utah 1995

59-2-1351.5, as last amended by Chapter 79, Laws of Utah 1996

59-2-1354, as repealed and reenacted by Chapter 3, Laws of Utah 1988

59-2-1361, as last amended by Chapter 4, Laws of Utah 1992

59-7-114, as repealed and reenacted by Chapter 169, Laws of Utah 1993

59-7-612, as last amended by Chapter 59, Laws of Utah 1999

59-10-540, as renumbered and amended by Chapter 2, Laws of Utah 1987

59-10-541, as renumbered and amended by Chapters 2 and 3, Laws of Utah 1987

59-10-603, as last amended by Chapter 345, Laws of Utah 1997

59-12-102 (Effective 07/01/01), as last amended by Chapter 253, Laws of Utah 2000

59-12-102 (Superseded 07/01/01), as last amended by Chapters 63 and 362, Laws of Utah 1999

59-12-111, as last amended by Chapter 86, Laws of Utah 2000

59-12-117, as last amended by Chapter 4, Laws of Utah 1993

59-13-202.5, as enacted by Chapter 174, Laws of Utah 2000

59-13-301.5, as enacted by Chapter 258, Laws of Utah 2000

59-13-307, as last amended by Chapter 271, Laws of Utah 1997

59-13-322, as enacted by Chapter 174, Laws of Utah 2000

59-22-101, as last amended by Chapter 1 and renumbered and amended by Chapter 229, Laws of Utah 2000

62A-4a-412, as last amended by Chapters 304 and 321, Laws of Utah 2000

62A-11-304.2, as last amended by Chapter 161, Laws of Utah 2000

63-55-258, as last amended by Chapter 66, Laws of Utah 2000

63-95-203, as enacted by Chapter 210, Laws of Utah 2000

63A-6-105, as last amended by Chapter 18, Laws of Utah 1999

63A-6-106, as last amended by Chapter 413, Laws of Utah 1998

63A-9-805, as renumbered and amended by Chapter 252, Laws of Utah 1997

63B-7-502, as enacted by Chapter 67, Laws of Utah 1998

67-1-9, as enacted by Chapter 252, Laws of Utah 1977

67-1a-1, as enacted by Chapter 68, Laws of Utah 1984

73-10b-2, as last amended by Chapter 282, Laws of Utah 2000

73-10d-4, as last amended by Chapter 245, Laws of Utah 1985

73-10d-7, as last amended by Chapter 245, Laws of Utah 1985

73-10h-8, as last amended by Chapter 10, Laws of Utah 1997

76-8-316, as enacted by Chapter 51, Laws of Utah 1995

76-10-1201, as last amended by Chapter 92, Laws of Utah 1977

76-10-1306, as enacted by Chapter 196, Laws of Utah 1973

78-14-5, as enacted by Chapter 23, Laws of Utah 1976

78-23-10, as enacted by Chapter 111, Laws of Utah 1981

REPEALS:

63C-5-101, as enacted by Chapter 233, Laws of Utah 1994

63C-5-103, as enacted by Chapter 233, Laws of Utah 1994

63C-5-104, as enacted by Chapter 233, Laws of Utah 1994

63C-5-105, as enacted by Chapter 233, Laws of Utah 1994

63C-5-106, as enacted by Chapter 233, Laws of Utah 1994

63C-5-107, as enacted by Chapter 233, Laws of Utah 1994

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

Section 1. Section **4-37-503** is amended to read:

4-37-503. Fish Health Policy Board.

(1) There is created within the department the Fish Health Policy Board which shall establish policies designed to prevent the outbreak of, control the spread of, and eradicate pathogens that cause disease in aquatic animals.

(2) The Fish Health Policy Board shall:

(a) determine procedures and requirements for certifying a source of aquatic animals as health approved, including:

(i) the pathogens for which inspection is required to receive health approval;

(ii) the pathogens which may not be present to receive health approval; and

(iii) standards and procedures required for the inspection of aquatic animals;

(b) establish procedures for the timely reporting of the presence of pathogens and disease threats;

(c) create policies and procedures for, and appoint, an emergency response team to:

(i) investigate serious threats of disease;

(ii) develop and monitor a plan of action; and

(iii) report to:

(A) the commissioner of agriculture and food;

(B) the director of the Division of Wildlife Resources; and

(C) the chair of the Fish Health Policy Board; and

(d) develop unified statewide aquaculture disease control plans.

(3) The Fish Health Policy Board shall advise the commissioner of agriculture and food and the executive director of the Department of Natural Resources regarding:

(a) educational programs and information systems to educate and inform the public about practices that the public may employ to prevent the spread of disease; and

(b) communication and interaction between the department and the Division of Wildlife Resources regarding fish health policies and procedures.

(4) (a) (i) The Fish Health Policy Board shall consist of seven members as follows:

(A) one member shall be jointly appointed by the commissioner of agriculture and food and the executive director of the Department of Natural Resources;

(B) two members shall be appointed by the commissioner of agriculture and food;

(C) two members shall be appointed by the executive director of the Department of Natural Resources;

(D) one member shall be the state veterinarian; and

(E) one member shall be the director of the Division of Wildlife Resources.

(ii) Each member appointed under Subsections (4)(a)(i)(A) through (C) shall be knowledgeable about the control of aquatic diseases.

(iii) The member appointed under Subsection (4)(a)(i)(A) may not be an employee of, or a member of a board within, the Department of Agriculture and Food or Department of Natural Resources.

(iv) Of the members appointed under Subsection (4)(a)(i)(B), one shall be an employee of the Division of Animal Industry and one shall be a representative of the aquaculture industry.

(v) Of the members appointed under Subsection (4)(a)(i)(C), one shall be an employee of the Division of Wildlife Resources and one shall represent sport fishermen.

(b) Except as required by Subsection (4)(c), the term of office of board members, other than the state veterinarian and the director of the Division of Wildlife Resources, shall be four years.

(c) Notwithstanding the requirements of Subsection (4)(b), the commissioner and the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(d) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(e) The member appointed under Subsection (4)(a)(i)(A) shall serve as chair of the board.

(f) The board shall meet upon the call of the chair or a majority of the board members.

(g) (i) An action of the board shall be adopted upon approval of four or more voting

members.

(ii) The chair may not vote.

(5) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(6) (a) The board shall make rules consistent with its responsibilities and duties specified in this section.

(b) Rules of the department and Fish Health Policy Board pertaining to the control of disease shall remain in effect until the Fish Health Policy Board enacts rules to replace those provisions.

Section 2. Section **7-5-5** is amended to read:

7-5-5. Revocation of trust authority -- Procedure.

(1) (a) The commissioner may issue and serve upon a trust company a notice of intent to revoke the authority of the trust company to exercise the powers granted by this chapter, if, in the commissioner's opinion, the trust company:

(i) [~~the trust company~~] is unlawfully or unsoundly exercising the powers granted under this chapter;

(ii) has unlawfully or unsoundly exercised the powers granted under this chapter;

(iii) has failed, for a period of five consecutive years, to exercise the powers granted by this chapter;

(iv) fails or has failed to comply with requirements upon which its permit is conditioned; or

(v) fails or has failed to comply with any rule of the commissioner.

(b) The notice shall:

(i) contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply; and

(ii) fix the time and place at which a hearing will be held to determine whether an order revoking authority to execute those powers should issue against the trust company.

(2) (a) If the trust company or its representative does not appear at the hearing, the commissioner may consider the trust company to be in default, and may issue a revocation order.

(b) If default has occurred, or if upon the record made at any hearing the commissioner finds that any allegation specified in the notice of charges has been established, the commissioner shall issue and serve upon the trust company an order:

(i) prohibiting it from accepting any new or additional trust accounts; and

(ii) revoking its authority to exercise any powers granted under this chapter.

(c) Any order issued under this section permits the trust company to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.

(3) A revocation order shall become effective 30 days after service of the order upon the trust company and shall remain effective and enforceable, unless it is stayed, modified, terminated, or set aside by action of the commissioner or by judicial review as provided for in Section 7-1-714.

Section 3. Section **7-15-1** is amended to read:

7-15-1. Definitions -- Civil liability of issuer -- Notice of action -- Collection costs -- Exemptions.

(1) As used in this chapter:

(a) "Check" means a payment instrument on a depository institution including a:

(i) check;

(ii) draft;

(iii) order; or

(iv) other instrument.

(b) "Issuer" means a person who makes, draws, signs, or issues a check, whether as corporate

agent or otherwise, for the purpose of:

(i) obtaining from any person any money, merchandise, property, or other thing of value; or

(ii) paying for any service, wages, salary, or rent.

(c) "Mailed" means the day that a notice is properly deposited in the United States mail.

(2) (a) An issuer of a check is liable to the holder of the check if:

(i) the check:

(A) is not honored upon presentment; and

(B) is marked "refer to maker";

(ii) the account upon which the check is made or drawn:

(A) does not exist;

(B) has been closed; or

(C) does not have sufficient funds or sufficient credit for payment in full of the check; or

(iii) (A) the check is issued in partial or complete fulfillment of a valid and legally binding obligation; and

(B) the issuer stops payment on the check with the intent to:

(I) fraudulently defeat a possessory lien; or

(II) otherwise defraud the holder of the check.

(b) If an issuer of a check is liable under Subsection (2)(a), the issuer is liable for:

(i) the check amount; and

(ii) a service charge of $20.

(3) (a) The holder of a check that has been dishonored may:

(i) give written or oral notice of dishonor to the issuer of the check; and

(ii) waive all or part of the service charge imposed under Subsection (2)(b).

(b) Notwithstanding Subsection (2)(b), a holder of a check that has been dishonored may not collect and the issuer is not liable for the service charge imposed under Subsection (2)(b) if:

(i) the holder redeposits the check; and

(ii) that check is honored.

(4) If the issuer does not pay the amount owed under Subsection (2)(b) within 15 calendar

days from the day on which the notice required under Subsection (5) is mailed, the issuer is liable for:

(a) the amount owed under Subsection (2)(b); and

(b) collection costs not to exceed $20.

(5) (a) A holder shall provide written notice to an issuer before:

(i) charging collection costs under Subsection (4) in addition to the amount owed under Subsection (2)(b); or

(ii) filing an action based upon this section.

(b) The written notice required under Subsection (5)(a) shall notify the issuer of the dishonored check that:

(i) if the amount owed under Subsection (2)(b) is not paid within 15 calendar days from the day on which the notice is mailed, the issuer is liable for:

(A) the amount owed under Subsection (2)(b); and

(B) collection costs under Subsection (4); and

(ii) the holder may file civil action if the issuer does not pay to the holder the amount owed under Subsection (4) within 30 calendar days from the day on which the notice is mailed.

(6) (a) If the issuer has not paid the holder the amounts owed under Subsection (4) within 30 calendar days from the day on which the notice required by Subsection (5) is mailed, the holder may offer to not file civil action under this section if the issuer pays the holder:

(i) the amount owed under Subsection (2)(b);

(ii) the collection costs under Subsection (4);

(iii) an amount that:

(A) is equal to the greater of:

(I) $50; or

(II) triple the check amount; and

(B) does not exceed the check amount plus $250; and

(iv) if the holder retains an attorney to recover on the dishonored check, reasonable attorney's fees not to exceed $50.

(b) (i) Notwithstanding Subsection (6)(a), all amounts charged or collected under Subsection (6)(a)(iii) shall be paid to and be the property of the original payee of the check.

(ii) A person who is not the original payee may not retain any amounts charged or collected under Subsection (6)(a)(iii).

(iii) The original payee of a check may not contract for a person to retain any amounts charged or collected under Subsection (6)(a)(iii).

(7) (a) A civil action may not be filed under this section unless the issuer fails to pay the amounts owed under Subsection (4) within 30 calendar days from the day on which the notice required by Subsection (5) is mailed.

(b) In a civil action, the issuer of the check is liable to the holder for:

(i) the check amount;

(ii) interest;

(iii) all costs of collection, including all court costs and reasonable attorneys' fees; and

(iv) damages:

(A) equal to the greater of:

(I) $100; or

(II) triple the check amount; and

(B) not to exceed the check amount plus $500.

(c) If an issuer is held liable under Subsection (7)(b), notwithstanding Subsection (7)(b), a court may waive all or part of the amounts owed under Subsections (7)(b)(ii) through (iv) upon a finding of good cause.

(d) (i) Notwithstanding Subsection (7)(b), all amounts charged or collected under Subsection (7)(b)(iv) shall be paid to and be the property of the original payee of the check.

(ii) A person who is not the original payee may not retain any amounts charged or collected under Subsection (7)(b)(iv).

(iii) The original payee of a check may not contract for a person to retain any amounts charged or collected under Subsection (7)(b)(iv).

(8) This section may not be construed to prohibit the holder of the check from seeking relief

under any other applicable statute or cause of action.

(9) (a) Notwithstanding the other provisions of this section, a holder of a check is exempt from this section if:

(i) the holder:

(A) is a depository institution; or

(B) a person that receives a payment on behalf of a depository institution;

(ii) the check is a payment on a loan that originated at the depository institution that:

(A) is the holder; or

(B) on behalf of which the holder received the payment; and

(iii) the loan contract states a specific service charge for dishonor.

(b) A holder exempt under Subsection [~~(6)~~] (9)(a) may contract with an issuer for the collection of fees or charges for the dishonor of a check.

Section 4. Section **7-15-3** is amended to read:

7-15-3. Liability of financial institution upon wrongful dishonor.

If a person is liable to a holder under Section 7-15-1 or under a contract with a depository institution as provided in Subsection 7-15-1[~~(6)~~](9), and the liability is proximately caused by a financial institution's wrongful dishonor under Section 70A-4-402, any award against the financial institution under Section 70A-4-402 shall include all amounts awarded against the person to the holder under:

(1) Section 7-15-1; or

(2) the contract with the depository institution as provided in Subsection 7-15-1[~~(6)~~](9).

Section 5. Section **8-5-5** is amended to read:

8-5-5. Proceeds of resale of lots.

The proceeds from the subsequent resale of any lot or parcel, title to which has been revested in the municipality under Section 8-5-2 or 8-5-6, less the costs and expenses incurred in the proceeding, shall become part of the permanent care and improvement fund of the municipality, subject to subsequent disposition under [~~the~~] Title 10, Chapter 6, Uniform Fiscal Procedures Act for Utah Cities.

Section 6. Section **10-6-151** is amended to read:

10-6-151. Independent audits required.

Independent audits of all cities are required, to be performed in conformity with Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities. In the case of a city organized under Title 10, Chapter 3, Part 12, [~~Optional~~] Alternative Forms of Municipal Government [~~Act~~], the council shall appoint an independent auditor for the purpose of complying with the requirements of this section and of Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities.

Section 7. Section **10-7-3** is amended to read:

10-7-3. Joining with county to create and maintain local health department -- Adoption of ordinances and regulations required.

(1) The governing body of every municipality shall join with the governing body of the county in which the municipality is located to create and maintain a local health department as provided in Title 26A, Chapter 1, Part 1, Local Health Department Act.

(2) The municipality shall cooperate with the board of health of the local health department in the adoption of ordinances necessary for the protection of public health required in this title.

Section 8. Section **10-7-8** is amended to read:

10-7-8. Resolution on bond issue -- Election as provided by Utah Municipal Bond Act.

When the board of commissioners, city council or the town board of trustees of any city or town shall have decided that incurring such bonded indebtedness is advisable, it shall by resolution specify the purpose for which the indebtedness is to be created and the amount of bonds which it is proposed to issue, and shall provide for submitting the question of the issue of such bonds to the qualified electors of the city or town at the next general election, or at a special election to be called for that purpose by the board of commissioners, city council or board of trustees in such manner and subject to such conditions as is provided in [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act. This section does not require an election for the issuance of refunding bonds or other bonds not required by the Constitution to be voted at an election.

Section 9. Section **10-8-62** is amended to read:

10-8-62. Cemeteries -- Purchase and operation.

The city legislative body may:

(1) purchase, hold, and pay for lands within or without the corporate limits for the burial of the dead, and all necessary grounds for hospitals;

(2) have and exercise police jurisdiction over those lands, and over any cemetery used by the inhabitants of the city;

(3) survey, plat, map, fence, ornament, and otherwise improve, manage, and operate public burial and cemetery grounds;

(4) convey cemetery lots owned by the city, and pass ordinances for the protection and governing of these grounds consistent with Title 8, Chapter 5, Municipal Cemeteries;

(5) contract for the care and improvement of cemeteries and cemetery lots, and for any compensation for the care and improvement;

(6) receive deposits for the care of lots and invest the deposits by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act; and

(7) pay the cost of the care from any proceeds from the investment.

Section 10. Section **10-8-63** is amended to read:

10-8-63. Burial of dead -- Vital statistics.

They may regulate the burial of the dead, consistent with Title 8, Chapter 5, Municipal Cemeteries, the registration of births and deaths, direct the returning and keeping of bills of mortality, and impose penalties on physicians, sextons, and others for any default therein.

Section 11. Section **11-13-1** is amended to read:

11-13-1. Title.

This [~~act~~] chapter may be cited as the "Interlocal Co-operation Act."

Section 12. Section **11-13-2** is amended to read:

11-13-2. Purpose of act.

It is the purpose of this [~~act~~] chapter:

(1) to permit local governmental units to make the most efficient use of their powers by enabling them to co-operate with other localities on a basis of mutual advantage and thereby to

provide services and facilities in a manner and [~~pursuant to~~] under forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

(2) to provide the benefit of economy of scale, economic development, and utilization of natural resources for the overall promotion of the general welfare of the state.

Section 13. Section **11-13-5.6** is amended to read:

11-13-5.6. Contract by public agencies to create new entities to own sewage and wastewater facilities -- Powers and duties of new entities -- Validation of previously created entities.

(1) It is declared that the policy of the state is to assure the health, safety, and welfare of its citizens, that adequate sewage and wastewater treatment plants and facilities are essential to the well-being of the citizens of the state and that the acquisition of adequate sewage and wastewater treatment plants and facilities on a regional basis in accordance with federal law and state and federal water quality standards and effluent standards in order to provide services to public agencies is a matter of statewide concern and is in the public interest. It is found and declared that there is a statewide need to provide for regional sewage and wastewater treatment plants and facilities, and as a matter of express legislative determination it is declared that the compelling need of the state for construction of regional sewage and wastewater treatment plants and facilities requires the creation of entities under the Interlocal Cooperation Act to own, construct, operate, and finance sewage and wastewater treatment plants and facilities; and it is the purpose of this law to provide for the accomplishment thereof in the manner provided in this section.

(2) Any two or more public agencies of the state may also agree to create a separate legal or administrative entity to accomplish and undertake the purpose of owning, acquiring, constructing, financing, operating, maintaining, and repairing regional sewage and wastewater treatment plants and facilities.

(3) A separate legal or administrative entity created in the manner provided herein is considered to be a political subdivision and body politic and corporate of the state with power to carry out and effectuate its corporate powers, including, but not limited to, the power:

(a) to adopt, amend, and repeal rules, bylaws, and regulations, policies, and procedures for the regulation of its affairs and the conduct of its business, to sue and be sued in its own name, to have an official seal and power to alter that seal at will, and to make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under the Interlocal Cooperation Act;

(b) to own, acquire, construct, operate, maintain, repair, or cause to be constructed, operated, maintained, and repaired one or more regional sewage and wastewater treatment plants and facilities, all as shall be set forth in the agreement providing for its creation;

(c) to borrow money, incur indebtedness and issue revenue bonds, notes or other obligations payable solely from the revenues and receipts derived from all or a portion of the regional sewage and wastewater treatment plants and facilities which it owns, operates, and maintains, such bonds, notes, or other obligations to be issued and sold in compliance with the provisions of [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act;

(d) to enter into agreements with public agencies and other parties and entities to provide sewage and wastewater treatment services on such terms and conditions as it considers to be in the best interests of its participants; and

(e) to acquire by purchase or by exercise of the power of eminent domain, any real or personal property in connection with the acquisition and construction of any sewage and wastewater treatment plant and all related facilities and rights-of-way which it owns, operates, and maintains.

(4) The provisions of Sections 11-13-25, 11-13-26, 11-13-27, 11-13-28, 11-13-29, 11-13-30, 11-13-31, 11-13-32, 11-13-33, 11-13-34, 11-13-35, and 11-13-36 [~~shall~~] do not apply to a legal or administrative entity created for regional sewage and wastewater treatment purposes under this section.

(5) All proceedings previously had in connection with the creation of any legal or administrative entity pursuant to this chapter, and all proceedings previously had by any such entity for the authorization and issuance of bonds of the entity are validated, ratified, and confirmed; and these entities are declared to be validly created interlocal cooperation entities under this chapter. These bonds, whether previously or subsequently issued pursuant to these proceedings, are validated,

ratified, and confirmed and declared to constitute, if previously issued, or when issued, the valid and legally binding obligations of the entity in accordance with their terms. Nothing in this section shall be construed to affect or validate any bonds, or the organization of any entity, the legality of which is being contested at the time this act takes effect.

(6) (a) The governing authority of each entity created under this section on or after May 4, 1998, shall, within 30 days of the creation, file a written notice of the creation with the State Tax Commission.

(b) Each written notice required under Subsection (6)(a) shall:

(i) be accompanied by:

(A) a copy of the agreement creating the entity; and

(B) a map or plat that delineates a metes and bounds description of the area affected and evidence that the information has been recorded by the county recorder; and

(ii) contain a certification by the governing authority that all necessary legal requirements relating to the creation have been completed.

Section 14. Section **11-26-1** is amended to read:

11-26-1. Definitions -- Ceiling on local charges based on gross revenues of public service provider.

(1) As used in this [~~part~~] chapter:

(a) (i) "Exchange access services" means telephone exchange lines or channels, and services provided in connection with them, which are necessary to provide access from the premises of a subscriber to the local switched public telecommunications network of the public utility to effect communication or the transfer of information.

(ii) "Exchange access services" does not include:

(A) private line services;

(B) long distance toll services;

(C) carrier access services;

(D) telephonic services that are not regulated by the Utah Public Service Commission; and

(E) services that emulate functions available in customer premises equipment.

(b) "Local charge" means one or more of the following charges paid by a public service provider to a county or municipality:

(i) a tax;

(ii) a license;

(iii) a fee;

(iv) a license fee;

(v) a license tax; or

(vi) a charge similar to Subsections (1)(b)(i) through (v).

(c) "Public service provider" means:

(i) a public utility; or

(ii) a person or entity engaged in the business of supplying:

(A) telephone service; or

(B) taxable energy as defined in Section 10-1-303.

(2) A county or a municipality may not impose upon, charge, or collect from a public service provider local charges:

(a) imposed on the basis of the gross revenues of the public service provider;

(b) derived from sales, use, or both sales and use of the service within the county or municipality; and

(c) in a total amount that is greater than 6% of gross revenues.

(3) The determination of gross revenues under this section may not include:

(a) the sale of gas or electricity as special fuel for motor vehicles;

(b) the sale of telephone service provided by a public utility regulated by the Utah Public Service Commission other than:

(i) exchange access services;

(ii) extended area service;

(iii) customer access line charges; and

(iv) any services for which a tax or other charge was being paid pursuant to this section as of January 1, 1992; or

(c) a local charge.

(4) This section may not be construed to:

(a) affect or limit the power of counties or municipalities to impose sales and use taxes under Title 59, Chapter 12, Part 2, Local Sales and Use Tax Act, or Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or

(b) grant any county or municipality the power to impose a local charge not otherwise provided for by law.

(5) This section takes precedence over any conflicting provision of law.

Section 15. Section **13-8-5** is amended to read:

13-8-5. Definitions -- Limitation on retention proceeds withheld -- Deposit in interest-bearing escrow account -- Release of proceeds -- Payment to subcontractors -- Penalty -- No waiver.

(1) As used in this section:

(a) (i) "Construction contract" means a written agreement between the parties relative to the design, construction, alteration, repair, or maintenance of a building, structure, highway, appurtenance, appliance, or other improvements to real property, including moving, demolition, and excavating for nonresidential commercial or industrial construction projects.

(ii) If the construction contract is for construction of a project that is part residential and part nonresidential, this section applies only to that portion of the construction project that is nonresidential as determined pro rata based on the percentage of the total square footage of the project that is nonresidential.

[~~(c)~~] (b) "Construction lender" means any person, including a bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any other financial institution that advances monies to a borrower for the purpose of making alterations or improvements to real property. A construction lender does not include a person or entity who is acting in the capacity of contractor, original contractor, or subcontractor.

[~~(b)~~] (c) "Contractor" means a person who, for compensation other than wages as an

employee, undertakes any work in a construction trade, as defined in Section 58-55-102 and includes:

(i) any person engaged as a maintenance person who regularly engages in activities set forth in Section 58-55-102 as a construction trade; or

(ii) a construction manager who performs management and counseling services on a construction project for a fee.

(d) "Original contractor" is as provided in Section 38-1-2.

(e) "Owner" means the person who holds any legal or equitable title or interest in property. Owner does not include a construction lender unless the construction lender has an ownership interest in the property other than solely as a construction lender.

(f) "Public agency" means any state agency or political subdivision of the state that enters into a construction contract for an improvement of public property.

(g) "Retention payment" means release of retention proceeds as defined in Subsection (1)(h).

(h) "Retention proceeds" means monies earned by a contractor or subcontractor but retained by the owner or public agency pursuant to the terms of a construction contract to guarantee payment or performance by the contractor or subcontractor of the construction contract.

(i) "Subcontractor" is as defined in Section 38-1-2.

(j) "Successful party" has the same meaning as it does under Section 38-1-18.

(2) (a) This section is applicable to all construction contracts relating to construction work or improvements entered into on or after July 1, 1999, between:

(i) an owner or public agency and an original contractor;

(ii) an original contractor and a subcontractor; and

(iii) subcontractors under a contract described in Subsection (2)(a)(i) or (ii).

(b) This section does not apply to a construction lender.

(3) (a) Notwithstanding Section 58-55-603, the retention proceeds withheld and retained from any payment due under the terms of the construction contract may not exceed 5% of the payment:

(i) by the owner or public agency to the original contractor;

(ii) by the original contractor to any subcontractor; or

(iii) by a subcontractor.

(b) The total retention proceeds withheld may not exceed 5% of the total construction price.

(c) The percentage of the retention proceeds withheld and retained pursuant to a construction contract between the original contractor and a subcontractor or between subcontractors shall be the same retention percentage as between the owner and the original contractor if:

(i) the retention percentage in the original construction contract between an owner and the original contractor is less than 5%; or

(ii) after the original construction contract is executed but before completion of the construction contract the retention percentage is reduced to less than 5%.

(4) (a) If any payment on a contract with a private contractor, firm, or corporation to do work for an owner or public agency is retained or withheld by the owner or the public agency, as retention proceeds, it shall be placed in an interest-bearing account.

(b) The interest accrued under Subsection (4)(a) shall be:

(i) for the benefit of the contractor and subcontractors; and

(ii) paid after the project is completed and accepted by the owner or the public agency.

(c) The contractor shall ensure that any interest accrued on the retainage is distributed by the contractor to subcontractors on a pro rata basis.

(5) Any retention proceeds retained or withheld pursuant to this section and any accrued interest shall be released pursuant to a billing statement from the contractor within 45 days from the later of:

(a) the date the owner or public agency receives the billing statement from the contractor;

(b) the date that a certificate of occupancy or final acceptance notice is issued to:

(i) the original contractor who obtained the building permit from the building inspector or public agency;

(ii) the owner or architect; or

(iii) the public agency;

(c) the date that a public agency or building inspector having authority to issue its own

certificate of occupancy does not issue the certificate but permits partial or complete occupancy of a newly constructed or remodeled building; or

(d) the date the contractor accepts the final pay quantities.

(6) If only partial occupancy of a building is permitted, any retention proceeds withheld and retained pursuant to this section and any accrued interest shall be partially released within 45 days under the same conditions as provided in Subsection (5) in direct proportion to the value of the part of the building occupied.

(7) The billing statement from the contractor as provided in Subsection (5)(a) shall include documentation of lien releases or waivers.

(8) (a) Notwithstanding Subsection (3):

(i) if a contractor or subcontractor is in default or breach of the terms and conditions of the construction contract documents, plans, or specifications governing construction of the project, the owner or public agency may withhold from payment for as long as reasonably necessary an amount necessary to cure the breach or default of the contractor or subcontractor; or

(ii) if a project or a portion of the project has been substantially completed, the owner or public agency may retain until completion up to twice the fair market value of the work of the original contractor or of any subcontractor that has not been completed:

(A) in accordance with the construction contract documents, plans, and specifications; or

(B) in the absence of plans and specifications, to generally accepted craft standards.

(b) An owner or public agency that refuses payment under Subsection (8)(a) shall describe in writing within 45 days of withholding such amounts what portion of the work was not completed according to the standards specified in Subsection (8)(a).

(9) (a) Except as provided in Subsection (9)(b), an original contractor or subcontractor who receives retention proceeds shall pay each of its subcontractors from whom retention has been withheld each subcontractor's share of the retention received within ten days from the day that all or any portion of the retention proceeds is received:

(i) by the original contractor from the owner or public agency; or

(ii) by the subcontractor from:

(A) the original contractor; or

(B) a subcontractor.

(b) Notwithstanding Subsection (9)(a), if a retention payment received by the original contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor.

(10) (a) In any action for the collection of the retained proceeds withheld and retained in violation of this section, the successful party is entitled to:

(i) attorney's fees; and

(ii) other allowable costs.

(b) (i) Any owner, public agency, original contractor, or subcontractor who knowingly and wrongfully withholds a retention shall be subject to a charge of 2% per month on the improperly withheld amount, in addition to any interest otherwise due.

(ii) The charge described in Subsection (10)(b)(i) shall be paid to the contractor or subcontractor from whom the retention proceeds have been wrongfully withheld.

(11) A party to a construction contract may not require any other party to waive any provision of this section.

Section 16. Section **15-7-12** is amended to read:

15-7-12. Obligations subject to chapter.

(1) Unless the official or official body of the issuer determines otherwise before or at the time of the original issuance of a registered public obligation, this act is applicable to such registered public obligation. When this act is applicable, the provisions of this act prevail over any inconsistent provision under any other law. Pursuant to Section 11-14-22, this act is specifically made applicable to registered public obligations issued under [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act, in accordance with Section 11-14-16.

(2) Nothing in this act limits or prevents the issuance of obligations in any other form or manner authorized by law.

(3) Unless determined otherwise pursuant to Subsection (1), this act is applicable with respect to obligations which have been approved before enactment of this act by vote, referendum,

or hearing, which authorized or permitted the authorization of obligations in bearer and registered form, or in bearer form only, and such obligations need not be resubmitted for a further vote, referendum or hearing, for the purpose of authorizing or permitting the authorization of registered public obligations under this act.

Section 17. Section **16-4-12** is amended to read:

16-4-12. Notice of delinquency -- Form.

If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein when the stock shall be delinquent, the secretary shall, unless otherwise ordered by the board of directors, cause to be published in the same newspapers in which the notice hereinbefore provided for shall have been published a notice in the following form:

(Name of corporation in full; location of principal place of business). Notice. There are delinquent upon the following described stock, on account of assessment levied on [~~the~~] _____(month/day/year), (and assessment levied previously thereto, if any) the several amounts set opposite the names of the respective shareholders as follows: (Names, number of certificate, number of shares, and amount) and in accordance with law[~~,~~] (and an order of the board of directors made on [~~the~~] _____(month/day/year), if any such order shall have been made) so many shares of each parcel of the stock as may be necessary will be sold at the (particular place) on [~~the~~] _____(month/day/year), at the hour of ____, to pay the delinquent assessments thereon, together with the cost of advertising and expenses of the sale. (Name of secretary, with location of office).

Section 18. Section **16-6a-809 (Effective 04/30/01)** is amended to read:

16-6a-809 (Effective 04/30/01). Removal of directors by judicial proceeding.

(1) (a) The applicable court may remove a director in a proceeding commenced either by the nonprofit corporation or by voting members holding at least 10% of the votes entitled to be cast in the election of the director's successor if the court finds that:

(i) the director engaged in:

(A) fraudulent or dishonest conduct; or

(B) gross abuse of authority or discretion with respect to the nonprofit corporation; or

(ii) (A) a final judgment has been entered finding that the director has violated a duty set forth in this Part [~~4~~] 8; and

(B) removal is in the best interests of the nonprofit corporation.

(b) For purposes of this Subsection (1), the applicable court is the:

(i) district court of the county in this state where a nonprofit corporation's principal office is located; or

(ii) if the nonprofit corporation has no principal office in this state:

(A) the district court of the county in which its registered office is located; or

(B) if the nonprofit corporation has no registered office, the district court for Salt Lake County.

(2) The court that removes a director may bar the director for a period prescribed by the court from:

(a) reelection;

(b) reappointment; or

(c) designation.

(3) If voting members commence a proceeding under Subsection (1), the voting members shall make the nonprofit corporation a party defendant.

(4) A director who is removed pursuant to this section may deliver to the division for filing a statement to that effect pursuant to Section 16-6a-1608.

Section 19. Section **17-18-1** is amended to read:

17-18-1. Powers -- Duties of county attorney -- Prohibitions.

(1) (a) In each county which is not within a prosecution district, the county attorney is a public prosecutor and shall:

(i) conduct on behalf of the state all prosecutions for public offenses committed within the county, except for prosecutions undertaken by the city attorney under Section 10-3-928 and appeals from them;

(ii) institute proceedings before the proper magistrate for the arrest of persons charged with or reasonably suspected of any public offense when in possession of information that the offense has

been committed, and for that purpose shall attend court in person or by deputy in cases of arrests when required; and

(iii) when it does not conflict with other official duties, attend to all legal business required in the county by the attorney general without charge when the interests of the state are involved.

(b) All the duties and powers of public prosecutor shall be assumed and discharged by the county attorney.

(2) The county attorney:

(a) shall appear and prosecute for the state in the district court of the county in all criminal prosecutions;

(b) may[~~, subject to Title 67, Chapter 23, Public Attorneys Act,~~] appear and prosecute in all civil cases in which the state may be interested; and

(c) shall render assistance as required by the attorney general in all cases that may be appealed to the Supreme Court and shall prosecute the appeal from any crime charged by the county attorney as a misdemeanor in the district court.

(3) The county attorney shall:

(a) attend the deliberations of the grand jury;

(b) draw all indictments and informations for offenses against the laws of this state within the county;

(c) cause all persons indicted or informed against to be speedily arraigned;

(d) cause all witnesses for the state to be subpoenaed to appear before the court or grand jury;

(e) examine carefully into the sufficiency of all appearance bonds that may be tendered to the district court of the county;

(f) upon the order of the court, institute proceedings in the name of the state for recovery upon the forfeiture of any appearance or other bonds running to the state and enforce the collection of them; and

(g) perform other duties as required by law.

(4) The county attorney shall:

(a) ascertain by all practicable means what estate or property within the county has escheated or reverted to the state;

(b) require the assessor of taxes of the county to furnish annually a list of all real or personal property that may have so escheated or reverted; and

(c) file a copy of the list in the office of the state auditor and of the attorney general.

(5) The county attorney shall:

(a) each year on the first business day of August file a report with the attorney general covering the preceding fiscal year, stating the number of criminal prosecutions in the district, the character of the offenses charged, the number of convictions, the amount of fines and penalties imposed, and the amount collected; and

(b) call attention to any defect in the operation of the laws and suggest amendments to correct the defect.

(6) The county attorney shall:

(a) appear and prosecute for the state in the juvenile court of the county in any proceeding involving delinquency;

(b) represent the state in any proceeding pending before the juvenile court if any rights to the custody of any juvenile are asserted by any third person; and

(c) prosecute before the court any person charged with abuse, neglect, or contributing to the delinquency or dependency of a juvenile.

(7) [~~Subject to the requirements of Title 67, Chapter 23, Public Attorneys Act, the~~] The county attorney shall:

(a) defend all actions brought against the county;

(b) prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the county;

(c) give, when required and without fee, an opinion in writing to county, district, and precinct officers on matters relating to the duties of their respective offices;

(d) deliver receipts for money or property received in an official capacity and file duplicates with the county treasurer; and

(e) on the first Monday of each month file with the auditor an account verified by oath of all money received in an official capacity during the preceding month, and at the same time pay it over to the county treasurer.

(8) A county attorney may not:

(a) in any manner consult, advise, counsel, or defend within this state any person charged with any crime, misdemeanor, or breach of any penal statute or ordinance;

(b) be qualified to prosecute or dismiss in the name of the state any case in which the county attorney has previously acted as counsel for the accused on the pending charge; or

(c) in any case compromise any cause or enter a nolle prosequi after the filing of an indictment or information without the consent of the court.

(9) If at any time after investigation by the district judge involved, the judge finds and recommends that the county attorney in any county is unable to satisfactorily and adequately perform the duties in prosecuting a criminal case without additional legal assistance, the attorney general shall provide the additional assistance.

Section 20. Section **17-18-1.5** is amended to read:

17-18-1.5. Powers -- Duties of county attorney within a prosecution district -- Prohibitions.

(1) In each county which is within a state prosecution district, the county attorney is a public prosecutor only for the purpose of prosecuting violations of county ordinances or as otherwise provided by law and shall:

(a) conduct on behalf of the county all prosecutions for violations of county ordinances committed within the county;

(b) have authority to grant transactional immunity for violations of county ordinances committed within the county;

(c) institute proceedings before the proper magistrate for the arrest of persons charged with or reasonably suspected of violations of county ordinances when in possession of information that the violation has been committed, and for that purpose shall attend court in person or by deputy in cases of arrests when required; and

(d) when it does not conflict with other official duties, attend to all legal business required in the county by the attorney general without charge when the interests of the state are involved.

(2) [~~Subject to Title 67, Chapter 23, Public Attorneys Act, the~~] The county attorney:

(a) may appear and prosecute in all civil cases in which the state may be interested; and

(b) shall render assistance as required by the attorney general in all civil cases that may be appealed to the Supreme Court and prosecute the appeal from any violation of a county ordinance.

(3) The county attorney shall:

(a) draw all informations for violations of a county ordinance;

(b) cause all persons informed against to be speedily arraigned;

(c) cause all witnesses for the county to be subpoenaed to appear before the court;

(d) upon the order of the court, institute proceedings in the name of the county for recovery upon the forfeiture of any appearance or other bonds running to the county and enforce the collection of them; and

(e) perform other duties as required by law.

(4) The county attorney shall:

(a) ascertain by all practicable means what estate or property within the county has escheated or reverted to the state;

(b) require the assessor of taxes of the county to furnish annually a list of all real or personal property that may have so escheated or reverted; and

(c) file a copy of the list in the office of the state auditor and of the attorney general.

(5) [~~Subject to Title 67, Chapter 23, Public Attorneys Act, the~~] The county attorney shall:

(a) defend all actions brought against the county;

(b) prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the county;

(c) give, when required and without fee, an opinion in writing to county, district, precinct, and prosecution district officers on matters relating to the duties of their respective offices;

(d) deliver receipts for money or property received in an official capacity and file duplicates with the county treasurer; and

(e) on the first Monday of each month file with the auditor an account verified by oath of all money received in an official capacity during the preceding month, and at the same time pay it over to the county treasurer.

(6) A county attorney may not:

(a) in any manner consult, advise, counsel, or defend within this state any person charged with any crime, misdemeanor, or breach of any penal statute or ordinance;

(b) be qualified to prosecute or dismiss in the name of the county any case in which the county attorney has previously acted as counsel for the accused on the pending charge; or

(c) in any case compromise any cause or enter a nolle prosequi after the filing of an information without the consent of the court.

(7) The county attorney or his deputy may be sworn as a deputy district attorney for the purpose of public convenience for a period of time and subject to limitations specified by the district attorney.

Section 21. Section **17A-2-306** is amended to read:

17A-2-306. Bonds.

(1) The board of trustees may, at any time after its organization, adopt a resolution determining it desirable to issue the bonds of the district for purposes and in amounts stated in the resolution. The resolution shall specify whether the bonds are payable from taxes or from the operating revenues of the district, or both. Where the bonds are payable from taxes, in whole or in part, the board of trustees shall call a bond election. If at the election, the proposition to issue the bonds is approved, the board of trustees shall issue the bonds in the manner provided in [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act. If the bonds are payable solely from the operating revenues of the district, no election is required to approve their issuance, and such bonds shall be issued pursuant to the resolution and in the manner provided in Title 11, Chapter 14, Utah Municipal Bond Act. The board may reduce the amount of bonds.

(2) Any bonds authorized prior to April 28, 1986, by an electric service district created pursuant to Chapter 2, Part 3, County Improvement Districts for Water, [~~Sewage~~] Sewerage, Flood Control, Electric and Gas [~~Systems~~], are considered valid and binding if all of the following

conditions have been met:

(a) a resolution has been adopted by the board of trustees of the electric service district, prior to April 28, 1986, for the purpose of authorizing the bonds, whether or not these bonds have been issued;

(b) the bonds are delivered and paid for;

(c) the electric service district which authorized the bonds complied with all of the requirements for electric service districts set forth in Section 17A-2-305; and

(d) the requirements of Subsection (1) are met.

(3) If any bonds have been authorized under the conditions described in Subsection (2), prior to April 28, 1986, the board of trustees of the electric service district may make any necessary changes in the specifications of the bonds or the proceedings authorizing the bonds.

Section 22. Section **17A-2-307** is amended to read:

17A-2-307. Resolution calling bond election -- Precincts and polling places.

If, under the provisions of Section 17A-2-306, the board shall determine to call an election on the issuance of the bonds, the board shall adopt a resolution directing that an election be held in the district for the purpose of determining whether bonds in the amount, for the purpose, and with the maximum maturity specified in the resolution, shall be issued. The resolution calling the election shall be adopted, notice of the election shall be given, the election shall be held, voters' qualifications shall be determined, and the results thereof canvassed in the manner and subject to the conditions provided for in [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act. The board may for purposes of the election treat the entire district as a single precinct or may divide the district into such precincts and fix such polling places as it may see fit.

Section 23. Section **17A-2-309** is amended to read:

17A-2-309. Results of bond election -- Resolution -- Issuance of bonds -- Maximum bonded indebtedness.

(1) The results of the bond election shall be canvassed by the board of trustees and a resolution adopted by the board declaring the results, and a certified copy of the resolution filed in the records of the district. The results of all subsequent elections shall be similarly canvassed by the

board of trustees and resolutions declaring the results of the elections adopted and filed.

(2) If, at the bond election, a majority of the qualified voters voting on any bond proposition vote in favor of the issuance of the bonds, the board of trustees shall proceed to issue the bonds. Bonds may be issued for the purpose of constructing or acquiring any improvement provided in Section 17A-2-301, or any part or combination of them, or for improving and extending the improvement or combination of improvements, and may include the payment of all legal, engineering, and fiscal agent expenses reasonably incurred in connection with the construction, acquisition, improving, and extending of these improvements and with the authorization and issuance of the bonds. The bonds shall be fully negotiable for all purposes and may not be issued in an amount which, together with all other existing indebtedness of the district then outstanding, will exceed in total principal amount 2.4% of the taxable value of taxable property in the district as computed from the last equalized assessment roll for county purposes made and completed prior to the issuance of the bonds. The taxable value of all tax equivalent property, as defined in Subsection 59-3-102(2), shall be included as a part of the total taxable value of taxable property in the district for purposes of the limitations. Bonds issued in the manner that they are payable solely from revenues to be derived from the operation of all or part of the facilities of the district may not be included as bonded indebtedness of the district for the purpose of this computation. All bonds not payable solely from revenues shall be the general obligations of the district, and the full faith, credit, and resources of the district shall be pledged for their payment; and regardless of any limitations contained elsewhere in the laws of Utah and this part, including Section 17A-2-312, the board of trustees shall cause to be levied annually on all taxable property in the district taxes sufficient to pay principal and interest on general obligation bonds as principal and interest fall due, or if the bonds are payable primarily from revenues, then anticipate and make up any amounts which may be necessary to pay the principal and interest by reason of deficiencies in revenues. The bonds shall be issued and sold in compliance with [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act.

Section 24. Section **17A-2-423** is amended to read:

17A-2-423. Resolution calling election for issuing general obligation and revenue bonds.

(1) If under the foregoing provisions the board is authorized to call an election on the issuance of the bonds, the board shall adopt a resolution directing that an election be held in the county or service area, as the case may be, for the purpose of determining whether bonds in the amount, for the purpose, and with the maximum maturity specified in the resolution, shall be issued. A proposition for issuing general obligation bonds and a proposition for issuing revenue bonds, or any combination thereof, may be submitted at the same election.

(2) Adoption of the resolution calling the election, determination of voters' qualifications, notice and conduct of the election, and the canvass of election results shall be accomplished in the manner prescribed in [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act. The board, for purposes of the election, may treat the entire district as a single precinct or divide the district into several precincts and it may fix such polling places as it [~~deems~~] considers appropriate.

Section 25. Section **17A-2-543** is amended to read:

17A-2-543. Contractual powers -- Bond issues -- Elections -- Limitations -- Uses.

Whenever the board of trustees considers it expedient it shall have power, for the purpose of constructing drains, drainage canals and other required improvements necessary to drain lands in the district or conserve the public health or welfare, to make a contract or contracts with the United States providing for the repayment of the principal and such other sums due thereunder at such times as may be agreed upon, or to issue bonds of the district to run not less than five years nor more than 40 years, and to bear interest, payable semiannually, at a rate not exceeding 8% per annum to be called "drainage district bonds," which bonds shall not be sold for less than 90% of their par value, and the proceeds of which shall be used for no other purpose than paying the cost of constructing such drains, drainage canals, or other like work considered necessary to drain lands within the district, or conserve the public health or welfare. Before such contract or contracts shall be made or bonds shall be issued, the board of trustees shall request the county legislative body to order, and the county legislative body shall at once order a special election on the question of the issuance of bonds. The persons authorized to vote in, the giving of notice, the forms of ballots, and the manner of holding the election, and canvassing the results of the election, shall be as provided in [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act. The expenses of such election shall be paid out of the funds

belonging to the drainage district. The terms and times of payment of the bonds so issued shall be fixed by the board of trustees. The bonds shall be issued for the benefit of the district authorizing the issue and shall bear the name and number of the district. The board of trustees shall keep a record of the bonds issued and sold or otherwise disposed of, and such record will also show the lands embraced in the district. In no case shall the amount of bonds exceed the benefits assessed. Each bond issued shall show expressly upon its face that it is to be paid by a tax assessed, levied, and collected on the lands within the drainage district. The board of trustees shall, by resolution, provide for the issuance and disposal of such bonds and for the payment of the interest thereon, the creation of a sinking fund for the ultimate redemption thereof, and for the date and manner of the redemption of the bonds. The board of [~~supervisors~~] trustees may sell or dispose of the bonds either at public or private sale. Before making any such sale, either private or public, the board of trustees shall give due notice of their intention to sell or dispose of the bonds, by publishing notice of sale at least once a week for four consecutive weeks in some newspaper having general circulation in the state and in the county where the district is situated, and by publishing in any other publication they consider advisable. The notice shall state that sealed proposals will be received by the board of trustees at their office, for the purchase of the bonds, until the day and hour fixed by the board of trustees. At the time appointed the board of trustees shall open the proposals, and award the purchase of the bonds to the highest responsible bidder, or may reject all bids. In case no bid is made and accepted as above provided, the board of trustees is hereby authorized to use the bonds for the construction of any ditches, drain or drains, drainage canal or drainage canals, or any other required improvement considered necessary to drain lands or for the public health or welfare.

Section 26. Section **17A-2-556** is amended to read:

17A-2-556. Form of release and discharge.

The release and discharge shall be substantially in the following form:

Release and discharge from liability for payment of the bonded indebtedness of ____ drainage district in ____ county, Utah, and from the lien of the equalized assessment of benefits and taxes and the benefit assessment roll.

Whereas, on [~~the~~] _____(month\day\year), ____ (the owner, part owner, mortgagee or

other lien holders, as the case may be) paid to the county treasurer of ____ county, (in lawful money of the United States, or bonds, notes, warrants or matured interest coupons of the district, as the case may be) the sum of $____, being the total amount of the unpaid drainage district equalized assessment of benefits and taxes levied and assessed against that certain tract, lot or parcel of land located in ____ drainage district in ____ county, Utah, and particularly bounded and described as follows, to wit: (Insert description of property) ____ and, ____.

Whereas, there is on file with the treasurer of this drainage district a receipt showing payment in full,

Now, Therefore, in consideration of such payment and pursuant to law, the undersigned drainage district does by these presents release and discharge the above described tract, lot or parcel of land from the lien of and from the payment of all of the bonded indebtedness now existing against the same, and from the payment of any bonds now issued or that may hereafter be issued to refund the same, or any part thereof, and from the payment of any notes or warrants of the district heretofore issued or that may hereafter be issued in payment of interest on the indebtedness or refunded indebtedness, and releases and discharges said tract, lot or parcel of land from the payment of any of the unpaid equalized assessment of benefits and taxes levied or assessed against the same and from the lien of the benefit assessment roll of said drainage district.

In Witness Whereof, the said drainage district has executed this instrument and caused its corporate name and corporate seal to be hereunto affixed by its chair and secretary this _____(month\day\year), pursuant to a resolution of its board of trustees.

Attest: _____

(Name of drainage district.)

By _____,

President

_____

Secretary.

The written release and discharge may be acknowledged before any officer authorized to take acknowledgments of deeds. The form of acknowledgment shall be substantially as follows: State

of Utah, ss.

County of ____

On [~~the~~] _____(month\day\year), personally appeared before me ____, who being by me duly sworn, did say that he is the chair of ____ drainage district which executed the above and foregoing instrument and that the instrument was signed in behalf of the drainage district by authority of a resolution of its board of trustees, and ____ acknowledged to me that the drainage district executed the same.

_____

Notary Public.

My Commission expires: ____(month\day\year) Residing at: ____.

Section 27. Section **17A-2-712** is amended to read:

17A-2-712. Additional powers of board.

(1) In addition to any of the powers granted in this part, the board of trustees of any irrigation district may acquire, purchase, construct, improve, enlarge, and operate, or contract for the construction, improvement, enlargement, and operation of:

(a) reservoir sites, reservoirs, water, water filings, water rights, canals, ditches, and all other related structures and works necessary or proper for the storage and conveyance of water for irrigation purposes and all other structures and facilities necessary or proper for the purposes of the irrigation district; and

(b) facilities for the generation of hydroelectric power and all other related structures and works necessary or proper for the generation of electricity, including hydroelectric power plants, turbine generators, penstocks, transformers, electrical equipment, and other facilities related to hydroelectric production plants, not including transmission facilities related to hydroelectric production plants.

(2) In addition to any of the powers granted in this part, the board of trustees of any irrigation district may enter into contracts for the sale of all or a portion of the electric power generated at a hydroelectric power plant, whether or not the electric power to be sold is surplus to the needs of the district, for the periods of time and under the terms and conditions the board deems necessary in

order to accomplish the purposes of the district. Any sale of the electric power may be for the period and upon the terms and conditions as may be provided in contracts authorized by the board and entered into by the district and any purchaser of the electric power having, at the time of the commencement of the acquisition and construction of the electric power plant by the district, a system for distributing the electric power. Any revenues received by the district pursuant to power sale contracts may be used and pledged for the payment of the principal of and interest and any premium on bonds or notes of the district issued to pay all or part of the cost of acquiring, constructing, improving, or enlarging the facilities from which the hydroelectric power is generated, or for any other lawful purpose of the district. The boards of trustees of any two or more irrigation districts may, by appropriate resolutions, enter into agreements with one another by which the districts may jointly or cooperatively exercise any of the powers conferred by this section.

(3) The board may issue revenue bonds of the district, in the manner provided in this section:

(a) to pay for all or part of the costs of the acquisition, construction, improvement, or enlargement of any facilities described in Subsection (1) and other related structures and works and to pay expenses preliminary and incidental thereto;

(b) to pay interest on the bonds during acquisition, construction, improvement, or enlargement; and

(c) to provide for necessary reserves and to pay costs of issuance and sale of the bonds, including, without limitation, printing, registration, and transfer costs, legal, financial advisor's, and rating agency fees, insurance premiums, and underwriter's discount.

(4) The board may provide that any revenue bonds issued and sold under this section shall be payable solely out of a special fund into which the district issuing the revenue bonds shall be obligated to deposit, as from time to time received, all or a designated portion of the proceeds from the sale of the services furnished by the facilities of the irrigation district, including the facilities to be so acquired, constructed, improved, or enlarged, all pursuant to contracts to be entered into as authorized in this section.

(5) Revenue bonds of the district issued under the authority of this section shall be issued and sold in compliance with Title 11, Chapter 14, Utah Municipal Bond Act, and may be in the form

and denominations and have the provisions and details as are permitted by [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act. The bonds and any evidences of participation interests in the bonds may be issued, executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with Title 15, Chapter 7, Registered Public Obligations Act, or any other statute relating to the registration of bonds enacted to meet the requirements of Section 149(a) of the Internal Revenue Code of 1986, or any similar or successor federal law, and applicable regulations. Bonds may be issued under the authority of this section at one time or from time to time. If more than one issue or series of bonds is delivered under the authority of this section, the bonds of the respective issue or series shall have the priorities of payment as provided in the proceedings authorizing the bonds.

(6) Any resolution authorizing revenue bonds may contain covenants with the future holders of the bonds as to:

(a) the management and operation of the facilities of the irrigation district, including the facilities acquired, constructed, improved, enlarged, or operated pursuant to this section;

(b) the imposition and collection of rates for the services furnished thereby;

(c) the disposition of the revenues;

(d) the issuance of future bonds and the creation of future liens and encumbrances against these facilities and the revenues thereof;

(e) the carrying of insurance on these facilities and the disposition of the proceeds of insurance;

(f) the sale, disposal, or alienation of these facilities; and

(g) other pertinent matters deemed necessary or proper by the board to assure the merchantability of the bonds. These covenants and agreements may not be inconsistent with this section.

(7) When a district has issued revenue bonds and pledged for the payment thereof any revenues of the facilities of the irrigation district, including the facilities acquired, constructed, improved, enlarged, or operated pursuant to this section, the district shall establish rates and collect fees and charges for the services furnished by these facilities in that amount and at those rates which will be fully sufficient at all times to pay the expenses of operating and maintaining these facilities,

to provide a special fund sufficient to assure the prompt payment of principal of and interest on the bonds as principal and interest fall due, and to provide funds for reserves and contingencies and for a depreciation fund for repairs, extensions, and improvements to these facilities as considered necessary to assure adequate and efficient service, all as required by the bond resolution. No board or commission other than the board of trustees of the district has authority over or is required to approve the making or fixing of the fees and charges or the acquisition of property by the district or the issuance of its bonds.

(8) Any restrictions, limitations, or regulations in any other section of this part relative to the issuance of bonds or the execution of contracts pursuant to the authority contained in this section do not apply to the revenue bonds issued under this section or the execution of contracts under the authority of this section. Sections 17A-2-750, 17A-2-751, 17A-2-752, and 17A-2-753 do not apply to any contract entered into by an irrigation district under this section, nor to the issuance of any revenue bonds by an irrigation district under this section.

Section 28. Section **17A-2-747** is amended to read:

17A-2-747. Returns and canvass of election.

The board of trustees shall name a day for canvassing the returns of election, and if it appears that a majority of the votes cast are "For Dissolution -- Yes," then the board of trustees shall declare the district to be disorganized, and shall certify to the county clerk of the county in which the office of the district is located, stating the number of signers to the petition and the number of acre-feet of water allotted to them; that the election was called and set for [~~the _____ day of _____ month of _____ year~~] _____(month/day/year), that the election was held and that so many votes (stating the number) had been cast for, and that so many votes (stating the number) had been cast against the proposition; the certificates to bear the seal of the district, and the signatures of the chair and secretary of the board of trustees. And it shall be the duty of the clerk to have such certificate recorded with the county recorder of the respective counties embracing any lands of the district. Should it appear that a majority of the votes cast at the election were "For Dissolution -- No," then the board of directors shall declare the proposition lost and shall cause the result and the vote to be made a part of the records of the irrigation district.

Section 29. Section **17A-2-826** is amended to read:

17A-2-826. Sale of bonds.

Bonds issued under this part shall be sold in compliance with the provisions of [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act.

Section 30. Section **17A-2-1037** is amended to read:

17A-2-1037. Elections.

All district elections shall be held in accordance with the provisions of the elections code of the state of Utah as they now exist or may be amended for the holding of elections in general law cities in so far as the same are not in conflict with this part; provided all elections upon the issuance of bonds of a district shall be called, held, and conducted pursuant to the provisions of [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act, and the provisions of the election code shall not be applicable to any such bond election.

Section 31. Section **17A-2-1038** is amended to read:

17A-2-1038. Board of trustees -- Appointment -- Apportionment -- Qualifications -- Quorum -- Compensation -- Terms.

(1) (a) All powers, privileges, and duties vested in any incorporated district shall be performed by a board of trustees.

(b) The board may delegate the exercise of any duty to any of the offices created under this part.

(2) If 200,000 people or [~~less~~] fewer reside within the district boundaries:

(a) the board of trustees shall consist of trustees appointed by the legislative bodies of each municipality, county, or unincorporated area within any county on the basis of one trustee for each full unit of regularly scheduled passenger routes proposed to be served by the district in each municipality or unincorporated area within any county in the following calendar year;

(b) the number of service miles comprising a unit shall be determined jointly by the legislative bodies of the municipalities or counties comprising the district;

(c) trustees shall be appointed and added to the board or omitted from the board at the time scheduled routes are changed, or as municipalities, counties, or unincorporated areas of counties

annex to or withdraw from the district using the same appointment procedures; and

(d) municipalities, counties, and unincorporated areas of counties in which regularly scheduled passenger routes proposed to be served by the district in the following calendar year is less than a full unit, as defined in Subsection (2)(a), may combine with any other similarly situated municipality or unincorporated area to form a whole unit and may appoint one trustee for each whole unit formed.

(3) If more than 200,000 people reside within the district boundaries, the board of trustees shall consist of 15 trustees appointed as described under Subsections (4) and (5).

(4) (a) Except as provided under Subsections (4)(b) and (c), the board shall apportion members to each county within the district based on:

(i) from the effective date of this act until the apportionment following the year 2000 decennial United States Census Bureau report, the proportion of population included in the district and residing within each county, rounded to the nearest 1/15 of the total transit district population; and

(ii) beginning with the first apportionment following the year 2000 decennial United States Census Bureau report, an average of:

(A) the proportion of population included in the district and residing within each county, rounded to the nearest 1/15 of the total transit district population; and

(B) the proportion of transit sales and use tax collected from areas included in the district and within each county, rounded to the nearest 1/15 of the total transit sales and use tax collected for the transit district.

(b) The board shall join an entire or partial county not apportioned a member under this subsection with an adjacent county for representation. The combined apportionment basis included in the district of both counties shall be used for the apportionment.

(c) If rounding to the nearest 1/15 of the total transit district apportionment basis under Subsection (4)(a) results in an apportionment of:

(i) more than 15 members, the county or combination of counties with the smallest additional fraction of a whole member proportion shall have one less member apportioned to it; or

(ii) less than 15 members, the county or combination of counties with the largest additional fraction of a whole member proportion shall have one more member apportioned to it.

(5) (a) If the unincorporated area of a county is at least 1/15 of the district's population, the county executive, with the advice and consent of the county legislative body, shall appoint one trustee to represent each 1/15 of the district's population within a county's unincorporated area population.

(b) If a municipality's population is at least 1/15 of the district's population, the chief municipal executive, with the advice and consent of the municipal legislative body, shall appoint one trustee to represent each 1/15 of the district's population within a municipality.

(c) The number of trustees appointed from a county and municipalities within a county under Subsections (5)(a) and (b) shall be subtracted from the county's total member apportionment under Subsection (4).

(d) If the entire county is within the district, the remaining trustees for the county shall represent the county or combination of counties if Subsection (4)(b) applies, or the municipalities within the county.

(e) If the entire county is not within the district, and the county is not joined with another county under Subsection (4)(b), the remaining trustees for the county shall represent a municipality or combination of municipalities.

(f) Except as provided under Subsections (5)(a) and (b), trustees representing counties, combinations of counties if Subsection (4)(b) applies, or municipalities within the county shall be designated and appointed by a simple majority of the chief executives of the municipalities within the county or combinations of counties if Subsection (4)(b) applies. The appointments shall be made by joint written agreement of the appointing municipalities, with the consent and approval of the county legislative body of the county that has at least 1/15 of the district's apportionment basis.

(g) Trustees representing a municipality or combination of municipalities shall be designated and appointed by the chief executive officer of the municipality or simple majority of chief executive officers of municipalities with the consent of the legislative body of the municipality or municipalities.

(h) The appointment of trustees shall be made without regard to partisan political affiliation from among citizens in the community.

(i) Each trustee shall be a bona fide resident of the municipality, county, or unincorporated area or areas which the trustee is to represent for at least six months before the date of appointment, and must continue in that residency to remain qualified to serve as a trustee.

(j) (i) Each trustee whose term has not expired and is serving on the effective date of this act shall continue to serve as a trustee until the expiration of the term for which the trustee was appointed, subject to the term limitations under which the trustee was initially appointed.

(ii) Beginning on the effective date of this act, any vacancy for which the successor has not taken the oath of office shall be filled in the following order:

(A) by a municipality eligible to make an appointment under Subsection (5)(b);

(B) by a county eligible to make an appointment for its unincorporated area under Subsection (5)(a); and

(C) as otherwise provided under this section.

(k) (i) All population figures used under this section shall be derived from the most recent official census or census estimate of the United States Bureau of the Census.

(ii) If population estimates are not available from the United States Bureau of Census, population figures shall be derived from the estimate from the Utah Population Estimates Committee.

(iii) All transit sales and use tax totals shall be obtained from the Tax Commission.

(l) After the initial apportionment immediately following the effective date of this act, the board shall be apportioned as provided under this section in conjunction with the decennial United States Census Bureau report every ten years.

(6) (a) Except the initial trustees, the terms of office of the trustees shall be three years or until their successors are appointed, qualified, seated, and have taken the oath of office.

(b) At the first meeting of the initial trustees, the directors shall designate by the drawing of lots 1/3 of their number to serve for one-year terms, 1/3 for two-year terms, and 1/3 for three-year terms.

(c) A trustee may not be appointed for more than two successive full terms.

(7) (a) Vacancies shall be filled by the official appointing the member creating the vacancy for the unexpired term, unless the official fails to fill the vacancy within 90 days.

(b) If the appointing official under Subsection (2) does not fill the vacancy within 90 days, the board of trustees of the authority shall fill the vacancy.

(c) If the appointing official under Subsection (5) does not fill the vacancy within 90 days, the governor, with the advice and consent of the Senate, shall fill the vacancy.

(8) (a) Each trustee may cast one vote on all questions, orders, resolutions, and ordinances coming before the board of trustees.

(b) A majority of all members of the board of trustees are a quorum for the transaction of business.

(c) The affirmative vote of a majority of all trustees present at any meeting at which a quorum was initially present shall be necessary and, except as otherwise provided, is sufficient to carry any order, resolution, ordinance, or proposition before the board of trustees.

(9) The district shall pay to each trustee:

(a) an attendance fee of $50 per board or committee meeting attended, not to exceed $200 in any calendar month to any trustee; and

(b) reasonable mileage and expenses necessarily incurred to attend board or committee meetings.

(10) (a) Members of the initial board of trustees shall convene at the time and place fixed by the chief executive officer of the entity initiating the proceedings.

(b) Immediately upon convening, the board of trustees shall elect from its membership a president, vice president, and secretary who shall serve for a period of two years or until their successors shall be elected and qualified.

(11) At the time of a trustee's appointment or during a trustee's tenure in office, a trustee may not hold:

(a) any elected public office with the United States, the state, or any political subdivision of either; or

(b) any employment, except as an independent contractor, with a county or municipality within the district.

Section 32. Section **17A-2-1058** is amended to read:

17A-2-1058. District may issue bonds.

Any district organized under this part may, in the manner and subject to the limitations and restrictions contained in [~~the Utah Municipal Bond Act,~~] Title 11, Chapter 14, Utah Municipal Bond Act, authorize, issue and dispose of its negotiable bonds for purposes of paying all or part of the cost of acquiring, improving, or extending any one or more improvements, facilities, or property authorized to be acquired under this part.

Section 33. Section **17A-2-1225** is amended to read:

17A-2-1225. Adoption, rejection, or modification of plan -- Plan submitted to voters -- When rejection required -- Petition for alternative plan.

(1) Once the hearings have been held, the legislative body may proceed to adopt, reject, or modify the project area redevelopment plan. The project area redevelopment plan may not be modified so as to add any real property to the project area without the legislative body holding a new hearing to consider the matter, notice of which shall be given in the same manner as provided in Section 17A-2-1222.

(2) (a) If the owners of 40% of the area of the property included within the project area proposed in the redevelopment plan, excluding property owned by public agencies or dedicated to public use, make objections in writing prior to or at the hearing and the objections are not withdrawn at or prior to the hearing, the plan may not be adopted until the proposition to so adopt the plan has been approved by a majority of the registered voters of the community voting thereon at an election called for this purpose.

(b) This election may be held on the same day and with the same election officials as any primary or general election held in the community and shall be held as nearly as practicable in conformity with the general election laws of the state.

(c) Upon the approval by the voters as set forth in Subsection (2)(a), the project area redevelopment plan shall be [~~deemed~~] considered adopted and the legislative body shall confirm the

adoption by ordinance.

(3) If the owners of [~~two-thirds~~] 2/3 of the area of the property included within any project area proposed in the redevelopment plan, excluding property owned by public agencies or dedicated to public use, make objections in writing at or prior to the hearing, the legislative body may not adopt the project, and the proposed project may not be reconsidered by the legislative body for a period of three years.

(4) (a) Projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, must adopt a plan within one year after a project area is designated under Section 17A-2-1206 for a redevelopment plan where the purpose is the elimination of blight, and within one year after a preliminary plan is prepared for a redevelopment plan where the purpose is economic development or education housing development.

(b) If the plan will be submitted to an election for approval by the registered voters of a community, the time limit for the plan adoption shall be increased by the time between the close of the public hearing held pursuant to Section 17A-2-1221 and the date of the next general election within the community.

(5) A majority of the owners of the area of the property included within the project area, excluding property owned by public agencies or dedicated to public use, may file a written petition requesting an alternative preliminary plan be formulated pursuant to Section 17A-2-1211.

Section 34. Section **17A-2-1236** is amended to read:

17A-2-1236. Actions on validity or enforceability of bonds -- Time for bringing action.

(1) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this part or the security for them, any such bond reciting in substance that it has been issued by the agency in connection with an area redevelopment, education housing development, or economic development project shall be conclusively [~~deemed~~] considered to have been issued for that purpose and the project shall be conclusively [~~deemed~~] considered to have been planned, located, and carried out in accordance with the provisions of this part.

(2) For a period of 30 days after the publication of the resolution authorizing the bonds, or a notice of bonds to be issued by the agency containing those items described in Subsection 11-14-21(3) in a newspaper having general circulation in the area of operation, any person may contest the legality of the resolution authorizing any bonds or any provisions made for the security and payment of the bonds. After the 30-day period no one has any cause of action to contest the regularity, formality, or legality of the bonds for any cause whatsoever.

Section 35. Section **17A-2-1264** is amended to read:

17A-2-1264. Affordable housing funds under redevelopment plans adopted on or after July 1, 1998.

(1) As used in this section:

(a) "Affordable housing" has the meaning as defined under Subsection 17A-2-1263(6).

(b) "Annual income" has the meaning as defined under regulations of the U.S. Department of Housing and Urban Development, 24 CFR, Part 813, as amended or as superseded by replacement regulations.

(c) "Board" means the Olene Walker Housing Trust Fund Board, established under Title 9, Chapter 4, Part 7, Olene Walker Housing Trust Fund.

(d) "Fair share ratio" means the ratio derived by:

(i) for a city or town, comparing the percentage of all housing units within the city or town that are publicly subsidized income targeted housing units to the percentage of all housing units within the whole county that are publicly subsidized income targeted housing units; or

(ii) for the unincorporated part of a county, comparing the percentage of all housing units within the unincorporated county that are publicly subsidized income targeted housing units to the percentage of all housing units within the whole county that are publicly subsidized income targeted housing units.

(e) "Family" has the meaning as defined under regulations of the U.S. Department of Housing and Urban Development, 24 CFR, Part 813, as amended or as superseded by replacement regulations.

(f) "Housing funds" means the funds allocated in the project area budget under Subsection

(2)(a) for the purposes provided in Subsection (3).

(g) "Income targeted housing" means housing to be owned or occupied by a family whose annual income is at or below 80% of the median annual income for the county in which the housing is located.

(h) "Unincorporated" means not within a city or town.

(2) (a) A project area budget for a redevelopment plan that is adopted on or after July 1, 1998, may allocate tax increment funds payable to the agency over the life of the redevelopment plan for use as provided in Subsection (3).

(b) (i) Beginning May 1, 2000, before an agency may adopt a project area budget that allocates tax increment funds under Subsection (2)(a), the agency shall prepare and adopt a housing plan showing the uses for the housing funds and provide a copy of the plan to the taxing agency committee and board.

(ii) If an agency amends a housing plan prepared under Subsection (2)(b)(i), the agency shall provide a copy of the amendment to the taxing agency committee and board.

(c) (i) If an agency fails to provide housing funds in accordance with the project area budget and the housing plan, if applicable, the board may bring legal action to compel the agency to provide the housing funds.

(ii) In an action under Subsection (2)(c)(i), the court:

(A) shall award the board a reasonable attorney's fee, unless the court finds that the action was frivolous; and

(B) may not award the agency its attorney's fees, unless the court finds that the action was frivolous.

(3) (a) Each agency shall use all housing funds allocated under Subsection (2)(a) to:

(i) pay part or all of the cost of land or construction of income targeted housing within the community that created the agency, if practicable in a mixed income development or area;

(ii) pay part or all of the cost of rehabilitation of income targeted housing within the community that created the agency;

(iii) pay part or all of the cost of land or installation, construction, or rehabilitation of any

building, facility, structure, or other housing improvement, including infrastructure improvements, related to housing located in a redevelopment project area where blight has been found to exist;

(iv) replace housing units lost as a result of the redevelopment, education housing development, or economic development;

(v) make payments on or establish a reserve fund for bonds:

(A) issued by the agency, the community, or the housing authority that provides income targeted housing within the community; and

(B) all or part of the proceeds of which are used within the community for the purposes stated in Subsection (3)(a)(i), (ii), (iii), or (iv); or

(vi) if the community's fair share ratio at the time of the first adoption of the project area budget is at least 1.1 to 1.0, make payments on bonds:

(A) that were previously issued by the agency, the community, or the housing authority that provides income targeted housing within the community; and

(B) all or part of the proceeds of which were used within the community for the purposes stated in Subsection (3)(a)(i), (ii), (iii), or (iv).

(b) As an alternative to the requirements of Subsection (3)(a), an agency may pay all housing funds to:

(i) the community for use as provided under Subsection (3)(a);

(ii) the housing authority that provides income targeted housing within the community for use in providing income targeted housing within the community; or

(iii) the Olene Walker Housing Trust Fund, established under Title 9, Chapter 4, Part 7, Olene Walker Housing Trust Fund, for use in providing income targeted housing within the community.

(4) The agency or community shall hold the housing funds, together with all interest earned by the housing funds and all payments or repayments for loans, advances, or grants from the housing funds, in a separately designated account until the funds are used pursuant to this section.

(5) In using housing funds under Subsection (3)(a), an agency may lend, grant, or contribute housing funds to a person, public body, housing authority, private entity or business, or nonprofit

organization for use as provided in Subsection (3)(a).

(6) An agency may:

(a) issue bonds from time to time to finance a housing undertaking under this section, including the payment of principal and interest upon advances for surveys and plans or preliminary loans; and

(b) issue refunding bonds for the payment or retirement of bonds under Subsection (6)(a) previously issued by the agency.

(7) Expenditures or obligations incurred by an agency under this section shall constitute an indebtedness incurred by the agency.

Section 36. Section **17A-2-1312** is amended to read:

17A-2-1312. General obligation bonds authorized by petition of property owners -- Contest.

(1) With respect to any service district established under this part, if there is no individual residing in the service district, such that compliance with the election requirements of Article XIV, Section 8, Utah Constitution, and Section 11-14-2 is otherwise impossible, then, 75% of the owners of real property located in the district, as shown on the most recent assessment roll of the county or municipality, as the case may be, may by written petition require the governing body of the county or municipality which established the service district to issue general obligation bonds pledging the full faith and credit of the district in an amount which may lawfully be issued by the district but not to exceed the amount set forth in the petition. Except for the election provisions of [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act, the bonds required to be issued shall be issued in accordance with [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act. Any such petition to require issuance of bonds shall be equivalent to and have the same force and effect as an election approving the issuance of the bonds by a majority of the qualified electors of the district.

(2) Upon receiving the petition described in Subsection (1), the governing body of the county or municipality which established the district shall proceed to issue the bonds in accordance with [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act.

(3) The determination by the governing body that 75% of the owners of real property located

in the district have duly filed a written petition requiring the issuance of bonds as provided in Subsection (1), shall be conclusive in any action or proceeding involving the validity of the petition or the district's authority to issue the bonds instituted after the expiration of the period provided in Subsection (4), for the filing of actions contesting the validity of the bonds and after the date of delivery of and payment for any part of the bonds.

(4) When the validity of any bond issue under this section is contested, the plaintiff or plaintiffs shall, within 40 days after the validity of the petition has been declared by the governing body, file with the clerk of the district court of the county in which the district is located, a verified written complaint setting forth specifically:

(a) the name of the party contesting the issuance of the bonds, and that he is an owner of property within the district; and

(b) the grounds of such contest. No such contest may be maintained and the issuance of the bonds may not be set aside or held invalid unless such a complaint is filed within the period prescribed in this section.

Section 37. Section **17A-2-1316** is amended to read:

17A-2-1316. Borrowing power -- Issuance of bonds and notes -- Use of proceeds.

(1) A service district may borrow money and incur indebtedness, issuing its bonds or notes therefor, including, without limitation:

(a) bonds payable in whole or in part from taxes levied on the taxable property in the service district;

(b) bonds payable from revenues derived from the operation of revenue-producing facilities of the service district;

(c) bonds payable from both such revenues and taxes;

(d) guaranteed bonds, payable in whole or in part from taxes levied on the taxable property in the service district;

(e) tax anticipation notes;

(f) bond anticipation notes;

(g) refunding bonds; and

(h) bonds payable in whole or in part from mineral lease payments as provided in Section 11-14-17.6.

(2) Tax anticipation notes are notes issued in anticipation of the collection of taxes and other revenues of a service district which are due and payable in not more than one year from their date of issue and, together with all other such notes then outstanding, do not exceed the estimated amount of taxes and other revenues to be collected from the date of issue until maturity.

(3) Bond anticipation notes are notes issued in anticipation of the receipt of the proceeds of bonds of the service district.

(4) All these bonds and notes shall be issued and sold in the manner, at either public or private sale, shall be in the form, and signed by the person or persons, who may, but need not, be officers of the county or municipality which established the service district and generally shall be issued in the manner and with the details as is provided for in proceedings of the governing authority of the service district authorizing the issuance of the bonds or notes; but all these bonds and notes and the interest on them shall be exempt from all taxation in this state, except for the corporate franchise tax, and all these bonds and notes may contain those terms and provisions as are permitted by and shall be issued in compliance with Title 11, Chapter 14, [~~the~~] Utah Municipal Bond Act.

(5) The proceeds of bonds or notes issued under the authority of this part shall be used to pay the costs of acquisition or construction of service district facilities or the providing of services including, without limitation:

(a) all costs of planning, designing, acquiring, and constructing a facility, including architectural, planning, engineering, legal, and fiscal advisor's costs;

(b) all costs incident to the authorization and issuance of the bonds or notes, including accountants' fees, attorneys' fees, financial advisors' fees, underwriting fees, including underwriting fees or bond discount, and other professional services and printing costs;

(c) interest estimated to accrue on bonds or notes for a reasonable time before, during, and for a reasonable time after the completion of the acquisition or construction of the facilities or services; and

(d) all amounts deemed necessary to establish one or more bond reserves and maintenance,

repair, replacement, contingency funds and accounts, and all amounts necessary to provide working capital for the facility.

Section 38. Section **17A-2-1322** is amended to read:

17A-2-1322. Tax levy and bonds -- Approval by majority of electors voting in election -- Procedure for election.

(1) The governing authority of a county or municipality which has established a service district may levy a tax on all taxable property within the service district in addition to all other taxes on such property levied or imposed by the county or municipality or by any other public corporation, district, or political subdivision in which the service district is located, and may also issue bonds payable in whole or in part from these taxes. No tax may be levied and no bonds or guaranteed bonds shall be issued, however, unless authorized, except as otherwise provided in Section 17A-2-1325, by a majority of the qualified electors of the service district voting at an election for that purpose held as provided in this section.

(2) The proposition to levy the tax or to issue the bonds shall be submitted to the qualified electors of the service district at an election called and held and for which notice is given in the same manner as is provided in [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act, for the holding of bond elections. The proposition shall state the purpose or purposes for which the taxes are to be levied or the bonds are to be issued. In addition, a proposition for the issuance of bonds shall state the maximum amount of bonds to be issued, the maximum number of years from their respective dates for which the bonds may run, and, if the bonds are to be payable in whole or in part from taxes, that fact and that taxes may be levied on all taxable property in the service district to pay the principal of and interest on the bonds. The purpose or purposes may be stated in general terms and need not specify the particular projects or services for which the taxes are to be levied or the bonds are to be issued nor the specific amount of the proceeds of the taxes or of the bonds to be expended for each project or service. If bonds are to be payable in part from tax proceeds and in part from the operating revenues of the service district or from any combination of them, the proposition shall so indicate but need not specify how the bonds are to be divided as to source of payment. If the bonds are to be issued as guaranteed bonds, the proposition shall also clearly state that fact together with

the name or names of the guarantors. A proposition for the levy of taxes and for the issuance of bonds may be combined as a single proposition.

Section 39. Section **17A-2-1413** is amended to read:

17A-2-1413. District powers -- Powers of board of trustees -- Other provisions applicable.

(1) (a) Each water conservancy district established under this part:

(i) shall have perpetual succession; and

(ii) except as provided in Subsection (1)(b), may exercise the power of eminent domain, as provided by law, to take any property necessary to exercise powers granted to the district.

(b) Notwithstanding Subsection (1)(a)(ii), a water conservancy district may not:

(i) exercise the power of eminent domain to acquire title to or beneficial use of vested water rights for transmountain diversion; and

(ii) carry or transport water in transmountain diversion, the title to which has been acquired by a municipality by virtue of eminent domain proceedings.

(2) The board of trustees may, on behalf of the district:

(a) take by appropriation, grant, purchase, bequest, devise, or lease, and hold and enjoy water, waterworks, water rights, sources of water supply, and any real and personal property within or without the district necessary or convenient to exercise fully its powers;

(b) sell, lease, encumber, alienate, or otherwise dispose of water, waterworks, water rights, and sources of water supply for any beneficial use within or without the district, and fix rates and terms for the sale, lease, or other disposal of water;

(c) acquire, construct, operate, control, and use any works or facilities within or without the district necessary or convenient to exercise its powers;

(d) construct, establish, or maintain works or facilities:

(i) across or along any public street or highway;

(ii) in, upon, or over any vacant public lands which are now, or may become, the property of this state in accordance with Title 53C, School and Institutional Trust Lands Management Act, and Title 65A, State Lands, except that any such action upon school or institutional trust lands may

only be undertaken with the consent of the director of the School and Institutional Trust Lands Administration, acting pursuant to Sections 53C-1-102 and 53C-1-303; or

(iii) across any streams of water or watercourses;

(e) contract with any agency of the United States, person, or corporation, public or private, for the construction, preservation, operation, or maintenance of tunnels, drains, pipelines, reservoirs, regulating basins, diversion canals and works, dams, power plants, and any necessary incidental works;

(f) acquire perpetual rights to the use of water from the works referred to in Subsection (2)(e) and to sell perpetual rights to the use of water from those works to persons and corporations, public and private;

(g) list in separate ownership the lands within the district which are susceptible of irrigation from district sources and to make an allotment of water to all those lands, which allotment of water may not exceed the maximum amount that the board determines could be beneficially used on the lands;

(h) levy assessments, as provided for by this part, against lands within the district to which water is allotted on the basis of:

(i) a uniform district-wide value per acre-foot of irrigation water; or

(ii) a uniform unit-wide value per acre-foot of irrigation water provided that the board divides the district into units and fixes a different value per acre-foot of water in the respective units;

(i) fix rates for the sale, lease, or other disposal of water, other than irrigation water, at rates that are equitable, although not necessarily equal or uniform, for like classes of service;

(j) adopt and modify plans and specifications for the works for which the district was organized;

(k) investigate and promote water development;

(l) appropriate and otherwise acquire water and water rights within or without the state;

(m) develop, store, and transport water;

(n) acquire stock in canal companies, water companies, and water users' associations;

(o) make and adopt plans for and to acquire, construct, operate, and maintain dams,

reservoirs, canals, conduits, pipelines, tunnels, power plants, and any works, facilities, improvements, and property necessary or convenient for those purposes;

(p) generate, distribute, or sell electric power from hydroelectric power plants owned, operated, licensed, or leased by the district if, as determined by the board, the electric power plant was acquired or constructed as an incidental and not the primary purpose of a project for the conservation, development, storage, transportation, or distribution of water;

(q) invest any surplus money in the district treasury pursuant to Title 51, Chapter 7, State Money Management Act;

(r) refund bonded indebtedness incurred by the district pursuant to rules prescribed by the board;

(s) borrow money and to issue bonds or other evidence of indebtedness;

(t) construct works and improvements on land not subject to acquisition by condemnation held by the district for a term of not less than 50 years under lease, easement, or otherwise and to issue bonds to pay the costs for which bonds may be issued as in this part;

(u) acquire, construct, operate, or maintain works for the irrigation of land;

(v) sell water and water services to individual customers and to charge sufficient rates for the water and services supplied; however, no sale of water for domestic or culinary use shall be made to a customer located within the limits of any incorporated municipality without the consent of the municipality, except as provided by Subsection 17A-2-1439(7);

(w) make and collect fees for customer connections to the works of the district and for permitting and supervising the making of the connections;

(x) use the proceeds of connection charges for any lawful corporate purpose, including the construction or acquisition of facilities, payment of principal of and interest on bonds, and the creation of a reserve for such purposes;

(y) own property for its corporate purposes within the boundaries of incorporated municipalities; and

(z) adopt a fiscal year, which may end June 30 or December 31.

(3) (a) The provisions of Title 17B, Chapter 2, Part 4, Board of Trustees, except Section

17B-2-402, apply to each water conservancy district to the same extent as if the water conservancy district were a local district under Title 17B, Chapter 2, Local Districts.

(b) (i) If a change in the expiration date of the term of a board of trustees member is necessary to comply with the requirements of Subsection 17B-2-403(1), the term of each board member whose term expires on a day other than the first Monday in January shall be extended to the first Monday in January after the normal expiration date next following the special district election date under Section 17A-1-305.

(ii) If a change in the length of the term of a board of trustees member is necessary to comply with the requirements of Subsection 17B-2-403(2), the change may not take effect until the expiration of the term of the member whose term length is to be changed.

Section 40. Section **17A-2-1414** is amended to read:

17A-2-1414. Who may enter into contracts -- Permissible purposes of contracts -- Agreements and leases -- Elections for water purchase contracts.

(1) Any water conservancy district and any incorporated municipality located within or without the boundaries of the district or other district created under any law of this state are expressly authorized and empowered to enter into contracts with each other and with any other person or corporation, public or private, for any of the following purposes:

(a) the joint operation of water facilities owned by any district or municipality;

(b) the exchange of water, water rights, or facilities;

(c) the leasing of water or water facilities; or

(d) the sale of water.

(2) (a) Any agreement about the operation or use of water facilities owned by a municipality or district by another municipality or district, the joint operation of facilities, or the lease of water or water facilities, may provide for the joint use of water facilities owned by one of the contracting parties under appropriate arrangements for reasonable compensation.

(b) Any agreement may provide for the renting or loan of water by one contracting party to the other or for the sale of water by one party and its purchase by another. No limitation contained in any existing law requiring the water of any district to be supplied to its own residents on a priority

basis shall be applicable to any contract made under this section.

(c) Any contract for the sale of water may run for a term of years as may be specified. The contract may require the purchasing party to pay for a minimum amount of water annually, provided the water is available, without regard to actual taking or use. The contract may provide for the payment for water sold or contracted to be sold from any of the following sources of revenue:

(i) the general funds or other funds of the purchasing municipality or district;

(ii) the proceeds of class B assessments imposed under the Water Conservancy Act;

(iii) the proceeds of water distributed and sold through the distribution system of the purchasing district or municipality; or

(iv) any combination of these sources of payment.

(d) The governing body of any municipality agreeing to purchase water under a contract, for the purpose of complying with any pertinent constitutional requirement or for any other reason, may call an election for that purpose. The election shall be conducted in the manner provided in [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act.

Section 41. Section **17A-2-1439** is amended to read:

17A-2-1439. Contracts providing for payment in installments -- Issuance and sale of bonds -- Sinking fund -- Covenants -- Default -- Revenue obligations -- Refunding bonds.

(1) (a) (i) To pay for construction, operation, and maintenance of works, and expenses preliminary and incidental to them, the board may enter into contracts with the United States of America or its agencies, providing for payment in installments.

(ii) To pay for all or part of the cost of the construction or acquisition of any works, to pay for the improvement and extension of them, to pay expenses preliminary and incidental to them, to pay interest on the bonds during acquisition and construction, to provide for necessary reserves, and to pay costs of issuance and sale of the bonds (including, without limitation, printing, registration and transfer costs, legal fees, financial advisor's fees, and underwriter's discount), the board may issue the bonds of the district as provided in this section.

(b) The indebtedness or obligation represented by any bonds issued by or any contract entered into by the board may be payable in whole or in part from all or part of the revenues derived

by the district from the operation of all or any designated portion of its works, from the proceeds of assessments and taxes levied under this part, or from any combination of those revenues, assessments, and taxes.

(c) The indebtedness or obligation represented by any bonds issued by or any contract entered into by the board may be incurred for the acquisition, construction, or both, of all or part of any works, for the improvement or extension of any works, or for a system of works for the distribution of water or for the treatment of water or both, whether or not the works of the district so acquired, constructed, improved, or extended include a source of water supply.

(d) (i) These bonds shall be issued and sold in compliance with Title 11, Chapter 14, Utah Municipal Bond Act, and may be in the form and denominations and have provisions and details permitted by [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act, except that the bonds shall mature serially or otherwise and contract payment installments shall fall due at any time or times not later than 50 years from their date.

(ii) The bonds and any evidences of participation interests in the bonds may be issued, executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with Title 15, Chapter 7, Registered Public Obligations Act, or any other statute relating to the registration of bonds enacted to meet the requirements of Section 103 of the Internal Revenue Code of 1954, as amended, or any similar or successor federal law, and applicable regulations.

(2) (a) Bonds may be issued hereunder at one time or from time to time.

(b) If more than one issue or series of bonds is delivered hereunder, the bonds of the respective issues or series shall have priorities of payment as provided in the proceedings authorizing the bonds.

(3) (a) Any resolution authorizing the issuance of bonds or the entering into of a contract indebtedness or obligation payable in installments hereunder shall provide for the creation of a sinking fund into which shall be paid from the revenues, assessments, and taxes, any or all, pledged to the payment in the authorizing resolution sums fully sufficient to pay the principal of and interest on the bonds or on the contract indebtedness or obligation and to create a reserve for contingencies as required by the resolution.

(b) Any resolution so authorizing bonds or the entering into of a contract indebtedness or obligation may contain those covenants with the future holders of the bonds or the other contracting party as to the management and operation of the properties and works of the district, the imposition and collection of fees and charges, including taxes and assessments, for the water and services furnished thereby, the disposition of the fees and revenues, the issuance of future bonds and the incurring of future contract indebtedness or obligations and the creation of future liens and encumbrances against the works and the revenues thereof, the carrying of insurance on the works and the disposition of the proceeds of insurance, the sale, disposal, or alienation of the works, and other pertinent matters considered necessary or proper by the board to assure the merchantability of the bonds or the execution of the contract.

(c) These covenants and agreements may not be inconsistent with this section.

(4) (a) It may be provided in the resolution that any holder of the bonds or any contracting party may by appropriate legal action compel performance of all duties required of the board and the officials of the district by this part and the resolution authorizing the bonds or contract.

(b) If any bond issued or any contract entered into hereunder is permitted to go into default as to any installment of principal or interest, any court of competent jurisdiction may, pursuant to the application of the holder of any bond or of the other contracting party, appoint a receiver to operate the works of the district and to collect and distribute the revenues thereof under the resolution, this part, and as the court may direct.

(5) (a) When the district has issued bonds or entered into a contract and pledged any revenues of the works for the payment of them as provided in this part, the district shall impose and collect fees and charges for water and services furnished by the works in that amount and at those rates fully sufficient at all times (in conjunction with the proceeds of available taxes and assessments if the bonds or contract indebtedness or obligation are also payable in part from the proceeds of assessments and taxes levied under this part) to pay the expenses of operating and maintaining the works, to provide a sinking fund sufficient to assure the prompt payment of principal of and interest on the bonds or contract indebtedness or obligation as principal and interest fall due, and to provide those funds for reserves and contingencies and for a depreciation fund for repairs, extensions, and

improvements to the works as considered necessary to assure adequate and efficient service, all as may be required by the resolution.

(b) No board or commission other than the board of trustees of the district has authority over or is required to approve the making or fixing of fees and charges, the acquisition of property by the district, the issuance of its bonds, or the entering into of a contract.

(6) (a) The board of any district that issues or has issued any bonds under this part, or that enters or has entered into any contracts under this part, may issue bonds hereunder for the purpose of refunding all or any part of the outstanding bonds, or the outstanding indebtedness or obligation represented by the contracts, or in part for the purpose of the refunding and in part for the purpose of acquiring, constructing, improving, or extending works for the district.

(b) If bonds are issued solely for refunding purposes, the election required by Section 17A-2-1440 is not a condition precedent to the issuance of the bonds.

(c) Refunding bonds so authorized:

(i) may be sold and the proceeds thereof applied to or deposited in an escrow and invested pending the retirement of the outstanding bonds; or

(ii) may be delivered in exchange for the outstanding bonds.

(d) The refunding bonds shall be authorized and secured in the manner herein provided for the issuance and securing of other bonds and may, but are not required to, have the same source of security and payment as the bonds refunded.

(7) (a) If bonds have been issued or a contract indebtedness or obligation has been incurred hereunder payable in whole or in part from revenues to be derived from supplying water to the inhabitants of territory which was not at the time of the issuance of the bonds or the entering into of the contract contained within the corporate limits of any municipality or any other district created for the purpose of supplying water to the territory, the district shall thereafter be the sole public corporation or political subdivision authorized to supply water to this area.

(b) No municipal corporation or other district into which any part of the territory is incorporated or included has authority either to supply water to the inhabitants of the corporation or district or to grant a franchise for the supplying of the water.

(c) Nothing contained in this Subsection (7) prevents the modification of this restriction contained by the district if modification does not in any way jeopardize the prompt payment of principal of and interest on the bonds of the district then outstanding or of the payment of installments of indebtedness or obligation under a contract.

Section 42. Section **17A-2-1448** is amended to read:

17A-2-1448. Validation of proceedings -- Changes.

(1) If proceedings have been adopted under authority of this part purporting to create any conservancy district thereunder, all proceedings had in connection with the creation of each such district are hereby validated, ratified and confirmed notwithstanding any failure to comply with any one or more pertinent statutory provisions and each such district is declared to be a validly created and existing district under authority of the law.

(2) It is expressly found and determined that all taxable property lying in each such district will be benefitted by the construction of the improvements to be constructed by such district to an amount not less than the aggregate of the taxes and assessments to be levied against such property to pay for the cost of such improvements.

(3) All proceedings had in connection with the appointment election and organization of board of trustees for each such district are ratified and approved and each such board of trustees is declared to be de facto and de jure governing body of each such district. If in any such district an election has been held on the approval of a contract with the United States of America or on the issuance of the bonds of the district or both, all proceedings had in connection with the calling and holding of each such election are validated, ratified and confirmed despite any irregularity which may have occurred therein and any contract so approved by any such election and any bonds so authorized at any such election are validated and confirmed and the board of trustees and officers of each such district are authorized and empowered to proceed to do all things necessary to the execution of such contract or to the issuance of such bonds as the case may be and each such contract when duly executed and all such bonds when delivered and paid for are declared to be valid and binding obligations of such district in accordance with the terms thereof and to be fully negotiable for all purposes.

(4) All construction contracts heretofore entered into by any such district for the construction or acquisition of works or facilities for such district are validated, ratified, and confirmed and declared to be valid obligations of such district in accordance with the terms thereof. The board of [~~directors~~] trustees of any such district may make such changes in any contract or in any bond proceedings or bonds hereby validated as may in its opinion be desirable for the best interests of such district without in any wise impairing or making ineffective any of the curative effect of this section. Any such change or changes may be so made despite the fact that such change or changes may be inconsistent with the proceedings at which any such contract, if voted at an election, or any such bonds, where voted, and no new election to approve or authorize such change or changes shall be necessary.

Section 43. Section **17A-2-1449** is amended to read:

17A-2-1449. Validation of proceedings and actions -- Changes in validated contracts, bond proceedings or bonds authorized.

(1) All proceedings that have been adopted and actions taken before May 13, 1969, under authority of this part, purporting to create any water conservancy district thereunder or purporting to provide for the inclusion of any additional area or areas in any such district, including all petitions filed and all notices given, published and mailed in connection with any such creation and any such inclusion, are hereby validated, ratified and confirmed, notwithstanding any failure to comply with any one or more pertinent statutory provisions and each such district as so created or enlarged is declared to be a validly created and existing district.

(2) It is expressly determined that all taxable property lying in each such district shall be benefitted by any improvements constructed before or after this part takes effect to an amount not less than the aggregate of the taxes and assessments levied against such property to pay for the cost of such improvements.

(3) All proceedings and actions taken with respect to the appointment, election and organization of a board of trustees and officers thereof for each such district are validated, ratified and confirmed and each such board of trustees is declared to be the de facto and de jure governing body of each such district. If in any such district an election has been held, before May 13, 1969,

on the question of approving a contract with the United States of America or on the question of the issuance of the bonds of the district, or both, all proceedings and actions concerned with the calling, holding and conduct of any such elections are validated, ratified and confirmed despite any irregularities which may have occurred in connection therewith.

(4) Any contract so approved at such an election and any bonds so authorized at such an election are validated, ratified and confirmed. The board of trustees and officers of each such district may do all things necessary to execute any such contract or issue such bonds, and each such contract when executed and all such bonds when delivered and paid for shall be valid and binding obligations of such district in accordance with the tenor and terms thereof. Any contracts made by such district for the construction or acquisition of works or facilities for such district are validated, ratified and confirmed and shall be valid obligations of such district in accordance with the terms thereof. Changes made after May 13, 1969 by the board of [~~directors~~] trustees of any such district in any contract, bond proceedings or bonds hereby validated shall be considered not to nullify any curative effect of this section.

Section 44. Section **19-6-505** is amended to read:

19-6-505. Long-term agreements for joint action -- Construction, acquisition, or sale of interest in management facilities -- Issuance of bonds.

(1) (a) Two or more public entities, which for the purposes of this section shall only include any political subdivision of the state, the state and its agencies, and the United States and its agencies, may enter into long-term agreements with one another pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, and any one or more public entities may enter into long-term agreements with any private entity or entities for joint or cooperative action related to the acquisition, construction, ownership, operation, maintenance, and improvement of solid waste management facilities, regardless of whether the facilities are owned or leased by a public entity or entities, private
entity or entities, or combination of them and pursuant to which solid waste of one or more public entities, any private entity or entities, or combination of them, are made available for solid waste management pursuant to the terms, conditions, and consideration provided in the agreement.

(b) Any payments made by a public entity for services received under the agreement are not

an indebtedness of the public entity within the meaning of any constitutional or statutory restriction, and no election is necessary for the authorization of the agreement.

(c) Any public entity or any public entity in combination with a private entity agreeing to make solid waste management facilities available may, in the agreement, agree to make available to other public entities a specified portion of the capacity of the solid waste management facilities, without regard to its future need of the specified capacity for its own use and may in the agreement agree to increase the capacity of its solid waste management facilities from time to time, as necessary, in order to take care of its own needs and to perform its obligations to the other parties to the agreement.

(2) (a) Two or more public entities or any one or more public entities together with any private entity or entities may construct or otherwise acquire joint interests in solid waste management facilities, or any part of them, for their common use, or may sell to any other public or private entity or entities a partial interest or interests in its solid waste management facility.

(b) Any public entity otherwise qualifying under [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act or [~~the~~] Title 11, Chapter 17, Utah Industrial Facilities and Development Act may issue its bonds pursuant to these acts for the purpose of acquiring a joint interest in solid waste management facilities, or any part thereof, whether the joint interest is to be acquired through construction of new facilities or the purchase of an interest in existing facilities.

Section 45. Section **19-6-804** is amended to read:

19-6-804. Restrictions on disposal of tires -- Penalties.

(1) (a) After January 1, 1994, an individual, including a waste tire transporter, may not dispose of more than four whole tires at one time in a landfill or any other location in the state authorized by the executive secretary to receive waste tires, except for purposes authorized by board rule.

(b) Tires are exempt from this Subsection (1) if the original tire has a rim diameter greater than 24.5 inches.

(c) No person, including a waste tire transporter, may dispose of waste tires or store waste tires in any manner not allowed under this [~~chapter~~] part or rules made under this part.

(2) The operator of the landfill or other authorized location shall direct that the waste tires be disposed in a designated area to facilitate retrieval if a market becomes available for the disposed waste tires or material derived from waste tires.

(3) An individual, including a waste tire transporter, may dispose of shredded waste tires in a landfill in accordance with Section 19-6-812, and may also, without reimbursement, dispose in a landfill materials derived from waste tires that do not qualify for reimbursement under Section 19-6-812, but the landfill shall dispose of the material in accordance with Section 19-6-812.

(4) (a) An individual, including a waste tire transporter, violating this section is subject to enforcement proceedings and a civil penalty of not more than $100 per waste tire or per passenger tire equivalent disposed of in violation of this section. A warning notice may be issued prior to taking further enforcement action under this Subsection (4).

(b) A civil proceeding to enforce this section and collect penalties under this section may be brought in the district court where the violation occurred by the board, the local health department, or the county attorney having jurisdiction over the location where the tires were disposed in violation of this section.

(c) Penalties collected under this section shall be deposited in the trust fund.

Section 46. Section **20A-3-304** is amended to read:

20A-3-304. Application for absentee ballot -- Time for filing and voting.

(1) As used in this section, "absent elector" means a person who:

(a) is physically, emotionally, or mentally impaired;

(b) will be serving as an election judge or who has election duties in another voting precinct;

(c) is detained or incarcerated in a jail or prison as a penalty for committing a misdemeanor;

(d) suffers a legal disability;

(e) is prevented from voting in a particular location because of religious tenets or other strongly held personal values;

(f) is called for jury duty in state or federal court; or

(g) otherwise expects to be absent from the voting precinct during the hours the polls are open on election day.

(2) A registered voter who is or will be an absent elector may file an absentee ballot application with the appropriate election officer for an official absentee ballot.

(3) (a) Except as provided in Subsection (3)(b), each election officer shall prepare blank applications for absentee ballot applications in substantially the following form:

"I, ____, a qualified elector, in full possession of my mental faculties, residing at ____ Street, ____ City, ____ County, Utah [~~and~~] to my best knowledge and belief am entitled to vote by absentee ballot at the next election.

I apply for an official absentee ballot to be voted by me at the election.

Date _____ (month\day\year) Signed _____

Voter"

(b) Each election officer shall prepare blank applications for absentee ballot applications for regular primary elections and for the Western States Presidential Primary in substantially the following form:

"I, ____, a qualified elector, in full possession of my mental faculties, residing at ____ Street, ____ City, ____ County, Utah to my best knowledge and belief am entitled to vote by absentee ballot at the next election.

I apply for an official absentee ballot for the _____ political party to be voted by me at the primary election.

I understand that I must be affiliated with or authorized to vote the political party's ballot that I request.

Dated _____ (month\day\year) ____ Signed _____

Voter"

If requested by the applicant, the election officer shall:

(i) mail or fax the application blank to the absentee voter; or

(ii) deliver the application blank to any voter who personally applies for it at the office of the election officer.

(4) (a) (i) Except as provided in Subsections (4)(a)(ii) and (iii), the voters shall file the application for an absentee ballot with the appropriate election officer no later than the Friday before

election day.

(ii) Overseas applicants shall file their applications with the appropriate election officer no later than 20 days before the day of election.

(iii) Voters applying for an absentee ballot for the Western States Presidential Primary shall file the application for an absentee ballot with the appropriate election officer not later than the Tuesday before election day.

(b) Persons voting an absentee ballot at the office of the election officer shall apply for and cast their ballot no later than the day before the election.

(5) (a) A county clerk may establish a permanent absentee voter list.

(b) The clerk shall place on the list the name of any person who:

(i) requests permanent absentee voter status; and

(ii) meets the requirements of this section.

(c) (i) Each year, the clerk shall mail a questionnaire to each person whose name is on the absentee voter list.

(ii) The questionnaire shall allow the absentee person to verify the voter's residence and inability to vote at the voting precinct on election day.

(iii) The clerk may remove the names of any voter from the absentee voter registration list if:

(A) the voter is no longer listed in the official register; or

(B) the voter fails to verify the voter's residence and absentee status.

(d) The clerk shall provide a copy of the permanent absentee voter list to election officers for use in elections.

Section 47. Section **20A-5-404** is amended to read:

20A-5-404. Election forms -- Preparation and contents.

(1) (a) For each election, the election officer[~~: (a)~~] shall prepare, for each voting precinct, a:

(i) ballot disposition form;

(ii) total votes cast form;

(iii) tally sheet form; and

(iv) pollbook.

(b) For each election, the election officer shall:

(i) provide a copy of each form to each of those precincts using paper ballots; and

(ii) provide a copy of the ballot disposition form and a pollbook to each of those voting precincts using an automated voting system.

(2) The election officer shall ensure that the ballot disposition form contains a space for the judges to identify:

(a) the number of ballots voted;

(b) the number of substitute ballots voted, if any;

(c) the number of ballots delivered to the voters;

(d) the number of spoiled ballots;

(e) the number of registered voters listed in the official register;

(f) the total number of voters voting according to the pollbook; and

(g) the number of unused ballots.

(3) The election officer shall ensure that the total votes cast form contains:

(a) the name of each candidate appearing on the ballot, the office for which the candidate is running, and a blank space for the election judges to record the number of votes that the candidate received;

(b) for each office, blank spaces for the election judges to record the names of write-in candidates, if any, and a blank space for the election judges to record the number of votes that the write-in candidate received;

(c) a heading identifying each ballot proposition and blank spaces for the election judges to record the number of votes for and against each proposition; and

(d) a certification, in substantially the following form, to be signed by the judges when they have completed the total votes cast form:

"TOTAL VOTES CAST

At an election held at ____ in ____ voting precinct in _____(name of entity holding

the election) and State of Utah, on _____(month\day\year), the following named persons received the number of votes annexed to their respective names for the following described offices: Total number of votes cast were as follows:

Certified by us ____, ____, ____, Judges of Election."

(4) The election officer shall ensure that the tally sheet form contains:

(a) for each office, the names of the candidates for that office, and blank spaces to tally the votes that each candidate receives;

(b) for each office, blank spaces for the election judges to record the names of write-in candidates, if any, and a blank space for the election judges to tally the votes for each write-in candidate;

(c) for each ballot proposition, a heading identifying the ballot proposition and the words "Yes" and "No" or "For" and "Against" on separate lines with blank spaces after each of them for the election judges to tally the ballot proposition votes; and

(d) a certification, in substantially the following form, to be signed by the judges when they have completed the tally sheet form:

"Tally Sheet

We the undersigned election judges for voting precinct #_____, _____(entity holding the election) certify that this is a true and correct list of all persons voted for and ballot propositions voted on at the election held in that voting precinct on _____(date of election) and is a tally of the votes cast for each of those persons. Certified by us ____, ____, ____, Judges of Election."

(5) The election officer shall ensure that the pollbook:

(a) identifies the voting precinct number on its face; and

(b) contains:

(i) a section to record persons voting on election day, with columns entitled "Ballot Number" and "Voter's Name";

(ii) another section in which to record absentee ballots;

(iii) a section in which to record voters who are challenged; and

(iv) a certification, in substantially the following form:

"We, the undersigned, judges of an election held at _____ voting precinct, in _____ County, state of Utah, on _____(month\day\year), having first been sworn according to law, certify that the information listed in this book is a true statement of the number and names of the persons voting in the voting precinct at the election, and that the total number of persons voting at the election was ____."

_____

_____

_____

Judges of Election

Section 48. Section **21-2-8** is amended to read:

21-2-8. Fees of county officers.

(1) As used in this section, "county officer" means all of the county officers enumerated in Section 17-53-101 except county recorders, county constables, and county sheriffs.

(2) (a) Each county officer shall collect, in advance, for exclusive county use and benefit:

(i) all fees established by the county legislative body under [~~this section~~] Section 17-53-211; and

(ii) any other fees authorized or required by law.

(b) As long as the displaced homemaker program is authorized by Section 35A-3-114, the county clerk shall:

(i) assess $20 in addition to whatever fee for a marriage license is established under authority of this section; and

(ii) transmit $20 from each marriage license fee to the Division of Finance to be credited to the displaced homemaker program.

(c) As long as the Children's Legal Defense Account is authorized by Section 63-63a-8, the county clerk shall:

(i) assess $10 in addition to whatever fee for a marriage license is established under authority of this section and in addition to the $20 assessed for the displaced homemaker program; and

(ii) transmit $10 from each marriage license fee to the Division of Finance for deposit in the Children's Legal Defense Account.

(3) This section does not apply to any fees currently being assessed by the state but collected by county officers.

Section 49. Section **23-13-2** is amended to read:

23-13-2. Definitions.

As used in this title:

(1) "Activity regulated under this title" means any act, attempted act, or activity prohibited or regulated under any provision of Title 23 or the rules, and proclamations promulgated thereunder pertaining to protected wildlife including:

(a) fishing;

(b) hunting;

(c) trapping;

(d) taking;

(e) permitting any dog, falcon, or other domesticated animal to take;

(f) transporting;

(g) possessing;

(h) selling;

(i) wasting;

(j) importing;

(k) exporting;

(l) rearing;

(m) keeping;

(n) utilizing as a commercial venture; and

(o) releasing to the wild.

(2) "Aquatic animal" has the meaning provided in Section 4-37-103.

(3) "Aquatic wildlife" means species of fish, mollusks, crustaceans, aquatic insects, or amphibians.

(4) "Aquaculture facility" has the meaning provided in Section 4-37-103.

(5) "Bag limit" means the maximum limit, in number or amount, of protected wildlife that one person may legally take during one day.

(6) "Big game" means species of hoofed protected wildlife.

(7) "Carcass" means the dead body of an animal or its parts.

(8) "Certificate of registration" means a document issued under this title, or any rule or proclamation of the Wildlife Board granting authority to engage in activities not covered by a license, permit, or tag.

(9) "Closed season" means the period of time during which the taking of protected wildlife is prohibited.

(10) "Conservation officer" means a full-time, permanent employee of the Division of Wildlife Resources who is POST certified as a peace or a special function officer.

(11) "Dedicated hunter program" means a program that provides:

(a) expanded hunting opportunities;

(b) opportunities to participate in projects that are beneficial to wildlife; and

(c) education in hunter ethics and wildlife management principles.

(12) "Division" means the Division of Wildlife Resources.

(13) (a) "Domicile" means the place:

(i) where an individual has a fixed permanent home and principal establishment;

(ii) to which the individual if absent, intends to return; and

(iii) in which the individual, and the individual's family voluntarily reside, not for a special or temporary purpose, but with the intention of making a permanent home.

(b) To create a new domicile an individual must:

(i) abandon the old domicile; and

(ii) be able to prove that a new domicile has been established.

(14) "Endangered" means wildlife designated as such pursuant to Section 3 of the federal Endangered Species Act of 1973.

(15) "Fee fishing facility" has the meaning provided in Section 4-37-103.

(16) "Feral" means an animal which is normally domesticated but has reverted to the wild.

(17) "Fishing" means to take fish or crayfish by any means.

(18) "Furbearer" means species of the Bassariscidae, Canidae, Felidae, Mustelidae, and Castoridae families, except coyote and cougar.

(19) "Game" means wildlife normally pursued, caught, or taken by sporting means for human use.

(20) (a) "Guide" means a person who receives compensation or advertises services for assisting another person to take protected wildlife.

(b) Assistance under Subsection (20)(a) includes the provision of food, shelter, or transportation, or any combination of these.

(21) "Guide's agent" means a person who is employed by a guide to assist another person to take protected wildlife.

(22) "Hunting" means to take or pursue a reptile, amphibian, bird, or mammal by any means.

(23) "Intimidate or harass" means to physically interfere with or impede, hinder, or diminish the efforts of an officer in the performance of the officer's duty.

(24) "Nonresident" means a person who does not qualify as a resident.

(25) "Open season" means the period of time during which protected wildlife may be legally taken.

(26) "Pecuniary gain" means the acquisition of money or something of monetary value.

(27) "Permit" means a document, including a stamp, which grants authority to engage in specified activities under this title or a rule or proclamation of the Wildlife Board.

(28) "Person" means an individual, association, partnership, government agency, corporation, or an agent of the foregoing.

(29) "Possession" means actual or constructive possession.

(30) "Possession limit" means the number of bag limits one individual may legally possess.

(31) (a) "Private fish installation" means a body of water where privately owned, protected aquatic wildlife are propagated or kept.

(b) "Private fish installation" does not include any aquaculture facility or fee fishing facility.

(32) "Private wildlife farm" means an enclosed place where privately owned birds or furbearers are propagated or kept and which restricts the birds or furbearers from:

(a) commingling with wild birds or furbearers; and

(b) escaping into the wild.

(33) "Proclamation" means the publication used to convey a statute, rule, policy, or pertinent information as it relates to wildlife.

(34) (a) "Protected aquatic wildlife" means aquatic wildlife as defined in Subsection (3), except as provided in Subsection (34)(b).

(b) "Protected aquatic wildlife" does not include aquatic insects.

(35) (a) "Protected wildlife" means wildlife as defined in Subsection (49), except as provided in Subsection (35)(b).

(b) "Protected wildlife" does not include coyote, field mouse, gopher, ground squirrel, jack rabbit, muskrat, and raccoon.

(36) "Released to the wild" means to [~~turn~~] be turned loose from confinement.

(37) (a) "Resident" means a person who:

(i) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license; and

(ii) does not claim residency for hunting, fishing, or trapping in any other state or country.

(b) A Utah resident retains Utah residency if that person leaves this state:

(i) to serve in the armed forces of the United States or for religious or educational purposes; and

(ii) complies with Subsection (37)(a)(ii).

(c) (i) A member of the armed forces of the United States and dependents are residents for the purposes of this chapter as of the date the member reports for duty under assigned orders in the state if the member:

(A) is not on temporary duty in this state; and

(B) complies with Subsection (37)(a)(ii).

(ii) A copy of the assignment orders must be presented to a wildlife division office to verify

the member's qualification as a resident.

(d) A nonresident attending an institution of higher learning in this state as a full-time student may qualify as a resident for purposes of this chapter if the student:

(i) has been present in this state for 60 consecutive days immediately preceding the purchase of the license; and

(ii) complies with Subsection (37)(a)(ii).

(e) A Utah resident license is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(f) An absentee landowner paying property tax on land in Utah does not qualify as a resident.

(38) "Sell" means to offer or possess for sale, barter, exchange, or trade, or the act of selling, bartering, exchanging, or trading.

(39) "Small game" means species of protected wildlife:

(a) commonly pursued for sporting purposes; and

(b) not classified as big game, aquatic wildlife, or furbearers and excluding cougar and bear.

(40) "Spoiled" means impairment of the flesh of wildlife which renders it unfit for human consumption.

(41) "Spotlighting" means throwing or casting the rays of any spotlight, headlight, or other artificial light on any highway or in any field, woodland, or forest while having in possession a weapon by which protected wildlife may be killed.

(42) "Tag" means a card, label, or other identification device issued for attachment to the carcass of protected wildlife.

(43) "Take" means to:

(a) hunt, pursue, harass, catch, capture, possess, angle, seine, trap, or kill any protected wildlife; or

(b) attempt any action referred to in Subsection (43)(a).

(44) "Threatened" means wildlife designated as such pursuant to Section 3 of the federal Endangered Species Act of 1973.

(45) "Trapping" means taking protected wildlife with a trapping device.

(46) "Trophy animal" means an animal described as follows:

(a) deer - any buck with an outside antler measurement of 24 inches or greater;

(b) elk - any bull with six points on at least one side;

(c) bighorn, desert, or rocky mountain sheep - any ram with a curl exceeding half curl;

(d) moose - any bull;

(e) mountain goat - any male or female;

(f) pronghorn antelope - any buck with horns exceeding 14 inches; or

(g) bison - any bull.

(47) "Waste" means to abandon protected wildlife or to allow protected wildlife to spoil or to be used in a manner not normally associated with its beneficial use.

(48) "Water pollution" means the introduction of matter or thermal energy to waters within this state which:

(a) exceeds state water quality standards; or

(b) could be harmful to protected wildlife.

(49) "Wildlife" means:

(a) crustaceans, including brine shrimp and crayfish;

(b) mollusks; and

(c) vertebrate animals living in nature, except feral animals.

Section 50. Section **30-3-35** is amended to read:

30-3-35. Minimum schedule for visitation for children 5 to 18 years of age.

(1) The visitation schedule in this section applies to children 5 to 18 years of age.

(2) If the parties do not agree to a visitation schedule, the following schedule shall be considered the minimum visitation to which the noncustodial parent and the child shall be entitled:

(a) (i) one weekday evening to be specified by the noncustodial parent or the court from 5:30 p.m. until 8:30 p.m.; or

(ii) at the election of the noncustodial parent, one weekday from the time the child's school is regularly dismissed until 8:30 p.m., unless the court directs the application of Subsection (2)(a)(i);

(b) (i) alternating weekends beginning on the first weekend after the entry of the decree from

6 p.m. on Friday until 7 p.m. on Sunday continuing each year; or

(ii) at the election of the noncustodial parent, from the time the child's school is regularly dismissed on Friday until 7 p.m. on Sunday, unless the court directs the application of Subsection (2)(b)(i);

(c) holidays take precedence over the weekend visitation, and changes shall not be made to the regular rotation of the alternating weekend visitation schedule;

(d) if a holiday falls on a regularly scheduled school day, the noncustodial parent shall be responsible for the child's attendance at school for that school day;

(e) (i) if a holiday falls on a weekend or on a Friday or Monday and the total holiday period extends beyond that time so that the child is free from school and the parent is free from work, the noncustodial parent shall be entitled to this lengthier holiday period; or

(ii) at the election of the noncustodial parent, visitation over a scheduled holiday weekend may begin from the time the child's school is regularly dismissed at the beginning of the holiday weekend until 7 p.m. on the last day of the holiday weekend;

(f) in years ending in an odd number, the noncustodial parent is entitled to the following holidays:

(i) child's birthday on the day before or after the actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday;

(ii) [~~Human Rights~~] Martin Luther King, Jr. Day beginning 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iii) spring break or Easter holiday beginning at 6 p.m. on the day school lets out for the holiday until 7 p.m. on the Sunday before school resumes;

(iv) Memorial Day beginning 6 p.m. on Friday until Monday at 7 p.m., unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(v) July 24th beginning 6 p.m. on the day before the holiday until 11 p.m. on the holiday;

(vi) Veteran's Day holiday beginning 6 p.m. the day before the holiday until 7 p.m. on the holiday; and

(vii) the first portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b)

plus Christmas Eve and Christmas Day until 1 p.m., so long as the entire holiday is equally divided;

(g) in years ending in an even number, the noncustodial parent is entitled to the following holidays:

(i) child's birthday on actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday;

(ii) [~~President's~~] Washington and Lincoln Day beginning at 6 p.m. on Friday until 7 p.m. on Monday unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iii) July 4th beginning at 6 p.m. the day before the holiday until 11 p.m. on the holiday;

(iv) Labor Day beginning at 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(v) the fall school break, if applicable, commonly known as U.E.A. weekend beginning at 6 p.m. on Wednesday until Sunday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(vi) Columbus Day beginning at 6 p.m. the day before the holiday until 7 p.m. on the holiday;

(vii) Thanksgiving holiday beginning Wednesday at 7 p.m. until Sunday at 7 p.m; and

(viii) the second portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b) plus Christmas day beginning at 1 p.m. until 9 p.m., so long as the entire Christmas holiday is equally divided;

(h) Father's Day shall be spent with the natural or adoptive father every year beginning at 9 a.m. until 7 p.m. on the holiday;

(i) Mother's Day shall be spent with the natural or adoptive mother every year beginning at 9 a.m. until 7 p.m. on the holiday;

(j) extended visitation with the noncustodial parent may be:

(i) up to four weeks consecutive at the option of the noncustodial parent;

(ii) two weeks shall be uninterrupted time for the noncustodial parent; and

(iii) the remaining two weeks shall be subject to visitation for the custodial parent consistent with these guidelines;

(k) the custodial parent shall have an identical two-week period of uninterrupted time during the children's summer vacation from school for purposes of vacation;

(l) if the child is enrolled in year-round school, the noncustodial parent's extended visitation shall be 1/2 of the vacation time for year-round school breaks, provided the custodial parent has holiday and phone visits;

(m) notification of extended visitation or vacation weeks with the child shall be provided at least 30 days in advance to the other parent; and

(n) telephone contact shall be at reasonable hours and for reasonable duration.

(3) Any elections required to be made in accordance with this section by either parent concerning visitation shall be made a part of the decree and made a part of the visitation order.

Section 51. Section **30-6-1** is amended to read:

30-6-1. Definitions.

As used in this chapter:

(1) "Abuse" means attempting to cause, or intentionally or knowingly causing to an adult or minor physical harm or intentionally placing another in fear of imminent physical harm.

(2) "Cohabitant" means an emancipated person pursuant to Section 15-2-1 or a person who is 16 years of age or older who:

(a) is or was a spouse of the other party;

(b) is or was living as if a spouse of the other party;

(c) is related by blood or marriage to the other party;

(d) has one or more children in common with the other party;

(e) is the biological parent of the other party's unborn child; or

(f) resides or has resided in the same residence as the other party.

(3) Notwithstanding Subsection (2), "cohabitant" does not include:

(a) the relationship of natural parent, adoptive parent, or step-parent to a minor; or

(b) the relationship between natural, adoptive, step, or foster siblings who are under 18 years

of age.

(4) "Court clerk" means a district court clerk or juvenile court clerk.

(5) "Department" means the Department of Human Services.

(6) "Domestic violence" means the same as that term is defined in Section 77-36-1.

(7) "Ex parte protective order" means an order issued without notice to the defendant in accordance with this chapter.

(8) "Foreign protective order" means a protective order issued by another state, territory, or possession of the United States, tribal lands of the United States, the Commonwealth of Puerto Rico, or the District of Columbia which shall be given full faith and credit in Utah, if the protective order is similar to a protective order issued in compliance with Title 30, Chapter 6, Cohabitant Abuse Act, or Title 77, Chapter 36, Cohabitant Abuse Procedures Act, and includes the following requirements:

(a) the requirements of due process were met by the issuing court, including subject matter and personal jurisdiction;

(b) the respondent received reasonable notice; and

(c) the respondent had an opportunity for a hearing regarding the protective order.

(9) "Law enforcement unit" or "law enforcement agency" means any public agency having general police power and charged with making arrests in connection with enforcement of the criminal statutes and ordinances of this state or any political subdivision.

(10) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace Officer Classifications.

(11) "Protective order" means a restraining order issued pursuant to this chapter subsequent to a hearing on the petition, of which the petitioner has given notice in accordance with this chapter.

Section 52. Section **31A-22-625** is amended to read:

31A-22-625. Catastrophic coverage of mental health conditions.

(1) As used in this section:

(a) (i) "Catastrophic mental heath coverage" means coverage in a health insurance policy or health maintenance organization contract that does not impose any lifetime limit, annual payment limit, episodic limit, inpatient or outpatient service limit, or maximum out-of-pocket limit that places

a greater financial burden on an insured for the evaluation and treatment of a mental health condition than for the evaluation and treatment of a physical health condition.

(ii) "Catastrophic mental health coverage" may include a restriction on cost sharing factors, such as deductibles, copayments, or coinsurance, prior to reaching any maximum out-of-pocket limit.

(iii) "Catastrophic mental health coverage" may include one maximum out-of-pocket limit for physical health conditions and another maximum out-of-pocket limit for mental health conditions, provided that, if separate out-of-pocket limits are established, the out-of-pocket limit for mental health conditions may not exceed the out-of-pocket limit for physical health conditions.

(b) (i) "50/50 mental health coverage" means coverage in a health insurance policy or health maintenance organization contract that pays for at least 50% of covered services for the diagnosis and treatment of mental health conditions.

(ii) "50/50 mental health coverage" may include a restriction on episodic limits, inpatient or outpatient service limits, or maximum out-of-pocket limits.

(c) "Large employer" means an employer that does not come within the definition of "small employer."

(d) (i) "Mental health condition" means any condition or disorder involving mental illness that falls under any of the diagnostic categories listed in the Diagnostic and Statistical Manual, as periodically revised.

(ii) "Mental health condition" does not include the following when diagnosed as the primary or substantial reason or need for treatment:

(A) marital or family problem;

(B) social, occupational, religious, or other social maladjustment;

(C) conduct disorder;

(D) chronic adjustment disorder;

(E) psychosexual disorder;

(F) chronic organic brain syndrome;

(G) personality disorder;

(H) specific developmental disorder or learning disability; or

(I) mental retardation.

(e) "Small employer" is as defined in Section 31A-30-103.

(2) (a) At the time of purchase and renewal, an insurer shall offer to each small employer that it insures or seeks to insure a choice between catastrophic mental health coverage and 50/50 mental health coverage.

(b) In addition to Subsection (2)(a), an insurer may offer to provide:

(i) catastrophic mental health coverage, 50/50 mental health coverage, or both at levels that exceed the minimum requirements of this section; or

(ii) coverage that excludes benefits for mental health conditions.

(c) A small employer may, at its option, choose either catastrophic mental health coverage, 50/50 mental health coverage, or coverage offered under Subsection (2)(b), regardless of the employer's previous coverage for mental health conditions.

(d) An insurer is exempt from the 30% index rating restriction in Subsection 31A-30-106(1)(b) and, for the first year only that catastrophic mental health coverage is chosen, the 15% annual adjustment restriction in Subsection 31A-30-106(1)(c)(ii), for any small employer with 20 or less enrolled employees who chooses coverage that meets or exceeds catastrophic mental health coverage.

(3) (a) At the time of purchase and renewal, an insurer shall offer catastrophic mental health coverage to each large employer that it insures or seeks to insure.

(b) In addition to Subsection (3)(a), an insurer may offer to provide catastrophic mental health coverage at levels that exceed the minimum requirements of this section.

(c) A large employer may, at its option, choose either catastrophic mental health coverage, coverage that excludes benefits for mental health conditions, or coverage offered under Subsection (3)(b).

(4) (a) An insurer may provide catastrophic mental health coverage through a managed care organization or system in a manner consistent with the provisions in Chapter 8, Health Maintenance Organizations and Limited Health Plans, regardless of whether the policy or contract uses a managed care organization or system for the treatment of physical health conditions.

(b) (i) Notwithstanding any other provision of this title, an insurer may:

(A) establish a closed panel of providers for catastrophic mental health coverage; and

(B) refuse to provide any benefit to be paid for services rendered by a nonpanel provider unless:

(I) the insured is referred to a nonpanel provider with the prior authorization of the insurer; and

(II) the nonpanel provider agrees to follow the insurer's protocols and treatment guidelines.

(ii) If an insured receives services from a nonpanel provider in the manner permitted by Subsection (4)(b)(i)(B), the insurer shall reimburse the insured for not less than 75% of the average amount paid by the insurer for comparable services of panel providers under a noncapitated arrangement who are members of the same class of health care providers.

(iii) Nothing in this Subsection (4)(b) may be construed as requiring an insurer to authorize a referral to a nonpanel provider.

(c) To be eligible for catastrophic mental health coverage, a diagnosis or treatment of a mental health condition must be rendered:

(i) by a mental health therapist as defined in Section 58-60-102; or

(ii) in a health care facility licensed or otherwise authorized to provide mental health services pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, or Title 62A, Chapter 2, Licensure of Programs and Facilities, that provides a program for the treatment of a mental health condition pursuant to a written plan.

(5) The commissioner may disapprove any policy or contract that provides mental heath coverage in a manner that is inconsistent with the provisions of this section.

(6) The commissioner shall:

(a) adopt rules as necessary to ensure compliance with this section; and

(b) provide general figures on the percentage of contracts and policies that include no mental health coverage, 50/50 mental health coverage, catastrophic mental health coverage, and coverage that exceeds the minimum requirements of this section.

(7) The Health and Human Services Interim Committee shall review:

(a) the impact of this section on insurers, employers, providers, and consumers of mental health services before January 1, 2004; and

(b) make a recommendation as to whether the provisions of this section should be modified and whether the cost-sharing requirements for mental health conditions should be the same as for physical health conditions.

(8) (a) An insurer shall offer catastrophic mental health coverage as part of a health maintenance organization contract that is governed by Chapter 8, Health Maintenance Organizations and Limited Health Plans, that is in effect on or after January 1, 2001.

(b) An insurer shall offer catastrophic mental health coverage as a part of a health insurance policy that is not governed by Chapter 8, Health Maintenance Organizations and Limited Health Plans, that is in effect on or after July 1, 2001.

(c) This section does not apply to the purchase or renewal of an individual insurance policy or contract.

(d) Notwithstanding Subsection (8)(c), nothing in this section may be construed as discouraging or otherwise preventing insurers from continuing to provide mental health coverage in connection with an individual policy or contract.

(9) This section shall be repealed in accordance with Section 63-55-231.

Section 53. Section **31A-23-102** is amended to read:

31A-23-102. Definitions.

As used in this chapter:

(1) Except as provided in Subsection (2):

(a) "Escrow" is a license category that allows a person to conduct escrows, settlements, or closings on behalf of a title insurance agency or a title insurer.

(b) "Limited license" means a license that is issued for a specific product of insurance and limits an individual or agency to transact only for those products.

(c) "Search" is a license category that allows a person to issue title insurance commitments or policies on behalf of a title insurer.

(d) "Title marketing representative" means a person who:

(i) represents a title insurer in soliciting, requesting, or negotiating the placing of:

(A) title insurance; or

(B) escrow, settlement, or closing services; and

(ii) does not have a search or escrow license.

(2) The following persons are not acting as agents, brokers, title marketing representatives, or consultants when acting in the following capacities:

(a) any regular salaried officer, employee, or other representative of an insurer or licensee under this chapter who devotes substantially all of the officer's, employee's, or representative's working time to activities other than those described in Subsection (1) and Subsections 31A-1-301(51), (52), and (54) including the clerical employees of persons required to be licensed under this chapter;

(b) a regular salaried officer or employee of a person seeking to purchase insurance, who receives no compensation that is directly dependent upon the amount of insurance coverage purchased;

(c) a person who gives incidental advice in the normal course of a business or professional activity, other than insurance consulting, if neither that person nor that person's employer receives direct or indirect compensation on account of any insurance transaction that results from that advice;

(d) a person who, without special compensation, performs incidental services for another at the other's request, without providing advice or technical or professional services of a kind normally provided by an agent, broker, or consultant;

(e) a holder of a group insurance policy, or any other person involved in mass marketing, but only:

(i) with respect to administrative activities in connection with that type of policy, including the collection of premiums; and

(ii) if the person receives no compensation for the activities described in Subsection (2)(e)(i) beyond reasonable expenses including a fair payment for the use of capital; and

(f) a person who gives advice or assistance without direct or indirect compensation or any expectation of direct or indirect compensation.

(3) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

(4) "Agency" means a person other than an individual, and includes a sole proprietorship by which a natural person does business under an assumed name.

[~~(6)~~] (5) "Bail bond agent" means any individual:

(a) appointed by an authorized bail bond surety insurer or appointed by a licensed bail bond surety company to execute or countersign undertakings of bail in connection with judicial proceedings; and

(b) who receives or is promised money or other things of value for this service.

[~~(5)~~] (6) "Broker" means an insurance broker or any other person, firm, association, or corporation that for any compensation, commission, or other thing of value acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than itself.

(7) "Captive insurer" means:

(a) an insurance company owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies; or

(b) in the case of groups and associations, an insurance organization owned by the insureds whose exclusive purpose is to insure risks of member organizations, group members, and their affiliates.

(8) "Controlled insurer" means a licensed insurer that is either directly or indirectly controlled by a broker.

(9) "Controlling broker" means a broker who either directly or indirectly controls an insurer.

(10) "Controlling person" means any person, firm, association, or corporation that directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of a reinsurance intermediary.

(11) "Insurer" is as defined in Section 31A-1-301, except the following persons or similar persons are not insurers for purposes of Part 6, Broker Controlled Insurers:

(a) all risk retention groups as defined in:

(i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;

(ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and

(iii) Title 31A, Chapter 15, Part II, Risk Retention Groups Act;

(b) all residual market pools and joint underwriting authorities or associations; and

(c) all captive insurers.

(12) (a) "Managing general agent" means any person, firm, association, or corporation that:

(i) manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office;

(ii) acts as an agent for the insurer whether it is known as a managing general agent, manager, or other similar term;

(iii) with or without the authority, either separately or together with affiliates, directly or indirectly produces and underwrites an amount of gross direct written premium equal to, or more than 5% of, the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year; and

(iv) either adjusts or pays claims in excess of an amount determined by the commissioner, or that negotiates reinsurance on behalf of the insurer.

(b) Notwithstanding Subsection (12)(a), the following persons may not be considered as managing general agent for the purposes of this chapter:

(i) an employee of the insurer;

(ii) a U.S. manager of the United States branch of an alien insurer;

(iii) an underwriting manager that, pursuant to contract:

(A) manages all the insurance operations of the insurer;

(B) is under common control with the insurer;

(C) is subject to Title 31A, Chapter 16, Insurance Holding Companies; and

(D) is not compensated based on the volume of premiums written; and

(iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney.

(13) "Producer" is a person who arranges for insurance coverages between insureds and

insurers.

(14) "Qualified U.S. financial institution" means an institution that:

(a) is organized or, in the case of a U.S. office of a foreign banking organization licensed, under the laws of the United States or any state;

(b) is regulated, supervised, and examined by U.S. federal or state authorities having regulatory authority over banks and trust companies; and

(c) has been determined by either the commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet the standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(15) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in Subsections (16) and (17).

(16) "Reinsurance intermediary-broker" means a person other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

(17) (a) "Reinsurance intermediary-manager" means a person, firm, association, or corporation who:

(i) has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office; and

(ii) acts as an agent for the reinsurer whether the person, firm, association, or corporation is known as a reinsurance intermediary-manager, manager, or other similar term.

(b) Notwithstanding Subsection (17)(a), the following persons may not be considered reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:

(i) an employee of the reinsurer;

(ii) a U.S. manager of the United States branch of an alien reinsurer;

(iii) an underwriting manager that, pursuant to contract:

(A) manages all the reinsurance operations of the reinsurer;

(B) is under common control with the reinsurer;

(C) is subject to Title 31A, Chapter 16, Insurance Holding Companies; and

(D) is not compensated based on the volume of premiums written; and

(iv) the manager of a group, association, pool, or organization of insurers that:

(A) engage in joint underwriting or joint reinsurance; and

(B) are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

(18) "Reinsurer" means any person, firm, association, or corporation duly licensed in this state as an insurer with the authority to assume reinsurance.

(19) "Surplus lines broker" means a person licensed under Subsection 31A-23-204(5) to place insurance with unauthorized insurers in accordance with Section 31A-15-103.

(20) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

Section 54. Section **31A-29-103** is amended to read:

31A-29-103. Definitions.

As used in this chapter:

(1) "Board" means the board of directors of the pool created in Section 31A-29-104.

(2) "Health care facility" means any entity providing health care services which is licensed under Title 26, Chapter 21.

(3) "Health care provider" has the same meaning as provided in Section 78-14-3.

(4) "Health care services" means any service or product used in furnishing to any individual medical care or hospitalization, or incidental to furnishing medical care or hospitalization, and any other service or product furnished for the purpose of preventing, alleviating, curing, or healing human illness or injury.

(5) (a) "Health insurance" means any:

(i) hospital and medical expense-incurred policy;

(ii) nonprofit health care service plan contract; and

(iii) health maintenance organization subscriber contract.

(b) "Health insurance" does not include any insurance arising out of the Workers'

Compensation Act or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and which is required by law to be contained in any liability insurance policy[~~;~~].

(6) "Health maintenance organization" has the same meaning as provided in Section 31A-8-101.

(7) "Health plan" means any arrangement by which a person, including a dependent or spouse, covered or making application to be covered under the pool has access to hospital and medical benefits or reimbursement including group or individual insurance or subscriber contract; coverage through a health maintenance organization, preferred provider prepayment, group practice, or individual practice plan; coverage under an uninsured arrangement of group or group-type contracts including employer self-insured, cost-plus, or other benefits methodologies not involving insurance; coverage under a group type contract which is not available to the general public and can be obtained only because of connection with a particular organization or group; and coverage by medicare or other governmental benefit. The term includes coverage through health insurance.

(8) "Insured" means an individual resident of this state who is eligible to receive benefits from any insurer, health maintenance organization, or other health plan.

(9) "Insurer" means an insurance company authorized to transact disability insurance business in this state, health maintenance organization, and a self-insurer not subject to federal preemption.

(10) "Medicaid" means coverage under Title XIX of the Social Security Act, 42 U.S.C. Sec. 1396 et seq., as amended.

(11) "Medicare" means coverage under both Part A and B of Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq., as amended.

(12) "Plan of operation" means the plan developed by the board in accordance with Section 31A-29-105 and includes the articles, bylaws, and operating rules adopted by the board under Section 31A-29-106.

(13) "Pool" means the Utah Comprehensive Health Insurance Pool created in Section 31A-29-104.

(14) "Pool Fund" means the Comprehensive Health Insurance Pool Enterprise Fund created in Section 31A-29-120.

(15) "Pool policy" means an insurance policy issued under this chapter.

(16) "Third-party administrator" has the same meaning as provided in Section 31A-1-301.

Section 55. Section **31A-35-608** is amended to read:

31A-35-608. Premiums and authorized charges.

(1) A bail bond surety or bail bond agent may not, in any bail transaction or in connection with that transaction, directly or indirectly, charge or collect money or other valuable consideration from any person except to:

(a) pay the premium on the bail at the rates established by the bail bond surety;

(b) provide collateral;

(c) reimburse himself for actual expenses, as described in Subsection (2), incurred in connection with the bail bond transaction; or

(d) to reimburse himself, or to establish a right of action against the principal or any indemnitor, for actual expenses the bail bond surety or bail bond agent incurred:

(i) in good faith; and

(ii) which were by reason of breach by the defendant of any of the terms of the written agreement under which the undertaking of bail or bail bond was written.

(2) (a) A bail bond surety may bring an action in a court of law to enforce its equitable rights against the principal and the principal's indemnitors in exoneration if:

(i) a bail bond agent did not establish a written agreement; or

(ii) there is only an incomplete writing.

(b) Reimbursement claimed under this Subsection (2) may not exceed the sum of:

(i) the principal sum of the bail bond or undertaking; and

(ii) any reasonable expenses that:

(A) are verified by receipt;

(B) in total do not amount to more than the principal sum of the bail bond or undertaking; and

(C) are incurred in good faith by the bail bond surety, its agents, and employees by reason of the principal's breach.

(3) This section does not affect or impede the right of a bail bond agent to execute undertaking of bail on behalf of a nonresident agent of the bail bond surety the bail bond agent represents.

Section 56. Section **34A-1-309** is amended to read:

34A-1-309. Attorneys' fees.

(1) In all cases coming before the commission in which attorneys have been employed, the commission is vested with full power to regulate and fix the fees of the attorneys.

(2) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, an attorney may file an application for hearing with the Division of Adjudication to appeal a decision or final order to the extent it concerns the award of attorney fees.

(3) (a) The commission may award reasonable attorneys' fees on a contingency basis when disability or death benefits or interest on disability or death benefits are generated.

(b) Attorney fees awarded under Subsection [~~(2)~~] (3)(a) shall be paid by the employer or its insurance carrier out of the award of disability or death benefits, or interest on disability or death benefits.

(4) (a) If the commission orders that only medical benefits be paid, the commission may award reasonable attorneys' fee on a contingency basis for medical benefits ordered paid if:

(i) the commission's informal dispute resolution mechanisms were fully used by the parties prior to adjudication; and

(ii) at no time were disability or death benefits or interest on disability or death benefits at issue in the adjudication of the medical benefit claim.

(b) Attorneys' fees awarded under Subsection (3)(a) shall be paid by the employer or its insurance carrier in addition to the payment of medical benefits ordered.

Section 57. Section **34A-2-105** is amended to read:

34A-2-105. Exclusive remedy against employer, and officer, agent, or employee of employer – Employee leasing arrangements.

(1) The right to recover compensation pursuant to this chapter for injuries sustained by an employee, whether resulting in death or not, shall be the exclusive remedy against the employer and shall be the exclusive remedy against any officer, agent, or employee of the employer and the liabilities of the employer imposed by this chapter shall be in place of any and all other civil liability whatsoever, at common law or otherwise, to the employee or to the employee's spouse, widow, children, parents, dependents, next of kin, heirs, personal representatives, guardian, or any other person whomsoever, on account of any accident or injury or death, in any way contracted, sustained, aggravated, or incurred by the employee in the course of or because of or arising out of the employee's employment, and no action at law may be maintained against an employer or against any officer, agent, or employee of the employer based upon any accident, injury, or death of an employee. Nothing in this section, however, shall prevent an employee, or the employee's dependents, from filing a claim for compensation in those cases in accordance with Chapter 3, Utah Occupational Disease Act.

(2) The exclusive remedy provisions of this section apply to both the client company and the employee leasing company in an employee leasing arrangement under Title 58, Chapter 59, Professional Employer Organization Licensing Act.

(3) (a) For purposes of this section:

(i) "Temporary employee" means an individual who for temporary work assignment is:

(A) an employee of a temporary staffing company; or

(B) registered by or otherwise associated with a temporary staffing company.

(ii) "Temporary staffing company" means a company that engages in the assignment of individuals as temporary full-time or part-time employees to fill assignments with a finite ending date to another independent entity.

(b) If the temporary staffing company secures the payment of workers' compensation in accordance with Section [~~35A-3-201~~] 34A-2-201 for all temporary employees of the temporary staffing company, the exclusive remedy provisions of this section apply to both the temporary staffing company and the client company and its employees and provide the temporary staffing company the same protection that a client company and its employees has under this section for the

acts of any of the temporary staffing company's temporary employees on assignment at the client company worksite.

Section 58. Section **35A-3-102** is amended to read:

35A-3-102. Definitions.

As used in this chapter:

(1) "Applicant" means a person who requests assistance under this chapter.

(2) "Average monthly number of families" means the average number of families who received cash assistance on a monthly basis during the previous federal fiscal year, starting from October 1, 1998 to September 30, 1999, and continuing each year thereafter.

(3) "Cash assistance" means a monthly dollar amount of cash a client is eligible to receive under Section 35A-3-302.

(4) "Child care services" means care of a child for a portion of the day that is less than 24 hours in a qualified setting, as defined by rule, by a responsible person who is not the child's parent or legal guardian.

(5) "Date of enrollment" means the date on which the applicant was approved as eligible for cash assistance.

(6) "Director" means the director of the division.

(7) "Diversion" means a single payment of cash assistance under Section 35A-3-303 to a client who is eligible for but does not require extended cash assistance under Part 3, Family Employment Program.

(8) "Division" means the Division of Employment Development.

(9) "Education or training" means:

(a) basic remedial education;

(b) adult education;

(c) high school education;

(d) education to obtain the equivalent of a high school diploma;

(e) education to learn English as a second language;

(f) applied technology training;

(g) employment skills training; or

(h) on-the-job training.

(10) "Full-time education or training" means training on a full-time basis as defined by the educational institution attended by the parent client.

(11) "General assistance" means financial assistance provided to a person who is not otherwise eligible for cash assistance under Part 3, Family Employment Program, because that person does not live in a family with a related dependent child.

(12) "Parent client" means a person who enters into an employment plan with the division to qualify for cash assistance under Part 3, Family Employment Program.

[~~(14)~~] (13) (a) "Passenger vehicle" means a self-propelled, two-axle vehicle intended primarily for operation on highways and used by an applicant or client to meet basic transportation needs and has a fair market value below 40% of the applicable amount of the federal luxury passenger automobile tax established in 26 U.S.C. Sec. 4001 and adjusted annually for inflation.

(b) "Passenger vehicle" does not include:

(i) a commercial vehicle, as defined in Section 41-1a-102;

(ii) an off-highway vehicle, as defined in Section 41-1a-102; or

(iii) a motor home, as defined in Section 13-14-102.

[~~(13)~~] (14) "Plan" or "state plan" means the state plan submitted to the Secretary of the United States Department of Health and Human Services to receive funding from the United States through the Temporary Assistance for Needy Families Block Grant.

(15) "Single minor parent" means a person under 18 years of age who is not married and has a minor child in his care and custody.

Section 59. Section **36-12-8** is amended to read:

36-12-8. Legislative Management Committee -- Research and General Counsel Subcommittee -- Budget Subcommittee -- Audit Subcommittee -- Duties -- Members -- Meetings.

(1) There is created within the Legislative Management Committee three subcommittees having equal representation from each major political party. The subcommittees, their membership,

and their functions are as follows:

(a) The Research and General Counsel Subcommittee, comprising six members, shall recommend to the Legislative Management Committee a person or persons to hold the positions of director of the Office of Legislative Research and General Counsel and legislative general counsel.

(b) The Budget Subcommittee, comprising six members, shall recommend to the Legislative Management Committee a person to hold the position of legislative fiscal analyst.

(c) The Audit Subcommittee, comprising four members, shall:

(i) recommend to the Legislative Management Committee a person to hold the position of legislative auditor general; and

(ii) (A) review all [~~request~~] requests for audits;

(B) prioritize those requests; and

(C) hear all audit reports and refer those reports to other legislative committees for their further review and action as appropriate.

(2) The members of each subcommittee of the Legislative Management Committee shall be appointed from the membership of the Legislative Management Committee by an appointments committee comprised of the speaker and the minority leader of the House of Representatives and the president and the minority leader of the Senate.

(3) Each subcommittee of the Legislative Management Committee shall meet as often as necessary to perform its duties. They may meet during and between legislative sessions.

Section 60. Section **41-22-2 (Effective 04/30/01)** is amended to read:

41-22-2 (Effective 04/30/01). Definitions.

As used in this chapter:

(1) "Advisory council" means the Off-highway Vehicle Advisory Council appointed by the Board of Parks and Recreation.

(2) "All-terrain type I vehicle" means any motor vehicle 50 inches or less in width, having an unladen dry weight of 800 pounds or less, traveling on three or more low pressure tires, having a seat designed to be straddled by the operator, and designed for or capable of travel over unimproved terrain.

(3) "All-terrain type II vehicle" means any other motor vehicle, not defined in Subsection (2), (9), or [~~(19)~~] (20), designed for or capable of travel over unimproved terrain. This term does not include golf carts, any vehicle designed to carry a disabled person, any vehicle not specifically designed for recreational use, or farm tractors as defined under Section 41-1a-102.

(4) "Board" means the Board of Parks and Recreation.

(5) "Dealer" means a person engaged in the business of selling off-highway vehicles at wholesale or retail.

(6) "Division" means the Division of Parks and Recreation.

(7) "Low pressure tire" means any pneumatic tire six inches or more in width designed for use on wheels with rim diameter of 12 inches or less and utilizing an operating pressure of ten pounds per square inch or less as recommended by the vehicle manufacturer.

(8) "Manufacturer" means a person engaged in the business of manufacturing off-highway vehicles.

(9) "Motorcycle" means every motor vehicle having a saddle for the use of the operator and designed to travel on not more than two tires.

(10) "Motor vehicle" means every vehicle which is self-propelled.

(11) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motorcycle.

(12) "Off-highway implement of husbandry" means every all-terrain type I vehicle, motorcycle, or snowmobile which is used by the owner or his agent for agricultural operations.

(13) "Operate" means to control the movement of or otherwise use an off-highway vehicle.

(14) "Operator" means the person who is in actual physical control of an off-highway vehicle.

(15) "Organized user group" means an off-highway vehicle organization incorporated as a nonprofit corporation in the state under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, for the purpose of promoting the interests of off-highway vehicle recreation.

(16) "Owner" means a person, other than a person with a security interest, having a property interest or title to an off-highway vehicle and entitled to the use and possession of that vehicle.

(17) "Public land" means land owned or administered by any federal or state agency or any political subdivision of the state.

(18) "Register" means the act of assigning a registration number to an off-highway vehicle.

(19) "Roadway" is used as defined in Section 41-6-1.

(20) "Snowmobile" means any motor vehicle designed for travel on snow or ice and steered and supported in whole or in part by skis, belts, cleats, runners, or low pressure tires.

(21) "Street or highway" means the entire width between boundary lines of every way or place of whatever nature, when any part of it is open to the use of the public for vehicular travel.

Section 61. Section **41-22-2 (Superseded 04/30/01)** is amended to read:

41-22-2 (Superseded 04/30/01). Definitions.

As used in this chapter:

(1) "Advisory council" means the Off-highway Vehicle Advisory Council appointed by the Board of Parks and Recreation.

(2) "All-terrain type I vehicle" means any motor vehicle 50 inches or less in width, having an unladen dry weight of 800 pounds or less, traveling on three or more low pressure tires, having a seat designed to be straddled by the operator, and designed for or capable of travel over unimproved terrain.

(3) "All-terrain type II vehicle" means any other motor vehicle, not defined in Subsection (2), (9), or [~~(19)~~] (20), designed for or capable of travel over unimproved terrain. This term does not include golf carts, any vehicle designed to carry a disabled person, any vehicle not specifically designed for recreational use, or farm tractors as defined under Section 41-1a-102.

(4) "Board" means the Board of Parks and Recreation.

(5) "Dealer" means a person engaged in the business of selling off-highway vehicles at wholesale or retail.

(6) "Division" means the Division of Parks and Recreation.

(7) "Low pressure tire" means any pneumatic tire six inches or more in width designed for use on wheels with rim diameter of 12 inches or less and utilizing an operating pressure of ten pounds per square inch or less as recommended by the vehicle manufacturer.

(8) "Manufacturer" means a person engaged in the business of manufacturing off-highway vehicles.

(9) "Motorcycle" means every motor vehicle having a saddle for the use of the operator and designed to travel on not more than two tires.

(10) "Motor vehicle" means every vehicle which is self-propelled.

(11) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motorcycle.

(12) "Off-highway implement of husbandry" means every all-terrain type I vehicle, motorcycle, or snowmobile which is used by the owner or his agent for agricultural operations.

(13) "Operate" means to control the movement of or otherwise use an off-highway vehicle.

(14) "Operator" means the person who is in actual physical control of an off-highway vehicle.

(15) "Organized user group" means an off-highway vehicle organization incorporated as a nonprofit corporation in the state under Title 16, Chapter 6, Utah Nonprofit Corporation and Co-operative Association Act, for the purpose of promoting the interests of off-highway vehicle recreation.

(16) "Owner" means a person, other than a person with a security interest, having a property interest or title to an off-highway vehicle and entitled to the use and possession of that vehicle.

(17) "Public land" means land owned or administered by any federal or state agency or any political subdivision of the state.

(18) "Register" means the act of assigning a registration number to an off-highway vehicle.

(19) "Roadway" is used as defined in Section 41-6-1.

(20) "Snowmobile" means any motor vehicle designed for travel on snow or ice and steered and supported in whole or in part by skis, belts, cleats, runners, or low pressure tires.

(21) "Street or highway" means the entire width between boundary lines of every way or place of whatever nature, when any part of it is open to the use of the public for vehicular travel.

Section 62. Section **46-4-105** is amended to read:

46-4-105. Use of electronic records and electronic signatures -- Variation by

agreement.

(1) This chapter does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(2) (a) This chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means.

(b) Whether or not the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(3) (a) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means.

(b) The right granted by [~~this~~] Subsection (3)(a) may not be waived by agreement.

(4) (a) Except as otherwise provided in this chapter, the effect of any of its provisions may be varied by agreement.

(b) The presence in certain provisions of this chapter of the words "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(5) Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable law.

Section 63. Section **52-4-7.8** is amended to read:

52-4-7.8. Electronic meetings -- Authorization -- Requirements.

(1) As used in this section:

(a) "Anchor location" means the physical location from which the electronic meeting originates or from which the participants are connected.

(b) "Electronic meeting" means a public meeting convened or conducted by means of a telephonic, telecommunications, or computer conference.

(c) "Electronic notice" means electronic mail or fax.

(d) "Monitor" means to:

(i) hear, live, by speaker, or by other equipment, all of the public statements of each member

of the public body who is participating in a meeting; or

(ii) see, by computer screen or other visual medium, all of the public statements of each member of the public body who is participating in a meeting.

(e) "Participate" means the ability to communicate with all of the members of a public body, either verbally or electronically, so that each member of the public body can hear or see the communication.

(f) "Public hearing" means a meeting at which comments from the public will be accepted.

(g) "Public statement" means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.

(2) A public body may, by following the procedures and requirements of this section, convene and conduct an electronic meeting.

(3) Each public body convening or conducting an electronic meeting shall:

(a) give public notice of the meeting pursuant to Section 52-4-6 by:

(i) posting written notice at the anchor location; and

(ii) providing written or electronic notice to:

(A) at least one newspaper of general circulation within the state; and

(B) to a local media correspondent;

(b) in addition to giving public notice required by Subsection [~~(1)~~] (3)(a), provide:

(i) notice of the electronic meeting to the members of the public body at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present; and

(ii) a description of how the members will be connected to the electronic meeting;

(c) establish written procedures governing the electronic meeting at which one or more members of a public body are participating by means of a telephonic or telecommunications conference;

(d) establish one or more anchor locations for the public meeting, at least one of which is in the building and city where the public body would normally meet if they were not holding an electronic meeting;

(e) provide space and facilities at the anchor location so that interested persons and the public may attend and monitor the open portions of the meeting; and

(f) if the meeting is a public hearing, provide space and facilities at the anchor location so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(4) Compliance with the provisions of this section by a public body constitutes full and complete compliance by the public body with the corresponding provisions of Sections 52-4-3 and 52-4-6.

Section 64. Section **53A-2-206** is amended to read:

53A-2-206. Exchange and interstate compact students -- Inclusion in attendance count -- Annual report -- Requirements for exchange student agencies.

(1) A school district may include membership and attendance of students for the purpose of apportionment of state monies if:

(a) the student is an exchange student sponsored by an agency approved by the State Board of Education, and the enrollment is in compliance with rules and enrollment limits set by the state board; or

(b) the student is enrolled under an interstate compact, established between the State Board of Education and the state education authority of another state, under which a student from one compact state would be permitted to enroll in a public school in the other compact state on the same basis as a resident student of the receiving state; or

(c) the student is receiving services under the Compact on Placement of Children.

(2) The board shall make an annual report to the Legislature on the number of exchange students and the number of interstate compact students sent to or received from public schools outside the state.

(3) (a) The board shall require each approved exchange student agency to provide it with a sworn affidavit of compliance prior to the beginning of each school year.

(b) The affidavit shall include the following assurances:

(i) that the agency has complied with all applicable rules of the board;

(ii) that a household study, including a background check of all adult residents, has been made of each household where an exchange student is to reside, and that the study was of sufficient scope to provide reasonable assurance that the exchange student will receive proper care and supervision in a safe environment;

(iii) that host parents have received training appropriate to their positions, including information about enhanced criminal penalties under Subsection 76-5-406(10) for persons who are in a position of special trust;

(iv) that a representative of the exchange student agency shall visit each student's place of residence at least once each month during the student's stay in Utah;

(v) that the agency will cooperate with school and other public authorities to ensure that no exchange student becomes an unreasonable burden upon the public schools or other public agencies;

(vi) that each exchange student will be given in [~~their~~] the exchange student's native language names and telephone numbers of agency representatives and others who could be called at any time if a serious problem occurs; and

(vii) that alternate placements are readily available so that no student is required to remain in a household if conditions appear to exist which unreasonably endanger the student's welfare.

(4) (a) The board shall provide each approved exchange student agency with a list of names and telephone numbers of individuals not associated with the agency who could be called by an exchange student in the event of a serious problem.

(b) The agency shall make a copy of the list available to each of its exchange students in [~~their~~] the exchange student's native language.

Section 65. Section **53A-15-305** is amended to read:

53A-15-305. Resolution of disputes in special education -- Hearing request -- Timelines -- Levels -- Appeal process -- Recovery of costs.

(1) The Legislature finds that it is in the best interest of students with disabilities to provide for a prompt and fair final resolution of disputes which may arise over educational programs and rights and responsibilities of students with disabilities, their parents, and the public schools.

(2) Therefore, the State Board of Education shall adopt rules meeting the requirements of

20 U.S.C. Section 1415 governing the establishment and maintenance of procedural safeguards for students with disabilities and their parents or guardians as to the provision of free, appropriate public education to those students.

(3) The timelines established by the board shall provide adequate time to address and resolve disputes without unnecessarily disrupting or delaying the provision of free, appropriate public education for students with disabilities.

(4) Prior to seeking a hearing or other formal proceedings, the parties to a dispute under this section shall make a good faith effort to resolve the dispute informally at the school building level.

(5) (a) If the dispute is not resolved under Subsection (4), a party may request a due process hearing.

(b) The hearing shall be conducted under rules adopted by the board in accordance with 20 U.S.C. Section 1415.

(6) (a) A party to the hearing may appeal the decision issued under Subsection (5) to a court of competent jurisdiction under 20 U.S.C. Section 1415[~~(e)~~](i).

(b) The party must file the judicial appeal within 30 days after issuance of the due process hearing decision.

(7) If the parties fail to reach agreement on payment of attorney fees, then a party seeking recovery of attorney fees under 20 U.S.C. Section 1415[~~(e)~~](i) for a special education administrative action shall file a court action within 30 days after issuance of a decision under Subsection (5).

Section 66. Section **53A-18-101** is amended to read:

53A-18-101. School district tax anticipation notes.

(1) A local school board may borrow money in anticipation of the collection of taxes or other revenue of the school district so long as it complies with [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act.

(2) The board may incur indebtedness under this section for any purpose for which district funds may be expended, but not in excess of the estimated district revenues for the current school year.

(3) Revenues include all revenues of the district from the state or any other source.

(4) The district may incur the indebtedness prior to imposing or collecting the taxes or receiving the revenues. The indebtedness bears interest at the lowest obtainable rate or rates.

Section 67. Section **53A-18-102** is amended to read:

53A-18-102. Additional indebtedness -- Election.

A local school board may require the qualified electors of the district to vote on a proposition as to whether to incur indebtedness, subject to conditions provided in [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act, under the following circumstances:

(1) if the debts of the district are equal to school taxes and other estimated revenues for the school year, and it is necessary to create and incur additional indebtedness in order to maintain and support schools within the district; or

(2) the local school board determines it advisable to issue school district bonds to purchase school sites, buildings, or furnishings or to improve existing school property.

Section 68. Section **53A-28-302** is amended to read:

53A-28-302. State financial assistance intercept mechanism -- State treasurer duties -- Interest and penalty provisions.

(1) (a) If one or more payments on bonds are made by the state treasurer as provided in Section 53A-28-301, the state treasurer shall:

(i) immediately intercept any payments from the Uniform School Fund or from any other source of operating monies provided by the state to the board that issued the bonds that would otherwise be paid to the board by the state; and

(ii) apply the intercepted payments to reimburse the state for payments made pursuant to the state's guaranty until all obligations of the board to the state arising from those payments, including interest and penalties, are paid in full.

(b) The state has no obligation to the board or to any person or entity to replace any monies intercepted under authority of Subsection (1).

(2) The board that issued bonds for which the state has made all or part of a debt service payment shall:

(a) reimburse all monies drawn by the state treasurer on its behalf;

(b) pay interest to the state on all monies paid by the state from the date the monies were drawn to the date they are repaid at a rate not less than the average prime rate for national money center banks plus 1%; and

(c) pay all penalties required by this chapter.

(3) (a) The state treasurer shall establish the reimbursement interest rate after considering the circumstances of any prior draws by the board on the state, market interest and penalty rates, and the cost of funds, if any, that were required to be borrowed by the state to make payment on the bonds.

(b) The state treasurer may, after considering the circumstances giving rise to the failure of the board to make payment on its bonds in a timely manner, impose on the board a penalty of not more than 5% of the amount paid by the state pursuant to its guaranty for each instance in which a payment by the state is made.

(4) (a) (i) If the state treasurer determines that amounts obtained under this section will not reimburse the state in full within one year from the state's payment of a board's scheduled debt service payment, the state treasurer shall pursue any legal action, including mandamus, against the board to compel it to:

(A) levy and provide property tax revenues to pay debt service on its bonds when due as required by [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act; and

(B) meet its repayment obligations to the state.

(ii) In pursuing its rights under Subsection (4)(a), the state shall have the same substantive and procedural rights under Title 11, Chapter 14, Utah Municipal Bond Act, as would a holder of the bonds of a board.

(b) The attorney general shall assist the state treasurer in these duties.

(c) The board shall pay the attorney's fees, expenses, and costs of the state treasurer and the attorney general.

(5) (a) Except as provided in Subsection (5)(c), any board whose operating funds were intercepted under this section may replace those funds from other board monies or from ad valorem property taxes, subject to the limitations provided in this subsection.

(b) A board may use ad valorem property taxes or other monies to replace intercepted funds only if the ad valorem property taxes or other monies were derived from:

(i) taxes originally levied to make the payment but which were not timely received by the board;

(ii) taxes from a special levy made to make the missed payment or to replace the intercepted monies;

(iii) monies transferred from the capital outlay fund of the board or the undistributed reserve, if any, of the board; or

(iv) any other source of money on hand and legally available.

(c) Notwithstanding the provisions of Subsections (5)(a) and (b), a board may not replace operating funds intercepted by the state with monies collected and held to make payments on bonds if that replacement would divert monies from the payment of future debt service on the bonds and increase the risk that the state's guaranty would be called upon a second time.

Section 69. Section **54-4-28** is amended to read:

54-4-28. Merger, consolidation, or combination.

No public utility shall combine, merge nor consolidate with another public utility engaged in the same general line of business in this state, without the consent and approval of the Public [~~Utilities~~] Service Commission, which shall be granted only after investigation and hearing and finding that such proposed merger, consolidation or combination is in the public interest.

Section 70. Section **54-4-29** is amended to read:

54-4-29. Acquiring voting stock or securities of like utility only on consent of commission.

Hereafter no public utility shall purchase or acquire any of the voting securities or the secured obligations of any other public utility engaged in the same general line of business without the consent and approval of the Public [~~Utilities~~] Service Commission, which shall be granted only after investigation and hearing and finding that such purchase and acquisition of such securities, or obligations, will be in the public interest.

Section 71. Section **54-4-30** is amended to read:

54-4-30. Acquiring properties of like utility only on consent of commission.

Hereafter no public utility shall acquire by lease, purchase or otherwise the plants, facilities, equipment or properties of any other public utility engaged in the same general line of business in this state, without the consent and approval of the Public [~~Utilities~~] Service Commission. Such consent shall be given only after investigation and hearing and finding that said purchase, lease or acquisition of said plants, equipment, facilities and properties will be in the public interest.

Section 72. Section **54-9-5** is amended to read:

54-9-5. Funding -- Power sales contracts -- Fee in lieu of ad valorem property taxes -- Bond issues -- Outlay declared for public purpose.

(1) A city or town participating in common facilities under authority contained in this chapter may furnish money and provide property, both real and personal, and, in addition to any other authority now existing, may issue and sell, either at public or privately negotiated sale, general obligation bonds or revenue bonds, pledging either the revenues of its entire electric system or only its interest or share of the revenues derived from the common facilities in order to pay its respective share of the costs of the planning, financing, acquisition, and construction.

(2) Capacity or output derived by a city or town from its ownership share of common facilities not then required by the city or town for its own use and for the use of its customers may be sold or exchanged by the city or town for a consideration, for a period, and upon other terms and conditions as may be determined by the parties prior to the sale and as embodied in a power sales contract entered into by the city or town; and any revenues arising under the power sales contract may be pledged by the city or town to the payment of revenue bonds issued to pay its respective share of the costs of the common facilities. Each power sales contract entered into by a city or town with a consumer which is not exempt by Article XIII, Sec. 2, Utah Constitution, for the sale or exchange to the consumer of capacity or output derived by the city or town from its ownership share of common facilities shall contain a provision for payment of an annual fee to the city or town by the consumer in lieu of ad valorem property taxes based upon the taxable value of the percentage of the ownership share of the city or town in the common facilities which is used to produce the capacity or output that is sold or exchanged by the city or town to or with consumer, which fee in

lieu of ad valorem property taxes shall be paid over by the city or town to the county treasurer for distribution as per distribution of other ad valorem tax revenues.

(3) Any city or town acquiring or owning an undivided interest in common facilities may contract with a county or counties to pay, solely from the revenues derived from the interest of the city or town in the common facilities, to the county or counties in which the common facilities are located, an annual fee in lieu of ad valorem property taxes based upon the taxable value of the percentage of the ownership share of the city or town in the common facilities, which fee in lieu of ad valorem property taxes shall be paid over by the city or town to the county treasurer of the county or counties in which the common facilities are located for distribution as per distribution of other ad valorem tax revenues. Bonds shall be issued under the applicable provisions of [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act, and of Title 55, Chapter 3, Public Works Program, authorizing the issuance of bonds for the acquisition and construction of electric public utility properties by cities or towns.

(4) All moneys paid or property supplied by any city or town for the purpose of carrying out powers conferred by this chapter are declared to be for a public purpose; but before a city or cities, town or towns, or power utility undertakes the construction of transmission facilities in which it or they have a common ownership interest, the city or cities, town or towns, or power utility shall, if the construction results in a duplication, in whole or part, of existing transmission in purpose or function, before construction endeavor to attain the equivalent capacity for a comparable term and comparable cost by purchase or contract with the duplicated facility. If the contract cannot be executed within six months from the date the city or cities, town or towns, or power utility request to contract with the owner of the duplicated facility, then the city or cities, town or towns, or power utility may proceed to construct the proposed transmission facilities notwithstanding the duplication.

Section 73. Section **54-13-1** is amended to read:

54-13-1. Definitions.

As used in this chapter, "intrastate pipeline transportation" and "pipeline facilities" have the definitions set forth in the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. Section [~~1671 et seq~~] 60101.

Section 74. Section **55-3-2.5** is amended to read:

55-3-2.5. Bond issues governed by Municipal Bond Act.

Any county, city, or incorporated town may issue bonds under [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act, for the purpose of acquiring, through purchase, construction, or any combination of them, improving, enlarging, extending, or repairing any project or utility authorized in Section 55-3-1, or any combination of these projects and utilities. It is the purpose and intent of the Legislature that the procedures for the issuance of bonds and other matters relating to bonds issued for the purposes provided in Title 55, Chapter 3, Public Works Program, shall be hereafter governed by the provisions of [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act.

Section 75. Section **55-5-6** is amended to read:

55-5-6. Definitions.

As used in this chapter:

(1) "Food service" includes restaurant, cafeteria, snack bar, vending machines for food and beverages, and goods and services customarily offered in connection with them.

(2) (a) "Public office building" means all county courthouses, all city or town halls, and all buildings used primarily for governmental offices of the state or any county, city, or town.

(b) "Public office building" does not include capitol hill facilities as defined in Section [~~63A-7-102~~] 63C-9-102, public schools, state colleges, or state universities.

Section 76. Section **57-1-5** is amended to read:

57-1-5. Creation of joint tenancy presumed -- Tenancy in common.

(1) (a) Beginning on May 5, 1997, every ownership interest in real estate granted to two persons in their own right who are designated as husband and wife in the granting documents is presumed to be a joint tenancy interest with rights of survivorship, unless severed, converted, or expressly declared in the grant to be otherwise.

(b) Every ownership interest in real estate which does not qualify for the joint tenancy presumption as provided in this Subsection (1)(a)[~~,~~] is presumed to be a tenancy in common interest unless expressly declared in the grant to be otherwise.

(2) (a) Use of words "joint tenancy" or "with rights of survivorship" or "and to the survivor

of them" or words of similar import means a joint tenancy.

(b) Use of words "tenancy in common" or "with no rights of survivorship" or "undivided interest" or words of similar import shall declare a tenancy in common.

(3) A sole owner of real property shall create a joint tenancy in himself and another or others:

(a) by making a transfer to himself and another or others as joint tenants by use of the words as provided in Subsection (2)(a); or

(b) by conveying to another person or persons an interest in land in which an interest is retained by the grantor and by declaring the creation of a joint tenancy by use of the words as provided in Subsection (2)(a).

(4) In all cases, the interest of joint tenants shall be equal and undivided.

(5) A "joint tenancy" is converted into a "tenancy in common" by a joint tenant by making a bona fide conveyance of the joint tenant's interest in the property to himself and another which terminates the joint tenancy.

(6) This act has no retrospective operation and shall govern instruments executed and recorded on or after May 5, 1997.

Section 77. Section **59-1-503** is amended to read:

59-1-503. Assessment and payment of deficiency.

(1) Following a redetermination of a deficiency by the commission, the entire amount redetermined as the deficiency by the decision of the commission, which has become final, shall be assessed and shall be paid within 30 days from the date the notice and demand is sent from the commission.

(2) If the taxpayer does not file a petition with the commission within the time prescribed for filing the petition, the deficiency, notice of which has been sent to the taxpayer, shall be assessed, and shall be paid within 30 days from the date the notice and demand is sent from the commission.

Section 78. Section **59-1-703** is amended to read:

59-1-703. Collection procedure -- Review -- Bond for stay -- Sale of seized property.

(1) If any liability which is due and payable under Sections 59-1-701 and 59-1-702 is not paid, the collection shall be made in the same manner as is provided for the collection of delinquent

taxes in Sections 59-7-526 and 59-7-527. In addition, the commission may issue a warrant of like terms, force, and effect directed to any legally authorized representative of the commission. In the execution of the warrant the authorized representative shall have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

(2) The appropriateness of any termination or jeopardy assessment shall be reviewable under the procedures prescribed by the commission by rule. The amount of any termination or jeopardy assessment is reviewable only in the manner prescribed in Title 59, Chapter 1, Parts 5 and 6.

(3) In any proceeding brought to enforce payment of any liability made due and payable by virtue of this section or Section 59-1-701 or 59-1-702, the finding of the commission, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

(4) After a petition has been filed with the commission and when the amount which the commission has determined to be assessable has become final, any unpaid portion which has been stayed by bond[~~,~~] shall be collected as part of the tax upon notice and demand from the commission, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount which should have been assessed, the excess shall be credited or refunded to the taxpayer without the filing of claim. If the amount the commission has determined to be assessable is greater than the amount actually assessed, the difference shall be assessed, and collected as part of the tax, upon notice and demand by the commission.

(5) The commission may abate the jeopardy assessment if it finds that jeopardy does not exist. The abatement may not be made after a decision of the commission in respect of the deficiency has been rendered or, if no petition is filed with the commission, after the expiration of the period for filing petition. The period of limitation on making assessments and levies or a proceeding for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made. The running of the period of limitation shall be suspended from the date of such jeopardy assessments until the expiration of the 10th day after the assessment is abated.

(6) The collection of all or any part of any jeopardy assessment may be stayed by filing with

the commission a bond in the amount and under conditions established by the commission. The taxpayer has the right to waive the stay at any time in respect of all or part of the amount covered by the bond. If, as a result of the waiver, any part of the amount covered by the bond is paid, then the bond shall, at the request of the taxpayer, be proportionately reduced. If any portion of the jeopardy assessment is abated, or if a notice of deficiency is mailed to the taxpayer in a lesser amount, the bond shall, at the request of the taxpayer, be proportionately reduced.

(7) If a bond is given before the taxpayer has filed his petition pursuant to Chapter 1, Part 5, the bond shall contain a condition that the amount of the deficiency assessment, the collection of which is stayed by the bond, will be paid on notice and demand at any time after the expiration of such period, together with interest thereon from the date of the jeopardy notice and demand until the date of notice and demand under this subsection. The bond shall be conditioned upon the payment of that part of the assessment (collection of which is stayed by the bond) which is not abated by a decision of the commission and has become final. If the commission determines that the amount assessed is greater than the amount which should have been assessed, then the bond shall, at the request of the taxpayer, be proportionately reduced when the decision of the commission is rendered.

(8) When a jeopardy assessment is made, the property seized for the collection of the tax may not be sold until a notice of deficiency is issued and the time for filing a petition for redetermination has expired. If a petition for redetermination is filed (whether before or after the making of the jeopardy assessment) the property may not be sold until the commission's decision on the petition becomes final unless the taxpayer consents to the sale, the commission determines that the expenses of conservation and maintenance would greatly reduce the net proceeds, or the property is perishable.

Section 79. Section **59-1-704** is amended to read:

59-1-704. Restraint of collection restricted.

(1) Except as otherwise provided in Parts 5, 6, and 7 of Chapter 1 and Chapters 2, 6, 7, 10, and 12 and the rules promulgated thereunder, no suit for the purpose of restraining the assessment or collection of any tax, penalty, or interest imposed under Chapter 1, 2, 6, 7, 10, or 12 may be maintained in any court by any person, whether or not such person is the person against whom such

tax was assessed.

(2) No suit may be maintained in any court for the purpose of restraining the assessment or collection of the amount of the state tax liability[~~,~~] of a transferee or of a fiduciary of property of a taxpayer.

Section 80. Section **59-1-1005** is amended to read:

59-1-1005. Suits against commission and its employees.

(1) A taxpayer may bring a civil suit against the commission for recovery of actual damages and costs incurred by the taxpayer if:

(a) the commission or one of its employees intentionally or recklessly takes possession of a taxpayer's property in disregard [~~to~~] of its published procedures, laws, or rules; or

(b) otherwise intentionally or recklessly disregards published procedures, laws, or rules.

(2) An award of actual damages and court costs in a suit under this section may not exceed $100,000.

(3) If the court finds that the civil action brought by the taxpayer is frivolous, the court may impose a penalty of up to $10,000 against the taxpayer.

Section 81. Section **59-2-507** is amended to read:

59-2-507. Land included as agricultural -- Site of farmhouse excluded -- Taxation of structures and site of farmhouse.

(1) Land under barns, sheds, silos, cribs, greenhouses and like structures, lakes, dams, ponds, streams, and irrigation ditches and like facilities is included in determining the total area of land actively devoted to agricultural use. Land which is under the farmhouse and land used in connection with the farmhouse[~~,~~] is excluded from that determination.

(2) All structures which are located on land in agricultural use, the farmhouse and the land on which the farmhouse is located, and land used in connection with the farmhouse, shall be valued, assessed, and taxed using the same standards, methods, and procedures that apply to other taxable structures and other land in the county.

Section 82. Section **59-2-509** is amended to read:

59-2-509. Change of ownership.

Continuance of valuation, assessment, and taxation under this part depends upon continuance of the land in agricultural use and compliance with the other requirements of this part, and not upon continuance in the same owner of title to the land. Liability [~~to~~] for the rollback tax attaches when a change in use or other withdrawal of the land occurs, but not when a change in ownership of the title takes place, if the new owner both:

(1) continues the land in agricultural use under the conditions prescribed in this part; and

(2) files a new application for valuation, assessment, and taxation as provided in Section 59-2-508.

Section 83. Section **59-2-704** is amended to read:

59-2-704. Assessment studies -- Sharing of data -- Factoring assessment rates -- Corrective action.

(1) Each year, to assist in the evaluation of appraisal performance of taxable real property, the commission shall conduct and publish studies to determine the relationship between the market value shown on the assessment roll and the market value of real property in each county. The studies shall include measurements of uniformity within counties and use statistical methods established by the commission. County assessors may provide sales information to the commission for purposes of the studies. The commission shall make the sales and appraisal information related to the studies available to the assessors upon request.

(2) The commission shall, each year, order each county to adjust or factor its assessment rates using the most current studies so that the assessment rate in each county is in accordance with that prescribed in Section 59-2-103. The adjustment or factoring may include an entire county, geographical areas within a county, and separate classes of properties. Where significant value deviations occur, the commission shall also order corrective action.

(3) If the commission determines that sales data in any county is insufficient to perform the studies required under Subsection (1), the commission may conduct appraisals of property within that county.

(4) If a county fails to implement factoring or corrective action ordered under Subsection (2), the commission shall:

(a) implement the factoring or corrective action; and

(b) charge 100% of the reasonable implementation costs to that county.

(5) If a county disputes the factoring or corrective action ordered under Subsection (2), the matter may be mediated by the Multicounty Appraisal Trust.

(6) The commission may change the factor for any county which, after a hearing before the commission, establishes that the factor should properly be set at a different level for that county. The commission shall establish the method, procedure, and timetable for the hearings authorized under this section, including access to information to ensure a fair hearing. The commission may establish rules to implement this section.

Section 84. Section **59-2-1351.5** is amended to read:

59-2-1351.5. Disposition of property struck off to county.

(1) (a) All property acquired by the county under this part may be disposed of for a price and upon terms determined by the county legislative body.

(b) If property is sold under a contract of sale and title remains in the county, the equity of the purchaser shall be subject to taxation as other taxable property.

(c) The county clerk may execute deeds for all property sold under this subsection in the name of the county and attest the same by seal, vesting in the purchaser all of the title of all taxing entities in the real estate so sold.

(d) (i) Money received from the sale of property under this section shall first be applied to the cost of administering and supervising the property.

(ii) Any remaining money shall be apportioned to state and other taxing entities with an interest in the taxes last levied upon the property in proportion to their respective interests in the taxes.

(iii) The treasurer shall settle with the taxing entities on funds remaining as provided in Section 59-2-1366.

(iv) Money in excess of claims under this subsection shall be paid to the state treasurer and treated as unclaimed property under Title 67, Chapter 4a, Unclaimed Property Act.

(2) (a) The county legislative body may rent or lease any property held in the name of the

county any time after the tax sale for a price and upon terms determined by the governing body.

(b) Lands leased may be sold at the discretion of the county executive, with the approval of the county legislative body, during the term of the lease, but any sale shall be made subject to the lease.

(c) The county executive, with the approval of the county legislative body, may enter into leasehold terms for asphalt, oil, or gas that the county considers to be in the best interest of the county as long as:

(i) the mineral, asphalt, oil, or gas is produced from, or attributable to, the property leased; and

(ii) each lease for oil and gas reserves a royalty of not less than 12-1/2%.

(d) If considered to be in the best interests of the county, the county executive may:

(i) enter into agreements for the pooling or unitizing of acreage with others for unit operations for the production of oil or gas, or both, and for the apportionment of oil or gas royalties, or both, on an acreage or other equitable basis; and

(ii) with the consent of its lessee, change any and all terms of leases issued by it to facilitate the efficient and economic production of oil and gas from the property under its jurisdiction.

(e) All leases for mineral, asphalt, or oil and gas already entered into by county governing bodies are ratified.

(3) (a) Money received as rents from the rental or leasing of property held in the name of the county shall first be applied to the cost of administering and supervising the property.

(b) Any remaining money shall be apportioned to state and other taxing entities with an interest in the taxes last levied upon the property in proportion to their respective interests in the taxes.

(c) The treasurer shall settle with the taxing entities on funds remaining as provided in Section 59-2-1366.

(d) Money in excess of these claims shall be paid to the state treasurer and treated as unclaimed property under Title 67, Chapter 4a, Unclaimed Property Act.

Section 85. Section **59-2-1354** is amended to read:

59-2-1354. Notice of intention to foreclose -- Service of notice.

Before the commencement of any action, 30 [~~days~~] days' written notice of intention to do so shall be given to the owner, if known, by enclosing the notice in an envelope plainly addressed to the owner at the owner's post office address, as shown on the last assessment roll of the county in which the real estate is located, postage prepaid. If the post office address of any owner does not appear on the assessment roll, notice shall be addressed to the owner at the general delivery at the post office in the city, town, or precinct where the real estate is located, postage prepaid. Service of the notice is complete when deposited in the United States mail.

Section 86. Section **59-2-1361** is amended to read:

59-2-1361. Notice of findings -- Proceedings in district court -- Injunction -- Determining taxes due -- Security during proceedings.

(1) (a) Notice that the commission has made a finding and declaration under Section 59-2-1359 shall be given to the owner of the property in the same manner as is provided by law for the giving of the notice of assessment by the commission.

(b) The notice required by this section shall include a notice of the location and time of the hearing in which the findings of the commission may be protested.

(c) (i) The hearing must be scheduled at least ten days after the mailing of the notice.

(ii) The owner, lessee, contractor, or operator of the property shall be afforded the opportunity to protest the commission's findings at the hearing.

(2) After the scheduled hearing, the taxes shall become immediately due and payable if any of the following occur:

(a) the owner, contractor, lessee, or operator of the property fails to appear at the hearing; or

(b) the commission sustains the findings.

(3) If the taxes are not paid within ten days from the date due, the commission may commence a proceeding in court in its name, but for the benefit of the state and the taxing entities interested in the taxes, in the district court of the county in which the property is located to determine the lien of the taxes and to foreclose the lien.

(4) In any proceeding the court may order any of the following:

(a) enjoin and restrain the destruction or removal of the property or any part of the property;

(b) appoint a receiver to operate the property; and

(c) order and direct that the proceeds from the property, or so much of it as may be necessary to pay the amount of the taxes, be withheld and impounded or paid on account of the taxes from time to time as the court may direct.

(5) In determining the amount of taxes due for any year for which the levy has not been fixed and for the purposes of the proceeding in court, the commission shall use the levy prevailing within the taxing entity where the property is located for the last preceding year.

(6) In any court proceeding brought to enforce the payment of taxes made due and payable under this section, the findings of the commission shall be for all purposes presumptive evidence of the necessity for the action for the protection of the public revenues and of the amount of taxes to be paid.

(7) (a) Payment of taxes due under this section will not be enforced through the proceedings authorized by this section prior to the expiration of the time otherwise allowed for payment of taxes if the owner, lessee, contractor, or other person operating the property furnishes security approved by the commission that the person will timely submit all required returns and tax payments.

(b) The commission may, from time to time, require additional security for the payment of taxes.

(8) The commission may promulgate rules to implement this section.

Section 87. Section **59-7-114** is amended to read:

59-7-114. Section 338, Internal Revenue Code -- Elections.

(1) Transactions for which an election has been made or considered to be made for federal purposes under Section 338, Internal Revenue Code, shall be treated as provided in this section. An election is not available for state purposes unless an election is made or considered to be made for federal purposes.

(2) If an election is made or considered to be made for federal purposes under Section 338, Internal Revenue Code, other than under Subsection 338(h)(10):

(a) the target corporation shall file a separate entity one-day tax return for state purposes, as is required for federal purposes, and shall include in such return the gain or loss on the deemed sale of assets in its adjusted income;

(b) the gain or loss on the deemed sale of assets shall be apportioned to this state using the apportionment fraction of the target corporation calculated on a separate entity basis for the most recent preceding taxable year consisting of 180 days or more; and

(c) the due date of the one-day return shall be the same as the due date of the return which includes the taxable period of the target corporation which immediately precedes the one-day return.

(3) If an election is made for federal purposes under Subsection 338(h)(10), Internal Revenue Code, the following shall apply:

(a) if the target corporation is a member of a unitary group immediately preceding the acquisition date, the target corporation shall be included in a combined return to the extent of its income through the acquisition date, and the gain or loss on the deemed sale of assets shall be included in the combined income of the unitary group;

(b) if the target corporation is not a member of a unitary group immediately preceding the acquisition date, the target corporation shall file a short period return for the period ending on the acquisition date and shall include in such return the gain or loss on the deemed sale of assets in its adjusted income; and

(c) any gain or loss which is not recognized for federal purposes on stock sold or exchanged by a member of a selling consolidated group as defined in Section 338, Internal Revenue Code, may not be included in the adjusted income of the selling corporation.

(4) There is a rebuttable presumption that the gain or loss on the deemed sale of assets constitutes business income.

(5) The new basis of the target corporation's assets shall be determined under Section 338, Internal Revenue Code.

(6) The target corporation shall be treated as a new corporation as of the day after the acquisition date.

(7) The commission may prescribe such rules as necessary to provide for the equitable

treatment of any transaction subject to Section 338, Internal Revenue Code.

Section 88. Section **59-7-612** is amended to read:

59-7-612. Credits for research activities conducted in the state -- Carry forward -- Commission to report modification or repeal of federal credits -- Tax Review Commission study.

(1) (a) For taxable years beginning on or after January 1, 1999, but beginning before December 31, 2010, a taxpayer meeting the requirements of this section shall qualify for the following nonrefundable credits for increasing research activities in this state:

(i) a research credit of 6% of the taxpayer's qualified research expenses for the current taxable year that exceed the base amount provided for under Subsection (4); and

(ii) a credit for payments to qualified organizations for basic research as provided in Section 41(e), Internal Revenue Code, of 6% for the current taxable year that exceed the base amount provided for under Subsection (4).

(b) If a taxpayer qualifying for a credit under Subsection (1)(a) seeks to claim the credit, the taxpayer shall:

(i) claim the credit or a portion of the credit for the taxable year immediately following the taxable year for which the taxpayer qualifies for the credit;

(ii) carry the credit or a portion of the credit forward as provided in Subsection (4)(f); or

(iii) claim a portion of the credit and carry forward a portion of the credit as provided in Subsections (1)(b)(i) and (ii).

(c) The credits provided for in this section do not include the alternative incremental credit provided for in Section 41(c)(4), Internal Revenue Code.

(2) For purposes of claiming a credit under this section, a unitary group as defined in Section 59-7-101 is considered to be one taxpayer.

(3) Except as specifically provided for in this section:

(a) the credits authorized under Subsection (1) shall be calculated as provided in Section 41, Internal Revenue Code; and

(b) the definitions provided in Section 41, Internal Revenue Code, apply in calculating the

credits authorized under Subsection (1).

(4) For purposes of this section:

(a) the base amount shall be calculated as provided in Sections 41(c) and 41(h), Internal Revenue Code, except that:

(i) the base amount does not include the calculation of the alternative incremental credit provided for in Section 41(c)(4), Internal Revenue Code;

(ii) a taxpayer's gross receipts include only those gross receipts attributable to sources within this state as provided in Part 3, Allocation and Apportionment of Income -- Utah UDITPA Provisions; and

(iii) notwithstanding Section 41(c), Internal Revenue Code, for purposes of calculating the base amount, a taxpayer:

(A) may elect to be treated as a start-up company as provided in Section 41(c)(3)(B) regardless of whether the taxpayer meets the requirements of Section 41(c)(3)(B)(i)(I) or (II); and

(B) may not revoke an election to be treated as a start-up company under Subsection (4)(a)(iii)(A);

(b) "basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except that the term includes only basic research conducted in this state;

(c) "qualified research" is as defined in Section 41(d), Internal Revenue Code, except that the term includes only qualified research conducted in this state;

(d) "qualified research expenses" is as defined and calculated in Section 41(b), Internal Revenue Code, except that the term includes only those expenses incurred in conducting qualified research in this state;

(e) notwithstanding the provisions of Section 41(h), Internal Revenue Code, the credits provided for in this section shall not terminate if the credits terminate under Section 41, Internal Revenue Code; and

(f) notwithstanding the provisions of Sections 39 and 41(g), Internal Revenue Code, governing the carry forward and carry back of federal tax credits, if the amount of a tax credit claimed by a taxpayer under this section exceeds the taxpayer's tax liability under this chapter for

a taxable year, the amount of the credit exceeding the liability:

(i) may be carried forward for a period that does not exceed the next 14 taxable years; and

(ii) may not be carried back to a taxable year preceding the current taxable year.

(5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules for purposes of this section prescribing a certification process for qualified organizations to ensure that amounts paid to the qualified organizations are for basic research conducted in this state.

(6) If a federal tax credit under Section 41, Internal Revenue Code, is modified or repealed, the commission shall report the modification or repeal to the Tax Review Commission within 60 days after the day on which the modification or repeal becomes effective.

(7) (a) Except as provided in Subsection (7)(b), the Tax Review Commission shall review the credits provided for in this section on or before the earlier of:

(i) October 1 of the year after the year in which the commission reports under Subsection (6) a modification or repeal of a federal tax credit under Section 41, Internal Revenue Code; or

(ii) October 1, 2004.

(b) Notwithstanding Subsection (7)(a), the Tax Review Commission is not required to review the credits provided for in this section if the only modification to a federal tax credit under Section 41, Internal Revenue Code, is the extension of the termination date provided for in Section 41(h), Internal Revenue Code.

(c) The Tax Review Commission shall address in a review under this section the:

(i) cost of the credit;

(ii) purpose and effectiveness of the credit;

(iii) whether the credit benefits the state; and

(iv) whether the credit should be:

(A) continued;

(B) modified; or

(C) repealed.

(d) If the Tax Review Commission reviews the credits provided for in this section, the Tax

Review Commission shall report its findings to the Revenue and Taxation Interim Committee on or before the November interim meeting of the year in which the Tax Review Commission reviews the credits.

Section 89. Section **59-10-540** is amended to read:

59-10-540. Transferees.

(1) The liability at law or in equity of a transferee of property of any person liable in respect of any tax (including additions to tax, penalties or interest) imposed by this chapter, shall be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the tax to which the liability relates, except that the period of limitations for assessment against the transferee shall be extended by one year for each successive transfer, in order of transfer (from the person originally liable to the transferee involved), but not by more than three years in the aggregate. As used in this section, "transferee" includes donee, heir, legatee, devisee, and distributee.

(2) (a) If, before the expiration of the period of limitations for assessment of liability of the transferee, a claim has been filed by the commission in any court against the person originally liable or the last preceding transferee, based upon the liability of the person originally liable, then the period of limitation for assessment of liability of the transferee shall in no event expire prior to one year after such claim has been finally allowed, disallowed, or otherwise disposed of.

(b) If, before expiration of the time prescribed in Subsection (1) or (2) (a) for the assessment of the liability, the commission and the transferee have both consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. For the purpose of determining the period of limitation on credit or refund to the transferee of overpayments of tax made by such transferee or overpayments of tax made by the transferor as to which the transferee is legally entitled to credit or refund, such agreement and any extension thereof are considered an agreement and extension thereof referred to in Section 59-10-516. If the agreement is executed after the expiration of the period of limitation for assessment against the original taxpayer, then in applying the limitations under Section

59-10-529 on the amount of the credit or refund, the periods specified in Section 59-10-529 shall be increased by the period from the date of such expiration to the date of the agreement.

(3) If any person is deceased, the period of limitation for assessment against him shall be the period that would be in effect if he had lived.

(4) Notwithstanding the provisions of Section 59-10-545 (relating to confidentiality of return information) the commission shall use its powers to make available to a transferee evidence necessary to enable the transferee to determine the liability of the original taxpayer and of any preceding transferees, but without undue hardship to the original taxpayer or preceding transferee.

Section 90. Section **59-10-541** is amended to read:

59-10-541. Violations -- Civil and criminal penalties.

(1) Every person who, without fraudulent intent, fails to make, render, sign, or verify any return, or to supply any information within the time required by or under the provisions of this chapter, is liable [~~to~~] for a penalty as provided in Section 59-1-401.

(2) It is unlawful for any person, with intent to evade any tax, to fail to timely remit the full amount of tax required by this chapter. A violation of this section is punishable as provided in Section 59-1-401.

(3) Any person who knowingly or intentionally makes, renders, signs, or verifies any false or fraudulent return or statement or supplies any false or fraudulent information is guilty of a criminal violation as provided in Section 59-1-401.

(4) Any person who, with intent to evade any tax or any requirement of this chapter, or any lawful requirement of the commission, fails to pay the tax, or to make, render, sign, or verify any return, or to supply any information, within the time required by or under this chapter, or who, with like intent, makes, renders, signs, or verifies any false or fraudulent return or statement, or supplies any false or fraudulent information, is liable [~~to~~] for a civil penalty as provided in Section 59-1-401, and is also guilty of a criminal violation as provided in Section 59-1-401.

Section 91. Section **59-10-603** is amended to read:

59-10-603. Business tax credit -- Limitations.

(1) (a) A business entity that purchases and completes or participates in the financing of a

residential energy system to supply all or part of the energy required for a residential unit owned or used by the business entity and situated in Utah is entitled to a tax credit as provided in this Subsection (1).

(b) (i) A business entity is entitled to a tax credit equal to 25% of the costs of a residential energy system installed with respect to each residential unit it owns or uses, including installation costs, against any tax due under this chapter for the taxable year in which the energy system is completed and placed in service.

(ii) The total amount of the credit under this Subsection (1) may not exceed [~~$~~] $2,000 per residential unit.

(iii) The credit under this Subsection (1) is allowed for any residential energy system completed and placed in service on or after January 1, 1997, but prior to January 1, 2001.

(c) If a business entity sells a residential unit to an individual taxpayer prior to making a claim for the tax credit under this Subsection (1), the business entity may:

(i) assign its right to this tax credit to the individual taxpayer; and

(ii) if the business entity assigns its right to the tax credit to an individual taxpayer under Subsection (1)(c)(i), the individual taxpayer may claim the tax credit as if the individual taxpayer had completed or participated in the costs of the residential energy system under Section 59-10-602.

(2) (a) A business entity that purchases or participates in the financing of a commercial energy system is entitled to a tax credit as provided in this Subsection (2) if:

(i) the commercial energy system supplies all or part of the energy required by commercial units owned or used by the business entity; or

(ii) the business entity sells all or part of the energy produced by the commercial energy system as a commercial enterprise.

(b) (i) A business entity is entitled to a tax credit equal to 10% of the costs of any commercial energy system installed, including installation costs, against any tax due under this chapter for the taxable year in which the commercial energy system is completed and placed in service.

(ii) The total amount of the credit under this Subsection (2) may not exceed $50,000 per

commercial unit.

(iii) The credit under this Subsection (2) is allowed for any commercial energy system completed and placed in service on or after January 1, 1997, but prior to January 1, 2001.

(c) A business entity that leases a commercial energy system installed on a commercial unit is eligible for the tax credit under this Subsection (2) if the lessee can confirm that the lessor irrevocably elects not to claim the credit.

(d) Only the principal recovery portion of the lease payments, which is the cost incurred by a business entity in acquiring a commercial energy system, excluding interest charges and maintenance expenses, is eligible for the tax credit under this Subsection (2).

(e) A business entity that leases a commercial energy system is eligible to use the tax credit under this Subsection (2) for a period no greater than seven years from the initiation of the lease.

(3) (a) A tax credit under this section may be claimed for the taxable year in which the energy system is completed and placed in service.

(b) Additional energy systems or parts of energy systems may be claimed for subsequent years.

(c) If the amount of a tax credit under this section exceeds a business entity's tax liability under this chapter for a taxable year, the amount of the credit exceeding the liability may be carried over for a period which does not exceed the next four taxable years.

Section 92. Section **59-12-102 (Effective 07/01/01)** is amended to read:

59-12-102 (Effective 07/01/01). Definitions.

As used in this chapter:

(1) (a) "Admission or user fees" includes season passes.

(b) "Admission or user fees" does not include annual membership dues to private organizations.

(2) "Area agency on aging" is as defined in Section 62A-3-101.

(3) "Authorized carrier" means:

(a) in the case of vehicles operated over public highways, the holder of credentials indicating that the vehicle is or will be operated pursuant to both the International Registration Plan (IRP) and

the International Fuel Tax Agreement (IFTA);

(b) in the case of aircraft, the holder of a Federal Aviation Administration (FAA) operating certificate or air carrier's operating certificate; or

(c) in the case of locomotives, freight cars, railroad work equipment, or other rolling stock, the holder of a certificate issued by the United States Interstate Commerce Commission.

(4) (a) For purposes of Subsection 59-12-104(43), "coin-operated amusement device" means:

(i) a coin-operated amusement, skill, or ride device;

(ii) that is not controlled through vendor-assisted, over-the-counter, sales of tokens; and

(iii) includes a music machine, pinball machine, billiard machine, video game machine, arcade machine, and a mechanical or electronic skill game or ride.

(b) For purposes of Subsection 59-12-104(43), "coin-operated amusement device" does not mean a coin-operated amusement device possessing a coinage mechanism that:

(i) accepts and registers multiple denominations of coins; and

(ii) allows the vendor to collect the sales and use tax at the time an amusement device is activated and operated by a person inserting coins into the device.

(5) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection (13) or residential use under Subsection (21).

(6) (a) "Common carrier" means a person engaged in or transacting the business of transporting passengers, freight, merchandise, or other property for hire within this state.

(b) (i) "Common carrier" does not include a person who, at the time the person is traveling to or from that person's place of employment, transports a passenger to or from the passenger's place of employment.

(ii) For purposes of Subsection (6)(b)(i), in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules defining what constitutes a person's place of employment.

(7) "Component part" includes:

(a) poultry, dairy, and other livestock feed, and their components;

(b) baling ties and twine used in the baling of hay and straw;

(c) fuel used for providing temperature control of orchards and commercial greenhouses doing a majority of their business in wholesale sales, and for providing power for off-highway type farm machinery; and

(d) feed, seeds, and seedlings.

(8) "Construction materials" means any tangible personal property that will be converted into real property.

(9) (a) "Fundraising sales" means sales:

(i) (A) made by a public or private elementary or secondary school; or

(B) made by a public or private elementary or secondary school student, grades kindergarten through 12;

(ii) that are for the purpose of raising funds for the school to purchase equipment, materials, or provide transportation; and

(iii) that are part of an officially sanctioned school activity.

(b) For purposes of Subsection (9)(a)(iii), "officially sanctioned school activity" means a school activity:

(i) that is conducted in accordance with a formal policy adopted by the school or school district governing the authorization and supervision of fundraising activities;

(ii) that does not directly or indirectly compensate an individual teacher or other educational personnel by direct payment, commissions, or payment in kind; and

(iii) the net or gross revenues from which are deposited in a dedicated account controlled by the school or school district.

(10) (a) "Hearing aid" means:

(i) an instrument or device having an electronic component that is designed to:

(A) (I) improve impaired human hearing; or

(II) correct impaired human hearing; and

(B) (I) be worn in the human ear; or

(II) affixed behind the human ear;

(ii) an instrument or device that is surgically implanted into the cochlea; or

(iii) a telephone amplifying device.

(b) "Hearing aid" does not include:

(i) except as provided in Subsection (10)(a)(i)(B) or (10)(a)(ii), an instrument or device having an electronic component that is designed to be worn on the body;

(ii) except as provided in Subsection (10)(a)(iii), an assistive listening device or system designed to be used by one individual, including:

(A) a personal amplifying system;

(B) a personal FM system;

(C) a television listening system; or

(D) a device or system similar to a device or system described in Subsections (10)(b)(ii)(A) through (C); or

(iii) an assistive listening device or system designed to be used by more than one individual, including:

(A) a device or system installed in:

(I) an auditorium;

(II) a church;

(III) a conference room;

(IV) a synagogue; or

(V) a theater; or

(B) a device or system similar to a device or system described in Subsections (10)(b)(iii)(A)(I) through (V).

(11) (a) "Hearing aid accessory" means a hearing aid:

(i) component;

(ii) attachment; or

(iii) accessory.

(b) "Hearing aid accessory" includes:

(i) a hearing aid neck loop;

(ii) a hearing aid cord;

(iii) a hearing aid ear mold;

(iv) hearing aid tubing;

(v) a hearing aid ear hook; or

(vi) a hearing aid remote control.

(c) "Hearing aid accessory" does not include:

(i) a component, attachment, or accessory designed to be used only with an:

(A) instrument or device described in Subsection (10)(b)(i); or

(B) assistive listening device or system described in Subsection (10)(b)(ii) or (iii); or

(ii) a hearing aid battery.

(12) (a) "Home medical equipment and supplies" means equipment and supplies that:

(i) a licensed physician prescribes or authorizes in writing as necessary for the treatment of a medical illness or injury or as necessary to mitigate an impairment resulting from illness or injury;

(ii) are used exclusively by the person for whom they are prescribed to serve a medical purpose; and

(iii) are listed as eligible for payment under Title 18 of the federal Social Security Act or under the state plan for medical assistance under Title 19 of the federal Social Security Act.

(b) "Home medical equipment and supplies" does not include:

(i) equipment and supplies purchased by, for, or on behalf of any health care facility, as defined in Subsection (12)(c), doctor, nurse, or other health care provider for use in their professional practice;

(ii) eyeglasses, contact lenses, or equipment to correct impaired vision; or

(iii) hearing aids or hearing aid accessories.

(c) For purposes of Subsection (12)(b)(i), "health care facility" includes:

(i) a clinic;

(ii) a doctor's office; and

(iii) a health care facility as defined in Section 26-21-2.

(13) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other fuels in:

(a) mining or extraction of minerals;

(b) agricultural operations to produce an agricultural product up to the time of harvest or placing the agricultural product into a storage facility, including:

(i) commercial greenhouses;

(ii) irrigation pumps;

(iii) farm machinery;

(iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not registered under Title 41, Chapter 1a, Part 2, Registration; and

(v) other farming activities; and

(c) manufacturing tangible personal property at an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget.

(14) "Manufactured home" means any manufactured home or mobile home as defined in Title 58, Chapter 56, Utah Uniform Building Standards Act.

(15) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:

(a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or

(b) a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:

(A) iron;

(B) steel;

(C) nonferrous metal;

(D) paper;

(E) glass;

(F) plastic;

(G) textile; or

(H) rubber; and

(ii) the new products under Subsection (15)(b)(i) would otherwise be made with nonrecycled materials.

(16) (a) "Medicine" means:

(i) insulin, syringes, and any medicine prescribed for the treatment of human ailments by a person authorized to prescribe treatments and dispensed on prescription filled by a registered pharmacist, or supplied to patients by a physician, surgeon, or podiatric physician;

(ii) any medicine dispensed to patients in a county or other licensed hospital if prescribed for that patient and dispensed by a registered pharmacist or administered under the direction of a physician; and

(iii) any oxygen or stoma supplies prescribed by a physician or administered under the direction of a physician or paramedic.

(b) "Medicine" does not include:

(i) any auditory, prosthetic, ophthalmic, or ocular device or appliance; or

(ii) any alcoholic beverage.

(17) "Olympic merchandise" means tangible personal property bearing an Olympic designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other copyrighted or protected material, including:

(a) one or more of the following terms:

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius";

(b) the symbol of the International Olympic Committee, consisting of five interlocking rings;

(c) the emblem of the International Olympic Committee Corporation;

(d) a United States Olympic Committee designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other copyrighted or protected material;

(e) any emblem of the Olympic Winter Games of 2002 that is officially designated by the Salt Lake Organizing Committee of the Olympic Winter Games of 2002; or

(f) the mascot of the Olympic Winter Games of 2002.

(18) (a) "Other fuels" means products that burn independently to produce heat or energy.

(b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible personal property.

(19) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

(20) "Purchase price" means the amount paid or charged for tangible personal property or any other taxable transaction under Subsection 59-12-103(1), excluding only cash discounts taken or any excise tax imposed on the purchase price by the federal government.

(21) "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

(22) (a) "Retail sale" means any sale within the state of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), other than resale of such property, item, or service by a retailer or wholesaler to a user or consumer.

(b) "Retail sale" includes sales by any farmer or other agricultural producer of poultry, eggs, or dairy products to consumers if the sales have an average monthly sales value of $125 or more.

(c) "Retail sale" does not include, and no additional sales or use tax shall be assessed against, those transactions where a purchaser of tangible personal property pays applicable sales or use taxes on its initial nonexempt purchases of property and then enters into a sale-leaseback transaction by which title to such property is transferred by the purchaser-lessee to a lessor for consideration, provided:

(i) the transaction is intended as a form of financing for the property to the purchaser-lessee; and

(ii) pursuant to generally accepted accounting principles, the purchaser-lessee is required to capitalize the subject property for financial reporting purposes, and account for the lease payments as payments made under a financing arrangement.

(23) (a) "Retailer" means any person engaged in a regularly organized retail business in

tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and who is selling to the user or consumer and not for resale.

(b) "Retailer" includes commission merchants, auctioneers, and any person regularly engaged in the business of selling to users or consumers within the state.

(c) "Retailer" does not include farmers, gardeners, stockmen, poultrymen, or other growers or agricultural producers producing and doing business on their own premises, except those who are regularly engaged in the business of buying or selling for a profit.

(d) For purposes of this chapter the commission may regard as retailers the following if they determine it is necessary for the efficient administration of this chapter: salesmen, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of these dealers, distributors, supervisors, or employers, except that:

(i) a printer's facility with which a retailer has contracted for printing shall not be considered to be a salesman, representative, peddler, canvasser, or agent of the retailer; and

(ii) the ownership of property that is located at the premises of a printer's facility with which the retailer has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the printed product is produced, shall not result in the retailer being deemed to have or maintain an office, distribution house, sales house, warehouse, service enterprise, or other place of business, or to maintain a stock of goods, within this state.

(24) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration. It includes:

(a) installment and credit sales;

(b) any closed transaction constituting a sale;

(c) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;

(d) any transaction if the possession of property is transferred but the seller retains the title

as security for the payment of the price; and

(e) any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made.

(25) (a) "Sales relating to schools" means sales by a public school district or public or private elementary or secondary school, grades kindergarten through 12, that are directly related to the school's or school district's educational functions or activities and include:

(i) the sale of textbooks, textbook fees, laboratory fees, laboratory supplies, and safety equipment;

(ii) the sale of clothing that:

(A) a student is specifically required to wear as a condition of participation in a school-related event or activity; and

(B) is not readily adaptable to general or continued usage to the extent that it takes the place of ordinary clothing;

(iii) sales of food if the net or gross revenues generated by the food sales are deposited into a school district fund or school fund dedicated to school meals; and

(iv) transportation charges for official school activities.

(b) "Sales relating to schools" does not include:

(i) gate receipts;

(ii) special event admission fees;

(iii) bookstore sales of items that are not educational materials or supplies; and

(iv) except as provided in Subsection (25)(a)(ii), clothing.

(26) "Senior citizen center" means a facility having the primary purpose of providing services to the aged as defined in Section 62A-3-101.

(27) "State" means the state of Utah, its departments, and agencies.

(28) "Storage" means any keeping or retention of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.

(29) (a) "Tangible personal property" means:

(i) all goods, wares, merchandise, produce, and commodities;

(ii) all tangible or corporeal things and substances which are dealt in or capable of being possessed or exchanged;

(iii) water in bottles, tanks, or other containers; and

(iv) all other physically existing articles or things, including property severed from real estate.

(b) "Tangible personal property" does not include:

(i) real estate or any interest or improvements in real estate;

(ii) bank accounts, stocks, bonds, mortgages, notes, and other evidence of debt;

(iii) insurance certificates or policies;

(iv) personal or governmental licenses;

(v) water in pipes, conduits, ditches, or reservoirs;

(vi) currency and coinage constituting legal tender of the United States or of a foreign nation; and

(vii) all gold, silver, or platinum ingots, bars, medallions, or decorative coins, not constituting legal tender of any nation, with a gold, silver, or platinum content of not less than 80%.

(30) (a) "Use" means the exercise of any right or power over tangible personal property under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item, or service.

(b) "Use" does not include the sale, display, demonstration, or trial of that property in the regular course of business and held for resale.

(31) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle, as defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and any vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both. "Vehicle," for purposes of Subsection 59-12-104(36) only, also includes any locomotive, freight car, railroad work equipment, or other railroad rolling stock.

(32) "Vehicle dealer" means a person engaged in the business of buying, selling, or

exchanging vehicles as defined in Subsection (31).

(33) (a) "Vendor" means any person receiving any payment or consideration upon a sale of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), or to whom the payment or consideration is payable.

(b) "Vendor" does not mean a printer's facility described in Subsection (23)(d).

Section 93. Section **59-12-102 (Superseded 07/01/01)** is amended to read:

59-12-102 (Superseded 07/01/01). Definitions.

As used in this chapter:

(1) (a) "Admission or user fees" includes season passes.

(b) "Admission or user fees" does not include annual membership dues to private organizations.

(2) "Area agency on aging" is as defined in Section 62A-3-101.

(3) "Authorized carrier" means:

(a) in the case of vehicles operated over public highways, the holder of credentials indicating that the vehicle is or will be operated pursuant to both the International Registration Plan (IRP) and the International Fuel Tax Agreement (IFTA);

(b) in the case of aircraft, the holder of a Federal Aviation Administration (FAA) operating certificate or air carrier's operating certificate; or

(c) in the case of locomotives, freight cars, railroad work equipment, or other rolling stock, the holder of a certificate issued by the United States Interstate Commerce Commission.

(4) (a) For purposes of Subsection 59-12-104 (43), "coin-operated amusement device" means:

(i) a coin-operated amusement, skill, or ride device;

(ii) that is not controlled through vendor-assisted, over-the-counter, sales of tokens; and

(iii) includes a music machine, pinball machine, billiard machine, video game machine, arcade machine, and a mechanical or electronic skill game or ride.

(b) For purposes of Subsection 59-12-104 (43), "coin-operated amusement device" does not mean a coin-operated amusement device possessing a coinage mechanism that:

(i) accepts and registers multiple denominations of coins; and

(ii) allows the vendor to collect the sales and use tax at the time an amusement device is activated and operated by a person inserting coins into the device.

(5) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection (13) or residential use under Subsection (21).

(6) (a) "Common carrier" means a person engaged in or transacting the business of transporting passengers, freight, merchandise, or other property for hire within this state.

(b) (i) "Common carrier" does not include a person who, at the time the person is traveling to or from that person's place of employment, transports a passenger to or from the passenger's place of employment.

(ii) For purposes of Subsection (6)(b)(i), in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules defining what constitutes a person's place of employment.

(7) "Component part" includes:

(a) poultry, dairy, and other livestock feed, and their components;

(b) baling ties and twine used in the baling of hay and straw;

(c) fuel used for providing temperature control of orchards and commercial greenhouses doing a majority of their business in wholesale sales, and for providing power for off-highway type farm machinery; and

(d) feed, seeds, and seedlings.

(8) "Construction materials" means any tangible personal property that will be converted into real property.

(9) (a) "Fundraising sales" means sales:

(i) (A) made by a public or private elementary or secondary school; or

(B) made by a public or private elementary or secondary school student, grades kindergarten through 12;

(ii) that are for the purpose of raising funds for the school to purchase equipment, materials, or provide transportation; and

(iii) that are part of an officially sanctioned school activity.

(b) For purposes of Subsection (9)(a)(iii), "officially sanctioned school activity" means a school activity:

(i) that is conducted in accordance with a formal policy adopted by the school or school district governing the authorization and supervision of fundraising activities;

(ii) that does not directly or indirectly compensate an individual teacher or other educational personnel by direct payment, commissions, or payment in kind; and

(iii) the net or gross revenues from which are deposited in a dedicated account controlled by the school or school district.

(10) (a) "Hearing aid" means:

(i) an instrument or device having an electronic component that is designed to:

(A) (I) improve impaired human hearing; or

(II) correct impaired human hearing; and

(B) (I) be worn in the human ear; or

(II) affixed behind the human ear;

(ii) an instrument or device that is surgically implanted into the cochlea; or

(iii) a telephone amplifying device.

(b) "Hearing aid" does not include:

(i) except as provided in Subsection (10)(a)(i)(B) or (10)(a)(ii), an instrument or device having an electronic component that is designed to be worn on the body;

(ii) except as provided in Subsection (10)(a)(iii), an assistive listening device or system designed to be used by one individual, including:

(A) a personal amplifying system;

(B) a personal FM system;

(C) a television listening system; or

(D) a device or system similar to a device or system described in Subsections (10)(b)(ii)(A) through (C); or

(iii) an assistive listening device or system designed to be used by more than one individual,

including:

(A) a device or system installed in:

(I) an auditorium;

(II) a church;

(III) a conference room;

(IV) a synagogue; or

(V) a theater; or

(B) a device or system similar to a device or system described in Subsections (10)(b)(iii)(A)(I) through (V).

(11) (a) "Hearing aid accessory" means a hearing aid:

(i) component;

(ii) attachment; or

(iii) accessory.

(b) "Hearing aid accessory" includes:

(i) a hearing aid neck loop;

(ii) a hearing aid cord;

(iii) a hearing aid ear mold;

(iv) hearing aid tubing;

(v) a hearing aid ear hook; or

(vi) a hearing aid remote control.

(c) "Hearing aid accessory" does not include:

(i) a component, attachment, or accessory designed to be used only with an:

(A) instrument or device described in Subsection (10)(b)(i); or

(B) assistive listening device or system described in Subsection (10)(b)(ii) or (iii); or

(ii) a hearing aid battery.

(12) (a) "Home medical equipment and supplies" means equipment and supplies that:

(i) a licensed physician prescribes or authorizes in writing as necessary for the treatment of a medical illness or injury or as necessary to mitigate an impairment resulting from illness or injury;

(ii) are used exclusively by the person for whom they are prescribed to serve a medical purpose; and

(iii) are listed as eligible for payment under Title 18 of the federal Social Security Act or under the state plan for medical assistance under Title 19 of the federal Social Security Act.

(b) "Home medical equipment and supplies" does not include:

(i) equipment and supplies purchased by, for, or on behalf of any health care facility, as defined in Subsection (12)(c), doctor, nurse, or other health care provider for use in their professional practice;

(ii) eyeglasses, contact lenses, or equipment to correct impaired vision; or

(iii) hearing aids or hearing aid accessories.

(c) For purposes of Subsection (12)(b)(i), "health care facility" includes:

(i) a clinic;

(ii) a doctor's office; and

(iii) a health care facility as defined in Section 26-21-2.

(13) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other fuels in:

(a) mining or extraction of minerals;

(b) agricultural operations to produce an agricultural product up to the time of harvest or placing the agricultural product into a storage facility, including:

(i) commercial greenhouses;

(ii) irrigation pumps;

(iii) farm machinery;

(iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not registered under Title 41, Chapter 1a, Part 2, Registration; and

(v) other farming activities; and

(c) manufacturing tangible personal property at an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget.

(14) "Manufactured home" means any manufactured home or mobile home as defined in Title 58, Chapter 56, Utah Uniform Building Standards Act.

(15) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:

(a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or

(b) a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:

(A) iron;

(B) steel;

(C) nonferrous metal;

(D) paper;

(E) glass;

(F) plastic;

(G) textile; or

(H) rubber; and

(ii) the new products under Subsection (15)(b)(i) would otherwise be made with nonrecycled materials.

(16) (a) "Medicine" means:

(i) insulin, syringes, and any medicine prescribed for the treatment of human ailments by a person authorized to prescribe treatments and dispensed on prescription filled by a registered pharmacist, or supplied to patients by a physician, surgeon, or podiatric physician;

(ii) any medicine dispensed to patients in a county or other licensed hospital if prescribed for that patient and dispensed by a registered pharmacist or administered under the direction of a physician; and

(iii) any oxygen or stoma supplies prescribed by a physician or administered under the direction of a physician or paramedic.

(b) "Medicine" does not include:

(i) any auditory, prosthetic, ophthalmic, or ocular device or appliance; or

(ii) any alcoholic beverage.

(17) "Olympic merchandise" means tangible personal property bearing an Olympic designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other copyrighted or protected material, including:

(a) one or more of the following terms:

(i) "Olympic[~~;~~]";

(ii) "Olympiad[~~;~~]"; or

(iii) "Citius Altius Fortius[~~;~~]";

(b) the symbol of the International Olympic Committee, consisting of five interlocking rings;

(c) the emblem of the International Olympic Committee Corporation;

(d) a United States Olympic Committee designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other copyrighted or protected material;

(e) any emblem of the Winter Olympic Games of 2002 that is officially designated by the Salt Lake Organizing Committee of the Winter Olympic Games of 2002; or

(f) the mascot of the Winter Olympic Games of 2002.

(18) (a) "Other fuels" means products that burn independently to produce heat or energy.

(b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible personal property.

(19) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

(20) "Purchase price" means the amount paid or charged for tangible personal property or any other taxable item or service under Subsection 59-12-103(1), excluding only cash discounts taken or any excise tax imposed on the purchase price by the federal government.

(21) "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

(22) (a) "Retail sale" means any sale within the state of tangible personal property or any other taxable item or service under Subsection 59-12-103(1), other than resale of such property, item, or service by a retailer or wholesaler to a user or consumer.

(b) "Retail sale" includes sales by any farmer or other agricultural producer of poultry, eggs, or dairy products to consumers if the sales have an average monthly sales value of $125 or more.

(c) "Retail sale" does not include, and no additional sales or use tax shall be assessed against, those transactions where a purchaser of tangible personal property pays applicable sales or use taxes on its initial nonexempt purchases of property and then enters into a sale-leaseback transaction by which title to such property is transferred by the purchaser-lessee to a lessor for consideration, provided:

(i) the transaction is intended as a form of financing for the property to the purchaser-lessee; and

(ii) pursuant to generally accepted accounting principles, the purchaser-lessee is required to capitalize the subject property for financial reporting purposes, and account for the lease payments as payments made under a financing arrangement.

(23) (a) "Retailer" means any person engaged in a regularly organized retail business in tangible personal property or any other taxable item or service under Subsection 59-12-103(1), and who is selling to the user or consumer and not for resale.

(b) "Retailer" includes commission merchants, auctioneers, and any person regularly engaged in the business of selling to users or consumers within the state.

(c) "Retailer" includes any person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

(d) "Retailer" does not include farmers, gardeners, stockmen, poultrymen, or other growers or agricultural producers producing and doing business on their own premises, except those who are regularly engaged in the business of buying or selling for a profit.

(e) For purposes of this chapter the commission may regard as retailers the following if they

determine it is necessary for the efficient administration of this chapter: salesmen, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of these dealers, distributors, supervisors, or employers, except that:

(i) a printer's facility with which a retailer has contracted for printing shall not be considered to be a salesman, representative, peddler, canvasser, or agent of the retailer; and

(ii) the ownership of property that is located at the premises of a printer's facility with which the retailer has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the printed product is produced, shall not result in the retailer being deemed to have or maintain an office, distribution house, sales house, warehouse, service enterprise, or other place of business, or to maintain a stock of goods, within this state.

(24) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable item or service under Subsection 59-12-103(1), for a consideration. It includes:

(a) installment and credit sales;

(b) any closed transaction constituting a sale;

(c) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;

(d) any transaction if the possession of property is transferred but the seller retains the title as security for the payment of the price; and

(e) any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made.

(25) (a) "Sales relating to schools" means sales by a public school district or public or private elementary or secondary school, grades kindergarten through 12, that are directly related to the school's or school district's educational functions or activities and include:

(i) the sale of textbooks, textbook fees, laboratory fees, laboratory supplies, and safety

equipment;

(ii) the sale of clothing that:

(A) a student is specifically required to wear as a condition of participation in a school-related event or activity; and

(B) is not readily adaptable to general or continued usage to the extent that it takes the place of ordinary clothing;

(iii) sales of food if the net or gross revenues generated by the food sales are deposited into a school district fund or school fund dedicated to school meals; and

(iv) transportation charges for official school activities.

(b) "Sales relating to schools" does not include:

(i) gate receipts;

(ii) special event admission fees;

(iii) bookstore sales of items that are not educational materials or supplies; and

(iv) except as provided in Subsection (25)(a)(ii), clothing.

(26) "Senior citizen center" means a facility having the primary purpose of providing services to the aged as defined in Section 62A-3-101.

(27) "State" means the state of Utah, its departments, and agencies.

(28) "Storage" means any keeping or retention of tangible personal property or any other taxable item or service under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.

(29) (a) "Tangible personal property" means:

(i) all goods, wares, merchandise, produce, and commodities;

(ii) all tangible or corporeal things and substances which are dealt in or capable of being possessed or exchanged;

(iii) water in bottles, tanks, or other containers; and

(iv) all other physically existing articles or things, including property severed from real estate.

(b) "Tangible personal property" does not include:

(i) real estate or any interest or improvements in real estate;

(ii) bank accounts, stocks, bonds, mortgages, notes, and other evidence of debt;

(iii) insurance certificates or policies;

(iv) personal or governmental licenses;

(v) water in pipes, conduits, ditches, or reservoirs;

(vi) currency and coinage constituting legal tender of the United States or of a foreign nation; and

(vii) all gold, silver, or platinum ingots, bars, medallions, or decorative coins, not constituting legal tender of any nation, with a gold, silver, or platinum content of not less than 80%.

(30) (a) "Use" means the exercise of any right or power over tangible personal property under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item, or service.

(b) "Use" does not include the sale, display, demonstration, or trial of that property in the regular course of business and held for resale.

(31) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle, as defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and any vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both. "Vehicle," for purposes of Subsection 59-12-104(36) only, also includes any locomotive, freight car, railroad work equipment, or other railroad rolling stock.

(32) "Vehicle dealer" means a person engaged in the business of buying, selling, or exchanging vehicles as defined in Subsection (31).

(33) (a) "Vendor" means:

(i) any person receiving any payment or consideration upon a sale of tangible personal property or any other taxable item or service under Subsection 59-12-103(1), or to whom such payment or consideration is payable; and

(ii) any person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic,

microwave, or other communication system.

(b) "Vendor" does not mean a printer's facility described in Subsection (23)(e).

Section 94. Section **59-12-111** is amended to read:

59-12-111. Licensee to keep records -- Failure to make return -- Penalties.

(1) Each person engaging or continuing in any business in this state for the transaction of which a license is required under this chapter shall:

(a) keep and preserve suitable records of all sales made by the person and other books or accounts necessary to determine the amount of tax for the collection of which the person is liable under this chapter in a form prescribed by the commission;

(b) keep and preserve for a period of three years all such books, invoices, and other records; and

(c) open such records for examination at any time by the commission or its duly authorized agent.

(2) If no return is made by any person required to make returns as provided in this chapter, the commission shall give written [~~notices~~] notice to the person to make the return within a reasonable time to be designated by the commission or, alternatively, the commission may make an estimate for the period or periods or any part thereof in respect to which the person failed to make a return, based upon any information in its possession or that may come into its possession of the total sales subject to the tax imposed by this chapter. Upon the basis of this estimate the commission may compute and determine the amount of tax required to be paid to the state. The return shall be prima facie correct for the purposes of this chapter and the amount of the tax due thereon shall be subject to the penalties and interest as provided in Sections 59-1-401 and 59-1-402. Promptly thereafter the commission shall give to the person written notice of the estimate, determination, penalty, and interest.

(3) If any person not holding a sales tax license under Section 59-12-106 or a valid use tax registration certificate makes a purchase of tangible personal property for storage, use, or other consumption in this state and fails to file a return or pay the tax due within 170 days from the time the return is due, this person shall pay a penalty as provided in Section 59-1-401 plus interest at the

rate and in the manner prescribed in Section 59-1-402 and all other penalties and interest as provided by this title.

Section 95. Section **59-12-117** is amended to read:

59-12-117. Refusal to make or falsifying returns -- Penalties -- Criminal violations.

(1) It is unlawful for any vendor to refuse to make any return [~~provided~~] required to be made in this chapter or to make any false or fraudulent return or false statement on any return or to evade the payment of the tax, or any part thereof imposed by this chapter or for any person to aid or abet another in any attempt to evade the payment of the tax or any part imposed by this chapter. Any person violating any of the provisions of this chapter, except as provided in Section 59-12-107, shall be guilty of a criminal violation as provided in Section 59-1-401. In addition to the foregoing penalties, any person who knowingly swears to or verifies any false or fraudulent return, or any return containing any false or fraudulent statement is guilty of the offense of perjury and on conviction thereof shall be punished in the manner provided by law. Any company making a false return or a return containing a false statement as aforesaid, is guilty of a criminal violation as provided in Section 59-1-401.

(2) Any person failing or refusing to furnish any return required to be made, failing or refusing to furnish a supplemental return or other data required by the commission, or rendering a false or fraudulent return shall be guilty of a criminal violation as provided in Section 59-1-401 for each such offense.

(3) Any person required to make, render, sign, or verify any report under this chapter, who makes any false or fraudulent return with intent to defeat or evade the assessment or determination of amount due required by law to be made shall be guilty of a criminal violation as provided in Section 59-1-401 for each such offense.

(4) Any violation of the provisions of this chapter, except as otherwise provided, shall be a criminal violation as provided in Section 59-1-401.

Section 96. Section **59-13-202.5** is amended to read:

59-13-202.5. Refunds of tax due to fire, flood, storm, or accident -- Filing claims and affidavits -- Commission approval -- Rulemaking -- Appeals -- Penalties.

(1) A retailer, wholesaler, or licensed distributor, who without fault, sustains a loss or destruction of 8,000 or more gallons of motor fuel in a single incident due to fire, flood, storm, accident, or the [~~commitment~~] commission of a crime and who has paid or is required to pay the tax on the motor fuel as provided by this part, is entitled to a refund or credit of the tax subject to the conditions and limitations provided under this section.

(2) (a) The claimant shall file a claim for a refund or credit with the commission within 90 days of the incident.

(b) Any part of a loss or destruction eligible for indemnification under an insurance policy for the taxes paid or required on the loss or destruction of motor fuel is not eligible for a refund or credit under this section.

(c) Any claimant filing a claim for a refund or credit shall furnish any or all of the information outlined in this section upon request of the commission.

(d) The burden of proof of loss or destruction is on the claimant who shall provide evidence of loss or destruction to the satisfaction of the commission.

(3) (a) The claim shall include an affidavit containing the:

(i) name of claimant;

(ii) claimant's address;

(iii) date, time, and location of the incident;

(iv) cause of the incident;

(v) name of the investigating agencies at the scene;

(vi) number of gallons actually lost from sale; and

(vii) information on any insurance coverages related to the incident.

(b) The claimant shall support the claim by submitting the original invoices or copy of the original invoices.

(c) This original claim and all information contained in it[~~,~~] constitutes a permanent file with the commission in the name of the claimant.

(4) Upon commission approval of the claim for a refund, the commission shall pay the amount found due to the claimant. The total amount of claims for refunds shall be paid from the

Transportation Fund.

(5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may promulgate rules to enforce this part, and may refuse to accept unsubstantiated evidence for the claim. If the commission is not satisfied with the evidence submitted in connection with the claim, it may reject the claim or require additional evidence.

(6) Any person aggrieved by the decision of the commission with respect to a refund or credit may file a request for agency action, requesting a hearing before the commission.

(7) Any person who makes any false claim, report, or statement, either as claimant, agent, or creditor, with intent to defraud or secure a refund or credit to which the claimant is not entitled, is subject to the criminal penalties provided under Section 59-1-401, and the commission shall initiate the filing of a complaint for alleged violations of this part. In addition to these penalties, the person may not receive any refund or credit as a claimant or as a creditor of a claimant for refund or credit for a period of five years.

(8) Any refund or credit made under this section does not affect any deduction allowed under Section 59-13-207.

Section 97. Section **59-13-301.5** is amended to read:

59-13-301.5. Refund of taxes impacting Ute tribe and Ute tribal members.

(1) In accordance with this section, the Ute tribe may receive a refund from the state of amounts paid in accordance with Section 59-13-301 if:

(a) the amounts paid by the Ute tribe when it purchases the special fuel includes the amount paid in taxes on the special fuel;

(b) the special fuel is purchased for use by:

(i) the Ute tribe; or

(ii) a Ute tribal member from a retail station that is:

(A) wholly owned by the Ute tribe; and

(B) located on Ute trust land; and

(c) the governor and the Ute tribe execute and maintain an agreement meeting the requirements of Subsection (3).

(2) [~~(a)~~] In addition to the agreement required by Subsection (1), the commission shall enter into an agreement with the Ute tribe that:

[~~(i)~~] (a) provides an allocation formula or procedure for determining:

[~~(A)~~] (i) the amount of special fuel sold by the Ute tribe to a Ute tribal member; and

[~~(B)~~] (ii) the amount of special fuel sold by the Ute tribe to a person who is not a Ute tribal member; and

[~~(ii)~~] (b) provides a process by which:

[~~(A)~~] (i) the Ute tribe obtains a refund permitted by this section; and

[~~(B)~~] (ii) reports and remits special fuel tax to the state for sales made to persons who are not Ute tribal members.

(3) The agreement required under Subsection (1):

(a) may not:

(i) authorize the state to impose a tax in addition to a tax imposed under this chapter;

(ii) provide a refund, credit, or similar tax relief that is greater or different than the refund permitted under this section; or

(iii) affect the power of the state to establish rates of taxation; and

(b) shall:

(i) provide that the state agrees to allow the refund described in this section;

(ii) be in writing;

(iii) be signed by:

(A) the governor; and

(B) the chair of the Business Committee of the Ute tribe;

(iv) be conditioned on obtaining any approval required by federal law; and

(v) state the effective date of the agreement.

(4) (a) The governor shall report to the commission by no later than February 1 of each year as to whether or not an agreement meeting the requirements of this Subsection (4) is in effect.

(b) If an agreement meeting the requirements of this Subsection (4) is terminated, the refund permitted under this section is not allowed beginning the January 1 following the date the agreement

terminates.

(5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules regarding the procedures for seeking a refund agreed to under the agreement described in Subsection (2).

Section 98. Section **59-13-307** is amended to read:

59-13-307. Supplier reports -- Signature required -- Penalties.

(1) Each supplier shall file with the commission, on or before the last day of each month, a report on forms prescribed by the commission showing the amount of fuel delivered or removed[~~,~~] during the preceding calendar month and any other information the commission may require to carry out the purposes of this part.

(2) The report shall be signed by the supplier or a responsible representative. This signature need not be notarized, but when signed is considered to have been made under oath. The report shall be accompanied by a remittance payable to the commission for the amount of special fuel tax due.

(3) A penalty is imposed under Section 59-1-401 upon each licensee and bonded supplier who fails to file any report as prescribed regardless of the imposition of other penalties under this part.

Section 99. Section **59-13-322** is amended to read:

59-13-322. Refunds of tax due to fire, flood, storm, or accident -- Filing claims and affidavits -- Commission approval -- Rulemaking -- Appeals -- Penalties.

(1) A retailer, wholesaler, or licensed supplier, who without fault, sustains a loss or destruction of 7,000 or more gallons of diesel fuel in a single incident due to fire, flood, storm, accident, or the [~~commitment~~] commission of a crime and who has paid or is required to pay the tax on the special fuel as provided by this part, is entitled to a refund or credit of the tax subject to the conditions and limitations provided under this section.

(2) (a) The claimant shall file a claim for a refund or credit with the commission within 90 days of the incident.

(b) Any part of a loss or destruction eligible for indemnification under an insurance policy for the taxes paid or required on the loss or destruction of special fuel is not eligible for a refund or

credit under this section.

(c) Any claimant filing a claim for a refund or credit shall furnish any or all of the information outlined in this section upon request of the commission.

(d) The burden of proof of loss or destruction is on the claimant who shall provide evidence of loss or destruction to the satisfaction of the commission.

(3) (a) The claim shall include an affidavit containing the:

(i) name of claimant;

(ii) claimant's address;

(iii) date, time, and location of the incident;

(iv) cause of the incident;

(v) name of the investigating agencies at the scene;

(vi) number of gallons actually lost from sale; and

(vii) information on any insurance coverages related to the incident.

(b) The claimant shall support the claim by submitting the original invoices or copy of the original invoices.

(c) This original claim and all information contained in it[~~,~~] constitutes a permanent file with the commission in the name of the claimant.

(4) Upon commission approval of the claim for a refund, the commission shall pay the amount found due to the claimant. The total amount of claims for refunds shall be paid from the Transportation Fund.

(5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may promulgate rules to enforce this part, and may refuse to accept unsubstantiated evidence for the claim. If the commission is not satisfied with the evidence submitted in connection with the claim, it may reject the claim or require additional evidence.

(6) Any person aggrieved by the decision of the commission with respect to a refund or credit may file a request for agency action, requesting a hearing before the commission.

(7) Any person who makes any false claim, report, or statement, either as claimant, agent, or creditor, with intent to defraud or secure a refund or credit to which the claimant is not entitled,

is subject to the criminal penalties provided under Section 59-1-401, and the commission shall initiate the filing of a complaint for alleged violations of this part. In addition to these penalties, the person may not receive any refund or credit as a claimant or as a creditor of a claimant for refund or credit for a period of five years.

Section 100. Section **59-22-101** is amended to read:

CHAPTER 22. MODEL TOBACCO SETTLEMENT ACT

59-22-101. Title.

This chapter is known as the "Model Tobacco Settlement [~~Statute~~] Act."

Section 101. Section **62A-4a-412** is amended to read:

62A-4a-412. Reports and information confidential.

(1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well as any other information in the possession of the division obtained as the result of a report is confidential and may only be made available to:

(a) a police or law enforcement agency investigating a report of known or suspected child abuse or neglect;

(b) a physician who reasonably believes that a child may be the subject of abuse or neglect;

(c) an agency that has responsibility or authority to care for, treat, or supervise a child who is the subject of a report;

(d) a contract provider that has a written contract with the division to render services to a child who is the subject of a report;

(e) any subject of the report, the natural parents of the minor, and the guardian ad litem;

(f) a court, upon a finding that access to the records may be necessary for the determination of an issue before it, provided that in a divorce, custody, or related proceeding between private parties, the record alone is:

(i) limited to objective or undisputed facts that were verified at the time of the investigation; and

(ii) devoid of conclusions drawn by the division or any of its workers on the ultimate issue of whether or not a person's acts or omissions constituted any level of abuse or neglect of another

person;

(g) an office of the public prosecutor or its deputies in performing an official duty;

(h) a person authorized by a Children's Justice Center, for the purposes described in Section 67-5b-102;

(i) a person engaged in bona fide research, when approved by the director of the division, if the information does not include names and addresses;

(j) the State Office of Education, acting on behalf of itself or on behalf of a school district, for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, limited to information with substantiated findings involving an alleged sexual offense, an alleged felony or class A misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person, and with the understanding that the office must provide the subject of a report received under Subsection (1)(k) with an opportunity to respond to the report before making a decision concerning licensure or employment; and

(k) any person identified in the report as a perpetrator or possible perpetrator of child abuse or neglect, after being advised of the screening prohibition in Subsection (2).

(2) (a) No person, unless listed in Subsection (1), may request another person to obtain or release a report or any other information in the possession of the division obtained as a result of the report that is available under Subsection (1)(k) to screen for potential perpetrators of child abuse or neglect.

(b) A person who requests information knowing that it is a violation of Subsection (2)(a) to do so is subject to the criminal penalty in Subsection (4).

(3) Except as provided in Subsection 62A-4a-116[~~(8)~~](9)(c), the division and law enforcement officials shall ensure the anonymity of the person or persons making the initial report and any others involved in its subsequent investigation.

(4) Any person who wilfully permits, or aides and abets the release of data or information obtained as a result of this part, in the possession of the division or contained on any part of the management information system, in violation of this part or Section 62A-4a-116, is guilty of a class

C misdemeanor.

(5) The physician-patient privilege is not a ground for excluding evidence regarding a child's injuries or the cause of those injuries, in any proceeding resulting from a report made in good faith pursuant to this part.

Section 102. Section **62A-11-304.2** is amended to read:

62A-11-304.2. Issuance or modification of administrative order -- Compliance with court order -- Authority of office -- Stipulated agreements -- Notification requirements.

(1) Through an adjudicative proceeding the office may issue or modify an administrative order that:

(a) determines paternity in accordance with Section 78-45a-10;

(b) determines whether an obligor owes support;

(c) determines temporary orders of child support upon clear and convincing evidence of paternity in the form of genetic test results or other evidence;

(d) requires an obligor to pay a specific or determinable amount of present and future support;

(e) determines the amount of past-due support;

(f) orders an obligor who owes past-due support and is obligated to support a child receiving public assistance to participate in appropriate work activities if the obligor is unemployed and is not otherwise incapacitated;

(g) imposes a penalty authorized under this chapter;

(h) determines an issue that may be specifically contested under this chapter by a party who timely files a written request for an adjudicative proceeding with the office; and

(i) renews an administrative judgment.

(2) (a) An abstract of a final administrative order issued under this section or a notice of judgment-lien under Section 62A-11-312.5 may be filed with the clerk of any district court.

(b) Upon a filing under Subsection (2)(a), the clerk of the court shall:

(i) docket the abstract or notice in the judgment docket of the court and note the time of receipt on the abstract or notice and in the judgment docket; and

(ii) at the request of the office, place a copy of the abstract or notice in the file of a child support action involving the same parties.

(3) If a judicial order has been issued, the office may not issue an order under Subsection (1) that is not based on the judicial order, except:

(a) the office may establish a new obligation in those cases in which the juvenile court has ordered the parties to meet with the office to determine the support pursuant to Section 78-3a-906; or

(b) the office may issue an order of current support in accordance with the child support guidelines if the conditions of Subsection 78-45f-207(2)(c) are met.

(4) The office may proceed under this section in the name of this state, another state under Section 62A-11-305, any department of this state, the office, or the obligee.

(5) The office may accept voluntary acknowledgment of a support obligation and enter into stipulated agreements providing for the issuance of an administrative order under this part.

(6) The office may act in the name of the obligee in endorsing and cashing any drafts, checks, money orders, or other negotiable instruments received by the office for support.

(7) The obligor shall, after a notice of agency action has been served on him [~~under this part~~] in accordance with Section 63-46b-3, keep the office informed of:

(a) his current address;

(b) the name and address of current payors of income;

(c) availability of or access to health insurance coverage; and

(d) applicable health insurance policy information.

Section 103. Section **63-55-258** is amended to read:

63-55-258. Repeal dates, Title 58.

(1) Title 58, Chapter 3a, Architects Licensing Act, is repealed July 1, 2003.

(2) Title 58, Chapter 5a, Podiatric Physician Licensing Act, is repealed July 1, 2002.

(3) Title 58, Chapter 9, Funeral Services Licensing Act, is repealed July 1, 2008.

(4) Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, is repealed July 1, 2006.

(5) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1, 2005.

(6) Title 58, Chapter 16a, Utah Optometry Practice Act, is repealed July 1, 2009.

(7) Title 58, Chapter 17a, Pharmacy Practice Act, is repealed July 1, 2006.

(8) Title 58, Chapter 20a, Environmental Health Scientist Act, is repealed July 1, 2003.

(9) Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, is repealed July 1, 2005.

(10) Title 58, Chapter 24a, Physical Therapist Practice Act, is repealed July 1, 2003.

(11) Title 58, Chapter [~~26~~] 26a, Certified Public Accountant Licensing Act, is repealed July 1, 2002.

(12) Title 58, Chapter 28, Veterinary Practice Act, is repealed July 1, 2004.

(13) Title 58, Chapter 31b, Nurse Practice Act, is repealed July 1, 2005.

(14) Title 58, Chapter 37, Utah Controlled Substances Act, is repealed July 1, 2007.

(15) Title 58, Chapter 37a, Utah Drug Paraphernalia Act, is repealed July 1, 2007.

(16) Title 58, Chapter 37b, Imitation Controlled Substances Act, is repealed July 1, 2007.

(17) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1, 2005.

(18) Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act, is repealed July 1, 2009.

(19) Title 58, Chapter 42a, Occupational Therapy Practice Act, is repealed July 1, 2005.

(20) Title 58, Chapter 44a, Nurse Midwife Practice Act, is repealed July 1, 2010.

(21) Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, is repealed July 1, 2003.

(22) Title 58, Chapter 47b, Massage Therapy Practice Act, is repealed July 1, 2004.

(23) Title 58, Chapter 49, Dietitian Certification Act, is repealed July 1, 2005.

(24) Title 58, Chapter 53, Landscape Architects Licensing Act, is repealed July 1, 2008.

(25) Title 58, Chapter 58, Preneed Funeral Arrangement Act, is repealed July 1, 2001.

(26) Title 58, Chapter 59, Professional Employer Organization Licensing Act, is repealed July 1, 2002.

(27) Title 58, Chapter 66, Utah Professional Boxing Regulation Act, is repealed July 1,

2005.

(28) Title 58, Chapter 67, Utah Medical Practice Act, is repealed July 1, 2006.

(29) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, is repealed July 1, 2006.

(30) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, is repealed July 1, 2006.

(31) Title 58, Chapter 71, Naturopathic Physician Practice Act, is repealed July 1, 2006.

(32) Title 58, Chapter 72, Acupuncture Licensing Act, is repealed July 1, 2002.

(33) Title 58, Chapter 73, Chiropractic Physician Practice Act, is repealed July 1, 2006.

Section 104. Section **63-95-203** is amended 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 105. Section **63A-6-105** is amended to read:

63A-6-105. Duties of director -- Rate Committee membership and duties.

(1) The director of the Division of Information Technology Services shall:

(a) manage the delivery of efficient and cost-effective data processing and telecommunication services for all state agencies at the lowest practical cost;

(b) provide priority service to public safety agencies; and

(c) provide a semiannual report to the chief information officer as provided in Subsection 63D-1-301.5(5).

(2) The director may negotiate the purchase, lease, or rental of private or public data processing or telecommunication services or facilities.

(3) Where practical, efficient, and economically beneficial, the director shall use existing private and public data processing or telecommunication resources.

(4) The director shall prescribe a schedule of fees to be charged for all services rendered to

any state agency by the division that are equitable and sufficient to recover all the costs of operation, including the cost of capital equipment and facilities.

(5) (a) The director shall provide the chief information officer and the state information technology review committee a written analysis of each state agency's annual information technology plan.

(b) That analysis shall:

(i) include an assessment of how the implementation of each plan will affect the costs, operations, and the services of the Division of Information Technology Services and state government; and

(ii) where appropriate, make alternative recommendations.

(6) (a) Before charging the fees, the director shall obtain approval of the fee schedules from the Rate Committee which shall consist of:

(i) the executive director;

(ii) the director of the Division of Finance;

(iii) the director of the Office of Planning and Budget;

(iv) the chief information officer;

(v) a representative of the agencies nominated by the Information Technology Policy and Strategy Committee established in Section 63D-1-302; and

(vi) a representative of the [~~agencies~~] agencies' administrative services managers nominated by the [~~agencies~~] agencies' administrative services managers coordination group.

(b) In appointing the agency representatives listed in Subsection (6)(a)(v) and (vi), the Rate Committee shall appoint:

(i) one representative from a large agency and one representative from a small agency; and

(ii) the representatives to four-year terms of office, except that initially one of the appointments shall be for a two-year term in order to stagger the appointments.

(c) In the event of a vacancy for any reason, the entity responsible for nominating the person who is vacating the position shall provide new nominations to the Rate Committee to fill the unexpired term.

(d) When modifying fees, the director shall attempt to provide sufficient notice to agencies and institutions so that they may reflect those fee changes in their budgets.

(7) (a) The director shall create advisory committees composed of representatives of user agencies.

(b) Those advisory committees may recommend policies and practices for the efficient and effective operation of the division.

(8) (a) The director shall create a Local Government Information Technology Review Committee whose membership shall include representatives from:

(i) the Chief of Police Association;

(ii) the Sheriff's Association;

(iii) the Associated Public Safety Communications Officers;

(iv) the Fire Chief Association; and

(v) the State School Bus Association.

(b) Representatives from additional agencies may be added upon a majority vote of the existing committee members.

Section 106. Section **63A-6-106** is amended to read:

63A-6-106. Subscription by state agencies and institutions.

(1) As used in this section:

(a) "Telecommunications" means the transmission or reception of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, light waves, or other electromagnetic means.

(b) "Telecommunications services and support" means providing the hardware, software, maintenance, and upkeep of equipment used in telecommunications.

(2) State agencies, after consultation with the state's chief information officer, may subscribe to the telecommunications services provided by the Division of Information Technology Services or may contract with alternate private providers of telecommunications services if the agency determines that the purchase of such services from a private provider will result in cost savings, increased efficiency, or improved quality of services to the agency without impairing the

interoperability of the [~~states~~] state's telecommunication services.

(3) An institution of higher education may subscribe to the services provided by the division if:

(a) the president of the institution recommends that the institution subscribe to the services of the division; and

(b) the Board of Regents determines that subscription to the services of the division will result in cost savings or increased efficiency to the institution.

Section 107. Section **63A-9-805** is amended to read:

63A-9-805. Acquisition of federal surplus property -- Powers and duties -- Advisory boards and committees -- Expenditures and contracts -- Clearinghouse of information -- Reports.

(1) As used in this section:

(a) "Property" includes equipment, materials, books, and other supplies.

(b) "Property act" means Section 203(j) of the Federal Property and Administrative Services Act of 1949.

(2) The division may:

(a) acquire from the United States of America under and in conformance with the property act any property under the control of any department or agency of the United States that is usable and necessary for any purposes authorized by federal law;

(b) warehouse that property if it is not real property; and

(c) distribute that property within Utah to:

(i) tax-supported medical institutions, hospitals, clinics, and health centers;

(ii) school systems, schools, colleges, and universities;

(iii) other nonprofit medical institutions, hospitals, clinics, health centers, schools, colleges, and universities that are exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code of 1954;

(iv) civil defense organizations;

(v) political subdivisions; and

(vi) any other types of institutions or activities that are eligible to acquire the property under federal law.

(3) The division may:

(a) receive applications from eligible health and educational institutions for the acquisition of federal surplus real property;

(b) investigate the applications;

(c) obtain opinions about those applications from the appropriate health or educational authorities of Utah;

(d) make recommendations about the need of the applicant for the property, the merits of the applicant's proposed use of the property, and the suitability of the property for those purposes; and

(e) otherwise assist in the processing of those applications for acquisition of real and related personal property of the United States under the property act.

(4) The division may appoint advisory boards or committees.

(5) If required by law or regulation of the United States in connection with the disposal of surplus real property and the receipt, warehousing, and distribution of surplus personal property received by the division from the United States, the division may:

(a) make certifications, take action, and make expenditures;

(b) enter into contracts, agreements, and undertakings for and in the name of the state including cooperative agreements with the federal agencies providing for use by and exchange between them of the property, facilities, personnel, and services of each by the other;

(c) require reports; and

(d) make investigations.

(6) The division shall act as the clearinghouse of information for public and private nonprofit institutions, organizations, and agencies eligible to acquire federal surplus real property to:

(a) locate both real and personal property available for acquisition from the United States;

(b) ascertain the terms and conditions under which that property may be obtained;

(c) receive requests from those institutions, organizations, and agencies and transmit to them all available information in reference to that property; and

(d) aid and assist those institutions, organizations, and agencies in every way possible in those acquisitions or transactions.

(7) The division shall:

(a) cooperate with the departments or agencies of the United States;

(b) file a state plan of operation;

(c) operate according to that plan;

(d) take the actions necessary to meet the minimum standards prescribed by the property act;

(e) make any reports required by the United States or any of its departments or agencies; and

(f) comply with the laws of the United States and the regulations of any of the departments or agencies of the United States governing the allocation of, transfer of, use of, or accounting for any property donated to the state.

Section 108. Section **63B-7-502** is amended to read:

63B-7-502. Other capital facility authorizations and intent language.

(1) (a) It is the intent of the Legislature that if funding from General Obligation bonding is provided for construction of new facilities, the Division of Finance shall transfer any occupying agency funds that are currently being used for rent payments to the service fund for debt service on the bonds.

(b) The Division of Finance may not transfer agency funds for operation and maintenance costs, which will continue to be incurred by the occupying agency.

(2) It is the intent of the Legislature that Utah State University use institutional funds to plan, design, and construct the American West Heritage Center under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated.

(3) It is the intent of the Legislature that:

(a) Utah State University allow the construction of the Poisonous Plant Laboratory on state-owned property under the direction of the Federal Government with oversight by the director of the Division of Facilities Construction and Management and Utah State University as may be required; and

(b) no state funds be used for any portion of this project.

(4) It is the intent of the Legislature that:

(a) Weber State University use institutional funds to plan, design, and construct the Weight Training room addition under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated; and

(b) no state funds be used for any portion of this project.

(5) It is the intent of the Legislature that:

(a) the College of Eastern Utah, San Juan campus, use institutional and other funds to plan, design, and construct the Arts and Conference Center under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

and

(b) no state funds be used for any portion of this project.

(6) It is the intent of the Legislature that:

(a) the University of Utah allow the construction of a privately owned West Health Science Mixed Use Facility on state-owned land located at the main campus of the University, under the oversight of the director of the Division of Facilities Construction and Management; and

(b) no state funds be used for any portion of this project.

(7) It is the intent of the Legislature that the Division of Facilities Construction and Management use up to $1,225,000 of the funds authorized for the Dead Horse Point Visitors Center project in Section 63B-6-102 for additional code upgrades and other critical repairs to the Dead Horse Point Visitors Center in addition to the modifications needed to meet [~~with~~] the Americans with Disabilities Act requirements.

(8) It is the intent of the Legislature that:

(a) the Division of Facilities Construction and Management proceed with the design of the Physical Education Building at Southern Utah University;

(b) the design include the full project scope, excluding funds for the purchase of the middle school;

(c) the 1999 Legislature rank the Physical Education Building at Southern Utah University as the top-ranked capital facility project for full funding in the 1999 annual general session of the

Legislature; and

(d) the Division of Facilities Construction and Management proceed with the bidding process for construction of this project.

Section 109. Section **67-1-9** is amended to read:

67-1-9. Governor's residence -- Sources of funds.

(1) [~~The proceeds from the sale of the property required to be sold in Section 67-1-8.1 shall be used for the restoration of the Kearns' mansion and to the extent possible, the carriage house adjacent to the mansion, and thereafter, the~~] The Kearns' mansion shall be the official residence of the governor.

(2) The building board may apply for, accept and expend funds from federal and other sources for carrying out the purposes of Section 67-1-8.1 and this [~~act~~] section.

Section 110. Section **67-1a-1** is amended to read:

67-1a-1. Intent of Legislature.

It is the [~~purpose~~] intent of the Legislature to emphasize the significant responsibilities and duties assigned to the lieutenant governor of the state. As the second highest official of the state, the lieutenant governor is next in command of the executive department in the event of death, removal, resignation, or disability of the governor. The assignment of important responsibilities to the lieutenant governor is essential to the continuity of state government and for the effective use of funds appropriated to the office of lieutenant governor.

Section 111. Section **73-10b-2** is amended to read:

73-10b-2. Definitions.

As used in this chapter:

(1) "Drinking water project" means any work or facility necessary or desirable to provide water for human consumption and other domestic uses which has at least 15 service connections or serves an average of 25 individuals daily for at least 60 days of the year and includes collection, treatment, storage, and distribution facilities under the control of the operator and used primarily with the system, and collection pretreatment or storage facilities used primarily in connection with the system but not under the operator's control.

(2) "Political subdivision" means any county, city, town, improvement district, metropolitan water district, water conservancy district, special service district, drainage district, irrigation district, separate legal or administrative entity created under Title 11, Chapter 13, Interlocal Cooperation Act, or any other entity constituting a political subdivision under the laws of Utah.

(3) "Sinking fund" means the 1983 general obligation water, wastewater, and drinking water bonds sinking fund created by Section 73-10b-12.

[~~(7)~~] (4) "Wastewater project" means any sewer, storm or sanitary sewage system, sewage treatment facility and system, lagoon, sewage collection facility and system, and related pipelines, and all similar systems, works, and facilities necessary or desirable to collect, hold, cleanse, or purify any sewage or other polluted waters of this state.

[~~(4)~~] (5) "Waters of this state" means any stream, lake, pond, marsh, watercourse, waterway, well, spring, irrigation system, drainage system, or other body or accumulation of water, whether surface, underground, natural, artificial, public, or private, or other water resource of the state, which is contained within or flows in or through Utah.

[~~(5)~~] (6) "Water project" means any work or facility necessary or desirable to conserve, develop, protect, or treat the waters of this state including, without limitation, any reservoir, diversion dam, irrigation dam and system, culinary water system, water work, water treatment facility, canal, ditch, aqueduct, pipeline, and related structures and facilities.

[~~(6)~~] (7) "Water project costs" or "wastewater project costs" or "drinking water project costs" means, as appropriate, the cost of acquiring and constructing any water project, wastewater project or drinking water project, including:

(a) the cost of acquisition and construction of any facility or any modification, improvement, or extension of a facility;

(b) any cost incident to the acquisition of any necessary property, easement, or right-of-way;

(c) engineering or architectural fees, legal fees, fiscal agents', and financial advisors' fees;

(d) any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project;

(e) costs of economic investigations and studies, surveys, preparation of designs, plans,

working drawings, specifications, and the inspection and supervision of the construction of any facility;

(f) interest accruing on loans made under this chapter during acquisition and construction of the water project, drinking water project, or wastewater project; and

(g) any other cost incurred by the political subdivision, the Board of Water Resources, the Division of Water Resources, the Water Quality Board, the Drinking Water Board, or the Department of Environmental Quality, in connection with the issuance of obligations of the political subdivision to evidence any loan made to it under this chapter.

Section 112. Section **73-10d-4** is amended to read:

73-10d-4. Notice of intention to enter privatization project -- Petition for election -- Election procedures -- Powers of political subdivision -- Public bidding laws not to apply.

(1) The governing authority of any political subdivision considering entering into a privatization project agreement shall issue a notice of intention setting forth a brief summary of the agreement provisions and the time within which and place at which petitions may be filed requesting the calling of an election in the political subdivision to determine whether the agreement should be approved. The notice of intention shall specify the form of the petitions. If, within 30 days after the publication of the notice of intention, petitions are filed with the clerk, recorder, or similar officer of the political subdivision, signed by at least 5% of the qualified electors of the political subdivision (as certified by the county clerks of the respective counties within which the political subdivision is located) requesting an election be held to authorize the agreement, then the governing authority shall proceed to call and hold an election. If an adequate petition is not filed within 30 days, the governing authority may adopt a resolution so finding and may proceed to enter into the agreement.

(2) If, under Subsection (1), the governing authority of a political subdivision is required to call an election to authorize an agreement, the governing authority shall adopt a resolution directing that an election be held in the political subdivision for the purpose of determining whether the political subdivision may enter into the agreement. The resolution calling the election shall be adopted, notice of the election shall be given, voting precincts shall be established, the election shall be held, voters' qualifications shall be determined, and the results shall be canvassed in the manner

and subject to the conditions provided for in Title 11, Chapter 14, [~~the~~] Utah Municipal Bond Act.

(3) A political subdivision may, upon approval of an agreement as provided by Subsections (1) and (2) and subject to the powers and rules of the supervising agency:

(a) supervise and regulate the construction, maintenance, ownership, and operation of all privatization projects within its jurisdiction or in which it has a contractual interest;

(b) contract, by entry into agreements with private owner/operators for the provision within its jurisdiction of the services of privatization projects;

(c) levy and collect taxes, as otherwise provided by law, and impose and collect assessments, fees, or charges for services provided by privatization projects, as appropriate, and, subject to any limitation imposed by the constitution, pledge, assign, or otherwise convey as security for the payment of its obligations under any agreements any revenues and receipts derived from any assessments, fees, or charges for services provided by privatization projects;

(d) require the private owner/operator to obtain any and all licenses as appropriate under federal, state, and local law and impose other requirements which are necessary or desirable to discharge the responsibility of the political subdivision to supervise and regulate the construction, maintenance, ownership, and operation of any privatization project;

(e) control the right to contract, maintain, own, and operate any privatization project and the services provided in connection with that project within its jurisdiction;

(f) purchase, lease, or otherwise acquire all or any part of a privatization project;

(g) with respect to the services of any privatization project, control the right to establish or regulate the rates paid by the users of the services within the jurisdiction of the political subdivision;

(h) agree that the sole and exclusive right to provide the services within its jurisdiction related to privatization projects be assumed by any private owner/operator;

(i) contract for the lease or purchase of land, facilities, equipment, and vehicles for the operation of privatization projects;

(j) lease, sell, or otherwise convey, as permitted by state and local law, but without any requirement of competitive public bidding, land, facilities, equipment, and vehicles, previously used in connection with privatization projects, to private owner/operators; and

(k) establish policies for the operation of any privatization project within its jurisdiction or with respect to which it has a contractual interest, including hours of operation, the character and kinds of services, and other rules necessary for the safety of operating personnel.

(4) Any political subdivision may enter into agreements with respect to privatization projects. Agreements may contain provisions relating to, without limitation, any matter provided for in this section or consistent with the purposes of this chapter.

(5) Any agreement entered into between a political subdivision and a private owner/operator for the provision of the services of a privatization project is considered an exercise of that political subdivision's business or proprietary power binding upon its succeeding governing authorities. Any agreement made by a political subdivision with a private owner/operator for payment for services provided or to be provided may not be construed to be an indebtedness or a lending of credit of the political subdivision within the meaning of any constitutional or statutory restriction.

(6) The provisions of the various laws of the state and the rules or ordinances of a political subdivision which would otherwise require public bidding in respect to any matter provided for in this chapter shall have no application to that matter.

Section 113. Section **73-10d-7** is amended to read:

73-10d-7. Agreements by political subdivisions for privatization projects -- Joint interests.

(1) Any one or more political subdivisions, or the United States or any of its agencies, may enter into long-term agreements with any person for joint or cooperative action related to the acquisition, construction, maintenance, ownership, operation, and improvement of privatization projects in accordance with the terms, conditions, and consideration provided in any long-term agreements. Any payments made by a political subdivision under a long-term agreement for joint or cooperative action may not be construed to be an indebtedness of or a lending of the credit of the political subdivision within the meaning of any constitutional or statutory restriction, and, except as required by this chapter and the constitution, no election is necessary for the authorization of any long-term agreement for joint or cooperative action.

(2) Any one or more political subdivisions may construct, purchase, or otherwise acquire

joint interests in any privatization project or any part of a privatization project, for common use with any private entity or other political subdivision, or may sell or lease to any other political subdivision or person a partial interest in a privatization project. Political subdivisions may finance their joint interests in privatization projects in the manner provided for and subject to Title 11, Chapter 14, [~~the~~] Utah Municipal Bond Act, if otherwise eligible thereunder to finance capital improvement.

Section 114. Section **73-10h-8** is amended to read:

73-10h-8. Terms and conditions of sale -- Plan of financing -- Signatures -- Replacement -- Registration -- Federal rebate.

(1) In the issuance of bonds, the commission may determine by resolution:

(a) the manner of sale, including public or private sale;

(b) the terms and conditions of sale, including the price, whether at, below, or above face value;

(c) denominations;

(d) form;

(e) manner of execution;

(f) manner of authentication;

(g) place and medium of purchase;

(h) redemption terms; and

(i) other provisions and details it considers appropriate.

(2) The commission may by resolution adopt a plan of financing, which may include terms and conditions of arrangements entered into by the commission on behalf of the state with financial and other institutions for letters of credit, standby letters of credit, reimbursement agreements, and remarketing, indexing, and tender agent agreements to secure the bonds, including payment from any legally available source of fees, charges, or other amounts coming due under the agreements entered into by the commission.

(3) (a) Any signature of a public official authorized by resolution of the commission to sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or otherwise placed on the bonds.

(b) If all signatures of public officials on the bonds are facsimile signatures, provision shall be made for a manual authenticating signature on the bonds by or on behalf of a designated authentication agent. A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise placed on the bonds.

(c) If an official ceases to hold office before delivery of the bonds signed by that official, the signature or facsimile signature of the official is nevertheless valid for all purposes.

(4) The commission by resolution may provide for the replacement of lost, destroyed, or mutilated bonds or for the exchange of bonds after issuance for bonds of smaller or larger denominations. Bonds in changed denominations shall be exchanged for the original bonds in like aggregate principal amounts and in a manner that prevents the duplication of interest, and shall bear interest at the same rate, mature on the same date, and be as nearly as practicable in form as the original bonds.

(5) (a) Bonds may be registered as to both principal and interest or may be in a book entry form under which the right to principal and interest may be transferred only through a book entry.

(b) The commission may provide for the services and payment for the services of one or more financial institutions or other entities or persons, or nominees, within or outside the state, for the authentication, registration, and transfer, including record, bookkeeping, or book entry functions, exchange, and payment of the bonds.

(c) The records of ownership, registration, transfer, and exchange of the bonds, and of persons to whom payment with respect to the obligations is made, are private records or protected records as defined in Section 63-2-103.

(d) The bonds and any evidences of participation interests in the bonds may be issued, executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature relating to the registration of obligations enacted to meet the requirements of Section 149, Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

(6) The commission may, [~~be~~] by resolution, provide for payment to the United States of such amounts as may be necessary to comply with Section 148(f), Internal Revenue Code of 1986,

as amended, and may enter into agreements with financial and other institutions and attorneys to provide for the calculation, holding, and payment of such amounts and provide for payment from any legally available source of fees, charges, or other amounts coming due under any agreements entered into by the commission.

Section 115. Section **76-8-316** is amended to read:

76-8-316. Influencing, impeding, or retaliating against a judge or member of the Board of Pardons and Parole.

(1) A person is guilty of a third degree felony if the person threatens to assault, kidnap, or murder a judge or a member of the Board of Pardons and Parole with the intent to impede, intimidate, or interfere with the judge or member of the board while engaged in the performance of the judge's or member's official duties or with the intent to retaliate against the judge or member on account of the performance of those official duties.

(2) A person is guilty of a second degree felony if the person commits an assault on a judge or a member of the Board of Pardons and Parole with the intent to impede, intimidate, or interfere with the judge or member of the board while engaged in the performance of the judge's or member's official duties, or with the intent to retaliate against the judge or member on account of the performance of those official duties.

(3) A person is guilty of a first degree felony if the person commits aggravated assault or attempted murder on a judge or a member of the Board of Pardons and Parole with the purpose to impede, intimidate, or interfere with the judge or member of the board while engaged in the performance of the judge's or member's official duties or with the purpose to retaliate against the judge or member on account of the performance of those official duties.

(4) As used in this section:

(a) "Immediate family" means parents, spouse, surviving spouse, children, and siblings of the officer.

(b) "Judge" means judges of all courts of record and courts not of record.

(c) "Judge or member" includes the members of the judge's or member's immediate family.

(d) "Member of the Board of Pardons and Parole" means appointed members of the board.

(5) A member of the Board of Pardons and Parole is an executive officer for purposes of [~~Subsections~~] Subsection 76-5-202(1)(k).

Section 116. Section **76-10-1201** is amended to read:

76-10-1201. Definitions.

For the purpose of this part:

(1) "Material" means anything printed or written or any picture, drawing, photograph, motion picture, or pictorial representation, or any [~~statute~~] statue or other figure, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or anything which is or may be used as a means of communication. Material includes undeveloped photographs, molds, printing plates, and other latent representational objects.

(2) "Performance" means any physical human bodily activity, whether engaged in alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomiming.

(3) "Distribute" means to transfer possession of materials whether with or without consideration.

(4) "Knowingly" means an awareness, whether actual or constructive, of the character of material or of a performance. A person has constructive knowledge if a reasonable inspection or observation under the circumstances would have disclosed the nature of the subject matter and if a failure to inspect or observe is either for the purpose of avoiding the disclosure or is criminally negligent.

(5) "Exhibit" means to show.

(6) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks, with less than an opaque covering, or the showing of a female breast with less than an opaque covering, or any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

(7) "Sexual conduct" means acts of masturbation, sexual intercourse, or any touching of a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is a female, breast, whether alone or between members of the same or opposite sex or between humans and animals in

an act of apparent or actual sexual stimulation or gratification.

(8) "Sexual excitement" means a condition of human male or female genitals when in a state of sexual stimulation or arousal, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

(9) "Sado-masochistic abuse" means flagellation or torture by or upon a person who is nude or clad in undergarments, a mask, or in a revealing or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

(10) "Minor" means any person less than eighteen years of age.

(11) "Harmful to minors" means that quality of any description or representation, in whatsoever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it:

[~~(i)~~] (a) taken as a whole, appeals to the prurient interest in sex of minors;

[~~(ii)~~] (b) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

[~~(iii)~~] (c) taken as a whole, does not have serious value for minors. Serious value includes only serious literary, artistic, political or scientific value for minors.

(12) "Contemporary community standards" means those current standards in the vicinage where an offense alleged under this act has occurred, is occurring, or will occur.

(13) "Public place" includes a place to which admission is gained by payment of a membership or admission fee, however designated, notwithstanding its being designated a private club or by words of like import.

Section 117. Section **76-10-1306** is amended to read:

76-10-1306. Aggravated exploitation of prostitution.

(1) A person is guilty of aggravated exploitation if:

(a) in committing an act of exploiting prostitution, as defined in section 76-10-1305, he uses any force, threat, or fear against any person; or

(b) the person procured, transported, or [~~pursuaded~~] persuaded or with whom he shares the proceeds of prostitution is under eighteen years of age or is the wife of the actor.

(2) Aggravated exploitation of prostitution is a felony of the second degree.

Section 118. Section **78-14-5** is amended to read:

78-14-5. Failure to obtain informed consent -- Proof required of patient -- Defenses -- Consent to health care.

(1) When a person submits to health care rendered by a health care provider, it shall be presumed that what the health care provider did was either expressly or impliedly authorized to be done. For a patient to recover damages from a health care provider in an action based upon the provider's failure to obtain informed consent, the patient must prove the following:

(a) that a provider-patient relationship existed between the patient and health care provider;

(b) the health care provider rendered health care to the patient;

(c) the patient suffered personal injuries arising out of the health care rendered;

(d) the health care rendered carried with it a substantial and significant risk of causing the patient serious harm;

(e) the patient was not informed of the substantial and significant risk;

(f) a reasonable, prudent person in the patient's position would not have consented to the health care rendered after having been fully informed as to all facts relevant to the decision to give consent. In determining what a reasonable, prudent person in the patient's position would do under the circumstances, the finder of fact shall use the viewpoint of the patient before health care was provided and before the occurrence of any personal injuries alleged to have arisen from said health care; and

(g) the unauthorized part of the health care rendered was the proximate cause of personal injuries suffered by the patient.

(2) It shall be a defense to any malpractice action against a health care provider based upon alleged failure to obtain informed consent if:

(a) the risk of the serious harm which the patient actually suffered was relatively minor;

(b) the risk of serious harm to the patient from the health care provider was commonly known to the public;

(c) the patient stated, prior to receiving the health care complained of, that he would accept the health care involved regardless of the risk; or that he did not want to be informed of the matters

to which he would be entitled to be informed;

(d) the health care provider, after considering all of the attendant facts and [~~circumstancts~~] circumstances, used reasonable discretion as to the manner and extent to which risks were disclosed, if the health care provider reasonably believed that additional disclosures could be expected to have a substantial and adverse effect on the patient's condition; or

(e) the patient or his representative executed a written consent which sets forth the nature and purpose of the intended health care and which contains a declaration that the patient accepts the risk of substantial and serious harm, if any, in hopes of obtaining desired beneficial results of health care and which acknowledges that health care providers involved have explained his condition and the proposed health care in a satisfactory manner and that all questions asked about the health care and its attendant risks have been answered in a manner satisfactory to the patient or his representative; such written consent shall be a defense to an action against a health care provider based upon failure to obtain informed consent unless the patient proves that the person giving the consent lacked capacity to consent or shows by clear and convincing proof that the execution of the written consent was induced by the defendant's affirmative acts of fraudulent misrepresentation or fraudulent omission to state material facts.

(3) Nothing contained in this act shall be construed to prevent any person 18 years of age or over from refusing to consent to health care for his own person upon personal or religious grounds.

(4) The following persons are authorized and empowered to consent to any health care not prohibited by law:

(a) any parent, whether an adult or a minor, for his minor child;

(b) any married person, for a spouse;

(c) any person temporarily standing in loco parentis, whether formally serving or not, for the minor under his care and any guardian for his ward;

(d) any person 18 years of age or over for his or her parent who is unable by reason of age, physical or mental condition, to provide such consent;

(e) any patient 18 years of age or over;

(f) any female regardless of age or marital status, when given in connection with her pregnancy or childbirth;

(g) in the absence of a parent, any adult for his minor brother or sister; and

(h) in the absence of a parent, any grandparent for his minor grandchild.

(5) No person who in good faith consents or authorizes health care treatment or procedures for another as provided by this act shall be subject to civil liability.

Section 119. Section **78-23-10** is amended to read:

78-23-10. Allowable claims against exempt property.

(1) Notwithstanding other provisions of this chapter, but subject to the provisions of the Utah Uniform Consumer Credit Code:

(a) A creditor may levy against exempt property of any kind to enforce a claim for:

(i) alimony, support, or maintenance;

(ii) unpaid earnings of up to one month's compensation or the full-time equivalent of one month's compensation for personal services of an employee; or

(iii) state or local taxes.

(b) A creditor may levy against exempt property to enforce a claim for:

(i) the purchase price of the property or a loan made for the purpose of enabling an individual to purchase the specific property used for that purpose;

(ii) [~~lbor~~] labor or materials furnished to make, repair, improve, preserve, store, or transport the specific property; and

(iii) a special assessment imposed to defray costs of a public improvement benefiting the property.

(2) This section does not affect the right to enforce any statutory lien or security interest in exempt property.

Section 120. **Repealer.**

This act repeals:

Section **63C-5-101, Utah Pioneer Sesquicentennial Celebration -- Purpose.**

Section **63C-5-103, Duties -- Responsibilities -- Quorum.**

Section **63C-5-104, Removal of members -- Vacancies.**

Section **63C-5-105, Staffing -- Division of State History -- Responsibilities.**

Section **63C-5-106, Utah Pioneer Sesquicentennial Fund -- Use.**

Section **63C-5-107, Repeal date.**