

1 **UTAH HOUSING CORPORATION AMENDMENTS**

2 2002 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Ron Bigelow**

5 **This act modifies the Community and Economic Development Code and other code**
6 **provisions by making conforming amendments of the change in name of the Utah Housing**
7 **Finance Agency to the Utah Housing Corporation. This act provides an effective date.**

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

9 AMENDS:

10 **9-4-503**, as last amended by Chapters 194 and 243, Laws of Utah 1996

11 **9-4-706**, as last amended by Chapter 265, Laws of Utah 1994

12 **9-4-1203**, as renumbered and amended by Chapter 30, Laws of Utah 1997

13 **10-9-307**, as last amended by Chapter 117, Laws of Utah 1998

14 **11-37-101**, as last amended by Chapter 76, Laws of Utah 1999

15 **17-27-307**, as last amended by Chapter 117, Laws of Utah 1998

16 **35A-3-103**, as last amended by Chapter 1, Laws of Utah 1998

17 **35A-3-309**, as renumbered and amended by Chapter 174, Laws of Utah 1997

18 **51-5-4.5**, as enacted by Chapters 4 and 5, Laws of Utah 1985, First Special Session

19 **51-7-2**, as last amended by Chapter 222, Laws of Utah 2000

20 **51-7-4**, as last amended by Chapter 222, Laws of Utah 2000

21 **59-7-607**, as last amended by Chapter 205, Laws of Utah 2000

22 **59-10-129**, as last amended by Chapter 205, Laws of Utah 2000

23 **61-2c-105**, as enacted by Chapter 329, Laws of Utah 2000

24 **63-5b-102**, as last amended by Chapter 222, Laws of Utah 2000

25 **63-38-9.5**, as last amended by Chapter 60, Laws of Utah 1990

26 **63-38a-102**, as last amended by Chapter 222, Laws of Utah 2000

27 **63-55-209**, as last amended by Chapters 1, 32 and 139, Laws of Utah 2000



- 28 **63-56-5**, as last amended by Chapter 86, Laws of Utah 2000
- 29 **63-95-102**, as last amended by Chapters 210 and 222, Laws of Utah 2000
- 30 **63-95-203**, as last amended by Chapter 9, Laws of Utah 2001
- 31 **63A-1-113**, as renumbered and amended by Chapter 212, Laws of Utah 1993
- 32 **63E-1-102 (Effective 07/01/02)**, as enacted by Chapter 201, Laws of Utah 2001
- 33 **63E-1-203 (Effective 07/01/02)**, as enacted by Chapter 201, Laws of Utah 2001

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

35 Section 1. Section **9-4-503** is amended to read:

36 **9-4-503. Private Activity Bond Review Board.**

37 (1) There is created within the department the Private Activity Bond Review Board,
38 composed of ten members as follows:

39 (a) four ex officio members who shall be:

- 40 (i) the executive director of the department or his designee;
- 41 (ii) the state treasurer or his designee;
- 42 (iii) the chair of the Board of Regents or his designee; and
- 43 (iv) the chair of the Utah Housing [~~Finance Agency~~] Corporation or his designee; and

44 (b) six local government members who shall be:

- 45 (i) three elected or appointed county officials, nominated by the Utah Association of
46 Counties and appointed by the governor with the advice and consent of the Senate; and
- 47 (ii) three elected or appointed municipal officials, nominated by the Utah League of Cities
48 and Towns and appointed by the governor with the advice and consent of the Senate.

49 (2) (a) Except as required by Subsection (2)(b), the terms of office for the local
50 government members of the board of review shall be four-year terms.

51 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time
52 of appointment or reappointment, adjust the length of terms to ensure that the terms of board
53 members are staggered so that approximately half of the board is appointed every two years.

54 (c) Members may be reappointed only once.

55 (3) (a) If a local government member ceases to be an elected or appointed official of the
56 city or county he is appointed to represent, his membership on the board of review shall terminate
57 immediately and there shall be a vacancy in the membership.

58 (b) When a vacancy occurs in the membership for any reason, the replacement shall be

59 appointed within 30 days in the manner of the regular appointment for the unexpired term, and
60 until his successor is appointed and qualified.

61 (4) The chair of the board of review shall be the executive director of the department or
62 his designee. The chair shall be nonvoting except in the case of a tie vote.

63 (5) Five members of the board of review constitute a quorum.

64 (6) Formal action by the board of review shall be by majority vote of a quorum.

65 (7) (a) (i) Members who are not government employees shall receive no compensation or
66 benefits for their services, but may receive per diem and expenses incurred in the performance of
67 the member's official duties at the rates established by the Division of Finance under Sections
68 63A-3-106 and 63A-3-107.

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

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

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

76 (c) (i) Local government members who do not receive salary, per diem, or expenses from
77 the entity that they represent for their service may receive per diem and expenses incurred in the
78 performance of their official duties at the rates established by the Division of Finance under
79 Sections 63A-3-106 and 63A-3-107.

80 (ii) Local government members may decline to receive per diem and expenses for their
81 service.

82 (d) (i) Higher education members who do not receive salary, per diem, or expenses from
83 the entity that they represent for their service may receive per diem and expenses incurred in the
84 performance of their official duties from the committee at the rates established by the Division of
85 Finance under Sections 63A-3-106 and 63A-3-107.

86 (ii) Higher education members may decline to receive per diem and expenses for their
87 service.

88 (8) The chair of the board of review shall serve as the state official designated under state
89 law to make certifications required to be made under Section 146 of the code including, without

90 limitation, the certification required by Section 149(e)(2)(F) of the code.

91 Section 2. Section **9-4-706** is amended to read:

92 **9-4-706. Entities authorized to receive fund moneys.**

93 The executive director, with the approval of the board, may grant or lend fund moneys to
94 housing sponsors. "Housing sponsor" includes a person who constructs, develops, rehabilitates,
95 purchases, or owns a housing development that is or will be subject to legally enforceable
96 restrictive covenants that require the housing development to provide, at least in part, residential
97 housing to low and moderate income persons. A housing sponsor includes:

98 (1) a local public body;

99 (2) a nonprofit, limited profit, or for profit corporation;

100 (3) a limited partnership;

101 (4) a limited liability company;

102 (5) a joint venture;

103 (6) a subsidiary of the Utah Housing ~~[Finance Agency]~~ Corporation or any subsidiary of
104 the subsidiary of the Utah Housing Finance Agency;

105 (7) a cooperative;

106 (8) a mutual housing organization;

107 (9) a local government;

108 (10) a local housing authority;

109 (11) a regional or statewide nonprofit housing or assistance organization; or

110 (12) any other type of entity or arrangement that helps provide affordable housing for low
111 and moderate income persons.

112 Section 3. Section **9-4-1203** is amended to read:

113 **9-4-1203. Division -- Functions.**

114 (1) In addition to any other functions the governor or Legislature may assign:

115 (a) the division shall:

116 (i) provide a clearinghouse of information for federal, state, and local housing assistance
117 programs;

118 (ii) establish, in cooperation with political subdivisions, model plans and management
119 methods to encourage or provide for the development of affordable housing that may be adopted
120 by political subdivisions by reference;

121 (iii) undertake, in cooperation with political subdivisions, a realistic assessment of
122 problems relating to housing needs, such as:

123 (A) inadequate supply of dwellings;

124 (B) substandard dwellings; and

125 (C) inability of medium and low income families to obtain adequate housing;

126 (iv) provide the information obtained under Subsection (1)(a)(iii) to:

127 (A) political subdivisions;

128 (B) real estate developers;

129 (C) builders;

130 (D) lending institutions;

131 (E) affordable housing advocates; and

132 (F) others having use for the information;

133 (v) advise political subdivisions of serious housing problems existing within their
134 jurisdiction that require concerted public action for solution; and

135 (vi) assist political subdivisions in defining housing objectives and in preparing for
136 adoption a plan of action covering a five-year period designed to accomplish housing objectives
137 within their jurisdiction; and

138 (b) within legislative appropriations, the division may accept for and on behalf of, and bind
139 the state to, any federal housing or homeless program in which the state is invited, permitted, or
140 authorized to participate in the distribution, disbursement, or administration of any funds or service
141 advanced, offered, or contributed in whole or in part by the federal government.

142 (2) The administration of any federal housing program in which the state is invited,
143 permitted, or authorized to participate in distribution, disbursement or administration of funds or
144 services, except those administered by the Utah Housing ~~[Finance Agency]~~ Corporation, is
145 governed by Sections 9-4-701 through 9-4-708.

146 Section 4. Section **10-9-307** is amended to read:

147 **10-9-307. Plans for moderate income housing.**

148 (1) The availability of moderate income housing is an issue of statewide concern. To this
149 end:

150 (a) municipalities should afford a reasonable opportunity for a variety of housing,
151 including moderate income housing, to meet the needs of people desiring to live there; and

152 (b) moderate income housing should be encouraged to allow persons with moderate
153 incomes to benefit from and to fully participate in all aspects of neighborhood and community life.

154 (2) As used in this section:

155 (a) "Moderate income housing" means housing occupied or reserved for occupancy by
156 households with a gross household income equal to or less than 80% of the median gross income
157 of the metropolitan statistical area for households of the same size.

158 (b) "Plan for moderate income housing" or "plan" means a written document adopted by
159 a municipal legislative body that includes:

160 (i) an estimate of the existing supply of moderate income housing located within the
161 municipality;

162 (ii) an estimate of the need for moderate income housing in the municipality for the next
163 five years as revised annually;

164 (iii) a survey of total residential zoning;

165 (iv) an evaluation of how existing zoning densities affect opportunities for moderate
166 income housing; and

167 (v) a description of the municipality's program to encourage an adequate supply of
168 moderate income housing.

169 (3) Before December 31, 1998, each municipal legislative body shall, as part of its general
170 plan, adopt a plan for moderate income housing within that municipality.

171 (4) A plan may provide moderate income housing by any means or combination of
172 techniques which provide a realistic opportunity to meet estimated needs. The plan may include
173 an analysis of why the means or techniques selected provide a realistic opportunity to meet the
174 objectives of this section. Such techniques may include:

175 (a) rezoning for densities necessary to assure the economic viability of inclusionary
176 developments, either through mandatory set asides or density bonuses;

177 (b) infrastructure expansion and rehabilitation that will facilitate the construction of
178 moderate income housing;

179 (c) rehabilitation of existing uninhabitable housing stock;

180 (d) consideration of waiving construction related fees generally imposed by the
181 municipality;

182 (e) utilization of state or federal funds or tax incentives to promote the construction of

183 moderate income housing;

184 (f) utilization of programs offered by the Utah Housing [~~Finance Agency~~] Corporation
185 within that agency's funding capacity; and

186 (g) utilization of affordable housing programs administered by the Department of
187 Community and Economic Development.

188 (5) (a) After adoption of a plan for moderate income housing under Subsection (3), the
189 legislative body of each city that is located within a county of the first or second class and of each
190 other city with a population over 10,000 shall annually:

191 (i) review the plan and its implementation; and

192 (ii) prepare a report setting forth the findings of the review.

193 (b) Each report under Subsection (5)(a)(ii) shall include a description of:

194 (i) efforts made by the municipality to reduce, mitigate, or eliminate local regulatory
195 barriers to moderate income housing;

196 (ii) actions taken by the municipality to encourage preservation of existing moderate
197 income housing and development of new moderate income housing;

198 (iii) progress made within the municipality to provide moderate income housing, as
199 measured by permits issued for new units of moderate income housing; and

200 (iv) efforts made by the municipality to coordinate moderate income housing plans and
201 actions with neighboring municipalities.

202 (c) The legislative body of each city that is located within a county of the first or second
203 class and of each other city with a population over 10,000 shall send a copy of the report under
204 Subsection (5)(a)(ii) to the Department of Community and Economic Development and the
205 association of governments in which the municipality is located.

206 Section 5. Section **11-37-101** is amended to read:

207 **11-37-101. Definition -- Procurement -- Use of recycled goods.**

208 (1) "Local government entity" means:

209 (a) municipalities, cities, and counties;

210 (b) entities created under Title 26A, Chapter 1, Local Health Department; and

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

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

213 (ii) Title 9, Chapter 4, Part 9, Utah Housing [~~Finance Agency~~] Corporation Act; and

214 (iii) Title 9, Chapter 13, Utah Technology and Small Business Finance Act.

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

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

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

220 Section 6. Section **17-27-307** is amended to read:

221 **17-27-307. Plans for moderate income housing.**

222 (1) The availability of moderate income housing is an issue of statewide concern. To this
223 end:

224 (a) counties should afford a reasonable opportunity for a variety of housing, including
225 moderate income housing, to meet the needs of people desiring to live there; and

226 (b) moderate income housing should be located in all areas of a community to allow
227 persons with moderate incomes to benefit from and to fully participate in all aspects of
228 neighborhood and community life.

229 (2) As used in this section:

230 (a) "Moderate income housing" means housing occupied or reserved for occupancy by
231 households with a gross household income equal to or less than 80% of the median gross income
232 of the county statistical area for households of the same size.

233 (b) "Plan for moderate income housing" or "plan" means a written document adopted by
234 a county legislative body that includes, but is not limited to:

235 (i) an estimate of the existing supply of moderate income housing located within the
236 county;

237 (ii) an estimate of the need for moderate income housing in that county for the next five
238 years as revised annually;

239 (iii) a survey of total residential zoning;

240 (iv) an evaluation of how existing zoning densities affect opportunities for moderate
241 income housing; and

242 (v) a description of the county's program to encourage an adequate supply of moderate
243 income housing.

244 (3) Before December 31, 1998, each county legislative body shall, as part of its general

245 plan, adopt a plan for moderate income housing within the unincorporated areas of that county.

246 (4) A plan may provide for moderate income housing by any means or combination of
247 techniques which provide a realistic opportunity to meet estimated needs. The plan may include
248 an analysis of why the means or techniques selected provide a realistic opportunity to meet the
249 objectives of this section. Such techniques may include:

250 (a) rezoning for densities necessary to assure the economic viability of inclusionary
251 developments, either through mandatory set asides or density bonuses;

252 (b) infrastructure expansion and rehabilitation that will facilitate the construction of
253 moderate income housing;

254 (c) rehabilitation of existing uninhabitable housing stock;

255 (d) consideration of waiving construction related fees generally imposed by the county;

256 (e) utilization of state or federal funds or tax incentives to promote the construction of
257 moderate income housing;

258 (f) utilization of programs offered by the Utah Housing [~~Finance Agency~~] Corporation
259 within that agency's funding capacity; and

260 (g) utilization of affordable housing programs administered by the Department of
261 Community and Economic Development.

262 (5) (a) After adoption of a plan for moderate income housing under Subsection (3), the
263 legislative body of each county with a population over 25,000 shall annually:

264 (i) review the plan and its implementation; and

265 (ii) prepare a report setting forth the findings of the review.

266 (b) Each report under Subsection (5)(a)(ii) shall include a description of:

267 (i) efforts made by the county to reduce, mitigate, or eliminate local regulatory barriers to
268 moderate income housing;

269 (ii) actions taken by the county to encourage preservation of existing moderate income
270 housing and development of new moderate income housing;

271 (iii) progress made within the county to provide moderate income housing, as measured
272 by permits issued for new units of moderate income housing; and

273 (iv) efforts made by the county to coordinate moderate income housing plans and actions
274 with neighboring counties.

275 (c) The legislative body of each county with a population over 25,000 shall send a copy

276 of the report under Subsection (5)(a)(ii) to the Department of Community and Economic
277 Development and the association of governments in which the county is located.

278 Section 7. Section **35A-3-103** is amended to read:

279 **35A-3-103. Division responsibilities.**

280 The division shall:

281 (1) administer public assistance programs assigned by the Legislature and the governor;

282 (2) determine eligibility in accordance with the requirements of this chapter for public
283 assistance programs assigned to it by the Legislature or the governor;

284 (3) cooperate with the federal government in the administration of public assistance
285 programs;

286 (4) administer the Utah state employment service in accordance with Section 35A-3-115;

287 (5) provide for the compilation of necessary or desirable information, statistics, and
288 reports;

289 (6) perform any other duties and functions required by law;

290 (7) monitor the application of eligibility policy;

291 (8) develop personnel training programs for more effective and efficient operation of all
292 programs under the administration of the division;

293 (9) provide refugee resettlement services;

294 (10) provide child care assistance for children; and

295 (11) provide services and support that enable clients to qualify for affordable housing in
296 cooperation with:

297 (a) the Utah Housing [~~Finance Agency~~] Corporation;

298 (b) the Division of Community Development within the Department of Community and
299 Economic Development; and

300 (c) local housing authorities.

301 Section 8. Section **35A-3-309** is amended to read:

302 **35A-3-309. Information regarding home ownership.**

303 The division shall provide information and service coordination to assist a client to occupy
304 affordable housing. The information and services may include:

305 (1) information from the Utah Housing [~~Finance Agency~~] Corporation and the Division
306 of Community Development within the Department of Community and Economic Development

307 regarding special housing programs, including programs for first-time home buyers and persons
308 with low and moderate incomes and the eligibility requirements for those programs;

309 (2) referrals to programs operated by volunteers from the real estate industry that assist
310 clients in obtaining affordable housing, including information on home ownership, down
311 payments, closing costs, and credit requirements; and

312 (3) referrals to housing programs operated by municipalities, counties, local housing
313 authorities, and nonprofit housing organizations that assist individuals to obtain affordable
314 housing, including first-time home ownership.

315 Section 9. Section **51-5-4.5** is amended to read:

316 **51-5-4.5. Housing Corporation and Technology Finance Corporation exempt.**

317 The Utah Housing [~~Finance Agency~~] Corporation and the Utah Technology Finance
318 Corporation are exempt from this chapter.

319 Section 10. Section **51-7-2** is amended to read:

320 **51-7-2. Exemptions from chapter.**

321 The following funds are exempt from this chapter:

322 (1) funds invested in accordance with the participating employees' designation or direction
323 pursuant to a public employees' deferred compensation plan established and operated in
324 compliance with Section 457 of the Internal Revenue Code of 1954, as amended;

325 (2) funds of the Workers' Compensation Fund;

326 (3) funds of the Utah State Retirement Board;

327 (4) funds of the Utah Technology Finance Corporation; and

328 (5) funds of the Utah Housing [~~Finance Agency~~] Corporation.

329 Section 11. Section **51-7-4** is amended to read:

330 **51-7-4. Transfer of functions, powers, and duties relating to public funds to state**
331 **treasurer -- Exceptions -- Deposit of income from investment of state money.**

332 (1) Unless otherwise required by the Utah Constitution or applicable federal law, the
333 functions, powers, and duties vested by law in each and every state officer, board, commission,
334 institution, department, division, agency, and other similar instrumentalities relating to the deposit,
335 investment, or reinvestment of public funds, and the purchase, sale, or exchange of any
336 investments or securities of or for any funds or accounts under the control and management of
337 these instrumentalities, are transferred to and shall be exercised by the state treasurer, except:

338 (a) funds assigned to the Utah State Retirement Board for investment under Section
 339 49-1-302;

340 (b) funds of member institutions of the state system of higher education:
 341 (i) acquired by gift, devise, or bequest, or by federal or private contract or grant;
 342 (ii) derived from student fees or from income from operations of auxiliary enterprises,
 343 which fees and income are pledged or otherwise dedicated to the payment of interest and principal
 344 of bonds issued by such institutions; and

345 (iii) any other funds which are not included in the institution's work program as approved
 346 by the State Board of Regents;

347 (c) funds of the Utah Technology Finance Corporation;

348 (d) inmate funds as provided in Section 64-13-23 or in Title 64, Chapter 9b, Work
 349 Programs for Prisoners;

350 (e) trust funds established by judicial order;

351 (f) funds of the Workers' Compensation Fund; and

352 (g) funds of the Utah Housing [~~Finance Agency~~] Corporation.

353 (2) All public funds held or administered by the state or any of its boards, commissions,
 354 institutions, departments, divisions, agencies, or similar instrumentalities and not transferred to the
 355 state treasurer as provided by this section shall be:

356 (a) deposited and invested by the custodian in accordance with this chapter, unless
 357 otherwise required by statute or by applicable federal law; and

358 (b) reported to the state treasurer in a form prescribed by the state treasurer.

359 (3) Unless otherwise provided by the constitution or laws of this state or by contractual
 360 obligation, the income derived from the investment of state money by the state treasurer shall be
 361 deposited in and become part of the General Fund.

362 Section 12. Section **59-7-607** is amended to read:

363 **59-7-607. Utah low-income housing tax credit.**

364 (1) As used in this section:

365 [~~(b)~~] (a) "Allocation certificate" means:

366 (i) the certificate prescribed by the tax commission and issued by the [agency]

366a **h** [~~corporation~~] **UTAH HOUSING CORPORATION** **h**

367 to each taxpayer that specifies the percentage of the annual federal low-income housing tax credit
 368 that each taxpayer may take as an annual credit against state income tax; or

369 (ii) a copy of the allocation certificate that the housing sponsor provides to the taxpayer.

370 ~~[(e)]~~ (b) "Building" means a qualified low-income building as defined in Section 42(c),

371 Internal Revenue Code.

372 ~~h [(a) "Agency"] (c) "Corporation" means the Utah Housing [Finance Agency] Corporation.~~

373 ~~— (d)] (c) h~~ "Federal low-income housing tax credit" means the credit under Section 42,

373a Internal

374 Revenue Code.

375 ~~h [(e)]~~ (d) h "Housing sponsor" means a corporation in the case of a C corporation, a

375a partnership

376 in the case of a partnership, a corporation in the case of an S corporation, or a limited liability

377 company in the case of a limited liability company.

378 ~~h [(f)]~~ (e) h "Qualified allocation plan" means the qualified allocation plan adopted by the [agency]

379 ~~h [corporation] UTAH HOUSING CORPORATION h~~ pursuant to Section 42(m), Internal Revenue Code.

380 ~~h [(g)]~~ (f) h "Special low-income housing tax credit certificate" means a certificate:

381 (i) prescribed by the tax commission;

382 (ii) that a housing sponsor issues to a taxpayer for a taxable year; and

383 (iii) that specifies the amount of credit a taxpayer may claim under this section if the

384 taxpayer meets the requirements of this section.

385 ~~h [(h)]~~ (g) h "Taxpayer" means the person entitled to the tax credit provided under this section

386 which is the corporation in the case of a C corporation, the partners in the case of a partnership,

387 the shareholders in the case of an S corporation, and the members in the case of a limited liability

388 company.

389 (2) (a) For taxable years beginning on or after January 1, 1995, there is allowed a

390 nonrefundable tax credit against taxes otherwise due under this chapter or Chapter 8, Gross

391 Receipts Tax on Certain ~~[Taxpayers] Corporations~~ Not Required to Pay Corporate Franchise or

392 Income Tax ~~h ACT h~~, for taxpayers issued an allocation certificate.

393 (b) The credit shall be in an amount equal to the greater of the amount of:

394 (i) federal low-income housing tax credit to which the taxpayer is entitled during that year

395 multiplied by the percentage specified in an allocation certificate issued by the [agency]

396 ~~h [corporation] UTAH HOUSING CORPORATION h~~; or

397 (ii) credit specified in the special low-income housing tax credit certificate that the housing

398 sponsor issues to the taxpayer as provided in Subsection (2)(c).

399 (c) For purposes of Subsection (2)(b)(ii), the credit is equal to the product of:

400 (i) the total amount of low-income housing tax credit under this section that:

401 (A) a housing sponsor is allowed for a building; and

402 (B) all of the taxpayers may claim with respect to the building if the taxpayers meet the

403 requirements of this section; and

404 (ii) the percentage of credit a taxpayer may claim:

405 (A) under this section if the taxpayer meets the requirements of this section; and

406 (B) as provided in the agreement between the taxpayer and the housing sponsor.

407 (d) (i) For the calendar year beginning on January 1, 1995, through the calendar year

408 beginning on January 1, 2005, the aggregate annual tax credit which the [agency] ~~h~~ [~~corporation~~]

408a **UTAH HOUSING CORPORATION** ~~h~~ may

409 allocate for the credit period described in Section 42(f), Internal Revenue Code, pursuant to this

410 section and Section 59-10-129 is an amount equal to the product of:

411 (A) 12.5 cents; and

412 (B) the population of Utah.

413 (ii) For purposes of this section, the population of Utah shall be determined in accordance

414 with Section 146(j), Internal Revenue Code.

415 (3) (a) By October 1, 1994, the [agency] ~~h~~ [~~corporation~~] **UTAH HOUSING CORPORATION** ~~h~~

415a shall determine criteria and

416 procedures for allocating the credit under this section and Section 59-10-129 and incorporate the

417 criteria and procedures into the [agency's] ~~h~~ [~~corporation's~~] **UTAH HOUSING CORPORATION'S** ~~h~~

417a qualified allocation plan.

418 (b) The [agency] ~~h~~ [~~corporation~~] **UTAH HOUSING CORPORATION** ~~h~~ shall create the criteria

418a under Subsection (3)(a) based on:

419 (i) the number of affordable housing units to be created in Utah for low and moderate

420 income persons in the residential housing development of which the building is a part;

421 (ii) the level of area median income being served by the development;

422 (iii) the need for the credit for the economic feasibility of the development; and

423 (iv) the extended period for which the development commits to remain as affordable

424 housing.

425 (4) (a) Any housing sponsor that has received an allocation of the federal low-income

426 housing tax credit and any applicant for an allocation of the federal low-income housing credit may

427 apply to the [agency] ~~h~~ [~~corporation~~] **UTAH HOUSING CORPORATION** ~~h~~ for a credit under this section.

428 (b) The [agency] ~~h~~ [~~corporation~~] **UTAH HOUSING CORPORATION** ~~h~~ may not require fees for

428a applications of the credit under this

429 section in addition to those fees required for applications for the federal low-income housing

430 credit.

431 (5) (a) The [agency] **§ [corporation] UTAH HOUSING CORPORATION §** shall determine the
 431a amount of the credit to allocate to a
 432 qualifying housing sponsor in accordance with the qualified allocation plan of the [agency]
 433 **§ [corporation] UTAH HOUSING CORPORATION §** .

434 (b) (i) The [agency] **§ [corporation] UTAH HOUSING CORPORATION §** shall allocate the
 434a credit to housing sponsors by issuing an
 435 allocation certificate to qualifying housing sponsors.

436 (ii) The allocation certificate under Subsection (5)(b)(i) shall specify the allowed
 437 percentage of the federal low-income credit as determined by the [agency] **§ [corporation] UTAH**
 437a **HOUSING CORPORATION §** .

438 (c) The percentage specified in an allocation certificate may not exceed 100% of the
 439 federal low-income housing tax credit.

440 (6) If a partnership, an S corporation, or a limited liability company qualifies for the credit
 441 provided in this section as a housing sponsor, it shall provide a copy of the allocation certificate
 442 to the taxpayers of the entity.

443 (7) A taxpayer shall attach a copy of the allocation certificate to any return upon which a
 444 credit is claimed under this section.

445 (8) (a) All elections made by the taxpayer pursuant to Section 42, Internal Revenue Code,
 446 shall apply to this section.

447 (b) (i) If a taxpayer is required to recapture a portion of any federal low-income housing
 448 tax credit, the taxpayer shall also be required to recapture a portion of any state credits authorized
 449 by this section.

450 (ii) The state recapture amount shall be equal to the percentage of the state credit that
 451 equals the proportion the federal recapture amount bears to the original federal low-income
 452 housing tax credit amount subject to recapture.

453 (9) (a) Any credits returned to the [agency] **§ [corporation] UTAH HOUSING CORPORATION §**
 453a in any year may be reallocated
 454 within the same time period as provided in Section 42, Internal Revenue Code.

455 (b) Credits that are unallocated by the [agency] **§ [corporation] UTAH HOUSING**
 455a **CORPORATION §** in any year may be carried over
 456 for allocation in the subsequent year.

457 (10) (a) Amounts otherwise qualifying for the credit, but not allowable because the credit
 458 exceeds the tax, may be carried back three years or may be carried forward five years as a credit
 459 against the tax.

460 (b) Carryover credits under Subsection (10)(a) shall be applied against the tax before the
 461 application of the credits earned in the current year and on a first-earned first-used basis.

462 (11) Any credit taken in this section may be subject to an annual audit by the commission.

463 (12) The [agency] ~~h~~ [~~corporation~~] UTAH HOUSING CORPORATION ~~h~~ shall provide an
463a annual report to the Revenue and Taxation

464 Interim Committee which shall include at least:

465 (a) the purpose and effectiveness of the exemption; and

466 (b) the benefits of the exemption to the state.

467 (13) The tax commission may, in consultation with the [agency] ~~h~~ [~~corporation~~] UTAH
467a HOUSING CORPORATION ~~h~~ , promulgate

468 rules to implement this section and Section 59-10-129.

469 Section 13. Section **59-10-129** is amended to read:

470 **59-10-129. Utah low-income housing tax credit.**

471 (1) As used in this section:

472 ~~(b)~~ (a) "Allocation certificate" means:

473 (i) the certificate prescribed by the tax commission and issued by the [agency]
473a ~~h~~ [~~corporation~~] UTAH HOUSING CORPORATION ~~h~~

474 to each taxpayer that specifies the percentage of the annual federal low-income housing tax credit
475 that each taxpayer may take as an annual credit against state income tax; or

476 (ii) a copy of the allocation certificate that the housing sponsor provides to the taxpayer.

477 ~~(c)~~ (b) "Building" means a qualified low-income building as defined in Section 42(c),
478 Internal Revenue Code.

479 ~~h~~ [~~(a)~~ "Agency"] ~~(c)~~ "~~Corporation~~ means the Utah Housing [Finance Agency] Corporation."
480 ~~(d)~~ (c) ~~h~~ "Federal low-income housing tax credit" means the credit under Section 42, Internal
481 Revenue Code.

482 ~~h~~ [~~(e)~~ (d) ~~h~~ "Housing sponsor" means a corporation in the case of a C corporation, a partnership
483 in the case of a partnership, a corporation in the case of an S corporation, or a limited liability
484 company in the case of a limited liability company.

485 ~~h~~ [~~(f)~~ (e) ~~h~~ "Qualified allocation plan" means the qualified allocation plan adopted by the [agency]
486 ~~h~~ [~~corporation~~] UTAH HOUSING CORPORATION ~~h~~ pursuant to Section 42(m), Internal Revenue Code.

487 ~~h~~ [~~(g)~~ (f) ~~h~~ "Special low-income housing tax credit certificate" means a certificate:

488 (i) prescribed by the tax commission;

489 (ii) that a housing sponsor issues to a taxpayer for a taxable year; and

490 (iii) that specifies the amount of a credit a taxpayer may claim under this section if the
491 taxpayer meets the requirements of this section.

492 ~~h~~ [~~(tr)~~ (g) ~~h~~ "Taxpayer" means the person entitled to the tax credit provided under this section

493 which is the corporation in the case of a C corporation, the partners in the case of a partnership,
 494 the shareholders in the case of an S corporation, and the members in the case of a limited liability
 495 company.

496 (2) (a) For taxable years beginning on or after January 1, 1995, there is allowed a
 497 nonrefundable tax credit against taxes otherwise due under this chapter for taxpayers issued an
 498 allocation certificate.

499 (b) The credit shall be in an amount equal to the greater of the amount of:

500 (i) federal low-income housing tax credit to which the taxpayer is entitled during that year
 501 multiplied by the percentage specified in an allocation certificate issued by the [agency]

502 **h [corporation] UTAH HOUSING CORPORATION h** ; or

503 (ii) credit specified in the special low-income housing tax credit certificate that the housing
 504 sponsor issues to the taxpayer as provided in Subsection (2)(c).

505 (c) For purposes of Subsection (2)(b)(ii), the credit is equal to the product of:

506 (i) the total amount of low-income housing tax credit under this section that:

507 (A) a housing sponsor is allowed for a building; and

508 (B) all of the taxpayers may claim with respect to the building if the taxpayers meet the
 509 requirements of this section; and

510 (ii) the percentage of credit a taxpayer may claim:

511 (A) under this section if the taxpayer meets the requirements of this section; and

512 (B) as provided in the agreement between the taxpayer and the housing sponsor.

513 (d) (i) For the calendar year beginning on January 1, 1995, through the calendar year

514 beginning on January 1, 2005, the aggregate annual tax credit which the [agency] **h [corporation]**

514a **UTAH HOUSING CORPORATION h** may

515 allocate for the credit period described in Section 42(f), Internal Revenue Code, pursuant to this
 516 section and Section 59-7-607 is an amount equal to the product of:

517 (A) 12.5 cents; and

518 (B) the population of Utah.

519 (ii) For purposes of this section, the population of Utah shall be determined in accordance
 520 with Section 146(j), Internal Revenue Code.

521 (3) (a) By October 1, 1994, the [agency] **h [corporation] UTAH HOUSING CORPORATION h**
 521a shall determine criteria and

522 procedures for allocating the credit under this section and Section 59-7-607 and incorporate the

523 criteria and procedures into the [agency's] **h [corporation's] UTAH HOUSING CORPORATION'S h**

523a qualified allocation plan.

524 (b) The [agency] **h [corporation] UTAH HOUSING CORPORATION h** shall create the criteria
525 under Subsection (3)(a) based on:

526 (i) the number of affordable housing units to be created in Utah for low and moderate
527 income persons in the residential housing development of which the building is a part;

528 (ii) the level of area median income being served by the development;

529 (iii) the need for the credit for the economic feasibility of the development; and

530 (iv) the extended period for which the development commits to remain as affordable
531 housing.

532 (4) (a) Any housing sponsor that has received an allocation of the federal low-income
533 housing tax credit and any applicant for an allocation of the federal low-income housing credit may
534 apply to the [agency] **h [corporation] UTAH HOUSING CORPORATION h** for a credit under this
535 section.

536 (b) The [agency] **h [corporation] UTAH HOUSING CORPORATION h** may not require fees for
537 applications of the credit under this
538 section in addition to those fees required for applications for the federal low-income housing
539 credit.

540 (5) (a) The [agency] **h [corporation] UTAH HOUSING CORPORATION h** shall determine the
541 amount of the credit to allocate to a
542 qualifying housing sponsor in accordance with the qualified allocation plan of the [agency]
543 **h [corporation] UTAH HOUSING CORPORATION h** .

544 (b) (i) The [agency] **h [corporation] UTAH HOUSING CORPORATION h** shall allocate the
545 credit to housing sponsors by issuing an
546 allocation certificate to qualifying housing sponsors.

547 (ii) The allocation certificate under Subsection (5)(b)(i) shall specify the allowed
548 percentage of the federal low-income credit as determined by the [agency] **h [corporation] UTAH**
549 **HOUSING CORPORATION h** .

550 (c) The percentage specified in an allocation certificate may not exceed 100% of the
551 federal low-income housing tax credit.

552 (6) If a partnership, an S corporation, or a limited liability company qualifies for the credit
553 provided in this section as a housing sponsor, it shall provide a copy of the allocation certificate
554 to the taxpayers of the entity.

555 (7) A taxpayer shall attach a copy of the allocation certificate to any return upon which a
556 credit is claimed under this section.

557 (8) (a) All elections made by the taxpayer pursuant to Section 42, Internal Revenue Code,
558 shall apply to this section.

559 (b) (i) If a taxpayer is required to recapture a portion of any federal low-income housing
560 tax credit, the taxpayer shall also be required to recapture a portion of any state credits authorized

555 by this section.

556 (ii) The state recapture amount shall be equal to the percentage of the state credit that
557 equals the proportion the federal recapture amount bears to the original federal low-income
558 housing tax credit amount subject to recapture.

559 (9) (a) Any credits returned to the [agency] ~~h~~ [-corporation] UTAH HOUSING
559a CORPORATION h in any year may be reallocated

560 within the same time period as provided in Section 42, Internal Revenue Code.

561 (b) Credits that are unallocated by the [agency] ~~h~~ [-corporation] UTAH HOUSING
561a CORPORATION h in any year may be carried over

562 for allocation in the subsequent year.

563 (10) (a) Amounts otherwise qualifying for the credit, but not allowable because the credit
564 exceeds the tax, may be carried back three years or may be carried forward five years as a credit
565 against the tax.

566 (b) Carryover credits under Subsection (10)(a) shall be applied against the tax before the
567 application of the credits earned in the current year and on a first-earned first-used basis.

568 (11) Any credit taken in this section may be subject to an annual audit by the commission.

569 (12) The [agency] ~~h~~ [-corporation] UTAH HOUSING CORPORATION h shall provide an
569a annual report to the Revenue and Taxation
570 Interim Committee which shall include at least:

571 (a) the purpose and effectiveness of the exemption; and

572 (b) the benefits of the exemption to the state.

573 Section 14. Section **61-2c-105** is amended to read:

574 **61-2c-105. Scope of chapter.**

575 (1) (a) This chapter applies to a closed-end residential mortgage loan secured by a first lien
576 or equivalent security interest on a dwelling.

577 (b) This chapter does not apply to a transaction covered by Title 70C, Utah Consumer
578 Credit Code.

579 (2) The following are exempt from this chapter:

580 (a) the federal government;

581 (b) a state;

582 (c) a political subdivision of a state;

583 (d) an agency of or entity created by a governmental entity described in Subsections (2)(a)
584 through (c) including:

585 (i) the Utah Housing [~~Finance Agency~~] Corporation created in Title 9, Chapter 4, Part 9,

586 Utah Housing [~~Finance Agency~~] Corporation Act;

587 (ii) the Federal National Mortgage Corporation;

588 (iii) the Federal Home Loan Mortgage Corporation;

589 (iv) the Federal Deposit Insurance Corporation;

590 (v) the Resolution Trust Corporation;

591 (vi) the Government National Mortgage Association;

592 (vii) the Federal Housing Administration;

593 (viii) the National Credit Union Administration;

594 (ix) the Farmers Home Administration; and

595 (x) the Department of Veterans Affairs;

596 (e) a depository institution;

597 (f) an affiliate of a depository institution;

598 (g) an employee or agent of an entity described in Subsections (2)(a) through (f) when that

599 person acts on behalf of the entity described in Subsections (2)(a) through (f);

600 (h) a person:

601 (i) who makes a loan:

602 (A) secured by an interest in real property;

603 (B) with the person's own money; and

604 (C) for the person's own investment; and

605 (ii) that does not engage in the business of making loans secured by an interest in real

606 property;

607 (i) a person who receives a mortgage, deed of trust, or lien interest on real property if the

608 person:

609 (i) is the seller of real property; and

610 (ii) receives the mortgage, deed of trust, or lien interest on real property as security for a

611 separate money obligation;

612 (j) a person who receives a mortgage, deed of trust, or lien interest on real property if:

613 (i) the person receives the mortgage, deed of trust, or lien interest as security for an

614 obligation payable on an installment or deferred payment basis;

615 (ii) the obligation described in Subsection (2)(j)(i) arises from a person providing materials

616 or services used in the improvement of the real property that is the subject of the mortgage, deed

617 of trust, or lien interest; and

618 (iii) the mortgage, deed of trust, or lien interest was created without the consent of the
619 owner of the real property that is the subject of the mortgage, deed of trust, or lien interest;

620 (k) a nonprofit corporation that:

621 (i) is exempt from paying federal income taxes;

622 (ii) is certified by the United States Small Business Administration as a small business
623 investment company;

624 (iii) is organized to promote economic development in this state; and

625 (iv) has as its primary activity providing financing for business expansion;

626 (l) a court appointed fiduciary; or

627 (m) an attorney admitted to practice law in this state:

628 (i) if the attorney is not principally engaged in the business of negotiating residential
629 mortgage loans; and

630 (ii) when the attorney renders services in the course of the attorney's practice as an
631 attorney.

632 (3) (a) Notwithstanding Subsection (2)(m), an attorney exempt from this chapter may not
633 engage in conduct described in Section 61-2c-301 when transacting business of residential
634 mortgage loans.

635 (b) If an attorney exempt from this chapter violates Subsection (3)(a), the attorney:

636 (i) is not subject to enforcement by the division under Part 4, Enforcement; and

637 (ii) is subject to disciplinary action generally applicable to an attorney admitted to practice
638 law in this state.

639 (c) If the division receives a complaint alleging an attorney exempt from this chapter is in
640 violation of Subsection (3)(a), the division shall forward the complaint to the Utah State Bar for
641 disciplinary action.

642 Section 15. Section **63-5b-102** is amended to read:

643 **63-5b-102. Definitions.**

644 (1) (a) "Absent" means:

645 (i) not physically present or not able to be communicated with for 48 hours; or

646 (ii) for local government officers, as defined by local ordinances.

647 (b) "Absent" does not include a person who can be communicated with via telephone,

648 radio, or telecommunications.

649 (2) "Attack" means a nuclear, conventional, biological, or chemical warfare action against
650 the United States of America or this state.

651 (3) "Department" means the Department of Administrative Services, the Department of
652 Agriculture and Food, the Alcoholic Beverage Control Commission, the Department of
653 Commerce, the Department of Community and Economic Development, the Department of
654 Corrections, the Department of Environmental Quality, the Department of Financial Institutions,
655 the Department of Health, the Department of Human Resource Management, the Department of
656 Workforce Services, the Labor Commission, the National Guard, the Department of Insurance, the
657 Department of Natural Resources, the Department of Public Safety, the Public Service
658 Commission, the Department of Human Services, the State Tax Commission, the Department of
659 Transportation, any other major administrative subdivisions of state government, the State Board
660 of Education, the State Board of Regents, the Utah Housing [~~Finance Agency~~] Corporation, the
661 Utah Technology Finance Corporation, the Workers' Compensation Fund, the State Retirement
662 Board, and each institution of higher education within the system of higher education.

663 (4) "Disaster" means a situation causing, or threatening to cause, widespread damage,
664 social disruption, or injury or loss of life or property resulting from attack, internal disturbance,
665 natural phenomenon, or technological hazard.

666 (5) "Division" means the Comprehensive Emergency Management Division established
667 in Title 53, Chapter 2, [~~Comprehensive~~] Emergency Management [~~Act~~].

668 (6) "Emergency interim successor" means a person designated by this chapter to exercise
669 the powers and discharge the duties of an office when the person legally exercising the powers and
670 duties of the office is unavailable.

671 (7) "Executive director" means the person with ultimate responsibility for managing and
672 overseeing the operations of each department, however denominated.

673 (8) "Internal disturbance" means a riot, prison break, disruptive terrorism, or strike.

674 (9) "Natural phenomenon" means any earthquake, tornado, storm, flood, landslide,
675 avalanche, forest or range fire, drought, epidemic, or other catastrophic event.

676 (10) (a) "Office" includes all state and local offices, the powers and duties of which are
677 defined by constitution, statutes, charters, optional plans, ordinances, articles, or by-laws.

678 (b) "Office" does not include the office of governor or the legislative or judicial offices.

679 (11) "Place of governance" means the physical location where the powers of an office are
680 being exercised.

681 (12) "Political subdivision" includes counties, cities, towns, townships, districts,
682 authorities, and other public corporations and entities whether organized and existing under charter
683 or general law.

684 (13) "Political subdivision officer" means a person holding an office in a political
685 subdivision.

686 (14) "State officer" means the attorney general, the state treasurer, the state auditor, and
687 the executive director of each department.

688 (15) "Technological hazard" means any hazardous materials accident, mine accident, train
689 derailment, air crash, radiation incident, pollution, structural fire, or explosion.

690 (16) "Unavailable" means:

691 (a) absent from the place of governance during a disaster that seriously disrupts normal
692 governmental operations, whether or not that absence or inability would give rise to a vacancy
693 under existing constitutional or statutory provisions; or

694 (b) as otherwise defined by local ordinance.

695 Section 16. Section **63-38-9.5** is amended to read:

696 **63-38-9.5. Agencies exempt from act.**

697 The Utah Housing [~~Finance Agency~~] Corporation and the Utah Technology Finance
698 Corporation are exempt from this act.

699 Section 17. Section **63-38a-102** is amended to read:

700 **63-38a-102. Definitions.**

701 As used in this chapter:

702 (1) (a) "Agency" means each department, commission, board, council, agency, institution,
703 officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau,
704 panel, or other administrative unit of the state.

705 (b) "Agency" does not include the legislative branch, the board of regents, the Utah Higher
706 Education Assistance Authority, the board of trustees of each higher education institution, each
707 higher education institution and its associated branches, centers, divisions, institutes, foundations,
708 hospitals, colleges, schools, or departments, a public education entity, or an independent agency.

709 (2) (a) "Dedicated credits revenues" means revenues from collections by an agency that

710 are deposited directly into an account for expenditure on a separate line item and program.

711 (b) "Dedicated credits" does not mean:

712 (i) federal revenues and the related pass through or the related state match paid by one
713 agency to another;

714 (ii) revenues that are not deposited in governmental funds;

715 (iii) revenues from any contracts; and

716 (iv) revenues received by the Attorney General's Office from billings for professional
717 services.

718 (3) "Fees" means revenue collected by an agency for performing a service or providing a
719 function that the agency deposits or accounts for as dedicated credits or fixed collections.

720 (4) (a) "Fixed collections revenues" means revenue from collections:

721 (i) fixed by law or by the appropriation act at a specific amount; and

722 (ii) required by law to be deposited into a separate line item and program.

723 (b) "Fixed collections" does not mean:

724 (i) federal revenues and the related pass through or the related state match paid by one
725 agency to another;

726 (ii) revenues that are not deposited in governmental funds;

727 (iii) revenues from any contracts; and

728 (iv) revenues received by the Attorney General's Office from billings for professional
729 services.

730 (5) (a) "Governmental fund" means funds used to account for the acquisition, use, and
731 balances of expendable financial resources and related liabilities using a measurement focus that
732 emphasizes the flow of financial resources.

733 (b) "Governmental fund" does not include internal service funds, enterprise funds, capital
734 projects funds, debt service funds, or trust and agency funds as established in Section 51-5-4.

735 (6) "Independent agency" means the Utah State Retirement Office, the Utah Housing
736 [~~Finance Agency~~] Corporation, the Utah Technology Finance Corporation, and the Workers'
737 Compensation Fund.

738 (7) "Program" means the function or service provided by an agency for which the agency
739 collects fees.

740 (8) "Revenue types" means the categories established by the Division of Finance under the

741 authority of this chapter that classify revenue according to the purpose for which it is collected.

742 Section 18. Section **63-55-209** is amended to read:

743 **63-55-209. Repeal dates, Title 9.**

744 (1) Title 9, Chapter 1, Part 8, Commission on National and Community Service Act, is
745 repealed July 1, 2004.

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

747 (3) (a) Title 9, Chapter 2, Part 16, Recycling Market Development Zone Act, is repealed
748 July 1, 2010.

749 (b) Sections 59-7-610 and 59-10-108.7, regarding tax credits for certain persons in
750 recycling market development zones, are repealed for taxable years beginning on or after January
751 1, 2011.

752 (c) Notwithstanding Subsection (3)(b), a person may not claim a tax credit under Section
753 59-7-610 or 59-10-108.7:

754 (i) for the purchase price of machinery or equipment described in Section 59-7-610 or
755 59-10-108.7 if the machinery or equipment is purchased on or after July 1, 2010; or

756 (ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-108.7(1)(b), if the
757 expenditure is made on or after July 1, 2010.

758 (d) Notwithstanding Subsections (3)(b) and (c), a person may carry forward a tax credit
759 in accordance with Section 59-7-610 or 59-10-108.7 if:

760 (i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-108.7; and

761 (ii) (A) for the purchase price of machinery or equipment described in Section 59-7-610
762 or 59-10-108.7, the machinery or equipment is purchased on or before June 30, 2010; or

763 (B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-108.7(1)(b), the
764 expenditure is made on or before June 30, 2010.

765 (4) Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority, is repealed July
766 1, 2009.

767 (5) Title 9, Chapter 4, Part 9, Utah Housing [~~Finance Agency~~] Corporation Act, is repealed
768 July 1, 2006.

769 (6) Title 9, Chapter 13, Utah Technology and Small Business Finance Act, is repealed July
770 1, 2002.

771 Section 19. Section **63-56-5** is amended to read:

772 **63-56-5. Definitions.**

773 As used in this chapter:

774 (1) "Architect-engineer services" are those professional services within the scope of the
775 practice of architecture as defined in Section 58-3a-102, or professional engineering as defined in
776 Section 58-22-102.777 (2) "Business" means any corporation, partnership, individual, sole proprietorship, joint
778 stock company, joint venture, or any other private legal entity.779 (3) "Change order" means a written order signed by the procurement officer, directing the
780 contractor to suspend work or make changes, which the appropriate clauses of the contract
781 authorize the procurement officer to order without the consent of the contractor or any written
782 alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity,
783 or other provisions of any contract accomplished by mutual action of the parties to the contract.784 (4) (a) "Construction" means the process of building, renovation, alteration, improvement,
785 or repair of any public building or public work.786 (b) "Construction" does not mean the routine operation, routine repair, or routine
787 maintenance of existing structures, buildings, or real property.788 (5) (a) "Construction Manager/General Contractor" means any contractor who enters into
789 a contract for the management of a construction project when that contract allows the contractor
790 to subcontract for additional labor and materials that were not included in the contractor's cost
791 proposal submitted at the time of the procurement of the Construction Manager/General
792 Contractor's services.793 (b) "Construction Manager/General Contractor" does not mean a contractor whose only
794 subcontract work not included in the contractor's cost proposal submitted as part of the
795 procurement of construction is to meet subcontracted portions of change orders approved within
796 the scope of the project.797 (6) "Contract" means any state agreement for the procurement or disposal of supplies,
798 services, or construction.799 (7) "Cooperative purchasing" means procurement conducted by, or on behalf of, more than
800 one public procurement unit, or by a public procurement unit with an external procurement unit.801 (8) "Cost-reimbursement contract" means a contract under which a contractor is
802 reimbursed for costs which are allowed and allocated in accordance with the contract terms and

803 the provisions of this chapter, and a fee, if any.

804 (9) (a) "Design-build" means the procurement of architect-engineer services and
805 construction by the use of a single contract with the design-build provider.

806 (b) This method of design and construction can include the design-build provider
807 supplying the site as part of the contract.

808 (10) "Established catalogue price" means the price included in a catalogue, price list,
809 schedule, or other form that:

810 (a) is regularly maintained by a manufacturer or contractor;

811 (b) is either published or otherwise available for inspection by customers; and

812 (c) states prices at which sales are currently or were last made to a significant number of
813 any category of buyers or buyers constituting the general buying public for the supplies or services
814 involved.

815 (11) "External procurement unit" means any buying organization not located in this state
816 which, if located in this state, would qualify as a public procurement unit. An agency of the United
817 States is an external procurement unit.

818 (12) "Grant" means the furnishing by the state or by any other public or private source
819 assistance, whether financial or otherwise, to any person to support a program authorized by law.
820 It does not include an award whose primary purpose is to procure an end product, whether in the
821 form of supplies, services, or construction. A contract resulting from the award is not a grant but
822 a procurement contract.

823 (13) "Invitation for bids" means all documents, whether attached or incorporated by
824 reference, utilized for soliciting bids.

825 (14) "Local public procurement unit" means any political subdivision or institution of
826 higher education of the state or public agency of any subdivision, public authority, educational,
827 health, or other institution, and to the extent provided by law, any other entity which expends
828 public funds for the procurement of supplies, services, and construction, but not counties,
829 municipalities, political subdivisions created by counties or municipalities under the Interlocal
830 Cooperation Act, the Utah Housing ~~[Finance Agency]~~ Corporation, the Utah Technology Finance
831 Corporation, or the Legislature and its staff offices. It includes two or more local public
832 procurement units acting under legislation which authorizes intergovernmental cooperation.

833 (15) "Person" means any business, individual, union, committee, club, other organization,

834 or group of individuals, not including a state agency or a local public procurement unit.

835 (16) "Policy board" means the procurement policy board created by Section 63-56-6.

836 (17) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference
837 under the requirements of this chapter.

838 (18) "Procurement" means buying, purchasing, renting, leasing, leasing with an option to
839 purchase, or otherwise acquiring any supplies, services, or construction. It also includes all
840 functions that pertain to the obtaining of any supply, service, or construction, including description
841 of requirements, selection, and solicitation of sources, preparation, and award of a contract, and
842 all phases of contract administration.

843 (19) "Procurement officer" means any person or board duly authorized to enter into and
844 administer contracts and make written determinations with respect thereto. It also includes an
845 authorized representative acting within the limits of authority.

846 (20) "Public procurement unit" means either a local public procurement unit or a state
847 public procurement unit.

848 (21) "Purchase description" means the words used in a solicitation to describe the supplies,
849 services, or construction to be purchased, and includes specifications attached to or made a part
850 of the solicitation.

851 (22) "Purchasing agency" means any state agency other than the Division of Purchasing
852 and General Services that is authorized by this chapter or its implementing regulations, or by
853 delegation from the chief procurement officer, to enter into contracts.

854 (23) "Request for proposals" means all documents, whether attached or incorporated by
855 reference, used for soliciting proposals.

856 (24) "Responsible bidder or offeror" means a person who has the capability in all respects
857 to perform fully the contract requirements and who has the integrity and reliability which will
858 assure good faith performance.

859 (25) "Responsive bidder" means a person who has submitted a bid which conforms in all
860 material respects to the invitation for bids.

861 (26) "Sealed" does not preclude acceptance of electronically sealed and submitted bids or
862 proposals in addition to bids or proposals manually sealed and submitted.

863 (27) "Services" means the furnishing of labor, time, or effort by a contractor, not involving
864 the delivery of a specific end product other than reports which are merely incidental to the required

865 performance. It does not include employment agreements or collective bargaining agreements.

866 (28) "Specification" means any description of the physical or functional characteristics,
867 or of the nature of a supply, service, or construction item. It may include a description of any
868 requirement for inspecting, testing, or preparing a supply, service, or construction item for
869 delivery.

870 (29) "State agency" means any department, division, commission, council, board, bureau,
871 committee, institution, government corporation, or other establishment or official of this state.

872 (30) "State public procurement unit" means the Division of Purchasing and General
873 Services and any other purchasing agency of this state.

874 (31) "Supplies" means all property, including equipment, materials, and printing.

875 (32) "Using agency" means any state agency which utilizes any supplies, services, or
876 construction procured under this chapter.

877 Section 20. Section **63-95-102** is amended to read:

878 **63-95-102. Definitions.**

879 For purposes of this chapter:

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

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

883 (b) stock or other investments;

884 (c) goodwill;

885 (d) real property;

886 (e) an ownership interest;

887 (f) a license;

888 (g) a cause of action; and

889 (h) any similar property.

890 (2) "Authorizing statutes" means the statutes creating an entity as a quasi-governmental
891 entity.

892 (3) "Business interest" means:

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

895 (b) the ownership, either legally or equitably, of at least 10% of the outstanding shares of

896 a corporation or 10% interest in any other business entity, being held by:

897 (i) an individual;

898 (ii) the individual's spouse;

899 (iii) a minor child of the individual; or

900 (iv) any combination of Subsections (3)(b)(i) through (iii).

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

903 (5) "Government requestor" means:

904 (a) the governor;

905 (b) an executive branch officer other than the governor;

906 (c) an executive branch agency;

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

909 (e) a legislative committee.

910 (6) "Interested party" means a person that held or holds the position of trustee, director,
911 officer, or other similar position with a quasi-governmental entity within:

912 (a) five years prior to the date of an action described in Subsection (8); or

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

914 (7) "Lobbyist" is a person that provided or provides services as a lobbyist, as defined in
915 Section 36-11-102, within:

916 (a) five years prior to the date of an action described in Subsection (8); or

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

918 (8) (a) "Privatized" means an action described in Subsection (8)(b) taken under
919 circumstances in which the operations of the quasi-governmental entity are continued by a
920 successor entity that:

921 (i) is privately owned;

922 (ii) is unaffiliated to the state; and

923 (iii) receives any asset of the quasi-governmental entity.

924 (b) An action referred to in Subsection (8)(a) includes:

925 (i) the repeal of the authorizing statute of a quasi-governmental entity and the revision to
926 state laws to terminate the relationship between the state and the quasi-governmental entity;

- 927 (ii) the dissolution of the quasi-governmental entity;
- 928 (iii) the merger or consolidation of the quasi-governmental entity with another entity; or
- 929 (iv) the sale of all or substantially all of the assets of the quasi-governmental entity.
- 930 (9) (a) "Quasi-governmental entity" means an entity that:
- 931 (i) is created by the state or is given by the state the right to exist and conduct its affairs
- 932 as a quasi-governmental entity:
- 933 (A) to serve a public purpose; and
- 934 (B) to meet a need that cannot be met through a private business; and
- 935 (ii) is designated by the state as:
- 936 (A) an independent state agency;
- 937 (B) an independent public corporation;
- 938 (C) a quasi-public corporation; or
- 939 (D) a term similar to that described in Subsections (9)(a)(ii)(A) through (C).
- 940 (b) "Quasi-governmental entity" includes the:
- 941 (i) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;
- 942 (ii) Utah Technology Finance Corporation created in Title 9, Chapter 13, Utah Technology
- 943 and Small Business Finance Act;
- 944 (iii) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber Valley
- 945 Historic Railroad Authority;
- 946 (iv) Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah Science
- 947 Center Authority;
- 948 (v) Utah Housing [~~Finance Agency~~] Corporation created in Title 9, Chapter 4, Part 9, Utah
- 949 Housing [~~Finance Agency~~] Corporation Act;
- 950 (vi) Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State Fair
- 951 Corporation Act;
- 952 (vii) Workers' Compensation Fund created in Title 31A, Chapter 33, Workers'
- 953 Compensation Fund;
- 954 (viii) Utah State Retirement Office created in Title 49, Chapter 1, Part 2, Retirement Office
- 955 and Board;
- 956 (ix) School and Institutional Trust Lands Administration created in Title 53C, Chapter 1,
- 957 Part 2, School and Institutional Trust Lands Administration; and

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

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

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

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

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

964 (iv) a local school district;

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

966 (vi) a local district created under the authority of Title 17B, Limited Purpose Local
967 Government Entities.

968 Section 21. Section **63-95-203** is amended to read:

969 **63-95-203. Exemptions from committee activities.**

970 Notwithstanding the other provisions of this Part 2 and Subsection 63-95-102(9), the
971 following quasi-governmental entities are exempt from the study by the committee under Section
972 63-95-202:

973 (1) the Utah Housing [~~Finance Agency~~] Corporation created in Title 9, Chapter 4, Part 9,
974 Utah Housing Corporation Act; and

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

977 Section 22. Section **63A-1-113** is amended to read:

978 **63A-1-113. Agencies exempt from title.**

979 The Utah Housing [~~Finance Agency~~] Corporation and the Utah Technology Finance
980 Corporation are exempt from this title.

981 Section 23. Section **63E-1-102 (Effective 07/01/02)** is amended to read:

982 **63E-1-102 (Effective 07/01/02). Definitions.**

983 As used in this title:

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

985 (2) "Committee" means the Legislative Independent Entities Committee created in Section
986 63E-1-201.

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

- 989 (4) (a) "Independent entity" means an entity having a public purpose relating to the state
990 or its citizens that is individually created by the state or is given by the state the right to exist and
991 conduct its affairs as an:
- 992 (i) independent state agency; or
993 (ii) independent corporation.
- 994 (b) "Independent entity" includes the:
- 995 (i) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;
996 (ii) Utah Technology Finance Corporation created in Title 9, Chapter 13, Utah Technology
997 and Small Business Finance Act;
998 (iii) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber Valley
999 Historic Railroad Authority;
- 1000 (iv) Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah Science
1001 Center Authority;
- 1002 (v) Utah Housing [~~Finance Agency~~] Corporation created in Title 9, Chapter 4, Part 9, Utah
1003 Housing [~~Finance Agency~~] Corporation Act;
- 1004 (vi) Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State Fair
1005 Corporation Act;
- 1006 (vii) Workers' Compensation Fund created in Title 31A, Chapter 33, Workers'
1007 Compensation Fund;
- 1008 (viii) Utah State Retirement Office created in Title 49, Chapter 1, Part 2, Retirement Office
1009 and Board;
- 1010 (ix) School and Institutional Trust Lands Administration created in Title 53C, Chapter 1,
1011 Part 2, School and Institutional Trust Lands Administration; and
- 1012 (x) Utah Communications Agency Network created in Title 63C, Chapter 7, Utah
1013 Communications Agency Network Act.
- 1014 (c) Notwithstanding this Subsection (4), "independent entity" does not include:
- 1015 (i) the Public Service Commission of Utah created in Section 54-1-1;
1016 (ii) an institution within the state system of higher education;
1017 (iii) a city, county, or town;
1018 (iv) a local school district;
1019 (v) a special district created under the authority of Title 17A, Special Districts; or

1020 (vi) a local district created under the authority of Title 17B, Limited Purpose Local
1021 Government Entities.

1022 (5) "Independent state agency" means an entity that is created by the state, but is
1023 independent of the governor's direct supervisory control.

1024 (6) "Monies held in trust" means monies maintained for the benefit of:

1025 (a) one or more private individuals, including public employees;

1026 (b) one or more public or private entities; or

1027 (c) the owners of a quasi-public corporation.

1028 (7) "Public corporation" means an artificial person, public in ownership, individually
1029 created by the state as a body politic and corporate for the administration of a public purpose
1030 relating to the state or its citizens.

1031 (8) "Quasi-public corporation" means an artificial person, private in ownership,
1032 individually created as a corporation by the state which has accepted from the state the grant of a
1033 franchise or contract involving the performance of a public purpose relating to the state or its
1034 citizens.

1035 Section 24. Section **63E-1-203 (Effective 07/01/02)** is amended to read:

1036 **63E-1-203 (Effective 07/01/02). Exemptions from committee activities.**

1037 Notwithstanding the other provisions of this Part 2 and Subsection 63E-1-102(4), the
1038 following independent entities are exempt from the study by the committee under Section
1039 63E-1-202:

1040 (1) the Utah Housing [~~Finance Agency~~] Corporation created in Title 9, Chapter 4, Part 9,
1041 Utah Housing Corporation Act; and

1042 (2) the Workers' Compensation Fund created in Title 31A, Chapter 33, Workers'
1043 Compensation Fund.

1044 Section 25. **Effective date.**

1045 This act takes effect on May 6, 2002, except that the amendments to Sections 63E-1-102
1046 (Effective 07/01/02) and 63E-1-203 (Effective 07/01/02) take effect on July 1, 2002.

Legislative Review Note
as of 1-16-02 2:25 PM

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

Office of Legislative Research and General Counsel