

DEPARTMENT OF NATURAL RESOURCES

AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Richard W. Wheeler

Senate Sponsor: _____

LONG TITLE

General Description:

This bill makes changes to provisions governing the Department of Natural Resources.

Highlighted Provisions:

This bill:

- ▶ clarifies a definition in the Wildlife Resources Code;
- ▶ invalidates any wildlife permit or tag obtained by fraud;
- ▶ amends the penalties for license or permit suspensions;
- ▶ authorizes the Division of Forestry, Fire, and State Lands to purchase property;
- ▶ extends the statute of limitations for wildland fire cost recovery;
- ▶ shifts the presumption relating to the operation of off-highway vehicles on public

lands;

- ▶ directs state agencies and political subdivisions to pursue opportunities to open areas for responsible off-highway vehicle use; and
- ▶ allows the state engineer to send notice by regular mail.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **23-13-2**, as last amended by Chapter 66, Laws of Utah 2004
30 **23-19-5**, as last amended by Chapter 76, Laws of Utah 1986
31 **23-19-9**, as repealed and reenacted by Chapter 224, Laws of Utah 2001
32 **41-22-12**, as last amended by Chapter 37, Laws of Utah 1999
33 **56-1-15**, Utah Code Annotated 1953
34 **65A-1-4**, as last amended by Chapter 159, Laws of Utah 1996
35 **73-1-4**, as last amended by Chapter 99, Laws of Utah 2003
36 **73-3-8**, as last amended by Chapter 139, Laws of Utah 1985
37 **73-3-12**, as last amended by Chapter 99, Laws of Utah 2003
38 **73-4-3**, as last amended by Chapter 252, Laws of Utah 1979
39 **73-4-4**, Utah Code Annotated 1953
40 **73-4-11**, Utah Code Annotated 1953
41 **78-12-23**, as last amended by Chapters 79 and 210, Laws of Utah 1996

42 RENUMBERS AND AMENDS:

43 **65A-8-101**, (Renumbered from 65A-8-1, as last amended by Chapter 319, Laws of
44 Utah 1997)
45 **65A-8-102**, (Renumbered from 65A-8-2, as last amended by Chapter 294, Laws of
46 Utah 1994)
47 **65A-8-103**, (Renumbered from 65A-8-3, as repealed and reenacted by Chapter 294,
48 Laws of Utah 1994)
49 **65A-8-104**, (Renumbered from 65A-8-1.1, as last amended by Chapter 294, Laws of
50 Utah 1994)
51 **65A-8-105**, (Renumbered from 65A-8-1.2, as last amended by Chapter 352, Laws of
52 Utah 2004)
53 **65A-8-201**, (Renumbered from 65A-8-4, as repealed and reenacted by Chapter 294,
54 Laws of Utah 1994)
55 **65A-8-202**, (Renumbered from 65A-8-5, as repealed and reenacted by Chapter 294,
56 Laws of Utah 1994)
57 **65A-8-203**, (Renumbered from 65A-8-6, as last amended by Chapter 47, Laws of Utah
58 2004)

59 **65A-8-204**, (Renumbered from 65A-8-6.1, as last amended by Chapter 256, Laws of
60 Utah 2002)

61 **65A-8-205**, (Renumbered from 65A-8-6.2, as last amended by Chapter 81, Laws of
62 Utah 2001)

63 **65A-8-206**, (Renumbered from 65A-8-6.3, as last amended by Chapter 319, Laws of
64 Utah 1997)

65 **65A-8-207**, (Renumbered from 65A-8-6.4, as last amended by Chapter 319, Laws of
66 Utah 1997)

67 **65A-8-208**, (Renumbered from 65A-8-6.5, as enacted by Chapter 319, Laws of Utah
68 1997)

69 **65A-8-209**, (Renumbered from 65A-8-7, as repealed and reenacted by Chapter 294,
70 Laws of Utah 1994)

71 **65A-8-210**, (Renumbered from 65A-8-8, as repealed and reenacted by Chapter 294,
72 Laws of Utah 1994)

73 **65A-8-211**, (Renumbered from 65A-8-9, as last amended by Chapter 71, Laws of Utah
74 1998)

75 **65A-8-212**, (Renumbered from 65A-8-10, as repealed and reenacted by Chapter 294,
76 Laws of Utah 1994)

77 **65A-8-301**, (Renumbered from 63-11-57, as enacted by Chapter 188, Laws of Utah
78 1975)

79 **65A-8-302**, (Renumbered from 63-11-58, as last amended by Chapter 159, Laws of
80 Utah 1996)

81 **65A-8-303**, (Renumbered from 63-11-59, as last amended by Chapter 305, Laws of
82 Utah 1983)

83 **65A-8-304**, (Renumbered from 63-11-60, as last amended by Chapter 305, Laws of
84 Utah 1983)

85 **65A-8-305**, (Renumbered from 63-11-60.3, as enacted by Chapter 305, Laws of Utah
86 1983)

87 **65A-8-306**, (Renumbered from 63-11-60.4, as last amended by Chapter 10, Laws of
88 Utah 1997)

89 **65A-8-307**, (Renumbered from 63-11-61, as last amended by Chapter 305, Laws of

Utah 1983)

65A-8-308, (Renumbered from 63-11-64, as last amended by Chapter 38, Laws of Utah 1993)

65A-8-309, (Renumbered from 63-11-65, as enacted by Chapter 305, Laws of Utah 1983)

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

Section 1. 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, Wildlife Resources Code of Utah 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.

- 121 (4) "Aquaculture facility" has the meaning provided in Section 4-37-103.
- 122 (5) "Bag limit" means the maximum limit, in number or amount, of protected wildlife
123 that one person may legally take during one day.
- 124 (6) "Big game" means species of hoofed protected wildlife.
- 125 (7) "Carcass" means the dead body of an animal or its parts.
- 126 (8) "Certificate of registration" means a document issued under this title, or any rule or
127 proclamation of the Wildlife Board granting authority to engage in activities not covered by a
128 license, permit, or tag.
- 129 (9) "Closed season" means the period of time during which the taking of protected
130 wildlife is prohibited.
- 131 (10) "Conservation officer" means a full-time, permanent employee of the Division of
132 Wildlife Resources who is POST certified as a peace or a special function officer.
- 133 (11) "Dedicated hunter program" means a program that provides:
- 134 (a) expanded hunting opportunities;
- 135 (b) opportunities to participate in projects that are beneficial to wildlife; and
- 136 (c) education in hunter ethics and wildlife management principles.
- 137 (12) "Division" means the Division of Wildlife Resources.
- 138 (13) (a) "Domicile" means the place:
- 139 (i) where an individual has a fixed permanent home and principal establishment;
- 140 (ii) to which the individual if absent, intends to return; and
- 141 (iii) in which the individual, and the individual's family voluntarily reside, not for a
142 special or temporary purpose, but with the intention of making a permanent home.
- 143 (b) To create a new domicile an individual must:
- 144 (i) abandon the old domicile; and
- 145 (ii) be able to prove that a new domicile has been established.
- 146 (14) "Endangered" means wildlife designated as such pursuant to Section 3 of the
147 federal Endangered Species Act of 1973.
- 148 (15) "Fee fishing facility" has the meaning provided in Section 4-37-103.
- 149 (16) "Feral" means an animal which is normally domesticated but has reverted to the
150 wild.
- 151 (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 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

214 purchase of the license; and

215 (ii) complies with Subsection (37)(a)(ii).

216 (e) A Utah resident license is invalid if a resident license for hunting, fishing, or
217 trapping is purchased in any other state or country.

218 (f) An absentee landowner paying property tax on land in Utah does not qualify as a
219 resident.

220 (38) "Sell" means to offer or possess for sale, barter, exchange, or trade, or the act of
221 selling, bartering, exchanging, or trading.

222 (39) "Small game" means species of protected wildlife:

223 (a) commonly pursued for sporting purposes; and

224 (b) not classified as big game, aquatic wildlife, or furbearers and excluding turkey,
225 cougar, and bear.

226 (40) "Spoiled" means impairment of the flesh of wildlife which renders it unfit for
227 human consumption.

228 (41) "Spotlighting" means throwing or casting the rays of any spotlight, headlight, or
229 other artificial light on any highway or in any field, woodland, or forest while having in
230 possession a weapon by which protected wildlife may be killed.

231 (42) "Tag" means a card, label, or other identification device issued for attachment to
232 the carcass of protected wildlife.

233 (43) "Take" means to:

234 (a) hunt, pursue, harass, catch, capture, possess, angle, seine, trap, or kill any protected
235 wildlife; or

236 (b) attempt any action referred to in Subsection (43)(a).

237 (44) "Threatened" means wildlife designated as such pursuant to Section 3 of the
238 federal Endangered Species Act of 1973.

239 (45) "Trapping" means taking protected wildlife with a trapping device.

240 (46) "Trophy animal" means an animal described as follows:

241 (a) deer - any buck with an outside antler measurement of 24 inches or greater;

242 (b) elk - any bull with six points on at least one side;

243 (c) bighorn, desert, or rocky mountain sheep - any ram with a curl exceeding half curl;

244 (d) moose - any bull with at least one antler exceeding five inches in length;

(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 2. Section **23-19-5** is amended to read:

23-19-5. Fraud, deceit, or misrepresentation in obtaining a license, permit, tag, or certificate of registration unlawful -- Violation -- Penalty.

(1) It is unlawful for:

(a) any person to obtain or attempt to obtain a license, permit, tag, or certificate of registration by fraud, deceit, or misrepresentation[. It is unlawful for];

(b) a nonresident to purchase a resident license[. It is unlawful for]; and

(c) a resident to purchase a nonresident license.

(2) Any license, permit, tag, or certificate of registration obtained in violation of Subsection (1) is invalid.

(3) Any person violating [provisions of this section] Subsection (1) is guilty of a class B misdemeanor.

(4) A fraudulent claim of residency in another state or country does not exempt a person from the definition of resident in Section 23-13-2.

Section 3. Section **23-19-9** is amended to read:

23-19-9. Suspension of license or permit privileges -- Suspension of certificates of registration.

(1) As used in this section, "license or permit privileges" means the privilege of

applying for, purchasing, and exercising the benefits conferred by a license or permit issued by the division.

(2) A hearing officer, appointed by the division, ~~[shall]~~ may suspend a person's ~~[privilege of applying for, purchasing, and exercising the benefits conferred by one or more licenses or permits issued by the division]~~ license or permit privileges if:

(a) in a court of law, the person:

(i) is convicted of:

(A) violating this title or a rule of the Wildlife Board;

(B) killing or injuring domestic livestock while engaged in an activity regulated under this title; or

(C) violating Section 76-10-508 while engaged in an activity regulated under this title;

(ii) enters into a plea in abeyance agreement, in which the person pleads guilty or no contest to an offense listed in Subsection (2)(a)(i), and the plea is held in abeyance; or

(iii) is charged with committing an offense listed in Subsection (2)(a)(i), and the person enters into a diversion agreement which suspends the prosecution of the offense; and

(b) the hearing officer determines the person committed the offense intentionally, knowingly, or recklessly, as defined in Section 76-2-103.

(3) (a) The Wildlife Board shall make rules establishing guidelines ~~[for]~~ that a hearing officer ~~[to]~~ shall consider in determining:

(i) the type of license or permit privileges to suspend[-]; and

(ii) the duration of the suspension.

(b) The Wildlife Board shall ensure that the guidelines established under Subsection (3)(a) are consistent with Subsections (4), (5), and (6).

(4) Except as provided in ~~[Subsection]~~ Subsections (5) and (6), a hearing officer ~~[shall]~~ may suspend a person's license or permit privileges ~~[pursuant]~~ according to Subsection (2) for ~~[the following time periods]~~ a period of time not to exceed:

(a) seven years for:

(i) a felony conviction;

(ii) a plea of guilty or no contest to an offense punishable as a felony, which plea is held in abeyance pursuant to a plea in abeyance agreement; or

(iii) being charged with an offense punishable as a felony, the prosecution of which is

suspended pursuant to a diversion agreement;

(b) five years for:

(i) a class A misdemeanor conviction;

(ii) a plea of guilty or no contest to an offense punishable as a class A misdemeanor, which plea is held in abeyance pursuant to a plea in abeyance agreement; or

(iii) being charged with an offense punishable as a class A misdemeanor, the prosecution of which is suspended pursuant to a diversion agreement; ~~and~~

(c) three years for:

(i) a class B misdemeanor conviction ~~[under Section 23-20-4];~~

(ii) a plea of guilty or no contest to an offense punishable as a class B misdemeanor ~~[under Section 23-20-4, which]~~ when the plea is held in abeyance ~~[pursuant]~~ according to a plea in abeyance agreement; or

(iii) being charged with an offense punishable as a class B misdemeanor ~~[under Section 23-20-4]~~, the prosecution of which is suspended pursuant to a diversion agreement~~[-]; and~~

~~[(5) Suspension periods as set forth in Subsection (4) shall be doubled for offenses:]~~

(d) one year for:

(i) a class C misdemeanor conviction;

(ii) a plea of guilty or no contest to an offense punishable as a class C misdemeanor, when the plea is held in abeyance according to a plea in abeyance agreement; or

(iii) being charged with an offense punishable as a class C misdemeanor, the prosecution of which is suspended according to a diversion agreement.

(5) The hearing officer may double a suspension period established in Subsection (4) for offenses:

(a) committed in violation of an existing suspension or revocation order issued by the courts, division, or Wildlife Board; or

(b) involving the unlawful taking of a trophy animal, as defined in Section 23-13-2.

(6) (a) A hearing officer may suspend, ~~[pursuant]~~ according to Subsection (2), a person's ~~[privilege to apply for, purchase, and exercise the benefits conferred by]~~ license or permit privileges for a particular license or permit only once for each single criminal episode, as defined in Section 76-1-401.

(b) If a hearing officer addresses two or more single criminal episodes in a hearing, the

suspension periods of any license or permit privileges of the same type suspended, ~~[pursuant]~~
according to Subsection (2), ~~[shall]~~ may run consecutively.

(c) If a hearing officer suspends, ~~[pursuant]~~ according to Subsection (2), license or
permit privileges of the type that have been previously suspended by a court, a hearing officer,
or the Wildlife Board and the suspension period has not expired, the suspension periods ~~[shall]~~
may run consecutively.

~~[(7) (a) A hearing officer, appointed by the division, shall suspend a person's privilege
of applying for, purchasing, and exercising the benefits conferred by one or more licenses or
permits issued by the division if:]~~

~~[(i) within a five-year period, the person, on three or more occasions, in a court of law,
is convicted or enters into a plea in abeyance agreement or diversion agreement as follows:]~~

~~[(A) the person is convicted of an offense listed in Subsection (2)(a)(i) that is
punishable as a class B or C misdemeanor;]~~

~~[(B) the person enters into a plea in abeyance agreement in which the person pleads
guilty or no contest to an offense listed in Subsection (2)(a)(i) that is punishable as a class B or
C misdemeanor, and the plea is held in abeyance; or]~~

~~[(C) the person is charged with an offense listed in Subsection (2)(a)(i) that is
punishable as a class B or C misdemeanor, and the person enters into a diversion agreement,
which suspends the prosecution of the offense;]~~

~~[(ii) each conviction, plea in abeyance agreement, or diversion agreement listed in
Subsection (7)(a)(i) originated from a separate single criminal episode; and]~~

~~[(iii) a suspension or revocation order has not been previously issued as a result of any
conviction, plea in abeyance agreement, or diversion agreement listed in Subsection (7)(a)(i).]~~

~~[(b) An order of suspension may be issued, under this Subsection (7), on a strict
liability basis.]~~

~~[(c) A hearing officer shall suspend a person's license or permit privileges, pursuant to
this Subsection (7), for a time period equal to the sum of the following:]~~

~~[(i) one year for each:]~~

~~[(A) class B misdemeanor conviction;]~~

~~[(B) plea of guilty or no contest to an offense punishable as a class B misdemeanor,
which plea is held in abeyance pursuant to a plea in abeyance agreement; or]~~

369 ~~[(C) charge of committing an offense punishable as a class B misdemeanor, the~~
370 ~~prosecution of which is suspended pursuant to a diversion agreement; and]~~

371 ~~[(ii) six months for each;]~~

372 ~~[(A) class C misdemeanor conviction;]~~

373 ~~[(B) plea of guilty or no contest to an offense punishable as a class C misdemeanor,~~
374 ~~which plea is held in abeyance pursuant to a plea in abeyance agreement; or]~~

375 ~~[(C) charge of committing an offense punishable as a class C misdemeanor, the~~
376 ~~prosecution of which is suspended pursuant to a diversion agreement.]~~

377 ~~[(8)]~~ (7) (a) A hearing officer, appointed by the division, may suspend a person's
378 privilege of applying for, purchasing, and exercising the benefits conferred by a certificate of
379 registration if:

380 (i) the hearing officer determines the person intentionally, knowingly, or recklessly, as
381 defined in Section 76-2-103, violated:

382 (A) this title;

383 (B) a rule or order of the Wildlife Board;

384 (C) the terms of a certificate of registration; or

385 (D) the terms of a certificate of registration application or agreement; or

386 (ii) the person, in a court of law:

387 (A) is convicted of an offense that the hearing officer determines bears a reasonable
388 relationship to the person's ability to safely and responsibly perform the activities authorized by
389 the certificate of registration;

390 (B) pleads guilty or no contest to an offense that the hearing officer determines bears a
391 reasonable relationship to the person's ability to safely and responsibly perform the activities
392 authorized by the certificate of registration, and the plea is held in abeyance in accordance with
393 a plea in abeyance agreement; or

394 (C) is charged with an offense that the hearing officer determines bears a reasonable
395 relationship to the person's ability to safely and responsibly perform the activities authorized by
396 the certificate of registration, and prosecution of the offense is suspended in accordance with a
397 diversion agreement.

398 (b) All certificates of registration for the harvesting of brine shrimp eggs, as defined in
399 Section 59-23-3, shall be suspended by a hearing officer, if the hearing officer determines the

holder of the certificates of registration has violated Section 59-23-5.

~~[(c) Subsections (4), (5), and (6) do not apply to suspensions of certificates of registration.]~~

~~[(9)] (8)~~ The director shall appoint a qualified person as a hearing officer to perform the adjudicative functions provided in this section. The director may not appoint a division employee who investigates or enforces wildlife violations.

~~[(10)] (9)~~ (a) The courts may suspend, in criminal sentencing, a person's privilege to apply for, purchase, or exercise the benefits conferred by a license, permit, or certificate of registration.

(b) The courts shall promptly notify the division of any suspension orders or recommendations entered.

(c) The division, upon receiving notification of suspension from the courts, shall prohibit the person from applying for, purchasing, or exercising the benefits conferred by a license, permit, or certification of registration for the duration and of the type specified in the court order.

(d) The division may suspend a person's privilege to apply for, purchase, or exercise the benefits conferred by a license, permit, or certificate of registration beyond the time period ordered by a court, provided the combined suspension periods are consistent with the requirements of Subsections (4), (5), and (6).

~~[(d)] (e)~~ The hearing officer shall consider any recommendation made by a sentencing court concerning suspension before issuing a suspension order.

~~[(11)] (10)~~ (a) A person may not apply for, purchase, possess, or attempt to exercise the benefits conferred by any permit, license, or certificate of registration specified in an order of suspension while that order is in effect. Any license possessed or obtained in violation of the order shall be considered invalid.

(b) A person who violates Subsection ~~[(11)] (10)~~(a) is guilty of a class B misdemeanor.

~~[(12)] (11)~~ Before suspension under this section, a person must be:

(a) given written notice of any action the division intends to take; and

(b) provided with an opportunity for a hearing.

~~[(13)] (12)~~ (a) A person may file an appeal of a hearing officer's decision with the Wildlife Board.

(b) The Wildlife Board shall review the hearing officer's findings and conclusions and any written documentation submitted at the hearing. The Wildlife Board may:

- (i) take no action;
- (ii) vacate or remand the decision; or
- (iii) amend the period or type of suspension.

~~[(14)]~~ (13) The division shall suspend and reinstate all hunting, fishing, trapping, and falconry privileges consistent with Title 23, Chapter 25, Wildlife Violator Compact.

~~[(15)]~~ (14) The Wildlife Board may make rules to implement this section in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and Title 63, Chapter 46b, Administrative Procedures Act.

Section 4. Section **41-22-12** is amended to read:

41-22-12. Restrictions on use of public lands.

(1) Except as provided in Section 63-11-17, federal agencies are encouraged and agencies of the state and its subdivisions shall ~~[refrain from closing any public land to]~~ pursue opportunities to open areas for responsible off-highway vehicle use.

(2) A person may not operate and an owner of an off-highway vehicle may not give another person permission to operate an off-highway vehicle on any public land ~~[which]~~ that is ~~[closed]~~ not designated open to off-highway vehicles.

Section 5. Section **56-1-15** is amended to read:

56-1-15. Fire caused by sparks emitted.

In any action for damages ~~[on account of]~~ from a fire caused by sparks emitted from locomotive engines on a ~~[steam railroad]~~ rail line, proof that the fire occurred and was caused by sparks emitted from a locomotive engine operated by ~~[such]~~ the railroad ~~[shall constitute]~~ is prima facie evidence of negligence on the part of ~~[such]~~ the railroad.

Section 6. Section **65A-1-4** is amended to read:

65A-1-4. Division of Forestry, Fire and State Lands -- Creation -- Power and authority.

(1) (a) The Division of Forestry, Fire and State Lands is created within the Department of Natural Resources under the administration and general supervision of the executive director of the department.

(b) The division is the executive authority for the management of sovereign lands, and

the state's mineral estates on lands other than school and institutional trust lands, and shall provide for forestry and fire control activities as required in Section ~~[65A-8-1]~~ 65A-8-101.

(c) The division may purchase land if the purchase is approved by the Legislature in an appropriations act.

(2) The division shall adopt rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, necessary to fulfill the purposes of this title.

(3) The director of the Division of Forestry, Fire and State Lands is the executive and administrative head of the division and shall be a person experienced in administration and management of natural resources.

(4) The director shall inform the council:

(a) in an annual meeting of the division's plans, policies, and budget; and

(b) of policy changes and developing conflicts, and give the council an opportunity to advise on the changes and conflicts.

(5) (a) An aggrieved party to a final action by the director may appeal that action to the executive director of the Department of Natural Resources within 20 days after the action.

(b) The executive director shall rule on the director's action within 20 days after receipt of the appeal.

Section 7. Section **65A-8-101**, which is renumbered from Section 65A-8-1 is renumbered and amended to read:

[65A-8-1]. 65A-8-101. Division responsibilities for fire control and the preservation of forest, watershed, and other lands -- Reciprocal agreements for fire protection.

(1) The division shall determine and execute the best methods for protecting private and public property by:

(a) preventing the origin and spread of fire on nonfederal forest, range, and watershed lands in unincorporated areas of the state;

(b) protecting nonfederal forest and watershed areas on conservation principles; and

(c) encouraging private landowners in preserving, protecting, and managing forest and other lands throughout the state.

(2) The division shall take action it considers necessary to control wildland fires and protect life and property on the nonfederal forest, range, and watershed lands within

493 unincorporated areas of the state.

494 (3) The division may enter into agreements with public or private agencies, or
495 individuals for the express purpose of protecting, managing, or rehabilitating those lands.

496 (4) The division may enter into a reciprocal agreement with any fire protection
497 organization, including federal agencies, to provide fire protection for land and improvements
498 for which the organization normally provides fire protection.

499 Section 8. Section **65A-8-102**, which is renumbered from Section 65A-8-2 is
500 renumbered and amended to read:

501 **[65A-8-2]. 65A-8-102. State forester.**

502 (1) There is created the position of state forester to carry out the provisions of this
503 chapter.

504 (2) The state forester shall be a graduate of an accredited school of forestry, technically
505 and professionally competent, and experienced in administration.

506 (3) The state forester shall be responsible to the director of the division.

507 (4) In all matters pertaining to forestry and fire control in which the state recognizes a
508 responsibility, the state forester shall be the official representative of the state.

509 Section 9. Section **65A-8-103**, which is renumbered from Section 65A-8-3 is
510 renumbered and amended to read:

511 **[65A-8-3]. 65A-8-103. Forestry and fire control funds.**

512 (1) All monies available to the division to meet the costs of Subsections (1)(a) through
513 (d) are nonlapsing and available to the division until expended:

514 (a) monies for controlling forest, range, and watershed fires;

515 (b) monies for controlling insect and disease epidemics;

516 (c) monies for rehabilitating or reforesting nonfederal forest, range, and watershed
517 lands; and

518 (d) monies for carrying on the purposes of Title 65A, Chapter 8, Management of Forest
519 Lands and Fire Control.

520 (2) (a) The collection and disbursement of all money made available to the division
521 shall be in accordance with the rules of the Division of Finance.

522 (b) Monies collected by the division from fees, rentals, sales, contributions,
523 reimbursements, and other such sources shall be deposited in the appropriate account.

Section 10. Section **65A-8-104**, which is renumbered from Section 65A-8-1.1 is renumbered and amended to read:

~~[65A-8-1.1].~~ **65A-8-104. Leaf-It-To-Us Children's Crusade for Trees program created -- Purpose -- Matching funds.**

(1) As used in this section, "program" means the Leaf-It-To-Us Children's Crusade for Trees program.

(2) (a) The Leaf-It-To-Us Children's Crusade for Trees program is created within the division.

(b) The purpose of the program is to provide matching funds for the planting of trees on public lands or alongside curbs.

(3) (a) Any student group may submit an application to the division for funds available through the program.

(b) To be eligible for the funds, the student group must provide an equal amount of money.

(c) Both the program funds and the student group's funds shall be used to plant trees on public lands or alongside curbs.

(4) The division shall make rules for the administration of the program and place emphasis on post-planting care.

Section 11. Section **65A-8-105**, which is renumbered from Section 65A-8-1.2 is renumbered and amended to read:

~~[65A-8-1.2].~~ **65A-8-105. Urban and community forestry program.**

(1) An urban and community forestry program is created within the division.

(2) The purpose of the program is to encourage the planting and maintenance of trees within municipalities and unincorporated communities.

(3) The division may:

(a) advise and assist municipalities, counties, and other public and private entities in developing and coordinating policies, programs, and activities promoting urban and community forestry;

(b) receive, by following the procedures and requirements of Title 63, Chapter 38e, Federal Funds Procedures, federal funds for the urban and community forestry program; and

(c) provide grants to municipalities and counties for urban and community forestry

programs and cooperative projects.

(4) The division shall:

(a) develop a public education program to inform tree care professionals and citizens of the hazards involved with the planting of new trees and the maintenance of existing trees near overhead power lines and highways; and

(b) develop and implement a program of public awareness to inform citizens about the benefits of planting trees in urban areas and how to maintain trees.

Section 12. Section **65A-8-201**, which is renumbered from Section 65A-8-4 is renumbered and amended to read:

[65A-8-4]. 65A-8-201. Uncontrolled fire is a public nuisance.

Any fire on forest, range, or watershed land in the state burning uncontrolled and without proper and adequate action being taken to control or prevent its spread is a public nuisance.

Section 13. Section **65A-8-202**, which is renumbered from Section 65A-8-5 is renumbered and amended to read:

[65A-8-5]. 65A-8-202. Fire control -- County responsibilities.

(1) Counties shall abate the public nuisance caused by uncontrolled fire on privately owned or county owned forest, range, and watershed lands.

(2) Counties, or other political subdivisions of the state as determined to be appropriate by the state forester, may participate in the wildland fire protection system of the division and become eligible for assistance from the state by agreement under the provisions of this chapter.

(3) The state forester shall make certain that appropriate action is taken to control wildland fires on nonfederal forest, range, and watershed lands.

(4) The actual costs of suppression action taken by the division on privately owned lands shall be a charge against the county in which the lands lie, unless otherwise provided by cooperative agreement.

Section 14. Section **65A-8-203**, which is renumbered from Section 65A-8-6 is renumbered and amended to read:

[65A-8-6]. 65A-8-203. Cooperative fire protection agreements with counties.

(1) The county legislative body of any county may enter into a cooperative agreement with the division to receive financial and supervisory cooperation and assistance from the

division.

(2) A county may not receive cooperation or assistance under Subsection (1) until a cooperative agreement is executed by the county legislative body and the division.

(3) In order to be eligible to enter into a cooperative agreement with the division, the county shall:

(a) adopt a wildland fire ordinance based upon minimum standards established by the division;

(b) require that the county fire department or equivalent private provider under contract with the county meet minimum standards for wildland fire training, certification, and wildland fire suppression equipment based upon nationally accepted standards as specified by the division; and

(c) file with the division a budget for fire suppression costs.

(4) A county that chooses not to enter into a cooperative agreement with the division may not be eligible to receive financial assistance from the division.

(5) The state forester may execute the agreements and may divide the state into fire protection districts.

(6) These districts shall provide efficient and economical fire protection within the area defined.

(7) The districts may comprise one or more counties, or portions of counties to be specified in the cooperative agreements.

(8) Under the terms of the cooperative agreements, the state forester shall file annual budgets for operation of the cooperative districts with each participating county.

(9) If the county approves a budget mutually acceptable to the county and the state forester, and budgets an amount for actual fire suppression costs determined to be normal by the state forester, the agreement shall commit the state to pay 1/2 the actual suppression costs that exceed the stated normal costs.

Section 15. Section **65A-8-204**, which is renumbered from Section 65A-8-6.1 is renumbered and amended to read:

~~[65A-8-6.1].~~ 65A-8-204. Wildland Fire Suppression Fund created.

(1) There is created a private-purpose trust fund known as the "Wildland Fire Suppression Fund."

(2) The fund shall be administered by the division to pay fire suppression and presuppression costs on eligible lands within unincorporated areas of counties.

(3) The contents of the fund shall include:

(a) payments by counties pursuant to written agreements made under Section ~~[65A-8-6.2]~~ 65A-8-205;

(b) interest and earnings from the investment of fund monies; and

(c) money appropriated by the Legislature.

(4) Fund monies shall be invested by the state treasurer with the earnings and interest accruing to the fund.

(5) (a) A maximum level of \$8,000,000 is established for the fund.

(b) (i) Except as provided in Subsection (5)(b)(ii), if the amount of money in the fund equals or exceeds \$8,000,000 on March 31, no assessments may be charged for the following year.

(ii) The waiver of assessments provided in Subsection (5)(b)(i) does not apply to any equity payment required by Section ~~[65A-8-6.2]~~ 65A-8-205.

Section 16. Section **65A-8-205**, which is renumbered from Section 65A-8-6.2 is renumbered and amended to read:

~~[65A-8-6.2].~~ 65A-8-205. Agreements for coverage by the Wildland Fire Suppression Fund -- Eligible lands -- County and state obligations -- Termination -- Revocation.

(1) (a) A county legislative body may annually enter into a written agreement with the state forester to provide for payment of county fire suppression costs in excess of the county's fire suppression budget out of the Wildland Fire Suppression Fund.

(b) Fire suppression costs on forest, range, and watershed lands within the unincorporated area of a county, except federal or state lands, are eligible for coverage by the Wildland Fire Suppression Fund.

(2) An agreement for payment of fire suppression costs from the Wildland Fire Suppression Fund shall provide that the county shall:

(a) pay into the fund an amount equal to:

(i) .01 times the number of acres of privately or county-owned land in the unincorporated area of the county; and

(ii) .0001 times the taxable value of real property in the unincorporated area of the county; and

(b) budget an amount for fire suppression costs determined to be normal by the state forester in accordance with the formula specified by rule.

(3) (a) Except as provided in Subsection (3)(d), after the first year of operation of the fund, any county that elects to initiate participation in the fund, or reestablish participation in the fund after participation was terminated, shall be required to make an equity payment, in addition to the assessment provided in Subsection (2)(a).

(b) The equity payment shall represent what the county's equity in the fund would be if the county had made assessments into the fund for each of the previous three years.

(c) The equity payment shall be determined by the state forester in accordance with division rules.

(d) The equity payment requirement is waived for any county that initiates participation in the fund, or reestablishes participation in the fund, during the period beginning on April 1, 2001 and ending on May 31, 2001.

(4) The agreement shall provide that:

(a) the state shall pay into the fund an amount equal to the county's payment, including any equity payment required under Subsection (3); and

(b) if monies in the fund are insufficient to pay for all eligible fire suppression costs, the state shall pay for 1/2 of the county's remaining costs.

(5) The agreement shall provide for revocation of the agreement for failure to pay assessments when due.

(6) Any county that elects to withdraw from participation in the fund, or whose participation in the fund is revoked due to failure to pay its assessments when due, shall forfeit any right to any previously paid assessments by the county.

Section 17. Section **65A-8-206**, which is renumbered from Section 65A-8-6.3 is renumbered and amended to read:

[65A-8-6.3]. 65A-8-206. Disbursements from the Wildland Fire Suppression Fund.

(1) Disbursements from the fund shall be made only upon written order of the state forester or his authorized representative.

(2) If the state forester determines monies in the fund may be insufficient to cover eligible costs in a program year, the state forester may delay making disbursements from the fund until the close of the program year, at which time available monies shall be prorated among those entitled to payments at less than 100%.

Section 18. Section **65A-8-207**, which is renumbered from Section 65A-8-6.4 is renumbered and amended to read:

[65A-8-6.4]. 65A-8-207. Division to make rules governing Wildland Fire Suppression Fund.

The division shall make rules to administer the Wildland Fire Suppression Fund, including rules:

(1) requiring documentation for the number of acres of privately- or county-owned land in the unincorporated area of the participating counties;

(2) describing the method or formula for determining:

(a) normal fire suppression costs; and

(b) equity payments required by Section [65A-8-6.2] 65A-8-205; and

(3) specifying fire suppression and presuppression costs that may be paid with disbursements from the fund.

Section 19. Section **65A-8-208**, which is renumbered from Section 65A-8-6.5 is renumbered and amended to read:

[65A-8-6.5]. 65A-8-208. Presuppression costs -- Disbursements from fund -- Credit against assessment -- Limited by appropriation.

(1) The state forester or the state forester's authorized representative may make disbursements from the Wildland Fire Suppression Fund to pay for costs of presuppression and fire management activities initiated by counties participating in the fund, subject to the limitations specified in this section.

(2) Payments to a county for costs of presuppression and fire management activities in any year may not exceed the county's assessment under Subsection [65A-8-6.2] 65A-8-205(2)(a).

(3) In lieu of making a disbursement from the fund for a county's costs of presuppression and fire management activities, the county may be given a credit against its assessment under Subsection [65A-8-6.2] 65A-8-205(2)(a) equal to those costs. The credit

may not exceed the county's assessment under Subsection [~~65A-8-6.2~~] 65A-8-205(2)(a).

(4) The total amount of money in the fund that may be allocated to cover costs of presuppression and fire management activities initiated by counties may not exceed the legislative appropriation to the fund for those costs.

Section 20. Section **65A-8-209**, which is renumbered from Section 65A-8-7 is renumbered and amended to read:

[~~65A-8-7~~]. 65A-8-209. Responsibilities of county sheriffs and district fire wardens in controlling fires.

(1) In those counties not directly participating in the state wildland fire protection organization by cooperative agreement as provided in this chapter, the county sheriff shall take appropriate action to suppress uncontrolled fires on state or private lands.

(2) In all cases the sheriff shall:

(a) report, as prescribed by the state forester, on wildland fire control action;

(b) investigate and report fire causes; and

(c) enforce the provisions of this chapter either independently or in cooperation with the state forester.

(3) In those counties participating in the state wildland fire protection organization by cooperative agreement, the primary responsibility for fire control is delegated to the district fire warden, who is designated by the state forester.

(4) The county sheriff and his organization shall maintain cooperative support of the fire control organization.

Section 21. Section **65A-8-210**, which is renumbered from Section 65A-8-8 is renumbered and amended to read:

[~~65A-8-8~~]. 65A-8-210. Fire control on state-owned lands -- Responsibilities of state agencies.

(1) The division shall abate the public nuisance caused by uncontrolled fire on state-owned forest, range, and watershed lands.

(2) (a) State agencies responsible for the administration of state-owned lands shall recognize the need for providing wildland fire protection and the responsibility for sharing the costs.

(b) Those agencies shall annually allocate funds to the division in amounts as are

determined to be fair and equitable proportionate costs for providing a basic level of fire protection.

(c) The amount of protection costs shall be negotiated by the respective land agencies and the division.

Section 22. Section **65A-8-211**, which is renumbered from Section 65A-8-9 is renumbered and amended to read:

[~~65A-8-9~~]. 65A-8-211. Closed fire season -- Notice -- Violations -- Burning permits -- Personal liability -- Exemptions from burning permits.

(1) (a) The period from June 1 to October 31 of each year is a closed fire season throughout the state.

(b) The state forester may advance or extend the closed season wherever and whenever that action is necessary.

(c) The alteration of the closed season shall be done by posting the appropriate proclamation in the courthouse of each county seat for at least seven days in advance of the date the change is effective.

(2) During the closed season it is a class B misdemeanor to set on fire, or cause to be set on fire, any inflammable material on any forest, brush, range, grass, grain, stubble, or hay land without:

(a) first securing a written permit from the state forester or a designated deputy; and

(b) complying fully with the terms and conditions prescribed by the permit.

(3) It is the duty of the district fire warden appointed by the state forester, or the county sheriff in nonparticipating counties, to issue burning permits using the form prescribed by the division.

(4) (a) The burning permit does not relieve an individual from personal liability due to neglect or incompetence.

(b) If a fire escapes control of the permittee and necessitates fire control action or does injury to the property of another, this may be held prima facie evidence that the fire was not safe.

(5) The state forester, his deputies, and the county sheriffs may refuse, revoke, postpone, or cancel permits when they find it necessary in the interest of public safety.

(6) (a) A burning permit is not required for the burning of fence lines on cultivated

lands, canals, or irrigation ditches if:

- (i) the burning does not pose a threat to forest, range, or watershed lands;
- (ii) due care is used in the control of the burning; and
- (iii) the individual notifies the nearest fire department of the approximate time the

burning will occur.

(b) Failure to notify the nearest fire department of the burning as required by this section is a class B misdemeanor.

(7) A burning conducted in accordance with Subsection (6) is not a reckless burning under Section 76-6-104 unless the fire escapes control and requires fire control action.

Section 23. Section **65A-8-212**, which is renumbered from Section 65A-8-10 is renumbered and amended to read:

~~[65A-8-10]. 65A-8-212. Power of state forester to close hazardous areas -- Violations of an order closing an area.~~

(1) (a) If the state forester finds conditions in a given area in the state to be extremely hazardous, he shall close those areas to any forms of use by the public, or to limit that use.

(b) The closure shall include the prohibition of open fires for the period of time he finds necessary.

(2) Nothing in this chapter prohibits any resident within the area from full and free access to his home or property, or any legitimate use by the owner or lessee of the property.

(3) The order or proclamation closing or limiting the use in the area shall set forth:

(a) the exact area coming under the order;

(b) the date when the order becomes effective; and

(c) if advisable, the authority from whom permits for entry into the area may be obtained.

(4) Any entry into or use of any area in violation of this section is a class B misdemeanor.

Section 24. Section **65A-8-301**, which is renumbered from Section 63-11-57 is renumbered and amended to read:

~~[63-11-57]. 65A-8-301. Heritage trees -- Legislative finding and purpose.~~

The Legislature finds the health and welfare of the people of the state require the preservation of certain rare, or threatened, or vanishing species of trees to preserve the state's

scenic beauty and preserve its historic past as it relates to such trees.

It is the intent of this ~~[act]~~ part to retain as many heritage trees as possible consistent with the reasonable and economic enjoyment of private property.

Section 25. Section **65A-8-302**, which is renumbered from Section 63-11-58 is renumbered and amended to read:

~~[63-11-58].~~ **65A-8-302. Heritage trees -- Definitions.**

As used in this ~~[act]~~ part:

(1) "Alter" means to change the configuration of a heritage tree by pruning, trimming, topping, cutting, or by any other means.

(2) "Committee" means the Heritage Trees Advisory Committee.

(3) "Division" means the Division of Forestry, Fire and State Lands.

(4) "Heritage tree" means any tree or group of trees designated as such by the division, in accordance with the following criteria:

(a) any live tree or group of trees indigenous to the state, or which has adapted exceptionally well to the climatic conditions of the state, or is one of a kind;

(b) any tree or group of trees that has exceptional national, state, or local historic significance;

(c) any tree or group of trees which has an exceptional size or exceptional form for its species;

(d) any tree or group of trees which has an exceptional age for its species; or

(e) any tree or group of trees in the state which is the sole representative of its species.

(5) "Person" means any individual, partnership, corporation, or association.

Section 26. Section **65A-8-303**, which is renumbered from Section 63-11-59 is renumbered and amended to read:

~~[63-11-59].~~ **65A-8-303. Heritage trees -- Application to alter or remove.**

Any person that desires to alter or remove one or more heritage trees from any public property within this state shall before altering or removing any such tree make application to the division on forms prescribed by it. An application for alteration or removal shall be filed with the division at least 60 days before the actual alteration or removal of any such trees. The application shall state the name of the applicant, the number, location, and species of the trees proposed to be altered or removed, the reason for alteration or removal, and such other

information as the division may reasonably require.

Section 27. Section **65A-8-304**, which is renumbered from Section 63-11-60 is renumbered and amended to read:

[63-11-60]. 65A-8-304. Heritage trees -- Guidelines and standards for granting or denying applications to alter or remove.

The committee shall develop published guidelines and standards to be used by the board in granting or denying applications for the alteration or removal of heritage trees. In addition to the guidelines and standards developed by the committee, the division shall consider the following criteria in granting or denying an application:

(1) the physical condition of the heritage tree or trees with respect to insect infestation, disease, danger of falling, proximity to existing or proposed structures, and interference with utility services;

(2) the necessity of alteration or removal of the heritage tree or trees in order to construct proposed improvements and allow economic enjoyment of property;

(3) the topography of the land and the effect of removal of the heritage tree or trees on erosion, soil retention, and the diversion or increased flow of surface waters resultant upon alteration or removal;

(4) the number of heritage trees existing in the neighborhood on improved property and the effect alteration or removal would have on established standards and property values in the area; and

(5) the number of heritage trees the particular parcel can support according to good forestry practices.

Section 28. Section **65A-8-305**, which is renumbered from Section 63-11-60.3 is renumbered and amended to read:

[63-11-60.3]. 65A-8-305. Heritage trees -- Powers of division.

The division may:

(1) grant or deny applications for designation of heritage trees from individuals, local shade tree commissions, or local governments;

(2) grant or deny applications for alteration or removal of heritage trees;

(3) acquire land if one or more heritage trees are located on the land;

(4) accept gifts, bequests, or donations; and

(5) determine policies necessary to carry out this ~~[act]~~ part.

Section 29. Section **65A-8-306**, which is renumbered from Section 63-11-60.4 is renumbered and amended to read:

~~[63-11-60.4].~~ **65A-8-306. Heritage trees -- Advisory committee -- Members -- Officers -- Expenses -- Functions.**

(1) There is created a Heritage Trees Advisory Committee composed of five persons appointed by the division from among persons who are members of the Utah Association of Shade Tree Commissions.

(2) (a) Except as required by Subsection (2)(b), as terms of current committee members expire, the division shall appoint each new member or reappointed member to a four-year term.

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

(c) No two members shall be appointed from the same city.

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

(4) The committee shall elect a chair who is responsible to call and conduct meetings. Three members present at a duly called meeting constitute a quorum for the transaction of official business. Members of the committee may meet as often as considered necessary. The urban forestry staff person of the division shall serve as secretary to the committee.

(5) (a) Members 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.

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

(6) The committee shall:

(a) publish guidelines for division use in granting or denying applications for the designation of heritage trees;

(b) publish an annual register of designated heritage trees and distribute it to public utilities, tree service companies, municipal forestry and parks departments, and the public; and

(c) develop a system for visibly identifying designated heritage trees.

Section 30. Section **65A-8-307**, which is renumbered from Section 63-11-61 is renumbered and amended to read:

~~[63-11-61]. 65A-8-307. Heritage trees -- Exemption for emergency or permit.~~

This ~~[act]~~ part shall not apply to any emergency when heritage trees constitute a danger to life or property, or to any person whose application for alteration or removal of a heritage tree has been granted by the division.

Section 31. Section **65A-8-308**, which is renumbered from Section 63-11-64 is renumbered and amended to read:

~~[63-11-64]. 65A-8-308. Heritage trees -- Enforcement -- Prosecution of violations.~~

County sheriffs, police, and other law enforcement officers within their respective jurisdictions are responsible for the enforcement of this ~~[act]~~ part. The county attorney or district attorney shall prosecute any violation of this ~~[act]~~ part.

Section 32. Section **65A-8-309**, which is renumbered from Section 63-11-65 is renumbered and amended to read:

~~[63-11-65]. 65A-8-309. Heritage trees -- Injury -- Violation of part -- Misdemeanor.~~

Any person who willfully or maliciously alters, injures, damages, or causes death of a heritage tree or who otherwise violates this ~~[act]~~ part is guilty of a class B misdemeanor.

Section 33. Section **73-1-4** is amended to read:

73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within five years -- Extension of time.

(1) In order to further the state policy of securing the maximum use and benefit of its scarce water resources, a person entitled to the use of water has a continuing obligation to place all of a water right to beneficial use. The forfeiture of all or part of any right to use water for failure to place all or part of the water to beneficial use makes possible the allocation and use of water consistent with long established beneficial use concepts. The provisions of Subsections (2) through (6) shall be construed to carry out the purposes and policies set forth in this Subsection (1).

(2) As used in this section, "public water supply entity" means an entity that supplies water as a utility service or for irrigation purposes and is also:

927 (a) a municipality, water conservancy district, metropolitan water district, irrigation
928 district created under Section 17A-2-701.5, or other public agency;

929 (b) a water company regulated by the Public Service Commission; or

930 (c) any other owner of a community water system.

931 (3) (a) When an appropriator or the appropriator's successor in interest abandons or
932 ceases to use all or a portion of a water right for a period of five years, the water right or the
933 unused portion of that water right ceases and the water reverts to the public, unless, before the
934 expiration of the five-year period, the appropriator or the appropriator's successor in interest
935 files a verified nonuse application with the state engineer.

936 (b) (i) A nonuse application may be filed on all or a portion of the water right,
937 including water rights held by mutual irrigation companies.

938 (ii) Public water supply entities that own stock in a mutual water company, after giving
939 written notice to the water company, may file nonuse applications with the state engineer on
940 the water represented by the stock.

941 (c) (i) A water right or a portion of the water right may not be forfeited unless a judicial
942 action to declare the right forfeited is commenced within 15 years from the end of the latest
943 period of nonuse of at least five years.

944 (ii) If forfeiture is asserted in an action for general determination of rights in
945 conformance with the provisions of Chapter 4, Determination of Water Rights, the 15-year
946 limitation period shall commence to run back in time from the date the state engineer's
947 proposed determination of rights is served upon each claimant.

948 (iii) A decree entered in an action for general determination of rights under Chapter 4,
949 Determination of Water Rights, shall bar any claim of forfeiture for prior nonuse against any
950 right determined to be valid in the decree, but shall not bar a claim for periods of nonuse that
951 occur after the entry of the decree.

952 (iv) A proposed determination by the state engineer in an action for general
953 determination of rights under Chapter 4, Determination of Water Rights, shall bar any claim of
954 forfeiture for prior nonuse against any right proposed to be valid, unless a timely objection has
955 been filed within the time allowed in Chapter 4, Determination of Water Rights.

956 (d) The extension of time to resume the use of that water may not exceed five years
957 unless the time is further extended by the state engineer.

(e) The provisions of this section are applicable whether the unused or abandoned water or a portion of the water is permitted to run to waste or is used by others without right with the knowledge of the water right holder, provided that the use of water pursuant to a lease or other agreement with the appropriator or the appropriator's successor shall be considered to constitute beneficial use.

(f) The provisions of this section shall not apply:

(i) to those periods of time when a surface water source fails to yield sufficient water to satisfy the water right, or when groundwater is not available because of a sustained drought;

(ii) to water stored in reservoirs pursuant to an existing water right, where the stored water is being held in storage for present or future use; or

(iii) when a water user has beneficially used substantially all of a water right within a five-year period, provided that this exemption shall not apply to the adjudication of a water right in a general determination of water rights under Chapter 4, Determination of Water Rights.

(g) Groundwater rights used to supplement the quantity or quality of other water supplies may not be subject to loss or reduction under this section if not used during periods when the other water source delivers sufficient water so as to not require use of the supplemental groundwater.

(4) (a) The state engineer shall furnish an application requiring the following information:

(i) the name and address of the applicant;

(ii) a description of the water right or a portion of the water right, including the point of diversion, place of use, and priority;

(iii) the date the water was last diverted and placed to beneficial use;

(iv) the quantity of water;

(v) the period of use;

(vi) the extension of time applied for;

(vii) a statement of the reason for the nonuse of the water; and

(viii) any other information that the state engineer requires.

(b) Filing the application extends the time during which nonuse may continue until the state engineer issues his order on the nonuse application.

(c) (i) Upon receipt of the application, the state engineer shall publish a notice of the application once a week for two successive weeks in a newspaper of general circulation in the county in which the source of the water supply is located and where the water is to be used.

(ii) The notice shall:

(A) state that an application has been made; and

(B) specify where the interested party may obtain additional information relating to the application.

(d) Any interested person may file a written protest with the state engineer against the granting of the application:

(i) within 20 days after the notice is published, if the adjudicative proceeding is informal; and

(ii) within 30 days after the notice is published, if the adjudicative proceeding is formal.

(e) In any proceedings to determine whether the application for extension should be approved or rejected, the state engineer shall follow the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

(f) After further investigation, the state engineer may approve or reject the application.

(5) (a) Nonuse applications on all or a portion of a water right shall be granted by the state engineer for periods not exceeding five years each, upon a showing of reasonable cause for nonuse.

(b) Reasonable causes for nonuse include:

(i) demonstrable financial hardship or economic depression;

(ii) the initiation of recognized water conservation or efficiency practices, or the operation of a groundwater recharge recovery program approved by the state engineer;

(iii) operation of legal proceedings;

(iv) the holding of a water right or stock in a mutual water company without use by any public water supply entity to meet the reasonable future requirements of the public;

(v) situations where, in the opinion of the state engineer, the nonuse would assist in implementing an existing, approved water management plan;

(vi) situations where all or part of the land on which water is used is contracted under an approved state agreement or federal conservation following program;

(vii) the loss of capacity caused by deterioration of the water supply or delivery equipment if the applicant submits, with the application, a specific plan to resume full use of the water right by replacing, restoring, or improving the equipment; or

(viii) any other reasonable cause.

(6) (a) Sixty days before the expiration of any extension of time, the state engineer shall notify the applicant by ~~[registered]~~ mail or by any form of electronic communication through which receipt is verifiable, of the date when the extension period will expire.

(b) Before the date of expiration, the applicant shall either:

(i) file a verified statement with the state engineer setting forth the date on which use of the water was resumed, and whatever additional information is required by the state engineer; or

(ii) apply for a further extension of time in which to resume use of the water according to the procedures and requirements of this section.

(c) Upon receipt of the applicant's properly completed, verified statement, the state engineer shall conduct investigations necessary to verify that beneficial use has resumed and, if so, shall issue a certificate of resumption of use of the water as evidenced by the resumed beneficial use.

(7) The appropriator's water right or a portion of the water right ceases and the water reverts to the public if the:

(a) appropriator or the appropriator's successor in interest fails to apply for an extension of time;

(b) state engineer denies the nonuse application; or

(c) appropriator or the appropriator's successor in interest fails to apply for a further extension of time.

Section 34. Section **73-3-8** is amended to read:

73-3-8. Approval or rejection of application -- Requirements for approval -- Application for specified period of time -- Filing of royalty contract for removal of salt or minerals.

(1) (a) It shall be the duty of the state engineer to approve an application if: ~~[(a)]~~

(i) there is unappropriated water in the proposed source; ~~[(b)]~~

(ii) the proposed use will not impair existing rights or interfere with the more

1051 beneficial use of the water; ~~[(c)]~~

1052 (iii) the proposed plan is physically and economically feasible, unless the application is
1053 filed by the United States Bureau of Reclamation, and would not prove detrimental to the
1054 public welfare; ~~[(d)]~~

1055 (iv) the applicant has the financial ability to complete the proposed works; and ~~[(e)]~~

1056 (v) the application was filed in good faith and not for purposes of speculation or
1057 monopoly.

1058 (b) If the state engineer, because of information in ~~[his]~~ the state engineer's possession
1059 obtained either by ~~[his]~~ the state engineer's own investigation or otherwise, has reason to
1060 believe that an application to appropriate water will interfere with its more beneficial use for
1061 irrigation, domestic or culinary, stock watering, power or mining development or
1062 manufacturing, or will unreasonably affect public recreation or the natural stream environment,
1063 or will prove detrimental to the public welfare, it is ~~[his]~~ the state engineer's duty to withhold
1064 his approval or rejection of the application until ~~[he]~~ the state engineer has investigated the
1065 matter. If an application does not meet the requirements of this section, it shall be rejected.

1066 (2) An application to appropriate water for industrial, power, mining development,
1067 manufacturing purposes, agriculture, or municipal purposes may be approved for a specific and
1068 certain period from the time the water is placed to beneficial use under the application, but in
1069 no event may an application be granted for a period of time less than that ordinarily needed to
1070 satisfy the essential and primary purpose of the application or until the water is no longer
1071 available as determined by the state engineer. At the expiration of the period fixed by the state
1072 engineer the water shall revert to the public and is subject to appropriation as provided by Title
1073 73[:], Water and Irrigation. No later than 60 calendar days before the expiration date of the
1074 fixed time period, the state engineer shall send notice by regular mail to the applicant of record.
1075 The state engineer may extend any limited water right upon a showing that the essential
1076 purpose of the original application has not been satisfied, that the need for an extension is not
1077 the result of any default or neglect by the applicant, and that water is still available~~[:]~~, except
1078 no extension shall exceed the time necessary to satisfy the primary purpose of the original
1079 application. A request for extension must be filed in writing in the office of the state engineer
1080 not later than 60 days before the expiration date of the application.

1081 (3) Before the approval of any application for the appropriations of water from

navigable lakes or streams of the state which contemplates the recovery of salts and other minerals therefrom by precipitation or otherwise, the applicant shall file with the state engineer a copy of a contract for the payment of royalties to the state ~~[of Utah]~~. The approval of an application shall be revoked in the event of the failure of the applicant to comply with terms of ~~[his]~~ the royalty contract.

Section 35. Section **73-3-12** is amended to read:

**73-3-12. Time limit on construction and application to beneficial use --
Extensions -- Procedures and criteria.**

(1) As used in this section, "public agency" means a public water supply agency of:

(a) the state; or

(b) a political subdivision of the state.

(2) (a) The construction of the works and the application of water to beneficial use shall be diligently prosecuted to completion within the time fixed by the state engineer.

(b) Extensions of time, not exceeding 50 years from the date of approval of the application, except as provided in Subsection (2)(c), may be granted by the state engineer on proper showing of diligence or reasonable cause for delay.

(c) Additional extensions of time, beyond 50 years, may be granted by the state engineer on applications held by any public agency, if the public agency can demonstrate the water will be needed to meet the reasonable future requirements of the public.

(d) All requests for extension of time ~~[shall be made by signed statement and]~~ shall be filed in the office of the state engineer on or before the date fixed for filing proof of appropriation.

(e) Extensions not exceeding 14 years after the date of approval may be granted by the state engineer upon a sufficient showing ~~[by signed statement]~~, but extensions beyond 14 years shall be granted only after application and publication of notice.

(f) (i) The state engineer shall publish a notice of the application once a week for two successive weeks, in a newspaper of general circulation, in the county in which the source of the water supply is located and where the water is to be used.

(ii) The notice shall:

(A) state that an application has been made; and

(B) specify where the interested party may obtain additional information relating to the

1113 application.

1114 (g) Any person who owns a water right from the source of supply referred to in
1115 Subsection (2)(f) or holds an application from that source of supply may file a protest with the
1116 state engineer:

1117 (i) within 20 days after the notice is published, if the adjudicative proceeding is
1118 informal; and

1119 (ii) within 30 days after the notice is published, if the adjudicative proceeding is
1120 formal.

1121 (h) In considering an application to extend the time in which to place water to
1122 beneficial use under an approved application, the state engineer shall deny the extension and
1123 declare the application lapsed, unless the applicant affirmatively shows that the applicant has
1124 exercised or is exercising reasonable and due diligence in working toward completion of the
1125 appropriation.

1126 (i) (i) If reasonable and due diligence is shown by the applicant, the state engineer shall
1127 approve the extension.

1128 (ii) The approved extension is effective so long as the applicant continues to exercise
1129 reasonable diligence in completing the appropriation.

1130 (j) The state engineer shall consider the holding of an approved application by any
1131 public agency to meet the reasonable future requirements of the public to be reasonable and
1132 due diligence within the meaning of this section for the first 50 years. The state engineer may
1133 approve extensions beyond 50 years for a public agency, if the agency provides information
1134 sufficient to demonstrate the water will be needed to meet the reasonable future requirements
1135 of the public.

1136 (k) If the state engineer finds unjustified delay or lack of diligence in prosecuting the
1137 works to completion, the state engineer may deny the extension or may grant the request in part
1138 or upon conditions, including a reduction of the priority of all or part of the application.

1139 (3) (a) Except as provided in Subsections (3)(b) and (c), an application upon which
1140 proof has not been submitted shall lapse and have no further force or effect after the expiration
1141 of 50 years from the date of its approval.

1142 (b) If the works are constructed with which to make beneficial use of the water applied
1143 for, the state engineer may, upon showing of that fact, grant additional time beyond the 50-year

period in which to make proof.

(c) An application held by a public agency to meet the reasonable future requirements of the public, for which proof of appropriation has not been submitted, shall lapse, unless extended as provided in Subsection (2)(j).

Section 36. Section **73-4-3** is amended to read:

73-4-3. Procedure for action to determine rights -- Notice to and list of claimants -- Manner of giving notice of further proceedings -- Duties of engineer -- Survey -- Notice of completion.

Upon the filing of any action by the state engineer as provided in Section 73-4-1, or by any person or persons claiming the right to the use of the waters of any river system, lake, underground water basin, or other natural source of supply, which involves a determination of the rights to the major part of the water of such source of supply or the rights of ten or more of the claimants of such source of supply, the clerk of the district court shall notify the state engineer that such suit has been filed. The state engineer then shall give notice to the claimants by publishing notice once a week for two consecutive weeks in a newspaper designated by the court as most likely to give notice to such claimants. The notice shall set forth that: such an action has been filed[;], the name of the action and the name and location of the court in which the action is pending; the name or description of the water source involved[;], and shall require claimants to the use of water therefrom to notify the state engineer within 90 days from the date notice is given of their names and addresses. After the expiration of 90 days, the state engineer shall prepare a list which shall include the names and addresses of all claimants then of record in [his] the state engineer's office and all claimants who have notified the state engineer of their addresses, and this list shall be certified by the state engineer as complete and filed with the clerk of the court. The court upon petition may by order permit the addition of names and addresses to this list at any time during the pendency of the action, and the clerk of the court may, without court order, upon notice from the claimant note any change of address. If any claimant appears in this action by an attorney, the clerk shall note on the list the address of the attorney. After the list is filed by the state engineer, notice of further proceedings, after service of summons, may be given without court order by mailing a copy thereof to the persons listed at the addresses listed and by mailing a copy thereof to any attorney of record for any such person, and notice may be given to such listed persons and to all other claimants by publication

in the manner and for the time prescribed by order of the district court. When ~~[such]~~ the statement or list shall have been filed, the state engineer shall begin the survey of the water source and the ditches, canals, wells, tunnels, or other works diverting water therefrom; and as soon as this survey has been completed, the state engineer shall file notice of completion with the clerk and give notice by ~~[registered]~~ mail or by personal service to all claimants whose names appear on the list that the survey has been completed and that their claims are due within 90 days from the date of notice, and within 90 days after ~~[such]~~ service of ~~[such]~~ the notice each claimant must file a written statement with the clerk of the court setting forth his respective claim to the use of ~~[such]~~ the water. Notice given by mail shall be complete when the notice is mailed. When ~~[such]~~ a suit has been filed by the state engineer as provided by Section 73-4-1, or by any person or persons involving the major part of the waters of any river system, lake, underground water basin, or other source of supply, or the rights of ten or more of the water claimants of ~~[such]~~ the source of supply, whether such suit is filed prior to or after the enactment hereof, it shall be the duty of the state engineer upon receiving notice thereof to examine the records of ~~[his]~~ the state engineer's office with respect to the water source involved, and if they are incomplete to make such further investigation and survey as may be necessary for the preparation of the report and recommendation as required by Section 73-4-11. In all such cases the court shall proceed to determine the water rights involved in the manner provided by this chapter, and not otherwise.

Section 37. Section **73-4-4** is amended to read:

73-4-4. Summons -- Service -- Publication -- Form -- Delivery of form for claimant's statement.

(1) Claimants whose names appear on the list prescribed by the next preceding section at the time the list is filed by the state engineer with the clerk of the court shall be served with a summons issued out of the district court and served as a summons is served in other civil cases. Upon the filing by the state engineer of an affidavit that ~~[he]~~ the state engineer has searched the records of ~~[his]~~ the state engineer's office and has listed all names as required by Section 73-4-3, and upon proof of publication of notice to all claimants to notify the state engineer of their names and addresses, summons may be served on all other persons and claimants not listed on said list by publication of summons, in a newspaper or newspapers designated by the judge of the court as most likely to give notice to the persons served, five times, once each

1206 week for five successive weeks. Service of summons to be completed upon the date of the
1207 publication. The summons in such cases shall be substantially in the following form:

1208 In the District Court of County, State of Utah, in the matter of the general
1209 adjudication of water rights in the described water source.

1210 SUMMONS

1211 The State of Utah to the said defendant:

1212 You are hereby summoned to appear and defend the above entitled action which is
1213 brought for the purpose of making a general determination of the water rights of the described
1214 water source. Upon the service of this summons upon you, you will thereafter be subject to the
1215 jurisdiction of the entitled court and it shall be your duty to follow further proceedings in the
1216 above entitled action and to protect your rights therein. When the state engineer has completed
1217 his survey you will be given a further written notice, either in person or by [~~registered~~] mail,
1218 sent to your last known address, that you must file a water users claim in this action setting
1219 forth the nature of your claim, and said notice will specify the date upon which your water
1220 users claim is due and thereafter you must file said claim within the time set and your failure so
1221 to do will constitute a default in the premises and a judgment may be entered against you
1222 declaring and adjudging that you have no right in or to the waters of described water source.

1223 (2) At the time the said notice of completion of survey is given, the state engineer
1224 must mail or otherwise deliver a form upon which the claimant shall present in writing, as
1225 provided in the next succeeding section, all the particulars relating to the appropriation of the
1226 water of said river system or water source to which [~~he~~] the claimant lays claim.

1227 Section 38. Section **73-4-11** is amended to read:

1228 **73-4-11. Report and recommendation by engineer to court.**

1229 (1) Within [~~thirty~~] 30 days after the expiration of the [~~60~~] 90 days allowed for filing
1230 statements of claims, the state engineer shall begin to tabulate the facts contained in the
1231 statements filed and to investigate, whenever [~~he~~] the state engineer shall [~~deem~~] consider
1232 necessary, the facts set forth in said statements by reference to the surveys already made or by
1233 further surveys, and shall as expeditiously as possible make a report to the court with [~~his~~] the
1234 recommendation of how all rights involved shall be determined.

1235 (2) After full consideration of the statements of claims, and of the surveys, records, and
1236 files, and after a personal examination of the river system or water source involved, if such

examination is [~~deemed~~] considered necessary, the state engineer shall formulate a report and a proposed determination of all rights to the use of the water of such river system or water source, and a copy of the same shall be mailed by regular mail to each claimant with notice that any claimant dissatisfied therewith may within [~~ninety~~] 90 days from such date of mailing file with the clerk of the district court a written objection thereto duly verified on oath. The state engineer shall distribute the waters from the natural streams or other natural sources in accordance with the proposed determination or modification thereof by court order until a final decree is rendered by the court; provided, if the right to the use of said waters has been theretofore decreed or adjudicated, said waters shall be distributed in accordance with such decree until the same is reversed, modified, vacated, or otherwise legally set aside.

Section 39. Section **78-12-23** is amended to read:

78-12-23. Within six years -- Mesne profits of real property -- Instrument in writing.

An action may be brought within six years:

- (1) for the mesne profits of real property;
- (2) upon any contract, obligation, or liability founded upon an instrument in writing, except those mentioned in Section 78-12-22[:]; and
- (3) to recover costs caused by wildland fire.

Legislative Review Note
as of 1-31-06 6:47 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0361

Department of Natural Resources Amendments

07-Feb-06

2:30 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst