

DISASTER RECOVERY FUNDING

2007 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This bill modifies provisions related to funding state and local government recovery efforts in cases of declared disasters.

Highlighted Provisions:

This bill:

- ▶ addresses emergency expenditures by local governments;
- ▶ transitions current loan programs for disasters to the Disaster Recovery Funding Act;
- ▶ modifies the duties of the Division of Emergency Services and Homeland Security;
- ▶ enacts the Disaster Recovery Funding Act including:
  - enacting definitions;
  - creating the State Disaster Recovery Restricted Account;

- 34           • directing the division to address state emergency disaster services;
- 35           • authorizing local governments to create local disaster funds; and
- 36           • requiring reporting;
- 37       ▶ addresses the governor's powers in cases of emergency;
- 38       ▶ provides for deposits into the State Disaster Recovery Restricted Account;
- 39       ▶ coordinates the State Disaster Recovery Restricted Account with funds outside the
- 40 act;
- 41       ▶ addresses limitations on spending; and
- 42       ▶ makes technical and conforming amendments.

**43 Monies Appropriated in this Bill:**

44           None

**45 Other Special Clauses:**

46           None

**47 Utah Code Sections Affected:**

48 AMENDS:

- 49           **10-5-118**, as enacted by Chapter 34, Laws of Utah 1983
- 50           **10-6-129**, as last amended by Chapter 52, Laws of Utah 1981
- 51           **17-36-27**, as enacted by Chapter 22, Laws of Utah 1975
- 52           **53-2-102.5**, as last amended by Chapter 89, Laws of Utah 2006
- 53           **53-2-104**, as last amended by Chapter 214, Laws of Utah 2005
- 54           **63-5a-8**, as last amended by Chapter 14, Laws of Utah 2002
- 55           **63-38c-103**, as last amended by Chapter 1, Laws of Utah 2005, First Special Session
- 56           **63-38f-904**, as renumbered and amended by Chapter 148, Laws of Utah 2005

57 ENACTS:

- 58           **53-2-401**, Utah Code Annotated 1953
- 59           **53-2-402**, Utah Code Annotated 1953
- 60           **53-2-403**, Utah Code Annotated 1953
- 61           **53-2-404**, Utah Code Annotated 1953

62 53-2-405, Utah Code Annotated 1953

63 53-2-406, Utah Code Annotated 1953

64 63-38-2.7, Utah Code Annotated 1953

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

67 Section 1. Section 10-5-118 is amended to read:

68 **10-5-118. Emergency expenditures.**

69 (1) The council, on determining that an emergency exists, such as widespread damage  
70 from fire, flood, or earthquake, and that the emergency necessitates the expenditure of money  
71 in excess of the budget of the general fund, may amend the budget and authorize such  
72 expenditures as may be reasonably necessary to meet the emergency.

73 (2) Except to the extent provided for in Title 53, Chapter 2, Part 4, Disaster Recovery  
74 Funding Act, a council of a town may not expend monies in the town's local fund for an  
75 emergency, if the town creates a local fund under Title 53, Chapter 2, Part 4, Disaster Recovery  
76 Funding Act.

77 Section 2. Section 10-6-129 is amended to read:

78 **10-6-129. Emergency expenditures.**

79 [~~In the event~~] (1) If the governing body of a city determines that an emergency exists,  
80 such as widespread damage from fire, flood, or earthquake, and that the emergency necessitates  
81 the expenditure of money in excess of the budget of the general fund, the governing body may  
82 by resolution amend the budget and authorize such expenditures and incur such deficits in the  
83 fund balance of the general fund as may be reasonably necessary to meet the emergency.

84 (2) Except to the extent provided for in Title 53, Chapter 2, Part 4, Disaster Recovery  
85 Funding Act, the governing body of a city may not expend monies in the city's local fund for an  
86 emergency, if the city creates a local fund under Title 53, Chapter 2, Part 4, Disaster Recovery  
87 Funding Act.

88 Section 3. Section 17-36-27 is amended to read:

89 **17-36-27. Emergency expenditures -- Deficit.**

90           (1) If the governing body determines that an emergency exists, such as widespread  
91 damage from fire, flood, or earthquake, and that the expenditure of money in excess of the  
92 general fund budget is necessary, it may make such expenditures and incur such deficits as  
93 reasonably necessary to meet the emergency.

94           (2) Except to the extent provided for in Title 53, Chapter 2, Part 4, Disaster Recovery  
95 Funding Act, the governing body of the county may not expend monies in the county's local  
96 fund for an emergency, if the county creates a local fund under Title 53, Chapter 2, Part 4,  
97 Disaster Recovery Funding Act.

98           Section 4. Section **53-2-102.5** is amended to read:

99           **53-2-102.5. Loan program for disasters prior to Disaster Recovery Funding Act.**

100           ~~[(1) The director may make loans to local governments as provided in this section~~  
101 ~~when:]~~

102           ~~[(a) the governor has issued a proclamation declaring a state of emergency because of a~~  
103 ~~natural disaster;]~~

104           ~~[(b) the Legislature has appropriated monies to the division explicitly for that purpose;~~  
105 ~~and]~~

106           ~~[(c) threats to the public health and safety, or damages to flood control systems or the~~  
107 ~~transportation infrastructure exist.]~~

108           ~~[(2) (a) In order to qualify for loans under this section, the county and each political~~  
109 ~~subdivision within the county shall:]~~

110           ~~[(i) pass a resolution that:]~~

111           ~~[(A) requests a loan;]~~

112           ~~[(B) identifies the loan amount that is requested; and]~~

113           ~~[(C) describes, in as much detail as possible, how the entity will spend the loan~~  
114 ~~proceeds; and]~~

115           ~~[(ii) complete the application for funds provided by the director.]~~

116           ~~[(b) Each political subdivision other than the county shall submit a copy of its~~  
117 ~~resolution and application to the county legislative body.]~~

118           ~~[(c) The county legislative body shall file with the director:]~~  
119           ~~[(i) a letter identifying the total loan amount sought by the county and its political~~  
120 ~~subdivisions; and]~~  
121           ~~[(ii) a copy of the county's resolution and application and a copy of the resolution and~~  
122 ~~application of each political subdivision seeking loan funds.]~~  
123           ~~[(3) (a) To the extent appropriated funds are available, the director shall prepare a~~  
124 ~~promissory note lending the county the total amount requested by the county for itself and its~~  
125 ~~political subdivisions.]~~  
126           ~~[(b) Except as required in Subsections (8) and (9), the director shall ensure that the~~  
127 ~~promissory note contains:]~~  
128           ~~[(i) a requirement that the principal on the note is due on the May 1 in the calendar year~~  
129 ~~two years after the year in which the note is signed;]~~  
130           ~~[(ii) terms that require repayment of the principal on the note be made to the General~~  
131 ~~Fund Budget Reserve Account established in Section 63-38-2.5; and]~~  
132           ~~[(iii) terms that limit the use of note proceeds to the repair and reconstruction of~~  
133 ~~infrastructures owned by local governments located within the county.]~~  
134           ~~[(c) After an authorized representative of the county signs the promissory note, the~~  
135 ~~director shall disburse the loan funds to the county.]~~  
136           ~~[(4) The county and any participating political subdivision may not use loan proceeds~~  
137 ~~for costs:]~~  
138           ~~[(a) that could have been paid from other available funding sources if the county or~~  
139 ~~participating political subdivision had applied for those funds; or]~~  
140           ~~[(b) to compensate private businesses or private persons for damages incurred in the~~  
141 ~~disaster by those private businesses or persons.]~~  
142           ~~[(5) After receiving the loan proceeds from the state, the county shall, before~~  
143 ~~disbursing loan proceeds to the other county political subdivisions, obtain signed promissory~~  
144 ~~notes from each participating political subdivision that include terms substantially similar to~~  
145 ~~the terms contained in the promissory note signed by the county.]~~

146 ~~[(6) The county shall, on behalf of itself and any participating political subdivision, file~~  
147 ~~a report with the director every three months, that:]~~

148 ~~[(a) specifies each project on which loan funds were expended, classified by the name~~  
149 ~~of the local entity that expended the funds; and]~~

150 ~~[(b) identifies the amount expended for that project.]~~

151 ~~[(7) If the county or one of its participating political subdivisions has not expended or~~  
152 ~~committed the funds by the date that the promissory note is due, the county or participating~~  
153 ~~political subdivision shall return the unused or uncommitted funds to the director for redeposit~~  
154 ~~into the fund.]~~

155 ~~[(8)]~~ (1) (a) For each promissory note issued under this section that is unpaid on May  
156 1, 2006, the director shall issue a new promissory note to replace the existing promissory note:

157 ~~[(a)]~~ (i) for the principal amount of the unpaid promissory note without accrued  
158 interest, if any;

159 ~~[(b)]~~ (ii) due on or before June 30, 2007; and

160 ~~[(c)]~~ (iii) with no interest rate.

161 (b) For a promissory note issued under this section that is unpaid as of April 30, 2007,  
162 the division shall ensure that when the principal on the promissory note is repaid, the  
163 repayment is made to the State Disaster Recovery Restricted Account created in Section  
164 53-2-403.

165 ~~[(9)]~~ (2) The director shall ensure that each promissory note issued under this section  
166 that is funded by monies appropriated and available for disaster loans as of January 1, 2006, are  
167 due on or before June 30, 2007.

168 (3) The Division of Finance shall transfer by no later than June 30, 2007, any monies  
169 repaid under this section to the General Fund Budget Reserve Account established in Section  
170 63-38-2.5 to the State Disaster Recovery Restricted Account created in Section 53-2-403.

171 Section 5. Section **53-2-104** is amended to read:

172 **53-2-104. Division duties -- Powers.**

173 (1) The division shall:

- 174 (a) respond to the policies of the governor and the Legislature;
- 175 (b) perform functions relating to emergency services and homeland security matters as
- 176 directed by the commissioner;
- 177 (c) prepare, implement, and maintain programs and plans to provide for:
  - 178 (i) prevention and minimization of injury and damage caused by disasters;
  - 179 (ii) prompt and effective response to and recovery from disasters;
  - 180 (iii) identification of areas particularly vulnerable to disasters;
  - 181 (iv) coordination of hazard mitigation and other preventive and preparedness measures
  - 182 designed to eliminate or reduce disasters;
  - 183 (v) assistance to local officials, state agencies, and the business and public sectors, in
  - 184 developing emergency action plans;
  - 185 (vi) coordination of federal, state, and local emergency activities;
  - 186 (vii) coordination of emergency operations plans with emergency plans of the federal
  - 187 government;
  - 188 (viii) coordination of search and rescue activities;
  - 189 (ix) coordination of rapid and efficient communications in times of emergency; and
  - 190 (x) other measures necessary, incidental, or appropriate to this part; ~~and~~
- 191 (d) coordinate with local officials, state agencies, and the business and public sectors in
- 192 developing, implementing, and maintaining a state energy emergency plan in accordance with
- 193 Section 53-2-110[-]; and
- 194 (e) administer Part 4, Disaster Recovery Funding Act, in accordance with that part.
- 195 (2) The division may consult with the Legislative Management Committee, the Judicial
- 196 Council, and legislative and judicial staff offices to assist them in preparing emergency
- 197 succession plans and procedures under Title 63, Chapter 5b, Emergency Interim Succession
- 198 Act.

199 Section 6. Section **53-2-401** is enacted to read:

200 **Part 4. Disaster Recovery Funding Act**

201 **53-2-401. Title.**

202 This part is known as the "Disaster Recovery Funding Act."

203 Section 7. Section **53-2-402** is enacted to read:

204 **53-2-402. Definitions.**

205 (1) Unless otherwise defined in this section, the terms defined in Part 1, Emergency  
206 Services and Homeland Security Act, shall have the same meaning for this part.

207 (2) As used in this part:

208 (a) "Declared disaster" means one or more events:

209 (i) within the state;

210 (ii) that occur within a limited period of time;

211 (iii) that involve:

212 (A) a significant number of persons being at risk of bodily harm, sickness, or death; or

213 (B) a significant portion of real property at risk of loss;

214 (iv) that are sudden in nature and generally occur less frequently than every three years;

215 and

216 (v) that results in:

217 (A) the president of the United States declaring an emergency or major disaster in the  
218 state;

219 (B) the governor declaring a state of emergency under Title 63, Chapter 5a, Disaster  
220 Response and Recovery; or

221 (C) the chief executive officer of a local government declaring a local emergency under  
222 Title 63, Chapter 5a, Disaster Response and Recovery.

223 (b) "Disaster recovery fund" means the State Disaster Recovery Restricted Account  
224 created in Section 53-2-403.

225 (c) "Emergency preparedness" means the following done for the purpose of being  
226 prepared for an emergency as defined by the division by rule made in accordance with Title 63,

227 Chapter 46a, Utah Administrative Rulemaking Act:

228 (i) the purchase of equipment;

229 (ii) the training of personnel; or



- 230 (iii) the obtaining of a certification.
- 231 (d) (i) "Emergency disaster services" means the following that are of a temporary basis:
- 232 (A) evacuation;
- 233 (B) shelter;
- 234 (C) medical triage;
- 235 (D) emergency transportation;
- 236 (E) repair of infrastructure;
- 237 (F) safety services, including fencing or roadblocks;
- 238 (G) sandbagging;
- 239 (H) emergency debris removal;
- 240 (I) temporary bridges;
- 241 (J) procurement and distribution of food, water, or ice;
- 242 (K) procurement and deployment of generators;
- 243 (L) rescue or recovery; or
- 244 (M) services similar to those described in Subsections (2)(d)(i)(A) through (L), as
- 245 defined by the division by rule, that are generally required within the first 96 hours of a
- 246 declared disaster.
- 247 (ii) "Emergency disaster services" does not include:
- 248 (A) emergency preparedness; or
- 249 (B) notwithstanding whether or not a county participates in the Wildland Fire
- 250 Suppression Fund created in Section 65A-8-6.1, any fire suppression or presuppression costs
- 251 that may be paid for from the Wildland Fire Suppression Fund if the county participates in the
- 252 Wildland Fire Suppression Fund.
- 253 (e) "Local fund" means a local government disaster fund created in accordance with
- 254 Section 53-2-405.
- 255 (f) "Local government" means a county, city, or town.
- 256 (g) "Special fund" means a fund other than a general fund of a local government that is
- 257 created for a special purpose established under the uniform system of budgeting, accounting,

258 and reporting.

259 Section 8. Section **53-2-403** is enacted to read:

260 **53-2-403. State Disaster Recovery Restricted Account.**

261 (1) (a) There is created a restricted account in the General Fund known as the "State  
262 Disaster Recovery Restricted Account."

263 (b) The disaster recovery fund shall consist of:

264 (i) monies deposited into the disaster recovery fund in accordance with Section  
265 53-2-102.5;

266 (ii) monies deposited into the disaster recovery fund in accordance with Section  
267 63-38-2.7;

268 (iii) monies appropriated to the disaster recovery fund by the Legislature;

269 (iv) any other public or private monies received by the division that are:

270 (A) given to the division for purposes consistent with this section; and

271 (B) deposited into the disaster recovery fund at the request of:

272 (I) the division; or

273 (II) the person giving the monies; and

274 (v) interest or other earnings derived from the disaster recovery fund.

275 (c) Monies in the disaster recovery fund may only be used as follows:

276 (i) without the monies being appropriated by the Legislature, in any fiscal year the  
277 division may use \$100,000 to fund, in accordance with Section 53-2-404, costs to the state of  
278 emergency disaster services in response to a declared disaster; and

279 (ii) subject to being appropriated by the Legislature, monies not described in  
280 Subsection (1)(c)(i) may be used to fund costs to the state directly related to a declared disaster  
281 that are not costs related to:

282 (A) emergency disaster services;

283 (B) emergency preparedness; or

284 (C) notwithstanding whether or not a county participates in the Wildland Fire

285 Suppression Fund created in Section 65A-8-6.1, any fire suppression or presuppression costs

286 that may be paid for from the Wildland Fire Suppression Fund if the county participates in the  
287 Wildland Fire Suppression Fund.

288 (2) The state treasurer shall invest monies in the disaster recovery fund according to  
289 Title 51, Chapter 7, State Money Management Act, except that the state treasurer shall deposit  
290 all interest or other earnings derived from the disaster recovery fund into the disaster recovery  
291 fund.

292 (3) (a) Except as provided in Subsection (1), the monies in the disaster recovery fund  
293 may not be diverted, appropriated, or used for a purpose that is not listed in this section.

294 (b) Notwithstanding Section 63-38-3.6, the Legislature may not appropriate monies  
295 from the disaster recovery fund to eliminate or otherwise reduce an operating deficit if the  
296 monies appropriated from the disaster recovery fund are used for a purpose other than one  
297 listed in this section.

298 (c) The Legislature may not amend the purposes for which monies in the disaster  
299 recovery fund may be used except by the affirmative vote of two-thirds of all the members  
300 elected to each house.

301 Section 9. Section **53-2-404** is enacted to read:

302 **53-2-404. State costs for emergency disaster services.**

303 (1) Subject to this section and Section 53-2-403, the division shall use monies  
304 described in Subsection 53-2-403(1)(c)(i) to fund costs to the state of emergency disaster  
305 services.

306 (2) Monies paid by the division under this section to government entities and private  
307 persons providing emergency disaster services are subject to Title 63, Chapter 56, Utah  
308 Procurement Code.

309 Section 10. Section **53-2-405** is enacted to read:

310 **53-2-405. Local government disaster funds.**

311 (1) (a) Subject to this section and notwithstanding anything to the contrary contained in  
312 Title 10, Utah Municipal Code, or Title 17, Counties, the legislative body of a local  
313 government may create and maintain by ordinance a special fund known as a local government

314 disaster fund.

315 (b) The local fund shall consist of:

316 (i) subject to the limitations of this section, monies transferred to it in accordance with

317 Subsection (2);

318 (ii) any other public or private monies received by the local government that are:

319 (A) given to the local government for purposes consistent with this section; and

320 (B) deposited into the local fund at the request of:

321 (I) the legislative body of the local government; or

322 (II) the person giving the monies; and

323 (iii) interest or income realized from the local fund.

324 (c) Interest or income realized from the local fund shall be deposited into the local  
325 fund.

326 (d) Monies in a local fund may be:

327 (i) deposited or invested as provided in Section 51-7-11; or

328 (ii) transferred by the local government treasurer to the state treasurer under Section  
329 51-7-5 for the state treasurer's management and control under Title 51, Chapter 7, State Money  
330 Management Act.

331 (e) (i) The monies in a local fund may accumulate from year to year until the local  
332 government legislative body determines to spend any money in the local fund for one or more  
333 of the purposes specified in Subsection (3).

334 (ii) Monies in a local fund at the end of a fiscal year:

335 (A) shall remain in the local fund for future use; and

336 (B) may not be transferred to any other fund or used for any other purpose.

337 (2) The amounts transferred to a local fund may not exceed 10% of the total estimated  
338 revenues of the local government for the current fiscal period that are not restricted or  
339 otherwise obligated.

340 (3) Monies in the fund may only be used to fund the services and activities of the local  
341 government creating the local fund in response to:

342           (a) a declared disaster within the boundaries of the local government;  
343           (b) the aftermath of the disaster that gave rise to a declared disaster within the  
344 boundaries of the local government; and  
345           (c) subject to Subsection (5), emergency preparedness.  
346           (4) (a) A local fund is subject to this part and:  
347           (i) in the case of a town, Title 10, Chapter 5, Uniform Fiscal Procedures Act for Utah  
348 Towns, except for:  
349           (A) in addition to the funds listed in Section 10-5-106, the mayor shall prepare a  
350 budget for the local fund;  
351           (B) Section 10-5-119 addressing termination of special funds does not apply to a local  
352 fund; and  
353           (C) the council of the town may not authorize an interfund loan under Section  
354 10-5-120 from the local fund;  
355           (ii) in the case of a city, Title 10, Chapter 6, Uniform Fiscal Procedures Act for Utah  
356 Cities, except for:  
357           (A) in addition to the funds listed in Section 10-6-109, the mayor shall prepare a  
358 budget for the local fund;  
359           (B) Section 10-6-131 addressing termination of special funds does not apply to a local  
360 fund; and  
361           (C) the governing body of the city may not authorize an interfund loan under Section  
362 10-6-132 from the local fund; and  
363           (iii) in the case of a county, Title 17, Chapter 36, Uniform Fiscal Procedures Act for  
364 Counties, except for:  
365           (A) Section 17-36-29 addressing termination of special funds; and  
366           (B) the governing body of the county may not authorize an interfund loan under  
367 Section 17-36-30 from the local fund.  
368           (b) Notwithstanding Subsection (4)(a), transfers of monies to a local fund or the  
369 accumulation of monies in a local fund do not affect any limits on fund balances, net assets, or

370 the accumulation of retained earnings in any of the following of a local government:

371 (i) a general fund;

372 (ii) an enterprise fund;

373 (iii) an internal service fund; or

374 (iv) any other fund.

375 (5) (a) A local government may not expend during a fiscal year more than 10% of the  
376 monies budgeted to be deposited into a local fund during that fiscal year for emergency  
377 preparedness.

378 (b) The amount described in Subsection (5)(a) shall be determined before the adoption  
379 of the tentative budget.

380 Section 11. Section **53-2-406** is enacted to read:

381 **53-2-406. Reporting.**

382 By no later than December 31 of each year, the division shall provide a written report to  
383 the governor and the Legislature's Executive Appropriations Committee of:

384 (1) the division's activities under this part;

385 (2) monies expended in accordance with this part; and

386 (3) the balances in the disaster recovery fund.

387 Section 12. Section **63-5a-8** is amended to read:

388 **63-5a-8. Acquisition of property for public use -- Compensation of owners.**

389 (1) (a) Upon proclamation of a state of emergency, the governor may purchase or lease  
390 public or private property for public use including:

391 (i) food and medical supplies;

392 (ii) clothing;

393 (iii) shelter;

394 (iv) means of transportation;

395 (v) fuels;

396 (vi) oils; or

397 (vii) buildings or lands.

398 (b) The governor may not purchase private home storage nor privately owned arms.

399 (2) (a) The governor may use property purchased under authority of this section for any  
400 purpose to meet the needs of an emergency, including its use to relieve want, distress, and  
401 disease.

402 (b) Any property used by the governor to meet the needs of an emergency is a public  
403 use.

404 (3) (a) The governor shall compensate the owner of property taken or used under  
405 authority of this section by complying with the procedures established in Title 78, Chapter 34,  
406 Eminent Domain.

407 (b) The governor shall pay for those purchases or leases from the funds available to the  
408 Division of Emergency Services and Homeland Security under:

409 (i) this chapter; or

410 (ii) Title 53, Chapter 2, Part 4, Disaster Recovery Funding Act, to the extent provided  
411 for in that chapter.

412 (4) Nothing in this section applies to or authorizes compensation for the destruction or  
413 damage of standing timber or other property in order to provide a fire break or to the release of  
414 waters or the breach of impoundments in order to reduce pressure or other danger from actual  
415 or threatened flood.

416 Section 13. Section **63-38-2.7** is enacted to read:

417 **63-38-2.7. Deposits related to the Disaster Recovery Funding Act.**

418 Beginning with the fiscal year ending June 30, 2007, at the end of each fiscal year and  
419 after the transfer of surplus General Fund revenues has been made to the General Fund Budget  
420 Reserve Account as provided in Section 63-38-2.5, the Division of Finance shall deposit an  
421 amount into the State Disaster Recovery Restricted Account, created in Section 53-2-403,  
422 calculated by:

423 (1) determining the amount of surplus General Fund revenues after the transfer to the  
424 General Fund Budget Reserve Account under Section 63-38-2.5 that is unrestricted and  
425 undesignated;

426           (2) calculating an amount equal to the lesser of:  
427           (a) 25% of the amount determined under Subsection (1); or  
428           (b) 6% of the total of the General Fund appropriation amount and the Uniform School  
429 Fund appropriation amount for the fiscal year in which the surplus occurs; and  
430           (3) adding to the amount calculated under Subsection (2) an amount equal to the lesser  
431 of:  
432           (a) 25% more of the amount described in Subsection (1); or  
433           (b) the amount necessary to replace in accordance with this Subsection (3) any amount  
434 appropriated from the State Disaster Recovery Restricted Account within ten fiscal years  
435 before the fiscal year in which the surplus occurs if:  
436           (i) a surplus exists; and  
437           (ii) the Legislature appropriates money from the State Disaster Recovery Restricted  
438 Account that is not replaced by appropriation or as provided in this Subsection (3).

439           Section 14. Section **63-38c-103** is amended to read:

440           **63-38c-103. Definitions.**

441           As used in this chapter:

442           (1) (a) "Appropriations" means actual unrestricted capital and operating appropriations  
443 from unrestricted General Fund sources and from non-Uniform School Fund income tax  
444 revenues as presented in the governor's executive budgets.

445           (b) [~~"Appropriation"~~] "Appropriations" includes appropriations that are contingent  
446 upon available surpluses in the General Fund.

447           (c) "Appropriations" does not mean:

448           (i) debt service expenditures;

449           (ii) emergency expenditures;

450           (iii) expenditures from all other fund or subfund sources presented in the executive  
451 budgets;

452           (iv) transfers into, or appropriations made to, the General Fund Budget Reserve  
453 Account established in Section 63-38-2.5;



454 (v) transfers into, or appropriations made to, the Education Budget Reserve Account  
455 established in Section 63-38-2.6;

456 (vi) transfers in accordance with Section 63-38-2.7 into, or appropriations made to the  
457 State Disaster Recovery Restricted Account created in Section 53-2-403;

458 [~~(vi)~~] (vii) monies appropriated to fund the total one-time project costs for the  
459 construction of capital developments as defined in Section 63A-5-104;

460 [~~(vii)~~] (viii) appropriations made to the Centennial Highway Fund Restricted Account  
461 created by Section 72-2-118; or

462 [~~(viii)~~] (ix) appropriations made to the Transportation Investment Fund of 2005 created  
463 by Section 72-2-124.

464 (2) "Base year real per capita appropriations" means the result obtained for the state by  
465 dividing the fiscal year 1985 actual appropriations of the state less debt monies by:

- 466 (a) the state's July 1, 1983 population; and
- 467 (b) the fiscal year 1983 inflation index divided by 100.

468 (3) "Calendar year" means the time period beginning on January 1 of any given year  
469 and ending on December 31 of the same year.

470 (4) "Fiscal emergency" means an extraordinary occurrence requiring immediate  
471 expenditures and includes the settlement under Chapter 4, Laws of Utah 1988, Fourth Special  
472 Session.

473 (5) "Fiscal year" means the time period beginning on July 1 of any given year and  
474 ending on June 30 of the subsequent year.

475 (6) "Fiscal year 1985 actual base year appropriations" means fiscal year 1985 actual  
476 capital and operations appropriations from General Fund and non-Uniform School Fund  
477 income tax revenue sources, less debt monies.

478 (7) "Inflation index" means the change in the general price level of goods and services  
479 as measured by the Gross National Product Implicit Price Deflator of the Bureau of Economic  
480 Analysis, U.S. Department of Commerce calculated as provided in Section 63-38c-202.

481 (8) (a) "Maximum allowable appropriations limit" means the appropriations that could

482 be, or could have been, spent in any given year under the limitations of this chapter.

483 (b) "Maximum allowable appropriations limit" does not mean actual appropriations  
484 spent or actual expenditures.

485 (9) "Most recent fiscal year's inflation index" means the fiscal year inflation index two  
486 fiscal years previous to the fiscal year for which the maximum allowable inflation and  
487 population appropriations limit is being computed under this chapter.

488 (10) "Most recent fiscal year's population" means the fiscal year population two fiscal  
489 years previous to the fiscal year for which the maximum allowable inflation and population  
490 appropriations limit is being computed under this chapter.

491 (11) "Population" means the number of residents of the state as of July 1 of each year  
492 as calculated by the Governor's Office of Planning and Budget according to the procedures and  
493 requirements of Section 63-38c-202.

494 (12) "Revenues" means the revenues of the state from every tax, penalty, receipt, and  
495 other monetary exaction and interest connected with it that are recorded as unrestricted revenue  
496 of the General Fund and from non-Uniform School Fund income tax revenues, except as  
497 specifically exempted by this chapter.

498 (13) "Security" means any bond, note, warrant, or other evidence of indebtedness,  
499 whether or not the bond, note, warrant, or other evidence of indebtedness is or constitutes an  
500 "indebtedness" within the meaning of any provision of the constitution or laws of this state.

501 Section 15. Section **63-38f-904** is amended to read:

502 **63-38f-904. Loans, grants, and assistance -- Repayment -- Earned credits.**

503 (1) (a) A company that qualifies under Section 63-38f-905 may receive loans, grants,  
504 or other financial assistance from the fund for expenses related to establishment, relocation, or  
505 development of industry in Utah.

506 (b) A company creating an economic impediment that qualifies under Section  
507 63-38f-907 may in accordance with this part receive loans, grants, or other financial assistance  
508 from the fund for the expenses of the company creating an economic impediment related to:

509 (i) relocation to a rural area in Utah of the company creating an economic impediment;

510 and

511 (ii) the siting of a replacement company.

512 (c) An entity offering an economic opportunity that qualifies under Section 63-38f-908

513 may:

514 (i) receive loans, grants, or other financial assistance from the fund for expenses related  
515 to the establishment, relocation, retention, or development of industry in the state; and

516 (ii) include infrastructure or other economic development precursor activities that act  
517 as a catalyst and stimulus for economic activity likely to lead to the maintenance or  
518 enlargement of the state's tax base.

519 (2) (a) Subject to Subsection (2)(b), the administrator has authority to determine the  
520 structure, amount, and nature of any loan, grant, or other financial assistance from the fund.

521 (b) Loans made under Subsection (2)(a) shall be structured so the intended repayment  
522 or return to the state, including cash or credit, equals at least the amount of the assistance  
523 together with an annual interest charge as negotiated by the administrator.

524 (c) Payments resulting from grants awarded from the fund shall be made only after the  
525 administrator has determined that the company has satisfied the conditions upon which the  
526 payment or earned credit was based.

527 (3) (a) (i) Except as provided in Subsection (3)(b), the administrator may provide for a  
528 system of earned credits that may be used to support grant payments or in lieu of cash  
529 repayment of a fund loan obligation.

530 (ii) The value of the credits described in Subsection (3)(a)(i) shall be based on factors  
531 determined by the administrator, including:

532 (A) the number of Utah jobs created;

533 (B) the increased economic activity in Utah; or

534 (C) other events and activities that occur as a result of the fund assistance.

535 (b) (i) The administrator shall provide for a system of credits to be used to support  
536 grant payments or in lieu of cash repayment of a fund loan when loans are made to a company  
537 creating an economic impediment.

538 (ii) The value of the credits described in Subsection (3)(b)(i) shall be based on factors  
539 determined by the administrator, including:

540 (A) the number of Utah jobs created;

541 (B) the increased economic activity in Utah; or

542 (C) other events and activities that occur as a result of the fund assistance.

543 (4) (a) A cash loan repayment or other cash recovery from a company receiving  
544 assistance under this section, including interest, shall be deposited into the fund.

545 (b) The administrator and the Division of Finance shall determine the manner of  
546 recognizing and accounting for the earned credits used in lieu of loan repayments or to support  
547 grant payments as provided in Subsection (3).

548 (5) (a) At the end of each fiscal year, [~~after the transfer of surplus General Fund~~  
549 ~~revenues has been made to the General Fund Budget Reserve Account as provided in Section~~  
550 ~~63-38-2.5, any additional~~] the unrestricted, undesignated General Fund balance after the  
551 transfers of surplus of General Fund revenues described in this Subsection (5)(a) shall be  
552 earmarked to the Industrial Assistance Fund in an amount equal to any credit that has accrued  
553 under this part. The earmark required by this Subsection (5)(a) shall be made after the transfer  
554 of surplus General Fund revenues is made:

555 (i) to the General Fund Budget Reserve Account as provided in Section 63-38-2.5; and

556 (ii) beginning with the fiscal year ending June 30, 2007, as provided in Section  
557 63-38-2.7.

558 (b) These credit amounts may not be used for purposes of the fund as provided in this  
559 part until appropriated by the Legislature.