

DEPARTMENT OF NATURAL RESOURCES

AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Richard W. Wheeler

Senate Sponsor: Darin G. Peterson

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ clarifies the definition of a trophy animal in the Wildlife Resources Code;
- ▶ allows a nonresident peace officer employed by the state to obtain a resident license to fish and hunt;
- ▶ invalidates any wildlife permit or tag obtained by fraud;
- ▶ amends the penalties for license or permit suspensions;
- ▶ allows the Wildlife Board to authorize locations where a person may donate protected wildlife;
- ▶ changes the definition of an all-terrain type I vehicle;
- ▶ authorizes the Division of Forestry, Fire, and State Lands to purchase property;
- ▶ extends the statute of limitations for wildland fire cost recovery;
- ▶ updates the terminology regarding fires caused by locomotive engines;
- ▶ directs state agencies and political subdivisions to pursue opportunities to open public land for responsible off-highway vehicle use;
- ▶ changes the requirement for the application to extend the amount of time a person has to put water to a beneficial use;



- 28 ▶ allows the state engineer to send notice by regular mail;
- 29 ▶ allows the state engineer to employ a deputy;
- 30 ▶ clarifies the requirement for water users to install measuring devices; and
- 31 ▶ makes technical changes.

32 Monies Appropriated in this Bill:

33 None

34 Other Special Clauses:

35 None

36 Utah Code Sections Affected:

37 AMENDS:

- 38 **23-13-2**, as last amended by Chapter 66, Laws of Utah 2004
- 39 **23-19-4**, as last amended by Chapter 126, Laws of Utah 1983
- 40 **23-19-5**, as last amended by Chapter 76, Laws of Utah 1986
- 41 **23-19-9**, as repealed and reenacted by Chapter 224, Laws of Utah 2001
- 42 **23-20-9**, as repealed and reenacted by Chapter 178, Laws of Utah 1993
- 43 **41-22-2**, as last amended by Chapter 2, Laws of Utah 2005
- 44 **41-22-12**, as last amended by Chapter 37, Laws of Utah 1999
- 45 **56-1-15**, Utah Code Annotated 1953
- 46 **65A-1-4**, as last amended by Chapter 159, Laws of Utah 1996
- 47 **65A-6-8**, as last amended by Chapter 138, Laws of Utah 1992
- 48 **73-1-4**, as last amended by Chapter 99, Laws of Utah 2003
- 49 **73-2-4**, Utah Code Annotated 1953
- 50 **73-3-8**, as last amended by Chapter 139, Laws of Utah 1985
- 51 **73-3-12**, as last amended by Chapter 58, Laws of Utah 2006
- 52 **73-4-3**, as last amended by Chapter 252, Laws of Utah 1979
- 53 **73-4-4**, Utah Code Annotated 1953
- 54 **73-4-11**, Utah Code Annotated 1953
- 55 **73-5-4**, Utah Code Annotated 1953
- 56 **73-18b-1**, as last amended by Chapter 276, Laws of Utah 1997
- 57 **78-12-23**, as last amended by Chapters 79 and 210, Laws of Utah 1996

58 RENUMBERS AND AMENDS:

- 59 **65A-8-101**, (Renumbered from 65A-8-1, as last amended by Chapter 319, Laws of
60 Utah 1997)
- 61 **65A-8-102**, (Renumbered from 65A-8-2, as last amended by Chapter 294, Laws of
62 Utah 1994)
- 63 **65A-8-103**, (Renumbered from 65A-8-3, as repealed and reenacted by Chapter 294,
64 Laws of Utah 1994)
- 65 **65A-8-104**, (Renumbered from 65A-8-1.1, as last amended by Chapter 294, Laws of
66 Utah 1994)
- 67 **65A-8-105**, (Renumbered from 65A-8-1.2, as last amended by Chapter 352, Laws of
68 Utah 2004)
- 69 **65A-8-201**, (Renumbered from 65A-8-4, as repealed and reenacted by Chapter 294,
70 Laws of Utah 1994)
- 71 **65A-8-202**, (Renumbered from 65A-8-5, as repealed and reenacted by Chapter 294,
72 Laws of Utah 1994)
- 73 **65A-8-203**, (Renumbered from 65A-8-6, as last amended by Chapter 47, Laws of Utah
74 2004)
- 75 **65A-8-204**, (Renumbered from 65A-8-6.1, as last amended by Chapter 256, Laws of
76 Utah 2002)
- 77 **65A-8-205**, (Renumbered from 65A-8-6.2, as last amended by Chapter 152, Laws of
78 Utah 2006)
- 79 **65A-8-206**, (Renumbered from 65A-8-6.3, as last amended by Chapter 319, Laws of
80 Utah 1997)
- 81 **65A-8-207**, (Renumbered from 65A-8-6.4, as last amended by Chapter 152, Laws of
82 Utah 2006)
- 83 **65A-8-208**, (Renumbered from 65A-8-6.5, as enacted by Chapter 319, Laws of Utah
84 1997)
- 85 **65A-8-209**, (Renumbered from 65A-8-7, as repealed and reenacted by Chapter 294,
86 Laws of Utah 1994)
- 87 **65A-8-210**, (Renumbered from 65A-8-8, as repealed and reenacted by Chapter 294,
88 Laws of Utah 1994)
- 89 **65A-8-211**, (Renumbered from 65A-8-9, as last amended by Chapter 71, Laws of Utah

- 90 1998)
- 91 **65A-8-212**, (Renumbered from 65A-8-10, as repealed and reenacted by Chapter 294,
- 92 Laws of Utah 1994)
- 93 **65A-8-301**, (Renumbered from 63-11-57, as enacted by Chapter 188, Laws of Utah
- 94 1975)
- 95 **65A-8-302**, (Renumbered from 63-11-58, as last amended by Chapter 159, Laws of
- 96 Utah 1996)
- 97 **65A-8-303**, (Renumbered from 63-11-59, as last amended by Chapter 305, Laws of
- 98 Utah 1983)
- 99 **65A-8-304**, (Renumbered from 63-11-60, as last amended by Chapter 305, Laws of
- 100 Utah 1983)
- 101 **65A-8-305**, (Renumbered from 63-11-60.3, as enacted by Chapter 305, Laws of Utah
- 102 1983)
- 103 **65A-8-306**, (Renumbered from 63-11-60.4, as last amended by Chapter 10, Laws of
- 104 Utah 1997)
- 105 **65A-8-307**, (Renumbered from 63-11-61, as last amended by Chapter 305, Laws of
- 106 Utah 1983)
- 107 **65A-8-308**, (Renumbered from 63-11-64, as last amended by Chapter 38, Laws of Utah
- 108 1993)
- 109 **65A-8-309**, (Renumbered from 63-11-65, as enacted by Chapter 305, Laws of Utah
- 110 1983)

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

113 Section 1. Section **23-13-2** is amended to read:

114 **23-13-2. Definitions.**

115 As used in this title:

116 (1) "Activity regulated under this title" means any act, attempted act, or activity
117 prohibited or regulated under any provision of Title 23, Wildlife Resources Code of Utah, or
118 the rules, and proclamations promulgated thereunder pertaining to protected wildlife including:

- 119 (a) fishing;
- 120 (b) hunting;

- 121 (c) trapping;
- 122 (d) taking;
- 123 (e) permitting any dog, falcon, or other domesticated animal to take;
- 124 (f) transporting;
- 125 (g) possessing;
- 126 (h) selling;
- 127 (i) wasting;
- 128 (j) importing;
- 129 (k) exporting;
- 130 (l) rearing;
- 131 (m) keeping;
- 132 (n) utilizing as a commercial venture; and
- 133 (o) releasing to the wild.
- 134 (2) "Aquatic animal" has the meaning provided in Section 4-37-103.
- 135 (3) "Aquatic wildlife" means species of fish, mollusks, crustaceans, aquatic insects, or
- 136 amphibians.
- 137 (4) "Aquaculture facility" has the meaning provided in Section 4-37-103.
- 138 (5) "Bag limit" means the maximum limit, in number or amount, of protected wildlife
- 139 that one person may legally take during one day.
- 140 (6) "Big game" means species of hoofed protected wildlife.
- 141 (7) "Carcass" means the dead body of an animal or its parts.
- 142 (8) "Certificate of registration" means a document issued under this title, or any rule or
- 143 proclamation of the Wildlife Board granting authority to engage in activities not covered by a
- 144 license, permit, or tag.
- 145 (9) "Closed season" means the period of time during which the taking of protected
- 146 wildlife is prohibited.
- 147 (10) "Conservation officer" means a full-time, permanent employee of the Division of
- 148 Wildlife Resources who is POST certified as a peace or a special function officer.
- 149 (11) "Dedicated hunter program" means a program that provides:
- 150 (a) expanded hunting opportunities;
- 151 (b) opportunities to participate in projects that are beneficial to wildlife; and

- 152 (c) education in hunter ethics and wildlife management principles.
- 153 (12) "Division" means the Division of Wildlife Resources.
- 154 (13) (a) "Domicile" means the place:
 - 155 (i) where an individual has a fixed permanent home and principal establishment;
 - 156 (ii) to which the individual if absent, intends to return; and
 - 157 (iii) in which the individual, and the individual's family voluntarily reside, not for a
 - 158 special or temporary purpose, but with the intention of making a permanent home.
- 159 (b) To create a new domicile an individual must:
 - 160 (i) abandon the old domicile; and
 - 161 (ii) be able to prove that a new domicile has been established.
- 162 (14) "Endangered" means wildlife designated as such [~~pursuant~~] according to Section 3
- 163 of the federal Endangered Species Act of 1973.
- 164 (15) "Fee fishing facility" has the meaning provided in Section 4-37-103.
- 165 (16) "Feral" means an animal which is normally domesticated but has reverted to the
- 166 wild.
- 167 (17) "Fishing" means to take fish or crayfish by any means.
- 168 (18) "Furbearer" means species of the Bassariscidae, Canidae, Felidae, Mustelidae, and
- 169 Castoridae families, except coyote and cougar.
- 170 (19) "Game" means wildlife normally pursued, caught, or taken by sporting means for
- 171 human use.
- 172 (20) (a) "Guide" means a person who receives compensation or advertises services for
- 173 assisting another person to take protected wildlife.
 - 174 (b) Assistance under Subsection (20)(a) includes the provision of food, shelter, or
 - 175 transportation, or any combination of these.
- 176 (21) "Guide's agent" means a person who is employed by a guide to assist another
- 177 person to take protected wildlife.
- 178 (22) "Hunting" means to take or pursue a reptile, amphibian, bird, or mammal by any
- 179 means.
- 180 (23) "Intimidate or harass" means to physically interfere with or impede, hinder, or
- 181 diminish the efforts of an officer in the performance of the officer's duty.
- 182 (24) "Nonresident" means a person who does not qualify as a resident.

183 (25) "Open season" means the period of time during which protected wildlife may be
184 legally taken.

185 (26) "Pecuniary gain" means the acquisition of money or something of monetary value.

186 (27) "Permit" means a document, including a stamp, which grants authority to engage
187 in specified activities under this title or a rule or proclamation of the Wildlife Board.

188 (28) "Person" means an individual, association, partnership, government agency,
189 corporation, or an agent of the foregoing.

190 (29) "Possession" means actual or constructive possession.

191 (30) "Possession limit" means the number of bag limits one individual may legally
192 possess.

193 (31) (a) "Private fish installation" means a body of water where privately owned,
194 protected aquatic wildlife are propagated or kept.

195 (b) "Private fish installation" does not include any aquaculture facility or fee fishing
196 facility.

197 (32) "Private wildlife farm" means an enclosed place where privately owned birds or
198 furbearers are propagated or kept and ~~which~~ that restricts the birds or furbearers from:

199 (a) commingling with wild birds or furbearers; and

200 (b) escaping into the wild.

201 (33) "Proclamation" means the publication used to convey a statute, rule, policy, or
202 pertinent information as it relates to wildlife.

203 (34) (a) "Protected aquatic wildlife" means aquatic wildlife as defined in Subsection
204 (3), except as provided in Subsection (34)(b).

205 (b) "Protected aquatic wildlife" does not include aquatic insects.

206 (35) (a) "Protected wildlife" means wildlife as defined in Subsection (49), except as
207 provided in Subsection (35)(b).

208 (b) "Protected wildlife" does not include coyote, field mouse, gopher, ground squirrel,
209 jack rabbit, muskrat, and raccoon.

210 (36) "Released to the wild" means to be turned loose from confinement.

211 (37) (a) "Resident" means a person who:

212 (i) has been domiciled in the state ~~of Utah~~ for six consecutive months immediately
213 preceding the purchase of a license; and

214 (ii) does not claim residency for hunting, fishing, or trapping in any other state or
215 country.

216 (b) A Utah resident retains Utah residency if that person leaves this state:

217 (i) to serve in the armed forces of the United States or for religious or educational
218 purposes; and

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

220 (c) (i) A member of the armed forces of the United States and dependents are residents
221 for the purposes of this chapter as of the date the member reports for duty under assigned
222 orders in the state if the member:

223 (A) is not on temporary duty in this state; and

224 (B) complies with Subsection (37)(a)(ii).

225 (ii) A copy of the assignment orders must be presented to a wildlife division office to
226 verify the member's qualification as a resident.

227 (d) A nonresident attending an institution of higher learning in this state as a full-time
228 student may qualify as a resident for purposes of this chapter if the student:

229 (i) has been present in this state for 60 consecutive days immediately preceding the
230 purchase of the license; and

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

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

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

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

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

239 (a) commonly pursued for sporting purposes; and

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

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

244 (41) "Spotlighting" means throwing or casting the rays of any spotlight, headlight, or

245 other artificial light on any highway or in any field, woodland, or forest while having in
246 possession a weapon by which protected wildlife may be killed.

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

249 (43) "Take" means to:

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

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

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

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

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

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

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

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

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

261 (e) mountain goat - any male or female;

262 (f) pronghorn antelope - any buck with horns exceeding 14 inches; or

263 (g) bison - any bull.

264 (47) "Waste" means to abandon protected wildlife or to allow protected wildlife to
265 spoil or to be used in a manner not normally associated with its beneficial use.

266 (48) "Water pollution" means the introduction of matter or thermal energy to waters
267 within this state which:

268 (a) exceeds state water quality standards; or

269 (b) could be harmful to protected wildlife.

270 (49) "Wildlife" means:

271 (a) crustaceans, including brine shrimp and crayfish;

272 (b) mollusks; and

273 (c) vertebrate animals living in nature, except feral animals.

274 Section 2. Section **23-19-4** is amended to read:

275 **23-19-4. Alien's and nonresident peace officer's right to licenses and certificates.**

276 (1) An alien resident of the State of Utah may purchase hunting, fishing, trapping,
277 seining, and fur dealer licenses and certificates of registration upon the same terms as a resident
278 citizen.

279 (2) All nonresident aliens may purchase hunting, fishing, trapping, seining, and fur
280 dealer licenses and certificates of registration upon the same terms as nonresident citizens.

281 (3) Notwithstanding Subsection 23-19-5(1)(b), a nonresident may purchase a hunting,
282 fishing, trapping, seining, and fur dealer license and certificate of registration upon the same
283 terms as a resident citizen if the person is:

284 (a) employed by the state as a peace officer, as classified by Title 53, Chapter 13, Peace
285 Officer Classifications; and

286 (b) required to live outside the state as a condition of the person's employment.

287 Section 3. Section **23-19-5** is amended to read:

288 **23-19-5. Fraud, deceit, or misrepresentation in obtaining a license, permit, tag, or**
289 **certificate of registration unlawful -- Violation -- Penalty.**

290 (1) It is unlawful for:

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

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

294 (c) a resident to purchase a nonresident license.

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

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

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

301 Section 4. Section **23-19-9** is amended to read:

302 **23-19-9. Suspension of license or permit privileges -- Suspension of certificates of**
303 **registration.**

304 (1) As used in this section, "license or permit privileges" means the privilege of
305 applying for, purchasing, and exercising the benefits conferred by a license or permit issued by
306 the division.

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

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

311 (i) is convicted of:

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

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

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

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

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

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

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

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

325 (ii) the duration of the suspension.

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

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

331 (a) seven years for:

332 (i) a felony conviction;

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

335 (iii) being charged with an offense punishable as a felony, the prosecution of which is
336 suspended pursuant to a diversion agreement;

337 (b) five years for:

338 (i) a class A misdemeanor conviction;

339 (ii) a plea of guilty or no contest to an offense punishable as a class A misdemeanor,

340 which plea is held in abeyance pursuant to a plea in abeyance agreement; or

341 (iii) being charged with an offense punishable as a class A misdemeanor, the

342 prosecution of which is suspended pursuant to a diversion agreement; ~~and~~

343 (c) three years for:

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

345 (ii) a plea of guilty or no contest to an offense punishable as a class B misdemeanor

346 ~~[under Section 23-20-4, which]~~ when the plea is held in abeyance [pursuant] according to a

347 plea in abeyance agreement; or

348 (iii) being charged with an offense punishable as a class B misdemeanor ~~[under Section~~

349 ~~23-20-4], the prosecution of which is suspended pursuant to a diversion agreement[-]; and~~

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

351 (d) one year for:

352 (i) a class C misdemeanor conviction;

353 (ii) a plea of guilty or no contest to an offense punishable as a class C misdemeanor,

354 when the plea is held in abeyance according to a plea in abeyance agreement; or

355 (iii) being charged with an offense punishable as a class C misdemeanor, the

356 prosecution of which is suspended according to a diversion agreement.

357 (5) The hearing officer may double a suspension period established in Subsection (4)

358 for offenses:

359 (a) committed in violation of an existing suspension or revocation order issued by the

360 courts, division, or Wildlife Board; or

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

362 (6) (a) A hearing officer may suspend, ~~[pursuant]~~ according to Subsection (2), a

363 person's [privilege to apply for, purchase, and exercise the benefits conferred by] license or

364 permit privileges for a particular license or permit only once for each single criminal episode,

365 as defined in Section 76-1-401.

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

367 suspension periods of any license or permit privileges of the same type suspended, ~~[pursuant]~~

368 according to Subsection (2), ~~shall~~ may run consecutively.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

400 ~~[(ii) six months for each;]~~
401 ~~[(A) class C misdemeanor conviction;]~~
402 ~~[(B) plea of guilty or no contest to an offense punishable as a class C misdemeanor,~~
403 ~~which plea is held in abeyance pursuant to a plea in abeyance agreement; or]~~
404 ~~[(C) charge of committing an offense punishable as a class C misdemeanor, the~~
405 ~~prosecution of which is suspended pursuant to a diversion agreement.]~~

406 ~~[(8)]~~ (7) (a) A hearing officer, appointed by the division, may suspend a person's
407 privilege of applying for, purchasing, and exercising the benefits conferred by a certificate of
408 registration if:

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

- 411 (A) this title;
- 412 (B) a rule or order of the Wildlife Board;
- 413 (C) the terms of a certificate of registration; or
- 414 (D) the terms of a certificate of registration application or agreement; or

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

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

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

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

427 (b) All certificates of registration for the harvesting of brine shrimp eggs, as defined in
428 Section 59-23-3, shall be suspended by a hearing officer, if the hearing officer determines the
429 holder of the certificates of registration has violated Section 59-23-5.

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

431 registration.]

432 [~~(9)~~] (8) (a) The director shall appoint a qualified person as a hearing officer to perform
433 the adjudicative functions provided in this section.

434 (b) The director may not appoint a division employee who investigates or enforces
435 wildlife violations.

436 [~~(10)~~] (9) (a) The courts may suspend, in criminal sentencing, a person's privilege to
437 apply for, purchase, or exercise the benefits conferred by a license, permit, or certificate of
438 registration.

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

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

445 (d) The division may suspend a person's license or permit privileges beyond the time
446 period ordered by a court, provided the combined suspension periods are consistent with the
447 requirements of Subsections (4), (5), and (6).

448 (e) The division may suspend a person's privilege of applying for, purchasing, and
449 exercising the benefits conferred by a certificate of registration beyond the time period ordered
450 by a court.

451 [~~(11)~~] (f) The hearing officer shall consider any recommendation made by a sentencing
452 court concerning suspension before issuing a suspension order.

453 [~~(12)~~] (10) (a) A person may not apply for, purchase, possess, or attempt to exercise the
454 benefits conferred by any permit, license, or certificate of registration specified in an order of
455 suspension while that order is in effect.

456 (b) Any license possessed or obtained in violation of the order shall be considered
457 invalid.

458 [~~(13)~~] (c) A person who violates Subsection [~~(12)~~] (10)(a) is guilty of a class B
459 misdemeanor.

460 [~~(14)~~] (11) Before suspension under this section, a person must be:

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

462 (b) provided with an opportunity for a hearing.

463 ~~[(13)]~~ (12) (a) A person may file an appeal of a hearing officer's decision with the
464 Wildlife Board.

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

467 (c) The Wildlife Board may:

468 (i) take no action;

469 (ii) vacate or remand the decision; or

470 (iii) amend the period or type of suspension.

471 ~~[(14)]~~ (13) The division shall suspend and reinstate all hunting, fishing, trapping, and
472 falconry privileges consistent with Title 23, Chapter 25, Wildlife Violator Compact.

473 ~~[(15)]~~ (14) The Wildlife Board may make rules to implement this section in accordance
474 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act~~[-, and Title 63, Chapter 46b,~~
475 ~~Administrative Procedures Act].~~

476 Section 5. Section **23-20-9** is amended to read:

477 **23-20-9. Donating protected wildlife.**

478 (1) A person may only donate protected wildlife or their parts to another person ~~[only]~~
479 at ~~[the following places]:~~

480 (a) the residence of the donor;

481 (b) the residence of the person receiving protected wildlife or their parts;

482 (c) a meat locker;

483 (d) a storage plant; ~~[or]~~

484 (e) a meat processing facility~~[-]; or~~

485 (f) a location authorized by the Wildlife Board in rule, proclamation, or order.

486 (2) A written statement of donation must be kept with the protected wildlife or parts
487 showing:

488 (a) the number and species of protected wildlife or parts donated;

489 (b) the date of donation;

490 (c) the license or permit number of the donor; and

491 (d) the signature of the donor.

492 (3) Notwithstanding Subsections (1) and (2), a person may donate the hide of a big

493 game animal to another person or organization at any place without a donation slip.

494 Section 6. Section **41-22-2** is amended to read:

495 **41-22-2. Definitions.**

496 As used in this chapter:

497 (1) "Advisory council" means the Off-highway Vehicle Advisory Council appointed by
498 the Board of Parks and Recreation.

499 (2) "All-terrain type I vehicle" means any motor vehicle [~~52~~] 50 inches or less in width,
500 having an unladen dry weight of 800 pounds or less, traveling on three or more low pressure
501 tires, having a seat designed to be straddled by the operator, and designed for or capable of
502 travel over unimproved terrain.

503 (3) (a) "All-terrain type II vehicle" means any other motor vehicle, not defined in
504 Subsection (2), (9), or (20), designed for or capable of travel over unimproved terrain. [~~This~~
505 ~~term~~]

506 (b) "All-terrain type II vehicle" does not include golf carts, any vehicle designed to
507 carry a disabled person, any vehicle not specifically designed for recreational use, or farm
508 tractors as defined under Section 41-1a-102.

509 (4) "Board" means the Board of Parks and Recreation.

510 (5) "Dealer" means a person engaged in the business of selling off-highway vehicles at
511 wholesale or retail.

512 (6) "Division" means the Division of Parks and Recreation.

513 (7) "Low pressure tire" means any pneumatic tire six inches or more in width designed
514 for use on wheels with rim diameter of 12 inches or less and utilizing an operating pressure of
515 ten pounds per square inch or less as recommended by the vehicle manufacturer.

516 (8) "Manufacturer" means a person engaged in the business of manufacturing
517 off-highway vehicles.

518 (9) "Motorcycle" means every motor vehicle having a saddle for the use of the operator
519 and designed to travel on not more than two tires.

520 (10) "Motor vehicle" means every vehicle which is self-propelled.

521 (11) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle,
522 all-terrain type II vehicle, or motorcycle.

523 (12) "Off-highway implement of husbandry" means every all-terrain type I vehicle,

524 motorcycle, or snowmobile [~~which~~] that is used by the owner or his agent for agricultural
525 operations.

526 (13) "Operate" means to control the movement of or otherwise use an off-highway
527 vehicle.

528 (14) "Operator" means the person who is in actual physical control of an off-highway
529 vehicle.

530 (15) "Organized user group" means an off-highway vehicle organization incorporated
531 as a nonprofit corporation in the state under Title 16, Chapter 6a, Utah Revised Nonprofit
532 Corporation Act, for the purpose of promoting the interests of off-highway vehicle recreation.

533 (16) "Owner" means a person, other than a person with a security interest, having a
534 property interest or title to an off-highway vehicle and entitled to the use and possession of that
535 vehicle.

536 (17) "Public land" means land owned or administered by any federal or state agency or
537 any political subdivision of the state.

538 (18) "Register" means the act of assigning a registration number to an off-highway
539 vehicle.

540 (19) "Roadway" is used as defined in Section 41-6a-102.

541 (20) "Snowmobile" means any motor vehicle designed for travel on snow or ice and
542 steered and supported in whole or in part by skis, belts, cleats, runners, or low pressure tires.

543 (21) "Street or highway" means the entire width between boundary lines of every way
544 or place of whatever nature, when any part of it is open to the use of the public for vehicular
545 travel.

546 Section 7. Section **41-22-12** is amended to read:

547 **41-22-12. Restrictions on use of public lands.**

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

551 (2) A person may not operate and an owner of an off-highway vehicle may not give
552 another person permission to operate an off-highway vehicle on any public land which is
553 closed to off-highway vehicles.

554 Section 8. Section **56-1-15** is amended to read:

555 **56-1-15. Fire caused by sparks emitted.**

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

560 Section 9. Section **65A-1-4** is amended to read:

561 **65A-1-4. Division of Forestry, Fire and State Lands -- Creation -- Power and**
 562 **authority.**

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

566 (b) The division is the executive authority for the management of sovereign lands, and
 567 the state's mineral estates on lands other than school and institutional trust lands, and shall
 568 provide for forestry and fire control activities as required in Section [~~65A-8-1~~] 65A-8-101.

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

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

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

576 (4) The director shall inform the council:

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

578 (b) of policy changes and developing conflicts[~~, and~~].

579 (5) The director shall give the council an opportunity to advise on the changes and
 580 conflicts.

581 [~~(5)~~] (6) (a) An aggrieved party to a final action by the director may appeal that action
 582 to the executive director of the Department of Natural Resources within 20 days after the
 583 action.

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

586 Section 10. Section ~~65A-6-8~~ is amended to read:

587 **65A-6-8. Mineral leases -- Cancellation -- Use of surface land -- Liability for**
588 **damage.**

589 (1) Upon violation by the lessee of any lawful provision in a mineral lease, the division
590 may cancel the lease after 30 days' notice by registered or certified return receipt mail, unless
591 the lessee;

592 (a) remedies the violation~~;~~;

593 (b) rectifies the condition~~;~~; or

594 (c) requests a hearing within;

595 (i) the 30 days; or [~~within~~]

596 (ii) any extension of time the [~~board~~] division grants.

597 (2) (a) A mineral lessee, subject to conditions required by the division, shall have;

598 (i) the right at all times to enter upon the leasehold for prospecting, exploring,
599 developing, and producing minerals; and [~~shall have~~]

600 (ii) reasonable use of the surface.

601 (b) The lessee shall not injure, damage, or destroy the improvements of the surface
602 owner or lessee.

603 (c) The lessee is liable to the surface owner or lessee for all damage to the surface of
604 the land and improvements, except for reasonable use.

605 (3) Any mineral lessee may occupy as much of the surface of the leased land as may be
606 required for all purposes reasonably incident to the exercise of lessee's rights under the lease
607 by:

608 (a) securing the written consent or waiver of the surface owner or lessee;

609 (b) payment for the damage to the surface of the land and improvements to the surface
610 owner or lessee where there is agreement as to the amount of the damage; or

611 (c) upon the execution of a good and sufficient bond to the state for the use and benefit
612 of the surface owner or lessee of the land to secure the payment of damages as may be
613 determined and fixed by agreement or in action brought upon the bond or undertaking in a
614 court of competent jurisdiction against the principal and sureties of the bond.

615 (4) The bond required by Subsection (3)(c) shall be;

616 (a) in a form and amount as prescribed by the division; and [~~shall be~~]

617 (b) filed with the division.

618 Section 11. Section **65A-8-101**, which is renumbered from Section 65A-8-1 is
619 renumbered and amended to read:

620 **Part 1. General Provisions**

621 ~~[65A-8-1].~~ **65A-8-101. Division responsibilities for fire control and the**
622 **preservation of forest, watershed, and other lands -- Reciprocal agreements for fire**
623 **protection.**

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

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

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

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

631 (2) The division shall take action it considers necessary to control wildland fires and
632 protect life and property on the nonfederal forest, range, and watershed lands within
633 unincorporated areas of the state.

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

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

639 Section 12. Section **65A-8-102**, which is renumbered from Section 65A-8-2 is
640 renumbered and amended to read:

641 ~~[65A-8-2].~~ **65A-8-102. State forester.**

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

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

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

647 (4) In all matters pertaining to forestry and fire control in which the state recognizes a

648 responsibility, the state forester shall be the official representative of the state.

649 Section 13. Section **65A-8-103**, which is renumbered from Section 65A-8-3 is
650 renumbered and amended to read:

651 ~~[65A-8-3].~~ **65A-8-103. Forestry and fire control funds.**

652 ~~[(1) All monies available to the division to meet the costs of Subsections (1)(a) through~~
653 ~~(d) are nonlapsing and available to the division until expended:]~~

654 (1) The division shall use monies available to it to meet the costs of:

655 (a) ~~[monies for]~~ controlling forest, range, and watershed fires;

656 (b) ~~[monies for]~~ controlling insect and disease epidemics;

657 (c) ~~[monies for]~~ rehabilitating or reforesting nonfederal forest, range, and watershed
658 lands; and

659 (d) ~~[monies for]~~ carrying on the purposes of ~~[Title 65A, Chapter 8, Management of~~
660 ~~Forest Lands and Fire Control]~~ this chapter.

661 (2) All monies available to the division to meet the costs of Subsections (1)(a) through
662 (d) are nonlapsing and available to the division until expended.

663 ~~[(2)]~~ (3) (a) The collection and disbursement of all money made available to the
664 division shall be in accordance with the rules of the Division of Finance.

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

667 Section 14. Section **65A-8-104**, which is renumbered from Section 65A-8-1.1 is
668 renumbered and amended to read:

669 ~~[65A-8-1.1].~~ **65A-8-104. Leaf-It-To-Us Children's Crusade for Trees**
670 **program created -- Purpose -- Matching funds.**

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

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

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

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

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

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

683 (4) The division shall make rules [~~for the administration of~~] to administer the program
684 and place emphasis on post-planting care.

685 Section 15. Section **65A-8-105**, which is renumbered from Section 65A-8-1.2 is
686 renumbered and amended to read:

687 ~~[65A-8-1.2].~~ **65A-8-105. Urban and community forestry program.**

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

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

691 (3) The division may:

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

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

697 (c) provide grants to municipalities and counties for urban and community forestry
698 programs and cooperative projects.

699 (4) The division shall:

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

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

705 Section 16. Section **65A-8-201**, which is renumbered from Section 65A-8-4 is
706 renumbered and amended to read:

707 **Part 2. Fire Control**

708 ~~[65A-8-4].~~ **65A-8-201. Uncontrolled fire is a public nuisance.**

709 Any fire on forest, range, or watershed land in the state burning uncontrolled and

710 without proper and adequate action being taken to control or prevent its spread is a public
711 nuisance.

712 Section 17. Section **65A-8-202**, which is renumbered from Section 65A-8-5 is
713 renumbered and amended to read:

714 ~~[65A-8-5].~~ **65A-8-202. Fire control -- County responsibilities.**

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

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

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

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

725 Section 18. Section **65A-8-203**, which is renumbered from Section 65A-8-6 is
726 renumbered and amended to read:

727 ~~[65A-8-6].~~ **65A-8-203. Cooperative fire protection agreements with counties.**

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

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

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

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

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

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

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

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

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

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

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

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

756 Section 19. Section **65A-8-204**, which is renumbered from Section 65A-8-6.1 is
757 renumbered and amended to read:

758 ~~[65A-8-6.1].~~ **65A-8-204. Wildland Fire Suppression Fund created.**

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

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

763 (3) The contents of the fund shall include:

764 (a) payments by counties pursuant to written agreements made under Section
765 ~~[65A-8-6.2]~~ 65A-8-205;

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

767 (c) money appropriated by the Legislature.

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

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

771 (b) (i) Except as provided in Subsection (5)(b)(ii), if the amount of money in the fund

772 equals or exceeds \$8,000,000 on March 31, no assessments may be charged for the following
773 year.

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

776 Section 20. Section **65A-8-205**, which is renumbered from Section 65A-8-6.2 is
777 renumbered and amended to read:

778 ~~[65A-8-6.2]~~. **65A-8-205. Agreements for coverage by the Wildland Fire**
779 **Suppression Fund -- Eligible lands -- County and state obligations -- Termination --**
780 **Revocation.**

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

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

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

789 (i) except as provided by Subsection (2)(b), pay into the fund an amount equal to:

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

792 (B) .0001151 times the taxable value of real property in the unincorporated area of the
793 county; and

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

796 (b) A county is not required to pay for an acre or real property described in Subsection
797 (2)(a)(i) if the acre or real property:

798 (i) is subject to concentrated residential, commercial, or industrial development;

799 (ii) would not be exposed to wildland fire; and

800 (iii) would not expose any wildland to fire spreading from it.

801 (3) (a) Any county that elects to initiate participation in the fund, or reestablish
802 participation in the fund after participation was terminated, shall make an equity payment, in

803 addition to the assessment provided in Subsection (2)(a)(i).

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

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

808 (4) The agreement shall provide that:

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

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

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

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

818 Section 21. Section **65A-8-206**, which is renumbered from Section 65A-8-6.3 is
819 renumbered and amended to read:

820 ~~[65A-8-6.3].~~ **65A-8-206. Disbursements from the Wildland Fire**
821 **Suppression Fund.**

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

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

828 Section 22. Section **65A-8-207**, which is renumbered from Section 65A-8-6.4 is
829 renumbered and amended to read:

830 ~~[65A-8-6.4].~~ **65A-8-207. Division to administer Wildland Fire**
831 **Suppression Fund -- Rulemaking -- Procedures.**

832 (1) By following the procedures and requirements of Title 63, Chapter 46a, Utah
833 Administrative Rulemaking Act, the division shall make rules to administer the Wildland Fire

834 Suppression Fund, including rules:

835 (a) requiring documentation for:

836 (i) the number of acres of privately[=] or county-owned land in the unincorporated area
837 of a participating county; and

838 (ii) an acre or real property exempt in Subsection [~~65A-8-6.2~~] 65A-8-205(2)(b);

839 (b) describing the method or formula for determining:

840 (i) normal fire suppression costs; and

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

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

844 (2) By following the procedures and requirements of Title 63, Chapter 46b,
845 Administrative Procedures Act, the division shall determine whether an acre or real property is
846 eligible for the exemption provided in Subsection [~~65A-8-6.2~~] 65A-8-205(2)(b).

847 Section 23. Section **65A-8-208**, which is renumbered from Section 65A-8-6.5 is
848 renumbered and amended to read:

849 ~~[65A-8-6.5]~~. **65A-8-208**. **Presuppression costs -- Disbursements from fund**
850 **-- Credit against assessment -- Limited by appropriation.**

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

855 (2) Payments to a county for costs of presuppression and fire management activities in
856 any year may not exceed the county's assessment under Subsection [~~65A-8-6.2~~]
857 65A-8-205(2)(a).

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

861 (b) The credit may not exceed the county's assessment under Subsection [~~65A-8-6.2~~]
862 65A-8-205(2)(a).

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

865 legislative appropriation to the fund for those costs.

866 Section 24. Section **65A-8-209**, which is renumbered from Section 65A-8-7 is
867 renumbered and amended to read:

868 ~~[65A-8-7]~~. **65A-8-209**. **Responsibilities of county sheriffs and district fire**
869 **wardens in controlling fires.**

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

873 (2) In all cases the sheriff shall:

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

875 (b) investigate and report fire causes; and

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

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

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

883 Section 25. Section **65A-8-210**, which is renumbered from Section 65A-8-8 is
884 renumbered and amended to read:

885 ~~[65A-8-8]~~. **65A-8-210**. **Fire control on state-owned lands -- Responsibilities of**
886 **state agencies.**

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

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

892 (b) Those agencies shall annually allocate funds to the division in amounts as are
893 determined to be fair and equitable proportionate costs for providing a basic level of fire
894 protection.

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

896 and the division.

897 Section 26. Section **65A-8-211**, which is renumbered from Section 65A-8-9 is
898 renumbered and amended to read:

899 ~~[65A-8-9].~~ **65A-8-211. Closed fire season -- Notice -- Violations -- Burning**
900 **permits -- Personal liability -- Exemptions from burning permits.**

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

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

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

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

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

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

913 (3) [~~It is the duty of the~~] The district fire warden appointed by the state forester[;] or
914 the county sheriff in nonparticipating counties[; ~~to~~] shall issue burning permits using the form
915 prescribed by the division.

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

918 (b) [~~If a~~] A fire [~~escapes~~] escaping control of the permittee [~~and~~] that necessitates fire
919 control action or does injury to the property of another[; ~~this may be held~~] is prima facie
920 evidence that the fire was not safe.

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

923 (6) (a) A burning permit is not required for the burning of fence lines on cultivated
924 lands, canals, or irrigation ditches if:

925 (i) the burning does not pose a threat to forest, range, or watershed lands;

926 (ii) due care is used in the control of the burning; and

927 (iii) the individual notifies the nearest fire department of the approximate time the
928 burning will occur.

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

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

933 Section 27. Section **65A-8-212**, which is renumbered from Section 65A-8-10 is
934 renumbered and amended to read:

935 **[65A-8-10]. 65A-8-212. Power of state forester to close hazardous areas --**
936 **Violations of an order closing an area.**

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

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

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

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

944 (a) the exact area coming under the order;

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

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

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

950 Section 28. Section **65A-8-301**, which is renumbered from Section 63-11-57 is
951 renumbered and amended to read:

952 **Part 3. Heritage Trees**

953 **[63-11-57]. 65A-8-301. Legislative finding and purpose.**

954 (1) The Legislature finds the health and welfare of the people of the state require the
955 preservation of certain rare, or threatened, or vanishing species of trees to preserve the state's
956 scenic beauty and preserve its historic past as it relates to such trees.

957 (2) It is the intent of this [act] part to retain as many heritage trees as possible

958 consistent with the reasonable and economic enjoyment of private property.

959 Section 29. Section **65A-8-302**, which is renumbered from Section 63-11-58 is
960 renumbered and amended to read:

961 ~~[63-11-58]~~. **65A-8-302. Definitions.**

962 As used in this [act] part:

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

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

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

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

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

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

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

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

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

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

978 Section 30. Section **65A-8-303**, which is renumbered from Section 63-11-59 is
979 renumbered and amended to read:

980 ~~[63-11-59]~~. **65A-8-303. Application to alter or remove trees.**

981 (1) Any person that desires to alter or remove one or more heritage trees from any
982 public property within this state shall before altering or removing any such tree make
983 application to the division on forms prescribed by it.

984 (2) An application for alteration or removal shall be filed with the division at least 60
985 days before the actual alteration or removal of any such trees.

986 (3) The application shall state:

987 (a) the name of the applicant[;];

988 (b) the number, location, and species of the trees proposed to be altered or removed[;];

989 (c) the reason for alteration or removal[;]; and [~~such~~]

990 (d) other information as the division may reasonably require.

991 Section 31. Section **65A-8-304**, which is renumbered from Section 63-11-60 is
992 renumbered and amended to read:

993 ~~[63-11-60]~~. **65A-8-304. Guidelines and standards for granting or denying**
994 **applications to alter or remove trees.**

995 (1) The committee shall develop published guidelines and standards to be used by the
996 board in granting or denying applications for the alteration or removal of heritage trees.

997 (2) In addition to the guidelines and standards developed by the committee, the
998 division shall consider the following criteria in granting or denying an application:

999 [~~(1)~~] (a) the physical condition of the heritage tree or trees with respect to:

1000 (i) insect infestation[;];

1001 (ii) disease[;];

1002 (iii) danger of falling[;];

1003 (iv) proximity to existing or proposed structures; and

1004 (v) interference with utility services;

1005 [~~(2)~~] (b) the necessity of alteration or removal of the heritage tree or trees in order to
1006 construct proposed improvements and allow economic enjoyment of property;

1007 [~~(3)~~] (c) the topography of the land and the effect of removal of the heritage tree or
1008 trees on:

1009 (i) erosion[;];

1010 (ii) soil retention; and

1011 (iii) the diversion or increased flow of surface waters resultant upon alteration or
1012 removal;

1013 [~~(4)~~] (d) the number of heritage trees existing in the neighborhood on improved
1014 property [~~and~~];

1015 (e) the effect alteration or removal would have on established standards and property
1016 values in the area; and

1017 [~~(5)~~] (f) the number of heritage trees the particular parcel can support according to
1018 good forestry practices.

1019 Section 32. Section **65A-8-305**, which is renumbered from Section 63-11-60.3 is

1020 renumbered and amended to read:

1021 ~~[63-11-60.3].~~ 65A-8-305. Powers of division.

1022 The division may:

1023 (1) grant or deny applications for designation of heritage trees from individuals, local
1024 shade tree commissions, or local governments;

1025 (2) grant or deny applications for alteration or removal of heritage trees;

1026 (3) acquire land if one or more heritage trees are located on the land;

1027 (4) accept gifts, bequests, or donations; and

1028 (5) determine policies necessary to carry out this ~~[act]~~ part.

1029 Section 33. Section 65A-8-306, which is renumbered from Section 63-11-60.4 is
1030 renumbered and amended to read:

1031 ~~[63-11-60.4].~~ 65A-8-306. Heritage trees advisory committee -- Members --
1032 Officers -- Expenses -- Functions.

1033 (1) There is created a Heritage Trees Advisory Committee composed of five persons
1034 appointed by the division from among persons who are members of the Utah ~~[Association of~~
1035 ~~Shade Tree Commissions]~~ Community Forestry Council.

1036 (2) (a) Except as required by Subsection (2)(b), as terms of current committee members
1037 expire, the division shall appoint each new member or reappointed member to a four-year term.

1038 (b) Notwithstanding the requirements of Subsection (2)(a), the division shall, at the
1039 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
1040 committee members are staggered so that approximately half of the committee is appointed
1041 every two years.

1042 ~~[(c) No two members shall be appointed from the same city.]~~

1043 (3) When a vacancy occurs in the membership for any reason, the replacement shall be
1044 appointed for the unexpired term.

1045 (4) (a) The committee shall elect a chair who is responsible to call and conduct
1046 meetings.

1047 (b) Three members present at a duly called meeting constitute a quorum for the
1048 transaction of official business.

1049 (c) Members of the committee may meet as often as considered necessary.

1050 (d) The urban forestry staff person of the division shall serve as secretary to the

1051 committee.

1052 (5) (a) Members shall receive no compensation or benefits for their services, but may
1053 receive per diem and expenses incurred in the performance of the member's official duties at
1054 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

1055 (b) Members may decline to receive per diem and expenses for their service.

1056 (6) The committee shall:

1057 (a) publish guidelines for division use in granting or denying applications for the
1058 designation of heritage trees;

1059 (b) publish an annual register of designated heritage trees and distribute it to public
1060 utilities, tree service companies, municipal forestry and parks departments, and the public; and

1061 (c) develop a system for visibly identifying designated heritage trees.

1062 Section 34. Section **65A-8-307**, which is renumbered from Section 63-11-61 is
1063 renumbered and amended to read:

1064 ~~[63-11-61]~~. **65A-8-307. Exemption for emergency or permit.**

1065 This [æct] part shall not apply to any emergency when heritage trees constitute a danger
1066 to life or property, or to any person whose application for alteration or removal of a heritage
1067 tree has been granted by the division.

1068 Section 35. Section **65A-8-308**, which is renumbered from Section 63-11-64 is
1069 renumbered and amended to read:

1070 ~~[63-11-64]~~. **65A-8-308. Enforcement -- Prosecution of violations.**

1071 (1) County sheriffs, police, and other law enforcement officers within their respective
1072 jurisdictions are responsible for the enforcement of this [æct] part.

1073 (2) The county attorney or district attorney shall prosecute any violation of this [æct]
1074 part.

1075 Section 36. Section **65A-8-309**, which is renumbered from Section 63-11-65 is
1076 renumbered and amended to read:

1077 ~~[63-11-65]~~. **65A-8-309. Injury -- Violation of part -- Misdemeanor.**

1078 Any person who willfully or maliciously alters, injures, damages, or causes death of a
1079 heritage tree or who otherwise violates this [æct] part is guilty of a class B misdemeanor.

1080 Section 37. Section **73-1-4** is amended to read:

1081 **73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within**

1082 **five years -- Extension of time.**

1083 (1) (a) In order to further the state policy of securing the maximum use and benefit of
1084 its scarce water resources, a person entitled to the use of water has a continuing obligation to
1085 place all of a water right to beneficial use.

1086 (b) The forfeiture of all or part of any right to use water for failure to place all or part of
1087 the water to beneficial use makes possible the allocation and use of water consistent with long
1088 established beneficial use concepts.

1089 (c) The provisions of Subsections (2) through (6) shall be construed to carry out the
1090 purposes and policies set forth in this Subsection (1).

1091 (2) As used in this section, "public water supply entity" means an entity that supplies
1092 water as a utility service or for irrigation purposes and is also:

1093 (a) a municipality, water conservancy district, metropolitan water district, irrigation
1094 district created under Section 17A-2-701.5, or other public agency;

1095 (b) a water company regulated by the Public Service Commission; or

1096 (c) any other owner of a community water system.

1097 (3) (a) When an appropriator or the appropriator's successor in interest abandons or
1098 ceases to use all or a portion of a water right for a period of five years, the water right or the
1099 unused portion of that water right ceases and the water reverts to the public, unless, before the
1100 expiration of the five-year period, the appropriator or the appropriator's successor in interest
1101 files a verified nonuse application with the state engineer.

1102 (b) (i) A nonuse application may be filed on all or a portion of the water right,
1103 including water rights held by mutual irrigation companies.

1104 (ii) Public water supply entities that own stock in a mutual water company, after giving
1105 written notice to the water company, may file nonuse applications with the state engineer on
1106 the water represented by the stock.

1107 (c) (i) A water right or a portion of the water right may not be forfeited unless a judicial
1108 action to declare the right forfeited is commenced within 15 years from the end of the latest
1109 period of nonuse of at least five years.

1110 (ii) If forfeiture is asserted in an action for general determination of rights in
1111 conformance with the provisions of Chapter 4, Determination of Water Rights, the 15-year
1112 limitation period shall commence to run back in time from the date the state engineer's

1113 proposed determination of rights is served upon each claimant.

1114 (iii) A decree entered in an action for general determination of rights under Chapter 4,
1115 Determination of Water Rights, shall bar any claim of forfeiture for prior nonuse against any
1116 right determined to be valid in the decree, but shall not bar a claim for periods of nonuse that
1117 occur after the entry of the decree.

1118 (iv) A proposed determination by the state engineer in an action for general
1119 determination of rights under Chapter 4, Determination of Water Rights, shall bar any claim of
1120 forfeiture for prior nonuse against any right proposed to be valid, unless a timely objection has
1121 been filed within the time allowed in Chapter 4, Determination of Water Rights.

1122 (d) The extension of time to resume the use of that water may not exceed five years
1123 unless the time is further extended by the state engineer.

1124 (e) The provisions of this section are applicable whether the unused or abandoned
1125 water or a portion of the water is permitted to run to waste or is used by others without right
1126 with the knowledge of the water right holder, provided that the use of water pursuant to a lease
1127 or other agreement with the appropriator or the appropriator's successor shall be considered to
1128 constitute beneficial use.

1129 (f) The provisions of this section shall not apply:

1130 (i) to those periods of time when a surface water source fails to yield sufficient water to
1131 satisfy the water right, or when groundwater is not available because of a sustained drought;

1132 (ii) to water stored in reservoirs pursuant to an existing water right, where the stored
1133 water is being held in storage for present or future use; or

1134 (iii) when a water user has beneficially used substantially all of a water right within a
1135 five-year period, provided that this exemption shall not apply to the adjudication of a water
1136 right in a general determination of water rights under Chapter 4, Determination of Water
1137 Rights.

1138 (g) Groundwater rights used to supplement the quantity or quality of other water
1139 supplies may not be subject to loss or reduction under this section if not used during periods
1140 when the other water source delivers sufficient water so as to not require use of the
1141 supplemental groundwater.

1142 (4) (a) The state engineer shall furnish an application requiring the following
1143 information:

- 1144 (i) the name and address of the applicant;
- 1145 (ii) a description of the water right or a portion of the water right, including the point of
1146 diversion, place of use, and priority;
- 1147 (iii) the date the water was last diverted and placed to beneficial use;
- 1148 (iv) the quantity of water;
- 1149 (v) the period of use;
- 1150 (vi) the extension of time applied for;
- 1151 (vii) a statement of the reason for the nonuse of the water; and
- 1152 (viii) any other information that the state engineer requires.
- 1153 (b) Filing the application extends the time during which nonuse may continue until the
1154 state engineer issues his order on the nonuse application.
- 1155 (c) (i) Upon receipt of the application, the state engineer shall publish a notice of the
1156 application once a week for two successive weeks in a newspaper of general circulation in the
1157 county in which the source of the water supply is located and where the water is to be used.
- 1158 (ii) The notice shall:
 - 1159 (A) state that an application has been made; and
 - 1160 (B) specify where the interested party may obtain additional information relating to the
1161 application.
- 1162 (d) Any interested person may file a written protest with the state engineer against the
1163 granting of the application:
 - 1164 (i) within 20 days after the notice is published, if the adjudicative proceeding is
1165 informal; and
 - 1166 (ii) within 30 days after the notice is published, if the adjudicative proceeding is
1167 formal.
- 1168 (e) In any proceedings to determine whether the application for extension should be
1169 approved or rejected, the state engineer shall follow the procedures and requirements of Title
1170 63, Chapter 46b, Administrative Procedures Act.
- 1171 (f) After further investigation, the state engineer may approve or reject the application.
- 1172 (5) (a) Nonuse applications on all or a portion of a water right shall be granted by the
1173 state engineer for periods not exceeding five years each, upon a showing of reasonable cause
1174 for nonuse.

- 1175 (b) Reasonable causes for nonuse include:
- 1176 (i) demonstrable financial hardship or economic depression;
- 1177 (ii) the initiation of recognized water conservation or efficiency practices, or the
1178 operation of a groundwater recharge recovery program approved by the state engineer;
- 1179 (iii) operation of legal proceedings;
- 1180 (iv) the holding of a water right or stock in a mutual water company without use by any
1181 public water supply entity to meet the reasonable future requirements of the public;
- 1182 (v) situations where, in the opinion of the state engineer, the nonuse would assist in
1183 implementing an existing, approved water management plan;
- 1184 (vi) situations where all or part of the land on which water is used is contracted under
1185 an approved state agreement or federal conservation following program;
- 1186 (vii) the loss of capacity caused by deterioration of the water supply or delivery
1187 equipment if the applicant submits, with the application, a specific plan to resume full use of
1188 the water right by replacing, restoring, or improving the equipment; or
- 1189 (viii) any other reasonable cause.
- 1190 (6) (a) Sixty days before the expiration of any extension of time, the state engineer
1191 shall notify the applicant by ~~registered~~ mail or by any form of electronic communication
1192 through which receipt is verifiable, of the date when the extension period will expire.
- 1193 (b) Before the date of expiration, the applicant shall either:
- 1194 (i) file a verified statement with the state engineer setting forth the date on which use of
1195 the water was resumed, and whatever additional information is required by the state engineer;
1196 or
- 1197 (ii) apply for a further extension of time in which to resume use of the water according
1198 to the procedures and requirements of this section.
- 1199 (c) Upon receipt of the applicant's properly completed, verified statement, the state
1200 engineer shall conduct investigations necessary to verify that beneficial use has resumed and, if
1201 so, shall issue a certificate of resumption of use of the water as evidenced by the resumed
1202 beneficial use.
- 1203 (7) The appropriator's water right or a portion of the water right ceases and the water
1204 reverts to the public if the:
- 1205 (a) appropriator or the appropriator's successor in interest fails to apply for an

1206 extension of time;

1207 (b) state engineer denies the nonuse application; or

1208 (c) appropriator or the appropriator’s successor in interest fails to apply for a further
1209 extension of time.

1210 Section 38. Section **73-2-4** is amended to read:

1211 **73-2-4. Deputy and assistants -- Employment and salaries -- Purchase of**
1212 **equipment and supplies.**

1213 For the purpose of performing the duties of his office the state engineer may [~~appoint a~~
1214 ~~chief~~];

1215 (1) employ a deputy[~~employ~~] and all necessary assistants[~~;~~];

1216 (2) fix [~~their~~] division employee's salaries in accordance with salary standards adopted
1217 by the Department of Finance; and

1218 (3) purchase all necessary equipment and supplies.

1219 Section 39. Section **73-3-8** is amended to read:

1220 **73-3-8. Approval or rejection of application -- Requirements for approval --**
1221 **Application for specified period of time -- Filing of royalty contract for removal of salt or**
1222 **minerals.**

1223 (1) (a) It shall be the duty of the state engineer to approve an application if: [~~(a)~~]

1224 (i) there is unappropriated water in the proposed source; [~~(b)~~]

1225 (ii) the proposed use will not impair existing rights or interfere with the more
1226 beneficial use of the water; [~~(c)~~]

1227 (iii) the proposed plan is physically and economically feasible, unless the application is
1228 filed by the United States Bureau of Reclamation, and would not prove detrimental to the
1229 public welfare; [~~(d)~~]

1230 (iv) the applicant has the financial ability to complete the proposed works; and [~~(e)~~]

1231 (v) the application was filed in good faith and not for purposes of speculation or
1232 monopoly.

1233 (b) (i) If the state engineer, because of information in [~~his~~] the state engineer's
1234 possession obtained either by [~~his~~] the state engineer's own investigation or otherwise, has
1235 reason to believe that an application to appropriate water will interfere with its more beneficial
1236 use for irrigation, domestic or culinary, stock watering, power or mining development, or

1237 manufacturing, or will unreasonably affect public recreation or the natural stream environment,
1238 or will prove detrimental to the public welfare, it is [~~his~~] the state engineer's duty to withhold
1239 [~~his~~] approval or rejection of the application until [~~he~~] the state engineer has investigated the
1240 matter.

1241 (ii) If an application does not meet the requirements of this section, it shall be rejected.

1242 (2) (a) An application to appropriate water for industrial, power, mining development,
1243 manufacturing purposes, agriculture, or municipal purposes may be approved for a specific and
1244 certain period from the time the water is placed to beneficial use under the application, but in
1245 no event may an application be granted for a period of time less than that ordinarily needed to
1246 satisfy the essential and primary purpose of the application or until the water is no longer
1247 available as determined by the state engineer.

1248 (b) At the expiration of the period fixed by the state engineer the water shall revert to
1249 the public and is subject to appropriation as provided by [~~Title 73. The~~] this title.

1250 (c) No later than 60 calendar days before the expiration date of the fixed time period,
1251 the state engineer shall send notice by mail or by any form of electronic communication
1252 through which receipt is verifiable, to the applicant of record.

1253 (d) Except as provided by Subsection (2)(e), the state engineer may extend any limited
1254 water right upon a showing that:

1255 (i) the essential purpose of the original application has not been satisfied[~~, that~~];

1256 (ii) the need for an extension is not the result of any default or neglect by the
1257 applicant[~~;~~]; and [~~that~~]

1258 (iii) the water is still available[~~; except no~~].

1259 (e) No extension shall exceed the time necessary to satisfy the primary purpose of the
1260 original application.

1261 (f) A request for extension of the fixed time period must be filed in writing in the
1262 office of the state engineer [~~not later than 60 days~~] on or before the expiration date of the
1263 application.

1264 (3) (a) Before the approval of any application for the [~~appropriations~~] appropriation of
1265 water from navigable lakes or streams of the state [~~which~~] that contemplates the recovery of
1266 salts and other minerals therefrom by precipitation or otherwise, the applicant shall file with the
1267 state engineer a copy of a contract for the payment of royalties to the state [~~of Utah~~].

1268 (b) The approval of an application shall be revoked in the event of the failure of the
1269 applicant to comply with terms of ~~[his]~~ the royalty contract.

1270 Section 40. Section **73-3-12** is amended to read:

1271 **73-3-12. Time limit on construction and application to beneficial use --**

1272 **Extensions -- Procedures and criteria.**

1273 (1) As used in this section, "public agency" means:

1274 (a) a public water supply agency of the state or a political subdivision of the state; or

1275 (b) the Bureau of Reclamation.

1276 (2) (a) The construction of the works and the application of water to beneficial use
1277 shall be diligently prosecuted to completion within the time fixed by the state engineer.

1278 (b) Extensions of time, not exceeding 50 years from the date of approval of the
1279 application, except as provided in Subsection (2)(c), may be granted by the state engineer on
1280 proper showing of diligence or reasonable cause for delay.

1281 (c) Additional extensions of time, beyond 50 years, may be granted by the state
1282 engineer on applications held by any public agency, if the public agency can demonstrate the
1283 water will be needed to meet the reasonable future requirements of the public.

1284 (d) All requests for extension of time ~~[shall be made by signed statement and]~~ shall be
1285 filed in the office of the state engineer on or before the date fixed for filing proof of
1286 appropriation.

1287 (e) Extensions not exceeding 14 years after the date of approval may be granted by the
1288 state engineer upon a sufficient showing ~~[by signed statement]~~, but extensions beyond 14 years
1289 shall be granted only after application and publication of notice.

1290 (f) (i) The state engineer shall publish a notice of the application once a week for two
1291 successive weeks, in a newspaper of general circulation, in the county in which the source of
1292 the water supply is located and where the water is to be used.

1293 (ii) The notice shall:

1294 (A) state that an application has been made; and

1295 (B) specify where the interested party may obtain additional information relating to the
1296 application.

1297 (g) Any person who owns a water right from the source of supply referred to in
1298 Subsection (2)(f) or holds an application from that source of supply may file a protest with the

1299 state engineer:

1300 (i) within 20 days after the notice is published, if the adjudicative proceeding is
1301 informal; and

1302 (ii) within 30 days after the notice is published, if the adjudicative proceeding is
1303 formal.

1304 (h) In considering an application to extend the time in which to place water to
1305 beneficial use under an approved application, the state engineer shall deny the extension and
1306 declare the application lapsed, unless the applicant affirmatively shows that the applicant has
1307 exercised or is exercising reasonable and due diligence in working toward completion of the
1308 appropriation.

1309 (i) (i) If reasonable and due diligence is shown by the applicant, the state engineer shall
1310 approve the extension.

1311 (ii) The approved extension is effective so long as the applicant continues to exercise
1312 reasonable diligence in completing the appropriation.

1313 (j) (i) The state engineer shall consider the holding of an approved application by any
1314 public agency to meet the reasonable future requirements of the public to be reasonable and
1315 due diligence within the meaning of this section for the first 50 years.

1316 (ii) The state engineer may approve extensions beyond 50 years for a public agency, if
1317 the agency provides information sufficient to demonstrate the water will be needed to meet the
1318 reasonable future requirements of the public.

1319 (k) If the state engineer finds unjustified delay or lack of diligence in prosecuting the
1320 works to completion, the state engineer may deny the extension or may grant the request in part
1321 or upon conditions, including a reduction of the priority of all or part of the application.

1322 (3) (a) Except as provided in Subsections (3)(b) and (c), an application upon which
1323 proof has not been submitted shall lapse and have no further force or effect after the expiration
1324 of 50 years from the date of its approval.

1325 (b) If the works are constructed with which to make beneficial use of the water applied
1326 for, the state engineer may, upon showing of that fact, grant additional time beyond the 50-year
1327 period in which to make proof.

1328 (c) An application held by a public agency to meet the reasonable future requirements
1329 of the public, for which proof of appropriation has not been submitted, shall lapse, unless

1330 extended as provided in Subsection (2)(j).

1331 Section 41. Section **73-4-3** is amended to read:

1332 **73-4-3. Procedure for action to determine rights -- Notice to and list of claimants**
1333 **-- Manner of giving notice of further proceedings -- Duties of engineer -- Survey -- Notice**
1334 **of completion.**

1335 (1) Upon the filing of any action by the state engineer as provided in Section 73-4-1, or
1336 by any person [~~or persons~~] claiming the right to [~~the~~] use [~~of~~] the waters of any river system,
1337 lake, underground water basin, or other natural source of supply[~~, which~~] that involves a
1338 determination of the rights to the major part of the water of [~~such~~] the source of supply or the
1339 rights of ten or more of the claimants of [~~such~~] the source of supply, the clerk of the district
1340 court shall notify the state engineer that [~~such~~] a suit has been filed.

1341 (2) (a) The state engineer then shall give notice to the claimants by publishing notice
1342 once a week for two consecutive weeks in a newspaper designated by the court as most likely
1343 to give notice to such claimants.

1344 (b) The notice shall [~~set forth that~~] state: [~~such~~]

1345 (i) an action has been filed;

1346 (ii) the name of the action [~~and~~];

1347 (iii) the name and location of the court in which the action is pending; and

1348 (iv) the name or description of the water source involved[~~, and shall require claimants~~].

1349 (c) Claimants to the use of water [~~therefrom to~~] shall notify the state engineer within 90
1350 days from the date notice is given of their names and addresses.

1351 (d) After the expiration of 90 days, the state engineer shall prepare a list [~~which~~] that
1352 shall include the names and addresses of all claimants then of record in [~~his~~] the state
1353 engineer's office and all claimants who have notified the state engineer of their addresses, and
1354 this list shall be certified by the state engineer as complete and filed with the clerk of the court.

1355 (e) The court upon petition may by order permit the addition of names and addresses to
1356 this list at any time during the pendency of the action, and the clerk of the court may, without
1357 court order, upon notice from the claimant note any change of address.

1358 (f) If any claimant appears in this action by an attorney, the clerk shall note on the list
1359 the address of the attorney.

1360 (g) After the list is filed by the state engineer, notice of further proceedings, after

1361 service of summons, may be given without court order by mailing a copy thereof to the persons
1362 listed at the addresses listed and by mailing a copy thereof to any attorney of record for any
1363 such person, and notice may be given to such listed persons and to all other claimants by
1364 publication in the manner and for the time prescribed by order of the district court. [~~When~~
1365 ~~such~~]

1366 (3) After the statement or list [~~shall have been~~] is filed, the state engineer shall begin
1367 the survey of the water source and the ditches, canals, wells, tunnels, or other works diverting
1368 water therefrom[~~; and as~~].

1369 (4) (a) As soon as [~~this~~] the survey [~~has been completed;~~] is complete, the state
1370 engineer shall file notice of completion with the clerk and give notice by [~~registered~~] mail or by
1371 personal service to all claimants whose names appear on the list that:

1372 (i) the survey [~~has been completed and that~~] is complete;

1373 (ii) their claims are due within 90 days from the date of notice[~~;~~]; and

1374 (iii) within 90 days after [~~such~~] service of [~~such~~] the notice, each claimant must file a
1375 written statement with the clerk of the court setting forth [~~his~~] the claimant's respective claim to
1376 the use of [~~such~~] the water.

1377 (b) Notice given by mail [~~shall be~~] is complete when the notice is mailed.

1378 (5) When [~~such~~] a suit has been filed by the state engineer as provided by Section
1379 73-4-1, or by any person [~~or persons~~] involving the major part of the waters of any river
1380 system, lake, underground water basin, or other source of supply, or the rights of ten or more of
1381 the water claimants of [~~such~~] the source of supply, whether [~~such~~] the suit is filed prior to or
1382 after the enactment hereof, [~~it shall be the duty of~~] the state engineer, upon receiving notice
1383 [~~thereof to~~], shall examine the records of [~~his~~] the state engineer's office with respect to the
1384 water source involved, and if they are incomplete to make such further investigation and survey
1385 as may be necessary for the preparation of the report and recommendation as required by
1386 Section 73-4-11.

1387 (6) In all such cases the court shall proceed to determine the water rights involved in
1388 the manner provided by this chapter, and not otherwise.

1389 Section 42. Section **73-4-4** is amended to read:

1390 **73-4-4. Summons -- Service -- Publication -- Form -- Delivery of form for**
1391 **claimant's statement.**

1423 in the next succeeding section, all the particulars relating to the appropriation of the water of
 1424 said river system or water source to which ~~he~~ the claimant lays claim.

1425 Section 43. Section **73-4-11** is amended to read:

1426 **73-4-11. Report and recommendation by engineer to court.**

1427 (1) Within ~~thirty~~ 30 days after the expiration of the ~~60~~ 90 days allowed for filing
 1428 statements of claims, the state engineer shall begin to tabulate the facts contained in the
 1429 statements filed and to investigate, whenever ~~he~~ the state engineer shall ~~deem~~ consider
 1430 necessary, the facts set forth in said statements by reference to the surveys already made or by
 1431 further surveys, and shall as expeditiously as possible make a report to the court with ~~his~~ the
 1432 recommendation of how all rights involved shall be determined.

1433 (2) After full consideration of the statements of claims, and of the surveys, records, and
 1434 files, and after a personal examination of the river system or water source involved, if such
 1435 examination is ~~deemed~~ considered necessary, the state engineer shall formulate a report and a
 1436 proposed determination of all rights to the use of the water of such river system or water
 1437 source, and a copy of the same shall be mailed ~~by regular mail~~ to each claimant with notice
 1438 that any claimant dissatisfied therewith may within ~~ninety~~ 90 days from such date of mailing
 1439 file with the clerk of the district court a written objection thereto duly verified on oath.

1440 (3) The state engineer shall distribute the waters from the natural streams or other
 1441 natural sources in accordance with the proposed determination or modification thereof by court
 1442 order until a final decree is rendered by the court; provided, if the right to the use of said waters
 1443 has been theretofore decreed or adjudicated, said waters shall be distributed in accordance with
 1444 such decree until the same is reversed, modified, vacated, or otherwise legally set aside.

1445 Section 44. Section **73-5-4** is amended to read:

1446 **73-5-4. Controlling works and measuring devices.**

1447 ~~[Every]~~ (1) To assist the state engineer or water commissioner in the regulation,
 1448 distribution, and measurement of water, each person using water in this state shall construct or
 1449 install and maintain ~~[a substantial head gate, cap, valve or other]~~ controlling works~~[- weir~~
 1450 ~~flume]~~ and a measuring device at:

1451 (a) each [point] location where water is diverted ~~[or turned out, for the purpose of~~
 1452 ~~regulating and measuring the quantity of water that may be used. Such controlling works or~~
 1453 ~~measuring device shall be of such design as the state engineer may approve and so that the~~

1454 same can be locked and kept set by him or his assistants; and such owner shall construct and
1455 maintain, when required by the state engineer, flumes or other measuring devices at such points
1456 along his ditch as may be necessary for the purpose of assisting the state engineer or his
1457 assistants in determining the amount of water that is to be diverted into his ditch from the
1458 stream or water source, or taken from it by the various users. Every] from a source; and

1459 (b) any other location required by the state engineer.

1460 (2) Each person using water in this state shall make the controlling works and
1461 measuring device accessible to the state engineer or water commissioner.

1462 (3) The state engineer shall approve the design of:

1463 (a) the measuring device; and

1464 (b) controlling works so that the state engineer or a water commissioner may regulate
1465 and lock the works.

1466 (4) (a) Each owner or manager of a reservoir [located across or upon the bed of a
1467 natural stream] shall construct and maintain[, when required] a measuring device as directed by
1468 the state engineer[, a flume or other measuring device of a plan to be approved by the state
1469 engineer, below such reservoir at a point approved by him, and a flume or measuring device
1470 above such reservoir on each stream or source of supply discharging into such reservoir, for the
1471 purpose of assisting the state engineer in determining the amount of water to which prior
1472 appropriators are entitled, and thereafter diverting it for such prior appropriators' use. If the
1473 owner of irrigation works, canals, reservoirs, wells, pumps or tunnels shall refuse or neglect] to
1474 measure the inflow, storage content, and outflow from the reservoir.

1475 (b) The state engineer shall approve the design and location of the measuring device.

1476 (c) The owner or manager of a reservoir shall make the measuring device accessible to
1477 the state engineer or water commissioner.

1478 (5) If a water user refuses or neglects to construct or install [such head gates, caps,
1479 valves, flumes] the controlling works or measuring [devices] device after [thirty] 30 days'
1480 notice to do so by the state engineer, the state engineer may:

1481 (a) forbid the use of water until the user [thereof shall comply with his] complies with
1482 the state engineer's requirement[, or the state engineer may proceed to construct or install or
1483 cause to be constructed or installed such controlling works or measuring devices, and the cost
1484 of the same shall be a lien against the lands and water rights served thereby, and the state

1485 engineer is authorized to bring action in the name of the state to foreclose such lien.]; and

1486 (b) commence enforcement proceedings authorized by Section 73-2-25.

1487 Section 45. Section 73-18b-1 is amended to read:

1488 **73-18b-1. Water safety rules and regulations -- Adoption.**

1489 (1) The Board of Parks and Recreation may make rules necessary to promote safety in
1490 swimming, scuba diving, and related activities on any waters where public boating is
1491 permitted.

1492 (2) The ~~commission~~ Board of Parks and Recreation may consider recommendations
1493 of and cooperate with other state agencies and the owners or operators of those waters.

1494 Section 46. Section 78-12-23 is amended to read:

1495 **78-12-23. Within six years -- Mesne profits of real property -- Instrument in**
1496 **writing.**

1497 An action may be brought within six years:

1498 (1) for the mesne profits of real property;

1499 (2) upon any contract, obligation, or liability founded upon an instrument in writing,
1500 except those mentioned in Section 78-12-22[-]; and

1501 (3) to recover fire suppression costs or other damages caused by wildland fire.

Legislative Review Note
as of 11-16-06 8:26 AM

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-18-06 2:00 PM

The Natural Resources, Agriculture, and Environment Interim Committee recommended this bill.

H.B. 48 - Department of Natural Resources Amendments

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

1/3/2007, 11:53:37 AM, Lead Analyst: Djambov, I.

Office of the Legislative Fiscal Analyst