

**Senator Margaret Dayton** proposes the following substitute bill:

**DEPARTMENT OF NATURAL RESOURCES**

**AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Richard W. Wheeler**

Senate Sponsor: Darin G. Peterson

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**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;
- ▶ 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



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

31 **Monies Appropriated in this Bill:**

32       None

33 **Other Special Clauses:**

34       None

35 **Utah Code Sections Affected:**

36 AMENDS:

- 37       **23-13-2**, as last amended by Chapter 66, Laws of Utah 2004
- 38       **23-19-4**, as last amended by Chapter 126, Laws of Utah 1983
- 39       **23-19-5**, as last amended by Chapter 76, Laws of Utah 1986
- 40       **23-19-9**, as repealed and reenacted by Chapter 224, Laws of Utah 2001
- 41       **23-20-9**, as repealed and reenacted by Chapter 178, Laws of Utah 1993
- 42       **41-22-2**, as last amended by Chapter 2, Laws of Utah 2005
- 43       **41-22-12**, as last amended by Chapter 37, Laws of Utah 1999
- 44       **56-1-15**, Utah Code Annotated 1953
- 45       **65A-1-4**, as last amended by Chapter 159, Laws of Utah 1996
- 46       **65A-6-8**, as last amended by Chapter 138, Laws of Utah 1992
- 47       **73-1-4**, as last amended by Chapter 99, Laws of Utah 2003
- 48       **73-2-4**, Utah Code Annotated 1953
- 49       **73-2-25**, as enacted by Chapter 33, Laws of Utah 2005
- 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       **73-3b-206**, as enacted by Chapter 146, Laws of Utah 1991
- 53       **73-4-3**, as last amended by Chapter 252, Laws of Utah 1979
- 54       **73-4-4**, Utah Code Annotated 1953
- 55       **73-4-11**, Utah Code Annotated 1953
- 56       **73-5-4**, Utah Code Annotated 1953

- 57           **73-18b-1**, as last amended by Chapter 276, Laws of Utah 1997
- 58           **78-12-23**, as last amended by Chapters 79 and 210, Laws of Utah 1996
- 59 RENUMBERS AND AMENDS:
- 60           **65A-8-101**, (Renumbered from 65A-8-1, as last amended by Chapter 319, Laws of
- 61 Utah 1997)
- 62           **65A-8-102**, (Renumbered from 65A-8-2, as last amended by Chapter 294, Laws of
- 63 Utah 1994)
- 64           **65A-8-103**, (Renumbered from 65A-8-3, as repealed and reenacted by Chapter 294,
- 65 Laws of Utah 1994)
- 66           **65A-8-104**, (Renumbered from 65A-8-1.1, as last amended by Chapter 294, Laws of
- 67 Utah 1994)
- 68           **65A-8-105**, (Renumbered from 65A-8-1.2, as last amended by Chapter 352, Laws of
- 69 Utah 2004)
- 70           **65A-8-201**, (Renumbered from 65A-8-4, as repealed and reenacted by Chapter 294,
- 71 Laws of Utah 1994)
- 72           **65A-8-202**, (Renumbered from 65A-8-5, as repealed and reenacted by Chapter 294,
- 73 Laws of Utah 1994)
- 74           **65A-8-203**, (Renumbered from 65A-8-6, as last amended by Chapter 47, Laws of Utah
- 75 2004)
- 76           **65A-8-204**, (Renumbered from 65A-8-6.1, as last amended by Chapter 256, Laws of
- 77 Utah 2002)
- 78           **65A-8-205**, (Renumbered from 65A-8-6.2, as last amended by Chapter 152, Laws of
- 79 Utah 2006)
- 80           **65A-8-206**, (Renumbered from 65A-8-6.3, as last amended by Chapter 319, Laws of
- 81 Utah 1997)
- 82           **65A-8-207**, (Renumbered from 65A-8-6.4, as last amended by Chapter 152, Laws of
- 83 Utah 2006)
- 84           **65A-8-208**, (Renumbered from 65A-8-6.5, as enacted by Chapter 319, Laws of Utah
- 85 1997)
- 86           **65A-8-209**, (Renumbered from 65A-8-7, as repealed and reenacted by Chapter 294,
- 87 Laws of Utah 1994)

- 88           **65A-8-210**, (Renumbered from 65A-8-8, as repealed and reenacted by Chapter 294,  
89 Laws of Utah 1994)  
90           **65A-8-211**, (Renumbered from 65A-8-9, as last amended by Chapter 71, Laws of Utah  
91 1998)  
92           **65A-8-212**, (Renumbered from 65A-8-10, as repealed and reenacted by Chapter 294,  
93 Laws of Utah 1994)  
94           **65A-8-301**, (Renumbered from 63-11-57, as enacted by Chapter 188, Laws of Utah  
95 1975)  
96           **65A-8-302**, (Renumbered from 63-11-58, as last amended by Chapter 159, Laws of  
97 Utah 1996)  
98           **65A-8-303**, (Renumbered from 63-11-59, as last amended by Chapter 305, Laws of  
99 Utah 1983)  
100          **65A-8-304**, (Renumbered from 63-11-60, as last amended by Chapter 305, Laws of  
101 Utah 1983)  
102          **65A-8-305**, (Renumbered from 63-11-60.3, as enacted by Chapter 305, Laws of Utah  
103 1983)  
104          **65A-8-306**, (Renumbered from 63-11-60.4, as last amended by Chapter 10, Laws of  
105 Utah 1997)  
106          **65A-8-307**, (Renumbered from 63-11-61, as last amended by Chapter 305, Laws of  
107 Utah 1983)  
108          **65A-8-308**, (Renumbered from 63-11-64, as last amended by Chapter 38, Laws of Utah  
109 1993)  
110          **65A-8-309**, (Renumbered from 63-11-65, as enacted by Chapter 305, Laws of Utah  
111 1983)

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

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

115           **23-13-2. Definitions.**

116           As used in this title:

117           (1) "Activity regulated under this title" means any act, attempted act, or activity  
118 prohibited or regulated under any provision of Title 23, Wildlife Resources Code of Utah, or

119 the rules, and proclamations promulgated thereunder pertaining to protected wildlife including:

120 (a) fishing;

121 (b) hunting;

122 (c) trapping;

123 (d) taking;

124 (e) permitting any dog, falcon, or other domesticated animal to take;

125 (f) transporting;

126 (g) possessing;

127 (h) selling;

128 (i) wasting;

129 (j) importing;

130 (k) exporting;

131 (l) rearing;

132 (m) keeping;

133 (n) utilizing as a commercial venture; and

134 (o) releasing to the wild.

135 (2) "Aquatic animal" has the meaning provided in Section 4-37-103.

136 (3) "Aquatic wildlife" means species of fish, mollusks, crustaceans, aquatic insects, or  
137 amphibians.

138 (4) "Aquaculture facility" has the meaning provided in Section 4-37-103.

139 (5) "Bag limit" means the maximum limit, in number or amount, of protected wildlife  
140 that one person may legally take during one day.

141 (6) "Big game" means species of hooved protected wildlife.

142 (7) "Carcass" means the dead body of an animal or its parts.

143 (8) "Certificate of registration" means a document issued under this title, or any rule or  
144 proclamation of the Wildlife Board granting authority to engage in activities not covered by a  
145 license, permit, or tag.

146 (9) "Closed season" means the period of time during which the taking of protected  
147 wildlife is prohibited.

148 (10) "Conservation officer" means a full-time, permanent employee of the Division of  
149 Wildlife Resources who is POST certified as a peace or a special function officer.

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

181 (23) "Intimidate or harass" means to physically interfere with or impede, hinder, or  
182 diminish the efforts of an officer in the performance of the officer's duty.

183 (24) "Nonresident" means a person who does not qualify as a resident.

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

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

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

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

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

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

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

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

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

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

201 (b) escaping into the wild.

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

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

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

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

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

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

212 (37) (a) "Resident" means a person who:  
213 (i) has been domiciled in the state [~~of Utah~~] for six consecutive months immediately  
214 preceding the purchase of a license; and  
215 (ii) does not claim residency for hunting, fishing, or trapping in any other state or  
216 country.

217 (b) A Utah resident retains Utah residency if that person leaves this state:  
218 (i) to serve in the armed forces of the United States or for religious or educational  
219 purposes; and  
220 (ii) complies with Subsection (37)(a)(ii).

221 (c) (i) A member of the armed forces of the United States and dependents are residents  
222 for the purposes of this chapter as of the date the member reports for duty under assigned  
223 orders in the state if the member:  
224 (A) is not on temporary duty in this state; and  
225 (B) complies with Subsection (37)(a)(ii).

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

228 (d) A nonresident attending an institution of higher learning in this state as a full-time  
229 student may qualify as a resident for purposes of this chapter if the student:  
230 (i) has been present in this state for 60 consecutive days immediately preceding the  
231 purchase of the license; and  
232 (ii) complies with Subsection (37)(a)(ii).

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

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

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

239 (39) "Small game" means species of protected wildlife:  
240 (a) commonly pursued for sporting purposes; and  
241 (b) not classified as big game, aquatic wildlife, or furbearers and excluding turkey,  
242 cougar, and bear.



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

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

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

250 (43) "Take" means to:

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

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

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

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

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

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

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

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

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

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

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

264 (g) bison - any bull.

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

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

269 (a) exceeds state water quality standards; or

270 (b) could be harmful to protected wildlife.

271 (49) "Wildlife" means:

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

273 (b) mollusks; and

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

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

276 **23-19-4. Alien's and nonresident peace officer's right to licenses and certificates.**

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

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

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

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

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

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

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

291 (1) It is unlawful for:

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

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

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

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

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

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

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

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

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

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

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

312 (i) is convicted of:

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

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

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

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

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

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

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

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

326 (ii) the duration of the suspension.

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

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

332 (a) seven years for:

333 (i) a felony conviction;

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

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

338 (b) five years for:

339 (i) a class A misdemeanor conviction;

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

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

344 (c) three years for:

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

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

349 (iii) being charged with an offense punishable as a class B misdemeanor ~~[under Section~~  
350 ~~23-20-4]~~, the prosecution of which is suspended pursuant to a diversion agreement~~[-]; and~~

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

352 (d) one year for:

353 (i) a class C misdemeanor conviction;

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

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

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

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

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

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

367 (b) If a hearing officer addresses two or more single criminal episodes in a hearing, the  
368 suspension periods of any license or permit privileges of the same type suspended, [~~pursuant~~  
369 according to Subsection (2), [~~shall~~] may run consecutively.

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

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

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

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

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

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

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

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

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

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

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

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

397 [~~(B) plea of guilty or no contest to an offense punishable as a class B misdemeanor,~~

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

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

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

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

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

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

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

412 (A) this title;

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

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

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

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

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

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

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

428 (b) All certificates of registration for the harvesting of brine shrimp eggs, as defined in

429 Section 59-23-3, shall be suspended by a hearing officer, if the hearing officer determines the  
430 holder of the certificates of registration has violated Section 59-23-5.

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

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

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

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

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

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

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

448 ~~[(11)] (10) (a)~~ A person may not apply for, purchase, possess, or attempt to exercise the  
449 benefits conferred by any permit, license, or certificate of registration specified in an order of  
450 suspension while that order is in effect.

451 ~~(b)~~ Any license possessed or obtained in violation of the order shall be considered  
452 invalid.

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

455 ~~[(13)] (11)~~ Before suspension under this section, a person must be:

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

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

458 ~~[(14)] (12) (a)~~ A person may file an appeal of a hearing officer's decision with the  
459 Wildlife Board.

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

462 (c) The Wildlife Board may:

463 (i) take no action;

464 (ii) vacate or remand the decision; or

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

466 ~~[(14)]~~ (13) The division shall suspend and reinstate all hunting, fishing, trapping, and  
467 falconry privileges consistent with Title 23, Chapter 25, Wildlife Violator Compact.

468 ~~[(15)]~~ (14) The Wildlife Board may make rules to implement this section in accordance  
469 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act~~[-, and Title 63, Chapter 46b,~~  
470 ~~Administrative Procedures Act].~~

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

472 **23-20-9. Donating protected wildlife.**

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

475 (a) the residence of the donor;

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

477 (c) a meat locker;

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

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

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

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

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

484 (b) the date of donation;

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

486 (d) the signature of the donor.

487 (3) Notwithstanding Subsections (1) and (2), a person may donate the hide of a big  
488 game animal to another person or organization at any place without a donation slip.

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

490 **41-22-2. Definitions.**



491 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

518 (12) "Off-highway implement of husbandry" means every all-terrain type I vehicle,  
519 motorcycle, or snowmobile [~~which~~] that is used by the owner or his agent for agricultural  
520 operations.

521 (13) "Operate" means to control the movement of or otherwise use an off-highway

522 vehicle.

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

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

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

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

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

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

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

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

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

542 **41-22-12. Restrictions on use of public lands.**

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

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

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

550 **56-1-15. Fire caused by sparks emitted.**

551 In any action for damages [~~on account of~~] from a fire caused by sparks emitted from  
552 locomotive engines on a [~~steam railroad~~] rail line, proof that the fire occurred and was caused

553 by sparks emitted from a locomotive engine operated by [~~such~~] the railroad [~~shall constitute~~] is  
554 prima facie evidence of negligence on the part of [~~such~~] the railroad.

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

556 **65A-1-4. Division of Forestry, Fire and State Lands -- Creation -- Power and**  
557 **authority.**

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

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

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

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

569 (4) The director shall inform the council:

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

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

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

574 [~~(5)~~] (6) (a) An aggrieved party to a final action by the director may appeal that action  
575 to the executive director of the Department of Natural Resources within 20 days after the  
576 action.

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

579 Section 10. Section **65A-6-8** is amended to read:

580 **65A-6-8. Mineral leases -- Cancellation -- Use of surface land -- Liability for**  
581 **damage.**

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

584 the lessee;

585 (a) remedies the violation[-];

586 (b) rectifies the condition[-]; or

587 (c) requests a hearing within;

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

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

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

591 (i) the right at all times to enter upon the leasehold for prospecting, exploring,

592 developing, and producing minerals; and [~~shall have~~]

593 (ii) reasonable use of the surface.

594 (b) The lessee shall not injure, damage, or destroy the improvements of the surface

595 owner or lessee.

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

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

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

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

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

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

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

610 (b) filed with the division.

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

613 **Part 1. General Provisions**

614 [~~65A-8-1~~]. **65A-8-101**. **Division responsibilities for fire control and the**

615 **preservation of forest, watershed, and other lands -- Reciprocal agreements for fire**  
616 **protection.**

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

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

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

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

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

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

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

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

634 ~~[65A-8-2].~~ **65A-8-102. State forester.**

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

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

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

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

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

644 ~~[65A-8-3].~~ **65A-8-103. Forestry and fire control funds.**

645 ~~[(1) All monies available to the division to meet the costs of Subsections (1)(a) through~~

646 ~~(d) are nonlapsing and available to the division until expended:]~~

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

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

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

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

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

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

656 ~~[(2)]~~ (3) (a) The collection and disbursement of all money made available to the  
657 division shall be in accordance with the rules of the Division of Finance.

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

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

662 **[65A-8-1.1]. 65A-8-104. Leaf-It-To-Us Children's Crusade for Trees**  
663 **program created -- Purpose -- Matching funds.**

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

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

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

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

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

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

676 (4) The division shall make rules ~~[for the administration of]~~ to administer the program

677 and place emphasis on post-planting care.

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

680 ~~[65A-8-1.2].~~ **65A-8-105. Urban and community forestry program.**

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

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

684 (3) The division may:

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

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

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

692 (4) The division shall:

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

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

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

700 **Part 2. Fire Control**

701 ~~[65A-8-4].~~ **65A-8-201. Uncontrolled fire is a public nuisance.**

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

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

707 ~~[65A-8-5].~~ **65A-8-202. Fire control -- County responsibilities.**

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

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

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

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

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

720 **~~65A-8-6~~. 65A-8-203. Cooperative fire protection agreements with counties.**

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

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

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

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

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

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

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

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



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

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

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

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

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

751 ~~[65A-8-6.1].~~ **65A-8-204. Wildland Fire Suppression Fund created.**

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

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

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

757 (a) payments by counties pursuant to written agreements made under Section  
758 ~~[65A-8-6.2]~~ 65A-8-205;

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

760 (c) money appropriated by the Legislature.

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

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

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

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

769 Section 20. Section **65A-8-205**, which is renumbered from Section 65A-8-6.2 is

770 renumbered and amended to read:

771 ~~[65A-8-6.2]~~. 65A-8-205. Agreements for coverage by the Wildland Fire  
772 **Suppression Fund -- Eligible lands -- County and state obligations -- Termination --**  
773 **Revocation.**

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

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

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

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

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

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

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

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

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

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

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

794 (3) (a) Any county that elects to initiate participation in the fund, or reestablish  
795 participation in the fund after participation was terminated, shall make an equity payment, in  
796 addition to the assessment provided in Subsection (2)(a)(i).

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

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

801 (4) The agreement shall provide that:

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

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

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

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

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

813 ~~[65A-8-6.3].~~ **65A-8-206. Disbursements from the Wildland Fire**  
814 **Suppression Fund.**

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

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

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

823 ~~[65A-8-6.4].~~ **65A-8-207. Division to administer Wildland Fire**  
824 **Suppression Fund -- Rulemaking -- Procedures.**

825 (1) By following the procedures and requirements of Title 63, Chapter 46a, Utah  
826 Administrative Rulemaking Act, the division shall make rules to administer the Wildland Fire  
827 Suppression Fund, including rules:

828 (a) requiring documentation for:

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

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

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

833 (i) normal fire suppression costs; and

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

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

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

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

842 **[~~65A-8-6.5~~]. 65A-8-208. Presuppression costs -- Disbursements from fund**  
843 **-- Credit against assessment -- Limited by appropriation.**

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

848 (2) Payments to a county for costs of presuppression and fire management activities in  
849 any year may not exceed the county's assessment under Subsection [~~65A-8-6.2~~]  
850 65A-8-205(2)(a).

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

854 (b) The credit may not exceed the county's assessment under Subsection [~~65A-8-6.2~~]  
855 65A-8-205(2)(a).

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

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

861 **[~~65A-8-7~~]. 65A-8-209. Responsibilities of county sheriffs and district fire**  
862 **wardens in controlling fires.**

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

866 (2) In all cases the sheriff shall:

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

868 (b) investigate and report fire causes; and

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

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

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

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

878 **~~[65A-8-8].~~ 65A-8-210. Fire control on state-owned lands -- Responsibilities of**  
879 **state agencies.**

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

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

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

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

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

892 **~~[65A-8-9].~~ 65A-8-211. Closed fire season -- Notice -- Violations -- Burning**  
893 **permits -- Personal liability -- Exemptions from burning permits.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

924 (7) A burning conducted in accordance with Subsection (6) is not a reckless burning

925 under Section 76-6-104 unless the fire escapes control and requires fire control action.

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

928 ~~[65A-8-10].~~ **65A-8-212. Power of state forester to close hazardous areas --**  
929 **Violations of an order closing an area.**

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

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

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

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

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

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

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

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

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

945 **Part 3. Heritage Trees**

946 ~~[63-11-57].~~ **65A-8-301. Legislative finding and purpose.**

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

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

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

954 ~~[63-11-58].~~ **65A-8-302. Definitions.**

955 As used in this [act] part:

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

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

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

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

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

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

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

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

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

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

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

973 ~~[63-11-59]~~. **65A-8-303. Application to alter or remove trees.**

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

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

979 (3) The application shall state:

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

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

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

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

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

986 ~~[63-11-60]~~. **65A-8-304. Guidelines and standards for granting or denying**



987 **applications to alter or remove trees.**

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

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

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

993 (i) insect infestation~~[-];~~

994 (ii) disease~~[-];~~

995 (iii) danger of falling~~[-];~~

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

997 (v) interference with utility services;

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

1000 ~~[(3)]~~ (c) the topography of the land and the effect of removal of the heritage tree or  
1001 trees on:

1002 (i) erosion~~[-];~~

1003 (ii) soil retention; and

1004 (iii) the diversion or increased flow of surface waters resultant upon alteration or  
1005 removal;

1006 ~~[(4)]~~ (d) the number of heritage trees existing in the neighborhood on improved  
1007 property ~~[and];~~

1008 (e) the effect alteration or removal would have on established standards and property  
1009 values in the area; and

1010 ~~[(5)]~~ (f) the number of heritage trees the particular parcel can support according to  
1011 good forestry practices.

1012 Section 32. Section **65A-8-305**, which is renumbered from Section 63-11-60.3 is  
1013 renumbered and amended to read:

1014 ~~**[63-11-60.3].**~~ **65A-8-305. Powers of division.**

1015 The division may:

1016 (1) grant or deny applications for designation of heritage trees from individuals, local  
1017 shade tree commissions, or local governments;

- 1018 (2) grant or deny applications for alteration or removal of heritage trees;
- 1019 (3) acquire land if one or more heritage trees are located on the land;
- 1020 (4) accept gifts, bequests, or donations; and
- 1021 (5) determine policies necessary to carry out this ~~[act]~~ part.

1022 Section 33. Section **65A-8-306**, which is renumbered from Section 63-11-60.4 is  
1023 renumbered and amended to read:

1024 ~~[63-11-60.4].~~ **65A-8-306. Heritage trees advisory committee -- Members --**  
1025 **Officers -- Expenses -- Functions.**

1026 (1) There is created a Heritage Trees Advisory Committee composed of five persons  
1027 appointed by the division from among persons who are members of the Utah ~~[Association of~~  
1028 ~~Shade Tree Commissions]~~ Community Forestry Council.

1029 (2) (a) Except as required by Subsection (2)(b), as terms of current committee members  
1030 expire, the division shall appoint each new member or reappointed member to a four-year term.

1031 (b) Notwithstanding the requirements of Subsection (2)(a), the division shall, at the  
1032 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
1033 committee members are staggered so that approximately half of the committee is appointed  
1034 every two years.

1035 ~~[(c) No two members shall be appointed from the same city.]~~

1036 (3) When a vacancy occurs in the membership for any reason, the replacement shall be  
1037 appointed for the unexpired term.

1038 (4) (a) The committee shall elect a chair who is responsible to call and conduct  
1039 meetings.

1040 (b) Three members present at a duly called meeting constitute a quorum for the  
1041 transaction of official business.

1042 (c) Members of the committee may meet as often as considered necessary.

1043 (d) The urban forestry staff person of the division shall serve as secretary to the  
1044 committee.

1045 (5) (a) Members shall receive no compensation or benefits for their services, but may  
1046 receive per diem and expenses incurred in the performance of the member's official duties at  
1047 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

1048 (b) Members may decline to receive per diem and expenses for their service.

1049 (6) The committee shall:

1050 (a) publish guidelines for division use in granting or denying applications for the  
1051 designation of heritage trees;

1052 (b) publish an annual register of designated heritage trees and distribute it to public  
1053 utilities, tree service companies, municipal forestry and parks departments, and the public; and

1054 (c) develop a system for visibly identifying designated heritage trees.

1055 Section 34. Section **65A-8-307**, which is renumbered from Section 63-11-61 is  
1056 renumbered and amended to read:

1057 **~~[63-11-61]~~. 65A-8-307. Exemption for emergency or permit.**

1058 This ~~[act]~~ part shall not apply to any emergency when heritage trees constitute a danger  
1059 to life or property, or to any person whose application for alteration or removal of a heritage  
1060 tree has been granted by the division.

1061 Section 35. Section **65A-8-308**, which is renumbered from Section 63-11-64 is  
1062 renumbered and amended to read:

1063 **~~[63-11-64]~~. 65A-8-308. Enforcement -- Prosecution of violations.**

1064 (1) County sheriffs, police, and other law enforcement officers within their respective  
1065 jurisdictions are responsible for the enforcement of this ~~[act]~~ part.

1066 (2) The county attorney or district attorney shall prosecute any violation of this ~~[act]~~  
1067 part.

1068 Section 36. Section **65A-8-309**, which is renumbered from Section 63-11-65 is  
1069 renumbered and amended to read:

1070 **~~[63-11-65]~~. 65A-8-309. Injury -- Violation of part -- Misdemeanor.**

1071 Any person who willfully or maliciously alters, injures, damages, or causes death of a  
1072 heritage tree or who otherwise violates this ~~[act]~~ part is guilty of a class B misdemeanor.

1073 Section 37. Section **73-1-4** is amended to read:

1074 **73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within  
1075 five years -- Extension of time.**

1076 (1) (a) In order to further the state policy of securing the maximum use and benefit of  
1077 its scarce water resources, a person entitled to the use of water has a continuing obligation to  
1078 place all of a water right to beneficial use.

1079 (b) The forfeiture of all or part of any right to use water for failure to place all or part of

1080 the water to beneficial use makes possible the allocation and use of water consistent with long  
1081 established beneficial use concepts.

1082 (c) The provisions of Subsections (2) through (6) shall be construed to carry out the  
1083 purposes and policies set forth in this Subsection (1).

1084 (2) As used in this section, "public water supply entity" means an entity that supplies  
1085 water as a utility service or for irrigation purposes and is also:

1086 (a) a municipality, water conservancy district, metropolitan water district, irrigation  
1087 district created under Section 17A-2-701.5, or other public agency;

1088 (b) a water company regulated by the Public Service Commission; or

1089 (c) any other owner of a community water system.

1090 (3) (a) When an appropriator or the appropriator's successor in interest abandons or  
1091 ceases to use all or a portion of a water right for a period of five years, the water right or the  
1092 unused portion of that water right ceases and the water reverts to the public, unless, before the  
1093 expiration of the five-year period, the appropriator or the appropriator's successor in interest  
1094 files a verified nonuse application with the state engineer.

1095 (b) (i) A nonuse application may be filed on all or a portion of the water right,  
1096 including water rights held by mutual irrigation companies.

1097 (ii) Public water supply entities that own stock in a mutual water company, after giving  
1098 written notice to the water company, may file nonuse applications with the state engineer on  
1099 the water represented by the stock.

1100 (c) (i) A water right or a portion of the water right may not be forfeited unless a judicial  
1101 action to declare the right forfeited is commenced within 15 years from the end of the latest  
1102 period of nonuse of at least five years.

1103 (ii) If forfeiture is asserted in an action for general determination of rights in  
1104 conformance with the provisions of Chapter 4, Determination of Water Rights, the 15-year  
1105 limitation period shall commence to run back in time from the date the state engineer's  
1106 proposed determination of rights is served upon each claimant.

1107 (iii) A decree entered in an action for general determination of rights under Chapter 4,  
1108 Determination of Water Rights, shall bar any claim of forfeiture for prior nonuse against any  
1109 right determined to be valid in the decree, but shall not bar a claim for periods of nonuse that  
1110 occur after the entry of the decree.

1111 (iv) A proposed determination by the state engineer in an action for general  
1112 determination of rights under Chapter 4, Determination of Water Rights, shall bar any claim of  
1113 forfeiture for prior nonuse against any right proposed to be valid, unless a timely objection has  
1114 been filed within the time allowed in Chapter 4, Determination of Water Rights.

1115 (d) The extension of time to resume the use of that water may not exceed five years  
1116 unless the time is further extended by the state engineer.

1117 (e) The provisions of this section are applicable whether the unused or abandoned  
1118 water or a portion of the water is permitted to run to waste or is used by others without right  
1119 with the knowledge of the water right holder, provided that the use of water pursuant to a lease  
1120 or other agreement with the appropriator or the appropriator's successor shall be considered to  
1121 constitute beneficial use.

1122 (f) The provisions of this section shall not apply:

1123 (i) to those periods of time when a surface water source fails to yield sufficient water to  
1124 satisfy the water right, or when groundwater is not available because of a sustained drought;

1125 (ii) to water stored in reservoirs pursuant to an existing water right, where the stored  
1126 water is being held in storage for present or future use; or

1127 (iii) when a water user has beneficially used substantially all of a water right within a  
1128 five-year period, provided that this exemption shall not apply to the adjudication of a water  
1129 right in a general determination of water rights under Chapter 4, Determination of Water  
1130 Rights.

1131 (g) Groundwater rights used to supplement the quantity or quality of other water  
1132 supplies may not be subject to loss or reduction under this section if not used during periods  
1133 when the other water source delivers sufficient water so as to not require use of the  
1134 supplemental groundwater.

1135 (4) (a) The state engineer shall furnish an application requiring the following  
1136 information:

1137 (i) the name and address of the applicant;

1138 (ii) a description of the water right or a portion of the water right, including the point of  
1139 diversion, place of use, and priority;

1140 (iii) the date the water was last diverted and placed to beneficial use;

1141 (iv) the quantity of water;

- 1142 (v) the period of use;
- 1143 (vi) the extension of time applied for;
- 1144 (vii) a statement of the reason for the nonuse of the water; and
- 1145 (viii) any other information that the state engineer requires.
- 1146 (b) Filing the application extends the time during which nonuse may continue until the
- 1147 state engineer issues his order on the nonuse application.
- 1148 (c) (i) Upon receipt of the application, the state engineer shall publish a notice of the
- 1149 application once a week for two successive weeks in a newspaper of general circulation in the
- 1150 county in which the source of the water supply is located and where the water is to be used.
- 1151 (ii) The notice shall:
- 1152 (A) state that an application has been made; and
- 1153 (B) specify where the interested party may obtain additional information relating to the
- 1154 application.
- 1155 (d) Any interested person may file a written protest with the state engineer against the
- 1156 granting of the application:
- 1157 (i) within 20 days after the notice is published, if the adjudicative proceeding is
- 1158 informal; and
- 1159 (ii) within 30 days after the notice is published, if the adjudicative proceeding is
- 1160 formal.
- 1161 (e) In any proceedings to determine whether the application for extension should be
- 1162 approved or rejected, the state engineer shall follow the procedures and requirements of Title
- 1163 63, Chapter 46b, Administrative Procedures Act.
- 1164 (f) After further investigation, the state engineer may approve or reject the application.
- 1165 (5) (a) Nonuse applications on all or a portion of a water right shall be granted by the
- 1166 state engineer for periods not exceeding five years each, upon a showing of reasonable cause
- 1167 for nonuse.
- 1168 (b) Reasonable causes for nonuse include:
- 1169 (i) demonstrable financial hardship or economic depression;
- 1170 (ii) the initiation of recognized water conservation or efficiency practices, or the
- 1171 operation of a groundwater recharge recovery program approved by the state engineer;
- 1172 (iii) operation of legal proceedings;

1173 (iv) the holding of a water right or stock in a mutual water company without use by any  
1174 public water supply entity to meet the reasonable future requirements of the public;

1175 (v) situations where, in the opinion of the state engineer, the nonuse would assist in  
1176 implementing an existing, approved water management plan;

1177 (vi) situations where all or part of the land on which water is used is contracted under  
1178 an approved state agreement or federal conservation following program;

1179 (vii) the loss of capacity caused by deterioration of the water supply or delivery  
1180 equipment if the applicant submits, with the application, a specific plan to resume full use of  
1181 the water right by replacing, restoring, or improving the equipment; or

1182 (viii) any other reasonable cause.

1183 (6) (a) Sixty days before the expiration of any extension of time, the state engineer  
1184 shall notify the applicant by [~~registered~~] mail or by any form of electronic communication  
1185 through which receipt is verifiable, of the date when the extension period will expire.

1186 (b) Before the date of expiration, the applicant shall either:

1187 (i) file a verified statement with the state engineer setting forth the date on which use of  
1188 the water was resumed, and whatever additional information is required by the state engineer;

1189 or

1190 (ii) apply for a further extension of time in which to resume use of the water according  
1191 to the procedures and requirements of this section.

1192 (c) Upon receipt of the applicant's properly completed, verified statement, the state  
1193 engineer shall conduct investigations necessary to verify that beneficial use has resumed and, if  
1194 so, shall issue a certificate of resumption of use of the water as evidenced by the resumed  
1195 beneficial use.

1196 (7) The appropriator's water right or a portion of the water right ceases and the water  
1197 reverts to the public if the:

1198 (a) appropriator or the appropriator's successor in interest fails to apply for an  
1199 extension of time;

1200 (b) state engineer denies the nonuse application; or

1201 (c) appropriator or the appropriator's successor in interest fails to apply for a further  
1202 extension of time.

1203 Section 38. Section **73-2-4** is amended to read:

1204           **73-2-4. Deputy and assistants -- Employment and salaries -- Purchase of**  
1205 **equipment and supplies.**

1206           For the purpose of performing the duties of his office the state engineer may [~~appoint a~~  
1207 ~~chief~~];

1208           (1) employ a deputy[~~employ~~] and all necessary assistants[-];

1209           (2) fix [~~their~~] division employee's salaries in accordance with salary standards adopted  
1210 by the Department of Finance; and

1211           (3) purchase all necessary equipment and supplies.

1212           Section 39. Section **73-2-25** is amended to read:

1213           **73-2-25. State engineer enforcement powers.**

1214           (1) For purposes of this section, "initial order" means one of the following issued by  
1215 the state engineer:

1216           (a) a notice of violation; or

1217           (b) a cease and desist order.

1218           (2) (a) The state engineer may commence an enforcement action under this section if  
1219 the state engineer finds that a person:

1220           (i) is diverting, impounding, or using water for which no water right has been  
1221 established;

1222           (ii) is diverting, impounding, or using water in violation of an existing water right;

1223           (iii) violates Section 73-5-4;

1224           (iv) violates Section 73-5-9;

1225           (v) violates a written distribution order from the state engineer;

1226           (vi) violates an order issued under Section 73-3-29 regarding the alteration of the bed  
1227 or bank of a natural stream channel; or

1228           (vii) violates a notice or order regarding dam safety issued under Chapter 5a, Dam  
1229 Safety.

1230           (b) To commence an enforcement action under this section, the state engineer shall  
1231 issue an initial order, which shall include:

1232           (i) a description of the violation;

1233           (ii) notice of any penalties to which a person may be subject under Section 73-2-26;

1234 and



1235 (iii) notice that the state engineer may treat each day's violation of the provisions listed  
1236 in Subsection (2)(a) as a separate violation under Subsection 73-2-26(1)(d).

1237 (c) The state engineer's issuance and enforcement of an initial order is exempt from  
1238 Title 63, Chapter 46b, Administrative Procedures Act.

1239 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
1240 state engineer shall make rules necessary to enforce an initial order, which shall include:

1241 (a) provisions consistent with this section and Section 73-2-26 for enforcement of the  
1242 initial order if a person to whom an initial order is issued fails to respond to the order or abate  
1243 the violation;

1244 (b) the right to a hearing, upon request by a person against whom an initial order is  
1245 issued; and

1246 (c) provisions for timely issuance of a final order after:

1247 (i) the person to whom the initial order is issued fails to respond to the order or abate  
1248 the violation; or

1249 (ii) a hearing held under Subsection (3)(b).

1250 (4) A person may not intervene in an enforcement action commenced under this  
1251 section.

1252 (5) After issuance of a final order under rules made pursuant to Subsection (3)(c), the  
1253 state engineer shall serve a copy of the final order on the person against whom the order is  
1254 issued by:

1255 (a) personal service under Utah Rules of Civil Procedure 5; or

1256 (b) certified mail.

1257 (6) (a) The state engineer's final order may be reviewed by trial de novo by the district  
1258 court in:

1259 (i) Salt Lake County; or

1260 (ii) the county where the violation occurred.

1261 (b) A person shall file a petition for judicial review of the state engineer's final order  
1262 issued under this section within 20 days from the day on which the final order was served on  
1263 that person.

1264 (7) The state engineer may bring suit in a court of competent jurisdiction to enforce a  
1265 final order issued under this section.

1266 (8) If the state engineer prevails in an action brought under Subsection (6)(b) or (7), the  
1267 state may recover all court costs and a reasonable attorney fee.

1268 Section 40. Section **73-3-8** is amended to read:

1269 **73-3-8. Approval or rejection of application -- Requirements for approval --**  
1270 **Application for specified period of time -- Filing of royalty contract for removal of salt or**  
1271 **minerals.**

1272 (1) (a) It shall be the duty of the state engineer to approve an application if: [~~(a)~~]

1273 (i) there is unappropriated water in the proposed source; [~~(b)~~]

1274 (ii) the proposed use will not impair existing rights or interfere with the more  
1275 beneficial use of the water; [~~(c)~~]

1276 (iii) the proposed plan is physically and economically feasible, unless the application is  
1277 filed by the United States Bureau of Reclamation, and would not prove detrimental to the  
1278 public welfare; [~~(d)~~]

1279 (iv) the applicant has the financial ability to complete the proposed works; and [~~(e)~~]

1280 (v) the application was filed in good faith and not for purposes of speculation or  
1281 monopoly.

1282 (b) (i) If the state engineer, because of information in [~~his~~] the state engineer's  
1283 possession obtained either by [~~his~~] the state engineer's own investigation or otherwise, has  
1284 reason to believe that an application to appropriate water will interfere with its more beneficial  
1285 use for irrigation, domestic or culinary, stock watering, power or mining development, or  
1286 manufacturing, or will unreasonably affect public recreation or the natural stream environment,  
1287 or will prove detrimental to the public welfare, it is [~~his~~] the state engineer's duty to withhold  
1288 [~~his~~] approval or rejection of the application until [~~he~~] the state engineer has investigated the  
1289 matter.

1290 (ii) If an application does not meet the requirements of this section, it shall be rejected.

1291 (2) (a) An application to appropriate water for industrial, power, mining development,  
1292 manufacturing purposes, agriculture, or municipal purposes may be approved for a specific and  
1293 certain period from the time the water is placed to beneficial use under the application, but in  
1294 no event may an application be granted for a period of time less than that ordinarily needed to  
1295 satisfy the essential and primary purpose of the application or until the water is no longer  
1296 available as determined by the state engineer.

1297 (b) At the expiration of the period fixed by the state engineer the water shall revert to  
 1298 the public and is subject to appropriation as provided by [~~Title 73. The~~] this title.

1299 (c) No later than 60 calendar days before the expiration date of the fixed time period,  
 1300 the state engineer shall send notice by mail or by any form of electronic communication  
 1301 through which receipt is verifiable, to the applicant of record.

1302 (d) Except as provided by Subsection (2)(e), the state engineer may extend any limited  
 1303 water right upon a showing that:

1304 (i) the essential purpose of the original application has not been satisfied[~~, that~~];

1305 (ii) the need for an extension is not the result of any default or neglect by the  
 1306 applicant[~~;~~]; and [~~that~~]

1307 (iii) the water is still available[~~; except no~~].

1308 (e) No extension shall exceed the time necessary to satisfy the primary purpose of the  
 1309 original application.

1310 (f) A request for extension of the fixed time period must be filed in writing in the  
 1311 office of the state engineer [~~not later than 60 days~~] on or before the expiration date of the  
 1312 application.

1313 (3) (a) Before the approval of any application for the [~~appropriations~~] appropriation of  
 1314 water from navigable lakes or streams of the state [~~which~~] that contemplates the recovery of  
 1315 salts and other minerals therefrom by precipitation or otherwise, the applicant shall file with the  
 1316 state engineer a copy of a contract for the payment of royalties to the state [~~of Utah~~].

1317 (b) The approval of an application shall be revoked in the event of the failure of the  
 1318 applicant to comply with terms of [~~his~~] the royalty contract.

1319 Section 41. Section **73-3-12** is amended to read:

1320 **73-3-12. Time limit on construction and application to beneficial use --**

1321 **Extensions -- Procedures and criteria.**

1322 (1) As used in this section, "public agency" means:

1323 (a) a public water supply agency of the state or a political subdivision of the state; or

1324 (b) the Bureau of Reclamation.

1325 (2) (a) The construction of the works and the application of water to beneficial use  
 1326 shall be diligently prosecuted to completion within the time fixed by the state engineer.

1327 (b) Extensions of time, not exceeding 50 years from the date of approval of the

1328 application, except as provided in Subsection (2)(c), may be granted by the state engineer on  
1329 proper showing of diligence or reasonable cause for delay.

1330 (c) Additional extensions of time, beyond 50 years, may be granted by the state  
1331 engineer on applications held by any public agency, if the public agency can demonstrate the  
1332 water will be needed to meet the reasonable future requirements of the public.

1333 (d) All requests for extension of time [~~shall be made by signed statement and~~] shall be  
1334 filed in the office of the state engineer on or before the date fixed for filing proof of  
1335 appropriation.

1336 (e) Extensions not exceeding 14 years after the date of approval may be granted by the  
1337 state engineer upon a sufficient showing [~~by signed statement~~], but extensions beyond 14 years  
1338 shall be granted only after application and publication of notice.

1339 (f) (i) The state engineer shall publish a notice of the application once a week for two  
1340 successive weeks, in a newspaper of general circulation, in the county in which the source of  
1341 the water supply is located and where the water is to be used.

1342 (ii) The notice shall:

1343 (A) state that an application has been made; and

1344 (B) specify where the interested party may obtain additional information relating to the  
1345 application.

1346 (g) Any person who owns a water right from the source of supply referred to in  
1347 Subsection (2)(f) or holds an application from that source of supply may file a protest with the  
1348 state engineer:

1349 (i) within 20 days after the notice is published, if the adjudicative proceeding is  
1350 informal; and

1351 (ii) within 30 days after the notice is published, if the adjudicative proceeding is  
1352 formal.

1353 (h) In considering an application to extend the time in which to place water to  
1354 beneficial use under an approved application, the state engineer shall deny the extension and  
1355 declare the application lapsed, unless the applicant affirmatively shows that the applicant has  
1356 exercised or is exercising reasonable and due diligence in working toward completion of the  
1357 appropriation.

1358 (i) (i) If reasonable and due diligence is shown by the applicant, the state engineer shall

1359 approve the extension.

1360 (ii) The approved extension is effective so long as the applicant continues to exercise  
1361 reasonable diligence in completing the appropriation.

1362 (j) (i) The state engineer shall consider the holding of an approved application by any  
1363 public agency to meet the reasonable future requirements of the public to be reasonable and  
1364 due diligence within the meaning of this section for the first 50 years.

1365 (ii) The state engineer may approve extensions beyond 50 years for a public agency, if  
1366 the agency provides information sufficient to demonstrate the water will be needed to meet the  
1367 reasonable future requirements of the public.

1368 (k) If the state engineer finds unjustified delay or lack of diligence in prosecuting the  
1369 works to completion, the state engineer may deny the extension or may grant the request in part  
1370 or upon conditions, including a reduction of the priority of all or part of the application.

1371 (3) (a) Except as provided in Subsections (3)(b) and (c), an application upon which  
1372 proof has not been submitted shall lapse and have no further force or effect after the expiration  
1373 of 50 years from the date of its approval.

1374 (b) If the works are constructed with which to make beneficial use of the water applied  
1375 for, the state engineer may, upon showing of that fact, grant additional time beyond the 50-year  
1376 period in which to make proof.

1377 (c) An application held by a public agency to meet the reasonable future requirements  
1378 of the public, for which proof of appropriation has not been submitted, shall lapse, unless  
1379 extended as provided in Subsection (2)(j).

1380 Section 42. Section **73-3b-206** is amended to read:

1381 **73-3b-206. Lapse of recovery permit.**

1382 A recovery permit will lapse if the recovery project is not completed within [~~two~~] five  
1383 years from the date of approval unless the applicant requests an extension of time to complete  
1384 the project and the state engineer approves the request.

1385 Section 43. Section **73-4-3** is amended to read:

1386 **73-4-3. Procedure for action to determine rights -- Notice to and list of claimants**  
1387 **-- Manner of giving notice of further proceedings -- Duties of engineer -- Survey -- Notice**  
1388 **of completion.**

1389 (1) Upon the filing of any action by the state engineer as provided in Section 73-4-1, or

1390 by any person [~~or persons~~] claiming the right to [~~the~~] use [~~of~~] the waters of any river system,  
1391 lake, underground water basin, or other natural source of supply[~~, which~~] that involves a  
1392 determination of the rights to the major part of the water of [~~such~~] the source of supply or the  
1393 rights of ten or more of the claimants of [~~such~~] the source of supply, the clerk of the district  
1394 court shall notify the state engineer that [~~such~~] a suit has been filed.

1395 (2) (a) The state engineer then shall give notice to the claimants by publishing notice  
1396 once a week for two consecutive weeks in a newspaper designated by the court as most likely  
1397 to give notice to such claimants.

1398 (b) The notice shall [~~set forth that~~] state: [~~such~~]

1399 (i) an action has been filed;

1400 (ii) the name of the action [~~and~~];

1401 (iii) the name and location of the court in which the action is pending; and

1402 (iv) the name or description of the water source involved[~~, and shall require claimants~~].

1403 (c) Claimants to the use of water [~~therefrom to~~] shall notify the state engineer within 90  
1404 days from the date notice is given of their names and addresses.

1405 (d) After the expiration of 90 days, the state engineer shall prepare a list [~~which~~] that  
1406 shall include the names and addresses of all claimants then of record in [~~his~~] the state  
1407 engineer's office and all claimants who have notified the state engineer of their addresses, and  
1408 this list shall be certified by the state engineer as complete and filed with the clerk of the court.

1409 (e) The court upon petition may by order permit the addition of names and addresses to  
1410 this list at any time during the pendency of the action, and the clerk of the court may, without  
1411 court order, upon notice from the claimant note any change of address.

1412 (f) If any claimant appears in this action by an attorney, the clerk shall note on the list  
1413 the address of the attorney.

1414 (g) After the list is filed by the state engineer, notice of further proceedings, after  
1415 service of summons, may be given without court order by mailing a copy thereof to the persons  
1416 listed at the addresses listed and by mailing a copy thereof to any attorney of record for any  
1417 such person, and notice may be given to such listed persons and to all other claimants by  
1418 publication in the manner and for the time prescribed by order of the district court. [~~When~~  
1419 such]

1420 (3) After the statement or list [~~shall have been~~] is filed, the state engineer shall begin

1421 the survey of the water source and the ditches, canals, wells, tunnels, or other works diverting  
1422 water therefrom[; and as].

1423 (4) (a) As soon as [this] the survey [has been completed,] is complete, the state  
1424 engineer shall file notice of completion with the clerk and give notice by [~~registered~~] mail or by  
1425 personal service to all claimants whose names appear on the list that:

1426 (i) the survey [has been completed and that] is complete;

1427 (ii) their claims are due within 90 days from the date of notice[;]; and

1428 (iii) within 90 days after [such] service of [such] the notice, each claimant must file a  
1429 written statement with the clerk of the court setting forth [~~his~~] the claimant's respective claim to  
1430 the use of [~~such~~] the water.

1431 (b) Notice given by mail [shall be] is complete when the notice is mailed.

1432 (5) When [such] a suit has been filed by the state engineer as provided by Section  
1433 73-4-1, or by any person [or persons] involving the major part of the waters of any river  
1434 system, lake, underground water basin, or other source of supply, or the rights of ten or more of  
1435 the water claimants of [such] the source of supply, whether [such] the suit is filed prior to or  
1436 after the enactment hereof, [it shall be the duty of] the state engineer, upon receiving notice  
1437 [thereof to], shall examine the records of [his] the state engineer's office with respect to the  
1438 water source involved, and if they are incomplete to make such further investigation and survey  
1439 as may be necessary for the preparation of the report and recommendation as required by  
1440 Section 73-4-11.

1441 (6) In all such cases the court shall proceed to determine the water rights involved in  
1442 the manner provided by this chapter, and not otherwise.

1443 Section 44. Section **73-4-4** is amended to read:

1444 **73-4-4. Summons -- Service -- Publication -- Form -- Delivery of form for**  
1445 **claimant's statement.**

1446 (1) (a) Claimants whose names appear on the list prescribed by [the next preceding  
1447 section] Section 73-4-3 at the time the list is filed by the state engineer with the clerk of the  
1448 court shall be served with a summons issued out of the district court and served as a summons  
1449 is served in other civil cases.

1450 (b) Upon the filing by the state engineer of an affidavit that [he] the state engineer has  
1451 searched the records of [his] the state engineer's office and has listed all names as required by

1452 Section 73-4-3, and upon proof of publication of notice to all claimants to notify the state  
1453 engineer of their names and addresses, summons may be served on all other persons and  
1454 claimants not listed on said list by publication of summons, in a newspaper or newspapers  
1455 designated by the judge of the court as most likely to give notice to the persons served, five  
1456 times, once each week for five successive weeks.

1457 (c) Service of summons [~~to be~~] is completed upon the date of the publication.

1458 (d) The summons [~~in such cases~~] shall be substantially in the following form:

1459 In the District Court of ..... County, State of Utah, in the matter of the general  
1460 adjudication of water rights in the described water source.

1461 SUMMONS

1462 The State of Utah to the said defendant:

1463 You are hereby summoned to appear and defend the above entitled action which is  
1464 brought for the purpose of making a general determination of the water rights of the described  
1465 water source. Upon the service of this summons upon you, you will thereafter be subject to the  
1466 jurisdiction of the entitled court and it shall be your duty to follow further proceedings in the  
1467 above entitled action and to protect your rights therein. When the state engineer has completed  
1468 [~~his~~] the survey you will be given a further written notice, either in person or by [~~registered~~]  
1469 mail, sent to your last-known address, that you must file a water users claim in this action  
1470 setting forth the nature of your claim, and said notice will specify the date upon which your  
1471 water users claim is due and thereafter you must file said claim within the time set and your  
1472 failure so to do will constitute a default in the premises and a judgment may be entered against  
1473 you declaring and adjudging that you have no right in or to the waters of described water  
1474 source.

1475 (2) At the time the said notice of completion of survey is given, the state engineer must  
1476 mail or otherwise deliver a form upon which the claimant shall present in writing, as provided  
1477 in the next succeeding section, all the particulars relating to the appropriation of the water of  
1478 said river system or water source to which [~~he~~] the claimant lays claim.

1479 Section 45. Section **73-4-11** is amended to read:

1480 **73-4-11. Report and recommendation by engineer to court.**

1481 (1) Within [~~thirty~~] 30 days after the expiration of the [~~60~~] 90 days allowed for filing  
1482 statements of claims, the state engineer shall begin to tabulate the facts contained in the



1483 statements filed and to investigate, whenever ~~[he]~~ the state engineer shall ~~[deem]~~ consider  
1484 necessary, the facts set forth in said statements by reference to the surveys already made or by  
1485 further surveys, and shall as expeditiously as possible make a report to the court with ~~[his]~~ the  
1486 recommendation of how all rights involved shall be determined.

1487 (2) After full consideration of the statements of claims, and of the surveys, records, and  
1488 files, and after a personal examination of the river system or water source involved, if such  
1489 examination is ~~[deemed]~~ considered necessary, the state engineer shall formulate a report and a  
1490 proposed determination of all rights to the use of the water of such river system or water  
1491 source, and a copy of the same shall be mailed ~~[by regular mail]~~ to each claimant with notice  
1492 that any claimant dissatisfied therewith may within ~~[ninety]~~ 90 days from such date of mailing  
1493 file with the clerk of the district court a written objection thereto duly verified on oath.

1494 (3) The state engineer shall distribute the waters from the natural streams or other  
1495 natural sources in accordance with the proposed determination or modification thereof by court  
1496 order until a final decree is rendered by the court; provided, if the right to the use of said waters  
1497 has been theretofore decreed or adjudicated, said waters shall be distributed in accordance with  
1498 such decree until the same is reversed, modified, vacated, or otherwise legally set aside.

1499 Section 46. Section **73-5-4** is amended to read:

1500 **73-5-4. Controlling works and measuring devices.**

1501 ~~[Every]~~ (1) To assist the state engineer or water commissioner in the regulation,  
1502 distribution, and measurement of water, each person using water in this state shall construct or  
1503 install and maintain ~~[a substantial head gate, cap, valve or other]~~ controlling works~~[- weir~~  
1504 ~~flume]~~ and a measuring device at:

1505 (a) each [point] location where water is diverted ~~[or turned out, for the purpose of~~  
1506 ~~regulating and measuring the quantity of water that may be used. Such controlling works or~~  
1507 ~~measuring device shall be of such design as the state engineer may approve and so that the~~  
1508 ~~same can be locked and kept set by him or his assistants; and such owner shall construct and~~  
1509 ~~maintain, when required by the state engineer, flumes or other measuring devices at such points~~  
1510 ~~along his ditch as may be necessary for the purpose of assisting the state engineer or his~~  
1511 ~~assistants in determining the amount of water that is to be diverted into his ditch from the~~  
1512 ~~stream or water source, or taken from it by the various users. Every] from a source; and~~

1513 (b) any other location required by the state engineer.

1514 (2) Each person using water in this state shall make the controlling works and  
1515 measuring device accessible to the state engineer or water commissioner.

1516 (3) The state engineer shall approve the design of:

1517 (a) the measuring device; and

1518 (b) controlling works so that the state engineer or a water commissioner may regulate  
1519 and lock the works.

1520 (4) (a) Each owner or manager of a reservoir [~~located across or upon the bed of a~~  
1521 natural stream] shall construct and maintain[~~, when required~~] a measuring device as directed by  
1522 the state engineer[~~, a flume or other measuring device of a plan to be approved by the state~~  
1523 engineer, below such reservoir at a point approved by him, and a flume or measuring device  
1524 above such reservoir on each stream or source of supply discharging into such reservoir, for the  
1525 purpose of assisting the state engineer in determining the amount of water to which prior  
1526 appropriators are entitled, and thereafter diverting it for such prior appropriators' use. If the  
1527 owner of irrigation works, canals, reservoirs, wells, pumps or tunnels shall refuse or neglect] to  
1528 measure the inflow, storage content, and outflow from the reservoir.

1529 (b) The state engineer shall approve the design and location of the measuring device.

1530 (c) The owner or manager of a reservoir shall make the measuring device accessible to  
1531 the state engineer or water commissioner.

1532 (5) If a water user refuses or neglects to construct or install [~~such head gates, caps,~~  
1533 valves, flumes] the controlling works or measuring [~~devices~~] device after [~~thirty~~] 30 days'  
1534 notice to do so by the state engineer, the state engineer may:

1535 (a) forbid the use of water until the user [~~thereof shall comply with his~~] complies with  
1536 the state engineer's requirement[~~, or the state engineer may proceed to construct or install or~~  
1537 cause to be constructed or installed such controlling works or measuring devices, and the cost  
1538 of the same shall be a lien against the lands and water rights served thereby, and the state  
1539 engineer is authorized to bring action in the name of the state to foreclose such lien.]; and

1540 (b) commence enforcement proceedings authorized by Section 73-2-25.

1541 Section 47. Section **73-18b-1** is amended to read:

1542 **73-18b-1. Water safety rules and regulations -- Adoption.**

1543 (1) The Board of Parks and Recreation may make rules necessary to promote safety in  
1544 swimming, scuba diving, and related activities on any waters where public boating is

1545 permitted.

1546 (2) The [~~commission~~] Board of Parks and Recreation may consider recommendations  
1547 of and cooperate with other state agencies and the owners or operators of those waters.

1548 Section 48. Section **78-12-23** is amended to read:

1549 **78-12-23. Within six years -- Mesne profits of real property -- Instrument in**  
1550 **writing.**

1551 An action may be brought within six years:

1552 (1) for the mesne profits of real property;

1553 (2) upon any contract, obligation, or liability founded upon an instrument in writing,  
1554 except those mentioned in Section 78-12-22[~~;~~]; and

1555 (3) to recover fire suppression costs or other damages caused by wildland fire.

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**H.B. 48 1st Sub. (Buff) - Department of Natural Resources Amendments**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**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.

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