

1 DEPARTMENT OF NATURAL RESOURCES

2 AMENDMENTS

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 Chief Sponsor: Jack R. Draxler

6 Senate Sponsor: Kevin T. Van Tassell

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8 LONG TITLE

9 General Description:

10 This bill amends provisions related to the Department of Natural Resources and its  
11 powers and duties.

12 Highlighted Provisions:

13 This bill:

- 14 ▶ reduces the age requirement for a falconry license from 14 years of age to 12 years  
15 of age;
- 16 ▶ addresses the use and possession of alcohol while boating;
- 17 ▶ removes duplicate requirements concerning:
- 18 • operation of a boat at wakeless speed; and
  - 19 • navigation lights on boats;
- 20 ▶ changes the calculation and use of user fees on golf courses located in state parks;
- 21 ▶ changes the membership of the Recreational Trails Advisory Council; and
- 22 ▶ makes technical changes.

23 Monies Appropriated in this Bill:

24 None

25 Other Special Clauses:

26 None

27 Utah Code Sections Affected:

28 AMENDS:

29 23-13-2, as last amended by Laws of Utah 2008, Chapter 69

- 30           **23-19-34.5**, as last amended by Laws of Utah 2007, Chapter 187
- 31           **23-19-34.7**, as last amended by Laws of Utah 2001, Chapter 22
- 32           **41-6a-526**, as renumbered and amended by Laws of Utah 2005, Chapter 2
- 33           **73-18-8**, as last amended by Laws of Utah 1995, Chapter 112
- 34           **73-18-15.1**, as last amended by Laws of Utah 2008, Chapter 94
- 35           **79-4-403**, as renumbered and amended by Laws of Utah 2009, Chapter 344
- 36           **79-5-202**, as renumbered and amended by Laws of Utah 2009, Chapter 344

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

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

40           **23-13-2. Definitions.**

41           As used in this title:

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

- 46           (a) fishing;
- 47           (b) hunting;
- 48           (c) trapping;
- 49           (d) taking;
- 50           (e) permitting any dog, falcon, or other domesticated animal to take;
- 51           (f) transporting;
- 52           (g) possessing;
- 53           (h) selling;
- 54           (i) wasting;
- 55           (j) importing;
- 56           (k) exporting;
- 57           (l) rearing;

- 58 (m) keeping;
- 59 (n) utilizing as a commercial venture; and
- 60 (o) releasing to the wild.
- 61 (2) "Aquatic animal" has the meaning provided in Section 4-37-103.
- 62 (3) "Aquatic wildlife" means species of fish, mollusks, crustaceans, aquatic insects, or
- 63 amphibians.
- 64 (4) "Aquaculture facility" has the meaning provided in Section 4-37-103.
- 65 (5) "Bag limit" means the maximum limit, in number or amount, of protected wildlife
- 66 that one person may legally take during one day.
- 67 (6) "Big game" means species of hoofed protected wildlife.
- 68 (7) "Carcass" means the dead body of an animal or its parts.
- 69 (8) "Certificate of registration" means a document issued under this title, or any rule or
- 70 proclamation of the Wildlife Board granting authority to engage in activities not covered by a
- 71 license, permit, or tag.
- 72 (9) "Closed season" means the period of time during which the taking of protected
- 73 wildlife is prohibited.
- 74 (10) "Conservation officer" means a full-time, permanent employee of the Division of
- 75 Wildlife Resources who is POST certified as a peace or a special function officer.
- 76 (11) "Dedicated hunter program" means a program that provides:
- 77 (a) expanded hunting opportunities;
- 78 (b) opportunities to participate in projects that are beneficial to wildlife; and
- 79 (c) education in hunter ethics and wildlife management principles.
- 80 (12) "Division" means the Division of Wildlife Resources.
- 81 (13) (a) "Domicile" means the place:
- 82 (i) where an individual has a fixed permanent home and principal establishment;
- 83 (ii) to which the individual if absent, intends to return; and
- 84 (iii) in which the individual, and the individual's family voluntarily reside, not for a
- 85 special or temporary purpose, but with the intention of making a permanent home.

86 (b) To create a new domicile an individual must:

87 (i) abandon the old domicile; and

88 (ii) be able to prove that a new domicile has been established.

89 (14) "Endangered" means wildlife designated as ~~[such]~~ endangered according to  
90 Section 3 of the federal Endangered Species Act of 1973.

91 (15) "Fee fishing facility" has the meaning provided in Section 4-37-103.

92 (16) "Feral" means an animal ~~[which]~~ that is normally domesticated but has reverted  
93 to the wild.

94 (17) "Fishing" means to take fish or crayfish by any means.

95 (18) "Furbearer" means species of the Bassariscidae, Canidae, Felidae, Mustelidae,  
96 and Castoridae families, except coyote and cougar.

97 (19) "Game" means wildlife normally pursued, caught, or taken by sporting means for  
98 human use.

99 (20) ~~[(a)]~~ "Guide" means a person who receives compensation or advertises services  
100 for assisting another person to take protected wildlife. ~~[(b) Assistance under Subsection~~  
101 ~~(20)(a) includes], including~~ the provision of food, shelter, or transportation, or any  
102 combination of these.

103 (21) "Guide's agent" means a person who is employed by a guide to assist another  
104 person to take protected wildlife.

105 (22) "Hunting" means to take or pursue a reptile, amphibian, bird, or mammal by any  
106 means.

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

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

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

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

114 (27) "Permit" means a document, including a stamp, [~~which~~] that grants authority to  
115 engage in specified activities under this title or a rule or proclamation of the Wildlife Board.

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

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

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

121 (31) (a) "Private fish pond" means a body of water where privately owned, protected  
122 aquatic wildlife are propagated or kept for a noncommercial purpose.

123 (b) "Private fish pond" does not include [~~any~~] an aquaculture facility or fee fishing  
124 facility.

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

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

128 (b) escaping into the wild.

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

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

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

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

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

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

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

140 (i) has been domiciled in the state for six consecutive months immediately preceding  
141 the purchase of a license; and

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

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

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

147 (ii) the person complies with Subsection (37)(a)(ii).

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

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

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

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

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

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

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

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

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

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

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

167 (a) commonly pursued for sporting purposes; and

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

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

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

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

177 (43) "Take" means to:

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

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

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

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

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

185 (a) deer - [~~any~~] a buck with an outside antler measurement of 24 inches or greater;

186 (b) elk - [~~any~~] a bull with six points on at least one side;

187 (c) bighorn, desert, or rocky mountain sheep - [~~any~~] a ram with a curl exceeding half  
188 curl;

189 (d) moose - [~~any~~] a bull with at least one antler exceeding five inches in length;

190 (e) mountain goat - [~~any~~] a male or female;

191 (f) pronghorn antelope - [~~any~~] a buck with horns exceeding 14 inches; or

192 (g) bison - [~~any~~] a bull.

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

195 (48) "Water pollution" means the introduction of matter or thermal energy to waters  
196 within this state [~~which~~] that:

197 (a) exceeds state water quality standards; or

198 (b) could be harmful to protected wildlife.

199 (49) "Wildlife" means:

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

201 (b) mollusks; and

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

203 Section 2. Section **23-19-34.5** is amended to read:

204 **23-19-34.5. Falconry certificate of registration -- Residents 12 or older may**  
205 **obtain certificate of registration -- License for falconry meet for nonresidents -- Wildlife**  
206 **Board approval required for falconry meet -- Hunting license required to take protected**  
207 **game.**

208 (1) ~~[Any]~~ A resident ~~[14]~~ 12 years of age or older, upon application to the division,  
209 may obtain a certificate of registration to hold falcons and engage in the sport of falconry on  
210 nongame wildlife species.

211 (2) A nonresident entering Utah to participate in the sport of falconry at an organized  
212 meet shall obtain a license as provided in Section 23-19-34.7.

213 (3) Organizers of a falconry meet ~~[must]~~ shall apply to and receive approval from the  
214 Wildlife Board in order to conduct an organized falconry meet.

215 (4) (a) Any person engaging in the sport of falconry on protected small game species  
216 shall possess, in addition to the falconry certificate of registration, a hunting license.

217 (b) Any nonresident who has been issued a license pursuant to Section 23-19-34.7 is  
218 not required to possess a hunting license in order to take small game during the five-day  
219 period of the license.

220 Section 3. Section **23-19-34.7** is amended to read:

221 **23-19-34.7. Nonresident falconry meet license.**

222 (1) A nonresident ~~[14]~~ 12 years of age or older may participate in a falconry meet in  
223 this state upon payment of a fee prescribed by the Wildlife Board.

224 (2) (a) A nonresident falconry meet license ~~[shall be]~~ is valid only for five consecutive  
225 days, the dates to be designated on the license.



226           (b) The holder of the license may engage in the sport of falconry on nongame wildlife  
227 species and small game species, during the specified five-day period.

228           Section 4. Section **41-6a-526** is amended to read:

229           **41-6a-526. Drinking alcoholic beverage and open containers in motor vehicle**  
230 **prohibited -- Definitions -- Exceptions.**

231           (1) As used in this section:

232           (a) "Alcoholic beverage" has the same meaning as defined in Section 32A-1-105.

233           (b) "Chartered bus" has the same meaning as defined in Section 32A-1-105.

234           (c) "Limousine" has the same meaning as defined in Section 32A-1-105.

235           (d) (i) "Passenger compartment" means the area of the vehicle normally occupied by  
236 the operator and passengers.

237           (ii) "Passenger compartment" includes areas accessible to the operator and passengers  
238 while traveling, including a utility or glove compartment.

239           (iii) "Passenger compartment" does not include a separate front or rear trunk  
240 compartment or other area of the vehicle not accessible to the operator or passengers while  
241 inside the vehicle.

242           (e) "Waters of the state" has the same meaning as defined in Section 73-18-2.

243           (2) A person may not drink any alcoholic beverage while operating a motor vehicle or  
244 while a passenger in a motor vehicle, whether the vehicle is moving, stopped, or parked on any  
245 highway or waters of the state.

246           (3) A person may not keep, carry, possess, transport, or allow another to keep, carry,  
247 possess, or transport in the passenger compartment of a motor vehicle, when the vehicle is on  
248 any highway or waters of the state, any container which contains any alcoholic beverage if the  
249 container has been opened, its seal broken, or the contents of the container partially consumed.

250           (4) Subsections (2) and (3) do not apply to a passenger:

251           (a) in the living quarters of a motor home or camper;

252           (b) who has carried an alcoholic beverage onto a limousine or chartered bus that is in  
253 compliance with Subsections 32A-12-213(3)(b) and (c); or

254 (c) in a motorboat [~~or~~] on the waters of [~~this~~] the state [~~as these terms are defined in~~  
255 ~~Section 73-18-2~~].

256 (5) Subsection (3) does not apply to passengers traveling in any licensed taxicab or  
257 bus.

258 Section 5. Section **73-18-8** is amended to read:

259 **73-18-8. Safety equipment required to be on board vessels.**

260 (1) (a) Except as provided in Subsection (1)(c), each vessel shall have, for each person  
261 on board, one personal flotation device [~~which~~] that is approved for the type of use by the  
262 commandant of the United States Coast Guard.

263 (b) Each personal flotation device shall be:

- 264 (i) in serviceable condition;
- 265 (ii) legally marked with the United States Coast Guard approval number; and
- 266 (iii) of an appropriate size for the person for whom it is intended.

267 (c) (i) Sailboards are exempt from the provisions of Subsection (1)(a).

268 (ii) The board may exempt certain types of vessels from the provisions of Subsection  
269 (1)(a) under certain conditions or upon certain waters.

270 (d) The board may require by rule for personal flotation devices to be worn:

- 271 (i) while a person is on board a certain type of vessel;
- 272 (ii) by a person under a certain age; or
- 273 (iii) on certain waters of the state.

274 (e) For vessels 16 feet or more in length, there shall also be on board, one Type IV  
275 throwable personal flotation device which is approved for this use by the commandant of the  
276 United States Coast Guard.

277 (2) [~~Each vessel shall display navigation lights when the vessel is on the waters of this~~  
278 ~~state between sunset and sunrise.~~] The operator of a vessel operated between sunset and  
279 sunrise shall display lighted navigation lights approved by the division.

280 (3) If a vessel is not entirely open and it carries or uses any flammable or toxic fluid in  
281 any enclosure for any purpose, the vessel [~~must~~] shall be equipped with an efficient natural or

282 mechanical ventilation system [~~which~~] that is capable of removing resulting gases [~~prior to~~]  
283 before and during the time the vessel is occupied by any person.

284 (4) Each vessel shall have fire extinguishing equipment on board.

285 (5) Any inboard gasoline engine shall be equipped with a carburetor backfire flame  
286 control device.

287 (6) The board may:

288 (a) require additional safety equipment by rule; and

289 (b) adopt rules conforming with the requirements of this section which govern  
290 specifications for and the use of safety equipment.

291 (7) A person may not operate or give permission for the operation of a vessel [~~which~~]  
292 that is not equipped as required by this section or rules promulgated under this section.

293 Section 6. Section **73-18-15.1** is amended to read:

294 **73-18-15.1. Vessel navigation and steering laws.**

295 (1) The operator of a vessel shall maintain a proper lookout by sight and hearing at all  
296 times to avoid the risk of collision.

297 (2) When the operators of two motorboats approach each other where there is risk of  
298 collision, each operator shall alter course to the right and pass on the left side of the other.

299 (3) When the operators of two motorboats are crossing paths and are at risk of a  
300 collision, the operator of the vessel [~~which~~] that has the other vessel on its right side shall keep  
301 out of the way and yield right-of-way if necessary.

302 (4) The operator of any vessel overtaking any other vessel shall keep out of the way of  
303 the vessel being overtaken.

304 (5) The operator of a vessel underway shall keep out of the way of a:

305 (a) vessel not under command;

306 (b) vessel restricted in its ability to maneuver;

307 (c) vessel engaged in fishing; and

308 (d) sailing vessel.

309 (6) If the operator of one of two vessels is to keep out of the way, the other vessel

310 operator shall maintain his course and speed unless it becomes apparent the other vessel is not  
311 taking the appropriate action.

312 (7) In narrow channels an operator of a vessel underway shall keep to the right of the  
313 middle of the channel.

314 (8) The operator of a vessel shall proceed at a safe speed at all times so that ~~he~~ the  
315 operator can take proper and effective action to avoid collision and be stopped within a  
316 distance appropriate to the prevailing circumstances or conditions.

317 (9) (a) When the operators of two sailboats are approaching one another so as to  
318 involve risk of collision, one of the operators shall keep out of the way of the other as follows:

319 (i) when each has the wind on a different side, the operator of the vessel ~~which~~ that  
320 has the wind on the left side shall keep out of the way of the other;

321 (ii) when both have the wind on the same side, the operator of the vessel ~~which~~ that  
322 is to the windward shall keep out of the way of the vessel ~~which~~ that is to leeward; and

323 (iii) if the operator of a vessel with the wind on the left side sees a vessel to windward  
324 and cannot determine with certainty whether the other vessel has the wind on the left or on the  
325 right side, the operator shall keep out of way of the other vessel.

326 (b) For purposes of this Subsection (9), the windward side shall be the side opposite  
327 that on which the mainsail is carried.

328 (10) The operator of any vessel may not exceed a wakeless speed when~~[-(a)]~~ within  
329 150 feet of:

330 ~~[(i)]~~ (a) another vessel;

331 ~~[(ii)]~~ (b) a person in or floating on the water;

332 ~~[(iii)]~~ (c) a water skier being towed by another boat;

333 ~~[(iv)]~~ (d) a water skier that had been towed behind the operator's vessel unless the  
334 skier is still surfing or riding in an upright stance on the wake created by the vessel;

335 ~~[(v)]~~ (e) a water skier that had been towed behind another vessel and the skier is still  
336 surfing or riding in an upright stance on the wake created by the other vessel;

337 ~~[(vi)]~~ (f) a shore fisherman;

338 [~~(vii)~~] (g) a launching ramp;

339 [~~(viii)~~] (h) a dock; or

340 [~~(ix)~~] (i) a designated swimming area~~[, or]~~.

341 [~~(b) in an area designated as a wakeless speed area.]~~

342 (11) The operator of a motorboat is responsible for any damage or injury caused by the  
343 wake produced by the operator's motorboat.

344 (12) (a) Except as provided in Subsection (12)(b), the operator of a motorboat that is  
345 less than 65 feet in length may not exceed a wakeless speed while any person is riding upon  
346 the bow decking, gunwales, transom, seatbacks, or motor cover.

347 (b) Subsection (12)(a) does not apply if the motorboat is:

348 (i) between 16 feet and 65 feet in length; and

349 (ii) the motorboat is equipped with adequate rails or other safeguards to prevent a  
350 person from falling overboard.

351 (13) If a person is riding upon the bow decking of a motorboat [~~which~~] that does not  
352 have designed seating for passengers, the person shall straddle one of the upright supports of  
353 the bow rail and may not block the vision of the operator.

354 (14) The operator of a vessel may not tow a water skier or a person on another device:

355 (a) unless an onboard observer, who is at least eight years of age, is designated by the  
356 operator to watch the person being towed; or

357 (b) between sunset and sunrise.

358 [~~(15) The operator of a vessel being operated between sunset and sunrise shall display~~  
359 ~~lighted navigation lights approved by the division.]~~

360 [~~(16)~~] (15) A person who violates this section is guilty of a class C misdemeanor.

361 Section 7. Section **79-4-403** is amended to read:

362 **79-4-403. User fees for golf -- Wasatch Mountain, Palisade, and Green River**

363 **State Parks.**

364 (1) The following user fees are assessed in the following parks for playing nine holes  
365 of golf:

366 (a) [~~\$1.50~~] 15% of the green fees at Wasatch Mountain State Park;

367 (b) [~~\$1.50~~] 15% of the green fees at Palisade State Park; and

368 (c) [~~\$1.50~~] 15% of the green fees at Green River State Park.

369 (2) The fee in Subsection (1) is:

370 (a) in addition to the fee set by the board; and

371 (b) to be used at the park where the money is collected for:

372 (i) the upgrade or development of facilities; or

373 (ii) the purchase of golf course operation and maintenance equipment and operating  
374 supplies or materials.

375 (3) The revenue from the fees established in Subsection (1) are nonlapsing.

376 Section 8. Section **79-5-202** is amended to read:

377 **79-5-202. Council membership -- Expenses.**

378 (1) The council shall consist of [~~nine~~] 10 members knowledgeable about  
379 muscle-powered recreational activities as follows:

380 (a) five members shall represent the public at large;

381 (b) one member, nominated by the Utah League of Cities and Towns, shall represent  
382 city government;

383 (c) one member, nominated by the Utah Association of Counties, shall represent  
384 county government;

385 (d) one member shall represent the United States Forest Service; [~~and~~]

386 (e) one member shall represent the Bureau of Land Management[~~;~~]; and

387 (f) one member shall represent the National Park Service's River, Trails, and

388 Conservation Assistance Program.

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

392 (b) Notwithstanding the requirements of Subsection (2)(a), the division shall, at the  
393 time of appointment or reappointment, adjust the length of terms to ensure that the terms of

394 council members are staggered so that approximately half of the council is appointed every  
395 two years.

396 (3) The council shall elect annually a chair and a vice chair from its members.

397 (4) When a vacancy occurs in the membership for any reason, the division shall  
398 appoint the replacement for the unexpired term.

399 (5) (a) (i) A member who is not a government employee may not receive compensation  
400 or benefits for the member's service, but may receive per diem and expenses incurred in the  
401 performance of the member's official duties at the rates established by the Division of Finance  
402 under Sections 63A-3-106 and 63A-3-107.

403 (ii) A member may decline to receive per diem and expenses for the member's service.

404 (b) (i) A state government officer and employee member who does not receive salary,  
405 per diem, or expenses from the agency the member represents for the member's service may  
406 receive per diem and expenses incurred in the performance of the member's official duties at  
407 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

408 (ii) A state government officer and employee member may decline to receive per diem  
409 and expenses for the member's service.

410 (c) (i) A local government member who does not receive salary, per diem, or expenses  
411 from the entity that the member represents for the member's service may receive per diem and  
412 expenses incurred in the performance of the member's official duties at the rates established by  
413 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

414 (ii) A local government member may decline to receive per diem and expenses for the  
415 member's service.