

1 **DEPARTMENT OF ADMINISTRATIVE SERVICES**

2 **REVISIONS**

3 2016 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Sophia M. DiCaro**

6 Senate Sponsor: Deidre M. Henderson

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies and repeals provisions related to the Department of Administrative
11 Services and funds administered by the Division of Finance.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ repeals certain funds and accounts administered by the Division of Finance;
- 15 ▶ modifies the duties of the director of the Division of Finance;
- 16 ▶ removes certain reporting requirements from the Division of Finance;
- 17 ▶ repeals provisions relating to adoption and use of a seal by the Division of Facilities
18 Construction and Management; and
- 19 ▶ makes technical and conforming changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **53A-17a-156**, as last amended by Laws of Utah 2015, Chapter 122

27 **63A-3-103**, as last amended by Laws of Utah 2015, Chapter 175



- 28 [63A-3-203](#), as last amended by Laws of Utah 2010, Chapter 324
- 29 [63A-3-205](#), as last amended by Laws of Utah 2014, Chapter 227
- 30 [63A-3-502](#), as last amended by Laws of Utah 2015, Chapters 193 and 258
- 31 [63A-5-204](#), as last amended by Laws of Utah 2009, Chapters 183 and 344
- 32 [63A-5-208](#), as last amended by Laws of Utah 2012, Chapters 91, 347 and last amended
- 33 by Coordination Clause, Laws of Utah 2012, Chapter 347
- 34 [77-32-201](#), as last amended by Laws of Utah 2012, Chapter 180
- 35 [77-32-401.5](#), as last amended by Laws of Utah 2010, Chapter 286
- 36 [77-32-402](#), as enacted by Laws of Utah 1997, Chapter 354
- 37 [78B-1-119](#), as last amended by Laws of Utah 2014, Chapter 138

38 REPEALS:

- 39 [53A-17a-157](#), as last amended by Laws of Utah 2015, Chapter 122
- 40 [59-12-120](#), as last amended by Laws of Utah 2011, Chapter 303
- 41 [77-32-701](#), as last amended by Laws of Utah 2011, Chapter 303
- 42 [77-32-702](#), as last amended by Laws of Utah 1998, Chapter 333
- 43 [77-32-703](#), as last amended by Laws of Utah 1998, Chapter 333
- 44 [77-32-704](#), as last amended by Laws of Utah 1998, Chapter 333

45

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

47 Section 1. Section **53A-17a-156** is amended to read:

48 **53A-17a-156. Teacher Salary Supplement Program -- Appeal process.**

49 (1) As used in this section:

50 (a) "Board" means the State Board of Education.

51 (b) "Eligible teacher" means a teacher who:

52 (i) has an assignment to teach:

53 (A) a secondary school level mathematics course;

54 (B) integrated science in grade seven or eight;

55 (C) chemistry;

56 (D) physics; or

57 (E) computer science;

58 (ii) holds the appropriate endorsement for the assigned course;

- 59 (iii) has qualifying educational background; and
60 (iv) (A) is a new employee; or
61 (B) received a satisfactory rating or above on the teacher's most recent evaluation.
62 (c) "Qualifying educational background" means:
63 (i) for a teacher who is assigned a secondary school level mathematics course:
64 (A) a bachelor's degree major, master's degree, or doctoral degree in mathematics; or
65 (B) a bachelor's degree major, master's degree, or doctoral degree that has course
66 requirements that are substantially equivalent to the course requirements for a bachelor's degree
67 major, master's degree, or doctoral degree in mathematics;
68 (ii) for a teacher who is assigned a grade seven or eight integrated science course,
69 chemistry course, or physics course, a bachelor's degree major, master's degree, or doctoral
70 degree in:
71 (A) integrated science;
72 (B) chemistry;
73 (C) physics;
74 (D) physical science;
75 (E) general science; or
76 (F) a bachelor's degree major, master's degree, or doctoral degree that has course
77 requirements that are substantially equivalent to the course requirements of those required for a
78 degree listed in Subsections (1)(c)(ii)(A) through (E);
79 (iii) for a teacher who is assigned a computer science course, a bachelor's degree major,
80 master's degree, or doctoral degree in:
81 (A) computer science;
82 (B) computer information technology; or
83 (C) a bachelor's degree major, master's degree, or doctoral degree that has course
84 requirements that are substantially equivalent to the course requirements of those required for a
85 degree listed in Subsections (1)(c)(iii)(A) and (B).
86 (2) (a) Subject to future budget constraints, the Legislature shall annually appropriate
87 money to the [~~Teacher Salary Supplement Restricted Account established in Section~~
88 ~~53A-17a-157 to fund the~~] Teacher Salary Supplement Program.
89 (b) Money appropriated for the Teacher Salary Supplement Program shall include

90 money for the following employer-paid benefits:

- 91 (i) retirement;
- 92 (ii) workers' compensation;
- 93 (iii) Social Security; and
- 94 (iv) Medicare.

95 (3) (a) The annual salary supplement for an eligible teacher who is assigned full time to
96 teach one or more courses listed in Subsections (1)(b)(i)(A) through (E) is \$4,100.

97 (b) An eligible teacher who has a part-time assignment to teach one or more courses
98 listed in Subsections (1)(b)(i)(A) through (E) shall receive a partial salary supplement based on
99 the number of hours worked in a course assignment that meets the requirements of Subsections
100 (1)(b)(ii) and (iii).

101 (4) The board shall:

102 (a) create an online application system for a teacher to apply to receive a salary
103 supplement through the Teacher Salary Supplement Program;

104 (b) determine if a teacher:

105 (i) is an eligible teacher; and

106 (ii) has a course assignment as listed in Subsections (1)(b)(i)(A) through (E); and

107 (c) verify, as needed, the determinations made under Subsection (4)(b) with school
108 district and school administrators.

109 (5) (a) An eligible teacher shall apply with the board before the conclusion of a school
110 year to receive the salary supplement authorized in this section.

111 (b) An eligible teacher may apply with the board, after verification that the
112 requirements under this section have been satisfied, to receive a salary supplement after the
113 completion of:

114 (i) the school year as an annual award; or

115 (ii) a semester or trimester as a partial award based on the portion of the school year
116 that has been completed.

117 (6) (a) The board shall establish and administer an appeal process for a teacher to
118 follow if the teacher applies for the salary supplement and is not certified under Subsection (4).

119 (b) (i) The appeal process established in Subsection (6)(a) shall allow a teacher to
120 appeal on the basis that the teacher has a degree or degree major with course requirements that

121 are substantially equivalent to the course requirements for a degree listed in:

- 122 (A) Subsection (1)(c)(i)(A);
- 123 (B) Subsections (1)(c)(ii)(A) through (E); or
- 124 (C) Subsections (1)(c)(iii)(A) and (B).

125 (ii) A teacher shall provide transcripts and other documentation to the board in order
126 for the board to determine if the teacher has a degree or degree major with course requirements
127 that are substantially equivalent to the course requirements for a degree listed in:

- 128 (A) Subsection (1)(c)(i)(A);
- 129 (B) Subsections (1)(c)(ii)(A) through (E); or
- 130 (C) Subsections (1)(c)(iii)(A) and (B).

131 (7) (a) The board shall distribute money [~~from~~] appropriated to the Teacher Salary
132 Supplement [~~Restricted Account~~] Program to school districts and charter schools for the
133 Teacher Salary Supplement Program in accordance with the provisions of this section.

134 (b) The board shall include the employer-paid benefits described under Subsection
135 (2)(b) in the amount of each salary supplement.

136 (c) The employer-paid benefits described under Subsection (2)(b) are an addition to the
137 salary supplement limits described under Subsection (3).

138 (8) (a) Money received from the Teacher Salary Supplement [~~Restricted Account~~]
139 Program shall be used by a school district or charter school to provide a salary supplement
140 equal to the amount specified in Subsection (3) for each eligible teacher.

141 (b) The salary supplement is part of the teacher's base pay, subject to the teacher's
142 qualification as an eligible teacher every year, semester, or trimester.

143 (9) Notwithstanding the provisions of this section, if the appropriation for the program
144 is insufficient to cover the costs associated with salary supplements, the board may limit or
145 reduce the salary supplements.

146 Section 2. Section **63A-3-103** is amended to read:

147 **63A-3-103. Duties of director of division -- Application to institutions of higher**
148 **education.**

149 (1) The director of the Division of Finance shall:

- 150 (a) define fiscal procedures relating to approval and allocation of funds;
- 151 (b) provide for the accounting control of funds;

- 152 ~~[(e) approve proposed expenditures for the purchase of supplies and services;]~~
153 ~~[(f)]~~ (c) promulgate rules that:
- 154 (i) establish procedures for maintaining detailed records of all types of leases;
 - 155 (ii) account for all types of leases in accordance with generally accepted accounting
156 principles;
 - 157 (iii) require the performance of a lease with an option to purchase study by state
158 agencies prior to any lease with an option to purchase acquisition of capital equipment; and
 - 159 (iv) require that the completed lease with an option to purchase study be approved by
160 the director of the Division of Finance;
- 161 ~~[(e)]~~ (d) if the department operates the Division of Finance as an internal service fund
162 agency in accordance with Section 63A-1-109.5, submit to the Rate Committee established in
163 Section 63A-1-114:
- 164 (i) the proposed rate and fee schedule as required by Section 63A-1-114; and
 - 165 (ii) other information or analysis requested by the Rate Committee;
- 166 ~~[(f)]~~ (e) oversee the Office of State Debt Collection;
- 167 ~~[(g)]~~ (f) publish the state's current constitutional debt limit on the Utah Public Finance
168 Website, created in Section 63A-3-402; and
- 169 ~~[(h)]~~ (g) prescribe other fiscal functions required by law or under the constitutional
170 authority of the governor to transact all executive business for the state.
- 171 (2) (a) Institutions of higher education are subject to the provisions of Title 63A,
172 Chapter 3, Part 1, General Provisions, and Title 63A, Chapter 3, Part 2, Accounting System,
173 only to the extent expressly authorized or required by the State Board of Regents under Title
174 53B, State System of Higher Education.
- 175 (b) Institutions of higher education shall submit financial data for the past fiscal year
176 conforming to generally accepted accounting principles to the director of the Division of
177 Finance.
- 178 (3) The Division of Finance shall prepare financial statements and other reports in
179 accordance with legal requirements and generally accepted accounting principles for the state
180 auditor's examination and certification:
- 181 (a) not later than 60 days after a request from the state auditor; and
 - 182 (b) at the end of each fiscal year.

183 Section 3. Section **63A-3-203** is amended to read:

184 **63A-3-203. Accounting control over state departments and agencies --**
 185 **Prescription and approval of financial forms, accounting systems, and fees.**

186 (1) The director of the Division of Finance shall:

187 (a) exercise accounting control over all state departments and agencies except
 188 institutions of higher education; and

189 (b) prescribe the manner and method of certifying that funds are available and adequate
 190 to meet all contracts and obligations.

191 (2) The director shall audit all claims against the state for which an appropriation has
 192 been made.

193 (3) (a) The director shall prescribe:

194 (i) [~~prescribe~~] all forms of requisitions, receipts, vouchers, bills, or claims to be used
 195 by all state departments and agencies; and

196 [~~(ii) prescribe the forms, procedures, and records to be maintained by all departmental,~~
 197 ~~institutional, or agency store rooms;~~]

198 [~~(iii) exercise inventory control over the store rooms; and~~]

199 [~~(iv) prescribe~~] (ii) all forms to be used by the division.

200 (b) Before approving the forms in Subsection (3)(a), the director shall obtain approval
 201 from the state auditor that the forms will adequately facilitate the post-audit of public accounts.

202 (4) Before implementation by any state department or agency, the director of the
 203 Division of Finance shall review and approve[~~-(a)~~] any accounting system developed by a state
 204 department or agency[~~;-and~~].

205 [~~(b) any fees established by any state department or agency to recover the costs of~~
 206 ~~operations.~~]

207 Section 4. Section **63A-3-205** is amended to read:

208 **63A-3-205. Revolving loan funds -- Standards and procedures -- Annual report.**

209 (1) As used in this section, "revolving loan fund" means:

210 (a) the Water Resources Conservation and Development Fund, created in Section
 211 [73-10-24](#);

212 (b) the Water Resources Construction Fund, created in Section [73-10-8](#);

213 (c) the Water Resources Cities Water Loan Fund, created in Section [73-10-22](#);

214 (d) the Clean Fuel Conversion Funds, created in Title 19, Chapter 1, Part 4, Clean
 215 Fuels and Vehicle Technology Program Act;

216 (e) the Water Development Security Fund and its subaccounts, created in Section
 217 73-10c-5;

218 (f) the Agriculture Resource Development Fund, created in Section 4-18-106;

219 (g) the Utah Rural Rehabilitation Fund, created in Section 4-19-4;

220 (h) the Permanent Community Impact Fund, created in Section 35A-8-603;

221 (i) the Petroleum Storage Tank Trust Fund, created in Section 19-6-409;

222 (j) the Uintah Basin Revitalization Fund, created in Section 35A-8-1602;

223 (k) the Navajo Revitalization Fund, created in Section 35A-8-1704; and

224 (l) the Energy Efficiency Fund, created in Section 11-45-201.

225 (2) The division shall for each revolving loan fund[~~-(a)~~] make rules establishing
 226 standards and procedures governing:

227 [~~(i)~~] (a) payment schedules and due dates;

228 [~~(ii)~~] (b) interest rate effective dates;

229 [~~(iii)~~] (c) loan documentation requirements; and

230 [~~(iv)~~] (d) interest rate calculation requirements[~~;-and~~].

231 [~~(b) make an annual report to the Legislature containing:~~]

232 [~~(i) the total dollars loaned by that fund during the last fiscal year;~~]

233 [~~(ii) a listing of each loan currently more than 90 days delinquent, in default, or that
 234 was restructured during the last fiscal year;~~]

235 [~~(iii) a description of each project that received money from that revolving loan fund;~~]

236 [~~(iv) the amount of each loan made to that project;~~]

237 [~~(v) the specific purpose for which the proceeds of the loan were to be used, if any;~~]

238 [~~(vi) any restrictions on the use of the loan proceeds;~~]

239 [~~(vii) the present value of each loan at the end of the fiscal year calculated using the
 240 interest rate paid by the state on the bonds providing the revenue on which the loan is based or,
 241 if that is unknown, on the average interest rate paid by the state on general obligation bonds
 242 issued during the most recent fiscal year in which bonds were sold; and]~~

243 [~~(viii) the financial position of each revolving loan fund, including the fund's cash
 244 investments, cash forecasts, and equity position.]~~

245 Section 5. Section **63A-3-502** is amended to read:

246 **63A-3-502. Office of State Debt Collection created -- Duties.**

247 (1) The state and each state agency shall comply with the requirements of this chapter
248 and any rules established by the Office of State Debt Collection.

249 (2) There is created the Office of State Debt Collection in the Division of Finance.

250 (3) The office shall:

251 (a) have overall responsibility for collecting and managing state receivables;

252 (b) assist the Division of Finance to develop consistent policies governing the
253 collection and management of state receivables;

254 (c) oversee and monitor state receivables to ensure that state agencies are:

255 (i) implementing all appropriate collection methods;

256 (ii) following established receivables guidelines; and

257 (iii) accounting for and reporting receivables in the appropriate manner;

258 (d) assist the Division of Finance to develop policies, procedures, and guidelines for
259 accounting, reporting, and collecting money owed to the state;

260 (e) provide information, training, and technical assistance to each state agency on
261 various collection-related topics;

262 (f) write an inclusive receivables management and collection manual for use by each
263 state agency;

264 (g) prepare quarterly and annual reports of the state's receivables;

265 (h) create or coordinate a state accounts receivable database;

266 (i) develop reasonable criteria to gauge state agencies' efforts in maintaining an
267 effective accounts receivable program;

268 (j) identify any state agency that is not making satisfactory progress toward
269 implementing collection techniques and improving accounts receivable collections;

270 (k) coordinate information, systems, and procedures between each state agency to
271 maximize the collection of past-due accounts receivable;

272 (l) establish an automated cash receipt process between each state agency;

273 (m) assist the Division of Finance to establish procedures for writing off accounts
274 receivable for accounting and collection purposes;

275 (n) establish standard time limits after which an agency will delegate responsibility to

276 collect state receivables to the office or its designee;

277 (o) be a real party in interest for an account receivable referred to the office by any
278 state agency or for any restitution to victims referred to the office by a court; and

279 (p) allocate money collected for judgments registered under Section 77-18-6 in
280 accordance with Sections 51-9-402, 63A-3-506, and 78A-5-110.

281 (4) The office may:

282 (a) recommend to the Legislature new laws to enhance collection of past-due accounts
283 by state agencies;

284 (b) collect accounts receivables for higher education entities, if the higher education
285 entity agrees;

286 (c) prepare a request for proposal for consulting services to:

287 (i) analyze the state's receivable management and collection efforts; and

288 (ii) identify improvements needed to further enhance the state's effectiveness in
289 collecting its receivables;

290 (d) contract with private or state agencies to collect past-due accounts;

291 (e) perform other appropriate and cost-effective coordinating work directly related to
292 collection of state receivables;

293 (f) obtain access to records and databases of any state agency that are necessary to the
294 duties of the office by following the procedures and requirements of Section 63G-2-206,
295 including the financial disclosure form described in Section 77-38a-204;

296 (g) collect interest and fees related to the collection of receivables under this chapter,
297 and establish, by following the procedures and requirements of Section 63J-1-504:

298 (i) a fee to cover the administrative costs of collection, on accounts administered by the
299 office;

300 (ii) a late penalty fee that may not be more than 10% of the account receivable on
301 accounts administered by the office;

302 (iii) an interest charge that is:

303 (A) the postjudgment interest rate established by Section 15-1-4 in judgments
304 established by the courts; or

305 (B) not more than 2% above the prime rate as of July 1 of each fiscal year for accounts
306 receivable for which no court judgment has been entered; and

- 307 (iv) fees to collect accounts receivable for higher education;
- 308 (h) collect reasonable attorney fees and reasonable costs of collection that are related to
309 the collection of receivables under this chapter;
- 310 (i) make rules that allow accounts receivable to be collected over a reasonable period
311 of time and under certain conditions with credit cards;
- 312 (j) file a satisfaction of judgment in the court by following the procedures and
313 requirements of the Utah Rules of Civil Procedure;
- 314 (k) ensure that judgments for which the office is the judgment creditor are renewed, as
315 necessary;
- 316 (l) notwithstanding Section [63G-2-206](#), share records obtained under Subsection (4)(f)
317 with private sector vendors under contract with the state to assist state agencies in collecting
318 debts owed to the state agencies without changing the classification of any private, controlled,
319 or protected record into a public record; and
- 320 (m) enter into written agreements with other governmental agencies to obtain
321 information for the purpose of collecting state accounts receivable and restitution for victims.
- 322 (5) The office shall ensure that:
- 323 (a) a record obtained by the office or a private sector vendor as referred to in
324 Subsection (4)(l):
- 325 (i) is used only for the limited purpose of collecting accounts receivable; and
326 (ii) is subject to federal, state, and local agency records restrictions; and
- 327 (b) any person employed by, or formerly employed by, the office or a private sector
328 vendor as referred to in Subsection (4)(l) is subject to:
- 329 (i) the same duty of confidentiality with respect to the record imposed by law on
330 officers and employees of the state agency from which the record was obtained; and
331 (ii) any civil or criminal penalties imposed by law for violations of lawful access to a
332 private, controlled, or protected record.
- 333 (6) (a) The office shall collect accounts receivable ordered by a court as a result of
334 prosecution for a criminal offense that have been transferred to the office under Subsection
335 [76-3-201.1\(5\)\(h\)](#) or (8).
- 336 (b) The office may not assess the interest charge established by the office under
337 Subsection (4) on an account receivable subject to the postjudgment interest rate established by

338 Section 15-1-4.

339 (7) The office shall require a state agency to:

340 (a) transfer collection responsibilities to the office or its designee according to time
341 limits established by the office;

342 (b) make annual progress towards implementing collection techniques and improved
343 accounts receivable collections;

344 (c) use the state's accounts receivable system or develop systems that are adequate to
345 properly account for and report their receivables;

346 (d) develop and implement internal policies and procedures that comply with the
347 collections policies and guidelines established by the office;

348 (e) provide internal accounts receivable training to staff involved in the management
349 and collection of receivables as a supplement to statewide training;

350 (f) bill for and make initial collection efforts of its receivables up to the time the
351 accounts must be transferred; and

352 (g) submit quarterly receivable reports to the office that identify the age, collection
353 status, and funding source of each receivable.

354 ~~[(8) The office shall use the information provided by the agencies and any additional
355 information from the office's records to compile a one-page summary report of each agency.]~~

356 ~~[(9) The summary shall include:]~~

357 ~~[(a) the type of revenue that is owed to the agency;]~~

358 ~~[(b) any attempted collection activity; and]~~

359 ~~[(c) any costs incurred in the collection process.]~~

360 ~~[(10) The office shall annually provide copies of each agency's summary to the
361 governor and to the Legislature.]~~

362 ~~[(H)]~~ (8) All interest, fees, and other amounts authorized to be charged by the office
363 under Subsection (4):

364 (a) are penalties that may be charged by the office; and

365 (b) are not compensation for actual pecuniary loss.

366 Section 6. Section 63A-5-204 is amended to read:

367 **63A-5-204. Specific powers and duties of director.**

368 (1) As used in this section, "capitol hill facilities" and "capitol hill grounds" have the

369 same meaning as provided in Section [63C-9-102](#).

370 (2) (a) The director shall:

371 (i) recommend rules to the executive director for the use and management of facilities
372 and grounds owned or occupied by the state for the use of its departments and agencies;

373 (ii) supervise and control the allocation of space, in accordance with legislative
374 directive through annual appropriations acts or other specific legislation, to the various
375 departments, commissions, institutions, and agencies in all buildings or space owned, leased, or
376 rented by or to the state, except capitol hill facilities and capitol hill grounds and except as
377 otherwise provided by law;

378 (iii) comply with the procedures and requirements of Title 63A, Chapter 5, Part 3,
379 Division of Facilities Construction and Management Leasing;

380 (iv) except as provided in Subsection (2)(b), acquire, as authorized by the Legislature
381 through the appropriations act or other specific legislation, and hold title to, in the name of the
382 division, all real property, buildings, fixtures, or appurtenances owned by the state or any of its
383 agencies;

384 [~~(v) adopt and use a common seal, of a form and design determined by the director, and~~
385 ~~of which courts shall take judicial notice;~~]

386 [~~(vi) file a description and impression of the seal with the Division of Archives;~~]

387 [~~(vii)~~] (v) collect and maintain all deeds, abstracts of title, and all other documents
388 evidencing title to or interest in property belonging to the state or any of its departments, except
389 institutions of higher education and the School and Institutional Trust Lands Administration;

390 [~~(viii)~~] (vi) report all properties acquired by the state, except those acquired by
391 institutions of higher education, to the director of the Division of Finance for inclusion in the
392 state's financial records;

393 [~~(ix)~~] (vii) before charging a rate, fee, or other amount for services provided by the
394 division's internal service fund to an executive branch agency, or to a subscriber of services
395 other than an executive branch agency:

396 (A) submit the proposed rates, fees, and cost analysis to the Rate Committee
397 established in Section [63A-1-114](#); and

398 (B) obtain the approval of the Legislature as required by Section [63J-1-410](#);

399 [~~(x)~~] (viii) conduct a market analysis by July 1, 2005, and periodically thereafter, of

400 proposed rates and fees, which analysis shall include a comparison of the division's rates and
401 fees with the fees of other public or private sector providers where comparable services and
402 rates are reasonably available;

403 [~~(xi)~~] (ix) implement the State Building Energy Efficiency Program under Section
404 63A-5-701; and

405 [~~(xii)~~] (x) take all other action necessary for carrying out the purposes of this chapter.

406 (b) Legislative approval is not required for acquisitions by the division that cost less
407 than \$250,000.

408 (3) (a) The director shall direct or delegate maintenance and operations, preventive
409 maintenance, and facilities inspection programs and activities for any department, commission,
410 institution, or agency, except:

411 (i) the State Capitol Preservation Board; and

412 (ii) state institutions of higher education.

413 (b) The director may choose to delegate responsibility for these functions only when
414 the director determines that:

415 (i) the department or agency has requested the responsibility;

416 (ii) the department or agency has the necessary resources and skills to comply with
417 facility maintenance standards approved by the State Building Board; and

418 (iii) the delegation would result in net cost savings to the state as a whole.

419 (c) The State Capitol Preservation Board and state institutions of higher education are
420 exempt from Division of Facilities Construction and Management oversight.

421 (d) Each state institution of higher education shall comply with the facility
422 maintenance standards approved by the State Building Board.

423 (e) Except for the State Capitol Preservation Board, agencies and institutions that are
424 exempt from division oversight shall annually report their compliance with the facility
425 maintenance standards to the division in the format required by the division.

426 (f) The division shall:

427 (i) prescribe a standard format for reporting compliance with the facility maintenance
428 standards;

429 (ii) report agency and institution compliance or noncompliance with the standards to
430 the Legislature; and

431 (iii) conduct periodic audits of exempt agencies and institutions to ensure that they are
432 complying with the standards.

433 (4) (a) In making any allocations of space under Subsection (2), the director shall:

434 (i) conduct studies to determine the actual needs of each department, commission,
435 institution, or agency; and

436 (ii) comply with the restrictions contained in this Subsection (4).

437 (b) The supervision and control of the legislative area is reserved to the Legislature.

438 (c) The supervision and control of the judicial area is reserved to the judiciary for trial
439 courts only.

440 (d) The director may not supervise or control the allocation of space for entities in the
441 public and higher education systems.

442 (e) The supervision and control of capitol hill facilities and capitol hill grounds is
443 reserved to the State Capitol Preservation Board.

444 (5) The director may:

445 (a) hire or otherwise procure assistance and services, professional, skilled, or
446 otherwise, that are necessary to carry out the director's responsibilities, and may expend funds
447 provided for that purpose either through annual operating budget appropriations or from
448 nonlapsing project funds;

449 (b) sue and be sued in the name of the division; and

450 (c) hold, buy, lease, and acquire by exchange or otherwise, as authorized by the
451 Legislature, whatever real or personal property that is necessary for the discharge of the
452 director's duties.

453 (6) Notwithstanding the provisions of Subsection (2)(a)(iv), the following entities may
454 hold title to any real property, buildings, fixtures, and appurtenances held by them for purposes
455 other than administration that are under their control and management:

456 (a) the Office of Trust Administrator;

457 (b) the Department of Transportation;

458 (c) the Division of Forestry, Fire, and State Lands;

459 (d) the Department of Natural Resources;

460 (e) the Utah National Guard;

461 (f) any area vocational center or other institution administered by the State Board of

462 Education;

463 (g) any institution of higher education; and

464 (h) the Utah Science Technology and Research Governing Authority.

465 (7) The director shall ensure that any firm performing testing and inspection work
466 governed by the American Society for Testing Materials Standard E-329 on public buildings
467 under the director's supervision shall:

468 (a) fully comply with the American Society for Testing Materials standard
469 specifications for agencies engaged in the testing and inspection of materials known as ASTM
470 E-329; and

471 (b) carry a minimum of \$1,000,000 of errors and omissions insurance.

472 (8) Notwithstanding Subsections (2)(a)(iii) and (iv), the School and Institutional Trust
473 Lands Administration may hold title to any real property, buildings, fixtures, and appurtenances
474 held by it that are under its control.

475 Section 7. Section **63A-5-208** is amended to read:

476 **63A-5-208. Definitions -- Certain public construction bids to list subcontractors --**
477 **Changing subcontractors -- Bidders as subcontractors -- Dispute resolution process --**
478 **Penalties.**

479 (1) As used in this section:

480 (a) "First-tier subcontractor" means a subcontractor who contracts directly with the
481 prime contractor.

482 (b) "Subcontractor" means any person or entity under contract with a contractor or
483 another subcontractor to provide services or labor for the construction, installation, or repair of
484 an improvement to real property.

485 (c) "Subcontractor" includes a trade contractor or specialty contractor.

486 (d) "Subcontractor" does not include suppliers who provide only materials, equipment,
487 or supplies to a contractor or subcontractor.

488 (2) The director shall apply the provisions of this section to achieve fair and
489 competitive bidding and to discourage bid-shopping by contractors.

490 (3) (a) (i) (A) On each public construction project, the director shall require the
491 apparent lowest three bidders to submit a list of their first-tier subcontractors indicating each
492 subcontractor's name, bid amount, and other information required by rule.

493 (B) Other bidders who are not one of the apparent lowest three bidders may also
494 submit a list of their first-tier subcontractors containing the information required by this
495 Subsection (3).

496 (C) The director may not consider any bid submitted by a bidder if the bidder fails to
497 submit a subcontractor list meeting the requirements of this section.

498 (ii) On projects where the contractor's total bid is less than \$500,000, subcontractors
499 whose bid is less than \$20,000 need not be listed.

500 (iii) On projects where the contractor's total bid is \$500,000 or more, subcontractors
501 whose bid is less than \$35,000 need not be listed.

502 (b) (i) The bidders shall submit this list within 24 hours after the bid opening time, not
503 including Saturdays, Sundays, and state holidays.

504 (ii) This list does not limit the director's right to authorize a change in the listing of any
505 subcontractor.

506 (c) The bidders shall verify that all subcontractors listed as part of their bids are
507 licensed as required by state law.

508 (d) Twenty-four hours after the bid opening, the contractor may change the contractor's
509 subcontractors only after:

510 (i) receiving permission from the director; and

511 (ii) establishing that:

512 (A) the change is in the best interest of the state; and

513 (B) the contractor establishes reasons for the change that meet the standards established
514 by the State Building Board.

515 (e) If the director approves any changes in subcontractors that result in a net lower
516 contract price for subcontracted work, the total of the prime contract may be reduced to reflect
517 the changes.

518 (4) (a) A bidder may list himself as a subcontractor when the bidder is currently
519 licensed to perform the portion of the work for which the bidder lists himself as a subcontractor
520 and:

521 (i) the bidder intends to perform the work of a subcontractor himself; or

522 (ii) the bidder intends to obtain a subcontractor to perform the work at a later date
523 because the bidder was unable to:

524 (A) obtain a bid from a qualified subcontractor; or

525 (B) obtain a bid from a qualified subcontractor at a cost that the bidder considers to be
526 reasonable.

527 (b) (i) When the bidder intends to perform the work of a subcontractor himself, the
528 director may, by written request, require that the bidder provide the director with information
529 indicating the bidder's:

530 (A) previous experience in the type of work to be performed; and

531 (B) qualifications for performing the work.

532 (ii) The bidder must respond in writing within five business days of receiving the
533 director's written request.

534 (iii) If the bidder's submitted information causes the director to reasonably believe that
535 self-performance of the portion of the work by the bidder is likely to yield a substandard
536 finished product, the director shall:

537 (A) require the bidder to use a subcontractor for the portion of the work in question and
538 obtain the subcontractor bid under the supervision of the director; or

539 (B) reject the bidder's bid.

540 (c) (i) When the bidder intends to obtain a subcontractor to perform the work at a later
541 date, the bidder shall provide documentation with the subcontractor list describing:

542 (A) the bidder's efforts to obtain a bid of a qualified subcontractor at a reasonable cost;
543 and

544 (B) why the bidder was unable to obtain a qualified subcontractor bid.

545 (ii) If the bidder who intends to obtain a subcontractor to perform the work at a later
546 date is awarded a contract, the director shall supervise the bidder's efforts to obtain a qualified
547 subcontractor bid.

548 (iii) The director may not adjust the amount of the contract awarded in order to reflect
549 the actual amount of the subcontractor's bid.

550 (5) The division may not disclose any subcontractor bid amounts obtained under this
551 section until the division has awarded the project to a contractor.

552 (6) (a) The director shall, in consultation with the State Building Board, prepare draft
553 rules establishing a process for resolving disputes involved with contracts under the division's
554 procurement authority.

555 ~~[(b) The draft rules shall be presented to the Government Operations Interim~~
556 ~~Committee for review, comment, and recommendations before August 31, 2004.]~~

557 ~~[(c)]~~ (b) The director shall consider, and the rules may include:

558 (i) requirements regarding preliminary resolution efforts between the parties directly
559 involved with the dispute;

560 (ii) requirements for the filing of claims, including notification, timeframes, and
561 documentation;

562 (iii) identification of the types of costs eligible for allocation and a method for
563 allocating costs among the parties to the dispute;

564 (iv) required time periods, not to exceed 60 days, for the resolution of the claim;

565 (v) provision for an independent hearing officer, panel, or arbitrator to extend the time
566 period for resolution of the claim by not to exceed 60 additional days for good cause;

567 (vi) provision for the extension of required time periods if the claimant agrees;

568 (vii) requirements that decisions be issued in writing;

569 (viii) provisions for administrative appeals of the decision;

570 (ix) provisions for the timely payment of claims after resolution of the dispute,
571 including any appeals;

572 (x) a requirement that the final determination resulting from the dispute resolution
573 process provided for in the rules is a final agency action subject to judicial review as provided
574 in Sections [63G-4-401](#) and [63G-4-402](#);

575 (xi) a requirement that a claim or dispute that does not include a monetary claim
576 against the division or its agents is not limited to the dispute resolution process provided for in
577 this Subsection (6);

578 (xii) requirements for claims and disputes to be eligible for this dispute resolution
579 process;

580 (xiii) the use of an independent hearing officer, panel, arbitration, or mediation; and

581 (xiv) the circumstances under which a subcontractor may file a claim directly with the
582 division.

583 ~~[(d)]~~ (c) Persons pursuing claims under the process required by this Subsection (6):

584 (i) are bound by the decision reached under this process unless the decision is properly
585 appealed; and

586 (ii) may not pursue claims or disputes under the dispute resolution process established
587 in Title 63G, Chapter 6a, Utah Procurement Code.

588 (7) In addition to all other reasons allowed by law or rule, the director may reject all
589 bids if none of the bidders whose bid is within the budget of the project submit a subcontractor
590 list that meets the requirements of this section.

591 (8) Any violation of this section, or any fraudulent misrepresentation by a contractor,
592 subcontractor, or supplier, may be grounds for:

593 (a) the contractor, subcontractor, or supplier to be suspended or debarred by the
594 director; or

595 (b) the contractor or subcontractor to be disciplined by the Division of Professional and
596 Occupational Licensing.

597 Section 8. Section **77-32-201** is amended to read:

598 **77-32-201. Definitions.**

599 For the purposes of this chapter:

600 (1) "Board" means the Indigent Defense Funds Board created in Section [77-32-401](#).

601 (2) "Compelling reason" shall include one or more of the following circumstances
602 relating to the contracting attorney:

603 (a) a conflict of interest;

604 (b) the contracting attorney does not have sufficient expertise to provide an effective
605 defense of the indigent; or

606 (c) the legal defense is insufficient or lacks expertise to provide a complete defense.

607 (3) "Defense resources" means a competent investigator, expert witness, scientific or
608 medical testing, or other appropriate means necessary, for an effective defense of an indigent,
609 but does not include legal counsel.

610 (4) "Defense services provider" means a legal aid association, legal defender's office,
611 regional legal defense association, law firm, attorney, or attorneys contracting with a county or
612 municipality to provide legal defense and includes any combination of counties or
613 municipalities to provide regional legal defense.

614 (5) "Indigent" means a person qualifying as an indigent under indigency standards
615 established in Part 3, Counsel for Indigents.

616 (6) "Legal aid association" means a nonprofit defense association or society that

617 provides legal defense for indigent defendants.

618 (7) "Legal defender's office" means a division of county government created and
619 authorized by the county legislative body to provide legal representation in criminal matters to
620 indigent defendants.

621 (8) "Legal defense" means to:

622 (a) provide defense counsel for each indigent who faces the potential deprivation of the
623 indigent's liberty;

624 (b) afford timely representation by defense counsel;

625 (c) provide the defense resources necessary for a complete defense;

626 (d) assure undivided loyalty of defense counsel to the client;

627 (e) provide a first appeal of right; and

628 (f) prosecute other remedies before or after a conviction, considered by defense counsel
629 to be in the interest of justice except for other and subsequent discretionary appeals or
630 discretionary writ proceedings.

631 (9) "Participating county" means a county [~~which~~] that has complied with the
632 provisions of this chapter for participation in the Indigent Capital Defense Trust Fund as
633 provided in Sections 77-32-602 and 77-32-603 [~~or the Indigent Felony Defense Trust Fund as~~
634 ~~provided in Sections 77-32-702 and 77-32-703~~].

635 (10) "Regional legal defense" means a defense services provider which provides legal
636 defense to any combination of counties or municipalities through an interlocal cooperation
637 agreement pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, and Subsection
638 77-32-306(3).

639 (11) "Serious offense" means a felony or capital felony.

640 Section 9. Section 77-32-401.5 is amended to read:

641 **77-32-401.5. Interim board -- Members -- Administrative support -- Duties.**

642 (1) Until the Indigent Defense Funds Board authorized by Section 77-32-401 is
643 constituted after achieving the number of participating counties required by [~~Sections~~] Section
644 77-32-604 [~~and 77-32-704~~], an interim board may be created within the Division of Finance
645 composed of the following three members:

646 (a) a county commissioner from a county participating in the Indigent Inmate Trust
647 Fund pursuant to Section 77-32-502 appointed by the Utah Association of Counties;

648 (b) a county attorney from a county participating in the Indigent Inmate Trust Fund
649 pursuant to Section 77-32-502 appointed by the Utah Association of Counties; and

650 (c) a representative appointed by the Administrative Office of the Courts.

651 (2) The Division of Finance shall provide administrative support to the interim board.

652 (3) (a) Members shall serve until the Indigent Defense Funds Board is constituted.

653 (b) When a vacancy occurs in the membership for any reason, a replacement shall be
654 appointed for the remaining unexpired term in the same manner as the original appointment.

655 (4) A member may not receive compensation or benefits for the member's service, but
656 may receive per diem and travel expenses in accordance with:

657 (a) Section 63A-3-106;

658 (b) Section 63A-3-107; and

659 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
660 63A-3-107.

661 (5) The per diem and travel expenses for board members under Subsection (4) shall be
662 paid from the Indigent Inmate Trust Fund in Section 77-32-502.

663 (6) Until the Indigent Defense Funds Board is constituted, the interim board shall be
664 authorized to carry out any responsibility provided to the Indigent Defense Funds Board in
665 statute as it relates to Chapter 32, Part 5, Indigent Inmates.

666 (7) The action by two members present shall constitute the action of the board.

667 Section 10. Section 77-32-402 is amended to read:

668 **77-32-402. Duties of board.**

669 (1) The board shall:

670 (a) establish rules and procedures for the application by counties for disbursements,
671 and the screening and approval of the applications for money from the:

672 (i) Indigent Inmate Trust Fund established in Part 5, Indigent Inmates; and

673 (ii) Indigent Capital Defense Trust Fund established in Part 6, Indigent Capital Defense
674 Trust Fund; ~~and~~

675 ~~[(iii) Indigent Felony Defense Trust Fund established in Part 7, Indigent Felony
676 Defense Trust Fund;]~~

677 (b) receive, screen, and approve or disapprove the application of counties for
678 disbursements from each fund;

679 (c) calculate the amount of the annual contribution to be made to the funds by each
680 participating county;

681 (d) prescribe forms for the application for money from each fund;

682 (e) oversee and approve the disbursement of money from each fund as provided in
683 Sections [77-32-401](#), [77-32-502](#), and [77-32-601](#)~~[, and [77-32-701](#)]~~;

684 (f) establish its own rules of procedure, elect its own officers, and appoint committees
685 of its members and other people as may be reasonable and necessary;

686 (g) negotiate, enter into, and administer contracts with legal counsel, qualified under
687 and meeting the standards consistent with this chapter, to provide defense counsel services to:

688 (i) indigents prosecuted in participating counties for serious offenses in violation of
689 state law; and

690 (ii) an indigent inmate who is incarcerated in certain counties.

691 (2) The board may provide to the court a list of attorneys qualified under Utah Rules of
692 Criminal Procedure, Rule 8, with which the board has a preliminary contract to defend indigent
693 cases for an assigned rate.

694 Section 11. Section **78B-1-119** is amended to read:

695 **78B-1-119. Jurors and witnesses -- Fees and mileage.**

696 (1) Every juror and witness legally required or in good faith requested to attend a trial
697 court of record or not of record or a grand jury is entitled to:

698 (a) \$18.50 for the first day of attendance and \$49 per day for each subsequent day of
699 attendance; and

700 (b) if traveling more than 50 miles, \$1 for each four miles in excess of 50 miles
701 actually and necessarily traveled in going only, regardless of county lines.

702 (2) Persons in the custody of a penal institution upon conviction of a criminal offense
703 are not entitled to a witness fee.

704 (3) A witness attending from outside the state in a civil case is allowed mileage at the
705 rate of 25 cents per mile and is taxed for the distance actually and necessarily traveled inside
706 the state in going only.

707 (4) If the witness is attending from outside the state in a criminal case, the state shall
708 reimburse the witness under Section [77-21-3](#).

709 (5) A prosecution witness or a witness subpoenaed by an indigent defendant attending

710 from outside the county but within the state may receive reimbursement for necessary lodging
711 and meal expenses under rule of the Judicial Council.

712 (6) A witness subpoenaed to testify in court proceedings in a civil action shall receive
713 reimbursement for necessary and reasonable parking expenses from the attorney issuing the
714 subpoena under rule of the Judicial Council or Supreme Court.

715 ~~[(7) There is created within the General Fund, a restricted account known as the CASA~~
716 ~~Volunteer Account. A juror may donate the juror's fee to the CASA Volunteer Account in~~
717 ~~\$18.50 or \$49 increments. The Legislature shall annually appropriate money from the CASA~~
718 ~~Volunteer Account to the Administrative Office of the Courts for the purpose of recruiting,~~
719 ~~training, and supervising volunteers for the Court Appointed Special Advocate program~~
720 ~~established pursuant to Section 78A-6-902.]~~

721 Section 12. **Repealer.**

722 This bill repeals:

723 Section **53A-17a-157, Teacher Salary Supplement Restricted Account.**

724 Section **59-12-120, Investment incentive to ski resorts for lease or purchase of**

725 **certain equipment -- Ski Resort Capital Investment Restricted Account created --**

726 **Conditions and restrictions on receiving incentive -- State Tax Commission to administer.**

727 Section **77-32-701, Establishment of Indigent Felony Defense Trust Fund -- Use of**

728 **fund -- Compensation for indigent legal defense from fund.**

729 Section **77-32-702, County participation.**

730 Section **77-32-703, Computing participating county assessments.**

731 Section **77-32-704, Application and qualification for fund money.**

Legislative Review Note
Office of Legislative Research and General Counsel