

1 **UTAH STATE DEVELOPMENTAL CENTER AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Margaret Dayton**

5 House Sponsor: _____

6

LONG TITLE

7 **General Description:**

8 This bill enacts and amends provisions related to the Utah State Developmental Center.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ creates a Utah State Developmental Center Board;
- 12 ▶ directs the Utah State Developmental Center Board to:
 - 13 • administer the Utah State Developmental Center Miscellaneous Donation Fund;
 - 14 • administer the Utah State Developmental Center Land Fund; and
 - 15 • approve the sale, lease, or other disposition of real property or water rights

16 associated with the Utah State Developmental Center; and

- 17 ▶ moves the Utah State Developmental Center Land Fund from the Division of
- 18 Facilities Construction and Management to the Utah State Developmental Center
- 19 Board.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **53-13-105**, as last amended by Laws of Utah 2014, Chapter 366



- 28 **62A-1-105**, as last amended by Laws of Utah 2009, Chapter 75
- 29 **62A-1-107**, as last amended by Laws of Utah 2010, Chapter 286
- 30 **62A-5-101**, as last amended by Laws of Utah 2011, Chapter 366
- 31 **62A-5-206**, as last amended by Laws of Utah 2013, Chapter 21
- 32 **62A-5-206.5**, as last amended by Laws of Utah 2015, Chapter 121
- 33 **63A-5-204**, as last amended by Laws of Utah 2009, Chapters 183 and 344

34 ENACTS:

- 35 **62A-5-202.5**, Utah Code Annotated 1953
- 36 **62A-5-206.6**, Utah Code Annotated 1953

37 REPEALS:

- 38 **63A-5-220**, as last amended by Laws of Utah 2013, Chapter 21



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

41 Section 1. Section **53-13-105** is amended to read:

42 **53-13-105. Special function officer.**

43 (1) (a) "Special function officer" means a sworn and certified peace officer performing
44 specialized investigations, service of legal process, security functions, or specialized ordinance,
45 rule, or regulatory functions.

46 (b) "Special function officer" includes:

- 47 (i) state military police;
- 48 (ii) constables;
- 49 (iii) port-of-entry agents as defined in Section **72-1-102**;
- 50 (iv) authorized employees or agents of the Department of Transportation assigned to
51 administer and enforce the provisions of Title 72, Chapter 9, Motor Carrier Safety Act;
- 52 (v) school district security officers;
- 53 (vi) Utah State Hospital security officers designated pursuant to Section **62A-15-603**;
- 54 (vii) Utah State Developmental Center security officers designated pursuant to
55 Subsection **62A-5-206**~~[(9)]~~**(8)**;
- 56 (viii) fire arson investigators for any political subdivision of the state;
- 57 (ix) ordinance enforcement officers employed by municipalities or counties may be
58 special function officers;

59 (x) employees of the Department of Natural Resources who have been designated to
60 conduct supplemental enforcement functions as a collateral duty;

61 (xi) railroad special agents deputized by a county sheriff under Section 17-30-2 or
62 17-30a-104, or appointed pursuant to Section 56-1-21.5;

63 (xii) auxiliary officers, as described by Section 53-13-112;

64 (xiii) special agents, process servers, and investigators employed by city attorneys;

65 (xiv) criminal tax investigators designated under Section 59-1-206; and

66 (xv) all other persons designated by statute as having special function officer authority
67 or limited peace officer authority.

68 (2) (a) A special function officer may exercise that spectrum of peace officer authority
69 that has been designated by statute to the employing agency, and only while on duty, and not
70 for the purpose of general law enforcement.

71 (b) If the special function officer is charged with security functions respecting facilities
72 or property, the powers may be exercised only in connection with acts occurring on the
73 property where the officer is employed or when required for the protection of the employer's
74 interest, property, or employees.

75 (c) A special function officer may carry firearms only while on duty, and only if
76 authorized and under conditions specified by the officer's employer or chief administrator.

77 (3) (a) A special function officer may not exercise the authority of a peace officer until:

78 (i) the officer has satisfactorily completed an approved basic training program for
79 special function officers as provided under Subsection (4); and

80 (ii) the chief law enforcement officer or administrator has certified this fact to the
81 director of the division.

82 (b) City and county constables and their deputies shall certify their completion of
83 training to the legislative governing body of the city or county they serve.

84 (4) (a) The agency that the special function officer serves may establish and maintain a
85 basic special function course and in-service training programs as approved by the director of
86 the division with the advice and consent of the council.

87 (b) The in-service training shall consist of no fewer than 40 hours per year and may be
88 conducted by the agency's own staff or by other agencies.

89 Section 2. Section 62A-1-105 is amended to read:

90 **62A-1-105. Creation of boards, divisions, and offices.**

91 (1) The following policymaking boards are created within the Department of Human
92 Services:

- 93 (a) the Board of Aging and Adult Services; ~~and~~
- 94 (b) the Board of Juvenile Justice Services~~[-];~~ and
- 95 (c) the Utah State Developmental Center Board.

96 (2) The following divisions are created within the Department of Human Services:

- 97 (a) the Division of Aging and Adult Services;
- 98 (b) the Division of Child and Family Services;
- 99 (c) the Division of Services for People with Disabilities;
- 100 (d) the Division of Substance Abuse and Mental Health; and
- 101 (e) the Division of Juvenile Justice Services.

102 (3) The following offices are created within the Department of Human Services:

- 103 (a) the Office of Licensing;
- 104 (b) the Office of Public Guardian; and
- 105 (c) the Office of Recovery Services.

106 Section 3. Section **62A-1-107** is amended to read:

107 **62A-1-107. Boards within department -- Members, appointment, terms,**
108 **vacancies, chairperson, compensation, meetings, quorum.**

109 (1) (a) This section applies only to the Board of Aging and Adult Services and the
110 Board of Juvenile Justice Services described in Subsections [62A-1-105\(1\)\(a\)](#) and [\(b\)](#).

111 ~~[(+)]~~ (b) Each board ~~[described in Section [62A-1-105](#)]~~ shall have seven members who
112 are appointed by the governor with the consent of the Senate.

113 (2) (a) Except as required by Subsection (2)(b), each member shall be appointed for a
114 term of four years, and is eligible for one reappointment.

115 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the
116 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
117 board members are staggered so that approximately half of the board is appointed every two
118 years.

119 (c) Board members shall continue in office until the expiration of their terms and until
120 their successors are appointed, which may not exceed 90 days after the formal expiration of a

121 term.

122 (d) When a vacancy occurs in the membership for any reason, the replacement shall be
123 appointed for the unexpired term.

124 (3) No more than four members of any board may be from the same political party.
125 Each board shall have diversity of gender, ethnicity, and culture; and members shall be chosen
126 on the basis of their active interest, experience, and demonstrated ability to deal with issues
127 related to their specific boards.

128 (4) Each board shall annually elect a chairperson from its membership. Each board
129 shall hold meetings at least once every three months. Within budgetary constraints, meetings
130 may be held from time to time on the call of the chairperson or of the majority of the members
131 of any board. Four members of a board are necessary to constitute a quorum at any meeting,
132 and, if a quorum exists, the action of the majority of members present shall be the action of the
133 board.

134 (5) A member may not receive compensation or benefits for the member's service, but,
135 at the executive director's discretion, may receive per diem and travel expenses in accordance
136 with:

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

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

139 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
140 63A-3-107.

141 (6) Each board shall adopt bylaws governing its activities. Bylaws shall include
142 procedures for removal of a board member who is unable or unwilling to fulfill the
143 requirements of his appointment.

144 (7) The board has program policymaking authority for the division over which it
145 presides.

146 Section 4. Section 62A-5-101 is amended to read:

147 **62A-5-101. Definitions.**

148 As used in this chapter:

149 (1) "Approved provider" means a person approved by the division to provide
150 home-based services.

151 (2) "Board" means the Utah State Developmental Center Board created under Section

152 [62A-5-202.5.](#)

153 ~~[(2)]~~ (3) (a) "Brain injury" means an acquired injury to the brain that is neurological in
154 nature, including a cerebral vascular accident.

155 (b) "Brain injury" does not include a deteriorating disease.

156 ~~[(3)]~~ (4) "Designated intellectual disability professional" means:

157 (a) a psychologist licensed under Title 58, Chapter 61, Psychologist Licensing Act,
158 who:

159 (i) (A) has at least one year of specialized training in working with persons with an
160 intellectual disability; or

161 (B) has at least one year of clinical experience with persons with an intellectual
162 disability; and

163 (ii) is designated by the division as specially qualified, by training and experience, in
164 the treatment of an intellectual disability; or

165 (b) a clinical social worker, certified social worker, marriage and family therapist, or
166 professional counselor, licensed under Title 58, Chapter 60, Mental Health Professional
167 Practice Act, who:

168 (i) has at least two years of clinical experience with persons with an intellectual
169 disability; and

170 (ii) is designated by the division as specially qualified, by training and experience, in
171 the treatment of an intellectual disability.

172 ~~[(4)]~~ (5) "Deteriorating disease" includes:

173 (a) multiple sclerosis;

174 (b) muscular dystrophy;

175 (c) Huntington's chorea;

176 (d) Alzheimer's disease;

177 (e) ataxia; or

178 (f) cancer.

179 ~~[(5)]~~ (6) "Developmental center" means the Utah State Developmental Center,
180 established in accordance with Part 2, Utah State Developmental Center.

181 ~~[(6)]~~ (7) "Direct service worker" means a person who provides services to a person
182 with a disability:

- 183 (a) when the services are rendered in:
 - 184 (i) the physical presence of the person with a disability; or
 - 185 (ii) a location where the person rendering the services has access to the physical
 - 186 presence of the person with a disability; and
 - 187 (b) (i) under a contract with the division;
 - 188 (ii) under a grant agreement with the division; or
 - 189 (iii) as an employee of the division.
- 190 [~~7~~] (8) "Director" means the director of the Division of Services for People with
- 191 Disabilities.
- 192 [~~8~~] (9) (a) "Disability" means a severe, chronic disability that:
- 193 (i) is attributable to:
 - 194 (A) an intellectual disability;
 - 195 (B) a condition that qualifies a person as a person with a related condition, as defined
 - 196 in 42 C.F.R. 435.1009;
 - 197 (C) a physical disability; or
 - 198 (D) a brain injury;
 - 199 (ii) is likely to continue indefinitely;
 - 200 (iii) (A) for a condition described in Subsection [~~8~~] (9)(a)(i)(A), (B), or (C), results in
 - 201 a substantial functional limitation in three or more of the following areas of major life activity:
 - 202 (I) self-care;
 - 203 (II) receptive and expressive language;
 - 204 (III) learning;
 - 205 (IV) mobility;
 - 206 (V) self-direction;
 - 207 (VI) capacity for independent living; or
 - 208 (VII) economic self-sufficiency; or
 - 209 (B) for a condition described in Subsection [~~8~~] (9)(a)(i)(D), results in a substantial
 - 210 limitation in three or more of the following areas:
 - 211 (I) memory or cognition;
 - 212 (II) activities of daily life;
 - 213 (III) judgment and self-protection;

214 (IV) control of emotions;
215 (V) communication;
216 (VI) physical health; or
217 (VII) employment; and
218 (iv) requires a combination or sequence of special interdisciplinary or generic care,
219 treatment, or other services that:

220 (A) may continue throughout life; and
221 (B) must be individually planned and coordinated.

222 (b) "Disability" does not include a condition due solely to:

- 223 (i) mental illness;
- 224 (ii) personality disorder;
- 225 (iii) hearing impairment;
- 226 (iv) visual impairment;
- 227 (v) learning disability;
- 228 (vi) behavior disorder;
- 229 (vii) substance abuse; or
- 230 (viii) the aging process.

231 [~~9~~] (10) "Division" means the Division of Services for People with Disabilities.

232 [~~10~~] (11) "Eligible to receive division services" or "eligibility" means qualification,
233 based on criteria established by the division in accordance with Subsection 62A-5-102(4), to
234 receive services that are administered by the division.

235 [~~11~~] (12) "Endorsed program" means a facility or program that:

- 236 (a) is operated:
 - 237 (i) by the division; or
 - 238 (ii) under contract with the division; or
- 239 (b) provides services to a person committed to the division under Part 3, Admission to
240 an Intermediate Care Facility for People with an Intellectual Disability.

241 [~~12~~] (13) "Licensed physician" means:

- 242 (a) an individual licensed to practice medicine under:
 - 243 (i) Title 58, Chapter 67, Utah Medical Practice Act; or
 - 244 (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or

245 (b) a medical officer of the United States Government while in this state in the
246 performance of official duties.

247 ~~[(13)]~~ (14) "Physical disability" means a medically determinable physical impairment
248 that has resulted in the functional loss of two or more of a person's limbs.

249 ~~[(14)]~~ (15) "Public funds" means state or federal funds that are disbursed by the
250 division.

251 ~~[(15)]~~ (16) "Resident" means an individual under observation, care, or treatment in an
252 intermediate care facility for people with an intellectual disability.

253 Section 5. Section **62A-5-202.5** is enacted to read:

254 **62A-5-202.5. Utah State Developmental Center Board -- Creation -- Membership**
255 **-- Duties -- Powers.**

256 (1) There is created the Utah State Developmental Center Board within the Department
257 of Human Services.

258 (2) The board is composed of nine members as follows:

259 (a) the director of the division or the director's designee;

260 (b) the superintendent of the developmental center or the superintendent's designee;

261 (c) the executive director of the Department of Human Services or the executive
262 director's designee;

263 (d) a resident of the developmental center selected by the superintendent; and

264 (e) five members appointed by the governor with the advice and consent of the Senate
265 as follows:

266 (i) three members of the general public; and

267 (ii) two members who are parents or guardians of individuals who receive services at
268 the developmental center.

269 (3) In making appointments to the board, the governor shall ensure that:

270 (a) no more than three members have immediate family residing at the developmental
271 center; and

272 (b) members represent a variety of geographic areas and economic interests of the state.

273 (4) (a) The governor shall appoint each member described in Subsection (2)(e) for a
274 term of four years.

275 (b) An appointed member may not serve more than two full consecutive terms unless

276 the governor determines that an additional term is in the best interest of the state.

277 (c) Notwithstanding the requirements of Subsections (4)(a) and (b), the governor shall,
278 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms
279 of appointed members are staggered so that approximately half of the appointed members are
280 appointed every two years.

281 (d) Appointed members shall continue in office until the expiration of their terms and
282 until their successors are appointed, which may not exceed 120 days after the formal expiration
283 of a term.

284 (e) When a vacancy occurs in the membership for any reason, the replacement shall be
285 appointed for the unexpired term.

286 (5) (a) The director shall serve as the chair.

287 (b) The board shall appoint a member to serve as vice chair.

288 (c) The board shall hold meetings quarterly or as needed.

289 (d) Five members are necessary to constitute a quorum at any meeting, and, if a
290 quorum exists, the action of the majority of members present shall be the action of the board.

291 (e) The chair shall be a non-voting member except that the chair may vote to break a tie
292 vote between the voting members.

293 (6) An appointed member may not receive compensation or benefits for the member's
294 service, but, at the executive director's discretion, may receive per diem and travel expenses in
295 accordance with:

296 (a) Section [63A-3-106](#);

297 (b) Section [63A-3-107](#); and

298 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
299 [63A-3-107](#).

300 (7) (a) The board shall adopt bylaws governing the board's activities.

301 (b) Bylaws shall include procedures for removal of a member who is unable or
302 unwilling to fulfill the requirements of the member's appointment.

303 (8) The board shall:

304 (a) act for the benefit of the developmental center and the division;

305 (b) advise and assist the division with the division's functions, operations, and duties
306 related to the developmental center, described in Sections [62A-5-102](#), [62A-5-103](#), [62A-5-201](#),

307 [62A-5-203](#), and [62A-5-206](#);

308 (c) administer the Utah State Developmental Center Miscellaneous Donation Fund, as
309 described in Section [62A-5-206.5](#);

310 (d) administer the Utah State Developmental Center Land Fund, as described in
311 Section [62A-5-206.6](#); and

312 (e) approve the sale, lease, or other disposition of real property or water rights
313 associated with the developmental center, as described in Subsection [62A-5-206.6\(5\)](#).

314 Section 6. Section **62A-5-206** is amended to read:

315 **62A-5-206. Powers and duties of division.**

316 The powers and duties of the division, with respect to the developmental center are as
317 follows:

318 (1) to establish rules, not inconsistent with law, for the government of the
319 developmental center;

320 [~~(2) to receive, take, and hold property, both real and personal, in trust for the state for~~
321 ~~the use and benefit of the developmental center;]~~

322 [(3)] (2) to establish rules governing the admission and discharge of persons with an
323 intellectual disability in accordance with state law;

324 [(4)] (3) to employ necessary medical and other professional personnel to assist in
325 establishing rules relating to the developmental center and to the treatment and training of
326 persons with an intellectual disability at the center;

327 [(5)] (4) to transfer a person who has been committed to the developmental center
328 under Part 3, Admission to an Intermediate Care Facility for People with an Intellectual
329 Disability, to any other facility or program operated by or under contract with the division, after
330 careful evaluation of the treatment needs of that person, if the facilities or programs available
331 meet the needs indicated, and if transfer would be in the best interest of that person. A person
332 transferred shall remain under the jurisdiction of the division;

333 [(6)] (5) the developmental center may receive a person who meets the requirements of
334 Subsection [62A-5-201\(3\)](#) from any other facility or program operated by or under contract with
335 the division, after careful evaluation of the treatment needs of that person, if the facility or
336 programs of the developmental center meet those needs, and if transfer would be in the best
337 interest of that person. A person so received by the developmental center remains under the

338 jurisdiction of the division;

339 ~~[(7)]~~ (6) to manage funds for a person residing in the developmental center, upon
340 request by that person's parent or guardian, or upon administrative or court order;

341 ~~[(8)]~~ (7) to charge and collect a fair and equitable fee from developmental center
342 residents, parents who have the ability to pay, or guardians where funds for that purpose are
343 available; and

344 ~~[(9)]~~ (8) supervision and administration of security responsibilities for the
345 developmental center is vested in the division. The executive director may designate, as
346 special function officers, individuals to perform special security functions for the
347 developmental center that require peace officer authority. Those special function officers may
348 not become or be designated as members of the Public Safety Retirement System~~[-and]~~.

349 ~~[(10) administration of the Utah State Developmental Center Miscellaneous Donation~~
350 ~~Fund, as established by Section 62A-5-206.5.]~~

351 Section 7. Section **62A-5-206.5** is amended to read:

352 **62A-5-206.5. Utah State Developmental Center Miscellaneous Donation Fund --**
353 **Use.**

354 (1) There is created an expendable special revenue fund known as the "Utah State
355 Developmental Center Miscellaneous Donation Fund."

356 (2) The ~~[division]~~ board shall deposit donations made to the Utah State Developmental
357 Center under Section **62A-1-111** into the expendable special revenue fund described in
358 Subsection (1).

359 ~~[(3) Except as provided in Subsection (5), no expenditure or appropriation may be~~
360 ~~made from the Utah State Developmental Center Miscellaneous Donation Fund.]~~

361 ~~[(4)]~~ (3) The state treasurer shall invest the money in the fund described in Subsection
362 (1) according to the procedures and requirements of Title 51, Chapter 7, State Money
363 Management Act, and the ~~[interest]~~ revenue received from the investment shall remain with the
364 fund described in Subsection (1).

365 (4) (a) Except as provided in Subsection (5), the money or revenue in the fund may not
366 be diverted, appropriated, expended, or committed to be expended for a purpose that is not
367 listed in this section.

368 (b) Notwithstanding Section 63J-1-410, the Legislature may not appropriate money or

369 revenue from the fund to eliminate or otherwise reduce an operating deficit if the money or
 370 revenue appropriated from the fund is expended or committed to be expended for a purpose
 371 other than one listed in this section.

372 (c) The Legislature may not amend the purposes for which money or revenue in the
 373 fund may be expended or committed to be expended except by the affirmative vote of
 374 two-thirds of all the members elected to each house.

375 ~~[(5) (a) Subject to the requirements of Subsection (6);]~~

376 (5) (a) The board shall approve expenditures of money and revenue in the fund
 377 described in Subsection (1).

378 (b) The board may expend money and [interest in] revenue the fund described in
 379 Subsection (1) [may] only [be spent]:

380 (i) as designated by the donor; or

381 (ii) for the benefit of ~~[clients]:~~

382 (A) residents of the [Utah State Developmental Center:] developmental center; or

383 (B) individuals with disabilities who receive services and support from the Utah State
 384 Developmental Center, as described in Subsection [62A-5-201\(2\)\(b\)](#).

385 ~~[(b)]~~ (c) Money and [interest] revenue in the fund described in Subsection (1) may not
 386 be used for items normally paid for by operating revenues or for items related to personnel
 387 costs without specific legislative authorization.

388 ~~[(6) (a) Single expenditures from the fund described in Subsection (1) in amounts of~~
 389 ~~\$5,000 or less shall be approved by the superintendent.]~~

390 ~~[(b) Single expenditures exceeding \$5,000 must be preapproved by the superintendent~~
 391 ~~and the division director.]~~

392 ~~[(c) Expenditures described in this Subsection (6) shall be used for the benefit of~~
 393 ~~patients at the Utah State Developmental Center.]~~

394 Section 8. Section **62A-5-206.6** is enacted to read:

395 **62A-5-206.6. Utah State Developmental Center Land Fund -- Use of fund.**

396 (1) As used in this section, "long-term lease" means:

397 (a) a lease with a term of five years or more; or

398 (b) a lease with a term of less than five years that may be unilaterally renewed by the
 399 lessee.

400 (2) Notwithstanding Section 63A-5-215, any money received by the board from the
401 sale, lease, except any lease existing on May 1, 1995, or other disposition of real property
402 associated with the developmental center shall be deposited in the expendable special revenue
403 fund created in Subsection (3).

404 (3) (a) There is created an expendable special revenue fund known as the "Utah State
405 Developmental Center Land Fund."

406 (b) The Division of Finance shall deposit the following money into the expendable
407 special revenue fund:

408 (i) money from the sale, long-term lease, except any lease existing on May 1, 1995, or
409 other disposition of real property associated with the developmental center; and

410 (ii) money from the sale, long-term lease, or other disposition of water rights
411 associated with the developmental center.

412 (c) The state treasurer shall invest money in the fund described in Subsection (3)
413 according to the procedures and requirements of Title 51, Chapter 7, State Money Management
414 Act, and the revenue from the investment shall remain with the expendable special revenue
415 fund, except as provided in Subsection (4).

416 (d) (i) Except as provided in Subsection (4), the money or revenue in the fund may not
417 be diverted, appropriated, expended, or committed to be expended for a purpose that is not
418 listed in this section.

419 (ii) Notwithstanding Section 63J-1-410, the Legislature may not appropriate money or
420 revenue from the fund to eliminate or otherwise reduce an operating deficit if the money or
421 revenue appropriated from the fund is expended or committed to be expended for a purpose
422 other than one listed in this section.

423 (iii) The Legislature may not amend the purposes for which money or revenue in the
424 fund may be expended or committed to be expended except by the affirmative vote of
425 two-thirds of all the members elected to each house.

426 (4) The board may expend money or revenue from the Utah State Developmental
427 Center Land Fund to:

428 (a) fulfill the functions of the Utah State Developmental Center as described in
429 Sections 62A-5-201 and 62A-5-203; and

430 (b) assist the division in the division's administration of services and supports, as

431 described in Sections 62A-5-102 and 62A-5-103.

432 (5) (a) Notwithstanding Section 65A-4-1, any sale, long-term lease, or other disposition
433 of real property or water rights associated with the developmental center shall be conducted as
434 provided in this Subsection (5).

435 (b) The board shall:

436 (i) approve the sale, long-term lease, or other disposition of real property or water
437 rights associated with the developmental center;

438 (ii) secure the approval of the Legislature before offering the real property or water
439 rights for sale, long-term lease, or other disposition; and

440 (iii) if the Legislature's approval is secured, as described in Subsection (5)(b)(ii), direct
441 the Division of Facilities Construction and Management to convey, lease, or dispose of the real
442 property or water rights associated with the developmental center according to the board's
443 determination.

444 Section 9. Section **63A-5-204** is amended to read:

445 **63A-5-204. Specific powers and duties of director.**

446 (1) As used in this section, "capitol hill facilities" and "capitol hill grounds" have the
447 same meaning as provided in Section 63C-9-102.

448 (2) (a) The director shall:

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

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

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

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

- 462 (v) adopt and use a common seal, of a form and design determined by the director, and
463 of which courts shall take judicial notice;
- 464 (vi) file a description and impression of the seal with the Division of Archives;
- 465 (vii) collect and maintain all deeds, abstracts of title, and all other documents
466 evidencing title to or interest in property belonging to the state or any of its departments, except
467 institutions of higher education and the School and Institutional Trust Lands Administration;
- 468 (viii) report all properties acquired by the state, except those acquired by institutions of
469 higher education, to the director of the Division of Finance for inclusion in the state's financial
470 records;
- 471 (ix) before charging a rate, fee, or other amount for services provided by the division's
472 internal service fund to an executive branch agency, or to a subscriber of services other than an
473 executive branch agency:
- 474 (A) submit the proposed rates, fees, and cost analysis to the Rate Committee
475 established in Section [63A-1-114](#); and
- 476 (B) obtain the approval of the Legislature as required by Section [63J-1-410](#);
- 477 (x) conduct a market analysis by July 1, 2005, and periodically thereafter, of proposed
478 rates and fees, which analysis shall include a comparison of the division's rates and fees with
479 the fees of other public or private sector providers where comparable services and rates are
480 reasonably available;
- 481 (xi) implement the State Building Energy Efficiency Program under Section
482 [63A-5-701](#); ~~and~~
- 483 (xii) convey, lease, or dispose of the real property or water rights associated with the
484 Utah State Developmental Center according to the Utah State Developmental Center Board's
485 determination, as described in Subsection [62A-5-206.6\(5\)](#); and
- 486 [~~xii~~] (xiii) take all other action necessary for carrying out the purposes of this chapter.
- 487 (b) Legislative approval is not required for acquisitions by the division that cost less
488 than \$250,000.
- 489 (3) (a) The director shall direct or delegate maintenance and operations, preventive
490 maintenance, and facilities inspection programs and activities for any department, commission,
491 institution, or agency, except:
- 492 (i) the State Capitol Preservation Board; and

- 493 (ii) state institutions of higher education.
- 494 (b) The director may choose to delegate responsibility for these functions only when
495 the director determines that:
- 496 (i) the department or agency has requested the responsibility;
- 497 (ii) the department or agency has the necessary resources and skills to comply with
498 facility maintenance standards approved by the State Building Board; and
- 499 (iii) the delegation would result in net cost savings to the state as a whole.
- 500 (c) The State Capitol Preservation Board and state institutions of higher education are
501 exempt from Division of Facilities Construction and Management oversight.
- 502 (d) Each state institution of higher education shall comply with the facility
503 maintenance standards approved by the State Building Board.
- 504 (e) Except for the State Capitol Preservation Board, agencies and institutions that are
505 exempt from division oversight shall annually report their compliance with the facility
506 maintenance standards to the division in the format required by the division.
- 507 (f) The division shall:
- 508 (i) prescribe a standard format for reporting compliance with the facility maintenance
509 standards;
- 510 (ii) report agency and institution compliance or noncompliance with the standards to
511 the Legislature; and
- 512 (iii) conduct periodic audits of exempt agencies and institutions to ensure that they are
513 complying with the standards.
- 514 (4) (a) In making any allocations of space under Subsection (2), the director shall:
- 515 (i) conduct studies to determine the actual needs of each department, commission,
516 institution, or agency; and
- 517 (ii) comply with the restrictions contained in this Subsection (4).
- 518 (b) The supervision and control of the legislative area is reserved to the Legislature.
- 519 (c) The supervision and control of the judicial area is reserved to the judiciary for trial
520 courts only.
- 521 (d) The director may not supervise or control the allocation of space for entities in the
522 public and higher education systems.
- 523 (e) The supervision and control of capitol hill facilities and capitol hill grounds is

524 reserved to the State Capitol Preservation Board.

525 (5) The director may:

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

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

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

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

537 (a) the Office of Trust Administrator;

538 (b) the Department of Transportation;

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

540 (d) the Department of Natural Resources;

541 (e) the Utah National Guard;

542 (f) any area vocational center or other institution administered by the State Board of
543 Education;

544 (g) any institution of higher education; and

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

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

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

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

553 (8) Notwithstanding Subsections (2)(a)(iii) and (iv), the School and Institutional Trust
554 Lands Administration may hold title to any real property, buildings, fixtures, and appurtenances

555 held by it that are under its control.

556 Section 10. **Repealer.**

557 This bill repeals:

558 Section **63A-5-220, Definitions -- Creation of Utah State Developmental Center**

559 **Land Fund -- Use of fund.**

Legislative Review Note
Office of Legislative Research and General Counsel