

UTAH STATE DEVELOPMENTAL CENTER AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Margaret Dayton

House Sponsor: _____

LONG TITLE

General Description:

This bill requires Legislative approval for action taken regarding the real property and water rights associated with the Utah State Developmental Center.

Highlighted Provisions:

This bill:

▸ requires Legislative approval before the Division of Facilities and Construction Management takes action regarding the real property and water rights associated with the Utah State Developmental Center; and

▸ sets restrictions on a process to adjust a municipal boundary if the adjustment affects the Utah State Developmental Center.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-2-419, as last amended by Laws of Utah 2010, Chapter 90

62A-1-105, as last amended by Laws of Utah 2016, Chapter 300

62A-5-101, as last amended by Laws of Utah 2017, Chapter 43

62A-5-202.5, as enacted by Laws of Utah 2016, Chapter 300



28 [63A-5-204](#), as last amended by Laws of Utah 2017, Chapter 56



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

31 Section 1. Section **10-2-419** is amended to read:

32 **10-2-419. Boundary adjustment -- Notice and hearing -- Protest.**

33 (1) The legislative bodies of two or more municipalities having common boundaries
34 may adjust their common boundaries as provided in this section.

35 (2) (a) The legislative body of each municipality intending to adjust a boundary that is
36 common with another municipality shall:

37 (i) adopt a resolution indicating the intent of the municipal legislative body to adjust a
38 common boundary;

39 (ii) hold a public hearing on the proposed adjustment no less than 60 days after the
40 adoption of the resolution under Subsection (2)(a)(i); and

41 (iii) (A) publish notice:

42 (I) at least once a week for three successive weeks in a newspaper of general
43 circulation within the municipality; or

44 (II) if there is no newspaper of general circulation within the municipality, post at least
45 one notice per 1,000 population in places within the municipality that are most likely to give
46 notice to residents of the municipality; and

47 (B) on the Utah Public Notice Website created in Section [63F-1-701](#) for three weeks.

48 (b) The notice required under Subsection (2)(a)(iii) shall:

49 (i) state that the municipal legislative body has adopted a resolution indicating the
50 municipal legislative body's intent to adjust a boundary that the municipality has in common
51 with another municipality;

52 (ii) describe the area proposed to be adjusted;

53 (iii) state the date, time, and place of the public hearing required under Subsection
54 (2)(a)(ii);

55 (iv) state in conspicuous and plain terms that the municipal legislative body will adjust
56 the boundaries unless, at or before the public hearing under Subsection (2)(a)(ii), written
57 protests to the adjustment are filed by the owners of private real property that:

58 (A) is located within the area proposed for adjustment;

59 (B) covers at least 25% of the total private land area within the area proposed for
60 adjustment; and

61 (C) is equal in value to at least 15% of the value of all private real property within the
62 area proposed for adjustment;

63 (v) state that the area that is the subject of the boundary adjustment will, because of the
64 boundary adjustment, be automatically annexed to a local district providing fire protection,
65 paramedic, and emergency services or a local district providing law enforcement service, as the
66 case may be, as provided in Section 17B-1-416, if:

67 (A) the municipality to which the area is being added because of the boundary
68 adjustment is entirely within the boundaries of a local district:

69 (I) that provides fire protection, paramedic, and emergency services or law enforcement
70 service, respectively; and

71 (II) in the creation of which an election was not required because of Subsection
72 17B-1-214(3)(c); and

73 (B) the municipality from which the area is being taken because of the boundary
74 adjustment is not within the boundaries of the local district; and

75 (vi) state that the area proposed for annexation to the municipality will be
76 automatically withdrawn from a local district providing fire protection, paramedic, and
77 emergency services, as provided in Subsection 17B-1-502(2), if:

78 (A) the municipality to which the area is being added because of the boundary
79 adjustment is not within the boundaries of a local district:

80 (I) that provides fire protection, paramedic, and emergency services; and

81 (II) in the creation of which an election was not required because of Subsection
82 17B-1-214(3)(c); and

83 (B) the municipality from which the area is being taken because of the boundary
84 adjustment is entirely within the boundaries of the local district.

85 (c) The first publication of the notice required under Subsection (2)(a)(iii)(A) shall be
86 within 14 days of the municipal legislative body's adoption of a resolution under Subsection
87 (2)(a)(i).

88 (3) Upon conclusion of the public hearing under Subsection (2)(a)(ii), the municipal
89 legislative body may adopt an ordinance approving the adjustment of the common boundary

90 unless, at or before the hearing under Subsection (2)(a)(ii), written protests to the adjustment
91 have been filed with the city recorder or town clerk, as the case may be, by the owners of
92 private real property that:

- 93 (a) is located within the area proposed for adjustment;
- 94 (b) covers at least 25% of the total private land area within the area proposed for
95 adjustment; and
- 96 (c) is equal in value to at least 15% of the value of all private real property within the
97 area proposed for adjustment.
- 98 (4) The municipal legislative body shall comply with the requirements of Section
99 10-2-425 as if the boundary adjustment were an annexation.

100 (5) (a) An ordinance adopted under Subsection (3) becomes effective when each
101 municipality involved in the boundary adjustment has adopted an ordinance under Subsection
102 (3).

103 (b) The effective date of a boundary adjustment under this section is governed by
104 Section 10-2-425.

105 (6) Notwithstanding the provisions of this section, without the recommendation of the
106 Utah State Developmental Center Governing Board and the approval of the Legislature, a
107 legislative body may not adjust a boundary if the adjustment will alter the boundary of all or
108 part of the real property associated with the Utah State Developmental Center.

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

110 **62A-1-105. Creation of boards, divisions, and offices.**

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

- 113 (a) the Board of Aging and Adult Services;
- 114 (b) the Board of Juvenile Justice Services; and
- 115 (c) the Utah State Developmental Center Governing Board.

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

- 117 (a) the Division of Aging and Adult Services;
- 118 (b) the Division of Child and Family Services;
- 119 (c) the Division of Services for People with Disabilities;
- 120 (d) the Division of Substance Abuse and Mental Health; and

121 (e) the Division of Juvenile Justice Services.

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

123 (a) the Office of Licensing;

124 (b) the Office of Public Guardian; and

125 (c) the Office of Recovery Services.

126 Section 3. Section **62A-5-101** is amended to read:

127 **62A-5-101. Definitions.**

128 As used in this chapter:

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

131 (2) "Board" means the Utah State Developmental Center Governing Board created
132 under Section [62A-5-202.5](#).

133 (3) (a) "Brain injury" means an acquired injury to the brain that is neurological in
134 nature, including a cerebral vascular accident.

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

136 (4) "Designated intellectual disability professional" means:

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

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

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

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

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

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

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

152 (5) "Deteriorating disease" includes:

- 153 (a) multiple sclerosis;
- 154 (b) muscular dystrophy;
- 155 (c) Huntington's chorea;
- 156 (d) Alzheimer's disease;
- 157 (e) ataxia; or
- 158 (f) cancer.

159 (6) "Developmental center" means the Utah State Developmental Center, established in
160 accordance with Part 2, Utah State Developmental Center.

161 (7) "Director" means the director of the Division of Services for People with
162 Disabilities.

163 (8) "Direct service worker" means a person who provides services to a person with a
164 disability:

- 165 (a) when the services are rendered in:
 - 166 (i) the physical presence of the person with a disability; or
 - 167 (ii) a location where the person rendering the services has access to the physical
168 presence of the person with a disability; and
- 169 (b) (i) under a contract with the division;
- 170 (ii) under a grant agreement with the division; or
- 171 (iii) as an employee of the division.

172 (9) (a) "Disability" means a severe, chronic disability that:

- 173 (i) is attributable to:
 - 174 (A) an intellectual disability;
 - 175 (B) a condition that qualifies a person as a person with a related condition, as defined
176 in 42 C.F.R. 435.1009;
 - 177 (C) a physical disability; or
 - 178 (D) a brain injury;
- 179 (ii) is likely to continue indefinitely;
- 180 (iii) (A) for a condition described in Subsection (9)(a)(i)(A), (B), or (C), results in a
181 substantial functional limitation in three or more of the following areas of major life activity:
 - 182 (I) self-care;

183 (II) receptive and expressive language;
184 (III) learning;
185 (IV) mobility;
186 (V) self-direction;
187 (VI) capacity for independent living; or
188 (VII) economic self-sufficiency; or
189 (B) for a condition described in Subsection (9)(a)(i)(D), results in a substantial
190 limitation in three or more of the following areas:
191 (I) memory or cognition;
192 (II) activities of daily life;
193 (III) judgment and self-protection;
194 (IV) control of emotions;
195 (V) communication;
196 (VI) physical health; or
197 (VII) employment; and
198 (iv) requires a combination or sequence of special interdisciplinary or generic care,
199 treatment, or other services that:
200 (A) may continue throughout life; and
201 (B) must be individually planned and coordinated.
202 (b) "Disability" does not include a condition due solely to:
203 (i) mental illness;
204 (ii) personality disorder;
205 (iii) deafness or being hard of hearing;
206 (iv) visual impairment;
207 (v) learning disability;
208 (vi) behavior disorder;
209 (vii) substance abuse; or
210 (viii) the aging process.
211 (10) "Division" means the Division of Services for People with Disabilities.
212 (11) "Eligible to receive division services" or "eligibility" means qualification, based
213 on criteria established by the division in accordance with Subsection [62A-5-102\(4\)](#), to receive

214 services that are administered by the division.

215 (12) "Endorsed program" means a facility or program that:

216 (a) is operated:

217 (i) by the division; or

218 (ii) under contract with the division; or

219 (b) provides services to a person committed to the division under Part 3, Admission to
220 an Intermediate Care Facility for People with an Intellectual Disability.

221 (13) "Licensed physician" means:

222 (a) an individual licensed to practice medicine under:

223 (i) Title 58, Chapter 67, Utah Medical Practice Act; or

224 (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or

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

227 (14) "Physical disability" means a medically determinable physical impairment that has
228 resulted in the functional loss of two or more of a person's limbs.

229 (15) "Public funds" means state or federal funds that are disbursed by the division.

230 (16) "Resident" means an individual under observation, care, or treatment in an
231 intermediate care facility for people with an intellectual disability.

232 Section 4. Section **62A-5-202.5** is amended to read:

233 **62A-5-202.5. Utah State Developmental Center Governing Board -- Creation --**
234 **Membership -- Duties -- Powers.**

235 (1) There is created the Utah State Developmental Center Governing Board within the
236 Department of Human Services.

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

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

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

240 (c) the executive director of the Department of Human Services or the executive
241 director's designee;

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

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

- 245 (i) three members of the general public; and
- 246 (ii) two members who are parents or guardians of individuals who receive services at
247 the developmental center.
- 248 (3) In making appointments to the board, the governor shall ensure that:
 - 249 (a) no more than three members have immediate family residing at the developmental
250 center; and
 - 251 (b) members represent a variety of geographic areas and economic interests of the state.
- 252 (4) (a) The governor shall appoint each member described in Subsection (2)(e) for a
253 term of four years.
 - 254 (b) An appointed member may not serve more than two full consecutive terms unless
255 the governor determines that an additional term is in the best interest of the state.
 - 256 (c) Notwithstanding the requirements of Subsections (4)(a) and (b), the governor shall,
257 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms
258 of appointed members are staggered so that approximately half of the appointed members are
259 appointed every two years.
 - 260 (d) Appointed members shall continue in office until the expiration of their terms and
261 until their successors are appointed, which may not exceed 120 days after the formal expiration
262 of a term.
 - 263 (e) When a vacancy occurs in the membership for any reason, the replacement shall be
264 appointed for the unexpired term.
- 265 (5) (a) The director shall serve as the chair.
- 266 (b) The board shall appoint a member to serve as vice chair.
- 267 (c) The board shall hold meetings quarterly or as needed.
- 268 (d) Five members are necessary to constitute a quorum at any meeting, and, if a
269 quorum exists, the action of the majority of members present shall be the action of the board.
- 270 (e) The chair shall be a non-voting member except that the chair may vote to break a tie
271 vote between the voting members.
- 272 (6) An appointed member may not receive compensation or benefits for the member's
273 service, but, at the executive director's discretion, may receive per diem and travel expenses in
274 accordance with:
 - 275 (a) Section [63A-3-106](#);

- 276 (b) Section 63A-3-107; and
- 277 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
- 278 63A-3-107.
- 279 (7) (a) The board shall adopt bylaws governing the board's activities.
- 280 (b) Bylaws shall include procedures for removal of a member who is unable or
- 281 unwilling to fulfill the requirements of the member's appointment.
- 282 (8) The board shall:
- 283 (a) act for the benefit of the developmental center and the division;
- 284 (b) advise and assist the division with the division's functions, operations, and duties
- 285 related to the developmental center, described in Sections 62A-5-102, 62A-5-103, 62A-5-201,
- 286 62A-5-203, and 62A-5-206;
- 287 (c) administer the Utah State Developmental Center Miscellaneous Donation Fund, as
- 288 described in Section 62A-5-206.5;
- 289 (d) administer the Utah State Developmental Center Land Fund, as described in
- 290 Section 62A-5-206.6; and
- 291 (e) approve the sale, lease, or other disposition of real property or water rights
- 292 associated with the developmental center, as described in Subsection 62A-5-206.6(5).
- 293 Section 5. Section 63A-5-204 is amended to read:
- 294 **63A-5-204. Specific powers and duties of director.**
- 295 (1) As used in this section, "capitol hill facilities" and "capitol hill grounds" have the
- 296 same meaning as provided in Section 63C-9-102.
- 297 (2) (a) The director shall:
- 298 (i) recommend rules to the executive director for the use and management of facilities
- 299 and grounds owned or occupied by the state for the use of its departments and agencies;
- 300 (ii) supervise and control the allocation of space, in accordance with legislative
- 301 directive through annual appropriations acts or other specific legislation, to the various
- 302 departments, commissions, institutions, and agencies in all buildings or space owned, leased, or
- 303 rented by or to the state, except capitol hill facilities and capitol hill grounds and except as
- 304 otherwise provided by law;
- 305 (iii) comply with the procedures and requirements of Title 63A, Chapter 5, Part 3,
- 306 Division of Facilities Construction and Management Leasing;

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

311 (v) collect and maintain all deeds, abstracts of title, and all other documents evidencing
312 title to or interest in property belonging to the state or any of its departments, except
313 institutions of higher education and the School and Institutional Trust Lands Administration;

314 (vi) report all properties acquired by the state, except those acquired by institutions of
315 higher education, to the director of the Division of Finance for inclusion in the state's financial
316 records;

317 (vii) before charging a rate, fee, or other amount for services provided by the division's
318 internal service fund to an executive branch agency, or to a subscriber of services other than an
319 executive branch agency:

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

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

323 (viii) conduct a market analysis by July 1, 2005, and periodically thereafter, of
324 proposed rates and fees, which analysis shall include a comparison of the division's rates and
325 fees with the fees of other public or private sector providers where comparable services and
326 rates are reasonably available;

327 (ix) implement the State Building Energy Efficiency Program under Section
328 [63A-5-701](#);

329 (x) convey, lease, or dispose of the real property or water rights associated with the
330 Utah State Developmental Center according to the Utah State Developmental Center
331 Governing Board's determination and with legislative approval, as described in Subsection
332 [62A-5-206.6\(5\)](#); and

333 (xi) take all other action necessary for carrying out the purposes of this chapter.

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

336 (c) The director may not, without the recommendation of the Utah State
337 Developmental Center Governing Board and the approval of the Legislature, take any action in

338 furtherance of changing a geographic boundary of a local governmental entity, if the change
339 will result in any part of the real property associated with the Utah State Developmental Center
340 being within the geographic boundary of a different local government entity than before the
341 change.

342 (3) (a) The director shall direct or delegate maintenance and operations, preventive
343 maintenance, and facilities inspection programs and activities for any agency, except:

344 (i) the State Capitol Preservation Board; and

345 (ii) state institutions of higher education.

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

348 (i) the agency has requested the responsibility;

349 (ii) the agency has the necessary resources and skills to comply with facility

350 maintenance standards approved by the State Building Board; and

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

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

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

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

359 (f) The division shall:

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

362 (ii) report agency compliance or noncompliance with the standards to the Legislature;
363 and

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

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

367 (i) conduct studies to determine the actual needs of each agency; and

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

- 369 (b) The supervision and control of the legislative area is reserved to the Legislature.
- 370 (c) The supervision and control of the judicial area is reserved to the judiciary for trial
371 courts only.
- 372 (d) The director may not supervise or control the allocation of space for entities in the
373 public and higher education systems.
- 374 (e) The supervision and control of capitol hill facilities and capitol hill grounds is
375 reserved to the State Capitol Preservation Board.
- 376 (5) The director may:
 - 377 (a) hire or otherwise procure assistance and services, professional, skilled, or
378 otherwise, that are necessary to carry out the director's responsibilities, and may expend funds
379 provided for that purpose either through annual operating budget appropriations or from
380 nonlapsing project funds;
 - 381 (b) sue and be sued in the name of the division; and
 - 382 (c) hold, buy, lease, and acquire by exchange or otherwise, as authorized by the
383 Legislature, whatever real or personal property that is necessary for the discharge of the
384 director's duties.
 - 385 (6) Notwithstanding the provisions of Subsection (2)(a)(iv), the following entities may
386 hold title to any real property, buildings, fixtures, and appurtenances held by them for purposes
387 other than administration that are under their control and management:
 - 388 (a) the Office of Trust Administrator;
 - 389 (b) the Department of Transportation;
 - 390 (c) the Division of Forestry, Fire, and State Lands;
 - 391 (d) the Department of Natural Resources;
 - 392 (e) the Utah National Guard;
 - 393 (f) any area vocational center or other institution administered by the State Board of
394 Education;
 - 395 (g) any institution of higher education; and
 - 396 (h) the Utah Science Technology and Research Governing Authority.
 - 397 (7) The director shall ensure that any firm performing testing and inspection work
398 governed by the American Society for Testing Materials Standard E-329 on public buildings
399 under the director's supervision shall:

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

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

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

Legislative Review Note
Office of Legislative Research and General Counsel