

SB0083S01 compared with SB0083

~~{deleted text}~~ shows text that was in SB0083 but was deleted in SB0083S01.

Inserted text shows text that was not in SB0083 but was inserted into SB0083S01.

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~~{UTAH STATE DEVELOPMENTAL CENTER}~~ Senator Margaret Dayton proposed the following substitute bill:

STATE REAL PROPERTY AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Margaret Dayton

House Sponsor: _____

LONG TITLE

General Description:

This bill requires ~~{Legislative}~~ legislative approval for ~~{action taken regarding the real property and water rights associated with the Utah State Developmental Center}~~ municipal boundary adjustments that affect real property owned by the state.

Highlighted Provisions:

This bill:

- ▶ requires ~~{Legislative}~~ legislative approval before the Division of Facilities and Construction Management takes action regarding ~~{the}~~ a municipal boundary change that affects real property ~~{and water rights associated with}~~ owned by the ~~{Utah State Developmental Center}~~ state; and
- ▶ sets restrictions on a process to adjust a municipal boundary if the adjustment affects real property owned by the ~~{Utah State Developmental Center}~~ state.

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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~~

~~‡ **63A-5-204**, as last amended by Laws of Utah 2017, Chapter 56~~

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

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

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

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

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

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

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

(iii) (A) publish notice:

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

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

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

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

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

(ii) describe the area proposed to be adjusted;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Upon conclusion of the public hearing under Subsection (2)(a)(ii), the municipal legislative body may adopt an ordinance approving the adjustment of the common boundary unless, at or before the hearing under Subsection (2)(a)(ii), written protests to the adjustment have been filed with the city recorder or town clerk, as the case may be, by the owners of private real property that:

(a) is located within the area proposed for adjustment;

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

(c) is equal in value to at least 15% of the value of all private real property within the area proposed for adjustment.

(4) The municipal legislative body shall comply with the requirements of Section 10-2-425 as if the boundary adjustment were an annexation.

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

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

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

~~Section 2. Section [62A-1-105](#) is amended to read:~~

~~[62A-1-105. Creation of boards, divisions, and offices.](#)~~

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

~~(a) the Board of Aging and Adult Services;~~

~~(b) the Board of Juvenile Justice Services; and~~

~~(c) the Utah State Developmental Center Governing Board.~~

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

~~(a) the Division of Aging and Adult Services;~~

~~(b) the Division of Child and Family Services;~~

~~(c) the Division of Services for People with Disabilities;~~

~~(d) the Division of Substance Abuse and Mental Health; and~~

~~(e) the Division of Juvenile Justice Services.~~

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

~~(a) the Office of Licensing;~~

~~(b) the Office of Public Guardian; and~~

~~(c) the Office of Recovery Services.~~

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

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

~~As used in this chapter:~~

~~(1) "Approved provider" means a person approved by the division to provide home-based services:~~

~~(2) "Board" means the Utah State Developmental Center Governing Board created under Section 62A-5-202.5:~~

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

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

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

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

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

~~(B) has at least one year of clinical experience with persons with an intellectual~~

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~~disability; and~~

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

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

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

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

~~—— (5) "Deteriorating disease" includes:~~

~~—— (a) multiple sclerosis;~~

~~—— (b) muscular dystrophy;~~

~~—— (c) Huntington's chorea;~~

~~—— (d) Alzheimer's disease;~~

~~—— (e) ataxia; or~~

~~—— (f) cancer.~~

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

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

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

~~—— (a) when the services are rendered in:~~

~~—— (i) the physical presence of the person with a disability; or~~

~~—— (ii) a location where the person rendering the services has access to the physical presence of the person with a disability; and~~

~~—— (b) (i) under a contract with the division;~~

~~—— (ii) under a grant agreement with the division; or~~

~~—— (iii) as an employee of the division.~~

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

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- ~~_____ (i) is attributable to:~~
- ~~_____ (A) an intellectual disability;~~
- ~~_____ (B) a condition that qualifies a person as a person with a related condition, as defined in 42 C.F.R. 435.1009;~~
- ~~_____ (C) a physical disability; or~~
- ~~_____ (D) a brain injury;~~
- ~~_____ (ii) is likely to continue indefinitely;~~
- ~~_____ (iii) (A) for a condition described in Subsection (9)(a)(i)(A), (B), or (C), results in a substantial functional limitation in three or more of the following areas of major life activity:~~
- ~~_____ (I) self-care;~~
- ~~_____ (II) receptive and expressive language;~~
- ~~_____ (III) learning;~~
- ~~_____ (IV) mobility;~~
- ~~_____ (V) self-direction;~~
- ~~_____ (VI) capacity for independent living; or~~
- ~~_____ (VII) economic self-sufficiency; or~~
- ~~_____ (B) for a condition described in Subsection (9)(a)(i)(D), results in a substantial limitation in three or more of the following areas:~~
- ~~_____ (I) memory or cognition;~~
- ~~_____ (II) activities of daily life;~~
- ~~_____ (III) judgment and self-protection;~~
- ~~_____ (IV) control of emotions;~~
- ~~_____ (V) communication;~~
- ~~_____ (VI) physical health; or~~
- ~~_____ (VII) employment; and~~
- ~~_____ (iv) requires a combination or sequence of special interdisciplinary or generic care, treatment, or other services that:~~
- ~~_____ (A) may continue throughout life; and~~
- ~~_____ (B) must be individually planned and coordinated.~~
- ~~_____ (b) "Disability" does not include a condition due solely to:~~
- ~~_____ (i) mental illness;~~

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- ~~—— (ii) personality disorder;~~
- ~~—— (iii) deafness or being hard of hearing;~~
- ~~—— (iv) visual impairment;~~
- ~~—— (v) learning disability;~~
- ~~—— (vi) behavior disorder;~~
- ~~—— (vii) substance abuse; or~~
- ~~—— (viii) the aging process.~~
- ~~—— (10) "Division" means the Division of Services for People with Disabilities.~~
- ~~—— (11) "Eligible to receive division services" or "eligibility" means qualification, based on criteria established by the division in accordance with Subsection 62A-5-102(4), to receive services that are administered by the division.~~
- ~~—— (12) "Endorsed program" means a facility or program that:~~
 - ~~—— (a) is operated:~~
 - ~~—— (i) by the division; or~~
 - ~~—— (ii) under contract with the division; or~~
 - ~~—— (b) provides services to a person committed to the division under Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability.~~
- ~~—— (13) "Licensed physician" means:~~
 - ~~—— (a) an individual licensed to practice medicine under:~~
 - ~~—— (i) Title 58, Chapter 67, Utah Medical Practice Act; or~~
 - ~~—— (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or~~
 - ~~—— (b) a medical officer of the United States Government while in this state in the performance of official duties.~~
- ~~—— (14) "Physical disability" means a medically determinable physical impairment that has resulted in the functional loss of two or more of a person's limbs.~~
- ~~—— (15) "Public funds" means state or federal funds that are disbursed by the division.~~
- ~~—— (16) "Resident" means an individual under observation, care, or treatment in an intermediate care facility for people with an intellectual disability.~~
- ~~—— Section 4. Section 62A-5-202.5 is amended to read:~~
- ~~—— 62A-5-202.5. Utah State Developmental Center Governing Board -- Creation -- Membership -- Duties -- Powers.~~

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~~———— (1) There is created the Utah State Developmental Center Governing Board within the Department of Human Services:~~

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

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

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

~~———— (c) the executive director of the Department of Human Services or the executive director's designee;~~

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

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

~~———— (i) three members of the general public; and~~

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

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

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

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

~~———— (4) (a) The governor shall appoint each member described in Subsection (2)(e) for a term of four years:~~

~~———— (b) An appointed member may not serve more than two full consecutive terms unless the governor determines that an additional term is in the best interest of the state.~~

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

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

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

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

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- ~~_____ (b) The board shall appoint a member to serve as vice chair.~~
- ~~_____ (c) The board shall hold meetings quarterly or as needed.~~
- ~~_____ (d) Five members are necessary to constitute a quorum at any meeting, and, if a quorum exists, the action of the majority of members present shall be the action of the board.~~
- ~~_____ (e) The chair shall be a non-voting member except that the chair may vote to break a tie vote between the voting members.~~
- ~~_____ (6) An appointed member may not receive compensation or benefits for the member's service, but, at the executive director's discretion, may receive per diem and travel expenses in accordance with:~~
 - ~~_____ (a) Section 63A-3-106;~~
 - ~~_____ (b) Section 63A-3-107; and~~
 - ~~_____ (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.~~
- ~~_____ (7) (a) The board shall adopt bylaws governing the board's activities.~~
- ~~_____ (b) Bylaws shall include procedures for removal of a member who is unable or unwilling to fulfill the requirements of the member's appointment.~~
- ~~_____ (8) The board shall:~~
 - ~~_____ (a) act for the benefit of the developmental center and the division;~~
 - ~~_____ (b) advise and assist the division with the division's functions, operations, and duties related to the developmental center, described in Sections 62A-5-102, 62A-5-103, 62A-5-201, 62A-5-203, and 62A-5-206;~~
 - ~~_____ (c) administer the Utah State Developmental Center Miscellaneous Donation Fund, as described in Section 62A-5-206.5;~~
 - ~~_____ (d) administer the Utah State Developmental Center Land Fund, as described in Section 62A-5-206.6; and~~
 - ~~_____ (e) approve the sale, lease, or other disposition} geographic boundary of a local governmental entity, if the change will result in any part of real property ~~{or water rights~~ associated with the developmental center, as described in Subsection 62A-5-206.6(5).~~
- ~~_____ Section 5} owned by the state being within the geographic boundary of a different local governmental entity than before the adjustment.~~

Section 2. Section **63A-5-204** is amended to read:

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

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

(2) (a) The director shall:

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

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

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

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

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

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

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

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

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

(viii) conduct a market analysis by July 1, 2005, and periodically thereafter, of proposed rates and fees, which analysis shall include a comparison of the division's rates and

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fees with the fees of other public or private sector providers where comparable services and rates are reasonably available;

(ix) implement the State Building Energy Efficiency Program under Section 63A-5-701;

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

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

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

(c) The director may not, without the ~~recommendation of the Utah State Developmental Center Governing Board and the~~ approval of the Legislature, take any action in furtherance of changing a geographic boundary of a local governmental entity, if the change will result in any part of ~~the~~ real property ~~associated with~~ owned by the ~~Utah State Developmental Center~~ state being within the geographic boundary of a different local ~~government~~ governmental entity than before the change.

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

(i) the State Capitol Preservation Board; and

(ii) state institutions of higher education.

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

(i) the agency has requested the responsibility;

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

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

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

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

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

(f) The division shall:

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

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

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

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

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

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

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

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

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

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

(5) The director may:

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

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

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

(6) Notwithstanding the provisions of Subsection (2)(a)(iv), the following entities may hold title to any real property, buildings, fixtures, and appurtenances held by them for purposes

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other than administration that are under their control and management:

- (a) the Office of Trust Administrator;
- (b) the Department of Transportation;
- (c) the Division of Forestry, Fire, and State Lands;
- (d) the Department of Natural Resources;
- (e) the Utah National Guard;
- (f) any area vocational center or other institution administered by the State Board of

Education;

- (g) any institution of higher education; and
- (h) the Utah Science Technology and Research Governing Authority.

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

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

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

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

†

Legislative Review Note

Office of Legislative Research and General Counsel†