

1 **CONTINGENT MANAGEMENT FOR FEDERAL FACILITIES**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: David E. Lifferth**

5 Senate Sponsor: _____

6

LONG TITLE

7 **General Description:**

8
9 This bill authorizes the Division of Parks and Recreation to prepare to operate and
10 maintain national parks, monuments, forests, and recreation areas in the state during a
11 fiscal emergency.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines the term "fiscal emergency";
- 15 ▶ exempts the Division of Parks and Recreation from the Utah Procurement Code
- 16 during a fiscal emergency;
- 17 ▶ requires the director of the Division of Parks and Recreation to prepare to take over
- 18 national parks, monuments, forests, and recreation areas, in the event of a fiscal
- 19 emergency, and coordinate with relevant federal agencies;
- 20 ▶ authorizes the Division of Parks and Recreation, during a fiscal emergency, to
- 21 continue charging standard fees for the use of national parks, monuments, forests,
- 22 and recreation areas, and deposit the fees in the Sovereign Lands Management
- 23 Account;
- 24 ▶ requires the director of the Outdoor Recreation Office to create a priority list of
- 25 national parks, monuments, forests, and recreation areas in the state and report to
- 26 the Natural Resources, Agriculture, and Environment Interim Committee by
- 27 November 30, 2014;



28 ▶ requires the Division of Parks and Recreation to open and operate one or more
 29 national parks, monuments, forests, or recreation areas during a fiscal emergency,
 30 contingent upon congressional approval, the governor's agreement with the
 31 Department of the Interior, or a presidential executive order;

32 ▶ states that a temporary state employee hired by the Division of Parks and Recreation
 33 is covered by the Governmental Immunity Act; and

34 ▶ requires the state to indemnify a state employee against an action brought by the
 35 United States or a federal representative, under certain circumstances.

36 **Money Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 None

40 **Utah Code Sections Affected:**

41 AMENDS:

42 63G-6a-107, as last amended by Laws of Utah 2013, Chapter 445

43 63M-1-3304, as enacted by Laws of Utah 2013, Chapter 25

44 65A-5-1, as last amended by Laws of Utah 2013, Second Special Session, Chapter 3

45 65A-5-2, as last amended by Laws of Utah 1994, Chapter 294

46 79-4-202, as renumbered and amended by Laws of Utah 2009, Chapter 344

47 79-4-203, as last amended by Laws of Utah 2012, Chapter 347

48 79-4-204, as renumbered and amended by Laws of Utah 2009, Chapter 344

49 ENACTS:

50 79-4-1101, Utah Code Annotated 1953

51 79-4-1102, Utah Code Annotated 1953

52 79-4-1103, Utah Code Annotated 1953

53 79-4-1104, Utah Code Annotated 1953

54 79-4-1105, Utah Code Annotated 1953

55 79-4-1106, Utah Code Annotated 1953

56 79-4-1107, Utah Code Annotated 1953

57 79-4-1108, Utah Code Annotated 1953

58 79-4-1109, Utah Code Annotated 1953

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

Section 1. Section **63G-6a-107** is amended to read:

63G-6a-107. Exemptions from chapter -- Compliance with federal law.

(1) Except for Part 23, Unlawful Conduct and Penalties, the provisions of this chapter are not applicable to:

(a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art Act;

(b) grants awarded by the state or contracts between the state and any of the following:

(i) an educational procurement unit;

(ii) a conservation district;

(iii) a local building authority;

(iv) a local district;

(v) a public corporation;

(vi) a special service district;

(vii) a public transit district; or

(viii) two or more of the entities described in Subsections (1)(b)(i) through (vii), acting under legislation that authorizes intergovernmental cooperation;

(c) medical supplies or medical equipment, including service agreements for medical equipment, obtained through a purchasing consortium by the Utah State Hospital, the Utah State Developmental Center, the University of Utah Hospital, or any other hospital owned by the state or a political subdivision of the state, if:

(i) the consortium uses a competitive procurement process; and

(ii) the chief administrative officer of the hospital makes a written finding that the prices for purchasing medical supplies and medical equipment through the consortium are competitive with market prices;

(d) goods purchased for resale; [or]

(e) the Division of Parks and Recreation, during a fiscal emergency, as defined by Subsection 79-4-1102(1), if the division is acting under the authority described in Sections 79-4-1101 through 79-4-1108; or

[~~e~~] (f) any action taken by a majority of both houses of the Legislature.

90 (2) (a) Notwithstanding Subsection (1), the provisions of Part 23, Unlawful Conduct
91 and Penalties, are not applicable to an entity described in Subsection (1)(b)(ii), (iii), (iv), (vi),
92 (vii), or (viii).

93 (b) This chapter does not prevent a procurement unit from complying with the terms
94 and conditions of any grant, gift, or bequest that is otherwise consistent with law.

95 (3) Notwithstanding any conflicting provision of this chapter, when a procurement
96 involves the expenditure of federal assistance, federal contract funds, local matching funds, or
97 federal financial participation funds, the procurement unit shall comply with mandatory
98 applicable federal law and regulations not reflected in this chapter.

99 (4) This chapter does not supersede the requirements for retention or withholding of
100 construction proceeds and release of construction proceeds as provided in Section 13-8-5.

101 Section 2. Section **63M-1-3304** is amended to read:

102 **63M-1-3304. Creation of office and appointment of director -- Purposes of office.**

103 (1) There is created within the Governor's Office of Economic Development an
104 Outdoor Recreation Office.

105 (2) (a) The executive director shall appoint a director of the office.

106 (b) The director shall report to the executive director and may appoint staff.

107 (3) The purposes of the office are to:

108 (a) coordinate outdoor recreation policy, management, and promotion:

109 (i) among state and federal agencies and local government entities in the state; and

110 (ii) with the Public Lands Policy Coordinating Office created in Section 63J-4-602, if
111 public land is involved;

112 (b) promote economic development by:

113 (i) coordinating with outdoor recreation stakeholders;

114 (ii) improving recreational opportunities; and

115 (iii) recruiting outdoor recreation business;

116 (c) recommend to the governor and Legislature policies and initiatives to enhance
117 recreational amenities and experiences in the state and help implement those policies and
118 initiatives;

119 (d) develop data regarding the impacts of outdoor recreation in the state; [~~and~~]

120 (e) promote the health and social benefits of outdoor recreation, especially to young

121 people[-];

122 (f) coordinate with the Division of Parks and Recreation to fulfill the requirements of
123 Title 79, Chapter 4, Part 11, Contingency Planning for Management of Federal Land; and

124 (g) create the priority list of national parks, national monuments, national forests,
125 national recreation areas, and other federal lands in the state, as described in Section
126 79-4-1103.

127 Section 3. Section **65A-5-1** is amended to read:

128 **65A-5-1. Sovereign Lands Management Account -- Creation -- Contents --**
129 **Appropriation to fund division expenses.**

130 (1) There is created within the General Fund a restricted account known as the
131 Sovereign Lands Management Account.

132 (2) The account shall consist of the following:

133 (a) all revenues derived from sovereign lands; [~~and~~]

134 (b) that portion of all revenues derived from mineral leases on other lands managed by
135 the division necessary to recover management costs[-]; and

136 (c) any fees deposited by the division under Subsection 79-4-1102(4).

137 (3) All expenditures of the division relating directly to the management of state lands
138 shall be funded by appropriation by the Legislature from the Sovereign Lands Management
139 Account or other sources.

140 (4) The Legislature may appropriate funds in the account to reimburse one or more
141 state government entities for money spent on the operation of national parks, national
142 monuments, national forests, national recreation areas, and other federal lands in the state
143 during a fiscal emergency, as defined in Section 79-4-1102.

144 Section 4. Section **65A-5-2** is amended to read:

145 **65A-5-2. Deposit and allocation of money received.**

146 (1) (a) [~~The~~] Subject to Subsection (3), the division shall pay to the state treasurer all
147 money received, accompanied by a statement showing the respective sources of this money.

148 (b) Each source shall be classified as to sales, rentals, royalties, interest, fees, penalties,
149 and forfeitures.

150 (2) (a) All money received by the division as a first or down payment on applications to
151 purchase, permit, or lease state lands or minerals shall be paid to the state treasurer and held in

152 suspense pending final action on those applications.

153 (b) After final action these payments shall either be credited to the appropriate fund or
154 account, or refunded to the applicant in accordance with the action taken.

155 (3) The division shall provide a separate accounting for all fees received under
156 Subsection 79-4-1102(4).

157 Section 5. Section 79-4-202 is amended to read:

158 **79-4-202. Director -- Qualifications -- Duties.**

159 (1) The director is the executive and administrative head of the division.

160 (2) The director shall demonstrate:

161 (a) executive ability; and

162 (b) actual experience and training in the conduct of park and recreational systems
163 involving both physical development and program.

164 (3) The director shall:

165 (a) enforce the policies and rules of the board; and

166 (b) perform the duties necessary to:

167 (i) properly care for and maintain any property under the jurisdiction of the division;

168 and

169 (ii) carry out this chapter.

170 (4) The director shall acquire, plan, protect, develop, operate, use, and maintain park
171 area and facilities in accordance with the policies and rules of the board.

172 (5) The director shall coordinate with relevant federal agencies, if possible and
173 reasonable, to carry out the duties described in Sections 79-4-1101 through 79-4-1108.

174 (6) (a) If a fiscal emergency, as defined in Section 79-4-1102, becomes imminent, the
175 director shall report to the governor, the speaker of the House, and the president of the Senate
176 and advise them on:

177 (i) how much money is available in the division's budget to open and operate one or
178 more national parks, national monuments, national forests, or national recreation areas in the
179 state;

180 (ii) the division's plans to open and operate one or more national parks, national
181 monuments, national forests, or national recreation areas in the state; and

182 (iii) how long the division will be capable of opening and operating one or more

183 national parks, national monuments, national forests, or national recreation areas in the state.

184 (b) During a fiscal emergency, the director shall report to the governor, the speaker of
185 the House, and the president of the Senate no less than every three days.

186 Section 6. Section **79-4-203** is amended to read:

187 **79-4-203. Powers and duties of division.**

188 (1) As used in this section, "real property" includes land under water, upland, and all
189 other property commonly or legally defined as real property.

190 (2) The Division of Wildlife Resources shall retain the power and jurisdiction
191 conferred upon it by law within state parks and on property controlled by the Division of Parks
192 and Recreation with reference to fish and game.

193 (3) The division shall permit multiple use of state parks and property controlled by it
194 for purposes such as grazing, fishing, hunting, mining, and the development and utilization of
195 water and other natural resources.

196 (4) (a) The division may acquire real and personal property in the name of the state by
197 all legal and proper means, including purchase, gift, devise, eminent domain, lease, exchange,
198 or otherwise, subject to the approval of the executive director and the governor.

199 (b) In acquiring any real or personal property, the credit of the state may not be pledged
200 without the consent of the Legislature.

201 (5) (a) Before acquiring any real property, the division shall notify the county
202 legislative body of the county where the property is situated of its intention to acquire the
203 property.

204 (b) If the county legislative body requests a hearing within 10 days of receipt of the
205 notice, the division shall hold a public hearing in the county concerning the matter.

206 (6) Acceptance of gifts or devises of land or other property is at the discretion of the
207 division, subject to the approval of the executive director and the governor.

208 (7) The division shall acquire property by eminent domain in the manner authorized by
209 Title 78B, Chapter 6, Part 5, Eminent Domain.

210 (8) (a) The division may make charges for special services and use of facilities, the
211 income from which is available for park and recreation purposes.

212 (b) The division may conduct and operate those services necessary for the comfort and
213 convenience of the public.

214 (9) (a) The division may lease or rent concessions of all lawful kinds and nature in state
215 parks and property to persons, partnerships, and corporations for a valuable consideration upon
216 the recommendation of the board.

217 (b) ~~[The]~~ Except as provided in Subsection 63G-6a-107(1)(e), the division shall
218 comply with Title 63G, Chapter 6a, Utah Procurement Code, in selecting concessionaires.

219 (10) The division shall proceed without delay to negotiate with the federal government
220 concerning the Weber Basin and other recreation and reclamation projects.

221 (11) The division shall receive and distribute voluntary contributions collected under
222 Section 41-1a-422 in accordance with Section 79-4-404.

223 (12) The division shall make and implement all necessary contingency plans to carry
224 out the requirements of Sections 79-4-1101 through 79-4-1108.

225 Section 7. Section **79-4-204** is amended to read:

226 **79-4-204. Division authorized to enter into contracts and agreements.**

227 (1) The division, with the approval of the executive director and the governor, may
228 enter into contracts and agreements with the United States, a United States agency, any other
229 department or agency of the state, semipublic organizations, and with private individuals to:

230 (a) improve and maintain state parks and recreational grounds and the areas
231 administered by the division; and

232 (b) secure labor, quarters, materials, services, or facilities according to procedures
233 established by the Division of Finance.

234 (2) All departments, agencies, officers, and employees of the state shall give to the
235 division the consultation and assistance that the division may reasonably request.

236 (3) Subject to Subsection (4), the division, with approval of the executive director and
237 the governor and as funding allows, shall seek to enter into provisional contracts whenever
238 possible with all concessionaires, vendors, and other persons who, as of May 13, 2014:

239 (a) are a party to a contract with the federal government; and

240 (b) provide services at national parks, national monuments, national forests, and
241 national recreation areas in the state.

242 (4) The contracts described in Subsection (3) shall fulfill the requirements of Section
243 79-4-1105.

244 Section 8. Section **79-4-1101** is enacted to read:

245 **Part 11. Contingency Planning for Management of Federal Land**246 **79-4-1101. Title.**247 This part is known as "Contingency Planning for Management of Federal Land."248 Section 9. Section **79-4-1102** is enacted to read:249 **79-4-1102. Contingency plan for federal property.**250 (1) As used in this part, "fiscal emergency" means a major disruption in the operation
251 of one or more national parks, national monuments, national forests, or national recreation
252 areas in the state caused by the unforeseen or sudden significant decrease or elimination of
253 funding from the federal government.254 (2) The division shall, in accordance with this part, prepare to assume responsibility for
255 operating national parks, national monuments, national forests, or national recreation areas in
256 the state during a fiscal emergency, including:257 (a) estimating the resources it would require to open and operate each national park,
258 national monument, national forest, or national recreation area, or in the state for:259 (i) one week; and260 (ii) an undetermined amount of time;261 (b) reporting the findings under Subsection (2)(a) to the Natural Resources,
262 Agriculture, and Environment Interim Committee by November 30, 2014; and263 (c) identifying concessionaires contracted with the federal government and, if possible,
264 entering into provisional contracts with concessionaires, as described in Subsection
265 79-4-1105(3).266 (3) During a fiscal emergency, and subject to congressional approval, the governor's
267 agreement with the United States Department of the Interior, or a presidential executive order,
268 the division is authorized to:269 (a) hire a federal employee who is necessary to open, operate, and maintain federal
270 property as a temporary state employee, as described in Section 79-4-1104;271 (b) assume responsibility of a federal contract with a concessionaire, as described in
272 Section 79-4-1106;273 (c) enter into a new contract, or trigger an existing provisional contract, with a
274 concessionaire, as described in Section 79-4-1105; and275 (d) at the direction of the governor, open and operate one or more national parks,

276 national monuments, national forests, or national recreation areas in the state according to the
277 priority set under Section [79-4-1103](#).

278 (4) If the division is operating a federally owned property, the division shall:

279 (a) continue to charge the same fee that was charged when the federal government
280 operated the property; and

281 (b) collect any money received under Subsection (4)(a) and deposit that money in the
282 Sovereign Lands Management Account created in Section [65A-5-1](#).

283 Section 10. Section **79-4-1103** is enacted to read:

284 **79-4-1103. Governor's duties -- Priority of federal property.**

285 (1) During a fiscal emergency, the governor shall:

286 (a) if financially practicable, direct the director to open and operate one or more
287 national parks, national monuments, national forests, and national recreation areas in the state,
288 in the order established under this section; and

289 (b) report to the speaker of the House and the president of the Senate on the need, if
290 any, for additional appropriations to assist the division in opening and operating one or more
291 national parks, national monuments, national forests, and national recreation areas in the state.

292 (2) The director of the Outdoor Recreation Office, created in Section [63M-1-3304](#), in
293 consultation with the executive director of the Governor's Office of Economic Development,
294 shall determine, by rule, the priority of national parks, national monuments, national forests,
295 and national recreation areas in the state.

296 (3) In determining the priority described in Subsection (2), the director of the Outdoor
297 Recreation Office shall consider the:

298 (a) economic impact of the national park, national monument, national forest, or
299 national recreation area in the state;

300 (b) recreational value offered by the national park, national monument, national forest,
301 or national recreation area; and

302 (c) estimates the division creates under Subsection [79-4-1102\(2\)](#).

303 (4) The director of the Outdoor Recreation Office shall:

304 (a) report the priority determined under Subsection (2) to the Natural Resources,
305 Agriculture, and Environment Interim Committee by November 30, 2014; and

306 (b) annually review the priority set under Subsection (2) to determine whether the

307 priority list should be amended.

308 Section 11. Section **79-4-1104** is enacted to read:

309 **79-4-1104. Contracts -- Compensation of federal employees.**

310 (1) The division shall, by January 1, 2015, and in conjunction with the Department of
311 Human Resources, prepare standard contracts for temporary employees to be employed by the
312 state during a fiscal emergency, as described in this section.

313 (2) Contracts for full- and part-time employees employed on a temporary basis for the
314 duration of a fiscal emergency shall be for the term of one week, subject to renewal.

315 (3) The division shall, by rule, set pay scales for temporary employees during a fiscal
316 emergency.

317 (4) During a fiscal emergency, the division may hire a federal employee as a temporary
318 state employee and shall use the contracts described in this section.

319 (5) A federal employee who is hired as a temporary state employee as described in this
320 part during a fiscal emergency:

321 (a) shall be paid the rate described in Subsection (3) for the temporary state employee's
322 services;

323 (b) shall be considered an employee, as defined in Section [63G-7-102](#), and not an
324 independent contractor;

325 (c) shall be considered to be engaged in a governmental function, as defined in Section
326 [63G-7-102](#);

327 (d) may not receive retirement or health benefits from the state;

328 (e) is career-service exempt, as described in Subsection [67-19-15\(1\)\(p\)](#); and

329 (f) may not be considered a state employee for the purpose of Section [79-4-1107](#).

330 Section 12. Section **79-4-1105** is enacted to read:

331 **79-4-1105. Contracts with concessionaires.**

332 (1) As described in this section, the division shall prepare standard contracts for
333 concessionaires for use during a fiscal emergency.

334 (2) By January 1, 2015, the division shall:

335 (a) identify all concessionaires under contract with the federal government to provide
336 services in, or relating to, national parks, national monuments, national forests, and national
337 recreation areas in the state; and

338 (b) determine a priority list of concessionaires in the event of a fiscal emergency.

339 (3) (a) In anticipation of a potential fiscal emergency, the division shall seek to enter

340 into a provisional contract, subject to the requirements of Section [79-4-203](#), with a

341 concessionaire under contract with the federal government to provide services in, or relating to,

342 national parks, national monuments, national forests, and national recreation areas in the state.

343 (b) A provisional contract with a concessionaire shall include:

344 (i) a provision:

345 (A) triggering the contract in the event of the governor authorizing the division, during

346 a fiscal emergency, to open and operate the national park, national forest, national monument,

347 or national recreation area in which, or relating to, the concessionaire provides services; and

348 (B) automatically terminating the contract in the event the federal government is able

349 to resume performance of the original contract between the federal government and the

350 concessionaire; and

351 (ii) terms that are identical or, if possible, more favorable than the terms agreed to by

352 the federal government.

353 (c) The division shall consider the priority list created under Subsection (2)(b) as it

354 seeks to enter into provisional contracts with concessionaires as described in this Subsection

355 (3).

356 (4) During a fiscal emergency, the division may seek to enter into a contract with a

357 concessionaire if:

358 (a) the division does not already have a provisional contract, as described in Subsection

359 (3), with the concessionaire;

360 (b) the duration of the contract is no longer than one week; and

361 (c) the terms of the contract are identical to or, if possible, more favorable than the

362 terms agreed to by the federal government.

363 Section 13. Section **79-4-1106** is enacted to read:

364 **79-4-1106. Assuming control of federal contracts with concessionaires during a**
365 **fiscal emergency.**

366 (1) During a fiscal emergency, the division may assume temporary responsibility of

367 fulfilling an existing federal contract with a concessionaire with whom the division does not

368 already have a provisional contract, as described in Section [79-4-1105](#), if:

369 (a) the concessionaire's contract includes a successor and assignment clause
370 authorizing the division to do so; and

371 (b) the federal government has defaulted on the contract.

372 (2) The division may, if a concessionaire's contract term with the federal government
373 expires during a fiscal emergency, negotiate with the concessionaire and enter into a new
374 contract, subject to the requirements of Section 79-4-203.

375 Section 14. Section 79-4-1107 is enacted to read:

376 **79-4-1107. Indemnification.**

377 If the United States or a federal representative brings an action or a proceeding against a
378 state employee for exercising a duty or obligation described in this part, the state shall
379 indemnify, hold harmless, and defend the state employee, if the state employee:

380 (1) followed the requirements of this part; and

381 (2) acted in good faith.

382 Section 15. Section 79-4-1108 is enacted to read:

383 **79-4-1108. Special provisions.**

384 In carrying out the requirements of this part, the credit of the state may not be pledged
385 without the consent of the Legislature.

386 Section 16. Section 79-4-1109 is enacted to read:

387 **79-4-1109. Applicability.**

388 (1) The division may make all necessary rules or regulations in order to fulfill this part.

389 (2) Notwithstanding any other provision of this chapter, the division may not assume
390 control of a national park, national monument, national forest, or national recreation area in the
391 state without:

392 (a) congressional approval of the plan;

393 (b) the governor's agreement with the United States Department of the Interior; or

394 (c) a presidential executive order.

Legislative Review Note
as of 2-12-14 8:39 AM

Office of Legislative Research and General Counsel