

**BOARDS AND COMMISSIONS AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE**

**General Description:**

This bill repeals certain boards and commissions.

**Highlighted Provisions:**

This bill:

▶ repeals the:

- Municipal Government Fiscal Committee;
- the Citizens and County Officials Advisory Committee;
- the Antidiscrimination and Labor Advisory Council;
- the Occupational Safety and Health Advisory Council;
- the advisory committee to the Motorcycle Rider Education Program; and
- the Utah Pioneer Communities Advisory Board;

▶ requires the state auditor to establish and conduct a continuing review of suggested measurements and procedures for program performance budgeting and reporting;

and

▶ makes technical and conforming amendments.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**10-6-154**, as last amended by Laws of Utah 2003, Chapter 292

**17-36-4**, as last amended by Laws of Utah 1996, Chapter 212

**34A-1-202**, as last amended by Laws of Utah 2009, Chapter 174

**34A-6-103**, as last amended by Laws of Utah 2011, Chapter 413

**34A-6-202**, as last amended by Laws of Utah 2011, Chapter 297

REPEALS:

33           **10-6-153**, as last amended by Laws of Utah 2010, Chapter 286  
 34           **17-36-5**, as last amended by Laws of Utah 2010, Chapters 286 and 324  
 35           **34A-5-105**, as last amended by Laws of Utah 2010, Chapter 286  
 36           **34A-6-106**, as last amended by Laws of Utah 2010, Chapter 286  
 37           **53-3-908**, as last amended by Laws of Utah 2010, Chapters 286 and 324  
 38           **63M-1-1501**, as renumbered and amended by Laws of Utah 2008, Chapter 382  
 39           **63M-1-1502**, as last amended by Laws of Utah 2010, Chapter 218  
 40           **63M-1-1503**, as last amended by Laws of Utah 2012, Chapter 212  
 41           **63M-1-1504**, as renumbered and amended by Laws of Utah 2008, Chapter 382  
 42           **63M-1-1505**, as renumbered and amended by Laws of Utah 2008, Chapter 382

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

45           Section 1. Section **10-6-154** is amended to read:

46           **10-6-154. Duties of state auditor -- Adoption and expansion of uniform system.**

47           (1) The state auditor [~~with the assistance, advice, and recommendations of the~~  
 48 ~~municipal government fiscal committee~~] shall:

49           (a) prescribe uniform accounting and reporting procedures for cities, in conformity  
 50 with generally accepted accounting principles;

51           (b) conduct a continuing review and modification of such procedures to improve them;

52           (c) prepare and supply each city with suitable budget and reporting forms; and

53           (d) prepare instructional materials, conduct training programs and render other services  
 54 deemed necessary to assist cities in implementing the uniform accounting, budgeting and  
 55 reporting procedures.

56           (2) The Uniform Accounting Manual for Utah Cities shall prescribe reasonable  
 57 exceptions and modifications for fourth and fifth class cities to the uniform system of  
 58 accounting, budgeting, and reporting.

59           (3) The [~~advisory committee~~] state auditor shall establish and conduct a continuing  
 60 review of suggested measurements and procedures for program and performance budgeting and  
 61 reporting which may be evaluated on a statewide basis.

62           (4) Cities may expand the uniform accounting and reporting procedures to better serve  
 63 their needs; however, no deviations from or alterations to the basic prescribed classification

64 systems for the identity of funds and accounts shall be made.

65 Section 2. Section **17-36-4** is amended to read:

66 **17-36-4. State auditor -- Duties.**

67 (1) The state auditor~~[, with the assistance, advice, and recommendation of the advisory~~  
68 ~~committee,]~~ shall:

- 69 (a) prescribe a uniform system of fiscal procedures for the several counties;
- 70 (b) conduct a constant review and modification of such procedures to improve them;
- 71 (c) prepare and supply each county budget officer with suitable budget forms; and
- 72 (d) prepare instructional materials, conduct training programs, and render other  
73 services deemed necessary to assist counties in implementing the uniform system.

74 (2) The uniform system of procedure may include reasonable exceptions and  
75 modifications applicable to counties with a population of 25,000 or less, such population to be  
76 determined by the Utah Population Work Committee. Counties may expand the uniform  
77 system to serve better their needs. Deviations from or alterations to the basic prescribed  
78 classification system for the identity of funds and accounts should not be made.

79 Section 3. Section **34A-1-202** is amended to read:

80 **34A-1-202. Divisions and office -- Creation -- Duties -- Labor Relations Board,**  
81 **Appeals Board, councils, and panels.**

82 (1) There is created within the commission the following divisions and office:

- 83 (a) the Division of Industrial Accidents that shall administer the regulatory  
84 requirements of this title concerning industrial accidents and occupational disease;
- 85 (b) the Division of Occupational Safety and Health that shall administer the regulatory  
86 requirements of Chapter 6, Utah Occupational Safety and Health Act;
- 87 (c) the Division of Boiler and Elevator Safety that shall administer the regulatory  
88 requirements of Chapter 7, Safety;
- 89 (d) the Division of Antidiscrimination and Labor that shall administer the regulatory  
90 requirements of:
  - 91 (i) Title 34, Labor in General, when specified by statute;
  - 92 (ii) Chapter 5, Utah Antidiscrimination Act;
  - 93 (iii) this title, when specified by statute; and
  - 94 (iv) Title 57, Chapter 21, Utah Fair Housing Act;

95 (e) the Division of Adjudication that shall adjudicate claims or actions brought under  
96 this title; and

97 (f) the Utah Office of Coal Mine Safety created in Section 40-2-201.

98 (2) In addition to the divisions created under this section, within the commission are  
99 the following:

100 (a) the Labor Relations Board created in Section 34-20-3;

101 (b) the Appeals Board created in Section 34A-1-205;

102 (c) the following program advisory councils:

103 (i) the workers' compensation advisory council created in Section 34A-2-107;

104 [~~(ii) the antidiscrimination and labor advisory council created in Section 34A-5-105;~~]

105 [~~(iii) the occupational safety and health advisory council created in Section~~  
106 ~~34A-6-106;~~]

107 [~~(iv)~~] (ii) the Mine Safety Technical Advisory Council created in Section 40-2-203;

108 and

109 [~~(v)~~] (iii) the Coal Miner Certification Panel created in Section 40-2-204.

110 (3) In addition to the responsibilities described in this section, the commissioner may  
111 assign to a division a responsibility granted to the commission by law.

112 Section 4. Section **34A-6-103** is amended to read:

113 **34A-6-103. Definitions -- Unincorporated entities.**

114 (1) As used in this chapter:

115 (a) "Administrator" means the director of the Division of Occupational Safety and  
116 Health.

117 (b) "Amendment" means such modification or change in a code, standard, rule, or  
118 order intended for universal or general application.

119 (c) "Commission" means the Labor Commission.

120 [~~(d) "Council" means the Utah Occupational Safety and Health Advisory Council.~~]

121 [~~(e)~~] (d) "Division" means the Division of Occupational Safety and Health.

122 [~~(f)~~] (e) "Employee" includes any person suffered or permitted to work by an employer.

123 [~~(g)~~] (f) "Employer" means:

124 (i) the state;

125 (ii) a county, city, town, and school district in the state; and

126 (iii) a person, including a public utility, having one or more workers or operatives  
127 regularly employed in the same business, or in or about the same establishment, under any  
128 contract of hire.

129 ~~(h)~~ (g) "Hearing" means a proceeding conducted by the commission.

130 ~~(i)~~ (h) "Imminent danger" means a danger exists which reasonably could be expected  
131 to cause an occupational disease, death, or serious physical harm immediately, or before the  
132 danger could be eliminated through enforcement procedures under this chapter.

133 ~~(j)~~ (i) "National consensus standard" means any occupational safety and health  
134 standard or modification:

135 (i) adopted by a nationally recognized standards-producing organization under  
136 procedures where it can be determined by the administrator and division that persons interested  
137 and affected by the standard have reached substantial agreement on its adoption;

138 (ii) formulated in a manner which affords an opportunity for diverse views to be  
139 considered; and

140 (iii) designated as such a standard by the Secretary of the United States Department of  
141 Labor.

142 ~~(k)~~ (j) "Person" means the general public, one or more individuals, partnerships,  
143 associations, corporations, legal representatives, trustees, receivers, and the state and its  
144 political subdivisions.

145 ~~(l)~~ (k) "Publish" means publication in accordance with Title 63G, Chapter 3, Utah  
146 Administrative Rulemaking Act.

147 ~~(m)~~ (l) "Secretary" means the Secretary of the United States Department of Labor.

148 ~~(n)~~ (m) "Standard" means an occupational health and safety standard or group of  
149 standards which requires conditions, or the adoption or use of one or more practices, means,  
150 methods, operations, or processes, reasonably necessary to provide safety and healthful  
151 employment and places of employment.

152 ~~(o)~~ (n) "Unincorporated entity" means an entity organized or doing business in the  
153 state that is not:

154 (i) an individual;

155 (ii) a corporation; or

156 (iii) publicly traded.

157           ~~[(p)]~~ (o) "Variance" means a special, limited modification or change in the code or  
 158 standard applicable to the particular establishment of the employer or person petitioning for the  
 159 modification or change.

160           ~~[(q)]~~ (p) "Workplace" means any place of employment.

161           (2) (a) For purposes of this chapter, an unincorporated entity that is required to be  
 162 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to  
 163 be the employer of each individual who, directly or indirectly, holds an ownership interest in  
 164 the unincorporated entity.

165           (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,  
 166 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption  
 167 under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that  
 168 the individual:

169           (i) is an active manager of the unincorporated entity;

170           (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated  
 171 entity; or

172           (iii) is not subject to supervision or control in the performance of work by:

173           (A) the unincorporated entity; or

174           (B) a person with whom the unincorporated entity contracts.

175           (c) As part of the rules made under Subsection (2)(b), the commission may define:

176           (i) "active manager";

177           (ii) "directly or indirectly holds at least an 8% ownership interest"; and

178           (iii) "subject to supervision or control in the performance of work."

179           Section 5. Section **34A-6-202** is amended to read:

180           **34A-6-202. Standards -- Procedure for issuance, modification, or revocation by**  
 181 **division -- Emergency temporary standard -- Variances from standards -- Statement of**  
 182 **reasons for administrator's actions -- Judicial review -- Priority for establishing**  
 183 **standards.**

184           (1) (a) The division, as soon as practicable, shall issue as standards any national  
 185 consensus standard, any adopted federal standard, or any adopted Utah standard, unless it  
 186 determines that issuance of the standard would not result in improved safety or health.

187           (b) All codes, standards, and rules adopted under Subsection (1)(a) shall take effect 30

188 days after publication unless otherwise specified.

189 (c) If any conflict exists between standards, the division shall issue the standard that  
190 assures the greatest protection of safety or health for affected employees.

191 (2) The division may issue, modify, or revoke any standard as follows:

192 ~~[(a) (i) Whenever the administrator determines upon the basis of information submitted~~  
193 ~~in writing by an interested person, a representative of any organization of employers or~~  
194 ~~employees, a nationally recognized standards-producing organization, the Department of~~  
195 ~~Health, or a state agency or political subdivision, or on information developed by the division~~  
196 ~~or otherwise available, that a rule should be promulgated to promote the objectives of this~~  
197 ~~chapter, the administrator may request recommendations from the advisory council.]~~

198 ~~[(ii) The administrator shall provide the advisory council with proposals, together with~~  
199 ~~all pertinent factual information developed by the division, or otherwise available, including~~  
200 ~~the results of research, demonstrations, and experiments.]~~

201 ~~[(iii) The advisory council shall submit to the administrator its recommendations~~  
202 ~~regarding the rule to be promulgated within a period as prescribed by the administrator.]~~

203 ~~[(b)] (a)~~ The division shall publish a proposed rule issuing, modifying, or revoking an  
204 occupational safety or health standard and shall afford interested parties an opportunity to  
205 submit written data or comments as prescribed by Title 63G, Chapter 3, Utah Administrative  
206 Rulemaking Act. When the administrator determines that a rule should be issued, the division  
207 shall publish the proposed rule after the ~~[submission of the advisory council's recommendations~~  
208 ~~or the]~~ expiration of the period prescribed by the administrator for submission.

209 ~~[(c)] (b)~~ The administrator, in issuing standards for toxic materials or harmful physical  
210 agents under this subsection, shall set the standard which most adequately assures, to the extent  
211 feasible, on the basis of the best available evidence, that no employee will suffer material  
212 impairment of health or functional capacity even if the employee has regular exposure to the  
213 hazard during an employee's working life. Development of standards under this subsection  
214 shall be based upon research, demonstrations, experiments, and other information deemed  
215 appropriate. In addition to the attainment of the highest degree of health and safety protection  
216 for the employee, other considerations shall be the latest available scientific data in the field,  
217 the feasibility of the standards, and experience under this and other health and safety laws.  
218 Whenever practicable, the standard shall be expressed in terms of objective criteria and of the

219 performance desired.

220 ~~(d)~~ (c) (i) Any employer may apply to the administrator for a temporary order  
221 granting a variance from a standard issued under this section. Temporary orders shall be  
222 granted only if the employer:

223 (A) files an application which meets the requirements of Subsection (2)~~(d)~~(c)(iv);

224 (B) establishes that the employer is unable to comply with a standard by its effective  
225 date because of unavailability of professional or technical personnel or of materials and  
226 equipment needed for compliance with the standard or because necessary construction or  
227 alteration of facilities cannot be completed by the effective date;

228 (C) establishes that the employer is taking all available steps to safeguard the  
229 employer's employees against hazards; and

230 (D) establishes that the employer has an effective program for compliance as quickly as  
231 practicable.

232 (ii) Any temporary order shall prescribe the practices, means, methods, operations, and  
233 processes which the employer shall adopt and use while the order is in effect and state in detail  
234 the employer's program for compliance with the standard. A temporary order may be granted  
235 only after notice to employees and an opportunity for a public hearing; provided, that the  
236 administrator may issue one interim order effective until a decision is made after public  
237 hearing.

238 (iii) A temporary order may not be in effect longer than the period reasonably required  
239 by the employer to achieve compliance. In no case shall the period of a temporary order  
240 exceed one year.

241 (iv) An application for a temporary order under Subsection (2)~~(d)~~(c) shall contain:

242 (A) a specification of the standard or part from which the employer seeks a variance;

243 (B) a representation by the employer, supported by representations from qualified  
244 persons having first-hand knowledge of the facts represented, that the employer is unable to  
245 comply with the standard or some part of the standard;

246 (C) a detailed statement of the reasons the employer is unable to comply;

247 (D) a statement of the measures taken and anticipated with specific dates, to protect  
248 employees against the hazard;

249 (E) a statement of when the employer expects to comply with the standard and what

250 measures the employer has taken and those anticipated, giving specific dates for compliance;

251 and

252 (F) a certification that the employer has informed the employer's employees of the  
253 application by:

254 (I) giving a copy to their authorized representative;

255 (II) posting a statement giving a summary of the application and specifying where a  
256 copy may be examined at the place or places where notices to employees are normally posted;

257 and

258 (III) by other appropriate means.

259 (v) The certification required under Subsection (2)~~(f)~~(c)(iv) shall contain a  
260 description of how employees have been informed.

261 (vi) The information to employees required under Subsection (2)~~(f)~~(c)(v) shall  
262 inform the employees of their right to petition the division for a hearing.

263 (vii) The administrator is authorized to grant a variance from any standard or some part  
264 of the standard when the administrator determines that it is necessary to permit an employer to  
265 participate in a research and development project approved by the administrator to demonstrate  
266 or validate new and improved techniques to safeguard the health or safety of workers.

267 ~~(e)~~ (d) (i) Any standard issued under this subsection shall prescribe the use of labels  
268 or other forms of warning necessary to ensure that employees are apprised of all hazards,  
269 relevant symptoms and emergency treatment, and proper conditions and precautions of safe use  
270 or exposure. When appropriate, a standard shall prescribe suitable protective equipment and  
271 control or technological procedures for use in connection with such hazards and provide for  
272 monitoring or measuring employee exposure at such locations and intervals, and in a manner  
273 necessary for the protection of employees. In addition, any such standard shall prescribe the  
274 type and frequency of medical examinations or other tests which shall be made available by the  
275 employer, or at the employer's cost, to employees exposed to hazards in order to most  
276 effectively determine whether the health of employees is adversely affected by exposure. If  
277 medical examinations are in the nature of research as determined by the division, the  
278 examinations may be furnished at division expense. The results of such examinations or tests  
279 shall be furnished only to the division; and, at the request of the employee, to the employee's  
280 physician.

281 (ii) The administrator may by rule make appropriate modifications in requirements for  
282 the use of labels or other forms of warning, monitoring or measuring, and medical  
283 examinations warranted by experience, information, or medical or technological developments  
284 acquired subsequent to the promulgation of the relevant standard.

285 ~~[(f)]~~ (e) Whenever a rule issued by the administrator differs substantially from an  
286 existing national consensus standard, the division shall publish a statement of the reasons why  
287 the rule as adopted will better effectuate the purposes of this chapter than the national  
288 consensus standard.

289 ~~[(g)]~~ (f) Whenever a rule, standard, or national consensus standard is modified by the  
290 secretary so as to make less restrictive the federal Williams-Steiger Occupational Safety and  
291 Health Act of 1970, the less restrictive modification shall be immediately applicable to this  
292 chapter and shall be immediately implemented by the division.

293 (3) (a) The administrator shall provide an emergency temporary standard to take  
294 immediate effect upon publication if the administrator determines that:

295 (i) employees are exposed to grave danger from exposure to substances or agents  
296 determined to be toxic or physically harmful or from new hazards; and

297 (ii) that the standard is necessary to protect employees from danger.

298 (b) An emergency standard shall be effective until superseded by a standard issued in  
299 accordance with the procedures prescribed in Subsection (3)(c).

300 (c) Upon publication of an emergency standard the division shall commence a  
301 proceeding in accordance with Subsection (2) and the standard as published shall serve as a  
302 proposed rule for the proceedings. The division shall issue a standard under Subsection (3) no  
303 later than 120 days after publication of the emergency standard.

304 (4) (a) Any affected employer may apply to the division for a rule or order for a  
305 variance from a standard issued under this section. Affected employees shall be given notice of  
306 each application and may participate in a hearing. The administrator shall issue a rule or order  
307 if the administrator determines on the record, after opportunity for an inspection where  
308 appropriate and a hearing, that the proponent of the variance has demonstrated by a  
309 preponderance of the evidence that the conditions, practices, means, methods, operations, or  
310 processes used or proposed to be used by an employer will provide employment and a  
311 workplace to the employer's employees that are as safe and healthful as those which would

312 prevail if the employer complied with the standard.

313 (b) The rule or order issued under Subsection (4)(a) shall prescribe the conditions the  
314 employer must maintain, and the practices, means, methods, operations and processes that the  
315 employer must adopt and use to the extent they differ from the standard in question.

316 (c) A rule or order issued under Subsection (4)(a) may be modified or revoked upon  
317 application by an employer, employees, or by the administrator on its own motion, in the  
318 manner prescribed for its issuance under Subsection (4) at any time after six months from its  
319 issuance.

320 (5) The administrator shall include a statement of reasons for the administrator's  
321 actions when the administrator:

322 (a) issues any code, standard, rule, or order;

323 (b) grants any exemption or extension of time; or

324 (c) compromises, mitigates, or settles any penalty assessed under this chapter.

325 (6) Any person adversely affected by a standard issued under this section, at any time  
326 prior to 60 days after a standard is issued, may file a petition challenging its validity with the  
327 district court having jurisdiction for judicial review. A copy of the petition shall be served  
328 upon the division by the petitioner. The filing of a petition may not, unless otherwise ordered  
329 by the court, operate as a stay of the standard. The determinations of the division shall be  
330 conclusive if supported by substantial evidence on the record as a whole.

331 (7) In determining the priority for establishing standards under this section, the division  
332 shall give due regard to the urgency of the need for mandatory safety and health standards for  
333 particular industries, trades, crafts, occupations, businesses, workplaces or work environments.  
334 The administrator shall also give due regard to the recommendations of the Department of  
335 Health about the need for mandatory standards in determining the priority for establishing the  
336 standards.

337 Section 6. **Repealer.**

338 This bill repeals:

339 Section **10-6-153, Municipal government fiscal committee created -- Members --**  
340 **Terms -- Vacancies -- Recommendations.**

341 Section **17-36-5, Creation of Citizens and County Officials Advisory Committee.**

342 Section **34A-5-105, Antidiscrimination and Labor Advisory Council --**

- 343 **Membership -- Appointment -- Term -- Powers and duties -- Chair.**
- 344       Section **34A-6-106, Occupational Safety and Health Advisory Council --**
- 345 **Appointment.**
- 346       Section **53-3-908, Advisory committee.**
- 347       Section **63M-1-1501, Title.**
- 348       Section **63M-1-1502, Definitions.**
- 349       Section **63M-1-1503, Advisory board.**
- 350       Section **63M-1-1504, Advisory board duties.**
- 351       Section **63M-1-1505, Criteria for participation -- Report.**