

**BONDING REQUIREMENTS FOR GOVERNMENT OFFICERS
AND EMPLOYEES**

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: _____

LONG TITLE

Committee Note:

The Government Operations and Political Subdivisions Interim Committee recommended this bill.

General Description:

This bill modifies the bonding requirement for certain government officers and employees.

Highlighted Provisions:

This bill:

▶ modifies the bonding requirement for certain government officers and employees to allow the officer or employee to be covered under the state Risk Management Fund;

▶ removes surety bond requirements for:

- regional grazing advisory boards;
- employees of the Alcoholic Beverage Control Commission;
- the Labor Commission and its designated employees;
- the adjutant general;
- a property and fiscal officer of the United States for Utah for the National Guard;
- the business administrator and other board officers of a local school board; and
- the Transportation Commission;



- 28 ▶ repeals surety bond provisions for:
- 29 • the Utah Insurance Commissioner and employees of the Insurance Department;
- 30 • officers of the state militia;
- 31 • the state auditor; and
- 32 • the attorney general;
- 33 ▶ amends provisions for giving a bond if required for a state officer or an official of a
- 34 state institution; and
- 35 ▶ makes technical changes.

36 **Money Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 This bill provides an effective date.

40 **Utah Code Sections Affected:**

41 **AMENDS:**

- 42 **4-20-1.6**, as last amended by Laws of Utah 2010, Chapter 278
- 43 **32B-2-206 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276
- 44 **34A-1-201**, as last amended by Laws of Utah 2002, Chapter 176
- 45 **39-1-21**, as last amended by Laws of Utah 1991, Chapter 114
- 46 **39-1-25**, as last amended by Laws of Utah 1963, Chapter 61
- 47 **52-1-2**, as last amended by Laws of Utah 1984, Chapter 67
- 48 **52-2-1**, Utah Code Annotated 1953
- 49 **53A-3-302**, as last amended by Laws of Utah 1999, Chapter 218
- 50 **53A-3-304**, as enacted by Laws of Utah 1988, Chapter 2
- 51 **72-1-301**, as last amended by Laws of Utah 2010, Chapter 286
- 52 **76-8-203**, as last amended by Laws of Utah 1996, Chapter 79

53 **REPEALS:**

- 54 **31A-2-107**, as last amended by Laws of Utah 1986, Chapter 204
- 55 **39-1-27**, Utah Code Annotated 1953
- 56 **63A-3-108**, as renumbered and amended by Laws of Utah 1993, Chapter 212
- 57 **63A-9-806**, as renumbered and amended by Laws of Utah 1997, Chapter 252
- 58 **67-3-7**, Utah Code Annotated 1953

59 **67-5-2**, Utah Code Annotated 1953

60

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

62 Section 1. Section **4-20-1.6** is amended to read:

63 **4-20-1.6. Regional Grazing Advisory Boards -- Duties.**

64 (1) The commissioner shall appoint members to a regional board for each grazing
65 district from nominations submitted by:

66 (a) the Utah Cattlemen's Association;

67 (b) the Utah Woolgrower's Association;

68 (c) the Utah Farm Bureau Federation; and

69 (d) a conservation district, if the conservation district's boundaries include some
70 portion of the grazing district.

71 (2) Regional boards:

72 (a) shall provide advice and recommendations to the state board; and

73 (b) may receive money from the Rangeland Improvement Account created in Section
74 4-20-2.

75 (3) If a regional board receives money as authorized by Subsection (2)(b), the regional
76 board shall elect a treasurer to expend the money:

77 (a) as directed by the regional board; and

78 (b) in accordance with Section 4-20-3.

79 ~~[(4)(a) A treasurer elected in accordance with Subsection (3) shall, for the faithful
80 performance of the treasurer's official duties, file with the department:]~~

81 ~~[(i) a \$5,000 corporate surety bond; or]~~

82 ~~[(ii) a \$10,000 personal surety bond.]~~

83 ~~[(b) The regional board shall pay the premium for the bond required by Subsection
84 (4)(a) from the money received under Subsection (2)(b).]~~

85 Section 2. Section **32B-2-206 (Effective 07/01/11)** is amended to read:

86 **32B-2-206 (Effective 07/01/11). Powers and duties of the director.**

87 Subject to the powers and responsibilities of the commission under this title, the
88 director:

89 (1) (a) shall prepare and propose to the commission general policies, rules, and

90 procedures governing the administrative activities of the department; and

91 (b) may submit other recommendations to the commission as the director considers in
92 the interest of the commission's or the department's business;

93 (2) within the general policies, rules, and procedures of the commission, shall:

94 (a) provide day-to-day direction, coordination, and delegation of responsibilities in the
95 administrative activities of the department's business; and

96 (b) make internal department policies and procedures relating to:

97 (i) department personnel matters; and

98 (ii) the day-to-day operation of the department;

99 (3) subject to Section 32B-2-207, shall appoint or employ personnel as considered
100 necessary in the administration of this title, and with regard to the personnel shall:

101 (a) prescribe the conditions of employment;

102 (b) define the respective duties and powers; and

103 (c) fix the remuneration in accordance with Title 67, Chapter 19, Utah State Personnel
104 Management Act;

105 [~~(d) designate those employees required to give a bond; and~~]

106 [~~(e) specify the bond amounts;~~]

107 (4) shall establish and secure adherence to a system of reports, controls, and
108 performance in matters relating to personnel, security, department property management, and
109 operation of:

110 (a) a department office;

111 (b) a warehouse;

112 (c) a state store; and

113 (d) a package agency;

114 (5) within the policies, rules, and procedures approved by the commission and
115 provisions of law, shall purchase, store, keep for sale, sell, import, and control the storage, sale,
116 furnishing, transportation, or delivery of an alcoholic product;

117 (6) shall prepare for commission approval:

118 (a) recommendations regarding the location, establishment, relocation, and closure of a
119 state store or package agency;

120 (b) recommendations regarding the issuance, denial, [~~nonrenewal~~] nonrenewal,

- 121 suspension, or revocation of a license, permit, or certificate of approval;
- 122 (c) an annual budget, proposed legislation, and reports as required by law and sound
123 business principles;
- 124 (d) plans for reorganizing divisions of the department and the functions of the
125 divisions;
- 126 (e) manuals containing commission and department policies, rules, and procedures;
- 127 (f) an inventory control system;
- 128 (g) any other report or recommendation requested by the commission;
- 129 (h) rules described in Subsection 32B-2-202(1)(o) governing the credit terms of the
130 sale of beer;
- 131 (i) rules governing the calibration, maintenance, and regulation of a calibrated metered
132 dispensing system;
- 133 (j) rules governing the display of a list of types and brand names of liquor furnished
134 through a calibrated metered dispensing system;
- 135 (k) price lists issued and distributed showing the price to be paid for each class, variety,
136 or brand of liquor kept for sale at a state store, package agency, or retail licensee;
- 137 (l) policies or rules prescribing the books of account maintained by the department and
138 by a state store, package agency, or retail licensee; and
- 139 (m) a policy prescribing the manner of giving and serving a notice required by this title
140 or rules made under this title;
- 141 (7) shall make available through the department to any person, upon request, a copy of
142 a policy made by the director;
- 143 (8) shall make and maintain a current copy of a manual that contains the rules and
144 policies of the commission and department available for public inspection;
- 145 (9) (a) after consultation with the governor, shall determine whether an alcoholic
146 product should not be sold, offered for sale, or otherwise furnished in an area of the state
147 during a period of emergency that is proclaimed by the governor to exist in that area; and
- 148 (b) shall issue a necessary public announcement or policy with respect to the
149 determination described in Subsection (9)(a); and
- 150 (10) shall perform any other duty required by the commission or by law.
- 151 Section 3. Section **34A-1-201** is amended to read:

152 **34A-1-201. Commissioner -- Appointment -- Removal -- Compensation --**
153 **Qualifications -- Responsibilities -- Reports.**

154 (1) (a) The chief administrative officer of the commission is the commissioner, who
155 shall be appointed by the governor with the consent of the Senate.

156 (b) The commissioner shall serve at the pleasure of the governor.

157 (c) The commissioner shall receive a salary established by the governor within the
158 salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

159 (d) The commissioner shall be experienced in administration, management, and
160 coordination of complex organizations.

161 (2) (a) The commissioner shall serve full-time.

162 (b) (i) Except as provided in Subsection (2)(b)(ii), the commissioner may not:

163 (A) hold any other office of this state, another state, or the federal government except
164 in an ex officio capacity; or

165 (B) serve on any committee of any political party.

166 (ii) Notwithstanding Subsection (2)(b)(i), the commissioner may:

167 (A) hold a nominal position or title if it is required by law as a condition for the state
168 participating in an appropriation or allotment of any money, property, or service that may be
169 made or allotted for the commission; or

170 (B) serve as the chief administrative officer of any division, office, or bureau that is
171 established within the commission.

172 (iii) If the commissioner holds a position as permitted under Subsection (2)(b)(ii), the
173 commissioner may not be paid any additional compensation for holding the position.

174 (3) [~~(a)~~] Before beginning the duties as a commissioner, an appointed commissioner
175 shall [~~:(i)~~] take and subscribe the constitutional oath of office[;] and file the oath with the
176 Division of Archives[; ~~and~~].

177 [~~(ii) give a corporate surety bond in the amount in form determined by the Division of~~
178 ~~Finance.~~]

179 [~~(b) An employee of the commission receiving or disbursing funds of the state shall~~
180 ~~give corporate surety determined by the Division of Finance.~~]

181 [~~(c) The bond premiums for bonds required under this Subsection (3) shall be paid by~~
182 ~~the state.~~]

183 (4) The commissioner shall:

184 (a) administer and supervise the commission in compliance with Title 67, Chapter 19,
185 Utah State Personnel Management Act;

186 (b) approve the proposed budget of each division and the Appeals Board;

187 (c) approve all applications for federal grants or assistance in support of any
188 commission program; and

189 (d) fulfill such other duties as assigned by the Legislature or as assigned by the
190 governor that are not inconsistent with this title or Title 34, Labor in General.

191 (5) (a) The commissioner shall report annually to the Legislature and the governor
192 concerning the operations of the commission and the programs that the commission
193 administers.

194 (b) If federal law requires that a report to the governor or Legislature be given
195 concerning the commission or a program administered by the commission, the commissioner or
196 the commissioner's designee shall make that report.

197 Section 4. Section **39-1-21** is amended to read:

198 **39-1-21. Adjutant general -- Salary.**

199 The adjutant general shall:

200 (1) receive a salary established by the governor within the salary range fixed by the
201 Legislature in Title 67, Chapter 22, State Officer Compensation[~~He shall give an official~~
202 ~~bond to the state in the penal sum of \$10,000 to cover all duties imposed and offices conferred~~
203 ~~by law or authority on the adjutant general. He shall~~]; and

204 (2) devote all of [his] the adjutant general's time during the office hours of the military
205 department to the duties of [his] the office.

206 Section 5. Section **39-1-25** is amended to read:

207 **39-1-25. Property and fiscal officer of the United States for Utah.**

208 (1) The governor shall designate an officer of the National Guard, subject to the
209 approval of the Department of the Army or the Department of the Air Force, as property and
210 fiscal officer of the United States for Utah. [Such]

211 (2) The officer shall:

212 (a) have had actual service in the forces of the United States or the National Guard[;]
213 and have knowledge of army or air administration[~~Such officer shall~~];

214 (b) receive and account for all funds and property belonging to the United States in the
215 possession of the National Guard~~[-and shall];~~

216 (c) make ~~[such]~~ the returns and reports concerning the ~~[same]~~ funds as may be required
217 by the National Guard Bureau~~[-Such officer shall]; and~~

218 (d) render, through the National Guard Bureau, ~~[such]~~ accounts of federal funds
219 entrusted to ~~[him]~~ the officer for disbursement as may be required by the Treasury Department.
220 ~~[Before entering upon the performance of his duties as property and disbursing officer he shall~~
221 ~~be required to give good and substantial bond to the United States, the amount thereof to be~~
222 ~~determined by the National Guard Bureau, for the faithful performance of his duties, for the~~
223 ~~safekeeping and proper disbursing of the federal property and funds entrusted to his care.]~~

224 Section 6. Section **52-1-2** is amended to read:

225 **52-1-2. Bonds to state -- Approval and recording -- Filing of oaths.**

226 ~~[Whenever state officers, officials of state institutions, or other persons, are required to~~
227 ~~give official bonds]~~

228 (1) When a state officer or an official of a state institution is required to give an official
229 bond to the state, ~~[the bonds,]~~ unless otherwise provided, ~~[shall be approved by the Division of~~
230 Finance, and recorded by the state treasurer in a book kept for that purpose. ~~The oaths of office~~
231 of all state officials shall be filed] the executive director or other chief executive of the agency
232 shall:

233 (a) approve the bond; and

234 (b) keep the bond on file at the agency's administrative office.

235 (2) A state official shall file the state official's oath of office with the Division of
236 Archives.

237 Section 7. Section **52-2-1** is amended to read:

238 **52-2-1. Time in which to qualify -- Failure -- Office declared vacant.**

239 ~~[Whenever]~~ (1) When any person duly elected or appointed to any office of the state or
240 any of its political subdivisions, fails to qualify for ~~[such]~~ the office within 60 days after the
241 date of beginning of the term of office for which ~~[he]~~ the person was elected or appointed,
242 ~~[such]~~ the office ~~[shall thereupon become]~~ is vacant and shall be filled as provided by law.

243 ~~[Whenever the]~~ (2) When a required bond of any officer of the state or of any of its
244 political subdivisions is canceled, revoked, annulled or otherwise becomes void or of no effect,

245 without another proper required bond being given so that continuance of the required bonded
246 protection is afforded, the office of [such] the officer [~~shall thereupon become~~] is vacant and
247 shall be filled as provided by law. [~~Any elected or appointed official who has failed on the~~
248 ~~effective date of this act to qualify for the position to which he was elected or appointed, shall~~
249 ~~be deemed to come within the provisions of this act, and the office of such officer shall become~~
250 ~~vacant at the end of 40 days after the effective date of this act unless legal bond is given before~~
251 ~~the expiration of such period, and such office shall be filled as provided by law.]~~

252 Section 8. Section **53A-3-302** is amended to read:

253 **53A-3-302. Business administrator -- Term -- Oath.**

254 (1) Each board shall appoint a business administrator.

255 (2) The business administrator's term of office is for two years and until a successor is
256 appointed and qualified.

257 (3) If it becomes necessary to appoint an interim business manager due to a vacancy in
258 the office of business administrator, then the board shall make an appointment during a public
259 meeting for an indefinite term not to exceed one year, which term shall end upon the
260 appointment and qualification of a new business manager.

261 (4) The business administrator qualifies for office by taking the constitutional oath of
262 office [~~and by posting any required bond or undertaking~~].

263 Section 9. Section **53A-3-304** is amended to read:

264 **53A-3-304. Other board officers.**

265 (1) A board may appoint other necessary officers who serve at the pleasure of the
266 board. [~~The board may require these officers to give a bond to the board in an amount~~
267 ~~prescribed by the board.~~]

268 (2) These officers shall qualify by taking the constitutional oath of office before
269 assuming office.

270 Section 10. Section **72-1-301** is amended to read:

271 **72-1-301. Transportation Commission created -- Members, appointment, terms --**
272 **Qualifications -- Pay and expenses -- Chair -- Quorum -- Surety bond.**

273 (1) (a) There is created the Transportation Commission which shall consist of seven
274 members.

275 (b) The members of the commission shall be residents of Utah.

276 (c) The members of the commission shall be selected on a nonpartisan basis.
277 (d) (i) The commissioners shall be appointed by the governor, with the consent of the
278 Senate, for a term of six years, beginning on April 1 of odd-numbered years, except as provided
279 under Subsection (1)(d)(ii).
280 (ii) The first two additional commissioners serving on the seven member commission
281 shall be appointed for terms of two years nine months and four years nine months, respectively,
282 initially commencing on July 1, 1996, and subsequently commencing as specified under
283 Subsection (1)(d)(i).
284 (e) The commissioners serve on a part-time basis.
285 (f) Each commissioner shall remain in office until a successor is appointed and
286 qualified.
287 (2) (a) Except as provided in Subsection (2)(b), the selection of the commissioners
288 shall be as follows:
289 (i) one commissioner from Box Elder, Cache, or Rich county;
290 (ii) one commissioner from Salt Lake or Tooele county;
291 (iii) one commissioner from Carbon, Emery, Grand, or San Juan county;
292 (iv) one commissioner from Beaver, Garfield, Iron, Kane, Millard, Piute, Sanpete,
293 Sevier, Washington, or Wayne county;
294 (v) one commissioner from Weber, Davis, or Morgan county;
295 (vi) one commissioner from Juab, Utah, Wasatch, Duchesne, Summit, Uintah, or
296 Daggett county; and
297 (vii) one commissioner selected from the state at large.
298 (b) Beginning with the appointment of commissioners on or after July 1, 2009 and
299 subject to the restriction in Subsection (2)(d), the selection of commissioners shall be as
300 follows:
301 (i) four commissioners with one commissioner selected from each of the four regions
302 established by the department; and
303 (ii) subject to the restriction in Subsection (2)(c), three commissioners selected from
304 the state at large.
305 (c) (i) At least one of the three commissioners appointed under Subsection (2)(b)(ii)
306 shall be selected from a rural county.

307 (ii) For purposes of this Subsection (2)(c), a rural county includes a county of the third,
308 fourth, fifth, or sixth class.

309 (d) No more than two commissioners appointed under Subsection (2)(b) may be
310 selected from any one of the four regions established by the department.

311 (3) A member may not receive compensation or benefits for the member's service, but
312 may receive per diem and travel expenses in accordance with:

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

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

315 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
316 63A-3-107.

317 (4) (a) One member of the commission shall be designated by the governor as chair.

318 (b) The commission shall select one member as vice chair to act in the chair's absence.

319 (5) Any four commissioners constitute a quorum.

320 (6) ~~(a)~~ Each member of the commission shall qualify by ~~(i)~~ taking the
321 constitutional oath of office ~~and~~.

322 ~~(ii) giving a surety bond.~~

323 ~~(b) The Division of Finance of the Department of Administrative Services shall~~
324 ~~determine the form and amount of the bond, and the state shall pay the bond premium.]~~

325 Section 11. Section **76-8-203** is amended to read:

326 **76-8-203. Unofficial misconduct.**

327 (1) A person is guilty of unofficial misconduct if ~~he~~ the person exercises or attempts
328 to exercise any of the functions of a public office when the person:

329 (a) ~~he~~ has not taken and filed the required oath of office;

330 (b) ~~he~~ has failed to execute and file ~~the~~ a required bond;

331 (c) ~~he~~ has not been elected or appointed to office;

332 (d) ~~he~~ exercises any of the functions of his office after his term has expired and the
333 successor has been elected or appointed and has qualified, or after his office has been legally
334 removed; or

335 (e) ~~he~~ knowingly withholds or retains from his successor in office or other person
336 entitled to the official seal or any records, papers, documents, or other writings appertaining or
337 belonging to his office or mutilates or destroys or takes away the same.

338 (2) Unofficial misconduct is a class B misdemeanor.
339 Section 12. **Repealer.**
340 This bill repeals:
341 Section **31A-2-107, Bonding of employees.**
342 Section **39-1-27, Bonds of accountable officers.**
343 Section **63A-3-108, Designation of state officers and employees required to give**
344 **surety bonds -- Form of bonds -- Competitive bidding.**
345 Section **63A-9-806, Bonds.**
346 Section **67-3-7, Official bond.**
347 Section **67-5-2, Official bond.**
348 Section 13. **Effective date.**
349 (1) Except as provided in Subsection (2), this bill takes effect on May 10, 2011.
350 (2) The amendments to Section 32B-2-206 (Effective 07/01/11) take effect on July 1,
351 2011.

Legislative Review Note
as of 11-22-10 7:27 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 40, 2011 General Session

SHORT TITLE: Bonding Requirements for Government Officers and Employees

SPONSOR: Wilcox, R.

STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill will likely save the State \$5,000 annually beginning FY 2012.

STATE BUDGET DETAIL TABLE	FY 2011	FY 2012	FY 2013
Revenue	\$0	\$0	\$0
Expenditure:			
General Fund	\$0	(\$5,000)	(\$5,000)
Total Expenditure	\$0	(\$5,000)	(\$5,000)
Net Impact, All Funds (Rev.-Exp.)	\$0	\$5,000	\$5,000
Net Impact, General/Education Funds	\$0	\$5,000	\$5,000

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill will likely save school districts \$1,000 per district per year (\$41,000 total).

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.