

Representative Douglas C. Aagard proposes the following substitute bill:

REVISIONS TO BOARDS AND COMMISSIONS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Howard A. Stephenson

This act modifies certain state boards and commissions. The act repeals certain boards and modifies the appointment requirements or the duties and responsibilities of other boards. This act requires the Occupational and Professional Licensure Review Committee to study the possible repeal of, combination of, or modifications to certain licensing boards and whether or not certain occupations should be licensed by the state.

This act makes technical changes. This act provides an effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

23-14-2.5, as enacted by Chapter 211, Laws of Utah 1995

61-1-6, as last amended by Chapter 161, Laws of Utah 1991

63-56-6, as last amended by Chapter 243, Laws of Utah 1996

64-13-1, as last amended by Chapter 240, Laws of Utah 2000

64-13-17, as last amended by Chapters 198 and 237, Laws of Utah 1996

64-13a-3, as last amended by Chapter 92, Laws of Utah 1987

REPEALS:

11-33-1, as enacted by Chapter 223, Laws of Utah 1987

11-33-2, as enacted by Chapter 223, Laws of Utah 1987

11-33-3, as last amended by Chapter 67, Laws of Utah 2002

11-33-4, as last amended by Chapter 56, Laws of Utah 1996

11-33-5, as enacted by Chapter 223, Laws of Utah 1987

11-33-6, as enacted by Chapter 223, Laws of Utah 1987



- 26 11-33-7, as enacted by Chapter 223, Laws of Utah 1987
- 27 11-33-8, as enacted by Chapter 223, Laws of Utah 1987
- 28 13-2-6.5, as last amended by Chapter 243, Laws of Utah 1996
- 29 17-40-1, as enacted by Chapter 264, Laws of Utah 1991
- 30 17-40-2, as last amended by Chapter 243, Laws of Utah 1996
- 31 26-10a-101, as renumbered and amended by Chapter 355, Laws of Utah 1999
- 32 26-10a-102, as renumbered and amended by Chapter 355, Laws of Utah 1999
- 33 26-10a-103, as renumbered and amended by Chapter 355, Laws of Utah 1999
- 34 26-10a-104, as renumbered and amended by Chapter 355, Laws of Utah 1999
- 35 63-55-272, as last amended by Chapter 185, Laws of Utah 2002
- 36 64-13-4.1, as last amended by Chapter 176, Laws of Utah 2002
- 37 64-13-5, as last amended by Chapter 135, Laws of Utah 1997
- 38 64-13a-5, as last amended by Chapter 243, Laws of Utah 1996
- 39 64-13a-6, as last amended by Chapter 13, Laws of Utah 1994
- 40 72-8-108, as enacted by Chapter 47, Laws of Utah 1999
- 41 72-13-101, as enacted by Chapter 372, Laws of Utah 2001
- 42 72-13-102, as enacted by Chapter 372, Laws of Utah 2001
- 43 72-13-103, as enacted by Chapter 372, Laws of Utah 2001
- 44 72-13-104, as enacted by Chapter 372, Laws of Utah 2001

45 This act enacts uncodified material.

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

47 Section 1. Section 23-14-2.5 is amended to read:

48 **23-14-2.5. Wildlife Board Nominating Committee -- Creation -- Membership --**

49 **Terms -- Quorum.**

50 (1) There is created a Wildlife Board Nominating Committee which shall consist of 11
51 members.

52 (2) The governor shall appoint members to the nominating committee as follows:

53 (a) three members shall be appointed from a list of at least two nominees per position
54 submitted by the agriculture industry;

55 (b) three members shall be appointed from a list of at least two nominees per position
56 submitted by sportsmen groups;

57 (c) two members shall be appointed from a list of at least two nominees per position
58 submitted by nonconsumptive wildlife interests;

59 (d) one member shall be appointed from a list of at least two nominees submitted by
60 federal land management agencies;

61 (e) one local elected official shall be appointed from a list of at least two nominees
62 submitted by the Utah Association of Counties; and

63 (f) one range management specialist shall be appointed from a list of at least two
64 nominees submitted jointly by the Utah Chapter, Society of Range Management and the Utah
65 Chapter, Wildlife Society.

66 (3) Each wildlife region described in Subsection 23-14-2.6(1) shall be represented by at
67 least one member and no wildlife region may be represented by more than three members.

68 (4) The nominating committee shall nominate at least two, but not more than four,
69 candidates for each position or vacancy which occurs on the board.

70 (5) (a) ~~[Each member shall serve]~~ Except as required by Subsection (5)(b), as terms of
71 current board members expire, the governor shall appoint each new or reappointed member to a
72 four-year term.

73 (b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the
74 time of appointment or reappointment, adjust the length of terms to ensure that:

75 (i) the terms of board members are staggered so that approximately half of the board is
76 appointed every two years; and

77 (ii) members from the same wildlife region serve staggered terms.

78 (c) If a vacancy occurs for any reason, the governor shall appoint a replacement in the
79 same manner that the position was originally filled to serve the remainder of the unexpired
80 term.

81 ~~[(b)]~~ (6) The nominating committee shall select a chair and vice chair from its
82 membership.

83 ~~[(c)]~~ (7) Six members shall constitute a quorum.

84 Section 2. Section **61-1-6** is amended to read:

85 **61-1-6. Denial, suspension, revocation, cancellation, or withdrawal of license.**

86 (1) ~~[Upon approval by a majority of the Securities Advisory Board;]~~ Subject to the
87 requirements of Subsections (2) and (3), the director, by means of adjudicative proceedings

88 conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act, may issue
89 an order:

90 (a) denying, suspending, or revoking any license[;];

91 (b) barring or censuring any licensee or any officer, director, partner, or person
92 occupying a similar status or performing similar functions for a licensee from employment with
93 a licensed broker-dealer or investment adviser[; ~~or~~];

94 (c) restricting or limiting a licensee as to any function or activity of the business for
95 which a license is required in this state[; ~~and~~];

96 (d) imposing a fine; or

97 (e) any combination of Subsections (1)(a) through (d).

98 (2) The director may impose [a fine] the sanctions in Subsection (1) if the director
99 finds that it is in the public interest and [if he] finds [any of the following], with respect to the
100 applicant or licensee or, in the case of a broker-dealer or investment adviser, any partner,
101 officer, or director, or any person occupying a similar status or performing similar functions, or
102 any person directly or indirectly controlling the broker-dealer or investment adviser, that the
103 person:

104 (a) has filed an application for a license that, as of its effective date or as of any date
105 after filing in the case of an order denying effectiveness, was incomplete in any material respect
106 or contained any statement that was, in light of the circumstances under which it was made,
107 false or misleading with respect to any material fact;

108 (b) has willfully violated or willfully failed to comply with any provision of this
109 chapter or a predecessor act or any rule or order under this chapter or a predecessor act;

110 (c) was convicted, within the past ten years, of any misdemeanor involving a security
111 or any aspect of the securities business, or any felony;

112 (d) is permanently or temporarily enjoined by any court of competent jurisdiction from
113 engaging in or continuing any conduct or practice involving any aspect of the securities
114 business;

115 (e) is the subject of an order of the director or any predecessor denying, suspending, or
116 revoking license as a broker-dealer, agent, investment adviser, or investment adviser
117 representative;

118 (f) is the subject of:

119 (i) an adjudication or determination, within the past five years by a securities or
120 commodities agency or administrator of another state, Canadian province or territory, or a court
121 of competent jurisdiction that the person has willfully violated the Securities Act of 1933, the
122 Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment
123 Company Act of 1940, the Commodity Exchange Act, or the securities or commodities law of
124 any other state; or

125 (ii) an order entered within the past five years by the securities administrator of any
126 state or Canadian province or territory or by the Securities and Exchange Commission denying
127 or revoking license as a broker-dealer, agent, investment adviser, or investment adviser
128 representative or the substantial equivalent of those terms or is the subject of an order of the
129 Securities and Exchange Commission suspending or expelling the person from a national
130 securities exchange or national securities association registered under the Securities Exchange
131 Act of 1934, or is the subject of a United States post office fraud order; except that

132 (iii) the division may not commence agency action to revoke or suspend any license
133 under Subsection (2)(f) more than one year from the date of the order relied on, and the
134 director may not enter an order under Subsection (2)(f) on the basis of an order under another
135 state's law unless that order was based on facts that would currently constitute a ground for an
136 agency action under this section;

137 (g) has engaged in dishonest or unethical practices in the securities business;

138 (h) is insolvent, either in the sense that liabilities exceed assets or in the sense that
139 obligations cannot be met as they mature, except that the director may not enter an order
140 against a broker-dealer or investment adviser under this Subsection (2)(h) without a finding of
141 insolvency as to the broker-dealer or investment adviser;

142 (i) is not qualified on the basis of the lack of training, experience, and knowledge of
143 the securities business, except as otherwise provided in Subsection [~~(3)~~] (5);

144 (j) has failed reasonably to supervise his agents or employees if the person is a
145 broker-dealer, or his investment adviser representatives or employees if the person is an
146 investment adviser; or

147 (k) has failed to pay the proper filing fee within 30 days after being notified by the
148 division of a deficiency.

149 (3) Before the director may issue an order under Subsection (1) that: revokes any

150 license; bars or censures any licensee or any officer, director, partner, or person occupying a
151 similar status or performing similar functions for a licensee from employment with a licensed
152 broker-dealer or investment adviser; or imposes a fine, the Securities Advisory Board shall:

153 (a) review the order; and

154 (b) if a majority of the Securities Advisory Board approves the order, authorize the
155 director to issue it.

156 [~~(2)~~] (4) The division may enter a denial order under Subsection [(1)] (2)(j) or (k), but
157 shall vacate the order when the deficiency has been corrected.

158 [~~(3)~~] (5) The division may not institute a suspension or revocation proceeding on the
159 basis of a fact or transaction known to it when the license became effective unless the
160 proceeding is instituted within the next 120 days.

161 [~~(4)~~] (6) The following provisions govern the application of Subsection [~~61-1-6(1)(i)~~]
162 (2)(i):

163 (a) The director may not enter an order against a broker-dealer on the basis of the lack
164 of qualification of any person other than:

165 (i) the broker-dealer himself if he is an individual; or

166 (ii) an agent of the broker-dealer.

167 (b) The director may not enter an order against an investment adviser on the basis of
168 the lack of qualification of any person other than:

169 (i) the investment adviser himself if he is an individual; or

170 (ii) an investment adviser representative.

171 (c) The director may not enter an order solely on the basis of lack of experience if the
172 applicant or licensee is qualified by training or knowledge.

173 (d) The director shall consider that an agent who will work under the supervision of a
174 licensed broker-dealer need not have the same qualifications as a broker-dealer and that an
175 investment adviser representative who will work under the supervision of a licensed investment
176 adviser need not have the same qualifications as an investment adviser.

177 (e) (i) The director shall consider that an investment adviser is not necessarily qualified
178 solely on the basis of experience as a broker-dealer or agent.

179 (ii) When the director finds that an applicant for a license as a broker-dealer is not
180 qualified as an investment adviser, the director may condition the applicant's license as a

181 broker-dealer upon the applicant's not transacting business in this state as an investment
182 adviser.

183 (f) (i) The division may by rule provide for examinations, which may be written or oral
184 or both, to be taken by any class of or all applicants.

185 (ii) The division may by rule or order waive the examination requirement as to a person
186 or class of persons if the division determines that the examination is not necessary for the
187 protection of investors.

188 ~~[(5)]~~ (7) If the director finds that any licensee or applicant for a license is no longer in
189 existence, has ceased to do business as a broker-dealer, agent, investment adviser, or
190 investment adviser representative, or is subject to an adjudication of mental incompetence or to
191 the control of a committee, conservator, or guardian, or cannot be located after reasonable
192 search, the division may summarily cancel or deny the license or application according to the
193 procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

194 ~~[(6)]~~ (8) (a) Withdrawal from license as a broker-dealer, agent, investment adviser, or
195 investment adviser representative becomes effective 30 days after receipt of an application to
196 withdraw or within a shorter period of time as determined by the director, unless:

197 (i) a revocation or suspension proceeding is pending when the application is filed;

198 (ii) a proceeding to revoke or suspend or to impose conditions upon the withdrawal is
199 instituted within 30 days after the application is filed; or

200 (iii) additional information is requested by the division regarding the withdrawal
201 application.

202 (b) (i) If a proceeding described in Subsection ~~[(5)(a)]~~ (7) is pending or instituted, the
203 director shall designate by order when and under what conditions the withdrawal becomes
204 effective.

205 (ii) If additional information is requested, withdrawal is effective 30 days after the
206 additional information is filed.

207 (c) (i) If no proceeding is pending or instituted, and withdrawal automatically becomes
208 effective, the director may initiate a revocation or suspension proceeding under ~~[Section~~
209 ~~61-1-6]~~ this section within one year after withdrawal became effective.

210 (ii) The director shall enter any order under Subsection ~~[(1)]~~ (2)(b) as of the last date
211 on which the license was effective.

212 Section 3. Section **63-56-6** is amended to read:

213 **63-56-6. Creation of procurement policy board.**

214 (1) (a) There is created a state procurement policy board.

215 (b) The policy board shall consist of ~~seven~~ eight members who shall be appointed as
216 follows:

217 (i) an employee of a state institution of higher education, appointed by the board of
218 regents;

219 (ii) an employee of the Department of Human Services, appointed by the executive
220 director of that department;

221 (iii) an employee of the Department of Transportation, appointed by the executive
222 director of that department;

223 (iv) an employee of a school district appointed by a cooperative purchasing entity for
224 school districts;

225 (v) an employee of the Division of Facilities Construction and Management appointed
226 by the director of that division;

227 (vi) an employee of a county, appointed by the [~~Utah Advisory Council on~~
228 ~~Intergovernmental Relations~~] Utah Association of Counties; [~~and~~]

229 (vii) an employee of a city, appointed by the [~~Utah Advisory Council on~~
230 ~~Intergovernmental Relations~~] Utah League of Cities and Towns; and

231 (viii) an employee of a special district, appointed by the Utah Association of Special
232 Districts.

233 (c) Members of the policy board shall be knowledgeable and experienced in, and have
234 supervisory responsibility for, procurement in their official positions.

235 (2) Members shall be appointed to four-year staggered terms.

236 (3) When a vacancy occurs in the membership for any reason, the replacement shall be
237 appointed for the unexpired term.

238 (4) (a) The policy board shall:

239 (i) adopt rules of procedure for conducting its business; and

240 (ii) elect a chair to serve for one year.

241 (b) The chair may be elected to succeeding terms.

242 (c) The chief procurement officer shall serve as the nonvoting secretary to the policy

243 board.

244 (5) (a) (i) Members who are not government employees shall receive no compensation
245 or benefits for their services, but may receive per diem and expenses incurred in the
246 performance of the member's official duties at the rates established by the Division of Finance
247 under Sections 63A-3-106 and 63A-3-107.

248 (ii) Members may decline to receive per diem and expenses for their service.

249 (b) (i) State government officer and employee members who do not receive salary, per
250 diem, or expenses from their agency for their service may receive per diem and expenses
251 incurred in the performance of their official duties from the board at the rates established by the
252 Division of Finance under Sections 63A-3-106 and 63A-3-107.

253 (ii) State government officer and employee members may decline to receive per diem
254 and expenses for their service.

255 (c) (i) Higher education members who do not receive salary, per diem, or expenses
256 from the entity that they represent for their service may receive per diem and expenses incurred
257 in the performance of their official duties from the committee at the rates established by the
258 Division of Finance under Sections 63A-3-106 and 63A-3-107.

259 (ii) Higher education members may decline to receive per diem and expenses for their
260 service.

261 (d) (i) Local government members who do not receive salary, per diem, or expenses
262 from the entity that they represent for their service may receive per diem and expenses incurred
263 in the performance of their official duties at the rates established by the Division of Finance
264 under Sections 63A-3-106 and 63A-3-107.

265 (ii) Local government members may decline to receive per diem and expenses for their
266 service.

267 Section 4. Section **64-13-1** is amended to read:

268 **64-13-1. Definitions.**

269 As used in this chapter:

270 (1) "Community correctional center" means a nonsecure correctional facility operated:

271 (a) by the department; or

272 (b) under a contract with the department.

273 (2) "Correctional facility" means any facility operated to house offenders, either in a

274 secure or nonsecure setting:

275 (a) by the department; or

276 (b) under a contract with the department.

277 [~~(3)~~] "~~Council~~" means the ~~Corrections Advisory Council~~.]

278 [~~(4)~~] (3) "Department" means the Department of Corrections.

279 [~~(5)~~] (4) "Emergency" means any riot, disturbance, homicide, inmate violence
280 occurring in any correctional facility, or any situation that presents immediate danger to the
281 safety, security, and control of the department.

282 [~~(6)~~] (5) "Executive director" means the executive director of the Department of
283 Corrections.

284 [~~(7)~~] (6) "Inmate" means any person who is committed to the custody of the department
285 and who is housed at a correctional facility or at a county jail at the request of the department.

286 [~~(8)~~] (7) "Offender" means any person who has been convicted of a crime for which he
287 may be committed to the custody of the department and is at least one of the following:

288 (a) committed to the custody of the department;

289 (b) on probation; or

290 (c) on parole.

291 [~~(9)~~] (8) "Secure correctional facility" means any prison, penitentiary, or other
292 institution operated by the department or under contract for the confinement of offenders,
293 where force may be used to restrain them if they attempt to leave the institution without
294 authorization.

295 Section 5. Section ~~64-13-17~~ is amended to read:

296 **64-13-17. Visitors to correctional facilities -- Correspondence.**

297 (1) (a) The following persons may visit correctional facilities without the consent of
298 the department:

299 (i) the governor;

300 (ii) the attorney general;

301 (iii) a justice or judge of the courts of record;

302 [~~(iv)~~] ~~members of the Corrections Advisory Council~~;

303 [~~(v)~~] (iv) members of the Board of Pardons and Parole;

304 [~~(vi)~~] (v) members of the Legislature;

305 [~~(vii)~~] (vi) the sheriff, district attorney, and county attorney for the county in which the
 306 correctional facility is located; and

307 [~~(viii)~~] (vii) any other persons authorized under rules prescribed by the department or
 308 court order.

309 (b) Any person acting under a court order may visit or correspond with any inmate
 310 without the consent of the department provided the department has received notice of, and is
 311 permitted to respond to, the court order. The court shall consider department policy when
 312 making its order.

313 (c) The department may limit access to correctional facilities when the department or
 314 governor declares an emergency or when there is a riot or other disturbance.

315 (2) (a) A person may not visit with any offender at any correctional facility, other than
 316 under Subsection (1), without the consent of the department.

317 (b) Offenders and all visitors, including those listed in Subsection (1), may be required
 318 to submit to a search or inspection of their persons and properties as a condition of visitation.

319 (3) Offenders housed at any correctional facility may send and receive correspondence,
 320 subject to the rules of the department. All correspondence is subject to search, consistent with
 321 department rules.

322 Section 6. Section **64-13a-3** is amended to read:

323 **64-13a-3. Definitions.**

324 As used in this chapter[~~:(1)~~] "division" means the Division of Correctional Industries.

325 [~~(2) "Board" means the Advisory Board of Utah Correctional Industries.]~~

326 Section 7. **Licensing boards study.**

327 (1) To enhance efficiencies and reduce costs in state government, the Occupational and
 328 Professional Licensure Review Committee shall study licensing boards in the state.

329 (2) (a) The committee may consider the deregulation of:

330 (i) acupuncturists; and

331 (ii) naturopathic physicians.

332 (b) The committee may consider repealing Title 58, Chapter 39a, Alternative Dispute
 333 Resolution Providers Certification Act.

334 (c) The committee may consider modifying licensure requirements and eliminating the
 335 licensing board for:

- 336 (i) dieticians;
337 (ii) environmental health scientists;
338 (iii) occupational therapists;
339 (iv) radiology technologists and radiology practical technicians;
340 (v) respiratory therapists; and
341 (vi) speech pathologists/audiologists.
342 (d) The committee may consider combining the licensing entities responsible for:
343 (i) certified nurse midwives and nurses;
344 (ii) physicians and surgeons, physicians assistants, and osteopathic physicians;
345 (iii) all mental health professions, including:
346 (A) psychologists;
347 (B) social workers;
348 (C) marriage and family therapists;
349 (D) professional counselors; and
350 (E) substance abuse counselors;
351 (iv) architects and landscape architects;
352 (v) physical therapists, recreational therapists, and occupational therapists;
353 (vi) funeral service providers and preneed funeral providers; and
354 (vii) if the licensing board for speech pathologist/audiologists is not eliminated,
355 hearing instrument specialists and speech pathologists/audiologists.
356 (e) The committee may consider transferring the responsibility of regulating certain
357 professions from the Division of Occupational and Professional Licensing to other entities
358 including:
359 (i) professional employer organizations to be regulated by the Department of Insurance
360 or the Department of Financial Institutions;
361 (ii) certified shorthand reporters to be regulated by the courts;
362 (iii) health facility administrators to be regulated by the Department of Health; and
363 (iv) private probation providers to be regulated by the Department of Corrections.
364 (f) The committee may consider eliminating the regulation of health facility
365 pharmacies by the Pharmacy Board.
366 (3) The committee shall complete the study required by Subsection (1) and present its

367 findings, including any proposed legislation, to the Business and Labor Interim Committee by
368 November 30, 2003.

369 Section 8. **Repealer.**

370 This act repeals:

371 Section **11-33-1, Legislative findings.**

372 Section **11-33-2, Establishment of Utah Advisory Council on Intergovernmental**
373 **Relations.**

374 Section **11-33-3, Composition of council -- Appointment -- Terms -- Officers --**
375 **Vacancies --Quorum -- Expenses.**

376 Section **11-33-4, Functions and duties.**

377 Section **11-33-5, Role of council.**

378 Section **11-33-6, Council meetings -- Hearings -- Receipt of information and**
379 **records -- Committees -- Rules.**

380 Section **11-33-7, Executive director.**

381 Section **11-33-8, Appropriations and grants.**

382 Section **13-2-6.5, Consumer Protection Advisory Council -- Membership -- Terms**
383 **-- Organization -- Expenses -- Duties.**

384 Section **17-40-1, Salt Palace Convention Center -- Appropriation.**

385 Section **17-40-2, Salt Palace Convention Center -- Oversight committee.**

386 Section **26-10a-101, Title.**

387 Section **26-10a-102, Healthy Communities Program -- Creation -- Description --**
388 **Committee.**

389 Section **26-10a-103, Funding grants -- Qualifications -- Application process --**
390 **Matching funds required.**

391 Section **26-10a-104, Evaluation -- Report to Legislature.**

392 Section **63-55-272, Repeal dates, Title 72.**

393 Section **64-13-4.1, Creation of Corrections Advisory Council.**

394 Section **64-13-5, Council duties.**

395 Section **64-13a-5, Creation of advisory board.**

396 Section **64-13a-6, Board powers and duties.**

397 Section **72-8-108, State Traffic and Pedestrian Safety Coordinating Council --**

398 **Membership -- Duties.**

399 Section 72-13-101, Title.

400 Section 72-13-102, Definitions.

401 Section 72-13-103, Powers of department -- Spaceports.

402 Section 72-13-104, Advisory board created -- Appointment -- Terms -- Meetings --

403 **Per diem and expenses -- Duties.**

404 Section 9. **Effective date.**

405 This act takes effect May 5, 2003, except that the repeal of Sections ^h ~~64-13-4.1, 63-13-5,~~

406 ~~63-13a-5, and 63-13a-6~~ 64-13a-5 AND 64-13a-6 ^h takes effect May 1, 2004.

Fiscal Note

Revisions to Boards and Commissioners

24-Feb-03

Bill Number SB0067s210:16 AM

State Impact

Any fiscal impact can be absorbed within existing budgets.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst