

**Senator Howard A. Stephenson** 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 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 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.

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

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

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

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

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

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

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

240 (c) The chief procurement officer shall serve as the nonvoting secretary to the policy  
241 board.

242 (5) (a) (i) Members who are not government employees shall receive no compensation



243 or benefits for their services, but may receive per diem and expenses incurred in the  
244 performance of the member's official duties at the rates established by the Division of Finance  
245 under Sections 63A-3-106 and 63A-3-107.

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

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

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

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

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

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

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

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

266 **64-13-1. Definitions.**

267 As used in this chapter:

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

269 (a) by the department; or

270 (b) under a contract with the department.

271 (2) "Correctional facility" means any facility operated to house offenders, either in a  
272 secure or nonsecure setting:

273 (a) by the department; or

274 (b) under a contract with the department.

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

276 [~~(4)~~] (3) "Department" means the Department of Corrections.

277 [~~(5)~~] (4) "Emergency" means any riot, disturbance, homicide, inmate violence  
278 occurring in any correctional facility, or any situation that presents immediate danger to the  
279 safety, security, and control of the department.

280 [~~(6)~~] (5) "Executive director" means the executive director of the Department of  
281 Corrections.

282 [~~(7)~~] (6) "Inmate" means any person who is committed to the custody of the department  
283 and who is housed at a correctional facility or at a county jail at the request of the department.

284 [~~(8)~~] (7) "Offender" means any person who has been convicted of a crime for which he  
285 may be committed to the custody of the department and is at least one of the following:

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

287 (b) on probation; or

288 (c) on parole.

289 [~~(9)~~] (8) "Secure correctional facility" means any prison, penitentiary, or other  
290 institution operated by the department or under contract for the confinement of offenders,  
291 where force may be used to restrain them if they attempt to leave the institution without  
292 authorization.

293 Section 5. Section **64-13-17** is amended to read:

294 **64-13-17. Visitors to correctional facilities -- Correspondence.**

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

297 (i) the governor;

298 (ii) the attorney general;

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

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

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

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

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

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

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

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

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

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

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

320 Section 6. Section ~~64-13a-3~~ is amended to read:

321 **64-13a-3. Definitions.**

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

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

324 Section 7. **Licensing boards study.**

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

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

328 (i) acupuncturists;

329 (ii) naturopathic physicians; and

330 (iii) recreational therapists.

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

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

335 (i) dieticians;

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

367 November 30, 2003.

368 Section 8. **Repealer.**

369 This act repeals:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

396 Section **72-8-108, State Traffic and Pedestrian Safety Coordinating Council --**  
397 **Membership -- Duties.**

- 398           Section **72-13-101, Title.**
- 399           Section **72-13-102, Definitions.**
- 400           Section **72-13-103, Powers of department -- Spaceports.**
- 401           Section **72-13-104, Advisory board created -- Appointment -- Terms -- Meetings --**
- 402   **Per diem and expenses -- Duties.**