

Senator Don L. Ipson proposes the following substitute bill:

DIVISION OF OCCUPATIONAL AND PROFESSIONAL

LICENSING

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Don L. Ipson

House Sponsor: Kay J. Christofferson

LONG TITLE

General Description:

This bill modifies provisions of the Professional Engineers and Professional Land Surveyors Licensing Act (the act).

Highlighted Provisions:

This bill:

- ▶ defines terms;
 - ▶ provides rulemaking authority to the Division of Occupational and Professional Licensing (DOPL) related to defining unprofessional conduct under the act;
 - ▶ modifies DOPL's citation authority to include unprofessional conduct under the act;
- and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

1st Sub. S.B. 184



26 [58-22-102](#), as last amended by Laws of Utah 2013, Chapter 278

27 [58-22-503](#), as last amended by Laws of Utah 2013, Chapter 278

28 ENACTS:

29 [58-22-502.5](#), Utah Code Annotated 1953

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

32 Section 1. Section **58-22-102** is amended to read:

33 **58-22-102. Definitions.**

34 In addition to the definitions in Section [58-1-102](#), as used in this chapter:

35 (1) "Board" means the Professional Engineers and Professional Land Surveyors
36 Licensing Board created in Section [58-22-201](#).

37 (2) "Building" means a structure which has human occupancy or habitation as its
38 principal purpose, and includes the structural, mechanical, and electrical systems, utility
39 services, and other facilities required for the building, and is otherwise governed by the State
40 Construction Code or an approved code under Title 15A, State Construction and Fire Codes
41 Act.

42 (3) "Complete construction plans" means a final set of plans, specifications, and reports
43 for a building or structure that normally includes:

- 44 (a) floor plans;
- 45 (b) elevations;
- 46 (c) site plans;
- 47 (d) foundation, structural, and framing detail;
- 48 (e) electrical, mechanical, and plumbing design;
- 49 (f) information required by the energy code;
- 50 (g) specifications and related calculations as appropriate; and
- 51 (h) all other documents required to obtain a building permit.

52 (4) "EAC/ABET" means the Engineering Accreditation Commission/Accreditation
53 Board for Engineering and Technology.

54 (5) "Fund" means the Professional Engineer, Professional Structural Engineer, and
55 Professional Land Surveyor Education and Enforcement Fund created in Section [58-22-103](#).

56 (6) "NCEES" means the National Council of Examiners for Engineering and

57 Surveying.

58 (7) "Principal" means a licensed professional engineer, professional structural engineer,
59 or professional land surveyor having responsible charge of an organization's professional
60 engineering, professional structural engineering, or professional land surveying practice.

61 (8) "Professional engineer" means a person licensed under this chapter as a
62 professional engineer.

63 (9) (a) "Professional engineering," ~~[or]~~ "the practice of engineering," or "the practice of
64 professional engineering" means a service or creative work, the adequate performance of which
65 requires engineering education, training, and experience in the application of special
66 knowledge of the mathematical, physical, and engineering sciences to the service or creative
67 work as consultation, investigation, evaluation, planning, design, and design coordination of
68 engineering works and systems, planning the use of land and water, facility programming,
69 performing engineering surveys and studies, and the review of construction for the purpose of
70 monitoring compliance with drawings and specifications; any of which embraces these services
71 or work, either public or private, in connection with any utilities, structures, buildings,
72 machines, equipment, processes, work systems, projects, and industrial or consumer products
73 or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, and
74 including other professional services as may be necessary to the planning, progress, and
75 completion of any engineering services.

76 (b) The practice of professional engineering does not include the practice of
77 architecture as defined in Section 58-3a-102, but a licensed professional engineer may perform
78 architecture work as is incidental to the practice of engineering.

79 (10) "Professional engineering intern" means a person who:

80 (a) has completed the education requirements to become a professional engineer;

81 (b) has passed the fundamentals of engineering examination; and

82 (c) is engaged in obtaining the four years of qualifying experience for licensure under
83 the direct supervision of a licensed professional engineer.

84 (11) "Professional land surveying" or "the practice of land surveying" means a service
85 or work, the adequate performance of which requires the application of special knowledge of
86 the principles of mathematics, the related physical and applied sciences, and the relevant
87 requirements of law for adequate evidence to the act of measuring and locating lines, angles,

88 elevations, natural and man-made features in the air, on the surface of the earth, within
89 underground workings, and on the beds of bodies of water for the purpose of determining areas
90 and volumes, for the monumenting or locating of property boundaries or points controlling
91 boundaries, and for the platting and layout of lands and subdivisions of lands, including the
92 topography, alignment and grades of streets, and for the preparation and perpetuation of maps,
93 record plats, field notes records, and property descriptions that represent these surveys and
94 other duties as sound surveying practices could direct.

95 (12) "Professional land surveyor" means an individual licensed under this chapter as a
96 professional land surveyor.

97 (13) "Professional structural engineer" means a person licensed under this chapter as a
98 professional structural engineer.

99 (14) (a) "Professional structural engineering" or "the practice of structural engineering"
100 means a service or creative work [~~in the following areas, and may be further defined by rule by~~
101 ~~the division in collaboration with the board: (a)~~] providing structural engineering services for
102 significant structures, including:

103 (i) buildings and other structures representing a substantial hazard to human life, which
104 include:

105 (A) buildings and other structures whose primary occupancy is public assembly with an
106 occupant load greater than 300;

107 (B) buildings and other structures with elementary school, secondary school, or day
108 care facilities with an occupant load greater than 250;

109 (C) buildings and other structures with an occupant load greater than 500 for colleges
110 or adult education facilities;

111 (D) health care facilities with an occupant load of 50 or more resident patients, but not
112 having surgery or emergency treatment facilities;

113 (E) jails and detention facilities with a gross area greater than 3,000 square feet; ~~[or]~~
114 and

115 (F) ~~[an occupancy]~~ buildings and other structures with an occupant load greater than
116 5,000;

117 (ii) buildings and other structures designated as essential facilities, including:

118 (A) hospitals and other health care facilities having surgery or emergency treatment

119 facilities with a gross area greater than 3,000 square feet;

120 (B) fire, rescue, and police stations and emergency vehicle garages with a mean height
121 greater than 24 feet or a gross area greater than 5,000 square feet;

122 (C) designated earthquake, hurricane, or other emergency shelters with a gross area
123 greater than 3,000 square feet;

124 (D) designated emergency preparedness, communication, and operation centers and
125 other buildings required for emergency response with a mean height more than 24 feet or a
126 gross area greater than 5,000 square feet;

127 (E) power-generating stations and other public utility facilities required as emergency
128 backup facilities with a gross area greater then 3,000 square feet;

129 (F) structures with a mean height more than 24 feet or a gross area greater than 5,000
130 square feet containing highly toxic materials as defined by the division by rule, where the
131 quantity of the material exceeds the maximum allowable quantities set by the division by rule;
132 and

133 (G) aviation control towers, air traffic control centers, and emergency aircraft hangars
134 at commercial service and cargo air services airports as defined by the Federal Aviation
135 Administration with a mean height greater than 35 feet or a gross area greater than 20,000
136 square feet; and

137 (iii) buildings and other structures requiring special consideration, including:

138 (A) structures or buildings that are~~[-]~~ normally occupied by human beings and are five
139 stories or more in height;

140 [~~(F) normally occupied by human beings; and]~~

141 [~~(H) five stories or more in height; or]~~

142 [~~(H) that have an average roof height more than 60 feet above the average ground level~~
143 ~~measured at the perimeter of the structure; or]~~

144 (B) structures or buildings that are normally occupied by human beings and have an
145 average roof height more than 60 feet above the average ground level measured at the
146 perimeter of the structure; and

147 [~~(B)~~] (C) [~~aH~~] buildings that are over 200,000 aggregate gross square feet in area[;
148 and].

149 (b) "Professional structural engineering" or "the practice of structural engineering":

150 ~~[(b)]~~ (i) includes the definition of professional engineering or the practice of
151 professional engineering as provided in Subsection (9)~~[-]; and~~

152 (ii) may be further defined by rules made by the division in collaboration with the
153 board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

154 (15) "Structure" means that which is built or constructed, an edifice or building of any
155 kind, or a piece of work artificially built up or composed of parts joined together in a definite
156 manner, and as otherwise governed by the State Construction Code or an approved code under
157 Title 15A, State Construction and Fire Codes Act.

158 (16) "Supervision of an employee, subordinate, associate, or drafter of a licensee"
159 means that a licensed professional engineer, professional structural engineer, or professional
160 land surveyor is responsible for and personally reviews, corrects when necessary, and approves
161 work performed by an employee, subordinate, associate, or drafter under the direction of the
162 licensee, and may be further defined by rule by the division in collaboration with the board.

163 (17) "TAC/ABET" means the Technology Accreditation Commission/Accreditation
164 Board for Engineering and Technology.

165 (18) "Unlawful conduct" ~~[is]~~ means the same as that term is defined in Sections
166 58-1-501 and 58-22-501.

167 (19) "Unprofessional conduct" ~~[as defined in Section 58-1-501 may be further defined~~
168 ~~by rule by the division in collaboration with the board]~~ means the same as that term is defined
169 in Sections 58-1-501 and 58-22-502.5.

170 Section 2. Section **58-22-502.5** is enacted to read:

171 **58-22-502.5. Unprofessional conduct.**

172 Unprofessional conduct includes unprofessional conduct that is defined by rules made
173 by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

174 Section 3. Section **58-22-503** is amended to read:

175 **58-22-503. Penalties and administrative actions for unlawful or unprofessional**
176 **conduct.**

177 (1) (a) If upon inspection or investigation, the division concludes that a person has
178 violated ~~[Subsections 58-1-501(1)(a) through (d) or Section]~~ Section 58-1-501, 58-22-501, or
179 58-22-502.5, or any rule or order issued with respect to Section 58-22-501 or 58-22-502.5, and
180 that disciplinary action is appropriate, the director or the director's designee from within the

181 division for each alternative respectively, shall promptly issue a citation to the person
182 according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or
183 notify the person to appear before an adjudicative proceeding conducted under Title 63G,
184 Chapter 4, Administrative Procedures Act.

185 (i) A person who violates [~~Subsections 58-1-501(1)(a) through (d) or Section~~] Section
186 58-1-501, 58-22-501, or 58-22-502.5, or any rule or order issued with respect to Section
187 58-22-501 or 58-22-502.5, as evidenced by an uncontested citation, a stipulated settlement, or
188 by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this
189 Subsection (1) and may, in addition to or in lieu of, be ordered to cease and desist from
190 violating [~~Subsections 58-1-501(1)(a) through (d) or Section~~] Section 58-1-501, 58-22-501, or
191 58-22-502.5, or any rule or order issued with respect to this section.

192 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
193 58-22-401 may not be assessed through a citation.

194 (b) A citation shall:

195 (i) be in writing;

196 (ii) describe with particularity the nature of the violation, including a reference to the
197 provision of the chapter, rule, or order alleged to have been violated;

198 (iii) clearly state that the recipient must notify the division in writing within 20
199 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
200 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

201 (iv) clearly explain the consequences of failure to timely contest the citation or to make
202 payment of any fines assessed by the citation within the time specified in the citation.

203 (c) The division may issue a notice in lieu of a citation.

204 (d) Each citation issued under this section, or a copy of each citation, may be served
205 upon a person upon whom a summons may be served in accordance with the Utah Rules of
206 Civil Procedure and may be made personally or upon the person's agent by a division
207 investigator or by any person specially designated by the director or by mail.

208 (e) If within 20 calendar days from the service of the citation, the person to whom the
209 citation was issued fails to request a hearing to contest the citation, the citation becomes the
210 final order of the division and is not subject to further agency review. The period to contest a
211 citation may be extended by the division for cause.

212 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
213 the license of a licensee who fails to comply with a citation after it becomes final.

214 (g) The failure of an applicant for licensure to comply with a citation after it becomes
215 final is a ground for denial of license.

216 (h) No citation may be issued under this section after the expiration of six months
217 following the occurrence of any violation.

218 (i) The director or the director's designee shall assess fines according to the following:

219 (i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to \$1,000;

220 (ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000;

221 and

222 (iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to
223 \$2,000 for each day of continued offense.

224 (2) An action initiated for a first or second offense which has not yet resulted in a final
225 order of the division shall not preclude initiation of any subsequent action for a second or
226 subsequent offense during the pendency of any preceding action. The final order on a
227 subsequent action shall be considered a second or subsequent offense, respectively, provided
228 the preceding action resulted in a first or second offense, respectively.

229 (3) Any penalty which is not paid may be collected by the director by either referring
230 the matter to a collection agency or bringing an action in the district court of the county in
231 which the person against whom the penalty is imposed resides or in the county where the office
232 of the director is located. Any county attorney or the attorney general of the state shall provide
233 legal assistance and advice to the director in any action to collect the penalty. In any action
234 brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be
235 awarded to the division.