

Board Members' Handbook



Updated December 2018

Cover photo courtesy of Lonnie Shull, Division of Water Quality

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An Overview of DEQ

Mission

- Safeguarding and improving Utah's air, land, and water through balanced regulation.
- Implement State and federal environmental laws.
- Work with individuals, community groups, and businesses to accomplish our mission.

Brief History

- 1990: Governor Norm Bangerter proposes the formation of a Utah Department of Environmental Quality from the Division of Environmental Health in the Utah Department of Health.
- 1991: Bill passes the Legislative Session and DEQ is officially inaugurated on July 1. Five Divisions: Air Quality, Drinking Water, Environmental Response and Remediation, Radiation Control, Solid and Hazardous Waste, and Water Quality
Ken Alkema is named the first Executive Director of DEQ
- 2015: Alan Matheson becomes DEQ's fifth Executive Director
- 2015: S.B. 244, *Department of Environmental Quality Modifications*, passes and results in consolidating the Division of Solid and Hazardous Waste and the Division of Radiation Control

DEQ Divisions

Air Quality: The Division's role is to protect public health and the environment from the harmful effects of air pollution through programs which:

- monitor pollutant levels;
- issue and update permits;
- conduct onsite compliance inspections;
- work with stakeholders to develop and implement regional plans to attain and maintain the National Ambient Air Quality Standards;
- provide technical assistance to small businesses;
- regulate the lead and asbestos programs; and,
- provide financial assistance through its clean fuels program.

Its authorities include the Utah Air Conservation Act and delegated programs of the Federal Clean Air Act. The Division includes 102 employees and is funded by fees for air quality permits, EPA grants, and State general fund monies.

Drinking Water: The Division regulates over 1,000 public drinking water systems, by implementing rules relating to source development, treatment, storage, and delivery of drinking water meeting national water quality requirements. This is accomplished through the following programs, as required by State and federal law:

- implementing a source protection program;
- evaluating engineering designs of drinking water facilities prior to construction;
- implementing water quality and monitoring requirements;
- training and certifying system operators;
- providing technical and financial assistance;
- implementing a cross-connection control program;

An Overview of DEQ

- periodically inspecting water utilities;
- initiating enforcement actions, when necessary;
- drinking water emergency response issues; and
- water system viability evaluations.

Its authorities include the Utah Safe Drinking Water Act, the Water Development Coordinating Council Act, and delegated programs under the Federal Safe Drinking Water Act. The Division has 41 employees and is funded by federal grants, legislative appropriations, and fees.

Environmental Response and Remediation: The Division registers and conducts compliance inspections for Utah's underground storage tanks (USTs). It helps revitalize communities and return contaminated property to a state of beneficial use by implementing waste cleanup plans under the Superfund, Voluntary Cleanup, Brownfields, Leaking Underground Storage Tank, and Petroleum Brownfields programs. It manages the DEQ Emergency Notification System and Community Right to Know programs. The division also provides certification of decontamination specialists for clandestine drug lab assessments and cleanups.

Its authorities and responsibilities include:

- Subtitle I of Resource Conservation and Recovery Act (Underground Storage Tanks)
- The Utah Underground Storage Tank Act
- The Comprehensive Environmental Response Compensation and Liability Act (Superfund)
- The Emergency Planning and Community Right to Know Act (SARA Title 3)
- The Hazardous Substances Mitigation Act
- The Illegal Drug Operations Site Reporting and Decontamination Act
- The Voluntary Release Cleanup Program Act
- The Uniform Environmental Covenants Act

Superfund is a non-delegated federal program that affords “meaningful and substantial involvement to States.” DEQ, through the Division, manages Utah's involvement in federal Superfund actions within the State.

The Division includes 63 employees and is funded by federal funds, State general funds, and fees from UST registration, petroleum surcharge, contractor and operator certifications, and reimbursements for cleanup oversight.

Waste Management and Radiation Control:

Solid and Hazardous Waste Programs: The Division ensures the proper management of solid and hazardous waste through programs which focus on issuing and updating permits, conducting onsite compliance inspections, managing cleanup and restoration of contaminated sites, and providing technical assistance and education in the following areas:

- solid and hazardous waste treatment, storage, and disposal facilities;
- recycling – waste tires, used oil, household waste, and e-waste;
- solid and hazardous waste generation and management, including remediation of contaminated sites; and
- commercial, private sector, and federal facilities.

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Its authorities include the Utah Solid and Hazardous Waste Act, the Utah Used Oil Management Act, the Waste Tire Recycling Act, and delegation of authority under the Federal Resource Conservation and Recovery Act (RCRA).

Radiation Control Programs: The Division works to assure Utahns the lowest possible exposure to any form of radiation through programs which focus on:

- limiting exposure to the lowest reasonably achievable levels necessary to accomplish medical procedures and to protect the general public and radiation workers; and,
- minimizing exposure from the generation, movement, remediation, and disposal of radioactive materials.

The Division issues licenses and conducts compliance inspections at a variety of locations ranging from medical and dental facilities to uranium mills and the EnergySolutions disposal facility near Clive, Utah.

Its authorities include the State Radiation Control Act and delegation of programs under the Federal Low-level Waste Policy Act and portions of the Federal Atomic Energy Act.

The Division includes 68 employees and funding for the solid and hazardous waste programs includes fees for waste disposal, fees for plan review and permitting services, an EPA grant, the U.S. Army, and fees on oil and tires. The radiation control programs are funded by fees from radioactive waste disposal, x-ray machine safety inspections, and the registration of x-ray and radioactive materials used in health care, industrial, and institutional settings.

Water Quality:

The Division protects public health and all beneficial uses of water by maintaining and enhancing the chemical, physical, and biological integrity of Utah's waters. Division staff:

- develop and implement water quality standards;
- monitor and assess the quality of lakes, rivers, and ground water;
- issue and update discharge permits;
- inspect facilities to assure compliance;
- develop watershed plans and conduct other water quality special studies; and,
- administer grant and loan programs to improve water quality.

The Division includes 75 employees and is funded by federal grants, legislative appropriations and fees. The Division's authorities include the Utah Water Quality Act and delegation of programs under the Federal Clean Water Act, and Section 1422 of the Federal Safe Drinking Water Act.

An Overview of DEQ

How We Do Business



Roles and Responsibilities

Executive Director:

- Administers the Department.
- Serves as a member of each DEQ Board; votes only to break a tie.
- Has statutory emergency powers.
- Appoints Division and Office Directors.
- Establishes programs.
- Makes final decisions on Administrative Appeals.

Deputy Directors:

- Oversee Administrative Law Judges (ALJ).
- Oversee and manages District Engineers, DEQ employees working out of four rural local health departments.
- Identify legislation that impacts Board and/or Department responsibilities.
- Oversee DEQ continuous improvement efforts.

Division Directors:

- Develop and administer programs.
- Develop rules for consideration by the Board.
- Issue permits, licenses, approval orders, etc.
- Oversee inspections and enforcement of Notices and Orders.
- Issue Notices of Violations, Orders, and other enforcement actions to ensure compliance.
- Act as Executive Secretary to the Board by providing administrative and technical assistance and by arranging the logistics of Board meetings.

Roles and Responsibilities

The Board:

- Acts as a body. An individual member may not speak or act for the Board unless so authorized by a majority vote taken at a meeting of the Board
- Establishes rules within the constraints of statutory authority.
 - Proposed rules:
 - Initiated by the staff, Board, or public.
 - Considered by the Board and approved for public comment.
 - Published in the *Utah State Bulletin* to open comment period.
 - 30-day (or more) public comment period.
 - Public hearing may be mandatory or discretionary.
 - Staff reviews comments and may suggest rule changes.
 - Board discussion and action on the proposed rule.
 - Final rule published with an effective date.
- Requests information on a specific permit or issue from the Division.
- Requests investigation by the Division.
- May respond to public inquiry.
- Considers issues or concerns initiated by the Division, Board, or public.

The Board Chair:

- Conducts the Board meetings, ensuring that order is maintained and that applicable policies are followed.
 - Ensures the meeting remains effective which may, at times, involve controlling the Board and/or the audience.
 - Ensures conflict of interest policy is practiced.
 - Ensures that individual members adequately disclose actual or potential conflicts that may arise in matters requiring Board action.
- As appropriate, acts as spokesperson for the Board when contacted by the media and when authorized to speak for the group by a vote of the Board.

Remember: All Board action must occur in an open, public meeting, as required in the Open Meetings Act. (See page 17)

- Discussion among Board members must be open (verbal), transparent, and on the record.
 - Communication among Board members or others by text or e-mail should not occur during a meeting.
 - Electronic communication may create a “record,” subject to the provisions of GRAMA. (See page 24).

Roles and Responsibilities

Code of Conduct

All Board members are expected to:

- Understand that Boards are a part of the Executive Branch of the government and are accountable to the Governor through the DEQ Executive Director. Boards are responsible for policy direction or advice regarding policies and should not be concerned with the day-to-day administration of DEQ.
- Agree to make your Board assignment a priority and devote an appropriate amount of time and energy to the assignment.
 - By accepting this appointment, you have agreed to prepare for, attend, and actively participate in all board meetings.
 - You have been selected because of your expertise and/or to represent a particular constituent group. Your perspective is critical to the overall success of the Board.
 - Learn about your Board and the specific role you play as a member.
 - Represent your constituency by communicating with and listening to them.
 - Research issues and form reasonable opinions based on facts.
 - Maintain a statewide perspective. Your decisions affect all citizens in Utah and you are responsible to keep the best interest of the public in mind.
 - Personal issues may arise which, understandably, prevent your attendance. However, if you are frequently unable to attend a majority of the meetings, the Department may ask that you be replaced to ensure the overall success of the Board. DEQ is required, by statute, to make a rule governing Board member attendance. That rule, R305-8, is included in the Appendix as Attachment 1.
- Know about the authority- and the limits of the authority - your Board has in shaping public policy. Respect that authority and work within the statutory framework.
- Understand and sign the conflict of interest and ethics form and carefully avoid conflicts as the result of your Board appointment.
 - When issues arise that present a potential conflict¹, it is your responsibility to declare the conflict and then orally disclose the conflict at the beginning of the discussion. Depending on the conflict, it may be appropriate that you abstain from participating in the discussion and/or the vote.
 - The Board Chair has the responsibility of ensuring that this is practiced, consistent with DEQ policy.
- Maintain a good working relationship with fellow Board members, Board staff, Department administration, and the Governor's Office.

¹ See also Conflict of Interest summary on page 12.

Roles and Responsibilities

Characteristics of an Effective Board Member

- Is committed to the public and the mission of the Board.
- Has experience dealing with the values, vision, and long-term interests of Utah's citizens.
- Possesses well-developed civic, interpersonal, and professional sensitivities and skills.
- Has the ability to assemble and evaluate information and to communicate personal views with honesty, directness, and integrity.
- Willing to share power and negotiate fairly, to affirmatively participate in Board discussions and decision-making, to delegate or allow others to make decisions as needed, and to acknowledge the staff's expertise in implementation of policy.
- Has the ability to think in terms of systems and contexts and is willing to do all required "homework" to develop a sound understanding of Board subject matter.
- Comes to each Board meeting prepared by reading and understanding the contents of the meeting's Board packet.
- Actively participates in discussions, unless a conflict of interest exists.
- Perform duties with independent judgment and courage, in good faith, and with integrity.

DEQ Boards

DEQ Board Make-up

- Executive Director or designee as a non-voting member (except in the case of a tie).

Plus, by Board, the following voting members:

Air Quality Board UCA §19-2-103 (*Effective March 1, 2013*)

- An air quality expert, not connected with industry, who is a Utah-licensed physician, a Utah-licensed professional engineer, or a scientist with relevant training or experience;
- two non-federal government representatives;
- a mining industry representative;
- a fuels industry representative;
- a manufacturing industry representative;
- someone from the public who represents either an environmental or community interest nongovernmental organization; and,
- someone from the public trained and experienced in public health.

Drinking Water Board UCA §19-4-103 (*Effective May 1, 2013*)

- A Utah-licensed professional engineer with expertise in civil or sanitary engineering;
- two elected officials from a municipal government involved in the management or operation of a public water system;
- an improvement, water conservancy, or metropolitan water district representative;
- a representative from an entity that manages or operates a public water system;
- a representative from either the state water research community or an institution of higher education that has comparable expertise in water research to the state water research community;
- someone from the public who represents either an environmental or community interest nongovernmental organization; and
- someone from the public trained and experienced in public health.

Waste Management and Radiation Control Board UCA §19-6-103 (*Effective July 1, 2015*)

- A Utah-licensed professional engineer, not connected with industry
- two non-federal government representatives;
- a manufacturing, mining, or fuel industry representative;
- a private solid or hazardous waste disposal industry representative;
- a private hazardous waste recovery industry representative;
- a uranium milling industry representative;
- a radioactive waste management industry representative;
- someone from the public who represents either an environmental or community interest nongovernmental organization;
- someone from the public trained and experienced in public health and a licensed medical doctor or dentist; and
- a medical or health physicist or a professional employed in the field of radiation safety.

DEQ Boards

Water Quality Board UCA §19-5-103 (Effective March 1, 2013)

- A water quality expert, not connected with industry, who is a Utah-licensed physician, a Utah-licensed professional engineer, or a scientist with relevant training or experience and who represents local and special service districts in the State;
- two non-federal government representatives;
- a minerals industry representative;
- a manufacturing industry representative;
- an agricultural and livestock representative;
- someone from the public who represents either an environmental or community interest nongovernmental organization; and
- someone from the public trained and experienced in public health.

DEQ Board Members

- Appointed for four years; may serve more than one term. Initially, some terms may be for two years in order to stagger the terms of the overall Board.
- Remain in their position until a new member is appointed but, by statute, this can be no more than 90 days.
- Required to be interested in and knowledgeable about the subject matter – air quality, drinking water, radiation control, solid and hazardous waste, or water quality.
- Attend and actively participate in Board meetings.
- May not receive compensation or benefits for service but may receive per diem and travel expenses.
- Comply with all applicable statutes, rules and policies, including conflict of interest rules.

Governmental Immunity of Utah (UCA §63G-7-101 et seq.)

As an appointed member of a Board:

- Subject to certain limitations, you may be entitled to protections of Governmental Immunity Act. The protection is, however, conditional and subject to review on a case by case basis.

Conflicts of Interest and Ethics

Conflict of Interest

- Board selection criteria implicitly recognize that a member's interest may be impacted by Board action. In fact, specific Board members are chosen because of their affiliation with stakeholder groups or organizations.
- Any actual or potential conflict of interest relevant to the interests of the Board must be disclosed. An actual or potential conflict of interest will be specific to a matter that is before the board, and arises if:
 1. the board member's participation may be prohibited under Title 67, Chapter 16, the Utah Public Officers' and Employees' Ethics Act; or
 2. the board member's participation may constitute a violation of constitutional due process under the Utah or United States constitutions.
- A failure to adequately disclose a conflict of interest may:
 1. Void or rescind any action taken by the Board in the particular matter.
 2. Result in the removal of the offending Board member.
 3. Result in criminal penalties, in the case of a knowing or intentional violation.
- If a potential conflict arises, it is incumbent upon you, as a Board member, to recuse yourself from participation or to disclose the potential conflict to the Board. The Board will then have the opportunity to discuss the nature of the conflict and chose a path forward. It may determine:
 1. The conflict doesn't prohibit your participation in the discussion of or vote on the issue.
 2. The conflict is such that your participation in the discussion would be okay but is such that you should abstain from voting.
 3. The conflict is such that you should exclude yourself from participation in the discussion and abstain from voting.
- In evaluating a potential conflict, the Board is to consider:
 1. the nature of the matter before the Board;
 2. the nature of the potential conflict; and
 3. the Legislative intent that the Board reflect balanced viewpoints.

Keep in Mind

- A potential conflict of interest is, generally:
 - Any direct and immediate interest of relationship, including financial interest, with:
 - persons or businesses regulated by or directly affected by the decisions of the Board; or
 - persons or organizations which may present requests of issues before the Board.

Conflicts of Interest and Ethics

- Inclusive of the following:
 - the interest of a spouse or other members of the immediate family/household; or,
 - the interest of any other person “constructively controlled” by the Board member.
- Some relationships and interests have more potential conflicts than others. This includes relationships or interests with persons, business enterprises, or nonprofit, professional, charitable, religious, social, educational, recreational, environmental, public service, or civic organizations with which you:
 - are connected as a member, employee, officer, owner, director, trustee, partner, advisor or consultant;
 - have any continuing financial interest as a creditor or through ownerships or stocks, bonds, or other securities, ownership of real property or rights in lands, or through a pension or retirement plan, shared income, or otherwise; or,
 - are indebted to financially.
- Courts have determined that a decision-maker’s participation in rulemaking is prohibited by due process considerations if the decision-maker’s mind is unalterably made up before considering the matter.
- Some interests and relationships which, because of their nature, are insignificant. The financial interest may be so small or the relationship so remote that it does not present an actual conflict.
- As a Board member, you are subject to the responsibilities and requirements imposed by the “Utah Public Officers and Employees Ethics Act” (UCA §67-16-1 *et seq.*)

NOTE: DEQ is required, by statute, to make a rule governing Board member conflict of interest. That rule, R305-9, is included in the Appendix as Attachment 2.

Conflicts of Interest and Ethics

Public Officers' and Employees' Ethics Act (UCA § 67-16)

Note: The following is only a summary. Board members should be familiar with all of the Act's requirements. A copy of the Act is included in the Appendix as Attachment 3.

- Disclosure is required when a Board member has a substantial interest in a regulated business.
 - Disclose position held and the precise nature and value of the interest.
 - Not required if the value is less than \$2,000.
 - Update if there is a significant change in position or value
 - A “substantial interest”:
 - Defined as legal or equitable ownership by an individual or an individual's spouse or minor children of at least:
 - 10% of the outstanding capital stock of a corporation; or
 - 10% interest in any other business entity
- Disclosures must be in writing. See UCA § 67-16-7 for information.
- No public officer shall:
 - accept employment or engage in any business or professional activity that he may reasonably expect would require or induce him to improperly disclose controlled information;
 - improperly disclose or use controlled, private, or protected information acquired by reason of his position in the course of official duties to substantially further his personal economic interest or to obtain special privileges or exemptions for himself or others;
 - use, or attempt to use, his position to substantially further personal economic interest or to secure special privileges or exemptions for himself or others;
 - accept employment that would impair his independence or judgment or interfere with the ethical performance of his public duties;
 - receive, take, seek, or solicit, directly or indirectly, for himself or another, a gift of substantial value or substantial economic benefit tantamount to a gift:
 - that would tend to improperly influence him in the discharge of his duties;
 - that the person knows, or a reasonable person in that position would know under the circumstances, is primarily to reward the person for the official action taken; or
 - if he recently has been, or is or will be, involved in a government action affecting the donor or lender unless a disclosure of the gift, compensation, or loan has been made in the manner described above.
 - have personal investments in any business entity which will create a substantial conflict between his private interests and his public duties; or
 - donate to, or demand donations of, property, money, or services on a condition of granting a permit, approval, or authorization.

Conflicts of Interest and Ethics

- Economic benefit tantamount to a gift includes:
 1. a loan at an interest rate that is substantially lower than the commercial rate for similar loans; and,
 2. substantially higher compensation received for private services than the fair market value of those services.

Excluded is an occasional non-pecuniary gift of a value less than \$50, an award publicly presented in recognition of public service, any bona fide loan made in the ordinary course of business, or a political campaign contribution.

For More Information:

Be familiar with the prohibitions in the following sections of the Ethics Act:

- § 67-16-4 - Improperly disclosing or using private, protected, or controlled information; using position to secure privileges; accepting employment which would impair independence of judgment or ethical performance.
- § 67-16-5 - Accepting gifts, loans, or compensation.
- § 67-16-5.3 & 5.6 - Requiring or offering a donation, payment or service to the agency in exchange for an approval.
- § 67-16-6 - Receiving compensation for assistance in a transaction involving the agency.

Board Meetings

Attendance

Governor Herbert expects his appointees to make Board meetings a priority by attending all, or a majority of, scheduled meetings. The rule governing attendance, R305-8, is included as Attachment 1 in the Appendix.

Open and Public Meetings Act (UCA §52-4)

DEQ Board meetings are open, public meetings as defined under Utah's Open and Public Meeting Act.

Board Actions

The Board can take actions only in a meeting that is open to the public and only on issues that are listed as agenda items.

- The agenda must be posted at least 24 hours before a meeting.
 - The date, time and place of the meeting must be stated.
- "Meeting" is defined as:
 - A convening of a simple majority of the Board for matters over which the Board has jurisdiction or advisory power.
 - It includes electronic meetings, workshops and Executive Sessions.
 - A quorum of members are present. For all Boards EXCEPT Waste Management and Radiation Control, a quorum is at least five members; for Waste Management and Radiation Control, a quorum is at least six members.
- A majority vote is required to take action.

Closed Meetings

Board meetings may be closed only in limited circumstances. If the Board closes a meeting, it must also follow the process specified in statute. The Law also limits closed meetings to the following topics:

- Discussion about "the character, professional competence, or physical or mental health of an individual."
- "Strategy sessions to discuss collective bargaining."
- "Strategy sessions to discuss pending or reasonably imminent litigation." If the Board were sued, for example, this exception would allow the Board to meet with its attorneys to plan its strategy or settlement response in a particular piece of litigation. This exception would not, however, allow a closed meeting for non-strategy sessions, such as simple reports about a pending lawsuit. Nor would this exception allow the Board to exclude the public from the Board's discussions about a controversial topic that could conceivably result in some future litigation. Unless the threatened litigation is "reasonably imminent" and the Board needs to discuss its litigation strategy, the statutory exception does not apply.

Board Meetings

- “Strategy sessions to discuss the purchase, exchange, or lease of real property when public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the public body from completing the transaction on the best possible terms.”
- Deployment of security personnel, investigation of allegations of criminal misconduct, or other deliberations regarding matters specified in statute.

If a Board closes a meeting to discuss “the character, professional competence, or physical or mental health of an individual”, the Board Chair must sign a sworn affidavit to that effect. If the purpose of the closed meeting is to discuss any other statutorily-permissible topic, the Board must either record or keep detailed written minutes of the closed session. If a judge later decides that the closed meeting was unlawful, the tape or the minutes must be released.

Closed Meetings Are Never Required

The Open Meetings Act does not require any meeting to be closed and the Board should consider whether it is in the public interest to conduct the discussion in secret. For example, the statute allows a closed meeting to discuss the character or professional competence of an individual. This provision protects that individual’s privacy interests. If the individual actually prefers to have the discussion conducted openly, however, the Board may not be justified in relying on this statutory basis for a closed meeting.

No Final Decisions or Actions in a Closed Meeting

The Act states that “no . . . resolution, rule, regulation, contract or appointment shall be approved at a closed meeting.” Any actual votes or decisions must be made in an open meeting.

Procedures for Electronic Meetings

Boards may conduct meetings by “telephone, telecommunications, or computer conference” as long as the Board complies with statutory requirements for giving public notice and providing each Board member an opportunity to participate in the electronic meeting. DEQ’s procedures governing electronic meetings can be found at R305-2.

Penalties for Violating the Open Meetings Act

A member of a public body who knowingly or intentionally violates the closed meeting provisions may be guilty of a class B misdemeanor. If a court finds that a public body has violated the Open Meetings Act, the court may declare that any final action taken at the meeting is void, and may order the Agency or Board to comply with the statute. The court may also order the Agency or Board to pay the opposing party’s attorney’s fees and may order the public body to release the tape or minutes about the closed meeting.

Board Meetings

Parliamentary Procedure at a Glance (Based on Roberts' Rules of Order)

To do this	You say this	May you interrupt?	Is a second required?	Is the motion debatable?	Required vote
*Adjourn meeting	"I move the meeting be adjourned"	No	Yes	No	Majority
Recess meeting	"I move the meeting be adjourned until. . ."	No	Yes	No	Majority
*Make a personal request	"Point of privilege"	Yes	No	No	No vote
*Suspend further consideration	"I move to table the motion"	No	Yes	Yes	Majority
End debate	"I move the previous question"	No	Yes	No	2/3 vote
Postpone consideration	"I move this matter be postponed until. . ."	No	Yes	Yes	Majority
Have something studied further	"I move this matter be referred to a committee"	No	Yes	Yes	Majority
Amend a motion	"I move this motion be amended by. . ."	No	Yes	Yes	Majority
Introduce new business	"I move that. . ."	No	Yes	Yes	Majority
*Object to something	"Point of order"	Yes	No	No	No vote Chair only
Request Information	"Point of information"	Yes	No	No	No vote
*Ask for a vote by actual count to verify a voice vote	"I call for a division of the board"	No	No	No	No vote
*Object to discuss a matter	"I objected to consideration of this matter"	Yes	No	No	2/3 vote
*Take up a matter previously tabled	"I move to take from the table. . ."	No	Yes	No	Majority
*Reconsider a previous action	"I move to reconsider the action relative to. . ."	Yes	Yes	Yes	Majority

*Motion cannot be amended

Rulemaking Process

Utah Administrative Rulemaking Act (UCA §63G-3)

Roles

- The Office of Administrative Rules (OAR) oversees all state agency rulemaking.
 - Its role is limited to the procedural aspects:
 - rules to direct the process; and
 - a manual to assist agencies in writing, formatting, and filing their rules.
 - OAR publishes the *Utah State Bulletin* (Bulletin), a semi-monthly publication which includes proposed rules, rules analyses, notices of effective dates, and review notices.
 - It also compiles, formats, indexes, and publishes all effective rules in the *Utah Administrative Code* (similar to the *Code of Federal Regulations* or CFR process.)
 - Changes are codified on a monthly basis.
 - Rules are available electronically at www.rules.utah.gov.
 - This constitutes the official administrative code of the State.
 - It is not the same as the *Utah Code Annotated* (UCA), a compilation of laws enacted by the Utah Legislature.
 - To avoid confusion, all administrative rules are numbered beginning with an "R."
- DEQ files all new rules, all proposed rules changes, or five-year reviews of existing rules with OAR.
- The Boards and DEQ Division staff focus on the content of the rules.
 - Divisions draft rules for Board consideration.
 - Boards perform all formal rulemaking actions for the DEQ programs.
 - Boards are the responsible authority for the rule language.
 - In this role, Boards are considered an agency of the executive branch
- Members of the public can petition a Board to undertake rulemaking to address a specific concern or issue.

Process

- Rulemaking is the "regulatory" power of an agency of the executive branch. It is used to:
 - establish standards or procedures; or
 - clarify a statute in order to carry out a mandate.
- A DEQ Division prepares either a proposed change to an existing rule or a new rule.
 - The Division completes a rule analysis form to accompany the proposed action. It also indicates a potential effective date.
 - The proposal is then filed with OAR.
 - If a statutory provision requires the rulemaking, the agency must file no later than 180 days from the effective date of the statutory provision.
 - A copy of the rule analysis form and rules are made available to the Governor's Office of Management and Budget (GOMB) for review.

Rulemaking Process

- OAR publishes the rule analysis form and the proposed rulemaking action in the *Utah State Bulletin* (Bulletin).
 - Rules filed by the first of the month are published in the Bulletin issued on the fifteenth of the month
 - Rules filed by the fifteenth of the month are published in the Bulletin edition issued on the first of the following month.
- Filing with OAR and subsequent publication in the Bulletin initiates the formal rulemaking process.
 - There is a minimum 30-day public comment period.
 - A public hearing may be held and is only required if mandated by federal law or regulation or if requested by another state agency, ten interested persons, or an organization with no fewer than ten members; and
 - A written request is received within 15 days of publication.
 - Hearings are not adjudicative hearings governed by the Administrative Procedures Act. The agency is not compelled to act according to comments received.
 - Following public comment, the proposed rule is brought back to the Board for final adoption.
 - The Board can adopt the rule as originally proposed or make changes.
 - If changes are substantive, the newly amended rule is re-filed
 - A new rule analysis form; noted as a change in a proposed rule.
 - The amended rule is republished which begins a 30-day public notice period. This is NOT a public comment period.
 - The rule may not become effective until after the 30-day notice period.
 - If the changes are non-substantive.
 - The rule is marked accordingly and submitted to DAR.
 - This revision is not published in the Bulletin.
 - Board adopts rule and sets an effective date
 - No fewer than seven days from the end of the 30-day comment period and no more than 120 days from the date of publication of the proposed rulemaking.
 - Effective date may be the same as or different from the "potential" effective date identified on the original rule analysis form.
 - Notice of the effective date submitted to OAR
 - OAR publishes the effective date in the next issue of the Bulletin. In order to meet the 120-day provision of the Rulemaking Act, the effective date may occur before the notice of the effective date is published in the Bulletin.

Rulemaking Process

- Each agency shall review each of its rules within five years after the rule's original effective date or within five years after the filing of the last five-year review, whichever is later.
 - An agency may consider any substantial review of a rule to be a five-year review if the agency also meets the requirements described in the following bullet.
 - At the conclusion of its review, and no later than the five-year review deadline described in the bullet above, the agency shall decide whether to:
 - Continue, repeal, or amend and continue the rule.
 - If the agency continues the rule, the agency shall file with the division a five-year notice of review and statement of continuation that includes:
 - a concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule;
 - a summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule; and
 - a reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any.

Rulemaking Hearings (R-15-1-5 (2)-(4))

- The Board appoints a hearing officer for a particular hearing.
- The Hearing Officer:
 - Opens hearing at the announced time and place.
 - Explains the subject and purpose of the hearing.
 - Invites “orderly, germane comment” from those present.
 - Conduct the hearing as an open, informal, orderly, and informative meeting.
 - Oaths, cross-examination, and rules of evidence are not required
 - Permits comment for a minimum of one hour.
(Note: If no one present at the hearing wishes to make formal comments, the hearing record may be closed temporarily to discuss the proposal off the record, but the record must be reopened at the end of the one hour mandatory hearing time to formally end the hearing.)
 - May set time limits for speakers.
 - Ensures equitable use of time.
 - May extend or continue hearing to another day, as necessary.
 - Invites written comment to be submitted at the hearing or after the hearing, within the comment period.
 - Written comments are attached to the hearing minutes.
- The Agency must have a representative in attendance that is familiar with the rule at issue and can respond to requests for information.

Adjudicative Process

Adjudicative Proceedings (UCA §19-1-301)

The purpose of an adjudicatory proceeding is to determine:

1. “Dispositive” (enforcement) actions; and
2. “Special adjudicative” proceedings to resolve a challenge to a permit or other determination.

The process is similar to and consistent with hearing procedures for EPA environmental permitting programs.

Process

Generally,

- An adjudicative hearing is an appellate-type hearing limited to a review of the administrative record.
 - Record is developed by the agency during the application and public comment process. (Supplements are allowed under certain provisions.)
 - To raise an issue on appeal, the issue must have been raised by the challenger during the public comment process.
 - Comments must be supported with sufficient information or documentation to allow the Director to fully consider the substance (not through a link to a website or other similar reference.)
- Proceedings may be initiated for actions such as:
 - Permits, financial assurance determinations, notices of violation or penalty assessments issued by the Executive Secretary.
 - Third-party challenge to permits and other Executive Secretary action.

Roles

- An administrative law judge (ALJ) hears the permit/license appeal and makes a recommended decision to the Executive Director.
- The Executive Director reviews ALJ's recommended decision and adopts, adopts with modifications, rejects, or returns to the ALJ for further action as directed.
- The Appellate Court Review of Agency's decision is based on the hearing record. The Court gives substantial deference to Agency expertise on factual findings.

Records

Utah Government Records Access and Management Act or GRAMA (UCA §63G-2)

Overview

- DEQ is required to retain government records in accordance with an approved retention schedule and to provide copies of, or permit access to, public government records in its possession, upon written request.
- The definition of what constitutes a 'record' subject to disclosure is very broad and includes electronic documentary material and communications
- DEQ places a high priority on assisting the public when there is a request to view our files. GRAMA requires that the request be responded to within 10 working days of its receipt.

What This Means for Board Members

- Promptly provide the staff with a copy of:
 - Any record created as part of your official service; and
 - Any record received from outside DEQ in the course of your official service.
 - This includes anything given by constituents, advocates or others that deal with Board business or official duties.
- Immediately forward any request you receive under GRAMA to agency staff.
 - Staff will analyze and write a response, as appropriate.
 - Staff may contact you to ask for documents in your possession that may need to be included in the response.
 - Retain – or turn over to staff – any documents that may be subject to request until all appeals have expired.
- Recognize that e-mails and text messages regarding Board matters may be a 'record' subject to disclosure retention under a litigation hold.
 - A **Litigation Hold** is the suspension of document destruction policies and procedures related to a matter that is reasonably likely to be litigated.
 - A **Litigation Hold** may be issued to DEQ for any actual, threatened, or potential litigation and required the agency and Board(s) to retain any potentially relevant information until the matter is resolved. Penalties for destroying relevant information can be severe.
- A district court may enjoin an agency that violates any provisions of GRAMA. In addition to injunctive relief, litigation costs and attorney fees may be awarded to the prevailing party.
- Criminal penalties may be imposed for the intentional improper disclosure of private/protected/controlled information or the failure to disclose public information

Exceptions

- Some legal and practical exceptions to this rule include:
 - Records received from staff supporting the Board. Staff will be responsible for complying with GRAMA requirements for these records.
 - Records received from sources outside the agency, copies of which are also given to staff supporting the Board.
 - Notes and daily calendars prepared for personal use. These are not records under UCA §63G-2-103 ((22)(b)(vi)
 - Junk mail or commercial publications. These are not records under UCA §63G-2-103 (22)(b)(ix).

Housekeeping

Compensation

- You are allowed meeting per diem and mileage reimbursement, based on current state rates and dependent on the agency's budget EXCEPT:
 - You may not receive compensation or travel expenses if you are being compensated as an officer or employee of a governmental entity while performing service on the DEQ Board.
- To be paid, you will need to provide the following information to Human Resources:
 - Current and previous names and correct spelling.
 - Mailing address, including city/state/zip.
 - Home and alternate telephone numbers.
 - Employment eligibility such as citizen, lawful permanent resident (alien #) or alien authorized to work.
 - Military status.
 - Emergency contact information such as name, address including city/state/zip, home and work phone numbers, and the person's relationship to you.
 - A clear and legible copy of your current driver's license.
 - A clear and legible copy of your Social Security card.
 - An original, voided check.
- Travel arrangements and all expenditures must be arranged and approved by DEQ in advance.
 - Traveler must submit appropriate reimbursement forms and receipts.
 - Your staff contact person can help you.

Your Public Contact Information

- As a public body, Board contact information is posted on the Web and is accessible by the public.

Term Expiration and Reappointment

- The Governor makes final determination on all appointments and reappointments.
 - A Board member may be allowed to serve more than one term.
 - A review is conducted before a reappointment is extended.
- As your expiration date nears, notify Board staff and Governor's Office if you would like to continue.

Working with People

Working with the News Media

Expectations:

- The Board is doing the public's business.
- The public has a right to know how public business is conducted.
- High standards of professionalism help ensure that the Board's work is correctly represented.
- All media inquiries should be handled first by the Communications Director/PIO – even when you may be asked to respond.

Guidelines

- DEQ's Communication Director is the Agency's PIO and will work closely with you in the event you are contacted by the media.
- Media requests should be addressed with the following guidelines in mind:
 - Board Members – other than Board Chairs – generally do not act as the spokespeople for the agency or the Board.
 - The Executive or Deputy Director or the Communication Director is generally the "official" department spokesperson. Likewise, the Division Director (or designee) is the "official" Division spokesperson.
 - On occasion, a Board member may be asked to give a comment to media. Please remember these critical points:
 - Whether or not to speak to the news media is a personal choice. If you chose not to answer a question, please refer the reporter to the DEQ Communication Director and she will assist the reporter in getting what is needed.
 - Recognize that you are an appointed representative. Though unintended, your comments may also reflect back on the Board, the Agency, and the Administration.
 - A Board member speaks **for** the Board only when authorized by the Board to do so.
 - Unless authorized to speak on behalf of the Board or Agency, you should refrain from comment to the press on issues handled by the Board and instead refer the reporter to the designated spokesperson.

More Help?

The Communication Director, Donna Spangler, is available for more detailed coaching/ training on working with the media. She can be reached at 801-536-4484 or dspangl@utah.gov

Working with People

Working with Stakeholders

- Stakeholder involvement is critical to effective public policymaking.
 - Special interest groups want you to understand and consider their perspective.
 - Stakeholders may add information that is “critical to the outcome.”
 - Stakeholders may also purposefully divert attention to the emotional in an attempt to delay or “kill” an issue.
 - Your challenge is to objectively listen and weigh information in making decisions.
 - Your vote needs to be based on facts and within the parameters of the rules and regulations that define DEQ’s work.
 - Each decision of the Board needs to be legally defensible.
 - Decisions can be hard, as there are times when your personal opinion and the emotion of the community do not “fit” within this framework.
- Suggestions:
 - Be proactive: Understand your constituency by reaching out to key stakeholders in the regulated, environmental, and public health communities.
 - Be honest: Your respect contributes to the Board’s effectiveness. Avoid skirting conflict by telling people what they want to hear or hinting at more than you are able to deliver. The impact is only temporary and can be more costly in the long run.
 - Listen empathetically: At the most basic level, everyone wants the same thing: to be heard AND understood. Empathy implies respect. Agreement or disagreement is separate.
 - Listen objectively and hear all potentially interested perspectives. Because you are in a position on influence, you should also be conscious about how your behavior may cause possible perceptions of bias.
 - Use good judgment: The loudest and/or the most visible may not be the most representative. Sometimes you just have to make the hard decision.

More Help?

Renette Anderson is available for more specific coaching on communication skills and working with stakeholder groups. She can be reached at 801-536-4478 or renetteanderson@utah.gov.

Working with People

10 Tips for Effective Communication

1. Set the tone. You help establish, or destroy, your own and your Board's credibility by your actions. People will, in turn, live up – or down – to your expectations.

Be a leader. A bad member can undermine a Board's effectiveness; a good member can help create enthusiasm and commitment.

Listen more than you talk. Stay curious and engaged.

Suspend judgment long enough to really hear what is being said – and, during a group discussion, encourage others to do the same.

React to ideas, not people. Don't make accusations about intention. Ask probing questions to delve more deeply and collect more information, rather than making assumptions based only on "surface traits".

Don't advocate your position, or tear down elements of a topic of discussion, at the expense of another person.

If you have asked for feedback, don't bring things to a conclusion until you have honestly absorbed multiple perspectives and ideas. Sometimes being able to communicate is more important to the group than what the final answer ends up being.

See the flip side of unfavorable traits:

Someone who seems overly strident or judgmental may simply have at his core the intention of making a positive difference.

Someone who seems jittery might actually be nervous because she wants whatever is being requested very much.

When you react, be honest with yourself about your intentions and then make sure your reaction is appropriate to the circumstance and will get you what you're after. If you automatically conclude that you are right and others are wrong, you minimize your own effectiveness as a leader as well as an opportunity to solve the "real" problem and/or to discover that "next great idea."

2. You have talked (or written) when you use your voice (or your computer.) You have communicated when the person understands. Experts agree that the ONLY message that counts is the message that was received.

3. People "hear" in different ways. Consider what you know about your fellow Board members and then give your message in a way that optimizes your likelihood of being heard.

Working with People

4. Like it or not, you are competing for attention with whatever else is going on in their world. If the message is very important, people generally need to hear it more than once to remember.

5. If the message is very important, the most effective thing you can do is to tell someone in person and then follow up in writing.

6. Follow-up to make sure what they “heard” is what you “said.” One of the biggest communication problems is the assumption that a message has been understood. Follow-up often finds that messages are unclear or misunderstood.

7. Avoid mixed messages.

Be honest with yourself about your intention so that your body language and/or tone don't override what your words are trying to communicate.

“I don't care how you handle it” gives the person some latitude. If you can't – or are unwilling to – give that latitude, then recognize you do care and structure your message differently.

8. Be sensitive to “wrong rock” (or “I'm not sure what but I'll know it when I see it”) syndrome when making requests or giving directions. Be as specific as you can about what it is you are asking. And, if you must send someone after that elusive rock, be sensitive to his/her frustrations.

9. Balance the grapevine. Don't ignore it but don't let it consume you.

10. ALWAYS allow someone else his or her humanity – even if it doesn't measure up to your personal standards of perfection. You may end up needing the same consideration one day.

Working with People

Tips for Handling Conflict

- Let the person vent.
 - Acknowledge the anger/frustration and focus on the issue (not the behavior.)
 - Maintain a calm voice. It will calm most people.
- Listen to understand rather than to find the hole in the argument.
 - Listen even if you've heard it before or think you know where the person is going.
 - Hear the message. Often it is buried in the emotion.
 - Give subtle, nonverbal feedback to indicate you are listening.
 - Avoid prejudice and other distractions.
- Before responding, briefly pause.
 - Learn to tolerate - and to use - silence.
- A careful choice of words will often diffuse anger.
 - Paraphrase what was said.
 - Ask for and listen to feedback so ensure you've "got it."
 - Empathize with and acknowledge frustration.
 - Try to determine expectations.
- Address issues without attacking people.
 - Avoid blaming words.
 - Understand what your own "buttons" are and become less sensitive. Don't trade insults.
- If you can, turn the issue into a mutual problem. Make sure you are both operating "off the same sheet of music." Try to avoid "you" and "me" positions and focus, where possible, on "we" positions.
 - Look for an area or areas where you have agreement.
 - Don't "hint" at things you won't deliver.
 - Don't create expectations and then hand the person off.
- ALWAYS allow the person an opportunity to save face.
- If nothing is working, take a break and let things cool off.
 - Arrange to speak later.
 - Ask to have the issue put into writing.

Division of Drinking Water

Overview

The Division of Drinking Water is responsible for administering the federal and State Safe Drinking Water Acts, as well as the drinking water portion of the State's Water Development Coordinating Council Act. The State of Utah, through the Division of Drinking Water, has received authority to implement the Environmental Protection Agency's regulations governing drinking water. This delegation of authority is known as "Primacy". According to federal statute, in order for the State to retain Primacy, it must adopt corresponding State rules for each adopted federal regulation and enforce them.

Mission

Safeguarding the quality and quantity of Utah's drinking water through balanced regulation.

Activities

The Division monitors regulatory compliance of 1,039 public drinking water systems in fulfillment of its mission. The Division does this with a combination of technical assistance, training and rule implementation. In addition, the Division, at the direction of the Board, implements both a federal and state based financial assistance program to enable water systems to construct drinking water infrastructure. Specifically, the Division implements the following programs:

- Drinking Water Source Protection
- Engineering Plan Review
- Water Quality Monitoring and Enforcement
- Water Operator Certification
- Cross Connection Control and Backflow Technician Certification
- State and Federal Financial Assistance
- Emergency Response
- Technical Assistance
- Water System Viability Evaluation

Funding

The Division is funded by federal EPA grants, State appropriations and fees.

Authorization

The Division receives its authority from the State's Safe Drinking Water Act (19-4 UCA) and the Water Development Coordinating Council Act (73-10c UCA).

Division of Drinking Water

Key Contacts

Division Director

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Assistant Director

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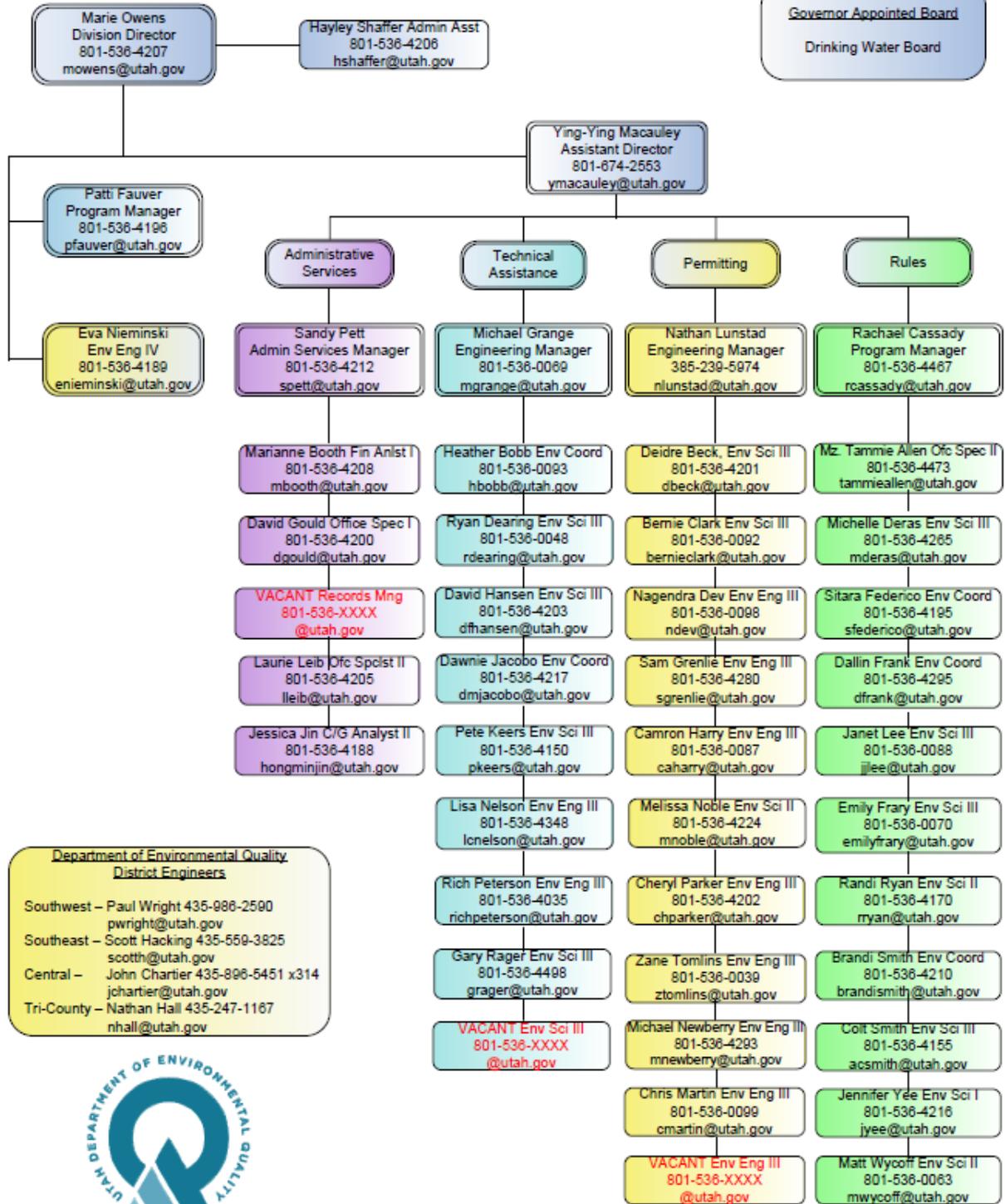
Webpage Information

Main DEQ Webpage deq.utah.gov

Division of Drinking Water <https://deq.utah.gov/division-drinking-water>

Drinking Water Board <https://deq.utah.gov/boards/utah-drinking-water-board>

DIVISION OF DRINKING WATER



DRINKING WATER
Updated December 19, 2018



DIVISION OF DRINKING WATER

Programs and Tasks

Backflow Prevention: Cross Connection Control and Backflow Technician Certification – Technical Assistance Section. Reference: UCA § 19-4-104(4)

- Train and certify backflow instructors
- Participate in technical training
- Issue technician certificates
- Perform on-site inspections
- Provide training to public water system personnel
- Evaluate water system's backflow prevention programs
- Provide technical assistance for a backflow event
- Provide training and assistance upon request

Drinking Water Quality Sampling: Water Quality, Monitoring and Enforcement - Rules Section. Reference: UCA §19-4-104(1)(a)(i)

- Establish monitoring schedules for water systems and sources
- Receive and enter parametric data into the Division's database
- Receive and process electronic data files from certified laboratories into the Division's database
- Receive and process water treatment plant reports from public water systems
- Determine compliance with monitoring requirements
- Report monitoring violations to EPA's database
- Prepare and send out monitoring violations to water systems

Emergency Response: Technical Assistance Section. Reference: UCA §19-4-104(1)(g)

- Activate Utah WARN
- Make damage assessments
- Provide technical assistance and training
- Train and assist water systems in the preparation of their emergency response plans
- Maintain the Division's emergency response plan
- Perform water sampling in an emergency
- Issue boil water orders as appropriate in an emergency
- Provide correlated security training to minimize the threat of a human caused emergency

EPA Rule Implementation: Enforcement Priority Rule – Rules Section. Reference: UCA § 19-4-106(1)

- Write corresponding State rules for each promulgated federal regulation
- Provide training on new rules
- Determine quality violations
- Adjust monitoring schedules based on parametric results and advise water systems of monitoring changes
- Prepare violation letters and send them to public water systems
- Report violations to the EPA database
- Maintain a State violation priority list and receive a federal violation priority list and take enforcement action against egregious violators

DIVISION OF DRINKING WATER

- Enter the enforcement actions into the Division's database
- Escalate enforcement against non-complying water systems

Financial Assistance: State and Federal financial assistance - Technical Assistance Section.
Reference: UCA § 73-10c-4.2 & 73-10c-5

- Receive loan/grant applications and evaluate them
- Advise the Board's Financial Assistance Committee
- Make presentations to the Drinking Water Board
- Prepare authorization letters
- Review engineering plans and other loan documents
- Evaluate and approve pay requests
- Monitor the status of state and federal loan funds
- Participate in loan closings
- Consult with the AG's contract attorney as needed
- Submit pay requests to the State Division of Finance
- Prepare and submit EPA Drinking Water Needs Survey (every 4 years)
- Prepare the annual Community Water System Rate Survey
- Prepare and submit annual federal SRF Capitalization Grant Applications
- Fulfill the following EPA reporting requirements: PBR, DWNIMS, Biennial SRF Program Report, Intended Use Plan, Set Aside Work Plan, Annual Capacity Development Program, and the Triennial Capacity Development Program report to the Governor's office

Operator Certification: Technical Assistance Section. Reference: UCA § 19-4-104(2)

- Review operator certification applications
- Prepare operator certification exams
- Maintain the exam question banks
- Proctor exams
- Prepare on-line exams
- Score tests
- Prepare and mail operator certification exam and renewal notices
- Prepare and mail certificates
- Conduct exam validation workshops
- Participate in operator certification training
- Track individual operator continuing education units (CEU)

Plan Review: Engineering Design Reviews – Permitting and Technical Assistance Sections.
Reference: UCA § 19-4-104(1)(d)

- Review project notification forms
- Review engineering plans based on the Division's rules and sound engineering practices
- Provide comments to engineering consultants
- Issue plan approvals
- Issue operating permits
- Evaluate new technologies
- Receive technical training and maintain CEUs for P.E. licenses
- Conduct water system capacity evaluations

DIVISION OF DRINKING WATER

- Provide technical assistance to water systems
- Conduct on-site inspections to ensure proper construction of drinking water facilities
- Perform well grout witnesses on drinking water wells

Sanitary Surveys (an on-site inspection): Site Inspections – Permitting Section. Reference: UCA § 19-4-104(1)(h)

- Notify the water system and set an appointment to perform a sanitary survey
- Notify the local health department of a scheduled survey
- Send the water system a written notification of the scheduled survey and report issues to be reviewed during the survey
- Obtain the question set for the survey and conduct the survey
- Conduct an exit interview with the surveyed water system
- Upload the survey results into the Division's database
- Send the survey report to the water system and the local health department
- Provide technical assistance on the correction of deficiencies noted during a sanitary survey
- Train personnel performing sanitary surveys

Source Water Protection: Watershed Protection – Permitting Section. Reference: UCA § [19-4-104(1)(a)(iv)]

- Evaluate and comment on preliminary evaluation reports
- Review and concur with source protection plans
- Provide technical assistance to preparers of source protection plans
- Review and concur with updated plans
- Encourage and empower third party entities in protecting drinking water sources
- Assist the public with DEQ's interactive map and associated drinking water source protection information
- Provide GIS data to local governments to aid in protecting drinking water sources
- Provide assistance in developing local source protection ordinances
- Assist other Division staff with geologic observations involving possible UDI classifications

Technical Assistance for Water Systems with Surface Water Treatment Plants

Technical Assistance - All Sections. Reference: UCA § 19-4-106(1)

- Provide specialized technical assistance to water treatment plant managers and operators
- Lead and coordinate the Utah Water Quality Alliance in four regions in Utah
- Enhance communication and expertise sharing between utilities
- Provide training to water systems personnel
- Organize, support, and participate in studies on new technologies conducted by utilities
- Participate in research projects pertaining to drinking water quality issues
- Assist the Engineering Section and the Construction Assistance Section in solving operational problems in treatment plants, developing pilot study protocols, and evaluating new and proposed water treatment technologies
- Consult with the Rules Section regarding perceived areas of weaknesses or deficiencies in water treatment plants in light of complying with current and future regulations

DIVISION OF DRINKING WATER

- Maintain cooperative relationships with the universities and encourage the implementation of promising new technologies
- Collaborate with EPA and states on development of the Area-Wide Optimization Program, focusing on its applicability to the State of Utah
- Respond to questions and requests from consultants, water personnel, the public, or other state or federal agency on any Drinking Water Program.

Water System Viability Program: Permitting and Technical Assistance Sections. Reference: UCA § 19-4-104(1)(a)(v)

- Oversee the Capacity Development Program (an evaluation of the financial, technical and managerial capacity of a water system)
- Evaluate new water systems for technical, managerial, and financial viability (TMF).
- Evaluate financially assisted projects for TMF.
- Report the status of TMF to EPA annually.
- Report the status of TMF to the Governor every two years.

DIVISION OF DRINKING WATER

Public Drinking Water Systems

The Board adopts rules and the Division enforces those rules involving Public Drinking Water Systems. A Public Drinking Water System is defined, in the State's Safe Drinking Water Act, as a water system that serves at least 15 connections and/or serves at least 25 people for at least 60 days per year. Public drinking water systems are divided into three categories based on the characteristics of the population served. The following is a list of the three categories along with a description of the characteristics of the served population:

Community water systems serve resident year round water users. These water systems are typified by communities within the State.

Non Transient Non Community water systems serve the same people for at least 6 months per year. These water systems typically serve rural schools or places of work. Schools and places of work are typically served by a community water system; however, if an independent water system serves the school or place of work, that system is a Non Transient Non Community water system.

Transient Non Community water systems serve a transient population. These systems typically serve local, State or federal parks, highway rest stops, summer home subdivisions, and campgrounds.

DIVISION OF DRINKING WATER

Drinking Water Project Construction Assistance

Each meeting of the Drinking Water Board will involve discussions relating to applicants for financial assistance to build water system infrastructure. The Board, assisted by the Division of Drinking Water (DDW), provides two financial assistance programs, both of which are called State Revolving Fund (SRF) Loan programs. First, is the State SRF Program which is funded by State sales tax revenues. DDW receives a maximum of approximately \$3.6 million per year to fund the State SRF Loan Program. The second SRF program is funded by a federal Grant and is identified as the federal SRF Loan Program. Utah receives approximately \$9.1 million dollars per year to capitalize the federal SRF program.

Financial Assistance is offered to water systems that apply based on guidelines established in Utah Administrative Rule R309-700 State Drinking Water Project Revolving Loan Program and R309-705 Federal Drinking Water Project Revolving Loan Program. These rules set forth criteria to prioritize applicants and to identify the financial need of the water system and its customers.

Once a project has been placed on the Project Priority List (PPL) and has been assigned to a staff project engineer, a financial evaluation of the system and project is performed to determine whether the project is affordable and whether the water system is financially capable of repaying a loan. Many factors are taken into consideration during this evaluation. These include Median Adjusted Gross Income (MAGI), average monthly water bill (before and after the proposed project is complete), water rate structure, and cost effectiveness, among others. Factors used to determine an appropriate financial assistance package are listed in Table 2 in both R309-700 and R309-705.

The PPL calculations, the financial evaluation, and a review of the financial assistance application are all used to prepare an evaluation packet for review by the Financial Assistance Committee (FAC). The FAC, composed of a subset of Drinking Water Board members, evaluates each proposed project and financial assistance packet and either recommends the project go to the full Board for consideration or requests additional information and evaluation before moving the request forward. When approved by the FAC the proposed project is presented to the full Drinking Water Board. Once the DWB has heard the request for financial assistance it has basically three options: 1) authorize the requested financial assistance; 2) table the project and request additional information and further evaluation, or 3) decline the request for financial assistance.

If the DWB chooses to authorize financial assistance for the proposed project it then sets terms and conditions (interest rate, level of grant or principal forgiveness, and repayment terms) on the funding package. DDW staff then works with the applicant, the applicant's consulting engineer, and attorneys to assemble the required documentation to obligate the funding and allow the applicant to begin construction on the project.

APPENDIX

ATTACHMENT 1: Rule R305-8. Board Member Attendance Requirements.

R305-8-101. Purpose and Authority

The purpose of this rule is to establish standards for board member attendance at regularly scheduled board meetings. This rule is authorized by Section 19-1-201(1)(d)(i)(A).

R305-8-102. Notification Requirement

A board member shall notify the board chair of an absence at least two business days prior to the board meeting in order to be excused. A board member who fails to notify the board chair of an absence at least two business days prior to the board meeting shall not be excused.

R305-8-103. Standards for Attendance

- (1) In order to effectively execute board duties, board members shall regularly attend board meetings.
- (2) A board member shall be deemed to be out of conformity with the requirement to regularly attend board meetings if:
 - (a) the member has two unexcused absences from a board meeting within a one-year period;
 - (b) the member misses three consecutive meetings for any reason; or
 - (c) the member misses one-third of the total number of board meetings in a one year period.

R305-8-104. Remedy for Failure to Meet Standards for Attendance

- (1) If a board member fails to meet standards for attendance, the board chair shall:
 - (a) notify the board member in writing; and
 - (b) schedule an agenda item for the next board meeting to consider dismissal of the board member.
- (2) The board member shall be given an opportunity to address the board at that meeting.
- (3) The Board may recommend to the Governor that the member be removed from the board.

Date of Enactment or Last Substantive Amendment: December 19, 2012

APPENDIX

ATTACHMENT 2: Rule R305-9. Recusal of a Board Member for Conflict of Interest.

R305-9-101. Purpose and Authority.

The purpose of this rule is to establish standards and procedures for addressing potential conflicts of interest. This rule is authorized by Section 19-1-201(1)(d)(i)(B).

R305-9-102. Disclosure of Interest Statements.

Each board member shall provide disclosure of interest statements on forms provided by the Department.

R305-9-103. Recusal.

- (1) A board member shall be recused from voting during any board proceeding involving a matter in which the member has a conflict of interest.
- (2) A board member may also be recused from participating in the board's discussion of a matter in which the member has a conflict of interest.

R305-9-104. Potential Conflicts of Interest.

A board member has a potential conflict of interest with respect to a matter to be considered by the board if:

- (1) the board member's participation is prohibited under Title 67, Chapter 16, the Utah Public Officers' and Employees' Ethics Act; or
- (2) the board member's participation may constitute a violation of constitutional due process under the Utah or United States constitutions.

R305-9-105. Procedures.

A board member who has a potential conflict of interest with respect to a matter before the board, as described in R305-9-104, may:

- (1) recuse himself or herself from participation in the board's discussion of the matter and from voting with the board on the matter; or
- (2) disclose the potential conflict of interest and seek a determination by the board about how to proceed in the matter.

R305-9-106. Decision of the Board.

- (1) In making a decision under this rule R305-9, the board shall consider:
 - (a) the nature of the matter before the board;
 - (b) the nature of the potential conflict; and
 - (c) the Legislative intent that the board reflect balanced viewpoints.
- (2) The board shall determine:
 - (a) whether the circumstances constitute a conflict of interest such that the board member shall be recused from voting with the board on the matter; and
 - (b) if the board member has a conflict of interest, whether the board member shall also be recused from participation in the board's discussion of the matter.

Date of Enactment or Last Substantive Amendment: February 22, 2013

APPENDIX

ATTACHMENT 3: "Utah Public Officers' and Employees' Ethics Act."

67-16-1 Short title.

This chapter is known as the "Utah Public Officers' and Employees' Ethics Act."

67-16-2. Purpose of chapter.

The purpose of this chapter is to set forth standards of conduct for officers and employees of the state of Utah and its political subdivisions in areas where there are actual or potential conflicts of interest between their public duties and their private interests. In this manner the Legislature intends to promote the public interest and strengthen the faith and confidence of the people of Utah in the integrity of their government. It does not intend to deny any public officer or employee the opportunities available to all other citizens of the state to acquire private economic or other interests so long as this does not interfere with his full and faithful discharge of his public duties.

67-16-3. Definitions.

As used in this chapter:

- (1) "Agency" means any department, division, agency, commission, board, council, committee, authority, or any other institution of the state or any of its political subdivisions.
- (2) "Agency head" means the chief executive or administrative officer of any agency.
- (3) "Assist" means to act, or offer or agree to act, in such a way as to help, represent, aid, advise, furnish information to, or otherwise provide assistance to a person or business entity, believing that such action is of help, aid, advice, or assistance to such person or business entity and with the intent to assist such person or business entity.
- (4) "Business entity" means a sole proprietorship, partnership, association, joint venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on a business.
- (5) "Compensation" means anything of economic value, however designated, which is paid, loaned, granted, given, donated, or transferred to any person or business entity by anyone other than the governmental employer for or in consideration of personal services, materials, property, or any other thing whatsoever.
- (6) "Controlled, private, or protected information" means information classified as controlled, private, or protected in Title 63G, Chapter 2, Government Records Access and Management Act, or other applicable provision of law.
- (7) "Governmental action" means any action on the part of the state, a political subdivision, or an agency, including:
 - (a) any decision, determination, finding, ruling, or order; and
 - (b) any grant, payment, award, license, contract, subcontract, transaction, decision, sanction, or approval, or the denial thereof, or the failure to act in respect to.
- (8) "Improper disclosure" means disclosure of controlled, private, or protected information to any person who does not have the right to receive the information.
- (9) "Legislative employee" means any officer or employee of the Legislature, or any committee of the Legislature, who is appointed or employed to serve, either with or without compensation, for an aggregate of less than 800 hours during any period of 365 days. "Legislative employee" does not include legislators.
- (10) "Legislator" means a member or member-elect of either house of the Legislature of the state of Utah.
- (11) "Political subdivision" means a district, school district, or any other political subdivision of the state that is not an agency, but does not include a municipality or a county.

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(12) "Public employee" means a person who is not a public officer who is employed on a full-time, part-time, or contract basis by the state or any of its political subdivisions. "Public employee" does not include legislators or legislative employees.

(13) "Public officer" means all elected or appointed officers of the state or any of its political subdivisions who occupy policymaking posts. "Public officer" does not include legislators or legislative employees.

(14) "State" means the state of Utah.

(15) "Substantial interest" means the ownership, either legally or equitably, by an individual, the individual's spouse, or the individual's minor children, of at least 10% of the outstanding capital stock of a corporation or a 10% interest in any other business entity.

67-16-4. Improperly disclosing or using private, controlled, or protected information -- Using position to secure privileges or exemptions -- Accepting employment which would impair independence of judgment or ethical performance -- Exception.

(1) It is an offense for a public officer, public employee, or legislator, under circumstances not amounting to a violation of Section 63G-6-1001 or 76-8-105, to:

(a) accept employment or engage in any business or professional activity that he might reasonably expect would require or induce him to improperly disclose controlled information that he has gained by reason of his official position;

(b) disclose or improperly use controlled, private, or protected information acquired by reason of his official position or in the course of official duties in order to further substantially the officer's or employee's personal economic interest or to secure special privileges or exemptions for himself or others;

(c) use or attempt to use his official position to:

(i) further substantially the officer's or employee's personal economic interest; or

(ii) secure special privileges or exemptions for himself or others;

(d) accept other employment that he might expect would impair his independence of judgment in the performance of his public duties; or

(e) accept other employment that he might expect would interfere with the ethical performance of his public duties.

(2)

(a) Subsection (1) does not apply to the provision of education-related services to public school students by public education employees acting outside their regular employment.

(b) The conduct referred to in Subsection (2)(a) is subject to Section 53A-1-402.5.

(3) This section does not apply to a public officer, public employee, or legislator who engages in conduct that constitutes a violation of this section to the extent that the public officer, public employee, or legislator is chargeable, for the same conduct, under Section 63G-6a-2404 or Section 76-8-105.

67-16-5. Accepting gift, compensation, or loan -- When prohibited.

(1) As used in this section, "economic benefit tantamount to a gift" includes:

(a) a loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans; and

(b) compensation received for private services rendered at a rate substantially exceeding the fair market value of the services.

(2) It is an offense for a public officer or public employee, under circumstances not amounting to a violation of Section 63G-6-1001 or 76-8-105, to knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself or another a gift of substantial value or a substantial economic benefit tantamount to a gift:

(a) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties;

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- (b) that the public officer or public employee knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the public officer or public employee for official action taken; or
 - (c) if the public officer or public employee recently has been, is now, or in the near future may be involved in any governmental action directly affecting the donor or lender, unless a disclosure of the gift, compensation, or loan and other relevant information has been made in the manner provided in Section 67-16-6.
- (3) Subsection (2) does not apply to:
- (a) an occasional nonpecuniary gift, having a value of not in excess of \$50;
 - (b) an award publicly presented in recognition of public services;
 - (c) any bona fide loan made in the ordinary course of business; or
 - (d) a political campaign contribution.
- (4) This section does not apply to a public officer or public employee who engages in conduct that constitutes a violation of this section to the extent that the public officer or public employee is chargeable, for the same conduct, under Section 63G-6a-2404 or Section 76-8-105.

67-16-5.3. Requiring donation, payment, or service to government agency in exchange for approval -- When prohibited.

- (1) It is an offense for a public officer, public employee, or legislator, under circumstances not amounting to a violation of Section 63G-6-1001 or 76-8-105, to demand from any person as a condition of granting any application or request for a permit, approval, or other authorization, that the person donate personal property, money, or services to any agency.
- (2) (a) Subsection (1) does not apply to any donation of property, funds, or services to an agency that is:
- (i) expressly required by statute, ordinance, or agency rule;
 - (ii) mutually agreed to between the applicant and the entity issuing the permit, approval, or other authorization;
 - (iii) made voluntarily by the applicant; or
 - (iv) a condition of a consent decree, settlement agreement, or other binding instrument entered into to resolve, in whole or in part, an actual or threatened agency enforcement action.
- (b) If a person donates property, funds, or services to an agency, the agency shall, as part of the permit or other written authorization:
- (i) identify that a donation has been made;
 - (ii) describe the donation;
 - (iii) certify, in writing, that the donation was voluntary; and
 - (iv) place that information in its files.
- (3) This section does not apply to a public officer, public employee, or legislator who engages in conduct that constitutes a violation of this section to the extent that the public officer, public employee, or legislator is chargeable, for the same conduct, under Section 63G-6a-2404 or Section 76-8-105.

67-16-5.6. Offering donation, payment, or service to government agency in exchange for approval -- When prohibited.

- (1) It is an offense for any person, under circumstances not amounting to a violation of Section 76-8-103, to donate or offer to donate personal property, money, or services to any agency on the condition that the agency or any other agency approve any application or request for a permit, approval, or other authorization.
- (2) (a) Subsection (1) does not apply to any donation of property, funds, or services to an agency that is:
- (i) otherwise expressly required by statute, ordinance, or agency rule;

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- (ii) mutually agreed to between the applicant and the entity issuing the permit, approval, or other authorization;
 - (iii) a condition of a consent decree, settlement agreement, or other binding instrument entered into to resolve, in whole or in part, an actual or threatened agency enforcement action; or
 - (iv) made without condition.
- (b) The person making the donation of property, funds, or services shall include with the donation a signed written statement certifying that the donation is made without condition.
- (c) The agency receiving the donation shall place the signed written statement in its files.
- (3) This section does not apply to a person who engages in conduct that constitutes a violation of this section to the extent that the person is chargeable, for the same conduct, under Section 63G-6a-2404 or Section 76-8-105.

67-16-6 . Receiving compensation for assistance in transaction involving an agency -- Filing sworn statement.

- (1) It is an offense for a public officer or public employee, under circumstances not amounting to a violation of Section 63G-6-1001 or 76-8-105, to receive or agree to receive compensation for assisting any person or business entity in any transaction involving an agency unless the public officer or public employee files a sworn, written statement containing the information required by Subsection (2) with:
- (a) the head of the officer or employee's own agency;
 - (b) the agency head of the agency with which the transaction is being conducted; and
 - (c) the state attorney general.
- (2) The statement shall contain:
- (a) the name and address of the public officer or public employee involved;
 - (b) the name of the public officer's or public employee's agency;
 - (c) the name and address of the person or business entity being or to be assisted; and
 - (d) a brief description of:
 - (i) the transaction as to which service is rendered or is to be rendered; and
 - (ii) the nature of the service performed or to be performed.
- (3) The statement required to be filed under Subsection (1) shall be filed within 10 days after the date of any agreement between the public officer or public employee and the person or business entity being assisted or the receipt of compensation, whichever is earlier.
- (4) The statement is public information and shall be available for examination by the public.
- (5) This section does not apply to a public officer or public employee who engages in conduct that constitutes a violation of this section to the extent that the public officer or public employee is chargeable, for the same conduct, under Section 63G-6a-2404 or Section 76-8-105.

67-16-7. Disclosure of substantial interest in regulated business.

- (1) Every public officer or public employee who is an officer, director, agent, employee, or the owner of a substantial interest in any business entity which is subject to the regulation of the agency by which the officer or employee is employed, shall disclose any such position held and the precise nature and value of the public officer's or public employee's interest upon first becoming a public officer or public employee, and again whenever the public officer's or public employee's position in the business entity changes significantly or if the value of his interest in the entity is significantly increased.
- (2) The disclosure required under Subsection (1) shall be made in a sworn statement filed with:
- (a) the state attorney general in the case of public officers and public employees of the state;

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- (b) the chief governing body of the political subdivision in the case of public officers and public employees of a political subdivision;
 - (c) the head of the agency with which the public officer or public employee is affiliated; and
 - (d) in the case of a public employee, with the immediate supervisor of the public employee.
- (3) This section does not apply to instances where the total value of the interest does not exceed \$2,000. Life insurance policies and annuities shall not be considered in determining the value of any such interest.
- (4) Disclosures made under this section are public information and shall be available for examination by the public.

67-16-8. Participation in transaction involving business as to which public officer or employee has interest -- Exceptions.

- (1) No public officer or public employee shall participate in his official capacity or receive compensation in respect to any transaction between the state or any of its agencies and any business entity as to which such public officer or public employee is also an officer, director, or employee or owns a substantial interest, unless disclosure has been made as provided under Section 67-16-7.
- (2) A concession contract between an agency, political subdivision, or the state and a certified professional golf association member who is a public employee or officer does not violate the provisions of Subsection (1) or Title 10, Chapter 3, Part 13.

67-16-9. Conflict of interests prohibited.

No public officer or public employee shall have personal investments in any business entity which will create a substantial conflict between his private interests and his public duties.

67-16-10. Inducing others to violate chapter.

No person shall induce or seek to induce any public officer or public employee to violate any of the provisions of this chapter.

67-16-11. Applicability of provisions.

The provisions of this chapter apply to all public officers and public employees.

67-16-12. Penalties for violation -- Removal from office or dismissal from employment.

In addition to any penalty contained in any other provision of law:

- (1) any public officer or public employee who knowingly and intentionally violates this chapter, with the exception of Sections 67-16-6 and 67-16-7, shall be dismissed from employment or removed from office as provided by law, rule, or policy within the agency; and
- (2) any public officer, public employee, or person who knowingly and intentionally violates this chapter, with the exception of Sections 67-16-6 and 67-16-7, shall be punished as follows:
 - (a) as a felony of the second degree if the total value of the compensation, conflict of interest, or assistance exceeds \$1,000;
 - (b) as a felony of the third degree if:
 - (i) the total value of the compensation, conflict of interest, or assistance is more than \$250 but not more than \$1,000; or
 - (ii) the public officer or public employee has been twice before convicted of violation of this chapter and the value of the conflict of interest, compensation, or assistance was \$250 or less;
 - (c) as a class A misdemeanor if the value of the compensation or assistance was more than \$100 but does not exceed \$250; or

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(d) as a class B misdemeanor if the value of the compensation or assistance was \$100 or less.

67-16-14. Unethical transactions -- Duty to dismiss officer or employee -- Right to rescind or void contract.

If any transaction is entered into in violation of Section 67-16-6, 67-16-7, or 67-16-8, the state, political subdivision, or agency involved:

- (1) shall dismiss the public officer or public employee who knowingly and intentionally violates this chapter from employment or office as provided by law; and
- (2) may rescind or void any contract or subcontract entered into in respect to such transaction without returning any part of the consideration that the state, political subdivision, or agency has received.

67-16-15. Complaint -- Political Subdivisions Ethics Review Commission.

A person may file a complaint for an alleged violation of this chapter by a political subdivision officer or employee in accordance with Title 11, Chapter 49, Political Subdivisions Ethics Review Commission.

Last amended by Chapter 196, 2014 General Session