

Occupational and Professional Licensure Review Committee

Thursday, October 22, 2015

Annual Report (Agenda Item #6)

Utah Code Section 36-23-106, Duties -- Reporting.	1
Annual Report (Discussion Draft).	3
Meeting minutes:	
September 16, 2014.	7
October 21, 2014.	11
November 25, 2014.	15
September 4, 2015.	19

36-23-106. Duties -- Reporting.

- (1) The committee shall:
 - (a) for each application submitted in accordance with Section 36-23-105, conduct a sunrise review in accordance with Section 36-23-107 before November 1:
 - (i) of the year in which the application is submitted, if the application is submitted on or before July 1; or
 - (ii) of the year following the year in which the application is submitted, if the application is submitted after July 1;
 - (b)
 - (i) conduct a sunset review for all statutes regarding a licensed occupation or profession under Title 58, Occupations and Professions, that are scheduled for termination under Section 63I-1-258;
 - (ii) conduct a sunset review under this Subsection (1)(b) before November 1 of the year prior to the last general session of the Legislature that is scheduled to meet before the scheduled termination date; and
 - (iii) conduct a review or study regarding any other occupational or professional licensure matter referred to the committee by the Legislature, the Legislative Management Committee, or other legislative committee.
- (2) The committee shall submit an annual written report before November 1 to:
 - (a) the Legislative Management Committee; and
 - (b) the Business and Labor Interim Committee.
- (3) The written report required by Subsection (2) shall include:
 - (a) all findings and recommendations made by the committee in the calendar year; and
 - (b) a summary report of each review or study conducted by the committee stating:
 - (i) whether the review or study included a review of specific proposed or existing statutory language;
 - (ii) action taken by the committee as a result of the review or study; and
 - (iii) a record of the vote for each action taken by the committee.



<http://le.utah.gov>

Utah State Legislature

Senate • Utah State Capitol Complex • 320 State Capitol
PO BOX 145115 • Salt Lake City, Utah 84114-5115
(801) 538-1035 • fax (801) 538-1414

House of Representatives • Utah State Capitol Complex • 350 State Capitol
PO BOX 145030 • Salt Lake City, Utah 84114-5030
(801) 538-1029 • fax (801) 538-1908

Memorandum

To: Legislative Management Committee
Business and Labor Interim Committee

From: Occupational and Professional Licensure Review Committee

Date: November 1, 2015

Re: Annual Report

Introduction

The Occupational and Professional Licensure Review Committee is composed of three members each from the Senate and House of Representatives, appointed by their respective presiding officers, and three members of the public, appointed by the President of the Senate and Speaker of the House, at least one of whom is a former member of an advisory board to the Division of Occupational and Professional Licensing (DOPL).

The committee is responsible for conducting three types of reviews regarding the licensing of occupations and professions: (1) a “sunrise” review of an application for a new occupational or professional license under Utah Code Title 58, Occupations and Professions; (2) a “sunset” review for all statutes that are scheduled for termination under Utah Code Section 63I-1-258; and (3) a review referred to the committee by the Legislature, the Legislative Management Committee, or other legislative committee.

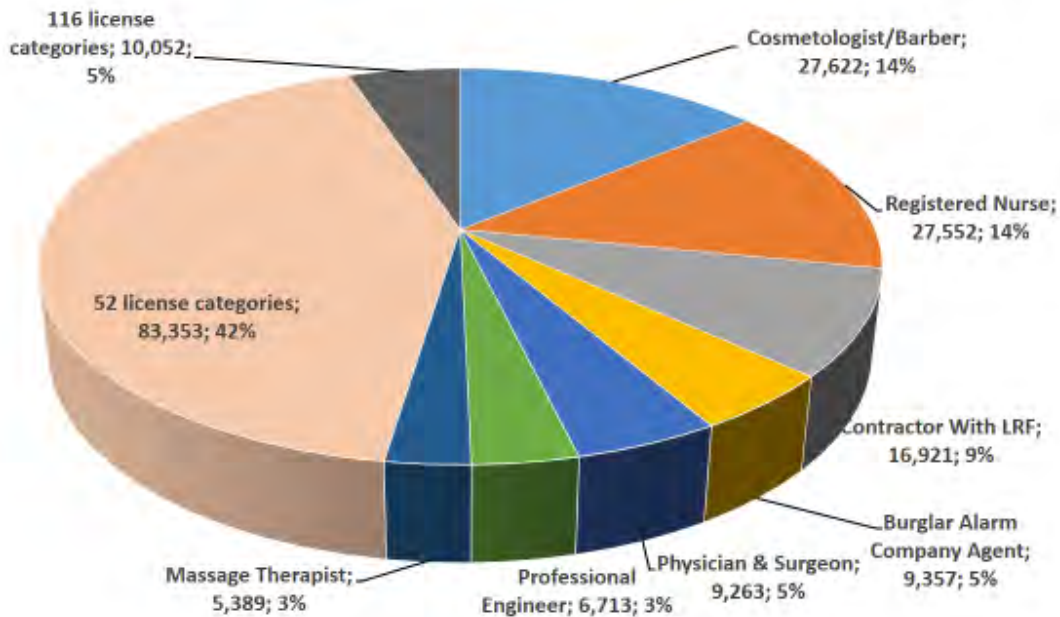
Occupational and Professional Licensing

The state licenses a wide variety of occupations and professions through several executive branch agencies, the State Board of Education, and the Utah Supreme Court. Together, these organizations, as of 2013, licensed nearly 487,000 persons or approximately 38 percent of Utah’s total labor force of 1.2 million.

The committee is charged with reviewing issues regarding licenses issued by DOPL, the largest licensing agency in the state. As of 2013, DOPL issued 174 distinct licenses

within 57 separate professions and occupations. As shown in the chart below, of the 196,222 persons licensed by DOPL in October 2013, about 53 percent of the persons were in just seven license categories, 42 percent of the persons were in 52 license categories, and five percent of the persons licensed were spread across 116 license categories.

**State of Utah
Division of Occupational and Professional Licensing
Percent and Number of all Licenses Issued by Selected License Categories**



Committee Reviews and Actions

Sunrise Reviews

In 2015, the committee did not conduct a sunrise review.

Interior Designers – In 2014, the committee received an application from Interior Design Education and Legislation for Utah for a new license for the practice of interior design. The committee reviewed the application and received public comment. The committee voted unanimously to direct staff to open a committee bill file to grant a limited exemption from the Architects Licensing Act for commercial spaces over 3,000 square feet for certain interior design professionals. At the next committee meeting, the requested draft legislation “Interior Designer Amendments” (2015FL-0406/004) was distributed. The committee discussed the draft legislation and received public comment. The committee did not take action on the draft legislation. In 2015, the committee voted (8 yes; 1 no; 0 absent) to reaffirm the committee’s actions taken in 2014.

Common Interest Community Manager – In 2014, the committee heard a presentation (but did not receive an application) from the Community Associations Institute proposing a new license for common interest community managers. The committee discussed the proposal and received public comment. The committee did not take action on this proposal.

Sunset Reviews

In 2015, the committee did not conduct a sunset review.

In 2014, the committee conducted the following three sunset reviews.

Health Facility Administrator Act – In 2014, the committee voted unanimously to reauthorize the Health Facility Administrator Act for an additional ten years. The committee voted unanimously to recommend draft legislation “Health Facility Administrator Act Reauthorization” (2015FL-0608/002) as a committee bill. 2015 General Session S.B. 27, “Health Facility Administrator Act Reauthorization,” passed extending the sunset date by ten years.

Occupational Therapy Practice Act – In 2014, the committee voted unanimously to reauthorize the Occupational Therapy Practice Act for an additional ten years. The committee voted unanimously to recommend draft legislation “Occupational Therapy Practice Act Reauthorization” (2015FL-0607/002) as a committee bill. 2015 General Session S.B. 26, “Occupational Therapy Practice Act Reauthorization,” passed extending the sunset date by ten years.

Dentist Educators – In 2014, the committee voted (7 yes; 1 no; 1 absent) to extend the sunset date of the licensing of dentist educators by two years. Accordingly, 2015 General Session S.B. 28, “Dentist Educator License Reauthorization,” was introduced but did not pass. However, 2015 General Session S.B. 92, “Dental Practice Act Amendments,” passed creating an exemption to licensure for dentist educators under certain circumstances, and repealing the section that provided for the licensure of dentist educators.

Less Restrictive Alternatives to Licensing

In 2013 General Session H.B. 75, “Occupational and Professional Licensing Amendments,” the committee was directed to study potentially less restrictive alternatives to licensing, including registration and certification.

In 2014 and 2015, the committee continued the discussion of potentially less restrictive alternatives.

In 2014, the committee voted unanimously to:

- Adopt a three-tier level of regulation for newly regulated occupations and professions with the designations of licensure, certification, and registration, in that order, from most to least restrictive;
- Begin considering ways to apply the named designations to the professions currently regulated; and
- Make recommendations about whether statutory changes should be made to adopt a three-tiered regulatory system in place of licensing.

In 2015, the committee voted (8 yes; 1 no; 0 absent) to reaffirm the action noted above.

Scope and Responsibilities of the Committee

In 2015, the committee voted unanimously to recommend draft legislation “Occupational and Professional Licensure Review Committee Amendments (2016FL-0548/004),” which modifies the responsibilities of the committee. More specifically, the legislation:

- expands the scope of the committee to include all occupations and professions, not just the occupations and professions under Title 58, which is administered by the Division of Occupational and Professional Licensure, Department of Commerce;
- authorizes the committee to conduct a review or study regarding any occupational or professional licensure matter;
- requires the committee, when conducting a sunrise or sunset review, to consider a potentially less restrictive alternative to licensing, including registration or certification, that would avoid unnecessary regulation and intrusion upon individual liberties by the state, while still protecting the health and safety of the public; and
- allows the committee to continue its study regarding less restrictive alternatives to licensure.

**MINUTES OF THE
OCCUPATIONAL AND PROFESSIONAL LICENSURE REVIEW COMMITTEE**

Tuesday, September 16, 2014 – 4:00 p.m. – Room 20 House Building

Members Present:

Sen. John L. Valentine, Senate Chair
Rep. Brian M. Greene, House Chair
Sen. Karen Mayne
Sen. Todd Weiler
Rep. Larry B. Wiley
Mr. Duane Gardner
Ms. Heather Johnston
Mr. Merlin Taylor

Members Absent:

Rep. Gregory H. Hughes

Staff Present:

Mr. Bryant R. Howe, Policy Analyst
Mr. Peter L. Asplund, Associate General Counsel
Ms. Tracey Fredman, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Valentine called the meeting to order at 4:00 p.m. and invited introductions of committee members and staff. Chair Valentine introduced himself and stated that this would be the last meeting he would chair due to his anticipated Senate confirmation in support of the nomination by Governor Herbert that he serve as chair of the Utah State Tax Commission. Many expressions of appreciation were made to Chair Valentine for his service to the Utah State Legislature by committee members and others in attendance at the meeting.

MOTION: Rep. Wiley moved to approve the minutes of the October 15, 2013, meeting. The motion passed unanimously. Sen. Weiler was absent for the vote.

2. Application for Licensure: Interior Designers

Ms. Amy Coombs, lobbyist, Interior Design Education and Legislation for Utah, introduced herself and distributed a packet containing the following handouts:

- "In Support of Interior Design Regulation,"
- text of Internet Inquisitr article "Mumbai Building Collapse: Interior Decorator Arrested for Killing 66 People,"
- a court opinion in a California designer case,
- "Architects Licensing Act," and
- student designer statistics pie charts.

Ms. Coombs indicated that there were several presenters prepared to discuss four significant arguments in support of the Interior Design Education and Legislation for Utah's (IDEAL) application for licensure, which was included in the mailing packet.

Mr. Coy Porter, State Fire Marshall, spoke in support of the application for licensure, noting the value IDEAL representatives place in providing background and education to enable interior design students to meet all code specifications for smoke and fire restrictive interior finishes and other decorative furnishings.

Ms. Jacie Johnson, Professor, Interior Design, Weber State University, indicated that she teaches a class specifically related to fire and construction codes. Ms. Johnson identified some areas in which interior design students become proficient, including codes related to finishes used on a wide variety of surfaces and furniture, as well as space planning so that emergency egresses will remain open.

Ms. Johnson responded to committee members' questions regarding the codes class curriculum and the differences between the curricula of interior design and architect programs. She also responded to questions about public safety, competition in the field of interior design, and the national certification exam administered by the National Council for Interior Design Qualification (NCIDQ).

Ms. Brianna Adams, Interior Designer, and part-time interior design educator, stated that she administers the NCIDQ exam in Utah. Ms. Adams explained that six years of combined education and interior design work experience are needed to meet eligibility requirements to take the exam. She clarified that the six years must be a combination of either a two-year associate's degree with four years of additional experience or a bachelor's degree with two years of additional experience. Ms. Adams discussed the various sections of the comprehensive exam, and the semi-annual requirement of continuing education hours to maintain NCIDQ certification.

Rep. Greene noted that one unintended consequence of licensure of interior designers may be a lack of work experience opportunities for students upon graduation. In response, Ms. Coombs stated that architects have an internship program that is similar to the interior designers' internship program.

Mr. Evan Cindrich, Commercial Interior Designer, EDA Architects, stated that current laws, such as the Architects Licensing Act, limit the ability of an interior designer to compete in the marketplace as an educated and experienced design professional. Mr. Cindrich described the scope of work he performs, including the creation of construction documents for the purpose of obtaining building permits, but noted that he is unable to legally stamp and sign those documents.

Rep. Greene asked Mr. Cindrich if registration or certification by the state would accomplish what was being sought through licensure. Rep. Greene indicated that this would require a statutory change.

Committee discussion followed about adding to Utah Code § 58-3a-304(e) an exemption from the 3,000 square foot limitation for those who have the NCIDQ certification.

Ms. Coombs supported the suggestion and noted that the national recommendation is for registration.

Ms. Kaye Christiansen Englert, American Society of Designers, Interior Design Education and Legislation Advisory Committee, discussed her professional career in interior design before the implementation of the Architects Licensing Act in 1993, and the limitations she has experienced since that time. She asked for the committee's support of the application for licensure.

Ms. Rachel Malan, student, Weber State University, spoke in support of the application for licensure for interior designers in Utah. Ms. Malan commented that states that license interior designers offer more competitive career opportunities after graduation.

There was no one who came forward to oppose the application for licensure of interior designers.

MOTION: Rep. Wiley moved that the committee direct staff to open a committee bill file to grant an exemption with authority to the Architects Licensing Act for those who have a nationally recognized certification and to provide those certified design professionals representation on the Architects Licensing Board. The motion also included conforming amendments to the respective construction and fire codes. The motion passed unanimously.

3. Sunset Review of Licensing of Dentist Educators

This item was not discussed. Chair Valentine noted that this item will be discussed at a future meeting.

4. Less Restrictive Alternatives to Licensing

This item was not discussed. Chair Valentine recommended this item be placed on an agenda for a future meeting.

5. Other Items/Adjourn

MOTION: Rep. Wiley moved to adjourn the meeting. The motion passed unanimously.

Chair Valentine adjourned the meeting at 6:01 p.m.

**MINUTES OF THE
OCCUPATIONAL AND PROFESSIONAL LICENSURE REVIEW COMMITTEE**

Tuesday, October 21, 2014 – 2:00 p.m. – Room 30 House Building

Members Present:

Sen. Todd Weiler, Senate Chair
Rep. Brian M. Greene, House Chair
Sen. Wayne A. Harper
Sen. Karen Mayne
Rep. Gregory H. Hughes
Rep. Larry B. Wiley
Mr. Duane Gardner
Ms. Heather Johnston
Mr. Merlin Taylor

Staff Present:

Mr. Bryant R. Howe, Assistant Director
Mr. Peter Asplund, Associate General Counsel
Ms. Tracey Fredman, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Greene called the meeting to order at 2:03 p.m. and announced Sen. Weiler's appointment as Senate Chair of the committee to fill the vacancy left by Sen. John L. Valentine. Chair Greene also welcomed Sen. Harper, newly appointed to the committee.

MOTION: Rep. Wiley moved to approve the minutes of the September 16, 2014, meeting. The motion passed unanimously. Sen. Mayne and Rep. Hughes were absent for the vote.

2. Sunset Review of the Licensing of Dentist Educators

Mr. Howe distributed "Sunset Review Process." Referring to the flowchart on the handout he described the legislative process of sunset reviews and how the committee's deliberations and recommendations fit into the process. Mr. Howe also distributed "Utah Code Section 36-23-107, Sunrise or sunset review – Criteria" and indicated that this section of the Utah Code contains the criteria the committee should consider when conducting a sunrise or sunset review.

Mr. Monte Thompson, Executive Director, Utah Dental Association, introduced President James Bekker, DMD, Utah Dental Association.

President James Bekker, DMD, Utah Dental Association, stated that the Utah Dentist and Dental Hygienist Licensing Board, the Utah Dental Association, and the two dental schools in the state would like to request that the Legislature extend the licensing of dentist educators. Dr. Bekker indicated that draft language, which would modify the requirements of a dentist educator, would be provided prior to the next general session for legislative consideration.

MOTION: Rep. Wiley moved that the committee recommend extending the sunset date of the licensing of dentist educators by two years.

Committee discussion followed.

SUBSTITUTE MOTION: Sen. Harper moved that the issue be placed on the next committee meeting agenda to provide staff time to research options and to allow for draft language containing the specific proposal of the stakeholders to be submitted for review by the committee.

Rep. Wiley withdrew his motion.

The committee voted on Sen. Harper's motion, which passed unanimously. Rep. Hughes was absent for the vote.

3. Sunset Review of the Health Facility Administrator Act

Mr. Dirk Anjewierden, Executive Director, Utah Health Care Association, indicated that the association represents the nursing homes throughout the state. He introduced and turned the time over to Mr. Bryan Erickson, President, Utah Health Care Association, who discussed the importance of the Health Facility Administrator Act and the need for continuing the professional administration of care facilities. Mr. Erickson asked the committee to extend the sunset date of the Health Facility Administrator Act. Mr. Anjewierden and Mr. Erickson responded to committee members' questions.

MOTION: Sen. Mayne moved that the committee recommend extending the Health Facility Administrator Act for a period of up to ten years. The motion passed unanimously. Rep. Hughes was absent for the vote.

MOTION: Sen. Mayne moved that the committee direct staff to open a bill file that will extend the Health Facility Administrator Act for a period of up to ten years. The motion passed unanimously. Rep. Hughes was absent for the vote.

4. Sunset Review of the Occupational Therapy Practice Act

Ms. Leslie Adler, Chair, Occupational Therapy Licensing Board, spoke in support of the Occupational Therapy Practice Act's renewal. She briefed committee members on the scope of services provided to the public at a minimal cost to the state through the Occupational Therapy Practice Act.

Mr. Kasey Mitchell, Government Affairs, Utah State Occupational Therapy Association, explained that occupational therapy is a health profession that works with individuals who have physical, cognitive, psychological, or developmental impairments to help them improve their function and participation in meaningful activities.

Committee discussion followed during which Ms. Adler and Mr. Mitchell responded to committee members' questions.

MOTION: Ms. Johnson moved that the committee recommend extending the sunset date of the Occupational Therapy Practice Act for an additional ten years and that staff open a bill file for this purpose. The motion passed unanimously.

Sen. Weiler asked staff to include in the mailing packet of future meetings a completed questionnaire that contains responses from the industry representatives requesting the sunrise or sunset review and that includes information identifying the compelling state interest in protecting against present, recognizable, and significant harm to the health or safety of the public, as stated in Utah Code § 36-23-107, for review and consideration prior to the meeting.

5. Modifications to the Architects Licensing Act

Mr. Asplund distributed draft legislation "Interior Designer Amendments" (2015FL-0406/004) and reviewed the discussion that took place during the previous meeting as background to the bill. Mr. Asplund introduced the provisions of the bill and responded to committee members' questions.

Ms. Amy Coombs, lobbyist, Interior Design Education and Legislation for Utah (IDEAL), stated that IDEAL members were present to show support of a bill that would give interior designers distinction and designation separate from architects within their scope of practice. She noted that the work performed by interior designers is described within the Architects Licensing Act, and is the reason the bill was drafted to modify the Architects Licensing Act rather than to create a new section. Ms. Coombs explained that interior designers are seeking to be able to practice their profession independently rather than remain subordinate to the architects profession.

Mr. Mark Steinagel, Director, Division of Occupational and Professional Licensing, articulated some of the steps generally followed in the creation of a professional license or certification by the Legislature, which include:

- defining a scope of practice;
- authorizing rulemaking authority;
- establishing an advisory board;
- identifying exemptions from licensure; and
- determining the standards of practice.

Mr. Steinagel stated that the draft legislation essentially accomplishes all of those things. Mr. Steinagel also discussed the work the division would be required to assume if the bill passed.

Ms. Patti Marrow, President, Interior Design Protection Consulting, indicated that she was speaking in behalf of five national trade associations that have members in Utah. Ms. Marrow spoke in opposition to the bill. She explained that it appeared to be a backdoor approach to licensing, which would add nothing to protect the public beyond measures already in place.

Ms. Heather Wilson, Executive Director, Utah Chapter of the American Institute of Architects, introduced Mr. Corey Solum, President, Utah Chapter of the American Institute of Architects.

Mr. Solum spoke in opposition to the draft legislation. He said there is no compelling health, welfare, or safety argument to support modification of the Architects Licensing Act and requested that the committee take no formal action in order to provide time for discussion between interior design and architect professionals.

Ms. Wilson and Mr. Solum responded to committee members' questions about the education and exam requirements for architects. Ms. Wilson distributed "Appendix A: Exam Comparator," which compares aspects of the Architect Registration Exam to the National Council for Interior Design Qualification (NCIDQ) Exam.

Mr. David Davis, President, Utah Retail Merchants Association, noted that the definition of the practice of architecture within the bill is broad and does not provide clear answers to every question that may arise in response to any given project. He urged the committee to not act on the bill at this meeting, but to allow interested groups time to participate in discussions in an effort to resolve differences.

Mr. Evan Cindrich, Commercial Interior Designer, EDA Architects, discussed projects that he has designed and completed as examples of the nature of work interior designers are trained and qualified to perform.

Mr. Hans Hoffman, architect, Hoffman Architects, and board member, Utah Architect's Licensing Board, indicated that the interior design profession is not defined within the Architects Licensing Act, as previously

stated. Mr. Hoffman commented on education and training requirements for architects, explained why the 3,000 foot exemption was put into the Architect's Licensing Act, and invited an open discussion of the issues between interested groups.

Mr. Peter Emerson, owner, EDA Architects, stated that he was not opposed to pursuing the opportunity for interior designers to have some form of recognition, certification, or license as it relates to the work they do.

Ms. Jeannie Jackson, Principal, VCBO Architecture, argued that the draft bill defines qualifications but not a scope of services that interior designers would be responsible for. She also commented on liability and enforcement issues, which would need consideration if the draft legislation moved forward.

Mr. Neil Petersen, student in interior design, stated that many graduates in the field of interior design are moving out of state because they cannot get the jobs they seek in Utah.

Mr. Gary Sheffield, past President, National Kitchen and Bath Association, commented on his own professional experience over many years and frankly stated that it seems narrow minded to think that only someone who is NCIDQ certified is qualified to do interior design work.

Ms. Coombs offered concluding comments in support of the efforts being made by IDEAL.

Chair Greene noted that resolution of the issues will clearly require the cooperation and involvement of all interested groups.

Sen. Weiler stated that he is not prepared to make the draft legislation a committee bill.

MOTION: Sen. Weiler moved to adjourn the meeting.

Before voting on the motion to adjourn, the committee agreed to meet next on Tuesday, November 18, 2014, at 4:00 p.m. Sen. Harper indicated he would not be available that week.

6. Less Restrictive Alternatives to Licensing

This agenda item was not discussed.

7. Adjourn

Chair Greene called for a vote on the motion to adjourn. The motion passed with Chair Green and Mr. Gardner voting in opposition.

Chair Greene adjourned the meeting at 5:02 p.m.

**MINUTES OF THE
OCCUPATIONAL AND PROFESSIONAL LICENSURE REVIEW COMMITTEE**

Tuesday, November 25, 2014 – 2:00 p.m. – Room 30 House Building

Members Present:

Sen. Todd Weiler, Senate Chair
Rep. Brian M. Greene, House Chair
Sen. Wayne A. Harper
Sen. Karen Mayne
Rep. Larry B. Wiley
Mr. Duane Gardner
Ms. Heather Johnston
Mr. Merlin Taylor

Members Absent:

Rep. Gregory H. Hughes

Staff Present:

Mr. Bryant R. Howe, Assistant Director
Mr. Peter Asplund, Associate General Counsel
Ms. Tracey Fredman, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Weiler called the meeting to order at 9:09 a.m.

MOTION: Rep. Greene moved to approve the minutes of the October 21, 2014, meeting with the following technical changes:

1. Change the location of the meeting to Room 30 House Building, and
2. Change the motion under Agenda Item #1 to reflect approval of the minutes of the September 16, 2014, meeting.

The motion passed unanimously. Sen. Harper was absent for the vote.

2. Sunset Review of the Licensing of Dentist Educators

Mr. Asplund distributed a memo dated November 20, 2014, from Mr. Monte Thompson, Director, Utah Dental Association, regarding "Sunset Review of UCA 58-69-302.5."

Mr. Asplund reviewed the committee's discussion on this issue during its October 21, 2014, meeting. He said that the Utah Dental Association presented reasons for seeking support to extend the sunset date of the licensing of dentist educators. Mr. Asplund indicated that at the time of the October meeting, no one was then holding a dentist educator license, but since that time one dentist educator license has been granted.

Mr. Mark Steinagel, Director, Division of Occupational and Professional Licensing, responding to questions from the committee, indicated that there has been only one application for a dentist educator license.

MOTION: Sen. Mayne moved to extend the sunset of the licensing of dentist educators for two years.

Committee discussion followed.

SUBSTITUTE MOTION: Sen. Harper moved to amend the original motion to extend the sunset of the licensing of dentist educators to one year, rather than two. The motion failed with Sen. Harper, Rep. Wiley, Mr. Gardner, and Ms. Johnston voting in favor.

Chair Weiler called for a vote on the original motion, which passed with Sen. Harper voting in opposition.

MOTION: Sen. Mayne moved that the committee direct staff to open a bill file to extend the sunset of the licensing of dentist educators for two years. The motion passed unanimously.

Mr. Asplund said that staff will consider this motion to be a motion to adopt this legislation as a committee bill.

3. Sunset Review of the Health Facility Administrator Act

Mr. Asplund referred committee members to draft legislation "Health Facility Administrator Act Reauthorization (2015FL-0608/002), which was distributed in the mailing packet, and noted that the bill extends the repeal date of the Health Facility Administrator Act for ten years.

MOTION: Mr. Gardner moved to recommend draft legislation "Health Facility Administrator Act Reauthorization" as a committee bill. The motion passed unanimously.

4. Sunset Review of the Occupational Therapy Practice Act

Mr. Asplund referred committee members to draft legislation "Occupational Therapy Practice Act Reauthorization" (2015FL-0607), which was distributed in the mailing packet, and indicated that the bill extends the repeal date of the Occupational Therapy Practice Act for ten years.

Mr. Kasey Mitchell, Government Affairs, Utah State Occupational Therapy Association, expressed gratitude to the committee for hearing and supporting the association through the legislation.

MOTION: Sen. Harper moved to recommend draft legislation "Occupational Therapy Practice Act Reauthorization" as a committee bill. The motion passed unanimously.

5. Common Interest Community Manager Registration Act

Mr. Craig Moody, lobbyist, Community Associations Institute, introduced Mr. Michael Johnson, President/CEO, FCS Community Management, to the committee.

Mr. Johnson distributed "Community Manager Registration Proposal" and briefed committee members about the public safety risks facing the industry of community associations, including:

- Mismanagement and comingling of funds between community associations;
- Embezzlement;
- Improper insurance coverage;
- Noncompliance with federal, state, and local community association laws; and
- Inability of owners and purchasers to obtain funding due to poor management of some associations.

Mr. Jason Sucher, owner, Advantage Management and Real Estate Services, and Mr. David D. Morris, partner, Morris Sperry, discussed two specific situations within the local industry, which illustrated some of the concerns Mr. Johnson highlighted. One of the examples Mr. Morris cited illustrated the types of structural problems that can and do arise due to poor management and lack of planning, and the effect these problems have on consumers. He argued that many problems could be lessened by sufficient regulation, which would necessarily result in better overall management.

Committee discussion followed during which Mr. Johnson indicated that the community associations are

seeking registration through the Division of Occupational and Professional Licensing because such registration does not appear to fall under the purview of the Division of Real Estate.

Rep. Greene said it would be beneficial for the committee to know the position of the Division of Real Estate regarding the need for this type of regulation.

Mr. Steinagel noted that in light of the discussion and the sample language provided in "Common Interest Community Manager Registration Act," which was distributed in the mailing packet, it appears that what is being asked for is more closely related to a license compared to registration.

Chair Weiler relinquished the chair to Rep. Greene.

Mr. John Richards, attorney, spoke in support of the Common Interest Community Manager Registration Act, stating that an untrained manager can potentially do a great deal of harm.

Chair Greene relinquished the chair to Sen. Weiler.

MOTION: Mr. Taylor moved to take the next step to moving toward fulfillment of the Community Associations Institute's request.

Mr. Asplund outlined what the possible next steps could be.

AMENDED MOTION: Mr. Taylor amended the motion to add a sunrise review of the Common Interest Community Manager Registration Act. The motion failed with Mr. Taylor and Sen. Mayne voting in favor.

6. Less Restrictive Alternatives to Licensing

Mr. Howe distributed and reviewed information contained in a packet, which included:

- "Utah Code Title 58 – Occupations and Professions: Number of Persons Licensed Under Each License Category;"
- "Number of Persons Licensed by Profession or Occupation;"
- "Less Restrictive Alternatives to Licensing;" and
- "Rent seeking."

Mr. Howe also distributed and commented on "Possible Options for Regulating the Practice of an Occupation or Profession."

Rep. Greene distributed "The Occupational Licensing Relief and Job Creation Act – ALEC – American Legislative Exchange Council." He indicated that the handout defines licensure, certification, and registration and may provide a starting point for the committee to classify or define three levels of regulation.

Mr. Howe indicated that the committee is not required to wait for a statute to come up for sunset review before it can be reviewed.

MOTION: Rep. Greene moved that the committee do the following:

- Adopt a three-tier level of regulation with the designations of licensure, certification, and registration, in that order from most to least restrictive;
- Begin applying the above named designations to the professions currently regulated; and
- Make recommendations about whether statutory changes should be made to adopt a level of regulation in place of licensing.

The motion passed unanimously. Sen. Harper was absent for the vote.

7. Other Items / Adjourn

Chair Weiler recognized Rep. Wiley for his years of service to the Utah State Legislature and to the Occupational and Professional Licensure Review Committee.

MOTION: Mr. Duane Gardner moved to adjourn the meeting. The motion passed unanimously.

Chair Weiler adjourned the meeting at 11:33 a.m..

**MINUTES OF THE
OCCUPATIONAL AND PROFESSIONAL LICENSURE REVIEW COMMITTEE**

Friday, September 4, 2015 – 9:00 a.m. – Room 20 House Building

Members Present:

Sen. Todd Weiler, Cochair
Rep. Brian M. Greene, Cochair
Sen. Wayne A. Harper
Sen. Karen Mayne
Rep. Susan Duckworth
Rep. Jon E. Stanard
Mr. Duane Gardner
Ms. Heather Johnston
Mr. Merlin Taylor

Staff Present:

Mr. Joseph T. Wade, Policy Analyst
Mr. Peter Asplund, Associate General Counsel
Ms. Tracey Fredman, Legislative Assistant

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Weiler called the meeting to order at 9:05 a.m.

MOTION: Mr. Merlin Taylor moved to approve the minutes of the November 25, 2014, meeting. The motion passed unanimously. Sen. Mayne and Rep. Stanard were absent for the vote.

2. Statutory Duties of the Committee

Mr. Wade distributed and reviewed "Statutory Duties of the Committee." He indicated that the committee is required to:

- meet at least twice each year before November 1;
- approve a sunrise application form;
- conduct a sunrise review for each sunrise application received;
- conduct a sunset review for each occupation or profession in Title 58 that is scheduled for termination;
- conduct a study or review of matters referred to the committee; and
- submit an annual report by November 1 of each year.

Rep. Greene asked that an updated application for licensure be provided to the committee for approval.

Mr. Asplund reviewed and briefed committee members on the outcomes of recommendations made by the committee in the November 25, 2014, meeting, including:

- a motion to extend the sunset of the licensing of dentist educators for two years;
- the reauthorization of the Occupational Therapy Practice; and
- the reauthorization of the Health Facility Administrator Act.

MOTION: Rep. Greene moved to reaffirm the actions and recommendations made in the previous year that have not yet been completed, and that those reaffirmed actions be included in the 2015 annual committee report. The motion passed with Rep. Stanard voting in opposition.

3. U.S. Supreme Court Case Regarding Licensing

Mr. Asplund presented an overview of *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, which was provided in the mailing packet prior to the meeting.

4. Three Tiers of Licensing

Rep. Greene distributed "The Occupational Board Reform Act, Model Legislation" and noted that the legislation is a model prepared in response to the *North Carolina State Board of Dental Examiners v. Federal Trade Commission* case. Rep. Greene reviewed the definitions of licensure, certification, and registration as defined in the document.

Committee discussion followed about the three tiers of licensing, as defined.

Mr. Mark Steinagel, Director, Division of Occupational Licensing, suggested that in addition to licensure, certification, and registration, the committee may consider exemption from licensure, which addresses the issue of policy without creating more regulation, and sometimes saying "No" to a request for licensure.

Mr. John Hill, Rocky Mountain Gas Association, expressed concern about the adoption of a definition that would allow a noncertified heating contractor to work on an appliance that is natural gas fired due to carbon monoxide safety issues.

Mr. Connor Boyak, President, Libertas Institute, spoke in support of the tiered licensing proposal and encouraged a continued exploration of ways to decrease the requirement for licensure and allow consumers to make informed choices.

No action was taken on this item. Rep. Greene asked that committee staff begin working on documenting the discussed framework of the tiered licensing proposal that can be developed into a bill and presented to the committee for further discussion.

5. Scope of the Committee

Mr. Asplund referred committee members to "Occupational and Professional Licensure Review Committee Act, Title 36, Chapter 23," which was distributed in the mailing packet prior to the meeting. Mr. Asplund noted that there are many professions that are not under Title 58, and that if professions do not want to go through the application process they can seek to put their licensure in a different title of the code.

MOTION: Rep. Greene moved that the committee open a bill file to address the issue of expanding the scope of the committee to include other sunrise review or similar types of licenses that are not under Title 58. The motion passed unanimously. Sen. Harper was absent for the vote.

6. Standards for Determining Unlawful or Unprofessional Conduct

Mr. Asplund presented an overview of *Monica Cecilia Cook v. Department of Commerce*, which was distributed in the mailing packet prior to the meeting.

Mr. Steinagel did not comment on the case. He did, however, explain briefly how the division determines the severity of cases they will investigate.

No action was taken on this item.

7. Future Meetings

The next meeting was scheduled for Thursday, October 22, 2015, at 9:00 a.m.

8. Other Items / Adjourn

MOTION: Rep. Stanard moved to adjourn the meeting. The motion passed unanimously. Sen. Harper was absent for the vote.

Chair Weiler adjourned the meeting at 11:15 a.m.