
**SELECTED PROVISIONS: WORKERS' COMPENSATION FUND, A QUASI-PUBLIC CORPORATION,
AND PAYMENTS TO MEMBERS OF ITS BOARD OF DIRECTORS FOR THEIR OFFICIAL DUTIES**

31A-33-101. Definitions.

As used in this chapter: . . .

(4) "Fund" and "Workers' Compensation Fund" mean the nonprofit, quasi-public corporation established by this chapter.

31A-33-102. Establishment of the Workers' Compensation Fund and the Injury Fund.

(1) (a) There is created a nonprofit, quasi-public corporation to be known as the Workers' Compensation Fund created by this chapter.

(b) The purpose of the fund is to:

(i) insure Utah employers against liability for compensation based on job-related accidental injuries and occupational diseases; and

(ii) assure payment of this compensation to Utah employees who are entitled to it under Title 34A, Chapters 2, Workers' Compensation Act, and 3, Utah Occupational Disease Act.

(2) (a) There is created an Injury Fund, which shall be maintained by the Workers' Compensation Fund. . .

31A-33-103. Legal nature of Workers' Compensation Fund.

(1) The Workers' Compensation Fund is:

(a) a nonprofit, self-supporting, quasi-public corporation; and

(b) a legal entity, that may sue and be sued in its own name.

(2) All of the business and affairs of the corporation shall be conducted in the name of the Workers' Compensation Fund or if conducted through a subsidiary, such other corporate names that comply with state law.

31A-33-104. Workers' Compensation Fund exempted.

(1) The Workers' Compensation Fund is exempt from the provisions of:

(a) Title 52, Chapter 4, Open and Public Meetings Act;

(b) Title 63, Chapter 2, Government Records Access and Management Act; and

(c) Title 63A, Utah Administrative Services Code.

(2) The board may specifically exempt the Workers' Compensation Fund from any provisions of:

(a) Title 67, Chapter 19, Utah State Personnel Management Act; and

(b) Title 63, Chapter 56, Utah Procurement Code.

(3) The provisions of Title 63, Chapter 46b, Administrative Procedures Act, do not govern the initial determination of any person's eligibility for benefits under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act.

31A-33-106. Board of directors -- Status of the fund in relationship to the state.

(1) There is created a board of directors of the Workers' Compensation Fund.

(2) The board shall consist of seven directors.

(3) Subject to Subsection (8), one director:

(a) (i) shall be the executive director of the Department of Administrative Services or the executive director's designee; and

(ii) acts as the representative of the state as a policyholder of the Workers' Compensation Fund; or

(b) is a public director appointed in accordance with Subsection (8)(b).

(4) One director shall be the chief executive officer of the fund.

(5) (a) In accordance with a plan that meets the requirements of this section, the governor, with the consent of the Senate, shall appoint five public directors as follows:

(i) three directors who are owners, officers, or employees of policyholders other than the state, each of whom is an owner, officer, or employee of a policyholder that has been insured by the Workers' Compensation Fund for at least one year before the appointment of the director representing the policyholder; and

(ii) two directors from the public in general.

(b) The plan described in Subsection (5)(a) shall comply with Section 31A-5-409 to the extent that Section 31A-5-409 does not conflict with this section.

(6) No two directors may represent or be employed by the same policyholder.

(7) At least four directors appointed by the governor shall have had previous experience in:

(a) the actuarial profession;

(b) accounting;

(c) investments;

(d) risk management;

(e) occupational safety;

(f) casualty insurance; or

(g) the legal profession.

(8) (a) Any director who represents a policyholder that fails to maintain workers' compensation insurance through the Workers' Compensation Fund shall immediately resign from the board, including the executive director of the Department of Administrative Services or the executive director's designee if the state is no longer insured by the Workers' Compensation Fund pursuant to Section 34A-2-203.

- (b) (i) If the state is no longer insured by the Workers' Compensation Fund pursuant to Section 34A-2-203, the governor with the consent of the Senate, shall appoint a public director to replace the executive director of the Department of Administrative Services or the executive director's designee.
- (ii) The public director appointed under this Subsection (8)(b) shall:
- (A) be an owner, officer, or employee of a policyholder that has been insured by the Workers' Compensation Fund for at least one year before the appointment of the director representing the policyholder;
- (B) have previous experience described in Subsection (7); or
- (C) be the director of the Governor's Office of Economic Development.
- (c) Once the executive director of the Department of Administrative Services or the executive director's designee is not a member of the board under Subsection (3), the state shall have a member on the board to represent the state as a policyholder only if the member is appointed in accordance with Subsection (5) or (8)(b).
- (9) A person may not be a director if that person:
- (a) has any interest as a stockholder, employee, attorney, or contractor of a competing insurance carrier providing workers' compensation insurance in Utah;
- (b) fails to meet or comply with the conflict of interest policies established by the board; or
- (c) is not bondable.
- (10) After notice and a hearing, the governor may remove any director for cause which includes:
- (a) neglect of duty; or
- (b) malfeasance.
- (11) (a) Except as required by Subsection (11)(b), the term of office of the directors appointed by the governor shall be four years, beginning July 1 of the year of appointment.
- (b) Notwithstanding the requirements of Subsection (11)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of directors are staggered so that approximately half of the board is appointed every two years.
- (12) Each director shall hold office until the director's successor is appointed and qualified.
- (13) When a vacancy occurs in the membership of the board for any reason, the replacement shall be appointed for the unexpired term.
- (14) The board shall annually elect a chair and other officers as needed from its membership.
- (15) (a) The board shall meet at least quarterly at a time and place designated by the chair.
- (b) The chair:
- (i) may call board meetings more frequently than quarterly; and
- (ii) shall call additional board meetings if requested to do so by a majority of the board.
- (16) Four directors are a quorum for the purpose of transacting all business of the board.
- (17) Each decision of the board requires the affirmative vote of at least four directors for approval.
- (18) (a) Directors shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the director's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- (b) Directors may decline to receive per diem and expenses for their service.
- (c) The fund shall pay the per diem allowance and expenses from the Injury Fund upon vouchers drawn in the same manner as the Workers' Compensation Fund pays its normal operating expenses.
- (d) The following shall serve on the board without a per diem allowance:
- (i) the executive director of the Department of Administrative Services, or the executive director's designee;
- (ii) the chief executive officer of the Workers' Compensation Fund; and
- (iii) the director of the Governor's Office of Economic Development if appointed under Subsection (8).
- (19) The requirement that the governor, with the consent of the Senate, appoint the directors of the Workers' Compensation Fund specified in Subsection (5) or (8), does not:
- (a) remove from the board of directors the managerial, financial, or operational control of the Workers' Compensation Fund;
- (b) give to the state or the governor managerial, financial, or operational control of the Workers' Compensation Fund;
- (c) consistent with Section 31A-33-105, cause the state to be liable for any:
- (i) obligation of the Workers' Compensation Fund; or
- (ii) expense, liability, or debt described in Section 31A-33-105;
- (d) alter the legal status of the Workers' Compensation Fund as:
- (i) a nonprofit, self-supporting, quasi-public corporation; and
- (ii) an insurer:
- (A) regulated under this title;
- (B) that is structured to operate in perpetuity; and
- (C) domiciled in the state; or
- (e) alter the requirement that the Workers' Compensation Fund provide workers' compensation:
- (i) for the purposes set forth in Section 31A-33-102;
- (ii) consistent with Section 34A-2-201; and
- (iii) as provided in Section 31A-22-1001.

31A-33-107. Duties of board -- Creation of subsidiaries -- Entering into joint enterprises.

- (1) The board shall:
 - (a) appoint a chief executive officer to administer the Workers' Compensation Fund;
 - (b) receive and act upon financial, management, and actuarial reports covering the operations of the Workers' Compensation Fund;
 - (c) ensure that the Workers' Compensation Fund is administered according to law;
 - (d) examine and approve an annual operating budget for the Workers' Compensation Fund;
 - (e) serve as investment trustees and fiduciaries of the Injury Fund;
 - (f) receive and act upon recommendations of the chief executive officer;
 - (g) develop broad policy for the long-term operation of the Workers' Compensation Fund, consistent with its mission and fiduciary responsibility;
 - (h) subject to Chapter 19a, Part 4, Workers' Compensation Rates, approve any rating plans that would modify a policyholder's premium;
 - (i) subject to Chapter 19a, Part 4, Workers' Compensation Rates, approve the amount of deviation, if any, from standard insurance rates;
 - (j) approve the amount of the dividends, if any, to be returned to policyholders;
 - (k) adopt a procurement policy consistent with the provisions of Title 63, Chapter 56, Utah Procurement Code;
 - (l) develop and publish an annual report to policyholders, the governor, the Legislature, and interested parties that describes the financial condition of the Injury Fund, including a statement of expenses and income and what measures were taken or will be necessary to keep the Injury Fund actuarially sound;
 - (m) establish a fiscal year;
 - (n) determine and establish an actuarially sound price for insurance offered by the fund;
 - (o) establish conflict of interest requirements that govern the board, officers, and employees; and
 - (p) perform all other acts necessary for the policymaking and oversight of the Workers' Compensation Fund.
- (2) Subject to board review and its responsibilities under Subsection (1)(e), the board may delegate authority to make daily investment decisions.
- (3) The fund may form or acquire a subsidiary or enter into a joint enterprise:
 - (a) only if that action is approved by the board; and
 - (b) subject to the limitations in Section 31A-33-103.5.

31A-33-109. Liability limited.

- (1) No officer or employee of the Workers' Compensation Fund is liable in a private capacity for any act performed or obligation entered into when done in good faith, without intent to defraud, and in an official capacity in connection with the administration, management, or conduct of the Workers' Compensation Fund or affairs relating to it.
- (2) Subject to the director's fiduciary responsibility as established by Section 31A-33-106, no director of the Workers' Compensation Fund is liable in a private capacity for any act performed or obligation entered into when done in good faith, without intent to defraud, and in an official capacity in connection with the administration, management, or conduct of the Workers' Compensation Fund or affairs relating to it.

63A-3-106. Per diem rates for state officers and employees.

Subject to approval by the executive director, the director of the Division of Finance shall establish per diem rates for all state officers and employees of the executive branch, except officers and employees of higher education, to meet subsistence expenses for attendance at official meetings.

63E-1-102. Definitions.

As used in this title: . . .

- (3) "Independent corporation" means a corporation incorporated in accordance with Chapter 2, Independent Corporations Act.
- (4) (a) "Independent entity" means an entity having a public purpose relating to the state or its citizens that is individually created by the state or is given by the state the right to exist and conduct its affairs as an:
 - (i) independent state agency; or
 - (ii) independent corporation.
- (b) "Independent entity" includes the:
 - (i) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;
 - (ii) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority;
 - (iii) Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah Science Center Authority;
 - (iv) Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing Corporation Act;
 - (v) Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State Fair Corporation Act;
 - (vi) Workers' Compensation Fund created in Title 31A, Chapter 33, Workers' Compensation Fund;
 - (vii) Utah State Retirement Office created in Title 49, Chapter 11, Utah State Retirement Systems Administration;
 - (viii) School and Institutional Trust Lands Administration created in Title 53C, Chapter 1, Part 2, School and Institutional Trust Lands Administration;
 - (ix) Utah Communications Agency Network created in Title 63C, Chapter 7, Utah Communications Agency Network Act; and
 - (x) Utah Capital Investment Corporation created in Title 63, Chapter 38f, Part 12, Utah Venture Capital Enhancement Act.
- (c) Notwithstanding this Subsection (4), "independent entity" does not include:
 - (i) the Public Service Commission of Utah created in Section 54-1-1;
 - (ii) an institution within the state system of higher education;
 - (iii) a city, county, or town;

- (iv) a local school district;
 - (v) a special district created under the authority of Title 17A, Special Districts; or
 - (vi) a local district created under the authority of Title 17B, Limited Purpose Local Government Entities.
- (5) "Independent state agency" means an entity that is created by the state, but is independent of the governor's direct supervisory control. . . .
- (8) "Quasi-public corporation" means an artificial person, private in ownership, individually created as a corporation by the state which has accepted from the state the grant of a franchise or contract involving the performance of a public purpose relating to the state or its citizens.

63E-2-102. Independent corporations.

An independent corporation is granted a franchise to incorporate in this state in accordance with this title and its authorizing statute.

63E-2-103. Public purpose -- Legislative findings.

- (1) Each independent corporation shall have a specific public purpose related to the state or its citizens stated in its authorizing statute. . . .

63E-2-105. Boards.

- (1) As used in this section, "director" includes a trustee or other board member.
- (2) Each independent corporation shall be governed by a board of directors.
- (3) The authorizing statute of each independent corporation shall specify:
 - (a) the process for appointing, removing, and replacing directors;
 - (b) the number and terms of office for directors;
 - (c) the board chair selection procedure;
 - (d) board quorum requirements;
 - (e) director qualifications; and
 - (f) the duties and fiduciary responsibilities of directors.

63E-2-106. Powers.

Except as specifically modified in its authorizing statute, each independent corporation shall have the power to:

- (1) exist as a:
 - (a) public corporation; or
 - (b) quasi-public corporation;
- (2) perform its stated public purpose;
- (3) sue and be sued in its own name;
- (4) retain and be represented by legal counsel independent of the attorney general;
- (5) create foundations or subsidiaries;
- (6) act in accordance with all other powers granted in its authorizing statute and by duly issued license or franchise;
- (7) act in all ways as a nonprofit corporation established under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, that do not conflict with:
 - (a) this title;
 - (b) the authorizing statute of the independent corporation; or
 - (c) statutes and regulations to which the independent corporation is subject.

63E-2-107. Prohibited participation.

Except as specifically modified in its authorizing statute, each independent corporation may not participate in the:

- (1) issuance of bonds that are the obligation of the state; or
- (2) services provided to state agencies, including:
 - (a) fuel dispensing;
 - (b) motor pool services;
 - (c) surplus property services;
 - (d) risk management coverage;
 - (e) information technology services; or
 - (f) archive services.

63E-2-108. Eligible participation.

Except as specifically modified in its authorizing statute, each independent corporation may participate in the state retirement system.

63E-2-109. State statutes.

- (1) Except as specifically modified in its authorizing statute, each independent corporation shall be exempt from the statutes governing state agencies, including:
 - (a) Title 51, Chapter 5, Funds Consolidation Act;
 - (b) Title 51, Chapter 7, State Money Management Act;
 - (c) Title 63, Chapter 38, Budgetary Procedures Act;
 - (d) Title 63, Chapter 38a, Revenue Procedures and Control Act;
 - (e) Title 63, Chapter 46a, Utah Administrative Rulemaking Act;
 - (f) Title 63, Chapter 46b, Administrative Procedures Act;
 - (g) Title 63, Chapter 56, Utah Procurement Code;

- (h) Title 63A, Utah Administrative Services Code; and
- (i) Title 67, Chapter 19, Utah Personnel Management Act.
- (2) Except as specifically modified in its authorizing statute, each independent corporation shall be subject to:
 - (a) Title 52, Chapter 4, Open and Public Meetings Act; and
 - (b) Title 63, Chapter 2, Government Records Access and Management Act.
- (3) Each independent corporation board may adopt its own policies and procedures governing its:
 - (a) funds management;
 - (b) audits; and
 - (c) personnel.