

Approved: January 25, 1999  
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE .

The meeting was called to order by Chairperson Senator Don Steffes at 9:00 a.m. on January 21, 1999, in Room 529 S of the Capitol.

All members were present except:

Committee staff present: Dr. Bill Wolff, Research  
Ken Wilke, Office of Revisor  
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: David Brant, Commissioner of Securities and Acting  
Commissioner of Consumer Credit  
Judi Stork, Acting Bank Commissioner  
Cary Hiner

Others attending: See Attached

Dr. Bill Wolff, Legislative Research, presented the Committee with copies of Characteristics of State Banking Boards of 28 states (Attachment 1). The comparative study contains statutes regarding the qualifications and/or restrictions for State Bank Commissioners as required by the various states reporting. Twenty-three states operate with no bank board and seventeen states have no Bank Commissioner. In most of these cases, the bank department is under the auspices of either a financial regulatory umbrella or part of another division.

David Brant, Acting Commissioner of Consumer Credit, explained that the statutorily required Advisory Board for Consumer Credit was abolished sometime ago but he has reinstated a voluntary Advisory Board. Consumer Credit is the regulatory agency for finance companies, second mortgage companies, pay day loan companies, car loan and credit card providers, as well as any other company (other than banks or savings and loans) offering credit. There are no formal criteria for choosing members of the Advisory Board.

Judi Stork, Acting State Bank Commissioner, reported that the FDIC insures all banks but alternates its annual exams with the state or federal exams, depending upon the type bank. Regulation through FDIC may eliminate the need for bank boards. Federal banks are examined by the Office of the Controller of the Currency and FDIC may or may not be on a regular examining schedule.

Cary Hiner, a retired executive after 30 years with FDIC in various capacities, presented his opinions and observations on the current regulations regarding the selection of Bank Commissioners for Kansas. He disagrees with the necessity for the Bank Commissioner to be an active banker. It is not the responsibility of the State Bank Commissioner to protect state-chartered banking institutions from the FDIC; his responsibility is to the citizens of the state. It may be necessary to sacrifice business for the protection of private citizens rather than work always for the stockholder. There is a tendency for chartered institutions to seek help from the chartering department in times of crisis. The most successful bank departments develop policies that guide the department in making decisions regarding regulatory policies to deal with chartered bank powers. They need policies to deal with insurance, securities, and commercial credit. The bank department should have adequate staffs who are well trained and competitively compensated.

The Committee discussed at length what exact points the proposed legislation should address: broadening or eliminating qualifications for position of Bank Commissioner, perceived or actual conflicts of interest, require full-time attention and responsibility to the position, fold Consumer Credit Department into banking department, appointment of Deputy Bank Commissioner to oversee Consumer Credit, change the configuration of the Bank Board to accommodate Consumer Credit interest, possible establishment of an umbrella agency for existing financial regulatory departments. Also discussed was the option of doing nothing to change the current system.

CONTINUATION SHEET

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

Judi Stork was asked to return to the Committee on Monday, January 25, to explain the advisory and/or policy making functions of the State Bank Board.

Senator Corbin made a conceptual motion for the introduction of legislation which would broaden the qualifications (eliminate the requirement of being an active banker with at least five years experience as an officer in a state-chartered bank) for Bank Commissioner and require the position to be viewed as full time. The motion was seconded by Senator Biggs. Motion carried.

The meeting was adjourned at 10:00 a.m. The next meeting is scheduled for January 25, 1999.

SENATE FINANCIAL INSTITUTIONS AND INSURANCE  
COMMITTEE GUEST LIST

DATE: 1/21

NAME	REPRESENTING
Judi Stork	OSBC
CARY HINER	-
Kevin Glendening	OSBC
Sonya Allen	OSBC
Kathy Oker	KBA
Sue Schmeler	KCUA
Vicci Short	Flinthill Leadership
Laurel Kelley	Flinthill Leadership
K. Trautz	KGC
Marc Hamann	DIVISION OF THE BUDGET
BRIAN WOTLER	FUNT HILLS LEADERSHIP
Chuck Stones	KBA
Ray Kay	House FI
Phyllis Rein	KCA & KANA
Tom Laches	McGill Center's Asso.
Debby Fleming	Federico Consulting
Alan Steppat	CBA
Joe Humphreys	Home FI
Sue Anderson	CBA

Matt Goddard

KCBA



## Characteristics of State Banking Boards

According to the Conference of State Bank Supervisors in *A Profile of State Chartered Banking*, 1996:

- 28 states have banking boards
  - 11 are listed as policy-making
  - 12 are listed as advisory
  - 3 are listed as policy-making and advisory
  - 1 appellate board only
  - 1 did not report function
  
- 23 states have no board

## Qualifications for State Bank Commissioner - Options

Each of the following options are in current use in one or more of the states listed as an example for the particular qualification or qualifications as provided by the various state banking departments to the Conference of State Bank Supervisors and compiled in *A Profile of State Chartered Banking*, sixteen edition, 1996.

- At least \_\_\_\_\_ years experience as an officer in a state or national bank, an examiner, or other officer in a federal or state bank supervisory agency (Examples: Alabama, Arkansas, Georgia, Idaho, Iowa, Maryland, Missouri, Ohio, Oklahoma, Tennessee and Wyoming)
- Experienced in the theory and practice of the business of banks and trust companies (Example: Illinois)
- \_\_\_\_\_ years experience as one of the following: an accountant with a degree in accounting from an accredited institution; an attorney licensed to practice law within the state; a certified licensed agent, broker, or principal who is registered as such in this state, or an officer of a financial institution (Example: Louisiana)
- Must have practical experience in banking, savings and loan associations or other financial institutions. ~~Shall devote his entire time and attention to the business of his office~~ (Example: Nevada)
- State resident; not indebted to or invested in any regulated entity; no affiliation in any corporation selling or negotiating loans, stocks, or securities (Example: New Hampshire)
- Sufficient experience as an executive officer in a bank or service in a banking supervisory authority (Example: Wisconsin)
- None (17 states)



**Article - Financial Institutions**

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**§ 2-110.**

- (a) The Commissioner and Deputy Commissioner shall devote full time to their duties.
- (b) The Commissioner and Deputy Commissioner may not:
  - (1) Be an officer or director of any State banking institution or national banking association, or in any entity engaged in the business of making loans; or
  - (2) Engage in any other business relating to banks and financial institutions or lending.
- (c) Directors and officers of financial institutions shall develop and implement, by December 31, 1989, written:
  - (1) Real estate appraisal policies; and
  - (2) Procedures pertaining to the hiring and performance of real estate appraisers.
- (d) The procedures required under subsection (c)(2) of this section shall set forth specific factors to be considered by the financial institution's directors and officers, including but not limited to:
  - (1) Whether the appraiser is licensed or certified under the Business Occupations and Professions Article; and
  - (2) The real estate appraiser's:
    - (i) Professional education; and
    - (ii) Experience in real estate appraising.
- (e) Real estate appraisal policies and procedures shall be submitted by the financial institutions to the Commissioner for review and approval.

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## Article - Financial Institutions

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### § 2-202.

(a) The Banking Board consists of the following nine members:

(1) The State Comptroller; and

(2) Eight members appointed by the Governor, with the advice of the Secretary of Labor, Licensing, and Regulation.

(b) (1) Of the eight appointed members:

(i) Three shall represent the Maryland Bankers Association;

(ii) One shall be an economist;

(iii) One shall be a certified public accountant;

(iv) One shall represent consumer interests; and

(v) Two shall be public members.

(2) The Governor shall appoint the members under paragraph (1)(i) of this subsection from a list of qualified individuals submitted to the Governor by the Maryland Bankers Association. The number of names on the list shall be at least three times the number of vacancies.

(3) A member appointed under paragraph (1)(ii) through (v) of this subsection may not be employed by any banking institution.

(c) (1) The term of an appointed member is 6 years.

(2) The terms of members are staggered as required by the terms provided for members of the Board on July 1, 1981.

(3) At the end of a term, an appointed member continues to serve until a successor is appointed and qualifies.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(d) A member of the Banking Board:

(1) May not receive compensation; but

(2) Is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

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**287.013 Financial Institutions Board -- Duties.**

- (1) There is created a Financial Institutions Board. The board shall consist of twelve (12) members appointed by the Governor who shall serve terms of four (4) years, except the initial terms shall be established as hereafter provided. It is recommended that the board appointments made by the Governor be selected from the following:
  - (a) Three (3) members selected from the banking industry regulated by the department with appropriate recognition as to bank size and geographic diversity;
  - (b) Three (3) members selected from the broker/dealer securities industry regulated by the department;
  - (c) One (1) member selected from the credit union industry regulated by the department;
  - (d) One (1) member selected from the consumer finance or industrial loan industry regulated by the department;
  - (e) Three (3) members selected from the public at large who are knowledgeable concerning financial institutions, the legislative process and consumer interests, two (2) of whom are not employees, officers, or directors of any financial institution; and
  - (f) The commissioner, who shall also serve as chairman of the board.
- (2) All members of the board from the banking industry, securities industry, credit union industry, consumer finance, or industrial loan industry shall be persons with practical experience in the industry so represented and currently serving at the executive level of that industry at the time of their appointment.
- (3) At the first meeting of the board, a drawing by lot shall be conducted to determine the length of each original member's term. Initially, there shall be four (4) four (4) year terms, five (5) three (3) year terms, and two (2) two (2) year terms. Vacancies in the membership of the board shall be filled in the same manner as original appointments. Appointments to fill vacancies occurring before the expiration of a term shall be for the remainder of the unexpired term.
- (4) No member of the board, other than the commissioner, shall serve more than two (2) consecutive terms on the board.
- (5) The board shall first meet at the call of the Governor and thereafter as the board shall determine, but at least quarterly, at a time and place determined by the chairman. The board may elect other officers for the conduct of its business. A majority of board members shall constitute a quorum, and a decision shall require the majority vote of those present. Each board member shall have one (1) vote, and voting by proxy shall be prohibited.
- (6) Board members shall receive one hundred dollars (\$100) per diem for each board meeting which they attend and shall be reimbursed for other reasonable and necessary expenses incurred while engaged in carrying out the duties of the board.
- (7) The board shall:

- (a) Prepare and submit at the Governor's request a list of candidates qualified to serve as commissioner and recommend to the Governor a proposed salary for each nomination for commissioner;
  - (b) Recommend to the Governor a proposed salary structure for other departmental staff in order to provide competitive salaries for recruitment and retention of staff;
  - (c) Receive and comment on various reports relating to the department and its activities as submitted to the board by the commissioner or the Governor; and
  - (d) Review, consider and make recommendations to the commissioner on any matters referred to the board by the commissioner or the Governor.
- (8) In no event shall the board or its members interfere with the statutory duties of the commissioner whose decisions shall be governed by law.

**Effective:** July 15, 1998

**History:** Amended 1998 Ky. Acts ch. 196, sec. 2, effective July 15, 1998. -- Amended 1986 Ky. Acts ch. 59, sec. 1, effective July 15, 1986. -- Created 1984 Ky. Acts ch. 324, sec. 40, effective July 13, 1984.

**11-2-102 - Banking board.**

(1) There is hereby established in the division a **banking** board which shall consist of eight members.

(2) (a) There shall be four members who during their tenure are, and shall remain, executive officers of state banks and shall have not less than five years' practical experience as an active executive officer of a bank.

(a.1) There shall be one member who during his or her tenure is, and shall remain, the executive officer of an industrial bank.

(a.2) There shall be one member who during his or her tenure is, and shall remain, the executive officer of a trust company.

(b) There shall also be two members to serve as public members of the **banking** board who shall have expertise in finance through their current experience in business, industry, agriculture, or education.

(c) No member of the **banking** board shall have any interest, direct or indirect, in a bank in which another member of the **banking** board has any such interest. Not more than one of the members shall be an executive officer or employee of any one bank holding company or affiliate thereof.

(d) Of the eight members appointed under this subsection (2), at least one and not more than two shall be appointed from each congressional district of the state, and not more than four shall be of the same major political party. At all times, at least one member shall reside west of the continental divide.

(3) Members shall be appointed by the governor, with the consent of a majority of the elected members of the senate at the next meeting thereof. Appointments made to take effect on January 1, 1983, shall be made in accordance with section 24-1-135, C.R.S. Persons holding office on June 15, 1987, are subject to the provisions of section 24-1-137, C.R.S. Thereafter, except as provided in subsection (9) of this section, the term of office of each member shall be four years. In the event of the death, resignation, nonresidency in the congressional district from which appointed, inability, or refusal to act of any member of the **banking** board, or the occurrence of any other event which disqualifies the member from serving the remainder of his term on the board, the governor within forty-five days thereafter, or in the event of his failure to act, the **banking** board, shall make an interim appointment of a member to serve for the unexpired term on the **banking** board, subject to the approval of a majority of the elected members of the senate at the next meeting thereof. A member who moves out of the congressional district from which appointed shall promptly notify the governor of the date of such move, but such notice is not a condition precedent to the occurrence of the vacancy. The governor may, after notice and hearing, remove a member for cause. Any **banking** board member who is absent from three consecutive board meetings is subject to immediate removal by the governor.

(4) Each member of the board shall receive the same per diem compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of

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registrations pursuant to section 24-34-102 (13), C.R.S. Payment for all such expenses and allowances shall be made upon vouchers therefor, which shall be filed with the department of personnel.

(5) The board shall meet at least once in each calendar month. The chairman of the board may call additional meetings of the board upon at least seventy-two hours' notice to all members of the board and shall do so upon the request of two members. All members of the board shall be subject to immediate call in the event of an emergency. Four members of the board shall constitute a quorum, and action taken by a majority of those present at any meeting at which a quorum is present shall be the action of the board. Upon the affirmative vote of a majority of those present at any meeting at which a quorum is present, one or more members may be authorized to conduct any hearing required under this code. In the event that less than a quorum of the board is present during the conduct of the hearing, at least a quorum of the board shall read the entire record before voting thereon. No member shall participate in a proceeding before the board when any corporation, partnership, or unincorporated association of which he is, or was at any time in the preceding twelve months, a director, officer, partner, employee, member, or stockholder is a party to such proceedings. A member may disqualify himself from participating in a proceeding for any other cause deemed by him to be sufficient.

(6) (a) Repealed.

(b) A quorum may be established by means of a conference telephone call which shall be recorded in the board's minutes. Upon the affirmative vote of a majority of those present at any meeting at which a quorum is present, the board may hold an executive session to consider certain matters required by statute to be kept confidential under this code. Any agenda and the minutes of executive sessions shall be kept confidential by the board.

(7) Such clerical, technical, and legal assistance as the board may require shall be provided by the division.

(8) The members of the board shall, before entering upon the discharge of their duties, in addition to any oath required by the state constitution, take and subscribe an oath to keep secret all information acquired by them in the discharge of their duties, except as may be otherwise required by law. Willful violation of this oath shall be a criminal offense.

(9) On July 1, 1989, the terms of office of the members of the **banking** board serving immediately prior to such date shall continue, except as necessary to comply with the requirements of subsection (2) of this section. The governor shall appoint members to the board, to fill the vacancies so created. Such appointments shall be subject to confirmation by the senate at the next meeting thereof. Of the members appointed to take office pursuant to this subsection (9), three shall be appointed to serve until July 1, 1989, and four shall be appointed to serve until July 1, 1991. Appointments to fill vacancies created to comply with the requirements of subsection (2) of this section shall take effect July 1, 1989, for the remainder of the term so vacated. Thereafter the term of office of each member shall be four years.



(10) The board shall elect a chairman from among its members to serve for a term not exceeding two years, as determined by the board. No chairman shall be eligible to serve as such for more than two successive terms. In addition to the amounts received pursuant to subsection (4) of this section, the chairman shall receive per diem compensation and reimbursement of expenses in the amounts provided by section 24-34-102 (13), C.R.S., for each day spent in attending to the duties of the **banking** board.

(11) The **banking** board may enter into contracts with temporary employees and for the provision of such other services as it may deem necessary in accordance with section 13 of article XII of the state constitution.

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 11-2-103 - Powers of banking board. 

(1) The **banking** board is the policy-making and rule-making authority for the division of **banking** and has the power to:

(a) Make, modify, reverse, and vacate rules and regulations for the proper enforcement and administration of this code and the "Public Deposit Protection Act", article 10.5 of this title;

(b) Make, promulgate, alter, amend, or revise reasonable rules and regulations as may be necessary for the enforcement and execution of the provisions of article 20 of title 12, C.R.S., and the provisions of the "Money Order Act", article 52 of title 12, C.R.S.; and

(c) Regulate procedure and practice of the **banking** board.

(2) In addition to any other powers conferred on it by this code, the **banking** board has the power to:

(a) Make all final decisions with respect to ownership including, but not limited to:

(I) Chartering and conversions;

(II) Mergers;

(III) Acquisitions; and

(IV) Change of control;

(b) Make all final decisions with respect to certification pursuant to sections 11-6.4-103 and 11-6.4-104;

(c) Make all final decisions with respect to the taking of possession, liquidation, or reorganization of banks and the emergency grant of new charters and branch facilities;

(d) Make all final decisions with respect to requests for detached facilities;

(e) Make all final decisions with respect to requests to exercise trust, fiduciary, and agency powers.

(3) The **banking** board has the power to prohibit the taking of deposits or to restrict the withdrawal of deposits, or both, from any one or more state banks when the **banking** board finds that extraordinary circumstances make such a restriction necessary for the proper protection of depositors in the affected state bank.

(4) The **banking** board has the power to authorize state banks, under circumstances in which state banks are not given authority under this code to act without the approval of the **banking** board, to participate in any public agency created after July 1, 1957, under the laws of this state or the United States, the purpose of which is to afford advantages or safeguards to banks or depositors, and to



authorize compliance with all requirements and conditions imposed upon such participants.

(5) The **banking** board has the power to authorize such banks to engage in any **banking** activity in which state banks could engage were they operating as national banks at the time such authority is granted, so long as such activity is not prohibited elsewhere in this code and to the extent permissible under rules and regulations of the **banking** board promulgated pursuant to subsection (1) of this section consistent with the policies set forth in section 11-1-101.5, or under any other provision of this code. State banks may engage in interstate branching to the same extent as if they were operating as national banks so long as such activity is in accordance with the rules and regulations of the **banking** board.

(6) The **banking** board has the power to affirm, modify, reverse, vacate, or stay the enforcement of any order of ruling made by a hearing officer acting pursuant to section 11-2-103.6 (1) or the bank commissioner acting pursuant to authority delegated by the **banking** board.

(7) The **banking** board has the power to order any person to cease violating a provision of this code or a rule or a regulation issued pursuant to this code or to cease engaging in any unsound **banking** practice, to impose civil money penalties pursuant to section 11-2-117, to suspend or remove a director or officer pursuant to section 11-2-119, and to take such other enforcement action as is authorized by sections 11-2-120 to 11-2-122 and any other provision of this code.

(8) With respect to any action pursuant to subsection (3) or (7) of this section, ten days' notice by certified mail, return receipt requested, and hearing shall be provided to the bank, the directors of the bank, and any person ordered to cease violating provisions of this code pursuant to subsection (7) of this section in advance of any action taken by the **banking** board. In cases found by the **banking** board to involve extraordinary circumstances requiring immediate action, the **banking** board may take such action without notice or hearing but shall promptly afford a subsequent hearing upon application by the bank or directors of the bank to rescind the action taken. With respect to any authorization requested pursuant to subsection (4) or (5) of this section, the **banking** board may, on its own motion, or shall if requested by the applicant, hold a hearing on such request.

(9) The **banking** board has the power to issue a declaratory order with respect to the applicability of this code or a rule and regulation issued by the **banking** board to any person, property, or state of facts under this code.

(10) The **banking** board has the power to review and comment on the preliminary budget draft for the division prior to its submission to the department of regulatory agencies.

(11) The **banking** board shall annually establish such fees and assessments and the percentages thereof as are necessary to generate the moneys appropriated by the general assembly for the division.

(12) The **banking** board has the power to comment on who shall be the bank commissioner and to recommend the termination of the commissioner for cause. The **banking** board's comments and recommendations shall be given to the appropriate office or officer of the state having appointment or termination powers with regard to the commissioner.

(13) The **banking** board has the power to perform any acts and make any decisions incidental to or necessary for carrying out its functions as set forth in this code.

(14) The **banking** board shall not delegate to the commissioner any of its powers under subsections (1) to (12) of this section except informal enforcement powers arising under section 11-2-121 which shall be delegable pursuant to subsection (15) of this section.

(15) Except as provided in subsection (14) of this section, the **banking** board may, in its discretion, delegate to the commissioner any of its powers, duties, and functions; except that all powers under this code vest in the **banking** board unless delegated to the commissioner by statute.

(16) The **banking** board may, in its discretion, require the commissioner to report to the **banking** board periodically with respect to any powers delegated pursuant to subsection (15) of this section.

(17) The **banking** board shall have a seal of office containing the words "**Banking** Board of Colorado" in the form of a circle and the word "seal" within the circle.

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**Title 07 – Financial Institutions Act**  
**Title 07 Chapter 01 – General Provisions**  
**7-1-203 Board of Financial Institutions.**

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7-1-203 Board of Financial Institutions.

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**7-1-203. Board of Financial Institutions.**

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- (1) There is created a Board of Financial Institutions consisting of the commissioner and the following five members, who shall be qualified by training and experience in their respective fields and shall be appointed by the governor with the advice and consent of the Senate:
- (a) one representative from the commercial banking business;
  - (b) one representative from the savings and loan, consumer lending, mortgage brokerage, or escrow agency business;
  - (c) one representative from the industrial loan corporation business;
  - (d) one representative from the credit union business; and
  - (e) one representative of the general public who, as a result of education, training, experience, or interest, is well qualified to consider economic and financial issues and data as they may affect the public interest in the soundness of the financial systems of this state.
- (2) The commissioner shall act as chair.
- (3) (a) All members of the board shall be residents of this state.  
 (b) No more than three members of the board may be from the same political party.  
 (c) No more than two members of the board may be connected with the same financial institution or its holding company.  
 (d) A member may not participate in any matter involving any institution with which the member has a conflict of interest.
- (4) (a) Except as required by Subsection (4)(b), the terms of office shall be four years each expiring on July 1.  
 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.  
 (c) All members serve until their respective successors are appointed and qualified.  
 (d) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
- (5) The board shall meet at least quarterly on a date it sets. The commissioner or any two members of the board may call additional meetings. Four members constitute a quorum for the transaction of business. Actions of the board require a vote of a majority of those present. Meetings of the board and records of its proceedings are subject to Title 52, Chapter 4, Open and Public Meetings, except for discussion of confidential information pertaining to a particular financial institution.
- (6) Each member of the board shall, by sworn or written statement filed with the commissioner, disclose any position of employment or ownership interest that the member has with respect to any institution subject to the jurisdiction of the department. The member shall file this statement when first appointed to the board and shall subsequently file amendments if there is any material change in the matters covered by the statement.
- (7) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.  
 (ii) Members may decline to receive per diem and expenses for their service.  
 (b) (i) State government officer and employee members who do not receive salary, per diem, or

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expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

(8) The board shall advise the commissioner with respect to the exercise of his duties, powers, and responsibilities under this title and the organization and performance of the department and its employees.

(9) The board shall recommend annually to the governor and the Legislature a budget for the requirements of the department in carrying out its duties, functions, and responsibilities under this title.

⊕ Amended by Chapter 79, 1996 General Session  
Amended by Chapter 243, 1996 General Session



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