

### 3 V.S.A. § 116a (Maintenance of inventory of State boards and commissions)

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#### **DEFINITIONS OF BOARDS, COMMISSIONS AND SIMILAR BODIES**

Although boards and commissions have existed in the government sector for a significant amount of time, there is, surprisingly, little definitive information about the differences between boards and commissions and similar bodies such as committees, councils and task forces. Associations that support the government sector, however – such as the Association of Governing Boards of Universities and Colleges, the Council of State Governments, the International City/County Management Association, the National Council of State Legislatures, and others – do provide definitions within the context of the government sectors they serve.

The descriptions provided below, as requested by the Sunset Advisory Commission at its November 7, 2018 hearing, represent a cross-section of common concepts articulated by affiliated associations in terms a board, commission, committee, council, or task force's power or authority; jurisdiction; and scope or purpose. Descriptions are general in nature and for discussion purposes only; they are not specific to Vermont state government.

#### ***Boards***

Boards have the most variation in terms of purpose, responsibilities and accountability and therefore are not equal. The most common types of boards are: administrative; advisory; independent; internal; and trustees (or directors).

<b>Board Type</b>	<b>Responsibilities</b>	<b>Accountability</b>
Administrative	Board is a public agency responsible for making decisions on administrative and business matters through formal hearings.	Board is obligated to represent the public interest. <sup>1</sup> Board does not have fiduciary responsibilities.

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<sup>1</sup> Board obligated to represent the public interest is in contrast to a court, for example, which must remain impartial between the two parties appearing before it.

Board Type	Responsibilities	Accountability
Advisory	Board is attached to a public agency to provide advice on general or specific matters to the agency’s leadership. The Board resides outside of the agency’s hierarchy and does not share in the responsibilities of the agency’s work.	Board does not set policy and does not make decisions, Its advice is not binding and it has no fiduciary or legal responsibilities.
Independent	Board is independent and its members are not affiliated with officials whom the Board is responsible for overseeing. The Board performs quasi-legislative and quasi-judicial functions in regards to a specific public agency or field entrusted to it.	Board makes decisions for the specific agency or field entrusted to it and its decisions are binding. Board does not have fiduciary responsibilities.
Internal	Board resides within a public agency to perform quasi-legislative and quasi-judicial functions in regards to a very specific field entrusted to it. Resides within the agency’s hierarchy to perform this role.	Board makes decisions for the specific field entrusted to it and its decisions are binding. Board does not have fiduciary responsibilities.
Trustees (or Directors)	Board is the ultimate authority over a specific public agency. The Board has the power to vote and make changes for the agency it oversees. Includes instructing chief executives and administrators responsible for implementing the board’s policies.	Board sets policy and makes decisions. It is a body that is elected or appointed with fixed terms. The Board also has fiduciary and legal responsibilities.

**Commissions**

Commissions are formed by a higher authority within government to address very specific issues. Like Boards, Commissions have variation in terms of responsibilities and accountability with some commissions only have advisory responsibilities like an advisory board. Others are independent and, upon creation, power is vested in the commission for performing quasi-legislative or quasi-judicial functions entrusted to it but the commission has no constitutional authority of its own. Commissions can be permanent or temporary and its members are appointed to fixed terms.

Commission can also be a form of municipal government in which individuals are elected, often at large, to serve on a governing board called a commission. The Commission carries out legislative and executive functions of a municipality and each commissioner is responsible for the administration of a particular municipal service or department, such as public works, fire, police, etc.

### ***Committees***

Committees are formed for a specific purpose and are subgroups of a public agency or governmental body. Committees can also be further subdivided into sub-committees. Members of committees are generally selected on merit or some other criteria and are appointed until they serve their purpose. Often, committee members will serve on various committee on a rotating basis, which helps its members gain a broader understanding of the larger agency or body, or, members will serve on the same committee for an extended period of time to develop significant knowledge on a particular subject.

Committees may be "standing" (sometimes called "operating committees") which means they serve a continual need of the larger agency or body and exist more or less permanently, or "ad hoc" meaning they are created for a limited time to serve a specific need and their existence will cease when their work is complete.

### ***Councils***

Councils are formed when there interest in having a large body of people come together for a specific purpose. Members of a council are often elected by the members themselves and represent their respective organizations, communities and/or disciplines. Councils do not have authority to develop and enact policies but play a vital role in coordinating services and/or developing a comprehensive or standardized approach pertinent to the Council's charge and purpose.

Councils can also be a form of municipal government in which individuals are elected, often at large, to serve as the legislative body of a municipality and the executive responsibilities for

the day-to-day administrative functions of a municipality reside with a separately elected official, e.g. a mayor, or a manager hired by the council to carry out its policies.

### ***Task Forces***

Task forces are assigned very specific and defined tasks under the direction of an appropriate committee or councils, whose scope is quite focused. Task forces normally report directly to an overseeing committee.

### **RECOMMENDATION FROM THE SECRETARY OF STATE'S OFFICE**

The need for greater control and transparency in state boards and commissions and their appointees and terms is appreciated. We recommend clarifying, for at least the Secretary of State's Office relative to 3 V.S.A. § 116a and the inventory, the scope of "state boards and commissions." The Secretary of State's Office had understood "state boards and commissions" to mean those Vermont state government boards and commissions with (1) statewide jurisdiction and (2) authority to perform quasi-legislative or quasi-judicial functions. It is now recognized that the legislature has a very expansive definition for board and commissions in 3 V.S.A. § 116a and that the definition includes boards and commissions beyond state government and also those with limited jurisdiction and functions.

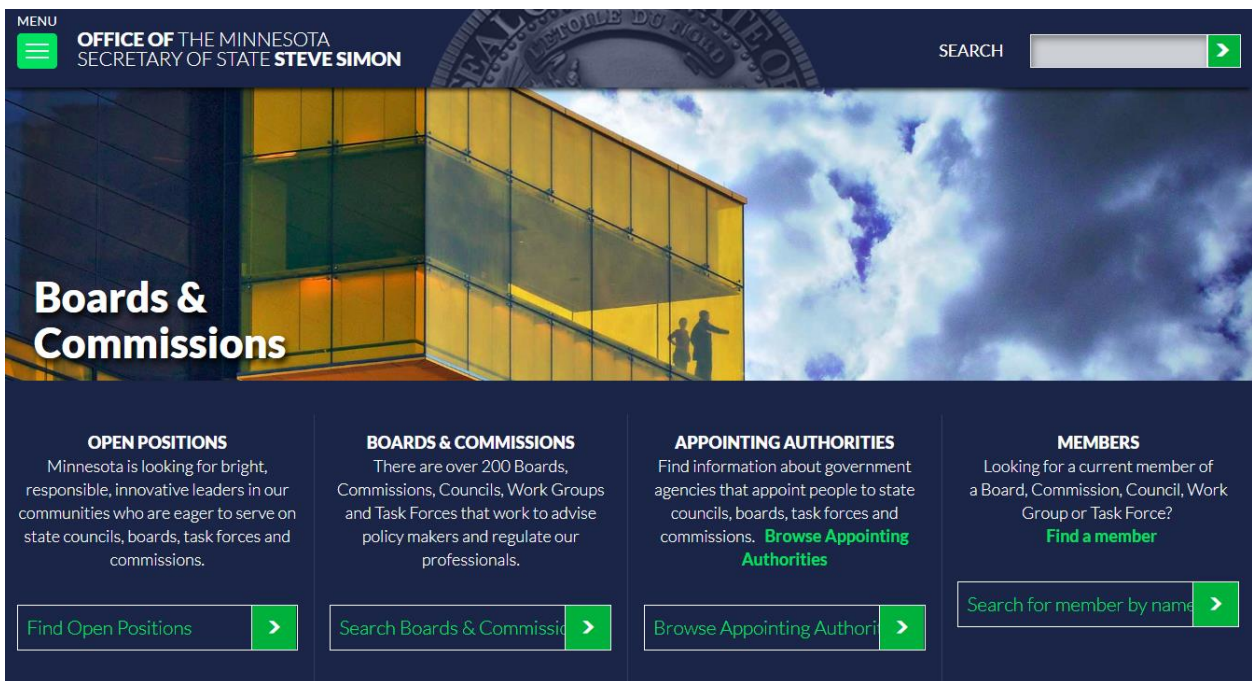
3 V.S.A. § 116a defines the term "state boards and commissions" broadly to also mean "professional or occupational licensing boards or commissions, advisory boards or commissions, appeals boards, promotional boards, interstate boards, supervisory boards and councils, and any other boards or commissions *of the State*" (emphasis added). The paper spreadsheet of "state boards and commissions" circulated at the hearing on November 7, 2018, however, also includes national boards and commissions as well as non-government sector (meaning neither Federal, state nor local government) entities.

Providing oversight and resources to create and maintain an accurate and reliable inventory, even if limited in scope to boards and commissions with statewide jurisdiction and authority to perform quasi-legislative or quasi-judicial functions, will be a challenge but is achievable; these boards and commissions, using the concepts articulated above, can be more readily defined. The

challenge largely resides in the area of human and financial resources within the Secretary of State's Office.

Secretary of State's Office, as stated at the Commission's November 7, 2018 hearing, has no existing functions or processes that can be easily augmented or adapted to meet the requirements in 3 V.S.A. § 116a. Therefore, using existing technologies and web-based resources, such as the State of Vermont's [Open Data Portal](#), and serving as a "pass-through" resource remains the most viable option using minimal staffing and little or no additional information technology or website development costs. Creating and maintaining an inventory for a broader defined set of boards and commissions, including those at the local government level and those specific to one entity or outside of the government sector will be extremely difficult, if not impossible, with current resources.

In reviewing models in other states, the Secretary of State's Office has identified the State of Minnesota, specifically the Minnesota Secretary of State's Office, has having not only an inventory of Minnesota boards and commissions available through its website, but also appointees, terms, and vacancies. The website, shown below, is fairly comprehensive.



(See: <https://www.sos.state.mn.us/boards-commissions>)

Unlike the Vermont Secretary of State's Office, which has no statutory mandates or requirements in relation to board and commissions besides legislation passed in Act 2 of 2018 (Special Session), Minnesota state law requires all "multimember agencies," defined in Minnesota law as "a state board, commission, council, committee, authority, task force, including an advisory task force established under section 15.014 or 15.0593, other multimember agency, however designated, established by statute or order and having statewide jurisdiction" to register with the Minnesota Secretary of State's Office. (See [Minn. Stat. 15.0599 \(2018\) REGISTRATION OF MULTIMEMBER AGENCIES.](#))

In addition, Minnesota law requires multimember agencies to provide appointment and vacancy information to the Minnesota Secretary of State's Office. The collection of data is formalized in law (See [Minn. Stat. 15.0597 \(2018\) APPOINTMENTS TO MULTIMEMBER AGENCIES](#)) and the Minnesota Secretary of State's Office has dedicated resources, including a robust registration system, for collecting, maintaining and publishing this information. The statutory requirement for providing appointment information to the Minnesota Secretary of State's Office dates back to at least 1978 and an act titled "An act relating to government agencies; providing for an open appointment process; requiring reports from appointing authorities and the secretary of state; providing for publication of agency vacancies; appropriating money)." <sup>2</sup>

If the legislative intent of 3 V.S.A. § 116a is to ultimately create a registry and resource like that of Minnesota's, the Secretary of State's Office welcomes the opportunity to work with the General Assembly to identify requirements and recommend legislation. Relative to 3 V.S.A. § 116a and current requirements, the Secretary of State's Office will do its best to meet requirements; however, the Office is struggling in terms of scope and resources to effectively meet this mandate.

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<sup>2</sup> See: <https://www.revisor.mn.gov/laws/1978/0/Session+Law/Chapter/592/pdf/>

## **SAMPLE OF RESOURCES USED IN PREPARING TESTIMONY**

Association of Governing Boards of Universities and Colleges (Undated). What is the difference between the board's policy-making roles versus that of the administration? Retrieved from <https://www.agb.org/faq/what-is-the-difference-between-the-boards-policy-making-roles-versus-that-of-the-administration>

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International City/County Management Association (2008). Forms of Local Government Structure. Retrieved from <https://icma.org/documents/forms-local-government-structure>

Minnesota Secretary of State's Office (2018). Boards and Commissions. Retrieved from <https://www.sos.state.mn.us/boards-commissions>

National Association of State Legislatures (2017). Committees and Commissions: What is the difference? Retrieved from <http://www.ncsl.org/research/ethics/committees-amp-commissions-whats-the-differenc.aspx>

Robert's Rules of Order Revised, 4th Edition (1915). Section IX Committees/Boards. Retrieved from <http://www.rulesonline.com/rror-09.htm>

Soronen, L. (2015). SCOTUS ruling means big changes for State agencies, boards, commissions. National Conference of State Legislatures Blog. Retrieved from <http://www.ncsl.org/blog/2015/02/26/scotus-ruling-means-big-changes-for-state-agencies-boards-commissions.aspx>