



UTAH SYSTEM OF
HIGHER EDUCATION

MEMORANDUM

December 1, 2023

Legislative Update

This memorandum outlines upcoming legislative issues, bills, and appropriations for the 2024 legislative session.

System Governance Amendments

Senator Ann Millner, in cooperation with the System, will run legislation that will amend over 40 titles in Utah code. These amendments include language that would:

- Reassign the Board's responsibility to produce reports, serve on commissions, and engage in other activities that fall outside the Board's updated scope of governance. Where appropriate, some of these responsibilities would be delegated to institutional staff and/or Boards of Trustees. In other circumstances, amendments would delegate responsibility to the Commissioner, acting under the Board's direction.
- Clarify that certain statutorily mandated positions within the Utah System of Higher Education are "hired" rather than "appointed" so that individuals in these positions are not subject to unnecessary oath of office requirements.
- Codify non-substantive edits (e.g., replacing references to "Board of Regents" with "Utah Board of Higher Education").

Concurrent Enrollment

Talent Ready Utah worked with Representative Val Peterson on a bill titled [Concurrent Enrollment Revisions](#). The bill would add completion of a youth apprenticeship to the list of ways students can earn the TRANSFORM certificate under the PRIME program and gives the Board authority to determine PRIME scholarship amounts annually based on legislative appropriations and the number of eligible students. Talent Ready Utah is also working with Senator Millner on statutory amendments that would allow employers more flexibility to offer youth apprenticeships.

Diversity, Equity, and Inclusion Legislation

During the 2023 session, several legislators ran legislation expressing serious concern around institutions' offices of diversity, equity, and inclusion (DEI), DEI training, and DEI statements as a requirement for employment, admission, or graduation. Key legislators agreed to work with the System on developing ways to address these concerns and draft an alternative legislative approach for the 2024 session.

Negotiations are ongoing, but legislative leadership has formally established a workgroup to begin

drafting a bill and asked Chair Covington and Interim Commissioner Landward to participate. The System is advocating to preserve and enhance efforts to increase access and completion for students who face barriers to higher education, to protect academic freedom, and to avoid jeopardizing federal research grants or accreditation.

Requests for appropriation

In the November 3 Board meeting, Deputy Commissioner Nate Talley presented:

- [USHE capital budget recommendations](#)
- [USHE operating budget recommendations](#), which included compensation and mandatory cost increases, technical education institution priorities pertaining to growth funding and performance funding, degree-granting institution priorities pertaining to performance funding, and systemwide priorities that included an attorney general for technical colleges, a systemwide common application, and an upgrade to the technical college Northstar enterprise system.

During the November 30 Board meeting, Deputy Commissioner Talley will present external requests for appropriations, which the Board will then prioritize for submission.

The Governor's office and legislative leadership have unambiguously signaled that there will be relatively little new ongoing revenue this coming year. That will likely have a significant impact on any increases in higher education funding, with priority going to compensation and mandatory increases such as health benefits.

Potential Legislation the Commissioner's Office is Tracking

- ***Educator licensing:*** In discussions with Commissioner's office leadership, Representative Norm Thurston has expressed interest in easing access to licensure for teachers and making teacher education programs more competency-based. Representative Thurston has opened the following bill files: "Educator License Amendments," "Licensure by Endorsement Amendments," "Professional Continuing Education Amendments," and "Professional Licensing Requirements".
- ***Due process for students:*** Representative Jordan Teuscher has opened a bill file titled "Student Right to Counsel." Although a draft of the bill has not been made publicly available, Interim Commissioner Landward has discussed this topic with Representative Teuscher, who ran a [similar bill](#) that did not pass in 2023. Among other provisions, the bill will likely prohibit institutions from denying a student the right to use legal representation during non-academic student disciplinary proceedings. USHE institutions have voiced concerns about potential provisions in the bill relating to waivers of immunity and provisions that could allow students to bring an action in court for alleged violations of due process in student disciplinary proceedings and could allow courts to award damages and reasonable costs.

- ***Student athlete name, image, and likeness (NIL)***: Representative Jordan Teuscher has opened a bill file titled "Student Athlete Amendments." While a draft of the bill has not been made public, the Commissioner's office anticipates this bill will pertain to student-athlete NIL activities. In the absence of federal legislation, more than half of state legislatures in the US have adopted laws to govern NIL endorsements among college athletes at their public institutions. The most common provisions in other states' bills include codifying athletes' rights to seek representation from agents and attorneys and prohibiting student-athletes from endorsing products that conflict with institutional contracts or undermine the institution's values. The Commissioner's office anticipates Representative Teuscher's bill could contain provisions restricting NIL collectives' activities that help broker arrangements and benefits for athletes, as concern has grown that NIL collectives can stifle competition in collegiate athletics recruitment.
- ***Gender and identity***: Representative Kera Birkeland has opened a bill file titled "Women's Bill of Rights." A draft of the bill has not yet been made public, but other states' women's bills of rights commonly define "male" and "female" by the characteristics or functions of the reproductive system present at a person's birth and, using these definitions, restrict male access to spaces designed to accommodate females, including restrooms, prisons, and domestic violence shelters. Several states also require government entities to ensure the demographic categories they use in data collection align with these definitions of male and female.
- ***Prison education***: Representative Melissa Ballard has opened a bill file titled "Prison Education Amendments," which, among other provisions, adds to the Board's list of statutory powers, duties, and authorities a charge to collaborate with the Department of Corrections to establish educational programs for Utah's incarcerated individuals. The bill would also require USHE institutions to grant incarcerated individuals enrolled in a prison education program resident student status for tuition purposes during their program and for one year after their release. The bill also directs the Board to require USHE institutions that offer prison education programming to use their existing prison education budgets to employ student success advisors. These advisors would assist incarcerated individuals who are enrolled in or who are planning to enroll in postsecondary education with financial aid applications, admissions, and academic preparation.
- ***National Guard financial aid***: The Education Interim committee adopted [2024FL-0528/001](#) as a committee bill. The bill would expand the definition of "fees" so that students who receive tuition and fee assistance from the Utah National Guard may use it to pay for special course fees and expenses for required textbooks and course-related materials.

Other potential legislation

- ***Data privacy***: The Office of the State Auditor is recommending the introduction of the Utah Government Privacy Act. Among other provisions, the bill would require each government entity

to have an Appointed Privacy Officer (APO) and would mandate that all government entities that collect or maintain personal data create a data governance plan. The Commissioner's office plans to work with the bill's sponsor to add to the bill permission to share individual student data with a school official who has a legitimate educational interest.

- ***Gender and gender identity:*** In addition to Rep. Berkeland's legislation, we also anticipate other legislation addressing gender and gender identity, in particular, the use of restrooms.
- ***Free expression on campus:*** Although we have not seen an open bill file, we anticipate legislation around free speech on campus, institutional sponsorship of controversial content such as drag shows and protests, and institutional policies governing when institutions may shut down free speech activities when there is a potential threat to public safety.

Communication between the Office of the Commissioner and the Board

To ensure the Board is kept abreast of all legislative affairs impacting the System, the Commissioner's office will make the following resources available to the Board during the 2024 General Session:

- Access to a tool used to track bills and appropriations
- A weekly legislative update report
- Optional Zoom calls between the Board and Interim Commissioner Landward every Friday afternoon to discuss legislative developments.

Commissioner's Recommendation

This is an information item only; no action is required.