

## **R120, Board of Higher Education Bylaws<sup>1</sup>**

**R120-1 Purpose:** This policy provides bylaws for the Utah Board of Higher Education (“Board”) that govern how the Board administers the Utah System of Higher Education (“USHE”) and conducts regular Board business.

### **R-120-2 References**

- 2.1** Utah Code § 53B-1-402, Establishment of Board – Powers, Rights, and Responsibilities
- 2.2** Utah Code § 53B-1-404, Membership of the Board
- 2.3** Utah Code § 53B-1-501, Initial Board Membership
- 2.4** Utah Code Title 67, Chapter 16, Public Employees’ and Officers’ Ethics Act
- 2.5** Utah Code Title 52, Chapter 4, Open and Public Meetings Act
- 2.6** Board Policy R122, Board Conflict of Interest

### **R120-3 Bylaws**

**3.1 Offices:** The principal office of the Board shall be located at the Utah Board of Higher Education Building, The Gateway, 60 South 400 West, Salt Lake City, Utah. The Board may have such other offices as the Board may designate or as the business of the Board may from time to time require.

**3.2 General Powers:** Under Utah Code section 53B-1-402, the Board is vested with the power to govern the USHE. The Board shall address all issues requiring its action in a properly convened meeting. The Board may adopt rules and regulations to govern the conduct of its meetings, to manage the Board and to manage and supervise the USHE, in accordance with these bylaws and the laws of this State.

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<sup>1</sup> *Adopted June 17, 1970; amended July 28, 1970, September 11, 1970, January 20, 1971, July 27, 1971, December 20, 1973, July 22, 1975, July 14, 1980, August 31, 1981, October 11, 1985, September 12, 1986, August 6, 1987, December 16, 1988 and Bylaws February 24, 1989, June 18, 1993, May 31, 2002, September 11, 2003, March 30, 2012, March 29, 2013, March 30, 2018, and November 19, 2021; and XXX.*

**3.3 Board Members:** The Board shall consist of 10 members who are residents of the state and appointed by the governor with the advice and consent of the Senate. At least one of the members shall be a student matriculated at a USHE institution. Except as provided in [Utah Code section 53B-1-501](#), the Governor shall appoint Board members to six-year staggered terms, each of which begins on July 1 of the year of appointment. The Governor shall appoint student members to a one-year term. Each member shall hold office until his or her successor has been chosen and qualified.

**3.3.1 Oath of Office:** A member shall take the official oath of office before entering upon the duties of office. The oath shall be filed with the Division of Archives and Records Services.

**3.3.2 Simultaneous Service on Institutions' Boards of Trustees:** An individual may not serve simultaneously on the Board and on an institution's board of trustees.

**3.3.3 Consecutive Terms:** Unless otherwise provided in [Utah Code section 53B-1-501](#), the Governor may appoint a member to a second consecutive full term without a recommendation from the nominating committee. Members who filled the unexpired term that resulted from the vacancy of a member may be appointed to serve up to one consecutive full term thereafter. Student members may not serve more than one full term.

**3.3.4 Vacancies:** A vacancy in the Board occurring before the expiration of a member's full term shall be immediately filled through the process described in [Utah Code section 53B-1-404](#). An individual appointed to fill a vacancy shall be appointed to serve for the remainder of the unexpired term.

**3.3.5 Removal of Board Members:** The governor may remove a member of the board for cause after consulting with the president of the Senate.

**3.3.6 Resignation:** A member of the Board may resign at any time by giving written notice to the Board’s chair or secretary. Unless otherwise specified in the notice, the resignation shall take effect upon receipt.

**3.3.7 Compensation:** A member of the Board shall receive a daily salary for each calendar day that the member attends a Board or Committee meeting as provided by statute. A member may also receive per diem and travel expenses as allowed by Utah Code section 53B-1-404(14).

**3.4 Regular Meetings:** The Board shall meet regularly at a time and place it shall determine. The Board may also meet, in full or executive session, at the request of the chair, the commissioner, or at least four members of the Board.

**3.4.1 Special Meetings:** The Board may convene a special meeting, in full or executive session, when called by the Board chair, the commissioner, or by request of four Board members. The chair or commissioner may designate the location or method for holding any special meeting.

### **3.5 Notice**

**3.5.1 Notice to Members of Board:** The Board secretary shall notify Board members and institutional presidents of the time and place of regular meetings of the Board at least seven days prior to the meeting, together with an agenda explaining the nature of the business to be acted upon. The Board secretary may provide shorter notice for special meetings.

**3.5.2 Notice to the Public:** The Board and Executive Committee—when taking action on behalf of the Board in accordance with subsection 3.9.6—shall give public notice of their meetings as required by Utah Code section 52-4-202 of the Open and Public Meetings Act.

**3.6 Quorum:** The Board must have a quorum to take action. A quorum consists of six members. A quorum of any committee of the Board shall consist of a

majority of its members. If less than a quorum is present at the time and place for any such meeting called, the Board or committee meeting may be adjourned without further notice.

### **3.7 Conducting Board Business**

**3.7.1 Agenda and Regular Order of Business:** The Board chair and the commissioner shall set the agenda for Board meetings in consultation with the Executive Committee. The official agenda shall constitute the principal business at regular meetings of the Board.

**3.7.2 Categories of Agenda Items:** The Board's business shall be listed in the agenda within the following categories:

**3.7.2.1 Action Items:** Items that are recommended for action and that require full discussion by the Board.

**3.7.2.2 Consent Calendar:** Items that are recommended for action and that either have been fully discussed by a Board committee or are non-substantive, routine matters governed by existing policy or statute and do not require discussion by the full Board.

**3.7.2.3 Information Items:** Items that are not recommended for action, but are for information, such as presentation of institutional reports by heads of institutions and other items for informational purposes.

**3.7.3 Consent Calendar:** The Board may act on items in the Consent Calendar by voting on items either as a group or as items individually. Any item listed upon the Consent Calendar may, by majority vote of the Board, be transferred to the Action Items at the same or a subsequent meeting and be subject to full discussion and deliberation.

**3.7.4 Rules of Procedure:** The Board and its committees shall follow Robert’s Rules of Order in conducting all meetings.

**3.7.5 Open and Public Meetings Act:** The Board shall conduct its meetings in compliance with the Open and Public Meetings Act. If the Executive Committee intends to take action on behalf of the Board in accordance with subsection 3.9.6, it shall conduct its meeting in compliance with the Open and Public Meetings Act.

### **3.7.6 Voting**

**3.7.6.1 Recording of Votes:** The minutes shall contain a record, by each individual member, of each vote taken by the Board.

**3.7.6.2 Proxy Voting:** Proxy voting shall not be permitted at meetings of the Board or meetings of its committees.

## **3.8 Board Officers and Staff**

**3.8.1** The officers of the Board shall be a chair, a vice-chair, and a secretary. The Board’s staff shall be the commissioner of higher education and other staff as the commissioner deems necessary.

### **3.8.2 Appointment, Election and Term of Office**

**3.8.2.1 Chair and Vice-chair:** The Board shall elect a chair and vice-chair from among its members at its August 2023 meeting and its May/June meeting in each odd numbered year thereafter. Beginning on the date of election, the chair and vice-chair shall serve concurrently for two years and until their successors are chosen and qualified. A member may not serve more than two terms as chair.

**3.8.2.2 Secretary:** The Board shall appoint a full-time employee from the commissioner’s staff to serve as secretary at the Board’s discretion.

**3.8.2.3 Commissioner:** Upon approval by the governor and with the advice and consent of the Senate, the Board shall appoint a commissioner of higher education. The commissioner shall serve at the Board's pleasure.

### **3.8.3 Removal of Board Officers or Commissioner**

**3.8.3.1 Chair and Vice-Chair:** The Board may remove a chair or vice-chair of the Board for cause.

**3.8.3.2 Commissioner:** Either the Board, or the Governor after consultation with the Board, may terminate the commissioner.

**3.8.4 Vacancies:** The Board may fill a vacancy in any Board office because of death, resignation, removal, disqualification or otherwise, according to the requirements of statutes and these bylaws, for the unexpired portion of the term.

**3.8.5 Chair:** The chair shall preside at all meetings of the Board and shall have such other duties, powers and responsibilities as directed by the Board or by these bylaws. In the absence of such specifications, the chair shall have the powers and authority and shall perform and discharge the duties of similar officers serving organizations with similar purposes and objectives as the Board.

**3.8.6 Vice-chair:** The vice-chair shall act as chair in the absence or disability of the chair and shall have such other duties, powers and responsibilities as the Board or chair may assign. In the event the office of chair becomes vacant, a vice-chair shall act as interim chair until the next regular meeting, at which time the Board shall elect a new chair to serve the balance of the unexpired term. If the office of vice-chair is similarly vacated, the Board shall elect a new vice-chair from among its members at the next regular meeting.

**3.8.7 Secretary:** The secretary shall make a record and maintain a record of all Board meetings and shall perform such other duties as the Board may direct.

### **3.8.8 Commissioner**

**3.8.8.1 Chief Executive Officer:** The commissioner shall act as the Board's chief executive officer and, subject to the control of the Board, shall supervise and control all of the business and affairs of the Board. The commissioner may enter into contracts or execute and deliver instruments that do not exceed \$100,000 on behalf of the Board without Board approval. For contracts or instruments that exceed \$100,000, the commissioner shall first obtain Board approval.

**3.8.8.2 Commissioner Interprets Board Policy:** The commissioner shall be responsible for interpreting the Board's policies.

**3.8.8.3 Advocacy:** The commissioner is authorized to advocate on behalf of the Board before the governor, the legislature, and other officials and governmental entities.

**3.8.8.4 Commissioner Represents Board:** In order to ensure that there is effective follow through in implementing the Board's action, the commissioner shall work with USHE institutions on the Board's behalf to ensure institutions effectively implement the Board's policies, directives, strategies and goals.

**3.8.8.5 Information, Reports, Audits:** The commissioner is empowered to require information and reports from USHE institutions. The commissioner has the authority, after giving due notice to the presidents, to assign staff to audit records of institutions or otherwise verify data. Such audits shall be in response to the Board's instructions or to verify compliance with

the Board's policies or applicable laws. The Board's audit committee shall prioritize the commissioner's audits.

**3.8.8.6 Board Policies Properly Executed:** After the Board has adopted a new policy or program, or taken an action, the commissioner shall ensure that it is properly carried out. The commissioner will collaborate with the Council of Presidents, and relevant institutional staff to implement new policies or directives and to periodically follow up on that implementation. Presidents shall cooperate with the commissioner to properly execute the Board's policies and directives.

**3.8.8.7 Statutory Duties:** The commissioner is responsible to: ensure that the Board's policies, programs, and strategic plan are properly executed; furnish information about the USHE and make recommendations regarding that information to the Board; in consultation with the Board's Executive Committee and in accordance with Utah Code section 53B-1-402(2), evaluate and provide support and guidance to USHE institution presidents; provide state-level leadership in any activity affecting an institution of higher education; and perform other duties assigned by the Board.

**3.8.9 Commissioner's Staff:** The commissioner may appoint and hire a staff of professional, legal, and administrative personnel, including associate commissioners.

### **3.8.10. Salaries and Benefits**

**3.8.10.1 Chair and Vice-Chair:** The chair and vice-chair are compensated as members of the Board and shall not receive additional salaries.

**3.8.10.2 Secretary:** The commissioner shall set the salary of the secretary as a member of staff.

**3.8.10.3 Commissioner:** The Board shall set the salary of the commissioner.

**3.8.10.4 Commissioner's Staff:** The commissioner shall determine salaries, retirement provisions, and other benefits for the staff in accordance with statute.

**3.8.11 Contracts:** The Board may authorize any officer or officers or agents of the Board, in addition to the officers so authorized by these bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Board, and such authority may be general or may be confined to specific instances.

### **3.9 Committees**

**3.9.1. Committee Appointments:** The Board may establish standing committees and such other special committees as the Board or the Board chair may determine to be necessary or appropriate. With the exception of the Executive Committee, the Board chair shall appoint the membership and a chair of all standing and special committees. Each standing committee shall serve concurrent two-year terms with the chair who appointed them.

**3.9.2. Standing Committees:** The Board shall form the following standing committees:

**3.9.2.1 Executive Committee**

**3.9.2.2 Audit Committee**

**3.9.3 Staff Support:** The commissioner shall provide staffing and support to each standing and special committee.

**3.9.5 Committee Membership and Voting of Board Chair and Vice-chair:** The chair and vice-chair may be appointed to and serve as regular members of one or more standing committees, with full power to vote. The chair and vice-chair shall also be ex officio members of each standing committee to which they are not appointed on a regular basis, but in such ex officio capacity shall be without power to vote.

### **3.9.6 Executive Committee**

**3.9.6.1. Composition:** The Executive Committee shall be comprised of the Board chair, the Board vice-chair, and one committee member at large appointed by the Board chair.

**3.9.6.2. Authority:** The Executive Committee may meet to address issues, identify areas of concern, set priorities or agenda items, or conduct other business requiring the Board's action during the interim period between Board meetings as provided in this section. The Executive Committee shall report to the Board at the Board's next meeting following an action undertaken.

**3.9.6.3. Routine Matters:** The Board authorizes the Executive Committee to act upon routine matters during the interim between the Board's regular meetings.

**3.9.6.4. Non-routine Matters:** The Executive Committee may not act on non-routine matters except under extraordinary and emergency circumstances.

**3.9.7. Committee Meetings:** Meetings of all committees of the Board may be held upon the call of the committee chair, the Board chair, or at the request of the commissioner.

### **3.10 Advisory Councils**

**3.10.1 Council of Presidents:** The Board shall establish a Council of Presidents comprised of the presidents from each of the institutions and the commissioner. The commissioner shall serve as Council of Presidents chair.

**3.10.2 Student Advisory Council:** The Board shall establish a Student Advisory Council composed of students from USHE degree-granting institutions to advise the Student Board Member on issues related to student well-being and student success. The Student Board Member shall also solicit feedback from technical college students during periodic listening sessions held throughout the Student Board Member's term.

**3.10.3 Other Advisory Councils:** The Board may establish other advisory committees or councils as needed.

**3.10.4** All matters requiring Board determination shall be addressed in a properly convened meeting of the Board or Executive Committee.

**3.11 Electronic Meetings:** The Board and the Executive Committee may convene and conduct an electronic meeting in accordance with Utah Code section 52-4-207 of the Open and Public Meetings Act. The members of the Board and committees who participate by electronic communication may be counted in the quorum that is necessary to conduct and transact the Board's business. Such participation does not alter the requirements of notice, open and public meetings, and other applicable rules of the Board.

### **3.12 Public Information**

**3.12.1 Official Pronouncements:** The Board chair is the only member of the Board authorized to make official pronouncements for the Board, and then only as authorized by the Board. The commissioner as executive officer of the Board is authorized to speak for the Board and USHE with

respect to administrative matters and any policy matters that have received the approval of the Board.

**3.12.2 Releases and General Information:** The commissioner or designee may issue news releases, general information, and other communications regarding administration of USHE, provided the releases are consistent with Board policies and directives.

### **3.13 Conflict of Interest**

**3.13.1** A potential conflict of interest exists when there is a direct and immediate interest or relationship, including a financial interest exceeding \$2,000, with persons or businesses regulated by or directly affected by decisions of the Board, or persons or organizations which may present requests or issues before the Board. Interests or relationships of a Board member, their spouse or other members of the immediate family/household, or of any other person who is constructively controlled by the Board member are included.

**3.13.2** Board members shall disclose potential conflicts of interest as outlined in *Board Policy R122, Board Conflict of Interest*. In the event the Board is taking action that involves issues with which a Board member has a potential conflict, the Board member shall orally disclose the conflict during a regularly scheduled public meeting and abstain from participating in discussion or voting on the issue.

**3.13.3** Board members are subject to the Utah Public Officers' and Employees' Ethics Act, Utah Code Title 67, Chapter 16. The Commissioner's Office will provide training materials to Board members that explain the obligations of the Act. Board members are also encouraged to seek counsel from the Board's general counsel or the Attorney General's office if there is any potential doubt as to the applicability of the Act.

**3.14 Amendment of Bylaws:** The Board may amend these bylaws at any regular meeting, provided that copies of any proposed amendments shall be submitted in writing to each member and to the commissioner at least seven days before the meeting at which they are to be proposed for vote.