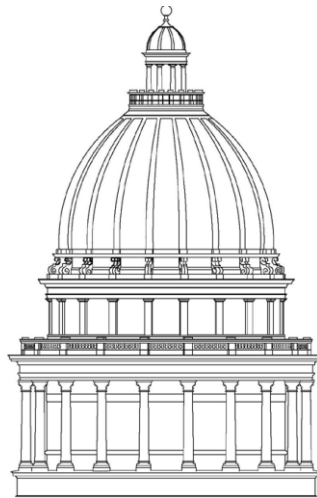


REPORT TO THE  
**UTAH LEGISLATURE**

Number ILR 2018-D



**Higher Education Governance by the Board of Regents and  
the Boards of Trustees Needs Reexamination**

October 2018

Office of the  
LEGISLATIVE AUDITOR GENERAL  
State of Utah





STATE OF UTAH

# Office of the Legislative Auditor General

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## Audit Subcommittee of the Legislative Management Committee

President Wayne L. Niederhauser, Co-Chair • Speaker Gregory H. Hughes, Co-Chair  
Senator Gene Davis • Senator Kevin T. Van Tassell • Representative Brian S. King • Representative Brad R. Wilson

JOHN M. SCHAFF, CIA  
AUDITOR GENERAL

October 2018

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **Higher Education Governance by the Board of Regents and the Boards of Trustees Needs Reexamination** (Report #ILR 2018-D). We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

John M. Schaff, CIA  
Auditor General

JMS/lm



# REPORT TO THE UTAH LEGISLATURE

Report No. ILR 2018-D

## **Higher Education Governance by the Board of Regents and the Boards of Trustees Needs Reexamination**

October 2018

### Audit Performed By:

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Office of  
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State of Utah

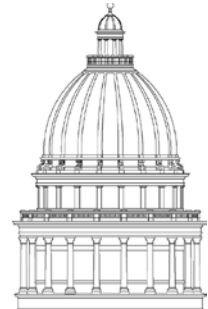
Report Number ILR 2018-D  
October 2018

## Higher Education Governance by the Board of Regents and the Boards of Trustees Needs Reexamination

As discussed in our companion report #2018-11 *A Performance Audit of the Utah Board of Regents*, the Utah State Board of Regents is statutorily established as the governing body for the Utah System of Higher Education (USHE). However, as that audit report shows, the Board of Regents can improve its governance and control of USHE in several important ways.

While higher education governance in the state statutorily falls significantly on the Board of Regents, institutional Boards of Trustees have transitioned to take on more oversight responsibilities over the last several years. Although the Boards of Trustees were statutorily set up largely as community advocates, the Regents have long delegated responsibility to the Trustees, increasing the Trustee role at the institutions. The Legislature also granted program approval and other duties to the Trustees in 2017.

Consequently, important USHE governance issues exist in Utah. The purpose of this report is to identify the changing nature of the Board of Trustees' roles and to provide the Legislature with information for consideration. Principle among these items for consideration is where the Legislature wants the primary governance of higher education to reside. Strong statewide control requires a strong and active Board of Regents and strong institution control would require reviewing statutory responsibilities of the Board of



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**Institutional Boards of  
Trustees have  
oversight  
responsibilities.**

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**Strong statewide  
control requires a  
strong Board of  
Regents.**

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Regents and Boards of Trustees. Policy issues can be found in the sections labeled in red, *Questions for Legislature to Consider*.

## **Board of Regents Has Delegated Powers To the Boards of Trustees**

Higher education governance systems vary across the United States. Most states can be classified as one of two governance structures: a consolidating board or a coordinating board. As a consolidating board, the Utah State Board of Regents holds the authority over the Utah higher education system, and delegates authority to the institutional Boards of Trustees.

### **Utah Higher Education Was Designed With the Regents as a Consolidating Board**

Higher education governance systems in the United States generally have either strong statewide control– with authority maintained at the state level– or strong institutional control with authority at the local level. Although distinctions exist between individual states’ governance systems, they can often be classified into two categories:

- Consolidating boards – authority resides with a statewide governing board but some power is delegated to institutions.
- Coordinating boards – statewide board organizes resources and academic programs but most authority resides with the institutions.

Duties and powers for specific states vary according to individual governance structures. Generally, consolidating boards have most of the authority to manage and control the statewide higher education system, while coordinating boards’ authority is often limited to organizing resources and monitoring. With few exceptions, both consolidating and coordinating boards maintain some common powers. These will be discussed later in this report.

We examined higher education governance systems in nearby states and some additional states with governance structures similar to Utah’s that were recommended by the National Council of State Legislatures (NCSL). Higher education models vary depending on

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**Higher education governance systems generally have either strong statewide control (consolidating boards) or strong institutional control (coordinating boards).**

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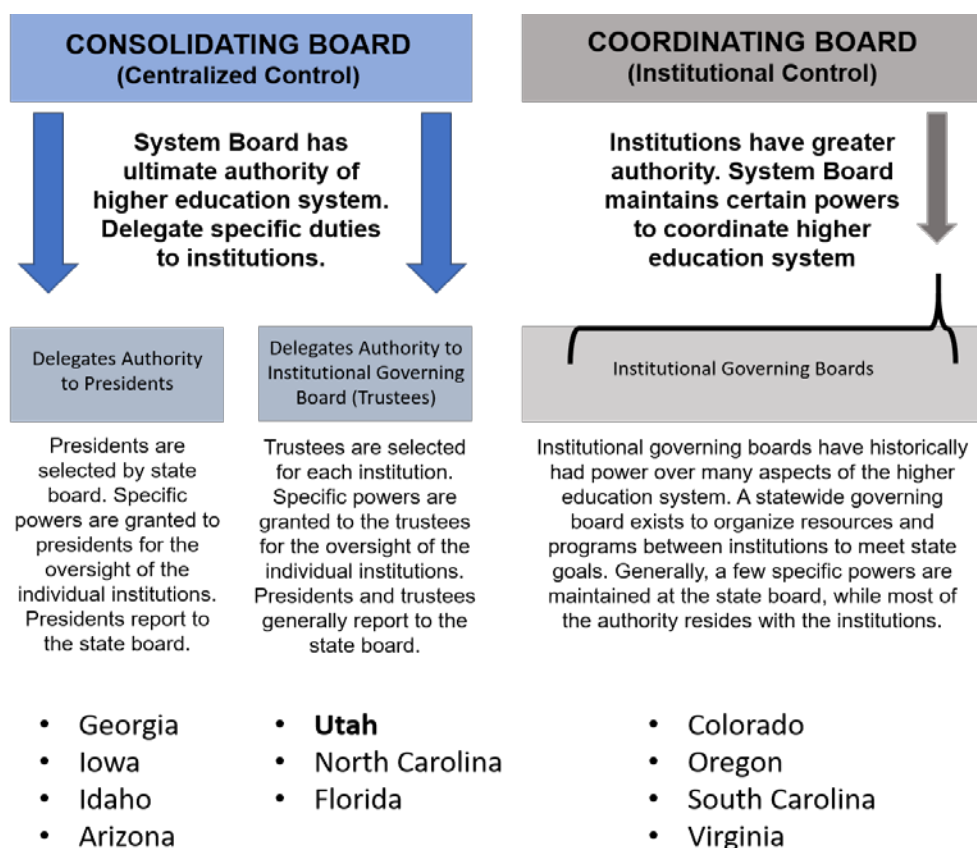
**Consolidating boards have most of the authority to control statewide higher education, while coordinating boards’ authority is often limited to organizing resources and monitoring.**

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many factors including history, geography, and the number of institutions. For example, states with institution-wide governing responsibilities over many institutions often delegate responsibilities to other bodies but maintain some control over them. Figure 1 shows these two main categories for higher education governance systems, as well as some examples of states that fall in each category.

**Figure 1 Higher Education Consolidating and Coordinating Boards.** We have categorized Utah as a consolidating board since state statute gives the Board of Regents most higher education governance responsibilities. The Regents have delegated some duties to institution-level Boards of Trustees.



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**The Board of Regents is set up as a consolidating board. However, delegation of authority and recent legislation has pushed Utah's higher education governance more toward a coordinating board.**

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The Utah Board of Regents is the governing authority for higher education in Utah. As such, the Regents are set up as a consolidating board that delegates duties to the institutions through the individual Boards of Trustees. However, we found that the delegation of authority that has happened over time along with recent legislation have granted more authority to the institutional Boards of Trustees, pushing Utah's higher education governance more toward a coordinating board. This will be discussed in more detail later in this report.

**Different Governance Structures Have Potential Strengths and Weaknesses.** Consolidating boards are generally more hands-on in the entire system, which can allow for state priorities to be established and followed without interference from local institutions pushing for their own agendas. Conversely, this statewide view from a central board can result in slower response to individual institution needs.

Coordinating boards are less involved in the statewide higher education system, with a role of monitoring high-level state needs for higher education. This allows institutions to assess their individual needs. However, this approach can result in individual institutional decisions conflicting with broader state goals.

### **Some Common Powers Are Typically Maintained at the Statewide Level**

Although statewide boards have different levels of involvement in the coordinating and consolidating governance structures, some common powers are maintained at the state level regardless of structure. For Figure 2, we examined 12 systems<sup>1</sup> and identified four powers that were identified as important factors to be maintained at the statewide, or Regents, level. Academic programing was the most common power maintained at the statewide board level, for both consolidating and coordinating boards.

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**Duties and powers for states will vary by governance structure. However, common powers are often maintained by statewide boards.**

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<sup>1</sup> The 12 states examined are Arizona, Idaho, Colorado, Oregon, Missouri, Washington, North Carolina, Iowa, Georgia, Florida, Kansas, and Virginia.

**Figure 2 Governing Body Powers Maintained by Other Statewide Boards.** Of the 12 states we looked at, both consolidating and coordinating boards typically maintain some duties at the state level.

Duties Maintained by Statewide Governing Board	Percentage of Other States Examined	Utah
Programs and Degree Approval	100%	No
Centralized Legislative Appropriations	75	No
Tuition Rate Approval	58*	Yes
Hiring and Removal of University Presidents	50	Yes
*One state we examined allowed institutions to increase tuition rates under 5%, with anything above going to the statewide board for approval. The state legislature in another state set tuition rates for all institutions.		

In Utah, the Board of Regents maintains tuition rates, manages all legislative appropriations requests, and hires university presidents. However, Utah is the only state we reviewed where program and degree approval is done at the local or institutional Board of Trustee level.

**Utah is the only state we reviewed where program and degree approval is done at the local or institutional Board of Trustee level.**

## Boards of Trustees' Duties Have Increased

Prior to recent legislative changes, statute gave Boards of Trustees limited powers, however through delegation authority that has been granted over time, the Board of Regents has enhanced each Board of Trustees with fiduciary and other governance duties. Recent statutory changes have shifted additional duties to the Trustees which has moved some power from the Regents to the Trustee level at the institutions.

### Recent Statutory Changes Increased Duties of Trustees

Governance responsibilities have shifted recently to the institutions' Boards of Trustees. While the Regents' delegation of powers to the Trustees is not new, recent changes to statute have increased the importance of the Trustees.

**Delegation of authority from the Board of Regents to Boards of Trustees is not new.**

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**In 2017 Boards of Trustees received power to approve programs.**

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**Trustees now act as a cochair for institutional presidential search committees.**

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**Eight of 17 Regents must be former Trustees.**

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Prior to 2017, statute gave Trustees limited powers such as:

- Facilitate communication with the community
- Fundraising and development projects
- Strengthen community identification
- Select recipients of honorary degrees
- Approve appointed personnel

In 2017 Senate Bill 238 gave Trustees several important duties regarding institution governance. The most important of these was the power to approve programs. Prior to this change, all program decisions were recommended by the Trustees to the Regents for final approval. This is an important duty that directly affects faculty and employee counts, budget requests, and institution perceptions. While most Trustees seemed happy with this change, there were some concerns that the change could lead to a statewide increased duplication of programs and costs.

In addition to program decisions, Trustees were also added to presidential search committees as a cochair. The Board of Trustees executive committee is also invited to join the Regents in their decision-making process. While the choice of institution presidents is ultimately determined by the Regents, several Trustees mentioned this as a positive change and they felt their input was important to the decision.

The makeup of the Board of Regents was also affected by S.B. 238. Eight of the 17 Regents are now required to be former Trustees, and are selected by the governor from nominations put forth by Boards of Trustees. With former Trustees now being appointed as Regents, the institution perspective will be better represented at the system level. These three changes further shift some control to the local Trustee level.

### **Board of Regents Has Delegated Power to Trustees**

In addition to the duties given to the Trustees in statute, the Board of Regents has further delegated to each Board of Trustees additional powers and duties, adding additional oversight for important items. As stated in Regent policy, “it is the intent of the Board to sustain and enhance the viability of a strong and stable structure of delegation.”

Policy delegates the following to the Boards of Trustees:

- Monitor implementation of the institutional mission
- Approve facility construction and property acquisitions
- Review and approve research and training contracts/grants
- Review of institutional audits
- Review and approve financial reports
- Review and approve institutional reports

These items are typically taken to the USHE Commissioner's office and Regents for review and approval after the Trustees consider them. This review can range from a consent calendar item for the Regents to discussion at Regent committees. This delegation of powers to Trustees makes the Regents look more like a coordinating board and less like the consolidating board they appear to be in statute. Many important decisions are first approved by Trustees before being submitted to the Regents, creating shared governance responsibilities. The delegation of authority to Trustees increases institution control.

## **Utah's Shared Governance Model Should Be Examined**

There are many types of governance structures within higher education systems throughout the country. As discussed previously, most state higher education governance models can be categorized as either consolidated or coordinated, although each state has individual differences. One institution president that we visited suggested that the type of system that is desired should determine the higher education governance structure.

Another way to look at state higher education governance is on a spectrum from strong statewide control to strong institution control, with some type of shared governance in between. A coordinating board will typically result in strong institution control, while a consolidating board may have strong statewide control or shared governance depending on the powers delegated to the institutions. The independence of the Trustees, along with their governance responsibilities, increases the institutional control in the system. Figure 3 shows some of the key considerations to be reviewed when determining the governance model.

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**Trustees have received delegated authority to monitor institution missions and approve facility construction and property acquisitions.**

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**Higher education governance can range from strong statewide control to strong institutional control.**

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**Figure 3 Key Considerations in Determining Where Control Lies in Governing Higher Education.** Some key considerations are typically maintained at the regent level: mission, programs, tuition, and funding requests. The current practice in Utah is shown in red.

Key Considerations	Strong Statewide Control	Shared Control	Strong Institution Control
Regent-Level Power	Very High	Medium <b>(Utah)</b>	Low
Trustee Power	Limited	Delegated from Regents <b>(Utah)</b>	Governing
Trustee Reporting	Limited or No Governance Responsibilities	May Report to Regents	Independent Authority <b>(Utah)</b>
President Reporting	Regents Hire and Oversee President	Regents Hire President, Regents and Trustees Oversee <b>(Utah)</b>	Trustees Hire and Oversee Presidents
Mission	Overseen by Regents <b>(Utah)</b>	Maintained at Regent Level	Overseen by Institution
Programs	Overseen by Regents	Maintained at Regent Level	Overseen by Institution <b>(Utah)</b>
Articulation of Credits to Other Institutions	High	Could be Regent or Institution Decision <b>(Utah)</b>	Determined by Institution
Tuition	Determined by Regents	Approved by Regents After Consultation with Institution <b>(Utah)</b>	Determined by Institution
Funding Requests	Determined by Regents	Approved by Regents After Consultation with Institution <b>(Utah)</b>	Determined by Institution

Higher education governance in Utah is typically shared between the Regents and Trustees.

Utah (shown in red in Figure 3) typically falls in the shared governance category above. The shared governance present in Utah is helpful to maintain a system perspective through the Board of Regents as well as get local input from Boards of Trustees. However, as discussed previously in this report, program decisions were Legislatively delegated to the Boards of Trustees, thus increasing institution control. The fact that Trustees are not appointed by the Regents also contributes to more institutional control.

The shared governance model in Utah is a function of both statute and Regent delegation of powers to Trustees. Because the delegation of powers is set by the Board of Regents, they could reduce the powers the Trustees have by reducing what is delegated to them. Therefore, if the shared governance model is desired in the state, powers currently delegated to the Trustees could be codified to ensure they are maintained.

As Trustees are given more power, they may need staff to ensure they have the ability to effectively govern the institutions. While the Trustees appear active and engaged, they are dependent on the institution's president and staff for information. The ability to independently assess and validate information from the institution becomes more important as more duties are shifted from the Regents. Unlike the Regents, the Trustees do not have a large dedicated staff working for them.

### Questions for Legislature to Consider:

*Policy makers in the state should determine if the balance of power between the Regents and the Trustees is appropriate. There are good arguments for both strong statewide control and strong institutional control. However, because much of Board of Trustee powers comes from delegated authority of the Board of Regents, if a continued shared governance model is desired, policy makers may want to consider statutory changes to formalize Board of Trustees roles in institution governance.*

*If stronger institutional control is desired, the Legislature may consider the need for Boards of Trustees to have staff assistance in fulfilling oversight roles at institutions. Boards of Trustees could also ask internal auditors to validate more information for them.*

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**Boards of Trustees may need staff as their governance responsibilities have increased.**

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## Board of Regent's Control Over Trustees Could Be Reexamined

The Board of Regents, Boards of Trustees, and institution presidents do not have clear reporting relationships. Trustees typically do not report as being subject to the Board of Regents, and presidents do not officially report to Boards of Trustees. The Board of Regents has delegated its authority to the Boards of Trustees that they do not appoint and cannot directly control. Presidents officially report to the Board of Regents but policy and other issues are first approved by Trustees who most often view themselves as advocates for their institution, not the system of higher education.

### Reporting and Appointment Structure Are Not Aligned

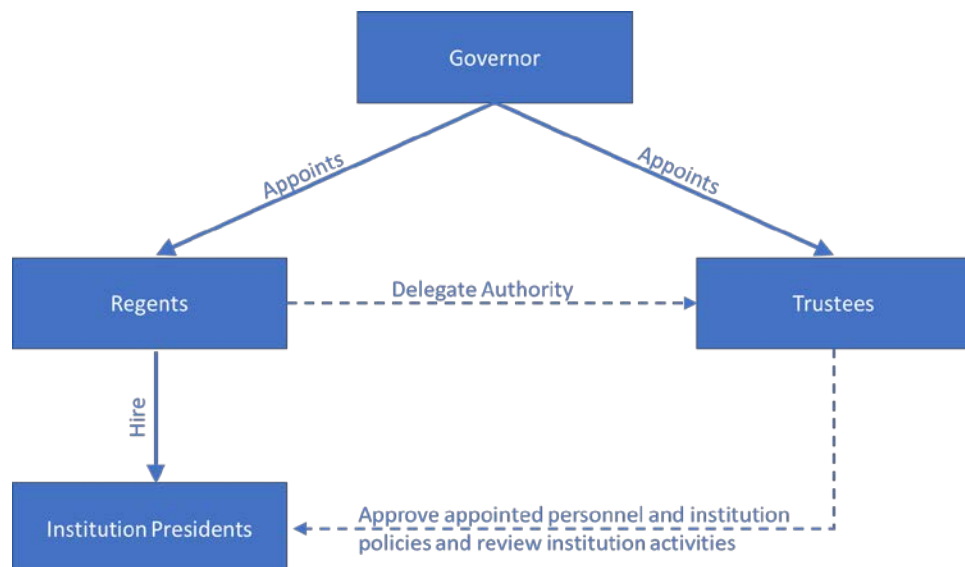
As shown in Figure 4, the Governor appoints board members to both the Board of Regents and the institutions' Boards of Trustees. While statute defines the duties of both groups, the Regents have delegated some of their duties to the Trustees.

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**The Board of Regents delegates powers to the Boards of Trustees, who they do not control.**

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**Figure 4 Regents Do Not Appoint Trustees, and Trustees Do Not Have Direct Control Over Presidents.** Regents delegate authority to Trustees but do not appoint them, and Trustees approve institution initiatives but do not have direct reporting from the presidents.





While it is common in other states for the entity charged with higher education governance to delegate some authority to the local institution level, often the delegating entity has the power to appoint or hire and terminate those to whom authority is delegated. For example:

- North Carolina and Florida delegate authority to institution-level Trustees, similar to Utah. However, in both states the statewide governing body has the authority to appoint some members of the Boards of Trustees.
- Georgia and Iowa do not have institutional Trustees so the statewide governing bodies delegate authority to university presidents who are directly hired by the governing authority.

In Utah the Board of Regents has no direct authority over the Boards of Trustees, yet many powers have been delegated to them by the Regents. If the Regents are unsatisfied with how the Trustees are using their delegated power, they cannot require them to act differently or remove them from their position. While the Regents could change their policy to take away all delegated authority, this would be a major change in governance structure. This would be an extreme step that would affect all Trustee boards, even if there were only concerns with one board.

**Trustees Do Not Have Direct Control Over Institution Presidents.** Through the authority delegated from the Regents, the Trustees have become like governing boards over the institutions. However, the institutions' presidents are hired and fired by the Regents, not the Trustees, giving the Regents direct control over institutional presidents. As discussed previously, the Trustees do have a role on the presidential search committee, and with the recent statutory changes to the makeup of the Board of Regents, more former Trustees will be Regents. But ultimately the Regents hire the presidents and determine their compensation. Statute gives Trustees the authority to approve programs and appointed personnel proposed by the president, and the Regents have given them additional authority to approve policies, contracts and grants, and construction and property purchases.

Because of the many governance duties Trustees have, the presidents are accountable to them, even though they do not hire, fire, or set compensation for presidents. One president we met with

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**In other states, the entity that delegates authority typically has some control over the entity to which power is delegated.**

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**The Boards of Trustees oversee presidents' decisions, but do not hire and fire them.**

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**Institution presidents report to both Trustees and Regents.**

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discussed the difficulty of having two boards to report to, a thought that was shared by a staff member in the Commissioner's office. The presidents work with Trustees often at their campuses and rely on their approval for many important issues. It is not surprising that one president said that Trustees are treated as though they have governance responsibilities over the institution, even though the president knew the Regents have this power.

While we recognize that having the local input and perspective of Trustees is important, and the Trustees play an important role in providing more detailed oversight of institutions, it should be noted that turning over governance duties to the Trustees increases the independence of institutions and may decrease the Regents' ability to coordinate the institutions as a unified statewide system.

### **Roles of Board of Regents and Boards of Trustees Should Be Examined**

As discussed in the introduction, the Trustee boards at the institutions of higher education in the state appear to have been set up with limited duties. As their governance duties have increased, there have not been changes with the reporting relationships within higher education. Additionally, Trustees at different institutions listed different responsibilities and duties, and Trustees did not always seem to fully understand what their authority is. As discussed previously, policy makers should review what level of control they believe should be centrally located with the Regents or locally controlled by Trustees. The governance balance between the Board of Regents and the Boards of Trustees would ideally determine:

- Presidential Reporting Lines
- Regent/Trustee Relationship
- Policy Making
- Institution Mission Decisions
- Funding Request Process
- Tuition Increases

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**Trustees listed different duties and responsibilities and did not seem to fully understand their authority.**

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## Trustees Have Different Roles Within the Higher Education System

The role of the Trustees at higher education institutions throughout the state is well defined through statute and policy, as shown in Figure 5.

**Figure 5 Trustee Duties Are Derived from Statute and Regents' Delegation.** Governance duties assigned to Trustees originate from the Legislature or are delegated from the Regents.



*Source: Utah Code and Regent Policy*

Despite statute and policy detailing Trustee roles, we did not receive consistent answers when we asked Trustees what they saw as their primary duty. Trustees typically view themselves as advocates for the institution and not as part of the state's system of higher education.

We visited Trustees at six institutions throughout the state. These Trustees reported different purposes for their boards, including:

- Institution governance
- Fiduciary responsibility
- Presidential advice
- Keep university running
- Regent delegate
- Institution administration oversight
- Protect University Brand

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**Trustee duties originate from statute or are delegated from the Board of Regents.**

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**Trustees typically view themselves as institution advocates.**

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Based on these responses, it does not appear that Trustee roles are consistent across the system. Few saw themselves as acting on the behalf of the Regents, despite the fact that much of what Trustees do is delegated from them. Only one of twenty Trustees interviewed said their duties were fulfilled on behalf of the Board of Regents. Because Regents do not appoint Trustees and have provided little training for them, Trustees generally did not report that they are accountable to the Regents. Most of the Trustees we spoke with had allegiance to the institution, not to the Regents or the system of higher education in the state.

### **Questions for Legislature to Consider:**

*The Legislature could consider changing the way Trustees are appointed. If stronger statewide control is desired, the Board of Regents could be given authority to directly appoint Board of Trustees members or submit names to the Governor for consideration. Also, to further strengthen statewide control, the Board of Regents should increase oversight and auditing of Board of Trustees decisions.*

*The Legislature could consider the relationship between presidents and Boards of Trustees. If stronger institutional control is desired, the Legislature could consider formalizing in statute a reporting relationship between institution presidents and their Board of Trustees, which could include the ability to appoint and terminate presidents.*

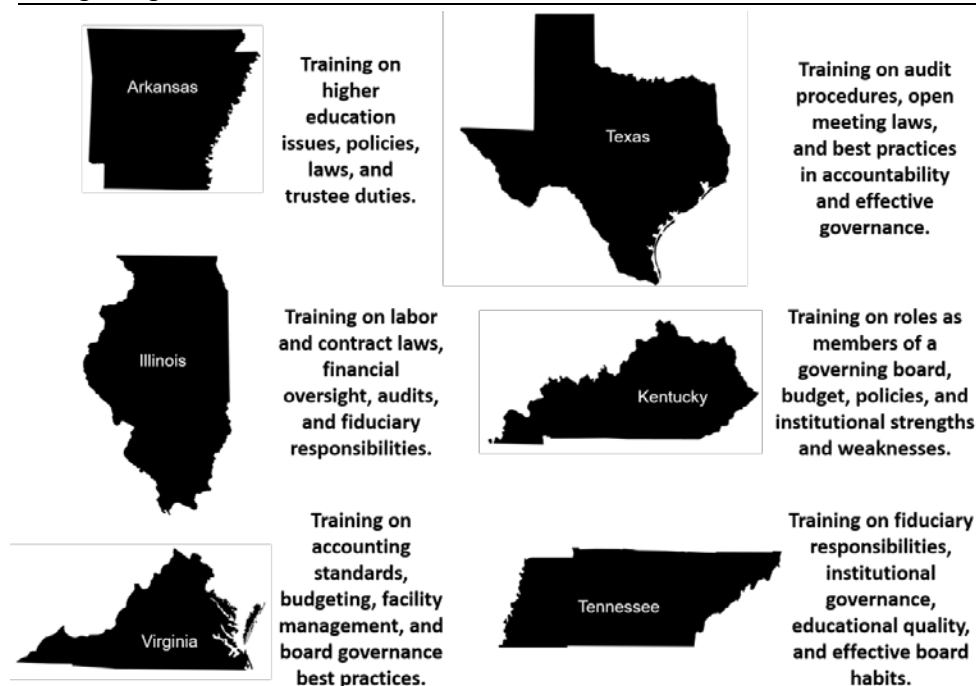
## **Trustee Training Should Be Improved If Governance Roles Continue to Expand**

Trustees often rely on the recommendations of presidents and professional staff in policy deliberations. To properly oversee all functions managed by the Trustees, board members should possess basic knowledge or experience in each oversight area. Limited operational training has been developed by the commissioner's office, but could be expanded. Other states have mandated trainings for institutional board members or have required that they possess relevant experience when being considered for appointment. Additionally, professional organizations encourage Trustee training and education to familiarize members with roles, responsibilities, and challenges.

## Other States Require Trustee Training or Experience

Some states have passed legislation to ensure the institutional governing boards receive appropriate training for the complex and diverse oversight responsibilities of their positions. These requirements are meant to encourage accountability and to ensure that board members are aware of their responsibilities as Trustees. For example, some states require an orientation training session for newly appointed board members. Some areas covered by training include accounting and budgeting, auditing standards, facility and property management, and ethics. Figure 6 displays six states that require training of their institutional governing boards.

**Figure 6 Trustee Receive Training in Other States.** Training for Trustees includes effective governance, Trustee duties, and budgeting.



In addition to training, some state-wide governing boards have processes in place to review the qualifications of potential Trustee members before appointment. For example, the Florida Board of Governors oversees the state's higher education system and delegates authority to the individual Trustee boards. The Board, which selects

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**Some states have passed legislation to train institutional governing board members in areas such as budgeting, auditing, facility management, and ethics.**

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**In addition to training, some state-wide governing boards review qualifications of potential Trustee members before appointment.**

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**Professional non-profit organizations dedicated to higher education governance also encourage training for Trustees.**

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**Local district boards are required by statute to receive training on budgeting, financial controls, and governance. These same topics would be beneficial for Trustees at higher education institutions as well.**

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five of the thirteen Trustee board members for each institution, uses an evaluation committee to review potential Trustee candidates in areas such as professional experience, knowledge of their role as a Trustee, prior experience on boards, and the ability to meet established code of ethics for public officers.

**Professional Organizations Advocate for Trustee Education and Training.** Some professional non-profit organizations dedicated to higher education governance have also encouraged training for Trustees. For example, the American Council of Trustees and Alumni (ACTA) supports essential and ongoing education for higher education governing boards and the Association of Governing Boards states that orientation and training are essential to good governance. Training is meant to encourage governing boards to take a more assertive role in the mission of their institutions. ACTA recommends that both state-wide and institutional boards incorporate training policies in their bylaws. They further encourage making training a condition to serving as a full member of the Board of Trustees.

### **Expertise and Training Requirements Could be Expanded**

*Utah Code* 63I-5, the Internal Audit Act, states that “the appointing authority shall ensure that audit committee members have the expertise to provide effective oversight of and advice about internal audit activities and services.” For higher education institutions, the appointing authority is the Board of Regents, and Trustees must make up at least three members of the audit committee. While expertise is required for audit committees, this requirement could be expanded to include additional Trustee duties.

In Utah, training is required for other board members. For example, local districts are required by statute to receive training from the Office of the State Auditor. This training includes items such as budgeting, financial controls, and governance. These topics would be beneficial for Trustees at higher education institutions as well.

### **Question for Legislature**

*The Legislature may consider adding more training requirements for Boards of Trustees.*

## **Recommendations**

1. We recommend the Legislature review the governance duties of the Board of Regents and Boards of Trustees to determine the appropriate balance of power between statewide and institutional control and if necessary consider formalizing Board of Trustees' duties.
2. We recommend the Legislature consider the need for Boards of Trustees to have staff help in fulfilling their oversight roles.
3. We recommend the Legislature consider whether the Board of Regents should be more involved with appointing Trustees.
4. We recommend the Legislature consider formalizing the relationship between presidents and Trustees through statute.
5. We recommend the Legislature and Board of Regents consider adding more training requirements for Trustees.

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## **Agency Responses**

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October 8, 2018

Mr. John Schaff, CIA  
Legislative Auditor General  
W315 Utah State Capitol Complex  
Salt Lake City, Utah 84114-5315

Dear Mr. Schaff,

Thank you for the opportunity to respond to the Legislative Audit ILR 2018-D. We appreciate the members of the boards of trustees and their dedicated service, our positive relationship with them, and the ways we work together for the benefit of Utah higher education and our state.

Thank you for considering our comments and suggestions. Our responses to each of the recommendations is attached for your reference. We look forward to continuing to work with legislators to accomplish our common goals.

Sincerely,



Harris H. Simmons, Chair  
Utah Board of Regents



David L. Buhler, Commissioner  
Utah System of Higher Education

*Recommendation 1: We recommend the Legislature review the governance duties of the Regents and Trustees to determine the appropriate balance of power between statewide and institutional controls and then consider formalizing Board of Trustee duties.*

Response: We agree. The Board of Regents has worked to strike the right balance of oversight between the Regents and trustees, at times in response to suggestions from legislators, trustees and others. That effort, however, may have confused reporting lines, and in some instances, ceded too many of the Regents' responsibilities to the trustees. A review of the current balance may provide helpful clarity that will benefit the students, the state, and the institutions.

In general, the Regents support the balance already established in statute, with a strong central governing body that establishes and protects statewide priorities and identifies statewide needs. There are many advantages of having a central governing body, some of which this audit highlights. Other specific benefits include systemwide general education curriculum that allows for seamless transferability, specific and disciplined institutional missions, consistent statewide policies addressing student mental health and safety, tuition oversight, uniform policies on civil liberties such as free speech and due process, and statewide accessibility initiatives such as the proposed statewide college access advising program.

The boards of trustees are valuable partners that provide local perspectives on the successes and challenges for their respective institutions. Moreover, trustees' regular interactions with institutions provide insight that Regents may not otherwise have. For those reasons, the Regents have delegated or shared some responsibilities to leverage these advantages. For example, the Regents share the responsibility of ongoing performance management for presidents by establishing resource and review teams that have two Regents and the chair and vice chair of the trustees who work together to support and evaluate presidents. That cooperation allows the Regents to assess a president's progress from the perspective of the local community and statewide system level. Trustees also have a critical role in leading presidential searches as co-chairs of the search committees and in assessing the final candidates.

The Regents remain concerned, however, that program approval has been legislatively delegated to the boards of trustees. Every state the auditors surveyed manage program approval at the statewide level; this is not surprising when observing a state-level board's priorities compared with individual institutions. Institutions will usually operate in their own best interests, and rightfully so—they must attract students, they must recruit skilled faculty, and they must raise money. Naturally, institutions may seek additional programs that increase their standing locally and nationally. It is perhaps unfair to expect a board of trustees to consider whether a proposed new program creates unnecessary duplication and inefficiencies within in the state system. But these are crucial concerns for students and taxpayers, and new programs should be scrutinized with those and other considerations in mind. It may be unrealistic to expect individual boards of trustees to make program approval decisions that will prioritize statewide interests over the priorities of their respective

institutions, but that is precisely what a central board does. All other states reviewed have reached that conclusion.

Recommendations in the companion audit suggest the Board of Regents can and should strictly scrutinize institutional needs and requests, and the Board agrees. Moving forward, if the Legislature were to choose to return program approval to the Board of Regents, the Board will openly examine and scrutinize proposed new programs to ensure they are needed, financially viable, meet workforce needs, and are within the institution's specific mission.

*Recommendation 2: We recommend the Legislature consider the need for Boards of Trustees to have staff help in fulfilling their oversight roles.*

Response: Because the Board of Regents believes a central governing body provides the most benefit for students and taxpayers, it does not support the need or cost of independent staff for boards of trustees. However, the Board of Regents understands that—depending on how much oversight is delegated—the boards of trustees may require additional staff support that is independent of their respective institutions. The Commissioner of Higher Education's Office could provide trustees with direct staff support to objectively evaluate institutional strategies, proposals and performance, to provide other guidance as needed.

*Recommendation 3: We recommend the Legislature consider whether the Board of Regents should be involved with appointing Trustees.*

Response: The Board of Regents supports this recommendation. Although the Regents have successfully collaborated with boards of trustees, the Regents acknowledge potential benefits of clarifying the reporting structure to align with the duties the Regents have delegated to the boards of trustees.

*Recommendation 4: We recommend the Legislature consider formalizing the relationship between presidents and Trustees throughout the statute.*

Response: The Board supports this recommendation if it provides needed clarity for presidents and trustees to understand their respective roles and relationships. Regents strongly affirm that their responsibility of selecting, evaluating, and making employment decisions regarding presidents is an essential element of ensuring institutional success through strong central oversight. The best interests of citizens are served when there is a system of higher education.



*Recommendation 5: We recommend the Legislature and Board of Regents consider adding more training requirements for Trustees.*

Response: The Board of Regents supports this recommendation. Currently we provide training for all trustees every July (which coincides with the beginning of terms to the boards of trustees). The training is voluntary. Whether or not the legislature makes training of trustees mandatory, we will enhance the training opportunities to be implemented beginning in July 2019.

October 8, 2018

Mr. John Schaff, CIA  
Legislative Auditor General  
W315 Utah State Capitol Complex  
Salt Lake City, UT 84114-5315

Re: Higher Education Governance by the Board of Regents and the Boards of Trustees Needs Examination: ILR 2018-D

Dear Mr. Schaff:

Thank you for the opportunity to review and provide comment on the draft of the above referenced audit. I was most impressed with the thorough nature of the examination of the current governance structure of higher education in Utah. You and your team are to be complimented for their exceptionally professional work.

My comment and feedback are as follows:

- I agree that Utah's shared governance model used currently in higher education should be examined.
- The audit's suggestion that most Trustees do not fully understand their reporting lines is accurate. In all fairness, however, these reporting lines are exceptionally confusing given the split nature (legislatively allocated authority versus authority delegated by the Board of Regents) of the Trustees authority set. Further, it is true that Trustees tend to lean toward their roles as advocates for their institution<sup>1</sup> as opposed to their roles as stewards of authority delegated by the Board of Regents and, by extension, as advocates for the Utah System of Higher Education.
- While the addition of statutory authority to Trustees pursuant to 2017's SB238 was welcomed by nearly all Boards of Trustees and their institutions, these changes also managed to add a greater potential for confusion in Trustees as to where their ultimate allegiance and advocacy should lie.
- It is true that the Trustees have come to be perceived by many to be like governing boards to the institutions. The implementation of SB238 only enhances that perception.
- A legislatively driven move to more institutional control by Boards of Trustees could be a positive move assuming capable and committed people continue to be appointed as Trustees—an assertion consistent with the theory that the most effective government is local. However, a complete reliance on local governance by Boards of Trustees would do great violence to Utah's commitment to have a higher education system that coordinates and correlates the efforts and missions of the institutions in the system. A true "system"

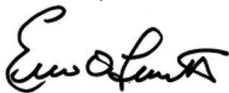
<sup>1</sup> Which is consistent spirit of the statutory authority given to Trustees prior to the addition of program approval authority in 2017 as a result of SB238.

would seek to assure the strength, survival and relative contribution of each of its component parts in a measured, fair and equitable way. It can certainly be argued, however, that the Utah System of Higher Education is not currently fulfilling this objective for all of its member institutions.

- The audit asserts that if more authority is given to institutional Boards of Trustees, more resource will need to be made available. I wholeheartedly agree. In this circumstance, the Office of the Commissioner could serve both the Trustees and the Regents. This is effectively happening now through the Peer Review process convened by the USHE Commissioner's Office as it relates to new programmatic proposals at the institutional level. From my perspective that process is now working exceptionally well. I would be hopeful that currently existing resources could be leveraged to avoid duplication.
- The suggestion in the audit that the Board of Regents play a larger role in selecting Trustees is intriguing. Doing so would certainly provide a more clear and rational connection between the grantors of delegated authority and those charged with utilizing it. It is likely, however, that institutions and those in the local community would chafe at the thought of the institution losing the opportunity to recommend prospective Trustees to the Governor for appointment. The example given from Florida where five of the thirteen Trustee board members appointed by the statewide governing body may be a model to be examined.
- The suggestion that Trustees should be required to receive and complete more training is excellent.
- The recommendation that the relationship between the institution president and the Trustees be formalized through statute would provide needed clarification and would remove much of the existing confusion regarding role, authority, scope and allegiance currently experienced by Trustees.

Thank you again for the opportunity to provide comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric O. Leavitt".

Eric O. Leavitt

Chair, Southern Utah University Board of Trustees



October 2, 2018

Mr. John M. Schaff, CIA  
Legislative Auditor General  
W315 Utah State Capitol Complex  
Salt Lake City, UT 84114-5315

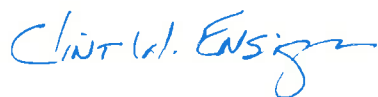
Dear Mr. Schaff,

Thank you for the opportunity to review the confidential draft of the report entitled, Higher Education Governance by the Board of Regents and the Boards of Trustees Needs Examination (ILR2018-D). Please note the following observations:

1. I favor the "Shared Governance" model that most accurately defines Utah's higher education system. Having "Strong Institution Control" where greater authority, responsibility and power lodged with Trustees would require a much greater commitment in time and resources by Trustees (which many of our fine trustees do not have). Having professional expertise lodged with the Regents—and having that expertise shared with trustees—is a good model.
2. I do favor having the Legislature codify duties the Regents have delegated to the Trustees.
3. Regarding training of trustees—at Salt Lake Community College there has been a significant escalation of trustee training offered over the 7 years that I have served on the board. Today, there are several state and national opportunities available to trustees to enhance their ability to serve.

Please feel free to contact me if you have any questions regarding my responses or the Salt Lake Community College Board of Trustees.

Sincerely,



Clint Ensign  
Chairman  
Salt Lake Community College  
Board of Trustees

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