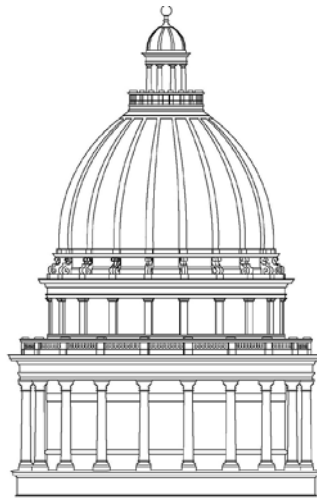


REPORT TO THE
UTAH LEGISLATURE

Number 2020-11



**A Performance Audit of
Public Education's Governance Structure**

December 2020

Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah



STATE OF UTAH

Office of the Legislative Auditor General

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KADE R. MINCHEY, CIA, CFE
AUDITOR GENERAL

December 16, 2020

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of Public Education's Governance Structure** (Report #2020-11). An audit summary is found at the front of the report. The objectives and scope of the audit are explained in the Introduction.

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,

A handwritten signature in black ink that reads "Kade minchey". The signature is written in a cursive, slightly slanted style.

Kade R. Minchey, CIA, CFE
Auditor General



PERFORMANCE AUDIT

► AUDIT REQUEST

This is the first in a series of education audits our office will be releasing.

It seeks to inform three policy questions, namely

- 1) Outcomes of varying governance structures,
- 2) Clarity of statutory governance roles, and
- 3) Governance bodies' focus on their own designated roles.

The governance structure of education is a legislative policy decision. As such, we make no recommendation on the structure to adopt.

► BACKGROUND

In its August 2019 meeting, the Legislative Audit Subcommittee prioritized a "... comprehensive audit of the performance outcomes of the public education system."

Because of the essential nature of governance, this audit serves as the foundation for additional audits to follow in 2021 and 2022.

Future audits will be conducted in the following areas:

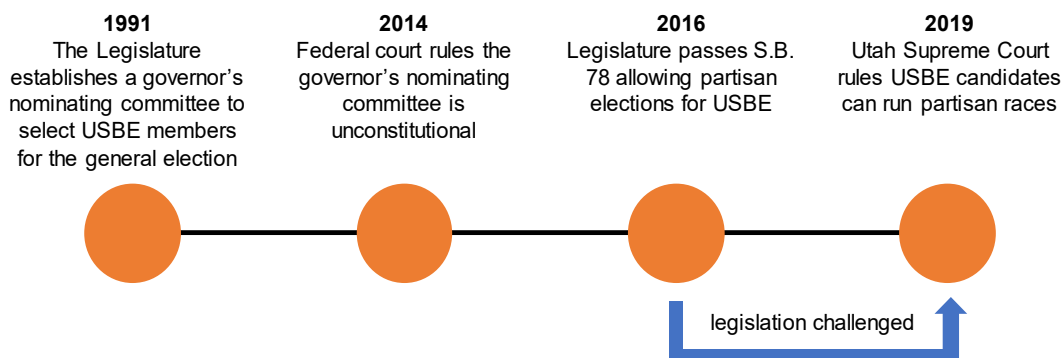
- Teacher retention
- Student performance
- Teacher and administrator compensation
- Administrative overhead in traditional and charter schools

Public Education's Governance Structure



KEY FINDINGS

- ✓ Over ten years, legislators have introduced changes to the governance structure 21 times.
- ✓ Different governance structures give varying amounts of influence to decision makers.
- ✓ Education governance oversight roles are broadly defined and overlap.
- ✓ Through court decisions and statutory changes, the method for placing candidates on the ballot for the general election to the USBE has changed from nomination by the Governor to partisan elections.



RECOMMENDATIONS

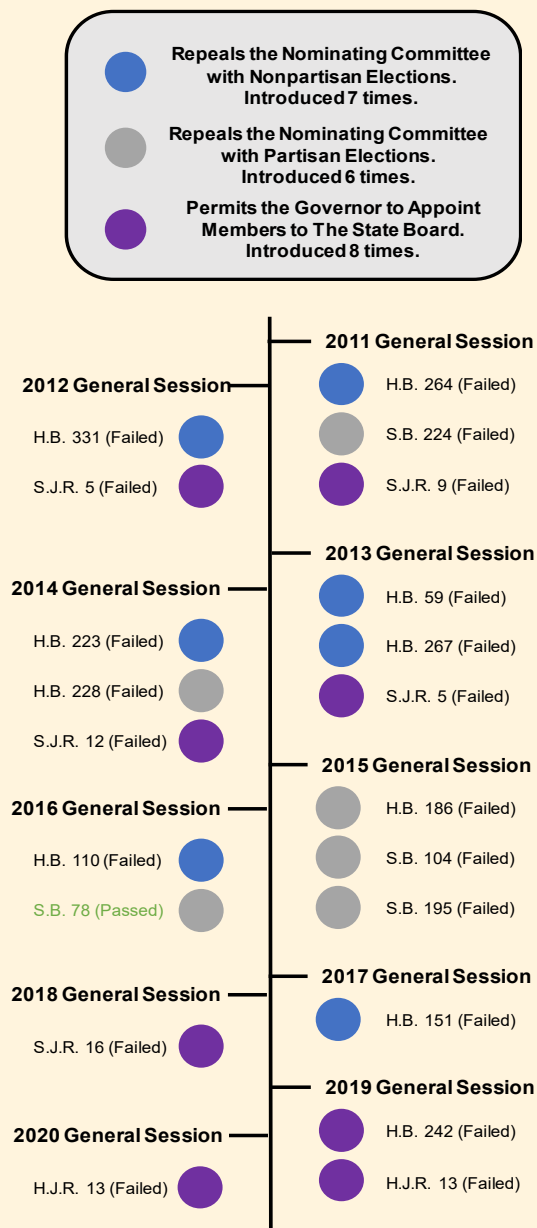
- ✓ The Legislature could review the structures found in this report to aid in future education governance policy decisions.
- ✓ The Legislature could consider whether to clarify statutory governance roles to reduce overlapping functions.



REPORT SUMMARY

The Legislature Has Steadily Proposed Changes to USBE's Governance Structure

A ten-year analysis showed that the Legislature proposed changes to the method for selecting candidates for USBE 21 times between 2011-2020. While most bills failed, it shows a consistent interest in the structure of the public education governance model.



The Statewide Governance Structure of Public Education Is a Policy Decision for the Legislature

Different selection practices have been introduced by legislation in recent years, resulting in various potential outcomes. Other states also use varying governance structures resulting in varying levels of influence by oversight bodies.

Educations' Statutory Governance Roles are Broad and Overlapping

Many of the frequently proposed education bills concern the often overlapping and sometimes broadly defined roles played by established oversight entities. Whether these roles should be more refined and focused is a policy decision.

The Governor Has a Small and Diminishing Role in Education Governance

The influence of the Governor's office has significantly decreased through a court ruling invalidating the Governor's Nominating Committee. Whether to increase the Governor's education influence is a widely-debated policy decision.

REPORT TO THE UTAH LEGISLATURE

Report No. 2020-11

A Performance Audit of Public Education's Governance Structure

December 2020

Audit Performed By:

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Chapter I

Introduction

Public education (kindergarten through grade 12, or K-12) in Utah is governed by four main elected bodies: the Legislature, the Utah State Board of Education (USBE), local school boards (LSBs),¹ and the Governor. The *Utah State Constitution*, *Utah Code*, *Administrative Rule*, and longstanding practices establish various overlapping roles for these entities to fill. Governance is the process by which key policymakers coordinate to make decisions that influence, set priorities, and provide accountability for the public education system.

Because of the essential nature of governance, this report on education governance, followed by two further governance reports to be released later, will serve as a foundation for additional education audit reports. The additional reports will cover a wide span of educational topics, all of which are founded on the state's educational governance structure.² While conducting the audit work for this report, we also performed the risk analyses and assessments for the remaining audit reports.

The Structure of Utah's Educational Governance Has Remained Essentially Unchanged

Unlike most states, Utah's educational governance structure is filled by bodies elected by the people. The Legislature, USBE, LSBs and the Governor are all directly elected. Each of these bodies has general and specific roles to play in creating and maintaining Utah's education system. Although it has long been an elected body, there have been recent changes to how USBE board members are elected. The Legislature has also recently made significant modifications to clarify and reorganize education statute.

Governance refers to the process by which key policymakers coordinate to set priorities and provide accountability for public education.

The Legislature, USBE, and LSBs are the primary governing bodies for Utah's public education system.

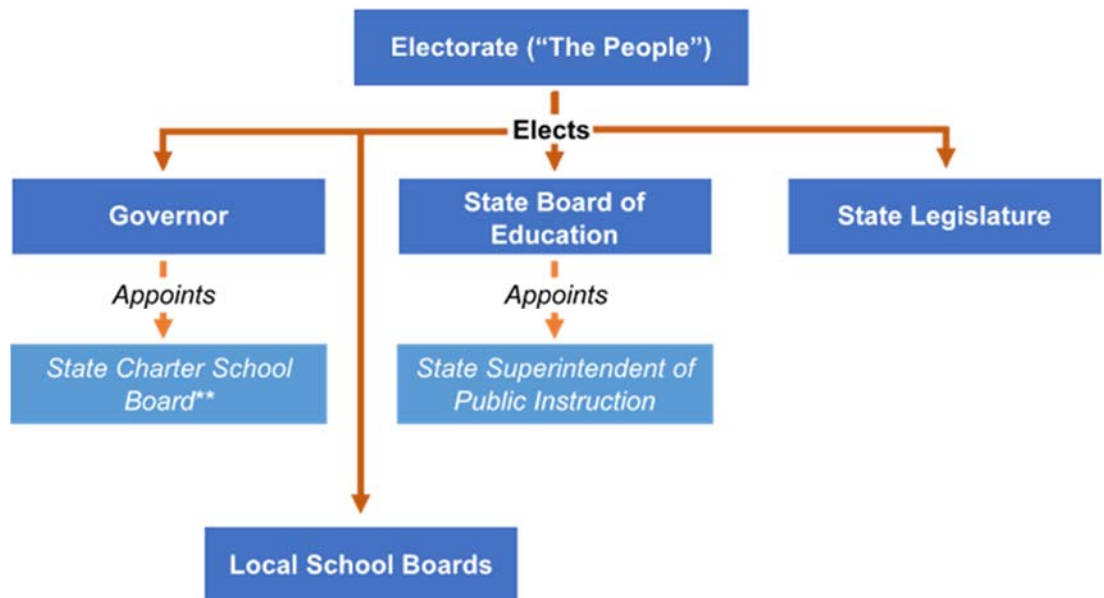
¹ This report does not address the governance of charter schools, charter school boards, or the State Charter School Board. Charter governance will be addressed in a future report.

² The additional topics to be covered are detailed later in the report.

Utah Differs from Most Other States Because Elected Officials Directly Control Education

Elected officials, including the Legislature, USBE, and LSBs govern Utah's K-12 public education system, as shown in Figure 1.1.

Figure 1.1 Utah's K-12 Public Education Governance Structure. The Legislature and USBE govern public education at the state level, and LSBs govern at the local level. Utah is one of seven states with an elected board.*



* Alabama, Colorado, Kansas, Michigan, Nebraska, and Texas also use this elected structure. Chapter II will address Utah's governance structure, and other governance structures used across the nation in more detail.
** The governing boards of individual charter schools are not elected like local school district boards.

Source: Auditor generated

The specific roles and responsibilities of the key governance entities, as set forth in the *Utah State Constitution* and *Utah Code* and shown in Figure 1.1, will be discussed in greater depth in Chapter III but are summarized below.

- Legislature – Sets policy at the state level and appropriates state funds, including those allocated to education.
- USBE – Has general control and supervision of the public education system. USBE fulfills its role by making administrative rules and establishing a framework of core learning standards and assessments, and licensing educators.

The Legislature and USBE govern public education at the state level, while local school boards govern at the local level.

Utah laws define the specific duties of each governing body in its public education system.

- LSBs – Govern school districts at the local level and have statutory authority for taxes, staffing, capital facilities, boundaries, and school management.
- Governor – Ensures that the laws are faithfully executed. The Governor’s role is limited to budget recommendations, and general and line-item veto authority. Statute does give the Governor authority to appoint members of the State Charter School Board (SCSB).³ The Governor has authority to fill USBE member vacancies through an appointment process.

State laws do not grant the Governor direct authority over the governance of public education.

The Legislature and USBE are primarily responsible for governing public education at the state level. While USBE members have been elected for at least 70 years, recent statutory modifications have changed the election process itself.

The Candidate Selection Process for USBE Members Has Changed Significantly in Recent Years

The passage of Senate Bill (S.B) 78 in the 2016 Legislative General Session resulted in two significant changes to the process for electing USBE members. First, the bill repealed the Governor’s nominating committee that selected USBE candidates to be on the ballot for the general election. The Governor’s committee was ruled unconstitutional in a 2014 federal court case, prompting the Legislature to consider alternative methods for selecting board members.⁴

Second, S.B. 78 allowed candidates wishing to be USBE members to run in partisan elections. This step altered the previous practice of USBE members running strictly nonpartisan races as established in 1950. However, legal challenges halted the implementation of partisan elections for USBE until the 2020 general election. The later passage of S.B. 236 in the 2019 Legislative General Session further clarified that candidates could choose to run as partisan, unaffiliated, or write-in contenders.⁵

Changes to state law in 2016 allowed USBE members to run in partisan elections.

³ The SCSB is the primary authorizer of charter schools in Utah and will be addressed in a future audit report.

⁴ More detail on the Governor’s nominating committee can be found in Chapters II and III.

⁵ This area will be covered in more detail in Chapter II.

During the last ten years, legislators have made multiple attempts to change how USBE members are selected.

The Legislature has introduced multiple bills, both before and after the passage of S.B. 78, to change the method for selecting USBE members. A review of legislation introduced from 2011 through 2020 showed several attempts to repeal the Governor’s nominating committee for partisan or nonpartisan elections, or to grant the Governor authority to appoint USBE members rather than elect them. For example, recent legislation introduced in 2018 and 2020 proposed a constitutional amendment to allow the Governor to appoint members of USBE. As such, we recognize that public education governance is a consistent policy interest for the Legislature.

Legislature Has Started Statutory Recodification Process

“Education,” including K-12 Education and Higher Education, is one of the leading subjects of legislation each year, representing about 12 percent of passed bills during the last five general sessions. Figure 1.2 summarizes passed bills for Education and five other top subjects from 2016 to 2020.

Figure 1.2 Bills from Top Subject Categories Represent More Than Half of Bills Passed Each General Session. The Legislature passed more bills relating to Education (including Higher Education and K-12 Public Education) than other top subjects.

Subject	2016	2017	2018	2019	2020	Average
Education	13%	10%	13%	11%	14%	12%
Government Operations	9	11	11	12	13	11
Health	8	10	9	9	13	10
Law Enforcement & Criminal Justice	7	9	9	13	10	10
Business	9	8	8	8	9	8
Natural Resources	5	4	6	6	8	6
Grand Total	52%	52%	56%	59%	66%	57%

Source: Auditor Analysis of passed bills for General Sessions 2016 through 2020

Education is the leading subject of passed legislation during the last five years.

A closer examination of K-12 Education bills during the last five Legislative General Sessions shows that legislators introduced an average of 85 K-12 education bills per year. Although the governance structure of public education has remained constant, K-12 public education statute changes significantly every year as an average of 52 (61 percent) of those introduced K-12 education bills passed each year.⁶ Figure 1.3 shows how many of the bills passed each year were K-12 education bills.

Figure 1.3 On Average, 10 Percent of Bills Each Year Relate to Public Education. Education bills are a significant amount of the new legislation passed each year.

Year	Number Passed Bills	Number Passed Education Bills ⁷	Education Bill Percent of Total
2016	475	50	11%
2017	535	51	10
2018	533	53	10
2019	574	51	9
2020	510	55	11
Average	525	52	10%

Source: Auditor analysis of annual summaries prepared by LRGC

Because of the resulting complexities created in statute by the many education bills passed every year, the Legislature recognized a need to reorganize and recodify education statutes. That effort began in 2018, when the Legislature started a massive recodification effort by passing four bills.^{8, 9} These bills made no substantive policy changes but simply placed education statute into three sections. One of the bill sponsors noted that these bills were “...step one of a major recodification effort for our education code. It’s been 35 years and there’s significant work that needs to be done. In order to be able to

Public education bills represented 10 percent of legislation passed during the last five years.

Recognizing a need for improvement, the Legislature began recodifying and clarifying education statute in 2018.

⁶ Bills each year will be further detailed and discussed in Chapter III.

⁷ These totals represent programmatic bills directly related to the public education system; however, these totals do not include budget bills or bills affecting state agencies and employees generally. USBE reports tracking a significantly broader range of bills that also impact public education in areas such as income and property taxes, retirement, elections, and others that impact state agencies and employers generally.

⁸ The four bills were House Bills 10 and 11, and Senate Bills 11 and 12.

⁹ Education code is found in *Utah Code* 53E-53G.

start this process, we felt like we needed to just reorganize the current code.”

After taking this first step, the Legislature continued to streamline and simplify the education statute by passing another four bills in the 2019 Legislative General Session. These bills standardized the education definitions used throughout *Utah Code* and streamlined both the special education and reporting requirements codes. No further recodification efforts have been made since 2019.

This Report Is the First of Several Education Reports

In its August 2019 meeting, the Legislative Audit Subcommittee prioritized a “...comprehensive audit of the performance outcomes of the public education system.” The Subcommittee specified that the audit areas should be the following:

- Teacher retention
- Student performance
- Teacher and administrator compensation
- Administrative overhead in traditional and charter schools

Because system governance is essential to performance outcomes, we will first release a total of three audits addressing the governance of Utah’s public education system. This first audit addresses the structural governance of the public education system. It will be followed by a report about USBE’s internal governance and culture. The final governance report will review oversight and governance of charter schools. The performance outcomes audit reports to follow will be anchored on these initial governance reports.

Although the audits were prioritized in August, it was January of 2020 before a team was available to fully staff the audits. Because of the interconnected nature of the areas, we performed risk analyses and assessments for the governance audits and all four of the requested areas simultaneously. This is unusual as our office typically performs each audit individually from start to finish. Each area listed is ready for the bulk of the work to be performed and reports to be written. We are releasing this report now and will continue releasing these public education governance and performance outcome audits throughout 2021 and 2022.

The Legislative Auditor General plans to release two more reports on governance of Utah’s public education system.

This report is the first in a series of reports on Utah’s public education system, which will be released during the next two years.

Audit Scope and Objectives

When making the motion to prioritize a comprehensive education audit, the Senate President said "...it's very important that we know...the performance of the particular institutions." This report seeks to answer that question by reviewing the roles of the policy-making bodies in Utah's education system and answering the following questions:

- Chapter II: What are the outcomes of varying governance structures?
- Chapter III: Are the roles of state-level governing bodies clearly defined in statute?
- Chapter III: Are state-level governing bodies focused on fulfilling their assigned governance roles?

Chapter II

The Governance Structure of Public Education is a Legislative Policy Decision

The method for selecting candidates to be elected to the Utah State Board of Education (USBE) has been of consistent policy interest to members of the Legislature for the last 10 years. Additionally, both federal and state court rulings have affected how board member candidates are selected to be placed on the ballot for the general election.

The purpose of this chapter is to inform the ongoing policy questions deliberated by the Legislature regarding the appropriate method to select USBE board members. As such, this chapter seeks to highlight the different selection practices introduced by legislation in recent years, and the potential outcomes of those structures. We also examined other states' governance structures and found varying practices that may prove helpful to Utah legislators in future policy deliberations. The governance structure of education is a legislative policy decision; thus, we do not recommend which structure to adopt. Instead, we offer applicable information to aid in potential decisions for upcoming legislative sessions. As mentioned in Chapter I, forthcoming public education audit reports will address other governance findings.

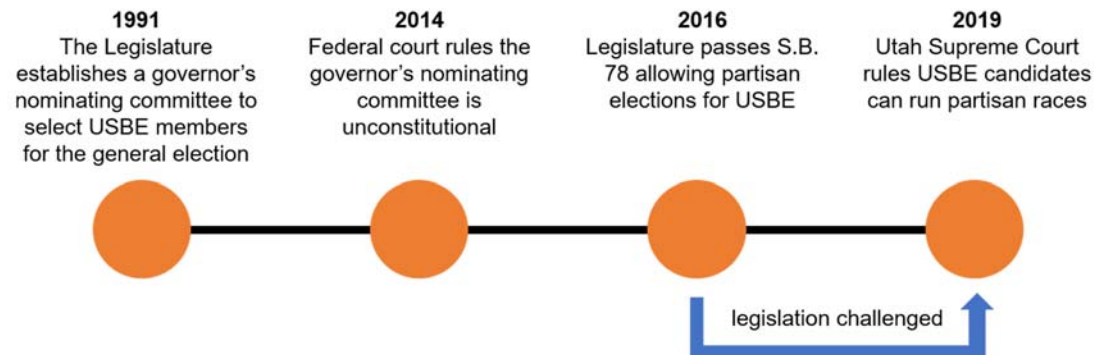
The method for selecting candidates for USBE has been a consistent policy interest to members of the Legislature for the last 10 years.

Court Rulings and Legislative Proposals Have Impacted the State School Board

In 2014, a federal court ruled the Governor's recruiting and nominating committee for USBE members unconstitutional. However, the court did not decree how board member candidates should be chosen, leaving the policy decision to the Legislature for consideration. In the 2016 Legislative General Session, the Legislature addressed the issue of the court case and significantly changed the selection process for USBE candidates. Figure 2.1 details a brief timeline of these events.

Figure 2.1 Timeline for USBE Candidate Selection Changes.

Two court cases and recent legislation have significantly impacted the USBE selection process.



Source: Auditor Analysis

Legislation was introduced to make changes to the selection process of USBE members annually from at least 2011 to 2020.

Legislation was introduced that attempted to repeal the Governor's nominating committee and make other changes to the selection processes from at least 2011 to 2020. Recent legislation allows USBE candidates to run for office in partisan elections, altering the long-standing practice of selecting candidates for USBE elections.

A Federal Court Decision Ruled the Governor's Nominating Committee Unconstitutional

From 1991 to 2014, the Governor's office organized a recruiting and nominating committee to select USBE candidates for the general election. In 2014, two of the applicants to the Governor's nominating committee were not selected to be placed on the ballot, despite having a background in education. These individuals sued to challenge the Governor's committee and the process for selecting candidates to be placed on the ballot for election to the State Board of Education. The resulting federal court case ruled that the Governor's nominating committee was unconstitutional.

In 2014, the Governor's nominating committee was legally challenged as the method to select USBE candidates. A federal court ruled it unconstitutional.

In 2015, the Governor's office encouraged the Legislature to produce a new candidate-selection system and did not assemble a nominating committee. The Legislature responded by introducing three different proposals in the 2015 Legislative General Session that addressed the selection process for USBE candidates. However, disagreements within the Legislature resulted in all three bills failing to pass. The portions of the statute deemed unconstitutional in 2014 remained in statute until 2016.

Legislators Attempted to Repeal the Governor's Nominating Committee Prior to the Federal Court Decision

Some legislators showed consistent interest in changing the method of selecting USBE members for several years prior to the 2014 federal court ruling. For example, between 2011 and 2014, legislators introduced seven bills to repeal the Governor's nominating committee. In addition, three bills were introduced in 2015 after the federal court ruling. All 10 of these attempts failed to pass during their respective legislative sessions. Figure 2.2 shows introduced bills intended to repeal the nominating committee.

Figure 2.2 Ten Bills Were Introduced to Repeal the Governor's Nominating Committee Between 2011-2015. Each of the bills failed to pass.

Year	Bill	Proposed	Status
2011	H.B. 264	Nonpartisan Elections	Failed
	S.B. 224	Partisan Elections	Failed
2012	H.B. 331	Nonpartisan Elections	Failed
2013	H.B. 59	Nonpartisan Elections	Failed
	H.B. 267	Nonpartisan Elections	Failed
2014	H.B. 223	Nonpartisan Elections	Failed
	H.B. 228	Partisan Elections	Failed
Federal court ruling invalidating Governor's nominating committee			
2015	H.B. 186	Partisan Elections	Failed
	S.B. 104	Partisan Elections	Failed
	S.B. 195	Partisan Elections	Failed

Source: Auditor Analysis

We analyzed a sample of legislative committee meetings and floor debates for some of these bills. We found general consensus from the bills' sponsors on the need to repeal the Governor's nominating committee in statute. However, disagreements over nonpartisan and partisan elections for USBE members divided the Senate and House of Representatives. This resulted in several failed attempts to reconcile or vote on bills during their respective sessions. It was not until Senate Bill (S.B.) 78 in the 2016 Legislative General Session that some commonality was found between the two legislative chambers.

Some legislators showed consistent interest in changing the method of selecting USBE members prior to the 2014 federal court ruling.

Disagreements over nonpartisan and partisan elections for USBE members resulted in several failed bills from 2011 to 2015.

The passage of S.B. 78 in the 2016 session significantly changed how USBE members were selected to serve on the Board.

S.B. 78 was challenged in state court because it allowed partisan elections for candidates for USBE.

In 2019, the Utah Supreme Court ruled that candidates for USBE could run in partisan elections.

Recent Changes Allow State Board Candidates to Run in Partisan Elections

The passage of S.B. 78 in the 2016 Legislative General Session significantly changed how USBE members were selected to be placed on the ballot for the board. First, it repealed the Governor's nominating committee in accordance with the 2014 federal court ruling. Second, it allowed a nonpartisan primary election for 2016 to reduce the number of candidates that would appear on the ballot for the general election. And third, it allowed those seeking membership on the Board of Education to run in partisan elections starting in the 2018 election year.

The sponsor of S.B. 78 stated in both the House and Senate Education Standing Committee meetings that the bill was "...not meant to be the permanent solution to this issue..." and further stated the Legislature would "...be able to make a decision on this going forward." However, the creation of partisan elections was challenged in state court which delayed the bill's implementation. Opponents argued that S.B. 78 was in violation of language in the *Utah Constitution* that stated there should be no partisan test as a condition of employment in the state's education system.¹⁰

In 2019, the Utah Supreme Court ruled in *Cox v. Richards* that candidates for USBE could indeed run in partisan elections because members of the state board were not considered to be employees. As such, the first partisan elections for candidates for USBE occurred in the 2020 election year.

Additionally, S.B. 236 in the 2019 Legislative General Session further clarified that USBE candidates could run as a member of a political party, unaffiliated, or as a write-in contestant. The Utah Supreme Court noted that this bill demonstrates that USBE is not a partisan office as candidates can use methods beyond partisanship to contend for board membership.

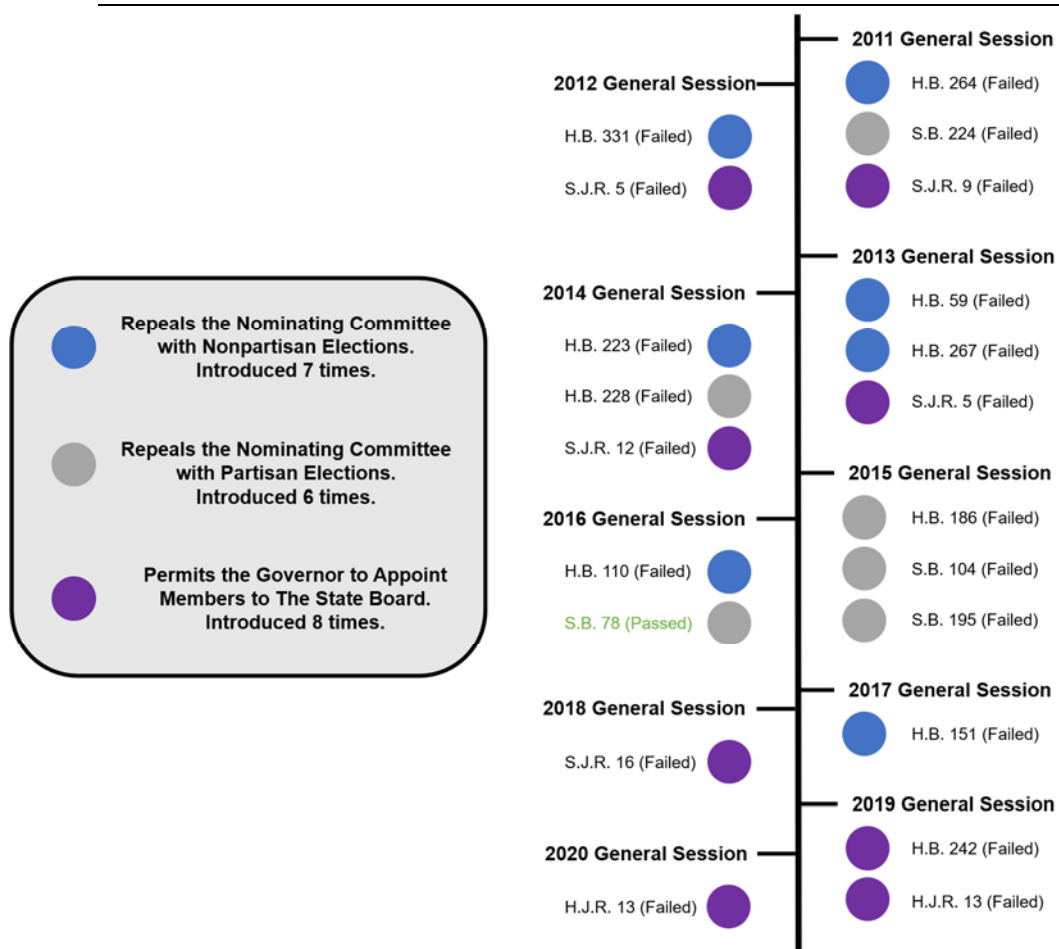
¹⁰ The text of Article X, Section 8 reads: "No religious or partisan test or qualification shall be required as a condition of employment, admission, or attendance in the state's education systems."

The Legislature Has Consistently Proposed Changes To the Candidate Selection Process for USBE Members

Our examination of a ten-year legislative history shows policy interest from lawmakers. Three different methods were proposed over the last ten years: 1) nonpartisan elections, 2) partisan elections, and 3) Governor appointment. We found that 21 bills including these three methods were introduced between 2011 and 2020. The only bill to pass altering the selection method was S.B. 78 in the 2016 General Session. Figure 2.3 shows a timeline of all the bills introduced to modify USBE member selection.

A ten-year legislative history shows three proposed selection methods for USBE.

Figure 2.3 Ten-Year History of Proposed Changes. The dot chart displays the 21 attempts to change the method for selecting members to serve on the USBE.



Source: Auditor Generated

While most of these proposals failed, the fact that they were regularly reintroduced indicates an interest in public education policy. Several of the bills proposing that the Governor appoint USBE members were

introduced as resolutions because they required constitutional change and thereby approval from the electorate. The following section provides information about the likely outcomes of the specific models introduced in recent years.

Key Considerations of Legislative Proposals Intended to Modify Board Member Candidate Selection

Maintaining an elected state board of education leads to potential public education governance effects, primarily accountability to voters. One academic study suggests the impact of partisanship and nonpartisanship on school boards may have little influence on education policy.

In recent years, several legislative proposals have been introduced to allow the Governor to appoint members of USBE. If approved, appointing members would affect public education governance by granting the executive branch more direct influence. The executive office has advocated for this policy change in the Governor's annual budget recommendations.

Maintaining an Elected Board Allows Candidates To Use a Political Party or Run Unaffiliated

Partisan elected state boards of education are an uncommon governance model. Utah is now one of only six states that hold partisan elections for members of the State Board of Education.¹¹ The effects of partisan elections cannot be precisely quantified, but generally the following bullet points present some potential outcomes found in education literature, testimony of bill sponsors, and interviews with education professionals.

- May provide more accountability to citizens and parents as board members must run in election cycles.

¹¹ Alabama, Colorado, Kansas, Michigan, and Texas also have partisan elections for members of the State Board of Education. Nebraska runs nonpartisan elections for its State Board of Education.

Utah is one of only six states that have partisan elections for members of the State Board of Education.

- Elected members may exhibit greater independence from other governance bodies and have more freedom to act in the best interest of the education system.
- Partisanship could increase the information provided to voters on a candidate's educational positions.

Little is known about the effects of partisan elections in public education due to only a handful of states utilizing the model. One academic study researched the effects of partisan elections on school boards.¹² The researcher recognized further study is needed, but the findings are nevertheless interesting to consider. The study asked both partisan-elected and nonpartisan-elected school boards questions about their motivations, priorities, and policy views and found that nonpartisan boards had strong policy positions without political affiliations. The report stated that "...the gap in average policy support expressed by Democrats and Republicans was greater amongst nonpartisan-elected board members than it was amongst partisan-elected board members..." and further stated that "...the average levels of policy support expressed by Democrats and Republicans were statistically indistinguishable from each other." The study concluded by noting that more research may be necessary as education governance is continually debated.

Legislation Allowing the Governor to Appoint Board Members Could Significantly Change Education Governance

In addition to legislative efforts to repeal the Governor's nominating committee, other proposed legislation conversely intended to increase the Governor's influence over public education. Legislators introduced eight bills from 2011 to 2020 that would have permitted the Governor to appoint members of USBE in lieu of holding elections, with four of the eight attempts occurring from 2018 to 2020. Most were resolutions to propose this change in a constitutional amendment for consideration by the voters. These frequent introductions indicate interest by some legislators for this model. As such, the intent of this section is to provide relevant information for policymakers to consider.

¹² *Why Nonpartisan – Versus Partisan – School Board Elections Do Not Tell the Whole Story.* (2017). Evan Crawford. University of San Diego.

Little is known about the effects of partisan elections in public education due to only a handful of states utilizing the model.

Alternate proposed legislation is intended to increase the Governor's influence over public education.

Legislators introduced eight bills from 2011-2020 that would permit the Governor to appoint USBE members.

Allowing governor appointment of USBE members would greatly increase the influence of the executive branch over public education.

The basic form of this model is Governor appointment of members to the board of education with the advice and consent of the Legislature – most often the Senate. This is the most common model for public education governance nationwide, with 27 states utilizing this method. For example, neighboring states such as Arizona, Idaho, and Wyoming have state board members selected by their governors with the consent of their senates.

Allowing gubernatorial appointment of USBE members would greatly increase the influence of the executive branch over public education in Utah. If adopted, some of the effects of this model could potentially include the following:

- The Governor would set education priorities for the state board of education and its office.
- The Governor could have more influence on policy to impact student outcomes.
- The Governor’s office would be connected to the administration of public education.
- Gubernatorial selection could create board stability by selecting board members that provide a continuity in governance.

We examined this model, along with others, in other states to gain a better understanding of some of the outcomes and influence of major policymakers. Our findings are described in the following section.

Other States Use Varying Governance Practices in Their Public Education Systems

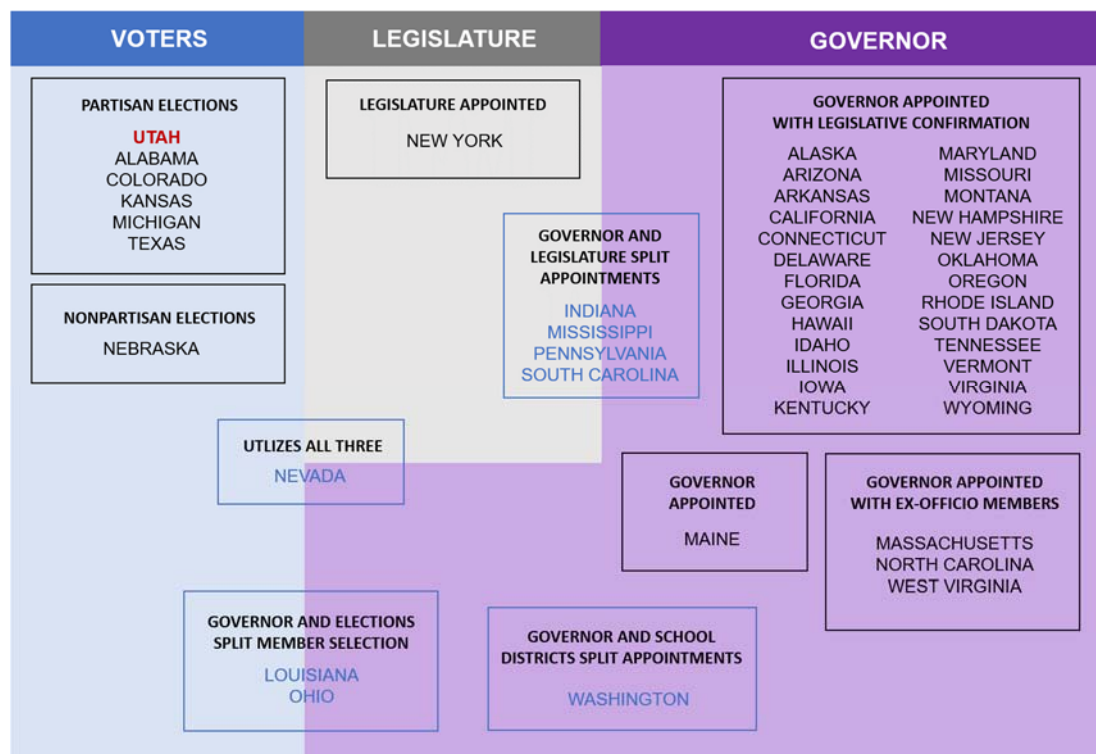
Education governance structures vary across the United States. While each state has specific practices for its individual system, most have elected boards or appointed boards. We found that some states use hybrid models for selecting board members. We also conducted a more in-depth review of sampled states to determine the effects of specific governance models.

A review of other states found that education governance structures vary across the United States.

Some States Divide Board of Education Appointments Between the Executive and Legislative Branches

In addition to elections and Governor appointment (the two models discussed above), some states have varying hybrid systems that allow governance over public education to be shared between the governor, the legislature, or the voters. Some states that utilize hybrid models have a strong voter influence over state board appointments, while others have a stronger executive influence. Figure 2.4 shows that policymaker influence varies based on the model a state utilizes to select school board members.

Figure 2.4 National Comparison of Influence in Public Education. This figure shows typical models for selecting board of education members and seven hybrid models displayed in blue text.

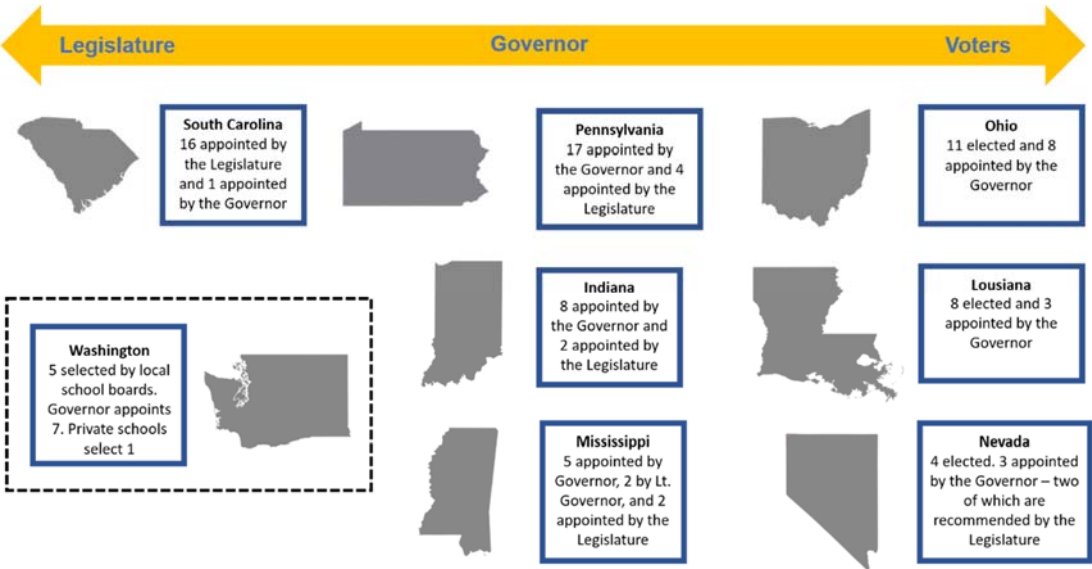


Note: Minnesota, New Mexico, North Dakota, and Wisconsin do not have a board of education. Rather, they utilize a state office of education with a director that is elected or appointed.
 Source: Auditor Analysis

Eight states utilize hybrid models that divide influence between the major public education policymakers such as the voters, the legislature, or the governor.

Eight states (shown in blue in Figure 2.4) use hybrid models that divide influence from the major policymakers in public education system. The specific influence of each policymaker over public education varies within each of these models. For example, Pennsylvania’s governor has more influence as the office appoints 17 members of the board with the Legislature appointing the remaining 4. In contrast, South Carolina’s governor appoints 1 member of the board with the Legislature appointing 16. The state of Washington uses a unique system by allowing local school districts to elect five members to the state board with the governor appointing seven, and private schools selecting one. Figure 2.5 shows these eight hybrid models on a scale of influence between the individual stakeholders.

Figure 2.5 Influence Scale for Public Education in Hybrid Systems. Policymakers have varying degrees of influence in the eight hybrid models over the board of education. Utah is not considered a hybrid model as all USBE members are elected.



Source: Auditor Analysis

South Carolina has the most legislative influence over public education governance of the hybrid models.

As shown in Figure 2.5, South Carolina has the most legislative influence over public education governance when examining the hybrid models. Other models place a larger influence on the voters with the governor sharing some influence.

A Review of Sample States with Different Governance Models Showed Various Outcomes

We conducted in-depth reviews of eight states that use the different public education governance structures. The review consisted of personal interviews and examination of state constitutions and statutes. Each of the eight states have elected or appointed state board members with two states without a state school board. Our review also found that states have varying practices for selecting the state superintendent of public instruction.

We interviewed key members within each of our sample states' public education systems. These interviews explained what states felt were some of the outcomes of their individual systems. Figure 2.6 displays a comparison of some of the potential consequences of the different structures as expressed by the states' education staff.

We conducted in-depth reviews of eight states that use the different public education governance structures.

Figure 2.6 Selection of Other State Governance Structures Reported Outcomes. A sample of states expressed some of the outcomes of their education governance models.

ELECTED BOARD OF EDUCATION	STATE	REPORTED OUTCOMES
	Colorado	Higher accountability to voters and parents because of regular election cycles. The governor has little influence over public education.
	Kansas	Higher accountability to voters and parents because of regular election cycles. Higher accountability to local districts and school boards
	Nebraska	Board independence from the executive branch that results in lasting policy. Without upcoming elections the board could become complacent.
NO BOARD OF EDUCATION	North Dakota	An elected commissioner allows more local control, but lacks some strong authority powers for local districts.
	Wisconsin	An elected commissioner can set an agenda without competing directions. Views of different state policymakers can result in difficult implementation.
APPOINTED BOARD OF EDUCATION	STATE	REPORTED OUTCOMES
	Connecticut	The governor has strong appointment power. This could result in good or bad outcomes depending on the executive branch's policy decisions.
	New Jersey	The public and education groups have a strong say in who is appointed to the state board. Changing governors can slow the implementation of policy.
	Wyoming	Greater influence of the executive branch with state board appointments. The superintendent is accountable to voters through elections.

Source: Auditor Analysis

In one state we interviewed, the Governor appoints both the state board and the commissioner of education with the consent of the Senate. The state felt this practice was beneficial because it could set a common agenda for major education policymakers in the state. In this

We recognize that the structure of education governance has been a consistent consideration for the Legislature in recent years.

case, policy implementation can be quick due to the common education goals. However, the staff also pointed out that a potential disadvantage would be if the governor had different educational views from the Legislature or a previously appointed board and commissioner. The result could be slow implementation of education policy.

We recognize that the structure of education governance has been a steady consideration by the Legislature in recent years. This report is intended to detail some of the models and practices seen in other states to help inform the Legislature's policy decisions. We recommend that the Legislature review the issues addressed in this report for assistance in future policy deliberations.

Recommendations

1. We recommend that the Legislature consider the issues and review the potential structures found in this report to aid in future education governance policy decisions.

Chapter III

Education's Statutory Governance Roles Are Broad and Overlapping

Educational governance is one of the most consistently debated policy questions the Legislature reviews during each general session.¹³ An average of 12 percent of all passed legislation in the last five general sessions concerned education, more than any other subject discussed.¹⁴ Many of these bills concern the often overlapping and sometimes broadly defined roles of the Legislature, the Utah State Board of Education (USB E), and local school boards (LSBs).¹⁵ Whether these education oversight roles should be more refined and focused is a legislative policy decision. An additional frequently introduced policy decision is whether to grant the Governor more authority over education governance, but recently the Governor's role has been limited. This chapter seeks to inform the Legislature and other interested parties about the current governance structure and provide insight into areas that, if the Legislature chooses, could be revised.

Refining broadly defined education governance roles is a policy decision.

Educational Governance Roles Are Broadly Defined in Statute

The *Utah Constitution* and *Utah Code* define the roles of educational governance entities both generally and specifically. The broadly defined roles cover functions intended to further and improve education in general, using language such as “maintenance,” “supervision,” or “promotion” of public education. Beyond these general education roles, statute also gives each entity more specific duties related to the financing and administration of education.

¹³ The frequency of educational governance legislation is discussed in detail in Chapter II.

¹⁴ This 12 percent includes both public and higher education, and is discussed in more detail in Chapter I.

¹⁵ Charter school governance will be covered in detail in a report to be released later. Governance provided by charters and charter boards will not be discussed in this report.

Each governance body has broadly defined roles intended to improve and further education in Utah.

Some Governance Responsibilities Are Broadly Defined

Each governance education entity has responsibility for roles intended essentially to improve education in Utah. Unlike the more specific roles to be discussed later in this chapter, these roles are broad and often overlap to some extent.

Education governance roles are set forth in the *Utah Constitution* and *Utah Code* for the following:

- Legislature
- Governor
- USBE
- LSBs¹⁶
- State Charter School Board and other charter school authorizers
- Charter School Boards¹⁷

The general, broadly defined education-system responsibilities for each governance body are listed in Figure 3.1.¹⁸

¹⁶ Much of the work of local school boards is carried out by school district administration offices.

¹⁷ Charter school governance and the role of the State Charter School Board will be discussed in detail in a forthcoming audit report; thus, this report does not discuss charter schools.

¹⁸ Additional detail on our analysis of *Utah Code* can be found in Appendix A.

Figure 3.1 Many Roles in Education Are Broadly Defined. Each entity has some overlapping, broadly defined duties.

Entity	Duty in <i>Utah Constitution</i> or <i>Utah Code</i>
Legislature	<ul style="list-style-type: none"> • Provide for the establishment and maintenance of the public education system • Designate schools and programs • Pass and enact legislation
Governor	<ul style="list-style-type: none"> • Approve or reject federal education agreements • Receive superintendent's annual report
USBE	<ul style="list-style-type: none"> • "The general control and supervision of the public education system" • Maintain a multi-year strategic plan for improved student outcomes • Prohibited from "...govern[ing], manag[ing], or operat[ing] school districts, institutions, and programs, unless granted that authority by statute"
LSBs	<ul style="list-style-type: none"> • Implement statewide core standards • "...make and enforce policies necessary for the control and management of the district schools" • "...shall do all other things necessary for the maintenance, prosperity, and success of the schools and the promotion of education."

Source: Auditor analysis of *Utah Constitution* and *Utah Code*

There appears to be no evidence in either the *Utah Constitution* or *Utah Code* that points to an effort to differentiate these duties. Because of this, it appears that some overlap of duties may be intentional. Alternately, some duties are quite distinct.

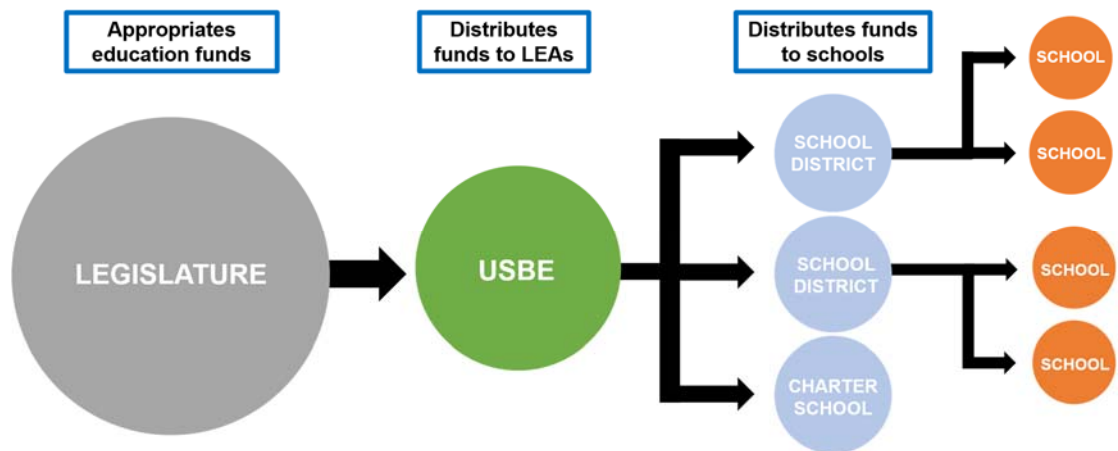
Each Governance Body Has Some Distinct Duties

While much of education statute sets forth broad oversight of public education (as shown in Figure 3.1), some duties are clearly designated to each entity. For the most part, these specific duties are either financial or administrative in nature.

Some Governance Bodies Have Specific Roles in the Disbursement of Education Funds. *Utah Code* clearly delineates the financial oversight roles of the main governance bodies. There are distribution roles and collection roles. Figure 3.2 shows each governance entity's distribution role.

The governance bodies each have clearly delineated duties in either education funding or administrative areas.

Figure 3.2 Each Educational Governance Body Controls an Aspect of Education Finance. The Legislature determines the total amount of money given to education.



Source: Auditor analysis of Utah Code

All these distribution roles are distinct and appear to be well understood.

The financial collection roles are performed by the Legislature and the LSBs. The Legislature’s constitutional role is to “...provide by statute for an annual tax sufficient, with other revenues, to defray the estimated ordinary expenses of the State for each fiscal year.”¹⁹ These estimated ordinary expenses include the costs of education. LSBs may “...levy a tax to fund the school district’s general fund.”²⁰

Some Governance Entities Have Specific Administration Roles. Distinct administrative roles are delineated in statute and are roles that only the specified party can fulfill. Some of these roles are listed in Figure 3.3.

¹⁹ *Utah Constitution* Article XIII, Section 5

²⁰ *Utah Code* 53F-8-302(2)

Figure 3.3 Administratively Focused Education Roles Are Specifically Assigned. Unlike the broad education roles in Figure 3.1, these roles do not overlap.

Governance Body	Distinct Administrative Governance Role
Legislature	<ul style="list-style-type: none"> • Create legislative education committees
USBE	<ul style="list-style-type: none"> • Establish a system for educator licensing • Take corrective action against non-compliant education entities • Appoint state superintendent of public instruction
LSBs	<ul style="list-style-type: none"> • Appoint district superintendents • Maintain capital facilities • Establish school boundaries

Source: Auditor Analysis of education statute

Since these roles are distinctly specified in statute, any overlap between the more general roles may be intentional. The next section details those overlapping functions and the effects of overlap.

Statute Allows Functions of Governance Bodies to Overlap

Statute allows for overlap of some educational governance functions. The Legislature’s authority is the broadest and grants the most overarching powers. Some have referred to the Legislature as a “super schoolboard,” but guiding education is one of its constitutional responsibilities. USBE’s similar constitutional mandate does not allow the Legislature to ignore its own responsibility. Then, much of the statutory language granting authority to USBE and LSBs is similar, further allowing overlap. This overlap can cause some friction between the governance entities. If the Legislature decides to further clarify statute to reduce overlap, USBE and LSBs could be called upon to help identify areas for clarification.

The broadly defined governance roles frequently overlap.

The Legislature’s constitutional duty is to “... provide for the establishment and maintenance of the public education system.”

The Legislature’s duty to create programs and guide education can overlap with USBE’s similar duties.

Legislature’s Constitutional and Statutory Authority Allows Broad Oversight

Utah’s Legislature has broad authority over public education. It is constitutionally charged to “...provide for the establishment and maintenance of the ... public education system.”²¹ The constitution also charges the Legislature with designating schools and programs. These two responsibilities, along with the mandate to appropriate funds throughout the state, gives the Legislature education governance power with few limitations.

The Structure of State Governance Places the Legislature in the Primary Position Over Education Governance. Because of its constitutional and statutory responsibilities, the Legislature is responsible to establish the process of education in the state, and then pay for that process. It is then the responsibility of USBE to ensure that children are appropriately educated. Because that is essentially the level of detail given, the responsibilities of these two bodies appear to be more of a meandering line than a distinctly delegated responsibility.

This indistinct explanation of duties can cause some confusion among education stakeholders. Throughout the course of the audit, multiple parties complained that the Legislature operates as a kind of “super schoolboard,” creating programs and guiding education. In fact, creating programs and guiding education is one of the Legislature’s constitutional and statutory responsibilities. The fact that USBE also has this responsibility does not negate the Legislature’s responsibility.

The Legislature’s Broad Authority Creates New Education Programs Each Year. Chapter I shows that public education bills represented about 10 percent of total enrolled (passed) legislation during the last five fiscal years. Figure 3.4 gives an overview of public education bills introduced and passed by the Legislature that created new programs from 2016 to 2020. Some bills made small technical changes while others made significant amendments and required implementation by USBE or LSBs.

²¹ *Utah Constitution* Article X, Section 1

Figure 3.4 Five-Year History of Public Education Bills. The Legislature introduced about 85 public education bills each year and passed over 60 percent of them on average. About 12 percent of passed bills resulted in new programs.*

Year	Introduced	Passed	New Programs
2016	91	50	8
2017	95	51	6
2018	75	53	3
2019	79	51	7
2020	84	55	6**
TOTAL	424	260	30
Average	85	52	6

** Study Limitations and Methodology: To identify bills containing new programs, auditors searched for keywords in bill Long Titles; reviewed bill appropriations, fiscal notes, and performance notes; and conferred with staff from USBE, LRGC, and LFA. There may have been more new programs created that were not caught using these methods.*

*** Funding for four of these bills was reversed in the 2020 Fifth Special Session (June 2020) and the new programs were not implemented.*

Source: Auditor Analysis

The number of passed bills and new programs remained relatively steady, averaging six new programs per year. From 1997 to 2015, the Legislature passed 68 new programs or about four per year.²² Each newly created program was then administered by USBE and implemented by LSBs.

We analyzed the 30 new program bills to determine whether they originated from the Legislature, USBE, the public education system (LEAs or schools), or another source (such as associations or third parties). While every bill is sponsored by a legislator and eventually passed or rejected by the Legislature, the idea for the bill may come from various sources. Figure 3.5 summarizes the results of our review of these original sources.

An average of six new education programs are created every Legislative General Session.

²² The study of new programs from 1997 to 2015 was conducted by the Utah Education Policy Center.

Figure 3.5 Origins of Bills Creating New Programs. Our limited analysis showed that although 33 percent of ideas for new public education programs originate with the Legislature, a significant portion originate with USBE or other stakeholders.*

Year	Legislature	USBE	System**	Other#	TOTAL
2016	4		2	2	8
2017	1	2	2	1	6
2018	1	2			3
2019	3	2		2	7
2020	1	2	1	2	6
TOTAL	10	8	5	7	30

* Study Limitations & Methodology: These auditor determinations of bill origins were made with the best available information and are imprecise due to nuances associated with bill drafting. Auditors reviewed board priority documents from USBE, bill Long Titles for Committee Notes, audio from committee hearings and floor debates, and conferred with sponsoring legislators, USBE, LRGC, and LFA staff to determine bill origins.

** System sources are LEAs or schools.

Other sources include education associations of stakeholders.

Source: Auditor Analysis

30 percent of new program ideas originate with a legislator or the Legislature.

A third of new public education programs during the last five years originated in the Legislature, and more than a quarter with USBE. Because new K-12 education programs often require funding, rulemaking, and administration by USBE, most new programs (60 percent) originated with either the Legislature or USBE. These programs are then implemented at the state and/or local level(s). Nonetheless, all the bills in Figure 3.5 show the Legislature doing its constitutional duty to "...provide for the establishment and maintenance of the state's public education system."

Statutory Language is Similar for USBE and LSBs, Causing Overlap of Effort

Because the goals of both USBE and LSBs are to provide children with a quality education, there is some overlap of that effort. The level of operation is obviously different, but nonetheless, some functions naturally overlap.

Utah's State Board of Education Is a State-Level Governing Board. It has the statutory power to direct, supervise, and regulate general aspects of Utah's public education system. USBE does this by means of oversight, model programs, grant programs to schools, and a recently developed strategic plan intended to increase the quality of

USBE has the statutory authority to direct, supervise, and regulate general aspects of public education.

education children receive.²³ *Utah Code* 53E-3-401(3) specifically prohibits USBE from governing, managing, or operating school districts, institutions, and programs unless granted that authority by statute.

Statute Delegates Rights, Powers, and Privileges to Local School Boards. Oversight is specifically delegated to them by *Utah Code* and *Administrative Rule*. LSBs also have the implied rights, powers, and authority of "local control" that are reasonably necessary to practice their delegated powers and meet their responsibilities. Public education stakeholders generally support the idea of local control, or local direction of public education under state supervision.

The overlap of USBE and LSBs' responsibilities comes from the vagueness of USBE's "... general control and supervision" as granted by the *Utah Constitution*. Some friction has been caused between USBE and LSBs because LSBs claim USBE exercises specific control, rather than general.

Statutory Overlap Causes Some Friction Among Entities

Although it does not appear that any of the governance bodies are overstepping their statutory responsibilities, some of the inherent overlap has caused friction between the parties.

We conducted in-depth interviews of two Utah school district administrations, and both groups mentioned that they felt USBE oversteps its bounds. Their concerns included the following:

- One district believes that the local entity is responsible outside of what is specifically listed in code as USBE's responsibility. Sometimes USBE oversteps those bounds and does things not specifically listed in statute.
- The second district believes that USBE oversteps its bounds when creating policies.
- The second district also believes that USBE should pull back and focus on its essential, statutorily defined duties and

USBE and LSBs' responsibilities overlap due to constitutional and statutory language.

Two school districts expressed concern that USBE oversteps their bounds.

²³ USBE's strategic plan will be discussed in detail in a future audit report.

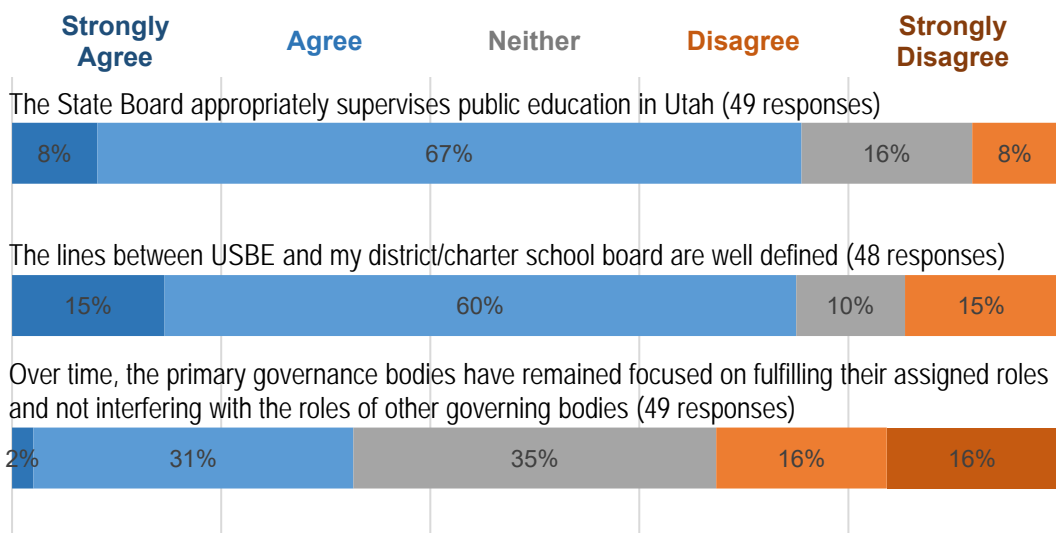
In general, district report that governance roles are well defined.

responsibilities, rather than trying to create new responsibilities all the time.

Because of the concerns expressed by these two school districts, we conducted online surveys about these topics. The first survey was sent to all USBE staff, while the second was sent to LEAs, including all local school districts and 116 charter schools.²⁴

The survey found that despite the concerns from two school districts, in general, districts believe roles are relatively well defined. They were less certain that each governance entity stays focused on its own defined responsibilities.²⁵ Figure 3.6 details district responses to some of the governance questions posed.²⁶

Figure 3.6 District Administrators’ Survey Responses About Education Governance Were Largely Positive. Districts responded to questions ranking how much they agreed with statements about governance of Utah's public education system.



Source: Auditor analysis of 50 District Administrator responses to LEA Administrators survey data (n=102). "Don't Know / Unsure" responses excluded from the analysis.

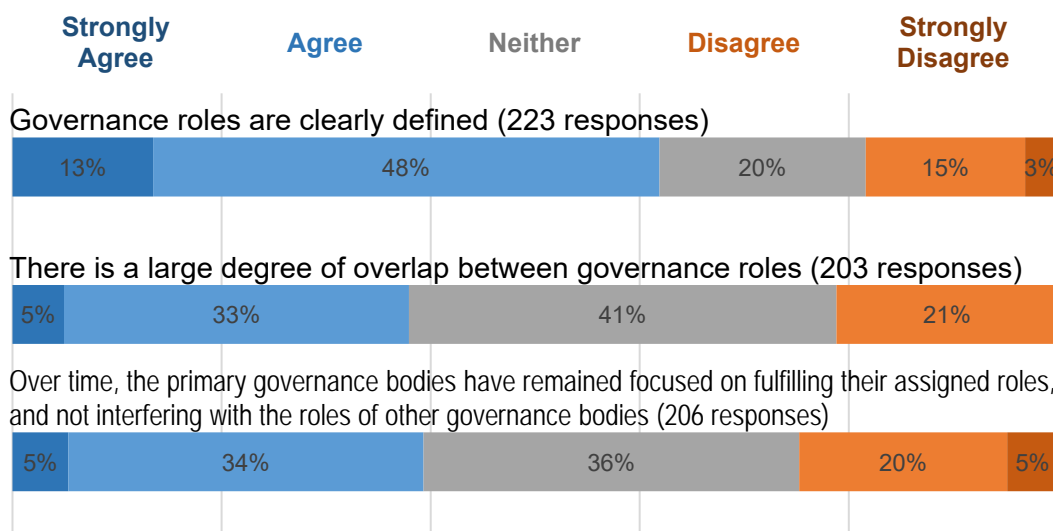
Although 75 percent of district administrators agreed that the lines and roles of the entities are well defined, only 33 percent agreed that

²⁴ Because charter schools will be addressed in a separate report, their answers are excluded here.
²⁵ There may have been a difference in responses between small and large districts. We did not ask respondents to identify their districts so they could maintain anonymity and be as frank as possible.
²⁶ See Appendix C for complete analysis of district responses.

the entities then fulfill these roles without interfering in the roles of others.

USBE staff responses to similar questions were generally positive. Figure 3.7 details those responses.²⁷

Figure 3.7 USBE Staff Expressed Similarly Positive Responses Concerning Education Governance. Employees responded to questions ranking how much they agreed with statements about governance of Utah's public education system.



Source: Auditor analysis of USBE staff survey data (n=248). "Don't Know / Unsure / N/A" responses excluded from the analysis.

Nearly two-thirds of staff agreed or strongly agreed that governance roles are clearly defined, and over a third also agreed that there is a large degree of overlap. Similar to district administrators, about 39 percent of USBE staff agree that the governance bodies remain focused on their role.

Because of the inherent overlap of functions and the potential friction involved, the Legislature may want to examine the policy decision of whether to clarify roles in statute, or to maintain the ambiguity and allow entities to overlap in some functions. If the Legislature does decide to examine this question, USBE and LSBs could be called upon to assist in these efforts.

USBЕ employees agree that there is a large degree of overlap with governance roles, but also that those roles are well defined.

²⁷ See Appendix C for complete analysis of USBE staff responses.

If the Legislature decides further clarification of roles is necessary, USBE and LSBs would advise on appropriate areas of clarification.

USBE and LSBs Could Advise the Legislature On Areas for Statutory Clarification

USBE and LSBs are uniquely qualified to advise the Legislature on areas for statutory clarification because they are the governing bodies that work on the implementation side of legislation. Both entities have experience reviewing and advising on education proposals. There are many examples of that advice to the Legislature.

- USBE staff recently reviewed budget performance measures they are required to report. During the October 2020 meeting of the Public Education Appropriations Subcommittee, USBE recommended changes to 12 of the 63 measures, and these recommendations were approved by the subcommittee.
- In two recent audit reports, we made four recommendations that USBE advise the Legislature on different matters.
- We interviewed 12 of the 15 state board members, and 3 mentioned that USBE and LSBs are working more collaboratively. One said that there has been great productivity and work with the Legislature, and another said that USBE is having better conversations and more interaction with the Legislature.

These examples help illustrate the collaborative relationship between the Legislature and other educational governance entities. Because the Legislature, USBE, and LSBs have worked collaboratively, they could continue to do so if the Legislature asks for their assistance on further clarifying roles.

Governor Has a Small and Diminishing Role in Educational Governance

The Governor's influence over education is a policy decision for the Legislature. This section seeks to help inform legislators in their policy-making role. In the last few decades, the influence of the Governor's office has decreased. Previously, the Governor selected candidates to be placed on the general election ballot after a review by the nominating committee. However, a federal court decision invalidated the nominating committee process in 2014, greatly decreasing the Governor's influence. Proposals intended to give the

The role and influence of the Governor in public education is a policy decision for the Legislature.

Governor more influence in public education is a policy question of significant interest to some groups. There are both advocates and opponents to these policy proposals. We recommend that the Legislature consider the education governance models discussed in this report for future policy deliberations.

The Governor's Influence Over Education Has Been Reduced

Utah's Governor has had varying levels of educational influence over the years. Through both legislation and court rulings, the Governor's input into the selection of board members has increased and decreased.

From 1950 to 1991, the Governor Had Little Influence in the Selection of State Board Members. Members of the state board of education were selected through a primary and general election process.

In 1991 the Legislature Passed Senate Bill 18, Which Increased the Influence of the Executive Branch in Public Education. The bill established the Governor's nominating committees to select candidates for the board of education. The original committees were made up of seven individuals in each state board district. These local committees consisted of four members of the education community and three members representing economic interests. The committee was intended to be a method for selecting candidates for a more competent state board of education.

Under this system, a person wishing to be a candidate for USBE applied to the committee in their district. Each committee produced a list of three to five potential USBE candidates in their district. The list would then be passed to the Governor for consideration. The Governor's office would review the committees' lists and select two candidates per district to be placed on the ballot for the general election. General elections for board members would then be conducted by nonpartisan ballot.

In 1991 the Governor was given the authority to use a nominating committee to select USBE candidates for the general election.

The influence of the Governor in selecting members for the nominating committee was altered in both 2003 and 2004.

In 2014 a federal court ruled that the Governor's nominating committee was unconstitutional based on the first amendment's right to free speech.

In 2003, the Legislature Eliminated Individual District Committees in Favor of One Large Committee. The committee makeup was also changed to have five individuals appointed by business-related organizations, and five by education-related organizations. The Governor appointed one member to the committee. The next year, legislation shifted power back to the Governor who would appoint all members of the committee, which was to be 12 individuals evenly split between business and education interests.

A Federal Court Case in 2014 Invalidated the Committee as Unconstitutional and Further Reduced the Influence the Governor Had Over Public Education. A legal challenge to the Governor's nominating committee resulted in a federal court ruling that the nominating committee was unconstitutional based on the first amendment's right to free speech, specifically stating:

...statutes governing the selection of candidates for the State Board of Education by a nominating committee and by the Governor implicated and restricted speech; statutes imposed substantial burden on First Amendment freedom of political expression.²⁸

The court also ruled that the Governor's nominating committee was not neutral, and therefore did not use subjective criteria to judge candidates for membership on the USBE. This decision further diminished the Governor's influence over public education.²⁹ It should be noted that the Governor still has authority to fill a USBE member vacancy through appointment.

There Have Been Proposals to Increase the Governor's Influence

With the repeal of the Governor's nominating committee in 2014, the Governor's authority over education decreased. Currently, the Governor only has the authority to appoint the seven members of the State Charter School Board or members of USBE in the event of a seat vacancy.

²⁸ England v. Hatch. Case No: 1:14-cv-079-CW

²⁹ The further effects and resulting structure are discussed in detail in Chapter II.

Outside of these formal statutory powers, the Governor suggests budget priorities for education in annual budget recommendations for the Legislature. In recent years, the Governor's office has recommended actions to review or change public education governance. For example, the fiscal year 2020 budget proposal recommends "...a thorough review of the K-12 education governance structure to ensure that it is properly designed to lead Utah to the head of the nation's class." Furthermore, the fiscal year 2021 budget proposal recommends that "...future Governors receive the constitutional authority to appoint the State Board of Education so that the Governor can both more directly influence student outcomes and be held accountable..."

Legislators have introduced constitutional amendments over the last three legislative sessions that would give the Governor authority to appoint USBE members. As of the 2020 General Session, none of these bills have passed. Bill sponsors argue that the Governor has little to no influence on public education. They argue that there needs to be a significant modification to include the executive branch in decisions affecting 27 percent of the state budget. In addition, staff at the Governor's office contend that having the Governor appoint USBE members would result in more accountability between the administration and the executive office.

If adopted, the policy proposal to allow the Governor to appoint board members to USBE would significantly alter the governance model of public education in Utah. We recognize that there are both advocates and opponents to this policy. We recommend the Legislature consider the education governance models discussed in this section and in Chapter II for future policy deliberations.

Recommendations

1. We recommend that the Legislature consider the policy decision of whether to clarify educational governance roles in statute to reduce overlapping functions.
2. We recommend that if the Legislature decides to clarify statutory educational governance roles, it could consider asking the Utah State Board of Education and members of local school boards to advise on potential areas for statutory clarification.

In recent years, the Governor's office has recommended actions to review or change public education governance to increase the Governor's influence.

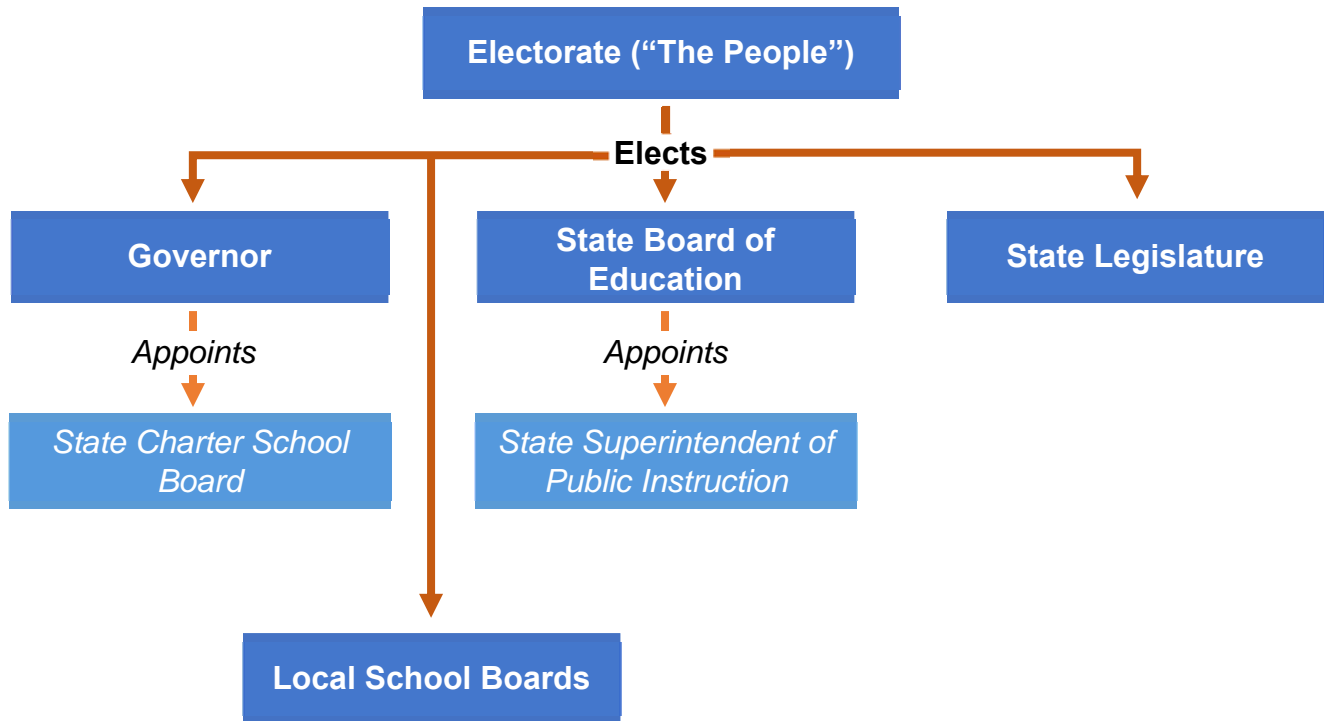
In recent years, legislators have introduced constitutional amendments to allow the Governor to appoint members of USBE. None of these proposals have passed as of 2020.

Appendices

Appendix A

Appendix A

Utah's K-12 Public Education Governance Structure



Roles and Authority

Overview

When it comes to governing Utah's public education system, the Governor's constitutional authority is limited to vetoing legislative bills and other general executive powers. The Governor's key statutory roles related to education include appointing state charter board members and proposing a budget to the Legislature. All other influence of the Governor is high-level advisory in nature and includes informal activities like recommending priorities for Utah's public education system.

When it comes to governing public education at the state level, the Legislature is constitutionally charged with providing for the establishment and maintenance of the public education system, setting policy, and approving the state budget. The State Board is constitutionally charged with "general control and supervision of the public education system" and appointing the state superintendent. The State Board also makes rules, sets the framework by establishing core standards and assessments, handles licensing education administrators and educators, and has power to take corrective action against non-

compliant entities such as districts and charter schools, by withholding state funds and requiring payment of penalties or reimbursement.

When it comes to daily operations, the state superintendent and USBE office ensure implementation of Legislative and State Board policies. Local School Boards also manage this on a local level for school districts and are responsible for things like staffing, capital facilities, boundaries, and closing schools.

Another quasi-governance body is the State Charter School Board, which is the primary authorizer of charter schools in the state.

When it comes to federal education programs, both the State Superintendent [*Utah Code* 53E-3-301(3)(e)] and Local School Boards [*Utah Code* 53G-4-402(10)(a)] are statutorily charged with administration and implementation.

State Constitution

Legislature

- Provide for the establishment and maintenance of the public education system (*Utah Constitution*, Article X, Section 1)
- Designate schools and programs (*Utah Constitution*, Article X, Section 2)
- Enact legislation

Governor

- **General veto authority over legislation**
- **Line-item veto** (*Utah Constitution*, Article VII, Section 8)
- General powers of the Governor (these are not directly related to education and are included as potentially applicable, but they do not bear any direct relationship or reflect the current operation of public education; moreover, it is unknown whether a governor has ever taken action related to public education based on these powers)
 - Ensure **laws are faithfully executed** (*Utah Constitution*, Article VII, Section 5)
 - May require information in writing from state institutions on any subject relating to condition, management, and expenses (*Utah Constitution*, Article VII, Section 5)
 - May—when legislature not in session—appoint committee to investigate and report on the condition of any executive office or state institution (*Utah Constitution*, Article VII, Section 5)

State Board of Education

- **General control and supervision** of the public education system (*Utah Constitution*, Article X, Section 3)
- Appoint **State Superintendent of Public Instruction** (*Utah Constitution*, Article X, Section 3)

State Superintendent

- Executive officer of and appointed by state board (*Utah Constitution*, Article X, Section 3)

State Statute

Governor

- Fill midterm vacancies on the Utah State Board of Education through appointment procedures (*Utah Code* 20A-1-504)
- Approve or reject each **federal** education agreement or national program (*Utah Code* 53E-3-804)
- Appoint members of the **State Charter School Board** [*Utah Code* 53G-5-201(2)(a)]
- Receive state superintendent's **annual report** (*Utah Code* 53E-1-203)

Legislature

- Appropriate funds
- Appoint education committees
- Consider bill recommendations from legislative committees, and take action to pass and enact legislation

State Board of Education

- **Educator licensing** system [*Utah Code* 53E-6-201 (1) and (3)(a)]
- **Financial** duties, such as accepting and distributing state funds [*Utah Code* 53E-3-402 (1)]
- Create, maintain, and review regularly a statewide, comprehensive multi-year **strategic plan** that includes long term goals for improved student outcomes [*Utah Code* 53E-2-202]
- **Audit** the use of state funds received as distribution from USBE [*Utah Code* 53E-3-401 (9)]
- Provide **education system framework**, including setting standards and assessments [*Utah Code* 53E-3-502 (1)]

- **Corrective action** against non-compliant education entities (e.g. Districts and charter schools), including withholding state funds and requiring payment of penalties or reimbursement (*Utah Code* 53E-3-401)
- Develop **models** for local school boards to use for things like comprehensive emergency response plans (*Utah Code* 53G-4-402), educator evaluations [*Utah Code* 53G-11-506(4)(a)], etc.
- Specifically **prohibited** from governing, managing, or operating school districts, institutions, and programs (unless granted authority in statute) [*Utah Code* 53E-3-401 (3)]

State Superintendent

- Administer all programs assigned to state board in accordance with state board policies and standards [*Utah Code* 53E-3-301(1)]
- Develop statewide education strategy with state board [*Utah Code* 53E-3-301(2)]
- Perform duties assigned by state board, including a list of specific duties related to investigating public school matters, data collection and management, and administering and implementing federal education programs [*Utah Code* 53E-3-301(3)]
- Manage USBE office staff

State Charter School Board

- Authorize charter schools
- Authorizes duties, such as annual reviews and evaluations of charter schools' performance, holding charter schools accountable, and monitoring charter schools' compliance with federal and state laws [*Utah Code* 53g-5-205(2)]

Local School Boards

- Appoint district superintendents (*Utah Code* 53G-4-301)
- Authorize charter schools (*Utah Code* 53G-5-305)
- Implementation of statewide core standards (*Utah Code* 53G-4-402)
- Administration of statewide assessments (*Utah Code* 53G-4-402)
- Spending MSP funds (*Utah Code* 53G-4-402)
- Levy taxes (*Utah Code* Title 53F, Chapter 8, Part 3)
- Administer and implement federal education programs [*Utah Code* 53G-4-402(10)(a)]
- Adopt bylaws and policies [*Utah Code* 53G-4-402(14)]
- "...make and enforce policies necessary for the control and management of the district schools" [*Utah Code* 53G-4-402(15)(a)]
- Capital facilities duties and responsibilities [*Utah Code* 53G-4-402(3)]

- Close district schools and change boundaries [*Utah Code* 53G-4-402(21)]
- “...shall do all other things necessary for the maintenance, prosperity, and success of the schools and the promotion of education.” [*Utah Code* 53G-4-402(20)]

Administrative Rules

State Board of Education

- Make **rules** to execute its constitutional and statutory duties and responsibilities [*Utah Code* 53E-3-401 (4)(a)]

State Charter School Board

Note: the following rules affecting the State Charter School Board come through the State Board of Education, which has the statutory rulemaking authority cited above

- Annual reviews of charter schools [*Administrative Rule* R277-553-2(1) & (3)]
- Comprehensive five-year reviews of charters’ governing boards’ performance and charter agreements [*Administrative Rule* R277-553-2(4)]

Appendix B



OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL

John Q. Cannon, Director
John L. Fellows, General Counsel

December 8, 2020
Leah Blevins, Senior Audit Supervisor
Office of the Legislative Auditor General
W135 State Capitol Complex
Salt Lake City, UT 84114

RE: Legal Review of Appendix A: Utah's K-12 Public Education Governance Structure

Leah,

You asked for a legal review of Appendix A: Utah's K-12 Public Education Governance Structure. Appendix A accurately summarizes and cites provisions of the Utah Constitution and Utah Code relevant to the authority of the identified entities and officials in relation to Utah's public education system.

Michael Curtis, Associate General Counsel
Amy Shewan, Associate General Counsel
Tel: 801-538-1032

Appendix C

Appendix C

Summary of Survey Responses Regarding the Governance of Utah's Public Education System

We created two surveys: one for Utah State Board of Education (USBE) staff and one for administrators at local education agencies (LEAs). We sent the first survey to 364 USBE employees, and 283 (78 percent) participated in the survey. We sent the second survey to 158 LEA business administrators, including 42 working for the Utah's school districts. We asked the business administrators to consider forwarding the survey to superintendents, assistant superintendents, department heads, or any other administrative staff they believed could provide valuable comments. Fifty-six district employees participated in the survey, including: 30 business administrators, 12 department heads, 8 executive directors, 3 other, 2 superintendents, and 1 support staff.

These surveys contained a variety of questions on three broader topic areas:

1. State- and local-level governance of Utah's public education system
2. Internal governance and culture at the USBE office
3. Governance of charter schools

The following summary figures only include information on responses to survey questions about state- and local-level governance. Moreover, only district responses to the LEA survey are covered in this appendix because charter school responses will be covered in a future report on charter school governance. Additionally, analyses of responses about internal governance and culture at the USBE office will also be covered in a future report, as explained in Chapter I of this report.

Summary of USBE Staff Responses to:
Overall, how much do you agree with the following statements regarding governance of Utah's public education system?



Source: Auditor analysis of USBE staff survey data (n=248). "Don't Know / Unsure / N/A" responses excluded from the analysis.

**Summary of Select USBE Staff Responses to:
*You selected Agree or Strongly Agree for the statement,
"Utah's governance structure needs to be modified."
How do you believe it could be changed?***

Of the 283 USBE employees who were asked to indicate their level of agreement with the statement, "Utah's governance structure needs to be modified," 206 (73 percent) responded. Thirty-three of the 206 respondents (16 percent) disagreed or strongly disagreed with the statement, and 93 respondents (45 percent) indicated that they neither agreed nor disagreed with the statement; however, 80 respondents (39 percent) indicated that they agreed or strongly agreed with the statement.

The respondents who agreed or strongly agreed that Utah's governance structure needs to be modified were presented with a follow-up question that asked, "How do you believe it could be changed?" Fifty-six of the 80 respondents (70 percent) answered the open-ended follow-up question.

We analyzed the responses and found that the following topics were mentioned most frequently by respondents:

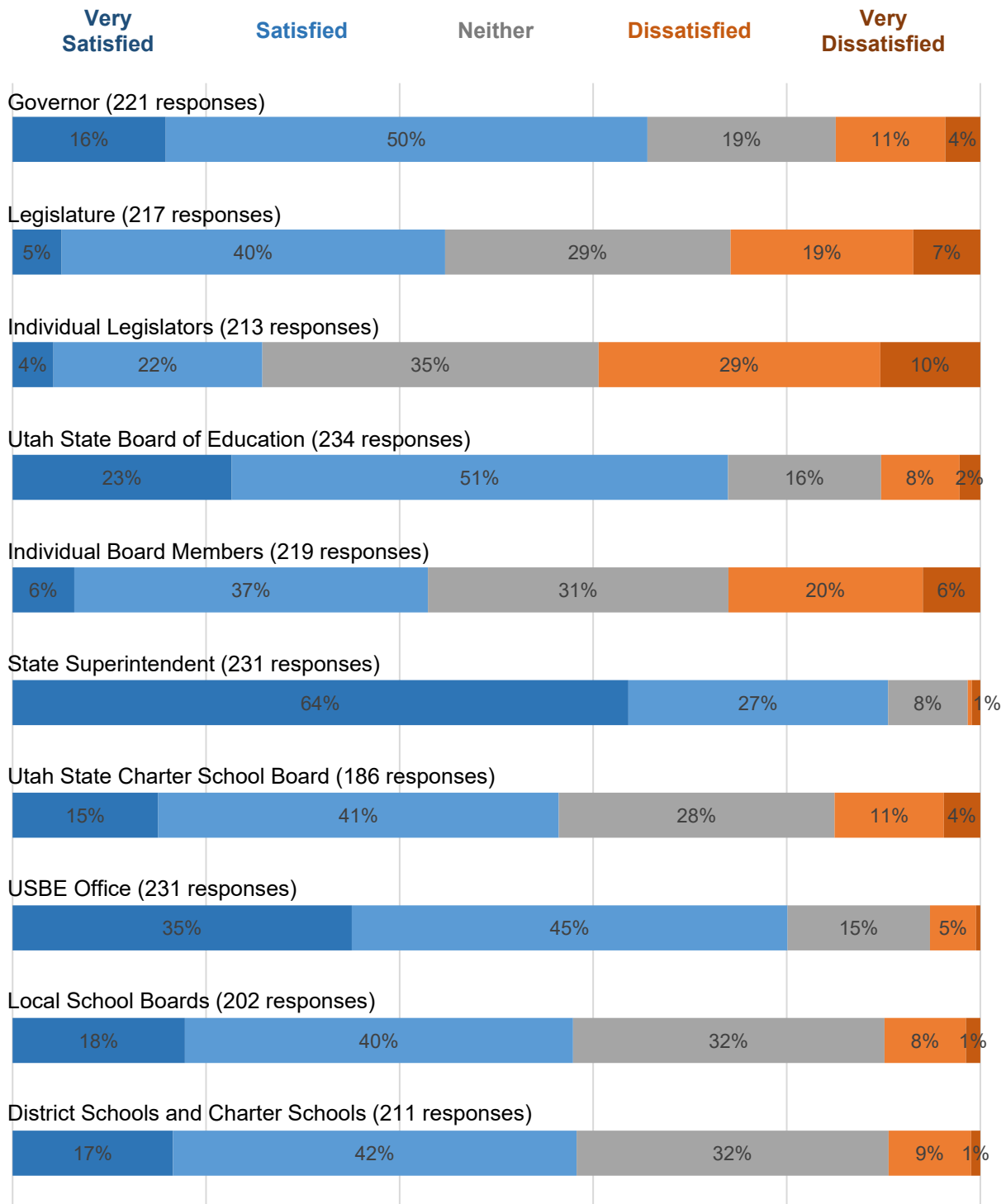
- USBE members should be appointed (11 respondents)
- Governance roles should be clarified (8 respondents)
- Conflicts of interest are a problem (8 respondents)
- Third party influences are a problem (6 respondents)
- USBE and SCSB roles should be clarified (6 respondents)
- USBE elections should be non-partisan (4 respondents)

**Summary of USBE Staff Responses to:
*Please take a moment to share your thoughts on
governance of Utah's public education system***

Eighty-five of the 283 survey participants (30 percent) shared their thoughts on governance of Utah's public education system. The most common topics mentioned by respondents included concerns related to:

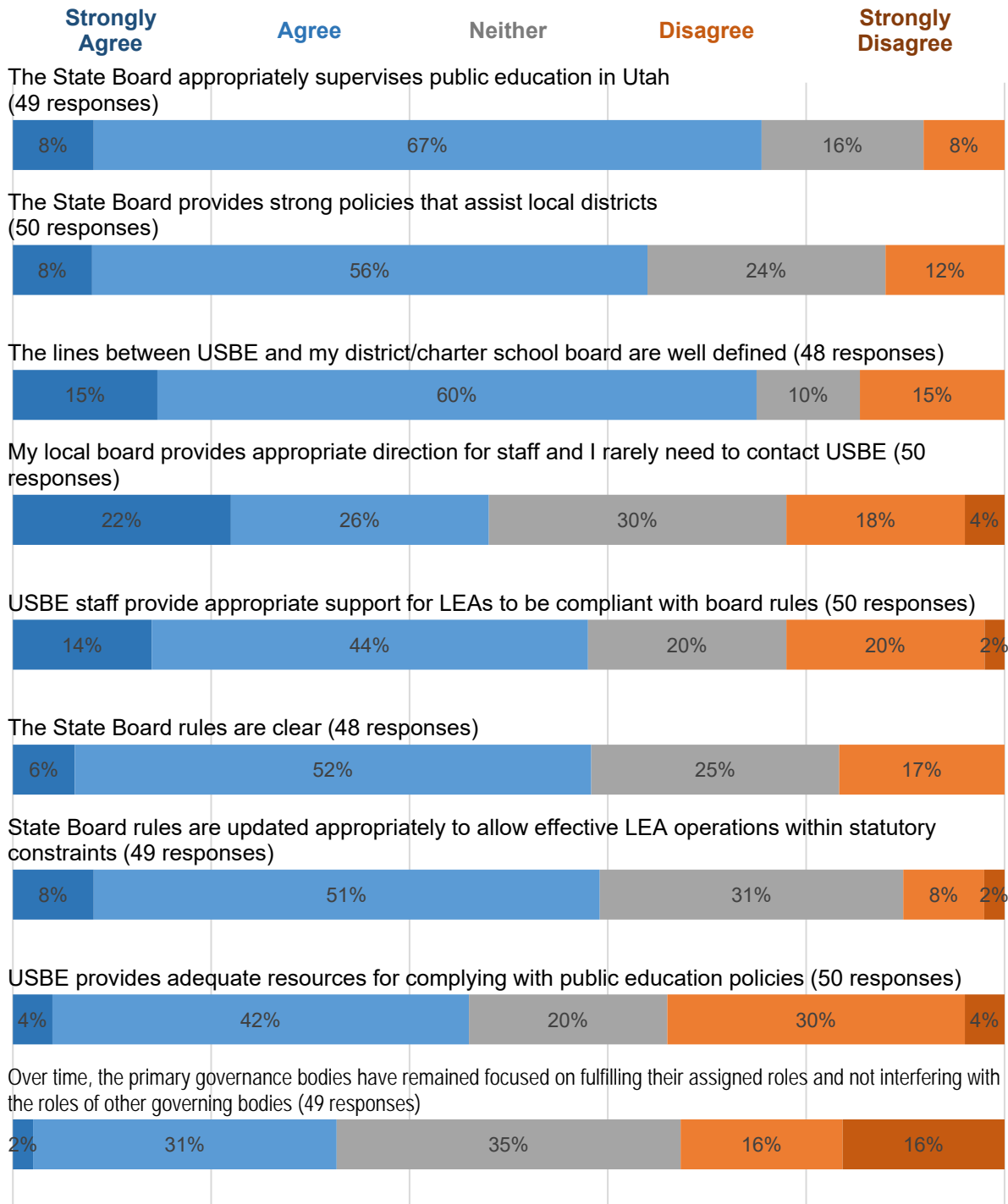
- Influence by third parties, such as vendors (13 respondents)
- Personal agendas (10 respondents)
- Unqualified decisionmakers (8 respondents)
- A lack of accountability (8 respondents)
- The current pandemic (6 responses)

Summary of USBE Staff Responses to:
Overall, how satisfied are you with how each of the following is staying within their defined roles and not performing duties reserved for other entities?



Source: Auditor analysis of USBE staff survey data (n=248). "Don't Know / Unsure" responses excluded from the analysis.

**Summary of District Administrator* Responses to:
Overall, how much do you agree with the following statements
regarding governance of Utah's public education system?**



* This survey was sent to the business administrators for each of Utah's 42 school districts. Recipients were encouraged to share the survey with assistant superintendents, department heads, or any other administrative staff they believed could provide valuable comments.

Source: Auditor analysis of 50 District Administrator responses to LEA Administrators survey data (n=102). "Don't Know / Unsure" responses excluded from the analysis.

**Summary of District Administrator Responses to:
*If applicable, which governing bodies tend to
interfere with the governance role of others
(Governor, Legislature, USBE, LEAs, or Other)?***

Twenty-eight of the 56 district participants (50 percent) commented on which governing bodies tend to interfere with the governance roles of others. Our analysis of the open-ended responses³⁰ showed the following:

- Legislature (21 responses)
- USBE (14 responses)
- State Auditor (4 responses)
- Governor (4 responses)

**Summary of District Administrator Responses to:
*How do you feel about the governance of
Utah's public education system?***

Thirty-five of the 56 district participants (63 percent) shared their feelings about the governance of Utah's public education system. Our analysis of the open-ended responses showed the following themes:

- Positive feelings (14 responses)
- Legislature out of touch or too political (8 responses)
- Too much tracking/regulation (7 responses)
- USBE overly restrictive (6 responses)
- Need for more resources (4 responses)

³⁰ Counts for responses listed exceed 29 because some responses included more than one governing body.

Agency Response



UTAH STATE BOARD OF EDUCATION

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December 8, 2020

Kade Minchey, CIA, CFE
Auditor General
Office of the Legislative Auditor General
W315 State Capitol Complex
Salt Lake City, UT 84114

Dear Mr. Minchey:

Thank you for the opportunity to respond to report 2020-11 "A Performance Audit of Public Education's Governance Structure". The Utah State Board of Education (USBE) recognizes audits provide information to policymakers to help ensure achievement of objectives within the public education system. We appreciate the professionalism and courtesy of your staff in conducting the review.

We concur that governance of public education in the state of Utah is a significant policy and constitutional decision and appreciate the high level of collaboration with the Legislature, local education agencies, and other stakeholders. The USBE is committed to fulfilling its governance role in public education in an effective and efficient manner.

As noted in the report, the Legislature considers many bills related to public education each year. While the report provides data specific to programmatic education bills, there are many other bills that impact public education that the USBE provides input, feedback, and track throughout the session. Examples of legislation that impact USBE and local education agencies (LEAs) include state board and local school board elections legislation, property and income tax legislation, procurement legislation, and legislation impacting public employers and employees. USBE's tracking sheet from the 2020 General Session can be reviewed [here](#) to see examples of bills tracked by USBE and other public education stakeholders. At the Legislature's request, the USBE is willing and pleased to advise on potential areas of statutory clarification regarding governance roles and functions.

With appreciation,

Sydnee Dickson, Ed.D.
State Superintendent of Public Instruction
Utah State Board of Education

cc: Mark Huntsman, Utah State Board of Education (USB E), Board Chair
Brittney Cummins, USB E, Audit Committee Chair
Angie Stallings, USB E, Deputy Superintendent of Policy
Debbie Davis, USB E, Chief Audit Executive