

Representative Karen M. Peterson proposes the following substitute bill:

HIGHER EDUCATION REVISIONS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen M. Peterson

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill modifies the responsibilities of a president of a degree-granting institution.

Highlighted Provisions:

This bill:

- ▶ requires a president of a degree-granting institution to make policies regarding tenure and post-tenure review;
- ▶ describes certain minimum requirements for tenure and post-tenure review; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53B-2-106, as last amended by Laws of Utah 2021, Chapter 187

ENACTS:

53B-2-106.1, Utah Code Annotated 1953



26 *Be it enacted by the Legislature of the state of Utah:*

27 Section 1. Section **53B-2-106** is amended to read:

28 **53B-2-106. Duties and responsibilities of the president of a degree-granting**
29 **institution of higher education -- Approval by board of trustees.**

30 (1) As used in this section, "president" means the president of a degree-granting
31 institution.

32 (2) (a) The president of each degree-granting institution may exercise grants of power
33 and authority as delegated by the board, as well as the necessary and proper exercise of powers
34 and authority not specifically denied to the degree-granting institution or the degree-granting
35 institution's administration, faculty, or students by the board or by law, to ensure the effective
36 and efficient administration and operation of the degree-granting institution consistent with the
37 statewide strategic plan for higher education.

38 (b) A president may, after consultation with the degree-granting institution's board of
39 trustees, exercise powers relating to the degree-granting institution's employees, including
40 faculty and persons under contract with the degree-granting institution, by implementing:

41 (i) furloughs;

42 (ii) reductions in force;

43 (iii) benefit adjustments;

44 (iv) program reductions or discontinuance;

45 (v) early retirement incentives that provide cost savings to the degree-granting
46 institution; or

47 (vi) other measures that provide cost savings to the degree-granting institution.

48 (3) A president may:

49 (a) (i) appoint a secretary, a treasurer, administrative officers, deans, faculty members,
50 and other professional personnel;

51 (ii) prescribe duties for a position described in Subsection (3)(a)(i);

52 (iii) appoint support personnel;

53 (iv) prescribe duties for support personnel;

54 (v) determine salaries for support personnel from the degree-granting institution's
55 position classification plan, which may:

56 (A) be based upon similarity of duties and responsibilities within the institution of

57 higher education; and
58 (B) as funds permit, provide salary and benefits comparable with private enterprise;
59 (vi) adopt policies for:
60 (A) employee sick leave use and accrual; and
61 (B) service recognition for employees with more than 15 years of employment with the
62 degree-granting institution; and
63 (vii) subject to the authority of, the policy established by, and the approval of the
64 board, and recognizing the status of the institutions within the Utah system of higher education
65 as bodies politic and corporate, appoint attorneys to:
66 (A) provide legal advice to the degree-granting institution's administration; and
67 (B) coordinate legal affairs within the degree-granting institution;
68 (b) subject to [Section 53B-2-106.1](#) and the approval of the degree-granting institution's
69 board of trustees, provide for the constitution, government, and organization of the faculty and
70 administration, and enact implementing rules, including the establishment of a prescribed
71 system of tenure;
72 (c) subject to the approval of the degree-granting institution's board of trustees,
73 authorize the faculty to determine the general initiation and direction of instruction and of the
74 examination, admission, and classification of students; and
75 (d) enact rules for administration and operation of the degree-granting institution that:
76 (i) are consistent with the degree-granting institution's role established by the board,
77 rules enacted by the board, or the laws of the state; and
78 (ii) may provide for:
79 (A) administrative, faculty, student, and joint committees with jurisdiction over
80 specified institutional matters;
81 (B) student government and student affairs organization;
82 (C) the establishment of institutional standards in furtherance of the ideals of higher
83 education fostered and subscribed to by the degree-granting institution and the degree-granting
84 institution's administration, faculty, and students; and
85 (D) the holding of classes on legal holidays, other than Sunday.
86 (4) A president shall manage the president's degree-granting institution as a part of the
87 Utah system of higher education.

88 (5) (a) Compensation costs and related office expenses for an attorney described in
89 Subsection (3)(a)(vii) shall be funded within existing budgets.

90 (b) The board shall coordinate the activities of attorneys described in Subsection
91 (3)(a)(vii).

92 (c) An attorney described in Subsection (3)(a)(vii):

93 (i) may not:

94 (A) conduct litigation;

95 (B) settle a claim covered by the State Risk Management Fund; or

96 (C) issue a formal legal opinion; and

97 (ii) shall cooperate with the Office of the Attorney General in providing legal
98 representation to a degree-granting institution.

99 (d) A degree-granting institution shall submit an annual report to the board on the
100 activities of appointed attorneys.

101 (6) The board shall establish guidelines relating to the roles and relationships between
102 presidents and boards of trustees, including those matters which must be approved by a board
103 of trustees before implementation by the president.

104 (7) A president is subject to regular review and evaluation administered by the board,
105 in consultation with the degree-granting institution's board of trustees, through a process
106 approved by the board.

107 Section 2. Section **53B-2-106.1** is enacted to read:

108 **53B-2-106.1. Tenure -- Reporting.**

109 (1) A president of a degree-granting institution, in consultation with the
110 degree-granting institution's board of trustees, shall make policies:

111 (a) related to tenure and post-tenure review; and

112 (b) ensuring that the terms and conditions of tenured employment are stated in writing
113 and provided to a faculty member.

114 (2) Tenure and post-tenure policies shall:

115 (a) protect academic freedom in teaching, research, and in an individual's personal life;

116 (b) require that a final award of tenure be approved by the president of the
117 degree-granting institution offering the award of tenure; and

118 (c) comply with this section.

119 (3) Beginning July 1, 2024, a tenured faculty member may be dismissed from
 120 employment at a degree-granting institution:

121 (a) for cause, including:

122 (i) professional incompetence;

123 (ii) serious misconduct or unethical behavior;

124 (iii) legal misconduct substantially related to the performance of duties;

125 (iv) serious violations of board or institution rules;

126 (v) the conviction of a crime affecting the fitness of the tenured faculty member to

127 engage in teaching, research, service, outreach, administration, or other assigned duties;

128 (vi) falsified credentials or plagiarism; or

129 (vii) inability or unwillingness to meet institutional expectations, including failure to
 130 address deficiencies outlined in a remediation plan following post-tenure review;

131 (b) if the program in which the tenured faculty member works is discontinued by the
 132 degree-granting institution or modified to such a degree that the tenured faculty member's
 133 position is no longer needed; and

134 (c) in the event of financial exigency of the degree-granting institution.

135 (4) Policies governing dismissal of a tenured faculty member for cause shall include, at
 136 a minimum:

137 (a) notice to the tenured faculty member of the alleged cause, including any evidence
 138 supporting the allegation;

139 (b) providing reasonable time and opportunity for the tenured faculty member to
 140 respond;

141 (c) a hearing before an independent board of tenured faculty peers;

142 (d) a written determination on the issue, including a determination of termination or
 143 continued employment; and

144 (e) an appeals process ending with the final decision of the president of the
 145 degree-granting institution.

146 (5) A tenured faculty member who is being dismissed because the program in which
 147 the tenured faculty member works is discontinued or modified, as described in Subsection
 148 (3)(b), or in the event of financial exigency of the degree-granting institution, as described in
 149 Subsection (3)(c), shall receive ~~H~~→ [z] severance in accordance with the terms of the tenured
 149a faculty member's employment contract. ←H

150 ~~Ĥ→ [(a) a minimum of six months notice before the termination; or~~
151 ~~———— (b) six months of salary and benefits in lieu of six months notice.] ←Ĥ~~

152 (6) Nothing in this section prohibits a president of a degree granting institution from
153 creating additional policies and processes regarding discipline of a tenured faculty member.

154 (7) Beginning July 1, 2024, a degree-granting institution shall conduct, and a tenured
155 faculty member shall receive:

156 (a) an annual performance review of the tenured faculty member's performance; and
157 (b) a post-tenure review, as described in Subsection (9).

158 (8) A president of a degree-granting institution shall ensure that each program or
159 department at the degree-granting institution has policies describing the minimum performance
160 of a tenured faculty member for use in a post-tenure review.

161 (9) A post-tenure review shall:

162 (a) be conducted by a committee of:

163 (i) tenured faculty member peers, appointed by the appropriate vice president at the
164 degree-granting institution, including at least two individuals appointed from either a different
165 department than the tenured faculty member going through post-tenure review, a different
166 degree-granting institution than the tenured faculty member going through post-tenure review,
167 or both; and

168 (ii) the provost or the provost's designee; and

169 (b) consist of a comprehensive review of the tenured faculty member's performance
170 over the previous five years, including:

171 (i) teaching assessment, including student evaluations, for all courses taught;
172 (ii) the quality of the tenured faculty member's scholarly research;
173 (iii) service to the profession, school, or community;
174 (iv) annual performance reviews;
175 (v) intellectual property owned wholly or partly by, or commercialization efforts
176 attributed to, the tenured faculty member;

177 (vi) the tenured faculty member's compliance with the degree granting institution's
178 policies regarding the responsibilities and ethical obligations of faculty members; and
179 (vii) any improvement plans for underperformance.

180 (10) (a) If, following a post-tenure review, a tenured faculty member is found to not

181 meet the standards established by the degree-granting institution, the degree-granting
182 institution shall create a remediation plan to address deficiencies and a timeline by which the
183 tenured faculty member is expected to address the deficiencies.

184 (b) A tenured faculty member who fails to address deficiencies as described in
185 Subsection (9)(a) may be subject to disciplinary action from the degree-granting institution,
186 including dismissal for cause.

187 (c) A president of a degree-granting institution who does not dismiss a tenured faculty
188 member who fails to address deficiencies as described in Subsection (9)(a) shall justify in
189 writing to the board why the tenured faculty member is not being dismissed.

190 (11) A president of a degree-granting institution shall provide an annual report to the
191 board, no later than October 1 of each year, with the following information:

192 (a) the number of post-tenure reviews that took place at the degree-granting institution
193 in the previous year;

194 (b) an analysis of scores from post-tenure reviews that took place in the previous year
195 with personal information redacted;

196 (c) the number of post-tenure reviews from the previous year that resulted in a
197 remediation plan;

198 (d) a qualitative summary of the types of remediation plans created in the previous
199 year, including an average timeline by which tenured faculty members are expected to address
200 deficiencies; and

201 (e) a summary of written justifications described in Subsection (9)(c), if any, with
202 personal information redacted.

203 **Section 3. Effective date.**

204 This bill takes effect on May 1, 2024.