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HIGHER EDUCATION REVISIONS

2024 GENERAL SESSION

STATE OF UTAH

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2

LONG TITLE

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General Description:

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

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Highlighted Provisions:

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7 This bill:

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8 ▶ requires a president of a degree-granting institution to make policies regarding tenure

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9 and post-tenure review;

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10 ▶ describes certain minimum requirements for tenure and post-tenure review; and

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11 ▶ makes technical changes.

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Money Appropriated in this Bill:

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13 None

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14 **Other Special Clauses:**

15 None

16 **Utah Code Sections Affected:**

17 AMENDS:

18 **53B-2-106**, as last amended by Laws of Utah 2021, Chapter 187

19 ENACTS:

20 **53B-2-106.1**, Utah Code Annotated 1953

21

22 *Be it enacted by the Legislature of the state of Utah:*23 Section 1. Section **53B-2-106** is amended to read:24 **53B-2-106 . Duties and responsibilities of the president of a degree-granting**
25 **institution of higher education -- Approval by board of trustees.**

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

27 (2) (a) The president of each degree-granting institution may exercise grants of power
28 and authority as delegated by the board, as well as the necessary and proper exercise
29 of powers and authority not specifically denied to the degree-granting institution or
30 the degree-granting institution's administration, faculty, or students by the board or
31 by law, to ensure the effective and efficient administration and operation of the
32 degree-granting institution consistent with the statewide strategic plan for higher
33 education.34 (b) A president may, after consultation with the degree-granting institution's board of
35 trustees, exercise powers relating to the degree-granting institution's employees,
36 including faculty and persons under contract with the degree-granting institution, by
37 implementing:

38 (i) furloughs;

39 (ii) reductions in force;

40 (iii) benefit adjustments;

41 (iv) program reductions or discontinuance;

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

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

45 (3) A president may:

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

- 48 (ii) prescribe duties for a position described in Subsection (3)(a)(i);
49 (iii) appoint support personnel;
50 (iv) prescribe duties for support personnel;
51 (v) determine salaries for support personnel from the degree-granting institution's
52 position classification plan, which may:
53 (A) be based upon similarity of duties and responsibilities within the institution of
54 higher education; and
55 (B) as funds permit, provide salary and benefits comparable with private
56 enterprise;
57 (vi) adopt policies for:
58 (A) employee sick leave use and accrual; and
59 (B) service recognition for employees with more than 15 years of employment
60 with the degree-granting institution; and
61 (vii) subject to the authority of, the policy established by, and the approval of the
62 board, and recognizing the status of the institutions within the Utah system of
63 higher education as bodies politic and corporate, appoint attorneys to:
64 (A) provide legal advice to the degree-granting institution's administration; and
65 (B) coordinate legal affairs within the degree-granting institution;
- 66 (b) subject to Section 53B-2-106.1 and the approval of the degree-granting institution's
67 board of trustees, provide for the constitution, government, and organization of the
68 faculty and administration, and enact implementing rules, including the establishment
69 of a prescribed system of tenure;
- 70 (c) subject to the approval of the degree-granting institution's board of trustees, authorize
71 the faculty to determine the general initiation and direction of instruction and of the
72 examination, admission, and classification of students; and
- 73 (d) enact rules for administration and operation of the degree-granting institution that:
74 (i) are consistent with the degree-granting institution's role established by the board,
75 rules enacted by the board, or the laws of the state; and
76 (ii) may provide for:
77 (A) administrative, faculty, student, and joint committees with jurisdiction over
78 specified institutional matters;
79 (B) student government and student affairs organization;
80 (C) the establishment of institutional standards in furtherance of the ideals of
81 higher education fostered and subscribed to by the degree-granting institution

82 and the degree-granting institution's administration, faculty, and students; and

83 (D) the holding of classes on legal holidays, other than Sunday.

84 (4) A president shall manage the president's degree-granting institution as a part of the Utah
85 system of higher education.

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

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

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

91 (i) may not:

92 (A) conduct litigation;

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

94 (C) issue a formal legal opinion; and

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

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

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

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

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

106 **53B-2-106.1 . Tenure -- Reporting.**

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

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

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

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

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

114 (b) require that a final award of tenure be approved by the president of the
115 degree-granting institution offering the award of tenure, in consultation with the

- 116 board of trustees of the degree-granting institution; and
117 (c) comply with this section.
- 118 (3) Beginning July 1, 2024, a tenured faculty member may be dismissed from employment
119 at a degree-granting institution:
- 120 (a) for cause, including:
- 121 (i) professional incompetence;
122 (ii) serious misconduct or unethical behavior;
123 (iii) legal misconduct substantially related to the performance of duties;
124 (iv) serious violations of board or institution rules;
125 (v) the conviction of a crime affecting the fitness of the tenured faculty member to
126 engage in teaching, research, service, outreach, administration, or other assigned
127 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
133 member's 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 a
136 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 in consultation with the board of trustees of the
146 degree-granting institution.
- 147 (5) A tenured faculty member who is being dismissed because the program in which the
148 tenured faculty member works is discontinued or modified, as described in Subsection
149 (3)(b), or in the event of financial exigency of the degree-granting institution, as

- 150 described in Subsection (3)(c), shall receive severance in accordance with the terms of
151 the tenured faculty member's employment contract.
- 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
154 member.
- 155 (7) Beginning July 1, 2024, a degree-granting institution shall conduct, and a tenured
156 faculty member shall receive:
- 157 (a) an annual performance review of the tenured faculty member's performance; and
158 (b) a post-tenure review, as described in Subsection (9).
- 159 (8) A president of a degree-granting institution shall ensure that each program or
160 department at the degree-granting institution has policies describing the minimum
161 performance of a tenured faculty member for use in a post-tenure review.
- 162 (9) A post-tenure review shall:
- 163 (a) be conducted by a committee of:
- 164 (i) tenured faculty member peers, appointed by the appropriate vice president at the
165 degree-granting institution in consultation with the faculty member's department
166 chair, including at least two individuals appointed from either a different
167 department than the tenured faculty member going through post-tenure review, a
168 different degree-granting institution than the tenured faculty member going
169 through post-tenure review, or both; and
- 170 (ii) the provost or the provost's designee; and
- 171 (b) consist of a comprehensive review of the tenured faculty member's performance over
172 the previous five years, including:
- 173 (i) teaching assessment, including student evaluations, for all courses taught;
174 (ii) the quality of the tenured faculty member's scholarly research;
175 (iii) service to the profession, school, or community;
176 (iv) annual performance reviews;
177 (v) intellectual property owned wholly or partly by, or commercialization efforts
178 attributed to, the tenured faculty member;
- 179 (vi) the tenured faculty member's compliance with the degree-granting institution's
180 policies regarding the responsibilities and ethical obligations of faculty members;
181 and
- 182 (vii) any improvement plans for underperformance.
- 183 (10) (a) If, following a post-tenure review, a tenured faculty member is found to not

- 184 meet the standards established by the degree-granting institution, the degree-granting
185 institution shall create a remediation plan to address deficiencies and a timeline by
186 which the tenured faculty member is expected to address the deficiencies.
- 187 (b) A tenured faculty member who fails to address deficiencies as described in
188 Subsection (10)(a) may be subject to disciplinary action from the degree-granting
189 institution, including dismissal for cause, subject to the appeals process described in
190 Subsection (4)(e).
- 191 (c) In consultation with the board of trustees, a president of a degree-granting institution
192 who does not dismiss a tenured faculty member who fails to address deficiencies as
193 described in Subsection (10)(a) shall justify in writing to the board why the tenured
194 faculty member is not being dismissed.
- 195 (11) A president of a degree-granting institution shall provide an annual report to the board,
196 no later than October 1 of each year, with the following information:
- 197 (a) the number of post-tenure reviews that took place at the degree-granting institution in
198 the previous year;
- 199 (b) an analysis of scores from post-tenure reviews that took place in the previous year
200 with personal information redacted;
- 201 (c) the number of post-tenure reviews from the previous year that resulted in a
202 remediation plan;
- 203 (d) a qualitative summary of the types of remediation plans created in the previous year,
204 including an average timeline by which tenured faculty members are expected to
205 address deficiencies; and
- 206 (e) a summary of written justifications described in Subsection (10)(c), if any, with
207 personal information redacted.

208 Section 3. **Effective date.**

209 This bill takes effect on May 1, 2024.