

HB0438S01 compared with HB0438

~~deleted text~~ shows text that was in HB0438 but was deleted in HB0438S01.

inserted text shows text that was not in HB0438 but was inserted into HB0438S01.

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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: _____

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

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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

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

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

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

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

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

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

- (i) furloughs;
- (ii) reductions in force;
- (iii) benefit adjustments;
- (iv) program reductions or discontinuance;
- (v) early retirement incentives that provide cost savings to the degree-granting institution; or
- (vi) other measures that provide cost savings to the degree-granting institution.

(3) A president may:

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

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- (ii) prescribe duties for a position described in Subsection (3)(a)(i);
- (iii) appoint support personnel;
- (iv) prescribe duties for support personnel;
- (v) determine salaries for support personnel from the degree-granting institution's position classification plan, which may:
 - (A) be based upon similarity of duties and responsibilities within the institution of higher education; and
 - (B) as funds permit, provide salary and benefits comparable with private enterprise;
- (vi) adopt policies for:
 - (A) employee sick leave use and accrual; and
 - (B) service recognition for employees with more than 15 years of employment with the degree-granting institution; and
- (vii) subject to the authority of, the policy established by, and the approval of the board, and recognizing the status of the institutions within the Utah system of higher education as bodies politic and corporate, appoint attorneys to:
 - (A) provide legal advice to the degree-granting institution's administration; and
 - (B) coordinate legal affairs within the degree-granting institution;
- (b) subject to Section 53B-2-106.1 and the approval of the degree-granting institution's board of trustees, provide for the constitution, government, and organization of the faculty and administration, and enact implementing rules, including the establishment of a prescribed system of tenure;
 - (c) subject to the approval of the degree-granting institution's board of trustees, authorize the faculty to determine the general initiation and direction of instruction and of the examination, admission, and classification of students; and
 - (d) enact rules for administration and operation of the degree-granting institution that:
 - (i) are consistent with the degree-granting institution's role established by the board, rules enacted by the board, or the laws of the state; and
 - (ii) may provide for:
 - (A) administrative, faculty, student, and joint committees with jurisdiction over specified institutional matters;
 - (B) student government and student affairs organization;

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(C) the establishment of institutional standards in furtherance of the ideals of higher education fostered and subscribed to by the degree-granting institution and the degree-granting institution's administration, faculty, and students; and

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

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

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

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

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

(i) may not:

(A) conduct litigation;

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

(C) issue a formal legal opinion; and

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

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

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

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

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

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

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

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

(b) ensuring that the terms and conditions of tenured employment are stated in writing

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and provided to a faculty member.

(2) Tenure and post-tenure policies shall:

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

~~{ (b) indicate that an award of tenure does not create a property interest;~~

~~{ (c) b}~~ require that a final award of tenure be approved by the president of the degree-granting institution offering the award of tenure; and

~~{ d}~~ c} comply with this section.

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

(a) for cause, including:

(i) ~~{ gross }~~ professional incompetence;

(ii) serious misconduct or unethical behavior;

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

(iv) serious violations of board or institution rules;

(v) the conviction of a crime affecting the fitness of the tenured faculty member to engage in teaching, research, service, outreach, administration, or other assigned duties;

(vi) falsified ~~{ academic }~~ credentials or plagiarism; or

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

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

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

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

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

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

(c) a hearing before an ~~{ impartial}~~ independent board of tenured faculty peers;

(d) a written determination on the issue, including a determination of termination or

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continued employment; and

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

(5) A tenured faculty member who is being dismissed because the program in which the tenured faculty member works is discontinued or **modified, as described in Subsection (3)(b), or** in the event of financial exigency of the degree-granting institution, as described in ~~Subsections~~ **Subsection (3)(b) and (c)**, shall receive:

(a) a minimum of six months notice before the termination; or

(b) six months of salary and benefits in lieu of six months notice.

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

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

(a) an annual performance review of the tenured faculty member's performance; and

(b) a post-tenure review, as described in Subsection (~~7~~9).

(~~7~~8) A president of a degree-granting institution shall ensure that each program or department at the degree-granting institution has policies describing the minimum performance of a tenured faculty member for use in a post-tenure review.

(~~8~~9) A post-tenure review shall:

(a) be conducted by a committee of:

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

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

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

(i) teaching assessment, including student evaluations, for all courses taught;

(ii) the quality of the tenured faculty member's scholarly research;

(iii) service to the profession, school, or community;

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(iv) annual performance reviews;

(v) intellectual property owned wholly or partly by, or commercialization efforts attributed to, the tenured faculty member;

(vi) the tenured faculty member's compliance with the degree granting institution's policies regarding the responsibilities and ethical obligations of faculty members; and

(~~vi~~)vii) any improvement plans for ~~underperformance~~underperformance.

(~~9~~)10) (a) If, following a post-tenure review, a tenured faculty member is found to not meet the standards established by the degree-granting institution, the degree-granting institution shall create a remediation plan to address deficiencies and a timeline by which the tenured faculty member is expected to address the deficiencies.

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

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

(~~10~~)11) A president of a degree-granting institution shall provide an annual report to the board, no later than October 1 of each year, with the following information:

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

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

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

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

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

Section 3. **Effective date.**

This bill takes effect on May 1, 2024.

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