

**SOUTH DAKOTA BOARD OF REGENTS**

**Planning and Resource Development**

**AGENDA ITEM: 5 – F**

**DATE: October 4-6, 2016**

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**SUBJECT: Amendment to the By-Laws (Second Reading)**

**Changes from the 1<sup>st</sup> Reading to the 2<sup>nd</sup> Reading**

None

**Changes approved as part of the 1<sup>st</sup> Reading**

At the August 2016 meeting, the Board approved the first reading of an amendment to the By-Laws. The item before the Board at the August 2016 meeting specifically addressed changes to the Search and Screen Committee and also included some clarifying non-substantive revisions to Article IV. During the Board’s discussion, two additional amendments to the By-Laws were discussed (eliminating the Committee of the Whole Board and revising the indemnification language) and were also approved as part of the first reading.

Below are the descriptions of each of the changes approved by the Board as part of the first reading:

**Section 4.3 Search and Screen Committee**

By-Laws Section 4.3.2 currently allows the Search and Screen Committee to “share the application materials **of selected finalists** with any local or campus advisory committee appointed by the **Board** as it deems appropriate” (emphasis added). At the conclusion of the presidential searches for the SDSU and NSU presidents, there was interest by the Board to streamline the process, including empowering the Search and Screen Committee to appoint a local or campus advisory committee.

Included in the revisions are two substantive amendments to Section 4.3.2 and a few clarifying amendments to Section 4.3:

(Continued)

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**DRAFT MOTION 20161004\_5-F:** I move to approve the second and final reading of the revisions to the By-Laws, as shown in Attachment I.

The first substantive amendment to Section 4.3.2 would delete the clause “of selected finalists” to allow the Search and Screen Committee to involve the local or campus advisory committee before finalists are selected:

The Search and Screen committee—Committee may share the application materials ~~of selected finalists~~ with any local or campus advisory committee appointed by the ~~Board~~ President of the Board as ~~is~~ the Search and Screen Committee deems appropriate.

The second substantive amendment to Section 4.3.2 would delete the word “Board” and replace it with “President of the Board” to allow the President of the Board to appoint the members of the local or campus advisory committee rather than requiring the full Board to appoint the members of the local or campus advisory committee:

The Search and Screen committee—Committee may share the application materials ~~of selected finalists~~ with any local or campus advisory committee appointed by the ~~Board~~ President of the Board as ~~is~~ the Search and Screen Committee deems appropriate.

The clarifying amendments to Section 4.3 were as follows:

- To Section 4.3.1
  - The addition of “and any local or campus advisory committee” to clarify that the President of the Board will appoint the members of such local or campus advisory committee; and
  - The addition of a sentence that clarifies that the Search and Screen Committee (which is limited to Regents) may be supplemented by any local or campus advisory committee.
- To Section 4.3.2
  - The addition of a clause to clarify that the Search and Screen Committee may make a recommendation to the full Board regarding the candidate that the Search and Screen Committee believes the Board should hire.

#### **Article IV. Special Committees**

A number of clarifying non-substantive revisions were also made to Article IV to clearly and consistently identify the relevant committee being discussed.

### **Section 4.1 Committee of the Whole Board**

The substance of Sections 4.1, 4.1.1, & 4.1.2 was deleted and replaced with “Reserved” to preserve the numbering. The effect of this change is to eliminate the Committee of the Whole Board.

### **Section 8.1**

The language was revised to remove the \$25,000 maximum amount for indemnification and instead reference the state statute that establishes the amount, so that should the legislature revise the maximum amount in the future, no change will be required to the By-Laws:

Indemnification is limited by statute ~~to a maximum of \$25,000 as set forth in SDCL 3-19-2~~, except that claims for indemnity exceeding that sum may be brought to the legislature.

All proposed amendments to the By-Laws are shown using track changes in Attachment I. The changes originally proposed as part of the agenda item for the August 2016 meeting are highlighted in yellow. The changes made by the Board during the discussion of the item at the August 2016 meeting are highlighted in blue in Attachment I. All changes were approved as part of the motion that passed approving the first reading of the changes to the By-Laws.

## BY-LAWS OF THE SOUTH DAKOTA BOARD OF REGENTS

### Article I. Name

Section 1.0 The legal name of the Board is the Board of Regents.

### Article II. Organization of the Board

- Section 2.0 Membership. The Board is composed of nine voting members appointed by the Governor and confirmed by the senate. One of the nine members shall be a student regent. Terms of each regent, except for the student regent, shall be six years with terms expiring the last day of March or when a successor is appointed and qualified or unless removed as provided in SDCL § 3-17-1. The term of the student regent shall be two years expiring the first day of July of every even-numbered year, unless removed under the provisions of SDCL §3-17-1 or if such student does not remain enrolled in a postsecondary institution controlled by the Board. No two regents may be residents in the same county, and no more than six shall be members of the same political party.
- Section 2.1 Officers. The Board shall elect a President, Vice-President and Secretary at the first regularly scheduled meeting of the Board following the end of the annual Session of the South Dakota Legislature. The terms of the President, Vice-President and Secretary shall run through the end of first such regularly scheduled meeting of the Board in the following year.
- Section 2.2 Duties of the President. The President shall preside at all meetings, appoint committees, and perform such other duties as authorized by statute, policy, agreement, or bylaws; delegated by the Board; or customarily placed upon the presiding officer of a deliberative body.
- Section 2.3 Duties of the Vice-President. The Vice-President shall assume the duties of President when ordered or when the President is absent or otherwise unable to serve.
- Section 2.4 Duties of the Secretary. The Secretary shall sign documents according to established practice and perform official duties as the Board may from time to time determine.
- Section 2.5 Vacancies. The Board shall fill a vacancy occurring in any of its offices at any regular or special meeting for the unexpired term of the office.

### Article III. Standing Committees

Section 3.0 Organization. Each Regent shall be appointed to a Committee at the first regularly scheduled meeting of the Board following the end of the annual Session of the South Dakota Legislature. The President of the Board shall designate a chairman for each Committee who shall serve until the Committee selects its own chairman and vice-chairman. The terms of each shall run through the end of first regularly scheduled meeting of the Board in the following year. A majority of the Committee members present and voting shall constitute a quorum for conducting business. The affirmative vote of a majority of the committee members shall be required to take action. The President of the Board shall serve as an ex-officio voting member of all standing committees. The President shall also have the authority to designate a Regent from one standing committee to serve on another standing committee as required to conduct business.

Section 3.1 Committees. Two standing committees consisting of four Regents on each committee shall be appointed by the President of the Board. In addition, the entire membership shall constitute a Committee on Planning and Resource Development. When possible, the President shall make the committee assignments based upon the preference of each Regent.

Section 3.1.1 Committee on Academic and Student Affairs. The jurisdiction of the Committee on Academic and Student Affairs shall be as follows:

- Accreditation
- Articulation Activities
- Enrollment
- Financial Aid, Tuition Waiver and Scholarship
- Faculty Rank, Tenure, and Promotions
- Faculty/Staff Development Service Policies
- Graduation Lists
- Guidance and Counseling
- Libraries
- Program Review and Development
- Reciprocity, Academic Compacts, Slot Programs
- Student Relations

Section 3.1.2 Committee on Budget and Finance. The jurisdiction of the Committee on Budget and Finance shall be as follows:

- Accounting
- Audit
- Bonding
- Budget
- Career Service/Exempt Personnel Activities
- Facilities and Physical Plant

HEFF and School and Public Lands Fund  
 Inventory  
 Investments  
 Maintenance and Repair  
 Payroll  
 Personnel Actions  
 Purchasing and Printing  
 Salaries and Fringe Benefits  
 Travel and Contractual Review  
 Tuition

Section 3.1.3 Committee on Planning and Resource Development. The jurisdiction of the Committee on Planning and Resource Development shall be as follows:

Foundations  
 Fund Raising/Gifts and Donations  
 Public Information  
 Research and Grant Proposals  
 System and Institutional Planning

Section 3.2 Meetings. Committee meetings will normally be held in conjunction with regular meetings of the Board. A special meeting of any standing committee may be called by the President of the Board, the Executive Director with the consent of the President of the Board, or the chair of the committee. Prior to a Committee meeting or a Board meeting, the Committee chairs and any other interested Regents may be briefed on agenda items by staff.

Section 3.3 Action. A Committee shall take one of the following actions on an agenda item before reporting back to the Board:

- (a) Recommend adoption
- (b) Recommend adoption with amendment(s)
- (c) Recommend against adoption
- (d) Forward without a recommendation
- (e) Recommend deferral to a date certain
- (f) Recommend re-referral to same committee for further study and/or hearings
- (g) Recommend referral to another committee with or without a recommendation
- (h) Receive for information purposes.

Committees shall report back to the Board following each committee meeting.

## Article IV. Special Committees

- Section 4.0 Special Committees. Special committees may be appointed from time to time by order of the Board. The following special committees are hereby authorized by order of the Board: Committee of the Whole Board; Steering Committee; Search and Screen Committee.
- Section 4.1 ~~Reserved. Committee of the Whole Board. The Committee of the Whole Board is the entire membership of the Board of Regents sitting as a committee rather than as the formal Board of Regents. Each member of the Committee of the Whole Board shall have one vote. A majority vote of the Regents, present and voting, is necessary for the Board of Regents to resolve into the Committee of the Whole Board. The Committee of the Whole Board shall consider only those matters delegated to it.~~
- Section 4.1.1 ~~Reserved. Organization. The President of the Board shall designate a chair of the Committee of the Whole Board. A quorum requires three Regents. A majority present and voting is necessary to take action by the Committee of the Whole Board.~~
- Section 4.1.2 ~~Reserved. Action. The only motions that are in order in the Committee of the Whole Board are motions to amend or a motion that the Committee of the Whole Board rise. A motion that the Committee of the Whole Board rise is always in order and shall be decided without debate. When the Committee of the Whole Board rises, a report shall be made to the Board. To be enforceable, actions taken by the Committee of the Whole Board must be approved by the Board.~~
- Section 4.2 Steering Committee. The Steering Committee shall consist of the President of the Board and the chairs of the standing committees of the Board.
- Section 4.2.1 Organization. The President of the Board shall chair the Steering committee~~Committee~~, and the Steering Committee shall meet upon call of the chair.
- Section 4.2.2 Action. The Steering Committee may rearrange the agenda of the Board, recommend time limits, and recommend any other actions of a procedural nature to the Board. To be enforceable, recommendations of the Steering Committee must be adopted by the Board.
- Section 4.3 Search and Screen Committee. All nationwide search and screen activities used by the Board shall be conducted by a search-Search and screen-Screen committee~~Committee~~ appointed in accordance with the Regents' Bylaws.
- Section 4.3.1 Organization. The President of the Board will appoint the Search and Screen Committee and any local or campus advisory committee. The

**Search and Screen** Committee shall consist of Regents with the Executive Director serving as staff. **The Search and Screen Committee may be supplemented by any local or campus advisory committee.**

Section 4.3.2 Action. The chair of the Search and Screen Committee or the President of the Board shall approve the position announcement prior to publication. The **Search and Screen** Committee shall determine appropriate materials to be submitted by the candidates for position vacancies. The initial screening process shall be conducted by the Search and Screen Committee. The **Search and Screen committee-Committee** may share the application materials **of selected finalists** with any local or campus advisory committee appointed by the **Board-President of the Board** as **it-the Search and Screen Committee** deems appropriate. The **Search and Screen committee-Committee** will contact references and conduct meetings to select approximately ten to twelve semifinalists. From this group approximately five finalists will be selected **by the Search and Screen Committee. A recommendation may be made by the Search and Screen Committee** and ultimately a final choice will be agreed upon by the Board.

## Article V. Meetings of the Board

Section 5.0 Regular Meetings. An annual schedule of meetings shall be prepared in advance by the Board.

Section 5.1 Special Meetings. Special meetings of the Board will be held on the call of the President or by joint request of a majority of the members, with due and reasonable notice always being given.

Section 5.2 Public Meetings. Regular and special meetings of the Board and its committee shall be appropriately noticed and open to the media and the public in accordance with SDCL § 1-25-1.1, except by vote of the Board for discussion of those matters which are permitted under South Dakota statutes to be discussed in executive session.

Section 5.3 Quorum. A majority of the current membership of the Board shall constitute a quorum for the transaction of business, except as otherwise provided in these Bylaws.

Section 5.4 Parliamentary Procedure. On questions of parliamentary procedure, Robert's Rules of Order, Revised, shall prevail.

Section 5.5 Official Action. The affirmative vote of a majority of the entire membership of the Board shall be required to take official action. Official action by the Board of Regents shall be in the form of (1) By-laws or Board Policy Actions, (2) Special Resolutions, and (3) Ordinary Business. All significant by-laws or Board policy



actions, special resolutions, and ordinary business have equal validity. The one passed last shall prevail in case of conflict.

Section 5.5.1 Final Action on Board Policy. Any proposed Board policy adoptions and revisions (including by-laws) may not be finally passed until they have official action at two separate Board of Regents' meetings, absent an emergency as determined by majority vote of the Board.

Section 5.6 Agenda. The Regents office must receive all requests for items to be placed on a Standing Committee agenda no later than fourteen working days prior to the meeting. Any request must be in writing and accompanied by the necessary background information. To fail to comply with this section may cause the Board to defer the proposed agenda item until the Board has sufficient time to review the item. The Bylaws shall govern the placement of items on the agendas of appropriate standing committees; however, an item of sufficiently broad interest may be placed on the full Board agenda with the consent of the President of the Board. The regular order of business at all meetings shall be:

- (a) Approval of agenda
- (b) Approval of minutes of preceding meetings
- (c) Reports of committees' consideration of agenda items
  - (1) Committee on Academic and Student Affairs
  - (2) Committee on Budget and Finance
  - (3) Committee on Planning and Resource Development

A vote of two-thirds of the entire membership of the Board shall be required to add an item to the agenda of the Board or of the committees.

## **Article VI. Employees**

Section 6.0 The Board shall employ an Executive Director, who shall perform such duties as are delegated by the Board. The salary of the Executive Director shall be set by the Board. The Executive Director shall be responsible for the employment and termination of additional staff in accordance with the personnel policies of the Board.

## **Article VII. Communications**

Section 7.0 All communications to the Board from persons not members thereof, except in the case of the Presidents or Superintendents of the institutions or from legal counsel where required as a matter of professional responsibility, shall be submitted in writing to the Executive Director of the Board at least fifteen days prior to the Board meeting at which Board consideration is requested.

Section 7.1 The President of the Board is the only member of the Board authorized to make

official pronouncements for the Board, and then as instructed by the Board. The Executive Director of the Board is authorized to speak for the Board and the state system of higher education with respect to any policy matters that have received the approval of the Board, and on administrative matters which have been entrusted to the Executive Director by law or by the Board. The President and Superintendent of each institution, as chief executive officer of his/her respective institutions, are responsible for all releases and information issued from his/her institution.

### **Article VIII. Indemnification**

Section 8.0 If any claim or action is instituted against the Board or any of its members, officers or employees arising out of an act or omission occurring in the exercise of official duties or responsibilities as an officer or member of the Board or within the scope of the employment, the Board may request authorization from the Attorney General for any one or more of the following:

- (a) Indemnification of such member, officer, or employee for the court costs incurred in the defense of such claim or action;
- (b) Payment to or indemnification of such member, officer or employee for the reasonable attorney fees incurred by virtue of such claim or action;
- (c) Payment to or indemnification of such member, officer or employee for a judgment based upon such claim or action; or
- (d) Payment to or indemnification of such member, officer or employee for a compromise or settlement of such claim or action.

Section 8.1 Indemnification is limited by statute ~~to a maximum of \$25,000 as set forth in~~ **SDCL 3-19-2**, except that claims for indemnity exceeding that sum may be brought to the legislature.

### **Article IX. Amendments**

Section 9.0 These Bylaws may be amended or repealed at any regular meeting of the Board, by a majority vote of the members of the Board, provided that proper notice of any proposed amendments shall be deemed to have been given to each member and to the Executive Director if included in the normal agenda distribution given before the meeting at which they are to be proposed.