

SOUTH DAKOTA BOARD OF REGENTS

AGENDA ITEM: 3 – H
DATE: October 6-7, 2021

SUBJECT

By-Laws Amendments (First & Final Reading)

CONTROLLING STATUTE, RULE, OR POLICY

[By-Laws of the SDBOR](#)

BACKGROUND / DISCUSSION

The proposed amendments to the By-Laws of the Board set forth in Attachment I serve to advance two primary changes, in addition to supplementing the jurisdiction of the Committee on Academic and Student Affairs to cover a few areas not currently referenced in the By-Laws (i.e., course enrollment(s), retention, learning management system(s) and student and financial aid management system(s)).

The first change adjusts the structure of the Audit Committee, which is currently a separate standing committee of the Board. The proposed changes maintain the Audit Committee and its current functions, but rather than have it operate as a separate standing committee, the Audit Committee would operate as a sub-committee of the Budget and Finance Committee. This structure better aligns the standing committees to capitalize on the shared subject matter and expertise that spans these two committees, without detracting from the role of either. The second change creates a Legislative Committee, which is not a standing committee, but rather a special committee, which exists to be called upon when needed, similar to the Search Committee. The Legislative Committee would exist to provide input and advice to the Executive Director and/or Board on legislation and legislative matters.

IMPACT AND RECOMMENDATIONS

The proposed changes will better align the Audit Committee and Budget and Finance Committee, while also providing an additional committee of the Board to assist with legislative matters.

Staff recommends approval.

ATTACHMENTS

Attachment I – Proposed Amendments to By-Laws

DRAFT MOTION 20211006_3-H:

I move to (1) waive the two-reading requirement of By-Laws Section 5.5.1, and (2) approve the first and final readings of the amendments to the By-Laws, as shown in Attachment I.

BY-LAWS OF THE SOUTH DAKOTA BOARD OF REGENTS

Article I. Name

Section 1.0 Legal Name. 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 regents appointed by the Governor and confirmed by the senate. One of the nine regents shall be a student regent. The regents are subject to SDCL Chapter 13-49 regarding terms and qualifications.

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. The President of the Board may convene the Officers between regularly scheduled meetings of the Board to address and provide direction on urgent matters of importance to the Board.

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 the By-Laws; 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 at least one Standing 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 chairperson for each Standing Committee. The terms of each shall run through the end of the first regularly scheduled meeting of the Board following the end of the annual Session of the South Dakota Legislature in the following year. A majority of the Standing Committee members present and voting shall constitute a quorum for conducting business. The affirmative vote of a majority of the Standing 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 Standing Committees. The following Standing Committees are hereby authorized: (1) Committee on Academic and Student Affairs, (2) Committee on Budget and Finance, and (3) Audit Committee, which shall function as a sub-committee of the Committee on Budget and Finance. Except where indicated otherwise, each Standing Committee shall consist of no more than three regents (not counting the President who is an ex-officio voting member), who shall be appointed by the President of the Board, and shall report directly to the Board. When possible, the President shall make the Standing Committee appointments based upon the preference of each regent. The chairperson of each Standing Committee may appoint additional non-regent members, on an ad hoc basis, as necessary and appropriate to address specific topics within the jurisdiction of the Standing Committee.

Section 3.1.1 Committee on Academic and Student Affairs. The jurisdiction of the Committee on Academic and Student Affairs shall include the following, in addition to other related activities-be as follows:

Accreditation
 Articulation Activities
Course Enrollment(s)
Curriculum
Enrollment and Retention
 Financial Aid, Tuition Waiver and Scholarship
 Faculty Rank, Tenure, and Promotions
 Faculty/Staff Development Service Policies
 Graduation Lists
 Guidance and Counseling
Learning Management System(s)
 Libraries
 Program Review and Development

Reciprocity, Academic Compacts, Slot Programs
 Student Relations
Student and Financial Aid Information System(s)
 Research and Grant Proposals

Section 3.1.2

Committee on Budget and Finance. The jurisdiction of the Committee on Budget and Finance shall include the following, in addition to other related activities~~be as follows~~:

Accounting
 Athletics (reported through the Athletics Committee)
 Bonding
 Budget
 Civil 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
 Foundations
 Fund Raising/Gifts and Donations
 Fiscal Integrity and Budget of Athletic Programs
 Compliance by Athletic Programs
 Personnel Contracts of Athletics Programs
 All Aspects of Intercollegiate Athletics Programs

Section 3.1.3

Audit Committee. The jurisdiction of the Audit Committee shall include the following, in addition to other related activities~~be as follows~~:

Financial Oversight and Control
 Financial Reporting
 External and Internal Audit Functions and Reports
 Internal Controls
 Compliance with Laws, Regulations, and Policies
 All Functions of the Chief Financial Officer of the Institutions

The Audit Committee shall consist of three to five members appointed by the President (not counting the President who is an ex-officio voting member): three members shall be regents, and up to two members ~~shall~~

may be non-regents who are permanent residents of the State of South Dakota. ~~The-Any~~ non-regents shall be appointed for three-year terms.

Section 3.2 Meetings. Standing Committee meetings may 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 chairperson of the Standing Committee. Prior to a Standing Committee meeting or a Board meeting, the Standing Committee chairpersons and any other interested regents may be briefed on agenda items by staff.

Section 3.3 Action. A Standing Committee may 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
- (i) Recommend adoption of a new policy or revision to a current policy
- (j) Recommend adoption of a new procedure or revision to a current procedure.

Standing Committees shall report back to the Board following each Standing Committee meeting.

Article IV. Special Committees

Section 4.0 Special Committees. The following Special Committees are hereby authorized by order of the Board: Search Committee and Legislative Committee. Additional Special Committees may be appointed from time to time by order of the Board for such purpose(s) and duration as the Board deems appropriate. Except where indicated otherwise, each Special Committee shall consist of no more than three regents (not counting the President who is an ex-officio voting member), who shall be appointed by the President of the Board, and shall report directly to the Board. The President of the Board shall serve as an ex-officio voting member of all Special Committees.

Section 4.1 Search Committee. All nationwide search activities conducted by the Board shall be assigned a Search Committee.

Section 4.1.1 Organization. The President of the Board shall appoint a Search Committee, the chairperson of the Search Committee, and any local or campus advisory committee that may supplement the Search Committee. The Executive Director shall serve as staff to the Search Committee.

Section 4.1.2 Action. The chairperson of the Search Committee or the President of the Board shall approve the position announcement prior to publication. The Search Committee shall determine appropriate materials to be submitted by the candidates for position vacancies. The screening process shall be conducted by the Search Committee. The Search Committee may share the application materials with any local or campus advisory committee appointed by the President of the Board as the Search Committee deems appropriate. The Search Committee will contact references and conduct meetings to select semifinalists. From this group, approximately three to five finalists will be selected by the Search Committee. The Search Committee may provide input and a recommendation to the Board regarding the applicants. The Board shall ultimately make any hiring decision.

Section 4.2 Legislative Committee. The Legislative Committee shall engage in legislative matters in accordance with Section 4.2.2 below.

Section 4.2.1 Organization. The President of the Board shall appoint a Legislative Committee and the chairperson of the Legislative Committee. The Executive Director and/or their designee(s) shall serve as staff to the Legislative Committee.

Section 4.2.2 Action. The Legislative Committee shall provide input and advice to the Executive Director and/or Board on proposed or prospective legislation and associated impacts, issues, positions and/or strategies. The Legislative Committee is not intended to act in lieu of the Board, but if necessary, it may offer direction to the Executive Director on legislative matters on behalf of the Board when time constraints do not allow for engagement with 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 regents, with due and reasonable notice always being given.

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

- Section 5.3 Quorum. A majority of the regents shall constitute a quorum for the transaction of business, except as otherwise provided in these By-Laws.
- 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 regents shall be required to take official action. Official action by the Board shall be in the form of (1) By-Laws or Board Policy Actions, (2) Special Resolutions, and (3) Ordinary Business. All By-Laws or Board policy actions, special resolutions, and ordinary business have equal validity. In case of conflict, the one passed last shall prevail.
- 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 meetings. However, the Board may waive this requirement by unanimous consent of the regents voting on the proposed Board policy adoption or revision.
- Section 5.6 Agenda. The Board office must receive all requests for items to be placed on a Standing Committee or the Board agenda no later than seven working days prior to the meeting. Any request must be in writing and accompanied by the necessary background information. Failure to comply with the requirements of this section may cause the Standing Committee or the Board to defer the proposed agenda item until the Standing Committee or the Board has sufficient time to review the item. Approval by two-thirds of the members shall be required to add an item to the agenda of the Standing Committee or the Board if the Board office did not receive the item at least seven working days prior to the meeting. The By-Laws shall govern the placement of items on the agendas of appropriate Standing Committees by jurisdiction or the Board. The regular order of business at all Board meetings shall be:
- (a) Approval of agenda
 - (b) Approval of minutes of preceding meetings
 - (c) Standing Committees' consideration of agenda items as a whole Board, or reports thereof
 - (1) Committee on Academic and Student Affairs
 - (2) Committee on Budget and Finance
 - (3) Audit Committee (as necessary)

Article VI. Employees

Section 6.0 Executive Director. 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 Communications by the Board. The President of the Board is the only regent 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 or Superintendent of each institution, as chief executive officer of his/her respective institution, is responsible for all releases and information issued from his/her institution.

Article VIII. Indemnification

Section 8.0 Indemnification. If any claim or action is instituted against the Board or any of its regents, officers, or employees arising out of an act or omission occurring in the exercise of official duties or responsibilities as a regent or an officer 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 regent, officer, or employee for the court costs incurred in the defense of such claim or action;
- (b) Payment to, or indemnification of, such regent, officer, or employee for the reasonable attorney fees incurred by virtue of such claim or action;
- (c) Payment to, or indemnification of, such regent, officer, or employee for a judgment based upon such claim or action; or
- (d) Payment to, or indemnification of, such regent, officer, or employee for a compromise or settlement of such claim or action.

Section 8.1 Limitations. Indemnification is subject to the limitations and exceptions in SDCL Chapter 3-19.

Article IX. Amendments

Section 9.0 Amendments. These By-Laws may be amended or repealed, consistent with Section 5.5.1, at any regular or special meeting of the Board, by a majority vote of the regents, provided that proper notice of any proposed amendments shall be deemed to have been given to each regent and to the Executive Director if included in the normal agenda distribution given before the meeting at which they are to be proposed.

SOURCE: BOR October 2015; BOR October 2016; BOR October 2017; BOR December 2017; BOR June 2019