

January 15, 2014

MEMORANDUM

TO: State Board of Regents

FROM: David L. Buhler

SUBJECT: Revision of R555, Competition with Private Sector Policy Revisions

Issue

At the November Regents meeting, proposed policy language changes to R555, *Providing Facilities, Goods and Services in Competition with Private Enterprise* were presented and discussed. These changes were in response to recommendations made in the Legislative Audit of Higher Education's Competition with the Private Sector. The recommendations included:

1. We recommend that the Board of Regents update policy R555, Providing Facilities, Goods and services in Competition with Private Enterprise.
2. We recommend that the Board of Regents provide greater oversight and enforcement of its policy pertaining to institutions of higher education competition with the private sector.

The USHE response to the audit recommendations concurred with the findings and indicated that the Commissioner's Office would work with the USHE institutions in careful consideration of how best to implement them moving forward.

The revised policy, as presented in the November Regents meeting, was carefully crafted to strike the proper balance in addressing: 1) the concerns raised by the Legislative audit, 2) ensuring institutions have enough flexibility that they might successfully operate auxiliary enterprise services which help support their core functions, and 3) to do so without creating an unfair advantage over the private sector.

Once an updated policy is approved, the Board of Regents role in enforcing the policy will include monitoring compliance through institutional policy creation and grievance procedure requirements (section 4.6.), along with a method by which institutions can request an "exception" to R555 (section 4.5).

Key Provisions

As pointed out in the audit and discussed during the November Regents meeting, there is a need to update policy R555, providing both better guidance and oversight of the affected activities. The key provisions addressed in R555's rewrite include:

- 1) Adding prospective students and alumni to the definition of campus community, and adding a definition of "non-academic self-support services".
- 2) Addressing competition in the private sector and providing reasonable yet limited exceptions for when institutional auxiliary services may advertise goods and services to the general public.
- 3) Requiring institutions to establish policies regarding competition with the private sector consistent with Regent policy.
- 4) Directing institutions, via Regents policy, to establish an institutional grievance process for resolution of complaints filed by a business regarding perceived competition.
- 5) Enforcement of exceptions to R555.

Process to Date

The Finance & Facilities Committee received an update at the September Regents meeting, informing committee members of the internal System discussions taking place to address the issues and craft appropriate policy language. At the November Regents meeting, a draft policy was brought forward for Regent discussion and input. With feedback received, the draft revision of R555, addressing the provisions referenced above, is now before you for action and adoption.

Commissioner's Recommendation

The Commissioner recommends that the Regents approve the revisions to policy R555, *Competition with the Private Sector*, effective immediately.

David L. Buhler
Commissioner of Higher Education

DLB/GLS/DAM/CRW
Attachment

R555, Providing Facilities, Goods and Services in Competition with Private Enterprise¹

R555-1. Purpose: To establish policy and guidelines for [institutions on public colleges and universities](#) providing facilities, goods and services in competition with the private sector. [The following policy shall apply to all non-academic, self-support services.](#)

R555-2. References

- 2.1. Utah Code §53B-7-101(10) (Each Institution Handles Its Own Financial Affairs Under the General Supervision of the Board)
- 2.2. Policy and Procedures ~~R510~~ R550, Auxiliary Enterprises Operation and Accountability

R555-3. Definitions

- 3.1. **"Institutions"**: colleges and universities which are part of the Utah System of Higher Education.
- 3.2. **"Campus Community"**: an institution's [prospective students](#), students, faculty, staff, [alumni](#) and campus guests.
- 3.3. **"[Institutional Services](#)"**: an institution's facilities, goods, and services.
- 3.4. **"[Non-academic Self-support Services](#)"**: [services that are complementary to an institution's teaching, research, and public service functions and are funded through the service's own activities or by charging a fee directly related to the costs of providing the goods or services.](#)

R555-4. Policy: Institutions shall not sell or provide services to their campus community or to the general public except as set forth below.

4.1. Services Necessary for the Education of Students or Basic Research: Institutions are expected to provide their campus communities appropriate services which are necessary for the education of students, or the performance of basic research in accordance with the institution's mission as established by the Utah State Board of Regents. This responsibility includes, but is not limited to, instructional, research, and public service programs; libraries; computing programs; and other academic support services.

4.2. Educationally Related Activities: Institutions may provide other services to their campus communities even though such services are practically available elsewhere providing that the services satisfy reasonable educationally related needs of the campus community, e.g. campus newspapers, campus store(s), campus dining facilities, student housing, etc. ~~and provided such services are not advertised to the general public and are not generally provided to persons who are not members of the campus community.~~

[4.2.1 Institutions may advertise institutional services to the campus community.](#)

¹ Adopted November 14, 1986, amended January 24, 1997.

4.2.2. Institutions may advertise or share information with the general public via an institution's webpage, the internet, social media, and e-mail.

4.2.3. Except as is necessary to meet the purposes of services listed in section 4.3, institutional services may not otherwise be advertised to the general public.

4.3. Services to Persons Other Than Members of the Campus Community: An institution shall not provide services to persons other than members of the campus community unless:

4.3.1. The service offers a substantial and valuable educational or research experience for registered students and faculty;

4.3.2. The service fulfills the institution's public service mission;

4.3.3. The service is incidental to the ordinary and authorized function of a campus entity, i.e., occasional sales by bookstores, food service, etc., to campus visitors;

4.3.4. The service consists of recreational, cultural, and athletic events; health services and medical treatment; public service radio and TV broadcasting; events of functions which have as their principal purposes the improvement of relations between the institutions and the general public; and sales of contributed services, if related to fund raising activities;

4.3.5. The equivalent service is not available in the local area; or

4.3.6. The service to persons not members of the campus community has been specifically authorized by the State Board of Regents.

4.4. Private Enterprise on Campus: Private enterprise entities which operate service or auxiliary units on a campus under contract with an institution are subject to this policy.

4.5. Exceptions Authorized by State Board of Regents: An institution may submit a proposal to the State Board of Regents requesting an exception to policy R555. Exceptions to this policy may be authorized if the Board determines, upon consideration and weighing of the various interests and public policies pertinent to providing the facilities, goods or services in competition with private enterprise, that the public interest favoring an exception outweighs the interest favoring denial of an exception.

4.6. Monitoring Institutional Services Which May Compete with Private Enterprise: Where an institution claims to provide services to persons other than members of the campus community in accordance with Sections 4.3. of this policy, the Board of Regents requires that the institution comply with the following requirements:

4.6.1. Each institution must establish a written policy regarding competition with private enterprise. This policy shall include the following provisions: (1) a requirement that the institution's provision of facilities, goods and services to persons other than members of the campus community complies with Policy R555; and (2) a description of the institution's grievance process, which must meet the requirements described in Section 4.7. The policy must designate an individual within the institution to whom complaints should be addressed. The policy must be accessible via the institution's website.

4.7. Grievance Review Procedures: In the event that the provision of a good or service by a higher education institution is perceived to be in competition with a privately owned business, that business shall be provided the opportunity for a hearing of such a complaint according to the following guidelines:

4.7.1. Each institution must establish a grievance hearing process as well as a first point of contact for that hearing process.

4.7.2. If resolution is not reached as a result of the institutional grievance hearing process, appeal may be made to the Board of Trustees of the institution.