

March 19, 2014

MEMORANDUM

TO: State Board of Regents  
FROM: David L. Buhler  
SUBJECT: Adoption of Policy R122, Board Conflict of Interest Policy

Issue

Policy R122, *Board Conflict of Interest Policy* is a new policy that sets forth the standard of conduct expected for members of the Board of Regents in areas where there are actual or potential conflicts of interest between their public duties and their private interests and to comply with state law.

Background

Key provisions of the policy include:

- Disclosure is required if:
  - A Regent or his/her family(s) owns, is an officer, director, employee of, or has a “substantial interest” in an entity (profit or not-for-profit) that does business with the Board (including UHEAA or UESP) or any institution with the USHE
    - “Substantial interest” is defined as when the Regent, Regent’s spouse, or minor children own at least 5% of a business
    - Disclosure is to be made annually
  - A Regent is to receive compensation for assisting any person or business in any transaction involving a Utah state agency
- Regents shall recuse themselves from discussion and voting on any matters where they are a director, employee, or own a substantial interest

Policy Compliance with Utah Code

The proposed new policy R122 is in compliance with Utah state statutes: Utah Code §63G-6a-2304.5 General Government, Utah Procurement Code: Gratuities – Kickbacks – Unlawful use of Position or Influence, Utah Code §67-16-(1-15) State Officers and Employees, and Utah Code §76-8-105 Receiving or Soliciting a Bribe by a Public Servant.

Commissioner's Recommendation

The Commissioner recommends that the Regents review the proposed R122, *Board Conflict of Interest Policy*, and if in agreement approve it, effective immediately.

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David L. Buhler  
Commissioner of Higher Education

DLB/GLS/KVO/CRW  
Attachment

## R122, Board Conflict of Interest Policy

**R122-1. Purpose:** To set forth the standards of conduct expected for members of the State Board of Regents in areas where there are actual or potential conflicts of interest between their public duties and their private interests and to comply with state law.

### R122-2. References

- 2.1. Utah Code §63G-6a-2304.5 (General Government, Utah Procurement Code: Gratuities – Kickbacks – Unlawful use of position or influence)
- 2.2. Utah Code §67-16-(1-15) (State Officers and Employees)
- 2.2. Utah Code §76-8-105 (Receiving or Soliciting a Bribe by a Public Servant)

### R122-3. Definitions

- 3.1. **Regent:** "Regent" means an individual member of the State Board of Regents.
- 3.2. **Substantial interest:** "Substantial interest" means the ownership, either legally or equitably, by a Regent, the Regent's spouse, or the Regent's minor children, of at least 5% of the outstanding capital stock of a corporation or a 5% interest in any other business entity.

### R122-4. Duties and Responsibilities

- 4.1. **Compliance with Utah Statutes:** Regents must comply with all state laws, with particular attention to those that govern conflicts of interest and their service as public officials as noted in the references of this policy.
- 4.2. **Duty to Submit Disclosure Statement**
  - 4.2.1. Regents who are officers, directors, or employees or who are owners of a substantial interest in any business entity that is or may be involved in any transaction with the State Board of Regents (including UHEAA and UESP) or any other Utah institution of higher education (as defined in Utah Code Ann. §53B-2-101) shall disclose such facts in a sworn disclosure statement as set forth in Section 5 of this policy before participating in their official capacities with respect to any such transactions and annually thereafter.
  - 4.2.2. Regents shall not receive or agree to receive compensation for assisting any person or business entity in any transaction involving a Utah state agency, including the State Board of Regents (including UHEAA and UESP) or any other Utah institution of higher education (as defined in Utah Code Ann. §53B-2-101), without first disclosing such facts in a sworn, written disclosure statement as set forth in Section 5 of this policy.
- 4.3. **Duty to Not Use Official Position for Personal Economic Gain:** Regents shall not use or attempt to use their official positions to further substantially their personal economic interest or to secure special privileges or exemptions for themselves or others.

- 4.4. **Duty to Recuse Oneself on a Matter Involving a Substantial Interest:** Regents shall recuse themselves from the discussion and vote on a matter that involves any business entity as to which they are officers, directors, or employees or in which they own a substantial interest.

#### **R122-5. Procedures for Submitting Disclosure Statement**

- 5.1. **What to Submit:** The disclosure statement must be made in writing and under oath. The disclosure statement shall be in the form attached.
- 5.2. **When to Submit:**
- 5.2.1. For disclosure statements required by Section 4.2.1., the disclosure statement must be submitted before the Regent participates in his or her official capacity with respect to such transactions or within thirty (30) days of the adoption of this policy and annually thereafter. The Regent shall submit another disclosure statement whenever his or her position or ownership interest in the business entity changes significantly.
- 5.2.2. For disclosure statements required by Section 4.2.2., the disclosure statement must be submitted within ten (10) days after the date of any agreement between the Regent and the person or business entity being assisted or within ten (10) days of the receipt of compensation, whichever is earlier.
- 5.3. **Where to Submit:** The disclosure statement must be completed and submitted to the Board Secretary. The Board Secretary shall then file the disclosure statement with the following offices as appropriate:
- 5.3.1. the Commissioner's Office;
- 5.3.2. the state Attorney General's Office; and
- 5.3.3. the agency head of the agency with which the transaction is being conducted if the disclosure is required by Section 4.2.2.
- 5.4. **Review of Statements:** The submitted disclosure statements will be reviewed by the Conflict of Interest Committee, which includes the Board Chair, Vice Chair, and two other Regents as selected by the Chair and Vice Chair as part of the determination of Regent Committee assignments. The disclosure statements of the Board Chair and Vice Chair will be reviewed by the other Regents on the Conflict of Interest Committee.
- 5.5. **Public Document:** The disclosure statement is public information and shall be available for examination by the public.

#### **R122-6. Records of Proceedings**

- 6.1. **Minutes:** The minutes of the State Board of Regents and all committees with board delegated powers shall contain the names of those Regents who abstain from participation in their official capacities in transactions involving business entities where they have a position or own a substantial interest and have not filed a disclosure statement as required by this Conflict of Interest Policy. The minutes, however, are not required to record the names of those Regents who have filed disclosure statements or any information contained in those disclosure statements.

## **R122-7. Boards of Trustees**

- 7.1. Disclosure Statements:** Institutional Boards of Trustees shall adopt similar standards of conduct for their respective Board members including conflict of interest policies within 120 days of enactment of this policy.

STATE BOARD OF REGENTS  
PUBLIC OFFICER'S DISCLOSURE STATEMENT

STATE OF UTAH                    )  
  :SS  
COUNTY OF SALT LAKE    )

\_\_\_\_\_, being first duly sworn upon oath states as follows:  
*Print Name of Regent*

1.     My address is: \_\_\_\_\_
2.     I am a Regent of the State Board of Regents.
3.     I am an officer, director, agent, or employee of the following business entities that are or may be involved in transactions with the State Board of Regents (including UHEAA and UESP) or any other Utah institution of higher education (as defined in Utah Code Ann. §53B-2-101). (If not applicable, write "NA" in the space provided.)

<i>Name of Business Entity</i>	<i>Position Held</i>
_____	_____
_____	_____
_____	_____

4.     I, my spouse, or my minor children, own, either legally or equitably, at least 5% of the following for-profit business entities that are or may be involved in transactions with the State Board of Regents (including UHEAA and UESP) or any other Utah institution of higher education (as defined in Utah Code Ann. §53B-2-101). (If not applicable, write "NA" in the space provided.)

<i>Name of Business Entity</i>	<i>Name of Owner</i>
_____	_____
_____	_____
_____	_____

5.     I will receive or have agreed to receive compensation for assisting a person or business entity in a transaction involving a Utah state agency, including the State Board of Regents (including UHEAA and UESP) and other Utah institutions of higher education (as defined in Utah Code Ann. §53B-2-101). The transaction and parties are described below. (If not applicable, write "NA in the space provided.")

Name and address of agency involved: \_\_\_\_\_

\_\_\_\_\_

Name and address of person or business entity being assisted: \_\_\_\_\_

\_\_\_\_\_

A brief description of the transaction and the nature of the service performed or to be performed:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. I understand that this Disclosure Statement is considered to be public information.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
*Signature of Board Member*

SUBSCRIBED AND SWORN TO before me by \_\_\_\_\_

*Print Name of Board Member*

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My Commission expires:

\_\_\_\_\_  
NOTARY PUBLIC

Residing at: