

BHE Annual Retreat- Legal Orientation Refresh for Members

July 2021



MASSACHUSETTS
Department of
Higher Education

BHE Orientation Refresh- Overview

- Overview
- BHE Meetings & Operations
 - Statutory requirements (# meetings; quorum; # absences);
 - OML
 - Public Records
- BHE Professional and Statutory Roles and Responsibilities and Conduct (Powers and Duties)
 - Conflict of Interest conduct and responsibilities;
 - Statutory powers and duties (Private/ Public Higher Ed)
 - Fiduciary Duties
- Resources
 - Materials- virtual "Board Binder"
 - Mandatory Online training- Conflict of Interest Law
 - Optional online resources

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Goals- Board Efficacy

- Understand the legal framework within which you operate
- Know your statutory and ethical responsibilities
- Uphold fiduciary principles and act in best interest of BHE
- Promote transparency and accountability.
- Promote being a “Consequential” (active) board member

BHE Meetings and Operations

BHE Procedure- Board Meetings and Operations

- 13 Members
 - 9 members appointed by Governor, including 1 Student
 - Secretary of Education (ex officio)
 - 3 Segmental [SU/CC/UMass] Representatives (elected by peers)
- Quorum= 7 Members
 - *And 7* affirmative votes of members needed for anything to pass
- BHE Must Meet 6 times Annually
 - At least once every 2 months, excluding July and August
- Minimum Attendance Requirement
 - Can not miss more than 3 regularly scheduled meetings
 - Automatic removal/ vacancy if 4 meetings missed
- BHE Member Reimbursement- Allowed for necessary expenses
- Board Operations
 - Meetings are subject to Open Meeting law*
 - Annual meeting to review board governance and operations (*new*)

BHE Operations- Rights of Board Members

- Parliamentary Procedure
- Majority vote decides- (7 affirmative votes)
- Rights of the minority must be protected
- All members have equal rights privileges
- Full and free discussion of every proposition presented
- Right to know the meaning of each question and what its effect will be
- All meetings must be characterized by fairness & good faith

BHE Operations- Responsibilities:

Be a “Consequential” Board Member

- **Be present**-- attend and actively participate in board and committee/ council meetings
- **Be engaged** in the board, school, community
- Bring **your knowledge** and expertise to the table and be prepared to share it with other members
- Keep **learning**-- be an active listener and **ask questions**
- **Consider** issues from the viewpoints of all stakeholders (students, faculty, taxpayers, parents, employers, community, government)
- **Understand** the framework in which you are working:
 - Culture of shared governance
 - Open meeting law
 - Ethics law

--AGB, *“Consequential Boards: Adding Value Where it Matters Most”*

BHE Operations- Open Meeting Law (Tab 3)

- Requirements
 - Meetings of the Board must be open to the public
 - Notices posted publicly (48 hours notice)
 - Board maintains and makes publicly available accurate written records
- Purpose- Eliminate secrecy surrounding deliberations upon which public policy is based
- Application- communications among quorum of public body on any matter within its jurisdiction.
- Enforcement- Court order requiring future compliance or invalidating any action taken at meeting where the law was violated.

BHE Operations- Open Meeting Law

- Application– any *communication among quorum* of public body on any matter within its jurisdiction must be conducted during noticed meeting.
- Includes: Verbal or non-verbal exchanges (emails, texts)
- Does not include
 - Purely administrative matters (e.g., scheduling)
 - DHE staff member communication with BHE members to share info/answer Qs
 - Chance meetings or Social gatherings
 - On site- inspections
 - Individual communications (under certain circumstances) (Provided!)
- **Provided (!)** such communications:
 - do not request or suggest BHE members discuss or attempt to arrive at any decision on public business
 - such communications are not meant to subvert letter or spirit of law (e.g., serial communications/ phone trees)

BHE Operations- Public Records Law

- Every record made or received by state employee is presumed to be public record, unless specific exemption applies.
- Includes computer records/ emails/ texts
- Examples of exemptions:
 - Attorney/ client privileged documents
 - Records exempt by statute (e.g., the FARM legislation)
 - Personnel records (unwarranted invasion of privacy)
 - Home address/ personal email of employee
 - Deliberative Process/ investigatory exemption
- General Rules:
 - Presume communication not exempt- careful what you write
 - Use your state email address for BHE business

BHE Operations- State Email Addresses

- Electronic records are public records
 - Includes emails, texts on both private or government- issued phones or accounts
- Use of personal email by government officials while conducting government business renders the emails public records (unless exempt)
 - Subject to search, redaction, disclosure, if asked
- Records retention laws
 - Government records continue to be property of government office even after people leave service
 - Offsite storage, inefficient
- *Benefit: BHE “intranet” will be created (SharePoint).

BHE Responsibilities & Conduct- Conflict of Interest Law

- Members are subject to c. 268A Conflict of Interest Law
- Purpose: Ensure integrity and promote public trust in State Government
- Five general areas
 - Gifts and gratuities
 - Self-Dealing and Financial Interests
 - Unwarranted Privileges
 - Use of Confidential Information
 - Inherently Incompatible Activities

BHE Responsibilities & Conduct- Conflict of Interest Law

Two General Rules:

- Avoid situations or conduct which create a *reasonable impression* of favoritism or bias, including any impression that:
 - A person may have improperly influenced you; or
 - You may have benefited from a favor; or
 - You are likely to act or fail to act because of kinship, rank, position or undue influence of a person or self-dealing.
- When in doubt, file a disclosure statement

*Review all agenda items; ask questions

Conflict of Interest Law- Mandatory Training

- Law requires all state employees, including special state employees to complete online training program once every 2 years.
- Next week- link to online training session with instructions.
- BHE members on multiple public boards- only need to take training once/ 2 years.

Resources

Additional Resources

- BHE Access to the 8 Public Higher Ed Trustee Training Modules on Blackboard:
 - Open meeting law
 - Public records law
 - Conflict of interest law
 - State procurement laws
 - State finance provisions under chapter 29
 - Fraud prevention
 - Fiduciary responsibilities
 - Governance
- BHE Intranet (SharePoint)-with state email address
 - Will post the "BHE Board Binder"
 - Link to Statutory Authority Summaries
 - Other resources, AGB articles

Overview and Comparison: Legislative Authority of BHE and Local Boards

Higher Ed Authority Overview

Massachusetts Board of Higher Education
University of Massachusetts Board of Trustees
Community College and State University
Boards of Trustees

<https://www.mass.edu/bhe/higheredauthority.asp>

*Includes citations to Massachusetts General Laws
Prepared by the Massachusetts Department of Higher Education
Updated January 2013*

Overview and Comparison

Comparison of Major Authority: General

Board of Trustees of University of Massachusetts	Massachusetts Board of Higher Education	Boards of Trustees of Community Colleges and State Universities
	<p>Analyze present and future goals, needs, and requirements of public higher education and establish goals to achieve a well coordinated quality system of public higher education in the Commonwealth. <i>Ch. 15A, §9(c)</i></p>	
<p>Submit five-year master plan to BHE and Secretary of Education for approval. <i>Ch. 15A, §9(l); Ch. 75 §1A(l)</i></p>	<p>The institutional five-year master plans for public higher education are submitted to the BHE and the Secretary of Education for review and approval.</p>	<p>Submit five-year master plan to BHE and Secretary of Education for approval. <i>Ch. 15A, §9(l) and §22(l)</i></p>
	<p>Prepare a five-year master plan for public higher education, subject to the approval of the Secretary of Education, taking into account the BHE's analysis of present and future goals, needs and requirements of public higher education, and the five-year plans submitted by individual boards of trustees. <i>Ch. 15A, §9(f) and (c)</i></p>	

MA Private Higher Education System

- Institutional authorization/ Program approval
 - State law- Any entity organized after 1943 that seeks to operate in MA and offer degrees or courses leading to degree must be authorized/ approved by BHE
 - Federal Law- Post-secondary institutions wanting to receive Title IV funds must be authorized in each state where they operate
- Regulate use of word “college” or “university”
- Conduct IHE Annual Financial Assessments- All private IHEs (new*)
- SARA administrator
 - MA institutions wishing to operation in other states under NC-SARA reciprocity agreement must be authorized by BHE
- State financial aid administration (\$120M)
 - Authority to set participation requirements
 - Vast majority of private IHEs- including all pre-1943s- participate
- Campus Safety and Violence Prevention (new*)

Next Annual Meeting-PD

- Think about other PD that may be more helpful
- AGB consultants
- Formal Board Self-Assessments
- Reps from AGO/ Ethics
- Fiduciary Duty
- Strategic planning experts

Questions?