

**BOARD OF HIGHER EDUCATION
REQUEST FOR BOARD ACTION**

NO.: BHE 21-49

BOARD DATE: June 22, 2021

AMENDMENTS TO BOARD OF HIGHER EDUCATION BY-LAWS

MOVED: The Board of Higher Education hereby approves amendments to its By-Laws, as set forth in Attachment A, and subject to the Board of Higher Education committing to conducting at least a mid-year review of the By-Law implementations in year one.

VOTED: Motion adopted by BHE 6/22/2021.

Authority: Massachusetts General Laws Chapter 15A, Section 4; BHE By Laws Article IV, Section 1 (Amendment or Revision).

Contact: Constantia T. Papanikolaou, Chief Legal Counsel

Background

The Board of Higher Education (BHE) By-Laws is a critical document which establishes the BHE's governance and procedural structure and forms the foundation of how the BHE functions, to the extent that such matters are not otherwise addressed in the Massachusetts General Laws. The current BHE By-Laws are accessible through the following link:

<https://www.mass.edu/bhe/bylaws.asp> The BHE last amended its By-Laws in November, 2010.

A memorandum from Chair Gabrieli which summarizes and outlines the purpose of the amendments is attached as Attachment A. The proposed Amendments are attached, in red-line format, as Attachment B.

Amendments to BHE By-Laws are subject to stricter voting and notice requirements than other BHE actions. As set forth in Article IV, Section 1 of the By-Laws, the By-Laws may be "amended, revised or repealed by a vote of two-thirds of the entire number of the members at any meeting, but in no event less than seven." In addition, BHE members must receive the proposed By-Law amendments, revisions, or repeal at least fifteen (15) days prior to the date of the meeting at which such action is to take place. BHE By-Laws Article IV, Section 1.

BY-LAWS OF THE MASSACHUSETTS BOARD OF HIGHER EDUCATION

Article I. Organization and Officers of the Board of Higher Education

Section 1. Composition and Functions of the Board

The composition, functions, duties, powers, and responsibilities of the Board of Higher Education shall be as provided and authorized by the laws of the Commonwealth as in effect from time to time.

Section 2. Officers of the Board

The officers of the Board of Higher Education shall be a Chairperson who is appointed by the Governor, a Vice Chairperson, a Secretary who is the Commissioner, and a Deputy Secretary appointed by the Chairperson. Each officer shall have the duties, functions, powers, and responsibilities of his/her office as prescribed by the laws of the Commonwealth, by these By-laws, and parliamentary custom. The Deputy Secretary may be a person other than a Board member.

Section 3. Chairperson of the Board of Higher Education

The Chairperson of the Board of Higher Education shall have the following powers and duties:

- a. To preside at all meetings of the Board of Higher Education at which he/she is present;
- b. To call special meetings of the Board of Higher Education;
- c. To serve as an ex officio voting member of all committees and task forces of which he/she is not a regular member;
- d. To appoint and remove, subject to the approval of the Board and subject to Board annual review and renewal, the Vice Chairperson, committee members, and advisory council members, and to appoint and remove task forces of the Board of Higher Education as in his/her discretion he/she may from time to time determine necessary;
- e. To appoint successor members and successor chairpersons of committees, advisory councils, and task forces if for any reason a vacancy occurs in any such membership or office;
- f. To appoint substitute members and chairpersons of the committees, advisory councils, and task forces in the event that any such member or chairperson thereof declares his/her inability to serve for any period.

Section 4. Vice Chairperson of the Board of Higher Education

The Vice Chairperson of the Board of Higher Education shall perform the duties of the Chairperson in the event of his/her absence or illness and assist in the preparation and conduct of general business under the direction of the Chairperson.

Section 5. The Secretary

The Secretary shall have the following duties:

- a. To give written notice of all regular and special meetings of the Board of Higher Education, the committees, advisory councils, and task forces thereof, and to compile and distribute agendas therefore;
- b. To assist the Chairperson in scheduling and preparing agendas for other events including orientation for new members;
- c. To record the proceedings and to prepare minutes of the meetings of the Board of Higher Education, the committees and task forces thereof;
- d. To preserve all documents, papers and records of the Board of Higher Education determined by the Secretary to be part of its official records or necessary to the performance of its duties;
- e. To conduct correspondence on behalf of the Board of Higher Education and to certify official documents and proceedings;
- f. To perform duties, not inconsistent with those prescribed by these By-Laws or by the Board of Higher Education, as prescribed from time to time by the Chairperson.

Section 6. Deputy Secretary

The Deputy Secretary shall perform the duties of the Secretary in the event of his/her absence or illness and assist in the preparation and conduct of general business under the direction of the Secretary.

Article II. Meetings of the Board

Section 1. Regular Meetings

Regular meetings shall be held six times per year and at least once every two months from September through June. The time and place of meetings shall be fixed by the Chairperson in consultation with the Secretary. All meetings shall be held within the Commonwealth.

Section 2. Special Meetings

Special meetings of the Board of Higher Education may be held at any time and place within the Commonwealth when called by the Chairperson or by three members in writing given to the Secretary specifying the purpose(s) of said meeting. The time and place of such meeting shall be fixed by the Chairperson in consultation with the Secretary. Written or telephonic notice of such meeting shall be sent or made to each member at least three days prior to the date fixed for said meeting, which notice shall state the time, place, and purpose(s) for which it has been called; provided that no notice need be given to any member who waives the same by a written waiver executed by him/her before or after the meeting. Each such waiver shall be filed with the records of the meeting.

Section 3. Notice of Regular Meetings; Waiver

Written notice of each regular meeting of the Board of Higher Education shall be sent to each member by email at least seven days prior to the date fixed for said meeting, which notice shall state the time and place thereof;

provided that no notice need be given to any member who waives the same by a written waiver executed by him/her before or after the meeting. Each such waiver shall be filed with the records of the meeting.

Section 4. Agenda of Regular Board Meetings

A written agenda of matters to be considered at each regular meeting of the Board of Higher Education shall be sent to each member by mail at least three days prior to the date fixed for said meeting. Items to be included in the agenda for a regular meeting shall be proposed by the Secretary and shall be subject to the Chairperson's approval. Items to be included in the agenda may also be submitted to the Secretary in writing no less than seven (7) days prior to the date fixed for the meeting by:

- recommendation of the committees, advisory councils, or task forces of the Board of Higher Education,
- the Chairperson,
- the Commissioner, or
- a member of the Board.

All meetings of the Board shall be conducted in accordance with commonly used parliamentary procedure, and the order of business at meetings shall be as determined from time to time by the Chairperson. The Board may reserve one-half hour on the agenda of its regular meetings for public participation. Individuals seeking to speak to the Board should so inform the Commissioner's office in writing, setting forth the purpose for which they seek to speak, at least twenty-four hours before the relevant meeting. The Chairperson shall determine whether said individuals shall be permitted to speak, and if so, for how long they may speak on the designated topic. A brief summary of this rule shall be included in the posted notice of each meeting. Notwithstanding the above provision, the Chairperson may exercise discretion to waive the notice of requirement set forth above and invite an individual(s) present at the meeting to address the Board.

Section 5. Quorum

The number of members necessary to constitute a quorum for the transaction of business shall be seven. Seven members are necessary to take action on behalf of the Board unless a different number is required by law or other provisions of these By-Laws.

Section 6. Annual Meeting of the Board

The date of the Annual meeting of the Board shall be established by the Board during the last Board meeting of the academic year for the following year. The Board may designate a regular meeting of the Board, a retreat, or a special meeting as the Board's Annual meeting.

Article III. Committees, Advisory Councils and Task Forces of the Board of Higher Education

Section 1. Committees. As required under state law, the Board "shall have an Executive Committee, and such other committees as the Board may from time to time establish". M.G.L. c. 15A, § 4(b).

- a. Executive Committee
 - i. Powers and duties. To consider Board of Higher Education governance and organizational issues; to review and advise on Board agendas; to consider and vote on consolidating matters on a consent agenda; to review audit issues as they arise; to consider and act upon matters specifically delegated by the Board to the Commissioner which require the concurrence of the Executive Committee; to consider and advise on policy related to presidential evaluation and compensation and employee relations including collective bargaining; to assign to the Commissioner and staff any matters for which a hearing by the Board is required by policy, rules, regulations, or law; and to consult with the Commissioner at his/her request.
 - ii. Membership. The Executive Committee shall be composed of the Chairperson and the Vice-Chairperson of the Board and at least two other Board members who also serve as chairs of committees or advisory councils. Membership of the Executive Committee shall be proposed by the Chairperson, shall be subject to the approval of the Board, and shall be reviewed annually by the Board during the Board's annual meeting.
 - iii. The Chairperson of the Board shall be the chair of the Executive Committee

- b. Other Committees of the Board. The Chairperson, with approval of the Board, may establish such standing or ad hoc special or select committees of the Board as may be deemed necessary. The membership, charge and duration of the committees shall be recommended by the Chairperson and shall be subject to Board approval. Membership of such committees shall be limited to Board members.

- c. The Chairperson and the Commissioner shall be members ex officio of each committee. Any member of the Board may attend any meeting of any committee of the Board.

- d. Temporary work assignments of a functional or project nature may be made by the Chairperson of the Board to individual members of the Board, each such assignment to terminate automatically upon the report to, and final action by the Board on such project.

- e. Notice of all committee meetings shall be given to all members of the Board. Such notice shall be no less than the minimum possible notice required under the General Laws.

Section 2. Advisory Councils

- a. Advisory Councils. The Chairperson, with the approval of the Board, may appoint advisory councils as may be deemed necessary, to advise the Board and the Department on matters pertinent to the strategic and/or core functions of the Board, such as: fiscal affairs; academic affairs; and strategic planning.

- b. The mission and purpose of each advisory council shall be to support the goals and priorities of the Board and the Department and will inform the current work of the Board and the Department. The membership, charge and duration of the advisory councils shall be recommended by the Chairperson in consultation with the Commissioner, and subject to Board approval.

- c. Membership. Advisory Council membership will be reviewed and renewed by the Board annually, provided that no non-BHE member of an Advisory will serve on the same council for more than five years. Members serving on councils will bring content experience and expertise specific to the interest of the advisory council and may include representatives from public and private higher education, business and civic leaders, students and other community members who have a demonstrated interest in and commitment to excellence in public or private higher education. The Chairperson and the Board will seek to establish a reasonable balance of members representing stakeholder interests and content experience and expertise and will strive for diversity and geographic balance.

- d. Council Chairs. The Chairperson will appoint a Board member to chair or co-chair each advisory council and may also appoint a co-chair who may be non-Board member.
- e. The Chairperson and the Commissioner, or the Commissioner's designee, shall be members ex officio of each advisory council. Any member of the Board may attend any meeting of any advisory council of the Board.
- f. Time and Location. Subject to open meeting law requirements as set forth in the Massachusetts General Laws, advisory Council meetings may be held at any time and place designated by the chair(s) of the council, the Chairperson of the Board, the Commissioner, or three members of the committee, after consultation with the Commissioner.
- g. Notice of all advisory council meetings shall be given to all members of the Board. Such notice shall be no less than the minimum possible notice required under the General Laws.
- h. Liaisons. The Commissioner will identify a staff member to serve as the liaison for each council. The liaison attends and supports each meeting of the advisory council and works on the Department and Board's behalf to facilitate communications between and among the advisory council, the Department, and the Board. The liaison consults with advisory council chairs to prepare meeting agendas, posts council meeting agenda, schedules, and other information, as necessary, and maintains council meeting minutes and records.

Section 3. Task Forces

There shall be such task forces as the Chairperson shall from time to time establish. Task forces shall be appointed on an ad hoc basis and in appointing task forces, the Chairperson shall state their respective purposes and missions. The Chairperson shall appoint the members and the chair of each task force.

Section 4. Committee Meetings

- a. Time and Location. Subject to open meeting law requirements as set forth in the Massachusetts General Laws, committee meetings may be held at any time and place designated by the chair of the committee, the Chairperson of the Board, the Commissioner, or three members of the committee, after consultation with the Commissioner.
- b. Notice. The Secretary or his/her designee shall send a written notice of the time and place of the meeting by mail to each member of such committee at least three days prior to such meeting.
- c. Waiver of Notice. Notice need not be given to any member who waives such notice in writing before or after the meeting or who attends the meeting.
- d. Joint Meetings. Should any matter be an appropriate subject for consideration by more than one committee, the Commissioner, after consultation with the respective chairs of said committees and the Chairperson of the Board, shall determine to which committee or committees the matter shall be referred and whether a joint meeting or a Board committee of the whole shall be held.
- e. Quorum. No quorum shall be required for any meeting of a committee for the transaction of business, so long as no fewer than two members are in attendance for the meeting.

Section 5. Consent Agenda

By a vote of a majority of members present at any committee meeting, action item(s) may be placed on a consent agenda for a regular Board meeting. Any item designated as a consent agenda item by the committee shall be so designated in the agenda of a regular Board meeting mailed to the Board. Unless any member objects to the inclusion of an item on the consent agenda by notifying the Commissioner at least twenty-four hours before the Board meeting, all items shall be included in the consent agenda for approval by a single vote by the Board without discussion of individual items.

Article IV. Miscellaneous

Section 1. Amendment or Revision or Repeal of By-Laws

These By-Laws may be amended, revised, or repealed by a vote of two-thirds of the entire number of the members at any meeting, but in no event less than seven; provided, however, that the text of any amendment, revision or repeal as originally proposed shall be sent to each member at least fifteen days before the meeting at which such action is to take place. The Board commits to regularly evaluating these By Laws at least once every five years to determine their effectiveness.

Section 2. Parliamentary Procedure

Commonly used parliamentary procedure shall be followed in conducting meetings of the Board of Higher Education unless otherwise provided in these By-Laws or by the Board.

Section 3.

In any given year that a student from the University segment, the state college segment, or the community college segment is not appointed to the Board of Higher Education by the Governor, a student representing each segment not so appointed shall be allowed to attend all open meetings of the full Board of Higher Education to be available to advise the appointed student board member at his/her request. All guidelines for procedures and deadlines for the selection process of such advisory students shall be established by the student advisory committee.

Last revised: June 22, 2021