

Senator Ann Millner proposes the following substitute bill:

HIGHER EDUCATION PERFORMANCE FUNDING

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ann Millner

House Sponsor: Brad R. Wilson

LONG TITLE

General Description:

This bill amends and enacts provisions related to performance funding for higher education institutions and applied technology colleges.

Highlighted Provisions:

This bill:

- defines terms;
- amends the powers and duties of the Utah College of Applied Technology Board of Trustees to include responsibilities related to a model to determine performance;
- creates a restricted account;
- requires that, up to a limit, certain individual income tax revenue be deposited in the restricted account;
- restricts the use of money in the restricted account to performance funding for higher education institutions and applied technology colleges;
- requires the Department of Workforce Services to estimate the amount of growth, over a baseline amount, in individual income tax revenue generated by targeted jobs;
- directs the Legislature to determine appropriations from the restricted account for higher education institutions and applied technology colleges based on performance;



- 26 ▶ requires the State Board of Regents and the Utah College of Applied Technology
27 Board of Trustees to:
- 28 • develop models for measuring the performance of higher education institutions
29 and applied technology colleges; and
 - 30 • report annually to the Higher Education Appropriations Subcommittee on the
31 performance of higher education institutions and applied technology colleges;
32 and
- 33 ▶ makes technical and conforming changes.

34 **Money Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 None

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **53B-2a-104**, as last amended by Laws of Utah 2016, Chapter 236

41 **53B-7-101**, as last amended by Laws of Utah 2015, Chapter 361

42 **63I-2-253**, as last amended by Laws of Utah 2016, Chapters 128, 229, 236, 271, and

43 318

44 ENACTS:

45 **53B-7-701**, Utah Code Annotated 1953

46 **53B-7-702**, Utah Code Annotated 1953

47 **53B-7-703**, Utah Code Annotated 1953

48 **53B-7-704**, Utah Code Annotated 1953

49 **53B-7-705**, Utah Code Annotated 1953

50 **53B-7-706**, Utah Code Annotated 1953

51 **53B-7-707**, Utah Code Annotated 1953

53 *Be it enacted by the Legislature of the state of Utah:*

54 Section 1. Section **53B-2a-104** is amended to read:

55 **53B-2a-104. Utah College of Applied Technology Board of Trustees -- Powers**
56 **and duties.**

(1) The Utah College of Applied Technology Board of Trustees is vested with the control, management, and supervision of applied technology colleges within the Utah College of Applied Technology in a manner consistent with the policy and purpose of this title and the specific powers and responsibilities granted to the board of trustees.

(2) The board of trustees shall:

(a) ensure that an applied technology college complies with the requirements in Section 53B-2a-106;

(b) appoint the commissioner of technical education in accordance with Section 53B-2a-102;

(c) advise the commissioner of technical education and the State Board of Regents on issues related to career and technical education, including articulation with institutions of higher education and public education;

(d) ensure that a secondary student in the public education system has access to career and technical education through an applied technology college in the secondary student's service region;

(e) in consultation with the State Board of Education, the State Board of Regents, and applied technology college presidents, develop strategies for providing career and technical education in rural areas, considering distances between rural career and technical education providers;

(f) receive budget requests from each applied technology college, compile and prioritize the requests, and submit the request to:

(i) the Legislature; and

(ii) the Governor's Office of Management and Budget;

(g) receive funding requests pertaining to capital facilities and land purchases from each applied technology college, ensure that the requests comply with Section 53B-2a-112, prioritize the requests, and submit the prioritized requests to the State Building Board;

(h) comply with Chapter 7, Part 7, Performance Funding;

~~[(h)]~~ (i) in conjunction with the commissioner of technical education, establish benchmarks, provide oversight, evaluate program performance, and obtain independent audits to ensure that an applied technology college follows the non-credit career and technical education mission described in this part;

88 ~~[(j)]~~ (i) approve programs for the Utah College of Applied Technology;
89 ~~[(j)]~~ (k) approve the tuition rates for applied technology colleges within the Utah
90 College of Applied Technology;

91 ~~[(k)]~~ (l) prepare and submit an annual report detailing the board of trustees' progress
92 and recommendations on career and technical education issues to the governor and to the
93 Legislature's Education Interim Committee by October 31 of each year, which shall include
94 information detailing:

95 (i) how the career and technical education needs of secondary students are being met,
96 including what access secondary students have to programs offered at applied technology
97 colleges;

98 (ii) how the emphasis on high demand, high wage, and high skill jobs in business and
99 industry described in Section [53B-2a-106](#) is being provided;

100 (iii) performance outcomes, including:

101 ~~[(A) entered employment;]~~

102 ~~[(B) job retention; and]~~

103 (A) performance on the metrics described in Section [53B-7-707](#); and

104 ~~[(C)]~~ (B) earnings; and

105 (iv) student tuition and fees; and

106 ~~[(j)]~~ (m) collaborate with the State Board of Regents, the State Board of Education, the
107 state system of public education, the state system of higher education, the Department of
108 Workforce Services, and the Governor's Office of Economic Development on the delivery of
109 career and technical education.

110 (3) The board of trustees, the commissioner of technical education, or an applied
111 technology college, president, or board of directors may not conduct a feasibility study or
112 perform another act relating to offering a degree or awarding credit.

113 Section 2. Section **53B-7-101** is amended to read:

114 **53B-7-101. Combined requests for appropriations -- Board review of operating**
115 **budgets -- Submission of budgets -- Recommendations -- Hearing request --**
116 **Appropriation formulas -- Allocations -- Dedicated credits -- Financial affairs.**

117 (1) As used in this section:

118 (a) (i) "Higher education institution" or "institution" means an institution of higher

education listed in Section 53B-1-102.

(ii) "Higher education institution" or "institution" does not include the Utah College of Applied Technology.

(b) "Research university" means the University of Utah or Utah State University.

(2) (a) The board shall recommend a combined appropriation for the operating budgets of higher education institutions for inclusion in a state appropriations act.

(b) The board's combined budget recommendation shall include:

(i) employee compensation;

(ii) mandatory costs, including building operations and maintenance, fuel, and power;

~~[(iii) mission based funding described in Subsection (3);]~~

~~[(iv)]~~ (iii) performance funding described in:

(A) Subsection ~~[(4);]~~ (3); and

(B) Part 7, Performance Funding;

~~[(v)]~~ (iv) statewide and institutional priorities, including scholarships, financial aid, and technology infrastructure; and

~~[(vi) unfunded historic growth.]~~

(v) enrollment growth.

(c) The board's recommendations shall be available for presentation to the governor and to the Legislature at least 30 days prior to the convening of the Legislature, and shall include schedules showing the recommended amounts for each institution, including separately funded programs or divisions.

(d) The recommended appropriations shall be determined by the board only after it has reviewed the proposed institutional operating budgets, and has consulted with the various institutions and board staff in order to make appropriate adjustments.

~~[(3)(a) The board shall establish mission based funding.]~~

~~[(b) Mission based funding shall include:]~~

~~[(i) enrollment growth; and]~~

~~[(ii) up to three strategic priorities.]~~

~~[(c) The strategic priorities described in Subsection (3)(b)(ii) shall be:]~~

~~[(i) approved by the board; and]~~

~~[(ii) designed to improve the availability, effectiveness, or quality of higher education]~~

150 in the state.]

151 [~~(d)~~] Concurrent with recommending mission-based funding, the board shall also
152 recommend to the Legislature ways to address funding any inequities for institutions as
153 compared to institutions with similar missions.]

154 [~~(4)~~] (3) (a) The board shall establish performance funding.

155 (b) Performance funding shall include metrics approved by the board, including:

156 (i) degrees and certificates granted;

157 (ii) services provided to traditionally underserved populations;

158 (iii) responsiveness to workforce needs;

159 (iv) institutional efficiency; and

160 (v) for a research university, graduate research metrics.

161 (c) The board shall:

162 (i) award performance funding appropriated by the Legislature to institutions based on
163 the institution's success in meeting the metrics described in Subsection [~~(4)~~] (3)(b); and

164 (ii) reallocate funding that is not awarded to an institution under Subsection [~~(4)~~]
165 (3)(c)(i) for distribution to other institutions that meet the metrics described in Subsection [~~(4)~~]
166 (3)(b).

167 [~~(5)~~] (4) (a) Institutional operating budgets shall be submitted to the board at least 90
168 days prior to the convening of the Legislature in accordance with procedures established by the
169 board.

170 (b) Funding requests pertaining to capital facilities and land purchases shall be
171 submitted in accordance with procedures prescribed by the State Building Board.

172 [~~(6)~~] (5) (a) The budget recommendations of the board shall be accompanied by full
173 explanations and supporting data.

174 (b) The appropriations recommended by the board shall be made with the dual
175 objective of:

176 (i) justifying for higher educational institutions appropriations consistent with their
177 needs, and consistent with the financial ability of the state; and

178 (ii) determining an equitable distribution of funds among the respective institutions in
179 accordance with the aims and objectives of the statewide master plan for higher education.

180 [~~(7)~~] (6) (a) The board shall request a hearing with the governor on the recommended

181 appropriations.

182 (b) After the governor delivers his budget message to the Legislature, the board shall
183 request hearings on the recommended appropriations with the appropriate committees of the
184 Legislature.

185 (c) If either the total amount of the state appropriations or its allocation among the
186 institutions as proposed by the Legislature or its committees is substantially different from the
187 recommendations of the board, the board may request further hearings with the Legislature or
188 its appropriate committees to reconsider both the total amount and the allocation.

189 ~~[(8)]~~ (7) The board may devise, establish, periodically review, and revise formulas for
190 its use and for the use of the governor and the committees of the Legislature in making
191 appropriation recommendations.

192 ~~[(9)]~~ (8) (a) The board shall recommend to each session of the Legislature the
193 minimum tuitions, resident and nonresident, for each institution which it considers necessary to
194 implement the budget recommendations.

195 (b) The board may fix the tuition, fees, and charges for each institution at levels it finds
196 necessary to meet budget requirements.

197 ~~[(10)-(a)]~~ (9) Money allocated to each institution by legislative appropriation may be
198 budgeted in accordance with institutional work programs approved by the board, provided that
199 the expenditures funded by appropriations for each institution are kept within the
200 appropriations for the applicable period.

201 ~~[(b) A president of an institution shall:]~~

202 ~~[(i) establish initiatives for the president's institution each year that are:]~~

203 ~~[(A) aligned with the strategic priorities described in Subsection (3); and]~~

204 ~~[(B) consistent with the institution's mission and role; and]~~

205 ~~[(ii) allocate the institution's mission-based funding to the initiatives:]~~

206 ~~[(11)]~~ (10) The dedicated credits, including revenues derived from tuitions, fees,
207 federal grants, and proceeds from sales received by the institutions are appropriated to the
208 respective institutions and used in accordance with institutional work programs.

209 ~~[(12)]~~ (11) Each institution may do its own purchasing, issue its own payrolls, and
210 handle its own financial affairs under the general supervision of the board.

211 ~~[(13)-(a)]~~ (12) If the Legislature appropriates money in accordance with this section, it

shall be distributed to the board and higher education institutions to fund the items described in Subsection (2)(b).

~~[(b) During each general session of the Legislature following a fiscal year in which the Legislature provides an appropriation for mission based funding or performance funding, the board and institutions shall report to the Legislature's Higher Education Appropriations Subcommittee on the use of the previous year's mission based funding and performance funding, including performance outcomes relating to the strategic initiatives approved by the board.]~~

Section 3. Section **53B-7-701** is enacted to read:

Part 7. Performance Funding

53B-7-701. Title.

This part is known as "Performance Funding."

Section 4. Section **53B-7-702** is enacted to read:

53B-7-702. Definitions.

As used in this part:

(1) "Account" means the Performance Funding Restricted Account created in Section [53B-7-703](#).

(2) "Applied technology college" means the same as that term is defined in Section [53B-2a-101](#).

(3) "Applied technology college graduate" means an individual who:

(a) has earned a certificate from an accredited program at an applied technology college; and

(b) is no longer enrolled in the applied technology college.

(4) "Estimated revenue growth from targeted jobs" means the estimated increase in individual income tax revenue generated by individuals employed in targeted jobs, determined by the Department of Workforce Services in accordance with Section [53B-7-704](#).

(5) "Full new performance funding amount" means the maximum amount of new performance funding that a higher education institution or applied technology college may qualify for in a fiscal year, determined by the Legislature in accordance with Section [53B-7-705](#).

(6) "Full-time" means the number of credit hours the board determines is full-time

enrollment for a student.

(7) "GOED" means the Governor's Office of Economic Development created in Section [63N-1-201](#).

(8) "Higher education institution" means the same as that term is defined in Section [53B-7-101](#).

(9) "Job" means an occupation determined by the Department of Workforce Services.

(10) "Membership hour" means 60 minutes of scheduled instruction provided by an applied technology college to a student enrolled in the applied technology college.

(11) "New performance funding" means the difference between the total amount of money in the account and the amount of money appropriated from the account for performance funding in the current fiscal year.

(12) "Performance" means total performance across the metrics described in:

(a) Section [53B-7-706](#) for a higher education institution; or

(b) Section [53B-7-707](#) for an applied technology college.

(13) "Research university" means the University of Utah or Utah State University.

(14) "Targeted job" means a job designated by the Department of Workforce Services or GOED in accordance with Section [53B-7-704](#).

(15) "Utah College of Applied Technology" means the Utah College of Applied Technology described in Chapter 2a, Utah College of Applied Technology.

Section 5. Section **53B-7-703** is enacted to read:

53B-7-703. Performance Funding Restricted Account -- Creation -- Deposits into account -- Legislative review.

(1) There is created within the Education Fund a restricted account known as the "Performance Funding Restricted Account."

(2) Money in the account shall be:

(a) used for performance funding for:

(i) higher education institutions; and

(ii) applied technology colleges; and

(b) appropriated by the Legislature in accordance with Section [53B-7-705](#).

(3) (a) Money in the account shall earn interest.

(b) All interest earned on account money shall be deposited into the account.

(4) (a) Except as provided in Subsection (4)(b)(ii), the Division of Finance shall deposit into the account an amount equal to:

(i) 14% of the estimated revenue growth from targeted jobs upon appropriation by the Legislature for the fiscal year beginning on July 1, 2018; and

(ii) 20% of the estimated revenue growth from targeted jobs upon appropriation by the Legislature for a fiscal year beginning on or after July 1, 2019.

(b) (i) As used in this Subsection (4)(b), "total higher education appropriations" means, for the current fiscal year, the total state funded appropriations to:

(A) the State Board of Regents;

(B) higher education institutions;

(C) the Utah College of Applied Technology; and

(D) applied technology colleges.

(ii) If a deposit described in Subsection (4)(a) would exceed 10% of total higher education appropriations, upon appropriation by the Legislature, the Division of Finance shall deposit into the account an amount equal to 10% of total higher education appropriations.

(c) The Legislature may appropriate money to the account.

(5) During the interim following a legislative general session in which an amount described in Subsection (4)(b) is deposited into the account, the Higher Education Appropriations Subcommittee shall review performance funding described in this part and make recommendations to the Legislature about:

(a) the performance levels required for higher education institutions and applied technology colleges to receive performance funding as described in Section [53B-7-705](#);

(b) the performance metrics described in Sections [53B-7-706](#) and [53B-7-707](#); and

(c) the amount of individual income tax revenue dedicated to higher education performance funding.

Section 6. Section **53B-7-704** is enacted to read:

53B-7-704. Designation of targeted jobs -- Determination of estimated revenue growth from targeted jobs.

(1) As used in this section, "baseline amount" means the average annual wages for targeted jobs over calendar years 2014, 2015, and 2016, as determined by the Department of Workforce Services using the best available information.

305 (2) (a) The Department of Workforce Services shall designate, as a targeted job, a job
306 that:

307 (i) has a base employment level of at least 100 individuals;

308 (ii) ranks in the top 20% of jobs for outlook based on:

309 (A) projected number of openings; and

310 (B) projected rate of growth;

311 (iii) ranks in the top 20% of jobs for median annual wage; and

312 (iv) requires postsecondary training.

313 (b) The Department of Workforce Services shall designate targeted jobs every other
314 year.

315 (c) GOED may, after consulting with the Department of Workforce Services and
316 industry representatives, designate a job that has significant industry importance as a targeted
317 job.

318 (3) Based on the targeted jobs described in Subsection (2), the Department of
319 Workforce Services shall annually determine the estimated revenue growth from targeted jobs
320 by:

321 (a) determining the total estimated wages for targeted jobs for the year:

322 (i) based on the average wages for targeted jobs, calculated using the most recently
323 available wage data and data from each of the two years before the most recently available
324 data; and

325 (ii) using the best available information;

326 (b) determining the change in estimated wages for targeted jobs by subtracting the
327 baseline amount from the total wages for targeted jobs described in Subsection (3)(a); and

328 (c) multiplying the change in estimated wages for targeted jobs described in Subsection
329 (3)(b) by 3.6%.

330 (4) Annually, at least 30 days before the first day of the legislative general session, the
331 Department of Workforce Services shall report the estimated revenue growth from targeted
332 jobs to:

333 (a) the Office of the Legislative Fiscal Analyst; and

334 (b) the Division of Finance.

335 Section 7. Section **53B-7-705** is enacted to read:

53B-7-705. Determination of full new performance funding amount -- Role of appropriations subcommittee -- Legislative review.

(1) In accordance with this section, and based on money deposited into the account, the Legislature shall, as part of the higher education appropriations budget process, annually determine the full new performance funding amount for each:

(a) higher education institution; and

(b) applied technology college.

(2) The Legislature shall annually allocate:

(a) 90% of the money in the account to higher education institutions; and

(b) 10% of the money in the account to applied technology colleges.

(3) (a) The Legislature shall determine a higher education institution's full new performance funding amount based on the higher education institution's prior year share of:

(i) full-time equivalent enrollment in all higher education institutions; and

(ii) the total state-funded appropriated budget for all higher education institutions.

(b) In determining a higher education institution's full new performance funding amount, the Legislature shall give equal weight to the factors described in Subsections (3)(a)(i) and (ii).

(4) (a) The Legislature shall determine an applied technology college's full new performance funding amount based on the applied technology college's prior year share of:

(i) membership hours for all applied technology colleges; and

(ii) the total state-funded appropriated budget for all applied technology colleges.

(b) In determining an applied technology college's full new performance funding amount, the Legislature shall give equal weight to the factors described in Subsections (4)(a)(i) and (ii).

(5) Annually, at least 30 days before the first day of the legislative general session:

(a) the board shall submit a report to the Higher Education Appropriations Subcommittee on each higher education institution's performance; and

(b) the Utah College of Applied Technology Board of Trustees shall submit a report to the Higher Education Appropriations Subcommittee on each applied technology college's performance.

(6) (a) In accordance with this Subsection (6), and based on the reports described in

Subsection (5), the Legislature shall determine for each higher education institution and each applied technology college:

(i) the portion of the full new performance funding amount earned; and

(ii) the amount of new performance funding to recommend that the Legislature appropriate, from the account, to the higher education institution or applied technology college.

(b) (i) A higher education institution earns the full new performance funding amount if the higher education institution has a positive change in performance of at least 1% compared to the higher education institution's average performance over the previous five years.

(ii) (A) Except as provided in Subsection (6)(b)(ii)(B), an applied technology college earns the full new performance funding amount if the applied technology college has a positive change in the applied technology college's performance of at least 5% compared to the applied technology college's average performance over the previous five years.

(B) An applied technology college's change in performance may be compared to the applied technology college's average performance over fewer than five years in accordance with Subsection [53B-7-707\(3\)\(b\)](#).

(c) A higher education institution or applied technology college that has a positive change in performance that is less than a change described in Subsection (6)(b) is eligible to receive a prorated amount of the full new performance funding amount.

(d) A higher education institution or applied technology college that has a negative change, or no change, in performance over a time period described in Subsection (6)(b) is not eligible to receive new performance funding.

(7) An appropriation described in this section is ongoing.

(8) Notwithstanding Section [53B-7-703](#) and Subsections (6) and (7), the Legislature may, by majority vote, appropriate or refrain from appropriating money for performance funding as circumstances require in a particular year.

Section 8. Section **53B-7-706** is enacted to read:

53B-7-706. Performance metrics for higher education institutions --
Determination of performance.

(1) The board shall establish a model for determining a higher education institution's performance.

(2) (a) The model described in Subsection (1) shall include metrics, including:

- 398 (i) completion, measured by degrees and certificates awarded;
399 (ii) completion by underserved students, measured by degrees and certificates awarded
400 to underserved students;
401 (iii) responsiveness to workforce needs, measured by degrees and certificates awarded
402 in high market demand fields;
403 (iv) institutional efficiency, measured by degrees and certificates awarded per full-time
404 equivalent student; and
405 (v) for a research university, research, measured by total research expenditures.
406 (b) Subject to Subsection (2)(c), the board shall determine the relative weights of the
407 metrics described in Subsection (2)(a).
408 (c) The board shall assign the responsiveness to workforce needs metric described in
409 Subsection (2)(a)(iii) a weight of at least 25% when determining an institution of higher
410 education's performance.
411 (3) For each higher education institution, the board shall annually determine the higher
412 education institution's:
413 (a) performance; and
414 (b) change in performance compared to the higher education institution's average
415 performance over the previous five years.
416 (4) The board shall use the model described in this section to make the report described
417 in Section 53B-7-705 for determining a higher education institution's performance funding for
418 a fiscal year beginning on or after July 1, 2018.
419 Section 9. Section **53B-7-707** is enacted to read:
420 **53B-7-707. Performance metrics for applied technology colleges -- Determination**
421 **of performance.**
422 (1) The Utah College of Applied Technology Board of Trustees shall establish a model
423 for determining an applied technology college's performance.
424 (2) (a) The model described in Subsection (1) shall include metrics, including:
425 (i) completions, measured by certificates awarded;
426 (ii) short-term occupational training, measured by completions of:
427 (A) short-term occupational training that takes less than 60 hours to complete; and
428 (B) short-term occupational training that takes at least 60 hours to complete;

(iii) secondary completions, measured by:

(A) completions of competencies sufficient to be recommended for high school credits;

(B) certificates awarded to secondary students; and

(C) retention of certificate-seeking high school graduates as certificate-seeking postsecondary students;

(iv) placements, measured by:

(A) total placements in related employment, military service, or continuing education;

(B) placements for underserved students; and

(C) placements from high impact programs; and

(v) institutional efficiency, measured by the number of applied technology college graduates per 900 membership hours.

(b) The Utah College of Applied Technology Board of Trustees shall determine the relative weights of the metrics described in Subsection (2)(a).

(3) (a) For each applied technology college, the Utah College of Applied Technology Board of Trustees shall annually determine the applied technology college's:

(i) performance; and

(ii) except as provided in Subsection (3)(b), change in performance compared to the applied technology college's average performance over the previous five years.

(b) For performance during a fiscal year before fiscal year 2020, if comparable performance data is not available for the previous five years, the Utah College of Applied Technology Board of Trustees may determine an applied technology college's change in performance using the average performance over the previous three or four years.

Section 10. Section **63I-2-253** is amended to read:

63I-2-253. Repeal dates -- Titles 53, 53A, and 53B.

(1) Section **53A-1-403.5** is repealed July 1, 2017.

(2) Section **53A-1-411** is repealed July 1, 2017.

(3) Section **53A-1-709** is repealed July 1, 2020.

(4) Subsection **53A-1a-513(4)** is repealed July 1, 2017.

(5) Section **53A-1a-513.5** is repealed July 1, 2017.

(6) Title 53A, Chapter 1a, Part 10, UPSTART, is repealed July 1, 2019.

(7) Title 53A, Chapter 8a, Part 8, Peer Assistance and Review Pilot Program, is

460 repealed July 1, 2017.

461 (8) Sections [53A-24-601](#) and [53A-24-602](#) are repealed January 1, 2018.

462 (9) (a) Subsections [53B-2a-103](#)(2) and (4) are repealed July 1, 2019.

463 (b) When repealing Subsections [53B-2a-103](#)(2) and (4), the Office of Legislative
464 Research and General Counsel shall, in addition to its authority under Subsection [36-12-12](#)(3),
465 make necessary changes to subsection numbering and cross references.

466 (10) Subsections [53B-7-101](#)(2)(b)(iii)(A) and (3) are repealed January 1, 2018.

467 (11) Subsection [53B-7-705](#)(6)(b)(ii)(B) is repealed July 1, 2021.

468 (12) Subsection [53B-7-707](#)(3)(b) is repealed July 1, 2021.

469 ~~[(10)]~~ (13) Title 53B, Chapter 18, Part 14, Uintah Basin Air Quality Research Project,
470 is repealed July 1, 2023.