



USITT Governance Changes

By Paul Brunner, Secretary, USITT Board of Directors

Earlier in 2021, the USITT Board of Directors charged the Bylaws Committee with proposing updates to the USITT's leadership structure. This process started in 2010 when we began transitioning from a large, service-oriented, "doing" Board to a strategic governance Board that monitors operations and puts its focus on long-range planning, resource development, and the vision needed to move the Institute further toward a 21st century planning and initiatives Board. Many changes have already been implemented, including the hiring of an Executive Director, and most of the operational tasks that used to be carried out by the Board and our volunteers have been absorbed into office staff positions. These were intentional moves to focus full-time professional attention to our members and our organizational vision and the implementation of our strategic initiatives. But the process is not complete in terms of the Board structure and governance.

In order to implement the directive of the Board, the Bylaws Committee researched the structure of comparable organizations, best practices of highly functional boards, and other association management methods. They held broad range discussions with various focus groups and reviewed recommendations from leadership organizations like BoardSource. From this, it was determined that major changes were still needed to complete the move to the desired fully governance Board.

It may be helpful to define the terms Governance and Operations, as they apply to not-for-profit organizations.

Governance is a collection of responsibilities and duties that must be undertaken to fulfill an organization's purpose. A governance Board should manage affairs, determine strategic objectives and policies, and monitor progress toward achieving the objectives. Much of these duties currently exist in our bylaws, but the Board has been continually hampered by operational responsibilities in making a full transition.

Operations is defined as the performance

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of work and the practical application of principles or processes that achieve predetermined goals. To put it another way, the **governance** Board sets goals, direction, and vision, and **operations** carries out the activities to meet these goals and vision.

The Committee sought the assistance of legal counsel, Barclay Damon LLP, to review our bylaws—the last legal review having been conducted over 10 years ago. Our bylaws were found to be out of compliance with the New York State Not-for-Profit Corporation Law (NPCL) and the New York Non-Profit Revitalization Act of 2013 (NPRA), the first overhaul of NPCL in more than 40 years. These new revisions restructured governance and optimized fiduciary oversight of non-profits. With the help of our legal team, the Bylaws Committee has been re-drafting our bylaws to be legally compliant and to ensure that USITT remains a viable charitable non-profit corporation under New York State law.

Bringing USITT into compliance aligns with our Board restructuring agenda begun in 2010. One large change occurred in August 2021 when the Board voted unanimously to eliminate Vice-Presidents from the Board. New York law recognizes vice-presidents as executive employees who are not operations-based. Our application of vice-presidents as elected volunteer positions with significant operational duties violates this definition. This change will eliminate operational positions from our elected leadership, thereby putting us in compliance. It will also serve to re-

duce the size of the overall Board, making the Governance structure more closely allied with other non-profit Board operations. Current Vice-Presidents will serve out their terms, but there will not be an election to replace them. Their operational responsibilities will transition to member volunteers, committees, and staff.

The Board will review the Bylaws Committee's recommended bylaws changes in November 2021 to bring our governing document into better compliance with New York law. Another important distinction will be made once these changes are adopted: New York does not recognize our existing committee structure. New committee definitions must be adopted and our committees realigned to ensure compliance. Under New York law, Committees of the Board may only be composed of current Board members and have the authority to bind the Board. This means that this type of committee may be authorized to make decisions on behalf the Board in some cases. Typically, these committees assist the Board in carrying out their primary legal duties of care, loyalty, and obedience, including fiduciary responsibilities, devotion to the membership, and subservience to the goals of the Institute above personal ambitions. Committees that do not directly address one of these primary duties are now defined as Committees of the Corporation. These committees may contain both Board and non-Board members, including staff and volunteers, and these committees may only serve an advisory capacity to the Board and bring proposals to the Board for approval. It's safe to say that very few committees in USITT will meet the criteria to be a Committee of the Board. Once the Board approves these bylaws changes, the Bylaws Committee will thoroughly evaluate our committee policies to ensure compliance.

Please look for additional information in *TD&T*, *USITT Weekly News*, and other member communications, as the Board reorganizes our governance structure to position the Institute for a bright future.