

Board of Trustees

Special Meeting - Committee on Governance and Long-Range Planning

Minutes of Meeting

VOLUME GLRP 9

August 15, 2014

A special meeting of the Committee on Governance and Long-Range Planning was held in Room 206, The Penn Stater Conference Center Hotel, University Park, Pennsylvania, beginning at 8:34 a.m. on August 15, 2014.

The following committee members, constituting a quorum, were present: Keith Eckel, Richard Dandrea, Barbara Doran, Betsy Huber, Anthony Lubrano, Keith Masser Dan Mead and Carl Shaffer. Emeriti member Dave Jones was also present.

Constituent Representatives Roger Egolf and Emily McDonald were in attendance, as well as the following staff members: Steve Dunham, Frank Guadagnino, Nick Jones and Tom Poole. Governance consultant Holly Gregory was also in attendance. Brendan Kennedy from Senator Mitchell's staff and Jen Branstetter, Governor's Representative were joining the meeting over the phone.

The meeting was called to order by Chairman Eckel.

After brief remarks, Chair Eckel welcomed members of the Committee and thanked them for making time in their busy schedule to be in attendance at this important meeting to continue thorough and considerate conversation around governance reform proposals. He also acknowledged current Trustees and Emeriti Trustees in attendance.

Chair Eckel then called upon Mark Mekilo, Chief Counsel for Senate Appropriations to make remarks on behalf of Senator John T. Yudichak. [see Attachment] At the conclusion of the report, there was time to address comments and questions from the Committee.

At this time, Chair Masser proposed to the Committee that today's discussions be thorough and in-depth and that there would no vote today on the proposal. This would give the Committee additional times to discuss, research and fine-tune the proposals and include more time at the Governance Committee meeting in September to finalize details. There would be a meeting of the full Board that would be called in October to have the proposals come before the Board for a vote.

Chair Eckel the proceeded to go through the matrix line by line, providing time for full discussion of proposals A, B and C. Discussion followed with Board members sharing their perspectives and opinions on the various proposals.

The meeting was adjourned at 12:54 p.m.

Respectfully submitted,

Thomas J. Penkala
Associate Director
Board of Trustees

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**REMARKS OF SENATOR JOHN T. YUDICHAK
PENNSYLVANIA STATE UNIVERSITY BOARD OF TRUSTEES
COMMITTEE ON GOVERNANCE AND LONG-RANGE PLANNING
AUGUST 15, 2014**

Good Morning Chairman Eckel and members of the Committee on Governance and Long-range Planning. Thank you for the opportunity to provide remarks today on governance issues surrounding the Board of Trustees of Penn State and, specifically, SB 1240, the Pennsylvania State University Board of Trustees Reorganization Act. I am sorry I cannot be there in person but prior commitments prevent me from traveling to State College today to speak to you.

Let me begin by saying that I am a proud alumnus of this great university. I'm sure you all would agree that Penn State is a special place. For many Penn Staters, the phrase "WE ARE" is not just something we say on a Saturday afternoon at Beaver Stadium or the Jordan Center, it's a mantra we incorporate into our daily lives. The education we received, the values that were instilled, and life's lessons learned at this university remain with us every day in our professional and personal lives. We identify ourselves as Penn Staters years after we leave here because we believe in this university and believe in its public mission.

Today, as we still stand in the shadow of the Sandusky scandal, Penn State University faces its greatest challenge as a public institution of higher education. The Penn State community is divided as it has never been before. And, perhaps most damaging of all, public confidence in the current governance structure of the Board of Trustees to effectuate meaningful change and reform has eroded considerably.

While I previously raised many questions regarding the actions of the Board of Trustees in the wake of the Sandusky child sexual abuse scandal, that issue is not before us today. The issue is whether the current composition of the Board provides the most responsible, responsive and efficient governance structure or whether a smaller Board should be considered. A second issue is whether the General Assembly and the Governor should play a role in making that determination.

Because it has been much debated, let me first address the issue of whether the General Assembly and the Governor should play a role in determining an appropriate composition of the Board of Trustees.

The Pennsylvania General Assembly, through Act 50 of 1855, created Penn State University and established the composition of its Board of Trustees. In 1863, the Commonwealth further cemented its partnership with Penn State by naming it Pennsylvania's sole land-grant university. Subsequent thereto, in 1905 and 1939, the Commonwealth enacted legislation adding members to the Board. These state laws, which to my knowledge remain in effect and have not been repealed, require that the Board include 9 members to be elected by the alumni of the University and 6 members appointed by the Governor and confirmed by the Senate. Each of the members representing these groups serves a 3 year term according to the statute. The acts also require that the Governor, the University President, the Secretary of Education, the Secretary of Agriculture, and the Secretary of what is now the Department of Conservation and Natural Resources to serve as ex-officio members during their terms of office.

While Penn State is organized as a nonprofit institution, it is not a traditional nonprofit. In fact, the corporate charter recognizes that the University is "the instrumentality of the Commonwealth to perform the essential governmental functions of education." The charter further recognizes that "...the Charter of the Pennsylvania State University consists of acts of the assembly which properly relate to it as well as all of the decrees of the Court of Centre County..."

The "hybrid" or "quasi-public" character of Penn State also has been established through numerous statutes and court proceedings. For example:

- Penn State reaps the benefits of its status as a "State-related institution" as that term has been defined in numerous places in state law.
- Meetings of this Board are subject to the Sunshine Act.
- University employees have the option to participate in the State Employees Retirement System.
- Legislation has been introduced to subject the University to the state's Right to Know Law
- Federal courts have held that Penn State is a "state actor" for purposes of addressing alleged violations of the United States Constitution.
- Over the last century and a half, the General Assembly and the Commonwealth's taxpayers have supported the University with billions of dollars in appropriations and capital project support to advance the public mission of Penn State. In fiscal years 2013-2014 and 2014-2015 combined, the General Assembly has appropriated in excess of \$460,000,000 to the University. In 2010-2011 alone, the University received approximately \$318,000,000 in taxpayer money.

All of these factors inevitably lead to the overarching issue – “What actions can the Board take on its own and what actions must be approved by the General Assembly?”

I, and many of my colleagues, believe any action taken by the Board that would reorganize the Board in a manner that contradicts state law requires the approval of the General Assembly before being implemented. Otherwise, any change made by the Board that contravenes existing law arguably would be illegal and subject to litigation by those adversely affected by the action. I think we can all agree that the possibility of more litigation is not what Penn State needs right now.

Given the unique status Penn State enjoys in this Commonwealth, we also feel the General Assembly and the Governor should have input into the question of the proper composition of this Board and that we have the legal authority to enact a statute effectuating the desired changes if necessary. We have begun that process with SB 1240 but remain open to continued dialogue on the issue with the Board.

With respect to the issue of the appropriate size of the Penn State Board of Trustees, while I recognize and applaud the Board for taking initial steps to reduce its size, the board, currently comprised of 30 voting members, remains out of step with the majority of public research universities across the country. Most of Penn State's peers in the Big Ten average only 11 voting trustees and most of its land-grant university peers average only 16 voting trustees.

Why does the size and composition of the board matter? Because research has demonstrated time and again that exceedingly large boards are, in the words of the American Council of Trustees and Alumni, “less effective ...and by default governance decisions are less inclusive.”

The Association Governing Boards of Universities and Colleges take the point further and suggests with large boards “members tend to be less involved in important issues brought before the board.”

The size and composition of the Penn State Board of Trustees, as it is currently structured, presents too many opportunities for power to be vested in a small, insular group of the Board at the expense of full and constructive engagement by the entire Board of Trustees.

When crafting SB 1240, we took a fairly straightforward approach. No one group was singled out for special treatment and no one group was singled out for “punishment.” There is nothing punitive about this bill.

We reduced all segments of the Board (i.e., Governor Appointees, Alumni, Business and Industry, and Agriculture) by one member.

We removed the Governor and Secretary of the Department of Conservation and Natural Resources and made the Secretary of Education and Secretary of Agriculture non-voting, ex officio members to remove the perception of undue influence.

We removed the President of the University to avoid any conflict of interest, and the appearance of any conflict of interest, based on his role as both an employee of the University and a member of the Board influence.

We included a statutory prohibition on the Governor, Lieutenant Governor, the Commonwealth's row officers, and the University President from serving on the Board during their terms of office to ensure that a future Board could not reverse the actions of this Board and re-appoint those individuals to the Board in the future and to ensure that the individuals removed cannot challenge the actions of the Board in removing them pursuant to prior statutory enactments by the General Assembly.

Since I announced my intentions to introduce SB 1240 in November 2013, and introduced the bill in February 2014, the Pennsylvania Senate has had numerous public discussions about this issue, including during Senate Appropriations Committee hearings in February of this year, a State Government Committee hearing in March of this year, and, of course, the State Government Committee meeting in June where the bill was unanimously reported, as amended, by the Committee.

As the prime sponsor of the legislation, I, along with Senator Jake Corman, have had the opportunity to meet with the Chairman of the Board, the chairman of this committee, university legal counsel, the government affairs office, and university consultants.

The State Government Committee received input from national higher education experts. We have reviewed former Auditor General Jack Wagner's report, the Penn State University Faculty report and received input from students.

From the beginning of this process, we have been transparent and have tried to thoughtfully engage the Board in a constructive dialogue about how the General Assembly could assist the University in addressing, what are by its own admission and action, structural deficiencies in board governance at Penn State.

By creating a board governance committee, hiring a governance consultant and removing the president and the governor as voting members of the board – the BOT has acknowledged that governance reform is a critical issue to the future of Penn State University. Unfortunately, I feel the board hasn't fully recognized or embraced the important role the General Assembly can and should play in helping the University implement this reform. But, I remain optimistic.

In closing Mr. Chairman, the strong partnership forged between the Commonwealth of Pennsylvania and Penn State University over the last 159 years has produced unparalleled success in the classroom, in the research lab, and across the Pennsylvania economy in all of our sixty-seven counties. Penn State graduates can be found in the highest levels of government, business, medicine, and any other field you can think of across the nation and around the world. This is a great source of pride not only for Penn Staters but all Pennsylvanians who believe in the public mission of Penn State.

I believe SB 1240, the Pennsylvania State University Board of Trustees Reorganization Act, will continue and strengthen the storied, 159 year old partnership between the Commonwealth of Pennsylvania and Penn State University by enshrining in state law the necessary board governance reforms that will create a board of trustees that is more engaged, more efficient, more inclusive, more accountable and ultimately more effective stewards of the public mission of Penn State University. As we move forward, I, and others, remain hopeful that the General Assembly and the University once again can work in “partnership” to resolve the University’s governance issues to the satisfaction of all involved.

Thank you.