



American Association of University Professors

Academic Freedom for a Free Society

June 2, 2021

Chair Wagner
Members of the Senate Committee on Rules
Oregon State Capitol
Salem, OR 97301

Re: Senate Bill 854—Support

Dear Chair Wagner and Members of the Committee:

On behalf of the more than 6300 members of the American Association of University Professors in Oregon, our collective bargaining chapters at the University of Oregon, Portland State University, Oregon State University, and Oregon Institute of Technology, and our faculty and graduate members across Oregon, I ask that you **please support SB 854 as is, though amendments -1 and -2 will definitely keep us moving in the right direction.**

For nearly a decade, the State of Oregon has experimented in deregulating state oversight for public universities. The new boards have not come without challenges. As a faculty leader in the state for many years, I have witnessed many complications arising from the devolution of the state system to independent boards.

Given the importance of boards of trustees of universities in the new structure, with billions of dollars, thousands of students, and thousands of faculty, administrators and staff in their charge, they deserve greater scrutiny from the public and from within university communities. Their now dominant roles in university policy-setting raise the stakes for ensuring that the boards make a high commitment to public accountability and transparency, and to continue the traditions and requirements of shared governance with faculty if they are to succeed in fulfilling their public missions. But what is it we mean by shared governance, and how does it relate to public accountability?

National leaders in higher education policy have taken notice and have issued their analyses of the situation pointing to the crucial need to get governance right, along with recommendations for at least initial steps. For instance, the Association of Governing Boards convened a blue-ribbon commission which issued a 2014 Report: “Consequential Boards: Adding Value Where it Matters Most” in which it declared:

The value of American higher education faces multiple risks, and changes in governance are needed to address them. At risk are accessibility and degree attainment for current and future students, institutional fiscal sustainability, educational quality, economic development and social equity, service to communities, and knowledge creation.

Leadership for change is more important than ever, and the choices ahead are more urgent and complex than those in the past. In this demanding environment, the structure of governance itself should not be an additional risk factor for the sector. ... Signs of pressure on governance are everywhere: polarized boards, rapid presidential turnover, faculty votes

of no confidence, and heightened scrutiny from accreditors, to name just a few. Dysfunctional governance contributes to the erosion of public trust in the ability of institutions to make choices that contribute to the public well-being.¹

The AGB “Consequential Boards” Report follows up its analysis of the challenges faced by university presidents and college and university boards with a set of 7 recommendations, including:

...
4. Boards must improve within their institutions through attention to board-president relationships and a reinvigoration of faculty shared governance. Boards additionally must attend to leadership development in their institutions, both for presidents and faculty.

5. Boards must improve their own capacity and functionality through increased attention to the qualifications and recruitment of members, board orientation, committee composition, and removal of members for cause.²

Several voices raised concerns about the proposed restructuring model, in particular the Oregon Student Association (OSA), the Service Employees International Union (SEIU), representing classified staff at universities, and various faculty, some of whom were prescient about the issues the restructuring would likely bring to the forefront.

Rosemary Powers and Dalton Miller-Jones, the two faculty members of the then statewide Board of Higher Education, authored an opinion memo³ explaining their support for at least a change to something other than state agency status (to avoid future budget account sweeps), while still questioning that creating local governing boards would be any more likely to solve the underlying funding crisis, and pointing out significant risks with the devolution to governing boards, such as:

Ongoing privatization leading to reduced access:

We continue to question whether the kinds of structural changes suggested will result in greater financial stability without risking an even greater *de facto* privatization of our universities and the diminishment of access at the very time we have so strongly advocated for the increased participation of all Oregon citizens in higher education.⁴

“Every-campus-for-itself” vs a system approach:

Establishing individual boards might lead to increased financial stability for single institutions (although we are not yet convinced that this would necessarily follow). We assert that such a step at this time would unavoidably reduce our common focus on creating a sustainable *system*, and in the current economic climate would risk even greater financial instability for smaller institutions, whose contribution to our statewide education mission remains essential.⁵

¹ Association of Governing Boards, National Commission on College and University Board Governance, 2014: “Consequential Boards – Adding Value Where It Matters Most”

² Ibid

³ Rosemary Powers, Dalton Miller-Jones, June 23, 2010; “Restructuring the OUS: A Faculty Perspective” – Draft, but circulated

⁴ Ibid, page 7

⁵ Ibid, page 7

Over-emphasis on research faculty whose research has proprietary potential and on research faculty versus teaching faculty:

...We also worry that institutions responsible to raise a majority of their own funds under a public corporation model might prioritize support for faculty who emphasize research with proprietary potential. Relying on private corporate grants for such research will reduce opportunities for knowledge production that do not have immediate economic applicability.

Clearly faculty at teaching institutions, and faculty in the humanities and some social science fields, will not be able to make as large a contribution in securing external funds. This could lead institutions to cut programs that do not have significant funding capability, even though these programs are typically more than self-sustaining because of large student enrollments. (Watson, Chronicle of Higher Education, March 21, 2010)⁶

Defending Public Higher Education as a Public Good:

The State of Oregon should not be relieved of its responsibility to provide adequate funding for a quality system of public higher education – creating an educated globally competitive workforce, with critical and creative capabilities required of citizens in a healthy democracy. This requires the strongest advocacy for a view of public education, and especially public higher education, as a public good and not just a personal or private good. A strong version of late consumer capitalism suggests that students (defined as “customers”) are primarily responsible to pay for individually beneficial career or vocational services (Kirp, 2004). In this conception, the democratically transformative value of higher education for all qualified applicants is viewed as a luxury the fiscally limited state cannot afford. As a System, in our statements of principles and values, we have rejected this conception of higher education.⁷

Out of the frying pan, into the fire:

Our accountability to all citizens of the state of Oregon should make us cautious about exchanging the current experience of micro-management by the state legislative leaders for the micro-management that also result[s] from targeted and restricted private funding.⁸

A significant dispute at the University of Oregon in the wake of SB 270 – thankfully, defused and averted at the last minute through the intercession of the Faculty Senate President with the University President - demonstrated the lack of consensus and trust over issues of shared governance. The dispute involved a new “Policy on University Policies” which the administration was set to take to the board of trustees for approval after developing it for 2 months without faculty consultation, and which would have done great damage to shared government and faculty-administration relations. As noted in a December 9, 2016 letter to the President from professors Bonine, Dreiling, and Freyd:

In effect, passage of this policy would eviscerate Section 7 of the Constitution of the

⁶ Ibid, page 9

⁷ Ibid, page 11

⁸ Ibid, page 11

University of Oregon, updated in 2011 and accepted by every President of the University since then. In addition to this effect, it would explicitly repeal two standing policies that were carefully negotiated between the Administration and the University Senate – UO Policies 01.00.01 and 01.00.02.

This is unnecessary. The policies already contain provisions that allow for modification, whether temporary or permanent. To repeal these by Board action would irrevocably damage the already strained bonds of trust between the faculty, the Administration, and the Board. It would diminish the academic and professional experts on the faculty to the status of mere committee members, not the holders of responsibility for academic matters as historically and commonly understood in American higher education.⁹

Conclusions

There are strong grounds for a revisiting of the framework for restructuring Oregon’s public universities since SB 270:

- Incidences at the UO (the December 2014 struggle over the “Policy on University Policies”), at PSU (over closed-door decisions granting the President above-standard favorable sabbatical conditions), at Oregon Tech, and at OSU indicate very consequential issues implicating the integrity of shared governance and public accountability/transparency.
- As far as is known, new board of trustee members do not receive orientations covering the critical issue of shared governance with faculty; nor are most selected board members from an educational background with those sensitivities already ingrained.
- While the legislature carried over very basic shared governance language into SB 270, it did not make a clear statement in the bill in support of shared governance or public accountability principles.
- The legislature charged local boards in SB 270 with apparent powers that could be construed to conflict with the general shared governance language in the bill, giving rise to either possible mis-understanding or mis-using of the law.
- The Governor, presumably in consultation with university presidents, primarily selected trustees with a business background. Many higher education experts have a host of concerns about allowing too strong a business bias to enter into university governance. Board composition could be more balanced – with more trustees from civic backgrounds, and more with expertise in educational fields.

However, unless faculty and other university stakeholders engage with the governing boards, the Governor, and the legislature, the important issues of public transparency, shared governance, and a less one-sided board composition may go unattended – as some did during hearings on SB 270. At some universities, early administration actions have given faculty reason to be wary and watchful, while at other universities the jury is still out.

Our hope is the SB 854 begins a process of addressing and correcting the unfinished business of SB 270,

⁹ Professor John e. Bonine, Professor Michael Dreiling, and Professor Jennifer Freyd, Dec. 9, 2016, Memo re: “Request to Postpone Board Resolution to Create a ‘Policy on University Policy’”

to improve HECC governance, and to promote board compositions that are more reflective of the public and of the nature of the public interest the boards are charged to protect; to establish a higher degree of board transparency; and to push for more developed commitments of shared governance on all public university campuses. Toward this end, I recommend the following:

- i. Win more faculty, student, and non-faculty staff representation on campus boards of trustees, and promote assignment of such representation to all sub-committees and task forces of the boards.
- ii. Seek amendment of SB 270 to explicitly require involvement of existing faculty governance structures (Faculty Senates) or collective bargaining representatives in the selection of faculty to fill designated faculty seats on boards of trustees.
- iii. Expand and deepen the relationship of boards of trustees to faculty bodies and to student and staff organizations by proposing designation of official liaisons – with specific duties – and regular appearances of representatives at each others’ policy-making bodies, and unofficial and informal visits to campus events.
- iv. Amend SB 270 to include a clear commitment in the law to principles of shared government and public accountability at the local governing board level; and to require HECC include in it’s annual evaluations an assessment of the status of these principles at each campus.
- v. Amend SB 270 to require local governing boards to be proactive in public transparency: To establish easily accessible email contact addresses for community members to direct comments or inquiries to members of the boards of trustees; to require boards of trustees to have sufficiently long periods for public comment that all speakers on issues can be heard for a reasonable length of time; to require boards of trustees to solicit feedback pro-actively from relevant interested parties – especially when those parties are part of the university community – instead of waiting to see if comments come in from a meeting announcements; and to require presentations of proposals at boards of trustees meetings to include a review of the potential or likely adverse impacts on internal or external constituencies of the university.
- vi. Engage with representatives of the Inter-Institutional Faculty Senate to form a collaborative effort in pursuing these recommendations.
- vii. Propose and promote a Board of Trustees motion to add a “Shared Governance” and “Public Transparency” primer to each new trustee’s orientation, which will give them a summarized version of the history, the principles, and the importance of this issue to the public mission of the University.
- viii. Promote the creation of a new Graduate Employee designated seat on the boards of trustees for at least the three research universities (PSU, UO, OSU)
- ix. Promote greater participation of faculty in the selection of new trustees, and use that participation to push for a greater focus on civic-background or community leaders, and education-background appointees as opposed to simply business background appointees.

I want to express my gratitude to the sponsors of this important bill that will make important and needed progress toward greater transparency and accountability in the oversight and administration of Oregon's public universities. **SB 854 and the possible -1 and -2 amendments are needed to address the shortcomings that we've witnessed in the system of independent boards at Oregon's public universities.** For years, these boards have fallen short in achieving transparency and accountability to the administration of public universities; worse, the boards have left many wondering as to their commitment to serving with an eye of oversight that enhances the public mission of these cherished institutions. SB 854 bill will require greater access by university stakeholders to the HECC and to the boards of trustees. We need to establish the clear norm and expectation that Oregon's university boards must be accessible, responsive, and most importantly ready to listen to faculty, staff, and students.

Thank you very much for your time and consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "M. Dreiling".

Michael C. Dreiling, Ph.D.
President, AAUP-Oregon
Professor, University of Oregon