

Dear Chair Wagner, Vice Chair Girod, and members of the committee:

My name is Dr. Mark Perlman and I am a Professor of Philosophy at Western Oregon University. I am former President of the Western Oregon University Federation of Teachers, local 2278 of the American Federation of Teachers-Oregon. I am also a member of the Public Employees Benefit Board.

I want to argue in favor of Senate Bill 854, and urge your committee to support it.

### **BOARDS LACK INDEPENDENCE FROM THE UNIVERSITY ADMINISTRATIONS THEY OVERSEE**

Since the breakup of the Oregon University System (OUS), each of Oregon's public universities have had their own Boards of Trustees. Unfortunately, this new system has not been without its problems. The main difficulty is one that was foreseen by a number of people but not prevented when the legislation forming individual boards was approved – the boards tend to have too close a connection to the presidents and administrations of their universities. Each board is supposed to oversee and be a check and balance to the university's president and their administration, but too often this has not happened. The problem is that the board members get virtually all their information from the administration of that university, and can be too easily led to decisions that are favored by that university's president. The boards have no independent source of information, and university administrations tend to present information in a manner that supports their agendas. This phenomenon is not uncommon on boards of various kinds, which is why successful board structures need special mechanisms to prevent a Board from being a virtual rubber stamp for what university executives and administrations seek.

The Oregon public university boards currently have one member from faculty, one from staff, and one from students – partly to bring their viewpoints to the board but also partly to be a counterweight to what the president and administrations are pushing for. However, those faculty, staff, and student members are basically handpicked by the university administration, and there is a great potential for the administrations to select people who are known to be very sympathetic to the president's and administration's agendas. Worse still, those people might well be people who are given favored treatment (getting grants, support for their projects, research reassignments, or leadership positions) by the administration, and thus have a vested interest in supporting the president and administration. This has in fact happened in a number of cases on several campuses. Of course, these Trustees are appointed by the Governor, but that is also basically automatic, as the Governor would have no reason not to appoint the people chosen by the president and board.

Trustees from outside of campus are also typically selected as candidates by the President, and are also likely to be chosen for their willingness to 'play ball'. Most of those Trustees, while being well-intentioned and vaguely familiar with higher education, are not very well-informed about the specifics of the individual campus they are to be leading and about which they will make decisions. Consequently, they make decisions based only on the limited information given them by the president. There are also many more people from off-campus than those three from on-campus, the faculty, staff, and student Trustees, thus tilting the balance away from those people who best know the campus. The result tends to be a Board of Trustees that is not really independent, but is spoon-fed information by the administration and is ready to approve more or less whatever the university president wants them to.

### **A WAY TO MAKE BOARDS MORE INDEPENDENT AND OBJECTIVE – SB 854**

A better way is proposed in SB 854 – that the various faculty, staff, and student groups put forward a small number of their own candidates to be Trustees, and then the governor can pick from those. This way, those members are much more likely to be independent, and less likely to just rubber stamp what they are asked to approve. SB 854 would also double the number of faculty, staff, and student trustees on each board, so that those people from on-campus, who know the university the best, have a larger say in

the decision-making. These changes would make the boards much more balanced, and improve the functioning of public university Boards of Trustees greatly.

#### **COMPARISON WITH THE PEBB BOARD STRUCTURE**

As a member of the PEBB Board, I have seen how an intentionally balanced board operates. PEBB has four members from management and four from labor (of which I am a labor representative), and this ensures that neither side has undue control. Decisions by PEBB are almost all the result of compromise and consensus, and most are unanimous. Perhaps when the university boards were designed the legislature did not view university boards as places that had adversarial sides to be balanced, but in practice there are often adversarial interests between administration on one side and faculty, staff, and students on the other. Right now, because of the slanted structure of the boards, the administration always wins, and often the best interests of the students lose. SB 854, while not creating exactly a half-and-half ratio like PEBB, would still be a great improvement in the balance of the composition of university boards.

PEBB also has an independent actuary do much of the financial analysis, and has each of the insurance vendors provide their own input, so PEBB board members have information from several sources from which to make decisions. We do not get our information solely from PEBB administration, and are thus very unlike the university boards in this way. Perhaps university boards might consider seeking outside agencies to examine information as a counter to hearing only what the university administration presents to them. At WOU, the Faculty Union paid an independent auditor to look at WOU's finances, and exposed a number of ways in which the financial numbers presented by WOU administration were either misleading, biased, or obscured the real situation. The WOU Board of Trustees gave only the most cursory examination of these findings, and despite them the board took all the information they were given by the administration as valid. This issue is beyond the scope of SB 854, but of course boards are at liberty to seek information that is independent of what they are told by their campus's administration. They simply decline to do so, probably because of the excessively close relationship between boards and presidents.

#### **ACCESS TO BOARD MEMBERS BY FACULTY, STAFF AND STUDENTS**

There is also a problem of access to the trustees. Input from faculty, staff, and students to the boards has often been significantly blocked. Right now, faculty, staff, and students, as well as organizations like the faculty and staff unions and various student groups, have only one route to present their views to the board – “public comment”. It is rather insulting to the vital members of the campus community to be treated as simply “the public”. Faculty and staff members often have decades of institutional knowledge to contribute, and have made their careers serving the university. To be relegated to as little as three minutes of “public comment” makes them feel that the board really does not care what they have to say.

During the pandemic, when boards had to move to online video meetings, the WOU Board eliminated all live (video or phone) public testimony, and only accepted written testimony. At the same time during the pandemic, PEBB retained live (video or audio) public comment, and so did the legislature in public hearings. After most of a year of being marginalized, people at WOU had to publicly protest to finally convince the WOU Board, to allow live video public comment. The board was shamed into convening a special meeting, at which five groups, the faculty senate, faculty union, staff senate, staff union, and student government, were allowed only 15 minutes each to present their input. These groups should not have to beg to be heard – they should have pre-set slots at all board meetings to communicate with their boards. SB 854 would require just that.

There is also a problem of conflict of interest in the Board Secretary position. At WOU, the WOU Board's Secretary is the university's VP and General Counsel, who serves at the pleasure of the President and reliably represents the wishes of the President. All communications with the board are to be sent through the Secretary – that is, through an administrator. So complaints to the board about administration

must be delivered to the board by the administration itself. There is no other regular avenue of contact, unless people go outside proper channels and find contact information from the Trustees non-WOU jobs, which is not ideal. It would be simple enough for each trustee to be given a publicly announced board email address, so that people could contact them directly and not through some university administration gatekeeper. SB 854 would do just that. Some may argue that this email move could be done without legislation, and though that is true, in fact it has not been done. The tight controls that the WOU Board Secretary has put in place make it very apparent that the administration prefers their control over contact with the board, because it helps ensure their administrative control over the board. SB 854 mandates independent routes of contact, and at virtually no cost.

#### **EVALUATION OF UNIVERSITY PRESIDENTS NEEDS TO OCCUR MORE FREQUENTLY**

There is also a problem with evaluation of university Presidents. Currently, there is a review after five years. But most presidents only stay for about five to seven years, so this long time before review gives them too much latitude. SB 854 makes the review period every two years, which is much more reasonable. It also puts representatives from faculty, staff, and students on that review committee, which would be very important. At WOU, due to widespread dissatisfaction with President Fuller, the faculty and staff unions were forced to take a No Confidence vote – the first time that has happened in WOU’s history (as far as anyone can remember). The result was faculty and staff voting 85% No Confidence in President Fuller. One might have expected this dramatic result to have repercussions, but the WOU administration and Board of Trustees totally ignored it. They proceeded with business as usual even though most of the campus has no confidence in its leader. A later vote on seven top administrators yielded all receiving between 63% and 89% No Confidence, and again no one on the Board seemed to care. Morale at WOU is at an all-time low, and the Board is either oblivious or disinterested. Faculty would have much preferred a formal review of the President be done through established channels, but there was nothing, and an ad-hoc No Confidence vote was all we had to turn to. SB 854 would improve things significantly by having biennial reviews.

#### **A PROCESS FOR APPEALING DECISIONS IS SORELY NEEDED**

Another major problem is that with university boards controlled tightly by presidents and administrations, once a decision is made, there is no possibility of appealing that decision. When we had OUS, decisions at any one of the campuses could be appealed to the Chancellor and system board. Now there is no Chancellor to appeal to, and with boards so ready to rubber stamp presidents’ decisions, the presidents have far too much unchallengeable authority. Ironically, there is a body that has some oversight, and that is the Higher Education Coordinating Commission (HECC). However, HECC reviews only a very limited range of decisions. Strangely, whereas HECC must approve establishment of all new academic programs at each university, programs can be eliminated by a university administration without any such review. Universities are supposed to have “shared governance” between faculty and administration. The WOU Board has pledged their support for shared governance. In particular, the curriculum is supposed to be under the control of the Faculty Senate, who are after all the experts of academic curriculum matters. But in fact, decisions made by bodies like the Faculty Senate are merely “recommendations” and the University President can ignore them as he or she wishes.

At WOU, a whole slate of program eliminations were proposed by the administration in November 2020 as part of Article 15 of the Faculty Collective Bargaining Agreement, which allows program elimination and layoffs in time of extreme financial crisis. The WOU Faculty Senate has rejected virtually all of these program eliminations (mostly by refusing to bring them to a vote since the faculty curriculum committee had already rejected them). Yet WOU President Rex Fuller is going through with the eliminations anyway. WOU has not adequately shown the financial need (especially after three rounds of federal COVID relief packages have made up for the losses suffered due to the pandemic), but the programs are being eliminated over the objections of the entire faculty because President Rex Fuller wants them gone. The WOU Board of Trustees has refused to even vote on them, claiming they don’t

have to, but also because of the questionable way that the WOU Board is controlled by the President. And there is no avenue for appeal, and this is simply unfair and bad public policy. Several members of the Oregon Legislature have heard complaints from the faculty about this problem, but we understand this is not the level that legislators should manage affairs of the state's higher education system

SB 854 would greatly improve the situation, both by requiring HECC review of all program eliminations, but also by establishing HECC as a final line of appeal (analogous to the old OUS Chancellor) when there is significant opposition to decisions by University Presidents and Boards of Trustees.

**AMENDMENTS TO SB 854**

I have seen that there are two amended versions of SB 854, no doubt because the bill is far-reaching. I expect that presidents and boards at all of the public universities oppose SB 854, which would be understandable for a bill that would increase checks and balances on presidents and boards. I have argued here for SB 854 as originally written, because I believe each part of it is absolutely essential to improving Oregon's public universities. However, I understand that politics involves compromise, and though I still urge you to pass the original bill, I would also view the amendments, though less than what is really needed, as important steps in the right direction (the -1 version being preferable to the -2 version).

**SUMMARY**

The creation of seven individual Boards of Trustees was a big step, and it might be expected that some things are not functioning ideally well. In fact, at several campuses, including WOU, things are going demonstrably badly at the moment. SB 854 would help remedy the problems it addresses and make university boards run more like I believe the Legislature originally intended them to run. I urge passage of SB 854.

Sincerely,



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