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## **Inching—or Sliding—Towards Charter Universities: What Price "Freedom"?**

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Among its other functions, the Ohio Education Association (OEA) Higher Education Advisory Committee (HEAC), a statewide body in Ohio, is responsible for developing position statements on legislative and policy matters that affect its members in particular and public education in general. These positions are regularly communicated to the leadership and membership at large. As part of that process, in the spring of 2011, Patricia Frost-Brooks, President of the OEA, directed the HEAC to develop a position paper on Governor John Kasich's plan for implementing charter universities in the State of Ohio. Subsequently, Steve Doster, then chair of the HEAC, Gregg Gascon, OEA research analyst, and I, vice-chair of the HEAC—with input solicited from the OEA higher education members—sat down to draft a response to Chancellor Jim Petro's report, *An Enterprise University Plan*,<sup>1</sup> released on the Ohio Board of Regents website on August 10, 2011. The remarks that follow will draw upon the content of that report to assess its import and to reflect upon its impact on academic freedom, collective bargaining, and access and affordability.

The *Plan* is an outgrowth of O.R.C. § 3345.81 which required the Chancellor to develop a strategy for designating public institutions of higher education as charter universities and to present the General Assembly and the Governor with a report of his findings and recommendations for developing changes in policy, statute, and administrative rules by August 15, 2011. The law includes a provision that forbids any university to be designated as a charter

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<sup>1</sup> Available at <http://www.ohiohighered.org/enterprise-university-plan>.

university until the General Assembly enacts legislation establishing such a procedure, which has not happened, to date.

The *Plan* provides a strategy consistent with its legislative mandate in two phases. In Phase 1, all public universities are relieved of a number of laws and regulations that are perceived to be non-beneficial to those entities. For those public universities that apply for "Enterprise University" status, the *Plan* allows other legal and administrative mandates that impact public universities to be dropped if the institution in question relinquishes control of 10% of its State Support of Instruction (SSI) to a mandatory student scholarship program. In Phase 2, those public universities that apply for "International Enterprise University" status will be released from still more regulation in exchange for 20% of its State Support of Instruction (SSI) to a mandatory student scholarship program.

Thus, the *Plan* proposes the release of public universities from a variety of state laws and regulations in exchange for a loss of a significant share of their state resources. For those who would aspire to "Enterprise University" status, losses could range from over a half million dollars in the case of Central State to nearly \$33 million in the case of The Ohio State University, and double that for those who would apply for "International University" status.

Granted, from the perspective of public policy, many laws and administrative regulations enacted over the years have become archaic, redundant, or otherwise no longer useful. However, correcting or eliminating them would seem to be the responsibility of the General Assembly, rather than the Chancellor's Office. On the other hand, other laws and administrative regulations have been enacted on the basis of sound government in order to curtail corruption and public malfeasance, reflecting the values of accountability and transparency. These should not be done away with, as any responsible citizen would agree. Herein, however, lies the first dilemma with

this proposal: by executive end-run, not only is the governor attempting to eliminate those provisions of the law which have become onerous and antiquated, but he is also seeking to eliminate some provisions which have traditionally upheld academic freedom, collective bargaining rights, and access and affordability.

Definitely, from the perspective of Ohio's public universities and their stakeholders, elimination of archaic, redundant, and ineffective laws and regulations is desirable, but such changes do not necessarily need to come at the price of diminished state support. Indeed, state support for higher education in Ohio lags behind other states, and the *Plan* would further limit the state's investment in one of its few enterprises that provide substantial revenue to Ohio and its citizens.

A variety of federal, state, and local organizations have raised money to provide merit-based and need-based assistance. Under this *Plan*, middle-class students would bear the brunt of the financial burden in the form of personal debt, leaving many more to graduate with substantial loans to pay back, keeping their discretionary spending low for years if not decades, crippling their ability to purchase homes and durable goods, and further contributing to the state's economic malaise.

Subsequent to its release, leaders of Ohio's public universities have been meeting with their faculty and staffs to discuss the *Plan* and its potential consequences for higher education operations and student tuition. Moreover, many are still trying to accommodate the new administration's decision to make the Chancellor employ political rather than independent review, and are wondering if the 10-year Strategic Plan implemented in 2008 by the previous Chancellor, with strong support from higher education stakeholders, will be given the opportunity to continue its positive impact on the universities, colleges, and taxpayers of Ohio.

Into this situation, the Board of Regents introduces the *Plan* which offers less funding than the biennial budget just passed the previous June.

The *Plan* proposes to provide far less support for higher education in Ohio in exchange for institutional "flexibility" and "autonomy" by eliminating unnecessary regulations along with those that the current General Assembly could eliminate with the stroke of a pen. These actions will undoubtedly cause public universities to seek replacement revenue from their students who are already paying more than 50% higher tuition than the average tuition across these United States.

The *Plan* consists of two phases. In Phase 1, all 14 of Ohio's public universities will be released from several legislative mandates and administrative rules, and will enable the following:

- Allow a board of trustees to determine the length of term for the board officers.
- Allow for meetings with specified internal auditors in executive session.
- Permit boards to meet by videoconferencing/other technological means.
- Exempt university capital laws from state construction procurement requirements.
- Eliminate escrow/retainage on construction projects.
- Allow universities to mandate electronic paycheck deposit for all employees.
- Eliminate enrollment limits.
- Provide that universities can officially partner with other state institutions of higher education.
- Review statutes requiring extensive institutional reporting to the State of Ohio to determine if they are still needed.

- Increase the bid limits for request-for-proposals (RFP) from the current \$49,000 threshold to \$250,000.<sup>2</sup>
- Eliminate required oversight by the Ohio Arts Council for university percent for Arts Program projects (required for projects of \$4 million or more, 1% of art selected by council).
- Provide the ability to set different tuition and fees for space and facility reasons.
- Permit CEO/CFO signature on university financial statements (GASB 14).<sup>3</sup>
- Set meeting standards for boards of trustees.
- Personnel Committee of board of trustees reviews the hiring of top 15 employees.<sup>4</sup>
- Permit boards to go into executive session to discuss matters concerning proprietary information.
- Allow universities to settle smaller claims against the university without approval from the Attorney General for amounts up to \$100,000.

Those universities wishing to apply for "Enterprise University" status would obtain additional autonomy in exchange for 10% of State Support of Instruction (SSI) funding. This increased autonomy would involve the following:

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<sup>2</sup> On June 30, 2011, the Governor signed the biennial budget bill which, among other provisions, raised the limit for competitive bidding to \$200,000. See pages 56-57 of the final bill analysis available at <http://www.lsc.state.oh.us/analyses129/11-hb153-129.pdf>.

<sup>3</sup> The OEA Higher Education Liaison, Gregg Gascon, wrote to the Office of the Chancellor on August 12, 2011, to clarify this statement, as GASB Statement No. 14 makes no mention of such a requirement. Spencer Waugh, a policy specialist, and Gascon spoke on the morning of August 16. He indicated that the Ohio Board of Regents wanted boards of trustees to sign off on all university financial statements, a position they later reconsidered. The GASB 14 reference was a mistake.

<sup>4</sup> In the conversation noted in footnote 3, Mr. Waugh indicated that the "top 15 employees" will most likely be those that are the highest paid, though they are still thinking about it.

- Eliminate the need for the Controlling Board to approve the release of capital appropriations for appropriated fund; unallocated improvements would still need to go before the Controlling Board.
- Eliminate Local Administration Competence certification program.
- Allow universities to self-insure.
- Explicitly provide that the sale of university real property require only the approval of the board of trustees and the Chancellor, not the General Assembly.
- Eliminate the requirement that expenditure of funds for the purchase of university real property receive approval from the Controlling Board (Chancellor's approval still required).
- Explicitly provide authority to the board of trustees to purchase, sell, lease, and grant easements for university land without Department of Administrative Services oversight or restrictions.
- Allow universities to differentiate the cost of tuition based upon cost of academic program.
- Increase the bid limits for request-for-proposals to \$500,000.<sup>5</sup>
- Allow universities to settle smaller claims against the university without approval from the Attorney General for amounts up to \$200,000.

In Phase 2, further autonomy for a subset of Ohio's public universities could also be granted in exchange for the designation of "International Enterprise University" status and the loss of 20% of State Support of Instruction (SSI) funding. To be eligible for this status, universities must meet seven of the nine following benchmarks:

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<sup>5</sup> See footnote 2.

- Unallocated net assets of 30% of total operating expenses.<sup>6</sup>
- Five-year graduation rate of 75%.
- First to second year retention rate of 85%.
- Endowment of 30% of total operating expenses.
- Research expenditures of \$250,000,000 or more.
- STEM degree percentage of 20%.
- Affordability measured as a percentage of Consumer Price Index (CPI) with a bonus for institutions that lower tuition.
- Twenty percent of FTEs participating in intern or co-op programs.
- Direct articulation partnership with community colleges.

If the university met this threshold, then further autonomy would involve the following:

- All mandate relief equal to Enterprise Universities.
- Eliminate requirement for universities to receive approval from the Controlling Board.
- Provide institutions with a waiver on debt related to student housing or a portion thereof.
- Remove the requirement that the Chancellor must approve issuances of obligation.
- Eliminate requirement that the Board of Regents approve the pledge of fees for paying debt service on general receipt bonds.
- Explicitly provide that the sale of university real property require only the approval of the board of trustees, not the Chancellor and General Assembly as well.
- Eliminate the requirement that expenditure of funds for the purchase of university real property receive approval from the Controlling Board and the Chancellor.

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<sup>6</sup> In the conversation noted in footnote 3, Mr. Waugh indicated that the term "unallocated" was a mistake, and that they had meant "unrestricted" to follow the S.B. 6 ratio calculation process.



- Increase the bid limits for request-for-proposals to \$1,000,000.<sup>7</sup>
- Allow universities to settle smaller claims against the university without approval from the Attorney General for amounts up to \$300,000.

In summary, the Chancellor's *Enterprise University Plan* provides a process through which many laws and administrative rules can be eliminated in exchange for loss of a significant share of their state resources and a state mandate that requires public universities to spend 10%-20% of their state revenue for merit-based scholarships regardless of the extent to which they currently provide the same. This is the great irony of the *Plan*: it exchanges many mandates for one which is more onerous than all the others assembled together, and it has a profound impact on a student's ability to access and afford higher education.

The second problematic aspect of the *Plan* is that, because it is based on a free-enterprise, corporate or global model, in all probability, it will lead to the weakening of academic freedom and collective bargaining rights for faculty, staff, and other higher education professionals. Such "privatizing " and relaxing of public oversight in the name of "flexibility" have been characterized well by John Russo and Sherry Linkon of Youngstown State University: "'Flexibility' often means the ability to rely more heavily on part-time and contingent workers resulting in lower [commitment] to the institution and to its students. The term can also provide cover for arbitrary, capricious, and discriminatory behavior by administrators."<sup>8</sup>.

As indicated in the first part of the *Plan*, a number of laws and regulations are to be dismissed outright for all public universities. While we should welcome efforts to eliminate duplicated or unnecessary operations on public university campuses in order to hold costs down,

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<sup>7</sup> See footnote 2.

<sup>8</sup> John Russo and Sherry Linkon, "Speaking Out: The War on Higher Ed in Ohio," *Advocate* 28.5 (June 2011): 12. Web.

that should be the province of the General Assembly. A significant number of those provisions allow boards of trustees to operate autonomously and without public scrutiny. One can envision that some of those closed sessions will involve financial and personnel decisions. Those laws and regulations that have been effective in upholding the transparency and accountability of public universities should be retained, and we should reject eliminating them outright.

For instance, the *Plan* would: allow for board of trustee meetings with specified internal auditors in executive session, allow the board to go into executive session to discuss matters concerning proprietary information, allow for board of trustee meetings to transpire via videoconferencing and other technological means, and allow universities to settle smaller claims against them without approval from the Attorney General.

It is imperative, however, that all public university stakeholders have access, as boards of trustees do, to those individuals who are charged with providing independent and objective evaluations of the university's finances, operations, and personnel matters. To the extent that the findings are hidden from view, they limit the financial and operational clarity that internal auditors currently bring to Ohio's public universities. While the *Plan* also allows the board to go into executive session to discuss matters concerning "proprietary information," this term is left undefined and can thus be used to expand the board's authority to hide its operations and personnel decisions from public university stakeholders. Similarly, if boards of trustees begin to meet through technological means that are not available to all of a public university's stakeholders, they impede the ability of citizens to learn more about the operations of public institutions.

Finally, the oversight that the General Assembly has previously exercised over the legal affairs of public universities would be progressively limited by the *Plan* so that neither that body

nor the public will be aware of the claims brought against public universities. Again, the twin principles of accountability and transparency are challenged in the name of expediency.

We should also take issue with the proposal in the *Plan* to increase the bid limits for all public university requests-for-proposals (RFP) up from \$49,000 to \$250,000.<sup>9</sup> While the General Assembly has already expanded the limit to \$200,000 under H.B. 153, we should strongly disagree with this provision of the *Plan*, and the General Assembly's actions, on the grounds of accountability; to the extent that public contracts for goods and services can be awarded without competition, both the public institution and the taxpayer are put in jeopardy. No further expansion should be granted to any public agency; these are public institutions, and, according to the *American Bar Association's Model Procurement Code of 2000*, all public funds should be expended in the context of standardized rules that apply to all public agencies.

In Phase 2, the *Plan* provides an outline of proposals to allow universities to differentiate the cost of tuition based upon cost of academic programs. Here we would suggest that the *Plan* be amended to indicate that the current tuition caps created by the General Assembly be kept in place so that public universities could use this proposal to decrease, rather than increase, tuition beyond the current caps. This proposal might also lead to disparities in pay scales based on "prestige" programs or the undervaluing of those teaching in "non-prestige" areas.

The *Plan* also introduces a proposal to provide public universities with a waiver on debt related to student housing or a portion thereof. Here our disagreement with the *Plan* should be connected to our concerns over transferring funds into restricted accounts designated for scholarships; the proposals impact the calculating of public university financial ratios generated for the purposes of public accountability. In both cases, the introduction of these changes would

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<sup>9</sup> In Phase 2, this limit is increased to \$500,000 for Enterprise Universities and \$1,000,000 for International Enterprise Universities.

create a discontinuity in the calculation and display of financial information which would negatively impact public university stakeholders' perspective of public university finances and operations.

Although the *Plan* was written in response to a legislative mandate, we should disagree both with the mandate and those aspects of the *Plan* that are outlined above. The central challenge facing higher education is the lack of state funding support in Ohio and elsewhere. This problem has been further compounded by the failure of the current administration in Ohio to keep the Chancellor's Office independent of politics and continue the previous Chancellor's 10-Year Strategic Plan begun in 2008.

While the lure of solving higher education's or a state's budget woes through corporatizing or globalizing institutions of higher education might be appealing to both politicians and administrators—in order to tap private capital and to provide relief for beleaguered state budgets—we should resist efforts to undermine access and affordability, academic freedom, and collective-bargaining rights, and work toward providing more equitable, long-term solutions to our budget woes. We would be well served to keep our eyes on similar experiments in Louisiana, Oregon, Pennsylvania, and Virginia, to discover what positive and negative outcomes these proposals have and how we might best address them in the days ahead.