

THE RISE OF UNACCOUNTABLE POWER: THE FIGHT
FOR SELF-DETERMINATION AT THE UNIVERSITY OF
OREGON

by
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A THESIS

Presented to the Department of Political Science
and the Robert D. Clark Honors College
in partial fulfillment of the requirements for the degree of
Bachelor of Science

June 2015

An Abstract of the Thesis of

Andrew Lubash for the degree of Bachelor of Science
in the Department of Political Science to be taken June 2015

Title: The Rise of Unaccountable Power: The Fight for Self-Determination at the
University of Oregon

Approved: _____
Daniel Tichenor

The creation of the new Board of Trustees at the University of Oregon in 2014, through SB 270, catalyzed a power struggle between University administrators and campus stakeholders that had simmered beneath the political surface for decades. While past literature on university governance has generally focused on its structural implications, this paper explores not only the impact of the structure of the UO Board, but also the political narratives that revealed themselves through open political conflict during the first year of its existence. Drawing on interviews with stakeholders, media accounts, primary documents, and the author's firsthand experience working in the University Senate and in Salem during the 2013 legislative session, this paper reveals the conflicts created between stakeholders with two distinct visions of what excellence looks like at the University of Oregon (UO). Starting with a historical account of major issues facing the UO, this paper first explains the motivations behind the intense lobbying effort to remove UO from the Oregon University System (OUS). It then analyzes the political landscape that existed in Salem during the 2013 legislative session that produced, after significant compromise, SB 270. Next, this paper delves into the political conflicts (e.g. the "Policy on the Retention and Delegation of Authority" and the "Policy on

University Policies”) that have occurred since the Board came to power, and the resulting implications of the Board’s decisions for the future of the University. This paper concludes with a look to the future, commenting on observed patterns, and offering suggestions as to how the Board can avoid future conflict while moving forward.

Acknowledgements

I would like to thank Professor Tichenor, Professor Davidson, Professor Mossberg and Professor Kyr for their consistent support and encouragement throughout this process. Their advice was invaluable and this paper would not be of the quality it is today without their critical questioning and review. I feel extremely grateful that they were willing to take the time to help mentor and guide me through this process as well as my hopes for the future. I would also like to thank my mom, Susanne Lubash, whose generosity has allowed me to pursue my education to the fullest extent possible.

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Acronym Index

AAU – Association of American Universities

AAUP – American Association of University Professors

AFT – American Federation of Teachers

AOI – Association of Oregon Industries

ASUO – Associated Students of the University of Oregon

EOU – Eastern Oregon University

HB – House Bill

HECC – Higher Education Coordinating Commission

IMD – Internal Management Directive

LC – Legislative Concept

OAR – Oregon Administrative Rule

OBA – Oregon Business Association

OBC – Oregon Business Council

OEIB – Oregon Education Investment Board

OHSU – Oregon Health & Sciences University

OIT – Oregon Institute of Technology

ORS – Oregon Revised Statute

OSA – Oregon Student Association

OSU – Oregon State University

OUS – Oregon University System

PBA – Portland Business Alliance

PERS – Public Employee Retirement System

PRDA – Policy on Retention and Delegation of Authority

PSU – Portland State University

PUP – Policy on University Policies

SB – Senate Bill

SBHE – State Board of Higher Education

SEIU – Service Employees International Union

SJR – Senate Joint Resolution

SOU – Southern Oregon University

TFAB – Tuition & Fees Advisory Board

UO – University of Oregon

WOU – Western Oregon University

Introduction

Furious, resentful, and exasperated: three words to describe those in the standing-room-only crowd that had gathered for the Emergency Special Session of the University Senate on December 10th, 2014. To be frank, people were livid. Only days before, members of the University of Oregon (UO) faculty had discovered that the University Administration had again, behind their backs, written a policy that would eliminate shared governance, as it was currently understood at the UO. Without any University Senate consultation, they had drafted a new “Policy on University Policies,” which they planned to pass through the Board of Trustees the next day.

As University Senate President Robert Kyr stepped up to the microphone, the not-so-muffled anger in the audience subsided. His update was uplifting. Since his discovery of the policy, he had worked tirelessly behind the scenes, demanding that Interim President Scott Coltrane fulfill his obligations as “President of the Faculty” by requesting that the Board postpone the vote. Kyr argued that the policy threatened the ability of the University Senate to legislate on academic policies, a right guaranteed by Oregon statute. Coltrane agreed. As Kyr finished reading the written remarks from Coltrane, who could not attend the meeting, the Senators in the audience expressed their gratitude and relief that Coltrane had agreed to remedy the situation. Yet, everyone could sense the feeling of betrayal directed towards university administrators that raged below the surface of each “thank you.” Community member Moshe Immerman stated plainly what everyone in the room was thinking: the University Senate must stand strong in its defense of shared governance and remain “wary of the rise of

unaccountable power,” a rebuke of the Administration and its cozy relationship with new Board.¹

Through research drawn from interviews with stakeholders, media accounts, primary documents, and firsthand experience working in the University Senate and in Salem during the 2013 legislative session, this paper examines the conflicts created by stakeholders with two distinct visions of what excellence looks like at the University of Oregon (UO). After positioning this research within the current academic literature on University Governance, this paper reviews the history of major issues facing the UO. Then, this paper explains the motivations behind the intense lobbying effort for removing UO from the Oregon University System (OUS). Next, this paper analyzes the political landscape that existed in Salem during the 2013 legislative session that produced, after significant compromise, SB 270. This paper then delves into the political conflicts (e.g. the “Policy on the Retention and Delegation of Authority” and the “Policy on University Policies”) that have occurred since the Board came to power, and the resulting implications of their decisions on the future of the University. This paper concludes with a look to the future, commenting on observed patterns, and offering suggestions as to how to move forward to avoid future conflict.

Literature Review

There is a significant amount of scholarship surrounding the implications of university governance structures on different aspects of higher education institutions. While there is a common belief that a higher degree of institutional “flexibility” leads to

¹ <http://senate.uoregon.edu/content/minutes-uo-senate-meeting-december-10-2014—special-emergency-session>

a higher “quality” institution, Volkwein and Malik (1997) found that relative size and wealth of the state in which an institution resides, rather than institutional flexibility, is the driving factor in an institution’s quality. However, other studies have shown that the “degree of centralization” of a state’s higher education system can influence important outcomes such as tuition rates and resource allocation, indicating that less statewide centralization leads to higher reliance on tuition revenues (Knott 2004, Bowen et al. 1997, Lowry 2001). This is because more centralized systems tend to favor statewide political priorities like lower tuition, rather than institutional priorities, such as research funding (Knott 2004). In his analysis of governance structures and trustee selection, Robert Lowry demonstrated that decision makers who are more accountable to the public will tend to favor lower tuition and lower operating budgets for universities more than decision makers who are more insulated from public pressures.

These studies reflect holistic analysis across the higher education landscape, identifying key factors and patterns, while justifying these patterns with national data sets. If Knott’s and Lowry’s findings are accurate, it would suggest that as Oregon’s system of higher education system gets more decentralized, tuition should increase at a higher rate than it did when Oregon utilized the Oregon University System. However, one missing component in both Knott’s and Lowry’s analyses surrounding factors of governance structures is the presence or absence of shared governance at a university. Robert Birnbaum (2003) argues that shared governance, especially the increased role of the faculty in decision-making, improves overall institutional effectiveness. The Oregon case demonstrates the significant impact with which a strong system of shared governance influences policymaking in less centralized systems of governance. As

evidenced by the numerous ways in which the University Senate impacted policy choices of the new Board, clearly the role that faculty play in decision-making should be considered as a factor when looking at holistic patterns of decisions in all of higher education.

Bruce Pardy (2008) also endorses the importance of shared governance in decision making (which he refers to as separation of powers) as inherently necessary to the mission of public universities in their search for new scholarship:

“Separation of powers makes the university's operation consistent with its mandate as a quasi-public institution dedicated to the free inquiry of new and controversial ideas. When consistently applied, it enables the parties within the institution to play complementary rather than conflicting roles in the pursuit of that mandate. When the principle is breached or ignored, university government is liable to be arbitrary and confused, and in conflict with the institution's conceptual foundations. In extreme situations, problematic administration, contentious politics, and excessive bureaucracy result.”

This paper investigates his claim by focusing on the governance controversies plaguing the University of Oregon, as well as the background and legislative history that led to them.

There is also a body of scholarship that discusses the increasing role of corporate influence (i.e. “corporatization”) in higher education governance. In states that have significantly disinvested in their institutions of higher education, universities have looked to private sources of revenue, such as commercialization (Bok 2003) and philanthropy (Weisbrod 2008) to make up the difference. This paper provides significant evidence supporting Weisbrod’s analysis, as one of the primary motivations for the decentralization of university governance at the UO was the increased need to solicit philanthropic donations (Appendix I).

Chapter 1: Background

1.1 Introduction to Shared Governance at the University of Oregon

Beginning with those individuals who survived the Oregon Trail, the people of Oregon have often demonstrated their courage, acting as pioneers for social and political change. In the early 20th Century, the development of “The Oregon System” (i.e. the initiative, referendum, secret ballot, and direct election of Senators) was a hallmark of Progressive Era political reform that worked to empower the general public.² In 1998, Oregonians pioneered the vote-by-mail system.³ Only months ago, they established a new automatic voter registration law.⁴ These policies were all designed to increase the general public’s participation in their democracy, an ideal firmly rooted in the Oregon tradition. Today, that same progressive spirit takes root at the University of Oregon, Oregon’s flagship university, in the form of shared governance. Shared Governance is best codified in what’s known as the “Joint Statement.” The “Joint Statement” defines the fundamental rights and responsibilities of faculty, administrations, and governing boards and their relative roles in university governance. The American Association of University Professors adopted it officially in 1966 and both the American Council on Education and the Association of Governing Boards of University and Colleges recognized it shortly afterward.⁵

² http://www.oregonlive.com/O/index.ssf/2011/03/william_uren_gave_oregon_syste.html

³ http://www.oregonlive.com/opinion/index.ssf/2012/11/a_stormy_election_year_proves.html

⁴ <http://www.kptv.com/story/28533616/gov-kate-brown-signs-motor-voter-automatic-registration-bill>

⁵ <http://www.aaup.org/report/statement-government-colleges-and-universities>

Since the creation of the University Charter during the University's founding, faculty at the University of Oregon have always participated in the policy development and governance of the University.⁶ However, shared governance currently manifests at the UO in the form of a legislative body called the University Senate and its designated committees. In late 2011, as UO President Richard Lariviere was on his way out after being fired by the State Board of Higher Education (SBHE), he agreed to ratify both the newly drafted University Constitution and the Policy on Policies at the request of University Senate President Robert Kyr. In doing so, he codified critical protections for the role of the University Senate and its five member constituencies (i.e. statutory faculty, students, Officers of Administration, Officers of Research, and Classified Staff) in the development of academic policies that had existed more informally for years. This ensured that faculty and other campus constituencies would have clear authority over developing policies related to academic matters as commonly understood in American higher education (i.e. issues such as curriculum, textbooks, admissions requirements, and tenure status) among others.

University Senate President Robert Kyr explained that the University Senate “represents the entire university community” and allows for a “form of shared governance in which all constituencies fully participate in a process of decision-making that respects the basic human right of self-determination.” He further explained that the University Senate “does not give authority to one constituency – such as a class of administrators or managers – as a way of silencing or excluding other constituencies”⁷ despite the fact that all its authority stems from the Faculty Assembly whose power is

⁶ <http://senate.uoregon.edu/content/governance-documents>

⁷ Kyr, Robert. Personal Interview. 12 May 2015

enshrined in statute. The University Charter, later codified by Oregon Revised Statute (ORS) 352.010, describes the policymaking role of the faculty:

“The president and professors constitute the faculty of each of the public universities listed in ORS 352.002 and as such have the immediate government and discipline of the public university and the students therein... The faculty may, subject to the supervision of the board under ORS 351.070, prescribe the course of study to be pursued in the public university and the textbooks to be used.”⁸

At the UO, this language has been interpreted over the years to allow for faculty governance over all academic-related policy making. However, now that SB 270 has become law, introducing a new Board of Trustees with significant policymaking authority, it remains unclear just how the political dynamics of the campus may change over the next few years, especially as they relate to shared governance. Many aspects of shared governance have already changed. According to Kyr, the University Senate’s “most heated disagreements with the administration and the Board of Trustees arise when it appears that [the University] is departing from the cherished principle of self-determination, which is at the heart of the University Charter, the University Constitution, and the Policy on Policies.”⁹

⁸ <http://www.oregonlaws.org/ors/352.010>

⁹ Kyr, Robert. Personal Interview. 12 May 2015

1.2 Discussion of History Leading up to the 2013 Legislative Session

The University of Oregon has served Oregon residents since 1876, seventeen years after Congress formally recognized Oregon as a state.¹⁰ However, since founding the University, the State of Oregon has fallen behind in its ability or willingness to adequately fund it. Compared to other public universities in the Association of American Universities (AAU), the UO ranks 30th out of 30 in state funding per Full Time Employee (FTE) at only \$4,071. In comparison, the University of Washington (UW) receives support from the state of Washington by over double that amount (\$8,876/FTE) and still the UW only places 23rd on the list.¹¹ Recognizing Oregon's shortcomings in this area, with SB 253, Governor Kitzhaber redefined the mission of Oregon's higher education system, as a "40-40-20 goal" – declaring an intention that by 2025, "40 percent of all adult Oregonians have a bachelor's degree or higher, 40 percent have earned an associate's degree or post-secondary credential and 20 percent have a high school diploma or the equivalent."¹²

Multiple legislators recognized the impossibility of the new goals and criticized them for their idealism. Rep. Hicks (R - Grants Pass) likened the goals to "the president declaring he wants to land a man on Mars when NASA doesn't have the infrastructure to put a man on the Moon..."¹³ Rep. Greenlick (D - Portland), a champion for higher education funding, claimed that if the legislature was actually serious about these goals, higher education would have received a substantially higher budget than they ultimately

¹⁰ <http://uoregon.edu/our-history>

¹¹ <http://newpartnership.uoregon.edu/blog/2010/05/12/the-white-paper-introduction-and-oregons-public-responsibility-regarding-higher-education/index.html>

¹² http://www.oregonlive.com/education/index.ssf/2011/06/oregon_legislature_adopts_loft.html

¹³ http://www.oregonlive.com/education/index.ssf/2011/06/oregon_legislature_adopts_loft.html

got. The bill became law in 2011, directing administrators to achieve the lofty goal. Quickly realizing the impossible nature of the task of reforming Oregon's system of higher education without significant reinvestment by the state, university presidents had already begun brainstorming their own proposals, utilizing the new benchmark to their advantage.

With the hiring of President Richard Lariviere, the University of Oregon's sixteenth President¹⁴, in 2009, the UO was introduced to a brand new style of governance. After spending the majority of his career at the University of Texas - Austin, Lariviere brought to Oregon a strong sense of independence and big ideas for change. Less than a year into his presidency, Lariviere proposed his New Partnership initiative, calling for three main reforms: a new financial partnership with the state of Oregon, governance reform, and increased accountability.¹⁵ Lariviere pushed on, despite calls from other higher education officials, including members of the Oregon University System (OUS), to be patient and wait for reforms giving all seven OUS institutions more autonomy to pass the Oregon Legislature. The rationale for Lariviere's New Partnership plan, according to Robert Kyr was that:

“In the nineties, the University of Oregon was being not-so-slowly bled to death as a means of financially supporting the other universities within the OUS. At one of the UO's annual deans' and directors' retreats, we were told that our university was paying roughly forty cents of each dollar collected in order to underwrite the system. I can still remember

¹⁴ <https://president.uoregon.edu/content/presidential-history>

¹⁵ <http://newpartnership.uoregon.edu/blog/2010/05/12/the-white-paper-introduction-and-oregons-public-responsibility-regarding-higher-education/index.html>

the gasps, followed by stunned silence, when this was announced. And equally unconscionable was the state's gradual divestment in public education. It was a double whammy: with one hand, the state practiced a "death-by-1000-cuts" policy by gradually defunding education, while with the other hand, it used [the UO] as a cash cow to cover [its own] failure to provide essential support for the education of its children, the future of the state. Is it any wonder that Richard Lariviere saw the tragedy in this and proposed 'The New Partnership'? This is one reason why he struggled so hard to correct the inherent wrongs of OUS before the system collapsed."¹⁶

Because of this, the New Partnership focused with laser-like precision on the new 40-40-20 mission of Oregon's higher education system. The plan identified that in order to meet the goal by 2025, Oregon would need a 66.1% increase in annual production of associate and bachelor's degrees produced by the public higher education system.¹⁷ It was a wakeup call to legislators with lofty goals, but without the money to back them up. Taking a proactive approach, Lariviere brainstormed new ways that the state could invest in the University of Oregon without having to raise taxes. The 2009 recession made clear to both legislators and higher education administrators that Oregon's volatile taxation system, which relies heavily on a state income tax, often leads to unpredictably low general fund allocations to Oregon's higher education institutions. A chart depicting this volatility is shown in Appendix A.

¹⁶ Kyr, Robert. Personal interview. May 12 2015

¹⁷ <http://newpartnership.uoregon.edu/blog/2010/05/12/the-white-paper-introduction-and-oregons-public-responsibility-regarding-higher-education/index.html>

To help mitigate this issue, Lariviere’s proposal recommended a “new fiscal partnership” between the UO and the state of Oregon, which included a blueprint for a public endowment system. The plan suggested that the state of Oregon sell \$800 million in thirty-year bonds at seven percent interest to create this quasi-public endowment. It would cost the state approximately \$64.5 million in annual debt service, which is what the state allocated to the UO during the 2009-2010 fiscal year. The plan also implied that this \$800 million would be matched by \$800 million provided in private donations, creating a \$1.6 billion endowment. The thirty-year plan for the endowment and its earnings is provided in Appendix B. By the end of the debt service, the plan projected the endowment to reach approximately \$7 billion. This would have satisfied the funding problem that has continued to plague the UO in terms of state funding.

Alongside this economic plan, the New Partnership proposal also identified governance reform and increased accountability in its reform. Citing the scholarship of Aimes McGuinness, the New Partnership suggested that Oregon move from a model with only a consolidated, statewide governing board (like Arizona, Iowa, Mississippi, South Dakota and Wyoming) to a model like that of Washington or Virginia that would combine a state-level coordinating board with more locally accountable governing boards for each of Oregon’s four-year institutions. The plan suggested that this method would increase accountability by allowing the coordinating board to focus on educational outcomes while the University was granted a certain freedom over governing and budget decisions.

During this same time frame, the Oregon University System also suggested changes. The OUS Governance and Policy Committee created recommendations in a

document titled, “Considerations for Change,” offering their analysis for how the legislature could restructure higher education governance in order to meet the needs of modern day Oregonians. The proposal argues for a transition of OUS from state agency status to a new “public university system” status that would essentially model the same status granted to community college districts.

OUS claimed that this exemption would increase autonomy in the higher education system in ways that would yield greater results for the state. OUS pointed to 2009 when the state legislature was able to “divert [\$33 million in] university resources and reserves to help balance the state’s general fund budget.”¹⁸ They claimed that the legality of this action was a direct result of OUS having state agency status. Oregon’s community colleges were not stripped of funding in this way. Also, because of their state agency status, Oregon’s universities were forced to participate in Oregon’s employee benefit plans. OUS claimed that this led to “abnormally low (and noncompetitive) faculty salaries as universities have tried to find ways to pay for those mandated benefits.” OUS also pointed to the fact that they could not “retain the earnings on investing the tuition, room, board, and other fees paid by students, but must turn them over to the state government.” This, they claimed, yielded a benefit to the state of about \$2 million per year from student payments to their universities. Again, this was contrasted with community colleges, which are not subject to this provision due to their non-agency status.

In order to reform this system, OUS proposed that the legislature confer on them a new legal status similar to that of Oregon’s community colleges. They proposed that

¹⁸ http://www.ous.edu/files/state_board/meeting/dockets/ddoc100624-GPC6.pdf

in this new system, the State Board of Higher Education (SBHE) would remain a public body, still appointed by the Governor and subject to Senate confirmation. In contrast to the New Partnership, OUS advocated for the continuation of a statewide system with the option of the SBHE creating local boards with select authorities and powers delegated to them by the SBHE if they so chose. OUS claimed that in this model, “institutions have means to achieve the statewide public goals of the Board within the public policy framework that the Board establishes and in fulfillment of the Board’s agreements with the state, and not as stand-alone entities with their own independent agendas.” This came in direct response to Lariviere’s proposal to separate the University of Oregon from the system as a whole.¹⁹

In late 2010, both the OUS plan and Lariviere’s New Partnership were presented to the Legislative Higher Education Working Group in preparation for the 2011 legislative session.²⁰ Shortly afterward, Senate Education Committee Chair Mark Hass introduced SB 242, which included many of the recommendations from the OUS plan.

The New Partnership legislation, SB 559, granting independence and autonomy to the UO, and SJR 20, allowing the state to borrow funds to partially establish endowments at public universities, were introduced by Sen. Edwards (D - Eugene) and sponsored by the entire Eugene delegation. Both New Partnership bills had a public hearing on March 1st, 2011, but it was clear there was not much support beyond Eugene. Neither made it out of the Senate Education Committee.^{21,22}

¹⁹ http://www.ous.edu/files/state_board/workgroups/gpc/GovernanceProposalJulyOSBHEdocket.pdf

²⁰ <http://newpartnership.uoregon.edu/history/>

²¹ <https://olis.leg.state.or.us/liz/2011R1/Measures/Overview/SB559>

²² <https://olis.leg.state.or.us/liz/2011R1/Measures/Overview/SJR20>

Governor Kitzhaber played a significant role in negotiating the legislative brawl that was ensuing between Lariviere and OUS, while enacting his own higher education reforms. Tension was building in the legislature as legislators were getting mixed messages from both parties and were unsure of the best solution. "People were coming to this issue, saying 'Which one should we do?'" said Sen. Hass in an interview with *The Oregonian*.²³ In a letter from Kitzhaber to Lariviere during the 2011 legislative session, after it was clear the New Partnership legislation had died, Kitzhaber thanked Lariviere for yielding his New Partnership push for a year so as to work more collaboratively with other stakeholders around the issues of governance and higher education funding.²⁴ He also thanked Lariviere for working with him to support SB 909 and SB 253, which established the Oregon Education Investment Board (OEIB) and revised the mission of higher education to reach Oregon's 40-40-20 goals.

With the Governor working as a facilitator of holistic higher education reform in Oregon, SB 242, SB 909, and SB 253 all became law. However, it was clear that many more legislative proposals were coming to further reform Oregon's higher education system and that Lariviere would hold Gov. Kitzhaber to his implied promises. On December 1st, Kitzhaber announced in a letter to the Oregon Education Investment Board (OEIB) that he intended to "advance the development of an option by which universities could establish independent governing boards with clearly demarcated powers."²⁵

²³ http://www.oregonlive.com/education/index.ssf/2011/12/the_rise_and_fall_of_richard_1.html

²⁴ <http://newpartnership.uoregon.edu/files/2011/03/Kitzhaber-letter-to-Lariviere-3.29.11.pdf>

²⁵ <http://newpartnership.uoregon.edu/files/2011/12/Governor-letter-to-OEIB-12-1-11.pdf>

The last months of 2011 proved pivotal in the discussion around issues of autonomy for higher education institutions. In the months following the legislative session, Lariviere had continued his streak of independence and blatant disregard for the SBHE. In direct defiance of the Chancellor's Office and the direction of the Governor, Lariviere increased the wages of 1,300 tenured faculty and administrators in order to maintain competitiveness with other universities around the country.²⁶ Anticipating more independent behavior from Lariviere, the SBHE renewed his contract for only a year. This new act of defiance created leverage for faculty at other OUS institutions who also demanded raises and caused significant problems for the Chancellor's office. In November, Chancellor Pernsteiner recommended to the board that Lariviere be terminated as the President of the University of Oregon. The Governor also weighed in, saying in a statement, "Dr. Lariviere's actions have done damage to our vision for higher education and other institutions of higher learning" and that if the SBHE were to fire him, "it would be fully justified."²⁷ The board unanimously terminated Lariviere on November 28th, 2011. Robert Berdahl took over in December as the UO's Interim President.

While Lariviere's career at the University of Oregon may have perished because of his actions, his ideas thrived. In December of 2011, mere months after the end of the 2011 legislative session in which the New Partnership legislation had died almost immediately, Governor Kitzhaber wrote a letter to the SBHE Governance and Policy Committee, recommending a host of governance changes to higher education, including

²⁶ http://www.oregonlive.com/education/index.ssf/2011/09/university_of_oregon_gave_pay.html

²⁷ http://www.oregonlive.com/education/index.ssf/2011/11/gov_john_kitzhabers_statement.html

local institutional governing boards for some OUS universities.²⁸ In this way, he fulfilled his end of the bargain with Lariviere, beginning the push for more autonomy for the University of Oregon.

During the 2012 short legislative session, the University of Oregon pushed again for its New Partnership legislation, under the guidance of Robert Berdahl through HB 4086. The bill again never made it out of committee.²⁹ However, HB 4061, a bill establishing the Special Committee on University Governance, passed and became the next (albeit small) step forward for the University of Oregon's quest for more autonomy.³⁰ The Committee consisted of 10 members (4 State Senators, 4 State Representatives, and 2 OEIB members). It was tasked to "recommend legislation for the creation of local governing boards at public universities" during the 2013 legislative session.³¹ According to Heidi Hall, Sen. Hass' Chief of Staff, the most important contribution of the Special Committee was that it made "the issue something everyone was aware of and that people on both sides of the aisle were interested in."³² On October 4th, 2012, the Joint Special Committee on University Governance unanimously passed its recommendations in the form of LC 759.

1.3 Major Players in Oregon Legislature on Higher Education Issues

Before discussing and analyzing the political battles taking place during the 2013 legislative session regarding higher education governance reform, it's important to firmly grasp the major political players who were invested in the outcome or played

²⁸ <http://newpartnership.uoregon.edu/files/2011/12/Governor-letter-to-OEIB-12-1-11.pdf>

²⁹ <https://olis.leg.state.or.us/liz/2012R1/Measures/Overview/HB4086>

³⁰ <https://olis.leg.state.or.us/liz/2012R1/Measures/Overview/HB4061>

³¹ <https://olis.leg.state.or.us/liz/2012R1/Downloads/MeasureDocument/HB4061/Enrolled>

³² Hall, Heidi. Personal Interview. 22 January 2015

significant roles in the discussions. These main players consisted of: the business lobby, the labor lobby, major donors, students, institutions, and certain elected officials. This section will detail their relative roles in the crafting of SB 270.

The Business Lobby

The multiple business lobbies are among the most powerful lobbies in Salem. They played an important role in the advocacy for SB 270 and the fight for institutional boards. The main business lobbying organizations are: the Oregon Business Association (OBA), Associated Oregon Industries (AOI), Portland Business Alliance (PBA), and Oregon Business Council (OBC).

OBA represents over 250 corporations that dramatically range in size and business type. They represent companies as large as Nike, NW Natural, and PGE, while also representing homegrown businesses like Sokol Blosser Winery and New Seasons.³³ Members of their Board of Directors include representatives from Columbia Sportswear, Nike, Bank of America, and Intel. According to a Capitol staffer, they are generally regarded as the “biggest” business lobby in Oregon and generally tend to be relatively moderate.³⁴ Andrew Colas, President of Colas Construction, sits on the OBA Board and was eventually appointed by the Governor to sit on the UO Board of Trustees as well.

Business interests profess to care deeply about access and affordability of higher education, as both issues relate directly to workforce development. AOI advertises that

³³ <http://www.oba-online.org/about/>

³⁴ Anonymous interview. 12 February 2015

they support making “college more accessible and affordable for all students, including populations that have not traditionally participated in the post-secondary system” on their website.³⁵ It was with this ambition in mind that these four business associations lobbied enthusiastically for the transition in governance embodied in SB 270. The creation of new institutional boards at universities, with trustee members who largely hailed from the business world, likely would work to advance the interests of the business community more effectively than the OUS previously had. Also, with the continued failure of the State Legislature to appropriately invest in its higher education system, business leaders believed that the move to new governing boards, as proposed by the UO, would yield a significant increase in philanthropic giving.

The Labor Lobby

The main labor involvement came from the American Federation of Teachers (AFT) and the American Association of University Professors (AAUP), both of whom represent faculty, and the Service Employees International Union (SEIU) which represents classified staff at the UO. During this same time frame, faculty members at the UO were attempting to unionize through the AFT and AAUP. Labor unions represent the strongest political supporters of Democrats in Salem, like they do in most state capitals. Every election they donate hundreds of thousands of dollars in order to maintain their influence. That being said, the unions had influential allies in certain key legislators, like Rep. Dembrow (D – Portland) and Rep. Buckley (D – Ashland) on

³⁵ <http://www.aoi.org/pub-pol/education-workforce-development/>

issues relating to Institutional Boards. Whereas other Democrats, like Sen. Hass (D – Beaverton) remained more sympathetic towards business during this process.

Major Donors

Major donors played an enormous role in pushing the issue of institutional boards to the front and center of Kitzhaber’s education agenda. After all, many of them had the most to gain if the legislation were to pass. Making it easier for the University of Oregon to utilize bonds for capital construction was a top priority for both the UO and likely for the major donors as well.

Of all the major philanthropic and political donors in Oregon, Phil Knight, founder of Nike, and UO philanthropist, likely pushed the hardest in trying to establish a new independent board. He had been advocating for more independence for the UO for years and firmly stood by President Lariviere after the Governor and Chancellor fired him. When interviewed by *The Oregonian*, Knight claimed the termination was “yet another application of Oregon’s Assisted Suicide law,” insinuating that the Governor (who is a physician) was killing the University of Oregon through Lariviere’s ousting.³⁶ Yet, interestingly enough, after Lariviere’s firing, Kitzhaber came out strongly in favor of institutional boards. And during the 2014 election, the year after SB 270 passed (as well as the year of a special session called specifically for Nike), Knight donated \$250,000 to the Governor’s re-election campaign.³⁷ During Kitzhaber’s

³⁶ http://www.oregonlive.com/education/index.ssf/2011/11/phil_knight_on_lariviere_firin.html

³⁷ <https://secure.sos.state.or.us/orestar/gotoPublicTransactionSearchResults.do?cneSearchButtonName=search&cneSearchPageIdx=&cneSearchContributorTypeName=&cneSearchTranTypeName=&cneSearchTranSubTypeName=&cneSearchTranPurposeName=&cneSearchFilerCommitteeId=&cneSearchFilerCommitteeText=&cneSearchFilerCommitteeTextSearchType=C&cneSearchTranStartDate=&cneSearchTranEndD>

previous election, he contributed \$400,000 to his Republican opponent.³⁸ This represented quite a change of heart, a net change of \$650,000.

A group of major donors also created a super PAC called Oregonians for Higher Education Excellence to put pressure on the Governor and legislators to act on institutional boards. The “Nature of the Committee” description listed on the Secretary of State’s website describes the goal of the PAC was “to support a restructuring of the Oregon University System so as to empower any member university to elect to put in place a governance model that may enable it better to serve the goals of higher education.”³⁹ The major donors listed as giving over \$50,000 to the PAC were: Phil Knight, Chuck Lillis, Andrew Berwick, Patrick Kilkenny, Timothy Boyle, and Edward Maletis. Donald Tykeson and John Von Schlegell also contributed \$30,000 and \$25,000 respectively.⁴⁰ The point of the PAC was likely to threaten taking the issue to the ballot if legislators again failed to pass institutional board legislation. Interestingly enough, many of these donors (Lillis, Kilkenny, and Burwick) are actually from out of state, not Oregonians, as the title of the PAC declares.

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³⁸ http://blog.oregonlive.com/mapesonpolitics/2010/10/phil_knight_gives_dudley_anoth.html

³⁹ <https://secure.sos.state.or.us/orestar/sooDetail.do?sooRsn=76797>

⁴⁰

<https://secure.sos.state.or.us/orestar/cneSearch.do?cneSearchButtonName=search&cneSearchFilerCommitteeId=15708>

Students

The Oregon Student Association (OSA) represents over 100,000 students at Oregon's public higher education institutions. Its members include students from: the University of Oregon, Oregon State University, Portland State University, Eastern Oregon University, Western Oregon University, Southern Oregon University, and Lane Community College. While it does not make campaign contributions to candidates, OSA can support or oppose legislation. Its members also derive power from their ability to register voters in many legislators' districts. In 2010, OSA registered more voters than Governor Kitzhaber won his election by and in 2012, OSA registered over 50,000 students to vote, more voters than any other organization in the state. Students played a role in advocating for incidental fee protections, as well as negotiating board composition issues and the cap on tuition & fees.

Higher Education Institutions

The University of Oregon played a critical role in shaping the concept of institutional boards and the relevant legislation from the outset. While instituting the New Partnership plan was just a failed first step, that setback led to discussions of university governance structures that, in turn, eventually led to SB 270. Lobbyists from the UO and PSU were integrally involved in advocating for more institutional freedom in all aspects of the legislation. Generally they opposed anything that statutorily limited their ability to do anything.⁴¹ This became an issue surrounding bonding powers for the

⁴¹ Anonymous. Personal Interview. February 2015

university and the relative powers of the board when compared to the oversight and coordinating powers of the Higher Education Coordinating Commission (HECC).

Elected Officials

The Governor and specific legislators played key roles in negotiations over SB 270 and higher education governance reform during the 2013 legislative session. Most importantly, the Chairs of the respective education committees (Rep. Dembrow & Sen. Hass) as well as the legislative leadership (Speaker Kotek, President Courtney, and Ways & Means Co-Chair Buckley) greatly influenced the ultimate compromises within the legislation. Analyzing each elected official and their stake in the legislation is important in order to comprehensively understand how SB 270 was formed.

The Governor had a massive education agenda. His primary goals were reflected in SB 242's attempt to move the state towards the 40-40-20 plan. However, he also was very much an "activist" governor in revamping the entire structure of Oregon's higher education system. He was very invested in streamlining lines of accountability and reforming the Higher Education Coordinating Commission (HECC). His office played a critical role in ensuring that HB 3120, the "HECC Bill" passed both legislative chambers. His office was also watching closely over SB 270, which was a much more controversial piece of legislation than HB 3120. After the 2011 session's negotiation with former UO President Lariviere, Governor Kitzhaber came out in support of increased autonomy for some of Oregon's universities through the creation local governing boards. This was likely due to the pressures placed on him to find ways of funding Oregon's universities other than through Oregon's General Fund, as well as

political re-election pressures weighing on him from rich donors like Phil Knight and the prospect of a UO-specific referendum creating a local board.

Senator Hass, the Chair of the Senate Education Committee, played a critical role in shaping SB 270 and ensuring its passage through the legislature. He was quite close with the Governor and works hard to craft bipartisan legislation, ensuring unanimous passage out of his committee, rather than partisan votes. Hass represents Beaverton and tends to lean towards the more conservative side of the Democratic caucus on issues related to business and labor.⁴² However, he is probably the biggest champion for education funding in the Senate and makes decisions favoring those that will get schools the most money. The belief that SB 270 would lead to more private, philanthropic giving, which would provide a solution to the state's continued disinvestment in higher education, played a key role in his support for the legislation.

On the other side of the ideological spectrum within the Democratic party, Representative Dembrow, Chair of the House Higher Education Committee played a much stronger role in passing HB 3120, but also drew the conversation around SB 270 to the left. While SB 270 never went through his committee, Dembrow advocated strongly for the inclusion of campus stakeholder appointments to the new boards and likely advocated that Buckley alter the legislation when it was in the Ways & Means Committee. Dembrow represents a very blue district in Portland and has very strong ties to labor and students, so this should not be surprising. His concerns over the legislation primarily matched those voiced by faculty and students from the various institutions offered boards.

⁴² Anonymous. Personal Interview. February 2015

Evidence from interviews with legislative staff members and lobbyists suggests that Speaker Kotek and President Courtney played only a tangential role in the creation of the legislation, but were much more influential in its ultimate passage. A key role of both legislative leaders was the responsibility to mediate the disagreements held by their respective committee chairs (Dembrow and Hass) and ensure that both SB 270 and HB 3120 passed their respective chambers, as supported by the Governor. By assigning the other house's bill to Ways & Means, and bypassing their chamber's policy committee, they ensured a smoother passage to the Governor's desk.

However, the decision to send both bills to Ways & Means, it gave the Co-Chairs of Ways & Means, Rep. Buckley and Sen. Devlin, significant authority in editing the compromises reached in both bills. Buckley represents a district in Southern Oregon that includes Southern Oregon University, making him keenly aware of concerns from the regional universities. This sensitivity was evidenced by his actions on easing the pathway to local governing boards for the regional universities. Buckley also has strong ties to labor and has been an ally to the Oregon Student Association in the past. His advocacy for stakeholder inclusion on the governing boards largely resulted in their presence in the final version of SB 270, despite objections from Sen. Hass and Republicans.

Chapter 2: Senate Bill 270

2.1 Outline of Legislative Journey

On January 14th, 2013, SB 270 was introduced in the Oregon State Senate at the request of its Interim Committee on Education and Workforce Development. Much of the preliminary language was based on the recommendations put forward by the Joint Special Committee on University Governance established in LC 759.⁴³ Sen. Hass, who chaired the Joint Special Committee on University Governance, also chaired the Senate Education Committee during the 2013 legislative session. He was the main shepherd of SB 270 through the legislative process.

On February 7th, SB 270 had its first public hearing, giving the public time to address concerns with the legislation. The Oregon Student Association (OSA) was among the first to testify regarding their key issues with the bill. Among their primary concerns were: (1) maintaining authority given to the Higher Education Coordinating Commission (HECC) (2) ensuring that tuition-setting power is retained by elected officials (3) codifying the caps to increases to tuition/fees increases in statute (4) maintaining student representation on governing boards and (5) preventing any negative impact of these changes on Oregon's regional campuses. OSA came out strongly against the addition of local governing boards at UO and PSU, specifically because there were no mechanisms to keep them "accountable to all Oregonians."⁴⁴

In contrast to OSA, the Oregon Business Association (OBA), one of the strongest lobbies in Salem, came out in support of SB 270 as it related to achieving the

⁴³ <https://olis.leg.state.or.us/liz/2013R1/Downloads/MeasureAnalysisDocument/22690>

⁴⁴ <https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/1867>

Governor's 40-40-20 goals. They argued that SB 270 represented a tight/loose model consistent with the business community ideology of "tight on outcomes - loose on how institutions achieve those outcomes."⁴⁵ Their support was not surprising, as SB 270 represented a major shift from a centralized, statewide governance structure, towards a less centralized, more corporate model of governance for institutions that wanted local boards.

The third major public comment came from Matt Donegan, chair of the State Board of Higher Education (SBHE) and a member of the Joint Special Committee on University Governance. After giving a brief history of the legislation, Mr. Donegan outlined two advantages of having local institutional boards: (1) increased ability to solicit financial resources and (2) more direct advice from boards that are focused solely on their institutions rather than a statewide entity. He also noted that the Joint Special Committee found that Oregon might benefit from allowing institutions to have local boards given that they:

- Provide transparency, public accountability and support for the university.
- Are close to and closely focused on the individual university.
- Do not negatively impact public universities that do not have institutional boards.
- Lead to greater access and affordability for Oregon residents and do not disadvantage Oregon students relative to out-of-state students.
- Are similar to the State Board of Higher Education in composition, constitution and transparency.

⁴⁵ <https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/1869>

- Have a dual fiduciary responsibility to the university and to the State of Oregon as a whole.
- Promote the academic success of students in support of Oregon achieving the statutory goal of 40-40-20.⁴⁶

These criteria represented the bedrock of the Joint Special Committee on University Governance's recommendations for institutional boards reflected in their support of LC 759, which eventually became SB 270.

The last major testimony during the first public hearing of SB 270 came from Marc Nisenfeld, representing the Service Employees International Union (SEIU) 503. SEIU came out strongly against SB 270. Nisenfeld identified the key issues of: (1) increased cost of bureaucracy, (2) increased cost of administrative bloat at universities, and (3) the lack of statewide oversight on tuition increases. He also mentioned that if these institutions were granted local boards, stakeholder groups such as students, faculty, and staff should have voting representation on the board. The issue of board composition would become a key controversial issue as the legislation moved forward through the legislative process.⁴⁷

During the second public hearing, labor groups, through SEIU and the American Federation of Teachers (AFT) again testified against SB 270. AFT-Oregon signaled that they would prefer to maintain the current structure of governance through the Oregon University System. They also brought up a key point, in that switching governance

⁴⁶ <https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/1868>

⁴⁷ <https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/1871>

structures would not fix the general problem of disinvestment in higher education by the state of Oregon. Both groups also again brought up the issue of faculty representation on the new institutional boards if the bill were to become law.⁴⁸

At the end of this hearing, it had become evident that this legislation was shaping up to be a fight between business interests and labor interests. This was best exemplified by the quickly deteriorating relationship between Rep. Dembrow, who chaired the House Higher Education Committee and Sen. Hass, Chair of the Senate Education Committee. While Hass shepherded SB 270 through the legislature, Dembrow focused on HB 3120, strengthening the role of the HECC. In this case, Dembrow represented and advocated the pro-labor position and Hass advocated the pro-business position, which matched their general leanings on either side of the Democratic Caucus. According to a source close to both, neither legislator worked with the other on their respective bills or even expected the other's to pass through both chambers.⁴⁹

On March 28th, UO President Gottfredson testified in favor of SB 270. Among his comments, he identified that having an institutional board would allow the UO to tap into greater philanthropy to support the academic mission of the university. He pointed to Oregon Health & Sciences University (OHSU) as an example of a successful institution with a public institutional board.⁵⁰ OHSU received its own board in 1995 thanks to SB 2 which allowed it to redefine itself as a “public corporation.” OHSU has a 10-member board, with nine of the members being governor-appointed, including an

⁴⁸ <https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/5169>

⁴⁹ Anonymous interview. February 2015

⁵⁰ <https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/17440>

OHSU student and a member of the OUS board, and the tenth member being the OHSU President.⁵¹ Gottfredson argued that he would like all of Oregon's institutions to achieve the same renown that OHSU has achieved since the implementation of its new board. He also indicated that the UO supported "the appointment of a student as a voting member of the UO Board" and that faculty should also be represented in some capacity, though ex-officio or non-voting status might be most appropriate.

On April 18th, the final work session for SB 270 was held and the -5 Amendments were adopted. The PSU American Association of University Professors (AAUP) testified in support of having two faculty, one staff, and two students on each of the boards.⁵² This is not what ended up in the final iteration of the bill before it was passed out of the Senate Education Committee in a unanimous 5-0-0 vote. It then was voted on by the Oregon Senate and passed 23 - 7.

Because SB 270 had a fiscal impact, after passing out of the Senate Education Committee, Speaker Kotek sent it to the Joint Committee on Ways & Means. This would be the only time members of the Oregon House of Representatives would hear SB 270 in committee before it would move to the floors of both houses of the Oregon Legislature. It would not be sent to Dembrow's House Higher Education Committee and Dembrow's HB 3120 would not be sent to Hass' Senate Education Committee. This was likely due to the fact that it was getting late in the session and Senate and House leadership were aware of the vast chasm of disagreement between Hass and Dembrow. They likely sent both bills directly to Ways & Means to ensure they had the best likelihood of becoming law. If they were sent to the other's policy committee, they

⁵¹ <https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/5868>

⁵² <https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/19882>

likely would come out extremely amended or would have died there and neither would have become law.

During the hearing of both bills in the Joint Committee on Ways & Means, Sen. Hass testified in support of SB 270. He outlined the more controversial aspects of the bill and how the Senate Education Committee ended up at the compromises that it did. There were many controversial aspects of this complicated bill: however, three main areas of controversy emerged as the most significant in terms of complicating the bill's passage into law. These were: (1) which universities were to be given institutional boards, (2) what would the relative powers of these boards be as compared to the HECC, and (3) who should sit on these new boards. He described how long this legislation had been worked and reworked by the committee and strongly advised that little to no policy changes occur due to the fragile nature of the legislation. He stated that "one change in one section may have unintended consequences in another section" of the bill and suggested that if any changes were to be made, the committee should "be very, very careful."⁵³

Following Sen. Hass, the Oregon business community made a strong appeal to the Committee. The four presidents of Oregon's four largest business associations: the Associated Oregon Industries, the Oregon Business Association, the Oregon Business Council, and the Portland Business Alliance, all signed a joint letter conveying their "strong support" for both SB 270 and HB 3120. They conveyed how the bills both worked to streamline public post-secondary education in Oregon and would work to contribute to Oregon's 40-40-20 goals.⁵⁴

⁵³ <https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/25925>

⁵⁴ <https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/26018>

Next, students and labor leaders began testifying on the legislation. For the most part, students representing the official student government at each university adopted the position their institution had throughout the session. The exception to this, was the PSU student government⁵⁵ and select students from UO who testified against SB 270⁵⁶, despite strong support from their institutions. The AFT again testified against SB 270, repeating the same arguments as they had during the hearings in the Senate Education Committee (i.e. lack of faculty representation on boards, impact on regional universities, the added costs of implementing the new boards, and concerns regarding tuition costs).⁵⁷

The next public hearing for SB 270 was held on May 29th. Peter Keyes, a faculty member from the University of Oregon testified in favor of giving the UO an institutional board, but brought up some significant concerns with the current draft of SB 270.⁵⁸ In regards to shared governance, he explained how SB 270 did not go far enough in protecting the status quo of governance at the UO. While the University Charter, which grants certain rights and responsibilities to the faculty, is incorporated in Section 18 of the bill, many of the developments since 1876, when it was written, are instead codified in Oregon Administrative Rules (OARs) and OUS Board Internal Management Directives (IMDs). While SB 270 keeps these policies intact, for now, Keyes said, it does not enshrine them into law. This essentially gives the new Boards of Trustees the power to revoke them at any point. He warned that, for all intents and

⁵⁵ <https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/25931>

⁵⁶ <https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/25924>

⁵⁷ <https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/25787>

⁵⁸ <https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/27071>

purposes, the new Boards could abolish shared governance over the objections of the faculty and the President.

He also brought up the issue of board composition, albeit through a different lens. While labor and students largely fought for specific stakeholder positions on the boards, he argued that the process of selecting the board members should be “expanded and made more rigorous” like the process for selecting OHSU board members. He argued that it seems strange that “the UO puts about 100 times more effort and diligence into hiring an assistant professor on a three-year contract than is proposed [in SB 270] for appointing a trustee of the University.”

On June 28th, Ways & Means held its work session for SB 270 and adopted the -A23 amendments and passed the bill out of committee. These amendments changed two major aspects of the bill. The amendments clarified that there would be a student voting member on each board as well as a faculty member and a staff member on each board, who, at the discretion of the governor, would be made either a voting or nonvoting member. Second, these amendments gave the regional schools (EOU, WOU, SOU, and OIT) the ability to form their own governing board, if approved by the HECC, and the timeline for those changes.⁵⁹

After SB 270 passed out of Ways & Means, Representative Buckley carried it on the floor of the Oregon House of Representatives, where it passed 44 - 15 on July 6th. Two days later, it passed again in the Senate. This time, the vote was 25 - 4. On August 14th, 2014, Governor Kitzhaber signed SB 270 into law.

⁵⁹ <https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/29551>

2.2 Biggest Issues and Controversies of Senate Bill 270

Who Gets a Board?

When SB 270 was initially introduced, only the University of Oregon was demanding a new institutional board, as it had been for years. Portland State University quickly joined the cause and began advocating for SB 270 and their own board as well. This dynamic, with UO and PSU wanting boards and Oregon State University along with the regional schools (EOU, SOU, WOU, OIT) all advocating against the passage of SB 270 lasted the majority of the session. OSU and the regional schools generally were in favor of a stronger centralized system, because instituting the changes in SB 270 would change the position of each university relative to all of the others. It is likely that OSU believed they would be better off if all schools maintained involvement in the centralized OUS structure that had existed for years. They feared that when UO and PSU gained new institutional boards, regardless of whether they got one as well, they would be left behind as UO and PSU had significantly larger donor bases than OSU. However, as SB 270 seemed likelier and likelier to pass as the session progressed, OSU eventually decided that they would rather have their own board than be stuck asking for funding with the four regional schools as UO and PSU forged ahead on their own. According to Heidi Hall, OSU had lobbied hard against the legislation from the beginning, but realizing its impending passage, requested its own board at the 11th hour. Seeing this, the other regional schools also asked for their own boards, but Sen.

Hass rejected their request, instead including a process by which such schools could petition the legislature for their own boards as a more appropriate avenue for the smaller regional schools to go through to obtain a board.

This was the compromise that existed as SB 270 came out of the Senate Education Committee. However, when the bill was sent to Ways & Means, the regional schools found an ally in Representative Buckley. As the Co-Chair of Ways & Means, he wielded significant authority over any amendments that would change the bill. Since Southern Oregon University (SOU) is in his district, it is not surprising that he was more open to the idea of immediately allowing the regional schools to get their own boards than Senator Hass was. Indeed, in the -A23 amendments, Rep. Buckley added language specifying that if the regionals wanted their own boards, they could seek the endorsement of the State Board of Higher Education and if approved, could obtain one. This was the language that ended up in the final version of the bill and ultimately became law. While not the first choice of the regional schools (or OSU), which fought the bill nearly the entire session, Buckley's amendment represented a consolation victory for the regional schools.

Powers of the Boards

Arguably the most important issue to be resolved by the new law was how much authority these new boards would have. All stakeholders and interest groups had varying perspectives on this critical component of the new law. The SBHE played a critical role in providing the basic framework of what the power dynamic between the boards and the HECC would eventually become. In his testimony to the Senate

Education Committee during SB 270's first public hearing, Matt Donegan, Chair of the SBHE stated that the powers delegated in the bill fell into the following categories:

- Powers reserved to the State Board of Higher Education
- Powers of the Institutional Boards that require State Board approval
- Powers of the Institutional Boards that require the advice and consent of the State Board
- Powers that would be exercised in parallel by the State Board and the Institutional Boards in their respective spheres.

Of these changes, the most notable powers delegated to the new boards were the authority to hire and fire the President, to issue revenue bonds for capital construction projects, and to set tuition and fees as long as increases were below a 5% annual cap. Interestingly enough, SB 270 also transferred significant academic and policy coordinating authority away from the State Board of Higher Education to the new statewide coordinating board, the Higher Education Coordinating Commission (HECC). HB 3120 also played a role in shifting authority towards the HECC from the other education boards, so that the HECC would have final authority on all higher education issues not delegated to the new institutional boards.

The Power to Hire and Fire the University President

The issue of granting hire/fire power over the President of the University to the boards was not a significantly controversial issue. However, it allows me to discuss one

key determinant of the legislation's fate that has been ignored up until this point: the firing of UO President Richard Lariviere. The claim from the Oregon University System and the Governor's office was that Lariviere was terminated because he directly disobeyed the Governor's orders in advocating for the New Partnership legislation during the 2011 session and by giving UO faculty and administrators salary increases. This was only one of many reasons he was terminated. Ultimately, Governor Kitzhaber was much more committed to the success of the entire Oregon system of universities, while Lariviere clearly only cared about achieving excellence for the University of Oregon. When the Chancellor's office recommended to OUS that they terminate Lariviere, many in the Eugene community viewed this as a direct attack on the University, and viewed Lariviere as a martyr for the cause of transitioning to institutional boards.

Regardless of whether the reason to terminate was justified, from the point of view of many in the Eugene community, the OUS had expended all remaining political capital by doing this. Therefore, the discussion surrounding institutional boards transitioned very quickly from "should Oregon universities have them?" to "what should they look like and do?" This fact allowed the UO to successfully reframe the debate and served as a key political factor in the overall success of the legislation.

Because the OUS was politically weak after the firing, it played a significantly reduced role in the conversations around SB 270. In many ways, OUS was mostly

reduced to the role of a moderator between the UO and the various labor groups. It stuck many as strange that such a large stakeholder would be limited to that role. It seems likely that the Governor asked OUS to operate in this capacity, and that his new stance in support of institutional boards prevented them from presenting a compelling case as to why a statewide coordinating system was important and should be preserved. An anonymous source advocating against SB 270 said the neutralization of OUS was a “brilliant political move by the UO” in helping to pass SB 270.⁶⁰

Bonding

One of the most complicated changes brought about by SB 270 was the delegation of bonding authority from the SBHE to the Institutional Boards. This authority was desired by each of the individual institutions, especially the University of Oregon, because of the significant bureaucratic challenges they had faced in constructing new buildings on their campuses in the past. In his statement to the Senate Education Committee, UO President Gottfredson mentioned how SB 270, if passed, would allow the UO to “accelerate administrative and capital construction projects,” a high priority for the UO, which had plans to build multiple new buildings over the coming couple of years.

With the passage of SB 270, this bonding authority was delegated to each institutional board. Multiple anonymous sources involved in negotiating the bonding

⁶⁰ Anonymous Interview. February 2015

authority language indicated that this issue was a top priority for the UO, which wanted as much freedom to issue bonds as possible.⁶¹⁶² Ultimately, the legislation reflected a compromise between the institutions and the state Treasurer's office, which was concerned with how much freedom the institutions were being given. Both the Treasurer and the Governor were uncomfortable giving institutions too much flexibility, in order to protect the interests of the state. They felt the original bill would allow the UO to hedge their bets when it came to bonding, benefitting if the investment paid off, but then forcing the state to take up the debt if the UO defaulted. The bonding section of the bill was changed significantly during the session to reflect these concerns. In the end, the law clearly states that revenue bonds granted by the Institutional Board of a university "are not an indebtedness or obligation of the State of Oregon" thereby further protecting the State from such instances of default by the university.

Tuition Cap Issues

A second, more politicized power delegated to the Institutional Boards was the authority to increase tuition and fees. There were three main political issues at stake surrounding tuition and fees. They were: (1) who could increase tuition; (2) whether any such increase would be capped, and, if so, at what level; and (3) whether tuition increases should be treated the same as student fee increases.

⁶¹ Anonymous Interview, January 2015

⁶² Anonymous Interview, February 2015

Students, faculty, and labor interests were all fundamentally opposed to allowing unelected members of Institutional Boards to have any authority over the tuition/fee setting process. In the OSA's first testimony on the legislation, they outlined their desire to maintain the legislature's "integral role" in setting tuition, and emphasized how the legislature could work in conjunction with the HECC to ensure each institution maintained its commitment to the state. A significant component in OSA's opposition to Institutional Board control over tuition was that OSA derives its power from lobbying and registering students to vote. OSA had significantly more influence on legislators than they would have on unelected board members. Ultimately, students, faculty, and labor lost on this issue and were forced to compromise by instituting a legislatively mandated "cap" on how much tuition and fees could increase per year.

The politicization of the issue of a tuition cap started back during the 2011 legislative session when President Lariviere first introduced the New Partnership legislation. Originally, the proposed legislation gave all tuition setting authority to the local boards. There was no cap. According to Emma Kallaway, it was only after the New Partnership legislation (SB 559) began experiencing trouble, as students came out hard against it saying, "it was an allocation of state funds with no protection for its citizens," that Lariviere agreed to institute a tuition cap to make it more palatable to

students and legislators.⁶³ He also agreed to a guarantee in total tuition price that would be set for four years when a student was a freshman according to the Register Guard. Though these compromises made the legislation less controversial, SB 559 died before they could even be attached through an amendment.

Before the 2013 legislative session even began, there was maneuvering on this issue. The University of Oregon backpedaled and submitted a proposal without a guaranteed total tuition price for four years. Students reached out to Ben Cannon (the Governor's main education advisor) and Rep. Unger and worked with them that to ensure the cap at least would be included in the bill when it was introduced. Rep. Unger played a critical role by educating members of the Democratic caucus on the importance of having a cap, ensuring that it would be extraordinarily difficult for institutions like the UO to try and take it out. On this front, students won.

However, due to the way the Incidental Fee works, this specified tuition cap works against student governments like the ASUO, which previously could grow by up to 7% in one year to support new student programs and services. The Incidental Fee is a specific student fee that students have near-complete autonomy over, in terms of how high the fee is and how it is spent. At first, students attempted to lobby that the cap only apply to tuition, not fees like the Incidental Fee. However, the argument failed, because

⁶³ Kallaway, Emma. Personal interview. 4 February 2015

of the hypocritical nature of asking institutions to stay below 5% growth, while students themselves are growing mandatory fees faster than 5%. In the end, legislators lumped tuition and fees together and mandated that they could not increase above 5%.

However, the legislation does allow the Institutional Board an “out” if it desires to raise the fee over the cap. If this is the case, the Board can get the approval of either the HECC or the state legislature. Some students were not supportive of this aspect of the compromise. Lamar Wise claimed it was analogous to when a kid wants something and goes to one parent who says, “no,” and then goes to the other to get them to say “yes.”⁶⁴

Who Should Sit on the Boards?

From the onset of the legislative war occurring between labor and business interests over SB 270, the issue of board composition and what types of people would make up the new boards if the bill were to become law was front and center. Labor groups, the OSA and faculty unions all supported the inclusion of constituent-elected, voting representatives on the boards. This, they claimed, would allow for the maintenance of shared governance and ensure that the interests of key stakeholders, like students, faculty, and staff, were always represented at the highest level of governance at the institution. Sen. Hass, from the beginning, was wary of including stakeholder groups on the boards. He viewed boards as holistic overseers of the institution, whose

⁶⁴ Wise, Lamar. Personal interview. 16 January 2015

primary role would be to ensure financial success and maintain the flow of contributions from philanthropic donors to support the academic mission of the university. If stakeholder representatives were included on the boards, he felt that they might feel more accountable to their specific constituencies than to the success of the institution as a whole.⁶⁵

In a normal session, labor would have put their full force behind fighting the underlying legislation and especially would have further demanded that faculty and staff serve as voting members on the boards. However, according to multiple sources within the capital, the major labor organizations with significant sway were busy fending off major cuts to the Public Employee Retirement System (PERS). They chose to trade that short term win (Gov. Kitzhaber called a special session a couple of months later and labor largely lost that battle) for their bargaining strength when it came to advocating policy issues on SB 270. Otherwise, the compromises reached by the Democratic caucus would have likely been more favorable to faculty and staff.

Politically, this issue split the Democratic caucus into two camps, pro-stakeholder boards and anti-stakeholder boards. In the House, five Democratic representatives voted against the final compromise. In the Senate, Senator Prozanski,

⁶⁵ Hass, Mark. Personal interview. 24 February 2015.

the lone Democrat to vote against the bill, filed a vote explanation clarifying his opposition to the bill:

“As much as I support individual governing boards, I cannot support SB 270-B in its current form.”

“To allow a governor to decide whether or not certain members of a governing board should have the right to be a voting member is subjective, arbitrary and is wrong. All members should be voting members. Further, it is not good public policy to permit a governor to allow certain members of a governing board to be voting members but to not allow those same members of a different governing board to not be voting members. Why should the faculty member at PSU or OSU be allowed to serve as a voting member, but not the faculty member at U of O? This is an inconsistency that I cannot support”

“Since the governing boards will have 11 to 15 members, it is hard for me to understand why two positions (faculty and classified staff) should not be full voting members. There is no way two members of an 11-to-15 member board can ever exert pressure over the other board members.”

“It only seems equitable, especially at an institution of higher learning, to allow all board members to have the same right to vote on matters brought before the governing board.”

It remains unclear whether most of the Democratic representatives that voted against SB 270 did so because of the language surrounding the makeup of the boards. However, Rep. Holvey did indicate to UO blogger Bill Harbaugh that while he supported the idea of institutional boards, he believed the bill did not go far enough in ensuring that faculty and staff had full voting membership on the boards, which is why he ultimately voted against the bill.

Incidental Fee Issues

While students, through their representatives in the OSA, generally opposed SB 270, they understood that this legislation offered a unique opportunity to protect student control over the Incidental Fee. The Incidental Fee is a student fee that each student at public universities in Oregon must pay each term. In Oregon, each public university allows its officially recognized student government to have autonomy over how to spend it and generally how large it will be, with restrictions on how much it can grow. Prior to SB 270, the Associated Students of the University of Oregon (ASUO), the recognized student government at the University of Oregon, had a general agreement with the University President that the incidental fee could grow no more than 7% per year. This agreement is reaffirmed annually in compliance with the Clark Document, the codified agreement between the ASUO and the University President regarding the Incidental Fee. For the 2014-2015 school year, the Incidental Fee was \$215.25 per student per term. This gave the ASUO about \$14 million to allocate towards student programs, departments, and contracted services.

As universities transitioned from being governed by the SBHE, to having their own local institutional boards, there was widespread student concern that these new boards would have a different perspective on how much say students should have on the allocation of the Incidental Fee. It was unclear whether or not agreements such as the ones codified in documents like the Clark Document would exist after SB 270 became

law. Also, as SB 270 shifted significant power from the SBHE and the legislature to local, unelected boards, OSA's collective lobbying power would diminish as key decision makers no longer would be elected. Students needed to act decisively in order to protect their current control of the fee, or risk losing it.

After realizing that SB 270 would likely become law as the session progressed, a group of concerned individuals formed to plan out how to enshrine Incidental Fee protections into the legislation. The core of this group was Emma Kallaway, Executive Director of OSA, Dave Rosenfeld, Executive Director of OSPIRG (Oregon Student Public Interest Research Group), and Representative Unger, who had previously served as Vice President of the ASUO. This core group developed language that would later become "the strongest student fee language in the country," according to Representative Unger.

Early in the session, when much of the language of SB 270 was still being drafted and negotiated, Rep. Unger provided Rep. Dembrow, Ben Cannon, and Hans Bernard, one of the UO lobbyists, with the student fee language he and Emma Kallaway had drafted. Then he told them that if the language was not included, he would vote against the entire bill and "raise holy hell" making it more likely the bill would die. During my interview with Representative Unger, he indicated to me that the UO was

very sensitive to his demand.⁶⁶ They thought the coalition they were trying to hold together was fragile and his impression was that they believed that every vote would really matter. Ultimately the bill passed with large bipartisan majorities, but they were not aware this would be the case at the time. Because of this, the language was included relatively painlessly in one of the early drafts of the legislation. From there, the battle was just to ensure the language stayed in the bill's final form, a significantly easier task than trying to add it in later.

To ensure that the language was maintained, Unger, Kallaway, and Rosenfeld reached out to the lobbyists of the different institutions regarding the issue of instituting protective language surrounding the Incidental Fee. Interestingly enough, many of those lobbyists were former OSA students and already had sufficient understanding of what the Incidental Fee was and why protecting it was important. Mary Moller, one of the PSU lobbyists, had served as the Legislative Director for the United States Student Association, and thus, had a keen understanding of student fee issues. According to Rep. Unger, by the time some of the administrators who generally opposed student control of the Incidental Fee saw the language, it was too late to take it out without jeopardizing the entire bill.

⁶⁶ Unger, Ben. Personal interview. 16 February 2015.

Lost in the Legislative Shuffle: Shared Governance Issues

Remarkably, issues related to shared governance seem to have been largely ignored by legislators. Other than Peter Keyes' testimony, issues related to policy adoption at universities were overshadowed by arguments related to the composition of the boards and whether or not a faculty member would sit on them. While faculty were eventually granted a seat on the boards, there were virtually no protections in SB 270 that enshrined the OUS IMDs and OARs into law. This lack essentially allows each board the ability to dramatically change the way policies are adopted at each institution. At the UO, this set the stage for more fights to come later.

Chapter 3: A Brewing Storm – Controversies Since the Board Came to Power

Shortly after Gov. Kitzhaber signed SB 270 into law, he nominated 14 individuals to sit on the newly created University of Oregon Board of Trustees. In his official statement, he declared that his nominees “offer deep and broad expertise in all aspects and levels of education, which will inform their work to ensure that Oregon's higher education system is efficient, equitable, and well-coordinated.”⁶⁷ Of the 14 nominees, three came from University of Oregon constituencies (i.e. students, faculty, staff) as mandated by SB 270: Sam Dotters-Katz, Susan Gary, and Kurt Willcox. An important note here is that Gov. Kitzhaber selected individuals suggested by the elected representatives of those constituencies (i.e. the ASUO, the University Senate, and SEIU) and gave them full voting privileges. Many of the other eleven nominees were chosen from amongst those suggested by administration of the University of Oregon. These include: Connie Ballmer, Peter Bragdon, Rudy Chapa, Ann Curry, Allyn Ford, Ross Kari, Chuck Lillis, Ginerva Ralph, and Mary Wilcox.⁶⁸ The only remaining nominees that did not come from these suggestions were Andrew Colas and Joseph Gonyea III, who are business executives in the construction and timber industries respectively.⁶⁹ Currently, the student Trustee is Helena Schlegel, who was nominated on November 14th, 2014 after Dotters-Katz stepped aside after graduating from the UO law school in May.

⁶⁷ <http://us2.campaign-archive1.com/?u=41b11f32beefba0380ee8ecb5&id=67df77f1e6>

⁶⁸ http://media.oregonlive.com/education_impact/other/UO%20Governing%20Board%20Suggestions.pdf

⁶⁹ <http://trustees.uoregon.edu/trustees>

In the following sections, this paper will describe the major decisions and actions the board has taken since taking authority of the University on July 1st, 2014. In less than a year, the Board has adopted numerous resolutions and policies dramatically altering the political landscape at the University, as well as developed precedents pertaining to increases in tuition and fees, and the appointment of new University Presidents.

3.1 Policy on Retention and Delegation of Authority

Criticized by some in the University community as the Board's "first major power play," a new Board Policy on Retention and Delegation of Authority (hereafter referred to as the PRDA) was proposed by Board Chair Chuck Lillis and Interim Board Secretary Randy Geller on March 27, 2014.⁷⁰ Lillis described the PRDA as the last remaining "critical foundational document" the Board of Trustees needed to be pass. It outlined which powers the Board would retain for itself and which it would delegate to other campus constituencies like the University President, faculty, and students. When introducing the policy to the Board, Lillis emphasized the "urgency of adopting a policy to provide guidance to university leadership during the transition." According to Geller, much of the language in the PRDA "came directly from current OUS Board policy" (March 2014 meeting minutes). However, a closer analysis reveals that this draft of the PRDA largely failed to incorporate many aspects of Oregon law and historical processes as they relate to the inclusion of campus stakeholders in the process of shared governance.

⁷⁰ Anonymous Interview. March 2015

The importance of the PRDA to the future of shared governance at the University of Oregon cannot be understated. It is the critical document that outlines the powers and lines of authority of the Board of Trustees within shared governance. *The Daily Emerald* reported that the PRDA “would have a major impact on the University of Oregon Senate.”⁷¹ When the Board first considered the policy, without consulting with campus stakeholders, many felt left out and concerned as to what this would mean for the future of shared governance if it were to pass. Some faculty members were able to voice their concerns during the public comment portion of the board meeting. John Bonine, a Professor of Law, expressed his concern over the proposed PRDA and urged the Board to postpone any adoption of policy until campus constituencies could review and propose changes to the critical document. According to Professor Bill Harbaugh, the draft of the PRDA was only posted to the Board of Trustees website two days before the full board was scheduled to consider it.⁷² This left very little time for faculty, staff, or students to look over the policy and suggest possible changes.

Despite this, University Senate President Robert Kyr identified “numerous factual errors—for example, calling [the University Senate] the ‘faculty senate’—and not acknowledging the primacy and authority of the University Charter and the University Constitution, as well as the Policy on Policies.”⁷³ This short time frame was especially concerning, because according to the rules established by the Board, if one plans on speaking before the Board during the public comment portion of a meeting,

⁷¹ <http://www.dailymerald.com/2014/12/09/board-of-trustees-policy-could-radically-change-university-senate-powers/>

⁷² <http://senate.uoregon.edu/content/minutes-uo-senate-meeting-april-9-2014>

⁷³ Kyr, Robert. Personal Interview. May 12, 2015

they must submit their intention to do so at least 24 hours in advance and be approved by the Board Secretary.

At the board meeting, the Trustees wrestled with the decision of whether or not to consult the campus community on the contents of the PRDA or pass the important policy. Lillis suggested they pass the policy immediately and go back to amend it later. Ultimately, the Board decided to grant the President temporary authority until a new PRDA could be drafted, with consultation from an ad hoc committee put together by University Senate President Robert Kyr. In his words:

“[the ad hoc committee] worked extremely hard to produce a version of the policy that corrected all errors, affirmed the foundational documents of our university, and promoted the basic principles of shared governance. With incredible effort, we did this within three weeks, when in fact, 2-3 months would have been the appropriate amount of time for such a project. Subsequently, the board severely revised our efforts with no consultation or discussion, and scheduled it for a vote at its next meeting.”⁷⁴

This committee did indeed send its recommendations to Geller who revised the policy and presented changes to the Board’s Executive and Audit Committee for further review before it was submitted to the full board for reconsideration.

An important point to note here is that if Harbaugh and Kyr had not noticed the inclusion of the PRDA in the Board’s March Agenda and informed the rest of the University community about the impending passage of this first version of the PRDA, it

⁷⁴ Kyr, Robert. Personal Interview. May 2, 2015

likely would have been passed in that first form, dramatically subverting the relative authorities of the different campus constituencies.

That initial version of the PRDA would have effectively destroyed any concept of shared governance as currently understood at the University of Oregon. Because the Board had authorized Kyr to create an ad hoc committee to suggest changes to the current proposed PRDA, university constituencies had a chance to provide much needed input on the policy. Many of the issues explained in the following paragraphs were identified in a final redlined version of the PRDA as the University Senate ad hoc committee proposed its recommended changes. However, while some of these recommended changes were addressed by Geller in his updated policy draft, many of the most important points were not addressed and remained unchanged in the final draft of the PRDA as passed by the board. That final version of the PRDA remains in force today, despite the fact that the University Senate did not approve it due to “violations of the basic principles set out in the University Charter, the University Constitution, and the Policy on Policies.”⁷⁵ It has dramatically altered the political landscape of the University of Oregon community.

This paper will now discuss the critical components and issues relating to this first draft of the PRDA, as well as the process by which it was revised, the changes made, and what implications the final version has for the future of shared governance at the UO.

⁷⁵ Kyr, Robert. Personal Interview. May 12, 2015.

Major Issues in the First Draft of the PRDA

1. Failure to recognize restrictions on Board power in state law

The first major issue with the March draft of the PRDA, as proposed by Lillis and Geller, was the preamble to the document, which stated, “The Board of Trustees shall establish the governance model of the University of Oregon while respecting the historic philosophy of shared governance.” Of concern here was the lack of identification of state laws dictating the governance model of public universities, namely SB 270 and ORS 352.010, which clearly dictate the relative authorities of the HECC, the Board of Trustees, faculty, and the recognized student government at each institution. In fact, in the entirety of the document, neither SB 270, nor any other Oregon Revised Statutes are mentioned at all. Ignoring these laws, which provide the basis of all authority granted by the state legislature to the Board, seems willfully ignorant at best and intentionally misleading at worst on the part of Lillis and Geller in their attempts to define the relative powers of university constituencies. In his statement asking the Board to postpone the adoption of the PRDA, Professor John Bonine explained, “The role of the faculty that is stated in ORS 352.010 is simply ignored in this draft policy,” especially as it relates to the ability to establish standards of conduct for students and faculty, “which Oregon Revised Statutes (ORS) have clearly stated for nearly 140 years.”⁷⁶ When attempting to define the relative governing roles of the Board and different campus constituencies, how could the authors of the PRDA not look directly to SB 270, the law creating the board, and other relevant statutes for guidance?

⁷⁶ <http://uomatters.com/2014/03/gottfredson-fails-on-transparency-uo-matters-resumes-blogging.html>

2. Failure to recognize and respect the University Charter and Constitution

According to Associate Professor Gordon Lafer, “the Board's proposal [was] more or less a coup. [Lillis and Geller] say that it's in keeping with the "philosophy" of shared governance and then destroy that in the first real clause.”⁷⁷ The clause he referred to is Section 1.1: Board Authority, which read:

The Board of Trustees is the final University authority and has full control of the University and its property of various kinds. The Board may take any and all Board actions as it determines necessary or appropriate. Board actions have precedence over other policies, standards, directives and other actions of the University and its constituent parts. Any policies, standards, directives and other actions of the University and its constituent parts shall be consistent with Board actions. The Board may review and intervene in any and all aspects of the University; modify any policy, standard, or directive; amend or rescind any existing policy, standard or directive; and enact and issue such policies, standards and directives as it deems proper for the University. The Board shall adopt a mission statement for the University in consultation with the faculty, students and staff members.

Lafer continued by writing, “Everything that’s not in the union contract that has anything to do with the real role of faculty governance is destroyed in this document.” This conclusion is underscored by the fact that the language in Section 1.1 effectively attempts to supersede all other governing documents and policies previously established, including the University Constitution (which this draft incorrectly refers to as the “Faculty Constitution”) and University Charter, which were ratified by President Lariviere and had effectively governed the University until this point. There are many outstanding issues regarding distribution of powers that remain unclear given conflicting statements in the PRDA and the University Constitution. These issues seem

⁷⁷<http://senate.uoregon.edu/sites/senate.uoregon.edu/files/Board%20Changes%20to%20Senate%20Proposed%20Policy.pdf>

to stem from differing interpretations of ORS 352.010, which defines the role of the faculty as “hav[ing] the immediate government and discipline of the public university and the students therein, except as otherwise provided by statute.”⁷⁸

3. Misrepresenting the process of appointing presidents of the university

A third major issue with the first draft of the PRDA was the inclusion of the University community in the appointment of the university president. SB 270 clearly states in Section 9 that the Board has the authority to appoint and employ the president with consultation from the governor. This is reflected in the draft of the PRDA. However, the PRDA draft fails to include the SB 270 language that states, “the hiring committee for the President of a university with a governing board shall include representatives of the university community.”⁷⁹ It remains unclear why some language from SB 270 seems to exactly match the PRDA, yet any language in SB 270 protecting the rights of campus constituency involvement in this process was left out. Later, the major differences between the presidential searches that occurred in 2012 and 2015 will be discussed. The differences in these two searches clearly illustrate how the passage of SB 270 changed campus political dynamics at the UO.

4. Failure to describe the process establishing tuition and the incidental fee

In section 1.4 of the PRDA draft, describing tuition and fees, there is no mention of any provisions established in SB 270 as they relate to tuition setting or the establishment of the incidental fee. The provisions fought for by OSA and Rep. Unger,

⁷⁸ <http://www.oregonlaws.org/ors/352.010>

⁷⁹ <https://olis.leg.state.or.us/liz/2013R1/Measures/Overview/SB270>

as explained previously in this chapter, were excluded as if they didn't exist. The section gives all authority to the Board and President:

1.4 Tuition and Fees. The Board shall determine tuition and mandatory enrollment fees (including incidental fees) for students who are enrolled in a degree program. The President determines all other fees, fines and charges, after providing notice to the Board.

The ad hoc committee, which included the soon-to-be student Trustee, Helena Schlegel, recommended that the procedures established in sections 10 (2), 10 (3), and 10 (4) of SB 270, relating to the recognized student government's authority in the incidental fee setting process, and the limitations set forth by the legislature on tuition increases, be included in the language of the revised PRDA. This would ensure full consistency between state statute and the Board's understanding of its relative power in determining tuition prices and the distribution of the incidental fee.

5. Overstepping authority as it relates to governance of academic policies

A fifth major issue identified by the ad hoc committee concerned the relative roles of faculty and the Board in establishing the academic policies of the institution. In section 1.8.3 of the PRDA draft, the Board claims the authority to "establish standards, qualifications, policies and practices relating to admission to study at the University and the curriculum, grading, credits, scholarships, and academic standards of the University." It goes on to claim that, "the Board has delegated to the faculty (the "president and professors") the immediate government and discipline of the university and the students therein and the authority to prescribe the course of study to be pursued in the University and the textbooks to be used."

However, ORS 352.010 already states that the faculty "have the immediate government and discipline of the public university and the students therein...[and]

prescribe the course of study to be pursued in the public university and the textbooks to be used.”⁸⁰ Thus, it seems odd that the Board would claim to delegate this authority to the faculty when (1) it never had this authority to begin with and (2) the legislature had already delegated this authority to the faculty. In fact, suggesting the Board retains this authority through law, but delegated it to the faculty could mean that at any point in the future, the Board could withdraw that delegation of power if it so chose.

6. Giving the University President full authority over university committees

The University Senate, the main institution facilitating shared governance at the UO, as described in the University Constitution, retains the authority to establish and appoint any university committees that it so chooses. These committees are not the same as those especially established by the University President. The draft of the PRDA fails to distinguish between these two types of committees and authorizes the University President to “establish and define the charge of any and all University committees.” However, the University Constitution establishes the University Senate with powers delegated to it by the Faculty Assembly in section 1.5, which derives its own governing authority from ORS 352.010. It is clear that there is a fundamental clarification needed as to what authority is retained by whom.

7. Failure to ensure public accountability and transparency

In Section 2.4 of the proposed PRDA regarding public notice, the language is quite vague, saying, “all Board actions and Presidential actions shall be approved in a manner reasonably calculated to provide public notice of the proposed and final approval.” This seems to lack any sort of mechanism to determine what is “reasonable”

⁸⁰ <http://www.oregonlaws.org/ors/352.010>

as defined by the board. Given the rushed attempt in passing the PRDA, in which Lillis and Geller failed to adequately consult the campus community, there seems to be a disconnect between what they consider to be reasonable process and notice and what the public believes is reasonable, suggesting the need for clearly defined rules governing public notice and transparency. Section 1(a) of SB 270 notes that the State of Oregon will benefit from governing boards that provide “transparency” and “public accountability”. The ad hoc committee, in its notes regarding this section, critiques the PRDA’s language, objecting that “it is remarkable that we would be educating more than 20,000 students each year and entrusting them with the future of our democracy, while providing a Policy for mere “notice” - and without any strictures - for their life while at the University of Oregon.” The committee suggested that the revised PRDA mirror procedures used by other state agencies instead of mirroring “*pro forma*” notice similar to “countries whom Americans would be quite reluctant to emulate.”⁸¹

Changes to the PRDA

After the University Senate’s ad hoc committee had presented Interim Board Secretary Geller with their proposed changes, it became his job to author a revised version of the PRDA to be discussed by the Executive and Audit Committee for further review before it was submitted to the full board for reconsideration. In his revised version, the PRDA clarified the respective role of the Board, President, and the faculty as established in Oregon statute. The language defining the roles of different constituencies in the appointment of the President was incorporated. He also clarified the respective roles of the Board and the recognized student government in determining

⁸¹ <http://senate.uoregon.edu/content/ad-hoc-committee-delegation-authority-policy>

tuition and fees. Public notice was changed to comply with Oregon Public Meetings Law. The role and relative authority of the faculty in regards to shared governance was clarified further, and the ratification of the University Constitution in 2011 was recognized. However, many inconsistencies remained. Merely recognizing the University Constitution leaves unclear many of the outstanding issues on which the PRDA and Constitution disagree.

On June 11th, 2014, the Board began discussions around the newly revised PRDA as edited by Geller, with the advice of the ad hoc committee. Multiple members of the University community, including University Senate President Kyr asked the board to again delay the passage of the PRDA as many of the suggestions proposed by the ad hoc committee had not been included in this updated version written by Geller. Suggestions like further clarification of the role of the faculty and outstanding issues brought about by conflicting language in the PRDA and the Constitution were ignored. Two amendments to the PRDA were adopted during this discussion, but neither was especially relevant to the criticisms expressed by the members of the campus community that showed up. The PRDA was then passed unanimously by the Board.

It was later discovered, through an accidental release of private internal documents that Interim Board Secretary Randy Geller, who also served as General Counsel for the University, penned a 2012 opinion to then-President Bob Berdahl advising him to get rid of the University Senate entirely, due to the recent unionization of the faculty. The memo states, “the faculty has traded its voice in internal government and management for the union’s voice,” advising Berdahl to “abolish the faculty assembly and the University Senate and all committees” among other anti-shared

governance recommendations.⁸² It is important to note that Geller, who espoused these anti-shared governance ideas to Interim President Berdahl, was the same person in charge of drafting the revised PRDA. University Senate President Robert Kyr explained that this likely had a significant effect on the board's actions, saying, "We can only imagine how this prejudiced a newly arrived President (Gottfredson), the Chair of the Board (Lillis), and board members (in general) against the University Senate, which had fought so long and hard for the University Constitution and the Policy on Policies."⁸³ It should not come as a surprise then that many of the changes recommended by the University Senate ad hoc committee charged with reviewing the document were not included by Geller in the final version he presented to the Board. This clearly demonstrates how the unaccountable decision-making authority granted to General Counsel and the Board Secretary by the Board, positions that remain largely unaccountable to anyone, have changed the political dynamics of the campus community.

3.2 Policy on University Policies

In December of 2014, only days before the scheduled meeting of the Board, it was discovered that the Board planned on adopting a new "Policy on University Policies" (hereafter referred to as PUP) that would essentially strip the University Senate of all policy legislating authority (Appendix C). Again, there was no consultation with any campus constituencies as to the drafting of the policy. The original PUP seems to have been designed as an attempt to supersede the University

⁸² <http://uomatters.com/2015/01/the-uo-administrations-secret-plan-to-abolish-the-uo-senate.html>

⁸³ Kyr, Robert. Personal Interview. May 12, 2015

Constitution. The Board stated in its proposed resolution adopting the PUP that the PUP “shall supersede all related and existing University authorities, policies, and procedures, to the extent they are inconsistent with the Policy on University Policies or would otherwise materially alter it, subject to the Board’s retention of authority to adopt, revise, or repeal any University policy by independent Board action.”⁸⁴ Clearly, this new Policy would disregard any authority conferred to the University Senate for the development of academic policies, as delegated by the Statutory Faculty in the University Constitution.

This was especially concerning, because only days before this resolution for a new PUP was discovered, UO Matters blogger Bill Harbaugh reported that University administrators had created a secret “academic continuity plan,” that had not been brought to the faculty, to deal with academic issues caused by the impending GTFF strike. When asked about the lack of University Senate consultation on how to respond to academic issues caused by the strike, Coltrane responded by saying, “there had not been consultation as it was normally carried out...because the University was in a strike situation.”⁸⁵ Pursuant to the continuity plan, faculty in the biology department were told that they were responsible for hiring new staff to cover the obligations of the striking GTFs. Other departments, at the urging of administrators, suggested that students could choose to receive their current grade in the class without taking a final or writing a term paper, sacrificing academic standards for a lower employee workload during the

⁸⁴ <http://trustees.uoregon.edu/sites/trustees2.wc-sites.uoregon.edu/files/field/image/Full%20BOT%20Notice%20and%20Materials%20120414%20-%20r.pdf>

⁸⁵ <http://senate.uoregon.edu/content/minutes-uo-senate-meeting-december-3-2014>

strike.⁸⁶ The University Senate then passed a resolution to create an “Academic Integrity Task Force” to investigate the actions of administrators as related to the creation and implementation of the “Academic Continuity Plan” while bypassing the legislative authority of the University Senate.⁸⁷ The entire controversy is concerning, because it leads one to believe that current administrators think can choose when and when not to include faculty in academic policy discussions, clearly disregarding the University Constitution.

Because faculty tensions were already heightened by the strike controversy, the University Senate responded quickly to the proposed PUP and scheduled an emergency special session in which to discuss the upcoming resolution. University Senate President Robert Kyr met separately with Interim President Scott Coltrane asking him to defend the rights and authority of the faculty in Coltrane’s role as the delineated “President of the Faculty” as expressed in the PRDA.⁸⁸ Many in the faculty feared that the PUP would limit their ability to establish academic policies relating to issues such as tenure requirements and admission standards, as believed to be protected through state statute.⁸⁹ In fact, the American Association of University Professors (AAUP) weighed in on the issue writing that “the document under consideration by the board of trustees,

⁸⁶ <http://senate.uoregon.edu/content/minutes-uo-senate-meeting-december-3-2014>

⁸⁷ <http://senate.uoregon.edu/content/legislation-establish-academic-integrity-task-force-existing-senate-committees>

⁸⁸ <http://trustees.uoregon.edu/sites/trustees2.wc-sites.uoregon.edu/files/field/image/Retention%20and%20Delegation%20of%20Authority%20Policy%20061914%20-%20final.pdf>

⁸⁹ <http://www.oregonlaws.org/ors/352.010>

if approved, will initiate a new way of developing policies that will radically change the role of the senate and of shared governance as we know it.”⁹⁰

During the special University Senate meeting, held on December 10th, a Resolution Affirming the University of Oregon Constitution was passed overwhelmingly (Appendix D). By this time, the behind-the-scenes negotiations between Kyr and Coltrane had proved successful. Coltrane had asked that the Board delay the adoption of the Policy until their March meeting, when the faculty and other stakeholders could weigh in on any concerns that they had regarding it. The University Senate resolution recognized and appreciated this collaboration as it states, “the University Senate commends President Coltrane for his decision to present the concerns of the university community, the Senate President, and the Senate Executive Committee to the Board of Trustees to postpone a vote on ‘The Policy on University Policies,’ and to fully engage in a process of consultation with the University Senate in the fashion legitimated by Section 7 of the University of Oregon Constitution.”

Ultimately, members of the University Senate, the Board, and President Coltrane were able to successfully negotiate a revised PUP in which the concerns of the faculty were addressed (Appendix E). Amongst the changes in the revised PUP is further clarification of the role and composition of the Policy Advisory Council (PAC), as well as an entirely new section devoted to the development of Academic Policies, with strong recognition of the University Senate process as described in the University Constitution.

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<http://senate.uoregon.edu/sites/senate.uoregon.edu/files/AAUP%20letter%20regarding%20shared%20governance%20at%20the%20UO.pdf>

3.3 Tuition-Setting Controversy

For many students, the greatest potential impact of SB 270 involved the transfer of tuition-setting authority from OUS to the new Board of Trustees. In an interview with UO's campus newspaper, *The Daily Emerald*, ASUO President Beatriz Gutierrez emphasized her investment in "increasing accessibility of higher education and making sure a tuition increase doesn't happen." Students, such as Missouri-native Lillian Huebner, have taken extreme measures to address the financial challenges posed by the increasing cost of tuition at the University. Huebner now lives "out of the two suitcases they brought from Missouri and sleeps on a friend's floor" while working as a Safeway courtesy clerk in order to save money and pay off their student debt. *The Emerald* reports that a full half of the "2014 undergraduate class had borrowed student loans" and had an "average loan debt of \$24,508."⁹¹

Before SB 270 became law and gave tuition-setting authority to the UO Board of Trustees, the power to raise tuition was retained by the State Board of Higher Education (SBHE). Each institution would recommend to the SBHE what increases were needed, but the State Board ultimately had the power to decide.

The process of setting tuition at the UO remains mostly the same, but now ends with the Board of Trustees instead of the SBHE. The process starts with the Tuition and Fees Advisory Board (TFAB). The TFAB is made up of mostly administrators, but also faculty, staff, and four students, including the Student Body President.⁹² They create a recommendation and hold a listening session for students to attend. Then, the

⁹¹ <http://www.dailyemerald.com/2015/03/09/3-7-percent-tuition-increase-university-of-oregon/>

⁹² <http://www.dailyemerald.com/2015/01/13/who-sets-tuition/>

recommendation goes before the Finance and Facilities Committee (FFC) of the Board of Trustees. Once approved by the FFC, the entire board then votes on it.

This year, the TFAB recommended a 3.8% increase for resident undergraduate tuition and a 3.7% increase for non-resident undergraduates. When they presented this recommendation to the student body on February 16th, 2015, students were displeased. This would increase costs by \$7/credit hour for resident undergraduates and \$24/credit hour for non-resident undergraduates. For a full-time undergraduate, this means a \$315 increase for residents and a \$1,080 increase for non-residents per year. According to Brad Shelton, a member of the TFAB, the increases were due to rising overall costs associated with increased state-mandated costs for retirement and health care of university employees.⁹³

A historical account of tuition increases for resident undergraduates is provided in Appendix F. The 2015 increase by the Board, when compared to recent tuition increases passed by the SBHE, is actually below the average over the past five years. From 2010 until their last increase in 2014, the SBHE averaged annual increases of 5.98% to tuition and fees at the University of Oregon. However, large outliers during 2010 and 2011 reflect the legislature's attempt to control the state budget during the tail end of the recession that began in 2009. In Section 10.4(b) of SB 270, the legislature asked that the Board attempt to contain all increases to tuition and fees to "a percentage that is not greater than the percentage increase in the Higher Education Price Index (HEPI), as compiled by the Commonfund Institute."⁹⁴ Unfortunately, the Board did not

⁹³ <http://www.dailymerald.com/2015/02/17/students-voice-concern-over-tuition-and-fees-increases-ahead-of-board-consideration/>

⁹⁴ <https://olis.leg.state.or.us/liz/2013R1/Downloads/MeasureDocument/SB270/Enrolled>

meet this objective. The HEPI for 2014 was 3%.⁹⁵ An important point to note here is that last year, the SBHE also would have failed this test given their 2.2% increase when the 2013 HEPI was only 1.6%.

The FFC met on March 4th, 2015 and passed the recommended increase brought by the TFAB.⁹⁶ The next day, the full board approved the proposed increases.⁹⁷ Notably, the student and staff trustees, Helena Schlegel and Kurt Willcox, attempted to pass an amendment to the resolution, which would lower the proposed increases to 3.4% for residents and 3.3% for non-residents. This would have saved them \$45 and \$90 a year respectively, and would have lowered the revenue generated by about \$1 million. They attempted to lobby the other trustees, but the amendment failed on a 6 - 7 vote with Connie Ballmer, Peter Bragdon, Rudy Chapa, Andrew Colas, Kurt Willcox, and Helena Schlegel voting in favor.

This is notable, because it represents one of the few critical moments thus far on the Board where the trustees were significantly divided on an important issue. It also demonstrates one of the key impacts of including stakeholder representatives on the board and their impact on decision-making. The trustee positions held by Schlegel and Wilcox were two out of the three seats on the Board won by the Oregon Student Association and labor groups during the legislative compromise of SB 270. Clearly by including them on the board, and by giving them voting authority, as Gov. Kitzhaber did, legislators ensured that issues critical to those communities would face increased

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<http://webcache.googleusercontent.com/search?q=cache:voUWrD9Y1PAJ:https://www.commonfund.org/InvestorResources/CommonfundNews/Documents/2014%25200925%2520HEPI.pdf+&cd=6&hl=en&ct=clnk&gl=us>

⁹⁶ <http://www.dailymerald.com/2015/03/05/oregon-tuition-increase/>

⁹⁷ <http://www.dailymerald.com/2015/03/05/tuition-protest-board-of-trustees/>

scrutiny. However, this representation was not enough to change the board's overall decision regarding the issue of increasing tuition. When asked about how the makeup of the board influenced the conversation around raising tuition, Schlegel responded by saying, "It is sometimes difficult to have conversations about how rising tuition negatively affects our lives. When there is only one student on a Board of 15, the needs of students are not properly taken into account."⁹⁸

Because the amendment failed, the proposed increases to tuition will stand unless the Oregon State Legislature approves a tuition "buydown" during its fiscal process to cover the cost. This was done during the last legislative biennium in order to maintain a tuition "freeze" at the University of Oregon.

3.4 The Presidential Search

One clear example of changing campus political dynamics is the comparison of presidential search processes. After President Lariviere was fired, the UO began a comprehensive search process for a new president. Looking at the process that led to the selection of Michael Gottfredson and comparing it to the current process reveals differences in how the process strengthened or weakened the voices of different campus stakeholders.

In 2012, while the UO was still governed by the Oregon University System (OUS), the process looked much different than the one the UO Board of Trustees initiated. The power to hire all university presidents within OUS was then retained by the SBHE. Chancellor Pernsteiner designated SBHE member Allyn Ford as the Chair of the Search Committee. According to the minutes of the March 2012 SBHE board

⁹⁸ Schlegel, Helena. Personal Interview. 15 January 2015

meeting, “the Chancellor and a team made every effort to ensure that appropriate representation of stakeholders were included on the search committee.”⁹⁹ This included administrators, students, faculty, staff, and community leaders (Appendix G).¹⁰⁰

On August 6th, 2014, with the new Board of Trustees having taken office only five weeks previous, President Michael Gottfredson resigned. After only two years as the University of Oregon’s seventeenth President, he was offered a substantial \$940,000 severance package from the Board. The Oregonian reported that the decision to resign was very much a mutual decision between Gottfredson and the new Board. Board Chair Chuck Lillis indicated that he thought “Gottfredson was gracious in cooperating with the newly installed UO board, accepting that the board wanted a leader of its own choosing.”¹⁰¹ However, over the months preceding his resignation, Gottfredson had been “enmeshed with the controversy” regarding his handling of an instance of alleged sexual assault by three members of the Oregon basketball team.¹⁰² This controversy, along with numerous sources that said Gottfredson was a poor fundraiser, likely impacted the Board’s decision to encourage his resignation.^{103 104}

Commented [A1]: Some good cites and quotes on this can be had from newspaper coverage.

Because SB 270 gave Presidential appointment power to the new Board of Trustees, the process of selecting a new President looks much different than when OUS had this responsibility. The Board redesigned the entire search process, including the extent to which campus constituencies are involved.

⁹⁹ http://www.ous.edu/files/state_board/meeting/minutes/mdoc120302.pdf

¹⁰⁰ <http://www.dailymerald.com/2012/02/01/presidential-search-committee-chosen/>

¹⁰¹ http://www.oregonlive.com/politics/index.ssf/2014/08/michael_gottfredson_will_get_9.html

¹⁰² http://www.oregonlive.com/education/index.ssf/2014/08/university_of_oregon_president_13.html

¹⁰³ Anonymous Interview. January 2015

¹⁰⁴ Anonymous Interview. February 2015

First, the Board of Trustees designated a search firm to “aggressively recruit, facilitate, and advise the process of hiring a new president.”¹⁰⁵ The firm chosen was Atlanta-based Parker Executive Search. Their main purpose was to attract as many highly qualified candidates as possible. The candidate pool for this search had over 250 nominations.¹⁰⁶

Next, the Board of Trustees designated a Search Committee that would play the main role in determining which candidates became finalists. The Search Committee was made up of four members of the Board of Trustees, the President of the UO Foundation, two University presidents, two UO faculty members, four administrators, and a member of the Oregon State Bar.¹⁰⁷ An important point to note is that the faculty members chosen to serve on the Search Committee were chosen by the Board of Trustees, not the faculty themselves, through the University Senate, despite calls from Senators to do so.¹⁰⁸ Also, no Search Committee member represented a constituency on the University Senate other than those faculty members. During the 2012 search, many of the constituency members involved in the process were those that could effectively represent their constituencies as the people they were representing directly elected them. A comparison of the differences in composition of the Search Committees from 2012 and 2015 is illustrated in Appendix G. For the 2015 Presidential Search, it was the Search Committee’s responsibility to take the pool of hundreds of applicants and winnow them down to approximately ten or so Semi-Finalists.

¹⁰⁵ <http://senate.uoregon.edu/content/minutes-uo-senate-meeting-february-11-2015>

¹⁰⁶ http://www.oregonlive.com/education/index.ssf/2015/02/candidate_pool_for_uo_presiden.html#incart_related_stories

¹⁰⁷ <http://trustees.uoregon.edu/content/presidential-search-committee>

¹⁰⁸ http://www.oregonlive.com/education/index.ssf/2015/02/candidate_pool_for_uo_presiden.html#incart_related_stories

After this process, an Advisory Committee made up of campus stakeholders provided input on paper applications of the ten Semi-Finalists selected. The Advisory Committee was also selected by the Board of Trustees and included: the previous chair of the Board of Trustees for the UO Foundation, the president of the UO Alumni Association, two other alumni, three students, the president of the University Senate, two other faculty members, the president and CEO of the Portland Business Alliance (also an alumna), and two non-faculty staff members (Appendix G). As the name of the Committee suggests, the role of the Advisory Committee is only to advise the Search Committee and “provide relevant perspectives and insights to aid the committee’s work throughout the process.”¹⁰⁹ It is through members of this committee in which elected campus representatives were allowed to voice their opinion on the Semi-Finalists.

After the Advisory Committee provided its input, the Search Committee interviewed these Semi-Finalists and selected four Finalists to send to the Board of Trustees for a final vetting process. The Board then voted to select the next President out of those four. On April 14th, 2015, the Board of Trustees announced that they had selected University of Chicago Law School Dean Michael Schill as the University of Oregon’s eighteenth President. During the announcement, he stressed the importance of quality public higher education and its role in educating the “vast majority of young people today.”¹¹⁰ Kurt Willcox, the staff Trustee indicated his confidence in the Board’s choice by saying that he “look[s] forward to Mike being someone that can bring us

¹⁰⁹ <http://trustees.uoregon.edu/content/presidential-search-advisory-group>

¹¹⁰ http://www.oregonlive.com/education/index.ssf/2015/04/new_university_of_oregon_presi_1.html

together,” despite the Board having already “faced some very difficult situations, some still on going... that have divided people.”¹¹¹

The challenges facing Schill in the days to come are numerous. Upon taking the reins of the University Administration on July 1, 2015, he will be in responsible for: running a \$2 billion fundraising campaign started by Gottfredson, dealing with the fallout surrounding the previous administration’s handling of the issue of sexual assault, introducing himself to Oregon state legislators, and forging new relationships with UO constituencies that remain deeply distrustful of administrators after the controversies surrounding the PRDA and the PUP. He certainly has his work cut out for him.

¹¹¹ <http://www.dailymerald.com/2015/04/14/michael-schill-new-university-of-oregon-president-willamette-week/>

Analysis

By observing the numerous controversies that have already plagued the Board, this paper highlights patterns of repeated behavior that have continued to cause conflict between the Board and the larger campus community. However, such controversy is not unique to just this new Board. The SBHE faced many controversies of its own (e.g. the firing of President Lariviere). This section will reflect back on the rationale for removing the UO from the OUS system and what implications this might have for Oregonians. Lastly, this paper will describe positive steps that the Board could take to remedy any current conflicts and prevent more from occurring in the future.

Implications for Oregonians

To begin analysis on what implications SB 270 might have on Oregonians, it is important to first discuss the original motivations for the law. Understanding whether the Board has started to move forward on the accomplishment of the goals set out by University lobbyists is the starting point in this analysis.

The State of Oregon has consistently divested from its higher education institutions. There are numerous reasons for this. The increased strain on the General Fund caused by Measure 5 (limiting property tax collection) and Measure 11 (creating mandatory minimum sentences for certain crimes) have dried up sources of revenue while increasing the demands on the State Budget. In the period from 1992 to 2007, while the amount of public investment in Oregon's higher education institutions dropped by 44% in real dollars, the investment in Public Safety increased by 50%.¹¹²

¹¹² <http://pages.uoregon.edu/uosenate/dirsen090/DF-18Nov09.pdf>

Most of the burden of this disinvestment has fallen on the backs of students, through increased tuition rates. During this same time frame, the cost of a typical 45-credit year for resident undergraduates at the UO went from \$2,721 to \$6,168, a 153% increase after accounting for inflation. Graphics for both the state’s disinvestment in higher education, as well as the history of tuition increases at the University of Oregon can be found in Appendix A and Appendix B.

As frustrated SBHE board member John E. von Schlegell wrote in his letter to Gov. Kulongoski in 2009, the disinvestment by the State represents a manifestation of his fear of a “two-class system of higher education where the great private universities build large endowments and cherry pick the best faculty and students while the public universities get underfunded and over-mandated and lose their ability to be excellent.”¹¹³ A key advantage of public education is that taxpayers subsidize some of the cost. As that advantage diminishes, it will continue to drive forward the “two-class system of higher education” von Schlegell feared. As a solution to this problem, he stressed the need for “public corporatization” of higher education. This would later transform itself to the “tight/loose” model of “tight on outcomes - loose on how institutions achieve [them],” that reverberated through the halls of the Capitol during the 2013 legislative session.¹¹⁴ While he did not mention the creation of independent governing boards, the theme of the letter stressed the importance of increased freedom from the state. Higher education institutions could not succeed with strict mandates if they continued to lack adequate state funding, he claimed. So, to a large extent,

¹¹³ http://www.oregonlive.com/opinion/index.ssf/2009/08/reinvigorating_oregons_higher.html

¹¹⁴ <https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/1869>

legislators chose to give up that control. According to University Senate President

Robert Kyr:

“The failure and ultimate collapse of the Oregon University System (OUS) may be attributed to the inability of the state and its agencies to understand the fact that self-determination is a basic human right, and one of the core principles of American democracy that sustains the republic itself. For many years, OUS espoused a philosophy of ‘one size fits all’ (although calling it by other names), which attempted to force the seven Oregon universities into a single mode of behavior that did not honor the individuality of each institution. Each of these universities functions best and is strongest, when it is encouraged to further its own individual mission, its unique set of values, its particular goals, and its truest purpose. To create a system that does not fully support the right of self-determination is to go against the very soul of what we are, that is, to deny the right of each individual—and each institution—to determine its own destiny, as opposed to forcing it into a single, constraining mold.”

To combat the lack of public investment by the state, UO administrators pitched SB 270 as a creative solution to the increasingly unaffordable price of tuition. In their lobbying materials to state legislators, UO lobbyists claimed that having a new Board would allow them “greater capacity to leverage philanthropy to support scholarship and fee remissions” (Appendix I). Indeed, Chief Sponsor of SB 270 and education funding advocate, Sen. Hass, indicated that in his view, the Board’s role should “focus largely on increasing philanthropic donations to the University.”¹¹⁵ As the University of Oregon is currently in the middle of a \$2 billion fundraising campaign, its biggest ever, only time will tell whether the new Board has made a critical difference in building up the University endowment. However, Board member Connie Ballmer and her husband have already contributed \$50 million. The gift will largely be directed to the Pathway Oregon scholarship program for low-income Oregonians and the “hiring of top-notch

¹¹⁵ Hass, Mark. Personal Interview. 24 February 2015.

faculty to join the university's prevention science research center," exactly the type of philanthropic giving SB 270 was designed to induce.¹¹⁶

When looking at these events, one must ask critical questions as to what trends like this mean for the future of higher education. Was this donation pre-ordained as a "thank you" for being appointed to the Board, or a result of the increased freedom given to the UO? An anonymous source close to the discussions indicated that multiple meetings took place between major donors and the Governor on the issue of increased philanthropic donations if the UO were to receive a Board.¹¹⁷ A second question to consider is: what will purchased Trusteeships, as this might have been, mean for the future of University governance? Increasing corporatization of education at all levels has been a national trend in the making for decades. As we can see through the actions of the Board surrounding the PRDA and PUP at the UO, treating the Board of Trustees like a corporate, top-down decision-making body angers campus stakeholders left out of the deliberating process.

A key criticism leveled at SB 270 was the lack of higher education experience required as a prerequisite to serving as a Trustee - opening the door further for increased corporatization. In his testimony on the bill, Professor Peter Keyes explained that, "OHSU, whose enabling legislation is being held up as the model for [SB 270], has a provision that candidates must exhibit experience and knowledge related to the mission of the institution," yet no such provision was ultimately included in SB 270. He also decried the selection process saying, "The UO puts about 100 times more effort and diligence into hiring an assistant professor on a three-year contract than is proposed

¹¹⁶ http://www.oregonlive.com/education/index.ssf/2014/11/steve_and_connie_ballmer_give.html

¹¹⁷ Anonymous interview. February 2015

here for appointing a trustee of the University. For those who take their responsibility for the University very seriously, this process seems rather cursory.”¹¹⁸ This lends itself to numerous philosophical questions: Who should be making the critical governing decisions of Oregon’s higher education institutions? What qualifications are required to run the day-to-day operations of what many believe to be the institutions that make up the bedrock of our democracy? Who should be included in the decision making process? What role does public accountability play? These are the critical questions being asked again and again by academic scholars, by legislators in education committee hearings, by Trustees in Board meetings, and by administrators in increasingly private conversations. Some scholars claim that the confusion over these questions is the root cause behind University controversies (Pardy 2008). The pattern over the past decade has shown that decision making power, in Oregon’s education system, is flowing away from those most impacted by those decisions, towards unaccountable leaders whose selection is often based on their net worth instead of their proven record of leadership on issues of higher education.

According to University Senate President Robert Kyr, the most concerning aspect of trends in University governance is the continued assault on a major tenet of our democracy: self-determination. The belief that those governed by an institution should choose the way it is run. As public institutions, he argues, our universities should mirror the structures laid out for us by the Founding Fathers of our nation.¹¹⁹ In *Federalist 22*, Alexander Hamilton wrote, “The fabric of American empire ought to rest

¹¹⁸ <https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/27071>

¹¹⁹ Kyr, Robert. Personal Interview. May 2, 2015

on the solid basis of the consent of the people.”¹²⁰ Similarly, in *The Declaration of Independence*, Thomas Jefferson rightly justified that government power should be derived from the “consent of the governed,” and if that power is destructive, it should be the “right of the people to alter or abolish it.”¹²¹

Interestingly, the University of Oregon used similar arguments in its appeal to remove itself from the jurisdiction of the SBHE in the New Partnership plan. As a faculty member at the UO who supported the creation of a new UO-specific Board, Kyr now argues that the Board itself has been violating the same tenet of self-determination that largely spurred its creation. By partnering with administrators instead of the larger campus community when creating critical governing documents like the PRDA and PUP, the Board has created the same level of distrust that existed when the SBHE made its decisions. Thus, it seems the prevalence of conflict recently has been induced by the prevention of participation in decision-making by those governed rather than the structure of the governing body itself.

How Should the UO Board of Trustees Proceed?

There are three simple goals the Board should work towards in order to ease the distrust felt by the larger campus community. These are: increase transparency, promote shared governance, and improve communication with campus constituencies. In some aspects, these goals may intersect. However, each plays a critical role in overcoming the trend of higher education towards consolidating power in places and people who remain unaccountable to those who are impacted by their decisions.

¹²⁰ <http://www.constitution.org/fed/federa22.htm>

¹²¹ http://www.archives.gov/exhibits/charters/declaration_transcript.html

Increase Transparency

First, the Board must work diligently to increase the transparency with which it discusses topics and makes decisions. Transparency is a fundamental aspect of accountability, which is essential for a functional democracy. There is no way for the general public to hold decision makers accountable if it is not made aware of what is going on or is intentionally kept in the dark. The Board should reconsider the methods in which it sets the agenda of its meetings, how much notice is given to the campus community prior to policy discussion and adoption, and the way it reports the “minutes” of what is said at its meetings.

Major policies scheduled for Board adoption should not be posted publicly only mere days before Board meetings (as was the case for the PRDA and the PUP controversies). Such practice furthers the perception that the Board is a top-down governing body that does not care to work with the rest of campus on policy development. Last minute and limited notice also leads some to believe that the Board may be trying to hide its actions from the larger campus community. Only allowing a couple of days for people to read through the Board’s agenda hinders people’s ability to consider the implications of the Board’s decisions on them and possibly mobilize dissent. The Board should work collaboratively with campus stakeholders to develop a more inclusive way to discuss and adopt policy changes.

Also, with today’s technology, it is easy to record and transcribe the word-for-word discussions occurring at Board meetings. The general public deserves this level of transparency and the Board should hold itself to at least the same standard of transcription to which the University Senate currently holds itself. Recently, University

of Oregon administrators have come under fire for the way they have handled public records requests and the information they redact.¹²² The Board should ensure that it also remain as transparent as possible in order to rebuild the trust that many in the campus community lost after its recent actions.

Transparency Recommendations:

- Include campus stakeholders in method for Board meeting agenda-setting
- Increase public notice of potential policy changes and adoption to at least two weeks prior to any Board decision
- Revamp the way “minutes” are recorded at Board meetings to include both a video recording of the meeting, along with transcribed word-for-word conversations that occur during the meeting.

Promote Shared Governance

Along with increasing transparency, the Board should work collaboratively with the University Senate in developing a model for shared governance with clear lines of authority for policy development. Many of the recent controversies involving the Board have stemmed from these lines of authority being blurred or ignored, resulting in dissatisfied members of the UO community.

The University Constitution already contains many of these lines of authority and should be recognized as the first fundamental governing document of the University. The Board should initiate a process that reconciles conflicting statements in the Constitution and the PRDA, with heavy participation from the University Senate.

¹²² <http://www.splc.org/article/2014/07/new-york-times-resubmits-request-for-public-records-on-university-of-oregon-sexual-misconduct-case-a>

This would work to ensure that all invested parties clearly understand their role in the development of policies at the University.

Shared Governance Recommendations:

- Develop clear lines of authority for policy development
- Recognize and affirm the University Constitution as the first fundamental governing document
- Initiate a process, with heavy involvement with the University Senate, in which to reconcile differences in the University Constitution and the Policy on Retention and Delegation of Authority

Improve Communication

Lastly, the Board should attempt to improve communication with the larger campus community besides University administrators. Board members should identify a liaison other than their Secretary who could work with the University Senate and increase communication between the two governing bodies. Both the University Senate and the Board should mutually agree upon this individual. It's critical that someone remains accountable to both bodies, ensuring that more controversies like those that stemmed from the lack of communication surrounding the PRDA and the PUP do not happen in the future.

The Board should also revise the process it has established for its public comment section of its Board meetings. Currently, it is more laborious for members of the public to sign up to speak during the Board's public comment time than it is to speak during a public hearing on pieces of legislation in Salem. This seems a bit extreme. Also, the Board only allows for 20 minutes of time for public comment. If

each speaker uses his or her allotted three minutes, this would only allow for seven individuals to speak. Such a policy is especially limiting, given that the Board often only meets once every couple of months. If the Board wants to increase its understanding of what life is actually like at the University, it is essential that they provide adequate means for those whom they represent to inform them. Increased understanding of the University, after all, was a main justification for having a new Board in the first place.

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Communication Recommendations:

- Identify a liaison to the University Senate who is mutually agreed upon by both bodies.
- Revise the public comment section of Board meetings to allow for at least an hour of public comment

Increased transparency, clearly communicated methods of shared governance, and improved communication with the campus community will work to ensure that the Board's decisions are educated ones based upon what those impacted by their decisions are telling them. No institution or individual's power should be diminished without his or her explicit participation in the process and giving consent to the result. So far, the Board has stumbled multiple times when attempting to alter campus political dynamics and this has resulted in significant outcry from the campus community. To avoid such outcomes in the future, the Board should adopt the aforementioned solutions or it will be destined to repeat the same mistakes as the SBHE before it.

Conclusion

Utilizing the transition in governance at the University of Oregon as a case study, this paper seeks to provide the academic literature with a real-world example of the impact of shifting governance policies in a state that has continually disinvested in its system of higher education. Numerous national studies have investigated such governance transitions, identifying key patterns in the outcomes of universities with different governing models. This paper investigates those patterns on a local level, specifically as they relate to the key actions taken by legislators as they created SB 270, and the actions of the new UO Board of Trustees in its first year of existence.

At the University of Oregon, discontent regarding the State's strict decision-making authority over the University, despite its continued disinvestment, eventually manifested itself in repeated attempts to create a more decentralized system of governance wherein the UO would have its own governing board and a steady stream of state funds. This "New Partnership" with the State ultimately failed, but it played an important role in driving the conversation forward on the issue of necessary reforms to Oregon's higher education governing institutions, mainly the SBHE.

The conversation turned to major governance reform during the 2013 legislative session with the creation of SB 270, granting greater autonomy to new institution-specific Boards at the UO, OSU, and PSU. At the same time, HB 3120 implemented a stronger coordinating board over the entire state's higher education system. Legislators acknowledged that if they were unwilling to fund Oregon's universities to the levels needed to achieve the Governor's 40-40-20 goals, they should at least provide them with the freedom to find funds from elsewhere – new Boards. In theory, these new

Boards could govern more effectively than the former SBHE, because they were more sensitive to the needs of their specific campuses. Also, if filled with the right people, they could work as chief fundraisers for their institution, bringing in the much-needed revenue that the State had, for decades, been unable to provide.

Complications in the legislation arose as the power-struggle that had simmered beneath the surface at Oregon's universities raged in the halls of the Capitol in Salem. Issues like the composition of the boards, tuition & fee authority, and shared governance protections pitted University administrators, who generally favored fewer restrictions, against faculty and students, who generally favored more codified guidelines. As legislative compromises worked themselves out, neither group ended up getting exactly what they wanted. Restrictions on tuition and fee increases, and token constituent seats on the boards were mandated in the law. At the same time, significant new powers were granted to the boards, including surprisingly vague language surrounding University policy creation and the relative role of faculty in the process, leaving the future of shared governance up in the air.

The ambiguity of SB 270's impact on shared governance set the stage for controversy almost immediately at the University of Oregon. University administrators used the opportunity of the new Board to try and redefine the power dynamic that had existed for decades and was codified in the University Charter, University Constitution, and Policy on Policies. They found an ally in Board Chair Chuck Lillis who stated that while he was personally committed to a form of shared governance, he was "embarrassed" by the reputation of the UO as a place "where the faculty and

administration do not get along.”¹²³ In many ways, administrators convinced the new Board to limit the authority and role of other campus constituencies as a way to change this reputational image. This is evidenced most clearly in the Board’s new Policy on Retention and Delegation of Authority, as well as their selection of people to serve on the Presidential Search Committee.

Peter Keyes was surprisingly predictive when he testified that the new Board created by SB 270 could “essentially abolish shared governance, over the objections of the Statutory Faculty.”¹²⁴ The law created an opportunity for the Board to disregard all recommendations regarding shared governance that had been developed as best practices by the State. This is exactly what UO administrators suggested that they do when attempting to pass the PRDA, despite the objections of the faculty.

When legislators enshrined institutional boards, and their powers, into law without mandating the protection of any of the aspects of shared governance that the SBHE contained in its policy directives, they gave the Boards full authority to redefine how all university policies are created as well. Multiple individuals involved in the process, who wished to remain anonymous, indicated that other issues were prioritized during the conversations surrounding SB 270 and that critical aspects of shared governance were not explored to the extent they should have been in the process.¹²⁵¹²⁶

The evidence presented in this paper suggests that the UO administration and certain members of the Board played an active role in working to diminish the authority of the faculty and the University Senate. Administrators secretly developed a new

¹²³ <http://senate.uoregon.edu/content/minutes-uo-senate-meeting-november-19-2014>

¹²⁴ <https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/27071>

¹²⁵ Anonymous interview. January 2015

¹²⁶ Anonymous interview. February 2015

Policy on Retention and Delegation of Authority, which worked to supersede already existing authorities granted to the University Senate by the University Constitution. They also devised a new Policy on University Polices without the advice of the faculty, which attempted to destroy all policy-making or advising authority the faculty still had. Lastly, the Board created an entirely new system of Presidential selection. They greatly diminished the role of faculty, staff, and students in the ability to search for and select their new University President, while at the same time increasing the influence of administrators. These actions shed light on how power is slowly becoming concentrated in the hands of those who remain unaccountable to those whom their decisions affect.

The decentralization of authority embodied in SB 270 has allowed the Boards at each university to determine their own destiny. However, this newly granted autonomy, which in itself represents a move towards self-determination at the campus level, has led to a war regarding who at the UO is best equipped to be influencing these new policies and developing the University's direction. So far, administrators have worked closely with the Board to reduce the role the faculty used to have in developing policy. This is evidenced by their involvement in the development of both the PRDA and the PUP. The extension of the principle of self-determination in University governance seems to have stopped with administrators, instead of extending down to those whom the University actually serves, faculty and students.

Returning to the scholarship of Bruce Pardy: the importance of systems of separation of powers at the University level of governance should not be ignored as they further the holistic mission of academia. Despite this, UO administrators have largely worked to eliminate the checks on their power, resulting in a system that bounces from

one political controversy to the next. Because this paper looks only at the University of Oregon's response to a more decentralized system of governance, it remains unclear if the actions of administrators and the Board are typical in a system undergoing such rapid change. It seems that in this case, individual characters played a significant role in the controversies created by the transition. The administration's seemingly strong desire to limit faculty participation, coupled with a strong faculty response, indicate that political tensions at the UO were not new. It was just this new opportunity to gain the upper hand in the struggle for power that ignited a series of dramatic controversies. It remains unexplored whether or not these same controversies exist at other campuses that are given more autonomy.

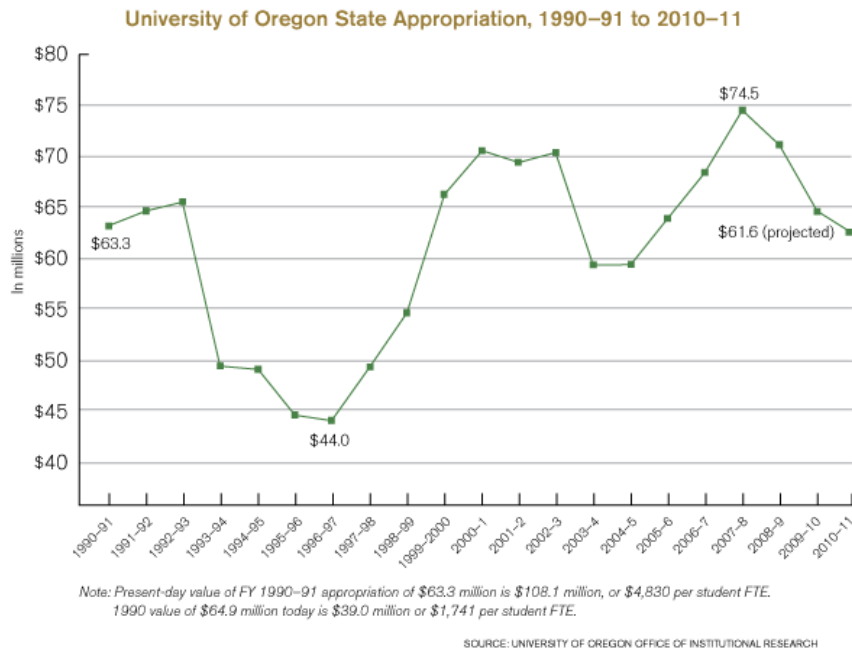
The events at the University of Oregon and the recent decentralization of higher education governance in the State of Oregon exist within the larger context of increasingly cash-strapped public university systems that have been forced to think creatively in their efforts to find the necessary funds to adequately support their quest for affordable, high quality education. For Oregon, higher education has shifted from relying on state funding, which has declined in real support for decades, to increasingly relying on student tuition dollars and private philanthropic donations. This transition has come with multiple consequences. It will be impossible to reach the 40-40-20 goals set out by the Governor and the legislature if higher education continues to be fiscally out of reach for entire classes of Oregonians. Also, the philanthropic donations solicited by University administrators have come with numerous strings, including the most major: an entirely new system of governance.

The majority of Trustees that now sit on the UO Board of Trustees come from successful backgrounds in business¹²⁷, which has been demonstrated to influence their decision-making. The increasing corporatization of higher education has been in the making for decades across the country. However, now at the University of Oregon, the issue has become more problematic as individuals sensitive to corporate interests now have more seats at the table than those who seek to give voices to the people the Board has direct authority over. The growing disconnect between decision makers and those impacted by their decisions raises the issue of what happens when those two groups clash over their vision for the University? What should happen? The answers to these questions will determine the future of higher education, not just in Oregon, but throughout the country.

¹²⁷ <http://trustees.uoregon.edu/trustees>

Appendices

Appendix A¹²⁸



¹²⁸ <http://newpartnership.uoregon.edu/blog/2010/05/12/the-white-paper-introduction-and-oregons-public-responsibility-regarding-higher-education/index.html>

Appendix B¹²⁹

New Public University Model

	Input Assumptions	Capitalized Debt Service
Current State Funding for the University of Oregon	\$64,469,123	
Capitalized Value of Payments	7.0%	\$800,000,000
Earnings Assumptions	9.0%	
Distribution Assumption	4.0%	
Private Match		800,000,000

A	B	C	D
Year	Capitalized Endowment	Endowment Earnings	Endowment Distribution
0	\$1,600,000,000	—	—
1	1,680,000,000	\$144,000,000	\$64,000,000
2	1,764,000,000	151,200,000	67,200,000
3	1,852,200,000	158,760,000	70,560,000
4	1,944,810,000	166,698,000	74,088,000
5	2,042,050,500	175,032,900	77,792,400
6	2,144,153,025	183,784,545	81,682,020
7	2,251,360,676	192,973,772	85,766,121
8	2,363,928,710	202,622,461	90,054,427
9	2,482,125,145	212,753,584	94,557,148
10	2,606,231,402	223,391,263	99,285,006
11	2,736,542,973	234,560,826	104,249,256
12	2,873,370,121	246,288,868	109,461,719
13	3,017,038,627	258,603,311	114,934,805
14	3,167,890,559	271,533,476	120,681,545
15	3,326,285,087	285,110,150	126,715,622
16	3,492,599,341	299,365,658	133,051,403
17	3,667,229,308	314,333,941	139,703,974
18	3,850,590,773	330,050,638	146,689,172
19	4,043,120,312	346,553,170	154,023,631
20	4,245,276,328	363,880,828	161,724,812
21	4,457,540,144	382,074,869	169,811,053
22	4,680,417,151	401,178,613	173,301,606
23	4,914,438,009	421,237,544	187,216,686
24	5,160,159,909	442,299,421	196,577,520
25	5,418,167,905	464,414,392	206,406,396
26	5,689,076,300	487,635,111	216,726,716
27	5,973,530,115	512,016,867	227,563,052
28	6,272,206,621	537,617,710	238,941,205
29	6,585,816,952	564,498,596	250,888,265
30	6,915,107,799	592,723,526	263,432,678

¹²⁹ <http://newpartnership.uoregon.edu/blog/2010/05/12/the-white-paper-introduction-and-oregons-public-responsibility-regarding-higher-education/index.html>

Appendix C¹³⁰

Board of Trustees of the University of Oregon

Resolution: Adoption of a Policy on the Development and Revision of University Policies

Whereas, the University of Oregon (the “University”) benefits from having a uniform, well- articulated, inclusive and thoughtful process for the development, adoption, and revision of University policies;

Whereas, the University community should have an easily-accessible, widely-disseminated, organized, consistent, and comprehensive set of University policies;

Whereas, the University should have policies that enhance the effective management of the institution, facilitate the implementation of best practices, and ensure compliance with applicable state and federal laws;

Whereas, ORS 352.029 provides that the Board of Trustees of the University of Oregon (the “Board”) manages the affairs of the University by exercising and carrying out all of the powers, rights and duties that are expressly conferred upon the Board by law, or that are implied by law or incident to such powers, rights and duties; and

Whereas, ORS 352.107(m) grants to the Board the authority to establish policies for the organization, administration and development of the University;

Now, therefore, the Board of Trustees of the University of Oregon hereby:

1. Adopts the Policy on University Policies attached hereto as Exhibit A, which shall supersede all related and existing University authorities, policies, and procedures, to the extent they are inconsistent with the Policy on University Policies or would otherwise materially alter it, subject to the Board’s retention of authority to adopt, revise, or repeal any University policy by independent Board action; and
2. Repeals UO Policies 01.00.01 (Policy Statements: Authority and Origins) and 01.00.02 (Policy Statements: Authority and Origins); and
3. Directs the offers of the university to take any and all steps necessary and proper to implement the Policy on University Policies, which is effective immediately upon passage of this resolution.

¹³⁰ <http://trustees.uoregon.edu/sites/trustees2.wc-sites.uoregon.edu/files/field/image/Full%20BOT%20Notice%20and%20Materials%20120414%20-%20r.pdf>

PREAMBLE

Exhibit A

Board of Trustees of the University of Oregon Policy on University Policies

As provided in ORS 352.029, the Board of Trustees of the University of Oregon (the “Board”) manages the affairs of the University by exercising and carrying out all of the powers, rights and duties that are expressly conferred upon the Board by law, or that are implied by law or are incident to such powers, rights and duties.

As provided in ORS 352.107(m), the Board has the authority to establish Policies for the organization, administration and development of the University.

This Policy establishes fundamental University Policy-making guidelines and delegates to the University President the authority to determine how best to implement the guidelines. This Policy recognizes the University President’s on-going authority under the Board’s Policy on Retention and Delegation of Authority, to establish emergency and temporary Policies, Standards and Directives that are exempt from this Policy when the Board or the President deems it necessary or appropriate. This Policy likewise recognizes the Board’s on-going authority to adopt, revise, or repeal University Policies, Standards, and Directives by direct Board action, independent of this Policy.

1. Title. This Policy shall be known as the Policy on University Policies.

2. Definition of Policy. A University Policy (“Policy”) is a policy that (1) has broad application or impact throughout the University community, (2) must be implemented to ensure compliance with state or federal law, (3) is necessary to enhance the University’s mission, to ensure institutional consistency and operational efficiency, or to mitigate institutional risks; or (4) is otherwise designated by the Board or the University President as a University Policy subject to the Policy-Making Process authorized in Section 3.

3. Process. The University President shall establish a Policy-making process (hereinafter referred to as the “Policy-Making Process”) for the efficient development, adoption, revision, or repeal of all new or existing University Policies, subject to the Board’s on-going authority to adopt, revise, or repeal University Policies independent of the Policy-Making Process and the University President’s on-going authority to establish emergency and temporary Policies, pursuant to the Board’s Policy on Retention and Delegation of Authority. The Policy-Making Process shall, at a minimum, include the following components:

3.1 A Policy Advisory Council (PAC), comprised of the President of the University Senate and other representatives from the University community as deemed appropriate by the University President, to advise and assist the President in the prioritization and organization of University Policies that are developed, adopted, revised, or repealed pursuant to the Policy-Making Process.

Board of Trustees of the University of Oregon Resolution: Approval of a Policy on University Policies December 11, 2014

Page 3

3.2 A designated Responsible Office and Subject-matter Work Group for each University Policy consisting of University faculty and/or staff most familiar with the subject matter or implementation of the University Policy, and which is responsible for reviewing the University Policy to propose revision or repeal to ensure compliance with applicable laws, rules, regulations and best practices. Following adoption of a new or revised University Policy, the designated Responsible Office is also responsible for assisting with the interpretation, administration, and oversight of the University Policy and for developing standard operating procedures, guidelines, forms, user-guides, and other materials to facilitate implementation and enforcement of the University Policy, as necessary.

3.3 Review by the Office of the General Counsel for each University Policy developed, adopted, revised, or repealed pursuant to the Policy-Making Process as established under the authority in Section 3 to ensure compliance with applicable laws and consistency with other established University Policies.

3.4 An opportunity for Responsible Offices, Subject-matter Work Groups, and members of the University community to submit forms maintained on the University's website, in the online Policy Library, to request development, adoption, repeal, or revision of University Policies.

3.5 An opportunity for public review and comment for University Policies developed, revised, or repealed pursuant to the Policy-Making Process.

3.6 Retention of Board or University President final approval for all University Policies developed, revised, or repealed pursuant to the Policy-Making Process.

3.7 Publication of all current, enforceable, and official University Policies on the University's website, in the online Policy Library. The publication shall include the Effective Date of the University Policy and the designated Responsible Office.

3.8 Authority for the Secretary of the University, in consultation with the designated Responsible Office, to make technical revisions that do not alter the substance, scope, or objective of a University Policy and that are therefore exempt from the Policy-making Process. Examples of technical revisions include, but are not limited to, clarifying terms, adding links, editing titles or office names to comply

with organizational changes, grammatical edit, formatting, or renumbering for organizational management.

4. Transition. This Policy on University Policies applies to University Policies developed, adopted, revised, or repealed after the effective date of this Policy. University Policies adopted prior to the effective date of this Policy shall, to the extent lawful, remain in effect until otherwise revised or repealed consistent with this Policy, independent Board action, or the processes specified in the Board’s Policy on Retention and Delegation of Authority.

Appendix D¹³¹

Resolution Affirming the University of Oregon Constitution

Number: US14/15-25

Sponsor: Michael Dreiling

Date of Notice: Wed, 12/10/2014

Legislation, Resolution, or Policy Adoption: Resolution

Current Status: Approved on 12/10/2014

Motion:

Section I

- 1.1 WHEREAS the Senate wishes to restore trust and confidence in shared governance at the University of Oregon, a feature of higher education that the Association of American Universities has deemed crucial “to support the university’s autonomy, enabling the institution to fulfill its education, research, and service missions”;
 - 1.2 WHEREAS On Dec. 7, 2011, the statutory faculty voted unanimously to approve the University of Oregon Constitution, once again affirming the customary practice of shared governance as legally grounded in the University of Oregon Charter and subsequent amendments to it [now contained in Oregon Revised Statutes § 352.146, reaffirmed in Oregon Laws 2013, Chapter 768, § 18];
 - 1.3 WHEREAS, the draft “Policy on University Policies” that was previously under consideration by the Board of Trustees was developed within the University Administration for the Board over several months, without consulting the faculty, the Senate President, the Senate Executive Committee, or the University Senate;
 - 1.4 WHEREAS the draft Board of Trustees’ “Policy on University Policies” would have had the effect of superseding existing policies, including the University Constitution and the currently operating University Policies 01.00.01 and 01.00.02;
- Section II

¹³¹ <http://senate.uoregon.edu/content/resolution-affirming-university-oregon-constitution>

2.1 BE IT THEREFORE RESOLVED, that the University Senate conveys appreciation to the university community, the Senate President, and the Senate Executive Committee for their vigilance in recognizing and acting decisively in asking President Coltrane to advocate to the Board of Trustees for the full preservation and integrity of the University Constitution and the process of shared governance;

2.2 AND BE IT FURTHER RESOLVED, that the University Senate commends President Coltrane for his decision to present the concerns of the university community, the Senate President, and the Senate Executive Committee to the Board of Trustees to postpone a vote on “The Policy on University Policies,” and to fully engage in a process of consultation with the University Senate in the fashion legitimated by Section 7 of the University of Oregon Constitution and as outlined in the current Policy on Policies;

2.3 AND BE IT FURTHER RESOLVED, that the University Senate commits to collaborating with the University President and the Board of Trustees to fully participate in an orderly and efficient review (and reworking as necessary) of all policies related to the academic mission of the University;

2.4 AND BE IT FURTHER RESOLVED, that the University Senate once again wholeheartedly reaffirms the University Charter, the University of Oregon Constitution, and the Policy on Policies [01.00.01 and 01.00.02], subject to any revision of the Policy on Policies through a collaborative process that honors shared governance.

Appendix E¹³²

Board of Trustees of the University of Oregon Policy on University Policies

Recognizing that the best approach to policy-making and excellence in a University setting is one that respects the longstanding tradition of shared governance in Higher Education by embracing the faculty's role in governance, consulting with content experts, and considering the input of constituents affected by a policy, this Policy establishes the process for University Policy-making.

As provided in ORS 352.146, "[t]he president and professors constitute the faculty and as such have the immediate government and discipline of a university with a governing board and the students therein, except as otherwise provided by law or action of the governing board."

As provided in ORS 352.029, the Board of Trustees of the University of Oregon (the "Board") manages the affairs of the University of Oregon (the "University") by exercising and carrying out all of the powers, rights and duties that are expressly conferred upon the Board by law, or that are implied by law or are incident to such powers, rights and duties.

As provided in ORS 352.107(m), the Board has the authority to establish Policies for the organization, administration and development of the University.

This Policy recognizes the University President's on-going authority under the Board's Policy on Retention and Delegation of Authority and the University of Oregon Constitution, to establish emergency and temporary Policies, Standards and Directives that are exempt from this Policy when the Board or the President deems it necessary or appropriate.

This Policy likewise recognizes the Board's ongoing authority to adopt, revise, or repeal University Policies, Standards, and Directives by direct Board action, independent of this Policy. The process set forth in this Policy will be the standard procedure for institutional policy-making.

1. Title. This Policy shall be known as the Policy on University Policies.
2. Purpose. The purpose of this Policy is to promote University-wide consistency, clarity and

understanding of the formulation, approval and promulgation of University of Oregon Policies.

¹³² <http://senate.uoregon.edu/sites/senate.uoregon.edu/files/Policy%20on%20Policies%20-%202015%20revision%20-%20DRAFT%2018.pdf>

3. Definitions.

3.1 Policy. A University Policy (“Policy”) is a policy that (1) has broad application or impact throughout the University community, (2) must be implemented to ensure compliance with state or federal law, (3) is necessary to enhance the University’s mission, to ensure institutional consistency and operational efficiency, or to mitigate institutional risks; or (4) is otherwise designated by the Board or the President as a University Policy subject to the Policy-Making Process authorized in section 4. A policy establishes rights, requirements or responsibilities. Excluded from this definition are things such as, but not limited to, implementation guides, operating guidelines, internal procedures, and similar management controls and tools.

3.2 Academic Policy. A Policy that addresses curriculum, academic standards, academic standards of admission, academic freedom, tenure and promotion, major changes to academic programs, grading standards, student life that relates to the educational process, or other matters of an academic nature as commonly understood in higher education, as specified in Section 1.3 of the University of Oregon Constitution.

3.3 Responsible Office. An office designated by the Policy Advisory Committee to be responsible for the development, review, maintenance and implementation of a Policy and for ongoing oversight of the Policy after its adoption.

4. Process. The following Policy-making Process shall be used for the efficient development, adoption, revision, or repeal of all new or existing Policies.

4.1 Any unit within the University such as a school, college, institution or department, may develop policies that relate solely to that unit so long as those policies do not conflict with applicable law and existing University Policies.

4.2 The President shall convene and maintain a Policy Advisory Council (PAC) and shall appoint a Chair or Co-Chairs. The President of the University Senate (“Senate President”) shall serve as a member of the PAC and may delegate a member of the faculty to act in his or her place when necessary. The University President, in consultation with others, including the Senate President, shall appoint students, faculty and staff to the PAC at his or her discretion. The PAC will advise and assist the President in the prioritization and organization of University Policies that are to be developed, adopted, revised, or repealed pursuant to the Policy- Making Process.

4.3 Any individual in the University community, any University unit, or the University Senate may submit a proposal for the development, revision or repeal of a Policy. Such a proposal shall be submitted to the University Secretary using a Policy Concept Form, to be developed and maintained by the University Secretary. On receiving a Policy Concept Form, the University Secretary shall post the Form on the Policy Library for public access and forward the Form to the Chair(s) of the PAC, who shall promptly forward it to PAC members.

4.4 For each Policy to be revised or repealed, or for each Policy Concept Form proposing a new Policy, the Chair(s) of the PAC shall designate a Responsible Office and will charge the Responsible Office with facilitating the development and review of Policies. The Responsible Office shall establish deadlines in connection with the development of a new Policy or for the review of an existing Policy for revision or repeal. The Responsible Office shall identify key constituent groups and subject matter experts for consultation regarding specific Policies. The Senate President shall inform the PAC Chair(s) if he or she considers a policy to be an Academic Policy. Policies determined to be Academic Policies shall follow those provisions outlined in section 5.

4.5 The Responsible Office, after consultation with groups identified pursuant to section 4.4, will draft proposed language for a new Policy, draft proposed language for the revision of an existing Policy, or recommend repeal of the Policy.

4.6 The Office of General Counsel shall review proposed language to ensure compliance with the law and existing University Policies.

4.7 The PAC shall ensure that each proposed revision, repeal or new Policy is made available for public comment. The PAC shall consider public comments and coordinate with the Responsible Office and General Counsel on any modifications resulting therefrom. For public comment on Academic Policies, see section 5.1.

4.8 The President will take action on the Policy or forward the Policy to the Board for consideration pursuant to the Policy on Retention and Delegation of Authority.

4.9 Notice concerning Policies that have been approved and published will be disseminated to vice presidents, deans, directors, the Senate President, the Senate Executive Coordinator, the presidents of the University's collective bargaining units, the President of the ASUO, and other relevant persons or offices.

4.10 Following adoption of a Policy, the designated Responsible Office is responsible for assisting with the interpretation, administration, and oversight of the Policy and for developing standard operating procedures, guidelines, forms, user guides, and other materials to facilitate the implementation and enforcement of the Policy, as necessary.

5. Academic Policies.

5.1 For Academic Policies, the Senate President will initiate action within the Senate's procedures and in collaboration with appropriate others. The Responsible Office for Academic Policies shall be the Office of the Senior Vice President and Provost, which shall coordinate with the University Senate.

5.2 After action by the Senate, the Senate President will present the Policy to the University President, who will take action in accordance with Section 7.2 of the University of Oregon Constitution.

5.2.1 For each proposed new Academic Policy or change to an existing Academic Policy, if the President's decision is contrary to a vote of the University Senate on the proposal, he or she shall come to the Senate within the time specified in Section 7 of the University of Oregon Constitution (60 days or longer if necessary) – as President of the Faculty – and suggest withdrawal or amendment. The Senate shall promptly consider the President's request. If the President and the Senate cannot come to agreement after 60 days from the President's presentation, the President and the Senate President shall jointly call a Faculty Assembly.

5.2.2 If the a Faculty Assembly is called pursuant to section 5.2.1, the Statutory Faculty and President will fulfill their oversight obligations and exercise their authorities according to the procedures outlined in Section 9 of the University of Oregon Constitution.

5.3 Proposals for majors, programs, minors, certificates, courses, and degree requirements originate in academic units and are drafted by faculty. These items are not considered policies for the purpose of this Policy.

Policy Library. All current, enforceable, and official Policies shall be published on the University's website in the online Policy Library and shall include the Policy's revision history. Policies shall have force and effect once published. The publication shall include the Effective Date and the designated Responsible Office for each Policy. The official version of all Policies shall be maintained by the University Secretary.

Technical Revisions. The Secretary of the University, in consultation with the designated Responsible Office, shall have the authority to make technical revisions that do not alter the substance, scope, or objective of a Policy, which shall be exempt from the Policy-making Process, namely adding links, editing titles or office names to comply with organizational changes, formatting, or renumbering for organizational management.

Maintenance. The Responsible Office shall perform a review of each Policy at least once every ten years to ensure compliance with current laws, regulations and practices. A policy review schedule will be maintained in the Policy Library.

Emergency Policies. If the University needs to comply immediately with federal, state or local law, or in the case of a determined immediate emergency, the President, pursuant to the Policy on Retention and Delegation of Authority, may issue a temporary emergency Policy, or may temporarily suspend an existing Policy without following the procedures described in this Policy. Each action of this type

shall have a duration of no more than six months unless a showing of necessity warrants a longer duration. If the President wishes to make the action permanent, the President shall follow the procedures in this Policy.

10. Transition. This Policy on University Policies applies to University Policies developed, adopted, revised, or repealed after the effective date of this Policy. University Policies adopted prior to the effective date of this Policy shall, to the extent lawful, remain in effect until otherwise revised or repealed consistent with this Policy, independent Board action, or the processes specified in the Board's Policy on Retention and Delegation of Authority.

11. Amendment. This Policy may be revised by the University President and University Senate.

Appendix F¹³³¹³⁴

Tuition & Fees Spreadsheet

Academic Year	Undergraduate Resident Tuition & Fees Cost (45 credits)	
	Dollar Amount	% Increase over previous year
2015-2016	10,288.5	3.74%
2014-2015	9,918	2.22%
2013-2014	9,703	4.22%
2012-2013	9,310	5.93%
2011-2012	8,789	7.31%
2010-2011	8,190	10.23%
2009-2010	7,430	14.57%
2008-2009	6,485	5.14%
2007-2008	6,168	3.32%
2006-2007	5,970	2.84%
2005-2006	5,805	2.38%
2004-2005	5,670	12.52%
2003-2004	5,039	6.69%
2002-2003	4,723	16.02%
2001-2002	4,071	6.60%
2000-2001	3,819	0.24%
1999-2000	3,810	1.03%
1998-1999	3,771	3.37%
1997-1998	3,648	3.05%
1996-1997	3,540	4.70%
1995-1996	3,381	3.78%
1994-1995	3,258	11.73%
1993-1994	2,916	7.17%
1992-1993	2,721	4.73%

¹³³ http://www.ous.edu/sites/ous.edu/files/historical_tf_ay74_thru_ay15_v2.pdf

¹³⁴ <http://trustees.uoregon.edu/sites/trustees2.wc-sites.uoregon.edu/files/field/image/FFC%20Meeting%20Notice,%20Agenda%20&%20Materials%20030415r.pdf>

1991-1992	2,598	32.21%
1990-1991	1,965	10.27%
1989-1990	1,782	8.07%
1988-1989	1,649	5.98%
1987-1988	1,556	4.64%
1986-1987	1,487	0.00%
1985-1986	1,487	3.12%
1984-1985	1,442	0.63%
1983-1984	1,433	3.84%
1982-1983	1,380	15.97%
1981-1982	1,190	22.81%
1980-1981	969	12.67%
1979-1980	860	9.00%
1978-1979	789	6.62%
1977-1978	740	3.64%
1976-1977	714	10.36%
1975-1976	647	12.91%
1974-1975	573	5.91%
1973-1974	541	N/A

OUS 2010-2014 Average Increase

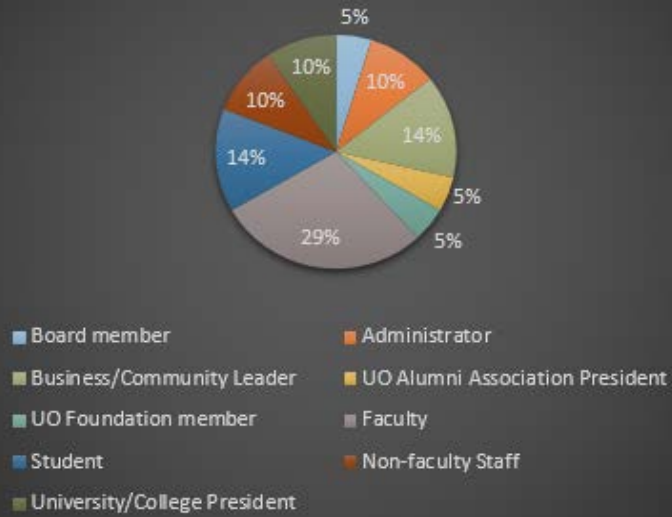
5.98%

OUS 2000-2014 Average Increase

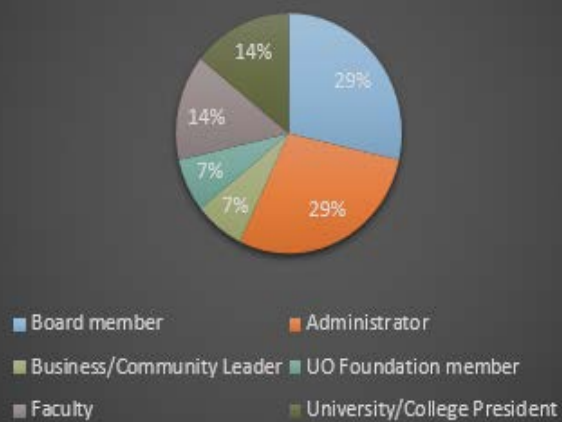
6.68%

Appendix G

2012 Presidential Search Committee



2015 Presidential Search Committee



KEY
Board Member
Administrator
Business/Community Leader
UO Alumni Association President
UO Foundation member
University Professor
Student
Non-faculty Staff
University/College President

2012 Presidential Search Committee
Allyn Ford, Search Chair, SBHE board member
Frances Bronet, Dean, School of Architecture & Allied Arts
Robin Holmes, VP of Student Affairs
Dan Giustina, managing partner, Giustina Resource
Gregg Kantor, CEO, Northwest Natural Gas Co.
Gwen Lillis, chair, The Lillis Foundation
Anne Marie Levis, UO Alumni Association president
Ed Maletis, UO Foundation member
Robert Kyr, University Senate President, University professor
Alec Murphy, University professor of geography
Margie Paris, University professor of law
Michael Hames-Garcia, University professor of ethn studies
Geraldine Richmond, University professor of chemis
Kim Sheehan, professor of journalism
Ben Eckstein, Undergraduate Student, ASUO presi
Maneesh Arora, Undergraduate Student
Miriam Abelson, Graduate Student
Miriam Bolton, University executive assistant, Lund College of Business
Eric Clark, University libraries' student coordinator
Mary Spilde, president, Lane Community College
Preston Pulliams, president, Portland Community C

2015 Presidential Search Committee
Connie Ballmer, Search Chair, Trustee
Peter Bragdon, Trustee
Rudy Chapa, Trustee
Joseph Gonyea III, Trustee
Robin Holmes, VP of Student Life
Jamie Moffit, VP of Finance & Admin., CFO
Michael Moffit, Dean, UO Knight Law School
Barbara Altmann, Vice Provost of Academic Affairs
Mariann Hyland, President of Oregon State Bar
Paul Weinhold, President of UO Foundation
Bill Cresko, professor of biology
Leslie Leve, professor of education
Chris Maples, president, Oregon Institute of Technology
Joe Robertson, president, Oregon Health & Sciences University
2015 Advisory Group
Sandra McDonough, president, Portland Business Alliance
Oscar Arana, Alumnus
Jeff Eager, Alumnus
Derrick Deadwiler, UO Alumni Association president
Jon Anderson, former Trustee of UO Foundation
Robert Kyr, University Senate President, University professor
Angela Davis, professor of business
Mary Jaeger, professor of classics
Beatriz Gutierrez, Undergraduate Student, ASUO president
Brennan Heller, Undergraduate Student
Kate Karfilis, Graduate Student
Teri Rowe, department manager, department of economics
Carla McNelly, operations coordinator, school of journalism

Appendix H

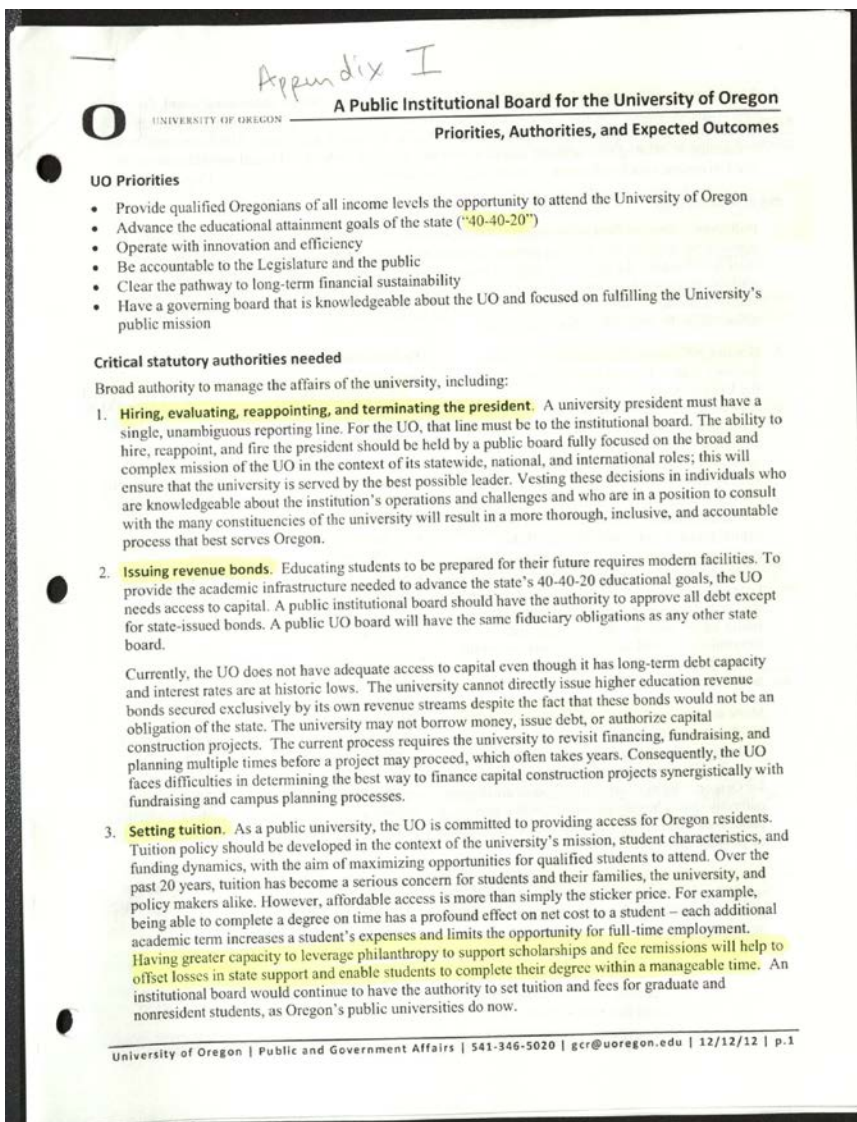
2009	July	<ul style="list-style-type: none"> 7/1/2009: Richard W. Lariviere became the 16th president of the University of Oregon
	August	
	September	
	October	
	November	<ul style="list-style-type: none"> OUS released the Dave Frohnmayer report commissioned to address governance issues with the state
	December	
2010	January	
	February	
	March	
	April	
	May	<ul style="list-style-type: none"> The UO issued its white paper, Preserving Our Public Mission through a New Partnership with the State.
	June	
	July	<ul style="list-style-type: none"> The Oregon State Board of Higher Education approved the OUS governance proposal, New Compact with the State
	August	<ul style="list-style-type: none"> The UO finalized and re-released its white paper, Preserving Our Public Mission through a New Partnership with the State OUS presented its governance proposal to the Legislative Higher Education Workgroup meeting in Corvallis
	September	
	October	<ul style="list-style-type: none"> President Lariviere presented UO's New Partnership proposal to the Legislative Higher Education Workgroup meeting in Portland
	November	
	December	<ul style="list-style-type: none"> Higher Education Workgroup, chaired by State Sen. Mark Hass, proposes changes to governance of higher education (SB 242)
2011	January	<ul style="list-style-type: none"> At the request of the UO Foundation, the New Partnership legislation, SJR 20 and SB 559, are introduced At the request of the OUS, HB 2118 is introduced to change and improve governance of higher education
	February	<ul style="list-style-type: none"> 76th Oregon Legislature convenes 2/9/11: University Senate deliberates formal endorsement of the New Partnership proposals 2/15/11: Lobby day in Salem for SB 559 and SJR 20
	March	<ul style="list-style-type: none"> 3/1/11: SB 559 and SJR 20 receive a public hearing before the Senate Education and Workforce Development Committee, where they die 3/21/11: President Lariviere meets with Gov. Kitzhaber to discuss timing of New Partnership proposal and alignment of the New Partnership SB 909 3/29/11: Gov. Kitzhaber sends President Lariviere a letter thanking him for his work on higher education restructuring and for his support of the Governor's proposal 3/29/11: President Lariviere responds to the Governor's letter,

		thanking him for his encouragement to continue advancing the ideas contained in the New Partnership
	April	
	May	
	June	• 6/28/11: SB 909 goes into effect as Gov. Kitzhaber signs it into law
	July	• 7/20/11: Governor John Kitzhaber signs SB 242 into law
	August	
	September	• 9/9/11: President Lariviere presents UO proposals for higher education governance and funding reform to the SBHE Governance and Policy Committee
	October	
	November	<ul style="list-style-type: none"> • 11/16/11: Gov. Kitzhaber writes to the Co-chairs of the SBHE Governance and Policy Committee, urging consideration of local institutional governing boards for universities that want one. • 11/17/11: The SBHE Governance and Policy Committee discusses the creation of institutional governing boards and releases draft divisional responsibilities • 11/28/11: The SBHE votes to terminate the contract of President Lariviere, without cause • 11/30/11: UO Statutory Faculty Assembly pass resolution to support the creation of an independent governing board
	December	• 12/9/11: In a special meeting, the SBHE appoints Dr. Robert Berdahl as interim president of the UO
2012	January	
	February	• 2/1/12: HB 4061 is introduced in the Oregon House of Representatives to create a Special Committee on University Governance and research a possible transition from OUS to local institutional boards for UO and PSU
	March	• 3/27/12: HB 4061B is signed into law
	April	• 4/12/12: SB 1438B is signed into law, clarifying the duties of the HECC and expanding it
	May	
	June	
	July	
	August	
	September	
	October	
	November	
	December	
2013	January	• 1/14/13: SB 270 introduced in the Oregon State Senate
	February	
	March	
	April	
	May	

	June	
	July	
	August	<ul style="list-style-type: none"> • 8/14/13: Gov. Kitzhaber signs HB 3120C and SB 270 into law • 8/18/13: Gov. Kitzhaber announces nominees for UO Board of Trustees
	September	
	October	
	November	
	December	
2014	January	<ul style="list-style-type: none"> • 1/23/14: UO Board of Trustees meets for the first time
	February	
	March	<ul style="list-style-type: none"> • 3/27/14: UO Board Chair Chuck Lillis proposes Policy on Retention and Delegation of Authority to the Board. It is delayed after University community outcry
	April	<ul style="list-style-type: none"> • 4/3/14: University Senate convenes Ad Hoc Committee on Delegation of Authority Policy for the first time to discuss changes to the PRDA
	May	
	June	<ul style="list-style-type: none"> • 6/2/14: Ad Hoc Committee on Delegation of Authority Policy submits redlined version of PRDA to Board of Trustees for revision • 6/11/14: UO Board of Trustees approves revised Policy on Retention and Delegation of Authority despite continued objections of the University community members, including University Senate President Kyr
	July	
	August	<ul style="list-style-type: none"> • 8/6/14: UO President Michael Gottfredson resigns
	September	
	October	
	November	
	December	<ul style="list-style-type: none"> • 12/1/14: GTFF Strike officially begins • 12/3/14: University Senate establishes Academic Integrity Task Force to investigate Administrative actions regarding the "Academic Continuity Plan" without Senate approval • 12/10/14: GTFF Strike officially ends • 12/10/14: University Senate passes "Resolution Affirming the University Constitution" in response to the proposed "Policy on University Policies" considered by the Board • 12/11/14: UO Board of Trustees do not consider the "Policy on University Policies" opting to wait for a revised policy to be considered at their March meeting
2015	January	
	February	<ul style="list-style-type: none"> • 2/26/15: UO Board of Trustees votes for the first time on Tuition & Fees. Raising tuition for resident undergraduates by 3.8%, despite student protests
	March	<ul style="list-style-type: none"> • 3/15/15: UO Board of Trustees passes revised "Policy on University Policies"
	April	<ul style="list-style-type: none"> • 4/14/15: UO Board of Trustees selects Michael Schill to be the 18th President of the University of Oregon

	May	
	June	
	July	
	August	
	September	

Appendix I



Appendix J

Glossary of People

Berdahl, Robert – Interim President of the UO, taking over after President Lariviere was terminated by the OUS in December of 2011 (2011 – 2012)

Buckley, Peter – State Representative representing Oregon’s 5th District (D – Ashland), Co-Chair of the Joint Committee on Ways & Means, played an influential role in including constituency representatives on the Boards of Trustees at UO, OSU, and PSU

Coltrane, Scott – Interim President of the UO, taking over after President Gottfredson’s resignation (2014 – 2015)

Courtney, Peter – State Senator representing Oregon’s 11th District (D – Salem), President of the Oregon Senate

Dembrow, Michael – Former State Representative representing Oregon’s 45th District (D – Portland), Chair of the House Higher Education Committee (2013 legislative session), currently a State Senator representing Oregon’s 23rd District

Donegan, Matt – Chair of the State Board of Higher Education

Geller, Randy – Former General Counsel of the UO, Interim Board of Trustees Secretary

Gottfredson, Michael – 17th President of the University of Oregon (2012 – 2014)

Harbaugh, Bill – Creator of the UOMatters Blog, UO Economics Professor

Hass, Mark – State Senator representing Oregon’s 14th District (D - Beaverton), Chair of the Senate Education Committee (2013 legislative session)

Kallaway, Emma – Executive Director of the Oregon Student Association

Kitzhaber, John – Governor of Oregon (1995 – 2003, 2011 - 2015), played an integral role in crafting SB 270 and HB 3120

Kyr, Robert – University Senate President ('11 - '12, '12 - '13, '14 - '15), Vice President of the Oregon Inter-institutional Faculty Senate ('13 - '14, '14 - '15), Philip H. Knight Professor of Music in the UO School of Music and Dance

Lariviere, Richard – 16th President of the University of Oregon (2009 – Nov. 2011)

Lillis, Chuck – Chair of the UO Board of Trustees

Pernsteiner, George – Chancellor of the Oregon University System

Schlegel, Helena – Student Trustee on the UO Board of Trustees

Unger, Ben – Former State Representative representing Oregon's 29th District (D – Hillsboro) who served during the 2013 legislative session and played a role in negotiating SB 270

Willcox, Kurt – Staff Trustee on the UO Board of Trustees

Appendix K: March Version of PRDA

Board of Trustees of the University of Oregon

Policy on Retention and Delegation of Authority

Preamble

The Board of Trustees shall establish the governance model of the University of Oregon while respecting the historic philosophy of shared governance.

1.0 Authority of the Board of Trustees; Appointment of the President of the University

1.1 Board Authority. The Board of Trustees is the final University authority and has full control of the University and its property of various kinds. The Board may take any and all Board actions as it determines necessary or appropriate. Board actions have precedence over other policies, standards, directives and other actions of the University and its constituent parts. Any policies, standards, directives and other actions of the University and its constituent parts shall be consistent with Board actions. The Board may review and intervene in any and all aspects of the University; modify any policy, standard, or directive; amend or rescind any existing policy, standard or directive; and enact and issue such policies, standards and directives as it deems proper for the University. The Board shall adopt a statement for the University in consultation with the faculty, students and staff members.

1.2 Appointment of the President of the University. In consultation with the Governor, or the Governor's designee, the Board shall appoint and employ a President of the University. The President reports exclusively to the Board, and the Board supervises the President. The Board shall prescribe the President's compensation and terms and conditions of employment and is responsible for the reappointment or removal of the President. The President shall perform such duties as are assigned by the Board. Except as otherwise provided by law or Board action, the President is the executive and governing officer of the University. The President shall, from time to time, report to the Board all significant matters within the President's knowledge related to the affairs of the University.

1.3 University Budget. The Board shall adopt the budget of the University.

1.4 Tuition and Fees. The Board shall determine tuition and mandatory enrollment fees (including incidental fees) for students who are enrolled in a degree program. The President determines all other fees, fines and charges, after providing notice to the Board.

1.5 Student Conduct. The Board has the authority to establish written standards of student conduct.

1.6 Employees and Volunteers.

1.6.1 The Board has the ultimate authority to appoint and employ any instructional, research, administrative, professional, trade, occupational and other personnel as are necessary or appropriate and establish their compensation and other terms and conditions of employment. The Board also has the ultimate authority to appoint volunteers as necessary or appropriate and establish the terms and conditions of the activities of such appointed volunteers. The Board has delegated the authority described in this subsection as set forth in Board actions.

1.6.2 The Board has the authority to establish written codes of conduct for instructional, research, administrative, professional, trade, occupational and other personnel, including volunteers.

1.7 Business and Administrative Affairs. The Board retains authority for the following:

1.7.1 The approval of the naming of University buildings or outdoor areas in recognition of individuals or organizations.

1.7.2 The approval of the execution of instruments relating to real property where the anticipated cost or value to the University exceeds \$5,000,000.

1.7.3 The approval of the appointment of external auditors.

1.7.4 The approval of a capital project budget that is anticipated to exceed \$5,000,000, including for architects, construction managers, engineers and other professional consultants; and approval of any increase to a capital project budget that causes the total of all increases to the capital project budget to exceed \$5,000,000.

1.7.5 The approval of the execution of instruments relating to any borrowing or debt finance transactions which are or may be in excess of \$5,000,000, singularly or in the aggregate.

1.7.6 The approval of the execution of instruments relating to any shares, stock or other equity or interests in or obligations of any entity other than the University in excess of \$5,000,000, unless the shares, stock or other equity or interests in or obligations of the entity are publicly traded or provided through the State Treasurer, University of Oregon Foundation or a brokerage firm, investment bank, depository or other licensed firm.

1.7.7 Consent to the encumbrance of University real property by the State of Oregon.

1.7.8 The approval of the execution of any other instruments, including but not limited to instruments related to the acquisition, disposal or provision of goods and services, where the anticipated cost or value to the University exceeds \$5,000,000; and approval of any increase or decrease in cost or value that causes the total of all increases or decreases in cost or value to exceed \$5,000,000. When the ultimate aggregate cost to the University is not known in advance for instruments relating to the acquisition, disposal or provision of goods or services on a continuing or intermittent basis (e.g. rental, service, or supply contracts), the amounts set forth in this paragraph shall be calculated on an annual basis.

1.7.9 The approval of the execution of any instrument that the President, Treasurer, Chair of the Board of Trustees, or a majority of the Trustees deems appropriate for consideration by the Board or a Board committee, so long as the instrument has not been executed.

1.8 Academic Programs; Degrees; Admissions.

1.8.1 The Board has the ultimate authority to establish, eliminate, control or substantially reorganize academic programs and units of operation. Any significant change in the University's academic programs as defined by the Higher Education Coordinating Commission must be approved by the Board prior to submission to the Commission.

1.8.2 The Board confers academic degrees, certificates and other forms of recognition upon the recommendation of the faculty. Such academic degrees, certificates and other forms of recognition are granted in the name of the Board of Trustees of the University of Oregon and are executed by the Board Chair and the University President. The Board reserves the right to review and approve the granting of any degree, certificate or recognition. The Board shall have the exclusive authority to approve honorary degrees.

1.8.3 The Board has the ultimate authority to establish standards, qualifications, policies and practices relating to admission to study at the University and the curriculum, grading, credits, scholarships, and academic standards of the University. Except as set forth in law or Board action, the Board has delegated to the faculty (the "president and professors") the immediate government and discipline of the university and the students therein and the authority to prescribe the course of study to be pursued in the University and the textbooks to be used.

1.9 Gifts. The Board retains authority for the acceptance of the following gifts:

1.9.1 Gifts that create obligations on the part of the University for which there is no established funding source.

1.9.2 Gifts with a value exceeding \$5,000,000 which involve: (1) Construction of facilities not previously approved; or (2) Non-traditional investment assets (such as real estate, debt instruments, closely held stock, partnership interests, permanent insurance policies, royalties, copyrights, licenses, and other illiquid assets); provided that gifts described in this subsection with a value between \$1,000,000 and \$5,000,000 will be reported to the Board of Trustees quarterly.

1.9.3 A gift requiring naming of a University building or outdoor area.

1.9.4 Any other gift that the President, Treasurer, or a majority of the Board of Trustees deems appropriate for Board consideration.

1.9.5 Current gifts of non-traditional investment assets, charitable lead trusts where the University is to act as trustee, bargain sale gifts of property, and partial interest gifts.

1.9.6 Deferred gifts, if the University is to act as trustee or custodian of the deferred gift.

1.9.7 Gifts of real estate, interests in real estate, or gifts of debt instruments secured by real estate from other than the University of Oregon Foundation. The Treasurer shall determine in each such case, including when the gift is from the University of Oregon Foundation, whether a hazardous waste inquiry or other due diligence is required, and the scope and extent of such inquiry. The President and the Treasurer, in consultation with the Vice President for Advancement, shall establish further policies and procedures regarding evaluation of gifts of real estate, as may be necessary or desirable from time to time.

1.10 Gifts to the University of Oregon Foundation. Gifts to the University of Oregon Foundation shall be accepted by the University of Oregon Foundation in accordance with then-current agreements between the University and the Foundation (as may be amended from time to time).

2.0 Policies, Standards and Directives

2.1 Governing Documents. The University shall have the following governing documents:

2.1.1 Bylaws of the University of Oregon, policies, standards, directives and other actions approved by the Board of Trustees or a committee of the Board as appropriate ("Board actions").

2.1.2 Policies, standards and directives approved by the President of the University regarding matters within the authority of the President ("Presidential actions").

2.1.3 A constitution as described in this policy.

2.2 Force of Law; Emergency and Temporary Actions. Board actions shall have the force of law to the extent set forth therein. Emergency and temporary Presidential actions may have the force of law to the extent set forth therein. Any Board action or Presidential action that is intended to have the force of law must include an opportunity for appeal.

2.3 Enforcement. Any Board action or Presidential action may be enforced by the University through internal procedures and in any court of competent jurisdiction. All Board actions and Presidential actions binding on University employees, students, volunteers, contractors and members of the public, except as set forth therein.

2.4 Public Notice. Except for emergency and temporary Board actions and Presidential actions, all Board actions and Presidential actions shall be approved in a manner reasonably calculated to provide public notice of the proposed and final approval.

2.5 Posting. After approval, emergency and temporary Board actions and Presidential actions shall be posted on the University website in a manner reasonably calculated to provide public notice of the approval.

3.0 Authority of the President of the University

3.1 Executive and Governing Officer; Delegation. The President of the University is the executive and governing officer of the University, except as otherwise provided by statute or Board actions. Subject to the supervision of the Board and Board action, the President shall direct the affairs of the University. The authorities and responsibilities of the President of the University include, but are not limited to, the authorities and responsibilities set forth in and modified by section 1.0 and this section 3.0 and the President may delegate any authorities and responsibilities, except as provided by Board actions. Any delegation must be consistent with Board actions. The President remains responsible for the proper functioning of the University, notwithstanding any delegation by him or her.

3.2 Policies, Standards and Directives; Consultation. The President of the University shall formulate, prescribe and issue Presidential actions regarding matters within the authority of the President when the Board or the President deems it necessary or appropriate. Any Presidential actions are subordinate to and must be consistent with Board actions. In carrying out these duties, the President should consult with the faculty, other employees, and students as deemed appropriate by the President, but it is not intended that consultation shall remove from the President the authority and the responsibility vested in the President by law and Board actions.

3.3 Emergency and Temporary Actions; Technical Corrections. The President of the University shall establish emergency and temporary policies, standards and directives when the Board or the President deems it necessary or appropriate. Such policies,

standards and directives may have the scope and force of Board actions and must be reported to the Board expeditiously. Pursuant to expedited procedures, the President of the University may amend Board actions and Presidential actions in order to correct typographical errors, make address or formatting changes, or clarify language without changing their. Such amendments must be reported to the Board quarterly. The President may make expedited repeals of Board actions and Presidential actions, provided that expedited repeals of Board actions are contemporaneously reported to the Board and ratified at the next Board meeting.

3.4 Committees, Councils and Advisory Groups. The President of the University shall establish and define the charge of any and all University committees, councils, and advisory groups. The establishment and charge of any and all University committees, councils and advisory groups shall be consistent with law and Board actions. The recommendations and reports of all committees, councils and advisory groups shall be made to the President.

3.5 Students. Subject to Board action, the President of the University shall act for the Board of Trustees in relation to all matters pertaining to students, the student body and other matters incident thereto.

3.6 University Personnel.

3.6.1 The President of the University shall act for the Board of Trustees regarding all personnel and employment matters, including labor relations and approval of collective bargaining agreements. Subject to Board action, the President has the exclusive authority to and shall establish necessary or appropriate written policies, standards and directives covering all employees not represented by a collective bargaining organization and necessary or appropriate written policies, standards and directives covering employees represented by a collective bargaining organization, subject to any legal obligation to negotiate the terms and conditions of such policies, standards and directives with the exclusive representative of the relevant bargaining unit.

3.6.2 The President may appoint any instructional, research, administrative, professional, trade, occupational and other personnel as are necessary or appropriate and establish their compensation and other terms and conditions of employment.

3.6.3 The President may appoint volunteers as necessary or appropriate and establish the terms and conditions of the activities of such appointed volunteers.

3.7 Research Grants and Contracts. The President of the University shall act for the Board of Trustees regarding grants and contracts for research, development, service, and training. However, a quarterly report to the Board is required for each initial contract or grant award that exceeds \$5,000,000, and when any increase or decrease to a

contract or grant award causes the total of all increases or decreases to the contract or grant award to exceed \$5,000,000.

3.8 Execution and Administration of University Affairs. Except as provided by Board action, the President of the University shall act for the Board regarding the execution and administration of instruments and the affairs of the University. Notwithstanding the dollar limits specified in section 1.0 above, the President shall act for the Board of Trustees regarding the execution and administration of all instruments, business affairs, and operations relating to:

3.8.1 Acquisition of electricity, natural gas, sewer, water, and all other utility services;

3.8.2 Subcontracts for collaborative research entered into in furtherance of sponsored research programs.

3.8.3 The acquisition of goods and services made by participating in contracts entered into by group purchasing organizations or pursuant to collaborative purchasing initiatives with public or non-profit entities.

3.8.4 The acquisition of fixtures, equipment and furnishings that are included in capital project budgets that have been authorized by the Board of Trustees.

3.8.5 The acquisition of goods and services for sponsored research programs when the source of the goods or services is directed by the sponsor, or the sponsor retains title to the goods acquired.

3.8.6 The settlement of claims or lawsuits brought against the University.

3.8.7 The acquisition of insurance or self-insurance.

3.8.8 Leases and licenses of real property and modifications thereto of up to 20 years.

3.8.9 Deferred gift assets.

3.8.10 Real property acquired through gift or devise from the University of Oregon Foundation;

3.8.10 The protection of the University's interests, property and operations in an emergency.

3.8.12 Actions and execution of documents necessary to establish legal entities, controlled by legal action necessary or appropriate to protect the interests of the University. However, no litigation shall be instituted against a public entity or

official or in exercise of the power of eminent domain the University, through which the University may conduct business;

3.8.13 Selection of depositories and investments.

3.8.14 The execution of instruments or the conduct of business affairs where approval by the Board or a Board committee is impractical due to time or other constraints. The President shall submit a report of any actions taken pursuant to this delegation to the Board of Trustees or its Executive Committee on or before the next regularly scheduled meeting.

3.9 Legal Action. The President of the University shall act for the Board of Trustees regarding all without approval by the Board of Trustees. The Board Chair may authorize the institution of other litigation.

3.10 Gifts. Subject to Board action, the President of the University shall act for the Board of Trustees regarding all current and deferred gifts to the University, including gifts to establish quasi-endowed or permanently endowed funds. Notwithstanding any delegation by the President, a gift with unusual terms or conditions affecting an academic program shall be accepted only with the concurrence of the President to the proposed terms or conditions. The proceeds of any gift, devise, bequest, or contribution received by the University shall be administered in accordance with the intention of the donor and any directions of the Board of Trustees in accepting the gift. Wherever possible, the University of Oregon Foundation shall manage gifts. The President of the University is authorized to act for the Board of Trustees regarding the disposition of gifts.

3.11 Fees, Fines and Charges. Subject to Board action, the President of the University shall establish fees, fines, and charges. The President shall enforce the collection of tuition, mandatory enrollment fees, other fees, fines, charges, and all other amounts due to the University.

4.0 The Faculty

4.1 Role of the Faculty. Except as set forth in law or Board action, the faculty has:

4.1.1 The immediate government and discipline of the university and the students therein.

4.1.2 The authority to prescribe the course of study to be pursued in the University and the textbooks to be used.

4.2 The President and the Professors. The President and the professors constitute the faculty. The

4.3 Higher Education Coordinating Commission. Any significant change in the University's academic programs as defined by the Higher Education Coordinating Commission must be approved by the Board prior to submission to the Commission.

4.4 Faculty Constitution. The faculty has adopted a constitution, which is subject to ratification by the President and approval by the Board of Trustees. A constitution, and any amendments to it, must be consistent with law and Board actions.

4.5 Modification. The faculty constitution is subject to modification by the Board of Trustees in consultation with the President and the professors.

5.0 Channel of Authority

The faculty and officers and employees of the University shall, through appropriate channels, be responsible to the President of the University and through the President to the Board of Trustees, except that the Treasurer, General Counsel and Secretary are responsible to the Board in relation to the business of the Board.

Appendix L: Final Version of PRDA¹³⁵

Board of Trustees of the University of Oregon

Motion on Policy on Retention and Delegation of Authority

Whereas, Sections 2, 2a, 2b, 3, 5, 8 to 18, 164, 165, 169 and 170 of Senate Bill 270 and the amendments to statutes and session laws by sections 24, 25, 28 to 37, 40 to 162 and 176 to 178 of Senate Bill 270 and the repeal of statutes by section 163 of Senate Bill 270 become operative on July 1, 2014.

Whereas, Section 172 of Senate Bill 270 provides that the State Board of Higher Education (State Board) and the Board of Trustees of the University of Oregon (Board of Trustees) may take any action before the operative date that is necessary for the State Board and the Board of Trustees to exercise on and after the operative date all of the duties, functions and powers conferred on the State Board and the Board of Trustees by Senate Bill 270.

Whereas, as provided in ORS 352.029, the Board of Trustees manages the affairs of the university by exercising and carrying out all of the powers, rights and duties that are expressly conferred upon the board by law, or that are implied by law or are incident to such powers, rights and duties.

Whereas, as provided in ORS 352.107, the Board of Trustees may establish policies for the organization, administration and development of the university which, to the extent set forth in those policies, shall have the force of law and may be enforced through university procedures that include an opportunity for appeal and in any court of competent jurisdiction.

Whereas, as provided in ORS 352.107, the Board of Trustees may perform any other acts that in the judgment of the Board are required, necessary or appropriate to accomplish the rights and responsibilities granted to the board and the university by law.

Whereas, as provided in ORS 352.146, the president and professors constitute the faculty and as such have the immediate government and discipline of a university with a governing board and the students therein, except as otherwise provided by law or action of the Board of Trustees. The faculty may, subject to the supervision of the Board and ORS 352.089 prescribe the course of study to be pursued in the university and the textbooks used.

¹³⁵ <http://trustees.uoregon.edu/sites/trustees2.wc-sites.uoregon.edu/files/field/image/Motion%20Regarding%20Policy%20on%20Retention%20Delegation%20061914.pdf>

Now, therefore, the Board of Trustees of Oregon adopts the Policy on Retention and Delegation of Authority attached hereto as Exhibit A.

Board of Trustees of the University of Oregon Policy on Retention and Delegation of Authority

Preamble

As provided in ORS 352.025, the Legislative Assembly has found that the State of Oregon will benefit from having public universities with governing boards that provide transparency, public accountability and support for the university and act in the best interests of both the university and the State of Oregon as a whole.

As provided in ORS 352.029, the Board of Trustees manages the affairs of the university by exercising and carrying out all of the powers, rights and duties that are expressly conferred upon the board by law, or that are implied by law or are incident to such powers, rights and duties.

As provided in ORS 352.107, the Board of Trustees may perform any other acts that in the judgment of the Board are required, necessary or appropriate to accomplish the rights and responsibilities granted to the board and the university by law.

As provided in ORS 352.096, the president of the university is the president of the faculty. The president is also the executive and governing officer of the university, except as otherwise provided by statute or action of the governing board. Subject to the supervision of the governing board, the president of the university has authority to direct the affairs of the university.

As provided in ORS 352.146, the president and professors constitute the faculty and as such have the immediate government and discipline of a university with a governing board and the students therein, except as otherwise provided by law or action of the Board of Trustees. The faculty may, subject to the supervision of the Board and ORS 352.089 prescribe the course of study to be pursued in the university and the textbooks used.

Nothing in this Policy affects any collective bargaining agreement entered into prior to the adoption of this Policy.

1.0 Authority of the Board of Trustees; Appointment of the President of the University

1.1 Board Authority. The Board of Trustees is the final University authority and has full control of the University and its property of various kinds. The Board may take any and all Board actions as it determines necessary or appropriate to the extent permitted

by law. Board actions have precedence over other policies, standards, directives and other actions of the University and its constituent parts. Any policies, standards, directives and other actions of the University and its constituent parts shall be consistent with Board actions. To the extent permitted by law, The Board may review and intervene in any and all aspects of the University; modify any policy, standard, or directive; amend or rescind any existing policy, standard or directive; and enact and issue such policies, standards and directives as it deems proper for the University. The Board shall adopt a mission statement for the University in consultation with the faculty, students and staff members.

1.2 Appointment of the President of the University. As provided in ORS 352.096, in consultation with the Governor, or the Governor's designee, the Board shall appoint and employ a President of the University. Except in the case of an interim or acting president, the hiring committee for the president of the University shall include representatives of the university community and at least one other president of a public university based in Oregon. The President reports exclusively to the Board, and the Board supervises the President. The Board shall prescribe the President's compensation and terms and conditions of employment and is responsible for the reappointment or removal of the President. The President shall perform such duties as are assigned by the Board. Except as otherwise provided by law or Board action, the President is the executive and governing officer of the University and President of the faculty. The President shall, from time to time, report to the Board all significant matters within the President's knowledge related to the affairs of the University.

1.3 University Budget. The Board shall adopt the budget of the University.

1.4 Tuition and Fees.

1.4.1 The Board shall determine tuition and mandatory enrollment fees in accordance with ORS 352.102, ORS 352.105, and other applicable law.

1.4.2 The incidental fee is a mandatory enrollment fee. The recognized student government will, in consultation with the President, establish a process for requesting the amount of the incidental fee, all uses of the proceeds of the incidental fee, and the modification of the existing incidental fee.

1.4.3 The amount of the incidental fee, uses of the proceeds of the incidental fee, and a decision to modify the existing incidental fee may be refused by the Board or the President if the Board or President determines that: (a) the recognized student government assessed or allocated the mandatory incidental fees in violation of applicable local, state or federal law; or (b) The allocation conflicts with a preexisting contractual financial commitment; or (c) the total mandatory incidental fees budget is an increase of more than five percent over the level of the previous year; or (d) the request is not advantageous to the cultural or physical development of students.

1.4.4 The mandatory incidental fee, use of the fee or decision to modify an existing fee may not be refused by the Board or the President based on considerations about the point of view that the funding seeks to advance.

1.4.5 The President determines all other fees, fines and charges, after providing notice to the Board. In arriving at a determination of fees, fines and charges, the President shall consult with employees and students as the President deems appropriate.

1.5 Student Conduct. The Board has the authority to establish written standards of student conduct in consultation with the President, faculty and students.

1.6 Employees and Volunteers.

1.6.1 The Board has the authority, subject to any collective bargaining agreements, to appoint and employ any instructional, research, administrative, professional, trade, occupational and other personnel as are necessary or appropriate and establish their compensation and other terms and conditions of employment. The Board also has the authority to appoint volunteers as necessary or appropriate and establish the terms and conditions of the activities of such appointed volunteers. The Board has delegated the authority described in this subsection as set forth in Board actions.

1.6.2 Subject to any collective bargaining agreements, the Board has the authority to establish written codes of conduct for instructional, research, administrative, professional, trade, occupational and other personnel, including volunteers.

1.7 Business and Administrative Affairs. The Board retains authority for the following:

1.7.1 The approval of the naming of University buildings or outdoor areas in recognition of individuals or organizations.

1.7.2 The approval of the execution of instruments relating to real property where the anticipated cost or value to the University exceeds \$5,000,000.

1.7.3 The approval of the appointment of external auditors.

1.7.4 The approval of a capital project budget that is anticipated to exceed \$5,000,000,

including for architects, construction managers, engineers and other professional consultants; and approval of any increase to a capital project budget that causes the total of all increases to the capital project budget to exceed \$5,000,000.

1.7.5 The approval of the execution of instruments relating to any borrowing or debt finance transactions which are or may be in excess of \$5,000,000, singularly or in the aggregate.

1.7.6 The approval of the execution of instruments relating to any shares, stock or other equity or interests in or obligations of any entity other than the University in excess of \$5,000,000, unless the shares, stock or other equity or interests in or obligations of the entity are publicly traded or provided through the State Treasurer, University of Oregon Foundation or a brokerage firm, investment bank, depository or other licensed firm.

1.7.7 Consent to the encumbrance of University real property by the State of Oregon.

1.7.8 The approval of the execution of any other instruments, including but not limited to instruments related to the acquisition, disposal or provision of goods and services, where the anticipated cost or value to the University exceeds \$5,000,000; and approval of any increase or decrease in cost or value that causes the total of all increases or decreases in cost or value to exceed \$5,000,000. When the ultimate aggregate cost to the University is not known in advance for instruments relating to the acquisition, disposal or provision of goods or services on a continuing or intermittent basis (e.g. rental, service, or supply contracts), the amounts set forth in this paragraph shall be calculated on an annual basis.

1.7.9 The approval of the execution of any instrument that the President, Treasurer, Chair of the Board of Trustees, or a majority of the Trustees deems appropriate for consideration by the Board or a Board committee, so long as the instrument has not been executed.

1.8 Academic Programs; Degrees; Admissions.

1.8.1 The Board has the authority to establish, eliminate, control or substantially reorganize academic programs and units of operation. Any significant change in the University's academic programs as defined by the Higher Education Coordinating Commission must be approved by the Board prior to submission to the Commission.

1.8.2 The Board confers academic degrees, certificates and other forms of recognition upon the recommendation of the faculty. Such academic degrees, certificates and other forms of recognition are granted in the name of the Board of Trustees of the University of Oregon and are executed by the Board Chair and the University President. The Board reserves the right to review and approve the granting of any degree, certificate or recognition. The Board shall have the exclusive authority to approve honorary degrees.

1.8.3 The Board has the authority to establish standards, qualifications, policies and practices relating to admission to study at the University and the curriculum, grading, credits, scholarships, and academic standards of the University. Except as set forth in law or Board action, the faculty (the "president and professors") has the immediate government and discipline of the university and the students therein and the authority to prescribe the course of study to be pursued in the University and the textbooks to be used. The faculty shall have primary authority over choice of method of instruction; subject matter to be taught; academic standards for admitting students; and standards of student competence in a discipline.

1.9 Gifts. The Board retains authority for the acceptance of the following gifts:

1.9.1 Gifts that create obligations on the part of the University for which there is no established funding source.

1.9.2 Gifts with a value exceeding \$5,000,000 which involve: (1) Construction of facilities not previously approved; or (2) Non-traditional investment assets (such as real estate, debt instruments, closely held stock, partnership interests, permanent insurance policies, royalties, copyrights, licenses, and other illiquid assets); provided that gifts described in this subsection with a value between \$1,000,000 and \$5,000,000 will be reported to the Board of Trustees quarterly.

1.9.3 A gift requiring naming of a University building or outdoor area.

1.9.4 Any other gift that the President, Treasurer, or a majority of the Board of Trustees deems appropriate for Board consideration.

1.9.5 Current gifts of non-traditional investment assets, charitable lead trusts where the University is to act as trustee, bargain sale gifts of property, and partial interest gifts.

1.9.6 Deferred gifts, if the University is to act as trustee or custodian of the deferred gift.

1.9.7 Gifts of real estate, interests in real estate, or gifts of debt instruments secured by real estate from other than the University of Oregon Foundation. The Treasurer shall determine in each such case, including when the gift is from the University of Oregon Foundation, whether a hazardous waste inquiry or other due diligence is required, and the scope and extent of such inquiry. The President and the Treasurer, in consultation with the Vice President for Advancement, shall establish further policies and procedures regarding evaluation of gifts of real estate, as may be necessary or desirable from time to time.

1.10 Gifts to the University of Oregon Foundation. Gifts to the University of Oregon Foundation shall be accepted by the University of Oregon Foundation in accordance with then-current agreements between the University and the Foundation (as may be amended from time to time).

2.0 Policies, Standards and Directives

2.1 Governing Documents. The University shall have the following governing documents:

2.1.1 Bylaws of the University of Oregon, policies, standards, directives and other actions approved by the Board of Trustees or a committee of the Board as appropriate ("Board actions").

2.1.2 Policies, standards and directives approved by the President of the University regarding matters within the authority of the President ("Presidential actions").

2.1.3 A University Constitution as described in this policy by which the President, professors and University constituencies shall exercise their shared governance roles in accordance with ORS Chapter 352.

2.2 Force of Law; Emergency and Temporary Actions. Board actions shall have the force of law to extent set forth therein. Emergency and temporary Presidential actions may have the force of law to extent set forth therein. Any Board action or Presidential action that is intended to have the force of must include an opportunity for appeal.

2.3 Enforcement. Any Board action or Presidential action may be enforced by the University through internal procedures and in any court of competent jurisdiction. All Board actions and Presidential actions are binding on University employees, students, volunteers, contractors and members of the public, except as set forth therein.

2.4 Public Notice. Except for emergency and temporary Board actions and Presidential actions, meeting materials and public notice shall be provided according to the Oregon Public Meetings Law.

2.5 Posting. After approval, emergency and temporary Board actions and Presidential actions shall be posted on the University website in a manner reasonably calculated to provide public notice of the approval.

3.0 Authority of the President of the University

3.1 Executive and Governing Officer; Delegation. The President of the University is the executive and governing officer of the University, except as otherwise provided by statute or Board actions. Subject to the supervision of the Board and Board action, the President shall direct the affairs of the University. The authorities and responsibilities of

the President of the University include, but are not limited to, the authorities and responsibilities set forth in and modified by section 1.0 and this section 3.0, and the President may delegate any authorities and responsibilities, except as provided by Board actions. Any delegation must be consistent with Board actions. The President remains responsible for the proper functioning of the University, notwithstanding any delegation.

3.2 Policies, Standards and Directives; Consultation. The President of the University shall formulate, prescribe and issue Presidential actions regarding matters within the authority of the President when the Board or the President deems it necessary or appropriate. Any Presidential actions are subordinate to and must be consistent with Board actions. In carrying out these duties, the President shall consult with the faculty, other employees, and students as deemed appropriate by the President. Consultation shall not remove from the President the authority and the responsibility vested in the President by law and Board actions.

3.3 Emergency and Temporary Actions; Technical Corrections. The President of the University shall establish emergency and temporary policies, standards and directives when the Board or the President deems it necessary or appropriate. Such policies, standards and directives may have the scope and force of Board actions and must be reported to the Board expeditiously. Pursuant to expedited procedures, the President of the University may amend Board actions and Presidential actions in order to correct typographical errors, make address or formatting changes, or clarify language without changing their effect. Such amendments must be reported to the Board quarterly. The President may make expedited repeals of Board actions (upon notice to the Board) and Presidential actions, provided that expedited repeals of Board actions must be ratified at the next Board or Executive Committee meeting.

3.4 Committees, Councils and Advisory Groups. The President of the University shall establish and define the charge of any and all University committees, councils, and advisory groups, except as provided in Board action. The establishment and charge of any and all University committees, councils and advisory groups shall be consistent with law and Board actions. The recommendations and reports of all committees, councils and advisory groups shall be made to the President. The President shall inform the Executive Committee of the Board regarding significant recommendations and reports related to the affairs of the University. Upon request by the Chair of the Board or a majority of the Trustees, the President shall provide the Board with a recommendation or report of a University committee, council or advisory group.

3.5 Students. Subject to Board action, the President is responsible for development and administration of University policies and rules governing the role of students and their conduct. In carrying out this responsibility, the President shall take into account the views of students, faculty, and others. The guidelines for student conduct which set forth prohibited conduct and provide for appropriate disciplinary hearings and sanctions for violations of institutional rules must be consistent with standards of procedural

fairness. The Board recognizes and affirms the importance of active student involvement in the deliberative and decision-making processes.

3.6. University Personnel.

3.6.1 The President of the University shall act for the Board of Trustees regarding all personnel and employment matters, including labor relations and approval of collective bargaining agreements. Subject to Board action, the President has the exclusive authority to and shall establish necessary or appropriate written policies, standards and directives covering all employees not represented by a collective bargaining organization and necessary or appropriate written policies, standards and directives covering employees represented by a collective bargaining organization, subject to any legal obligation to negotiate the terms and conditions of such policies, standards and directives with the exclusive representative of the relevant bargaining unit. Upon request by the Chair of the Board or a majority of the Board, the President shall provide the Board with requested information regarding personnel and employment matters, including labor relations and collective bargaining.

3.6.2 In a manner consistent with applicable state law and applicable collective bargaining agreements, the President may appoint any instructional, research, administrative, professional, trade, occupational and other personnel as are necessary or appropriate and establish their compensation and other terms and conditions of employment.

3.6.3 The President may appoint volunteers as necessary or appropriate and establish the terms and conditions of the activities of such appointed volunteers.

3.7 Research Grants and Contracts. The President of the University shall act for the Board of Trustees regarding grants and contracts for research, development, service, and training. However, a quarterly report to the Board is required for each initial contract or grant award that exceeds \$5,000,000, and when any increase or decrease to a contract or grant award causes the total of all increases or decreases to the contract or grant award to exceed \$5,000,000.

3.8 Execution and Administration of University Affairs. Except as provided by Board action, the President of the University shall act for the Board regarding the execution and administration of instruments and the affairs of the University. Notwithstanding the dollar limits specified in section 1.0 above, the President shall act for the Board of Trustees regarding the execution and administration of all instruments, business affairs, and operations relating to:

3.8.1 Acquisition of electricity, natural gas, sewer, water, and all other utility services; 3.8.2 Subcontracts for collaborative research entered into in furtherance of sponsored research programs.

3.8.3 The acquisition of goods and services made by participating in contracts

entered into by group purchasing organizations or pursuant to collaborative purchasing initiatives with public or non-profit entities.

3.8.4 The acquisition of fixtures, equipment and furnishings that are included in capital project budgets that have been authorized by the Board of Trustees.

3.8.5 The acquisition of goods and services for sponsored research programs when the source of the goods or services is directed by the sponsor, or the sponsor retains title to the goods acquired.

3.8.6 The settlement of claims or lawsuits brought against the University.

3.8.7 The acquisition of insurance or self-insurance.

3.8.8 Leases and licenses of real property and modifications thereto of up to 20 years. 3.8.9 Deferred gift assets.

3.8.10 Real property acquired through gift or devise from the University of Oregon Foundation;

3.8.10 The protection of the University's interests, property and operations in an emergency.

3.8.12 Actions and execution of documents necessary to establish legal entities, controlled by the University, through which the University may conduct business; 3.8.13 The selection of depositories and investments.

3.8.14 The execution of instruments or the conduct of business affairs where approval by the Board or a Board committee is impractical due to time or other constraints. The President shall submit a report of any actions taken pursuant to this delegation to the Board of Trustees or its Executive Committee on or before the next regularly scheduled meeting.

3.9 Legal Action. The President of the University shall act for the Board of Trustees regarding all legal action necessary or appropriate to protect the interests of the University. However, no litigation shall be instituted against a public entity or official or in exercise of the power of eminent domain without approval by the Board of Trustees. The Board Chair may authorize the institution of other litigation.

3.10 Gifts. Subject to Board action, the President of the University shall act for the Board of Trustees regarding all current and deferred gifts to the University, including gifts to establish quasi-endowed or permanently endowed funds. Notwithstanding any delegation by the President, a gift with unusual terms or conditions affecting an academic program shall be accepted only with the concurrence of the President to the proposed terms or conditions. The proceeds of any gift, devise, bequest, or contribution received by the University shall be administered in accordance with the intention of the donor and any directions of the Board of Trustees in accepting the gift. Wherever possible, the University of Oregon Foundation shall manage gifts. The President of the University is authorized to act for the Board of Trustees regarding the disposition of gifts.

3.11 Fees, Fines and Charges. Subject to Board action and applicable laws, the President of the University shall establish fees, fines, and charges after providing notice to the Board. In arriving at a determination of fees, fines and charges, the President shall consult with employees and students as the President deems appropriate. The President

shall enforce the collection of tuition, mandatory enrollment fees, other fees, fines, charges, and all other amounts due to the University.

4.0 Authority of the Faculty

4.1 Role of the Faculty. As provided in ORS 352.146, the faculty, which consists of the President and the professors, has:

4.1.1 The immediate government and discipline of the university and the students therein, except as otherwise provided by law or action of the Board.

4.1.2 The authority, subject to the supervision of the Board, to prescribe the course of study to be pursued in the University and the textbooks to be used.

4.2 The President and the Professors. The President and the professors constitute the faculty. The President of the University is the president of the faculty. Shared governance, as a principle in American higher education, is embedded in longstanding practices, and reflects the regard for all stakeholders in the academic endeavors of the University.

4.3 Higher Education Coordinating Commission. Any significant change in the University's academic programs as defined by the Higher Education Coordinating Commission must be approved by the Board prior to submission to the Commission.

4.4 University Constitution. The faculty has adopted a University Constitution which was ratified by the President in 2011. A University Constitution, and any amendments to it, must be consistent with law and Board actions.

4.5 Modification. A University Constitution is subject to modification as set forth therein or by the Board of Trustees in consultation with the President and the professors consistent with applicable law.

5.0 Channel of Authority

The faculty and officers and employees of the University shall, through appropriate channels, be responsible to the President of the University and through the President to the Board of Trustees, except that the Treasurer, General Counsel and Secretary are responsible to the Board in relation to the business of the Board.

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