

Minutes of the  
**NIU Board of Trustees**  
**Of Northern Illinois University**  
**Ad Hoc Committee on Governance**  
June 15, 2015

**1. CALL TO ORDER AND ROLL CALL**

The NIU Ad Hoc Committee on Governance meeting was called to order at 1:33 p.m. by Chair John Butler in the Board of Trustees Room 315 Altgeld Hall. Recording Secretary Linda Odom conducted a roll call of the Committee members. Members present were Trustees Robert Boey, Robert Marshall, Marc Strauss, Paul Julion, and Board and Committee Chair John Butler.

Also present were President Douglas Baker, Provost Lisa Freeman, Board Liaison Mike Mann, General Counsel Jerry Blakemore, Vice President Alan Phillips, UAC Representative Rebecca Shortridge, Dean Chris McCord. With a quorum present, the meeting proceeded.

**2. VERIFICATION OF QUORUM AND APPROPRIATE NOTICE OF PUBLIC MEETING**

Mr. Blakemore indicated that proper notification of the meeting has been provided pursuant to the Illinois Open Meetings Act and a quorum was present.

**3. MEETING AGENDA APPROVAL**

Trustee Strauss motioned to approve the agenda; Trustee Marshall seconded. The motion was approved.

**4. REVIEW AND APPROVAL OF MINUTES OF JANUARY 15 & FEBRUARY 5, 2015**

Chair Butler noted there were two sets of minutes for approval. Trustee Boey made the motion to approve the minutes of January 15, 2015 and Trustee Julion seconded. The motion was approved. Trustee Julion made the motion to approve the minutes of February 5, 2015 and Trustee Boey seconded. The motion was approved.

**5. CHAIR'S COMMENTS/ANNOUNCEMENTS**

Chair Butler noted that, at the March Regular Board Meeting, the Board approved all the previous recommended changes to the Bylaws and Regulations that were presented. Today we're going to be considering updates to the Board Bylaws regarding public appearances before the Board to comply with rulings by the Attorney General. In addition, the Committee will consider changes to the Board Regulations and Bylaws that were initially summarized in an action item the Board approved at its Special Meeting of May 28, 2015.

Chair Butler recognized the University Advisory Council representative Rebecca Shortridge and asked if she had any comments at this time. Ms. Shortridge had no remarks to make on behalf of the UAC but appreciated the opportunity to speak.

**6. PUBLIC COMMENT**

Chair Butler indicated there were two individuals, Ms. Misty Haji Sheikh and Mr. Derek Van Buer who requested to speak to the Committee. He noted they each had five minutes and should be seated at the table for recording purposes. Ms. Haji Sheikh came to the table to address the Committee.

Misty Haji-Sheikh: Thank you to the members of the Committee for allowing me to speak to you today. I come before you as a citizen to alert you to information I have discovered. Let me read to you what the Freedom of Information Act requires. 5ILCS140-4: Each public body shall prominently display at each of its administrative or regional offices, make available for inspection and copy, and send through mail if request each of the following: a) a brief description of itself which will include but not be limited to a short summary of its purpose, a block diagram giving its functional subdivisions, the total amount of its operating budget, the number and location of all of its separate offices, the approximate number of full and part-time employees, and the identification, membership, commission, committee or council which operates in an advisory capacity relative to the operation of a public body or which exercises control over its policies or procedures or to which a public body is required to report and be answerable for its operations; and b) a brief description of the methods whereby the public may request information of public records, a directory designating the Freedom of Information Officer or Officers, the address where requests for public record should be directed, and any fees allowable under section 6 of this Act. A public body that maintains a website shall also post this information on its website. Another requirement of this Act is 5ILCS140-5: As to public records prepared or received after the effective date of this Act, each public body shall maintain and make available for inspection and copying a reasonable current list of all types of categories of records under its control. The list shall be reasonably detailed in order to aid persons in obtaining access to public records pursuant to this Act. Each public body shall furnish upon request a description of the manner in which the public record is stored by means of electronic data. Processing may be obtained in a form comprehensible to persons lacking the knowledge of computer language of a printout format. So on June 11<sup>th</sup>, I went to Altgeld Hall, which was just recently, and we are in Altgeld Hall, which is your administrative office. I tried to find the prominently displayed material as specified in 140-4 A and B, and I looked on the first floor and there was nothing on display. So I went to the second floor and again there was nothing on display. And, I went to the third floor. I still didn't see anything on display. I talked to three of the employees here, but was repeatedly told that the information was not prominently displayed anywhere in the building. So I asked about 140-5 and was told that those didn't exist either. NIU is not in compliance. Prior to that, on May 28<sup>th</sup>, I attended your Board of Trustees meeting at Hoffman Estates. I walked around and even talked to the person who greeted me. I did not see any of the aforementioned 140-4a or b. They were not prominently displayed. 140-5 should also be available. Hoffman Estates is a regional office and is not in compliance because 140-4 a and b were not prominently displayed. Is Hoffman Estates in compliance now? The law requires that all regional offices be in compliance so that would include Rockford and Naperville campuses as well. Are Rockford and Naperville campuses in compliance? I'm also interested in commissions and committees you have, including the Communiversity meeting. NIU held Communiversity meetings at the president's residence which included the mayor and city staff along with NIU staff. These meetings were catered and alcohol was served. I should be able to see who is on each committee, commission and council by simply walking in the door of Altgeld Hall. Five years since this went into effect, on January 1, 2010, why has NIU been out of compliance for so long? It leads me to wonder what you pay your FOIA officers and your General Council to do. How can you have effective governance if you don't understand the law? By the way, as a final note on my way in today, I looked around and I didn't see 140-a or b prominently displayed. Did any of you see this information prominently displayed on your way in today? Thank you very much.

Chair Butler asked if there were any questions for Ms. Haji-Sheikh. No additional questions were asked.

Chair Butler then asked Mr. Van Buer to come to the table and indicated that he had five minutes to address the Committee.

Derek Van Buer: Thank you for the opportunity to speak today. I want to talk about governance and hopefully you will be willing to listen to what I talk about today. None of what I'm talking about today is legal advice, as I'm an attorney; rather, it's just a general discussion. Mr. Blakemore discussed two aspects of governance at the last Compliance, Audit, Risk Management and Legal Affairs Committee meeting held at the Hoffman Estates campus: he mentioned good faith and oversight. By the way, does anybody know why these meetings were held at Hoffman Estates? Both Trustees Murer and Boey were late and Trustee Marshall says it took him an extra hour to get there instead of the DeKalb campus. I believe Trustee Boey missed Mr. Blakemore's comments about governance. Today's agenda shows

they're going to be discussing many new proposals related to the Office of the President. While these topics are important items to discuss, oversight, compliance, and internal controls are probably more relevant in today's environment. A few definitions might be useful. The first term that would be useful is what is "fiduciary"? Black's Law Dictionary defines it as a person who is required to act for benefit of another person on all matters within the scope of the relationship. One who owes to another the duties of good faith, trust, confidence and candor. The corporate officer is a fiduciary to the corporation. 2. one who must exercise a high standard and procure and manage another's money or property. What does "good faith" mean? Black's Law Dictionary defines it as a state of mind consistent in 1. honesty, and belief or purpose; 2. faithfulness to one's duty or obligations, 3. observance of reasonable commercial standing or fair dealing in a given trade of business, 4. absence an attempt to defraud (inaudible) advantage. Recently an audit report from the Illinois Office of the Attorney General was released. (inaudible) Ron Walter's travel expenses and performance being performed before contracts were signed. Why can't the CARL Committee review the report in public (inaudible) the release of the report at Hoffman Estates? The amount was small in comparison of the expenses to the issue of whether Walters was paid for any pay periods in which no work is performed, such as when Ron Walters was on his honeymoon in Turkey. I have included a printout from Ron's website in the handout on page one. The second page of the handout is Ron Walters W-2 for 2013 showing payments for all trips in 2013, including the pay period for the honeymoon. The Northern Star newspaper published Ron Walters' NIU calendar showing no activities for some weeks in which he received full compensation. Ron Walters, Nancy Suttentfield and Kenneth Wilson's time (inaudible). NIU responded to the request by (inaudible). These three individuals were all temporary employees, or extra help, temporary employees who are exempt from time reporting. If so, how can NIU insure that they are working? I included the reported response of NIU in the handout on page three. Internal controls are a necessary part of the any governance model to insure there is (inaudible) of bylaws (inaudible). Look what has happened since President Baker has arrived on campus. One, President Baker had (inaudible) [Keith Bickles] perform services prior to a purchase order being approved. In Mr. Bickles' letter dated December 17, 2013, for payment, they had already preformed these services under the direction of President Baker in early September, 2013. Is there not a recommendation saying there will be no payment for work performed before a purchase order is issued? I have included relevant information for you in my handout, pages four to seven, and also it's highlighted in the audit commission report. Nancy Suttentfield's contract and work. Nancy Sutterfield started working in November, 2013; but, her contract was not signed until January '14. This issue is the same problem as above. I have included this information too. See page 13 for the date that the contract was signed by NIU: January 21, 2014. Three, Nancy Suttentfield's compensation was increased by President Baker, but her contract was not amended to reflect this change. The pay was retroactive to begin her offer start date, November 2013. Is this right and why would NIU pay more than what was contracted? Page 19 shows increased pay of the Foundation fund on May 20, 2014. Page 15 shows amended contracts on (inaudible) 2014 of the contract, but it doesn't reflect increase in the pay to Nancy Suttentfield. Why? President, four, President Baker's contract for legal services. Approving the contract benefited himself. It was only at the special meeting of the Executive Committee that President Baker's legal fees up to \$50,000 was approved. What happened to the approval of the initial contract of February, approved for \$19,999, a dollar less than that required to go out for bid? Hopefully, you will take a step back and examine the internal controls that are necessary to what your duties and responsibilities are. Thank you.

Chair Butler asked if there were any questions for Mr. Van Buer.

Trustee Marshall clarified that, although he may have made the comment regarding the travel time, he was not complaining.

Mr. Van Buer responded, I was just putting it as an extra time. I actually FPIA-ed the expenses that everybody incurred traveling to Hoffman Estates. To me it's one thing if it's a Board of Trustees meeting, in which a minimum number of people are actually involved. It's a different thing when it's committee meetings, when you have all these people having to drive from DeKalb to Hoffman Estates. And, even if that's true, there should be a valid business reason for why you move to Hoffman Estates. It just was what was done. I ran into Trustee Boey because I came from DeKalb and other people probably did too,

got stuck on traffic on Route 72 and 20. So, I mean, that was the question, why when the normal one is here, why was it at Hoffman Estates (inaudible) you said it. It took me an extra hour and a half because I could walk from my house to here in about ten minutes.

Chair Butler thanked Mr. Van Buer.

## **7. BOARD GOVERNANCE DOCUMENT PROPOSALS**

### **7.a. Proposed Changes to Board Bylaws, Regulations, and Policies**

Chair Butler indicated the first agenda item concerns public appearances before the Board. Mr. Blakemore's office has drafted a revised policy to replace all existing Section IV language in our Bylaws.

Mr. Blakemore indicated that Deputy General Counsel Greg Brady would speak regarding the draft proposal for Section IV, Appearance Before the Board. Mr. Blakemore commented that recent meetings of the Board have been operating under the province of what is being proposed. It was brought to the attention of the Board that what we had in writing was inconsistent with a recent Attorney General's opinion, wherein information that was asked for was no longer required or permitted under the law. Therefore the Board, notwithstanding the fact that you've not officially taken action, has actually been acting in compliance with the provisions for some time.

Mr. Brady added there were two major components. The first is to address specifically that Attorney General's binding opinion. It did not allow a village to request the address of an individual who is trying to seek an appearance before that village. The Attorney General's Office did say that public entities can impose reasonable time, place and matter restrictions on individuals who wish to appear before a board, but that the Open Meetings Act requires of each of those public bodies an opportunity for any person to appear before the public body in order to address any number of issues. We have modernized the board bylaws that went to the appearance of the public, to eliminate requests for information that did not appear to be relevant towards the time, place and matter restrictions that a public body has in place. We used to ask for the address, we don't ask for the address anymore. If you look at the proposal, the first purpose was to modernize in order to be up to date with the Attorney General's expectations. The second, was to streamline it so that it read in a logical fashion.

Mr. Blakemore continued that he would like to point out that we have not recommended any time, place, or matter limitations, although the Board may want to consider it in the future. The only request of the public is the name, so that the chair can identify them, and the date, for record purposes.

Mr. Brady added one caveat: that if a presenter wanted to do a PowerPoint or video, or something similar, we ask, in this draft, that a 24-hour notice be given to allow arrangements for the equipment to be available for the meeting. Traditionally, 95% of all requests are verbal and can be registered up to the time of the start of the meeting with the name of the individual for the purpose of calling them up to the podium for an approximate five minute, or less, presentation.

Trustee Strauss asked if it is the opinion of the Office of the General Counsel that this proposed amendment is fully compliant with the current law?

Mr. Blakemore responded yes.

Trustee Strauss made a motion to approve and Trustee Julion seconded.

Discussion continued with Trustee Boey asking for a clarification regarding the five minute allowance and if it is in compliance with the current law. Mr. Blakemore responded, it is up to this Board to make that determination. It can extend that five minutes upon request of the public, which is typically what has happened in the past.

Trustee Boey clarified he was concerned that any longer than five minutes may start imposing on the time left for regular business and suggested setting a time limit.

Mr. Blakemore continued, my recommendation would be provide the chair the discretion, given the time and circumstances of that particular meeting, to make that decision as opposed to prescribing a set time, for example three minutes or 30 minutes.

Chair Butler noted, Section 4, Subsection F, states it is the chair's prerogative to determine the amount of time that's provided to the interested party. It does indicate that, if feasible, a speaker will be given five minutes, but it then goes on to indicate the conditions that a chair of the meeting might use to determine that less time is warranted. Perhaps there's many speakers, perhaps it's a particularly full meeting agenda. Then the chair would have that discretion.

Mr. Blakemore added we should expect to provide each speaker not less than five minutes because that that would be an appropriate amount of time. If there's additional time needed, then that can be within the discretion of the chair to provide it. The primary reason for the revision was to remove the requirement for the speaker to provide their address.

Chair Butler added, there are two categories of board presentations. There's a formal presentation that can be more than five minutes and that requires a 24-hour notification that is primarily so that the Board can prepare for that presentation and can schedule it. If somebody had a presentation and the board chair or the committee chair felt like it was really important that they be permitted to speak more than five minutes, then they could permit that. That's a formal presentation and could include PowerPoint. Then there's a second category which are for those appearances that do not represent a formal presentation and are intended to be less than five minutes.

Mr. Brady explained, the concept of a formal presentation was already in your board bylaws. I did not receive instruction to change that; as such, I kept that concept and then looked at reasonable time, place, and matter restrictions that could be placed on that. That's the 24-hour notice and that was also in our previous version. The legal obligation is to allow a person to address the board pursuant to reasonable policies and procedures established by the board. The issue [in the Attorney General's rulling] was whether the policies of that village, in asking for the address of somebody, was a reasonable restriction. The Attorney General's Office found that there is no legitimate governmental interest in asking for that information because the Open Meetings Act does not require that only constituents of the body be able to talk; it says any person. So, it doesn't matter what their address is. To review, in balancing all of what the Attorney General's opinion says, my draft balances the interest between the public having a right to speak and the board wishing not to be burdened by an abuse of that right. If you were to get 128 requests a day, it's impossible to give everyone five minutes. Five minutes, more or less, is a guiding principle; it is not a firm principle; and, depending on the time, place and matter, the chair has discretion to change that in an emergency situation.

Mr. Blakemore added, the proposal specifically indicates, "When feasible the chair will attempt to at least provide five minutes for each requestor to address the board." This is to set a standard that would meet the test of reasonableness.

Trustee Boey replied, I think five minutes is fair for general speaking items. The chair will decide if someone asks for more than five minutes, they should also state how much time they need and the chair will decide.

Chair Butler responded, there's no requirement that someone indicate they wish to speak to the board in a non-formal manner any time prior to the beginning of the meeting. It's only if they wish to make a formal presentation that will go beyond five minutes and will utilize technology of some kind, or may utilize technology, would they need to tell us 24 hours in advance? But just as today if somebody wished to address the board or one of its committees, they would merely have to indicate that interest before the start of the meeting. I have just some basic points. In paragraph C, the second line, I think there

needs to be an "s" after "mean." The fifth line down, we have the pronoun "his" in reference generally to the president' it should "his or her." Are there other questions, discussion points from the trustees on this particular matter?

Chair Butler continued, if I could ask for some clarification from Trustee Strauss: does your motion mean that you wish to have this presented to the board?

Trustee Strauss replied, let me first make a motion to amend the item presented to us to make the two changes that you noted; the second line the word "mean" becomes "means," and then in the fifth line following the word "his," we add "or her." Chair Butler clarified, there's a motion. Is there a second to amend the motion? Trustee Paul Julion seconded the motion.

Chair Butler asked, do we vote on that? Mr. Blakemore clarified, stylistic and technical corrections do not require a motion of the board and those changes have been noted and will be made. Trustee Strauss clarified that the motion included that the item be presented to the full Board. Chair Butler asked a procedural question. This is an amendment to the bylaws. This would require a first reading and a second reading in accordance with our bylaws unless the board chose to waive that.

Mr. Blakemore added, the board has the power to waive the first reading requirement.

Chair Butler continued, the motion is to pass this through the committee and recommend it for adoption at the full board meeting on the 18<sup>th</sup> of June.

The motion was approved for recommendation to the full board.

#### **7.b. Previously Identified Policy Initiatives for the Ad Hoc Governance Committee**

The next item on the agenda will be a combined information item. I'm going to offer the members of the committee an opportunity to ask Mr. Blakemore or Mr. Brady any questions about those items. Mr. Blakemore do you have any updates on those items for us?

Mr. Blakemore continued, Item 7.b. lists seven items. These were the items that this committee classified as areas for this committee's consideration. I would have to confirm this, but I believe that 7.b.(2) was actually taken up by the Board previously. What Mr. Brady and I are most interested in is if there any guidance that you would like to provide us in drafting proposals in these areas, you can do that either within this committee or at a later time, and depending on the committee's desires, we will present you specific proposals in these areas at your next meeting.

Trustee Strauss responded, my suggestion is that we get some specific proposals and/or recommendations and options for us to consider. That will make our discussion a lot easier than having a free form conversation about these topics.

Mr. Blakemore stated that could be done and, in a couple of these areas, the Board has previously seen proposals. For example, some time ago there was an update about the conflict of interest policy. We will provide you specifics and use this forum for you to respond to those.

Chair Butler noted, we were not sure what we would have prepared for today's meeting so we indicated them as action items because we thought there was a possibility that we might have drafted policies in these areas. If there are no other questions from the committee for these items, I'd like to move to item 7.c.

#### **7.c. Newly Identified Policy Initiatives for the Ad Hoc Governance Committee**

Chair Butler noted that, at the Special Meeting of May 28, 2015, the Board approved an action item to consider policy changes to Board Bylaws, Regulations, and the creation of policy concerning board and

presidential contracting and related matters. We have some drafted changes to the board regulations and bylaws that we're going to consider today. I'm going to turn the floor over to Mr. Blakemore so that he may introduce us to the documents that we have, but before I do that I'll point out, again because we were not sure what forum these items would take for today's meeting, we indicated that these would be action items in accordance with the list that we provided on May 28, 2015 and that was to make clear that we could take action on these items. In what format they might take, that was a determination that we asked the General Counsel's Office to give some thought to and they have provided their recommendation for us today. So the action items cover the general categories that we're going to be discussing today.

Mr. Blakemore responded, I refer you to agenda 7a, May 28, 2015, in the packet which I provided you. This is what the board actually adopted at its May 28 Special Meeting of the board. You provided various categories for which the General Counsel's Office was instructed to provide some specific areas within both the bylaws as well as the regulations. What I'm going to do is connect the red line that you see to the action item that the board took on the 28<sup>th</sup> of May. We can walk through it that way. You will find that the action items don't fit exactly into ten different areas because some are regulatory and some are bylaws, but I think it's important to understand that, with the exception of the affiliate area and issues related to fundraising etc., we believe that we have covered all of the areas that the board has required us to present on. Let me talk about the affiliate category before we get into the substance here. We do not have a proposal in the affiliate area for two reasons. One, it is an area that the university is now taking a look at in terms of what else the definitions are and that was our thinking originally. However, under the United States Affordability Care Act, that category may not be a category that the university can, consistent with the Affordable Care Act, actually have. Rather than having the board try and define this, particularly in light of the interest of the university to look at that category, etc., we have no recommendation. In conjunction with other public universities, we really need to come to grips with how we're going to deal with this particular category and the Affordable Care Act. In our opinion, we did not present proposals because of that.

Mr. Blakemore continued, referring you to the regulations of the b, Section 2, the document speaks for itself. Your points six and seven concern obligations to bring certain matters to the board and obligations to advise the board of matters whether they are required. In those circumstances where there is no specific statutory or regulator requirement, but "as a matter of sound management practices should be brought to the board's attention," we include significant financial implications, substantial public interests or ethical considerations, and material changes and/or deviation from standard contractual provisions and obligations." We explicitly provide response to those two and what is provided in your red line under Section 2, Subsection A, which is titled "Appointments;" and under 2, which concerns "Authority to Employ," and under that we add the language that is spelled out here. Another area where there were specific instructions was to "modify existing policy concerning the hiring of employees that report directly to the president whose functions and compensation level regardless of formal title constitute cabinet level senior leadership of the kind that may warrant board approval." We are explicit here, given that instruction, to require executive committee approval for employees with salaries of \$150,000 or more who report to the president, a vice-president, or a dean.

Trustee Strauss asked do we have any idea how many people fit that descriptions?

Provost Freeman responded that the \$150,000 level, according to our team, is going to be variable in terms of the type of college. Often, in professional colleges, the faculty salaries for professor often exceed \$150,000. Is it fair to single out people who choose an administrative appointment for this type of approval when there are faculty appointments within the same college that don't require that? I would also argue I don't think most universities consider associate dean a major administrative role.

Trustee Strauss added, what I'm looking for is to strike the right balance between oversight and practicality. The Executive Committee is going to have to meet in order to approve these. I want to fulfill the oversight function but I don't want this to become a crushing administrative burden. I want to wind up with a definition for the types of items that come to us that truly warrant our particular attention. I'm

not sure whether we've found the right balance here or we sought a real easy way to be able to get at this. This is one area where maybe we should gather some data to be a little more thoughtful about the way in which we're approaching it. I'd also ask the question whether it is possible to get the number for the salary, whatever that is. Could you have somebody who does not report to the president, vice-president or a dean who makes three or four hundred thousand dollars a year?

Dr. Phillips responded, yes, a football coach.

Trustee Strauss followed, that's why I think we should be more careful about what we are developing here, not because I necessarily care about the football coach, but because I'm not sure that we've fully thought through who's included, who's excluded, and what burden it is that we're taking on. I'd like to be more thoughtful about that.

Dr. Phillips added, my concern would also be the timing of any offer that you would make. What considerations would have to go to the board? Could you not make an offer pending approval? There might be other issues associated with the timing of an offer and at what point would you have to go to board? In addition, that could create some other additional challenges in getting good people into key positions.

Provost Freeman added, I would follow-up and say I would also want additional guidance on how to interpret that, because if you have a gap in a college, sometimes you need to look at providing additional pay for people who step in in an emergency. Sometimes that would cross the threshold amount and does that mean we need an executive action and board approval to proceed?

Trustee Strauss responded, again, we should gather some data and take a look. If it turns out that these happen in bulk and there are two or three times a year where the Executive Committee could meet and consider all of them, that's one thing. If it's going to happen every three weeks, that's another consideration. Not knowing the number of people or how often it comes up, is hard really for me to reach a considered judgment as to what the appropriate level should be. I do think that we ought to institutionalize some level of control beyond what we currently have. I believe that was the spirit of what we intended when we talked about this at the last regular meeting. I'd just like to take enough time to make sure that we have the balance right.

Chair Butler asked if there is the distinction between hiring and appointment. In the existing language, the Board is required to approve the appointment of personnel to vice president or dean positions which is in the existing language. In this case we're talking about hiring, and so that would certainly kick in the question of timing, which would be Dr. Phillips concern. If you had to go to the Executive Committee before you actually made an offer that could present a significant competitive disadvantage for the university if the Executive Committee wasn't able to meet. Is there a distinction between hiring and appointment is my question to the General Counsel.

Mr. Blakemore responded, no, the appointment section and the appointment language is used there. I don't know how long this has been in place, but we're making distinctions where there's no difference. An offer letter for employment is the same offer letter of an appointment. You use appointments more often as higher level positions and so there's the practical distinction, but there's no distinction at all with respect to the legal effect of an offer of employment or hiring or an appointment.

Provost Freeman added when we make offers at the level of vice-president and president, we put in the offer letter that it's subject to the appointment by the Board of Trustees and most of the time that is formality. Indeed we are, by our governing documents, mandated to have board approval for those appointments and offer letters that have been extended and signed, but we do have language in the offer. We don't at the level of associate dean or vice provost, so that would concern me a little bit in terms of an inconsistency between hiring and appointments.

Trustee Strauss responded, it strikes me that maybe we should take a look at the language and use



something that's consistent and we should also think through that process to determine whether it makes sense for some of these other offers of employment to also to be conditional on some sort of an approval. I know that this is an issue that's come up in other institutions in other contexts, and to the extent that we don't have a policy that covers that issue, now might be a good time to see whether or not we can accommodate it because we've got to do some drafting here anyway.

Mr. Blakemore noted that even without a policy, whether it's the employee at the lowest level, regardless of how you define that category, or at the highest levels, all of the decisions are subject to the board's approval. I think we can be clearer about that and I certainly understand the equity issue that was raised and I think it's more than a legitimate one. The bottom line is I think Trustee Strauss put it very well, this is an issue for the board to determine the level of oversight it wants to have. Where do you cut it off at? I think clearly the board has indicated that just why the instructions were given, we need to have a level other than those named cabinet members. Now how far you want to go down is really with the prerogative, the purview of the board.

Chair Butler responded, I personally don't want to go as deep as this is pursuing, because I think if we look at the original language that the board approved on the 28<sup>th</sup>, we were interested in cabinet level positions. So those would be people who report directly to the president and who are cabinet level who may not have the specific title of vice president or dean and even dean isn't cabinet level.

Trustee Straus asked Chair Butler, if I could because if you jump back to 2a, it says prior board approval is required for any personnel action that creates an obligation and has significant operational, financial, academic, and/or reputational implications. So maybe that gets to the person who makes \$400,000 a year. I think we have to take a look at all of these items in order to figure out what the appropriate level is. I always intended that we take a look in exercise of our oversight responsibility at more than just cabinet level appointments. There are some of these appointments that jump out at you as being significant enough that somebody else should take a look at them. But without having some idea how many people we're talking about or what type, they don't know how deep it makes sense to go.

Mr. Blakemore responded, if I may, I could point out to the board that much of this language comes from discussions that the board had when the board was looking at guidelines and streamlining more than a year ago. This is, in a sense, not new. Some of these issues have been sown to that language, which specific language does come almost directly from those discussions. And again, the purpose for bringing it to the committee was to get direction from the board in terms of how we can go to the next level. If I hear correctly, then we can delete issues related to deans and just look at cabinet, vice presidents, or as you put it cabinet-like, which will need to be defined.

Trustee Strauss responded, that's not my feeling.

Chair Butler added, I think Trustee Strauss and I are going in different directions on this.

Trustee Strauss commented that may be.

Chair Butler felt Trustee Strauss was moving more toward what's written, and he was moving away from what's written.

Mr. Blakemore asked that the board let him know which direction is desired.

Chair Butler clarified, I'm only trying to stay true to the board's statement of the 28<sup>th</sup> which seems to me grounded in its desire to consider not only vice presidents and deans but hires that were cabinet level hires. People who reported directly to the president and had a significant role of some kind that was cabinet level like. To me, we get away from that when we go into people who are reporting to vice presidents and deans. I think what we may be looking for is language to add for individuals at a salary level of \$150,000 or more that provide significant, direct reporting to the president or something similar.

Trustee Strauss noted that he still would want to see data before making a decision.

Chair Butler noted, we want to make good policy here and asked Trustee Strauss to describe as detailed as possible what kind of data would be useful to continue the discussion on this item.

Trustee Strauss asked to see how many people we have that are earning \$150,000 or more and who they report to. I think that would give us an idea about whether we're talking about 10 people or 1000 people; although I know it's not 1000 and I know it's not 10, but I don't know what the exact number or the reporting relationships to appropriately define this.

Chair Butler asked, could we exclude faculty members in this data request on the grounds that there's so many layers in which faculty members are reviewed, there's so many people involved in that process and determination?

Trustee Strauss asked for a chance to reflect on the discussion before making a decision regarding faculty members. I think then the issue is going to be, you have faculty members who take on other assignments as well, their level of compensation by virtue of their faculty service is already there. What happens when they accept an opportunity in the provost's office or a vice presidential office?

Chair Butler asked if there is a point at which one crosses over in terms of employment classification?

Provost Freeman responded chairs are sort of the grey area. Sometimes they come as faculty and sometimes they come a grade above that. For example, I have faculty appointment in the Department of Biology where I would return if I were no longer serving in this role. I am not counted as a faculty member. We have faculty members who move into administrative roles, there are different models by which we compensate them and in part it depends on where the faculty members are coming from. Within a college, when a faculty member moves into an administrative role as a chair or perhaps a dean's office appointment, especially if it's a college where all of the faculty make around the same amount of money because of disciplinary band is relatively narrow, we will sometimes structure with an administrative supplement that persists for the time the faculty member is in administrative service and goes away when they return as faculty. It is the same situation in a larger college. LAS comes to mind where we have differences in disciplinary salaries for a physicist and a humanist. They don't start out making the amount, but if they move to the dean's office to be an associate dean, the portfolio of the associate dean is listing whether you start out as a humanist or a physicist to give examples of the extremes. We've been trying to move away from doing unequal administrative supplements to doing actually temporary increases to base that revert from a formula of what you would have had in faculty. So dynamically, we've been changing the way we structure these things to try to make them more equitable, so depending how you ask the question, the answer is attainable but it's complex. I would suggest that perhaps we sit down and talk about what you want to know so we can be sure to get you the data that you actually need to inform your questions. We want to be completely cooperative and transparent. It's just not one size fits all because of the nature of the university in terms of faculty administrators and transitions.

Chair Butler asked Provost Freeman, when one moves from a position in a department to an associate dean position for example, does their classification change to SPS? Can they serve in that capacity for a brief period of time, up to three years, and then go back to the faculty?

Provost Freeman responded it varies. In some colleges it's quite common to see people do temporary rotations in administrative service, in others, it's generally a stepping stone towards an administrative role at that level.

Trustee Strauss added, I'm not sure I can frame my question with any greater precision as we sit here today, but I'd be happy to sit down and talk about further.

Provost Freeman clarified, from what I heard you say, salary distribution would be of interest and

perhaps the frequency of hiring at that level, at that threshold, would be useful?

Trustee Strauss confirmed that both be useful. I think the conversation that we have had here today illustrates that it's hard with a simple formulation to be able to accomplish fully what it is that we have in mind. I'm willing to accept additional assistance in formulating something that serves both of our objective, which is again that we make sure that we can exercise oversight authority but we still have something that's workable when we're finished. The assumption here isn't that people are completely irresponsible; there are marketplace pressures as well that will lead you to be able to compensate within a certain band and there are pay comparability issues that are going to militate against your being outside of that band with many of these hires. We just have to find a way to be able to understand this enough to try to come up with a draft solution to be able to accomplish what we want. Any additional data that can assist with solving that challenge would be useful.

Chair Butler asked if this information should be presented to the committee?

Trustee Strauss agreed to hold it over until the next meeting but does not want to delay this needlessly. If it's not possible to have these conversations before Thursday or we don't have enough time on Thursday to complete this conversation with the full board, I would surely understand that. One other option is there may be some of these authorizations that we're prepared to make on Thursday and then come back and do another amendment later as well.

Chair Butler noted we will have some things that we are ready to advance and there are some things we will want to receive more information on.

Trustee Strauss asked to back up a step before we going further. I appreciate Mr. Blakemore's comments about the affiliated employees. I take it we have affiliated employees that are on the books today as affiliated employees?

Mr. Blackmore responded, that is correct.

Trustee Strauss asked if it possible that we could freeze affiliate hires or that we can transfer them to another classification, those that are currently on the books?

Provost Freeman confirmed that HRS is actually in the process of trying to do that under the pressures of the Affordable Care Act and there has been a lot of progress towards that and could provide a report.

Trustee Strauss suggested that this may be something that we could look at doing instead of carrying this into future, if we can do something about it today we might as well just do it and then we don't have to worry about this anymore.

Chair Butler confirmed Provost Freeman reported that HR is in the process of doing that in response to the Affordable Care Act and asked if she could brief the board today.

Provost Freeman agreed but not at this moment. She would need to check in with her HR colleagues, but yes that would be very doable.

Chair Butler also asked what they anticipate that transition will look like and whether those people will still be employed by the university in a capacity and classification similar. I assume that this has some impact on the question of who is a Civil Service employee as well.

Provost Freeman asked for time to check first in order to give accurate information.

Mr. Blakemore confirmed this is a very recent issue. Mr. Brady spent three hours this morning addressing this and related issues. Some of these issues are just coming to our attention and we're working in collaboration with other public universities. I would hesitate to provide an opinion. We're going to need

some time on this and I think the board's going to want to take some time on it and I don't think it's the kind of thing that we can turn around in the next couple days. We can provide you information with the number of employees and the like.

Trustee Strauss indicated the reason for my wanting to ask that question was if we had a quick solution I would grasp it. If we don't have a quick solution then we need to do something that is again, thoughtful and will address the issues involved because right now, at least as I understand it, we don't adequately address affiliate employees as a class within our regulations. So I think we either need to be able to rationalize that fully or we should do away with it and make other arrangements. Whatever is most appropriate. Again, I completely understand if we don't have enough information to be able to discuss that today.

Chair Butler continued, before we move on to the next page, I have even stronger concerns about board work load in relation to the phrase that precedes this, which is the red phrase, "board approval shall be required for any personnel action that creates an obligation that has significant operational, financial, academic, or reputational implications." The text that precedes that refers to the president will seek "board concurrence" for new positions at the vice presidential and deans level. This gets clarified under number one of the existing language, underneath it, which says "board approval shall be required." Is there a way that we can take this phrase, "any personnel action," and move it up to follow "levels"? So, "at the vice presidential or dean levels 'and/or any personnel action,'" because the phrase here is "personnel action," which is different than new positions that "create an obligation that has significant operational, financial, academic or reputational implications." Is there a way for us to add that language to the existing language so that we don't create a higher standard for a much less clear set of circumstances? Because to me, it's not really clear what a "significant operational, financial, academic or reputational matter" is. That clarity doesn't usually surface until after there's been a problem of some kind and then people think, "well this is a significant matter," but how would we know prior to the personnel action that it might become significant? Take, for example, the U of I situation with the professor who was tweeting anti-Israeli comments. While there may be a personnel matter or action taken there, would President Baker necessarily know that, if he took that action, that it would create a "substantial reputational matter" for the university? How would he know that before the action was taken?

Trustee Strauss replied, we had this conversation back when we first looked at making modifications in this area and the issue was that it's impossible to know that. I think the impact of having this language is that it causes you to be more conservative when you're the person who is making the decision about whether or not you've violated the provision. I don't necessarily have a problem with the way that this is phrased as I've thought about it a lot since it was proposed before. Now you and I may still not be on exactly the same page about how deep this has to go so that would be the impact of pushing this up. On the other hand, you could just get rid of that second paragraph basically.

Chair Butler commented, well it's the phrase "board approval" that concerns me.

Trustee Strauss replied, some of these things now we're asking the executive committee to do; some of them we're asking the board to do. I think the assumption was that for some of these there wouldn't be board meetings often enough to be able to cover these eventualities and so you needed to be able to involve the executive committee. I don't know that we've fully talked among ourselves and we certainly haven't talked at the full board level about whether this class of items should be referred to the executive committee, but if everybody was content to do that, then maybe you want to be consistent about having all these decisions go to the executive committee.

Mr. Blakemore added, Mr. Chair, in response to your question and your comments regarding what is significant, etc., I'll make a couple points. One, concerning the example that you provided from the University of Illinois, there was nothing unusual about the board's action other than it got into the substance of the actual hiring, i.e. brought into play issues that typically are not a factor when a board is considering employment. This was not an unusual circumstance that deviated from typical employment

practices. As an example, a compensation level that was outside of the market or that was very different from others would be an unusual circumstance. I believe that "substantial," "significant," "material," when those words are used, establish a legal standard for review for the person making the decision and then the persons who have some oversight are going to look to at what are the typical practices in that area, and that's how that decision is going to be made. So having such language does provide a standard that can legally be defensible even though you may not know exactly what that is in every circumstance. In terms of deleting number two, I would agree that, with the addition of the two, seem to be inconsistent, but I also will point out that given the instructions provided, you were literally trying to address issues that were not on point with a vice president or a dean. It was persons other than persons who would be filing those positions that you were looking to have some greater oversight on the part of the board.

Chair Butler added, it's not just hiring, it's also personnel actions. The concern I have about the first red line here, the prior board approval, is that it deals specifically with personnel actions which would include terminations or promotions. There's so many actions that would be included in that category.

Mr. Blakemore responded, it goes to the level of oversight the board feels appropriate to have. As part of personnel actions, oversight, hiring, promotion, outside of the issue of tenure, are all issues of personnel. It's not just hiring. From an employment lawyer's perspective, you want, and you will be obligated to have, some oversight across the board, not just on the hiring side. You know evaluation becomes another area that would be included in that spectrum of personnel actions.

Chair Butler asked if there was any reason why the provision isn't covered under the provision letter B under board approval sub point C? Wouldn't that constitute potentially a matter with significant financial public interest, ethical, material changes?

Mr. Blakemore continued, well again it's really within the discretion as it was put in this category because the section your referring to concerns obligation of financial resources. But again, the organization of this, in terms of placement, is within the discretion of the board and it could be easier read one place or the other.

Chair Butler added, the section I'm referring to on the third page deals with contracting specifically. As it stands, I'm uncomfortable with the broad range of the language here at this stage and the obligation that it would place on the board. I cannot guarantee that I can get a quorum of the board whenever we're in a situation that fits this description. I don't control who gets appointed to the board and that's what concerns me. I don't want to obligate the board to do something that it's not able to do and that prevents the university from conducting business. That's not to say I'm not in favor of some gesture that indicates what the board is interested in learning about, receiving information about, and, if the situation warrants it, voting on. Can we continue to work on this section and not recommend anything to the board at this stage and see if we can't find a way to manage our concerns? Trustee Strauss has some requests for some data. I don't think that it's the type of data that we would have at our disposal before the meeting anyway and, given that the meeting involves a number of subjects, we probably shouldn't try that. We should try to schedule a follow-up meeting to this one and, prior to that, get that data and maybe consider different language here. Is that suitable for the committee? Let's not recommend the first page of changes at this stage and let's move on to third page which concerns board approval for financial matters, obligations of financial resources.

Mr. Blakemore clarified, given the discussion, you would want to do the same thing in this area because this mirrors from the contractual side which we were trying to be responsive to in terms of your document on the personnel side. You've got some of the same types of language, required to bring matters to the board regarding statutory, regulatory policy, etc. We've got broad language that even if it's not required by law, there are significant financial or substantial public interest or material changes or deviation from standard contractual provisions and obligations. Again, we tried to establish standards of the language used. If you have concerns with the definition there, you've got more definitions to be concerned about I guess.

Trustee Strauss responded he had no problem with the changes on page three.

Chair Butler agreed. I would like to talk about the contractual provision under professional services. This is language that comes from what we discussed a year ago, and my only issue a year ago was the actual expectations that are occasioned by informing the board. How would that be done? We've had two years now in a relationship with Dr. Baker and I know how Dr. Baker informs the board. That makes sense to me now whereas it didn't make as much sense to me a year ago. Typically what happens when the President is informing the board is he begins by informing the Chair and then there's a discussion as to how widespread that discussion should be. Typically my advice is call the rest of the board members and talk to them. From there, we determine whether it's something that requires the board to vote on. I think my concern a year ago was I didn't know what the expectations would be for the board chair. We've developed a process where that doesn't concern me as much anymore. Mr. Blakemore, correct me if I'm wrong, but didn't we have reputational matters in the language here in an earlier iteration?

Mr. Blakemore responded, reputational matters are covered above where it said substantial public interest or ethical considerations, but we also have reputational issues as part of the duties and responsibilities in section one. This is the bylaw of the board where it lays out the duties and responsibilities of the president. If you turn to next page you have it established as a duty and it is the duty and responsibility to exercise sound management of the operational, financial, academic, and reputational aspects of the university.

Chair Butler indicated he was satisfied with this language.

Trustee Marshall indicated he was interested in the section under professional services and consulting. My question is would there be a timeline involved when a consultant is hired? Is it tied to a fiscal year, could it run a calendar year?

Mr. Blakemore responded, typically contracting is done at a dollar amount, not tied to a fiscal year. It may be approved in a particular fiscal year, but it is not automatically approved at the same amount for the next year. When we speak in terms of a contractual obligation of dollars, even if the performance of it takes place after that fiscal year, that dollar amount is not going to change.

Trustee Strauss added, would it be fair to limit this to a transaction or any "series of related transactions" then? Although the concept was for a single transaction maybe that would be an appropriate clarification: "\$100,000 or more for any transaction or series of related transactions."

Mr. Blakemore stated we can add that language, "for any transaction or series of related transactions."

Chair Butler continued, I want to get into the specific language of who is doing the contracting. If it says for the president, we mean professional services and consulting that's contracted by the president for the president. In other words, the president is actually doing the contracting with the consultant as opposed to the more general idea that, at the end of the day, the president and the board ultimately are doing all the contracting.

Mr. Blakemore responded, that's why we use the language "or directly for the board." We didn't want to get into a circumstance where every consulting or contracting arrangement, some of which would never come to the board. If it's not of particular interest to either the president or the board, it would not need to come to the board. This would overwhelm you with approvals. If there were a priority that really impacted the board or was commissioned by the president, him or herself, then that's what you were looking to capture. It's hard to do that in language with bylaws because you got to define what's "directly" and what's "for," but we actually put those two together for that very purpose, trying to have some limitation on this.

President Baker added if we're at \$50,000 or \$100,000 there will have to be an RFP; and if there's an RFP

for \$50,000 or \$100,000 for a piece of work, does the board really want to have to come back and look at that?

Chair Butler responded, it would only be in the case of the board contracting directly with a consultant or the president contracting directly with a consultant. In all other cases, it would be presidential authority granting that contract. My question when I first read this is about consultants that you might contract with, that Provost Freeman might contract with, that Dr. Phillips might contract with?

Mr. Blakemore asked what level do you want to capture oversight?

Chair Butler responded, the spirit of board's intention is captured in its first point in the May 28<sup>th</sup> item, the retention of consultants "by and on behalf of the president" under the provisions governing appointments and "consultants directly providing professional services to the board." That's the limitation of the board's request. That makes sense to me, but then we're under the understanding that all other contracting would be done under the spending authority of the president.

Mr. Blakemore noted, I think we're getting to the same place through the use of different language.

Trustee Strauss asked if it would be covered by C.

Mr Blakemore responded, well it would be covered by both.

Chair Butler added, so is "for the president" as opposed to "by and on behalf of the president," an appropriate change? Does "for the president" cover the concept?

Mr. Blakemore agreed. Again these are going to be ultimately interpreted by the board and the president in terms of the actions that each of them take. Right now, the board gets information regarding the number and who, the cost of the contract at certain levels, just as the president gets the same information at different levels. So you're going to be able to look in real time at this professional service provision was provided by X at what costs, and what was it for, and determine whether it met that.

Chair Butler asked if other committee members had thoughts on this item? Trustee Strauss with the change that you've recommended are you satisfied with this addition?

Trustee Strauss agreed.

Chair Butler continued, next would be changes to the bylaws concerning the duties and responsibilities of the president and the board and presidential assessment.

Mr. Blakemore responded, again, the language here is an attempt to respond to the board's directives. We did not feel the appropriate place for this language was in the regulations, but you find this type of language as appropriate in presidential and board agreements, and then obviously the area where the board is clearly spelling out its expectations of the president. These were areas where one could imply from what was there that these would be consumed under them but the belief was that it was better to spell out more specifically what those duties and responsibilities or expectations were.

Chair Butler clarified this was not only of the president but also of the board.

Trustee Strauss agreed.

Mr. Blakemore continued, I think we're in agreement that we're not ready to advance the items under sub section A(2) which are the items regarding the authority to employ, but we are prepared to move forward with the amendments that Trustee Strauss has requested for section 5, number 2. This would be the addition of a C, board approval provisions, subsequent changes to the numbers, and the addition of language under professional services and consulting that would provide a \$100,000 threshold. This is

what we are proposing as well as the bylaw changes we just considered. This is what this committee wishes to send to the board and this is the extent of what they wish to refer to the board on Thursday.

Trustee Strauss asked, so the changes to article 7, the last two pages that we have in front of us, go from section one to section three, there is an intervening section two we are not making changes?

Mr. Blakemore agreed, yes and there were no changes there.

Trustee Strauss responded, I'll make a motion that we forward to the full board for its consideration the changes before us today with exception of those to sub section A appointments number 2 and with the change that I suggested in section 5, number 2e regarding for any transaction or series of related transactions. Trustee Marshall seconded.

Chair Butler continued, there's a second, is there any further discussion? In the interest of not getting caught in Trustee Strauss's motion to adjourn which I know is coming. I do want to point out that on May 28, 2015 we also sought to return to the question of expenditures for sponsored research and other sponsored activities under grants and contracts. These changes were proposed a year ago. At our next meeting when we bring back any revisions for the items that we discussed today for the first page, can we add this to that item?

Mr. Blakemore agreed.

Chair Butler continued, because to me that was just a sensible change that we didn't make because we didn't have consensus on altering the spending threshold. I see no reason why we can't pursue those changes in this context as well.

Mr. Blakemore responded, that would obviously provide us opportunity to consult with the Provost and the Vice President for Administration and we would certainly do that.

Trustee Strauss asked, we're going to come back to the appointment of affiliate employees as well, correct?

Mr. Blakemore confirmed we're going to receive from Provost Freeman an update on what is happening with respect to that employment classification in relation to the Affordable Care Act and I think that will include some kind of an inventory of individuals classified under that classification.

Provost Freeman responded, while we were sitting here, I did reach out to HR to find out what would be possible because of the complex conversations regarding the ACA. I'm not sure if what I'm saying causes a problem in the context of what our Office of the General Counsel is saying, but I will confirm with them. When HR replies to me, whatever we can easily share at this point, I am happy to put together in an expedient fashion for the board.

Chair Butler asked for a second to the motion. The motion was approved.

Chair Butler continued, these will be recommended to full board on the June 18<sup>th</sup>.

Mr. Blakemore confirmed we will send these items to full board.

## **8. NEXT STEPS**

Chair Butler noted, in terms of next steps, we need to schedule a follow-up meeting of this committee. We've got a number of things that will happen perhaps between now and then. My guess is that by the time we do, we'll have a set of new board officers and we'll have to determine how this process is going to continue under that new leadership. It doesn't make sense for us to schedule that meeting at this



moment, but we will as soon as it's practical.

#### **9. OTHER MATTERS**

No other matters were discussed.

#### **10. NEXT MEETING DATE**

Next meeting will be determined at a later date.

#### **11. ADJOURNMENT**

Trustee Butler asked for a motion to close the meeting. Trustee Strauss made a motion and Trustee Marshall seconded. The motion was approved. Meeting adjourned at: 3:22 p.m.

Respectfully submitted,

Linda Odom  
Recording Secretary

*In compliance with Illinois Open Meetings Act 5 ILCS 120/1, et seq, a verbatim record of all Northern Illinois University Board of Trustees meetings is maintained by the Board Recording Secretary and is available for review upon request. The minutes contained herein represent a true and accurate summary of the Board proceedings.*