

Minutes of the  
**NIU Board of Trustees  
of Northern Illinois University  
Ad Hoc Committee on Governance**  
December 17, 2015

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

The meeting was called to order at 3:13 p.m. by Committee Chair John Butler in the Board of Trustees Room, 315 Altgeld Hall. Recording Secretary Kathy Carey conducted a roll call. Members present were Trustees Robert Marshall, Marc Strauss, Raquel Chavez, and Tim Struthers. Members absent Trustee Robert Boey. Also present: Committee Liaison General Counsel Jerry Blakemore, Board Liaison Mike Mann, President Doug Baker, Executive Vice President and Provost Lisa Freeman, Deputy General Counsel Greg Brady, and UAC Representative Greg Long.

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

General Counsel Blakemore indicated the appropriate notification of the meeting has been provided pursuant to the Illinois Open Meetings Act. Mr. Blakemore also advised that a quorum was present.

**3. APPROVAL OF PROPOSED MEETING AGENDA**

Chair Butler asked for a motion to approve the meeting agenda. Trustee Strauss so moved and Trustee Marshall seconded. The motion was approved.

**4. REVIEW AND APPROVAL OF MINUTES OF OCTOBER 14, 2015**

Chair Butler asked for a motion to approve the minutes of October 14, 2015. Trustee Chavez so moved and Trustee Marshall seconded. The motion passed.

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

No additional comments were given.

**6. PUBLIC COMMENT**

General Counsel Blakemore indicated that there were no request for public comment.

**7. UNIVERSITY REPORTS**

**Agenda Item 7.a. Definition of Commodities and Authorization Levels of Commodities (BOT Regulations, Section V. Subsection b.2.a.)**

Chair Butler introduced the University report, which he noted was a continuation of our discussion at the last meeting. This began with Trustee Strauss having some questions about what exactly is meant by "commodities" in the BOT Regulations, Section V. Trustees know there are obligations for the University to bring before the Board expenditures at \$250,000 or more. There are also exceptions to this requirement, situations in which the University may enter into expenditures at a lower level and exceeding \$250,000; and that's what this is about. I'll turn the floor over to President Baker.

President Baker asked John Heckmann, Vice President for Facilities Management, to give a presentation. Mr. Heckmann responded, noting that Vice President Alan Phillips was not able to be present for the

meeting, so he would be addressing the topic. I hope I can meet your intentions of laying out what the current situation is between the Regulations and how we've been operating, to facilitate an understanding of this issue and where we go in the future with your deliberations on this. There are four parts to this set of regulations that lays out exceptions to when items need to be brought to the Board for review and approval. I want to systematically walk through each of these to explain how we're reading the regulations and how they are laying out in our practice. I want to point out what I highlighted on number 4 at the end of the regulations because that's at the heart of the matter after you exhaust yourself of item 1, 2 and 3, the exceptions provided by those subparagraphs. Item 4 is that catch-all that says, if an item isn't addressed in subparagraph 1, 2, and 3, then item 4 says "if it's over \$250,000 it needs to come to the Board for approval and review." So it really comes down to understanding numbers 1, 2, and 3 and I'll systematically walk through those.

Mr. Heckmann continued, item one, this is probably the most interesting, and probably the most complicated one. It clearly lists out a number of exceptions to the Board approval process where it says the University is authorized to enter in purchase agreements for the following categories; it lists out utility services and library items, text books and food products; and then it has this catch-phrase where it talks about approved generic commodities that are bid through the Illinois Public Higher Education Cooperative, the state-wide contracts that are out there. There's a number of categories to the right side of the slide there, these commodity categories. The question that came up at the last committee meeting was surrounding the question of an IT purchase and, of course, there is a commodity category for computers and related computer equipment. So, in accordance with reading the governance regulations, an IT purchase that goes beyond \$250,000, according to this, does not need to come to the Board's attention. It does not make sense to bring everything to the Board that is over \$250,000 because some things are pretty matter of fact. They're necessary actions that we need to do day-to-day and month-to-month to facilitate the operations of the University. For example, utility purchases and food purchases are pretty matter-of-fact and routine, and those are things that do not go to the Board. If I can take you down to the next subparagraph, or number 2, which relates to projects: any time we're arriving at a contract action to award a project that was previously approved by the Board, we do so through a process that's laid out in subsection 6, which basically says we don't have to come back to the Board as long as that project stays within the estimates that we previously had approval for. This relates to facility improvements and capital improvements around the University. The next slide concerning subparagraph 3 is an exception for performance contracts. A prime example is when we're doing an entertainment contract for the Convocation Center to bring in some entertainment. That initial contract, and our knowing the level it's going to get to when that money comes back in ticket sales, has been an exception. When we look back at FY15, just to get a feel for the magnitude of some of the contract actions in this category, I didn't find anything that exceeded \$250,000 in any way, so it seems to be a rare occurrence that anything would go beyond \$250,000 for a performance type contract.

Mr. Heckmann added, maybe we can facilitate an understanding of where you would like to go without creating too much bureaucracy for some of the routine items that we always contract for. Again, utilities and food purchases that are being made on a pretty routine basis very commonly go over \$250,000, but these are things that we always need, and will always need, as opposed to some other things that may be potentially discretionary. With that, I would like to recommend that I learn more and facilitate more discussions, and we have an opportunity to come back and propose revisions that might meet your intentions of what you might be interested in.

Trustee Strauss asked, I am interested in B.2.a.1, and I don't want to create an administrative nightmare that we're not prepared to participate in on a timely basis. I'm wondering if you could give me some sense as to how many contracts you might let for what are considered IPEC commodities for some of the categories that are set out in the column to the right. That will give me a context. I'm not focused on utilities, and I'm not focused on food purchases. Obviously, the one that did catch my eye was the substantial amount of money that we spent at the end of the fiscal year for computers which wouldn't have occurred to me were "commodities" that fell within this provision. That's not to say that I'm questioning the interpretation of the regulation. We had a conversation about it at the time, so I'm not calling into question the propriety of the purchase that was made, but it highlighted an issue for me. And some of

these are probably more sensitive because you could have purchases that are significant in dollar terms and I don't believe that any of us understood the common meaning of "commodity" to include all of the things that are in the list. So, any additional light that you could shed on what the dollar disbursement is and how frequently these purchases are made I think would be useful.

Mr. Heckmann responded, I'll give you a little bit of what we have been able to analyze in the short time. We went back to FY15 and looked at it as if that's an average year. How many actions are over \$250,000 that may be of contention here? As we look back at FY15 there seem to be around 20 to 25 actions that it's a matter of how you interpret the action. In that magnitude, that number of actions, maybe 20 to 25 actions, and somewhere in the neighborhood of 20 to 25 million worth of value in those 20 actions. Now roughly, as I went through them very quickly, about half of those were related to utilities and food services and text books and things like that. I would have to go back and discern a little bit more which ones directly apply just to IPEC contracts in the other commodity areas that you may be interested in. Just to help give you a little magnitude of what we saw in FY15.

Trustee Strauss responded, so that's a start. I would be interested in being able to get down to the next level and then I'd also be interested in knowing, of those purchases, how many of them were time sensitive. With meetings scheduled for the year, if we decided we were going to add those remaining items to our agenda at one of our regular meetings, is it likely that we would catch those items or do we have a significant number of these that are going to require action? I have no interest in handcuffing anybody from making essential purchases for the institution, but I want to make sure that we have the appropriate level of control over large ticket items given the reason why the \$250,000 limit is in there. I understand you don't have that information today, but if at the next meeting we could understand that it would help me come to a conclusion as to what I think is reasonable.

President Baker suggested perhaps Chair Butler and Trustee Strauss could have a follow up meeting with Mr. Heckmann before the next meeting.

Chair Butler responded, thank you very much. I appreciate your research and preparation for today's meeting.

## **8. UNIVERSITY RECOMMENDATIONS**

Chair Butler reminded the committee that the next set of items are titled "University Recommendations" that begin with a continuation of our discussion about disclosure of interest policy. You have in this packet a draft policy and we have gone over this policy with the Office of the General Counsel and made some amendments to it as a result of those discussions. What we have today is a policy that I would like us to discuss and possibly make a recommendation to the full Board for either first reading or passage depending on where it's placed today.

General Counsel Blakemore began, I'm going to actually call on the Deputy General Counsel Greg Brady to run through the substance. You have in your packet a proposal, this was vetted with the Chair but it was also vetted with the President and Cabinet. We have had some very constructive suggestions on revisions. They are primarily over substance, although there are some areas in terms of the original draft substantively that changed a bit. I think those substantive changes really relate to one particular area and that's assuring greater due process to put it that way since we're in litigation on those issues. So I think the comments we received from the Cabinet and from others who have looked at this have really enhanced the original document that the Office of General Counsel was instructed by this committee to put together. With that, I'm going to turn it over to Greg.

### **Agenda Item 8.a. Proposed Disclosure of Interest Policy (Conflict of Interest)**

Deputy General Counsel Greg Brady began, please refer to the revised version of the policy with the slight edits that came from the Senior Cabinet. The Board's current governance structure, when it comes to conflict of interest, has at least two statements of conflict of interest. One for bylaws and also we have a

completely separate conflict of interest policy. So you see from the draft Board item this is threefold and that it's the recommendation of the University to first, forward the proposed bylaw changes to the full Board for first reading consideration. The second, is that forwarding the idea that the existing conflict of interest policy separate would be abolished; and third, a delegation of authority to the president for the creation of a disclosure of interest/conflict of interest policy that would apply to those employees of the University that aren't covered by the bylaw in the proposal. Tom O'Grady is Assistant General Counsel in our office who has been with our office for a little bit of time now and started on contracts, but I've been fortunate enough to pull him off of contracts to help work with governance, FOIA, and student affairs issues. Tom was really instrumental in drafting the disclosure of interest policy that is before you. So I'm going to allow him to explain what we tried to accomplish here.

Assistant General Counsel Grady began, the Office of General Counsel has drafted a proposed bylaw regarding disclosure of interest and we did this to reflect the direction that we received from this committee at its October 2015 meeting. While drafting, we kept in mind some of the guidelines that were set out; and, some of the main issues that we wanted to accomplish were to consolidate the current conflict of interest-related statements of the Board bylaws and eliminate references to the regulations. We wanted to expand this policy to include "an appearance of impropriety standard," which we've done; and, we wanted to define "financial interest" more broadly than just the direct/indirect standard that we currently have. The current conflict of interest policy provides for reporting only to the Ethics Officer and, in the policy I have before you, we've expanded that to include the Chair, Vice Chair, the President, and the General Counsel or Board Liaison. We did keep in mind the statement from AGB on developing conflicts of interest and I'll show a few of the changes you'll notice in the bylaw. I took what the current bylaw was and then I highlighted what the proposal captures. The first one sets the standard showing you must avoid conflicts of interest between personal affairs and duties and responsibility to the University. This is broadened a lot with the proposed bylaw. The duty must be discharged in good faith with the degree of care that an ordinary person in a like position would exercise under similar circumstances, and then we added "avoid the appearance of impropriety." The current bylaw doesn't state the standard used in determining conflict. In this proposed bylaw we go more in-depth into what is a material, personal and professional interest and expand that to show it's important that the material aspect goes to show the importance of what the matter at hand is. The next revision goes to the disclosure to the Board and what you must do. We broadened what you're able to do; and, the trustee or the affected person who has a conflict has a couple of options. One is to voluntarily recuse himself and, if he doesn't feel like he wants to do that, then there's a determination to be made by the Executive Committee. At this point, I'm prepared to answer any questions you might have regarding the policy that we came up with.

General Counsel Blakemore added that the policy also creates a process by which the Board can ultimately determine what this Board believes to be a conflict of interest that requires either disclosure by the member or by recusal. In an earlier meeting, a Board member volunteered to recuse them self, abstain from voting, that was done voluntarily. If there was ever a dispute as to whether a Board member should or shouldn't, the Executive Committee or the committee designated by this Board would make that determination and it would be a final decision. So we put into place a process for actually making what admittedly has some subjectivity associated with it, that what really does constitute a conflict of interest.

Trustee Struthers asked, so the idea of reporting to the Chair, Vice Chair, President, General Counsel, or Ethics Officer; I kind of appreciate the flexibility, but does that create some confusion that you need five people to really know what they're doing. I think I'd feel more comfortable with a paint-by-numbers process, so we don't mess it up. Like "here it is," and then the person who receives it knows what to do with it exactly. I don't know what the driving force was behind giving us lots of options as to who to submit the conflicts to.

General Counsel Blakemore responded, the purpose behind several entities to report to was to provide, to be candid, flexibility depending on the circumstances. Let me give you a couple of examples. I believe, reporting to the General Counsel gives you privilege, makes those communications privileged and confidential to the extent that they can be by law; and having someone to go to for that kind of discussion other than the Ethics Officer, who here happens to be a lawyer, but if he's operating as the Ethics Officer,

your communications with him are not privileged. Adding the General Counsel was done for that very purpose, so that you could have a confidential conversation that professional rules require that we maintain those when you are seeking legal advice, which is often the case, and they can be privileged. Given the nature of the Board's relationship with the President, it is critical that Board members feel free to have discussions regarding any actions that they may have with the President; so, not having the President there, in my opinion, when we were expanding it, would have been an oversight and not all of these issues are legal. So there are times when as the President ultimately is responsible for putting together whatever materials that go to the Board, and you know, often times, these questions may not be legal questions. We kept the Ethics Officer there because that's a legal requirement under the State Officials and Employees Act. He's got that responsibility of making determinations as to what is relevant to ethics law, and I obviously have responsibility for what is a legal issue; so that's why they were there. Since this is an actual Board decision, having the Chair or the Vice Chair, and having the Executive Committee ultimately do that, it seemed more than appropriate to have members of the Board, being very clear that they could have that discussion amongst the Board without ever having that discussion amongst staff, whoever that staff may be. So having the Board Chair, or the Vice Chair, in the event that it it's the Chair, and they want to basically run their thoughts about this. That's why it was expanded to that.

Trustee Strauss added part of what I think you're asking Trustee Struthers is about the oddness of the construction of that sentence. If it was revised so that it said "any one of the following"; it's the "and/or" that raised the challenge about whether you have to let everybody know some subset or just one person. So maybe clarify that it's "any one of" the above.

Chair Butler commented, that there would be some scenarios under this policy in which we wouldn't expect someone to go to the Board Vice Chair or Chair. If a member of the Cabinet, for example, had a conflict they would report that conflict to the President. Because this policy covers more than just the Board.

General Counsel Blakemore clarified, yes, it does. "Affected parties" is defined as members of the Board of Trustees, but it also involves the President, the President's Cabinet, and then all of the attorneys in the General Counsel's Office. Just given the nature of who we are and what we do, we need to have the same standard that the Board has. But it does not cover employees, which is why we also are recommending that you delegate that process, given shared governance, to the President. This is within your purview with a limited number of employees obviously, but ultimately you would want a comprehensive conflict of interest policy at the university level as well.

Trustee Chavez asked, so if we decided to go that route, my biggest concern is that, if we're abolishing something and there's nothing in place, how does this go about happening?

Chair Butler responded, it would happen simultaneously. The bylaw change requires that the Board receive it for first reading. Now that proposal will include the three recommendations. So when we pass that recommendation for the first reading, then we go to the second reading. We might waive the requirement that we have a second reading and go right to it or we might wait, if the Board members want, three months or however long to review it. It might go to a second reading. But once we vote on it, simultaneously all of those things happen.

Trustee Chavez added, I just don't want there to be gaps of time where we don't have a conflict of interest clause for regular employees.

Chair Butler continued, for regular employees, that's an interesting question. So regular employees, let me rephrase that question, because I'm also interested in the answer, which is what is the current status of regular employees? What sort of policy infrastructure regulates their activities?

General Counsel Blakemore responded, the regulation of employees with respect to conflict of interest, and – I want to broaden it – ethics issues and legal issues, are going to be covered by statutes that are in place and nothing that this Board can do is going to change that. For example, you look at procurement and requirements that people now have. You've got the Procurement Code itself that has very clear indications

there, but you also have the State Officials and Employees Act, and the State Officials and Employees Ethics Act, which would still govern. You have already in place at the state level and at the federal level. You also have regulations that are unique. The Provost can speak better to this than I, but when you have a series in the research area and the area of conflict of commitment, the policy is already in place. The Board adopting this and eliminating that regulation doesn't change any of that. In fact, it's because you have all of those issues out there that affect employees, that you want to do a comprehensive review of what's in place, what needs to be updated, changed, or whatever, and then make it part of a broader policy, and that's what this would do. How much time it would take, how it would go, I'll defer to the Provost on the particulars on the academic side.

Provost Freeman responded, I'll just say the conflict of interest policy that covers the Division of Academic Affairs and Faculty was updated relatively recently so that it's appropriate and meets all of the federal guidelines that were imposed by recent changes and federal research conflicts of interest. So we certainly could revisit that policy at any time, but we would have to do it in a way that made sure that we didn't destroy the alignment between that policy and what's federally mandated.

Trustee Strauss asked is there a recommended course of action at this point?

Chair Butler called for a motion that we recommend this policy for a first reading to our colleagues on the full Board of Trustees including the change that you've recommended which is to insert "any one of" after "advise" and prior to "the Chair" under number one.

Trustee Strauss added, for clarification, does that include the other steps that were discussed previously?

Chair Butler responded, yes, so the motion would be as outlined in the cover sheet. I could restate it again and say I'm seeking a motion that we present a recommendation to approve the proposed disclosure of interest policy with the insertion that's been recommended by Trustee Strauss of "any one of" after "advise" and before "the Chair" under #1. Secondly, that we approve the elimination of the Board's separate conflict of interest policy; and third that we delegate authority to the President for the creation and implementation of an appropriate disclosure and interest policy for persons not covered by the proposed bylaw amendment and that we forward the item to the full Board for first reading.

Trustee Strauss seconded the motion.

Chair Butler responded, there's a motion and a second. Is there any discussion?

Trustee Struthers asked, for clarification, is there any time set on this such as annually to disclose. I don't think I read that. It must always be on a situation basis?

General Counsel Blakemore responded, it is by situation of circumstances and the reason for that is this Board is presented, particularly on the transaction of procurement side, situations at virtually every meeting. Now part of the work becomes, particularly with finance and administration and the General Counsel's Office, identifying where we think there may be a potential conflict, bringing it to that particular Trustee's attention before the Board meeting so that we can in effect then begin, or the Trustee maybe annually saying to President, the General Counsel's Office, etc., here are the areas in which my business, my practice, my whatever are in and that will help us. So that annually, we don't have that written here, but you're right, it would be good to sort of know are there any changes, material changes, in one's professional status. But I would want to know that whether it occurred six months into the year or two days into one's tenure.

Trustee Struthers added, so not to change the motion at all, but procedurally it seems it would be good to be prodded at least once a year to do that even though it's not required in the policy. It strikes me that it would be a good practice to keep that fresh.

General Counsel Blakemore responded, I don't see a problem with adding a line that, in effect, says the

General Counsel's Office or other appropriate University officials will annually make an effort to get updated information from members of the Board regarding their profession and personal status that may impact their role. I don't have a problem with that at all. I don't know if we typically would put that in.

Trustee Strauss commented, I understand your thought. I guess here's what I would argue. You're making an annual statement of economic interest. We have frequent enough contact with the people who are going to be involved in this so that I don't know that we really need to make another change.

Trustee Struthers agreed, I think we're mindful of that. It's not a miss if we're not reminded to do it. It should always be top of mind and maybe for your own benefit whatever it may be you submit it. You can't overdo it.

General Counsel Blakemore commented, we will take the responsibility of doing for this and I also alert Vice President for Administration and Finance of the same. Because I think those are the two areas where this is most relevant to do.

Chair Butler commented, we might want to consider in the future some framework by which we'd acquire some review that takes place when a member of the Cabinet comes onto the Cabinet or a new member of the Board comes onto the Board and an annual review of the Student Trustee when he or she comes onto the Board.

Trustee Chavez added, that's something I just did during orientation.

Chair Butler replied, I think that's sort of the standard practice, but we haven't codified it, which we don't need to do here I don't think. But, as we think about what are some practices we might employ, I would think that would make some sense.

General Counsel Blakemore added, we will continue that practice, but what we will do is memorialize it. The other thing is each of you know you sort have had a one-on-one with either myself or Greg where we really do ask about the more delicate kind of issues so we'll continue to do that.

Chair Butler responded we have a motion, we have a second, we've had some discussion, is there any more discussion? All those in favor? The motion passed and will be recommended to the full Board.

### **Agenda Item 8.b. Proposed Administrative Leave Policy**

Chair Butler indicated, next we have a proposed administrative leave policy which as Mr. Blakemore has said has had some changes since I saw it last. I'll turn the floor over to Mr. Blakemore to introduce this.

General Counsel Blakemore responded, I'm going to turn it over to the primary author which is Greg Brady to walk through this.

Deputy General Counsel Brady began, we prepared an item based upon discussion with the Chair. There is an option for the Governance Committee and for the full Board on this as far as deciding whether this item is a Board Policy or a University Policy. It doesn't have to necessarily be included in the Board of Trustees Regulations. Members of the Senior Cabinet provided feedback, and asked a very legitimate question regarding what are those leaves. Administrative leave is described as the employee's work status, and it is not covered by any other type of leave recognized by the University. We put in examples where the Board regulations have provisions for sick leave, military leave, jury duty; these are leaves where the individual requests and receives a leave for specific reasons that are recognized by industry policy or both. Administrative leave is different. It's putting a person on a work status. Your Board regulations currently indicate types of approved leaves of absence, but not administrative leave. You do not necessarily have to adopt this as a Board policy. You will see, from the draft Board item, the University is requesting that the Ad Hoc Committee on Governance either approve the draft and forward it to the Board as a full Board policy or forward it to the Board for consideration as a delegation of authority to the institution to develop

and adopt a University Policy that is carried out – probably – through Human Resource Services.

General Counsel Blakemore added, although we provided you an option, I think it's appropriate I at least give you the opinion of the GC on this. I don't think we should treat this leave differently than we treat other leaves. We don't have this type of leave at the Board level, but I think, given the significance of this type of leave, obviously delegating it within these parameters probably is the best way to do this. If you have administrative leave in a sense sticking out of the Board regulation, why is it treated different than these other leaves when part of the requirement here is for the Board. Again, it's totally the Board's decision, but I just think, as we went back and forth on this issue, we should have leave policies, they should be transparent, they should be easy to access. Having to go to the Board for A, but going for B, C, D, and E someplace else is at least one factor that the Board could consider.

Trustee Strauss replied, so I understand why Mr. Blakemore would come to that recommendation. I'd like to hear in detail about the nature of the reporting requirement to the Board in an event that an administrative leave is chosen.

Deputy General Counsel Brady responded, the current draft has provisions that call for administrative leave to be brought to the President for approval, whether it's going to be extended or not, at a three month point. In the introductory paragraph, any administrative leave, with or without pay, that exceeds three months in duration must be expressly approved by the President. The President will also make a report to the Board of Trustees as soon as practicable of the decision and the rationale for the decision. Personnel determinations related to the President of the administrative leave are within the exclusive purview of the Board of Trustees and not subject to procedures of the policy.

Trustee Strauss added, so that language is the same as the draft that I read, so my question is does that mean the President reports after you got the three months, or the President reports any time somebody is placed on administrative leave?

Deputy General Counsel Brady responded, this draft is only intended to get those that would go extraordinary – two, three month point – because it's up to you to decide whether you want to learn about every single situation that involves an administrative leave.

Trustee Strauss continued, the reason for my question isn't because I want to know about every administrative leave. I think we could have a discussion about whether it's three months or two months or four months or whatever, but I do think that the section regarding notice is ambiguous as to the situations to which it applies. If the intention of the draft is to say that the President only is responsible to report to the Board of Trustees with respect to those leaves then the criteria in the prior sentence needs to be added to this last sentence to make it clearer.

General Counsel Blakemore continued, and that was the intent. We wanted to treat this leave as much as possible, although there are some unique provisions related to it, like we treat other leaves; and, the President and nobody else reports every time someone makes a family leave request. So, it was not the intent to have it come to the Board prior to or at the time the administrative leave is granted. It was here as a check and balance that's put in place so that people below the President understand they have to advise the President if it goes three months or more or beyond three months.

Trustee Strauss added, so just for the sake of conversation, if we clarified that, then the issue for me is whether there are certain uses of administrative leave that would be different, from the Board's perspective, than other uses of administrative leave in determining what the appropriate time period is for reporting. I don't want to interfere with the President's discretion to run the institution, if we have – and it's hard to categorize somebody as a lower level employee and I don't mean to degrade their contribution to the University – circumstances where decisions about leave of any sort don't rise to the level where the Board would be interested. On the other hand, if the President was in a position where he had decided to place, as an example not intended to reflect reality, the Provost, on administrative leave, then perhaps waiting three months to advise the Board would not be the appropriate process or the expectation of the Board. I



don't know whether those are subtleties that we need to address within this policy, or whether what we should do is respect that the President would likely tell somebody if that's what the President was going to decide to do. I don't know what the feeling of my colleagues on that particular issue would be, but I think we would be remiss if we didn't discuss those differences and see whether it caused a problem for anybody.

Trustee Struthers added, we're only being notified, so theoretically you can do a three month, and a three month, and a three month, and we would be notified; but, there would be no other recourses. So, I think your concern is whether this is a nuisance, or do you need to add some other pieces in there based along those rules and such; might that come from somewhere else in the protocol of the job description?

Chair Butler responded, the Board specifically did adopt provisions calling on the President to inform the Trustees of any matter that, any personnel matter, that may cause reputational concerns or significant financial obligations to the University, and that's a "as soon as practical" standard as well. That's already there. I would think this might be a question of the format of the report and that the rationale for the decision may not be necessary in this reporting format; but I think what this could call for is just some kind of a report that indicates this leave is taking place and then that might even enhance then the capacity of the Board to enter into dialog with the President as to whether there is a substantial, reputational, and financial issue related to the leave. I'm not sure that the policy calls for a report every three months. I think this is calling for, as soon as the President is aware that someone is going to be on leave for more than three months or has been on leave for three months, a report as soon as practical. Now that might take the form of, depending on the President's style of reporting, an updated spreadsheet that could be an e-mail with one person's name on it; it depends on how we establish that protocol. I don't think we've experienced difficulty with new reporting requirements as this committee has promulgated new policy and it's been passed by the Board. We've had some reports under those new guidelines with the President, leaving some flexibility for how that takes place. I think it has worked well.

President Baker added, if the reporting is written, asking for why is probably not a good idea; but, I think the spirit of the document is to seek some sort of moment where there's an interaction where we can have a wider conversation as we need to. In reality, if Provost Freeman was to be put on leave, I would have called the Chair and the Vice Chair to start, and then likely talked to all the Board members, because it would be such a significant issue.

Chair Butler continued, so we have in front of us still a policy. Do we want to remove any of the existing language in the policy? Are we still at a more conceptual stage of asking whether or not we want to adopt a Board policy versus a recommendation that a university level policy be developed? What's the feeling of the Committee?

Trustee Strauss asked, if we forward it so that it's incorporated with the other university policies and then we decided we want to change it, do we retain the right to change it or do we need to engage in a shared governance process to change it at that point?

Deputy General Counsel Brady responded, the shared governance is traditionally academic policies. University-wide policies don't necessitate shared governance. The Board always retains the ultimate oversight, so if there are issues the Board certainly could raise those.

General Counsel Blakemore added, the other thing that we can do is that, if this committee recommends it to the full Board, our action item would include explicit language that "the Board reserved the right to" if you wish that to be part of this.

Trustee Strauss agreed, if we could do that and we can modify that last sentence in the introductory paragraph as I had previously discussed, then I am fine with this. If it reads, "with respect to any administrative leave that exceed 3 months in duration, the President will also make a report to the Board of Trustees as soon as practicable thereafter of the decision and the rationale for the decision."

General Counsel Blakemore asked for a repeat of the change.

Trustee Strauss responded, "with respect to any administrative leave in excess of 3 months in duration," then go back to the printed text, "the President will also make a report to the Board of Trustees as soon as practicable," insert the word "thereafter."

General Counsel Blakemore responded, what we're going to do since there's another item, is we're going to bring back both documents with the highlighted area only of the revisions that were made so that the committee will actually see what we think you've instructed us to do.

Trustee Strauss asked, can we advance it out of the committee to the full Board with those changes? I don't know that it's worth our time to get it back here again. We have such a long agenda.

General Counsel Blakemore clarified, it seems there's consensus towards the second option.

Trustee Strauss responded, correct with these two changes. We will be forwarding it to the full Board for the Board to recommend that it go to the University for inclusion in the general policies or regulations whichever is appropriate.

Chair Butler clarified, the recommendation would also have some reporting requirements attached to it. So would we add then to the recommendation that there be some report back to the Board of the final determined policy that's been adopted through whatever process is required?

General Counsel Blakemore responded, we would do that in the action item to the Board after the policy itself, but we can make that part of the action item.

Chair Butler replied, then there is a motion to prepare for presentation to the full Board an item that will delegate the authority of the University to establish and implement an administrative leave policy.

Chair Strauss added, yes, that would be on the terms presented to us with the two modifications that we've discussed.

Chair Butler continued, as long as you understand that what we are not doing is proposing to the full Board that we adopt a policy at the next meeting which is something we could do. That wouldn't even require a first reading, doing it at the next full Board meeting, and then it would be a policy. We're opting out of that option. We're choosing instead to present to the University this policy and saying make this a University policy.

Trustee Strauss so moved and Trustee Struthers seconded. The motion was approved.

### **Agenda Item 8.c. Proposed Naming Rights Policy**

Chair Butler commented, we are not prepared to consider a naming right policy at today's meeting. So I'm going to move what I think is the only logical motion which is to postpone the matter until the next meeting of the Committee.

Trustee Strauss seconded the motion and asked for an update on the progress.

General Counsel Blakemore responded, the Foundation are taking the lead and have prepared an outline to date on what their current policy is. I believe they will be prepared to provide you that next step at the next meeting.

Trustee Strauss responded, I'd only like to register my interest seeing that it actually happens at the next meeting.

President Baker commented, they have new counsel and they're working through that.

Chair Butler added, this is a long standing matter for the Board and we've talked about it several times and so I appreciate Trustee Strauss' comment. The motion has not been voted on I don't believe, so all those in favor?

The motion passed and the naming rights policy action is postponed.

#### **Agenda Item 8.d. Proposed Process for Constitutional Assessment and Potential Reform**

Chair Butler began, I'm very pleased to be at the point of saying that we have with us the Executive Secretary of University Council and the President of the Faculty Senate, Professor Greg Long. Even though my name is on here with President Baker, really I believe this is a presentation from both Professor Long and Dr. Baker, which concerns an effort that we've been hopeful will begin at some point: to review and reform the University's organic governance documents. This isn't to say that there hasn't been a concern for this is that past, but it looks as though we are looking at the possibility of putting forward a new charter. This would involve a fresh look at all of the documents, correcting for any potential conflicts, moving toward a system that will provide a more nimble process for curricular change and academic innovation. So, I'll turn the floor over to our guests. Welcome and you can tell us a little bit about this activity.

Professor Long began, I thank you all for providing this opportunity. I'd also like to thank and acknowledge Therese Clark Arado and George Slotsve who are my colleagues. Therese is the chair of the combined Faculty Senate and University Council Rules, Governance and Elections Committee that's going to be taking this on as their major charge; and George is Vice President of the Faculty Senate. They're here today to add moral support. I'd also note that while there's very little background and we've got some time limits, NIU basically became a university in 1955. Thirty years after that, roughly, the administration was very concerned about the idea that we might be subsumed with the Regency System and so created a constitution and bylaws that we currently have that was intentionally designed to be resistant to change. It was very detailed, such that what many of us would consider working rules as they relate to governance documents, actually got codified as bylaws. And so we have a constitution and bylaws that are significantly different than many other universities. Let me give you an example: this is a constitution and bylaws from the University of Virginia. This is Kent State, Western Michigan, Miami University, ISU, and North Carolina. This is NIU. This is a little exaggerated because these are your Board regs. There are 71 pages of Board regs and 171 pages of constitutional bylaws. When I say that this creates a problem, you have no idea; They did a tremendously good job of what they wanted to do because they tied this up in knots. You have 171 pages of bylaws, 23 pages devoted to grievance bylaws and they are so specific. If we wanted to make a change, from 15 days to respond versus 10 days to respond, that's a bylaw change. That's not a policy, that's not working rules, that's a bylaw change as it's currently constructed. That is our major issue with this. You have all these bylaws and specificity, and to change a bylaw requires two-thirds of the entire membership of University Council. The membership of the University Council runs roughly 60, 61, 62, depending upon student representation and appointment. What that means is that, to change any bylaw, requires roughly 40 to 41 votes to pass something. And that has proven to be a challenge for us. As a very substantive thing, in April for example, several, I mean a number peopled, worked together to create a baccalaureate curriculum council and it was to increase efficiency because right now we have six undergraduate curricular bodies that, and having been here for 25 years I still can't tell you exactly what each one does, that's separate from the other. In this particular proposal they put forth a baccalaureate curricular council. First reading, no problem whatsoever. Second reading it comes up and the vote was 38 in favor, 6 opposed, and one abstained. So logic would make people think it passed, of course; right? It failed because we needed to have 40 votes. So a vote of 38-6-1 meant that that didn't pass and so it put us now back another 12 to 18 months as far as even being able to readdress that. That's silly. Our more recent one that is even a bit more stunning is the University Assessment Panel; there was an update on it in terms of basically changing some titles. The previous title was this and the new title was this; so, nothing substantive. This came up for a vote early in the session and it came back up on the 2<sup>nd</sup> of this month. The vote on this was 40-0-2. We actually needed 42 votes. So we had that fail; so, we can't operate in a fashion, given the specificity and the standard in which bylaws have to be changed, because our typical attendance is 45 people.

Trustee Strauss asked, so how many votes does it take to amend?

Professor Long continued, 40-0-2 and that doesn't pass? What logical, sane person thinks that's reasonable? So, with that being said, we do definitely want to become more efficient and inclusive, and recognize the need to move faster. Our first priority is to deal with the voting issue. We're stuck with these rules being bylaws, but at least can we lower the standard, because most other documents identify changes to bylaws as to being two-thirds of a quorum, and the quorum votes. The standard is not two-thirds of the entire body. We're kind of out of line with what a number of other institutions do, so our first task is to go in and we'll have a first reading of this. Therese has already made some contact with our Rules, Governance and Elections Committee because, right now, from a voting standpoint, we're saying, as currently written, to become effective, amendments to the bylaws must be approved by two-thirds of the current membership of the University Council. What we're going to do is propose a 50% plus one to have a quorum. To become effective, an amendment must be approved by two-thirds of the voting members in attendance. That's very similar to what other universities do. That's going to be at least our initial discussion with Rules, Governance, and Elections. That would then come to University Council at our first meeting, February 3<sup>rd</sup> and it will come out for a second reading on March 2<sup>nd</sup>.

Chair Butler asked, but you need 40 votes to pass that.

Professor Long responded, we need 40 votes to pass that, and I've already been shaking the bushes, talking to people, meeting with the Student Association in the spring, as well as sending out individual invitations to all the Student Advisory Committee members. I do not want to go into that meeting with any sense of having fewer than 50 people present and also knowing where any pushback might come from. On a positive statement, thus far presenting to University Council and Faculty Senate and other administrators and individuals on campus, I've received no pushback from anyone. So, that's our first step.

Trustee Struthers asked if there has been any resistance to rewriting constitution and bylaws from the university community. You might have as much resistance in getting the voting thing changed that you might get the entire thing done.

Professor Long responded, I don't think the voting change will be so much of an issue, because at the last meeting it's embarrassing when you have a vote of 40-0-2 and you're talking about something that is as inconsequential as basically aligning some names. So, I don't think the vote issue is going to be much of a concern. I think what comes next is going to be a concern.

Trustee Strauss replied, I don't want to interfere in Faculty Senate's business if the Faculty Senate can get its business done as it wishes. My question is if the Faculty Senate can't get its business done as it wishes along the lines that Trustee Struthers was inquiring, I would assume that the Board of Trustees still has power to say we no longer recognize this document, we would like to start over.

Professor Long responded, yes, it's in your second paragraph of the Board of Trustees rights.

Trustee Strauss responded, I think we share an interest in seeing that the institution is governable and we share an interest, from our prior conversations as a Board, in seeing that inconsistencies within those regulations, and between those regulations and other documents that the Board weighs in on, are resolved one way or another. So, again, if your first choice is to try to solve some number of these challenges yourself, have at it. My personal view is if you get to the point where you say we're throwing in the towel on doing this ourselves we need your help, then I'm perfectly willing to have that conversation. If we have the chance, and we can start from scratch, I think that might be easier than doing it one piece at a time, but I'm not in a position where I'm going to dictate to the University Council what the University Council wants to do.

Professor Long responded, I look at this as just an amalgamation of all sorts of things that we really don't have a big handle on what the specific inconsistencies are between, say, Board of Trustees Regulations,

the University Constitution and Bylaws, and the Academic Policy and Procedure manual. Those are our three main governing documents. At this point, we don't get how to handle them. In fact one of the requests that I was going to make is that if we can get some assistance from the General Counsel's Office to help us identify where some of those inconsistencies are, because if we do go forward with this as I'm hoping we will, we want to make sure that everything is aligned because right now there's some question.

Deputy General Counsel Brady added, right, because if we do that, that gives us more of an argument for making the change because, again, we don't want to be in a position where which document you look at determines what action you take. That puts us at risk.

Chair Butler clarified, before you continue, I don't think we have an action item here. I think we have an informational presentation. But I think we're leaning toward coming up with sort of a set of recommendations that we're going to make about working together and beginning to develop the reform.

Trustee Marshall responded, I agree wholeheartedly on moving forward.

Professor Long continued, dealing with voting and looking at the alignment or any inconsistencies is our first two priorities. I think both of those could be done by the end of March, for example, because we will certainly know the vote by the first part of March. We also have a graduate assistant starting in January in our office who is a doctoral student in Political Science who has a particular interest in policy. He's very interested in helping and spending some time going through this work as well. But once we do that, then the third step would be to prioritize changes. As I mentioned before, the grievance bylaws are absolutely maddening. They are not efficient, they're not helpful. Even simple changes require a bylaw change and I would argue that we need to pull a lot of the material out that's under the grievance bylaws right now and many of those can be policies, or procedures; but to have them be bylaws really makes it difficult. As I look at these other documents, they may at most have a paragraph. One of these had a paragraph, the others just had a single line that says faculty rights and student rights will be protected, but they don't put in here bylaws. We have 20 some pages of bylaws and procedures. I'm very much looking at this as a collaborative process. If we're going to do this it has to be something where we know your concerns, you know our concerns. This is a big deal if we're able to do this. And then the fourth step would be to identify a desired governance structure. Do we need to start from scratch or are there other models that are out there that we might look at and try to emulate. My time up to this point has been to learn my role as Faculty Senate President and Executive Secretary of University Council, and also to learn the constitutional bylaws because there may be additions to the other groups. I've been a faculty member for 25 years here and the need for me as a general academic to read the constitution and bylaws was never part of my agenda. I looked at certain aspects of it, but the big picture? No. So now that I've looked at it, you know you realize "wow, we have some issues here," but I don't have a suggestion for how it has to ultimately be structured. I would say two goals that I would have for that would be the delineation of what's a bylaw versus what's a policy. I would also think that we have maintained some level of university-wide structure from bigger kinds of discussions, but NIU is unique from a Faculty Senate standpoint, that in all the governance documents I've looked at, faculty senates actually have responsibility for curricular decisions – that curricular decisions stop at faculty senates. In our current governance system the Faculty Senate is nothing more than a caucus; we have absolutely no power, no authority, no anything. Things come up through us and then go to the University Council, where they get voted down 38-6-1. That's the maddening aspect of this and so as we move forward we'd like to see Faculty Senate actually be given some of the power that's very typical within other universities. We're not suggesting anything here that's a power grab or that's making us really different than others, we're saying we already are very, very different than other institutions and can't we create something that allows our governance structure to work a lot better. I would even argue that, as we do this, we make it readable too. I'm sorry but it's too legal.

Trustee Strauss commented, we already had as Phase 3 or our original work product that we were going to take a look at how to rationalize all of the organic governing documents. I think our challenge is, at this point, that we're up to Phase 47 and instead of having three total phases. We've got about 180, but if there's interest on behalf of the University Council on engaging this discussion, maybe we should also spend some time preparing ourselves for the conversation without knowing exactly at what point we're

going to be called on to participate. We've had a willingness to do this, but it hadn't risen to the top. My suggestion is that we get to the point where we're ready to engage in that conversation whenever it's appropriate.

Professor Long replied, we will certainly do everything we can to maintain communication. I'm very committed to this. I'm at a point in my career where you know if we can pull this off this leaves a lasting legacy. This is something that will really make a difference and I'm able to be in this position for another three semesters, so I'm potentially able to be Executive Secretary until basically June of '17 and I'm willing to devote the majority of my focus, in collaboration with my colleagues, to this particular cause, because this is the biggest project I think perhaps University Council has had for 30 years. But, if we can pull this off, we set ourselves up for potentially the next 30 years of being a responsive and efficient organization.

Trustee Struthers asked, what is the tenor of that of the 60 members? Are you pretty collaborative now? Does the vote generally go in the same, or are there lots of different interests that are competing?

Guest George Slotsve replied, I just wanted to add to Greg's comments that I also think there's a window of opportunity right now. In the next year or so there's a number of changes that are going on within the University and, mind you, I've been VP of the Faculty Senate for six, seven years; but my read of it is I think we can get this through and people would be in favor of this change. If we tried this five years ago I don't think we could have done it. I would hate to wait another three years. I think there is a window of opportunity here.

Professor Long responded to Trustee Struthers' question, there is a difference, but it's a good place to start. When you get the Faculty Senate together, that's just faculty, and they we can sometimes be vocal and grumpy. That's a nice way or putting it. Whereas, I think the University Council, given the diversity we tend to have a bit more restrained discussion on topics. So, Faculty Senate can say and do whatever they want, but when it comes right down to it, it's all what happens in University Council. And we're working on the student's involvement too, because at this point out of roughly 60 people, students make up 16 out of 60 seats, and their average attendance is about 8 or 9.

Chair Butler responded, are there other comments or questions because I want to sort of sum up what I think I'm hearing. You're reporting to us that there's an interest in inventorying the university's organic governance document for efficiencies and innovation and for a new charter that will permit us to move forward in the spirit of shared governance. You are going to begin by seeking to amend the bylaws with fewer votes and that's a first step in opening the door to these changes. Then you're going to inventory the documents for conflicts, inefficiencies, and compare our structure to other potential frameworks and structures. Then you're going to prioritize policies for reform and identify areas for reform. It seems to me that's where we are probably going to enter, at stage 2, as soon as you get this vote, and then we're going try to together propose a structure and create the associated documents which may require some work of this committee as well. So there's sort of five steps I see. I'm delighted that you're interested in doing this. I think the whole Board will be as well. I think what we need to do is express our desire for the Office of the General Counsel to work with you in identifying the documents and the areas where reform would be useful and to begin think about how to structure the proposed new structure.

Professor Long responded, yes that's what I'm talking about. If we can work this out for our own governance structure that would also help to empower us. I'm very, very inclusive and we already have good solid relationships with the Student Association, SPS, and Operating Staff. We do need to have some mechanism where all of the constituencies have the opportunity to participate, but we also need to have some mechanism where it's not so darn hard to make changes. I mean for us it take 12 to 18 months to get a new course proposed. The University of Cincinnati, for example, they've got it down; they can do it in a month because of how their governance works and the current process and bylaws. There are ways that we could become much more efficient in how we do things.

Provost Freeman commented, it's also being respectful of our human resources. It takes a lot of faculty or staff time to have a structure that's inefficient.

Chair Butler: Okay, I think we've expressed our interest in this activity. Thank you very much for coming before us. Thank you for joining us.

## **9. NEXT STEPS**

Chair Butler added, in terms of next steps, I'll talk to the committee members and General Counsel's Office and President about where we're moving next. Obviously naming rights is still a very important subject for us. There's some reporting in the meeting that needs to take place with regard to the exemptions that we talked about earlier and the issue of the Board provisions and when these items will take place.

## **10. OTHER MATTERS**

No other matters were discussed.

## **11. NEXT MEETING DATE**

The next meeting of the Ad Hoc Committee on Governance will be in February with the exact date and time to be determined at a later date.

## **12. ADJOURNMENT**

Chair Butler asked for a motion to adjourn. Trustee Strauss so moved and Trustee Chavez seconded. The motion was approved. Meeting adjourned at 4:48 p.m.

Respectfully submitted,

Kathleen Carey  
Recording Secretary

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