

Date: May 27, 2013

To: Joint Committee on Ways and Means
Subcommittee on Education

From: Peter Keyes, United Academics of the University of Oregon
Associate Professor of Architecture, University of Oregon

Re: Senate Bill 270A – Institutional Boards

Co-Chair Komp, Co-Chair Monroe, and Members of the committee

I am pleased to submit testimony on SB 270A, which I hope will inform further amendments to the bill, leading to a stronger and more successful university system in the state of Oregon. I am a faculty at the University of Oregon, and have been involved in university shared governance for many years. I have served as University Senate President, twice as Senate Vice-President, chaired the Senate Budget Committee, served on the Internal Governance Committee which wrote the new UO Constitution, and currently serve on the Faculty Advisory Council. The views expressed in this testimony are not the official views of any governing body or committee at the UO, but reflect the positions of the United Academics of the University of Oregon, our new faculty union, which strongly supports the principle and history of share governance at the UO.

Faculty resolution supporting an institutional board

At the meeting of the University's Statutory Faculty last year, following the firing of President Lariviere, I made a motion, as a member of the Senate Executive Committee, that endorsed the idea of an institutional board for the University, and that the faculty should work with legislators, alumni and others to define the powers and functions of that board. At that point, there was strong and widespread support among the faculty for an institutional board.

Now there is a wider range of opinion on the current board proposal, as detailed in Senate Bill 270. Some faculty are skeptical, some are worried, and most are just confused about what certain provisions in the bill mean. I still support the idea of an institutional board for the UO and other OUS institutions, and I believe that with a few adjustments, this proposal could easily gain strong faculty support again.

Shared governance at the University of Oregon

Shared governance at the University of Oregon is based upon the University Charter of 1876, which gave the power of governing to the Faculty – the president and the professors. I have always interpreted the Charter literally, as it is the clearest expression of the intentions of the State on how this public institution should be run. This Charter has served us well – the faculty has

always taken its responsibility for the University very seriously. We are not just employees of the University, we are its stewards. Administrators come and go with increasing frequency, but the faculty endures. The faculty is where the institutional memory resides, and we often have the knowledge of history and the long-term perspective which allows us to consider the true best interest of the University.

Shared governance in SB 270

The University Charter was later incorporated into ORS 352.010, and is now incorporated into Section 18 of Senate Bill 270, which is a very important thing. It carries forward the clear intentions of the 19th century. But we have had much experience with shared governance since then, and the lessons learned that have built upon the Charter have been codified in other policies – specifically, in Oregon Administrative Rules (OARS), and OUS Board Internal Management Directives (IMDs). Of particular note are the policies which directly address how the University should draw up and ratify its own internal system of governance.

Section 170 of SB 270 does indeed keep all these policies in place as the university moves towards being governed by an institutional board, so it is true that there will be exactly the same provisions in place regarding shared governance currently exist under the OUS Board. However, the policies being incorporated will be only policies, not laws, and so will be subject to change by the institutional board at their discretion. The President has stated that he will recommend that the new board continue all such policies that relate to shared governance, but they will not be obligated to follow that recommendation. The institutional board could essentially abolish shared governance, over the objections of the Statutory Faculty (the professors and the President). The only recourse the Statutory Faculty would have would be to raise the legal issue of interpretation of the Charter, as that would be the only provision relating to university governance incorporated into law.

However, this could all be easily avoided. If our long experience with governance has led us to the policies under which we currently operate (which we all seem to agree work very well), why not incorporate these policies into SB 270? Why give a brand-new and untested board (of whose membership we have no knowledge) the power to change fundamental and long-standing issues of university shared governance? Why not set the starting point for the future right now, incorporating the accumulated insights and wisdom of the past 137 years, rather than going back to the starting point of 1876? Why reinvent the wheel?

Membership on the institutional board

The second issue I would like to address is the process for determining membership on the institutional board. SB 270 states that the members shall be appointed by the Governor and confirmed by the Senate. Obviously we have no quibbles with this part of the process, but we think the process should be expanded and made more rigorous. The fundamental questions are, what

qualifications should the candidates have, and from where does the slate of proposed candidates come?

Many other schools with boards of trustees have extensive systems for finding, vetting and nominating board candidates. Some schools have a hierarchy of boards through which candidates for the governing board ascend, demonstrating their abilities and dedication to the institution along the way. An earlier version of this bill stated that the list of proposed candidates would be submitted to the Governor by the University. OHSU, whose enabling legislation is being held up as the model for this bill, has a provision that candidates must exhibit experience and knowledge related to the mission of the institution.

Senate Bill 270 makes no provision for this evaluation of board candidates. As these individuals will wield enormous power over a public university, shouldn't there be a more public process for their appointment, allowing excellent candidates to rise to the top of the pool? In many ways, universities are very good at evaluating candidates. The UO puts more effort and due diligence into selecting candidates for honorary degrees than is proposed here for selecting board candidates,. The UO puts about 100 times more effort and diligence into hiring an assistant professor on a three-year contract than is proposed here for appointing a trustee of the University. For those who take their responsibility for the University very seriously, this process seems rather cursory.

The timeline for appointing and confirming the board nominees is also very worrisome. According to SB 270, candidates will be appointed by the Governor this summer, and confirmed before the end of September. While getting the board constituted and ready to hit the ground running is clearly a good idea, this schedule seems to be needlessly accelerated. If the board is not to assume power until July 2014 at the earliest, couldn't some more time be spent nominating, vetting and confirming candidates? What is the rush? From the perspective of the faculty, many of whom are gone from Eugene for much of the summer, and all of whom are completely unorganized (no formal committee meetings) during this period, this schedule looks suspicious; it will do much to undermine the legitimacy of the institutional board in the eyes of the university community if everyone returns in September to find a new governing board already in place.

As a first cut, I'd like to make the following suggestion: a board nominating committee should be formed this summer, comprising administrators, faculty, alumni and students. It should solicit nominations for board candidates – anyone would be able to submit nominations, and having a broad range of committee members, representing a broad range of stakeholders, would ensure that many worthy candidates would be proposed. In the fall, the committee would vet these candidates, and would submit a slate of nominees, all of whom they found meritorious, and from which slate the Governor would pick his nominations. These candidates would then be submitted to the Senate for confirmation.

Further progress on SB 270

As SB 270 moves forward into the final days of the session, we would like to offer our assistance in making this the best possible legislation, leading to an ever more effective University which can meet the needs of the people of Oregon. The motion passed by the Statutory Faculty in 2001 called for faculty participation in the drafting of a bill enabling an institutional board. This has not happened to date. While a casual reading (if that is possible) of SB 270 shows that great expertise has been brought to bear in the drafting of sections on bonding, real property, etc., the same cannot be said of the sections on university governance.

The faculty have this expertise. Four years ago, when the Attorney General ruled that the existing governance structure of the University was illegal, it was a faculty committee which had the expertise to write a new constitution, one that passed review with the Attorney General, and which has served us well since. Why not build on that long experience and expertise that is embodied in the faculty? There are many faculty who are knowledgeable in these matters, and I am sure that all would be glad to have the opportunity to work with legislators and their staffs in amending SB 270 in a way that will ensure the long-term viability and success of the universities of the State of Oregon.