

To: Whom It May Concern  
From: Dennis Jones  
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Subject: Comments on Legislation

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We have been asked to review the major governance bills working their way through the Oregon Legislature and to comment on the strengths and weaknesses of these bills. To that end, we have looked at SB 270 (in its form as of 4/22/13), and HB 3120 (in its form as of 4/19/13), and have the following observations:

1. Taken together the two bills
  - Clearly and appropriately articulate the very different functions of the two (types of) entities, a statewide coordinating entity and governing boards for individual institutions.
  - Do a good job of delineating the separation of powers between the two types of entities.
  - Specify the roles and responsibilities of the coordinating commission in a way that will put Oregon in the forefront of good practice.
2. The bills' strengths lie in their assignment of responsibilities to the Coordinating Commission, especially
  - Mission and program approval.
  - The role in data and information.
  - Recommendation of a consolidated budget and responsibility for distribution of appropriations. Especially noteworthy are the inclusion of student financial aid funding within the purview of the Coordinating Commission as well as the role in formulating tuition policy. The fact that the commission has responsibility for all aspects of funding policy will put Oregon in the forefront of good policy regarding higher education coordination.
  - The role in evaluating universities with independent Boards, and in recommending whether other Universities should also have their own Boards.
3. The bills help to clarify the relationship between OEIB and the Coordinating Commission. The existing line relationship between the chief education officer and the executives of various units is removed. This is a positive step. It is important to maintain a degree of independence of higher education coordination from direct executive control in order to ensure that the HECC can be an effective advisory and coordinating entity – with sufficient independence to make objective recommendations to the Governor and Legislative



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Assembly, without attempting to pre-judge the necessarily political actions of the Governor or legislature.

We are pleased to see the language that the HECC is to advise the OEIB on “State goals and associated achievement compacts for the state post-secondary education system, including community colleges and public universities listed in ORS 352.002, and for student access program.” We strongly encourage an arrangement in which the OEIB looks to the HECC to work with institutions to develop the compacts and make recommendations to the OEIB.

Consistency in establishing and maintaining the relationship between the two entities is critical. In many ways, the Big Idea in Oregon is the OEIB. While a HECC that functions well as envisioned in HB 3120 could make Oregon an exemplar, the notion of a coordinating entity, in and of itself, is not new. The OEIB, as envisioned is new. HB 3120 creates an entity that can protect OEIB from distracting issues and allow it to stay focused on key elements of the policy agenda. In that light, it is important that the day-to-day work of negotiating and updating institutional compacts be done at the Commission level leaving OEIB to review and make final decisions.

4. The language on “distribution” of funds could include language similar to Tennessee in which the HECC develops a policy framework and methodology for allocation that is aligned with the goals (in 351.006 and .009). This doesn’t need to mention performance but the implication should be clear that the allocation methodology should include incentives for HEIs to perform in relationship to state goals. It might also be important to indicate the distribution framework and methodology should be developed in a manner in which the Legislative Assembly is at least consulted as in Tennessee. We have learned that building trust and confidence in the Legislature is critical to the success of inter-institutional allocation methodologies.
5. We are pleased to see that the naming of the Executive Director is made a responsibility of the Coordinating Commission not the Governor (except for the initial appointment made to get the HECC up and running). While the trend (but by no means the majority of states) is to have the Executive Director appointed by the Governor, there is mounting evidence that this is a bad idea.
  - It is a fundamentally unstable arrangement. The executive comes and goes as a function of the election cycles. The issues that must be dealt with are long term and necessarily span gubernatorial terms. Even in states where the practice is to elect two-term governors, the time frame is not long enough to address the key issues.
  - It puts the Commission in a purely advisory role. When the Executive Director works for the Governor, the commissioners themselves have little leverage over the agency staff. We have seen, too often, circumstances where very good ideas can’t surface because a Governor’s political calculus trumps sound policy work coming forward from a commission. As a corollary, it is very difficult to get the best people in the state to serve on such Commissions if a central decision, the hiring of their staff leadership, is not in their hands.
  - The Governor can benefit from having a degree of separation; he will be much freer to reject ideas coming from an independent entity than from a staff member he selected.

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It is not as if the Governor will have no influence over the selection of the Executive Director; the decision will be made by Commission members who hold their position by virtue of gubernatorial appointment and any good recruitment process would involve the Governor in the interview process.

6. Having said all these laudatory things, there is an area in HB 3120 about which we have concerns. We have registered them before, but we feel compelled to register them again; they deal with a critical issue. The concern is found in Section 4, membership on the Board. While there are often benefits from having key constituents (e.g., students and faculty) serve on institutional boards, it is not a good idea for coordinating boards. The objective should be to have a board:
  - Comprised of leading civic and business leaders from throughout the state, not stakeholder representatives.
  - That reflects the diversity of the state's population.
  - That can think – and act – on the basis of consideration for the future of the state, not the needs of (inside higher education) stakeholder groups. Stakeholder perspectives can, and should, be obtained through advisory groups, not direct membership on the commission.
7. Similarly we have a major concern with regard to Section 9 of SB 270, the appointment of Presidents. The HECC ought to have a role in the search process (at least in providing advice on the final appointment) and in the Presidential evaluation process. Having all this done through “advice from the governor” also involves the governor directly in university governance more than would be acceptable in many states. It would be better to have the HECC play this role. At least the HECC should have a role in reviewing and commenting on the criteria for selection and evaluation to ensure that these include a commitment to (1) state goals, and (2) working collaboratively with other institutions to achieve state goals. Perhaps the statutory language could specify these as mandatory criteria – criteria that the Governor will take into consideration in his or her advice.