

February 5, 2024

Dear Members of the Oregon Legislative Assembly:

Subject: Vote “Yes” on HB 4125, but not as introduced; the study needs multiple, but modest, technical changes.

Thank you for your consideration of my opinion on this bill. As a reminder, the title of this bill is, *“Relating to a study on governing structures of public universities; prescribing an effective date.”*

As a believer in continuous improvement, as a student, as an employee, and as close observer of the Board of Trustees of the University of Oregon, I always will welcome opportunities to soberly reflect on how we should change – or keep the same – higher education governance in this state. My goal is a governance structure which best serves the needs of Oregonians, university employees, and – most importantly – our students.

I welcome the concept of this study, because I believe the outcome of this bill will illuminate areas where we currently don’t have great data. Ideally, a properly conducted study that has broad stakeholder trust will also help us all better understand the governance options on the table. My remarks and concerns tend to echo the written testimony of Kyle Thomas, Director of Legislative and Policy Affairs for the Higher Education Coordinating Commission (HECC), and expand on his comments. I primarily share wonky observations and suggested technical tweaks to make the study more methodologically robust and better aligned with my understanding of higher education data reporting norms. I generally frame my remarks in a “concern-solution” format in the following pages.

Before diving into the following pages of “concern-solution” weeds, a high-level executive summary of my eight observations and concerns are listed here:

- I Observation: I want to gently remind folks that OHSU also exists, and we should consciously decide whether they ought to be included in this study or not.
- II Concern: Echoing Kyle Thomas, we should be comparing Oregon’s metrics against other states, in addition to tracking metrics over time.
- III Concern: The report should break down reported metrics by individual institution, as well as statewide aggregates. It is not clear to me that the bill’s language has the study do this.
- IV Concern: The scope of employee categories and their activities listed in Section 1.(2).(C) is too simplistic for the modern university, and I believe the resulting data requested by the bill, as written, will be inadvertently misleading. I suggest alternative language below.
- V Concern: The scope of institutional finances is too narrow. We should be sure to adequately and explicitly include legally distinct but closely affiliated organizations as part of this study, such as university foundations. I also suggest the study reports, in aggregate (to protect the privacy of gifts intended to be made anonymously), the dollar amounts of philanthropic gifts made by trustees and former trustees to the universities or their foundations. I suspect this number is in the range of high hundred millions to low billions of dollars when considering contributions from all trustees or former trustees at all universities across the timespan of 2011-2023.
- VI Concern: I urge extreme caution to LPRO about whatever vendor they may choose to use to conduct this important and likely very impactful study. The last thing we need is for the results of this study to be dismissed by any portion of the public due to real or perceived bias by the conductor of the survey, or real or perceived lack of expertise in the complex, nuanced, niche, and controversial area of public higher education institutional governance. I make suggestions to increase stakeholder trust below.

VII Concern: I am mildly concerned about the deadline for the study given the scope. I suggest a check-in point during the summer to see how things are progressing, with an understanding that the deadline may need to be pushed back a few months.

VIII Concern: As a fan of this study, I am also concerned about the cost. This study is a perfect example of one of the many relatively small unfunded (and usually federal) government mandates which, when combined with all the other relatively small unfunded government mandates, contributes to increased tuition costs for students. I suggest the universities treat all data procurement required by this study as a public records request made by any ordinary member of the public, and then send a bill to the legislature for reimbursement.

While unrelated to the topic of the bill at hand – which, narrowly construed, is simply “a study on governing structures of public universities” – I do want to make my position on our governing board structures transparent: With the passage of SB 273 (2023), its imperatives for boards to better respond to community members, and the addition of a graduate voice to the body, I am largely satisfied with the structure of our universities’ governing boards here in Oregon.

Like with all decision-making bodies, I will not agree with every decision ever made by the Board of Trustees. Indeed, no matter what governance structure is chosen, the legislature can expect to hear from folks disappointed by the outcome of those controversial decisions which are bound to arise during the course of governing a complex, high profile institution that has deep emotional investment by numerous stakeholder groups. Stakeholder groups which, by the way, often have mutually incompatible views with other important stakeholder groups. The legislature should not mistake disappointment with decisions made by a governing body with a flaw in the governance structure itself, so long as the governing body is doing due diligence in actively communicating with stakeholder groups, explaining its reasoning, and being open to change in light of new information.

With this in mind, I believe that future changes to the governance structure itself will require only minor-to-modest adjustments, if any, and not the major reconstruction desired by some citizens. At the same time, I have been pondering the concerns frequently raised about the current governance structure, including the concerns raised in other individuals’ testimony on this very bill. I look forward to sharing specific, more flushed out ideas for modest governance structure adjustments that address common stakeholder concerns at a later date.

Lastly, I want to report that I have confidence in the Board of Trustees of the University of Oregon and wish to publicly thank each member of the board for their dedicated service. The board is making the best decisions it can with the available information at hand. Most of the frustrations I have with my university lie with a lack of funding and idiosyncratic decisions made by individual administrators, not with the governing board itself. The University of Oregon is by no means perfect, but the institution and our state as a whole is better because of its excellent Board of Trustees.

Thank you for your time, and for reading through my concerns and proposed solutions in the following pages. I recognize that time is of the essence in this short session, and I hope the concerns I have are resolved before sine die.

Sincerely,



Sam Schwartz, PhD Candidate
Department of Computer Science
University of Oregon

I Comment on Section 1.(1): Reminder that OHSU exists.

We often refer to ORS 352.029. (defines “Governing Boards”) and ORS 352.002 (defines “Public Universities”) to identify the typical seven public universities under the legislature’s purview. However, these definitions might lead us to inadvertently forget our eighth public university: Oregon Health and Science University. As we make policy and commission studies we should be conscientious about whether various studies include OHSU, too.

While OHSU is a hospital, and thus worthy of special distinction in most laws, it is also a public university. Inasmuch as OHSU functions as a public research university, the laws that govern the other seven universities ought to also apply to OHSU.

Whether this particular bill ought to apply to OHSU is up for debate. But I do think the situation at OHSU is a point worth raising as we continue to think about institutional governance.

II Concern with Section 1.(2).(A-D): Lack of state-to-state comparisons..

The instructions for the study seem very temporal – that is, comparing how various metrics have changed over time. This is good and appropriate. But it is important to note that Oregon is not an island unto itself. Understanding how Oregon has fared compared to other states over time is also important. Most states have been facing profound challenges in the higher education arena, and it’s important to place Oregon in a national context to better understand the whole story about whatever trends are uncovered by the study.

Solution:

Include language to also require comparison with other states and/or national averages and medians, if data is available (which, as someone who has done some of this work, is sometimes surprisingly difficult to find), when considering all of the metrics identified in Section 1.(2).(A-D). That is, do cross-state comparisons with all (or as many as possible) of the metrics regarding tuition and debt, enrollment and graduation, workforce, and institutional finance.

While some data may be difficult to obtain, much of it is easily and publicly available at the institutional level through the federal Integrated Postsecondary Education Data System (IPEDS) system (<https://nces.ed.gov/ipeds>) and related systems, such as the college scorecard (<https://collegescorecard.ed.gov>). The study need only consolidate the federal data and then compare Oregon with other states.

III Another concern with Section 1.(2).(A-D): Institutional aggregation.

There are stark differences in mission, size, and geographic location(s) of our public universities. However, in my reading of the legislation, this study makes no distinction between aggregation at a state-wide level and individualized findings for each institution.

Solution:

It would be helpful for all results to be presented both as statewide aggregates, and broken down by institution. If that’s already the intention, adding clarifying language to that effect would be appreciated.

IV Concerns about employee aggregation in Section 1.(2).(C)

The whole of Section 1.(2).(C) on employee workplace trends could be improved. My complaints are mostly about technical tweaks to the language to better differentiate various employee groups of likely interest to the legislature and public, and to better align reporting with the academic year.

Solution:

Consider the following language instead. I note this language is not official legalese, but it should sufficiently illustrate the concept for Legislative Counsel to quickly make changes to the bill:

Section 1.(2).(C) Trends in the workforce at public universities in this state, including:

(a) Headcount and FTE of instructors, number of classes, number of credit hours, and credit hours adjusted percentage: of undergraduate, graduate, online and certificate program courses taught by each of the below subgroups for each academic quarter of each year from 2011 to 2023.

- i. Full-time tenured or tenure-track faculty – for the purposes of this survey department heads/chairs count as faculty;*
- ii. Full-time non-tenure-track instructional faculty (e.g., “career instructors” or “teaching professors”);*
- iii. Adjunct (e.g., “pro-tem”), part-time non-tenure-track faculty;*
- iv. Postdoctoral scholars or full time visiting professors;*
- v. Graduate employees;*
- vi. Senior leaders and administrators (e.g., college presidents, vice presidents, provosts, vice provosts, deans, assistant/associate deans, executive directors, etc.);*

For the purposes of this study, each lab or discussion section counts as “1” credit hour if recorded as “0” credit hours in an institution’s internal recording system (e.g., Banner).

(b) Headcount and FTE of employees engaged in research activities for each of the below subgroups for each academic quarter of each year from 2011 to 2023:

- i. Full-time tenured or tenure-track faculty – for the purposes of this survey department heads/chairs count as faculty;*
- ii. Full-time non-tenure-track research faculty (e.g., “career researchers,” “research professors,” “staff scientists,” “lab managers,” etc.);*
- iii. Adjunct (e.g., “pro-tem”), part-time non-tenure-track faculty;*
- iv. Postdoctoral scholars or full time visiting professors;*
- v. Graduate employees;*
- vi. Senior leaders and administrators (e.g., college presidents, vice presidents, provosts, vice provosts, deans, assistant/associate deans, executive directors, etc.);*

(c) Headcount and FTE of employees engaged in service activities (e.g., serving on university committees, advising students on which classes to take, testifying before Congress or the legislature, chairing task forces, running professional conferences, etc.) for each of the below subgroups for each academic quarter of each year from 2011 to 2023:

- i. Full-time tenured or tenure-track faculty – for the purposes of this survey department heads/chairs count as faculty;*
- ii. Full-time non-tenure-track faculty (e.g., “career instructors,” “teaching professors,” “career researchers,” “research professors,” “staff scientists,” “lab managers,” etc.);*

- iii. *Adjunct (e.g., “pro-tem”), part-time non-tenure-track faculty;*
- iv. *Postdoctoral scholars or full time visiting professors;*
- v. *Graduate employees;*
- vi. *Senior leaders and administrators (e.g., college presidents, vice presidents, provosts, vice provosts, deans, assistant/associate deans, executive directors, etc.);*

(Note to legislators: the three pillars of “teaching,” “research,” and “service” are often explicitly included as a percentage breakdown in faculty contracts, and long-term excellence in all three categories constitutes a nationwide norm for obtaining tenure for tenure-track faculty. Typical ranges for tenured/tenure-track faculty are 35-65% teaching, 35-65% research, 5-25% service; e.g., a 45% teaching 45% research 10% service breakdown is quite common.)

- (d) *Percentage increase, if any, in total personnel costs, salaries and employment numbers in each year from 2011 to 2023 for each of the following groups:*
 - i. *Full-time tenured or tenure-track faculty – for the purposes of this survey department heads/chairs count as faculty;*
 - ii. *Full-time non-tenure-track faculty (e.g., “career instructors,” “teaching professors,” “career researchers,” “research professors,” “staff scientists,” “lab managers,” etc.);*
 - iii. *Adjunct (e.g., “pro-tem”), part-time non-tenure-track faculty;*
 - iv. *Postdoctoral scholars or full time visiting professors;*
 - v. *Graduate employees;*
 - vi. *Undergraduate employees;*
 - vii. *Senior leaders and high-level administrators (e.g., including employees with the phrase(s) “president,” “vice president,” “provost,” “vice provost,” “dean,” “associate dean,” “assistant dean,” “executive director,” or similar indicia of leadership in their title), and excluding athletics personnel;*
 - viii. *Unclassified employees and lower-level administrators (e.g., IT middle managers, doctors working in the student health clinic, etc.), excluding athletics personnel and employees identified in (g);*
 - ix. *Classified employees/administrators (e.g., administrative assistants, janitors, etc.), excluding athletics personnel;*
 - x. *Athletics personnel;*
- (e) *25th percentile, median, mean, 75th percentile, and maximum take-home salary levels, as adjusted for inflation, for each of the following groups of employees in the fiscal year containing academic year 2022-2023 and academic year 2011-2012, or the fiscal year containing the majority of academic year if the institution’s fiscal year does not wholly encompass an academic year;*
 - i. *Full-time tenured or tenure-track faculty – for the purposes of this survey department heads/chairs count as faculty;*

- ii. *Full-time non-tenure-track faculty (e.g., “career instructors,” “teaching professors,” “career researchers,” “research professors,” “staff scientists,” “lab managers,” etc.);*
 - iii. *Adjunct (e.g., “pro-tem”), part-time non-tenure-track faculty;*
 - iv. *Postdoctoral scholars or full time visiting professors;*
 - v. *Graduate employees;*
 - vi. *Undergraduate employees;*
 - vii. *Senior leaders and high-level administrators, including employees with the phrase(s) “president,” “vice president,” “provost,” “vice provost,” “dean,” “associate dean,” “assistant dean,” or similar indicia of leadership in their title, and excluding athletics personnel;*
 - viii. *Unclassified employees and lower-level administrators (e.g., IT middle managers, doctors working in the student health clinic, etc.), excluding athletics personnel and employees identified in (g);*
 - ix. *Classified employees/administrators (e.g., administrative assistants, janitors, etc.), excluding athletics personnel;*
 - x. *Athletics personnel;*
- (f) *Where possible, comparisons should also be made with appropriate market controls.*

For example, tenure-track faculty and senior administrators are largely recruited through competitive national searches and the job market is becoming more competitive and international every year. It is appropriate to benchmark most faculty metrics, such as salaries, against peer (and “aspirational” peer) institutions and national trends (and, in the specific case of salary, adjusted for Oregon’s significantly higher cost of living).

By contrast, most classified workers (e.g., janitors, administrative assistants, etc.) are drawn from the local labor market here in Oregon. These benchmarks should be made with comparisons to local market rates for administrative assistants, janitors, etc.

In all cases when aggregating many employees into broad employee groups, one should be mindful of the different markets of specific disciplines and professions even when titles are the same. For example, a professor of philosophy is likely to command a smaller salary than a professor of applied bioengineering. Yet both could fall under the large umbrella group of “tenured/tenure-track professor.”

V Concerns about inadequate scope of “institutional finances” in Section 1.(2).(D)

Surrounding each university is an ecosystem of related but legally distinct entities. For example, endowments are held/managed through foundations which are legally separate entities from the universities themselves. Similarly, alumni associations – which solicit donations that help feed the universities’ coffers – are also generally distinct but related organizations.

I worry that some institutions, like the foundation housing a university’s endowment, may look at this study and declare themselves exempt from scrutiny.

Furthermore, I am not letting the legislature off the hook: PERS is a major component of university system finances, and while PERS may be wrapped up in the employment trends identified in Section 1.(2).(C), I think explicitly including PERS obligations as a study finding would be insightful.

Lastly, the trustees themselves often give generously to the institutions they serve, sometimes after sitting on the boards for a while. Perhaps the best example is that of Connie Ballmer who, after serving on the Board of Trustees of the University of Oregon, gave half a billion dollars dedicated to children’s mental and behavioral health. It founded the Ballmer Institute, and is unquestionably a net positive for our state.

Bottom line: understanding how philanthropic gifts from trustees and former trustees have impacted universities is something which is missing from this study.

Solution

Insert language to explicitly include the study of affiliated institutions, like university foundations, and compel them to provide any data requested. Further, also explicitly breakout PERS obligations mandated by the legislature somewhere in the report.

Also insert language to track philanthropic gifts from trustees or former trustees, their close family members (i.e., spouses), and affiliated foundations or trusts. Now we don’t want to spook individual trustees, who often want to donate anonymously and whose anonymity should be respected. However, including in the final, public report aggregate amounts donated to universities by trustees or former trustees across the entire 2011-2023 study window would also be appropriate information for the legislature to consider.

VI Concerns about procurement in Section 1.(4)

I hope this study truly serves as a source of neutral, unbiased information for lawmakers and the public to better understand the options on the table, and not merely as a procedural window-dressing for already-decided-upon governance reform.

To that end, I am concerned about who will be developing this report. To give an example, if the legislature were wanting to commission a study on animal products in consumer goods, having “PETA Research” do this study would likely give different outcomes than a study undertaken by consultants Jasper and Horace from “De Vil Research,” with funding from its well-known benefactor Ms. Cruella de Vil.

Ensuring that any consultant tapped by LPRO is respected by all parties involved in higher education governance will be paramount in ensuring the legitimacy of its findings.

Unfortunately, there is nuance and complexity to this work that is not always evident to non-experts. While I have deep respect for much of the work done by LPRO, I do not believe they have the requisite expertise and experience to draw the best policy conclusions about governance structure from any data-driven findings the study might uncover in Section 1.(2).

Solution

My suggestion to LPRO would be to separate the work of this study into two conceptual tasks:

- (a) “Data collection;” i.e., Section 1.(2).(b)
- (b) “Data analysis and providing recommendations;” i.e., Section 1.(2).(a) & Section 1.(3)

For the first task, “data collection,” I think the regular folks the legislature might solicit for studies (e.g., LPRO itself, ECONorthwest, DHM, or – ideally – a professor/graduate student at one of our public universities) is perfectly fine.

For the second task, “data analysis and providing recommendations,” well that is going to be a very nuanced and specialized activity requiring expertise that, frankly, I don’t think many folks in Oregon have – particularly since the recommendations and analysis may very likely have profound political consequences for higher education.

I think getting public feedback on appropriate individuals and groups to conduct such an analysis is needed in order to give the study’s findings any legitimacy in the eyes of all stakeholders. In any case, my recommendation would be to use a consultant the legislature has already used before to assess governing boards – specifically, the Association of Governing Boards (AGB). Other interested parties I speculate might be qualified and interested in doing this work include the American Council of Trustees and Alumni (ACTA), the American Association of University Professors (AAUP), and individual professors with academic/research expertise in higher education governance at non-Oregon universities. Once again, all of these entities have some bias, and it’s important for lawmakers to be aware of them as they read this report.

I also echo Kyle Thomas’ remark that the study should not be limited to just those forms of governance outlined in the bill as introduced. My impression is that this is a “brainstorming” study, meant to illustrate all the options on the table, and their pros and cons. We should ensure the language of the bill allows the entity conducting the study the widest freedom to investigate and present options.

VII Concerns about the deadline in Section 1.(5)

This study will be a lot of work, and I am concerned about the timeline.

If the progress for the delivery of this study is timely, wonderful! But I don’t think we should set folks up to fail, especially since the writers of this report will be relying on so many different groups to provide data before being able to compile final statistics and make recommendations.

Solution

I think having whoever is doing this study do a check-in sometime during the summer – perhaps with just the Chairs of the House Higher Education and Senate Education committee – about how things are progressing would be appropriate. If we have to push back deadlines, that would be reasonable to me.

VIII Concerns about cost in Section 1.(6)

This bill is a great example of the legislature giving an unfunded mandate to our public universities. Collecting and compiling this data will be a time consuming, non-trivial task for staff.

An exercise in treating the information collection for this study as a public records request I think will be enlightening to members of the legislature about how universities function with respect to transparency, timeliness, and cost in furnishing information of interest to the public.

Solution:

The legislature should ask the universities to furnish the information, but to also track their time in providing it, in the same manner as they would do for a public records request. The legislature should then reimburse the universities at the rate the universities would charge an ordinary member of the public – not a news organization, not the legislature, just an ordinary citizen – who wanted this information.