

Meeting No. 1,121

THE MINUTES OF THE BOARD OF REGENTS  
OF  
THE UNIVERSITY OF TEXAS SYSTEM

Pages 1 - 18

May 20, 2014

Austin, Texas

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 OF  
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MEETING NO. 1,121

TUESDAY, MAY 20, 2014.--The members of the Board of Regents of The University of Texas System convened this special called meeting via telephone conference call at 11:02 a.m. on Tuesday, May 20, 2014, in the Chairman's Office on the Ninth Floor, Ashbel Smith Hall, 201 West Seventh Street, Austin, Texas, with the following participation:

ATTENDANCE.--

Present

Chairman Foster (in person)  
Vice Chairman Powell  
Vice Chairman Hicks  
Regent Aliseda  
Regent Cranberg  
Regent Hall  
Regent Hildebrand  
Regent Pejovich  
Regent Stillwell  
Regent Horne, Student Regent, nonvoting (in person)

In accordance with a notice being duly posted with the Secretary of State and there being a quorum present, Chairman Foster called the meeting to order in open session.

RECESS TO EXECUTIVE SESSION.--At 11:03 a.m., Chairman Foster said the Board would recess to convene in Executive Session pursuant to *Texas Government Code* Sections 551.071, 551.073, and 551.074 to consider the matters listed on the Executive Session agenda.

RECONVENE IN OPEN SESSION.--At 11:14 a.m., the Board reconvened in open session for the following action on matters discussed in Executive Session.

1. U. T. System Board of Regents: Discussion with Counsel on pending legal issues

No action was taken on this item.

2a. U. T. Rio Grande Valley: Appointment of Dr. Guy H. Bailey as President

Vice Chairman Powell moved that Dr. Guy H. Bailey, former President and currently Professor of Linguistics at the University of Alabama, be selected President of The University of Texas Rio Grande Valley effective on June 15, 2014, at a compensation commensurate with the responsibilities of the office, to be

negotiated in accordance with University of Texas System policies by Executive Vice Chancellor Reyes, approved by Chancellor Cigarroa, and submitted to the Board for approval via the usual budgetary procedures.

He further moved that the Minutes reflect that, by approval of this motion, the Board has made a finding that, as required by State law, this appointment is in the best interest of U. T. Rio Grande Valley.

Vice Chairman Hicks seconded the motion, which carried unanimously.

- 2b. U. T. System: Discussion and appropriate action regarding individual personnel matters relating to appointment, employment, evaluation, compensation, assignment, and duties of presidents (academic and health institutions), U. T. System Administration officers (Executive Vice Chancellors and Vice Chancellors), other officers reporting directly to the Board (Chancellor, General Counsel to the Board, and Chief Audit Executive), and U. T. System and institutional employees

No action was taken on this item.

3. U. T. Rio Grande Valley: Approval of proposed negotiated gifts with potential naming features

Upon motion by Regent Aliseda, duly seconded, the Board authorized the President of The University of Texas Rio Grande Valley and the Vice Chancellor for External Relations to conclude negotiations necessary to finalize and accept gifts to benefit U. T. Rio Grande Valley with potential naming features consistent with the terms and conditions outlined and recommended in Executive Session.

The motion carried by acclamation.

## AGENDA ITEMS

1. U. T. System Board of Regents: Appointment of Mr. H. Lee S. Hobson to the Board of Directors of The University of Texas Investment Management Company (UTIMCO)

Upon recommendation of Chairman Paul Foster and The University of Texas Investment Management Company (UTIMCO) Chairman Morris Foster, the Board appointed Mr. H. Lee S. Hobson to the UTIMCO Board of Directors for a term to expire on April 1, 2017.

*Texas Education Code* Section 66.08 and Regents' *Rules and Regulations*, Rule 10402, Section 5 require that The University of Texas System Board of Regents appoint seven members to the UTIMCO Board of Directors and two members will be appointed by The Texas A&M University System Board of Regents.

Appointments made by U. T. System shall include three members of the Board of Regents, three must have a substantial background and expertise in investments, and one must be a qualified individual, as determined by the Board. Such individual may be the Chancellor of the U. T. System. Of the two members appointed by The Texas A&M University System Board of Regents, at least one must have substantial background and expertise in investments. The approved UTIMCO bylaws allow external directors to serve a maximum of three terms of three years each.

Mr. Hobson replaces Mr. Charles W. Tate, who was appointed to the UTIMCO Board of Directors on September 28, 2004, and was reappointed on March 26, 2008, and on March 18, 2011. Mr. Tate's third term as an external director expired on April 1, 2014.

Mr. Hobson is the founder and managing partner of Highside Capital Management, a private investment firm based in Dallas, Texas. Prior to founding Highside in 2003, he was a partner at Maverick Capital from 1994 to 2003 where he focused on investments in the consumer sector and in Latin America. Prior to his time with Maverick, he worked with PepsiCo Foods International in finance and new business development, with Goldman Sachs as a corporate finance analyst, and with Société Générale as an analyst in the capital markets group. He is a graduate of Princeton University (cum laude) and received an MBA from Harvard Business School.

2. U. T. System Board of Regents: Approval of Mr. Charles W. Matthews, Jr., as Regental Representative to U. T. Austin Intercollegiate Athletics Council for Men and Mrs. Fallon B. Vaughn as Regental Representative to the Intercollegiate Athletics Council for Women effective September 1, 2014

The Board appointed Mr. Charles W. Matthews, Jr., as Regental representative to The University of Texas at Austin Intercollegiate Athletics Council for Men and Mrs. Fallon B. Vaughn as Regental representative to the Intercollegiate Athletics Council for Women, each for a four-year term beginning September 1, 2014.

Each U. T. Austin Intercollegiate Athletics Council is a nine member advisory group composed of students, two Regental appointees, and five members of the University General Faculty. There is one student and one ex-student on the Men's Council and two students (one nonvoting) and one ex-student on the Women's Council. The Regental appointments are for four-year, staggered terms.

The terms of Mr. John W. Barnhill on the Intercollegiate Athletics Council for Men and The Honorable Pamela P. Willeford on the Intercollegiate Athletics Council for Women will expire on August 31, 2014. Regental representatives currently serving are David J. Beck (Men's Council) and Cyndi Taylor Krier (Women's Council).

Mr. Charles Matthews is the Retired Vice President and General Counsel of ExxonMobil. He earned a J.D. degree from the University of Houston and a B.A. in Government from U. T. Austin. He and his wife have funded two endowed

scholarships and one endowed fellowship at U. T. Austin. Mr. Matthews has served in numerous civic leadership roles, including the boards of The University of Texas Foundation, Inc. and the University of Houston Law Foundation.

Mrs. Fallon Vaughn was a member of the USA Skeleton National Team from 1999-2002, qualified for the USGA Women's Mid-Amateur and Senior Golf Championships, has served as Director of the U.S. Lacrosse Foundation, and supports a multitude of philanthropic organizations, including Think Human First, which seeks to build schools around the world. She is an accomplished tennis player, and in her honor, her husband established the Fallon B. Vaughn Tennis Scholarship at U. T. Austin. Mrs. Vaughn received a B.S. degree in Business Administration from Arizona State University in 1981 and a Masters of International Management from the American Graduate School of International Management in 1984.

3. U. T. System: Approval of in-state tuition and fee plans for each U. T. System academic institution

Chairman Foster called on Chancellor Cigarroa for his recommendations on in-state tuition and fee plans for each University of Texas System academic institution.

Remarks and recommendations by Chancellor Cigarroa

My recommendations are that the Board of Regents approve the four-year fixed tuition proposals that our campus leadership presented at our last Board of Regents' meeting. These proposals are consistent with our Regents' direction to offer this plan to students as well as with legislation passed during the 83rd Session.

I further recommend that we do not increase tuition and fees for in-state students at our academic campuses, but rather ask you to help us identify other means of supporting our campuses in a recurrent manner to provide the resources to our universities at least equivalent to the revenue generated from tuition and fees to advance their mission.

I ask this Board to allow me and Dr. Pedro Reyes to work with Executive Vice Chancellor for Business Affairs, Scott Kelley, to identify Systemwide expenses or other specific expenses incurred by our campuses that can be offset with Available University Funds (AUF) with the appropriate legal and transparent manner to achieve this goal.

The Board approved the Chancellor's recommendations as presented.

Chairman Foster said this is an important step, both in terms of establishing a fixed four-year tuition option at each U. T. System academic institution as well as holding the line on tuition increases. He said both send the right message to students and to the institutions.

Regent Cranberg asked about the authority for the fixed option. He said he presumed that the motion envisioned a fixed option no higher than that approved, but given that residential undergraduate tuition may remain fixed, he asked if the presidents have the authority to modify downwards that fixed option to make it more attractive to students in keeping with the lower expected resident undergraduate rates. Chairman Foster replied that the presidents have the option of lowering tuition, but he clarified that the motion contemplated increases in fixed tuition as opposed to the annual tuition that is being held flat.

Regent Cranberg commented that students will have the option to take a higher fixed tuition. He noted that previously, the presidents were asked to assure that the fixed option was efficiently attractive so that some students would opt for it. Given that resources are being provided to allow the annual option to be lower, he suggested the presidents specifically be allowed to offer lower fixed rate alternatives.

Chairman Foster agreed with the suggestion, and he clarified that undergraduate rates will not necessarily be fixed for four years at flat. He said presumably, there would be some students that would accept, who would opt for the four-year fixed rate to ensure they know exactly what their costs are going to be. He called on the presidents to make sure that their four-year plan is attractive enough that some students would entertain it.

Executive Vice Chancellor Reyes provided examples of cost savings for students subscribing to the four-year fixed plan.

4. U. T. System Board of Regents: Amendment of Regents' Rules and Regulations concerning best practices for Board governance, operation, and engagement as follows: a) Rule 10101 (Board Authority and Duties), Section 3; b) Rule 10102 (Chairman and Vice Chairmen), Subsection 2.1; c) Rule 10401 (Meetings of the Board and Standing Committees) to add new Section 5 (Closed Executive Session); and d) Rule 10801 (Policy on Transparency, Accountability, and Access to Information), Subsection 5.4

Chairman Foster said his recommendations related to changes to the Regents' *Rules and Regulations* concerning Board governance and operations were previously provided to members of the Board. He asked if there were questions or comments about the recommendations. The discussion is reflected in the transcription attached to these Minutes on Pages 9 - 18, which included revisions to the Chairman's recommended changes.



The Board approved the following amendments to the Regents' *Rules and Regulations*, and deferred addition of a proposed new Section 5 to Rule 10101, regarding Records and Information Management.

a. Amendments to Section 3, Rule 10101 (Board Authority and Duties)

Sec. 3 Duties and Responsibilities of Each Regent.

. . .

3.3 A Regent may not publicly disclose information that is confidential, by law, unless disclosure is required by law or made pursuant to a vote of the Board to waive an applicable privilege.

3.4 Members of the Board shall bring concerns about operations, accountability, compliance, or the need for an investigation to the Chancellor, Chairman, Board, or an appropriate Committee of the Board.

3.5 Members of the Board will at all times respect the role of the Chancellor as the chief executive officer of the U. T. System and will at all times respect management and reporting lines for U. T. System and institutional employees.

b. Amendments to Rule 10102, Subsection 2.1, regarding the Duties and Responsibilities of the Chairman, as recommended by University of Texas System staff:

2.1 Duties and Responsibilities of the Chairman. The duties and responsibilities of the Chairman shall include the following:

(a) The Chairman shall preside over the meetings of the Board.

(b) The Chairman shall be authorized to call special meetings of the Board.

(c) The Chairman shall appoint the standing committees of the Board and such special committees as the Board may authorize.

(d) The Chairman shall appoint ad hoc committees as necessary to address special issues.

(e) The Chairman shall be a nonvoting ex officio member of all standing and special committees of the Board.

(f) The Chairman, as the Board's elected leader, serves as the day-to-day administrative leader of the Board.

- c. Amendments to Rule 10401, regarding Meetings of the Board and Standing Committees, to add a new Section 5:

Sec. 5 Closed Executive Session.

- 5.1 Closed executive sessions may be convened as authorized by State law.
- 5.2 The Board recognizes the importance of the confidentiality of executive session discussions as authorized by the Texas Open Meetings Act. In compliance with State law, the Board has determined that the only recording or notes that document executive session discussions may be a certified agenda or a recording prepared by Board Office staff. Other recordings, notes, or third party communications are not authorized.

- d. Amendments to Rule 10801 (Policy on Transparency, Accountability, and Access to Information), Subsection 5.4, regarding Requests by Members of the Board of Regents and Chancellor, as follows:

5.4 Requests by Members of the Board of Regents and Chancellor.

...

- 5.4.2 Except for a request processed under Subsection 5.4.4, requests by an individual Regent for information shall be submitted to the Chancellor in writing by the requesting Regent, with a copy to the Board Chairman and General Counsel to the Board. An individual Regent's written request for information shall identify the need for the information requested and shall provide a requested deadline for response if the request is time-sensitive.

...

- 5.4.5 Within 5 business days of the receipt of a Regent's information request, the Chancellor's Office will provide the requesting Regent with an estimated date for delivery or production. The Board requires all U. T. System Administration and U. T. System institutional employees to respond thoroughly and appropriately to requests for information from a member of the Board or the Chancellor, without undue delay. In the rare circumstance when there are concerns about a Regent's request, the matter will be discussed with the Regent within 5 business days of receipt of the request. If concerns are unresolved following

discussion with the Regent, the matter will be presented to the Board as quickly as possible, but in no event later than 21 days from the date of the receipt of the request. Upon vote, if any two or more Regents support the request, the request will be filled without delay.

ADJOURNMENT.--At 12:00 p.m., there being no further business, the meeting was adjourned.

/s/ Carol A. Felkel  
Secretary to the Board of Regents

June 23, 2014

Transcription of discussion of Item 4

4. U. T. System Board of Regents: Amendment of Regents' Rules and Regulations concerning best practices for Board governance, operation, and engagement potentially including, but not limited to, a) Rule 10101 (Board Authority and Duties), b) Rule 10102 (Chairman and Vice Chairmen), c) Rule 10401 (Meetings of the Board and Standing Committees) to add new Section 5 (Closed Executive Session), d) Rule 10801 (Policy on Transparency, Accountability, and Access to Information)

PAUL FOSTER: Members of the Board, you have been sent my recommendations related to changes to the Regents' Rules concerning Board governance and operations. Are there questions or comments about these recommendations?

ALEX CRANBERG: The question I had relates to the recommended or required number of additional Regents to support another Regent's information request. Thinking about this in the context, for example, of a public company board, if one member of a board of directors looks for information, normally it would be very unusual for that information not to be provided and probably contrary to normal public company governance rules. It seems to me that there should be ... I can understand the desire to try to prevent information requests from which there is a narrow, perhaps a personal agenda or an information request that for some reason is completely unreasonable, but if more than one Regent believes that such an information request is appropriate and reasonable, it takes it out of a narrow interest into a broader interest. It strikes me that raising the bar all the way up to three additional Regents is unnecessarily high.

ROBERT STILLWELL: It seems to me that, and if I'm reading this correctly, this is the context of a referral to the Board and it's ... I don't know if it's a Board vote; I think vote is used ... this already kind of plates a minority rule provision. I don't see why it is not perfectly fine as presented.

PAUL FOSTER: The discussion we had in trying to come up with this originally was a majority. I think we all realized that that was going too far; that it needs to be a reasonable number, but also something that can keep abuses from happening. That's not to say that abuses have happened in the past. This should be an extraordinarily rare circumstance where a request by a Regent would not be honored. If the Chancellor or potentially the Chairman raises the question about a request being either unreasonable or potentially representing some kind of conflict or whatever, the idea is that in that very rare instance we would take it to the full Board, and if there were two other supporting votes in addition to the Regent making the request, then it would be fulfilled immediately. I'm open to other comments and suggestions on this. I'm not drawing a line in the sand.

ALEX CRANBERG: Just to clarify, are you ... perhaps I misread the Rule. Is that three Regents, inclusive of the requesting Regent, or three additional Regents?

PAUL FOSTER: It is inclusive.

FRANCIE FREDERICK: And to that end, I should probably clarify the Rule itself.

ROBERT STILLWELL: That's not clear.

PAUL FOSTER: That's not clear?

ROBERT STILLWELL: No.

FRANCIE FREDERICK: I think we will probably go with, if two or more other Regents or we could just go with the wording, if three Regents.

PAUL FOSTER: Presumably the requesting Regent would vote in favor of his own request.

ALEX CRANBERG: Okay, I misunderstood.

PAUL FOSTER: I'm sorry that wasn't clear.

FRANCIE FREDERICK: We will take out the "other;" I think it's the best way to handle it.

PAUL FOSTER: Are there other comments or questions or concerns?

WALLACE HALL: I read Rule 10101, Section 3.1, where it says that "each member of the Board of Regents has the right and authority to inform himself/herself as to the duties, responsibilities, and obligations of the member in such a manner as they each may deem proper." I think this entire process that you placed in 5.4.5 undermines that completely. Currently, a Regent has the unfettered right to request what they deemed to be appropriate to educate themselves and now you are supplanting that with a different process. I think you are going to just have to remove 3.1, because it's no longer relevant in my opinion. I think this really consolidates the power and decision making within the Chair and Chancellor and removes it from members of the Board.

GENE POWELL: Chairman, the question that I had was exactly the same. I talked to Francie this morning. We have not changed at all the Rule that says the Regents should do whatever necessary to have themselves informed and to be informed. That whole section is somewhat at odds to the section that we just discussed about the three Regents. I understand that today, and possibly in the near future, possibly that's not a problem. But I do think that when you have one Regent or one Board member on one of our corporate boards who finds something that they think is something very necessary to look at or to read about or to study, I hesitate to be the one or to be the group of Regents that say no, we are, whenever we deem it necessary, going to take the opportunity to get two other Regents.

I would point out that early in my tenure as a Regent, I became very fixated on criminal background checks. I had an extremely difficult time getting the (U. T.) System to move. It took over a year of me badgering (Vice Chancellor and General Counsel) Barry Burgdorf and the System. I think Francie will tell you I was the only Regent who was upset about that, and I continued. Now, it was not where I was asking for information, but it was a topic

that I think today that we all look back on and say thank God we have put those more stringent criminal background checks in place because we've had some instances where children could have been damaged or injured. That helped us, and it's also given us some effort in the public to show we are doing what we said we would do. I'm concerned if we ever take away an individual Regent's ability to look into something that they think might damage the institution, damage a child, damage a faculty member, that just bothers me. It bothers me that these Rules have been set up and operated for many, many years, and that possibly because of some recent circumstances that maybe some of us are less than fond of, we would change something to where we would have to get two other Regents to concur that what we are working on or what we are concerned about is a problem.

STEVE HICKS: I would say that if you had asked for two other Regents to support you in that cause you would have gotten it without a problem. Keep in mind that this clause is only if the Chancellor and the Chairman had turned down the request for hopefully very valid reasons. I think it's important to safeguard, and I would support keeping it in there.

GENE POWELL: The other problem I do have with this is that the Chancellor works for the Board and to have the Chancellor ruling, I think gets the cart before the horse to have the Chancellor ruling on what a Board member should be able to look at, even if he is doing it in conjunction with the Chair. So then that puts the Chair in the position of making that decision and forcing that item to go on to the Board. I'm just pointing out that I am very reluctant to be the one to change the Rule to where an individual Regent who has a concern about a particular item cannot look into that.

ROBERT STILLWELL: I think that it's very important that we take reasonable, and I consider these steps to be such reasonable steps to encourage cooperation not only among Regents at the Board level, but between and among Regents and the Chancellor and senior staff at the System level. I see the encouragement of joint action and cooperation to be the sort of the highlight and the bedrock of these Rules, the proposals, or these changes. I would be in favor of leaving them as they are presently proposed; as changed and as proposed.

PAUL FOSTER: One thing I'd like to comment on is that we worked really hard to draft these in a spirit of making sure that we don't inhibit the ability of any Regent to ask any question or seek any data whatsoever. I think the circumstance where the Chancellor or the Chairman or the Board might push back is going to be extremely rare, and hopefully, and presumably, might not ever even occur. Vice Chairman Powell stated it well. We find ourselves in circumstances that we might not have previously envisioned, and I think we just feel like there is a need to bring a little bit of order and a little bit of -- control is not the right word, nobody wants to control this -- what we want to do is have this work efficiently and have everybody understand how it works.

So, I understand the concerns that have been voiced and agree with them to a certain extent, but I also feel like that in that very rare circumstance, we need to have concurrence by more than one Regent before we head down a path that might be questionable. Again, it is not a matter of seeking certain data, or whatever, unless there is some reason to raise

the question. Maybe it's a conflict or maybe just overly burdensome and there is a different way of getting there. In no circumstance would we go back to a Regent and say we don't want you pursuing that line unless there is some moral or ethical reason not to go there.

WALLACE HALL: I don't believe it's rare at all. As a matter of fact, it was as recent as 10 or 11 weeks ago when I asked for information through the proper channels, and it was not provided to me. The reason was because you were not allowing it to come to me. You didn't respond to my questions; you didn't respond to my emails, you ultimately took it to the Board and others to determine whether or not I was going to be provided the information. So, the idea that this is a rare circumstance...

PAUL FOSTER: Regent Hall we lost you there ... we lost the last comment, Regent Hall.

WALLACE HALL: My last comment was to say that this is rare is just not true. That is what the situation is. I see this as unfortunately an effort to remove a Regent's ability to get information and to delay. This is also a delay tactic which, I think, is improper.

PAUL FOSTER: Thank you, that is the only instance that I am aware of that this has occurred, and in that particular case, I would argue that two other Regents probably were supportive of what you were seeking, and you would have gotten it. I think the Rule in that circumstance would have worked, but maybe not in every circumstance.

ALEX CRANBERG: I regard this as an opportunity to clarify and in some ways protect Regent's access to information by specifying some guidelines that are more specific and concrete. So in that sense, I think that this is a positive step. I'm curious if Vice Chairman Powell would feel more comfortable with this if it were two Regents as opposed to three.

GENE POWELL: Sure, I would be. I would like it a lot better if it were just two Regents, the requesting Regent, and one other. In fact, I could probably support it if it were that.

PAUL FOSTER: Alright, well let's hear comments from others.

ERNEST ALISEDA: I expressed the same concerns that Vice Chairman Powell had just relayed. I think anything that prohibits a Regent's access to information is something that I would certainly take seriously. I would prefer that the language read "the requesting Regent and one other."

ROBERT STILLWELL: I think creating the process is probably more important, or as important as the exit strategy, whether it's plus one or plus two or we started at plus three, plus two, plus one. I am sort of largely indifferent to that. I think the process is important.

PAUL FOSTER: I agree with that, and I can live with the plus one, and I honestly agree with the logic that has been expressed. With your indulgence, I modify my recommendation to change the word three to two. Just to clarify, that's the requesting Regent plus one so that there is no confusion there. Are there other comments or questions?

STEVE HICKS: Move to approve.

WALLACE HALL: I do have a question about the suggestion under records retention. I have read the record management guidelines, and I'm not sure, unless everybody on the Board has read it, if any of us really understands the impact and the potential ramifications that that has for each of us. I'm very wary, and we only did this before, I'm not sure I have any more information to satisfy my concerns since then. I'm interested to know, Chairman Foster, what you think about the guidelines?

PAUL FOSTER: Well, I think the reason we are putting them in there is just to emphasize that we as a Board are subject to the same documentation and records retention requirements as any other state agency and that we commit to comply with Systemwide policies. Francie, I don't know if you have any other comment?

WALLACE HALL: I think the problem is that we are not even in the definitions, so I kind of think that if we are going to try to insert ourselves into the record management guidelines that we need to understand the redline version of what that means for us. We are the only volunteers in the System. We are not employees of the U. T. System. I think there is a difference, and I'm not sure this doesn't create a situation where every member of the Board of Regents is going to be in violation from day one going forward as we don't know what it means. That has been my concern and it continues to be.

FRANCIE FREDERICK: As we have discussed, the Systemwide rules for information management/records retention were indeed written without the contemplation that they would necessarily apply to members of the Board. As you and I discussed this morning, it's a chicken or egg situation. If the Board determines by passing these Rules that you will submit yourself to the policies, the policies will need to be rewritten, but that can be done fairly quickly to contemplate the situation. At the same time, if there is language about a violation of these policies that subjects one to discharge as an employee, that's obviously not going to be applicable. But I think again, my position is that you are currently subject to encryption, retention, and maintenance requirements, and we have not put you in a position where we can train you and give you the structure for what those requirements are.

GENE POWELL: Chairman, I share Wallace's concern, not necessarily with what you are requesting us to do, but that this is a very serious change for the Regents to voluntarily come under this. I would suggest that you take that out for today and that you have us briefed, have Francie brief us and completely brief us on what it is we are subjecting ourselves to, what we are voting to do voluntarily, and what the System is proposing in a way of training us and getting us up to speed. I am a little uncomfortable on voting that imposition on a group of volunteers today when I think the real reason to be changing the Rules or the other items that you are concerned about. That would just be my suggestion. I would be much more comfortable if we had some time to be better educated on that topic.

ALEX CRANBERG: Would it be reasonable to ask that we be provided with amended guidelines or policies so that we can see the actual policies that might be proposed as opposed to the principal that would be governed by the Rules?

PAUL FOSTER: Yes, I'm inclined to agree with Regent Hall and Vice Chairman Powell that we probably need some more education on this and that we can provide that information



and maybe bring it back at the next Board meeting so we would redact this section out, Francie, and bring it back at our next available time if we're prepared by then, but as we are prepared. I appreciate you bringing that up.

WALLACE HALL: Sorry to have another one here. Section 5, under Closed Executive Session 5.2. I just want to make sure I understand this. Obviously, a lot takes place in executive session. I have certainly, on occasions, prepared for executive session by taking notes and writing down my questions, but the way I interpret this is that I won't be able to do that in the future, nor will I be able to write down any follow-up questions I have. I feel it limits my ability to do my job. I'd like to understand if that interpretation is accurate or not.

FRANCIE FREDERICK: No sir, that is not. The wording is you would be precluded from taking notes of executive session discussions. So again, if the Board does deem the confidentiality of executive sessions to be important, any action, including taking notes that could be almost verbatim notes, would contravene that finding. But it's not to preclude you from bringing notes in or having notes on a follow-up question. It's to preclude notes of the discussion.

PAUL FOSTER: So, could we clarify that somehow to go on to say it's not what you just said, basically. This is not to preclude you from bringing notes in or from noting questions that you want to ask, but instead is intended to keep us from documenting the discussions.

FRANCIE FREDERICK: I think the simple amendment might be "or notes that document executive session discussions" if that's acceptable for the Board?

ROBERT STILLWELL: Yes, that's what I thought it did mean.

PAUL FOSTER: Does that get you there, Wallace?

WALLACE HALL: Well, it sounds better because the other one was kind of all inclusive. So, anything documenting the ... however you just said it Francie. But I would appreciate some clarification.

PAUL FOSTER: Okay. Any other questions or comments?

WALLACE HALL: I've got one last one. Sorry.

PAUL FOSTER: No, that's okay.

WALLACE HALL: Where is it? b.2.1(f). "The Chairman, as the Board's elected leader, serves as the day-to-day administrative leader of the Board." I'm not sure what that means, and what is the administrative leader of the Board, and what does that entitle the Chair to do that a Regent is not entitled to do?

FRANCIE FREDERICK: This is in the Rules at the suggestion of staff because we felt that we needed some clarification. If we are given an instruction by the Chairman or if we are given an instruction that differs from another Regent, what controls? You have all heard

my mantra for years has been the Chairman is the first among equals, and unless the Chairman is asking something be done that's either illegal or immoral, and luckily I have not had that happen, it's the Chairman's guidance that controls. So again, this is at the suggestion of the staff that on day-to-day advice, day-to-day procedures for running the Board, and where the Board touches the operations of the System, that we take our guidance from the Chairman.

ROBERT STILLWELL: I think that is precisely consistent with the way corporate America runs corporate boards as well and what I would have assumed, even without this provision applied here, but I think it's certainly appropriate to spell it out.

WALLACE HALL: Francie, I just want to make sure I understand. If I as a Regent come to you, and this has happened, with a request, and I follow the procedures and the policies of the Regents' Rules, and it's all teed up, and the Chairman doesn't want you to do that, even though it's provided for in the Regents' Rules, he can and has precluded you from giving me data. Under the new scenario, I provide you something in writing, I've got this other Regent who wants me to get it. But what you are telling me is that the Chair has a special privilege to supersede the Rules, and I'm not sure I think that is a good idea. I don't think that's a good idea.

FRANCIE FREDERICK: No sir. I don't agree. I don't think this gives the Chair the ability to supersede a procedure that is spelled out in the Rules.

GENE POWELL: So Francie, the scenario that Wallace brought up though, currently, I guess I have done this. I guess Paul and all Chairmen have done it. Currently, if a Regent comes to you with a request or wants something done, the Chairman can pretty much, effectively, shut that down if he wants to. However, under the new Rules that we are passing or going to consider today, let's say Alex wanted something, the Chairman said no, Alex goes through the process, comes to another Regent, say he comes to me and gets me to sign off on it. Then within a reasonable amount of time, you have got to provide him that information. So actually the one additional Regents' Rule takes power away from the Chair.

FRANCIE FREDERICK: Correct. Let me make sure though because I think there may be a misperception about how the one plus one rule would work. It wouldn't be just gathering your supporter in the absence of a Board meeting. The way it is written right now, if there is an unresolved concern about an information request, it will come to the Board for discussion, then at that time if you can show your one plus one support, the request will be filled.

ROBERT STILLWELL: That's an important distinction set out in this process.

GENE POWELL: So, but still then the only thing that I missed that I said, you got to go to the Board, but still if you go to the Board and it's one plus one, you should be able to get what you want.

FRANCIE FREDERICK: Absolutely.

ROBERT STILLWELL: Correct.

PAUL FOSTER: I think that's right.

GENE POWELL: The only thing I would say there, I can see how if you needed something urgently, you could wait two months before there was a Board meeting. I think you ought to have a provision where, you know, within a certain or reasonable period of time you at least got to call a telephonic Board meeting so that the Regent could continue to move forward if he or she wants to.

STEVE HICKS: Francie, wouldn't it be correct to just apply this to information requests? If I told you that I think our Board meetings should start at 10 a.m. and the Chairman says we should start at 10:30, the answer would be 10:30.

FRANCIE FREDERICK: Yes sir.

BRENDA PEJOVICH: I do agree with Vice Chairman Powell. In 5.4.5 it says the matter would be presented to the Board as quickly as possible. "As quickly as possible" is vague. If we could define that a little better, I would certainly be in favor of it.

WALLACE HALL: To the extent that some of us ask a lot of questions and some of us ask no questions for data, I see this as a real imposition and it really does by introducing long time lags, it serves a purpose for denying a member their ability to get data. That's just what it does.

PAUL FOSTER: Well that's clearly not the intent.

GENE POWELL: Well Paul, if that's not the intent, one of the things that we do is we clarify what "quickly" means on when you can have a Board meeting. If you are in the process and want to move forward, we ought to have a Board meeting within however many hours or however many days that you think is appropriate so that you can move the process forward. If there is no intent to draw this out and keep Regents from getting the information, well then let's give them a timeline as to how quickly we will provide a Board meeting so that they can move forward.

WALLACE HALL: Or I would suggest that if I want to make data requests, then I will just make my data request on the front end with having another Regent support it, and wouldn't that just short circuit this entire issue?

PAUL FOSTER: No.

ALEX CRANBERG: Well, Wallace, I think I am sympathetic with Regent Stillwell's point that it's helpful to the entire Board to hear about an issue about which there is a difference in opinion. I think sometimes, for example; some of yours and some of my requests, or other Regents' requests, would have been better understood if everyone were there to know about them. So I think the idea as I understand it, there would be a Board meeting as quickly as possible, certainly the laws of physics provide the possibility very quickly ... is

quite prompt. I think that probably is intended and should be intended that in the unlikely event that there is a difference of opinion about the advisability of obtaining some data, we all get to hear about it.

STEVE HICKS: Including the public is another aspect that we are looking for.

ALEX CRANBERG: Absolutely, I think this would clearly be of interest to the public and should be of interest to the public.

BRENDA PEJOVICH: Agreed.

PAUL FOSTER: If a Chairman were to use this Rule in order to deliberately delay, then shame on that Chairman as far as I'm concerned. I don't know that you can write these Rules to where they are absolute. I don't know how much detail you can get into. Obviously, as quickly as possible, if there is some other wording that can be put in there, especially coming into the summer where we don't have many Board meetings. There can be a long time before a next scheduled Board meeting, although it seems we have them pretty often either telephonic or in person. But, you know, maybe Francie, if there isn't a Board meeting scheduled within x, maybe it's 20 days or 30 days, then we will call, if the Regent requests it; if it's that urgent, we would call a special called telephonic Board meeting to do it.

FRANCIE FREDERICK: Absolutely, and in fact I really contemplated that at the point I was told there is need for a Board meeting, that I would start working to schedule one very quickly thereafter; again, telephonic or adding it on to something else.

GENE POWELL: Paul once again, you know under the current Chair and possibly with the current Board of Regents, this may not be a problem, but we are now setting precedents and rules that will live long beyond us and if a different regime comes in; a different Board Chairman wants to control things, it would be pretty hard to get into an argument over what the definition of "quickly" is and it might be a month. He might say that's as quick as I can get it done, I was out of the U.S. or this, that, or the other. So I just think it would be helpful if we more clearly defined "quickly." That's all I'm asking that we do. As soon as the General Counsel can schedule a Board meeting either telephonic or in person would be okay.

STEVE HICKS: And no later than 21 days.

GENE POWELL: Perfect. Yeah, something like that.

ROBERT STILLWELL: That would be fine with me.

GENE POWELL: Well as quickly as possible, but no later than 21 days.

PAUL FOSTER: Right, in no event later than 21 days.

BRENDA PEJOVICH: I like that.

ERNEST ALISEDA: Are we going to cap the 21 days from the time of the original request or 21 days after the 5 business days? I want to get that clear. Is it from the original request?

GENE POWELL: I would say it is from the original written request.

PAUL FOSTER: I think it should be.

Alright, others?

STEVE HICKS: Once again, move to approve the motion that's on the floor.

PAUL FOSTER: Alright, and as modified.

STEVE HICKS: As modified.

PAUL FOSTER: We have good notes, and it's recorded so we can go back through and make sure we don't miss anything, and we will make sure that all these are documented as agreed.

ROBERT STILLWELL: I second.

PAUL FOSTER: All in favor? (aye) Any opposed?? Alright, that passes, and I appreciate the cooperation and collegial nature of the discussion.

That concludes the meeting of the Board and we are adjourned.