



June 12, 2008

Chancellor Mark Rosenberg
Florida Board of Governors
325 West Gaines Street, Suite 1614
Tallahassee, FL 32299-0400

Dear Mark:

I am concerned about the proposed regulation on the powers and duties of the university boards of trustees (BOT). The regulation has far reaching impacts and requires more than two weeks to fully understand the ramifications of the proposed changes. I have listed several points related to the proposed regulation for your consideration:

Points on the Regulation

- ❖ The purpose of the regulation should be aimed at clarifying the relationship between the Boards.
- ❖ The clarification should not merely be concerned with regulation, control and accountability but also facilitate the efficient operation of the universities, encourage their involvement in the economy of the state, promote their performance, and provide the Boards of Trustees with meaningful roles in order to encourage the on-going active participation of the best possible individuals in the affairs of our universities.
- ❖ The first order of business is to clarify the relationship of the Board of Trustees to the policy prescriptions of both the Board of Governors' (BOG) and state law. BOG direction should not complicate this further. If this process entails court action, then that action should occur before further directions are given.

If the BOG decides none-the-less to proceed, several considerations are of note.

Major Points in the side-by-side comparison

- 1) The regulation results in loss of flexibility vis-à-vis the 2003 BOG delegation resulting in increased inefficiencies and additional logistical challenges for the universities.
 - a) With power being vested with the Board of Governors, it is doubtful if the universities can be free enough to pursue expanded opportunities without waiting for review and approval of the Board of Governors.
 - b) The regulation removes local control and decision making in several areas and moves the authority to the state level. The well functioning university board of trustees will lose the needed autonomy to pursue the unique missions of the university.

- c) Examples of previously delegated authorities:
 - i. Approval for all degree programs except PhD.
 - ii. Fee authority for all levels except in-state undergraduate
 - iii. Approval of campus master plan
 - iv. Approval of the campus development plan
 - v. Authorized rent or lease of parking facilities

- 2) The regulation results in diminished flexibility vis-à-vis community college boards and those of the new 4 year colleges that results in inconsistencies across the higher educational delivery systems and inefficient operating distinctions among the systems.
 - a) Community college boards shall appoint, suspend, or remove the president and appoint the search committee.
 - b) Community college boards conduct annual evaluations of presidents.
 - c) Community college boards establish fees pursuant to law.
 - d) Community college boards have responsibility for the establishment and discontinuance of program and course offerings.

- 3) The regulation creates circumstances in which the state law calls for actions by the university following delegation by the BOG in which there is no delegation, resulting in confusion and increased risk of liabilities for the universities.
 - a) State law requires the BOG to delegate authority to BOT to adopt written anti-hazing policies.
 - b) State law requires the BOG to delegate authority to BOT to establish a uniform code of conduct.
 - c) State law requires the BOG to delegate authority to BOT to develop guidelines and procedures related to data and technology.
 - d) State law requires the BOG to delegate authority to the BOT to secure appraisals and surveys.
 - e) State law requires the BOG to delegate authority to the BOT to negotiate and enter into an option contract before an appraisal is obtained.
 - f) State law requires the BOG to delegate authority to the BOT to administer a program for the maintenance and construction of facilities.

- 4) The regulation creates circumstances in which state law may be inconsistent or at odds with the regulation proposed by the BOG, resulting in confusion and inefficiencies in university operations.
 - a) Deeds, mortgages, leases, and other contracts of the university board of trustees relating to real property may be executed by the university board of trustees except those for more than 10 years shall be approved by resolution of the Board of Governors pursuant to Florida Statutes. New regulation 7(f) does not include the 10 year language.
 - b) State law requires each BOT to establish tuition in fees pursuant to ss. 1009.24 and 1009.26. The BOG regulation allows BOTs to establish fees pursuant to regulations of the BOG.

- c) State law requires BOTs to adopt rules pursuant to chapter 120 when acting pursuant to statutory authority derived from the Legislature, the BOG regulation authorizes pursuant to the BOG regulation development procedure.
 - d) State law allows each BOT to establish direct support organizations (DSO). DSOs are independent, not-for-profit corporations and currently have title to property. The new regulation requires property to be titled in the name of the BOT on behalf of the State University System.
- 5) The regulation creates circumstances that may cause difficulties that may redound to the detriment of both the universities and the BOG.
- a. Requirements that may conflict with requirements of the Southern Association of Colleges and Schools Standards (SACS).
 - b. Currently, presidential candidates are not made public until selection has been narrowed to ensure privacy of the candidates and a more competitive application pool. New regulation may lengthen the time before president can be named and thus work to diminish the pool of talented applicants willing to be exposed to sunshine scrutiny.
 - c. New regulation creates an unfortunate overlap of responsibility that provides for no win situation for both new presidents and the Boards. Suppose the two BOG members on the selection committee voted for candidate A and swing a close vote. Candidate A is ratified by the BOG. Candidate B was the actual preferred candidate of the BOT members on the selection committee. Candidate A may be placed in a difficult position of being the president with insufficient support of the university BOT. Or suppose the BOG members on the selection committee vote against the candidate forwarded for ratification. The BOG may be in a position of selecting a president that two members voted against and would leave the president in the position of working with members that voted against him or put the BOG in the position of not ratifying the candidate and requiring a new selection process.

Your support is appreciated in working together with the universities to develop the regulations to support the needs of the universities, the State, the university boards as well as the Board of Governors is appreciated.

Sincerely,



T.K. Wetherell
President

Attachment