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Governance: Roles and Responsibilities

Board of Governors
Councils of Trustees
Presidents
Chancellor

As Reviewed with Councils of Trustees, Academic Year 2015/16



Topics

State System: *Act 188 of 1982*

Roles and Responsibilities

Pennsylvania Sunshine Law

Right-to-Know Law

Gift Ban Executive Order



Governing Roles and Responsibilities:

Act 188 of 1982

<http://www.passhe.edu/inside/bog/Pages/Act-188.aspx>



System's Founding Legislation

Act 188 of 1982

Identifies Governance Bodies

- Board of Governors 
 - Councils of Trustees 
 - Presidents 
 - Chancellor 
- Most appointed by Governor with Senate confirmation
(Senate does not confirm student trustees)
- Appointed by Board of Governors

Outlines Roles and Responsibilities of Each Governance Body

Highlights of Statutory Authority

As Specified in Act 188

	Board	Chancellor	Trustees	Presidents
Presidential Appointment & <u>Evaluation</u>	Employs/ evaluates presidents and chancellor	Assists in appointment; establishes professional development plan; assesses performance	Recommend president; establishes professional development plan; evaluate president	
<u>Academic Programs</u>	Sets policies/ Criteria governing all new academic programs; approves new degree programs	Administers academic policies/ criteria governing new academic programs	Approve new academic degree programs to move forward to Board for final approval (<i>associate degree or higher</i>); approve/ notified of other academic program changes	Approve curriculum consistent with law and collective bargaining agreements; recommend to chancellor and trustees per Board policies/ criteria

Highlights of Statutory Authority *(cont'd)*

	Board	Chancellor	Trustees	Presidents
<u>Procurement Contracts</u>		Administers System-wide business procedures	Review and approve negotiated/awarded contracts/purchases	Negotiate and award contracts and purchases
<u>Budget—Operating and Capital</u>	Approves budget request; sets tuition; allocates state funding	Recommends the System's overall budget	Review and approve president's recommended budget; set fees	Prepare/manage capital and operating budget requirements; set activity fee
<u>Collective Bargaining</u>	Enters into agreements	Negotiates contracts		Administer contracts; employ personnel
<u>Policies</u>	Sets policy	Develops policy and ensures compliance; Board studies; etc.	Approve university standards and certain policies	Set standards/policies for students, instruction, research, service, etc.
<u>Relationships with Affiliates</u>	Sets policy	Establishes procedures and standards	Annually certify compliance of all affiliates; annually review affiliates' benefit to university	Enter into agreements; delineate between affiliate and university; joint fundraising



Governing Roles and Responsibilities: Presidential Evaluation

Act 188 of 1982

Presidential Evaluation Roles

Council of Trustees is to evaluate the president in accordance with procedures established by the **Board**.

Council of Trustees then forwards the results of the evaluation with a recommendation to the **chancellor** for submission to the **Board**.



Presidential Evaluation Roles

Two Types of Presidential Evaluations

1. Annual
2. Triennial

Board Policy 2002-03-A: *Evaluating Presidents* *(Amendments effective July 1, 2015)*

The University Council of Trustees Evaluation Committee—Each year, the chair of the Council of Trustees will appoint a committee of at least three members for the purpose of administering the Council of Trustees evaluation procedures described in this policy and *Act 188 of 1982*.



Presidential Evaluations:

Professional and Leadership Development

- Annually, the chancellor and the Council of Trustees' chair will develop a professional development plan with the president.
- Each president will meet with the chancellor, the Council of Trustees' chair, and the chair of the evaluation committee to plan for the upcoming performance year and review the results of the current year's performance evaluation.



Annual Presidential Evaluation:

Evaluation Committee Tasks

In consultation with the Council of Trustees, the committee will complete the following tasks:

- An assessment of the president's performance of the defined duties and responsibilities.
- An assessment of the achievement of goals and objectives that were agreed upon by the chancellor, the Council of Trustees' chair, and the president at the beginning of the evaluation period.
- A review of university performance results provided by the chancellor.



Annual Presidential Evaluation: *Evaluation Results*

- Constituency interviews are not part of the annual evaluation; however, it is expected that the trustees' ongoing engagement of university constituencies in matters of importance to the university will inform the evaluation process.
- The results of this evaluation are submitted to the Board of Governors, with the chancellor's assessment, for review and action by the Board.
- At the conclusion of the process, the president shall receive the annual evaluation in writing from the chancellor and Council of Trustees' chair.
- The chair of the evaluation committee, after sharing the results of the review with the president, will communicate the results to trustees and subsequently to constituencies via an executive summary posted on the university's website.



Triennial Presidential Evaluation

- The goal is to ensure that continuing and substantial progress toward the achievement of goals is made each year, along with systematic input from constituencies.
- This evaluation is conducted every third year by the university Council of Trustees.
 - Led by a committee similar to the annual evaluation committee.
 - The chancellor, in consultation with the president and Council of Trustees' chair, identifies a consultant with expertise in presidential and university leadership to assist the committee.
 - The evaluation includes formal, systematic input from university constituencies.



Presidential Evaluations:

Evaluation Report for Board Review

A complete evaluation report will include:

- Annual university performance results.
- Chancellor's assessment of the president's performance.
- Council of Trustees' evaluation committee report of the president's performance.
- President's self-evaluation.

The Board of Governors will review the completed evaluations of presidents in making its decisions regarding the extension of presidents' employment agreements and determining compensation.



Governing Roles and Responsibilities: Academic Programs

Act 188 of 1982



Academic Programs: Presidents

- Approve curriculum recommendations consistent with laws and faculty collective bargaining agreements.
- Recommend new academic programs to the chancellor (associate degree or higher).
- Recommend Trustees approve moving new academic programs to the Board for final approval (associate degree or higher).



Academic Programs: Presidents

- Recommend the following to the chancellor for approval (does not need Board approval):
 - Significant reorganization of existing approved degree programs (associate degree or higher).
 - Reactivation of a degree that has been placed into moratorium or discontinued.

- Recommend the above to Trustees for final approval.

Academic Programs: Presidents

- Provide notification of the following to the chancellor (does not need Board approval):
 - New concentration, track, specialization, or emphasis.
 - New academic minor.
 - New certificates.
 - Conversion of any existing degree programs, minors, tracks, certificates, etc., to online modality.
 - Degree programs, minors, certificates, tracks, concentrations, etc., that are placed into moratorium or discontinued.
- It is a local decision if the above needs Trustees' approval or notification.



Academic Programs: Trustees

- Approve new academic programs to move forward to the Board for approval (associate degree or higher).
- Approve the following after the chancellor's approval:
 - Significant reorganization of existing approved degree program (associate degree or higher).
 - Reactivation of a degree that has been placed into moratorium or discontinued.



Academic Programs: Trustees

- Approve or are notified of (local decision) the following:
 - New concentration, track, specialization, or emphasis.
 - New academic minor.
 - New certificates.
 - Conversion of any existing degree programs, minors, tracks, certificates, etc., to online modality.
 - Degree programs, minors, certificates, tracks, concentrations, etc., that are placed into moratorium or discontinued.



Academic Programs: Chancellor

- Administers academic/policies governing all new academic programs.
- Recommends new academic programs to the Board for approval (associate degree or higher).
- Approves significant reorganization of existing approved degree programs and the reactivation of a degree that has been placed into moratorium or discontinued.



Academic Programs: Chancellor

- Maintains an official inventory of all academic programs (degrees, minors, certificates, concentrations, etc.). Inventory includes:
 - Status for each program—active, moratorium, discontinued.
 - Modality for each program—face-to-face; online; ITV.



Academic Programs: Board

- Sets policies and criteria governing all new academic programs to include:
 - Board Policy 1985-01-A: *Requirements for Initiation or Change of Credit-Based Academic Programs.*
 - Board Policy 1990-06-A: *Academic Degrees.*
 - Board Policy 1993-01: *General Education at State System of Higher Education Universities.*
- Approves new academic programs in accordance with the above (associate degree or higher).



Governing Roles and Responsibilities: Contracting/Purchasing

Act 188 of 1982

Contracting/Purchasing Roles

Presidents

Negotiate and award all contracts currently >\$19,400 on a competitive basis. This amount is adjusted annually by the PA Dept. of Labor & Industry.

Council of Trustees

Review and approve all contracts and purchases negotiated or awarded by the president with or without competitive bidding and all contracts for consultative services entered into by the president.



Contracting/Purchasing Opinion

“It is my opinion that the Powers and Duties of Councils of Trustees set forth in Section 20-2009-A of Act 188 includes, at subsection (9), the review and approval of contracts entered into by the president or other designated university personnel **after the contracts have been signed**, not before. This subsection uses the past tense with respect to identifying contracts ‘negotiated or awarded’ that are subject to review and approval. **This responsibility is clearly designed to assure that trustees are advised of contracts for informational purposes.** It does not, however, authorize trustees to be directly involved in the contracting process itself. Such involvement would be contrary to BOG Policy 1998-04-A, the Commonwealth Procurement Code, and the Commonwealth Attorneys Act, all of which collectively identify **agency executives as having contracting authority** and provides for approval of contacts by the Office of General Counsel and the Office of the Attorney General.”



Contracting/Purchasing Delegation

“It has also been the practice of most Councils of Trustees to review only those Service Purchase Contracts in excess of \$5,000. I believe this to be an appropriate limit considering the size of university budgets and believe that such a review satisfies any fiduciary obligations of the trustees.”

Chief Counsel, 2006

Councils of Trustees may delegate the review of contracts/purchases below a certain threshold to the president or designee.

- Current thresholds used: \$0; \$5,000; \$10,000; \$20,000.
- Delegation should be renewed periodically.



Contracting/Purchasing: *System-Wide Shared Services and Contracts*

**Shared Services—The chancellor shall be responsible for the administration of...
System-wide business procedures.**

This is the authority by which the universities share cost-effective services, including employee payroll and benefits management, information systems, legal services, and construction support.

System-Wide Contracts—As the “agency executive,” the chancellor has contracting authority to enter into System-wide contracts.



Contracting/Purchasing: *Regional Shared Services and Contracts*

Presidents are responsible for the “effective management” of the university.

This may result in some universities working together to provide certain functions collectively, rather than individually, to reduce cost and/or increase services.

To do so, the presidents (or designees) would establish a Letter of Understanding, which is not a “contract.”



Governing Roles and Responsibilities: Operating and Capital Budgets

Act 188 of 1982



Budget Roles

Operating and Capital Budgets

Chancellor—Recommends the System's budget to the Board.

President—Prepares and, after review and action by the council, submits to the chancellor the annual operating and capital budget requirements of the university. Manages the university within the limitations of the operating budget and other available funds.

Council of Trustees—Reviews and approves the recommendations of the president pertaining to annual operating and capital budget requirements.

Board of Governors—Coordinates, reviews, amends, and approves the annual capital budget requirements of the System, operating budgets of the individual universities, and the operating budget of the chancellor and the Board.



Facilities Management

Chancellor and President—Execute and administer contracts for construction, repair, renovation, and maintenance projects.

Council of Trustees—Conducts an annual physical inspection of facilities and makes recommendations regarding maintenance and construction to the Board.

- Inspection should at least include a tour of a sampling of university facilities.

Board of Governors—Recommends approval or disapproval to the Secretary of the Budget of all System building projects that are not within the contracting authority of the System, allocates capital funding, and authorizes bond financing.



Pricing Roles

President—Sets student **activity fees** in cooperation with the student association.

Council of Trustees—Reviews and approves charges for room and board and other fees.

- Excludes privatized housing fees.

Board of Governors—Sets the levels of **tuition fees** (includes the technology tuition fee).

Through Board policy, authority has been delegated to the Councils of Trustees to set an instructional fee within certain limitations. The Board also approves exceptions to tuition and the instructional fee, in compliance with Board policy.



Governing Roles and Responsibilities: Collective Bargaining

Act 188 of 1982

Collective Bargaining Roles

There is no statutory role of the **Councils of Trustees** in relation to collective bargaining.

Per Act 188, “the **Chancellor** shall negotiate or cause to be negotiated on behalf of the **Board** and subject to its final approval” collective bargaining agreements.

Additionally, the **Board** shall coalition bargain with the Commonwealth (e.g., AFSCME).



Governing Roles and Responsibilities: Policies and Standards

Act 188 of 1982



Policy Roles

Board of Governors

To establish broad fiscal, personnel, and educational policies under which the universities operate.

Chancellor

- Is responsible for the administration of the System under policies prescribed by the Board.
- Advises on the formulation of policies.
- Sees that the Board's policies are carried out.
- Supervises the Board's studies.



Policy Roles

President

- Develops and implements policies and procedures for the administration of the institution.
- Develops standards for instructional, research, and public service programs and academic standards.
- Ensures compliance with Board policies.

Council of Trustees

Reviews and approves the recommendations of the president pertaining to:

- Policies and procedures governing use of facilities/property.
- Standards regarding student admission, discipline, and expulsion.

Consults with the president on other policies.



Governing Roles and Responsibilities: Relationships with Affiliates

Act 188 of 1982



Board of Governors' Policy 1985-04-A: *University External Financial Support*

Universities may affiliate with private organizations that exist solely for the benefit of the university.

Types of Affiliates

Foundations

Alumni
Associations

Student
Associations

Research and
Economic
Development

Other



Affiliated Entity *(policy definition)*

A private organization, typically classified as a 501(c)(3) nonprofit organization for federal tax purposes, that exists solely for the benefit of the university and:

1. Is recognized as an affiliate through a resolution of the **council of trustees** certifying compliance with Board Policy 1985-04-A;
2. Makes financial contributions to the university or provides similar benefits on a regular basis, satisfactory to the president and council of trustees; and
3. Provides an annual external audit report to the university on a timely basis.



Board of Governors' Policy 1985-04-A: *University External Financial Support*

- Council of Trustees must annually certify compliance of affiliates with Board policy, including their benefit to the university.
- Presidents must enter into memoranda of understanding with affiliates.
- Presidents may enter into fiduciary agreements with qualified affiliated entities to administer university gifts and grants and/or manage the investment of certain limited long-term funds.



Excerpts from HEMA*

Section 503: Authorized Transactions

General Rule—System employees or officers may voluntarily provide services to an affiliated entity as an ex officio, nonvoting member of the board of such affiliated entity as part of the mission of the System or a state-owned university.

Joint Fundraising—The System and its universities may coordinate and jointly engage in fundraising activities with an affiliated entity in order to raise moneys for the affiliated entity as long as the moneys are used to directly inure to the benefit of the System or state-owned university.

Commission of Presidents

“The commission shall recommend policies for the institutions and shall act in an advisory capacity to the chancellor and the governors.”

Section 20-2007-A

Remaining Topics

Pennsylvania Sunshine Law

Right-to-Know Law

Gift Ban Executive Order



Pennsylvania Sunshine Law: Open Government



What Does the Law Require?

- **All** deliberation and official action of the Board and councils take place at a public meeting.
- Regular and special meetings are advertised in a newspaper of general circulation.
 - Exception is made for emergency meetings.
- Time allotted at meetings for public comment.
- Public and recorded voting.
 - Whenever more than one member participates by telephone, a roll call vote must be taken.
- Minutes must be kept of public meetings.
- Provisions for executive sessions.



What is Official Action?

- Recommendations made pursuant to statute, ordinance, or executive order.
- Establishment of policy.
- Business decisions made by a governing body.
- Vote taken by a governing body on any motion, proposal, resolution, rule, regulation, ordinance, report, or order.

What is Deliberation?

- The discussion of agency business held for the purpose of making a decision.

What Constitutes a Meeting?

- Any prearranged gathering of the Board or councils that is attended or participated in by a **quorum**.
- Held for the purpose of **deliberating agency business** or taking **official action**.
- **No quorum—No requirement to meet publicly.**
- Participation by speaker phone permitted unless precluded by by-laws or policy.



Executive Session

May be held to review and discuss any of the following matters:

- **Employment** of public officers or employees.
- Collective bargaining, **labor relations**, or arbitration.
- The purchase or lease of **real property**.
- **Litigation** (current or potential).
- **Academic admissions or standings**.
- Business such as **investigations** and **quasi-judicial deliberations** for which disclosure of information is protected by law.
- Other matters protected by a **legal privilege** (e.g., legal advice).



Violations

- If a meeting does not meet the requirements of the Sunshine Law, a court may invalidate any business transacted.
- Violations are subject to fines plus costs of prosecution.
- Willful or wanton disregard of the law may result in an award of **attorney fees and costs**.
- A frivolous challenge may result in the award of **attorney fees and costs of litigation**.



Pennsylvania's Right-to-Know Law



What the Law Does

- Increases transparency in government.
- Broadly defines what is a public record.
- Places burden of proof on the university.
 - Presumption is that the record is public.
- Limits the time to respond (typically 5 days).
- Removes local appeal.
- Created Open Records Office.

Public Record/Burden of Proof

Records—Information, regardless of physical form or characteristics, that documents a transaction or activity **and** that is created, received, or retained pursuant to law **or** in connection with a transaction, business, or activity of the System.

General Rule—A **record** in the possession of the System or a university **shall be presumed** to be a public record, unless:

- It is exempt from disclosure pursuant to 30 exceptions.
- It is protected by a privilege.
- It is exempt from disclosure under any other federal or state law or regulation or judicial order or decree.



What Leaders Need to Know

All communication to/from university administrators may be subject to disclosure.

- Emails about System/university business are likely public records.

Communications between Board/Council members related to System/university business may be subject to disclosure.

This includes letters, email, and anything that meets the definition of a record.

Practical Tips

- Act in good faith—The presumption is that now every record is accessible.
- Use common sense.
- Treat each email communication that you author as if it will be publicly disclosed.
- Call University Legal Counsel with questions.



Executive Order 2015-01

Executive Branch Employee Gift Ban

*Applies to Employees, Appointees,
or Officials of the Executive Branch*



Text of the Ban

No employee, appointee or official in the Executive Branch of the Commonwealth may solicit or accept for the personal use of the employee or another, a gift, gratuity, favor, entertainment, hospitality, loan or any other thing of monetary value, including in-kind gifts, from a person who:

- 1) Is seeking to obtain business from or has financial relations with the Commonwealth.
- 2) Conducts operations or activities that are regulated by the Commonwealth.
- 3) Is engaged, either as principal or attorney, in proceedings before the Commonwealth or in court proceedings in which the Commonwealth is an adverse party.
- 4) Has interests that may be substantially affected by the performance or nonperformance of the official duty of the employee.



Who is an Executive Branch Employee, Appointee, or Official?

For the purposes of this Executive Order, the following State System officials or employees are subject to the gift ban:

- Members of Councils of Trustees.
- Members of the Board of Governors who are appointed by the Governor.
- University Legal Counsel and the Chief Counsel.

How does the Gift Ban apply to Trustees or Board Members?

- The “Gift Ban,” like the rest of the Code of Conduct provisions, applies to activities within the scope of the appointment.
- Therefore, when you are not acting as a Trustee or Board Member, **the Gift Ban does not apply.**



How does this change activities within the scope of the appointment?

- Prior to the “Gift Ban,” the Governor’s Code of Conduct permitted *de minimis* exceptions found in Executive Order 1980-18, Part I, Section 3.
- However, now there are no monetary value exceptions to the Gift Ban.



The Gift Ban has Three Exceptions:

1. The solicitation/acceptance of something of monetary value from a friend, parent, spouse, child or other close relative **under circumstances which make it clear that the gift is motivated by that relationship rather than the official position.**
2. The acceptance of loans from banks or other financial institutions on customary terms of finance for proper and usual activities, such as home mortgage loans.
3. Participation in widely attended gatherings free of charge when officials have been invited and are acting in furtherance of their official duties, **but no food or drink can be accepted without payment at market value.**



Appointees May Not Accept:

- Food and refreshment (even of nominal value).
- Unsolicited advertising or promotional material.
- Reimbursement of expenses for travel by a non-Commonwealth entity.
- An award for a meritorious public contribution.
- A voluntary gift of nominal value (mugs, T-shirts, trinkets, etc.).
- A plaque, memento, or gift of nominal value, etc.



May the University:

- Provide a meal or other food of which the trustee may partake?

Yes

- Pay for, or reimburse, the trustee for official travel?

Yes

- Provide a trustee an award or item (T-shirt, coffee mug, etc.) of monetary value?

Yes



May the Foundation:

- Provide food, drink, or otherwise pay for a function at which trustees/governors may participate?

Yes

May University Vendors do the Same?

- No.
- Trustees/governors may not:
 - Accept food or drink provided by vendors to the university.
 - Partake in any food or drink provided by, or paid for by, any current or potential vendor of the **Commonwealth**, not just the State System.



Other than the University or Foundation, can someone still buy you lunch?

- Yes, as long as you are not acting within the scope of your duties as a trustee/governor.
- **Which “hat” are you wearing?**

When in doubt...

- Ask the Office of Chief Counsel.
- Say, “No thank you.”
- Pay for the item/meal out of your personal funds.
 - May submit for reimbursement for appropriate and reimbursable expenditures



Pennsylvania's
STATE SYSTEM
of Higher Education

14 universities.
Infinite opportunities.