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March 6, 2020

Dear Chancellor Greenstein,

Earlier this week the PACT Executive Board and the Council of Trustee Chairs met to discuss the pending legislation that would profoundly impact the organizational structure of the PASSHE system for the first time in 37 years. This meeting was a culmination of a series of meetings and conference calls that the individual Councils of Trustees held to discuss the legislation locally. As a demonstration of the importance of this meeting, all fourteen sister institutions were in attendance to formulate this joint response.

The group utilized the attached list of 18 key points to structure their discussion of Representative Sonney's HB 2171, Representative Topper's HB 2172, and Representative Schroeder's HB 2173. In order to make this a consensus response, the group agreed that unless there were at least four dissenting universities, this response would only include the majority opinion.

Although we certainly had a healthy discussion on many of the items, you will see that there are no cases where there is a minority opinion expressed in this report. Again, that is not to imply that there was unanimous agreement on all items, simply that the vast majority of universities shared the views which follow.

HB 2172 (key points 8 – 14) and HB 2173 (15 – 18) were addressed very quickly. There were no significant concerns about any of these points with only a couple minor points raised by single individuals or clarifications asked by a single university. If you like, I can share those specifics with you or Cody at a later date.

Of the seven key points in HB 2171, the trustees did not have any significant issues with #2, #3, or #7. However, issues #1, #4, #5, and #6 consumed the majority of our two-hour discussion time. Some of the concerns overlapped and stemmed from similar reservations about the process.

Item # 1 – Section 2002-A (Establishment of System) - *empower the Board to expand, create, etc.; provides for a framework around which a change may occur*

– Allows the system to add / consolidate / close universities without legislative approval.

The committee as a whole was strongly opposed to this language. A reoccurring theme in the discussion concerning this item was that trustees felt strongly that the ability to close an institution should rest with the legislature. As the legislature is elected by the people

and is responsible to the people, it should have the responsibility to take these types of actions. They felt that the Board of Governors would not be as accountable to the voters as the elected legislators. This concern about the consolidation of power within the Board of Governors and subsequently the Chancellor, permeated the discussion on the other items.

Item # 4 – Section 2006-A (Powers and duties of the Board) - grant plenary powers to the Board (enforce board policies, require institutions to share services) – BOG can approve (formerly create) new programs, expand, close institutions or colleges, require universities to participate in shared services and collaborations and appoint student trustees.

While the “close institutions or colleges” was the real red flag of this item, the consolidation of power in the BOG was an underlying factor in this discussion. There was discussion on how some of the language might be softened, i.e. “provide opportunities to participate in shared services as opposed to require participation.” The group also objected to the portion of this section which authorizes the Board to appoint student trustees since that is in conflict with Section 2008 that give the Council of Trustees that authority.

Item # 5 – Section 2008-A (Council of Trustees) - Provides qualifications of trustees, shorten the term length, and change the nomination and appointment process for student trustees.

The group disagreed with the “qualifications” section as being too exclusionary. It has the appearance of wanting to do something about qualifications but not really knowing what to do. Several examples of excluded vocations were mentioned. While the attempt to find “better” trustees is welcome, it is likely that this goal can be accomplished through process rather than creating an arbitrary list of acceptable functions.

The group also disagreed with the idea of limiting the terms to four years. The predominant argument in favor of maintaining a six-year term is the time in service for successful leadership and to promote leadership succession. Curtailing years of service will diminish organizational and hierarchal knowledge necessary to augment the mission of the university.

However, there was universal support for having the student trustee selected and approved at the local level since this will enable students to become active faster.

Although not listed under the impacts of Item #5, this section also gives the Board of Governors the ability to remove trustees for cause. This group objected to the Board having the ability to

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remove an individual that was appointed by the Governor and confirmed by the Senate. They specifically noted that Act 188 and Trustee Accountability Documents addresses the issue of an underserving trustee.

Item # 6 – Section 2009-A (Powers and Duties of Council of Trustees) – Clarifies powers and duties of councils related to appointment, retention, and dismissal of presidents; policies and procedures governing the use of institutional facilities and property; tuition and fees; and contracts and purchases. Trustees will provide input rather than approval to the president pertaining to policies and procedures governing the use of institutional facilities, COT will approve tuition and all fees except for student activity fees and contracted health service fees, COTs will no longer approve contracts and purchases after the fact, COT will no longer be required to make a physical inspection of the university.

During the meeting there was discussion about what “approving tuition” really meant. There was some concern that it meant that this was a way to push the problem of how to make up for shrinking appropriations down to the trustee level. However, I was able to confirm after the meeting that this is simply clarifying that the trustees must approve any tuition increase proposals that are different than the standard system-wide proposal. The Board of Governors will still maintain the final approval of tuition levels. Because of that clarification, this tuition section should no longer be controversial.

The elimination of the contract and purchase order approval and the elimination of the physical inspection tour were not opposed although a number of COTs will likely continue to review those purchase and will continue the tours, despite them not being a requirement.

In summary, there were really only three of eighteen points that created significant objections. However, I do not believe that the importance of those three concerns can be underestimated as they are at the core of what I believe Systemness means. But the concept of the Board of Governors, and the Chancellor by extension, holding “life and death” power of our institutions and being able to dictate their operations is objectionable to the majority of the trustees.

How did we get to this point?

There was a lot of discussion over the level of trustee involvement in the development of this legislation. With 154 trustees, there are probably 154 different ideas on what the appropriate amount of involvement should have been. The consensus seemed to be not enough. Trustees

felt through comments on process that being more inclusive demonstrates good faith in composition of legislation and lack thereof breeds distrust.

Did trustees really understand that Cody's presentations at the fall PACT meeting were precursors to this legislation and that we should have had these kinds of discussions at that time? Apparently not. And that was my failure as PACT president to ensure that these discussions were initiated last fall.

At this point, I don't believe that the trustees are saying to give up on Systemness. But I do think the majority are asking to rethink Systemness and how can we become a stronger system without surrendering much of our autonomy.

Please let me know what I can do to help.

JEFF