

Building Public Governing Board Capacity: Suggestions and Recommendations to Governors and State Legislatures for Improving the Selection and Composition of Public College and University Board Members

Ingram Center for Public Trusteeship and Governance

The challenges facing public higher education are placing new demands and pressures on colleges and universities and those responsible for their governance and leadership. Changing student demographics and the need for more college graduates and higher college completion rates require that more attention be paid to undergraduate education. New technologies pose threats but also create opportunities for changed educational delivery. Resources from state and local governments are tight, and competition for scarce dollars from other public sector activities and programs essential to public welfare—including health care, transportation, corrections, and public schools—is intense. In addition, there is a perception that higher education is less productive and conducive to positive change than it should be in a time of fiscal constraints.

As higher education seeks to negotiate these and other 21st century changes, the role of its “guardians” in stimulating change, supporting purposeful leadership, and restoring confidence has never been more critical. Yet when strong and effective governing boards are most needed, many boards have been weakened, and their capacity to fulfill guardian responsibilities is questionable. While there are many effective boards, public confidence in the overall effectiveness of public higher education boards is declining, eroded in part by recent controversies at several high-profile universities and university systems. Boards can be no more effective than the character, competence, commitment, and dedication of their individual members.

About State Policy Briefs:

AGB periodically publishes informal papers on timely topics that reflect best policies and practices in state government’s relationship with public and independent colleges and universities. The papers are intended for governors, state legislators, and their staffs as well as organizations concerned about effective public policy. State Policy Briefs are published under the auspices of AGB’s Ingram Center for Public Trusteeship and Governance, which serves as an independent resource on the subject of this paper and others in the series. For more information about AGB and the center, visit www.agb.org.

Building and sustaining effective public governing boards and governance structures in public higher education can be challenging. But having the “right” board(s) with the “right” members in place can help create a responsive and accountable higher education system, strengthen the public higher education–state government partnership, and lead to the successful pursuit of a state strategic agenda.

A strategy to build greater board leadership capacity begins by appointing the most able, experienced, and deserving citizens to institutional or university system governing boards and providing them the tools and independence to do their jobs successfully. Many states have developed an ongoing expectation for high-caliber board appointments and have sustained this practice from governor to governor, administration to administration. But other states seem unable to build effective boards and successful governance structures over time. Although several notable exceptions exist, states generally have underestimated the potential of boards to strengthen higher education, to stimulate greater responsiveness to societal needs, and to preserve the freedoms necessary to achieve excellence.

Suggestions and Recommendations for Governors and Legislatures

Elected leaders can take several actions to strengthen performance and accountability in public college and university governance. The suggestions and recommendations that follow draw upon several studies, statements, and work in several states conducted over the past two decades by the Association of Governing Boards. They touch upon board best practices for selection of board members, the need for a fair process for considering the reappointment of board members, the wisdom of setting expectations for board members, and the possibility of allowing boards to self-select a certain number of their own board members. The suggestions and recommendations are primarily intended for governors and legislators.

Send a clear signal that merit comes first in recruiting, screening, and appointing public higher education governing board members. Governors should recruit and appoint civic and business leaders, as well as educators and other citizens of stature, who:

- understand the broad role of public higher education in society;
- have the knowledge base to craft effective policy in a rapidly evolving environment;
- demonstrate the leadership—and listening—skills to acknowledge and work with a diverse array of internal and external stakeholders;
- make the necessary time commitment to board service;
- bring a broad perspective to the issues at hand; and
- have the skill mix, ethical grounding, good judgment, institutional memory, and gender and ethnic diversity required to oversee today’s increasingly complex and diverse higher education institutions and systems.

In addition, governors should:

- solicit the views of presidents, chancellors, and board leaders as they seek to fill vacancies on governing boards. Many will welcome the opportunity to be consulted regarding the expertise and experience the current board lacks or needs; and
- give strong consideration to reappointing trustees who have demonstrated value to their boards, institutions, and community—even if political expediency or party affiliation argues against reappointment.

In states where the legislature is the appointing authority, the same steps should be taken as those recommended for governors.

Governors and legislators should make board selection a priority and not let partisan or ideological considerations outweigh merit criteria when nominating members. Governors, in particular, must recognize that the appointment of board members represents one of the most important policy tools for maintaining and enhancing vigorous state systems of higher education. Such appointments are among governors' most important legacies to their states' colleges and universities.

The quality of *all* gubernatorial appointments is important, of course, but it is arguable that college and university trusteeships have such long-term and consequential effects on individual institutions and a state's higher education system that institutionalizing an explicit set of merit criteria for recruitment and screening of all candidates is a good and timely practice. In addition to specific characteristics, the screening process should seek candidates of unimpeachable personal integrity and independence, with a commitment to education, a willingness to devote the necessary time and energy needed to strengthen the institution (or university system) and its board, and a willingness to forego any partisan political activity that would be disruptive or harmful to the institution. *(A list of "Desirable Qualifications Sought in Individual Board Members" that can help guide the selection or confirmation can be found in Appendix A.)*

Although the process of trustee appointment is fundamentally a political process, its aim should be the placement of the most able, experienced, and deserving citizens on public boards of higher education—institutional, system, or multi-campus, as well as the boards of statewide coordinating agencies. No selection process is perfect, but a rigorous process sends the message to the general public and to those being considered for academic trusteeships that they have serious responsibilities to perform.

Colleges and universities are ultimately "owned" by the citizens of the state and uniquely serve broad social, cultural, and economic purposes with long-term impact on the quality of life for all of its citizens. Therefore, it is vital that colleges and universities and their leaders at the top of their governing structures be independent of political ideologies or partisan interests. The United States has a long tradition of relying on citizen governing boards to be the ultimate determinants of institutional policies. This tradition reflects the delicate balance by which the state and the university have a reasonable "arms-length" relationship.

Those states with several public boards, each with several appointments, can present challenges to governors; the situation is very different than it is in states in which one university governing board oversees an integrated higher education system. In most cases, the flagship institutions or flagship systems will garner the most attention, interest, and high-profile nominees, but all higher education boards need attention and strong, effective board members.

Create a nonpartisan advisory or nominating committee. One way states can minimize political considerations and institutionalize merit criteria into board selection is to create a nonpartisan advisory or nominating committee. Several states have had success with the establishment (through executive order or legislation) of such committees to recommend candidates to the appointing authority for each vacancy that occurs on the states' higher education boards. The best of these advisory committees are also guided by detailed, written qualifications for prospective members that are tailored to each board. These committees work well in some of the states; however, without continued support and proper utilization, they will atrophy over time.

Passing legislation or issuing an executive order to create such a committee could be seen as conceding appointment authority or surrendering gubernatorial control and influence over higher education. But establishing such a committee is a viable option for many states to consider, because, in addition to a sound practice that institutionalizes merit criteria into board member selection, it also provides some safe distance between the appointing authority and board nominees. (*Appendix B explains these committees and their roles, responsibilities, and operations in greater detail.*)

Understand the important responsibilities of legislatures in the confirmation process. State legislatures are an underutilized resource in strengthening governing boards. They have a responsibility to improve boards through the confirmation process without undermining the prerogatives of governors. The confirmation process should be viewed as a major responsibility as well as an opportunity. Like governors, legislatures should follow publicly available criteria for confirming new and re-nominated board members that emphasize merit and experience and minimize political or party affiliation. Specifically, legislatures can do the following:

- Develop statements of qualifications to use in the confirmation process. The governor and the public should understand these qualifications in advance.
- Provide adequate staff and funds to ensure proper investigation of candidates' credentials.
- Involve legislators and staff most knowledgeable about higher education in the confirmation process.
- Review the performance and qualifications of board members nominated for reappointment, ensuring a fair and bi-partisan process.

The reappointment of board members requires serious attention and re-thinking. Most states allow board members to serve two consecutive terms. Unfortunately, governors often fail to reappoint well-deserving board members simply because the members were appointed by a governor of a different political party. This is an unfortunate practice, one that can and should be reversed. Staggered terms for board members can prevent major disruption of board stability and leadership when key members depart the board. But many public boards are relatively small (less than the average size of 11 members), and the unnecessary loss of one or two talented members can disrupt or weaken the board. As in initial appointments, merit should be the predominate consideration in reappointments, including confirmation. Some boards do assessments of their individual members. Governors and legislators could inquire about these assessments when considering whether to re-appoint a board member or discreetly ask presidents and board chairs about the performance of an existing member whose term is up for renewal.

Set clear expectations for board members. Bright and well-informed individuals called to board service often do not have clear understandings about what is expected of them, why we have citizen governing boards, how boards exercise their (sometimes ambiguous) responsibilities, and what the demands on their time are likely to be.

Appointing authorities should make clear that board members:

- Must exercise independent judgment while formulating academic policy—balancing institutional and state interests while not beholden to any single stakeholder group or special interest. Communicating this to board members reinforces that they are selected because their judgment is trusted and respected.
- Should fully exercise the authority the state has invested in them for setting academic policy. Rather than micromanage, boards should set policy and allow chief executives and other administrators to get the job done.
- Provide the first level of institutional accountability to the state’s citizens—for institutional performance, achieving mission, the prudent expenditure of public dollars, and the performance of senior administrators.

Board troubles or missteps inevitably lead to questions about board accountability. Boards are accountable to the mission and heritage of their institutions and for advancing the mission for the benefit of the citizens and taxpayers of the state. It is important for boards and state officials to appreciate that public boards are surrogates for the state and the citizenry; they are responsible for doing what state government cannot, should not, and does not do itself—particularly regarding decisions on academic policy. Public boards are not fulfilling the public interest if an expectation exists that they must be directly accountable to elected leaders, rather than to the broad citizenry. Ultimately, to be effective, boards must be responsive and communicative, while never surrendering their independent judgment on matters before the institution. (*A “Statement of Governing Board and Individual Board Member Responsibilities” can be found in Appendix C.*)

Promote board orientation and education programs. Governors and legislators should promote orientation and education programs at both the institutional and state level that bring together regents and trustees to discuss their basic responsibilities and to attain a full understanding of state-level issues and funding priorities.

In addition to institutional or system board orientations and ongoing board education, an annual or bi-annual state education program—particularly in states with multiple higher education boards—can strengthen communication and understanding, clarify responsibilities, and contribute to board cohesion and general effectiveness. These programs are best if managed by the state’s higher education agency in cooperation with the governor’s office and funded sufficiently by the legislature. (For a full description of state-level board education programs, visit the AGB website to download a copy of the state policy brief, *Building Public Governing Board Capacity through State-Level Education Programs for College and University Board Members* from May 2013.)

Consider board self-selection or self-nomination. States should give strong consideration to two related ways that allow a degree of board and institutional determination of their governance that can complement improved selection by governors and legislatures. A process of either board self-selection or self-nomination allows institutions and university systems to call upon individuals with known leadership skills and capacity from their work on alumni boards, foundation boards, advisory boards, or other activities. For both practices, requiring each board to have an explicit list of selection criteria and a required mix of geographical, gender, ethnic, and background considerations and professional experiences would ensure that boards would be sufficiently diverse with a wide skill set.

- *Allow some number of self-perpetuating members on the board.* As the contribution of state tax dollars to public institutional budgets continues to decline, many are asking whether governors and legislatures should continue to appoint all of the members of public governing boards. It is unrealistic to expect state elected leaders to totally surrender this authority, and it would not be good public policy if they did. But a reasonable proposition might be a “hybrid board” composed of a combination of self-selected (self-perpetuating) members and members appointed by the governor or elected by the legislature. As vacancies occur for the self-selected seats, current members would choose replacements, a practice used by private college and universities. The number of self-selected seats on the board could be set by law but perhaps never be more than half. Preserving at least one-half of the seats for appointment by elected officials will reassure those who may worry that state priorities will not be adequately addressed. Existing examples of this practice include the University of Alabama System, where all members of the board are self-selected with confirmation by the state senate, and the University of Vermont, which has nearly half its members self-selected.
- *Allow current boards to make direct nominations to the governor.* A similar selection process could be used where governors retain authority to make all governing board appointments. Short of full authority for institutions to self-select half of their board members, states could allow current boards to make direct nominations to the governor. This practice often happens informally when the needs of the board are solicited by the governor prior to making nominations to the legislature. The governor need not be bound by the names submitted by the board and could ask for other names if the first name or slate of names is unacceptable. This would be a reasonable practice to formalize in state statutes. New Jersey has had a version of this practice since 1994.

Other Considerations in Board Selection and Composition

The following ideas can be considered separately or in combination with other suggestions and recommendations contained in this state policy brief.

Allow non-state residents on governing boards. States could also allow a modest number of out-of-state members on public boards. Expanding the pool of potential governing board members who reside outside of the state is not at all unreasonable. About six states allow such a practice. Doing so can provide institutions with access to important expertise or alumni who reside outside the state’s borders.

Resist calls for more “constituents” on governing boards. Key internal stakeholders—namely faculty, staff, alumni, and students—may want a seat at the board table, not only so their voices are heard but also so they can be full decision makers on the board. Students serve on half of all public boards as voting members and on many boards as non-voting members. Faculty are voting members on only 13 percent of boards; non-voting faculty serve on an additional 9 percent of governing boards. A designated board seat for staff is the law in only two states. Faculty, student, and staff voices are important for boards to hear, but if higher education and the states are to remain committed to citizen governance, to the extent a board reserves seats for specific constituent interests, it fails to fully meet the test of true citizen-based governance. A more “representative” or constituent-based board may not be in the broad public interest.

Consider political balance on the board. Eleven states require political balance on the governing board(s) so that members of one political party do not dominate the board’s composition. Nine of these 11 states, including Colorado, Illinois, Iowa, Missouri, Montana, and West Virginia, set a limit on the number of board members from a single political party. Colorado’s language is typical: “No more than four voting members can be members of any political party.” Kentucky and New Hampshire do not set limits on the number of members from a political party, but require that the state’s major political parties are represented on the boards. Requirements for political balance can minimize the intrusion or distraction of statewide politics into the board room, and do not preclude independent or non-partisan board candidates.

Ensure gender and racial diversity on the board. It is incumbent on governors and legislators to ensure diversity in their board appointments in regard to gender, sexual orientation, and race and ethnicity. Governing boards should be representative of the state’s population and be seen as representative of those they govern. Although progress over time has been made in this regard, data from AGB’s most recent survey of public governing board composition (2010) shows that much more needs to be done in this area. The data shows that the racial composition of public governing boards is 74.3 percent white non-Hispanic, 23.1 percent minority with African American/Black members accounting for 15.8 percent, Hispanic/Latinos 4.1 percent, Asian Americans/Pacific Islanders 2.1 percent, American Indians/Alaska Natives 0.7 percent and other minorities 0.4 percent. These numbers have increased modestly over the past four decades. Women comprise 28.4 percent of public board voting members, but showing slight declines since in the last decade.

APPENDIX A

Desirable Qualifications Sought in Individual Board Members

Personal

1. Integrity, with a code of personal honor and ethics above reproach.
2. Wisdom and breadth of vision.
3. Independence.
4. An inquiring mind and an ability to speak it articulately and succinctly.
5. An ability to challenge, support, and motivate the university or system administration.
6. An orientation to the future with an appreciation of the university's heritage (or the heritage of each university or college in the system).
7. The capability and willingness to function as a member of a diverse group in an atmosphere of collegiality and selflessness.
8. An appreciation of the public nature of the position and the institution, including the open process of decision making and service.

Professional/experiential

1. Valid knowledge and experience that can bear on university problems, opportunities, and deliberations.
2. A record of accomplishment in one's own life.
3. An understanding of the board's role of governance and a proven record of contribution with the governing body of one or more appropriate organizations.

Commitment

1. A commitment to education.
2. An enthusiastic understanding and acceptance of the university's mission or the mission of all system institutions.
3. An understanding of the role of their college or university (or university system) within the broader higher education system of the state.
4. A willingness to commit the time and energy necessary to fulfill the responsibilities of a board member.
5. A willingness to forego any partisan political activity while a board member that could be disruptive or harmful to the university or university system.
6. The capability to foresee six to eight years of constructive and productive service.
7. An overriding loyalty to the institution (or university system) and to the public interest rather than to any region or constituency.

These statements are adapted from documents of the Minnesota Regents Candidate Advisory Council.

APPENDIX B

Establishing a Non-partisan Committee to Recruit, Screen, and Appoint Public Higher Education Governing Board Members

Possible Approaches

The possibilities range from executive order to formal legislation. Ideally, however, even if initially established by the former, the panel charged with the mission of recruiting and screening candidates to be considered by the governor will be “institutionalized” and made permanent.

The panel (by whatever name, such as “Trustee Candidate Advisory Council” or “Citizens’ Committee on Trustee Selection”) can require or not require the incumbent governor to select from among a specified number of candidates for each vacancy on a particular board. Ideally, provision should be made to require the governor to choose from among at least two (or perhaps three) candidates for each vacancy, provided he or she can request that the panel provide a new slate of candidates if submissions are unacceptable.

The panel can operate on a minimal budget or operate with a modest annual appropriation commensurate with the seriousness of its mission and activities and its need to be reasonably visible in the search for capable citizens for consideration. Furthermore, it can be staffed by an appropriate individual already employed in state government (who may have other complementary responsibilities), or it can be independently staffed on a part-time basis depending on the number of annual vacancies to be filled. Ideally, both adequate budget and staffing will be provided to ensure effectiveness. Given the long-term benefits to the state and its citizens, such a modest investment promises a very good return. Panel members should not expect remuneration for this public service, but it is a reasonable expectation to cover their travel and related expenses.

Panel Responsibilities

- Articulate and widely publicize its mission and responsibilities, procedural rules, membership and staffing, and office location.
- Articulate, publicize, and periodically review the qualifications to be sought in outstanding candidates.
- Develop and periodically review a generic job description for 1) institutional or system governing boards (and the statewide coordinating board, if any) and 2) individual board members (a statement of responsibilities and expectations; suggested do’s and don’ts in the conduct of trusteeship).
- Confer periodically with the board chair (and chief executive) of each institution concerning how they view their board’s current and future membership composition needs (skills, experience, understanding of the university’s purposes in society, geography, gender and minority balance, and the like).

- Interview all candidates.
- Develop a policy and procedure to accommodate citizen applications (if this is part of the panel's mission; it need not be).
- Provide the governor with names of candidates for each vacancy, including those being asked to fill partial terms.

Panel Members

If one of the key aims of this initiative is to bring due diligence to the process of trustee selection and to “depoliticize” the process, how can such a panel be composed in its membership to satisfy those who would otherwise question its objectivity and nonpartisan purposes?

Every state has outstanding senior public servants who are widely accepted as placing the broad public interest ahead of political party, partisan, and special interests. Every state has citizens who have in various ways demonstrated their understanding of the special place that colleges and universities hold within the state and our democratic and diverse society.

The chair, preferably selected by the panel's members to serve for a multi-year term, should be widely respected by political leaders on “both sides of the aisle.” Alternatively, the governor could be extended this privilege, but responsible panels of this kind would understandably prefer to make their own selection of their leader. In either case, however, the panel's credibility depends on a wise choice of leader. Numbering at least nine but not more than 15 (to share the workload), the panel should be bipartisan in its composition. There should be six-year terms, renewable only once. The incumbent governor, consistent with the terms of the enabling legislation or other guidelines, should fill vacancies on the panel. None is eligible to serve as a trustee.

They should be expected to meet at least quarterly, and, given the importance of protecting individual rights to privacy, their meetings should be exempt from the state open meetings law.

APPENDIX C

Statement of Governing Board and Individual Board Member Responsibilities

Responsibilities of the Governing Board

The fiduciary role of the governing board of a public college, university, or system has many facets. Most notably, a board should recognize and accept these basic responsibilities (“institution” is used here to refer to college, university, or system):

1. Ensure that the institution’s mission is kept current and is aligned with public purposes. In the case of multi-campus systems, ensure the alignment of each campus’s mission with the system’s vision and public purposes.
2. Select a chief executive to lead the institution.
3. Support and periodically assess the performance of the chief executive, and establish and review the chief executive’s compensation.
4. Charge the chief executive with the task of leading a strategic planning process, participate in that process, approve the strategic plan, and monitor its progress.
5. Ensure the institution’s fiscal integrity, preserve and protect its assets for posterity, and engage in fundraising and philanthropy.
6. Ensure the educational quality of the institution and its academic programs.
7. Preserve and protect institutional autonomy and academic freedom and the public purposes of higher education.
8. Ensure that institutional policies and processes are current and properly implemented.
9. In concert with senior administration, engage regularly with the institution’s major constituencies.
10. Conduct the board’s business in an exemplary fashion and with appropriate transparency, in adherence to the highest ethical standards and in compliance with applicable open-meeting and public-records laws; ensure the currency of board governance policies and practices; and periodically assess the performance of the board, its committees, and its members.

Responsibilities of Individual Trustees and Regents

1. Seek to be fully informed about the college, university, or university system.
2. Understand the responsibilities of the institution or university system in addressing the public interest and public good.
3. Understand where the institution(s) fits into the overall state higher education policy agenda.
4. Support the mission of the institution or university system.
5. Support positive change and responsiveness of higher education while being cognizant that preserving tradition, culture, and long-term stability is tantamount.
6. Speak one’s mind at board meetings, but support policies and programs once established.

7. Understand that the board's responsibility is policymaking and not involvement in administration or the management process.
8. Strengthen and sustain the chief executive while being an active, energetic, and probing board member exercising critical judgment on policy matters.
9. Communicate promptly to the chief executive and board chair any significant concern or complaint.
10. Defend the autonomy and the independence of the college, university, or university system.
11. Maintain an overriding loyalty to the entire college, university, or university system rather than to any part of it or constituency within it.
12. Represent all the people of the state and no particular interest, community, or constituency.
13. Help enhance the public image of the college, university, or university system and the board.
14. Recognize that authority resides only with the board as a whole and not with its individual members.
15. Recognize that the president or chancellor is the primary spokesperson for the institution or university system, and the chair of the board is the only other person authorized to speak for the board.
16. Foster openness and trust among the board, the administration, the faculty, the students, state government, and the public.
17. Maintain a decent respect for the opinions of one's colleagues and a proper restraint in criticism of colleagues and officers.
18. Recognize that no board member shall make any request or demand for actions that violates the written policies, rules, and regulations of the board or the institution or make inappropriate requests for special perks or privileges that may embarrass the board, president, or institution.
19. Maintain the highest ethical standards, and never allow any personal conflict of interest to exist.