

State Policy Brief

January 2020

Merit Selection of Public College and University Board Members

From the Association of Governing Boards of Universities and Colleges

Several challenges face public colleges and universities as they enter the third decade of the 21st century. Changing student demographics and the need for more college graduates require that greater attention be paid to access, enrollments, college costs, and college completion rates. Disruptions from new technologies are affecting how faculty teach and how students learn. The need for impactful research to drive innovation and spur the national and state economies is perhaps greater than it has been since the post-World War II or Sputnik eras. The competition for scarce government resources is growing ever more intense from other priorities essential to the public's welfare—health care, transportation, corrections, and public schools—and the decline of those resources is leading many states to consider institutional mergers and consolidations. Public confidence in higher education is eroding, in part because of the perception that it is less productive and less conducive to needed change than it should be when public funding is constrained, and in part because of recent controversies and scandals at several high-profile universities.

The responsibilities of the guardians of public colleges and universities—the men and women who serve on public governing boards—have never been more critical to supporting purposeful leadership, stimulating change, and restoring public and policymaker confidence in the higher education enterprise. Yet when strong and effective governing boards are most needed, many boards are not fulfilling their fiduciary responsibilities adequately, nor serving as effective bridges between their institutions and state governments. It is incumbent on public governing boards to be at the top of their game. But boards can be no more effective than the character, competence, commitment, and dedication of their individual members.

Although notable exceptions exist, states have generally underestimated the potential of boards to strengthen higher education by stimulating change, leveraging responsiveness to societal needs, ensuring accountability, and preserving the conditions necessary for academic excellence. And while several states have developed an expectation for high-caliber board appointments and have sustained this practice from governor to governor and administration to administration, other states are seemingly unable to build strong boards and successful governance structures.

Although the process of board member 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—

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. For more information, visit AGB.org.

institutional or multicampus—as well as the boards of statewide coordinating agencies. No selection process is perfect, but a process with standards and some level of rigor sends the message to the general public and to those being considered for academic trusteeships that they have serious responsibilities to perform.

Suggestions and Recommendations for Governors and Legislatures

The Association of Governing Boards of Universities and Colleges (AGB) offers the following suggestions and recommendations to strengthen public college and university governance. These are drawn from studies, statements, and work in several states conducted by AGB in recent decades. They are intended primarily for governors and legislators; most would require legislation or gubernatorial executive orders.¹

Send a clear signal that merit comes first in recruiting, screening, and appointing public higher education governing board members. State leaders should send a clear signal that merit comes first in recruiting, screening, and appointing public higher education board members. Governors, who hold appointment authority in the vast majority of states, should seek to recruit and appoint citizens of stature who have the knowledge base to craft effective policy in a rapidly evolving environment; and who demonstrate the leadership—and listening—skills to work with a diverse array of internal and external stakeholders. These citizens should also represent a diversity of backgrounds and professional experiences. To help identify and recruit such talent, governors should establish and issue a publicly available list of qualifications and criteria. These “standards” should be tailored to each institution or multicampus system and its board, but could follow general qualifications and merit criteria sought in all candidates, such as those that follow. The same steps could be taken in states in which the state legislature elects governing board members.

Personal

- Integrity, breadth of vision, and independence
- An inquiring mind and an ability to speak articulately and succinctly
- An orientation to the future with an appreciation of the heritage of the university or system
- The ability to function as a member of a diverse group in a collegial atmosphere
- An appreciation of the public nature of the position and the institution or system, including the open process of decision-making and service

Professional/Experiential

- Knowledge and experience that can bear on university challenges, opportunities, and deliberations
- An understanding of the board’s role in governance and a proven record of contribution with the governing board of one or more appropriate organizations
- A record of personal and professional accomplishment

Commitment

- A commitment to education and to the mission of the university or system
- A willingness to commit the time and energy necessary to fulfill the ongoing responsibilities
- A willingness to forego any partisan political activity that could be disruptive or harmful to the university or system

¹ Citizen board members for four-year universities and multicampus systems in the majority of states are appointed by governors subject to confirmation by the legislature. In three states—North Carolina, South Carolina, and Minnesota—legislatures have major appointment responsibilities. At two-year colleges, governors make the majority of appointments, although in several states, local elections and local elected officials also determine board membership.

- An overriding loyalty to the university or system and to the public interest rather than to any region or constituency

Create a nonpartisan citizen screening or nominating committee. Several states have had success with the establishment of screening/nominating committees to recommend candidates to the appointing authority for each vacancy that occurs on the states' higher education boards. The best of these committees are guided by detailed and tailored qualifications, criteria, and expectations for prospective board members.

Passing legislation or issuing an executive order to create a screening/nominating committee could be seen as conceding appointment authority, or surrendering too much gubernatorial or legislative control and influence over higher education. But establishing such a committee is a viable option that many states should consider. In addition to a sound practice that institutionalizes merit criteria into board member selection, it can also minimize political considerations—political activities, campaign donations, party affiliation, and the like—while providing some needed or desired distance between the appointing authority and board nominees. Every state has outstanding citizens or public servants who are widely viewed as placing the broad public interest ahead of political party, partisanship, and special interests, and who in various ways demonstrate their understanding of the special place that colleges and universities hold within the state.

Those who chair such committees should be widely respected by political leaders on “both sides of the aisle,” and preferably selected by the committee’s members. The committee should be expected to meet at least quarterly, and, given the importance of protecting individual rights to privacy, their deliberations should be exempt from the state open meetings law. Continued support and proper utilization by elected leaders is also critical; without it a screening/nominating committee will risk losing its effectiveness.

Committee 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 board candidates.
- Develop and periodically review a generic job description for 1) institutional or multicampus system governing boards (and the statewide coordinating board, if one exists) and 2) individual board members (a statement of responsibilities and expectations in the conduct of trusteeship can be found in the Appendix.
- Confer as necessary with the board chair and chief executive of each institution (or system) concerning how they view their board’s current and future membership composition needs in terms of skills, experience, geography, and gender and minority balance.
- Interview all candidates.
- Develop a policy and procedure to accommodate citizen self-nominations (if this is part of the panel’s charge; it need not be).
- Provide the governor (or legislature) with names of candidates for each vacancy, including those being asked to fill partial terms. (Preferably, a provision should be made to require the governor [or legislature, if the appointing authority] to choose from among at least two, no more than three, candidates for each vacancy, provided the governor can request that the panel provide a different slate of candidates if the names submitted are deemed unacceptable.)

Give serious attention to the reappointment of sitting board members. Allowing members to serve two or three consecutive terms helps bring continuity and stability to a governing board and prevent unnecessary disruptions when members depart the board. Unfortunately, because some board members were appointed by

previous governors of a different political party, current governors often fail to reappoint these well-deserving members simply because of different party affiliation. This is a practice that can and should be seriously reconsidered. Many public boards are relatively small (fewer than the average size of 12 members), and the loss of two or three contributing members can weaken the board. Current performance and demonstrated commitment to the board and the institution or system should be the predominant considerations in board reappointments. A growing number of boards conduct assessments of their individual members. Governors and legislators should inquire whether these assessments can be shared for purposes of renewal consideration. State officials discreetly asking presidents and board chairs about the performance of board members up for renewal is not an uncommon or unwelcome practice.

Elevate the important responsibilities of legislatures in the confirmation process. In the majority of states in which governors are the appointing authority, the legislatures—most often state senates—should see the confirmation process as a major responsibility and opportunity to improve boards. In addition to confirming candidates on the basis of merit, legislators also should seek to minimize political considerations. Specifically, legislatures can do the following, which are especially important if a screening/nominating committee does not exist:

- Develop qualifications and criteria to use in the confirmation process, even if different from those of the governor. Board candidates, the public, (and the governor) should understand these in advance of any confirmation process.
- Devote adequate time and support for the proper vetting of candidates and their credentials.
- If a higher education committee is not the first level of board candidate review, ensure that legislators and legislative staff most knowledgeable about higher education are involved in the confirmation process.
- Ensure a fair and bipartisan review process of the performance of board members renominated for reappointment.

Consider allowing governing boards to be their own appointing or nominating body. States should give serious consideration to two related processes that would provide a greater degree of direct board input into the governance of their institution or system. A process of either board self-perpetuation or self-nomination would allow a governing board a level of formal authority to call upon individuals with proven leadership skills and experience to consider joining the board. Many qualified individuals—be they from the community, the business or corporate sector, or who serve on alumni, university foundation, or advisory boards, or other relevant organizations—may not be on the radar of legislators and governors as potential governing board candidates. Formalizing either process in state statute would be a reasonable way for these individuals to be appointed or considered for appointment.

- *Allow some number of self-perpetuating members on the board.* It might be reasonable for some governing boards to become “hybrid boards” composed of a combination of self-perpetuating members and members appointed by the governor or elected by the legislature. The number of self-selected seats could be set by law but perhaps be never more than half to allay any concerns about conceding elected leaders appointment authority or influence. As vacancies occur for the self-selected seats, current members would choose replacements for those departing the board. Examples of this practice are found at the University of Vermont, where nearly half its members are self-perpetuating and do not need legislative confirmation, and the University of Alabama System, where all members of the board are self-perpetuating but state senate confirmation is required.
- *Allow current boards to make direct nominations to the governor.* Short of authority for institutions to self-select a portion of their board members, states could allow governing boards to make direct nominations to the governor. The governor need not be bound by the nominations. Informally, this practice often happens when governors solicit board or presidential input about a board’s future

composition needs prior to making nominations to the legislature. New Jersey formalized this process in state statute in 1994.

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, what distinguishes American higher education and its citizen governing boards, how boards exercise their fiduciary responsibilities, and what are likely to be the demands on their time. Appointing authorities may not be able to adequately answer all such questions, but they can make clear that board members:

- Establish, disseminate, and keep current the mission of the institution.
- Select and support the president of the institution.
- Periodically assess the president's performance and review his or her compensation.
- Charge the president with the task of leading a strategic planning process, participating in that process, approving the strategic plan, and monitoring its progress.
- Ensure the institution's fiscal integrity, preserve and protect its assets for posterity, and engage directly in fundraising and philanthropy.
- Ensure the quality of the education provided by the institution.
- Safeguard both the autonomy of the institution and the related tradition of academic freedom.
- Ensure that the policies and processes of the institution remain current and are properly implemented.
- Engage regularly with the institution's major constituencies.
- Ensure that its business is conducted in an exemplary fashion, that its governance policies and practices are kept current, and that the performance of the board, its committees, and its members are periodically assessed

From [*Higher Education Governing Boards: An Introductory Guide for Members of College, University, and System Boards*](#), 2019.

A Statement of Commitment and Responsibilities, from [*The Governance Committee: Public Institutions*](#), can be found in the Appendix.

Ensure gender and racial diversity. Governing boards should be representative of the state's population and be seen as representative of those they govern, so it is incumbent on governors and legislators to ensure diversity in their board appointments with regard to gender, sexual orientation, and race and ethnicity. Although progress has been made in terms of broadening diversity, data from AGB's most recent survey of public governing board composition (2016) show that the numbers are much the same over the course of the last decade. The data tell us that the racial composition of public governing boards is 74.9 percent white non-Hispanic and 23.9 percent minority, with African American/black members accounting for 13.6 percent, Hispanic members 5.8 percent, Asian Americans/Pacific Islanders 2.9 percent, and American Indians/Alaska Natives 1.6 percent. Women comprise 32.3 percent of public board voting members, up from 28 percent in 2010.

Promote and set expectations for board orientation and education programs. Governors and legislators should promote board member orientation and education programs at both the institutional and multicampus system levels, and also at the state level. Governors and legislators should make an explicit expectation that board members will participate in both types of programs for purposes of understanding their responsibilities to the institution or system, and also to the state's citizens. An annual or bi-annual state sponsored education program—particularly in states with multiple higher education boards—can serve to bring together higher education board members to reinforce an understanding of fiduciary responsibilities; connect board members to the state's educational, social, and economic challenges and opportunities; and communicate a broader

sense of roles, responsibilities and purposes. State-level programs are best conducted by the state's higher education agency, often in cooperation with the governor's office. (For a full description of state-level board education programs, see the AGB state policy brief "[Building Public Governing Board Capacity through State-Level Education Programs for College and University Board Members](#).")

Resist calls for more “constituents” on governing boards. The ideas and opinions of key internal stakeholders—faculty, staff, and students—are important for all institutional leaders to hear. Accommodations should be made by governing boards to do so, including invitations to serve on committees of the board. But faculty, staff, and students often make the case for seats on the full board, not only to be voting members but also to give collective voices to the constituents they represent. Currently, students serve on nearly half of all public boards as voting members and on a quarter of boards as nonvoting members; faculty are voting members on only 11 percent of boards and nonvoting faculty serve on an additional 9.6 percent of governing boards. A designated board seat for staff is the law in only two states. As indicated in AGB's 2010 [Statement on Board Responsibility for Institutional Governance](#):

It is AGB's view that faculty, staff, and students ordinarily should not serve as voting members of their own institution's governing board because such involvement runs counter to the principle of independence of judgment required of board members. Particularly in the case of faculty or staff members, board membership can place them in conflict with their employment status. Even when constituent groups are represented on the board, the board should be mindful that the presence of one or more students, faculty, or staff as members of the board or its committees or institutional task forces neither constitutes nor substitutes for communication and consultation with these constituent groups.

Consider political balance on the board. A different but related strategy to a merit-based process to minimize political considerations in board appointments would be to mandate political balance on governing boards. Such action could help to minimize the intrusion or distraction that statewide politics can bring to governing board deliberations. Eleven states require such balance. Nine of these 11 states set a limit on the number of board members from a single political party so that members of one party do not dominate a board's composition. The others do not set limits on the number of board members from a single political party but require that the state's major political parties are represented. Requirements for political balance should not preclude independent or nonpartisan board candidates.

Allow a modest number of out-of-state members on public governing boards. Expanding the pool of potential governing board members who reside outside of the state is not at all unreasonable. Six states allow such a practice. Doing so can provide institutions with access to individuals with important expertise.

Conclusion

A strategy to build greater board leadership capacity begins with governors and legislators appointing the most able, experienced, and deserving citizens to institutional and multicampus system governing boards and providing them with the tools and independence to perform their jobs successfully. Elected leaders should not let partisan or ideological considerations outweigh merit criteria when nominating or selecting governing board members. Governors, in particular, must recognize that the appointment of board members represents one of the most important policy tools for maintaining or enhancing vigorous systems of higher education. Such appointments are among governors' most important legacies to the continued effectiveness, vitality, and sustainability of public colleges and universities.

Building and sustaining effective public governing boards and governance structures can be its own challenge. But having the “right” board(s) with the “right” members in place can create responsive and accountable colleges and universities—to the benefit of higher education and the state and its citizens.

APPENDIX

Statement of Commitment and Responsibilities

Commitment of the Governing Board

1. Briefly state the distinct mission of the institution.
2. Provide oversight and review and approve strategies, policies, and plans for implementation while deferring to the university's president and administrative staff to manage day-to-day business
3. Ensure sound management of the institution.
4. Attend and participate in the plenary meetings of the board, and actively contribute as a member of the committees of the board.
5. Actively participate in defining and regularly updating a plan for the strategic direction of the institution.
6. Attend public functions such as receptions, programs, and athletic events throughout the year, recognizing the importance of a board "face" at these occasions.
7. Act as stewards of the institution's mission and values.
8. Where appropriate and permitted within the public meetings laws, maintain confidentiality of sensitive information.
9. Recognize that members do not act as individuals, but as collective members of the board and that their obligations include the avoidance or full disclosure of conflicts of interest, and even the appearance of conflict.
10. The currency of board membership is "trust." Every effort will be made to ensure there is not a perception that inappropriate benefits and perquisites are given to members in return for their service.
11. Reciprocal to this Statement of Commitment and Responsibilities, the university shall at all times carry in force directors' and officers' liability insurance. Such insurance shall include coverage for all members and those who are non-board voting members of committees of the governing board.

From [*The Governance Committee: Public Institutions*](#), 2019