

Delegation of Authority Amendments

BACKGROUND

The Board of Trustees manages the affairs of the university by exercising and carrying out all of the powers, rights and duties that are expressly conferred upon the Board by law, or that are implied by law or are incident to such powers, rights and duties (ORS 352.029). The Board may delegate and provide for the further delegation of any and all powers and duties, subject to limitations expressly set forth in law. By resolution, the Board delegates the day-to-day operations of the university to the president, with the exception of activities reserved to the Board.

In May 2021, the Executive & Audit Committee made recommendations and the Board approved amendments to the delegation clarifying authorities related to certain gifts and leases. During the committee and Board's discussion, Trustee Julia Brim-Edwards noted that the Board might consider clarifying authorities related to settlement agreements. Staff committed to research delegations and thresholds at other similar public institutions and bring possible changes to the delegation to the committee for further discussion at the October meetings.

OPTIONS FOR DISCUSSION

In response to the request, the Board Office and General Counsel researched a number of similarly situated institutions to better understand how others handle authority related to settlement agreements. Staff did not find a best practice on the matter from the Association of Governing Boards of Universities and Colleges (AGB), and the approach to handling settlement agreements appears to vary widely from institution to institution nationally, both as to whether settlement authority is fully delegated to the President and the amount of the monetary threshold for settlements that must be approved by the Board. All but one of the public universities in Oregon¹ have delegated all settlement authority to the President.

To support further discussion with the Committee, staff developed two options for amendments to the Board's Delegation of Authority policy if the Board would like to specify authorities related to settlement agreements. These options are labeled "Option A" and "Option B" and are shown in red text in Attachment 1. Staff will be prepared to discuss benefits and drawbacks of each option, as well as the current model, in the meeting.

Implementing either of these options would likely necessitate an executive session discussion under the provisions of ORS 192.660(2)(f) or 192.660(2)(h).

RECOMMENDATION

Staff will present options to the Executive & Audit Committee for consideration as possible recommendations to the Board.

¹ The Oregon public universities that have delegated all settlement authority to the President include Oregon Health and Sciences University, University of Oregon, Portland State University, Eastern Oregon University, Southern Oregon University and Oregon Institute of Technology. Western Oregon University has a \$500,000 threshold for settlement agreements that must be approved by the Board of Trustees.

RESOLUTION NO. _____



Oregon State University Delegating Authority to the University

Now, therefore, be it resolved by the Board of Trustees that it delegates to the President of the University or his or her designee authority to undertake all lawful activities to further the operation of the University, with the exception of the activities set forth below, which are reserved to the Board:

1. Personnel Matters
 - a. Presidential hiring, evaluation, compensation and removal;
 - b. Granting of the rights, privileges and title of President Emeritus; and
 - c. Adoption of standards governing outside employment and activities for employees, including potential conflict of interest and the public disclosure thereof, and procedures for reporting and hearing potential or actual conflict of interest complaints.
2. Governance
 - a. Election of Board officers;
 - b. Changes in the mission, purposes and statutory goals of the University;
 - c. Amendments to the Board's bylaws; and
 - d. All other matters related to Board governance.
3. Fiscal Matters
 - a. Sale or acquisition of real property over \$5 million;
 - b. Condemnation of real property;
 - c. Gift or exchange of real property with an estimated value of over \$5 million;
 - d. Leases of real property that involve an initial lease term of more than fifteen years or consideration over \$15 million in base rent under the initial term of the lease. Except for amendments that exceed these thresholds independently, authority to amend leases is delegated to the President.
 - e. Issuance of bonds;
 - f. Designation of the foundation to solicit contributions for the support of the University;
 - g. Determination of tuition and mandatory enrollment and incidental fees;
 - h. Adoption of the University budget;
 - i. Approval of a capital project with a total project cost anticipated to exceed \$5 million, including for architects, construction managers, engineers and other professional consultants; and
 - j. Approval of an increase to a Board-approved capital project budget where the total of all increases exceeds either \$5 million or ten percent (10%) of the budget.

Option A: New section adding consultation requirement on certain settlement agreements

4. Settlement Agreements

October 6 – 8, 2021 Board of Trustees Meetings

Prior to binding the University, the President will consult with the Executive & Audit Committee on the following settlements:

- a. A Settlement Agreement that obligates the University to pay \$500,000 or more.
 - b. Two or more Settlement Agreements that, at the time of signing, are known to relate to the same claim and that collectively obligate the University to pay \$500,000 or more.
 - c. Settlement Agreement of any monetary value that resolves a challenge to a specific decision made by the Board or specific action taken by a Trustee.
 - d. As used in this Resolution, "Settlement Agreement" means a negotiated written resolution of any actual or threatened lawsuit or other judicial, administrative or investigative proceeding related to an alleged violation of law. "Settlement Agreement" does not include resolution of a change order dispute related to a construction contract.
 - e. The President will ensure that the General Counsel inform the Board of all complaints filed in state or federal court, and will keep the Board informed of major developments in litigation and the resolution thereof.
- ~~5- 6.~~ Activities for which authority is granted in a Board Committee charter;
- ~~6- 7.~~ Mediation with other Oregon public universities regarding a dispute on proposed new program or location; and
- ~~7- 8.~~ Any other issue recommended for Board action by the Executive and Audit Committee.

Option B: New section requiring Executive & Audit Committee approval on certain settlement agreements

Be it further resolved that the Board reserves and hereby delegates to the Executive & Audit Committee authority to undertake the following activities:

1. A Settlement Agreement that obligates the University to pay \$500,000 or more.
2. Two or more Settlement Agreements that, at the time of signing, are known to relate to the same claim and that collectively obligate the University to pay \$500,000 or more.
3. Settlement Agreement of any monetary value that resolves a challenge to a specific decision made by the Board or specific action taken by a Trustee.
4. As used in this Resolution, "Settlement Agreement" means a negotiated written resolution of any actual or threatened lawsuit or other judicial, administrative or investigative proceeding related to an alleged violation of law. "Settlement Agreement" does not include resolution of a change order dispute related to a construction contract.
5. All other Settlement Agreements are delegated to the President or their designee. The President will ensure that the General Counsel inform the Board of all complaints filed in state or federal court, and will keep the Board informed of major developments in litigation and the resolution thereof.

Although this general delegation of authority is subject to amendment by the Board at any time, the Board will also review it annually.

This Resolution is effective _____.

APPROVED by the Board of Trustees _____.

Secretary to the Board

Date

Document History:

- Adopted by the Board of Trustees October 17, 2014
- Amended October 26, 2018
- Amended May 21, 2021