



A SPECIAL REPORT _____

**RECOMMENDATIONS FOR
GOVERNANCE REFORM AT
THE PENNSYLVANIA STATE
UNIVERSITY AFTER THE CHILD
SEX ABUSE SCANDAL**

NOVEMBER 2012

JACK WAGNER, AUDITOR GENERAL

PENNSYLVANIA DEPARTMENT OF THE AUDITOR GENERAL

**Recommendations for governance reform at
The Pennsylvania State University after the child sex abuse scandal**

Pennsylvania Department of the Auditor General
Jack Wagner, Auditor General

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OVERVIEW – How this report differs from others

Actions of the Penn State board of trustees and university officials have been widely reported and analyzed as those actions relate to the child sex abuse scandal. Analyses were elevated following the board's commissioned investigation by the team of Freeh Sporkin & Sullivan LLP, who produced what is known as the Freeh report.

The Freeh report was critical of the then-president of Penn State, calling him one of the four most powerful people at the university* and saying that he shared important information with only a few others. The Freeh team also criticized the board, saying that trustees were overconfident in the president's ability to deal with the crisis and did not make reasonable inquiries or demand details when the president did share information.

The Freeh report recommended increased and improved communication between the board and the administration, and use of the board's sessions with the president "to make relevant and reasonable inquiry into substantive matters and to facilitate sound decision-making." These are good recommendations.

However, in looking at reporting by Freeh, the media, and others as background for our own analysis of Penn State's governance, we see a primary focus on the particular *people* involved—not on the particular *positions* and the structure that gives those positions their power. For example, discussions of the then-president zero in on *the actions* of that *particular president, and only in his position as president*. Little attention is paid to the fact that the president holds the added roles of trustee/trustee officer and is a voting member of the board to whom he reports.

Here in our report, we have a different objective. Our discussion goes beyond that of other reports in that we do not focus on the veracity of past actions; instead, we *analyze the structure of the governing board*, which includes the university president. Regarding that particular position, we call for reforming the conflicted and contradictory structure by which the president holds plural roles that compromise reporting relationships and undercut the board's ability to govern as leaders. By its very design, the structure of Penn State's governance vests too much control and power in the position of university president, *no matter who held that position in the past or who holds it now*.

Penn State's governing structure is rare among public universities, whether we are discussing the university president, the governor as a voting trustee, the board's size, or the required quorum. The structure is prescribed in legislation, further detailed in Penn State's charter as revised by court decrees resulting from university requests, and is also addressed in Penn State's bylaws and the board's standing orders. Reform in some cases will require changing the existing law and/or board documents; reform in other cases requires the board's acknowledgement that existing law says or intends something different from the charter, bylaws, and/or standing orders. Even more important is that reform will require the support not only of the Penn State board, but also of the General Assembly, the governor, and the public.

We cite the Freeh report and media reports where relevant. At the same time, the Freeh report has been disputed by others as it relates to some of its specific details. Readers should know that our own recommendations are made independent of the Freeh report and, in fact, were in development months before that report's release. In cases where our recommendations are similar to—or appear to expand on—those of the Freeh team, they are still Department of the Auditor General recommendations that stand on their own.

We end this note with a very important caution to remember throughout our report: Readers will recognize, as we do, that changing the governance structure can never prevent what happened at Penn State from happening again as long as there are breakdowns in human character. Still, if implemented, our proposed changes will reduce the potential for breakdowns to remain undetected and will add needed transparency to this flagship public university that Pennsylvania taxpayers have supported for more than 150 years.

*The others: Gary C. Schultz, senior vp, finance and business; Timothy M. Curley, athletic director; and Joseph V. Paterno, head football coach.

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*Overview,
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Penn State's origin as a public-supported agricultural college

The status of Penn State as a public-supported institution started in 1855. That year, Act 50 established a college for the education of youth in science and agriculture. Initially called the Farmers' High School of Pennsylvania, that college—Penn State's predecessor—opened four years later with 69 students.

Penn State's origin as a public-supported land-grant institution

In 1862, Abraham Lincoln signed the Morrill Act to give free land (hence, "land grant") to states if they supported at least one public college to provide affordable education in fields like agriculture, engineering, and mining. Those fields were critical to the technological growth of a nation whose schools, until then, focused mostly on non-technical studies.

Pennsylvania received 780,000 acres of federal land under that Morrill Act of 1862, eventually selling the land for \$439,000 to invest in what is now Penn State.

A public university: no question about it

The Pennsylvania State University is a public university; of that there is no question. Penn State cannot simply change itself to a private university despite suggesting it might take that route if it doesn't see more state (taxpayer) dollars each year.

Over the past five years, the Commonwealth of Pennsylvania has given Penn State an average of more than \$300 million each year. Over the past century and a half, Pennsylvania taxpayers have invested \$10 billion or more in their flagship public university.

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**A world-renowned institution,
now linked forever to
the child sex abuse scandal**

With the state's start-up investment and continued support over the years, Penn State no longer resembles the Farmer's High School with 69 students. As of October 25, 2012, for example, Penn State's website listed its fall 2012 enrollment at 45,351 for the main campus, and 96,562 for all campuses, affiliates, and online learning.¹

The university's academic reputation is solid. Penn State has clearly built itself into a world-renowned institution.

Penn State is also known for its football program, the largest sport in the university's athletic department. That program's reputation, and the university's as well, was undercut when the world learned of the horrendous child sex abuse perpetrated by former assistant football coach Gerald A. Sandusky. Questions were raised, many still unanswered, about how much university officials knew—including those on the governing board—and what could have been done to stop the abuse sooner.

The Freeh report referred to Penn State's "culture of reverence for the football program...ingrained at all levels of the campus community,"² and to a janitor who told the Freeh team that "football runs this University" when explaining why a fall 2000 incident had gone unreported.³ The Freeh report was most critical of the university's four "most powerful leaders"⁴ who—in large part to avoid the consequences of bad publicity—"repeatedly concealed critical facts relating to Sandusky's child abuse from the authorities, the University's Board of Trustees, the Penn State community, and the public at large."⁵

¹ <http://www.budget.psu.edu/Factbook/studentdynamic/EnrollmentFallToFallComparison.aspx?SemesterCodes=201011FA201112FA&FBPlusIndc=N>.

² Page 17, *Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky*, Freeh Sporkin & Sullivan, LLP, July 12, 2012.

³ Page 65, Freeh Report.

⁴ Page 16, Freeh Report. Also see the box on page 1 of our report.

⁵ Page 16, Freeh Report.

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According to the Freeh team, those powerful leaders went “unchecked by the Board of Trustees that did not perform its oversight duties,” thus empowering Sandusky continued access to attract his victims.⁶

Our role in looking at Penn State’s governance

It is Penn State’s structure of governance that we analyze in our report. What we found is this: Penn State’s governing structure—as represented by its 32-member board of trustees with complete responsibility for the oversight and welfare of the university, including the interests of its students, faculty, staff, and alumni—is either out of step with that of similar universities or is not in keeping with good governance practices, or both, as follows:

- (1) The university’s president is a voting board member and executive officer, making the presidency an all-powerful position.
- (2) The governor is a trustee whose vote on the board creates conflict-of-interest questions.
- (3) The board is too big.
- (4) Fewer than half of the 32 trustees constitute a quorum to transact business.
- (5) Penn State allows insiders to lead and govern; with few restrictions, staff can become trustees and, with no restrictions, trustees can become staff.
- (6) Penn State is largely excluded from the state’s Right-to-Know Law and has historically opposed being included. In addition, neither employees nor trustees are subject to the state’s Ethics Act, including the financial disclosure provisions.
- (7) By all appearances, Penn State has not welcomed governance transparency and, in fact, has impeded it.

⁶ Page 15, Freeh Report.

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- (8) Penn State has established term limits for board members but has not applied those limits equally, resulting in some trustees having served for decades.
- (9) Penn State can award emeritus status to retired trustees and others, a status awarded by exception to Gerald Sandusky based on the then-president's recommendation and the then-provost's signoff, giving Sandusky access to university facilities.

Our methodology

We prepared this report under the general authority of Section 403 of the state Fiscal Code. Our analysis and conclusions are based on extensive research, including but not limited to our review of the following, all of which we cite and source throughout the report, along with the scope as it applies to each:

- Penn State's enabling statute, charter, board bylaws, and board standing orders
- Pennsylvania's Right-to-Know Law
- Pennsylvania's Public Official and Employee Ethics Act
- The Morrill Acts of 1862 and 1890
- Penn State board meeting minutes and, if available, videos
- Website of the Big Ten Conference and individual websites of the individual Big Ten universities (See Appendix A for more detail)
- Website of the U.S. Department of Education's National Center for Education Statistics, as well as websites for 20 individual universities (See Appendix B for more detail)
- Website and publications of the Association of Public and Land-Grant Universities, as well as individual websites for 69 land-grant institutions (See Appendix C for more detail)

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- Websites and the governing documents of the three other state-related institutions (See Appendix D for more detail)
- Many other websites, publications, and news stories
- The Freeh report

Also as part of our methodology, we did the following:

- Obtained expert opinions from higher education associations, including the Association of Governing Boards of Universities and Colleges and the American Council of Trustees and Alumni
- Attended Penn State board meetings
- Met twice with Penn State officials
- Met or communicated with an alumni group, a former trustee, and others as appropriate
- Corresponded with the public, including alumni and others interested in following the progress of our report

Availability and distribution of this report

We did not provide a copy of this report to Penn State or to any other entity prior to release. (On July 26, 2012, we did publicly release preliminary recommendations via a letter sent to leaders of the General Assembly and copied to the Penn State board.) An online link to this report has been made simultaneously available to Penn State's board, various members of the General Assembly, and the public. That link is <http://www.auditorgen.state.pa.us/Reports/PennStateSpecialReport.pdf>.

We have made hard copies of the report available at a press conference and will continue to meet with interested persons and entities in the future to discuss this report. Additional hard copies are available by contacting the Pennsylvania Department of the Auditor General's

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Office of Communications at 717-787-1381 or by emailing that office at news@auditorgen.state.pa.us.

In addition, as a how-to manual to implement our recommendations, we have prepared a separate document of legislative and procedural guidelines to provide suggested methods of re-configuring Penn State's enabling statute, Penn State's charter, and the board's bylaws and standing orders. These guidelines will be useful to the General Assembly, Penn State, and any other interested party and are available at <http://www.auditorgen.state.pa.us/Reports/PennStateSupplementToSpecialReport.pdf>.

Where to go from here

Public support for this report and its recommendations is critical, as is support from the Penn State's board of trustees, members of the Pennsylvania General Assembly, Pennsylvania's governor, and others:

1. The **Pennsylvania General Assembly** should utilize this report and our separate legislative and procedural guidelines as aids for amending any provision of state law as necessary to implement our recommendations.⁷
2. The **Penn State board of trustees** should publicly support the recommended reforms, working as necessary with the General Assembly. In addition, the board should require the university's legal counsel to ensure that Penn State's charter, bylaws, and standing orders are amended not only to implement our recommendations but also to ensure those documents are consistent both with each other and with Penn State's enabling statute *and* are written in plain language. Finally, the board—either in full or via its Committee on Governance and Long-Range Planning—should meet with us (i.e., the Department of the Auditor General) to discuss the report and a timeline for implementing our recommendations.

⁷ Although not discussed in our report, a good statutory drafting practice for the General Assembly to follow would be the addition of a “Legislative finding; declaration of policy” to Penn State's enabling statute, similar to those in the statutes of the three other state-related universities, to summarize the history/background of Penn State and its board of trustees. (See our separate legislative and procedural guidelines.)

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3. **Pennsylvania's governor**, who is also a Penn State trustee, should review and support this report and its recommendations.
4. **Pennsylvania's three other state-related universities**—Lincoln University, University of Pittsburgh, and Temple University—should review this report for issues and recommendations applicable to each university, in particular but not limited to the Right-to-Know Law and the Ethics Act, and should work with the **General Assembly** to act on the necessary reforms.
5. **The public** should support our recommendations, with state taxpayers in particular insisting on accountability and transparency from taxpayer-supported Penn State.

**Significant event November 1, 2012:
University president charged with
perjury, obstruction of justice, more**

As this report was being finalized, the state's attorney general and the state police commissioner announced that Graham Spanier, Penn State's former president, has been charged with criminal conspiracy, perjury, obstruction of justice, endangering the welfare of children, and failure to report child abuse. These charges will of course be resolved in the judicial system but, regardless of outcome, they represent the most recent stark example of Penn State's bad structure of governance.

In particular, as we explain in Chapter One, Penn State has concentrated too much power in its president, regardless of who holds that position, by making that president also a voting trustee, a board officer, and a member of nearly every committee. That empowerment creates a culture by which the board of trustees defers to the president as a high-ranking colleague when, instead, the board should be overseeing the president as an employee.

Structural reform must take place at once.

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CHAPTER ONE

University president on the board

*An unusual,
contradictory,
and conflicted
structure:*

*In 2011-12, no
other public Big
Ten university had
its president as a
voting trustee.
Also, among the
20 largest U.S.
universities, only
Penn State gives
its president a vote
on the board.*

Summary of Issue:

Penn State has concentrated too much power in its president, who is also a voting board member, the board's secretary, and a member of almost every board committee.

Summary of Recommendations:

The president should report to the board and be active in every board meeting but should not be a board member or board officer.

The president of The Pennsylvania State University does not serve only in that single role. Based on a structure of governance rare among public universities, Penn State's president holds multiple and conflicting positions: (1) president of the university, (2) member of the board of trustees, and (3) executive officer/secretary of the board of trustees.

In addition, the president serves on nearly every board committee, subcommittee, and special committee and can refer matters to and/or influence the work of such groups.

The present structure must be changed because it contradicts the purpose of having the president report to the board as his/her boss and be accountable to that body. Indeed, just the *appearance* of conflicted roles supports the need for change.

Notwithstanding appearances, the *practice* itself is unhealthy. Specifically, it is illogical to expect that trustees can objectively supervise someone who, as a fellow trustee, holds not only an equal position but also, as the board's secretary, holds the higher position of an executive officer.

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The reporting and relational conflicts of this multiple-role presidency are obvious:

- **President is subordinate to trustees.** As the university's top employee and administrator, the president reports to the trustees. They hire and confirm the president, they evaluate the president, and they ultimately retain or fire the president. In that relationship, the president is *subordinate* to the board.
- **President is equal to trustees.** As a voting member of the board, the president deliberates and votes with the board. In that relationship, the president is *equal* to the other trustees.
- **President outranks trustees.** As the board's secretary, the university president controls the flow and content of information to the other trustees, including the other executive officers such as chair and vice chair, and ultimately to the public. This critical gatekeeping includes, for example, setting meeting agendas, determining meeting places and times, having ultimate responsibility for the written record/minutes of board and executive committee meetings, and preparing board correspondence. In this officer's role of secretary/gatekeeper, the president outranks most other trustees. The president also outranks other trustees by serving on nearly every committee, subcommittee, and special committee and by being empowered to refer matters to and/or influence the work of such groups.

The structure at Penn State is a rare one, as we detail later in this chapter. First, however, we provide some background.

**Background: President turnover following
child sex abuse scandal**

During the course of the child sex abuse scandal, the president of Penn State University and the secretary of its board of trustees was Dr. Graham B. Spanier. Unanimously elected by the board as Penn State's 16th president on March 16, 1995, Spanier began his term on September 1 of that year. He therefore became an ex officio trustee ("ex officio" means a role conferred automatically by virtue of position) and board officer.

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On November 9, 2011, the board of trustees determined that Spanier would leave his position as university president. That action was ratified by the board's executive committee three weeks later on December 2, 2011, with its adoption of this resolution:

RESOLVED, That in view of the situation and unfolding circumstances at Penn State, the Board of Trustees determined, and Dr. Graham B. Spanier concurred, that it was best for Dr. Spanier to step down as President effective November 9, 2011.⁸

At that same meeting, and with the same retroactive effective date of November 9, 2011, the executive committee ratified the firing of football coach Joseph V. Paterno and the appointment of Dr. Rodney A. Erickson as university president.

Until his appointment as the new president, Erickson had served since July 1, 1999, or more than 11 years, as Penn State's executive vice president and provost. As executive vice president, he served as Penn State's chief executive officer in the president's absence; as provost, he was the university's chief academic officer.⁹

**Authority for president's multiple roles comes from
law, the charter, bylaws, and standing orders**

Voting trustee. Penn State cites Act 50 of February 22, 1855,¹⁰ as its original institutional charter. The original enabling statute and charter have been amended numerous times through statutory changes and Centre County court decrees, the latter of which resulted from university-initiated requests. The current position of president was originally known as the "principal of the institution," who was also a voting member of the board of trustees. That role as a voting trustee continues to this day.

⁸ Penn State University Board of Trustees, Minutes of Meeting, Executive Committee, December 2, 2011. Spanier continued to be a tenured professor at Penn State and also held the rank of President Emeritus. Questions raised publicly about whether and how his professorship could or should have continued were not within the scope of this report. However, according to a Penn State announcement dated November 1, 2012, and accessed at <http://progress.psu.edu/resource-library/story/university-officials-issue-statement-on-attorney-generals-actions>, "In light of the charges brought against him, Spanier will be placed on leave, effective immediately."

⁹ <http://president.psu.edu/biography>. Accessed July 27, 2012.

¹⁰ 24 P.S. § 2531 *et seq.*

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Board secretary. It is the board's bylaws that tacked on the president's additional role as the board's secretary, an executive officer of the board. We could not determine the initial date for establishment of that role because the bylaws—at least those that Penn State publishes online for the public—do not contain information to identify amendments or their dates.¹¹

Regardless of their date, the bylaws are superseded by Penn State's enabling legislation, which suggest something different about the role of board secretary. In particular, neither the original law nor its amendments decreed that the board secretary's position should be filled by the university president. Instead, the General Assembly initially said only that the board would elect a treasurer and appoint a secretary¹²—not whom the board would appoint or elect to either position. The law at that point did not even refer to those positions as board officers.

Later, in 1905, the General Assembly amended the law¹³ to reference the additional board positions of president [chair] and vice president [vice chair]. The amended law referred to those positions, along with the secretary and treasurer positions, as officers of the board. The amended law also said that officers would be elected¹⁴ (as opposed to appointed) annually. But, again, the amendments did not say whom the board should elect as any of the officers—whether chair, vice chair, secretary, or treasurer.¹⁵

Committee involvement and influence. Penn State's bylaws make the university president a member of almost all standing committees, special committees, and subcommittees. At the same time, various other bylaws empower the president to influence the appointments of standing committee members (including the chair and vice chair), subcommittee members, and special committees. This power is based on bylaws that direct the board chair and committee officers to consult with the president before making appointments.

¹¹The bylaws published online do contain a date, but the same date appears at the bottom of every page in a simple month/date format (e.g., "7/2012"). Thus, readers cannot tell what provisions in particular might have changed as of that month and year, or the dates of prior revisions.

¹² 24 P.S. §§ 2540-2541.

¹³ 24 P.S. § 2539.

¹⁴ The language used in the amendment was "chosen."

¹⁵ The charter is inconsistent with the enabling statute by referring only to a 1915 Centre County court decree.

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Finally, the president and the board chair together are empowered to assign work to one or more committees.

So who's ultimately in control?

Despite a critical standing order¹⁶ of the board stating that the president “shall be responsible only to the Board and shall report to the Board,” other bylaws and standing orders have enabled Penn State’s board to cede control to the university president. In ceding that control to one of its own members—a member/officer who controls the flow of information such as meeting agendas and minutes, and who influences committee work and appointments—the board cannot be an effective or objective supervisor. In short, the assignment of power to Penn State’s president has resulted in a serious imbalance rare among public universities.

**Presidents of most public universities, including
Penn State’s peers, are not voting board members**

According to the *2010 Policies, Practices, and Composition of Governing Boards of Public Colleges, Universities, and Systems*¹⁷ of the Association of Governing Boards of Universities and Colleges, only 6.3 percent of the responding boards of trustees had the university CEOs as voting members. The far majority of institutions—72.5 percent—did not have the CEO on the board at all. The remaining 21.2 percent included the CEO, but not as a voting member.¹⁸

¹⁶Standing orders are “provisions for special committees and subcommittees; special assignments; attendance; matters requiring approval; matters to be presented for information; procedures for the election of trustees by alumni; rules and regulations for the conduct of public meetings; governance of the University; General Counsel; delegation of corporate authority; and trustee emeriti.” See <http://www.psu.edu/trustees/pdf/charter.pdf>, accessed August 15, 2012. Like the bylaws published online, the standing orders also do not reflect revision dates other than the same single month/day notation at the bottom of every page. As of October 2, 2012, for example, 13 of the 14 pages of the *Standing Orders of the Board of Trustees*, plus the table of contents page, showed “07/2012” at the bottom of each page; the second page of the standing orders, however, has no date.

¹⁷ Page 1. This 2010 report of the Association of Governing Boards of Universities and Colleges, or AGB, is based on a survey of governing boards of 195 public institutions of higher education in the United States regarding board composition and selected policies and practices.

¹⁸Page 12.

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We also conducted our own research by looking at three different groups.

First, we looked at the 11 public universities in the **Big Ten Conference**.¹⁹ (The Big Ten also includes a private institution, Northwestern University in Illinois.)²⁰ Penn State was the **only** one of the 11 public Big Ten universities with a *voting* CEO on the governing board. Three other Big Ten public universities—University of Minnesota, Michigan State University, and University of Michigan²¹—did have CEOs on their boards, but in all cases the CEOs were *nonvoting*.

Second, we reviewed the 20 **public universities with the highest enrollments** for 2011-12.²² Only Penn State had a voting CEO on the board. At the remaining 19 top-enrollment universities, 4 had *nonvoting* CEOs on their boards. Three institutions were the same Big Tens cited in the preceding paragraph—University of Minnesota, Michigan State University, and University of Michigan—while the fourth was New Jersey’s Rutgers University.

Third, based on Penn State’s oft-cited status as a land-grant university, we looked at 69 **land-grant colleges and universities**, including Penn State.²³ Again, Penn State was in the clear minority since 54 of the land-grants had no CEOs on the board at all and 5 others had *nonvoting* CEOs. Thus, besides Penn State, only 9 of the land-grants had voting CEOs, and none of those land-grant institutions was a member of the Big Ten Conference or in our test group of the 20 universities with the highest enrollment.

We also looked at Pennsylvania’s other three state-related universities, as they and Penn State are known. While all three—Lincoln University,

¹⁹ See Appendix A for a list of the Big Ten Conference universities.

²⁰ Because we could find very little publicly available information about Northwestern’s board, we focused our review on the boards of the 11 public Big Ten universities, which include Penn State and these 10 others: Indiana University, Michigan State University, Ohio State University, Purdue University, University of Illinois, University of Iowa, University of Michigan, University of Minnesota, University of Nebraska, and University of Wisconsin.

²¹ The University of Michigan did have a board secretary who, like Penn State, was a school administrator. Unlike Penn State, however, the university administrator/board secretary was nonvoting and was not the university president. (We did not look at the board secretary’s position at every university in our test group but came across the University of Michigan example as we determined whether the university president/CEO was a board member.)

²² See Appendix B for a list of these 20 universities.

²³ See Appendix C for a list of these 69 land grant colleges and universities.

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Temple University, and University of Pittsburgh—include their presidents as voting board members, which we recommend against, not one of those presidents also serves as board secretary.²⁴

We sought outside professional opinions as well:

Speaking for the **Association of Governing Boards of Universities and Colleges**, or AGB, was Richard Novak, Senior Vice President of Programs and Research. Mr. Novak wrote this to us in an email dated August 9, 2012:

*According to Association of Governing Board's 2010 study, "Policies, Practices, and Composition of Governing Boards of Public Colleges, Universities, and Systems," presidents serve on the governing board in 27.5 percent of all public boards. The vast majority of the presidents who serve on the board do so as a non-voting member. **It is best, however, if the chief executive is not on the board because Board members are his/her boss.** Not including the president on the board in no way precludes a strong and effective working relationship between the president and the board. (Emphasis added.)*

Mr. Novak's email also addressed the issue of the president serving as the board's secretary:

*The position of the Secretary of the Board is **somewhat archaic** and unnecessary. If the President/CEO should be off the Board..., he/she should also not be a Secretary of the Board.*

*In addition, any non-Board member President/CEO should be instructed by the Board to be at **all** Board meetings. This includes any executive meetings to discuss legal, personnel, and real estate matters and even meetings regarding the President's performance evaluations since the Board will be discussing their objectives for his/her future performance. There will be*

²⁴ See Appendix D for a table about these 3 universities.

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some exceptions to this rule to ensure that the Board can discuss certain matters without the presence of the President. There is no need to have a specific written bylaw, rule, or policy regarding this issue. (Emphases added.)

For the **American Council of Trustees and Alumni**, Vice President of Policy Dr. Michael Poliakoff told us this in an email dated September 10, 2012:

Because presidents also often are members of the faculty, serious conflicts can arise. Permitting the president to serve only ex officio nonvoting, or to attend board meetings simply upon the call of the board, will eliminate the problem of dual loyalties. It is noteworthy that, based on our research, less than 10 percent of public boards give voting rights to presidents.

Dr. Poliakoff's email also said this:

The president serves at the pleasure of the board. Therefore, the president should be an ex officio, non-voting member of the board available at the board's call. Because presidents are also often members of the faculty, as noted above, serious conflicts can arise if they are voting members of the governing board. Service as an ex officio member eliminates such a conflict yet acknowledges that the president is most familiar with the daily operations of the institution and therefore essential to the board discussion. As a best practice, boards should include on their agenda a regular executive session which permits appropriate confidential discussions solely among the members of the board.

In addition, the **Center for Nonprofit Management & Cause Communications** states that nonprofits should guard against having the executive director of the organization having a vote on the nonprofit board for the reason that follows:

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While an executive director is often a member of the board, involved in board discussions and information sharing, he or she is rarely granted a vote. After all, the board is technically the executive director's employer and conflicts of interest could arise. To guard against this, both the board and the executive director should act independently from each other—the executive director as leader of the organization and the board in a governance role.²⁵

Finally, when issuing the *AGB Statement on Conflict of Interest* on November 20, 2009, the board of directors for the Association of Governing Boards of Universities and Colleges advised college leaders of the “pressing need” for thorough, periodic reviews of their conflict-of-interest policies. The AGB also noted that boards, when considering conflict-of-interest standards, should not restrict questions only to legal requirements.

Of the 12 principles in AGB's statement, the first is this:

*Each board must bear ultimate responsibility for the terms and administration of its conflict of interest policy. Although **institutional officers, staff, and legal counsel** can assist in administration of the policy, **boards should be sensitive to the risk that the judgment of such persons may be impaired by their roles relative to the board's.**²⁶ (Emphases added.)*

**Recent example illustrates
problems created by
multiple-role presidency**

We end our discussion with a recent example—the process by which Penn State agreed to sanctions imposed by the National Collegiate

²⁵ “What are some best practices for board operations?” *Nonprofit answer guide*, A project of Center for Nonprofit Management & Cause Communications, Los Angeles, CA. Last accessed on August 15, 2012, at <http://nonprofitanswerguide.org/faq/boards-governance/what-are-some-best-practices-for-board-operations>.

²⁶ <http://agb.org/news/2009-12/agb-board-directors-statement-conflict-interest>. Last accessed August 16, 2012.

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Athletic Association, or NCAA—to illustrate the conflicted roles of Penn State’s president.

Readers should keep in mind the significance of the example in view of the following:

- **The conflicted roles continue today.** The multiple-role problem is a continuing one. We also use this example to show that the problem is structural, not personal with regard to any particular president.
- **The spillover is significant.** The problem of the president’s multiple roles has spilled over into additional issues that we raise in the remainder of this report, thus showing the widespread effects of the multiple roles.

Example

NCAA sanctions:

Who at Penn State was in charge?

Was it the president or the board?

Important notes: Our purpose in citing this example is **not** to discuss the propriety of the sanctions themselves²⁷—i.e., whether they were too harsh, not harsh enough, or just right. Nor is our purpose to discuss the president’s authority for signing the related consent decree.

Our purpose instead is to show how the president’s various roles exacerbated the publicly apparent confusion and conflict among board members as they tried to sort out their own roles and their questions about who was in charge. Our points follow:

- a) **The president became the focus.** Media reports—enhanced by public comments of Penn State stakeholders, including some trustees—focused on the university president, who signed the consent decree from the NCAA. The public debate and controversy surrounding the president resulted in a special teleconference on August 12, 2012, involving the full board.

²⁷ Sanctions include a fine of \$60 million, loss of scholarships, a four-year prohibition on postseason football, and invalidation of football wins back to 1998.

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- b) At the special teleconference to support the president, the [other] trustees could not act as leaders.** The board was in a defensive posture. With most trustees excluded from the process until after the consent agreement was signed, some trustees could not “own” it, at least not until they learned more. The chair opened the meeting with this statement:

I had intended to call for a vote this evening to ratify the consent decree, not because ratification is legally required—it is not—but rather because President Erickson's authority has been challenged publicly by some of our own trustees. The leadership of the board wanted to publicly demonstrate the board's support of President Erickson and the university's commitment to fully perform and comply with the consent decree.²⁸

The chair's statement perfectly illustrates the conflicted roles of the university president. The first sentence shows that the president reports to the board—hence the meeting because some of his bosses (i.e., “our own trustees”) challenged his authority. The second sentence shows the boundary problem: “the leadership” in support of the president includes the president/executive officer/secretary, making him a boss in support of himself.

- c) The real victims of the child sex abuse scandal were overshadowed by the board's dysfunction.** Based on our analysis, initially excluding the other trustees from learning about the NCAA sanctions was a natural extension of Penn State's historically bad structure, a structure simply too conflicted about who's in charge of whom when so much power is with the president/trustee/secretary.²⁹

Had the president truly reported to the board, the focus would have been on the leadership by trustees as a unit. Instead, trustees on both sides of the issue escalated the tension by making the president the focus. Calling a meeting to defend Erickson as a victim ended up sidelining the *real* victims of the

²⁸ Words of Karen Peetz, board chair, at <http://www.youtube.com/watch?v=BwzS7JqRJzI>. Last accessed August 16, 2012.

²⁹ The exclusion also mirrors Penn State's historic unwillingness to open its records. See Chapter Six.

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child sex abuse scandal and paused Penn State's need to move forward. It is unconscionable for the president to be put in that role, for the board to allow it, and for the General Assembly not to fix it. The president of Penn State University must be able to focus on the job of university president and leave the governing to the board.

In the preceding example, if the university president had been an employee accountable to the trustees but not one of them, he would still have been the person to work with the NCAA. The NCAA makes that responsibility clear: "A member institution's president or chancellor has ultimate responsibility and final authority for the conduct of the intercollegiate athletics program and the actions of any board in control of that program."³⁰ At the same time—again, as an employee accountable to the board but not one of them—the president would have been duty-bound to consult with his bosses (i.e., the board) beforehand by letting the executive officers know that he thought it best to sign the decree. Then, those officers—who would not include the university president—would have been the ones to determine whether and to what extent to involve the rest of the trustees, and to defend that choice of whether and to what extent to involve them.

The difference between our scenario and the one that actually happened is that, under our scenario, the board would have put the focus on itself and its leadership as a group, as opposed to the actual scenario under which the board was called upon to defend the president after the fact, thus taking the focus away from the real victims.

Our Summary

Based on state legislation, as well as on Penn State bylaws and standing orders, the university president has been given additional roles that impair good governance and effective leadership. These added roles—by which the president determines the board's agenda and can set or influence the board's priorities—include voting board member, board secretary/executive officer, member of most

³⁰ Constitution 6.1.1, *2011-12 NCAA Division Manual*, page 43, The National Collegiate Athletic Association, Indianapolis, IN. Last accessed August 22, 2012, at <http://www.ncaapublications.com/productdownloads/D112.pdf>.

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committees, consultant for committee member appointments, and co-assigner of committee work.

As we have shown, the result of this structure is a concentration of power rare among public universities. The roles are conflicted and contradictory. The necessary and healthy boundaries between the president as employee and the board as employer are indistinguishable.

To address this significant problem of governance and leadership, and to help Penn State move forward as it restores its worldwide reputation, we offer the recommendations that follow.

Our Recommendations

Although our report and recommendations are specific to Penn State, we recognize that some of the recommendations should also apply to Pennsylvania's other three state-related universities—Lincoln University, Temple University, and the University of Pittsburgh. We therefore encourage the General Assembly and the universities themselves to act on our recommendations about Penn State where applicable to their own structures. In particular are our recommendations below to remove a university president from the board of trustees.

IMPORTANT: These recommendations should not be taken to mean that the Penn State president should be removed from participating actively at board meetings and in board discussions. On the contrary, the board should require the president to attend every board meeting and to participate actively—but as an employee, not as a voting board member or officer.

1. The General Assembly should amend the act that established The Pennsylvania State University (i.e., Penn State's enabling statute) by removing the university president as a member of the board of trustees.
2. The General Assembly should amend Penn State's enabling statute to prohibit the university president from serving as the secretary of the board of trustees.

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3. The General Assembly should amend Penn State's enabling statute to prohibit the university president from serving on the executive committee, as well as on any standing committee, special committee, and subcommittee of the board.
 4. The General Assembly should amend Penn State's enabling statute to prohibit the university president from assigning work to board committees and subcommittees.
 5. The Penn State board of trustees should amend its charter, bylaws, and standing orders to remove or amend any provision that implies or appears to put the university president in a position that outranks the board, or that implies or appears to make the board of trustees report to the university president rather than vice versa. For example, the board of trustees should remove all language in Article 4 of the bylaws, sections (3)(a), (4), and (5)(a), that requires the board's chair to seek the president's counsel—and implied permission—before other trustees are appointed to various committees and subcommittees.
 6. The board of trustees should take the proactive step of reviewing its bylaws and standing orders to evaluate whether the board adheres to the 12 principles of the *AGB Statement on Conflict of Interest*.³¹

³¹ This statement from the Association of Governing Boards of Universities and Colleges is available at <http://agb.org/news/2009-12/agb-board-directors-statement-conflict-interest>. Last accessed on October 2, 2012.

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CHAPTER TWO

The governor as a voting trustee

*Governors were
not on the boards
of most public
universities in
our test groups.*

Summary of Issue:

**The Penn State board includes
Pennsylvania's governor as a voting
trustee, but the governor's ability to vote
creates conflict-of-interest questions.**

Summary of Recommendations:

**The governor should be a nonvoting
trustee instead of a voting trustee.**

Overall, during the past 155 years, the Commonwealth of Pennsylvania has given *a minimum of* \$10 billion in taxpayer money to what is now Penn State University. That conservative and partial figure represents annual appropriations, grants, and capital projects.³²

The governor of the Commonwealth recommends the annual appropriations to the General Assembly, approves grants, and makes decisions on capital expenditures.

Stated another way, the governor is responsible for making critical decisions that affect the operation of public institutions. That responsibility is especially significant as it applies to Penn State, the Commonwealth's flagship public university.

At the same time, the governor is a voting member of the Penn State board of trustees. Thus, as a trustee, and absent a change in law, a Pennsylvania governor can vote on expenditures for projects funded with the same state monies that he or she approves as governor, or on any other Penn State issue with its roots in the governor's decision-making. That voting power gives rise to conflict-of-interest concerns, whether real or perceived.

³² <http://www.budget.psu.edu/factbook/StateAppropriation/StateAppropriationsHistoryDetails1855topresent.pdf>.

We initially accessed this document on February 15, 2012; however, when attempting to verify the information on October 26, 2012, we found that Penn State had updated the file but had omitted the years of 1857 through 1887.

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**History: The law
created this inherent conflict**

The governor is a voting member of the Penn State board of trustees by virtue of being governor (i.e., the governor is an “ex officio” board member). That role as a voting trustee is part of the enabling legislation of 1855 that established the university.

In the early days of what is now Penn State, it likely made sense to have a voting trustee/governor for a state educational institution that was seeking credibility. Today, Penn State is known worldwide. And just as the university has evolved, so have good governance practices in higher education.

The basic question for current governors is this: Which role takes priority, governor or Penn State trustee?

Elected by the people, Pennsylvania’s governor must answer that the role of governor is both principal and primary. In that role, the governor has the duty to represent all Commonwealth citizens and taxpayers without favoritism or partisanship. Conversely, as we explain below, a Penn State trustee has the duty to advocate for Penn State specifically.

**Conflict: Advocating the interests
of Penn State versus
those of the wider public**

According to the board’s standing orders, membership on the Penn State board carries with it numerous expectations. Standing Order IX(1)(f)11 provides that trustees should “Advocate the University’s interests, but speak for the Board or the University only when authorized to do so by the Board or the Chair.”

Looking at the first part of the standing order, we see the obvious and inherent conflicts when the voting trustee is also Pennsylvania’s governor.

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- ✓ First, the Commonwealth provides **annual funding** to Penn State as part of the state's budget. It is the governor who establishes the annual budget, including the money for Penn State, and it is the governor who signs and approves each budget after revision and passage by the General Assembly.

Exercising an active voting role on the Penn State board creates a direct entanglement for the governor. The people of Pennsylvania expect the governor—indeed, it is the governor's responsibility—to advocate for their interests and to maximize state funding that affects them. On the other hand, Penn State expects its trustees to advocate for the university's interests and to maximize state funding for those interests specifically.

- ✓ Second, the Commonwealth provides **funding for capital projects**, and Penn State has been the beneficiary of hundreds of millions of dollars in such funding for construction and reconstruction. Again, the General Assembly plays a role by approving the Commonwealth's capital budget, which authorizes spending on construction projects. But it is the governor who decides when the capital funds become available and which projects get those funds.

Exercising an active voting role as a Penn State trustee in decisions about capital projects is, again, an entanglement for the governor. Taxpayers in general expect the governor to fund all capital projects impartially, while Penn State expects its trustees to maximize Penn State's capital projects specifically.

**Conflict: Speaking as a trustee
versus speaking as the governor**

More entanglements. Looking at the second part of Standing Order IX(1)(f)11, in which trustees are expected to speak for the board or university only when authorized by the chair or board, we find conflicts that are particularly difficult to sort out. The public cannot be sure under which role or roles a governor is speaking when Penn State is the topic, and this conflict became particularly apparent in the wake of Penn State's child sex abuse scandal.

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Example. In late July 2012, the governor was asked by reporters in western Pennsylvania about the NCAA sanctions imposed on Penn State. After explaining that he was advised that sanctions were coming but not what they were, the governor said this:

First off, there's more to be done on the criminal side as you well know, and I was involved in the investigation. I'm no longer involved in the investigation although our state police are still involved. So I have to be very careful about where we go...The [NCAA] actions taken, though, go well beyond those who were responsible or should have been responsible and affect all those students up there [in State College]. It affects the psyche up there. I can certainly understand where the players who played all those games are looking at the NCAA and saying, "I didn't play the game? Of course I did." I believe the university was turning things around on its own, and I'm a little concerned at the overall impact....³³

The governor clearly communicated his need as the former prosecuting attorney general to “be very careful” in whatever he said. But the ability to offer even a nonofficial/personal opinion is conflicted, too, because the roles of governor and trustee are concurrent:

- ✓ The governor is a voting trustee, and trustees—according to the standing order we previously cited—should speak for the university or board only when so authorized. It is not clear for whom the governor was speaking when he said that the university was “turning things around on its own.”
- ✓ The governor is also the head of state and, as such, supervises the Pennsylvania State Police, who are still investigating the criminal case. It is not clear in what capacity the governor was speaking when he asserted that all the people “who were responsible or

³³ “Corbett comments on NCAA sanctions on Penn State,” Timothy McNulty, *Pittsburgh Post-Gazette*, July 25, 2012. Article and video most recently accessed on October 1, 2012, at <http://www.post-gazette.com/stories/sports/psu/corbett-comments-on-ncaa-sanctions-on-penn-state-646166/>.

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should have been responsible” have been identified in the criminal investigation.

**Conflict: Coming from an
elected state row office,
or from the elected office of
lieutenant governor**

Pennsylvania has three statewide elected row officers, including the state treasurer, auditor general, and attorney general. Because of their prior involvement and authority related to Penn State, potential conflicts exist for any of the three to serve as a Penn State trustee with voting powers, similar to the conflicts we’ve been discussing as they pertain to the governor or, for that matter, to the lieutenant governor:

- ✓ If the state’s treasurer were to become a voting trustee after leaving the treasurer’s position, whether to become governor or to serve in any other position, a conflict would exist because he or she as treasurer would have disbursed state monies to Penn State. A period of separation would assist in mitigating this conflict.
- ✓ If the state’s auditor general were to become a voting trustee after leaving the auditor general’s position, whether to become governor or to serve in any other position, a conflict would exist because he or she as auditor general would have conducted audits of Penn State. A period of separation would assist in mitigating this conflict.
- ✓ The current governor has already pointed out conflicts associated with his former role as the attorney general whose office investigated the child sex abuse scandal. But even without his involvement in the criminal case, the conflicts exist as we’ve explained; and they would still exist for an attorney general who went on to hold any other position, whether governor or not. Again, a period of separation should be required.

Pennsylvania law has recognized the types of conflicts that arise from the former roles performed by row officers. For example, the state

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constitution requires a window of four years to pass before the state treasurer is eligible to become auditor general.

For the same types of reasons as we have been discussing—i.e., the authority for decision-making with regard to Penn State—potential conflicts also exist if any lieutenant governor were to serve as a voting trustee either during or soon after his or her term. Thus, a period of separation is also needed before a current or former lieutenant governor could serve as a voting Penn State trustee.

**Other potential conflicts for the
governor as a voting trustee:
Philanthropy, attendance, participation**

Other standing orders also pose potential conflicts for Pennsylvania's governors, and particularly if they are full voting members and thus subject to the same level of responsibility as their voting colleagues.

Examples of these standing orders include Penn State's expectations that each trustee will do the following:

- ✓ "Make the University a top philanthropic priority to the very best of one's personal ability"³⁴
- ✓ "Participate regularly in events that are integral parts of the life of the University community"³⁵
- ✓ "Prepare diligently, attend faithfully, and participate constructively in all Board meetings and related activities by reading the agenda and supporting materials"³⁶

The preceding expectations might be reasonable for other trustees, but not for the state's governor, who first and foremost must devote time to running the state, and who must not treat Penn State with favoritism.

³⁴ Standing Order IX(1)(f)3.

³⁵ Standing Order IX(1)(f)7.

³⁶ Standing Order IX(1)(f)4.

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How governors have complied with the “attend faithfully” order regarding board meetings actually serves to illustrate our position that governors can be nonvoting trustees and nonetheless retain their ability to weigh in at meetings. Over the years, this ability to weigh in without a vote has occurred because governors routinely do not personally attend board meetings but, instead, send nonvoting designees.³⁷ For example, we found a reference from 1978 about that practice of sending nonvoting designates, and we found the same results when we reviewed board attendance records since 2006. The current governor was most recently represented by his nonvoting designee at the September 2012 board meeting.

**Governor not on the boards
at most public universities**

According to the 2010 survey by the **Association of Governing Boards of Universities and Colleges**, or AGB, 83 percent of the 195 responding institutions did not have the governor serving on their boards at all, while 6 percent had governors serving without voting privileges.³⁸ Thus, only 11 percent of the institutions had governors who were voting board members.³⁹

Based on our own survey work, we found the following:

Besides Penn State, we found only one other **Big Ten Conference** university with a governor on the board of trustees. In that case, at the University of Illinois, the governor serves as a voting ex officio board member.

Looking at the 20 **largest universities by enrollment** for the 2011-12 year, we found only 2 others besides Penn State with governors as ex officio voting board members. One was Arizona State University; the other—a Big Ten member as reported above—was the University of Illinois.

³⁷ By “designee,” we mean an official specifically named by the governor to represent him. We are not referring the governor-appointed voting trustees.

³⁸ *2010 Policies, Practices, and Composition of Governing Boards of Public Colleges, Universities, and Systems*, Association of Governing Boards of Universities and Colleges, page 12.

³⁹ Ibid.

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Looking at the 69 **land-grant universities**, we found that only 15 had governors as voting board members, while 3 land-grants had governors on the board as nonvoting members. The far majority of land-grants—or 51, which is nearly three-quarters—did not have governors on their boards at all.

We also consulted experts:

A senior vice president from the **Association of Governing Boards of Universities and Colleges** referred to the AGB’s 2010 survey of institutions, which found that most public institutions do not include the governor as an ex officio member:

*Governors serve on governing boards at 17 percent of all public institutions or university systems. A governor’s seat on the board is an **archaic** practice that is likely no longer necessary. Having the governor on the board may “muddy” the issues and there should be a clear separation between the governing board and the state. The governor can always have a “voice” with the board because he/she usually appoints many of the board members and has ample opportunity to communicate with the board chairman and other key board members.⁴⁰ (Emphasis added.)*

A vice president for the **American Council of Trustees and Alumni**, Dr. Michael Poliakoff,⁴¹ told us he knew of a minority of states where governors or lieutenant governors sat on university system boards and where he deemed it “essential” for those governors to be voting members in those particular cases.⁴² For other cases, he called it a “better way” for the governor to appoint all members⁴³ or a supermajority of members⁴⁴ rather than to serve on the board; he

⁴⁰ Richard Novak, Senior Vice President of Programs and Research, Association of Governing Boards of Universities and Colleges. Email dated August 9, 2012.

⁴¹ Dr. Poliakoff is Vice President of Policy. The comments summarized in this paragraph are from an email dated September 10, 2012.

⁴² He referred to Arizona, California, Connecticut, Delaware, Illinois, Montana, New Hampshire, Tennessee, Vermont, and Wyoming.

⁴³ The states he named were Arkansas, Georgia, Iowa, Kansas, Maine, Mississippi, Oklahoma, and Texas, as well as most schools in Virginia.

⁴⁴ The states he named were Florida, Louisiana, and Ohio.

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explained that appointing members allows the governor to avoid the perception of micromanaging the board and also acknowledges competing priorities that make regular attendance difficult. Voters can hold a governor accountable for the appointments; it is therefore important for such appointees to “invest the time, understand the issues, and raise the tough questions required to represent the public interest.”

As we have noted, Pennsylvania’s current and prior governors have sent nonvoting designees to meetings while knowing—and obviously accepting—that the designees lacked voting privileges.

Our Summary

In the early years of Penn State, lawmakers found it made sense for the Penn State board to include Pennsylvania’s governor as a voting member. But that inclusion as a voting trustee no longer makes sense. Today, via the board’s standing orders, the trustees of Penn State are held to certain expectations and responsibilities, some of which conflict with the governor’s role.

Some conflicts are related to financial duties. Penn State benefits from the governor’s direct involvement and decision-making in the annual budget and the capital funding processes. In those processes, the governor represents the Commonwealth as its executive leader. It is not appropriate for the governor to vote on the same funding as a representative of Penn State, too.

Other conflicts arise in identifying whether the governor is speaking as a governor or as a Penn State trustee; in ensuring that boundaries are maintained between a governor’s current and former positions; and in fulfilling Penn State’s expectations of its trustees with regard to philanthropy, participation in university events, and even to regular attendance at board meetings.

The governor should remain on the board, but not with a vote, and thus not with the same level of expectations placed on voting members. The nonvoting status will still allow the governor to have a voice on the board—the same as now with the participation of the governor’s

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nonvoting designee—but will pose fewer potential conflicts as we have outlined.

Our Recommendations

7. The General Assembly should amend Penn State’s enabling statute to require that the governor be an ex officio nonvoting member of Penn State’s board of trustees rather than a voting member.
8. The General Assembly should also amend Penn State’s enabling statute to prohibit any of the state’s independent row officers (state treasurer, auditor general, and attorney general), as well as the governor and lieutenant governor, from subsequently serving on Penn State’s board as a voting member until at least four years have passed from the time those elected officials leave their positions.

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CHAPTER THREE

Size of the board

Summary of Issue:

Penn State has a board larger than most other public universities we surveyed.

Summary of Recommendations:

The General Assembly should reduce the Penn State board from 32 voting members to 22 members (21 voting, 1 nonvoting) and change the way that business/industry members are elected.

Current Composition of the Penn State Board of Trustees		
5 voting trustees serve automatically because of the offices they hold	President of Penn State Governor of Pennsylvania Pa. Secretary of Agriculture Pa. Secretary of Conservation and Natural Resources Pa. Secretary of Education	5
21 voting trustees are elected—15 by constituent groups and 6 by the board itself	Elected by alumni to represent alumni	9
	Elected by Pa. county agricultural societies to represent agriculture	6
	Elected by board to represent business and industry	6
6 voting trustees are appointed by the governor	Appointed at governor's discretion and confirmed by Senate	6
TOTAL		32

As established in statute and through court decrees amending its charter,⁴⁵ Penn State's board of trustees is structured to include 32 voting members as shown above.

⁴⁵ 24 P.S. §§ 2533, 2535-2537 and the Penn State charter, page C-2 and C-3.

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**Penn State's board size
is atypical for public universities**

In comparing Penn State to the 11 public universities in the **Big Ten Conference**, we found that only Penn State's board had more than 18 voting members. On average, the other public Big Ten universities had 11 voting members, or 12.1 total members.⁴⁶

Penn State was also atypical among the **20 largest U.S. universities**. Specifically, the Penn State board, with its 32 voting members, differed markedly from the boards of the other 19 universities, whose governing bodies averaged just 11.6 voting members, or 12.4 total members.

In looking at the **69 land-grant universities** in our survey group, we found that Penn State was one of only six land-grants with 32 or more board members. Three other public land-grants had 32-member boards like Penn State's board: North Carolina A&T State University (Greensboro), North Carolina State University (Raleigh), and University of Delaware (Newark). A hybrid (private-public) land-grant, Cornell University, had a 64-member board. And a private land-grant, the Massachusetts Institute of Technology, had the largest board of all, with 72 voting and 31 nonvoting members.

The average board size for all 69 land-grants was 16.2 voting members, or 17.4 total members. That average includes all six of the largest boards (Penn State and the five others) as detailed in the preceding paragraph.

It is important to point out that Penn State's three state-related colleagues—Lincoln University, Temple University, and the University of Pittsburgh—have boards even larger than Penn State's board.⁴⁷ Specifically, Lincoln's board has 39 voting members; Temple's board has 39 members, 3 of whom are nonvoting; and Pitt's board has 40 members, 4 of whom are nonvoting. (Readers are directed to Appendix D for additional information.) Although those three universities are not the subject of this report, the issue of their

⁴⁶ Northwestern University, the 12th member of the Big Ten, is a private university.

⁴⁷ The other state-related universities were designated as instrumentalities of the Commonwealth within the Commonwealth system of higher education in 1972, 1965, and 1966, respectively.

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large boards is a significant concern nonetheless, and it is one that the General Assembly should study further and address.

**What do others say
about board size?**

The Institute for Effective Governance of the American Council of Trustees and Alumni considers the optimal board size to be 15 trustees, believing that larger boards are less effective.⁴⁸

The Association of Governing Boards of Universities and Colleges also weighed in on board size, citing an 11-member board as the average and a 12- to 15-member board as optimal.

It is important to have at least this [12-15] board membership range because having less will hamper a good committee structure. Extremely large boards of more than 30 members, more often found at independent colleges and universities[,] tend to defer to their executive committees and members [do] tend to be less involved in important issues brought before the board. In addition, these larger boards may also suffer from a lack of attendance and preparation.⁴⁹

The American Council of Trustees and Alumni, or ACTA, said a board should have no more than 15 members:

The size should be manageable to ensure a meaningful dialogue among the trustees who are all fiduciaries. Effective boards ideally are no smaller than 7 or greater than 15 in size, a size that permits trustees to address key issues and do so in an intensive way. A size of this range also allows for committee structures. In North Carolina, ACTA called upon the legislature to reduce the size of the [University of North Carolina]

⁴⁸ "Best Practices in University Governance," Institute for Effective Governance of the American Council of Trustees and Alumni, March 3, 2006, page 2.

⁴⁹ Email dated August 9, 2012, from Richard Novak, Senior Vice President of Programs and Research, Association of Governing Boards of Universities and Colleges.

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*system Board of Governors from 32 (the size of the
current Penn State Board) to 15....*

*...While one size does not fit all, boards which exceed
15-23 in number are likely to be “non-governing”
boards whose vast numbers and diffuse constituencies
by default vest governance in the president, rather than
trustees....*

*...It is at times argued that larger boards are necessary
to raise funds. Our experience shows that the goals of
[fundraising] and governance can be in conflict.
Accordingly, it is important that boards keep their eyes
on the ball—governance, not fundraising—and remain
small. There are other ways to structure development
programs within the university.⁵⁰*

⁵⁰ Email dated September 10, 2012, from Dr. Michael Poliakoff, Vice President of Policy, American Council of Trustees and Alumni. We began speaking with and emailing Dr. Poliakoff in early June 2012. Dr. Poliakoff clarified and/or expanded his positions over the months, often adding considerable detail and length to his prior positions. In the above quotes about board size, we extracted portions of Dr. Poliakoff’s most recent response. He also said that board members need to be independent—i.e., “not dependent on any kind of favors from the university administration”—and should be “sufficiently strong characters to exercise their own best judgment.” Membership should also be diverse, he said: “Some, but not all, trustees may be alumni. Some, but not all, should have financial skills. Some, but not all, may be residents of the area. Some should have been on other university boards; others should be chosen to bring a fresh perspective.” And, finally, he said that boards should “seek regular input from interested constituencies, such as the faculty, alumni, and student government” and should invite those constituencies “to attend board meetings and provide counsel formally and informally to trustees.” Although Dr. Poliakoff was never associated with Penn State as an employee or contractor, he did serve as a deputy secretary for the Pennsylvania Department of Education from 1996 to 1999 under the administration of Governor Tom Ridge.

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**A final note: Business and industry trustees
are not elected by
business and industry groups**

Returning to the subject of Penn State's board composition, we call readers' attention to the section of the table on the first page of this chapter, and specifically to the middle section of the table regarding the 21 elected trustees. It is noteworthy that, while alumni and agricultural groups get to elect their own representatives, representatives of business and industry do not get the same election consideration. Instead, trustees already on the board get to choose who will represent business and industry.

The selection/election of trustees to represent business and industry interests used to be different. Those representatives were formerly elected annually by delegates who represented engineering, mining, manufacturing, and mechanical societies and associations.⁵¹

The change by which business and industry trustees are now selected and voted upon by the existing trustees was made via a 2002 amendment to the Penn State's articles of incorporation filed with the Pennsylvania Department of State and amending Penn State's charter.

Furthermore, the following standing order of the board provides for this election procedure:

The Selection Group on Board Membership for Business and Industry Trustees shall be composed of five members (three seated or emeriti trustees representing business and industry endeavors excepting those standing for reelection; and two trustees from among those elected by the alumni, elected by agricultural associations, or appointed by the governor.) The selection group shall be appointed annually by the [board chair] for the purpose of recommending two

⁵¹ We found that, while neither the enabling act nor its amendments ever referenced the business and industry members, there were several court decrees—i.e., Decree of 1875, Decree of 1915, Decree of 1925, and the Decree of 1951—the most recent of which states that trustees would be elected annually by delegates representing “Engineering, Mining, Manufacturing and Mechanical Societies and Associations.” These court decrees were in keeping with the Morrill Act (known as the “First Morrill Act,” which provided for the endowment, support, and maintenance of at least one college in each state “where the leading object shall be...to teach such branches of learning as are related to agriculture and **the mechanic arts**....” 7 U.S.C. § 304. (Emphasis added.)

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candidates for membership on the Board of Trustees representing business and industry endeavors. The names and qualifications of the candidates shall be submitted for confirmation by the Board of Trustees (approval or rejection of recommended candidates only).⁵²

This current process for electing business and industry trustees raises several concerns.

First, it is a questionable practice for the board to choose its own members. The public can reasonably raise concerns about insider influence. (Also see Chapter Five.)

Second, the involvement of trustees emeriti is a significant concern. As we discuss in Chapter Nine, a standing order of the board says that trustees emeriti may not make motions, vote, or hold office. But based on the different standing order that we cite on the previous page, up to three emeriti trustees may serve on the business/industry selection committee that presents business/industry candidates to the full board. If that standing order holds true and emeriti trustees are indeed appointed to serve on that selection committee, they can obviously add their weight to the process whether or not they vote or make motions.

Third, it is especially troubling that Penn State *took it upon itself* (by simply amending its articles of incorporation) to make such a drastic change in choosing business/industry trustees. Penn State's action had the effect of overturning Centre County court decrees that had been in place for almost 125 years, from 1875 to 2002. Furthermore, Penn State's land-grant mission was to support not only agriculture but also to promote engineering.⁵³

Penn State should have asked the General Assembly to amend the university's enabling statute. The fact that Penn State instead chose

⁵² Standing Order VII.

⁵³ The "Board of Trustees History" on Penn State's website at <http://www.psu.edu/trustees/timeline/index.html> (most recently accessed on October 3, 2012) states, "[T]he Land-Grant Act mandated designated institutions to offer instruction in agriculture, **engineering** and related subjects, and at a price that was affordable by citizens of ordinary means. In return, land-grant institutions would receive income from endowments created by the sale of federal lands." (Emphasis added.) Penn State's board already includes representatives of agriculture, but it does not include specifically designated representatives of engineering and related fields. Therefore, we propose as part of Recommendation 10 at the end of this chapter that at least **two** of the four elected business/industry trustees should represent the fields of engineering, mining, manufacturing, and/or architecture.

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its own route without involving the General Assembly raises the question of why. Would the General Assembly have asked, for example, why Penn State was replacing an external election process with an insider procedure?

Our Summary

The size of Penn State's board is atypical for most public universities. Boards of 20 or more are more likely to allow governance responsibility to default to the university president and/or the executive committee rather than to the trustees where it belongs.

Regarding Penn State's process by which the board chooses its own business/industry representatives, that process is a drastic change made by Penn State itself in a way that is open to question. The original and intended process to choose business/industry trustees was one in which business and industry groups made their selections, just as alumni and agricultural groups choose their representatives on the board.

Our Recommendations

9. The General Assembly should amend Penn State's enabling legislation to reduce the board of trustees from 32 to 22, to include 21 **voting** members (including 3 cabinet secretaries ex officio) and 1 **nonvoting** ex officio member (the governor). Eliminated from the current structure would be Penn State's president, 3 of the 9 elected alumni, and 2 each of the 6 agriculture representatives, business and industry representatives, and gubernatorial appointments.
10. The General Assembly should add a provision to Penn State's enabling statute to require that our recommended four business/industry trustees be elected by members of geographically disbursed Pennsylvania business and industry associations. At

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least two of those trustees should represent the fields of
engineering, mining, manufacturing, and/or architecture.

Recommended Composition of the Penn State Board of Trustees		
1 nonvoting and 3 voting trustees would serve automatically because of the offices they hold <i>[There are currently 5 voting trustees, including Penn State's president]</i>	Governor of Pennsylvania (nonvoting)	1
	Pa. Secretary of Agriculture Pa. Secretary of Conservation and Natural Resources Pa. Secretary of Education	3
14 voting trustees, <u>all</u> to be elected by constituent groups <i>[There are currently 21 elected trustees—9 by alumni, 6 by agriculture, and 6 by the board itself]</i>	Elected by alumni to represent alumni	6
	Elected by Pa. county agricultural societies to represent agriculture	4
	Elected by business and industry groups <i>[not by the board]</i> to represent business and industry	4
4 voting trustees to be appointed by the governor <i>[There are currently 6]</i>	Appointed at governor's discretion and confirmed by Senate	4
Nonvoting members		1
Voting members		21
TOTAL MEMBERS		22

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CHAPTER FOUR

Quorum for board meetings

Once again, Penn State is rare among its peers.

The boards of most public universities that we looked at require a majority of their members to be present to transact business.

Summary of Issue:

Fewer than half of the 32 trustees constitute a quorum for transacting business.

Summary of Recommendations:

The board should have at least a majority of members present to establish a quorum.

A full Penn State board of trustees consists of 32 members. But only 13 members, or 40 percent, are needed to establish a quorum. In other words, official business can be transacted by a minority of the board, or 13 members.

Readers should keep in mind that a quorum is the number of trustees who must be present for business to be transacted. A quorum is **not** the number of trustees who actually vote on that business.⁵⁴

The board would be hard-pressed to argue that 13 of 32 members can fairly represent the opinions and interests of the entire board. And even though we found no instances in which the board had only 13 members present, this potential problem should be resolved proactively by increasing the quorum to at least a majority of the membership.

History of the board size and the quorum

In the early days. Act 50 of 1855⁵⁵ established a board of 13 members. Section 2 of that law established a quorum of 7 of the 13 members, or more than half.⁵⁶

⁵⁴ *Roberts Rules of Order*, 11th Edition, 2011, p. 345, defines quorum as “the number of members...who must be present in order that business can be validly transacted. The quorum refers to the number of [voting] members present, not to the number actually voting on a particular question.”

⁵⁵ 24 P.S. § 2531 *et seq.*

⁵⁶ 24 P.S. § 2532.

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It is significant to note that this 13-member board came about after earlier legislative action in 1854—later repealed by Section 10 of Act 50—did not work out as expected. That 1854 action called for a board of about 60 members to establish what is now Penn State. The members would have included the president and vice presidents of the state agricultural societies and the presidents of the various county agricultural societies. Unfortunately, fewer than 13 members of that large board attended the first meeting, which was held in June 1854.

The same attendance problem occurred at the board's second meeting held the next month. A board size of 13 (with the quorum of 7) was then set by Act 50 of 1855. That board first met on June 14, 1855, in Harrisburg.

At its first meeting, the trustees sought to determine where to locate the new school. They considered offers of land from persons in five counties, including Centre County. At their next meeting in September of 1855, the trustees settled on the Centre County location.

The Farmers' High School of Pennsylvania—Penn State's predecessor—opened with 69 students more than three years later, on February 16, 1859.⁵⁷

That same year, with the board still at 13 members, the General Assembly lowered the quorum to 5 members.⁵⁸ The reason for the lowered quorum is not clear; the change may have once again been the result of trustee attendance problems. At that time, the school was in an isolated location; transportation, for example, was by stagecoach and train, with the nearest railroad connection reportedly 22 miles away and with no nearby hotels.

Now. Today, the board has increased to 32 voting members (plus 16 nonvoting trustees emeriti, which we discuss in Chapter Nine). They no longer have the transportation and lodging problems faced by their earliest predecessors.

⁵⁷ The historical information in this paragraph and the three that precede it are summarized from *Penn State, an Illustrated History*, Chapter 1, "Origins: The Land-Grant Vision," by Michael Bezilla, published by The Pennsylvania State University Press and available at <http://www.libraries.psu.edu/psul/digital/pshistory/bezilla/origins.html>. Accessed August 9, 2012.

⁵⁸ Act 165 of 1859.

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Surprisingly, we found that the board's increase in size from 13 to 32 voting trustees did not result from amendments to Penn State's enabling legislation. Instead, the 32-member board came about by Centre County court decrees that resulted from Penn State's requests. The current 13-member quorum was established by the board's bylaws.

**Low quorum contradicts
other bylaw requirements**

According to a provision contained in the standing orders that the board has established for its operations, trustees are expected to act "in good faith at all times and in the best interests of the University in a non-partisan manner."

Unfortunately, regardless of their good faith, 13 of 32 members cannot reasonably be expected to act "in the best interests of the university in a non-partisan manner."

The General Assembly was right in 1855 when it established a quorum that, at 7 of 13 members, represented a majority of the board. The current quorum should be changed to reflect that same majority requirement, which would be 11 voting members for our recommended board size of 21 voting members (22 recommended board members in total), or 17 for the current board of 32 members.

**Low quorum also is rare
among public universities**

First, in looking at universities in the **Big Ten Conference**, we found that Penn State was the only public university in that 12-member conference⁵⁹ to have a less-than-majority quorum. The governing boards of the 10 other public Big Ten institutions have established quorums of at least a majority of their board members.

Second, in looking at the 20 **public universities with the highest enrollments** for 2011-12, we found that Penn State was the only one

⁵⁹We were unable to determine the quorum requirement for Northwestern University, a private university in Illinois.

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of that group to allow a quorum of less than a majority of board members for regular board meetings. The remaining 19 require the presence of a majority of board members to transact business.

Third, in looking at 69 **land-grant colleges and universities**, only Penn State and 7 others operate with a less-than-majority quorum. The remaining 61 all require quorums of at least one more than half of the voting board members.

**Additional sources agree
that majority quorums are best**

The **Association of Governing Boards of Universities and Colleges**, or AGB, agrees that a board quorum “should be a majority plus one.” This agreement was confirmed in an email dated August 9, 2012, from Richard Novak, an AGB senior vice president.

For the **American Council of Trustees and Alumni**, or ACTA, Vice President of Policy Dr. Michael Poliakoff told us this in an email dated September 10, 2012:

As ACTA has noted in its state report cards for Maine, Minnesota, Illinois, and elsewhere, a board that meets to conduct business cannot be effective if a majority of the board members are absent or members fail to attend regularly. And while many boards use a simple majority as their quorum, effective [decision making] occurs when all trustees are present—in person—at every meeting. If the board allows meeting participation by telephone, it may want to consider placing a limit on the frequency that a member may exercise this privilege.

But the question of an optimal quorum size is secondary to the more important issue—overall board size. The real problem is not absent trustees; it is the large board size. An oversized board diffuses responsibility and makes meaningful discussion difficult.... [Also see our Chapter Three of this report.]

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In addition, Pennsylvania's **Nonprofit Corporation Law of 1988**, Section 5727(a), provides the following:

*Unless otherwise provided in the bylaws, a majority of the directors in office shall be necessary to constitute a quorum for the transaction of business and the acts of a majority of the directors present at a meeting at which a quorum is present shall be the acts of the board of directors.*⁶⁰

Our Summary

It is not a good governance practice to allow only 13 members of Penn State's 32-member board to transact business. The board would be hard-pressed to argue that 13 of 32 members can fairly represent the opinions and interests of the entire board. The law must be changed to ensure that a majority of board members are always present to establish a quorum to transact business. To some readers, this issue may appear minor when compared to others that we raise, but it illustrates the need to upgrade legislation that originally passed the General Assembly 157 years ago, and that now allows our flagship university to be governed in conflict with modern-day standards.

Our Recommendations

- 11.** The General Assembly should amend Penn State's enabling statute of The Pennsylvania State University by establishing a quorum level as the majority of the voting members of the board of trustees.
- 12.** The Penn State board of trustees should amend Section 5 of Article 1 of its bylaws to establish a quorum level as the majority of the board's voting members.
- 13.** The Penn State board of trustees should amend its charter, standing orders, and any other provision in its bylaws to remove or amend any provision that is inconsistent with the above-recommended provisions.

⁶⁰15 Pa.C.S. § 5727(a).

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CHAPTER FIVE

**Insiders
moving back
and forth
between board
and staff**

*A revolving door
for Penn State
insiders does not
represent good
governance;
insider influence is
unacceptable at a
public university
that should be
striving for
transparency and
accountability.*

Summary of Issue:

The Penn State board allowed high-level university employees to become trustees/officers, and vice versa, thus creating a cast of influential insiders with the potential to impair objective and independent thinking.

Summary of Recommendations:

The board should actively question staff-to-board and board-to-staff crossovers and restrict such movements when there are real or perceived impairments to objectivity and independence.

At Penn State, there has been movement of people from university employment to university governance, and vice versa. Penn State may perceive this movement to be an advantage—the idea that knowing “how we do things here” is a good thing, for example.

On the other hand, this movement gives rise to reasonable public perceptions of insider influence and conflicting interests, particularly when the movement involves persons at executive levels. In that regard, what Penn State has perceived in the past to be an advantage could actually be detrimental to a healthy, independent separation between the university’s administration and the university’s governance.

Since the child sex abuse scandal, Penn State has come under a microscope regarding the role of insiders and their influence, and it is time to address the issue.

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**An overview:
What's allowed
and what's not allowed**

- ☒ **Not allowed: With only a few exceptions, current university employees may not serve on the board.** Penn State's bylaws prohibit a university employee from serving as a member of the board of trustees, with the exception of an ex officio member—such as the president—or a student employed part time.
- ☒ **Allowed: Former university employees may become board members after a three-year separation period.** Former employees are eligible to become trustees, but the bylaws establish a waiting period of three years between the end of employment and the beginning of trustee service.
- ☒ **Allowed: Board members are not specifically prohibited from becoming university employees.** Although there are some provisions that may be generally relevant, we found nothing *specific* in the bylaws or the board's standing orders to prohibit current board members from becoming employees. There is not even a waiting period. However, based on the preceding “not allowed” bullet, a trustee who becomes an employee cannot remain a trustee.
- ☒ **Allowed: Former board members are not specifically prohibited from becoming university employees.** Again, we found nothing in the bylaws or standing orders that specifically restrict *former* trustees from becoming employees, not even a waiting period.

**Analysis of the problem,
with six examples**

When trustees become employees. By virtue of their membership on the board, trustees are the university's highest-ranking officials. Every employee is ultimately responsible to them. Because of their rank, significance, and breadth of responsibility, the trustees obtain

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confidential information that gives them intimate knowledge of the internal affairs and operations of the university.

When a trustee becomes a paid employee in a senior management and/or policymaking position, that trustee becomes one of the employees that he or she, as trustee, used to supervise.

This role reversal creates an inherent conflict. One day a trustee is overseeing the university; the next day that former trustee can be an executive-level employee. Suddenly, other university employees find they have a new fellow employee who used to be one of their bosses on the board, and who most likely retains his or her ties there—even close ties. Going forward, those other employees might feel compelled to defer to this trustee-turned-colleague, even without direct pressure, based on a reasonable belief that he or she still has influence with the current board.

The conflict is elevated when the former trustee has been named to a senior position that requires the same interest and expertise for which he or she was known while on the board. In that case, the stakes go beyond putting fellow employees in uncomfortable or compromised positions. Now, Penn State trustees and top management have sent a public message that influential insiders are running the university, and that objectivity and independent thinking are compromised.

Looking at the last three years, we found three long-serving trustees who moved into high-profile and high-paying university positions (Examples 4-6, next section). These individuals would have been privy to confidential information as a trustee, and they had advantages—including knowledge and connections—that other potential candidates for those jobs did not have. In addition, even after leaving the board, these former trustees would likely retain ties to their former board colleagues who now, at least on paper, are their bosses.

When employees become trustees. The problem with employee-to-trustee crossover manifests itself primarily with employees who were part of upper management, and the problem is magnified by the length of time spent in such positions. Those high-ranking officials drive the university's operations; they have decision-making and policymaking responsibility, they have hiring and firing power over other employees, and they gain intimate knowledge of internal affairs and operations.

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Suddenly, when those senior-level employees become trustees, they become responsible for evaluating the success and effectiveness of their own past work—i.e., for evaluating the same policies and actions that they had previously developed and implemented.

Stated another way, suddenly the employee-turned-trustee is responsible for evaluating his or her own effectiveness. It would be hard to argue that such an evaluation is either objective or independent. Accordingly, just as in the trustee-to-employee movement, Penn State has sent a public message that influential insiders run the university, and that objectivity and independent thinking are compromised.

Our review of the Penn State board found three trustees between 1998 and the present who were former university employees, one a high ranking officer (Examples 1-3, next section). To varying degrees, these individuals would have been familiar with university communication channels and personnel and could tap into those communication channels and personnel for knowledge to use as a trustee.

**Six examples of Penn State's
revolving door for insiders**

Example 1. Alumnus and long-time executive employee became veteran board member, including board chair. The 2010 and 2011 board chair, who has since resigned, is the most obvious example of a long-time institutional insider.

Steve Garban is a 1959 Penn State graduate and former captain of the football team. He was a Penn State employee for 33 years, including 10 years as controller and his last 12 years as senior vice president/treasurer. In 1989, then-university president Bryce Jordan called Garban “a chief business officer that understands the purpose of the University. It’s a terrific advantage. He knows the University. He knows its history.”⁶¹ One of Garban’s direct reports was Gary Schultz, then assistant vice president of finance, later named senior vice

⁶¹ “Administrator Garban keeps PSU healthy,” *The Daily Collegian Online*, Saturday, August 19, 1989.

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president, and now under criminal investigation in the child sex abuse scandal.

Garban retired as an employee of Penn State in 1993. He was then granted the emeritus rank and the title of “Senior Vice President of Finance and Operations/Treasurer Emeritus.” Five years later, in 1998, Garban became an alumni-elected trustee. We are not certain if the three-year separation requirement (before employees can become trustees) was in effect at the time but, regardless, Garban met that requirement.

Garban served as the board’s vice chair from 2007 through 2009 before becoming chair in 2010. He resigned as chair in January 2012 but remained a trustee until July 19, 2012, when he resigned from the board altogether. He remains Senior Vice President of Finance and Operations/Treasurer Emeritus.

The Freeh report noted the following in one of its narratives related to Garban as board chair:

Some Trustees thought Garban’s history of being previously employed at Penn State, where as [Senior Vice President – Finance and Business] he reported directly to Spanier, hampered his ability to lead the Board.⁶²

The Freeh report stopped short of detailing specific concerns or examples that may have been voiced in the interviews; readers are left to draw their own conclusions. But except for the “some trustees” that Freeh referenced, it appears that Garban’s potential influence as an institutional insider went largely unquestioned by the rest of the board.

In that regard, we found numerous examples from over the years that should have given rise to questions about whether Garban’s leadership was hampered by his insider history. These are the types of questions that, going forward, should be raised by the board, the public, and

⁶² Freeh report, page 93. In our own research, we found that Garban retired from his senior vice president’s position in 1993 and thus was not in active employment status with Penn State under Spanier, who was named president in 1995. However, Penn State continued its association with Garban after his retirement by granting him the rank of senior vice president and treasurer emeritus.

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other constituents before electing, appointing, or approving *any* potential trustee:

?? Can the potential trustee objectively oversee and evaluate a university's operation that he or she has been responsible for managing, and when he or she has been a direct report to the president/trustee?

When Garban held the position of senior vice president, that position was responsible to the university president, who was responsible to the board. Garban retained his title—under emeritus status—after he retired and, later, while serving on the board.

The [Harrisburg] *Patriot-News* opined in December 2011 that a company's board of directors would not elect a chair who formerly worked for the CEO. "Too many possible conflicts of interest and cozy relationships exist," said the editorial board. "Yet that is exactly what the Penn State board of trustees did by electing Steve Garban chairman to oversee the \$4.3 billion university."

?? Does the potential trustee have a history of resisting conflict-of-interest concerns?

In 1989, as senior vice president, Garban is reported to have "downplayed" conflict-of-interest concerns that faculty members raised about a transaction between Penn State and a trustee who had made numerous other transactions with the university.

According to *The Daily Collegian*, when then-trustee Mimi Coppersmith (who is now a trustee emerita) leased office space to Penn State in a building she owned, the faculty senate asked to meet with top university administrators to learn more about that half-million-dollar deal and other transactions between the trustee and the university.

"But while faculty members voiced their concern over appearances, Senior Vice President for Finance and Operations Steve Garban downplayed the discussions, saying they were just a

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matter of exchanging information.” He felt there had been full disclosure to the other board members.⁶³

Although full disclosure apparently prevented the transaction from being classified as an actual conflict of interest, both the faculty senate and the graduate student association were just as concerned about the appearance or perception of a conflict.

The 1989 article said that Coppersmith’s company and the university had continually done business transactions under \$2,500, which was then the amount requiring board approval. Several years earlier, according to the article, the other trustees had actually disallowed Coppersmith from conducting *any* individual transaction of more than \$2,500 and had capped her *total yearly* transactions with Penn State at \$5,000. But those limitations were lifted when the board “revamped” its conflict-of-interest policy shortly afterwards, according to the article.

?? Does the potential trustee have a history of resisting university openness?

When the state’s Senate Education Committee considered open records legislation in 1991, Penn State, the University of Pittsburgh, and Temple University all resisted. Steve Garban spoke for Penn State in saying that exposing records would be costly. The resulting criticism from then-Auditor General Barbara Hafer holds true today: “The message to these schools must be they can’t have it both ways—private when they want to protect themselves from public scrutiny and public when they want taxpayer money.”⁶⁴

?? Does the potential trustee have a longtime association with a football program or another program that could lead to a real or perceived cultural bias that affects objectivity?

Before Garban became a trustee, he had a longtime history with the football program. He was captain of the football team while a

⁶³ “Possible conflict-of-interest questions surround Coppersmith’s transaction,” *The Daily Collegian Online*, September 7, 1989. The trustee in question, as we have noted, is now a trustee emerita.

⁶⁴ “Universities pressed to reveal finances,” *Observer-Reporter (AP)*, September 19, 1991.

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student, and he oversaw the football program as senior vice president. He is also credited for his involvement in Penn State's becoming a member of the Big Ten Conference.

Example 2. Employee to trustee: Alumnus and former faculty member is a long-time trustee. Joel N. Myers, a trustee for more than 30 years, holds his bachelor's, master's, and doctoral degrees from Penn State. He was elected to the board in 1981 by the alumni.

Myers is also a former university employee who served as instructor, lecturer, and assistant professor from 1964 until his retirement in 1981. Myers would not have met the bylaw provision requiring a separation period of three years between employment and board membership, but we do not know whether or not that bylaw was in effect in 1981.

Unlike Steve Garban, it does not appear that Myers was an executive-level employee, or that he had policymaking responsibility. Nor could we find that he served as executive officer as a trustee on the board. Even so, going forward, the same types of questions as noted previously should be raised for this type of crossover employee, i.e., questions about conflicts of interest, openness, and loyalties. The issue of term limits is another one that presents itself in looking at this particular example; term limits are discussed in Chapter Eight.

Example 3. Employee to trustee—Alumnus and former faculty member was a 12-year trustee. Ben Novak holds bachelor's and doctoral degrees from Penn State. He was also an employee who, according to an online resume, served from 1970 to 1972 as an assistant dean of students, student legal advisor, and member of the dean's staff.

Novak was elected to the board of trustees by the alumni in 1988; he served until 2000, or for 12 years. According to Novak, he was not granted the rank of trustee emeritus. According to the policy in effect now, trustees can be considered for that rank if they have served at least 12 years. The rank is automatically granted to trustees with 20 years of service. (See Chapter Nine.)

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Like Joel Myers, Novak does not seem to have been employed in a high-ranking position, to have had policymaking responsibility, or to have served as an executive officer of the board. Regardless, before naming any trustee, the board should ask about conflicts of interest, openness, and loyalties.

Example 4. Trustee to employee: Alumna and former board chair became executive-level employee. Former Pennsylvania Supreme Court Justice Cynthia Baldwin is a Penn State graduate and former president of the alumni association. She was first appointed to the board by the governor in 1995 and served as board chair from 2004 until early 2007.

Baldwin remained a trustee until at least January 22, 2010. On that date, at the board's regular bimonthly meeting, her colleagues voted to approve her appointment as Penn State's vice president and general counsel. At the time, Baldwin was also a member of the board's executive committee, which comprises the board's leadership.

Baldwin began her service as vice president and general counsel less than a month later, in February 2010, with virtually no separation between her service as a trustee/officer and her service as high-level employee.

Baldwin resigned her position as vice president and general counsel in January 2012.

The types of questions that the board should have raised, and the issues the board should raise going forward, include those addressing the propriety of such high-level movement with no separation period, the perception of conflicting interests, if not actual conflicts, and the insider influence based on confidential knowledge obtained as a trustee.

Example 5. Trustee to employee: Alumnus and trustee became executive-level employee. David Joyner, M.D., holds his undergraduate and medical degrees from Penn State. He was first elected to the board in July 2000. Joyner was re-elected for succeeding terms until being named acting athletic director in

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November 2011⁶⁵ to replace Tim Curley, who took leave in the wake of the child sex abuse scandal.

Joyner does not appear to have been an officer of the university's board. Although he is no longer a trustee, it is unclear exactly when that role ended; media reports said his role of trustee was "suspended" when he was named acting athletic director. When we met with Penn State executives in mid-January 2012, they told us that Joyner's term as trustee would be expiring.

As of August 14, 2012, Joyner was also listed as a member of the board of directors of the Penn State Milton S. Hershey Medical Center.⁶⁶ A spokesman for the medical center on that date, however, would not confirm whether that listing was current.

Questions that trustees should consider related to this type of movement include, again, those addressing the propriety of such high-level movement with no separation period, the perception of conflicting interests, if not actual conflicts, and the insider influence based on confidential knowledge obtained as a trustee. The board should also consider whether close relationships—including financial relationships—exist between trustees; media reports have noted that such a relationship has existed between Joyner and another trustee.

In addition, as we found in this example, the board also must look at whether a trustee-turned-employee can serve on other Penn State boards, such as the medical center board.

Example 6. Trustee to employee: Alumna and emerita trustee became management-level employee. Trustee Mary Beahm, another Penn State graduate, was a trustee for more than 15 years. Initially a gubernatorial appointment to the board in the 1980s as a student representative, Beahm was subsequently elected by alumni and served for five terms ending June 30, 2005.⁶⁷

⁶⁵ http://www.lehighvalleylive.com/sports/index.ssf/2011/11/penn_state_names_dr_david_joyner.html. Also, www.psu.edu/trustees/members/joyner.html. Both sites accessed May 22, 2012, and verified July 17, 2012.

⁶⁶ <http://www.pennstatehershey.org/web/guest/home/aboutus/boardofdirectors>. Accessed August 14 and 15, 2012.

⁶⁷ <http://www.psu.edu/trustees/members/beahm.html>. Accessed July 19, 2012.

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Within 15 days of her term's end, Penn State announced that Beahm was awarded the rank of trustee emerita. In the announcement, then board-chair Cynthia Baldwin called Beam a "dedicated and hard-working colleague and a friend to Penn State."

The rank of emeritus entitles former trustees to serve on the board as their schedules permit, but not to vote or hold office. (Also see Chapter Nine.)

In our research for this report, when we could not find Beahm's name on Penn State's listing of current trustees emeriti, we learned she is now employed by Penn State as a recruitment and compensation director⁶⁸ and that, as an employee, Beahm can no longer hold the emeritus rank.

Beahm's links to the board continue nonetheless. In June 2012, Beahm was named by the university president/board trustee/secretary as a member of the search committee for a university compliance director, a new position created following the child sex abuse scandal. The announcement omitted mention of her former service as a trustee or her rank as a trustee emerita.⁶⁹

Issues for the board to examine before allowing these types of moves include, as in previous examples, the perception of conflicting interests, if not actual conflicts, and the question of insider influence based on confidential knowledge obtained as a trustee.

A further complication

The movement from board to staff and staff to board is made all the more complicated because, as previously discussed, Penn State's president—i.e., the university's central figure—is both the senior-most executive *and* an officer of the board. Straddling those positions gives the president more influence than anyone else in determining the movement of personnel and thereby jeopardizes the independence of both the board and senior management.

⁶⁸ <http://ohr.psu.edu/staff-directory/> and <http://ohr.psu.edu/recruitment-and-compensation/contact-us/>. Accessed July 19, 2012.

⁶⁹ <http://live.psu.edu/story/60025>. Accessed July 19, 2012.

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**What the board
must do**

It cannot be emphasized enough that independence and transparency are critical to good governance. As a public university, Penn State should look at independence and transparency regarding every relationship to guard against insider movements that have no place in a public university that now, more than ever, should be striving for accountability as its hallmark.

Accordingly, the board must evaluate the back-and-forth movements of trustees and staff with a careful eye for either real or perceived conflicts. In some cases, a period of separation may be a way to address the perception or reality of insider influence. In other cases, crossovers might never be wise, depending on the rank and length of time as an insider in either role, whether employee or trustee. At present, as we have noted, there is no bylaw, for example, that prohibits a trustee from leaving the board and going immediately to a salaried staff position.

To resolve the issue formally, the bylaws must be changed to address movement in both directions—staff to board and board to staff, and to address such movement specifically and aggressively. In the meantime, however, and to assist the board in its review, we can point to some bylaw and standing order provisions that speak at least *generally* to this issue and are therefore relevant and instructive.

- ① **Use of confidential information for personal gain, such as employment.** The board should look to one of its bylaw provisions related to conflicts of interest. That provision prohibits trustees from achieving personal gain by using “any information not available to the public at large and obtained as a result of service to the university....”⁷⁰

It bears repeating that, by virtue of their membership on the board, trustees are the university’s highest-ranking officials, that every employee is ultimately responsible to them, and that their rank, significance, and breadth of responsibility make trustees privy to

⁷⁰ Bylaws, Article 6, Section (1)(b).

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confidential information that gives them intimate knowledge of the internal affairs and operations of the university.

This knowledge can be very powerful for trustees. If a trustee wants to jump from the board into a paid position, the trustee's knowledge can give him or her an edge over another candidate.

- ② **Relationship with the president or staff.** There is also a relevant standing order, Order IX(1)(f)9, under which trustees are expected to “[r]efrain from requests of the president or staff for special consideration or personal prerogatives, including admissions, employment, and contracts for business.” (Emphasis added.)
- ③ **Ethics considerations.** In addition, the bylaws direct trustees to look elsewhere, as needed, for relevant instruction related to their important fiduciary responsibility and the resulting need to maintain confidentiality:

*Members of the Board of Trustees stand in a fiduciary relationship to the University which reposes special confidence in each member. Members of the Board of Trustees shall act in good faith, with due regard to the interests of the University, and shall comply with the fiduciary principles of conduct hereinafter set forth in **addition to any other federal or state reporting requirements.***⁷¹ (Emphasis added.)

Following that guidance to look beyond the bylaws, we reviewed Pennsylvania's Public Official and Employee Ethics Act,⁷² or the Ethics Act. While Penn State trustees and staff are not subject to the Ethics Act (See Chapter Six), it is nonetheless instructive given that public officials and public employees as currently defined under that act must—because of conflict-of-interest concerns—wait for a period of time after leaving their positions before representing a person or entity on a matter that involves their former employer or before accepting a paying job from their former employer:

⁷¹ Bylaws, Article 6, Section (1).

⁷² 65 Pa.C.S. § 1101 *et seq.*

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- Section 1103(g) of the Ethics Act requires a public official/public employee,⁷³ for example, to wait one year after leaving his/her public position before representing someone on a matter that involves the public official/public employee's former employer.
 - Section 1103(i) of the Ethics Act says that an executive-level state employee⁷⁴ must be gone from his/her job for two years before accepting a job from, being paid by, or representing a business (1) that had been recruited or induced to expand by the executive and (2) that had received a grant or loan or promise of such money related to the recruitment or expansion.

**Good governance practices
go beyond compliance with
legal requirements**

In Chapter One, we discussed the conflict-of-interest statement published by the board of directors for the Association of Governing Boards of Universities and Colleges. We noted that the AGB (1) had advised college leaders of the “pressing need” for thorough, periodic reviews of their conflict of interest policies and (2) had noted that boards should not restrict their questions only to legal requirements.

Said the AGB:

*Each board must bear ultimate responsibility for the terms and administration of its conflict of interest policy. Although **institutional officers, staff, and legal counsel** can assist in administration of the policy, **boards should be sensitive to the risk that the judgment of such persons may be impaired by their roles relative to the board's.***⁷⁵[Emphases added.]

⁷³ 65 Pa.C.S. § 1103(g).

⁷⁴ 65 Pa.C.S. § 1103(i).

⁷⁵ <http://agb.org/news/2009-12/agb-board-directors-statement-conflict-interest>. Last accessed August 16, 2012.

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We followed up with the AGB's Richard Novak, a senior vice president, who termed it "pretty unusual" to have public universities with "instances of a revolving door." Novak cited Penn State as one of those instances. He also said this:

*You believe that if a public university board has a **strong** board conflict-of-interest policy and an institutional ethics policy, the problem would probably be eliminated without the need for a specific bylaw change.⁷⁶*

For the **American Council of Trustees and Alumni**, Vice President of Policy Dr. Michael Poliakoff was even stronger:

Trustees should not serve for the benefit of friends or constituencies and least of all to further their own interests. They are appointed to safeguard the academic and financial integrity of the university for the benefit of the entire community. And utmost propriety is important to ensure the public trust.

*Conflict-of-interest concerns arise when board members enter into transactions of any kind—including **employment agreements**—with the university they are entrusted to oversee. The conflict is not mitigated by the nature (policymaking or otherwise) of the contemplated employment relationship. Such transactions give the appearance of impropriety to the trustee's actions. **As a best practice, trustees should not be allowed to enter any type of employment arrangement with the university during the administration of the president they are charged with overseeing. Similarly, those employed by the university, or those previously employed should not be allowed to serve on the board if they will oversee the administrator under whom they previously worked.***

There is a potential conflict of interest when former or current university employees (e.g., administrators,

⁷⁶ Email dated August 9, 2012. Besides Penn State, Mr. Novak cited the other "public university examples" as Montana State University and the University of Nevada System.

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faculty) sit on the independent board charged with ensuring that the university serves the public interest. However, people with institutional knowledge of the university can, absent a conflict of interest, offer valuable perspective for a governing board. Emeritus faculty and former presidents of other universities, for example, may be considered for membership on the institution's governing board, subject to the conditions articulated in the preceding paragraph. Special advisory committees—with no voting rights—are an alternative way to gain multiple perspectives. While it is important for trustees to be knowledgeable and familiar with their university, their first job is to be accountable and hold the institution accountable to the people.⁷⁷ [Emphases added.]

Finally, the editorial board of *The Patriot-News*, Harrisburg, took Penn State to task for several insider moves, saying that Penn State has “simply promoted from within to fill key positions” rather than moving forward with new leadership. “The board cannot change the past, but it can change the future by signaling a desire for new leadership,” said the editorial board.⁷⁸

Our Summary

It is a valid question to ask how experiences as employees affect actions as trustees and/or officers of the board, and vice versa. It is also a valid question to ask about the interrelationships between trustees and employees.

Top-ranked employees in particular are familiar with university communication channels, are entrusted with confidential matters, and develop working relationships with subordinates, superiors, and colleagues. The experiences take on greater significance when the employment has been long-term, as do the relationships cultivated with other personnel. In the case of trustees, particularly those who

⁷⁷ Email dated September 10, 2012.

⁷⁸ “PSU needs to look beyond school insiders to fill key leadership roles,” *Patriot-News* Editorial Board, December 23, 2011.

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are board officers, they too are privy to applicable confidentialities, and they likewise cultivate relationships with their trustee colleagues.

Most important of all, however, is the question of reporting relationships. Specifically at risk is the integrity of the reporting relationships by which trustees are the ultimate bosses of the employees. Or, stated in reverse: Specifically at risk is the integrity of the reporting relationships by which employees are ultimately responsible to the board of trustees.

In short, there should be boundaries to protect the integrity of those relationships in both directions.

When a trustee accepts university employment, the former reporting relationship becomes upended as the trustee-turned-employee is now accountable to the very board of which he or she was once a part. Likewise, when an employee becomes a trustee, the prior reporting relationship is upended because the employee-turned-trustee is now the ultimate supervisor of those he or she has worked with or for.

There are bound to be conflicts in the mix, and such conflicts are doubtless magnified in proportion to the length of time spent in the prior relationship.

Our recommendation is to place restrictions on movements from board to staff and vice versa. The most basic restriction would be to prohibit *any* movement between board and staff in any case where conflict of interest can be an issue based on the types of examples and questions that we have raised. In other cases, there should be at least a time of separation between the end of one relationship and the beginning of the other. But strictly following those restrictions and stopping there is not enough: the board is duty-bound to go further by examining and questioning every crossover before allowing it.

Our Recommendations

- 14.** The Penn State board of trustees should add an article to its bylaws entitled “Qualifications of Trustees Serving as Penn State Employees.” The article should prohibit trustees from moving

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between board and university management positions in any case where even the appearance of conflict is an issue. In cases where a time separation can adequately address a potential conflict, the time-out requirement should be a minimum of five years between resignation or end of board service and acceptance of employment.

15. The Penn State board of trustees should revise Article 2 of its bylaws to require a five-year waiting period before university employees are eligible for board of trustee membership.
16. The Penn State board of trustees should review its bylaws to determine whether Article 6 is in keeping with the 12 principles of the *AGB Board of Directors' Statement on Conflict of Interest*.⁷⁹

⁷⁹ The statement is available at <http://agb.org/news/2009-12/agb-board-directors-statement-conflict-interest>. The AGB website at <http://agb.org/conflict-interest> indicates that the AGB board had “formed a six-member Conflict of Interest Advisory Council to recommend practices for implementation of conflict of interest policies.” Penn State is surely already aware of these recommended practices; we learned from the AGB website that Cynthia Baldwin was one of the 6 members of the AGB’s Conflict of Interest Council and, at the time, was also AGB board chair *and* a Penn State trustee and former Penn State board chair. Both websites referenced in this footnote were accessed on October 10, 2012.

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6

CHAPTER SIX

Right-to-Know Law and Ethics Act

There is no shame in opening records at a public university. The shame is in opposing open records.

Also, trustees and employees should be subject to state ethics requirements.

Summary of Issue:

Penn State has historically opposed opening its records under the state's Right-to-Know Law and has been largely excluded from that law. Also, board members and employees are not subject to the state's Ethics Act, including the financial disclosure provisions.

Summary of Recommendations:

Penn State, as well as the three other state-related universities, should be subject to the Right-to-Know Law and the Ethics Act.

Penn State is one of four public Pennsylvania universities referred to as "state-related." The others are Lincoln University, Temple University, and the University of Pittsburgh. All four are instrumentalities of the Commonwealth within its system of higher education. Even so, the General Assembly excluded them from the standard provisions of the state's Right-to-Know Law.⁸⁰ Board members and employees are also exempt from the Public Official and Employee Ethics Act, which we refer to here as the Ethics Act.⁸¹

On the other hand, all 14 of Pennsylvania's "state-owned" universities⁸² are subject to both those laws.

⁸⁰ See 65 P.S. § 67.101 *et seq.*

⁸¹ See 65 Pa.C.S. § 1101 *et seq.* However, the governor, his nonvoting designee, and his cabinet secretaries are otherwise subject to the Ethics Act based on their positions as state officials/employees. In addition, other trustees may elect to fill out the financial disclosure forms voluntarily, which we found that some trustees have done.

⁸² The 14 (all of whose official names end in "of Pennsylvania") are Bloomsburg University, California University, Cheyney University, Clarion University, East Stroudsburg University, Edinboro University, Indiana University, Kutztown University, Lock Haven University, Mansfield University, Millersville University, Shippensburg University, Slippery Rock University, and West Chester University.

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**What is the Right-to-Know Law,
and why is Penn State largely excluded?**

The state's new Right-to-Know Law, most of which took effect on January 1, 2009, gives the public access to public information.⁸³ Each affected Commonwealth agency is required to have an open records officer to handle information requests.

Here is what the state's Office of Open Records said in its first annual report after the new law was passed:

*Citizens no longer have to prove that a record is public. Now, a government agency must presume the record is public. If the government chooses to withhold a record, it has the burden to prove, with legal citation, why access should be denied. The law also required the creation of the Office of Open Records and required that it issue an annual report on its progress, which we do in this debut report.*⁸⁴

And this:

*The National Freedom of Information Coalition at the University of Missouri previously ranked Pennsylvania among the worst in the nation for open government issues. Under the new law, the Coalition ranked Pennsylvania in the top 20 states for open government success.*⁸⁵

Unfortunately for the public, the Right-to-Know Law does *not* apply to Penn State and the three other state-related universities, except for a brief chapter requiring those institutions to report certain information publicly, such as the highest 25 salaries paid to employees and the salaries of officers and directors.⁸⁶

⁸³ Act 3 of 2008 replaced the state's previous Right-to-Know Law, Act 212 of 1957, which, incidentally, was amended by Act 100 of 2002 to include, in part, the State System of Higher Education.

⁸⁴ <https://www.dced.state.pa.us/public/oor/Annual%20Report%202009%20FINAL.pdf>.

⁸⁵ Ibid.

⁸⁶ 65 P.S. §§ 67.1501-1504; see also *The Pennsylvania State University et al. v. State Employees' Retirement Board*, 594 Pa. 244, 935 A.2d 530 (2007), indicating that the service history and salaries of certain Penn State University's employees are also public records subject to disclosure under the State Employees' Retirement Code.

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It is significant that Penn State and the other three state-related universities *were included* in this right-to-know legislation when it was first introduced. Exempting Penn State occurred only after it and the three other state-related universities argued for their exclusion, with Penn State publicly taking much of the lead in making that argument.

For example, at hearings before the Senate State Government Committee on June 4, 2007, and the House State Government Committee on August 7, 2007, Penn State’s then-president Graham Spanier testified that, if passed, the legislation would have a “profound negative impact” on the state-related schools. With regard to Penn State specifically, he complained that the university “receives a very small portion of its budget from the state—less than 10 [percent]—yet these proposals would open up the entire university to open records....”⁸⁷

After those hearings, the proposed legislation was indeed changed to exempt Penn State and the other state-related universities from most of the Right-to-Know mandates.⁸⁸

An important note: Readers are advised that the Right-to-Know Law is not the same as the state’s Sunshine Act,⁸⁹ which *does* apply to Penn State and the other three state-related universities. Generally speaking, the Sunshine Act, also commonly referred to as the “open meetings” law, is intended to ensure that citizens are notified of and have the right to attend meetings of public agencies at which agency business is discussed.

⁸⁷ Testimony of Graham B. Spanier. Pennsylvania Senate State Government Committee, *PLS Committee News* (subscription service), June 4, 2007.

⁸⁸ Also see Chapter Five, where we point out that, in 1991, Steve Garban, who was then a Penn State senior vice president (and who later became chair of the board of trustees), told the Senate Education Committee that opening Penn State’s records would be too costly.

⁸⁹ 65 Pa.C.S. § 701 *et seq.*

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**What is the Ethics Act,
and why is Penn State excluded?**

Pennsylvania's Ethics Act⁹⁰ provides that "public office is a public trust and that any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust."⁹¹ When enacting that law in 1998, the General Assembly declared that "public confidence in government can best be sustained by assuring the people of the impartiality and honesty of public officials," and that the law should be "liberally construed to promote complete financial disclosure."⁹²

The State Ethics Commission administers and enforces the provisions of the Ethics Act, including financial disclosure. The vehicle for this disclosure is a statement of financial interests. The Ethics Commission prescribes, develops, accepts, and reviews those statements and ensures they are available to the public.

Although Penn State is an "instrumentality of the Commonwealth to perform the **essential governmental functions** of education,"⁹³ its board members and employees, and also its affiliates, including Penn State's Pennsylvania College of Technology in Williamsport, are not subject to the Ethics Act. The reason they are not subject to the act is that Penn State does not meet the current definition of "governmental body" in the Ethics Act, just as employees and board members do not fit the definition of a "public official."⁹⁴ As instrumentalities of the Commonwealth, the other three state-related institutions,⁹⁵ as well as their employees, board members, and affiliates, are also not subject to the act.

⁹⁰ 65 Pa.C.S. § 1101 *et seq.*, as amended, (Act 93 of 1998).

⁹¹ 65 Pa.C.S. § 1101.1(a).

⁹² *Ibid.*

⁹³ See the introductory paragraph of the Penn State Corporate Charter, page C-1 (emphasis added); 24 P.S. § 2510-503(6) and (7); 24 P.S. § 2510-504.

⁹⁴ 65 Pa.C.S. § 1102.

⁹⁵ See 24 P.S. § 2510-402 (Lincoln); 24 P.S. § 2510-2 (Temple); 24 P.S. § 2510-202 (Pitt).

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**Open records and participation
in the Ethics Act are critical for Penn State
and the other three state-related schools**

There is no shame in opening public records; the shame is in hiding them. Open records are critical for Penn State—as well as for the other three state-related universities—to demonstrate accountability to the public. To argue against inclusion in the Right-to-Know Act, as Penn State has done, is a direct affront to taxpayers, who have supported the university with their tax dollars for more than a century.

Just as Penn State successfully lobbied for its own exclusion and for that of its three state-related colleagues, it could successfully argue for *inclusion* in the Right-to-Know Law—but with exceptions to protect certain intellectual property rights, vital research to keep the universities competitive, and information about donor contributions. For example, according to the National Conference of State Legislatures, public records laws in at least 13 states protect information related to intellectual property, trade secrets, or to proprietary research conducted in public institutions of higher education.⁹⁶

Regarding the Ethics Act, the issue of public accountability is applicable as well. Provisions applicable to Penn State and the other three state-related universities are needed to ensure that board members and employees disclose their conflicts of interest and financial interests.⁹⁷ In that way, the public can have support for its expectations that trustees/directors and employees will act with neutrality, that they will lead and/or govern with the utmost integrity, and that they are free from financial conflicts.

Our Summary

To make Penn State and the three other state-related universities, including affiliates, more publicly accountable, their records must be

⁹⁶See National Conferences of State Legislatures, “State Statutes (Excerpt) Providing for Confidentiality of Intellectual Property or Proprietary Research in Public Universities,” February 24, 2012.

⁹⁷Section 1104 of the Ethics Act (65 Pa.C.S. §1104) requires that public officials file Statements of Financial Interests and Section 1105 of the Ethics Act (65 Pa.C.S. §1105) of the Act describes the information to be reported.

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open to the public. The universities should stop opposing their **inclusion under the Right-the-Know Law**; the General Assembly can make exceptions to protect certain intellectual property rights, vital research, and information about donor's contributions.

Employees and board members of Penn State and the three other state-related universities, including affiliates, should also be **subject to the state Ethics Act**, which would require those employees and board members to disclose conflicts of interest and their financial interests. Financial disclosure is important to help assure the public that tax dollars at our state-related institutions are being spent by officials who are impartial, honest, and free of financial conflicts.

Our Recommendations

- 17.** Penn State and its board of trustees should actively request and support action by the Pennsylvania General Assembly to make the Right-to-Know Law fully and immediately applicable to Penn State and its affiliates, with exceptions to protect certain trade secrets and intellectual property rights, vital research, and information about donors. The boards of the other three state-related universities should also request and support the same legislative action for themselves and their affiliates.
- 18.** Penn State and its board of trustees should actively request and support action by the Pennsylvania General Assembly to make the Public Official and Employee Ethics Act immediately applicable to Penn State board members and employees. The boards of the other three state-related universities should also request and support the same legislative action for themselves and their affiliates.

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CHAPTER SEVEN

Lack of transparency

Summary of Issue:

Penn State has not appeared to welcome governance transparency and, in fact, has impeded it by restricting the public's access to the board and filtering how trustees communicate.

Summary of Recommendations:

The board should be more transparent and accountable.

In this chapter, we go beyond the open records issue as addressed in the previous chapter. Amendments to the Right-to-Know Law only partially address what the public can see related to Penn State University.

Penn State's board should strive to be a leader in making itself transparent to the public.

The American Council of Trustees and Alumni says that public universities should be leaders in transparency and says this about the role of boards:

...[S]tate public university boards should report to their stakeholders, the most important of whom are taxpayers, parents, and students.⁹⁸

Transparency with regard to Penn State's governance can manifest itself in various ways. Transparency can be viewed as the availability of information to and for the taxpaying public about the board of trustees and the university it governs. Transparency can be seen as access to board members by the public; or it can be seen as access by

⁹⁸ See "Open to the Public - Making public universities leaders in government transparency—a checklist of questions and answers," American Council of Trustees and Alumni (ACTA), May 21, 2010, at <https://www.goacta.org/publications/downloads/ACTA%20and%20IPI%20-%20Open%20to%20the%20public.pdf>, accessed May 21, 2012. See also "Basics of Responsible Trusteeship," ACTA, Institute for Effective Governance, at <https://www.goacta.org/publications/downloads/Basics%20of%20Trusteeship.pdf>, accessed May 21, 2012.

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the board to university administration, faculty, staff, the students, and the taxpaying public. In addition, transparency can be viewed as the availability of information to the trustees themselves, and the trustees' ability to communicate openly among themselves and to the public.

**Not encouraged:
Public input at board meetings:**

No agendas, little space for visitors, and—until recently—no public comments allowed. In this section, we report that the Penn State board of trustees has not created an atmosphere of transparency in the most basic of places—that is, at its board meetings. Even more to the point, we found standing orders of the board that specifically obstruct the public's involvement in board meetings.

One such standing order directs that, at board and committee meetings, meeting rooms should include space for up to 25 visitors, including media, on a first-come, first served basis. The order also provides that the rooms will be opened one-half hour prior to the meetings.

Another standing order says that visitors to meetings, including the media, should “be present as observers, and not as participants.” The order goes on to prohibit “[a]ny form of participation including speaking,” except by guests invited by either the board chair or the university president.

Making space for a mere 25 visitors and prohibiting their participation sends a clear message that the public is not welcome.

Wisely, at its meeting on July 13, 2012, the board adopted a new standing order giving the public permission to speak, effective at the board's meeting on September 14, 2012.

While certainly better than an order not allowing public comment, the new order has problems of its own. According to that order, speakers must preregister on a special form 48 hours prior to the meeting, and the board secretary will review the form. The requesters will be notified if they are approved to speak, with preference given to speakers who wish to address the board about matters that “relate to

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the agenda for the relevant Board meeting and to avoid repetitiveness.”

Unfortunately, in order for potential speakers to know what is on the agenda and thus what is a related matter, they will have to have better access than we had when we attended board meetings. For example, at the board’s meeting on March 16, 2012, we received an agenda only after asking for one several times. And at the board’s meeting on July 13, 2012, we found no agendas either prior to or during the meeting.

Penn State’s own website notes that meeting agendas are considered “confidential documents” available for review only on meeting days and thereafter.

It is difficult for Penn State to argue that it welcomes public input when it establishes rules that impede that input. If potential speakers cannot pick up an agenda until the meeting room opens one-half hour prior to a meeting, how can they notify the board 48 hours in advance about an agenda item they would like to address?

We did find a standing order that relates to our concern by specifying that, in addition to making the agenda “and supporting material” available on meeting days, “...the University will make available five days in advance of the meeting an agenda of items to be considered with a note that the agenda of items is subject to change without notice prior to the meeting.” However, when we looked online five days prior to at least two of the meetings that we attended, we could find no such agenda of items.

The advanced availability of the Board’s “agenda of items” is not the only issue. The document provided to the public immediately prior to a meeting is of little value anyway because it is more a schedule than an agenda, referring only to the committees that will be reporting and the approximate times. There are no topics previewed, no speakers or presenters listed, and no new business identified—apparently in keeping with the previously mentioned policy stating that agendas are “confidential documents” until the actual days of meetings. If visitors can find agendas on meeting days, those agendas are the more detailed versions.

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Penn State is starting to catch up but should try to be a leader. At the time when Penn State was just deciding to make changes to its policy regarding public input at meetings, we found other universities that already had better policies in place. Examples follow:

- ✓ The board of regents for the University of Michigan, which like Penn State is a member of the Big Ten Conference, notes that it sets aside time for individuals to address the board as part of the regular monthly meeting agenda. There are restrictions (e.g., five-minute length, limit of ten speakers with five per topic), but the regents allow two additional speaker slots for individuals who sign up after the agenda is posted online so they can speak about a particular agenda item.⁹⁹
- ✓ The board of regents at the University of Nebraska, another member of the Big Ten Conference, says it allows any person to address the board for five minutes concerning any item on a meeting's agenda. Further, persons may address the board at any annual or scheduled meeting on any board- or university-related matter *not* on the agenda (but with some limitations on topic) if they provide 24 hours notice. Finally, although the total time for all speakers is limited to 30 minutes, the regents have discretion to extend the time limit.¹⁰⁰
- ✓ Another member of the Big Ten conference, Indiana University, says it posts board meeting agendas online five to ten days prior to the meetings.¹⁰¹

**Missing:
Public access to
better board meeting minutes**

Board meeting minutes are published on Penn State's website after the meetings. The minutes represent the board's official public record of the meetings and are critical for that reason. Ensuring their

⁹⁹ <http://regents.umich.edu/meetings/addressing.html#Guidelines>, accessed June 12, 2012.

¹⁰⁰ <http://nebraska.edu/board/bylaws-policies-and-rules.html>, accessed June 12, 2012.

¹⁰¹ <http://indiana.edu/~trustees/meetings/attending-meetings.shtml>, accessed October 11, 2012.

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preparation and accuracy is the ultimate responsibility of the secretary of the board, i.e., the university president, as discussed in Chapter One.

Minutes that we could test. To determine how well the minutes reflect the actual meetings, we made comparisons using board meeting videos that became routinely available through a link on Penn State's website starting in January 2012. The videos are provided by WPSU, Penn State's public broadcasting station, and are available online at the board of trustees' website.¹⁰²

Based on our review of four regular board meetings held in 2012 on the dates of January 20, March 16, May 4, and July 13, we found that Penn State could be doing a better job in the published written minutes.

▪ **Minutes did not include trustees' questions and commentary.**

Documentation of trustees' questions and commentary is especially significant when we consider the Freeh team's suggestion that board members were passive and disinterested attendees rather than inquiring and detail-demanding participants. Specifically, the Freeh team report said some trustees felt meetings were "scripted" or that trustees "were 'rubber stamping' major decisions already made by the [university president] and a smaller group of [t]rustees."¹⁰³

For the minutes that we reviewed, i.e., for the 2012 board meetings in January, March, May, and July, we might have come to the same conclusion because those minutes did not reflect discussion except in limited instances (such as a list of general questions that follow the president's report). But the videos that we examined tell a different story.

Example 1. The official minutes from the meeting of May 4, 2012, do not reflect any of the discussion that took place prior to the board's vote to approve the assignment of a 2002 ground lease. The lease is for 50+ acres of Penn State property that is home to a

¹⁰² <http://www.psu.edu/trustees/meetings.html>. Accessed most recently on October 23, 2012.

¹⁰³ Page 101, *Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky*, Freeh Sporkin & Sullivan, LLP, July 12, 2012. Accessed most recently on October 23, 2012, at http://www.thefreehreportonpsu.com/REPORT_FINAL_071212.pdf.

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privately developed/privately owned project, The Village of Penn State Retirement Community. The board's committee on finance, business, and capital planning recommended the lease assignment because the retirement community had filed for bankruptcy protection, the assets were being sold to a new owner, and the ground lease was one of the assets.

Here is all that the minutes say:

RESOLVED, That the existing ground lease dated February 1, 2002[,] with The Village at Penn State Retirement Community be assigned to Liberty Lutheran Housing Development Corporation a Pennsylvania non-profit corporation. FURTHER BE IT RESOLVED, That the lease dated February 1, 2002[,] be amended to reflect the amended ground lease term sheet presented in Appendix IV [of the agenda]. FURTHER BE IT RESOLVED, That the Officers are authorized and directed to take such steps as are necessary to make effective these resolutions.

And this:

The Board voted to approve the action items as recommended by the Committee on Finance, Business and Capital Planning.

The minutes give no clue to the fact that discussion about these resolutions went on for more than six minutes prior to the vote. For example, pointed questions were asked by five trustees, including David Jones and Joel Myers, as well as by a trustee emeritus. In fact, we found old news reports indicating that both Jones and Myers had been concerned about the retirement community project as far back as the mid-1990s when it was conceived. Now, Jones reminded the board that Penn State has yet to see any of the promised compensation for affiliating itself with the retirement community.

The trustees' engagement is important because it shows interest and concern related to a controversial project that, over the years,

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has generated questions about conflicts of interest, insider involvement, and the propriety of a taxpayer-supported university lending its name and providing other benefits in promoting a private business.¹⁰⁴ The minutes should reflect the trustees' questions and concerns; when the minutes do not include such discussion, it is easy for the public to perceive that Penn State trustees simply "rubber stamp" what is put before them.

Example 2. Not referenced in the July 2012 minutes is a trustee-raised concern that resulted in an amendment to a proposed resolution. Unlike the previous example, the resolution was not controversial. Even so, the board's participation should be noted in order to clarify—and to complete—the record.

- **The minutes did not include the names of trustees who introduced motions, as well as who voted for and against motions.**

This most basic information should be included for the public to know what actions the board has taken, and why. *Roberts Rules of Order*, which the Penn State bylaws have incorporated by reference for the conduct of board meetings, say that published minutes should contain not only a list of speakers on each side of every question, but should also contain at least an abstract of what the speakers say.

To illustrate this issue, we found that, at the board's January 20 meeting, Governor Corbett abstained from voting on actions proposed by the committee on finance and physical plant. Our review of the video shows that the governor expressed concerns about not having enough information related to the 13 individual action items that were grouped together in a resolution for the board to approve in a single vote. The items were not

¹⁰⁴ The history is this: Penn State had entered into the original ground lease in February 2002 based on the board's earlier approval—in 1997—to lease or sell university-owned land. Then-president Spanier is said to have conceived the idea of the retirement community in those early years. Four of the co-owners were Penn State trustee and former board chair William Schreyer, football coach Joe Paterno, and two other associates: Second Mile then-board chair Robert Poole and local real estate developer Phil Sieg. The four had formed Pinnacle Development, Inc., which had a 50 percent share in the retirement community. And the president of Pinnacle (named later, in 1999) was the university's just-retired senior vice president for administration.

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insubstantial: capital expenditures of \$123 million, a room and board increase designed to raise \$5.3 million, the hiring of five architects and an accounting firm, changes to scholarships and fellowships, and acknowledgement of endowments and other commitments totaling \$17.5 million. These amounts, by the way, were not included either in the resolution or in the subsequent minutes; we tallied the figures using the detailed meeting agenda made available to us only that day at the meeting.

The governor spoke for about four minutes, explaining he would abstain because he was worried about voting to spend taxpayer money with so little information. “I don’t want to give you the impression that you can count on a lot of money coming from the state by voting for something that I would suggest you might want to defer,” he told the board. When another trustee asked if the 13 items could be separated so that the board could vote on them individually, a motion was made to do so. But it was withdrawn when the governor said he would still have to abstain without having seen more detailed information.

The motion to separate was then withdrawn, and the board voted to approve the block of items as a whole.

The vote count is confusing. We cannot determine the count by watching the video. Even the governor can be heard asking the chair to clarify the number of abstentions and “no” votes, but the chair does not make the count clear, even in response to the governor’s request. It appears that the governor may have been the sole abstention and that several other trustees (six? seven?) voted against the resolution, but it is impossible for us to tell precisely. Regardless, the meeting minutes simply convey that the board voted to approve the committee-recommended action items and that “Trustee Corbett abstained.” There was nothing about the discussion and no mention of the nay votes.

▪ **The minutes left out some key actions.**

Near the end of the July 2012 meeting, the board chair announced “new business,” specifically the establishment of a task force (comprised of committee chairs) to oversee implementation of recommendations made by the Freeh team, and working in tandem

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with a similar, already-established administration task force. The minutes did not mention this important action.

- **The minutes did not always reflect attendees/presenters.**

The meeting minutes of July 13, 2012, discuss a presentation about selected construction projects, but the presenter—a member of the university’s staff—was not identified in those minutes, not even in the section that lists the roster of staff attendees.

- **The minutes included reports “in their entirety” that were not actually presented in their entirety.**

Reports by the university president, for example, are included in the minutes and said to be “in their entirety.” In reality, the actual spoken reports sometimes differed. The differences were typically small and insignificant, but in some cases large portions of paragraphs were changed during the spoken report.

The problem is in saying the reports are published “in their entirety.” Readers expect that assertion to be accurate. If speakers/presenters stray from their prepared remarks, the minutes should reflect the changes. Otherwise, the minutes should qualify that published reports represent prepared remarks, not necessarily those that were actually presented.

Minutes that we could not test for accuracy. We did not have videos to test the accuracy of minutes prior to January 2012. A comparison would have been helpful regarding two instances from minutes in 2011 that give rise to questions.

Specifically, for the board’s meetings of January 21 and May 13, 2011, the published minutes indicate under “Legal Matters” that there were “no items to report” (January) or no “pending legal matters” (May). Again, without videos, we cannot verify the accuracy of those minutes to see if indeed no items were reported or discussed. The questions arise because, just nine days prior to the January 21 meeting, Tim Curley and Gary Schultz were accompanied by the university’s legal counsel when they testified before the Grand Jury about their knowledge and actions related to the child sex abuse allegations. Also, the day before the May 13 meeting, then-president Spanier had briefed

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the board about the Grand Jury investigation; Spanier himself had appeared before the Grand Jury in April.

It bears repeating that the university president, as the secretary/officer of the board, is responsible for the preparation and accuracy of meeting minutes. In Chapter One, we discussed this inherent conflict.

**Restricted: Faculty and
employee access to the board**

A board standing order requires any communication from faculty to the board to be made through the university president. But we found nothing specifically to address potential disagreements if the university president disagrees with, ignores, or fails to present the other board members with faculty-generated communications intended for trustees.

Regarding employee communications to the board, we found no standing order, and nothing in the bylaws, that either prohibits or allows such communications, or discusses specifically how to address employee-generated communications that do not get to the board if they are sent through the president.

Even the new standing order that the board adopted at its meeting of July 13, 2012, does not fix the problem of employee access to the board:

...the Board will not hear presentations or entertain questions on the following topics: issues under negotiation as part of the University's collective bargaining process; the employment status of any specific individual; statements concerning the private activities, lifestyles or beliefs of individuals employed by or associated with the University; grievances of individual students or employees....

The bylaws of Ohio State University, a member of the Big Ten Conference like Penn State, also impose restrictions on faculty and employee communications to the board, but with a significant qualifier that illustrates more openness and greater transparency. Specifically, although the bylaws deem that any employee-to-board communication

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should ordinarily occur in writing and through the president, they also say that “[t]his rule shall not be interpreted, however, as in any way limiting the right of communication between the employees of the university and the board, or as limiting the manner in which the trustees may gain information as to the work of the university.”¹⁰⁵

**Restricted:
Student access to the board**

Like the standing order restricting faculty access to the board, another standing order places the same restrictions on student-to-board communications by requiring those, too, to be made through the university president.

And also like the case with faculty or employee communications to the board, we found no other standing order, and nothing in the bylaws, to address student-to-board communications; and nothing specifically to address potential disagreements if the university president disagrees with, ignores, or fails to present other board members with student-generated communications intended for trustees.

**Restricted: Trustee access to the
university and trustee openness**

As we have previously discussed, various standing orders of the board remind trustees of the expectations placed upon them. The standing orders about the expectations most relevant to our discussion here include some that are reasonable on the surface but become problematic when examined more deeply:

- ✓ The expectation for trustees to “[r]espect established channels to acquire information or open communication with constituents” clearly sets forth that trustees should work through “channels” when seeking information or otherwise communicating with others. Working through these “channels,” based on the wording of other standing orders, would seem to mean that trustees should work through the president or perhaps his/her administration (who

¹⁰⁵ <http://trustees.osu.edu/rules/bylaws.html>. Accessed June 12, 2012.

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of course reports to the president). In other words, a trustee who attempts direct communication with someone—faculty, staff, students, alumni, media, whoever—is running afoul of the expectation that communications must go through “channels.” Accordingly, trustees run the risk that requests will be vetted or influenced, will not get to the appropriate respondent, and/or will not be shared with the rest of the board, if needed. Furthermore, any responses are less likely to be direct, open, and honest when they go through “established channels.”

- ✓ The expectation for trustees to “[s]peak openly within the Board and publicly support decisions...” is problematic because trustees are told, however implicitly, that speaking openly is okay to do **within** the board but not **outside** it, i.e., when speaking **publicly**.
- ✓ The expectation for trustees to “[m]ake decisions and instruct the administration as a Board, not as individuals” is problematic because trustees are told, again implicitly, that individual differences/dissents should be suppressed in favor of a show of unity.
- ✓ The expectation for trustees to “[a]dvocate the University's interests, but speak for the Board or the University only when authorized to do so by the Board or the Chair” is problematic because trustees are told that only the board or the chair can determine which university interests get conveyed to the public, and when.

There would be no problem if the expectations were straightforward in emphasizing that trustees should accept decisions that result from a majority vote, and that trustees should publicly acknowledge their acceptance of a majority vote even if they dissented. But Penn State takes the expectations further than merely asking for acceptance when it attempts to keep the public from *knowing* about board dissent and the reasons for it.

Penn State can do better, both in the expectations and in their wording. Equally important, Penn State should be transparent in its public reports of the board's actions, including dissents. At present, for the meeting minutes that we reviewed, they did not reflect questions and discussion, either supporting or dissenting, and they did not provide actual vote tallies. The one exception we noted is that the minutes did include a summary of questions—but without answers—posed after the president's report, which is made early in the meetings.

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**Missing:
Public access to dates of bylaw changes**

In conducting our research for this report, we found that Penn State's bylaws and standing orders are published online, along with a wealth of other governance data. This public communication was a good indicator of governance transparency.

On the other hand, and as previously noted, we found that the bylaws, for example, do not list dates to show when the various provisions were adopted initially and/or when they were amended. Instead, the online bylaws show the same date at the bottom of every page in a simple month/year format, such as "7/2012," a date that appears to reflect a point when some unidentified change or changes were made.

The lack of specific dates for amended provisions makes it impossible for the public to tell which bylaw provisions were amended, when and how such amendments occurred, and to make comparisons over time for purposes of analyzing Penn State's direction and progress.

Showing the history of the bylaws, including initial dates and subsequent changes, would be a way for Penn State to let the public follow changes over time. Adding this information should not be difficult for an institution of Penn State's resources and stature.

Our Summary

Penn State is a public university supported by the taxpayers of Pennsylvania. Transparency in governance is vital. In addition to improving its reporting about the board and its actions, Penn State must also improve access to the board and by the board.

Our Recommendations

19. The Penn State board of trustees should amend the bylaws to require that detailed agendas are available online for the public at least five days in advance of board meetings (with a note that the agendas are subject to change); that final detailed agendas and all supporting materials are available online for the public on

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meeting days; and that final detailed agendas and all supporting materials in sufficient quantities are readily available for the public at meeting places on meeting days.

20. The Penn State board of trustees should amend Standing Order VIII, Section (9) to make it consistent with the new Section (9)(c) that was added at the board's meeting on July 13, 2012. The board should further amend subsection (c) to make an additional 5 speaking slots available for visitors who sign up within the hour prior to a board meeting. Also available for that same meeting-day sign-up should be whatever slots were left unfilled from the 10 that were previously set aside for the 48-hour pre-registrants. In total, then, the board would set aside time for potentially 15 speakers.
21. The Penn State board of trustees should amend the bylaws to create a channel of communication, such as a hotline, tip line, and the like, free of retribution, for notifying the board of trustees of significant issues that might otherwise not come to the board's attention. The details of this communication channel, including issues of confidentiality and/or anonymity, should be determined by the board.
22. The Penn State board of trustees should delete Standing Order IX, provision (1)(f)12. in its entirety and replace it with openness language. For example, the new Standing Order IX, provision (1)(f)12. could read as follows:

Members of the board of trustees are granted access to university operations, and are encouraged to speak freely with all students, faculty, staff, and alumni to obtain a better understanding of university operations and to make more informed assessments of university performance.
23. The Penn State board of trustees should immediately implement changes to its bylaws and standing orders to provide the history of each provision, including the dates of initial adoption and any amendments.

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CHAPTER EIGHT

Term limits for board members

*Fresh ideas and
new perspectives
are lost when
board members
can wait 12 or
more years
before stepping
aside.*

Summary of Issue:

The Penn State board established term limits in 2003 but did not apply the limits equally to all members. Some members have served for decades.

Summary of Recommendations:

The board should impose a nine-year term limit that applies to all members equally.

Act 50 of 1855, as amended,¹⁰⁶ established a board of trustees of elected (i.e., not ex officio) members divided into three classes with alternating terms of three years each. There was no provision to prevent trustees from being re-elected for successive three-year terms.

Current term limits are 15 years, with exceptions. In 2003, the board established its current 15-year term limit for the elected trustees, effective with terms that began July 1, 2003, or thereafter, but with certain exceptions.

- ✓ The term limit does not apply to elected trustees while they are serving as chair or vice chair. It is not clear from the bylaw wording¹⁰⁷ if the years served as chair or vice chair are not counted at all toward the limit, or if a current chair or vice chair simply cannot be made to step down in the middle of service if the 15-year mark is reached, or something else.
- ✓ For elected trustees already on the board before the new rule started, their 15-year time clock did not count all the prior years served. Instead, the 15-year clock started ticking only with the

¹⁰⁶24 P.S. § 2536.

¹⁰⁷ The wording: "This provision for term limits shall not apply to elected members of the Board while serving in the capacity as President [chair] or Vice President [vice chair] of the Board of Trustees."

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term in effect at the time the board established the limit—that is, the term that started before July 1, 2003. Even those trustees who had already served 15 years (or 20 or 30, for that matter) could, in effect, start anew and serve 15 more years with successful re-elections.

Future term limits are reduced to 12 years, but only for new trustees, and not until July 2013. On July 13, 2012, the Penn State trustees voted to amend the bylaws to reduce elected trustee term limits from 15 years to 12 years. But the reduced limit is only for new trustees elected for terms beginning July 1, 2013. Thus, again, the current trustees carved out exceptions for themselves:

- ✓ As before, the term limit does not apply to trustees while they are serving as chair or vice chair. But the new bylaw wording¹⁰⁸ is even murkier than the previous version: Readers can still not tell if and how the years served as chair or vice chair are counted; in addition, readers are now left to wonder what the new last part of the sentence is saying.
- ✓ Elected trustees who were affected by the last 2003 revision get to keep their 15-year limit. In other words, trustees elected after July 1, 2003, can stay on the board for 15 years provided they are re-elected. Or perhaps—if they become chair or vice chair—they can stay on longer depending on how those years are or are not counted.
- ✓ What is most unclear is how the term limits apply to the trustees whose previous 15-year clock started anew the last time around—that is, when the clock re-started in their term immediately prior to July 1, 2003. A close reading of the *new* provision seems to say that (1) these trustees get to keep a 15-year limit instead of the new 12-year limit and (2) their clock starts anew again with the date of their “most recent” election or re-election. Applying that interpretation to the current longest-serving trustee, who began his term in 1969, we calculate that, if successfully re-elected, he could serve a total of 57 years as illustrated in the table that follows.

¹⁰⁸ The new wording: “This provision for term limits shall not apply to elected members of the Board while serving in the capacity as President [chair] or Vice President [vice chair] of the Board of Trustees and they will be considered eligible for re-election as a member by the respective constituent group.”

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Penn State trustees: How many years are too many?

Current elected trustees whose terms started prior to July 1, 2003

All terms are three years in length

Trustee/ In what term as of 07-01-12/ Elected by what group		Year elected/ First term started	Year current term ends (on 06-30-####)	Number of years served to date (as of 07-01-12)	Years allowed to serve based on wording in bylaws
H. Jesse Arnelle	<i>in 15th term Alumni</i>	1969	2014	43	57
Joel Myers	<i>in 11th term Alumni</i>	1981	2014	31	45
Edward Hintz, Jr.	<i>in 7th term Business</i>	1994	2015	18	33
Carl Shaffer	<i>in 6th term Agriculture</i>	1997	2015	15	30
Paul Suhey	<i>in 5th term Alumni</i>	1998	2013	14	27
James Broadhurst ¹⁰⁹	<i>in 6th term Business</i>	1998	2014	14	28
Keith Eckel	<i>in 4th term Agriculture</i>	2001	2013	11	24
Samuel Hayes ¹¹⁰	<i>in 5th term Agriculture</i>	1997	2013	15	28

It is possible that our interpretation is not what the board intended and that the bylaws are just poorly written. That is, the board may not have realized it was voting on yet another 15-year restart of the term limit clock for the pre-2003 board members. Trustee James Broadhurst, the

¹⁰⁹ James Broadhurst was initially appointed to fill an unexpired business/industry term; he was subsequently elected/re-elected for succeeding terms. The “Years served...” column is more precisely 13 years, 9 months; the “Years allowed” column is more precisely 27 years, 9 months.

¹¹⁰ Samuel Hayes was initially an ex officio trustee (June 1997 to January 2003) as the Pennsylvania Secretary of Agriculture. In March 2003, he was appointed to fill an unexpired term as an agricultural representative. Thereafter, he was elected/re-elected by the agricultural societies. The “Years served...” column is more precisely 14 years, 10 months; the “Years allowed” column is more precisely 27 years, 10 months.

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committee chair who introduced the bylaw change, did not indicate there would be another 15-year restart, but it is still not clear. Before the vote, he said that trustees elected prior to July 1, 2013, would “continue under the previously enacted 15-year term limits.”

Whatever the case, and whatever the intention, Penn State should clarify the issue. Furthermore, the bylaws should be written in plain language, with provisions clearly stated and easy to understand. (See box, next page.)

Terms of 6-8 years are long enough

Term limits are a common governance practice. The Association of Governing Boards of Universities and Colleges, or AGB, verifies that commonality. Indeed, the AGB’s *2010 Survey Data for Boards of Public Institutions* found that terms averaged just 5.7 years. The survey also found an average of just 2 consecutive terms.

Our source at the AGB, Richard Novak, senior vice president, said that term limits should be between 6 to 8 years, and staggered.¹¹¹

The AGB has said that critics argue against term limits because they can result in lost expertise and institutional knowledge, and also because they create a need for continual recruitment to replace the departing directors. But proponents call term limits “a healthy way to infuse the board with new ideas and new energy...[and to] rotate ineffective members off the board.”

At the Penn State board meeting on July 13, 2012, Trustee Broadhurst said his governance committee had considered but decided against reducing term limits for elected members “across the board to twelve years or nine years.” The resulting turnover, he said, would have put the board at risk of losing “a minimum level of continuity to assure the proper oversight of our fiduciary responsibilities.”

With regard to the non-elected trustees appointed by the governor, there are no term limits. Even so, Broadhurst said that the governor would be advised of the new 12-year provision for consideration when making future nominations for trustees.

¹¹¹ Email dated August 9, 2012.

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Term limits: Plain language needed

Penn State's bylaws regarding term limits make it difficult to determine which trustees are really affected, and how the limits are applied:

Provision adopted in 2003

Term limits for elected members of the Board will be 15 years, effective with terms beginning July 1, 2003[,] or thereafter. This provision for term limits shall not apply to elected members of the Board while serving in the capacity as President or Vice President of the Board of Trustees. (For Trustees with terms beginning prior to July 1, 2003, the 15[-]year term limit is effective with the date of the most recent election or re-election as trustees elected by the alumni, elected by delegates of agricultural societies, and/or elected as business and industry trustees.)¹¹²

Provision adopted in 2012

Term limits for elected members of the Board will be 12 years, effective with terms beginning July 1, 2013[,] or thereafter. This provision for term limits shall not apply to elected members of the Board while serving in the capacity as President or Vice President of the Board of Trustees and they will be considered eligible for re-election as a member by the respective constituent group. (For Trustees with terms beginning prior to July 1, 2003, the previously enacted 15[-]year term limit is effective with the date of the most recent election or re-election as trustees elected by the alumni, elected by delegates of agricultural societies, and/or elected by the board representing business and industry endeavors. For Trustees with terms beginning between July 1, 2003[,] and July 1, 2012, the previously enacted 15[-]year term limit is effective with the date of the initial election as trustees elected by the alumni, elected by delegates of agricultural societies, or elected by the board representing business and industry endeavors.)¹¹³

¹¹² Article 7, Miscellaneous Provisions, Section (8), Term Limits.

¹¹³ Section (8), Term Limits.

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Our Summary

Penn State trustees, regardless of knowledge, meritorious service, or devotion, should not be permitted to serve for decades. Good governance requires a fresh approach and new ideas, and staggered terms reduce the loss of institutional knowledge. Term limits are a common and healthy practice.

Our Recommendations

24. The General Assembly should amend Penn State's enabling statute to prohibit any member (including members both elected and appointed) from serving more than nine years in total, or three consecutive three-year terms. This term limit should be applicable to all members equally, including current members and officers, meaning that all years served to date should be counted toward the nine-year limit.
25. The Penn State board of trustees should ensure that its bylaws related to term limits—and all other bylaws, for that matter—are worded in plain, easy-to-understand language.

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9

CHAPTER NINE

**Emeritus
status for
trustees and
others;
trustee
expenses**

*Trustees emeriti
add to the
public's
perception of
insider influence
at Penn State.*

Summary of Issue:

The Penn State board has 16 retired trustees who can receive most privileges given to the 32 active trustees, and who swell the board to 48 trustees; the board also does not report its expenses per trustee, whether active or emeritus.

Summary of Recommendations:

The board should not award the emeritus rank to retired trustees or should at least decrease the privileges, and should report per-trustee expenses for all trustees.

The rank of “emeritus” is considered an honor in the Penn State community. The rank is awarded under certain circumstances to Penn State trustees, faculty, and staff.

Trustees emeriti get to retain the privileges they had as trustees, except they cannot make motions, vote, or hold office. Faculty and staff emeriti also get privileges, which we discuss later in this chapter.

The emeritus issue is *not* addressed in Penn State’s enabling statute or in the charter. The university has developed a human relations policy with regard to the emeritus rank as it applies to faculty and staff, but the policy does not apply to the emeritus rank for trustees.

What are the privileges and expenses of trustees emeriti, and of active trustees as well?

The board has developed a standing order to provide its members with access to the emeritus rank and its accompanying privileges. The

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emeritus issue is also part of the July 2012 bylaws, under which the committee on governance and long-range planning may recommend to the board that emeritus status be awarded to retired trustees. It is not clear when the awarding of trustee emeritus status first began, but bylaws from 1974 indicate that emeritus status would be given to any living former board member who had served for 20 years or more. The 1974 bylaws also said that trustees emeriti would have none of the obligations of board membership but all of the privileges except for making motions, voting, and holding office.

The current board standing order says that the emeritus status is “reserved for any living former member of the Board of Trustees who has served as a board member for 12 years or more with distinction.” According to that standing order, criteria for selection include offices held, attendance, participation, length of service, or “other significant contributions.”

Alternatively, and also according to the current standing order, a trustee with 20 years of service is entitled to automatic emeritus status. This automatic inclusion appears to counter the stated intention of recognizing “significant contributions” or service “with distinction.”

Regarding *what* privileges are extended to a trustee emeritus, the bylaws and standing orders are not specific. The current order says the same thing that was in the 1974 bylaws: “A trustee emeritus shall have none of the obligations of membership on the Board of Trustees, but shall be entitled to all of the privileges” except voting, making motions, and holding office.

Because trustees emeriti can attend and participate in meetings, Penn State might consider the associated travel and lodging expenses to be reimbursable, just as they are for active trustees. But because Penn State combines and reports trustee expenses all together, the public is not told how much trustees emeriti might or might not be costing Penn State, or if any associated costs are equal to the value of having these trustees. The public simply cannot tell what any particular trustee is costing the university, whether that trustee is active or retired.

A breakdown of expenses by trustee—including the trustees who can no longer vote, hold office, or make motions—would show that trustees are

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serious about transparency. The information is particularly relevant to Penn State students and their families at a time when tuition and educational costs are rising, and at a time when Penn State is incurring both direct and indirect costs related to the child sex abuse scandal.

According to its website, Penn State spent \$826,798 in operating expenses related to trustees for the fiscal year ended June 30, 2011. We have listed those reported expenses in the next table.

2010-11 Operating Expenses – Board of Trustees¹¹⁴ <i>(The board includes 32 active trustees and 16 emeriti trustees. In this chapter, “32 active trustees” means the number of voting trustees if all seats are filled. Not all 32 seats were filled as this report was being finalized.)</i>		
Salaries ¹¹⁵		\$210,304
Departmental expenses:		
Supplies, materials & services	76,020	
Communication services	10,138	
Travel expense	157,650 *	
Publications, printing & copying	16,297	
Property expense	10,061	
Repairs, alterations & capital	11,306	
Equipment budget	23,521	
Conferences & group activities	216,385 *	
Books & periodicals	<u>2,751</u>	
Sub-total departmental expenses		524,129
Employee benefits		<u>92,365</u>
Total board of trustees		<u><u>\$826,798</u></u>

**Travel expenses for 2010-11 totaled \$374,035*

Readers should also keep in mind that the board of trustee expenses are paid with operating revenues. According to Penn State’s website,

¹¹⁴ The numbers in this table were taken from the Penn State website on June 7, 2012, at the following address: <http://www.budget.psu.edu/openbudget/DepartmentalDetail.asp?type=A&FY=20102011&Admin=043&fundtype=01&Dept=0430010100>. The numbers were re-verified on October 2, 2012.

¹¹⁵ As of October 2, 2012, the site at <http://www.psu.edu/trustees/staff.html> listed names for these four positions: (1) Director of the Office of the Board of Trustees/Associate Secretary, (2) Assistant Director, (3) Administrative Assistant, and (4) Staff Assistant. However, this website gives no further information, such as whether the staff members are full time and if their duties are solely related to the board of trustees. In addition, the site listed in the preceding footnote does not clarify whether the salaries are those of the four staffers; nor does the site give further detail related to any of the listed expenses.

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operating revenues are unrestricted and include taxpayer dollars and student tuition.

The reported operating expenses show that, in total, the cost to support one trustee works out to \$17,225 annually if we include the trustees emeriti, and \$25,837 if we include only the active trustees.¹¹⁶

Breaking out only the obvious travel-related expenses (i.e., “Travel expenses” and “Conferences & group activities”), we find they total almost \$8,000 a year per trustee if we divide the expenses by the number of active and emeriti trustees combined. Specifically, \$374,035 divided by 48 trustees (32 active and 16 emeriti) equals \$7,792.

Alternatively, if we divide the \$374,035 by just the 32 active trustees, the expense works out to \$11,689 per trustee. We used that lesser number (i.e., 32 active trustees) in this alternative calculation because Penn State’s enabling legislation does not appear to authorize travel/lodging reimbursement to trustees emeriti. We draw that conclusion for two reasons: First, as mentioned previously, the law is silent regarding trustees emeriti. Second, the trustees emeriti do not perform board member duties,¹¹⁷ and the law provides payment only of “expenses actually incurred in the performance of duty” as a board member.¹¹⁸

Our calculations are deliberately rudimentary, intended to assign a per-trustee cost to the trustee-related operating expenses based solely on the number of trustees, and despite other variables, some of which are unknown.

¹¹⁶ \$826,798 total costs divided by 48 trustees (emeriti and active trustees combined) equals \$17,225.

\$825,798 total costs divided by 32 trustees (active trustees only) equals \$25,837.

¹¹⁷ The order states, “A trustee emeritus shall have **none of the obligations of membership** on the Board of Trustees, but shall be entitled to all of the privileges except those of making motions, of voting and of holding office.” (Emphasis added.)

¹¹⁸ 24 P.S. § 2539 (“No member of the board shall receive compensation for his services; but shall be paid necessary traveling and hotel expenses actually incurred in the performance of duty as such member.”). Penn State’s charter does not refer to that 1905 legislation but rather refers to a 1915 Centre County court decree with similar language as follows: “[n]o member of the Board shall receive compensation for his services, but shall be paid his necessary traveling expenses and hotel bills actually incurred in the performance of his duty as such member.” (See Penn State Corporate Charter, p. C-6.)

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Regarding such variables as they relate to the travel costs, we acknowledge that some trustees, retired or active, might serve completely at their own expense, volunteering their time and institutional knowledge with no request for reimbursement. Even trustees who live far enough away to use air travel to attend meetings might pay for that travel personally, for example. We also acknowledge that, for active or emeritus trustees with outside employment, their employers might subsidize travel and lodging costs. And, finally, we acknowledge that travel expenses could include the expenses of staff and presenters who also attend the meetings. But the public is not told. Therefore, until Penn State shares that type of information and breaks down the aggregated expenses that are currently reported, our per-trustee average is a valid way to see what it costs to operate the board.

Penn State also doesn't report what might be additional benefits that we do not see from the reported expenses. For example, do trustees—whether active or emeriti—receive free or discounted tickets to athletic events, including special location seating? Free/discounted admission to other events? Access to university recreational facilities? Parking privileges? Discounts at Penn State bookstores? Educational privileges for themselves and eligible dependents? And how does Penn State account for any such privileges?

Finally, for the trustees emeriti, how much weight do they carry in guiding or advising active trustees and Penn State's administration? Is there a culture by which emeriti trustees expect and/or receive deference from active trustees with less board experience and less institutional knowledge? Are emeriti trustees further examples of insider influence? These are also questions for which the public should have answers.

**What do experts say
about benefits for trustees emeriti?**

The Association of Governing Boards (AGB) provides some guidance:

What is evident is that appointment to "trustee emeritus" status should be based on the quality of service demonstrated as a board member rather than time served; that is, it should be a clear recognition of

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distinguished service. Recognizing those former board members whose service was less than distinguished serves neither the interests of the institution nor the responsibilities of those who currently serve as board volunteers.¹¹⁹

The AGB also offers additional suggestions on the involvement of trustees emeriti:

Trustees emeriti (who should not have voting privileges) should limit their participation at board meetings to the governing board's official "annual" meeting.¹²⁰

Overall, based on our analysis and without greater transparency to allow an analysis of additional cost/benefit factors, we recognize the board's desire to honor its members with various privileges, including extending those privileges to retired trustees by offering the rank of trustee emeritus. On the other hand, the board must recognize that Penn State students and their families, alumni, Pennsylvania taxpayers, and the general public deserve to know what Penn State trustees—including trustees emeriti—are both giving and taking via their membership.

**How do trustees emeriti
compare to faculty and staff emeriti?**

Penn State has a long-standing human relations policy for conferring emeritus rank on faculty and staff. The policy has existed since 1964, with the latest version—from July 2006—reading as follows:

Unless specifically not recommended, Emeritus Rank is granted upon leaving the University to those holding the rank of professor, associate professor, librarian, associate librarian, senior scientist, or senior research associate, or to personnel classified as executive, associate dean, or director of an academic unit.

¹¹⁹ "What's the role of an emeritus trustee?" Association of Governing Boards, <http://agb.org/knowledge-center/faq/what%E2%80%99s-role-emeritus-trustee>. Accessed August 16, 2012.

¹²⁰ Ibid.

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*To be eligible, individuals in the above ranks or positions must be either age **sixty or older with ten or more years of service at the University or have completed twenty-five years or more of service at the University, AND have held an eligible rank at The Pennsylvania State University for a period of at least five years prior to leaving the University.** [Emphases added.]*

The President may grant (or deny) Emeritus Rank on an exception basis.¹²¹

That same policy notes that the board of trustees may grant the emeritus rank to the university president.

Further noted are these privileges that are available to faculty and staff who receive the emeritus rank:

- Penn State emeritus ID Card
- Listing in faculty/staff Directory
- Vehicle registration for campus parking at faculty/staff rates
- Penn State Access account for Internet services
- Regular faculty/staff privileges at university libraries
- Receipt of Penn State newswire services
- Access to university recreational facilities
- Faculty/staff discount at Penn State bookstores
- Educational privileges for self and eligible dependents
- Office or lab space assigned as (and if) appropriate

The rank for faculty/staff is granted by the university president and presented to the trustees for their information, after which public news releases are used to announce the names of the faculty/staff emeriti. As with the awarding of the emeritus rank to trustees, the awarding of the emeritus rank to faculty and staff is considered an honor and is granted in recognition of meritorious service. However, unlike the policy applicable to trustees, the policy for faculty/staff members does not say they are entitled to automatic emeritus status after serving 20 years.

¹²¹ Penn State Policy HR25, "Emeritus Rank," July 27, 2006. Accessed most recently on September 19, 2012, at <http://guru.psu.edu/policies/OHR/hr25.html#A>.

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As it relates to the child sex abuse scandal, the issue of the emeritus rank received attention in the Freeh report and in the media based on the awarding of the rank in 1999 to Gerald Sandusky, former Penn State assistant football coach and now convicted sex offender.

Sandusky did not have the required credentials for the emeritus status, and the Freeh report included email exchanges in which university officials, including then-provost and now-president Rodney Erickson, discussed granting Sandusky the emeritus rank on an exception basis based on the request of then-president Graham Spanier, who as president was entitled to grant an exception. As provost, Erickson needed to sign off on the request and did so with this email:

Let's go ahead and grant it if Graham has already promised it. We can hope that not too many others take that careful notice. These requests would have to come through the deans in any case, and I can't imagine many deans lobbying for assistant professors.

Sandusky's emeritus status became an important issue, according to the Freeh report, because it gave him access to university facilities even after the criminal investigation was reported in the media in March 2011. According to the Freeh report, Penn State's then-general counsel, Cynthia Baldwin, said no when she was asked by athletics department staff if Sandusky could be prevented from using Penn State's athletic facilities. She later explained to the Freeh team that "because of Sandusky's emeritus status and the fact that he had not been charged with a crime [as of March 2011], his access could not be eliminated without the University being sued."¹²²

Our Summary

The board developed its own policy that allows former trustees to be awarded the rank of trustee emeritus in recognition of distinguished service. That same policy, however, contradicts itself regarding the "distinguished service" intent by also allowing an automatic emeritus rank simply if a trustee has served for 20 years.

¹²² Freeh report, page 107.

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In addition, the awarding of the emeritus status creates questions that the board should address, including the question of cost and value to the university regarding trustees emeriti, whether the rank should be eliminated for trustees, and when and how exceptions should or should not be made regarding faculty/staff emeriti awards.

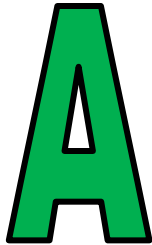
Finally, with regard to expenses, Penn State does not report per-trustee expenses whether the trustees are active or retired. Reporting such expenses is something that Penn State should do as a matter of transparency and accountability.

Our Recommendations

- 26.** The Penn State board of trustees should amend the bylaws to prohibit anyone on the board or staff—including the president and the provost—from granting emeritus status to any faculty or staff member on an exception basis, as was done with Gerald Sandusky.
- 27.** The Penn State board of trustees should seriously consider eliminating the awarding of emeritus status to its members.
- 28.** If the Penn State board of trustees continues to award the emeritus rank to trustees, the rank should not be automatic based on numbers of years served. Furthermore, the board should eliminate bylaw and standing order provisions that extend the same privileges received by active trustees to trustees emeriti and instead limit the role of those trustees to, for example, participation in annual meetings.
- 29.** The Penn State board of trustees should disclose per-trustee expenses paid to its active trustees, and to its trustees emeriti if that rank is allowed to continue and if those trustees receive reimbursements.
- 30.** The Penn State board of trustees should ensure that its charter, bylaws, and standing orders are all entirely consistent on the issue of the rank of trustee emeriti.

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APPENDIX A

**Boards of the
universities in
the Big Ten
Conference**

**Our methodology for obtaining
information about
the universities in
the Big Ten Conference**

(Table is on next page)

To obtain the names of the universities in the Big Ten Conference, we used the Big Ten Conference website, specifically the page “About the Conference” at this address:

<http://www.bigten.org/school-bio/big10-school-bio.html>.

As we indicate, the 12 universities in the Big Ten Conference include Penn State and 10 other public universities, plus one private university (Northwestern University in Illinois).

To obtain the additional information about number of board members/trustees, quorums, inclusion of CEOs and governors, and number of alumni-chosen and governor-appointed members/trustees, we reviewed the websites of the individual universities. If those websites directed us elsewhere (e.g., state statutes), we reviewed that additional information as well.

Boards of the universities in the Big Ten Conference

University Name (and whether public or private)		How many members are on the board of trustees/directors?	How many board members make a quorum?	Do members include the CEO/president and the governor?	Do alums elect members? If yes, how many?*	How many voting members does governor appoint?
Public	Indiana University	9	5	CEO=No Gov=No	Yes 3 of 9	6 of 9
	Michigan State University	9 (1 is nonvoting)	Majority	CEO=Yes, nonvoting Gov=No	No	0 of 8
	Ohio State University	19 (2 are nonvoting)	Majority	CEO=No Gov=No	No	17 of 17
	Pennsylvania State University	32	13	CEO=Yes, voting Gov=Yes, voting	Yes 9 of 32	6 of 32
	Purdue University	10	Majority	CEO=No Gov=No	Yes 3 of 10	7 of 10
	University of Illinois	13 (2 are nonvoting)	Majority	CEO=No Gov=Yes, voting	No	9 of 11
	University of Iowa	9	6	CEO=No Gov=No	No	9 of 9
	University of Michigan	9 (1 is nonvoting)	5	CEO=Yes, nonvoting Gov=No	No	0 of 8
	University of Minnesota	13 (1 is nonvoting)	Majority	CEO=Yes, nonvoting Gov=No	No	0 of 12
	University of Nebraska	12 (4 are nonvoting)	Majority	CEO=No Gov=No	No	0 of 8
	University of Wisconsin	18	Majority	CEO=No Gov=No	No	16 of 18
Private	Northwestern University	Unknown	Unknown	Unknown	Unknown	Unknown

*Even if universities do not have processes like Penn State's whereby alumni get to elect some trustees, boards typically consist of a majority of alumni.

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APPENDIX B

**Boards of the
20 largest
universities
by 2011
enrollment**

**Our methodology for obtaining
information about the
20 largest U.S. universities
by 2011 enrollment**

(Table is on next two pages)

Our source for universities by name and enrollment was the U.S. Department of Education's National Center for Education Statistics, and particularly the College Navigator function at <http://nces.ed.gov/collegenavigator/>.

From that resource, we first compiled a list of public universities that offer at least four-year bachelor's degrees, sorted by fall 2011 enrollment. The enrollment data is reported by the universities under the Higher Education Act of 1965.

Our next step, i.e., choosing the 20 largest universities, was dependent on the student population data reported on the website. This information is reported by the institutions themselves. We used main campus enrollment to rank universities by their enrollments, but—an important note—we did find that, in some cases, the *main campus* enrollment was reported to be the same as the total enrollment for that university's campuses.

To obtain the additional information about number of board members/trustees, quorums, inclusion of CEOs and governors, and number of alumni-chosen and governor-appointed members/trustees, we reviewed the websites of the individual universities. If those websites directed us elsewhere (e.g., state statutes), we reviewed that additional information as well.

Boards of the 20 largest universities by 2011 enrollment

Information from Natl. Center for Education Statistics	Information obtained online from university websites				
University and location <i>Student population (total and undergraduate)</i>	How many members are on the board of trustees/directors?	How many board members make a quorum?	Do members include the CEO/president and the governor?	Do alums elect members? If yes, how many?*	How many voting members does governor appoint?
1.Arizona State University <i>Student population = 72,254 total; 58,404 undergrad</i>	12 <i>(1 is nonvoting)</i>	Majority	CEO=No Gov=Yes, voting	No	8 of 11
2.University of Central Florida <i>Student population = 58,465 total; 49,972 undergrad</i>	13	7	CEO=No Gov=No	No	6 of 13
3.Ohio State University-Main Campus <i>Student population = 56,867 total; 42,916 undergrad</i>	19 <i>(2 are nonvoting)</i>	Majority	CEO=No Gov=No	No	17 of 17
4.University of Minnesota-Twin Cities <i>Student population = 52,557 total; 34,812 undergrad</i>	13 <i>(1 is nonvoting)</i>	Majority	CEO=Yes, nonvoting Gov=No	No	0 of 12
5.University of Texas at Austin <i>Student population = 51,112 total; 38,437 undergrad</i>	10 <i>(1 is nonvoting)</i>	Majority	CEO=No Gov=No	No	9 of 9
6.Texas A & M University-College Station <i>Student population = 50,230 total; 39,867 undergrad</i>	10 <i>(1 is nonvoting)</i>	Majority	CEO=No Gov=No	No	9 of 9
7.University of Florida <i>Student population = 49,589 total; 32,598 undergrad</i>	13	7	CEO=No Gov=No	No	6 of 13
8.Michigan State University <i>Student population = 47,825 total; 36,557 undergrad</i>	9 <i>(1 is nonvoting)</i>	Majority	CEO=Yes, nonvoting Gov=No	No	0 of 8
9.Pennsylvania State University-Main Campus <i>Student population = 45,628; 38,954 undergrad</i>	32	13	CEO=Yes, voting Gov=Yes, voting	Yes 9 of 32	6 of 32
10.Florida International University <i>Student population = 44,616; 35,888 undergrad</i>	13	Majority	CEO=No Gov=No	No	6 of 13

*Even if universities do not have processes like Penn State's whereby alumni get to elect some trustees, boards typically consist of a majority of alumni.

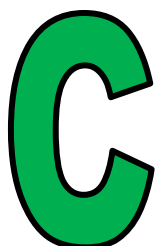
Boards of the 20 largest universities by 2011 enrollment

Information from Natl. Center for Education Statistics	Information obtained online from university websites				
University and location <i>Student population (total and undergraduate)</i>	How many members are on the board of trustees/directors?	How many board members make a quorum?	Do members include the CEO/president and the governor?	Do alums elect members? If yes, how many?*	How many voting members does governor appoint?
11.University of Illinois at Urbana-Champaign <i>Student population = 44,407 total; 32,256 undergrad</i>	13 (2 are nonvoting)	Majority	CEO=No Gov=Yes, voting	No	9 of 11
12.Indiana University-Bloomington <i>Student population = 42,731 total; 32,543 undergrad</i>	9	5	CEO=No Gov=No	Yes 3 of 9	6 of 9
13.University of Michigan-Ann Arbor <i>Student population = 42,716 total; 27,407 undergrad</i>	9 (1 is nonvoting)	5	CEO=Yes, nonvoting Gov=No	No	0 of 8
14.University of Maryland-College Park <i>Student population = 42,713 total; 28,119 undergrad</i>	17	Majority	CEO=No Gov=No	No	17 of 17
15.University of Washington-Seattle Campus <i>Student population = 42,444 total; 29,022 undergrad</i>	10	Majority	CEO=No Gov=No	No	10 of 10
16.University of Wisconsin-Madison <i>Student population = 41,946 total; 29,880 undergrad</i>	18	Majority	CEO=No Gov=No	No	16 of 18
17.Florida State University-Tallahassee <i>Student population = 41,087 total; 32,201 undergrad</i>	13	7	CEO=No Gov=No	No	6 of 13
18.Purdue University-Main Campus (Indiana) <i>Student population = 40,849 total; 31,988 undergrad</i>	10	Majority	CEO=No Gov=No	Yes 3 of 10	7 of 10
19.Rutgers University-New Brunswick (New Jersey) <i>Student population = 39,950 total; 31,268 undergrad</i>	15 (4 are nonvoting)	6	CEO=Yes, nonvoting Gov=No	No	6 of 11
20.University of Houston (Texas) <i>Student population = 39,820 total; 31,764 undergrad</i>	10 (1 is nonvoting)	Majority	CEO=No Gov=No	No	9 of 9

*Even if universities do not have processes like Penn State's whereby alumni get to elect some trustees, boards typically consist of a majority of alumni.

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APPENDIX C

69 U.S. land-grant universities and their boards; Penn State's land-grant history

Our methodology for obtaining information about 69 U.S. land-grant colleges and universities

(Table begins after this introduction.)

The primary source for obtaining names for our list of 69 U.S. land-grant colleges and universities was the Association of Public and Land-Grant Universities, or APLU, including its 2012 publication, “Land-Grant Tradition.” The source for our additional information about the boards was primarily the websites of the individual institutions.

Our list should not be interpreted to mean that these 69 colleges and universities comprise the entire population of land-grant institutions; instead, these 69 are the colleges and universities that were designated land-grant status under provisions of the Morrill Acts of 1862 and 1890. The APLU explains that land-grant status was given to additional institutions under other acts. For example, in 1967, what is now the University of the District of Columbia was given land-grant status by the District of Columbia Post Secondary Education Reorganization Act; and in 1994, land-grant status was given to 29 Native American Colleges as a provision of the Elementary and Secondary Education Reauthorization Act.¹²³

The first Morrill Act (1862) is the act under which Penn State received its land-grant status. Here is how Penn State explains how its mission of teaching, research, and public service was shaped by that act:

Penn State was founded in 1855 as a publicly supported agricultural college. It brought science to bear on age-old problems of food and fiber production. It broadened its mission a few years later, after Congress passed the Morrill Land-Grant Act (1862). The act encouraged institutions of higher education nationwide to add engineering, mining, agriculture, and other applied sciences to existing courses of studies that were grounded in arts and letters. These subjects would be

¹²³ Page 7, *The Land-Grant Tradition*, 2012, Association of Public and Land-Grant Universities, Washington, D.C. We were unable to verify some of the details related to these two other acts.

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useful to a nation that was just beginning to enter a period of unprecedented economic and technological growth.

Congress gave each state an allotment of federal land—30,000 acres for each senator and representative the state had in Congress. The states were to sell the land and use the proceeds to create endowments, which in turn would provide dependable support for colleges that agreed to introduce the new curriculum. These colleges also had to pledge that the cost of this new higher education would remain within reach of Americans of average financial means. Land-grant institutions thus have often been termed "democracy's colleges."

In 1863, the Pennsylvania legislature designated Penn State the Commonwealth's sole land-grant institution—a distinction it still holds. Pennsylvania received 780,000 acres of land, which were sold for a total of \$439,000. The state legislature then converted this amount to a \$500,000 bond yielding 6 percent (\$30,000) annually to Penn State. The bond functioned in effect as Penn State's "endowment" during those early years.

In return for this support, Penn State began a steady expansion of its academic program. It also pledged to disseminate the benefits gained through research and instruction, which today takes the form of hundreds of outreach programs that touch the lives of millions of people each year throughout Pennsylvania and across America. Thus the Morrill Land-Grant Act in effect conferred on Penn State a three-part mission: teaching, research, and public service. This mission continues to guide the University in all that it does for Pennsylvania, the nation, and humankind.¹²⁴

¹²⁴ "Penn State's History and Tradition," <http://www.psu.edu/ur/about/landgrant.html>. Accessed most recently on October 4, 2012.

69 U.S. land-grant universities and their boards

U.S. land-grant institutions designated under the Morrill Acts of 1862 or 1890		Number of board members	Number required for quorum	CEO and/or governor on board?
Alabama				
1	Alabama A&M University <i>Normal, AL</i>	14 <i>(2 are nonvoting)</i>	7	CEO=No Governor=Yes, voting
2	Auburn University <i>Auburn, AL</i>	14	One more than half	CEO=No Governor=Yes, voting
3	Tuskegee University <i>Tuskegee, AL</i>	20	9 or 10	CEO=Yes, voting Governor=No
Alaska				
4	University of Alaska Statewide System <i>Fairbanks, AK</i>	11	6	CEO=No Governor=No
Arizona				
5	University of Arizona <i>Tucson, AZ</i>	12 <i>(1 is nonvoting)</i>	Majority	CEO=No Governor=Yes, voting
Arkansas				
6	University of Arkansas-Fayetteville <i>Fayetteville, AR</i>	10	6	CEO=No Governor=No
7	University of Arkansas at Pine Bluff <i>Pine Bluff, AR</i>	10	6	CEO=No Governor=No
California				
8	University of California System <i>Oakland, CA</i>	28 <i>(2 are nonvoting)</i>	9	CEO=Yes, voting Governor=Yes, voting
Colorado				
9	Colorado State University <i>Fort Collins, CO</i>	13 <i>(4 are nonvoting)</i>	Majority	CEO=No Governor=No
Connecticut				
10	University of Connecticut <i>Storrs, CT</i>	21	Majority	CEO=No Governor=Yes, voting
Delaware				
11	Delaware State University <i>Dover, DE</i>	17	Majority	CEO=Yes, voting Governor=Yes, voting
12	University of Delaware <i>Newark, DE</i>	32	9	CEO=Yes, voting Governor=Yes, voting
Florida				
13	Florida A&M University <i>Tallahassee, FL</i>	13	7	CEO=No Governor=No
14	University of Florida <i>Gainesville, FL</i>	13	7	CEO=No Governor=No

69 U.S. land-grant universities and their boards

U.S. land-grant institutions designated under the Morrill Acts of 1862 or 1890		Number of board members	Number required for quorum	CEO and/or governor on board?
Georgia				
15	Fort Valley State College <i>Fort Valley, GA</i>	18	Majority	CEO=No Governor=No
16	University of Georgia <i>Athens, GA</i>	18	Majority	CEO=No Governor=No
Hawaii				
17	University of Hawaii <i>Honolulu, HI</i>	15	Majority	CEO=No Governor=No
Idaho				
18	University of Idaho <i>Moscow, ID</i>	8	Majority	CEO=No Governor=No
Illinois				
19	University of Illinois <i>Urbana, IL</i>	13 <i>(2 are nonvoting)</i>	Majority	CEO=No Governor=Yes, voting
Indiana				
20	Purdue University <i>West Lafayette, IN</i>	10	Majority	CEO=No Governor=No
Iowa				
21	Iowa State University <i>Ames, IA</i>	9	6	CEO=No Governor=No
Kansas				
22	Kansas State University <i>Manhattan, KS</i>	9	5	CEO=No Governor=No
Kentucky				
23	Kentucky State University <i>Frankfurt, KY</i>	11	Majority	CEO=No Governor=No
24	University of Kentucky <i>Lexington, KY</i>	20	Majority	CEO=No Governor=No
Louisiana				
25	Louisiana State University System <i>Baton Rouge, LA</i>	16	10	CEO=No Governor=No
26	Southern University System <i>Baton Rouge, LA</i>	16	Majority	CEO=No Governor=No
Maine				
27	University of Maine <i>Orono, ME</i>	16	Majority	CEO=No Governor=No

69 U.S. land-grant universities and their boards

U.S. land-grant institutions designated under the Morrill Acts of 1862 or 1890		Number of board members	Number required for quorum	CEO and/or governor on board?
Maryland				
28	University of Maryland at College Park <i>College Park, MD</i>	17	Majority	CEO=No Governor=No
29	University of Maryland at Eastern Shore <i>Princess Anne, MD</i>	17	Majority	CEO=No Governor=No
Massachusetts				
30	Massachusetts Institute of Technology <i>Cambridge, MA</i>	103 <i>(31 are nonvoting)</i>	25	CEO=Yes, voting Governor=Yes, voting
31	University of Massachusetts <i>Amherst, MA</i>	22 <i>(3 are nonvoting)</i>	9	CEO=No Governor=No
Michigan				
32	Michigan State University <i>East Lansing, MI</i>	9 <i>(1 is nonvoting)</i>	Majority	CEO=Yes, nonvoting Governor=No
Minnesota				
33	University of Minnesota <i>Minneapolis, MN</i>	13 <i>(1 is nonvoting)</i>	Majority	CEO=Yes, nonvoting Governor=No
Mississippi				
34	Alcorn State University <i>Lorman, MS</i>	12	8	CEO=No Governor=No
35	Mississippi State University <i>Mississippi State, MS</i>	12	8	CEO=No Governor=No
Missouri				
36	Lincoln University <i>Jefferson City, MO</i>	10 <i>(1 is nonvoting)</i>	Majority	CEO=No Governor=No
37	University of Missouri System <i>Columbia, MO</i>	10 <i>(1 is nonvoting)</i>	5	CEO=No Governor=No
Montana				
38	Montana State University <i>Bozeman, MT</i>	10 <i>(3 are nonvoting)</i>	Majority	CEO=No Gov=Yes, nonvoting
Nebraska				
39	University of Nebraska System <i>Lincoln, NE</i>	12 <i>(4 are nonvoting)</i>	Majority	CEO=No Governor=No
Nevada				
40	University of Nevada-Reno <i>Reno, NV</i>	13	7	CEO=No Governor=No
New Hampshire				
41	University of New Hampshire <i>Durham, NH</i>	27	14	CEO=Yes, voting Governor=Yes, voting

69 U.S. land-grant universities and their boards

U.S. land-grant institutions designated under the Morrill Acts of 1862 or 1890		Number of board members	Number required for quorum	CEO and/or governor on board?
New Jersey				
42	Rutgers State University <i>New Brunswick, NJ</i>	15 (4 are nonvoting)	6	CEO=Yes, nonvoting Governor=No
New Mexico				
43	New Mexico State University <i>Las Cruces, NM</i>	5	Majority	CEO=No Governor=No
New York				
44	Cornell University <i>Ithaca, NY</i>	64	30	CEO=Yes, voting Governor=Yes, voting
North Carolina				
45	North Carolina A&T State University <i>Greensboro, NC</i>	32	Majority	CEO=No Governor=No
46	North Carolina State University <i>Raleigh, NC</i>	32	Majority	CEO=No Governor=No
North Dakota				
47	North Dakota State University <i>Fargo, ND</i>	8	Majority	CEO=No Governor=No
Ohio				
48	Ohio State University <i>Columbus, OH</i>	19 (2 are nonvoting)	Majority	CEO=No Governor=No
Oklahoma				
49	Langston University <i>Langston, OK</i>	9	5	CEO=No Governor=No
50	Oklahoma State University <i>Stillwater, OK</i>	9	5	CEO=No Governor=No
Oregon				
51	Oregon State University <i>Corvallis, OR</i>	15	8	CEO=No Governor=No
Pennsylvania				
52	Pennsylvania State University <i>University Park, PA</i>	32	13	CEO=Yes, voting Governor=Yes, voting
Rhode Island				
53	University of Rhode Island <i>Kingston, RI</i>	15	Majority	CEO=No Governor=No
South Carolina				
54	Clemson University <i>Clemson, SC</i>	13	7	CEO=No Governor=No
55	South Carolina State University <i>Orangeburg, SC</i>	22 (9 are nonvoting)	Majority	CEO=Yes, nonvoting Gov=Yes, nonvoting

69 U.S. land-grant universities and their boards

U.S. land-grant institutions designated under the Morrill Acts of 1862 or 1890		Number of board members	Number required for quorum	CEO and/or governor on board?
South Dakota				
56	South Dakota State University <i>Brookings, SD</i>	9	Majority	CEO=No Governor=No
Tennessee				
57	Tennessee State University <i>Nashville, TN</i>	18 <i>(1 is nonvoting)</i>	9	CEO=No Governor=Yes, voting
58	University of Tennessee <i>Knoxville, TN</i>	26 <i>(3 are nonvoting)</i>	7	CEO=Yes, voting Governor=Yes, voting
Texas				
59	Prairie View A&M University <i>Prairie View, TX</i>	10 <i>(1 is nonvoting)</i>	Majority	CEO=No Governor=No
60	Texas A&M University <i>College Station, TX</i>	10 <i>(1 is nonvoting)</i>	Majority	CEO=No Governor=No
Utah				
61	Utah State University <i>Logan, UT</i>	20 <i>(4 are nonvoting)</i>	9	CEO=No Governor=No
Vermont				
62	University of Vermont <i>Burlington, VT</i>	25	Majority	CEO=Yes, voting Governor=Yes, voting
Virginia				
63	Virginia Polytechnic Institute & State University <i>Blacksburg, VA</i>	14	Majority	CEO=No Governor=No
64	Virginia State University <i>Petersburg, VA</i>	15	Majority	CEO=No Governor=No
Washington				
65	Washington State University <i>Pullman, WA</i>	10	6	CEO=No Governor=No
West Virginia				
66	West Virginia University <i>Morgantown, WV</i>	17	9	CEO=No Governor=No
67	West Virginia State University <i>Institute, WV</i>	12	7	CEO=No Governor=No
Wisconsin				
68	University of Wisconsin-Madison <i>Madison, WI</i>	18	Majority	CEO=No Governor=No
Wyoming				
69	University of Wyoming <i>Laramie, WY</i>	16 <i>(4 are nonvoting)</i>	Majority	CEO=Yes, nonvoting Gov=Yes, nonvoting

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D

APPENDIX D

The boards of Pennsylvania's 4 state-related universities

Comparison/contrast of the board structures of Pennsylvania's four state-related universities

Our review of the governance structures of Pennsylvania's three other state-related universities was limited to assessing each university's enabling statute and board bylaws with the objective of determining (1) institutional status, (2) board size and voting/nonvoting membership, (3) board quorum, and (4) inclusion of CEO/governor on the board, and (5) CEO as the board's secretary.

The General Assembly should consider further study and analysis of these boards to determine whether our recommendations related to Penn State's board—for example, reducing the size—might be applicable to the other three state-related universities as well.

University Act granting state-related status Citation	How many members are on the board of trustees?	How many board members make a quorum?	Do members include the CEO/president and the governor?	Is CEO also the board secretary?
Pennsylvania State University Act 50 of 1855 24 P.S. § 2531 <i>et seq.</i>	32	13	CEO=Yes, voting Gov=Yes, voting	Yes
Temple University Act 355 of 1965 24 P.S. § 2510-1 <i>et seq.</i>	39 (3 are nonvoting: <i>Pa. governor, Pa. Secretary of Ed., Philadelphia mayor</i>)	12	CEO=Yes, voting Gov=Yes, nonvoting	No
University of Pittsburgh Act 3 of Special Session of 1966 24 P.S. § 2510-201 <i>et seq.</i>	40 (4 are nonvoting: <i>Pa. governor, Pa. Secretary of Ed., Pittsburgh mayor, County Chief Exec.</i>)	15*	CEO=Yes, voting Gov=Yes, nonvoting	No
Lincoln University Act 176 of 1972 24 P.S. § 2510-401 <i>et seq.</i>	39	12	CEO=Yes, voting Gov=Yes, voting	No

*Unlike the other state-related universities, Pitt does not include its bylaws on the university's website.

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APPENDIX E

**Where are
changes
needed?**

**Our recommendations:
What must be changed to implement them?**

**Does the General Assembly need to change state law?
Or does Penn State need to change its charter, bylaws,
and/or standing orders?**

The table on the following pages answers the above questions. In some cases, a combination of changes is needed.

However, regardless of what document or documents must be changed to implement our recommendations, and regardless of what entity has final authority to do so, support for these reforms must come from *all* stakeholders speaking with one voice, including the General Assembly, the governor, Penn State's board and administration, university alumni, and—the most important stakeholder group of all—Pennsylvania taxpayers.

**Our recommendations:
What must be changed
to implement them?**

	State law	Penn State documents			State law	State law
	<i>Penn State's enabling statute</i>	<i>Penn State's charter</i>	<i>Board bylaws</i>	<i>Standing orders of the board</i>	<i>Pa. Right-to-Know Law</i>	<i>Pa. State Ethics Act</i>
Recommendation 1 (Ch. 1) The General Assembly should amend the act that established The Pennsylvania State University (i.e., Penn State's enabling statute) by removing the university president as a member of the board of trustees.	✓	-	-	-	-	-
Recommendation 2 (Ch. 1) The General Assembly should amend Penn State's enabling statute to prohibit the university president from serving as the secretary of the board of trustees.	✓	-	-	-	-	-
Recommendation 3 (Ch. 1) The General Assembly should amend Penn State's enabling statute to prohibit the university president from serving on the executive committee, as well as on any standing committee, special committee, and subcommittee of the board.	✓	-	-	-	-	-
Recommendation 4 (Ch. 1) The General Assembly should amend Penn State's enabling statute to prohibit the university president from assigning work to board committees and subcommittees.	✓	-	-	-	-	-
Recommendation 5 (Ch. 1) The Penn State board of trustees should amend its charter, bylaws, and standing orders to remove or amend any provision that implies or appears to put the university president in a position that outranks the board, or that implies or appears to make the board of trustees report to the university president rather than vice versa. For example, the board of trustees should remove all language in Article 4 of the bylaws , sections (3)(a), (4), and (5)(a), that requires the board's chair to seek the president's counsel—and implied permission—before other trustees are appointed to various committees and subcommittees.	-	✓	✓	✓	-	-

Our recommendations: What must be changed to implement them?

	State law	Penn State documents			State law	State law
	<i>Penn State's enabling statute</i>	<i>Penn State's charter</i>	<i>Board bylaws</i>	<i>Standing orders of the board</i>	<i>Pa. Right-to-Know Law</i>	<i>Pa. State Ethics Act</i>
Recommendation 6 (Ch. 1) The board of trustees should take the proactive step of reviewing its bylaws and standing orders to evaluate whether the board adheres to the 12 principles of the <i>AGB Statement on Conflict of Interest</i> .	-	-	✓	✓	-	-
Recommendation 7 (Ch. 2) The General Assembly should amend Penn State's enabling statute to require that the governor be an ex officio <u>nonvoting</u> member of Penn State's board of trustees rather than a voting member.	✓	-	-	-	-	-
Recommendation 8 (Ch. 2) The General Assembly should also amend Penn State's enabling statute to prohibit any of the state's independent row officers (state treasurer, auditor general, and attorney general), as well as the governor and lieutenant governor, from subsequently serving on Penn State's board as a voting member until at least four years have passed from the time those elected officials leave their positions. ¹²⁵	✓	-	-	-	-	-
Recommendation 9 (Ch. 3) The General Assembly should amend Penn State's enabling legislation to reduce the board of trustees from 32 to 22, to include 21 voting members (including 3 cabinet secretaries ex officio) and 1 nonvoting ex officio member (the governor). Eliminated from the current structure would be Penn State's president, 3 of the 9 elected alumni, and 2 each of the 6 agriculture representatives, business and industry representatives, and gubernatorial appointments.	✓	-	-	-	-	-

¹²⁵ The Legislative Reference Bureau may determine that the above change may require an amendment to the Constitution of Pennsylvania. For example, Article IV, Section 8, of the Constitution requires the State Treasurer to wait one four-year term before serving as Auditor General. (See Pa. Const., Art. I, § 8.)

**Our recommendations:
What must be changed
to implement them?**

	State law	Penn State documents			State law	State law
	<i>Penn State's enabling statute</i>	<i>Penn State's charter</i>	<i>Board bylaws</i>	<i>Standing orders of the board</i>	<i>Pa. Right-to-Know Law</i>	<i>Pa. State Ethics Act</i>
Recommendation 10 (Ch. 3) The General Assembly should add a provision to Penn State's enabling statute to require that our recommended four business/industry trustees be elected by members of geographically disbursed Pennsylvania business and industry associations. At least two of those trustees should represent the fields of engineering, mining, manufacturing, and/or architecture.	✓	-	-	-	-	-
Recommendation 11 (Ch. 4) The General Assembly should amend Penn State's enabling statute of The Pennsylvania State University by establishing a quorum level as the majority of the voting members of the board of trustees.	✓	-	-	-	-	-
Recommendation 12 (Ch. 4) The Penn State board of trustees should amend Section 5 of Article 1 of its bylaws to establish a quorum level as the majority of the board's voting members.	-	-	✓	-	-	-
Recommendation 13 (Ch. 4) The Penn State board of trustees should amend its charter , standing orders , and any other provision in its bylaws to remove or amend any provision that is inconsistent with the above-recommended provisions.	-	✓	✓	✓	-	-
Recommendation 14 (Ch. 5) The Penn State board of trustees should add an article to its bylaws entitled "Qualifications of Trustees Serving as Penn State Employees." The article should prohibit trustees from moving between board and university management positions in any case where even the appearance of conflict is an issue. In cases where a time separation can adequately address a potential conflict, the time-out requirement should be a minimum of five years between resignation or end of board service and acceptance of employment.	-	-	✓	-	-	-

**Our recommendations:
What must be changed
to implement them?**

	State law	Penn State documents			State law	State law
	<i>Penn State's enabling statute</i>	<i>Penn State's charter</i>	<i>Board bylaws</i>	<i>Standing orders of the board</i>	<i>Pa. Right-to-Know Law</i>	<i>Pa. State Ethics Act</i>
Recommendation 15 (Ch. 5) The Penn State board of trustees should revise Article 2 of its bylaws to require a five-year waiting period before university employees are eligible for board of trustee membership.	-	-	✓	-	-	-
Recommendation 16 (Ch. 5) The Penn State board of trustees should review its bylaws to determine whether Article 6 is in keeping with the 12 principles of the <i>AGB Board of Directors' Statement on Conflict of Interest</i> .	-	-	✓	-	-	-
Recommendation 17 (Ch. 6) Penn State and its board of trustees should actively request and support action by the Pennsylvania General Assembly to make the Right-to-Know Law fully and immediately applicable to Penn State and its affiliates, with exceptions to protect certain trade secrets and intellectual property rights, vital research, and information about donors. The boards of the other three state-related universities should also request and support the same legislative action for themselves and their affiliates.	-	-	-	-	✓	-
Recommendation 18 (Ch. 6) Penn State and its board of trustees should actively request and support action by the Pennsylvania General Assembly to make the Public Official and Employee Ethics Act immediately applicable to Penn State board members and employees. The boards of the other three state-related universities should also request and support the same legislative action for themselves and their affiliates.	-	-	-	-	-	✓

**Our recommendations:
What must be changed
to implement them?**

	State law	Penn State documents			State law	State law
	<i>Penn State's enabling statute</i>	<i>Penn State's charter</i>	<i>Board bylaws</i>	<i>Standing orders of the board</i>	<i>Pa. Right-to-Know Law</i>	<i>Pa. State Ethics Act</i>
Recommendation 19 (Ch. 7) The Penn State board of trustees should amend the bylaws to require that detailed agendas are available online for the public at least five days in advance of board meetings (with a note that the agendas are subject to change); that final detailed agendas and all supporting materials are available online for the public on meeting days; and that final detailed agendas and all supporting materials in sufficient quantities are readily available for the public at meeting places on meeting days.	-	-	✓	-	-	-
Recommendation 20 (Ch. 7) The Penn State board of trustees should amend Standing Order VIII , Section (9) to make it consistent with the new Section (9)(c) that was added at the board's meeting on July 13, 2012. The board should further amend subsection (c) to make an additional 5 speaking slots available for visitors who sign up within the hour prior to a board meeting. Also available for that same meeting-day sign-up should be whatever slots were left unfilled from the 10 that were previously set aside for the 48-hour pre-registrants. In total, then, the board would set aside time for potentially 15 speakers.	-	-	-	✓	-	-
Recommendation 21 (Ch. 7) The Penn State board of trustees should amend the bylaws to create a channel of communication, such as a hotline, tip line, and the like, free of retribution, for notifying the board of trustees of significant issues that might otherwise not come to the board's attention. The details of this communication channel, including issues of confidentiality and/or anonymity, should be determined by the board.	-	-	✓	-	-	-

**Our recommendations:
What must be changed
to implement them?**

	State law	Penn State documents			State law	State law
	<i>Penn State's enabling statute</i>	<i>Penn State's charter</i>	<i>Board bylaws</i>	<i>Standing orders of the board</i>	<i>Pa. Right-to-Know Law</i>	<i>Pa. State Ethics Act</i>
Recommendation 22 (Ch. 7) The Penn State board of trustees should delete Standing Order IX , provision (1)(f)12. in its entirety and replace it with openness language.	-	-	-	✓	-	-
Recommendation 23 (Ch. 7) The Penn State board of trustees should immediately implement changes to its bylaws and standing orders to provide the history of each provision, including the dates of initial adoption and any amendments.	-	-	✓	✓	-	-
Recommendation 24 (Ch. 8) The General Assembly should amend Penn State's enabling statute to prohibit any member (including members both elected and appointed) from serving more than nine years in total , or three consecutive three-year terms. This term limit should be applicable to all members equally, including current members and officers, meaning that all years served to date should be counted toward the nine-year limit.	✓	-	-	-	-	-
Recommendation 25 (Ch. 8) The Penn State board of trustees should ensure that its bylaws related to term limits—and all other bylaws , for that matter—are worded in plain, easy-to-understand language.	-	-	✓	-	-	-
Recommendation 26 (Ch. 9) The Penn State board of trustees should amend the bylaws to prohibit anyone on the board or staff—including the president and the provost—from granting emeritus status to any faculty or staff member on an exception basis, as was done with Gerald Sandusky.	-	-	✓	-	-	-
Recommendation 27 (Ch. 9) The Penn State board of trustees should seriously consider eliminating the awarding of emeritus status to its members.	-	-	✓	✓	-	-

**Our recommendations:
What must be changed
to implement them?**

	State law	Penn State documents			State law	State law
	<i>Penn State's enabling statute</i>	<i>Penn State's charter</i>	<i>Board bylaws</i>	<i>Standing orders of the board</i>	<i>Pa. Right-to-Know Law</i>	<i>Pa. State Ethics Act</i>
Recommendation 28 (Ch. 9) If the Penn State board of trustees continues to award the emeritus rank to trustees, the rank should not be automatic based on numbers of years served. Furthermore, the board should eliminate bylaw and standing order provisions that extend the same privileges received by active trustees to trustees emeriti and instead limit the role of those trustees to, for example, participation in annual meetings.	-	-	✓	✓	-	-
Recommendation 29 (Ch. 9) The Penn State board of trustees should disclose per-trustee expenses paid to its active trustees, and to its trustees emeriti if that rank is allowed to continue and if those trustees receive reimbursements.	-	-	-	-	-	-
Recommendation 30 (Ch. 9) The Penn State board of trustees should ensure that its charter , bylaws , and standing orders are all entirely consistent on the issue of the rank of trustee emeriti.	-	✓	✓	✓	-	-

