



**SUPPLEMENT TO SPECIAL REPORT** \_\_\_\_\_

**LEGISLATIVE AND PROCEDURAL  
GUIDELINES TO IMPLEMENT  
RECOMMENDATIONS FOR  
GOVERNANCE REFORM AT THE  
PENNSYLVANIA STATE UNIVERSITY**

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**NOVEMBER 2012**

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**PENNSYLVANIA DEPARTMENT OF THE AUDITOR GENERAL**

## Supplement to Special Penn State Report

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### Legislative and Procedural Guidelines to Implement Recommendations for Governance Reform at The Pennsylvania State University

The Pennsylvania State University has a close relationship with the Commonwealth of Pennsylvania and also bears its name. As a state-related instrumentality of the Commonwealth, Penn State performs the essential governmental functions of education within the Commonwealth system of higher education. The General Assembly created Penn State and, accordingly, only the General Assembly can make needed changes to Penn State's enabling statute, the Right-to-Know Law, and the Public Official and Employee Ethics Act (Ethics Act). Those changes are needed to make Penn State a more accountable and transparent public university.

The purpose of this document is to outline not only the Department of the Auditor General's recommendations but also to provide suggested methods of re-configuring the following:

1. Penn State's enabling statute (Act 50 of 1855, last amended by Act 367 of 1939<sup>i</sup>)
2. Penn State's charter (last amended by the Court of Common Pleas of Centre County - Decree of September 28, 1962,<sup>ii</sup> and a corporate filing dated November 2002)
3. Penn State's bylaws (last amended in July 2012) and Penn State's board of trustees' standing orders (last amended in July 2012).

Although it would be possible to repeal and replace Act 50, as amended, through an entirely new statute, we believe it would be better to retain the language of Act 50 to better reflect the original intent<sup>iii</sup> of this long-standing statute and to enhance the statute, where necessary.<sup>1</sup>

While our recommendations are often self-explanatory, we provide these guidelines for the benefit of the General Assembly to suggest methods of re-constituting Penn State's enabling statute. We are hopeful that the document will also serve as an aid for Penn State's board of trustees for the enhancement of its charter, bylaws, and standing orders in keeping with good governance practices and internal consistency. Finally, although we provide these suggested guidelines for amending the enabling statute, we are cognizant that any technical changes to the enabling statute must be addressed by the Legislative Reference Bureau.  
**(Please also see Attachment 1 for additional information.)**

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<sup>1</sup> Key: added language is underlined **in bold**, deleted language is struck-out, and deleted punctuation marks are in brackets.

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### Next Steps After the Release of our Special Report

**Report released November 14, 2012:**  
*Recommendations for governance reform at  
The Pennsylvania State University  
after the child sex abuse scandal*

- The **Pennsylvania General Assembly** should utilize our special report and these guidelines as an aid to amend any provision of the Pennsylvania Statutes that relates to Penn State, including Penn State’s enabling statute, and to work closely with the Penn State board of trustees.
- 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.<sup>2</sup>
- The **Penn State board of trustees**, with the assistance of its **Committee on Governance and Long-Range Planning**, should immediately provide the General Assembly with a list of proposed amendments to Penn State’s enabling statute, consistent with the recommendations in our special report.
- The **Penn State board of trustees** should immediately request that Penn State’s legal counsel utilize our special report and these guidelines for amending Penn State’s charter, bylaws, and standing orders to ensure that those documents are consistent both with each other and with Penn State’s enabling statute. In addition, the charter, bylaws, and standing order should be written in plain language.
- Although our special report and the recommendations are specific to Penn State, we encourage the **General Assembly** and the other three state-related universities (**Lincoln University, University of Pittsburgh, and Temple University**) and their affiliates<sup>iv</sup> to act on our recommendations where applicable to their own institutions, in particular but not limited to the Right-to-Know Law and the Ethics Act, and to work with the General Assembly to act on the necessary reforms.

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<sup>2</sup> See “Lincoln University—Commonwealth Act” (Act 176 of 1972), 24 P.S. § 2510-402; “Temple University--Commonwealth Act” (Act 355 of 1965), 24 P.S. § 2510-2; and “University of Pittsburgh—Commonwealth Act” (Act 3 of the Special Session of 1966), 24 P.S. § 2510-202; as well as the “Pennsylvania College of Technology Act” (Act 27 of 1989), 24 P.S. § 2510-503 (relating to Declaration of Policy) and § 2510-504 (relating to Status).

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### Recommendations from Chapter One of our special report: University president on the board<sup>3</sup>

*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.*

- 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.**

*Amend 24 P.S. § 2536 (relating to Reorganization of the board of trustees; additional members; election), added by Act 35 of 1905 and amended by Act 367 of 1939, by striking out the words “~~the President of the College.~~”*

*The Penn State board of trustees should also amend the section of its charter (p. C-2) entitled, “Membership of the Board (1) Ex Officio Members” by striking out the words, “~~the President of The Pennsylvania State University.~~” The bylaws and standing orders should also be amended accordingly.*

- 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.**

*Amend 24 P.S. § 2539 (relating to Officers of the board, compensation of the members of the board; treasurer’s bond), added by Act 35 of 1905, by rewording the provision as follows:*

*“(a) The officers of the board shall be elected ~~chosen~~ annually, to serve for a period of one year each [;] and shall include ~~be a chair president, a vice-chair president, a secretary, and a treasurer.~~[.] The President of the Pennsylvania State University shall not serve as an officer of the board of trustees....”*

*The Penn State board of trustees should also amend the section of its charter (p. C-6) entitled, “Officers Of The Board” by amending the section as stated above. The bylaws and standing orders should also be amended accordingly.*

- 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.**

*Amend 24 P.S. § 2539 by adding the language below:*

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<sup>3</sup>As noted in our special report, our 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.

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*“(a) The officers of the board shall be elected ~~chosen~~ annually, to serve for a period of one year each [;] and shall include ~~be a chair president, a vice-chair president, a secretary, and a treasurer.~~[,] The President of the Pennsylvania State University shall not serve as an officer of the board of trustees and shall not serve on the executive committee, any standing committee, special committee, or subcommittee of the board....”*

*The charter, bylaws, and standing orders should also be amended to be consistent with this change.*

- 4. The General Assembly should amend Penn State’s enabling statute to prohibit the university president from assigning work to board committees and subcommittees.**

*Amend 24 P.S. § 2539 by adding the language below:*

*“(a) The officers of the board shall be elected ~~chosen~~ annually, to serve for a period of one year each [;] and shall include ~~be a chair president, a vice-chair president, a secretary, and a treasurer.~~[,] The President of the Pennsylvania State University shall not serve as an officer of the board of trustees and shall not, serve on the executive committee, any standing committee, special committee, or subcommittee of the board. The President shall not assign any work to board committees and subcommittees.”*

*The charter, bylaws, and standing orders should also be amended to be consistent with this change.*

- 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.**

*Recommendation is self-explanatory.*

- 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.<sup>4</sup>**

*Recommendation is self-explanatory.*

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<sup>4</sup>The Association of Governing Boards of Universities and Colleges.

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### Recommendations from Chapter Two of our special report: The governor as a voting trustee

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

- 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.**

*Amend 24 P.S. § 2536 (relating to Reorganization of the board of trustees; additional members; election), added by Act 35 of 1905 and amended by Act 367 of 1939, by striking out the following words:*

*“~~and the following members to serve ex officio during their respective terms of office: The Governor of the Commonwealth, the President of the College,<sup>5</sup> the State Superintendent of Public Instruction, the Secretary of Agriculture, and the Secretary of Mines~~” and adding the following to that provision:*

**“(b) The Governor of the Commonwealth of Pennsylvania shall serve as a nonvoting member ex officio and the following three members of the board of trustees shall serve as voting members ex officio: The Secretary of Education, the Secretary of Agriculture, and the Secretary of Conservation and Natural Resources.”**

*The Penn State board of trustees should also amend the section of its charter (p. C-2) entitled, “Membership of the Board (1) Ex Officio Members” by making it consistent with the above. In addition, the bylaws and standing orders should also be amended accordingly, if necessary.*

- 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.**

*Amend 24 P.S. § 2536 (relating to Reorganization of the board of trustees; additional members; election), added by Act 35 of 1905 and amended by Act 367 of 1939, adding the following to that provision:*

**“(c) Any person who serves in the capacity of the Governor of the Commonwealth, Lieutenant Governor, State Treasurer, Auditor General, or the Attorney General is prohibited from subsequently serving on the board of trustees as a voting member until at least four years have passed from the time he leaves office.”**

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<sup>5</sup> Please note that our recommendation regarding the “President of the College” was already addressed in Chapter 1, Recommendation 1.

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*We point out that 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.<sup>6</sup> In addition, the Penn State board of trustees should also amend the section of its charter (p. C-2) entitled, “Membership of the Board (1) Ex Officio Members” by making it consistent with the above; the bylaws and standing orders should also be amended accordingly.*

### Recommendations from Chapter Three of our special report: Size of the board

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

<b>Recommended Composition of the Penn State Board of Trustees</b>		
<b>1 nonvoting and 3 voting</b> 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 ( <i>nonvoting</i> )	1
	Pa. Secretary of Agriculture Pa. Secretary of Conservation and Natural Resources Pa. Secretary of Education	3
<b>14 voting</b> 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
	<b>Elected by business and industry groups</b> <i>[not by the board]</i> to represent business and industry	4
<b>4 voting</b> trustees to be appointed by the governor <i>[There are currently 6]</i>	Appointed at governor’s discretion and confirmed by Senate	4
<b>Nonvoting members</b>		<b>1</b>
<b>Voting members</b>		<b>21</b>
<b>TOTAL MEMBERS</b>		<b>22</b>

- 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).**

<sup>6</sup> Pa. Const., Art. I, § 8.

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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.

*Amend 24 P.S. § 2532 (relating to Management by board of trustees) by striking out the words “~~of whom there shall be thirteen~~” and adding the words: **“composed of 22 trustees, including 18 voting trustees, 3 voting trustees ex officio, and 1 nonvoting governor ex officio.”***

*Amend 24 P.S. § 2536 (relating to Reorganization of the board of trustees; additional members; election), added by Act 35 of 1905 and amended by Act 367 of 1939, by striking out the following words: “~~and the following members to serve ex officio during their respective terms of office: The Governor of the Commonwealth, the President of the College,<sup>7</sup> the State Superintendent of Public Instruction, the Secretary of Agriculture, and the Secretary of Mines~~” and adding the following to that provision:*

**“(b) The Governor of the Commonwealth of Pennsylvania shall serve as a nonvoting member ex officio and the following three members of the board of trustees shall serve as voting members ex officio: The Secretary of Education, the Secretary of Agriculture, and the Secretary of Conservation and Natural Resources.”**

*The Penn State board of trustees should also amend the section of its charter (p. C-2) entitled, “Membership of the Board (1) Ex Officio Members” accordingly.*

*The bylaws and standing orders should also be amended accordingly, if necessary.*

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

*Amend 24 P.S. § 2536 (relating to Reorganization of the board of trustees; additional members; election), by adding the following to that provision:*

**“(c) The business and industry trustees shall be elected by members of geographically disbursed Pennsylvania business and industry associations.”**

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<sup>7</sup> Please note that our recommendation regarding the “President of the College” was already addressed in Chapter 1, Recommendation 1.



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*At least two of those trustees should represent the fields of engineering, mining, manufacturing, or architecture.*<sup>8</sup>

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### Recommendations from Chapter Four of our special report: Quorum for board meetings<sup>v</sup>

*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.*

#### **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.**

*Amend 24 P.S. § 2532 (related to Management by the board of trustees) brought about by Act 50 of 1855 by striking out the words “~~and seven of whom shall be a quorum~~”<sup>9</sup> and adding the following to that provision:*

**“(b) A majority of the voting members of the board of trustees shall be required for taking any official action by the board.”**

*Although the charter and standing orders<sup>vi</sup> have no related provision(s), the charter, bylaws, and standing orders should also be amended to be consistent with this change.*

#### **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.**

*Recommendation is self-explanatory.*

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<sup>8</sup>As noted in our special report, we found several Centre County court decrees - Decrees of 1875, 1915, 1925, and 1951 - with the most recent stating that trustees would be elected annually by delegates representing “Engineering, Mining, Manufacturing and Mechanical Societies and Associations.” In addition, Penn State’s website, which provides for a “Board of Trustees History,” states that, “[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.”

(<http://www.psu.edu/trustees/timeline/index.html> as last accessed on October 3, 2012. Emphasis added.) Therefore, we believe that it is appropriate that at least two of the Penn State board trustees should represent the fields of engineering, mining, manufacturing, or architecture.

<sup>9</sup>It is important to note that Act 165 of 1859 lowered the quorum to five members but that the current bylaws provide for a quorum of 13 members.

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- 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.**

*Recommendation is self-explanatory.*

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### **Recommendations from Chapter Five of our special report: 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.*

- 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 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.**

*Recommendation is self-explanatory.*

- 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.**

*Recommendation is self-explanatory.*

- 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.<sup>10</sup>**

*Recommendation is self-explanatory.*

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<sup>10</sup>As noted in our special report, 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.”

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### Recommendations from Chapter Six of our special report: **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 at a public university. Also, trustees and employees should be subject to state ethics requirements.*

**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<sup>11</sup> 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.**

**A. Amend Section 67.102 (relating to Definitions) of the Right-to-Know Law,<sup>12</sup> Act 3 of 2008, by adding the following:**

*“**State-affiliated entity.**’ A Commonwealth authority or Commonwealth entity. The term includes the Pennsylvania Higher Education Assistance Agency and any entity established thereby, the Pennsylvania Gaming Control Board, the Pennsylvania Game Commission, the Pennsylvania Fish and Boat Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement Board, the State System of Higher Education, **a State-related institution and its affiliates**, a community college, the Pennsylvania Turnpike Commission, the Pennsylvania Public Utility Commission, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, the Pennsylvania Interscholastic Athletic Association and the Pennsylvania Higher Educational Facilities Authority. ~~The term does not include a State-related institution.~~*

*‘**State-related institution and its affiliates.**’ Includes:*

*(1) Temple University, **including any of its graduate schools, law school, medical schools, and its continental and international branch campuses.***

*(2) The University of Pittsburgh, **including any of its graduate schools, medical school, and its branch campuses.***

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<sup>11</sup> 65 P.S. § 67.101 *et seq.* 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.

<sup>12</sup> 65 P.S. § 67.102.

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(3) The Pennsylvania State University, including any of its graduate schools, law school, medical school, its branch campuses, and the Pennsylvania College of Technology.

(4) Lincoln University, including any of its graduate schools and its branch campuses.

(5) Any associated hospital, medical center, institute, facility, subsidiary, or subordinate unit of any of the above named institutions.”

**B. Amend Section 67.708 (relating to Exceptions for open records) of the Right-to-Know Law,<sup>13</sup> by adding the following to this section:**

**“(b) Exceptions.--**Except as provided in subsections (c) and (d), the following are exempt from access by a requester under this act:

\*\*\*

(11) A record that constitutes or reveals a trade secret or confidential proprietary information, including research and development information of a State-related institution and its affiliates.

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(13) Records that would disclose the identity of an individual who lawfully makes a donation to an agency or to a State-related Institution and its affiliates, unless the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public official, ~~or~~ employee of the agency, or an officer, director, or employee of a State-related institution and its affiliates, including lists of potential donors compiled by an agency to pursue donations, donor profile information or personal identifying information relating to a donor.

(14) Unpublished lecture notes, unpublished manuscripts, unpublished articles, creative works in progress, research-related material and scholarly correspondence of a community college, ~~or~~ an institution of the State System of Higher Education, a State-related Institution and its affiliates, or a faculty member, staff employee, guest speaker or student thereof.

(15) (i) Academic transcripts.

(ii) Examinations, examination questions, scoring keys or answers to examinations. This subparagraph shall include licensing and other examinations relating to the qualifications of an individual and to examinations given in primary and secondary schools and institutions of higher education, including State-related Institution and its affiliates.”

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<sup>13</sup> 65 P.S. § 67.708.

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C. *Retain Chapter 15 (relating to State-Related Institutions) of the Right-to-Know Law,<sup>14</sup> but also add the following:*

1. *Amend Section 67.1501 (relating to Definitions) of the law as follows:*

“As used in this chapter, ‘State-related institution *and its affiliates*’ means any of the following:

(1) *Temple University, including any of its graduate schools, law school, medical schools, and its continental and international branch campuses.*

(2) *The University of Pittsburgh, including any of its graduate schools, medical school, and its branch campuses.*

(3) *The Pennsylvania State University, including any of its graduate schools, law school, medical school, its branch campuses, and the Pennsylvania College of Technology.*

(4) *Lincoln University, including any of its graduate schools and its branch campuses.*

(5) *Any associated hospital, medical center, institute, facility, subsidiary, or subordinate unit of any of the above named institutions.*”

2. *Amend Section 67.1502 (relating to Reporting) of the law as follows:*

“No later than May 30 of each year, a State-related institution *and its affiliates* shall file with the Governor's Office, the General Assembly, the Auditor General and the State Library the information set forth in section 1503.”

3. *Amend Section 67.1503 (relating to Contents of report) of the law as follows:*

“The report required under section 1502 shall include the following:

(1) *Except as provided in paragraph (4), all information required by Form 990 or an equivalent form of the United States Department of the Treasury, Internal Revenue Service, entitled the Return of Organization Exempt From Income Tax, regardless of whether the State-related institution *and its affiliates* is required to file the form by the Federal Government.*

(2) *The salaries of all officers and directors of the State-related institution *and its affiliates*.*

(3) *The highest 25 salaries paid to employees of *the institution and its affiliates* that are not included under paragraph (2).*

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<sup>14</sup> 65 P.S. §§ 67.1501-1504.

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(4) *The report shall not include information relating to individual donors.*”

**4. Amend Section 67.1504 (relating to Copies and posting) of the law as follows:**

*“A State-related institution **and its affiliates** shall maintain, for at least seven years, a copy of the report in the institution’s **or affiliate’s** library and shall provide free access to the report on the institution’s **or affiliate’s** Internet website.”*

**D. Intellectual Property and Proprietary Research.** *In addition to the above referenced proposed amendments, the General Assembly may wish to review the open records laws of 13 states that the National Conference of State Legislatures<sup>15</sup> cites as exempting from their public records laws information related to intellectual property, trade secrets or proprietary research conducted in public institutions of higher education, including 1. Alaska; 2. Arizona; 3. Florida; 4. Indiana; 5. Louisiana; 6. Michigan; 7. Mississippi, 8. Missouri; 9. New Jersey; 10. Oklahoma; 11. Utah; 12. Vermont; and 13. Virginia. The open records law of one of our neighbors – the state of New Jersey- might be a potential model. Please see below.*

*Title 47. Public Records - New Jersey statutes excludes the following information from the definition of government record “with regard to any public institution of higher education...deemed to be privileged and confidential:*

- *pedagogical, scholarly and/or academic research records and/or the specific details of any research project conducted under the auspices of a public higher education institution in New Jersey, including, but not limited to research, development information, testing procedures, or information regarding test participants, related to the development or testing of any pharmaceutical or pharmaceutical delivery system, except that a custodian may not deny inspection of a government record or part thereof that gives the name, title, expenditures, source and amounts of funding and date when the final project summary of any research will be available;*
  - *test questions, scoring keys and other examination data pertaining to the administration of an examination for employment or academic examination;*
  - *records of pursuit of charitable contributions or records containing the identity of a donor of a gift if the donor requires non-disclosure of the donor's identity as a condition of making the gift*

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<sup>15</sup> See National Conferences of State Legislatures, “State Statutes (excerpt) Providing for Confidentiality of Intellectual Property or Proprietary Research in Public Universities,” February 24, 2012.

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*provided that the donor has not received any benefits of or from the institution of higher education in connection with such gift other than a request for memorialization or dedication;*

*- valuable or rare collections of books and/or documents obtained by gift, grant, bequest or devise conditioned upon limited public access;*

*- information contained on individual admission applications; and*

*- information concerning student records or grievance or disciplinary proceedings against a student to the extent disclosure would reveal the identity of the student.”<sup>16</sup>*

**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.**

*Amend Section 1102 (relating to Definitions) of the Ethics Act,<sup>17</sup> Act 93 of 1989, as last amended by Act 134 of 2006, effective January 1, 2007, by adding to this section the four state-related institutions, any of their affiliates, their board of trustees members, and their employees as follows:*

*“**Governmental body.**’ Any department, authority, commission, committee, council, board, bureau, division, service, office, officer, administration, legislative body or other establishment in the executive, legislative or judicial branch of a state, a nation or a political subdivision thereof, ~~or~~ any agency performing a governmental function **or a state-related institution and its affiliates.***

*‘**Governmental body with which a public official or public employee is or has been associated.**’ The governmental body within State government, **a state-related institution and its affiliates,** or a political subdivision by which the public official or employee is or has been employed or to which the public official or employee is or has been appointed or elected and subdivisions and offices within that governmental body.*

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*‘**Public employee.**’ Any individual employed by the Commonwealth, **a state-related institution and its affiliates,** or a political subdivision who is responsible for taking or recommending official action of a nonministerial nature with regard to:*

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<sup>16</sup> N.J.S.A. 47:1A-1.1, enacted 1995 and amended in 2001 and 2005, effective August 5, 2005.

<sup>17</sup> 65 Pa.C.S. § 1102.

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- (1) contracting or procurement;
- (2) administering or monitoring grants or subsidies;
- (3) planning or zoning;
- (4) inspecting, licensing, regulating or auditing any person; or
- (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person.

*The term shall not include individuals who are employed by this Commonwealth or any political subdivision thereof in teaching as distinguished from administrative duties.*

*‘Public official.’ Any person elected by the public or elected or appointed by a governmental body or an appointed official in the executive, legislative or judicial branch of this Commonwealth, a state-related institution and its affiliates, or any political subdivision thereof, provided that it shall not include members of advisory boards that have no authority to expend public funds other than reimbursement for personal expense or to otherwise exercise the power of the State or any political subdivision thereof.”*

*‘State-related Institution and its affiliates’ The Pennsylvania State University, including the Pennsylvania College of Technology, Temple University, the University of Pittsburgh, and Lincoln University serving as instrumentalities of the Commonwealth within the Commonwealth system of higher education, its graduate schools, law schools, medical schools, and their continental and international branch campuses, as applicable. This also includes any associated hospital, medical center, institute, facility, subsidiary, or subordinate unit of any of the above named institutions.”*

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### Recommendations from Chapter Seven of our special report:

#### Lack of transparency

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

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 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 is self-explanatory.*



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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.

*Recommendation is self-explanatory.*

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.

*Recommendation is self-explanatory.*

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.*

*Recommendation is self-explanatory.*

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.

*Recommendation is self-explanatory.*

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### Recommendations from Chapter Eight of our special report: Term limits for board members

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

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.

*Recommendation is self-explanatory.*

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.

*Recommendation is self-explanatory.*

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### Recommendations from Chapter Nine of our special report: Emeritus status for trustees and others; trustee expenses

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

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.

*Recommendation is self-explanatory.*

27. The Penn State board of trustees should seriously consider eliminating the awarding of trustee emeritus status to its members.

*Recommendation is self-explanatory.*

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

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**instead limit the role of those trustees to, for example, participation in annual meetings.**

*Recommendation is self-explanatory.*

- 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.**

*Recommendation is self-explanatory.*

- 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.**

*Recommendation is self-explanatory.*

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### Attachment 1

**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>
<b>Recommendation 1 (Ch. 1)</b> The General Assembly should amend the act that established The Pennsylvania State University (i.e., Penn State's <b>enabling statute</b> ) by removing the university president as a member of the board of trustees.	✓	-	-	-	-	-
<b>Recommendation 2 (Ch. 1)</b> The General Assembly should amend Penn State's <b>enabling statute</b> to prohibit the university president from serving as the secretary of the board of trustees.	✓	-	-	-	-	-
<b>Recommendation 3 (Ch. 1)</b> The General Assembly should amend Penn State's <b>enabling statute</b> 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.	✓	-	-	-	-	-
<b>Recommendation 4 (Ch. 1)</b> The General Assembly should amend Penn State's <b>enabling statute</b> to prohibit the university president from assigning work to board committees and subcommittees.	✓	-	-	-	-	-

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**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>
<p><b>Recommendation 5 (Ch. 1)</b>                      The Penn State board of trustees should amend its <b>charter, bylaws, and standing orders</b> 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 <b>bylaws</b>, 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.</p>	-	✓	✓	✓	-	-
<p><b>Recommendation 6 (Ch. 1)</b>                      The board of trustees should take the proactive step of reviewing its <b>bylaws and standing orders</b> to evaluate whether the board adheres to the 12 principles of the <i>AGB Statement on Conflict of Interest</i>.</p>	-	-	✓	✓	-	-
<p><b>Recommendation 7 (Ch. 2)</b>                      The General Assembly should amend Penn State's <b>enabling statute</b> 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.</p>	✓	-	-	-	-	-

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**Our recommendations:  
 What must be changed  
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	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>
<p><b>Recommendation 8 (Ch. 2)</b>                      The General Assembly should also amend Penn State's <b>enabling statute</b> 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.<sup>18</sup></p>	✓	-	-	-	-	-
<p><b>Recommendation 9 (Ch. 3)</b>                      The General Assembly should amend Penn State's enabling legislation to reduce the board of trustees from 32 to 22, to include 21 <b>voting</b> members (including 3 cabinet secretaries ex officio) and 1 <b>nonvoting</b> 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.</p>	✓	-	-	-	-	-
<p><b>Recommendation 10 (Ch. 3)</b>                      The General Assembly should add a provision to Penn State's <b>enabling statute</b> 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.</p>	✓	-	-	-	-	-

<sup>18</sup> 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.)




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	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>
<p><b>Recommendation 11 (Ch. 4)</b>                      The General Assembly should amend Penn State's <b>enabling statute</b> of The Pennsylvania State University by establishing a quorum level as the majority of the voting members of the board of trustees.</p>	✓	-	-	-	-	-
<p><b>Recommendation 12 (Ch. 4)</b>                      The Penn State board of trustees should amend Section 5 of Article 1 of its <b>bylaws</b> to establish a quorum level as the majority of the board's voting members.</p>	-	-	✓	-	-	-
<p><b>Recommendation 13 (Ch. 4)</b>                      The Penn State board of trustees should amend its <b>charter, standing orders,</b> and any other provision in its <b>bylaws</b> to remove or amend any provision that is inconsistent with the above-recommended provisions.</p>	-	✓	✓	✓	-	-
<p><b>Recommendation 14 (Ch. 5)</b>                      The Penn State board of trustees should add an article to its <b>bylaws</b> 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.</p>	-	-	✓	-	-	-
<p><b>Recommendation 15 (Ch. 5)</b>                      The Penn State board of trustees should revise Article 2 of its <b>bylaws</b> to require a five-year waiting period before university employees are eligible for board of trustee membership.</p>	-	-	✓	-	-	-

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	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>
<p><b>Recommendation 16 (Ch. 5)</b>                      The Penn State board of trustees should review its <b>bylaws</b> 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>.</p>	-	-		-	-	-
<p><b>Recommendation 17 (Ch. 6)</b>                      Penn State and its board of trustees should actively request and support action by the Pennsylvania General Assembly to make the <b>Right-to-Know Law</b> 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.</p>	-	-	-	-		-
<p><b>Recommendation 18 (Ch. 6)</b>                      Penn State and its board of trustees should actively request and support action by the Pennsylvania General Assembly to make the <b>Public Official and Employee Ethics Act</b> 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.</p>	-	-	-	-	-	



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**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>
<p><b>Recommendation 19 (Ch. 7)</b>                      The Penn State board of trustees should amend the <b>bylaws</b> 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.</p>	-	-	✓	-	-	-
<p><b>Recommendation 20 (Ch. 7)</b>                      The Penn State board of trustees should amend <b>Standing Order VIII</b>, 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.</p>	-	-	-	✓	-	-
<p><b>Recommendation 21 (Ch. 7)</b>                      The Penn State board of trustees should amend the <b>bylaws</b> 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.</p>	-	-	✓	-	-	-

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	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>
<b>Recommendation 22 (Ch. 7)</b> The Penn State board of trustees should delete <b>Standing Order IX</b> , provision (1)(f)12. in its entirety and replace it with openness language.	-	-	-	✓	-	-
<b>Recommendation 23 (Ch. 7)</b> The Penn State board of trustees should immediately implement changes to its <b>bylaws</b> and <b>standing orders</b> to provide the history of each provision, including the dates of initial adoption and any amendments.	-	-	✓	✓	-	-
<b>Recommendation 24 (Ch. 8)</b> The General Assembly should amend Penn State's <b>enabling statute</b> to prohibit any member (including members both elected and appointed) from serving more than nine years <b>in total</b> , 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.	✓	-	-	-	-	-
<b>Recommendation 25 (Ch. 8)</b> The Penn State board of trustees should ensure that its <b>bylaws</b> related to term limits—and all other <b>bylaws</b> , for that matter—are worded in plain, easy-to-understand language.	-	-	✓	-	-	-
<b>Recommendation 26 (Ch. 9)</b> The Penn State board of trustees should amend the <b>bylaws</b> 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.	-	-	✓	-	-	-
<b>Recommendation 27 (Ch. 9)</b> The Penn State board of trustees should seriously consider eliminating the awarding of trustee emeritus status to its members.	-	-	✓	✓	-	-

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**Our recommendations:  
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	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>
<b>Recommendation 28 (Ch. 9)</b> 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 <b>bylaw</b> and <b>standing order</b> 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.	-	-	✓	✓	-	-
<b>Recommendation 29 (Ch. 9)</b> 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.	-	-	-	-	-	-
<b>Recommendation 30 (Ch. 9)</b> The Penn State board of trustees should ensure that its <b>charter</b> , <b>bylaws</b> , and <b>standing orders</b> are all entirely consistent on the issue of the rank of trustee emeriti.	-	✓	✓	✓	-	-

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### NOTES

<sup>i</sup> 24 P.S. § 2531 *et seq.* Please note that our suggested amendments **do not** pertain to the chapter in Pennsylvania statutes relating to “Land Donated and Appropriations Made by Congress,” 24 P.S. § 2571 *et seq.*, last amended in 1965 and pertaining to Penn State’s status as a land-grant institution, the only one of its kind in Pennsylvania. However, the General Assembly may want to examine this chapter for possible amendment as well, given that the chapter has not been updated in over 45 years.

<sup>ii</sup> While the original charter was amended once in the “Court of Quarter Sessions” of Centre County on May 1, 1862, all other amendments of the charter were made by the Court of Common Pleas of Centre County. The need for court proceedings for the incorporation of nonprofit corporations was eliminated by Act 31 of 1969, which created an *optional procedure* for incorporation, amendments of articles, merger, or the like for nonprofit corporations solely by making a filing with the Pennsylvania Department of State’s Corporation Bureau. Subsequently, Act 271 of 1972 entirely abolished the optional use of court proceedings and all nonprofit filings were centralized in the Department of State. See “Forward to Title 15,” Associations Code.

<sup>iii</sup> Recognizing that Penn State was established by the General Assembly, the Statutory Construction Act will serve as a guide for determining the intent of the General Assembly in 1855 and through later amendments. For instance, “[i]n the construction of the statutes of this Commonwealth, the rules set forth in this chapter shall be observed, unless the application of such rules would result in a construction inconsistent with the manifest intent of the General Assembly” (1 Pa.C.S. § 1901) and “(a) [t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly” (1 Pa.C.S. § 1921(a)).

<sup>iv</sup> For example, the Pennsylvania College of Technology (Penn College) in Williamsport, Pennsylvania is “a wholly controlled affiliate of The Corporation For Penn State” and was “granted the benefits and responsibilities of the status of...[Penn State] as a State-related institution and as an instrumentality of the Commonwealth of Pennsylvania.” 24 P.S. § 2510-503(6) and § 2510-504.

<sup>v</sup> As noted in our special report, 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.

<sup>vi</sup> Standing Order VIII pertaining to “RULES AND REGULATIONS FOR THE CONDUCT OF PUBLIC MEETINGS OF THE BOARD OF TRUSTEES, ITS STANDING COMMITTEES AND ITS SPECIAL COMMITTEES” defines a “meeting” as “any prearranged gathering which is attended or participated in by a **quorum** and held for the purpose of deliberating University business or taking official action” but does not address what the board quorum actually is.