

The Regents of the University of California

**COMMITTEE ON GOVERNANCE**

June 22, 2016

The Committee on Governance met on the above date by teleconference at the following locations: 1130 K Street, Ste. 340, Sacramento; 12011 San Vicente Blvd., Ste. 606, Los Angeles; 8400 Lincoln Blvd., Los Angeles; 909 Montgomery Street, Ste. 400, San Francisco; 3750 University Avenue, Ste. 610, Riverside.

Members Present: Regents Gould, Reiss, Sherman, and Varner

In attendance: Regent Lozano, Secretary, Chief of Staff Shaw, and General Counsel Robinson

The meeting convened at 9:00 a.m. with Committee Chair Gould presiding.

**1. READING OF NOTICE OF MEETING**

For the record, it was confirmed that notice had been given in compliance with the Bylaws and Standing Orders for a special meeting of the Regents, for this date and time, for the purpose of considering Board governance restructuring and Bylaws revision.

**2. PUBLIC COMMENT**

Committee Chair Gould explained that the Committee would first hear from members of the public addressing University-related matters. The following persons addressed the Board concerning the items noted.

A. Ms. Christina Hildebrand, of A Voice for Choice, spoke in opposition to the UC Immunization Plan, because she said its medical exemption is too strict and would discriminate on medical condition and religious beliefs. She advocated allowing an exemption based on a doctor's discretion. Ms. Hildebrand expressed her view that incoming students have had insufficient warning, since she said some UC campuses implemented the Plan for fall 2016. She asked if UC employees would be required to be vaccinated. She requested that implementation be delayed at all UC campuses until 2017 and that this matter be put on the agenda for the July Regents meeting.

B. Ms. Jennifer Aleksic, psychotherapist in Folsom and parent of two UC students, expressed opposition to the UC Immunization Plan, stating that even though her son died the night he was vaccinated and her daughter was injured by vaccines, her living children would not qualify for a medical exemption under the UC Plan. Her daughter had been accepted to UC Davis, but would not be able to attend if UC Davis implements the Plan. She asked what provision would be made for her daughter to attend another university and how current K-12 students whose

Personal Belief Exemptions (PBE) were grandfathered in under SB 277 would be treated if admitted to UC.

- C. Ms. Dawn Saunders, parent, expressed her view that the UC Immunization Plan's disallowing a PBE violated religious freedom. Her daughter aspires to attend UC Berkeley, but would be denied admission because of her immunization status.
- D. Ms. Jamie Reiss, UCLA alumna, spoke in favor of maintaining students' ability to submit a PBE from the UC Immunization Plan. She had an extreme reaction to a tetanus shot and would not have been able to attend UC under the Plan.
- E. Ms. Valentina Garcia, representing Indigenous Peoples' Alliance for Healthy Choices, expressed that group's opposition to mandatory immunizations. She cited the dangers of vaccines to some. She stated that, even though both their parents were Stanford graduates, her grandchildren would not be able to attend public schools because they were not immunized. She requested that an action item restoring the PBE be put on the agenda for the July Regents meeting.
- F. Ms. Dina Gorman, parent, said that two of her three children would be directly affected by the UC Immunization Plan. She questioned the safety and efficacy of immunizations. She urged the Regent to delay implementation of the Plan to 2017 and place this matter on the agenda for the July Regents meeting.
- G. A public school teacher, union activist, and parent asked if the University planned to require its employees to be immunized. She asked the Regents to delay implementation of the UC Immunization Plan to 2017 and place this matter on the agenda for the July Regents meeting.

### 3. **BOARD GOVERNANCE RESTRUCTURE AND BYLAWS REVISION**

[Background material was provided to Regents in advance of the meeting, and a copy is on file in the Office of the Secretary and Chief of Staff.]

Committee Chair Gould began the discussion by referring to Attachment 1 of the item, a list highlighting comments received from Regents, chancellors, senior executives in the Office of the President, and other members of the University community on the proposed governance restructure and Bylaws revision. These comments would be considered at the current meeting, with the goal of having a proposal incorporating any recommended changes ready for consideration by the Regents at the subsequent meeting. Committee Chair Gould advised that the proposed governance restructure would result in changes to the Board's committee structure, with fewer committees. Should the proposal be adopted, another meeting of the Committee on Governance would be held to recommend leadership and membership of the new committees.

Regent Varner asked when the new structure would be effective. Committee Chair Gould replied that the new structure would be operational at the September meeting, if the new Bylaws were adopted at the July meeting.

Chairman Lozano expressed appreciation for the work that had been done on the proposal since the last meeting, to aggregate comments from many stakeholders into a clear summary. She observed that there appeared to be support for the proposed changes to the committee structure and some operational concerns to be addressed. Much progress had been made.

Committee Chair Gould led the discussion of the comments that had been received and proposed solutions where necessary, to solicit feedback from the Committee. A concern had been raised that the proposed concurrent committee meetings would not be transparent. He noted the importance of transparency and public access to Regents' meetings. The proposed resolution was to make no change, since all committee meetings would be video streamed and archived.

Regent Varner asked if, on the second meeting day, the Regents would receive summaries of actions taken at the prior day's concurrent committee meetings. Committee Chair Gould said that major issues requiring the review of the entire Board, such as the University's annual budget or any proposal on student fees, would not be handled by committee, but would be heard by the full Board on the second meeting day. Also, committee reports would be more substantive, so the Board would be well-informed. There would still be the opportunity for consideration of an item if a Regent had a concern with any committee action.

Committee Chair Gould reported concerns that had been expressed on the proposal that the Committee on Oversight of the Department of Energy (DOE) Laboratories should become a subcommittee of the Academic and Student Affairs Committee since the University's role at the National Laboratories is academic leadership. If larger National Laboratory issues arise that have broad financial implications for the University, there could be a joint meeting with the proposed Finance and Capital Strategies Committee. New contracts and engagements with the DOE would likely come before the full Board, since they are major issues involving the University's relationship with its partners at the federal level. No change is recommended to the proposal in this area.

Regent Reiss asked how the proposal would affect the current Laboratory management, since Los Alamos National Laboratory (LANL) and Lawrence Livermore National Laboratory (LLNL) have their own boards on which the chair of the Committee on Oversight of the DOE Laboratories serves. Regent Varner explained that there are two separate limited liability companies that operate LANL and LLNL, with the controlling vote in the chair of the Board of Governors of the respective LLC, which is always the representative from UC, currently Regent Pattiz. There is no requirement that the chair of the Committee on Oversight of the DOE Laboratories be the chair of the Boards of Governors. Chairman Lozano said there would be no change to current procedures in this regard. Regent Reiss pointed out that, under the proposed new governance, the Regent

who had chaired the Committee on Oversight of the DOE Laboratories could still be the chair of the Boards of Governors of the LLCs. Committee Chair Gould agreed that it would be beneficial to clarify that the operation of the LLCs would remain the same. General Counsel Robinson added that membership and operation of the LLCs is not addressed in the LLCs' governing documents and would not be affected by proposed Bylaw changes. Regent Varner added that oversight of the Lawrence Berkeley National Laboratory is different from that of LANL and LLNL.

Regent Sherman asked if clarification was needed of who would serve on the LLC boards. Would that person be chosen by the new subcommittee, whereas it had been automatically the Chair of the Committee on Oversight of the DOE Laboratories? Regent Reiss stated that the Committee on Governance would choose the chairs of all committees and the Chair of the Committee on Oversight of the DOE Laboratories would be on the LLC Boards. She suggested clarifying that under the proposed new structure, without a Committee on Oversight of the DOE Laboratories, the Committee on Governance would choose who would sit on the LLC Boards and report on National Laboratory activities to the Academic and Student Affairs Committee. Committee Chair Gould agreed that more clarity could be provided in this area. Regent Sherman said the question remained whether the Chair of the Academic and Student Affairs Committee or the Governance Committee would choose the Regents who sat on the Boards of the LLCs. Regent Reiss expressed her view that it would be preferable to have this authority with the Committee on Governance. Regent Sherman agreed.

Mr. Robinson noted that the Committee on Governance would nominate committee chairs and members, who would be approved by the full Board. He asked if it was this Committee's preference that this procedure remain the same. Chairman Lozano clarified that the composition of subcommittees, including the Subcommittee on Investments and the Subcommittee on Oversight of the DOE Laboratories, would be determined upon recommendation of the Committee on Governance and Compensation. Committee Chair Gould and Regent Sherman agreed. No committee members expressed disagreement.

Committee Chair Gould proceeded to the concern that had been expressed that Regents should have the right to place any item on a meeting agenda without needing a majority vote of the Board, as had been proposed. He proposed a change that any Regent would be entitled to have any item placed on the agenda. It would be the responsibility of the Chair of the Board in consultation with the President of the University to work out the timing so that the item would be brought to the Regents in an appropriate form and in a timely manner.

Regent Varner asked if it had been clarified that the Chair of the Board, in consultation with the President of the University, should be the controlling factor in setting Regents' meeting agendas, rather than the President setting the agendas in consultation with the Chair of the Board.

Regent Reiss commented that she had proposed requiring a majority vote of the Regents to have an item proposed by a Regent placed on the agenda. She expressed concern that

the proposal to allow a Regent to place an item on the agenda could be disruptive to Board governance. Committee Chair Gould provided background, adding that under current practice any Regent could put an item on the agenda at any time. So the proposed change that the Chair of the Board and the President would determine the scheduling would be an added constraint.

Regent Sherman expressed agreement with Regent Reiss that governance could become unwieldy if any Regent could place an item on the agenda. A Regent should be able to convince a majority of the Board to support placing an item on the agenda. Regent Reiss added that requiring majority support would further the goal of making good use of Regents meeting time.

Committee Chair Gould commented that some Regents feel very strongly about this proposal. Maintaining the ability of any Regent to put an item on the agenda was proposed in part to prevent a potentially divisive situation of a Regent trying to obtain majority support for putting an item on the agenda, to counter a decision by the Chair of the Board or the President not to put the item on the agenda. Regent Sherman commented that campaigns to convince other Regents would be unlikely, since most issues would arise from committee discussions. Regent Reiss expressed concern that a single Regent could place a divisive issue on the agenda.

Chairman Lozano suggested requiring the item to be deemed appropriate by the Chair of the Board and the President of the University, but stressed the importance of being responsive to Regents' desire to fulfil their duty and bring up issues they feel are important to the University, even if they may be different from the concerns of most Regents. She thought it appropriate that any Regent could submit an item for consideration, but that it must meet some threshold.

Regent Sherman suggested that a Regent could submit an item to be put on the agenda, but if the Board Chair and the President do not concur, the item could be put on the agenda only by agreement of a majority of Regents. Regent Varner concurred. Chairman Lozano advocated submitting Regent Sherman's suggestion to the full Board as the Committee's proposal to gain a sense of the reaction of the Regents. In response to a question from Committee Chair Gould, Chairman Lozano confirmed that she supported the language proposed by Regent Sherman, which she thought represented the concurrence of the Committee.

Committee Chair Gould discussed the role of the Staff Advisors, which he said would be described in the committee charters and Regents' policies rather than in the Bylaws. He suggested that this treatment is appropriate. There would be no change to the role of the Staff Advisors. The Committee members expressed support for this approach.

Committee Chair Gould said that some concerns had been expressed about delegations of authority to the President of the University and the chancellors. He pointed out that the Board would retain ultimate authority and could rescind any of its delegations. Regent Reiss asked how the proposed governance structure would change delegations of

authority. Mr. Robinson said the proposal would not change any delegations; the proposed Bylaws would clarify those authorities the Regents clearly want to retain. The overall governance structure would still be one in which authority originates with the Board; the Board then delegates some authority to the President subject to various powers that the Board wants to retain. In exercising any delegated authority the President must act within the directives of the Board. Regent Varner expressed support for clarifying that any delegation could be rescinded.

Committee Chair Gould discussed the structure of the Governance and Compensation Committee. Some Regents and others had expressed concern about the concentration of power if the committee chairs were the members of the Governance and Compensation Committee. A few options in addition to the proposal had been considered. Another option, which he called Option A, would have the outgoing Committee on Governance appoint members of the new Governance and Compensation Committee. The members could be committee chairs or not. A third option, Option B, would allow the Chair of the Board to appoint members of the new Governance and Compensation Committee. Regent Reiss asked if the Chairman of the Board currently appointed members of the Committee on Governance. Secretary and Chief of Staff Shaw answered in the affirmative. Regent Reiss expressed support for Option B. Committee Chair Gould agreed.

Ms. Shaw added that under current procedures, the Chairman of the Board is not a member of the Committee on Governance. Committee Chair Gould said that under the proposed new structure, the Chair of the Board would be a member of the Governance and Compensation Committee. Mr. Robinson asked if the Chair of the Board would be an ex officio member of the Committee. Chairman Lozano responded that under the proposed structure, the Chair of the Board and the President of the University would be members of all committees, including the Governance and Compensation Committee.

Chairman Lozano explained that one argument for Option A was that the Chair of the Board and the President would already be members of all committees. As members of the Governance and Compensation Committee, they would be part of the deliberating body that would determine committee membership. Option A would give that authority to a committee, rather than to a single individual, the Chair of the Board, as it would be in Option B. Regent Reiss reiterated her support for Option B.

Mr. Robinson asked how the chair and vice chair of the Governance and Compensation Committee would be determined. Regent Reiss said that she supported maintaining the current process under which the Chairman of the Board appoints the chairs and vice chairs of all committees.

Mr. Robinson asked if the Governor would be a member of the Governance and Compensation Committee. Regent Reiss answered in the affirmative. Committee Chair Gould agreed.

Committee Chair Gould said he was comfortable with what seemed to be the Committee's consensus.

Mr. Robinson asked whether the Committee preferred to continue the current procedure that the Committee on Governance recommends committee membership, which is approved by the full Board. Committee Chair Gould and Regent Reiss answered in the affirmative. Chairman Lozano commented that the intention was to standardize procedures for all committees; there was no need for exceptional procedures for the Governance and Compensation Committee.

Committee Chair Gould discussed concerns that the authority over misconduct procedures against a Regent should be retained by the full Board, rather than by the Governance and Compensation Committee. He suggested proposing that authority regarding misconduct procedures against a Regent would rest with the Board, based on a recommendation of the Governance and Compensation Committee. Committee members expressed no opposition to that proposal.

Committee Chair Gould discussed possible delegation of compensation policies and programs and individual compensation actions to committees, as had been done with the reconfigured Committee on Health Services, which could execute certain compensation decisions under a framework approved by the Governance and Compensation Committee. He asked if the Committee thought it appropriate to extend that kind of delegation to other areas, for example to the Committee on Investments. Compensation of senior staff in the Office of the Chief Investment Officer can involve substantial bonuses. The proposed new governance structure would have compensation in the Office of the Chief Investment Officer (CIO) under the authority of the Governance and Compensation committee, since senior CIO staff are typically among the University's most highly compensated and the Regents' oversight and continued transparency would be appropriate. He would not recommend any further change, other than the restructured arrangement for the Committee on Health Services. He asked for the Committee's reaction, adding that this issue could be revisited in the future. Regent Reiss agreed. Regent Sherman suggested that the Chair of the Committee on Investments be consulted by the Governance and Compensation Committee on items involving compensation of senior staff in the Office of the CIO. Committee Chair Gould agreed. Chairman Lozano pointed out that the current Committee on Compensation constructed frameworks, with appropriate input, to guide the implementation of compensation decisions. The framework would be reviewed annually and updated as needed every two years. Different compensation programs for different areas of the University would be taken into account in putting together those frameworks. Committee Chair Gould agreed. The Committee would have the flexibility to revisit the compensation of various segments of the University, which could also be part of the new committee's charter. He asked if the Committee was comfortable with the proposal as it exists.

Mr. Robinson clarified that some language would be added to the proposal to indicate that the Governance and Compensation Committee would consult as appropriate with other committees on individual compensation items. Committee Chair Gould answered in the affirmative.

Regent Reiss recalled that a few times an offer letter sent to a candidate had different terms from those approved by the Committee on Compensation. As Chair of the Committee on Compensation, Regent Reiss had instituted a procedure by which the Committee on Compensation must see any commitment letter to a prospective Senior Management Group (SMG) employee to verify its consistency with the compensation plan approved by the Committee on Compensation. She suggested including that procedure in the new structure. Mr. Robinson expressed his view that would be appropriate to be placed in a policy, rather than in the Bylaws. Committee Chair Gould added that it could be included in a committee charter. Regent Reiss agreed.

Committee Chair Gould stated that the Academic Senate had recommended some language changes to the proposal. Mr. Robinson suggested that the Regents not adopt a proposal made by the chancellors that decisions made by the chancellors within the budget and policies approved by the Board and/or the President of the University shall be final because of possible ambiguity about the President's or the Board's ability to undo a chancellor's decision. He added that there are other delegations throughout the proposal and no other delegations have language indicating that an action under delegated authority would be final. Ms. Shaw added that the current standing order did contain language indicating that the chancellors' actions described above would be final. That language would be removed. Mr. Robinson stated that the chancellors had recommended transferring that language from the standing orders into the Bylaws, but he recommended against it, since the Board and the President of the University have the authority to reconsider a decision made by a chancellor. Mr. Robinson said all of the other changes recommended by the chancellors were made. Committee members expressed support.

Committee Chair Gould commented that some changes had been proposed by the Academic Senate. Regents' analyst Clare Sheridan commented that changes recommended by the Academic Senate had been made to the proposal. Committee Chair Gould asked if the Academic Senate had recommended any substantive changes that had not been included. Ms. Sheridan responded that the recommended changes had been made.

Committee Chair Gould commented that it was proposed to change the name of the Laboratory Oversight Subcommittee to the National Laboratories Subcommittee. Mr. Robinson noted that this change had been recommended by Vice President Budil for purposes of clarification, since UC had various other laboratories. Chairman Lozano expressed support for the proposed change.

Committee Chair Gould noted that a question had been raised whether the National Laboratories Subcommittee should be given delegated authority to approve capital projects or other financial matters at Lawrence Berkeley National Laboratory (LBNL). Mr. Robinson clarified that the delegated authority would be appropriate only to the Berkeley Laboratory, as the other two UC-affiliated National Laboratories are governed by LLCs. Regent Sherman suggested approving up to a certain level of delegated authority, as with the restructured Committee on Health Services. Regent Reiss suggested that the finance and capital outlay decisions regarding LBNL made by the Finance and



Capital Strategies Committee be made in consultation with the Subcommittee on National Laboratories. Committee Chair Gould and Regents Sherman and Varner agreed.

Committee Chair Gould asked Mr. Robinson to discuss a question raised about the procedure by which the Board would overturn an action taken by a committee under delegated authority. Mr. Robinson explained that proposed Bylaw 24.1 states that the Board can revisit a decision by a Standing Committee, even if the decision was made under the plenary authority of the Standing Committee. A question had been raised as to the procedure for reversing a Committee decision under the proposed new governance structure. Mr. Robinson expressed his view that it was unnecessary to prescribe that level of procedural detail in the Bylaws; this matter could be addressed in Regents policies. Regent Reiss asked if all committee decisions had to be approved by the full Board. Mr. Robinson explained that, under the proposed new governance structure, more authority would be delegated to the committees. Regent Sherman pointed out that reversal of a committee action would have to be done in a timely manner or it would become quite cumbersome. Mr. Robinson said a balance would have to be achieved. He suggested making it clear that the Board can revisit a committee decision. Regent Reiss added that the Board has ultimate authority and could reverse any committee decision or, as discussed earlier, a decision of a chancellor. Committee Chair Gould suggested including a statement regarding this broad Board authority in the Bylaws. Mr. Robinson said the proposed Bylaws contain such a statement, but the question related to the procedure. Regent Varner commented that timing would be important if a committee took an action that would be implemented. Chairman Lozano suggested that, since the Committees would meet on the first meeting day and would report out their action items to the full Board, that committee actions not be implemented until after the full Board meeting the second day. Regent Reiss expressed her view that additional language about procedure was not necessary, since the Board can reverse any decision at any time. Mr. Robinson said it would be important to ensure that the Board had adequate notice of committee actions. Committee Chair Gould added that it would be important for the Board to be informed of actions taken under delegated authority in off-cycle committee meetings. Mr. Robinson said it seemed to be the consensus that a procedure could be developed, but it need not be in the Bylaws. Committee Chair Gould and Regent Reiss agreed.

Committee Chair Gould reported that a question had been raised as to whether requests for capital project augmentation or changes in project scope should be approved by committee or by the full Board. He suggested that this question could be addressed in the committee charter rather than in the Bylaws. Mr. Robinson said a proposed change to the charter of the Finance and Capital Strategies Committee would give that Committee plenary authority to make some limited changes, while more substantial changes would be recommended by the Committee for approval by the full Board. Committee Chair Gould expressed support for that proposed change, noting that thresholds for authority should be established in the Committee charter. The Committee on Governance members agreed.

Committee Chair Gould said a question had been raised as to whether the Finance and Capital Strategies Committee should be delegated plenary authority for all external finance above a certain threshold, and if \$20 million would be an appropriate threshold. He suggested that this could be set in the Committee charter rather than in the Bylaws. Regent Sherman commented that \$20 million seemed to be an appropriate threshold. Mr. Robinson agreed that this would be best specified in the Committee charter. His office was consulting subject-matter experts about several thresholds for the committee charters. He would bring those proposed thresholds to the Committee on Governance for review.

Regent Reiss asked if committee chairs should be required to report committee actions to the Chair of the Board within a certain time. Chairman Lozano agreed that timely notification of actions would be appropriate, for instance by distributing at the end of the meeting a list of actions taken. In response to a question from Committee Chair Gould, Ms. Shaw stated that would be no problem procedurally. Mr. Robinson said there was a provision in the proposed Bylaws that committee actions be reported to the full Board. Ms. Shaw clarified current procedures by which actions taken in off-cycle committee meetings are reported to the Board in the Report of Interim and Concurrent Actions. She expressed her understanding that, under proposed new procedures, a more robust report would be made to the Board during the second meeting day. She said that Regent Reiss' suggestion of having a separate notification of committee actions to the Chairman of the Board within 24 hours would be possible. Committee Chair Gould suggested requiring timely notification and including the President of the University. Mr. Robinson commented that proposed Bylaw 24.11 would require each standing committee to report all actions under delegated authority to the Board at its next regularly scheduled meeting. Regent Reiss said a requirement to notify the Chair of the Board and the President of such actions as soon as possible should be added. Members of the Committee on Governance concurred.

Chairman Lozano asked if the proposed Bylaws had been reviewed for any internal inconsistencies. Mr. Robinson said his office had reviewed the proposed Bylaws for consistency and would do so again before the next Regents meeting.

Regent Reiss asked if the current Committee on Governance would determine the chairs and members of the new committees. Committee Chair Gould and Chairman Lozano said that was their understanding. Ms. Shaw pointed out that if Option B were chosen at the July meeting as the procedure to select members of the Committee on Governance and Compensation, then that procedure would go into effect for selecting members of leadership of the Committee, i.e., they would be appointed by the Chair of the Board.

Committee Chair Gould expressed appreciation for the work of the Committee. He added that an appropriate cycle would be established to review the efficacy of the proposed new governance structure.

The meeting adjourned at 10:30 a.m.

Attest:

Secretary and Chief of Staff

Pending Approval