I. INTRODUCTION
When the State Board decided in 2010 to explore whether and how to establish separate boards for some or all of its universities, the Board emphasized that it would recommend such boards if to do so would lead to better achievement of the Board’s goals of student success, quality education, contributions to an innovative society and economy, and underpinning vibrant communities throughout Oregon. The Committee sought the advice of a large number of nationally prominent governance experts and commissioned a firm to research governance practices in several states.

The Committee learned that institutional governing boards do not, of themselves, lead to greater student success, more affordability for students, more research, or even more private donations. The principal problem identified by the presidents of OUS universities was lack of state funding. And the Committee learned that institutional boards are associated with slightly less, not more, investment from states.

In order to further focus the discussion, it seems logical to revisit the driving question: what problems are we trying to solve?

Those presidents who wanted institutional boards pointed to the possibility for greater philanthropy (which, although not demonstrated in other states, was viewed as highly possible for the University of Oregon) and greater access to advice from dedicated and knowledgeable volunteers.

At the November meeting, the Committee decided to explore how best to establish institutional boards for those universities that wish them, keeping in mind the need to achieve the goals set by the Board and the State. In January, the Committee heard overwhelming support for maintaining the separate status between university foundation boards and university institutional boards. Last month, the Committee heard about the approaches taken in North Carolina (which has both a state board and institutional boards, each level with clearly demarcated powers) and Connecticut (which has just centralized most of its universities under a state board but which left the University of Connecticut in a separate status). There are many examples of statewide boards, of campus specific boards, and of shared responsibility among boards.

The most common form of state governance for universities in the United States is the one Oregon now has: a single statewide system governed by a single governing board responsible for all public universities in the state. There are 22 states where this form prevails and another 17 that have multiple systems of multi-campus universities where each system has its own systemwide governing board (e.g., as in California). Three states have statewide governing boards along with institutional governing boards, with differing powers for the two levels of boards (as in North Carolina). Five states have independent governing boards for each of their universities and two have independent boards for some universities and a state board for others.
The Committee has heard from two presidents who desire institutional boards—but with somewhat different status and responsibilities—and from several who do not. The Committee has received a paper from President Ray who, while not desiring an institutional board at this time, laid out some principles that could help guide how such boards might be established and what their authorities and those of the State Board could be.

In my opinion, the Committee already has tentatively agreed that at least some universities could establish and maintain institutional governing boards and the real questions revolve around how to do so and what responsibilities should be exercised by those boards, by institutional presidents, and by statewide authority (such as the OUS Board). This matter will be addressed over the next several months by a select committee of the legislature, which will include members of the House and Senate and of the Oregon Education Investment Board. The work of that group will get under way next month and the background developed by this Committee will be shared with it.

Obviously, the work of this Committee and of the legislature’s select committee will be guided and informed by efforts to attain the state’s ambitious education goals: 40-40-20. Any other guidepost would be inappropriate and might serve to place perceived institutional interest above that of the state and its citizens. After all, the universities were created by and are public entities of the state, established for the benefit of the state and its citizens. They are not and cannot be seen in the same light as are independent universities established by private organizations.

This means that care must be taken in how institutional boards are established, what authorities they have, and how they are held accountable to achieve state goals and fulfill state and public expectations in the way they do their business. This was one of the issues raised at the November meeting when Committee members spoke about “off ramps.” One other question is what conditions must exist before an institutional board is authorized and whether that board is to be established by legislation or by the State Board (as in the original draft of the legislative concept that led to SB 242).

As noted in November, most operational decisions would be the responsibility of an institutional board or an institutional president. This would include, for example, purchasing, contracting, personnel policies, promotion and tenure, and salaries (unless affected by Systemwide collective bargaining agreements).

II. CATEGORIES OF ISSUES
Although there could be many ways to categorize the issues, I will offer four broad groups to help organize the discussion: accountability, public good, stewardship, and efficiency. Many of the issues could fit readily into more than one category, so their assignment in this draft is by no means definitive.

Accountability issues relate to fulfilling the public trust and often have elements of governmental function. Issues pertaining to the public good go to the reasons Oregon has public higher education and relate to the programs and students that are at its center. Stewardship relates to the fiduciary responsibility that must be maintained with regard to the state’s investment (current and historic) to ensure that the assets that have been developed and will be developed are managed effectively and for the public interest. Efficiency issues deal with minimizing cost and optimizing revenue in order that maximum resources can be devoted effectively to the core functions of public universities: education, research and public service.
A. **Accountability**

Under the heading of accountability issues, I am suggesting we discuss a range of matters that pertain to governance and control, some of which take on a governmental flavor. These include the appointment of institutional board members; their terms; joint membership between the State Board and institutional boards; data collection, data analysis, and data systems requirements; internal audit; achievement compacts with the Oregon Education Investment Board; performance targets and performance assessment; and the hiring, evaluation, and termination of institutional presidents.

1. **Board composition and appointment**: Oregon’s public universities belong to the public and were established for public purposes. As such, it seems appropriate that the boards that oversee them be appointed by the governor and confirmed by the state senate. The allegiance of the boards and their members must be to the state and not to other entities (such as foundations and alumni associations). The governor may seek, or even be required to seek, nominations from such entities but the appointment authority should remain the governor’s prerogative. Obviously, legislation establishing institutional boards could follow the current legislation regarding the State Board of Higher Education and call for faculty and student representation on institutional boards. This could even be broadened to include university staff, leaders of foundations or alumni associations, or others. However, the more prescriptive the membership of the board, the more likely it could be for interests other than those of either the state or the university to become drivers of board discussions or even decisions. One further suggestion (and one that was used in the case of OHSU) is to have a member of the State Board of Higher Education also be on each institutional governing board. In any event, I would recommend that the governor appoint all members, that membership should include some employees and students, and that all members be subject to senate confirmation. I also believe that the foundation boards and alumni boards affiliated with a university should be able to recommend names for consideration by the governor in making appointments. The size of the board must be large enough to permit effective advice and oversight but small enough to function efficiently. Although many independent universities have boards of 35-50 members, effective governance of the institutions often devolves to the board chair and a relative small executive committee. My discussions with representatives of the Association of Governing Boards of Universities and Colleges (AGB) suggest that a board size of 9-15 members could be optimal for a public university. If some of the seats are designated (e.g., for faculty, staff, or students), nine would seem too few. Therefore, a size of 11-15 would seem to make sense. (This does not address the desire of some universities to have larger governing bodies as a tool to enhance philanthropy. However, the research cited last fall does not find any statistically positive relationship between institutional governing boards and the level of donations for public universities. Hence, a larger size would not seem to be warranted.) As for the terms of the board members, I think the current two-year terms for faculty and student members (and any staff who might be nominated) make sense. Although two terms of four years each has been the norm for the State Board of Higher Education, some other states have longer terms for their board members in order to build greater knowledge and expertise. (Most University of California’s regents, for example, have twelve year terms.) One question is whether two six-year terms might make more sense than two four-year terms. The chair of the board could be elected for a two-year term by the members of the board from among the public members. Finally, I would recommend that the president of the university be designated as an ex officio member of the institutional governing board.
Summary: Public board, 11-15 members, appointed by governor, confirmed by senate, includes employees and students, includes a member of the State Board of Higher Education, requires governor to seek nominations from foundation and alumni associations, two-year terms for employees and students, 4 to 6 year terms (with a limit of two terms) for public members, board elects its chair, president as ex officio member. Questions remain about any conditions that must be met before a board is established (e.g., demonstrated financial or management viability) and by whom (legislation or authorization by the State Board.)

2. Data collection, data analysis, and data systems requirements: A key to accountability will be the information that is available to state policy makers and decision-makers. Consistent information about students and finances will be essential for the success of the achievement compacts and the overall vision that will be part of implementing the Oregon Education Investment Board. Consistent information about students and finances has been necessary for the effective governance of the Oregon University System. This requires standard definitions of data elements for both student and financial information systems (including a standard chart of accounts and common approaches to software definitions and updates), standard reporting formats, and common understandings about student progress. This means that institutional boards and the universities they oversee must adhere to statewide data system requirements and timeframes. The current OUS data systems and their congruence with those of Oregon’s other public education entities must be maintained and deviation from them resisted. Although all seven universities have individual missions and often serve different kinds of students and certainly have different levels of resources, they all now define and account for students and for financial transactions in the same way and through an integrated system. In order to maintain the coherence of data and to ensure that matters such as student transfer can be accommodated across all the universities, these systems must continue to be standard and integrated. Institutional discretion must be limited and coordinated, as at present, in order to make sure that students are not disadvantaged and that financial consistency is maintained. (This does not argue for the centralized operation of data systems, a subject for the efficiency category under shared services, but for the centralization of information definitions and rules in order to maintain and ensure consistency across all Oregon’s public universities.)

3. Internal Audit: The internal audit role encompasses three main functions: the professional and knowledgeable interface with the state auditor and with external auditors; investigative and best practices services for operations; and providing expert investigative, financial, systems, and best practices advice to the governing board at both the System- and institutional-level. It is important, therefore, that both the state and the institutional governing board have access to effective and professional internal audit. It is important for the institutional board to have access to such services as part of its responsibility to exercise fiduciary control and oversight over the operations of the university and the activities of its leaders. It also is important for the State Board to have internal capability to ensure that its responsibilities can be met and that the institutions are operating effectively and legally. Therefore, I think it important for both the State Board and any institutional board to have access to internal auditing services. The integration of student and financial data systems requires that the State Board’s internal audit function also be the primary point of contact with the state auditor and an important link to external auditors.
4. **Achievement Compacts:** Recently enacted Senate Bill 1581 established a mechanism for both the State Board of Higher Education and individual universities to propose and adopt achievement compacts with the Oregon Education Investment Board. The framework now includes a number of Systemwide compact elements as well as some institution-specific elements that were proposed by universities and adopted by the State Board on March 2. This means that the OUS Board is responsible to the OEIB for some elements (e.g., the total number of degrees granted to Oregonians) and that universities are responsible to the State Board for their “share” of the targets associated with the elements. That requires the State Board to retain a major voice in defining the statewide elements and in ensuring that the seven universities achieve the targets for which OUS is responsible. It makes sense that the entity that integrates the efforts of all the universities to meet the state’s 40-40-20 goals have agreements with the individual universities regarding their responsibilities toward meeting those goals. However, institutions are responsible for their mission-related campus elements and meeting the targets associated with them. Those elements must not conflict with those required of the System. Therefore, it would seem that the 2012 practice of having university-specific elements and targets go through the State Board of Higher Education would make sense. University presidents and, if applicable, institutional boards would be responsible to the State Board for the achievement of the institution’s portion of the statewide elements and to the OEIB for the achievement of the mission-specific elements. Institutional boards also would send their mission-specific elements and targets to the OEIB through the State Board of Higher Education in order to ensure that they do not conflict with the achievement of statewide measures. The development and assessment of performance targets related to the statewide achievement compact would be a negotiated effort between the State Board and institutions. The development and assessment of performance targets called for under SB 242 would remain a responsibility of the State Board unless ORS 351 is amended to remove that authority. At present, most of the elements of the statewide achievement compact are among those adopted by the State Board as part of performance compacts. The few that are not must be part of compacts between the State Board and universities.

5. **Hiring, evaluation, and termination of Presidents:** The hiring, evaluation, and termination of a president are important functions of governance. Although it is important for the State Board to be able to hold a president responsible for performance and for legal and ethical behavior, it is important for institutional boards to hold her or him responsible for those things and for effective operation of the university. Therefore, it would appear that this function is and should be a shared responsibility. The North Carolina approach may be instructive here. At the University of North Carolina, the institutional boards recommend the hiring of the president to the statewide board, which typically accepts that recommendation. The issue of evaluation is joint between the institutional board and the systemwide president. The matter of termination seems to be with the statewide board. In Oregon, I suggest we consider a system in which the institutional board hires and reappoints the president with the advice and consent of the State Board, that the institutional board evaluate the president in collaboration with the chancellor and with the member of the institutional board who also is a member of the State Board, and that the termination of the president be the responsibility of the institutional board after consultation with or with the advice and consent of the State Board. It is important that both management of the institution and the achievement of statewide goals be included in presidential evaluations and decisions about contracts.
B. **Public Good**

1. **Tuition-Setting:** Establishing the rates that students pay for tuition is a financial decision, a decision about affordability, a decision about the public good, and a decision about state policy. Historically, tuition has been set by the State Board of Higher Education for all categories of students and the legislature has often set caps by budget note for resident undergraduate students and has occasionally provided funding to the universities to buy down or freeze tuition for resident undergraduate students. Further, state policy may suggest that certain graduate students might pay lower rates than others based on their programs of study. These all are elements of policy. Although some states have intervened in university decisions about nonresident student enrollment (setting maximum enrollment levels), Oregon has not done so. Further, the policy of the State Board for many years has been to permit universities to charge nonresident undergraduate students whatever the universities determined was in their best interest. Consequently, it would seem that institutional boards would be the logical approving authority for nonresident undergraduate tuition rates. Typically, that also would be extended to graduate student rates paid by nonresident students. In addition, participation in programs such as the Western Undergraduate Exchange that permits nonresidents to pay a rate that is discounted from the regular nonresident rate would be a decision of the institutional board. Setting tuition for resident students, especially for resident undergraduate students, might more appropriately be retained at the level of the State Board since it pertains directly to affordability for Oregonians and the achievement of the 40-40-20 goals. Perhaps institutional boards could be delegated authority up to a certain level of increase but the level would seem to be a changeable matter since economic conditions and the level of state appropriations to support university operations are often the key drivers of the level of tuition increase needed or sought for universities. In summary, tuition for Oregonians could be set by the State Board and for nonresidents by institutional boards. In any case, the processes established for tuition setting in conjunction with the enactment of SB 242 must be followed.

2. **Mission and Program Approval:** The mission of public universities, the academic programs they offer, where they offer such programs, and the degree of collaboration among the programs of the universities, appropriately seem to be within the province of the State Board. Duplication of expensive programs may not be affordable for Oregon, collaboration may be essential to provide critical programs, and competition in certain locales may create economic hardship for some universities without corresponding benefit to Oregon and Oregonians. The gatekeeper function is one that the State Board should play. Further, if there are programs that must be offered to meet state needs, the State Board may need to identify how best to offer them—even when no university feels it is in its institutional best interest to do so. (In such cases, the State Board also may need to provide some level of incentives or other support to permit the needed programs to be successful without damaging the university tasked with program them.) The State Board also would seem best equipped to provide the incentives, requirements, and frameworks for collaboration among universities and between universities and community colleges.

3. **Interaction and advocacy with state government:** Clarity and consistency are essential in dealings between the universities and state government. The state executive and legislative leaders frequently have expressed a desire for such consistency. Competition among
universities for resources could cause some universities to lose out to others in ways that
could reduce the state’s success in achieving its education attainment goals. For these
reasons, a coordinated and consistent message from the universities in the capitol is
essential and argues that all universities, whether or not their operations are governed by
institutional boards, must adhere to a congruent and consistent approach and that it be
clear that the State Board of Higher Education is responsible for ensuring that congruent
and consistent message and approach. This extends to requests for both capital and
operating budgets and state-supported or state-authorized bonding or other indebtedness.
It also argues for consistency in the legal framework within which the universities operate,
particularly with regard to academic programs and connections with other education
providers, such as the community colleges and public schools.

4. **Allocation of State Appropriations**: Just as there needs to be a single voice for the
universities in seeking state funding, so, too, should there be a single allocator of base
funding received from the state and a single entity responsible for ensuring that state
conditions attached to appropriations be honored. This means that the State Board of
Higher Education must be the entity that allocates state appropriations tied to the OUS
achievement compact and the performance of the universities in fulfillment of that
compact. Those portions of the state appropriations that are allocated by the Oregon
Education Investment Board for mission-specific investments at universities must be
congruent with the overall allocation strategy that allows the universities, collectively, to
achieve the Systemwide targets essential to meeting the OUS achievement compact
requirements.

5. **Capacity planning**: Capacity planning (for academic programs, for campus facilities, for
technology) is a shared responsibility between the State Board of Higher Education (charged
with meeting the 40 percent goal) and the individual universities charged with meeting their
portions of that statewide goal. This planning must be tied not only to the 40 percent goal
but also to the seeking of state appropriations for capital and operations and to the seeking
of state support for bonding or other indebtedness, where appropriate. These planning
efforts should be coordinated to ensure compatibility.

6. **Financial aid policies**: Each institution will have its own financial aid policies and programs
depending upon its mission, the nature of its student body, resources, and enrollment
strategy. An institutional board can be expected to consider and approve the policies and
strategies that underlie these efforts. However, the State Board of Higher Education, as part
of its approach to SB 242, adopted affordability minimum guidelines that must be followed
by all Oregon universities. These state that the public universities will ensure that they meet
at least 12 percent of unmet financial need for Oregon resident undergraduate students
from institutional sources (investment earnings on tuition proceeds, fee remissions/tuition
discounts, and donations raised directly for need-based financial aid or made available for
that purpose by affiliated foundations). Further, all investment earnings from tuition
proceeds must be used for need-based financial aid for Oregon resident undergraduate
students.

7. **Applicability of state rules and policies**: The Oregon University System is subject to certain
statutes, policies, and rules of state government. Some of these were matters chosen by the
Board and the legislature as part of the discussions surrounding SB 242, while others were
embedded in a catch-all provision of SB 271 in 1995 that said that OUS would meet state public policy goals and strive for the level of achievement of these goals that it had met prior to 1995 and that are met by state agencies. Examples of the former include public records, public meetings, payment of prevailing wages on public contracts, and One Percent for Art. An example of the latter is contracting with minority, women and emerging small businesses. SB 242 continues some of the provisions of SB 271 with regard to employee benefit plans (e.g., healthcare insurance and pensions). Each of the many items in these categories must be considered as individual universities consider the establishment of institutional governing boards unless such boards derive their powers from the State Board of Higher Education (in which case, the statutes and policies governing or adopted by the State Board would apply).

C. **Stewardship**

1. **Property Ownership:** The real property (land and buildings) of all seven universities are currently owned by the State Board of Higher Education and are assets of the state. These assets have been accumulated over more than a century mostly through investment by the state and have a value in the billions of dollars. As such, they represent some of the most valuable assets of the state and are a direct tie between the people of Oregon and the universities. The property should continue to be owned by the State Board and administered as a public asset on its behalf by the university. The sale of real property or its encumbrance by any university must be subject to approval by the State Board as the fiduciary agent of the people of Oregon.

2. **Bonding and indebtedness:** Securing approval for state backed debt (e.g., lottery bonds, Article XI bonds) is a responsibility of the State Board of Higher Education (see the section about state relations and advocacy). This debt is the responsibility of the state and should be subject to oversight by the State Board insofar as the state is paying debt service or insofar as bond covenants demand that the state pay the debt service if an institution fails to do so. Further, only the State Board should be able to encumber state property as collateral for debt. However, institutional boards could have the responsibility for prudent use of revenue bonds and short-term debt instruments whose repayment is entirely from university sources and do not involve the pledging of any state asset or the state’s full faith and credit. Because all universities also now have outstanding state-backed debt and may acquire more in the future, institutional debt capacity policies and rates charged to repay state-backed debt (if applicable) should be developed in consultation with and be subject to concurrence by the State Board. Under the shared services section, consideration could be given to pooling revenue streams in order to receive more favorable rates for debt.

3. **Financial statement requirements:** This is related to the data consistency role of the State Board of Higher Education (see data collection section) and may also be related to the fiduciary responsibilities of the State Board under federal tax law and state accounting requirements. The charts of accounts used by universities, the fiscal calendars they employ, and other matters that affect the consistency of the financial data upon which decisions will be made by the Oregon Education Investment Board and others suggest this responsibility remain with the State Board even if the actual accounting is done under the control of an institutional board.
4. **Investment of funds**: Although the investment of funds could be controlled by an institutional board, the actual investment strategies may be decided in consultation with the State Treasurer or even made by the State Treasurer. Questions regarding asset allocation, the different tranches of cash, risk profile, and pooling of cash to maximize returns all have elements of shared services.

5. **Intellectual Property Management**: Unlike real property, intellectual property is often the product of faculty creativity and the result of research. Although some research is conducted by teams of faculty from across Oregon’s universities, most is done by faculty within a single institution. Therefore, it would seem appropriate that intellectual property management be the responsibility of an institutional board. The State Board may have protocols regarding intellectual property whose ownership is shared among two or more Oregon universities.

6. **Risk Management**: Risk management is a shared function among the State Board (as owner of the property and, potentially, the pooler of risk to reduce insurance or other costs) and the institutional board (responsible for university operations). The details of this sharing should be considered in more depth as the new risk management authority granted to OUS under SB 242 is implemented.

D. **Efficient Operations**

1. **Foundation relations**: As discussed in the January Committee meeting, this is a proper role for an institutional board. The respective roles of foundation boards and institutional governing boards should be spelled out clearly.

2. **Consistency of legal advice**: Oregon law provides a framework for university attorneys. Legal matters that pertain to State Board responsibilities (e.g., matters regarding property) would properly require consistency of advice. But advice regarding university operations and matters within the purview of the institutional boards could be guided by the framework of federal and state law. In order to ensure that universities do not have disputes with one another, a mechanism should be established to resolve differences and all litigation responsibility retained by the State Board.

3. **Labor agreements**: There is nothing inherent in labor agreements that requires them to be within the scope of either the institutional board or the State Board. Current contracts are with the State Board and the staff union has a Systemwide contract and is the recognized employee representative for staff at all universities. This could be changed through collective bargaining, by a ruling by the State Employee Relations Board, or, possibly, by legislation. Decisions made by the state or by universities regarding employee benefits may have an impact on whether some or all labor agreements remain with the State Board.

4. **Employee benefits**: Employee benefit plans could be developed and administered by each university, could be Systemwide, or could (as at present) be a combination of state-administered or System-administered. The issues are of cost, pool size, coverage (especially in smaller markets), and the strategies of the governor and legislature relating to healthcare insurance and pensions. The matter of employee benefits could be treated, too, as a shared service where the cost savings to either a single institution or the entire System are taken
into account in deciding how to structure the plans. Federal law also may have an impact on which employee groups can be covered by which plans at either the campus- or System-level.

5. **Shared services**: Several possibilities for sharing services among all the campuses have been noted above (risk management, employee benefits, payroll, financial statements, volume purchases, etc.). A fuller discussion of these opportunities should be undertaken with an eye toward maximizing revenue (as with investment earnings) or minimizing costs (as with risk management and employee benefits).