GOVERNANCE AND THE INTENT OF SB 271 & SB 437

While there is a wide range of administrative and management issues addressed in the Higher Education Administrative Efficiency Act of 1995 (SB 271), and the proposed extension and expansion of the Efficiency Act through SB 437 in the current legislative session, the best way to view the intent of these bills is to examine what was not proposed in the measures, and the larger organizational effect of the bills on the Oregon University System. While the details of the measures are important to the System and its institutions in capturing cost savings and allowing for administrative flexibility, the sum of the measures say four distinct things about the OUS and its management that are not explicitly stated in either bill.

1. Neither bill called for a change in the fundamental status of the Oregon University System as a state agency. In each case, in 1994-95 as the Efficiency Act was being developed and introduced, and in 2002 as SB 437 was being formulated, the Oregon State Board of Higher Education chose not to seek a change in the agency status of the enterprise. A public corporation and other configurations have been considered in each instance, and passed over. The deliberate choice was made in each case to seek alterations in the statutory framework that controls the Department of Higher Education, not to escape that framework.

2. No statutory responsibility for the governance and administration of the Oregon University System is lost in the passage of either measure, but the location of the responsibility changes. This is the key organizational change at the heart of both bills: Statutory oversight of the OUS is moved from external agencies to the System itself. You can go to the Oregon Revised Statutes and find that the law governing the personnel policies of the OUS is still on the books; it’s just been moved from the Department of Administrative Services (DAS) to the OUS. The same is true for the laws governing OUS contracting, purchasing, collective bargaining, and on down the list.

The chief product of the first Efficiency Act, then, was to align accountability and responsibility within the agency, instead of the split in authority between agencies that existed prior to its passage. The same would be true for the shift in statutory authority from DAS and other agencies to the OUS in SB 437. The Inter-Agency Agreement on business practices and legal services executed between the OUS and the Department of Justice (DOJ) this spring significantly moves in that direction, by acknowledging OUS’ need to quickly and efficiently respond to technological advances and entrepreneurial
opportunities. While DOJ statutes remain, the Inter-Agency Agreement underscores OUS’ ability to establish more meaningful response times and institutes a process for business community input and feedback.

3. The authority of the Board was enhanced, and the need for System accountability increased. Ministerial functions once performed by the System under statutes administered by the DAS or other agencies have become the management responsibilities of the Board. Unlike other agencies, a significant array of business activities is solely vested in the Board, and the accountability for the appropriate use of those authorities is also charged to the Board. While the Board has by rule and directive extended these responsibilities to the individual institutions, agency accountability rests with the Board.

It is no accident that a government-wide survey conducted this year by the Audits Division of the Secretary of State found that the OUS was one of only three state agencies with a comprehensive internal audit function. By design, the Board extended the flexibility granted by the Efficiency Act to the institutions, and then insured compliance through a well-staffed and empowered internal audit division. Again, the changes in governance made by the Efficiency Acts, and the accountability that comes with this realignment of responsibilities between agencies, was deliberately sought by the Board, and the enhanced role of the Board in management of the System was a clearly intended outcome.

4. Governance within the System changed as a result of the 1995 Efficiency Act, and would change again under SB 437. As the years have passed and best practices have developed for institution-based management for much of the authority granted by the Efficiency Act, the roles of the Board and campuses in System governance have changed. The Board has granted greater (but not full) autonomy to the campus administrations, and has taken on the duties of an oversight board, managing by exception. For the duties devolved to the Board by the Efficiency Act and passed through to the institutions, the Board role has been both narrowed and strengthened as a result, because multi-agency authority has been eliminated. For the campuses, institutional managers have greater latitude in administration, and also accept direct accountability to the Board, instead of to the Board and an outside agency, for their performance. This alignment of governance roles was also an outcome deliberately sought by the Board in the Efficiency Act.