

MINUTES OF THE SEVENTH MEETING OF THE 2015-16 UNIVERSITY SENATE
Thursday, April 28, 2016

Members Present: 51

Members Absent: 17

1. The meeting was called to order by the chairperson of the University Senate, Amy Harden, at 4:00 p.m.

Roll Call was taken by initialing the roster located at the entrance to LB 125.

Members Present: S. Aegisdottir, A. Beane, J. Becker, D. Berger, R. Bernot, B. Chang, J. Chapman, M. Chiuini, J. Christman, A. Crow, B. Donoher, J. Fitzgerald, B. Frankel, J. Fugate, J. Gruver, A. Harden, M. Hill, J. Hesser, S. Hsieh, J. Huff, J. Jemiolo, K. Kessler, J. Khubchandani, T. King, K. Koch, R. Kraus, M. Lee, C. Luchs, T. Mahfouz, C. Marlow, S. McFadden, R. Morris, E. Nesson, C. Pak, S. Pattison, K. Ritchey, K. Rosenberger, J. Sponseller, Z. Taylor, C. Thomas, J. Wells, D. Wheeler, R. Wijesinghe, E. Zygmunt

Substitutes: Adam Kuban for M. Hanley, Curtis Clock for M. Holtzman, Henry Wang for J. Johnson, Joseph McKinney for M. Quick, Greg Marchant for S. Shin, Melissa Ginotti for M. Warter, Michael Doyle for Z. Zhuk

Members Absent: R. Aby, A. Kanyinsola, E. Agnew, A. Brown, R. Brown, G. Carbo, T. Jitpaiboon, K. Kenyon, R. Kovac, I. Livshits, A. Loudon, C. Munchel, S. Rice-Snow, M. Smith, B. Wagner, K. Warren-Gordon

A motion was made and seconded to approve the minutes of March 17, 2016.

The motion carried.

2. Announcements

Items I. A. Faculty Athletics Representative to NCAA/MAC Report (Enclosure #1), I.B. Action on Disabled Parking (Enclosure #2), and I.C. Academic Posting (Enclosure #3) were reviewed by the Senate.

3. Per Diem Rates Bernard Hannon, Vice President of Business Affairs and Treasurer, was present at today's meeting and discussed the policy and revisions to the policy. (Link to presentation below).

[..\..\Travel Reimbursement.pptx](#)

4. Recognition of Death There was a moment of silence to recognize the death of Jean Louise Heffron.

5. Committee Reports

- A. Governance and Elections Committee – Karen Kessler, Chairperson. Karen reported the committee met on April 14 and approved the slate of officers for 2016-17 for university senate and the one opening for the senate agenda committee. The elections will take place at the second meeting today.
- B. Faculty Council – Andy Beane, Acting Chairperson. Andy reported the Council met on April 7 and passed the add/drop policy revision and withdrew the faculty council resolution. The second meeting of the council was the first meeting for 2016-17 and the following were elected to the executive committee of the council: Tarek Mahfouz, chair; Elizabeth Agnew, vice chair, and Jagdish Khubchandani, secretary.
- C. University Council – Derek Berger, Chairperson. Derek reported the Council met on April 14 and passed the incomplete grade policy. There was no second meeting because of the recent reorganization of professional units. An election of members will take place over the summer; the election of the executive committee will take place electronically after a nomination process.
- D. Campus Council – Rachel Johnson, Chairperson. Rachel reported the Council met on April 21. An electronic election was held for the chair and vice chair positions. Lauren Brannick was elected chair and Bailey Loughlin was elected vice chair for 2016-17.
- E. Student Government Association – James Wells, President. James reported the cabinet has been approved for 2016-17. SGA heard from the company conducting the presidential search as well as a representative from dining services regarding offerings of healthier fruits and vegetables.

6. Report by Chairperson of Senate – Amy Harden (University Senate Agenda, 4/28/16, Enclosure #4)

The membership reviewed the GANTT chart. The issue of telecommuting will be reviewed next fall as well as the issue of responsible conduct of research. The University Council has requested a review of the governance structure. It will be on the agenda for the first meeting of the Governance and Elections Committee in the fall. The Course Add/Drop Policy and the Per diem rates are on today's agenda.

7. Questions Directed to the Interim President

Interim President King reported the following:

- Big issue is the water pipe break in the Library which flooded much of the Library. It happened after the library closed on a Saturday and was not found until Sunday, when the library opened. He commended the library staff and facilities for doing a tremendous job in working to get the library up and running in the affected areas.
- The College of Fine Arts gave a great presentation at the last Board of Trustees meeting. There was healthy discussion which lasted for quite some time.
- The Board of Trustees accepted the Campus Master Plan, which is a roadmap of how the university will change physically in the next 15-20 years.
- The revised senate resolution, a result of the meetings with the Board of Trustees, is on today's agenda for consideration.
- The speaker at the May 6 commencement is Scott McCorkle, Chief Executive Officer of Salesforce Marketing Cloud and a 1989 graduate of Ball State.
- The next meeting of the Board of Trustees is May 5 and the only agenda item will be the budget for next year.

Interim President King answered the following questions from the membership of the senate:

- The Campus Master Plan, is it going to be available on a website for people to see what the future looks like for the university?

Bernie Hannon, Vice President for Business Affairs and Treasurer, indicated it will be up on its own website in two days.

Interim President King indicated there is talk of the east mall connecting the Village clear down to the Recreation and Wellness Center.

- A member of the senate indicated there are theories about the Koch Brothers/Papa John's donation and the strings that may be attached and issues connected to past presidents. Is there anything that people should know that would be of concern to that donation?

Interim President King reported the agreements are public information. The funds will be come from the John Schnatter Family Foundation and from the Charles Koch Foundation. There are no strings attached as the university will have complete control in hiring and what is taught in the program. He went on to talk about the development of the donation – Schnatter was our commencement speaker a year ago. We explained to him what Ball State was doing and how we develop activities at the university and how we solve problems and improve business practices. Mr. Schnatter was excited about that and asked if he could come back. He came early this past fall semester and one of the things he said to the group was this was exactly what he wanted to do and Ball State was so far and above other universities and he wanted to be a part of it. This partnership is good for the university. Mike Goldsby, the university's Chief Entrepreneurship Officer and Stoops Distinguished Professor of Entrepreneurship, will lead the John H. Schnatter Institute for Entrepreneurship and Free Enterprise. There was no connection between the gift and the transition in presidential leadership.

- A member of the senate spoke of the new policy of faculty not having the option to teach classes that were underenrolled. What is the reason behind this?

Interim President King reported there was no change in the policy.

8. Question and Answer Period

There were no questions.

9. Unfinished Business

There was no unfinished business.

10. New Business

A. Conflict of Interest/Conflict of Commitment Policy Revisions (University Senate Agenda, 4/28/16, Enclosure #5)

The chair of the senate reiterated this was spearheaded by an ad hoc committee in response to meeting federal regulations. It was four years in the process. A motion was made and seconded (Beane/R. Johnson) to place on the floor for discussion.

Discussion ensued. Bruce Frankel, professor of urban planning, College of Architecture and Planning, presented challenges to the proposed policy (Attachment #1). He is in favor of tabling the policy.

Kalli McBride, Research Integrity and Export Control Officer, was present at today's meeting. In response to Frankel's comments, she does not recommend tabling the policy. She informed the senate that the university subject to these policies because we are public employees. The Ghost Employee policy is separate from this new policy. The Conflict of

Commitment/Conflict of Interest policy is solely institutional. The Board of Trustees does have their own legal requirements of reporting. In response to the issue of the Salary and Benefits document: The only place where performance is linked to this new policy is in a note (separating university and external activities). This entire policy refers to broader university activities.

Her presentation was interrupted by a motion and seconded (Marchant/Frankel) to table the discussion because, according to the senator making the motion, although her arguments seemed to be well-reasoned and researched it was in the best interest of time to move to table because she would need to repeat herself to the new members of the University Senate at the September senate meeting, regardless.

The motion to table the policy carried.

B. Add/Drop Policy Revisions (University Senate Agenda, 4/28/16, Enclosure #6)

A motion was made and seconded (Kessler/Beane) to place on the floor for discussion and approve the revision. There was no discussion.

The motion to revise the policy carried. It will be implemented spring semester, 2017.

C. Proposed Policy Enhancements to Sick Leave Days to Care for a Family Member and Adoption/Foster Care Placement of a Child for Faculty, Professional and Staff Personnel (University Senate Agenda, 4/28/16, Enclosure #7)

A motion was made and seconded (Taylor/Mahfouz) to place on the floor for discussion and approval. There was no discussion.

The motion to approve the policy carried.

D. Senate Resolution (University Senate Agenda, 4/28/16, Enclosure #8)

A motion was made and seconded to approve the resolution.

The motion carried.

11. Other Items

Amy Harden, chair of the University Senate, remarked she appreciated the opportunity to serve as chair these past couple of years. She wished the senate the best in their future endeavors. (There was applause for Amy in appreciation for her service to the senate.)

12. Adjournment

The meeting adjourned at 4:55 p.m.

Respectfully submitted,

Rachel Kraus, Secretary

/mt

ROA Policy Proposal Challenges

Preface & Synopsis

The proposed ROA policy attempts to make bureaucratically enforceable¹ the existing policies on Conflict of Interest and of Commitment. The impetus for this is the 2012 statute, the “Indiana Ghost Employment” law². The statute was prompted by “ghost” employment of employees not showing up for assigned work and excluded outside activities not performed during normal hours of employment; the ROA does not comply with this exclusion. Further, we question the law’s application to faculty and staff as we are not employed in the executive branch of Indiana government, but as an IRC 501c3 contract with the General Assembly for certain services. We have a Salary & Merit policy for faculty that obviates any need for a conflict of commitment.³ We need to retain a Conflict of Interest policy, but streamline it to waive common conflicts, such as assigning one’s own text in class.⁴ Beyond that the ROA is poorly constructed, as recited below. The proposed ROA policy is objectionable because it is onerous and, in large measure, unnecessary.

Critical Review

1. ROA is intrusive and unreasonably violates constitutional privacy rights that overarch the employer’s rights to set conditions of employment. Note also that full-time employment in any semester qualifies the employee under this policy for any activity during the entire calendar year. If on paid leave, does the policy apply? What is the basis for application of the policy to the single day per week on average of “consulting,” weekend activities, and semester break activities?
2. It cannot be readily administered in that:
 - a. It sets no standards for what constitutes the University’s interest⁵, which activities are “outside” yet contribute to “service,” [i.e, which are outside and which professional?⁶], and what level of outside activities cumulatively would cause a dereliction of University duties and not revealed in an annual evaluation of underperformance and multi-annual chronic underperformance. Apparently the Reportable Outside Activities Committee shall over time establish guidelines and do so outside the University’s governance system.
 - b. It sets no standards for a “completed” ROA form, which can be rejected. Further, it sets no regulation of time frames for application, review, decision and appeal, timely to participate in the outside activity; absent approval, then it favors no outside activities.⁷
 - c. It is autocratic, the judgment of a single “Outside Activities Officer” with no guidelines; there is an appeal procedure to AF&E of Faculty Council and the Reportable Outside Activities Committee, but establishes no basis for an appeal.
 - d. Without a “written policy” to conform to it is not an enforceable policy.⁸
3. It is prone to abuse and politics, and endangers the constitutional civil rights to speech and assembly. Can a member organize a labor union that may be counter to the University’s corporate interest? Can a member organize for LGBT rights in Indiana that may be counter to the State government’s policy and interest? Further, the ROA policy would apply to all actual or “perceived” conflicts of either interest or commitment; thus, despite the activity not qualifying as an actual conflict it may be disallowed as a perceived conflict, an unreasonably broad and amorphous standard of enforcement.
4. In a significant irony, the policy does not apply to the institution, just its employees. For example, the investments of the University are not subject to disclosure as a potential conflict of interest and at variance with the University’s mission [as expressed in the proposed ROA policy], as well as those investments and policies of the Board of Trustees. As the Board of

¹ 1.5 years in prison, \$10K fine as penalty for non-compliance

² Indiana Code 35-44.1-1-3

³ Indeed, the Salary & Merit policy is broader in that it accounts for excessive dawdling/ sleeping as a conflict of commitment activity.

⁴ See the policy at Purdue University as waiving a series of such matters

⁵ Section 2.4 “which advance the public and institutional mission of the University”

⁶ If included in a member’s Annual Report would this satisfy that the activity is professional and not outside? Including everything in the report would effectively boycott the policy.

⁷ The policy seems motivated by the State Executive and Administration, as per the inclusion post RFRA of a pre-review and censorship of all materials [marketing, public presentations] emanating from the State-BSU contract of My Community, My Vision.

⁸ Pp. 33 of Primer document and reference IC 35-44.1-1-3

Trustees members are not employed, and the conflict of interest may apply significantly to them, why not include them? Also, the University's Cabinet is excluded from this policy.⁹ Let there be no mistake of who is the governed and the government.

5. It is derived from a 2012 Indiana statute. Does the statute apply to us in a fashion reflected by the proposed ROA policy?
 - a. That law excludes any review of activities not conducted "during normal hours of employment." Accordingly, a State employee cannot promote religion, attempt to influence legislation or government policy, or attempt to influence election to public office during normal hours, but can conduct these activities on his/ her own time.¹⁰
 - b. The statute applies to the Executive branch only, and so can one find the administrative agency or authority under which BSU is subordinate? No, because we are an independent, private, nonprofit entity¹¹ and not supported in excess of 10% administratively by the government, and funded, in part, only for its contracted programs with the State?¹² No, because by University edict the Cabinet, as "employees," and the Board are not subject to this policy [see below]. Thus, we challenge the legal opinion of the University Administration that we are State government and the Ghost Employment Law applies.
6. In yet another irony and under the premise that we are all State employees, as the members of the University's Cabinet are excluded from ROA, they are included in the 2002 statute, and in serious violation of its provisions. These employees commonly and quite substantially lobby to "influence legislation and governmental policy...during normal hours of employment."
7. Indeed, the final irony is that the University Senate, the sole instrument in the governance system, outside of the President and the Board, to influence University [read "government"] policy, would have its members in violation of the 2012 statute in that the University is conducting such activity and during normal hours of employment. This accepts the premise that the University is an executive State agency and its faculty body constitutes State employees. We challenge this premise as incorrect and not the legislative intention.
8. The conflict of commitment is with the ROA policy, as unreasonably demanding on the employee as well as the university. Can one do his/ her job at BSU and comply with this onerous policy?
9. Lastly, no one will come here if this policy is instituted, and, thus, is counter to our mission and interests. It exists but is uncommon among the states, and we readily achieve a competitive disadvantage.

⁹ Not so at Purdue University, as quoted... "an employee of Purdue, wherever located, and whether full-time or part-time, including but not limited to *all executive officers*, faculty and staff.

¹⁰ Pp. 33 of Primer document and reference IC 35-44.1-1-3

¹¹ The IEDC is a IRC 506 public-private nonprofit corporation, establish to avoid the many regulations of an executive branch agency.

¹² New Jersey court ruling re. Rutgers University faculty