



MEETING OF THE BOARD OF GOVERNORS
Committee on University Governance

April 16, 2020 at 1:30 p.m.
Via Videoconference and UNC-TV Live Stream

AGENDA

OPEN SESSION

- A-1. Approval of the Minutes of March 19, 2020 David Powers
- A-2. UNC Policy Review David Powers
 - a. Section 200.1 of the UNC Policy Manual (Dual Memberships and Conflicts of Interest)
- A-3. East Carolina University Board of Trustees Appointment David Powers

CLOSED SESSION

- A-4. Approval of the Closed Session Minutes of February 20, 2020..... David Powers
- A-5. Legal Affairs Report.....Thomas Shanahan

OPEN SESSION

- A-6. Other BusinessDavid Powers
 - a. Student Elections Working Group
- A-7. Adjourn



Closed Session Motion

Motion to go into closed session to:

- Prevent the disclosure of information that is privileged or confidential under Article 7 of Chapter 126 of the North Carolina General Statutes, or not considered a public record within the meaning of Chapter 132 of the General Statutes; and
- Consult with our attorney to protect the attorney-client privilege.

Pursuant to: G.S. 143-318.11(a)(1) and (3).



MEETING OF THE BOARD OF GOVERNORS
Committee on University Governance

DRAFT MINUTES

March 19, 2020
University of North Carolina System Office
Center for School Leadership Development, Room 119
Chapel Hill, North Carolina

This meeting of the Committee on University Governance was presided over by Chair David Powers. The following committee members, constituting a quorum, were also present by phone: W. Louis Bissette, Jr., Pearl Burris-Floyd, Thomas H. Fetzer, Thomas C. Goolsby, Terry Hutchens, and James L. Holmes, Jr.

Chancellors participating were Jose Sartarelli and Peggy Valentine.

Staff members present included Thomas Shanahan, Meredith Steadman, and others from the UNC System Office.

1. Call to Order and Approval of OPEN Session Minutes (Item A-1)

The chair called the meeting to order at 1:49 p.m., on Thursday, March 19, 2020.

Chair Powers reminded all members of the committee of their duty under the State Government Ethics Act to avoid conflicts of interest and appearances of conflict of interest. The chair asked if there were any conflicts or appearances of conflict with respect to any matter coming before the committee. No members identified any conflicts at the time.

Following roll call, Mr. Powers turned the floor over to Interim President Roper to provide an update on the UNC System's response to the coronavirus pandemic and the work that each of the institutions and the UNC System Office are doing to assist University students, faculty, and staff during this difficult time.

The chair next called for a motion to approve the open session minutes of February 20, 2020.

MOTION: Resolved, that the Committee on University Governance approve the open session minutes of February 20, 2020.

Motion: Terry Hutchens

Motion carried

2. State Advisory Council on Indian Education Appointment (Item A-3)

The chair advised the committee of a vacancy on the State Advisory Council on Indian Education. Pursuant to statute, the council has 15 members, one of whom is appointed by the Board of Governors. The Board appointee

must be an American Indian and, preferably, a faculty member. Dr. Tiffany Locklear of UNC Pembroke is recommended for reappointment for a term of July 1, 2020, through June 30, 2022.

MOTION: Resolved, that Dr. Tiffany Locklear of UNC Pembroke be appointed to the State Advisory Council on Indian Education.

Motion: James L. Holmes, Jr.

Motion carried

3. East Carolina University Board of Trustees Member Complaint (Item A-3)

The committee next considered the complaint involving ECU Board of Trustees member Max Joyner. The chair reminded the committee that Section 200.7 of the UNC Policy Manual establishes the standards for ethical conduct and includes a reference to the State Ethics Act. Based on a review of the complaint and the response provided by Mr. Joyner, it appeared that the issue involves an interpretation of the State Ethics Act, which is overseen by the State Ethics Commission. The chair then moved that the committee recommend to the Board of Governors that the matter be referred to the State Ethics Commission for review and inquiry in accordance with the State Ethics Act. Mr. Fetzer then requested an amendment to the motion to include that a letter be sent to the ECU Board of Trustees chair, Vern Davenport, requesting that he exercise his discretion as chair of the board and, in accordance with the board's bylaws, suspend Mr. Joyner from his committee responsibilities pending resolution of the complaint.

MOTION: Resolved, that the committee recommend to the Board of Governors that the matter be referred to the State Ethics Commission for review and inquiry in accordance with the State Ethics Act; and to send an official letter to the ECU Board of Trustees Chair Vern Davenport requesting that the chair exercise his discretion, in accordance with the board's bylaws, to suspend Mr. Joyner from his committee responsibilities pending resolution of the complaint.

Motion: David Powers

Motion carried

4. Other Business (Item A-4)

The chair briefed the committee on two items. First, the status of the Student Working Group. The chair stated that he would soon announce the members of the working group, which will represent the diverse institutions across the System. Additionally, Mr. Powers requested System Office staff to compile election policies from the System institutions so that work can begin over the next few weeks.

Second, regarding spring commencements for this year, the chair advised the committee of the possibility commencements being postponed because of the COVID-19 pandemic. The committee will be updated as information becomes available.

5. Adjourn

There being no further business, the meeting adjourned at 2:25 p.m.

Thomas H. Fetzer, Secretary

AGENDA ITEM

A-2. Review of the UNC Policy ManualDavid Powers

- Situation:** The Committee on University Governance will review a number of policies over the 2019-20 academic year. The purpose of the review is to determine whether these policies are still needed, and whether these policies are still meeting their goals and purposes. This review process will help determine when changes are required to improve the effectiveness or clarify the University's policies and procedures.
- Background:** The committee will review and update, as needed, the following policies over the 2019-20 academic year.
- April 2020: Section 200.1 of the UNC Policy Manual (Dual Memberships and Conflicts of Interest)
- Assessment:** This item includes copies of Section 200.1 of the UNC Policy Manual (Dual Memberships and Conflicts of Interest) the committee will review.
- Action:** This item is for discussion only.

200.1

Adopted 05/11/84

Amended 06/09/89

Amended 09/08/89

Amended 05/11/91

Amended 06/08/01

Amended 11/09/07

Amended 09/18/09

Amended 12/15/17

Technical Corrections 04/25/19

Dual Memberships and Conflicts of Interest

The Board of Governors seeks at all times to be fair and impartial in carrying out its responsibilities and tries to avoid even the appearance of partiality or undue influence. To promote this objective the following guidelines are adopted as board policy and recommended to the members for their guidance:

1. Service on Foundation Boards or Boards of Visitors of Constituent Institutions

Members of the Board of Governors may, from time to time, be asked to serve simultaneously on a foundation board or a board of visitors or some similar board for one of the 16 constituent institutions. No matter how conscientious or successful a member may be in maintaining impartiality among constituent institutions, service on such a board will undoubtedly be construed by some as showing favoritism. It is also felt that some institutions will feel pressure to name members of the Board of Governors to such boards if service on them becomes commonplace. For these reasons members of the Board of Governors are encouraged to decline any such service.

2. Service on Boards of Private Colleges and Universities

Members of the Board of Governors may be asked to serve simultaneously on the board of a private college or university in North Carolina. While such an invitation is always an honor, there are potential areas of conflict in such dual memberships. A member should satisfy himself or herself that dual service will not interfere with his or her obligations either to the University of North Carolina or to the private institution.

3. Inquiries Concerning Admissions and Job Openings

From time to time a member of the Board of Governors may wish to inquire, either directly or through an officer of the University, about a job opening in the University or about the admission of an individual to an institution or to a program. Sometimes a Board member is asked to write a letter of recommendation on behalf of a candidate for a job or for admission. It is highly inappropriate to use one's position on the Board of Governors in an attempt to influence employment or admissions. It is not inappropriate, however, for a member to make inquiries or to write letters of recommendation on the member's personal or business stationery. It should always be clear that the Board member is not seeking a favor and understands that the decision in all cases will be made strictly on the merits.

4. Appointments by the Board of Governors

In order to avoid any appearance of undue influence, the Board of Governors will not consider for membership on any board to which it makes appointments any person who is a spouse of a Board of

Governors member, a brother or a sister or a lineal ancestor or descendant of a member, or the spouse of any such person. This policy shall not apply, however, to any person who may have been elected or appointed to any such board prior to the time the related person became a member of the Board of Governors. Nor shall the policy apply to any person who may already be serving on any such board at the time of the adoption of the policy. The Board of Governors will not consider for membership on any board to which it makes appointments any person who was a member of the Board of Governors at any time during the two-year period immediately preceding the effective date of the appointment. The boards to which this policy shall apply include the boards of trustees of the constituent institutions and all boards to which the Board of Governors make appointments.

5. Inappropriate Advantage Derived from Board Membership

a. **Purpose.** It is of critical importance that decisions made on behalf of the University by its governors, trustees, chief executive officers, and chief finance officers be in the best interest of the University and not be influenced by any potential financial gain to the decision-makers. Furthermore, to assure public confidence in the integrity of the University, it is important that the University not appear to be influenced by the personal financial interests of those in decision-making positions. The purpose of this policy is assure public confidence in the integrity of the University by preventing members of the governing boards and chief executive and finance officers of the University from using their positions, or appearing to use their positions, to influence the decisions of the University for their personal financial gain while at the same time allowing the University to take advantage of contracts that are advantageous to the citizens of North Carolina and to the University and also avoiding having service to the University be so restrictive that persons with substantial financial interests will be reluctant to serve.

b. Definitions

As used in this policy, the following terms have the following meanings:

- i. "Business entity" means a "business" as defined in G.S. 163A-152(5)¹ or a not for profit corporation.
- ii. "Person" means a member of the Board of Governors or of a board of trustees of a constituent institution, the vice president for finance, a chancellor, or the chief finance officer of a constituent institution.
- iii. "Substantial interest" means any of the following:
 1. A "business with which associated" as that term is defined in G.S. 163A-152(7),² except that ownership of more than \$10,000 in a publicly traded corporation by itself is not a substantial interest; or
 2. A "nonprofit corporation or organization with which associated" as that term is defined in G.S. 163A-152(54),³ except that uncompensated service as a director, officer, or trustee of a not for profit corporation is not a substantial interest.
- iv. "The University" as applied to members of the Board of Governors, the president, and the vice president for finance means the University of North Carolina System Office (UNC System Office) or any of the constituent institutions. The University as applied to

members of the boards of trustees, a chancellor, or a chief finance officer of a constituent institution means the constituent institution on whose board of trustees the member serves or at which the chancellor or chief finance officer is employed.

c. Requirements

i. Each person must contemporaneously submit to the vice president of finance, each Statement of Economic Interests that the person files with the State Ethics Commission pursuant to G.S. 163A-187. These disclosure statements are public records.

ii. Whenever a person has actual knowledge that a business entity in which the person has a substantial interest is attempting or planning to enter, is entering, or has entered into a contract with the University, the person must report the nature of the person's substantial interest and the nature of the contract to the chief finance officer of the institution that is or would be a party to the contract. If the person is a chief finance officer, then the chief finance officer must make this report to the chancellor or to the president of the institution that is or would be a party to the contract. Reports required by this paragraph shall be in writing and will be public records retained by the respective chief finance officers.

iii. The University will not enter into a contract with a value of \$10,000 or more, or with expected payments of \$10,000 or more per year, with a business entity in which a person has a substantial interest, unless one of the exceptions in paragraph c.iv., applies. A person will not in any way:

1. Participate in making a contract;
2. Attempt to cause or influence the University to make a contract; or
3. Attempt to influence the contract specifications or contracting process concerning a contract between a business entity in which the person has a substantial interest and the University.

The vice president for finance and the respective chief finance officers of the constituent institutions are responsible for determining whether the University is entering into a contract with a value of \$10,000 or more with a business entity in which a person has a substantial interest.

iv. The restrictions on entering into a contract in paragraph c.iii., do not apply if the person with the substantial interest does not participate in making or administering the contract and:

1. The contract results from a competitive sealed bid or a competitive request for proposals with specifications and criteria;
2. The contract is for goods or services sold or provided to the general public at a uniform price or is for goods on state contract sold to state agencies at a uniform price, unless the contract is prohibited by state law;

3. The contract is an employment contract with the dependent child or spouse of the president, the vice president for finance, a chancellor, or chief finance officer, or the dependent child of a member of the Board of Governors or a board of trustees and the employment is allowed under Section 300.4.2 of the UNC Policy Manual;

4. The contract is with a bank or a public utility; or

5. The committee of the Board of Governors or of the relevant board of trustees designated pursuant to paragraph d.i., below, finds that the contract is in the best interest of the University. Examples of when a contract might be in the best interest of the University include, but are not limited to, when it has financially advantageous terms, when the goods or services to be provided are demonstrated to be unique, or when the contract is a continuation of a contract that was in effect before the person with the substantial interest became affiliated with the University.

v. If a person is an employee or agent of a business entity, the person shall not attempt to influence the University to enter into a contract with the business entity that employs or retains the person.

vi. A person shall not attempt to influence the administration of or payments under a contract between the University and a business entity in which the person has a substantial interest or between the University and the person's employer.

vii. No person shall disclose or use confidential information or information concerning economic development or technology research or development which the person received in his capacity as a board member or employee of the University for the person's financial gain.

viii. No person shall accept a gift or favor from a business entity, or the principal in a business entity, which has entered into a contract with the University within the past year, who currently has a contract with the University, or who intends to attempt to enter into a contract with the University if the person:

1. Has or will prepare plans, specifications, criteria or estimates for the contract;
2. Awards, approves, negotiates, or administers the contract; or
3. Inspects or supervises the contract.

This paragraph does not prohibit the receipt of advertising items of nominal value, awards such as plaques or trophies, food served at professional meetings or banquets, or gifts from family members or personal friends when it is clear that the friendship extends beyond the business relationship.

ix. A person shall not represent, as attorney, agent, or trustee, a third party who has an adverse relationship with the University. A person shall attempt to dissuade a firm or

business entity in which the person has a substantial interest from engaging in representation adverse to the University.

d. Procedures

i. The chair of the Board of Governors and each chair of a board of trustees shall designate a standing committee to determine whether a potential conflict is a permissible or impermissible activity and to make recommended findings as to whether this policy has been violated.

ii. Potential conflicts:

1. Any person who receives a report of a potential conflict shall forward that report to the chief finance officer of the institution that is or would be a party to the contract.

2. If the person with the substantial interest claims or the chief finance officer believes that the contract is permissible pursuant to paragraph c.iv.1., 2., 3., or 4., above, the determination of whether the contract is permissible or impermissible may be made by the respective president or chancellor, or the president or chancellor may request that the designated committee make the determination. Any determination by the president or a chancellor shall be in writing and shall be a public record.

3. If the person claims that the contract is permissible pursuant to paragraph c.iv.5., above, because the contract is in the best interest of the University, or if a chancellor or the president refers a conflict question to the committee, then the designated committee shall determine whether the proposed contract is a permissible or impermissible activity under this policy and shall enter its determination in the minutes of its proceedings.

4. If the person who has the potential conflict is a member of the designated committee, the person shall not participate in the deliberations of the committee, other than to present the relevant facts to the committee, and shall abstain from voting.

iii. Allegations of conflict

1. If any person or any senior academic or administrative officer (SAAO) becomes aware or alleges that a person covered by this policy has violated this policy, the person shall report the alleged violation to the chancellor or President of the institution that is or would be a party to the contract.

2. The person who receives the allegation shall forward the allegation:

a. To the designated committee of the board of trustees or of the Board of Governors if the person alleged to have violated this policy is a member of that board;

b. To the designated committee of the Board of Governors if the president is alleged to have violated this policy;

c. To the president if the person alleged to have violated this policy is a chancellor or the vice president for finance; or

d. To the respective chancellor if the person is a chief finance officer of that constituent institution.

3. If the person alleged to have violated the policy is the President or a member of a Board of Governors or of the board of trustees, then the designated committee will determine whether or not the policy has been violated. The chairperson of the designated committee will designate an individual to investigate the allegations and to make a report to the committee. After considering the report of the investigation and any response by the person alleged to have violated the policy, the committee shall make a determination as to whether the policy has been violated and, if so, a recommendation as to the appropriate sanction to the respective board of trustees or Board of Governors. The board of trustees or Board of Governors shall vote to affirm, reject, or modify the recommendation.

4. If the person who has the potential conflict is a member of the designated committee, the person shall not participate in the deliberations of the committee, other than to present the relevant facts and arguments to the committee on his own behalf, and shall abstain from voting.

5. A Board of Governors member, board of trustees member, or president who is alleged to have violated this policy is entitled to receive notice of the allegation, to be present to hear the report presented to the designated committee, and to inform the committee of any facts or arguments that demonstrate that he or she did not violate the policy.

6. If the vice president for finance, a chief finance officer or a chancellor is alleged to have violated this policy, that allegation will be investigated and acted upon in accordance with the procedures for disciplining, demoting, dismissing, or terminating the contract of employees of that position.

iv. The president will present this policy annually to the Board of Governors and will present it to new members at the beginning of their service. The chancellors will present this policy annually to their respective Boards of Trustees and will present it to new members at the beginning of their service.

e. Sanctions

i. If the Board of Governors or a board of trustees finds that one of its members has violated this policy, the Board may take one or more of the following actions:

1. Reprimand or censure the member;

2. Remove the person from any board office the person holds or from any committee chairmanship or assignment; and
 3. Report the violation to the entity that appointed the member.
- ii. If the Board of Governors finds that the president has violated this policy, the Board of Governors may discipline, demote or dismiss the president, as it deems appropriate.
 - iii. If the president finds that the vice president for finance has violated this policy, the president may discipline, demote, or dismiss the vice president, and shall report the violation and the action taken by the president to the Board of Governors.
 - iv. If the president finds that a chancellor has violated this policy, the president may discipline the chancellor and report the action taken to the Board of Governors and the relevant board of trustees, or the president may recommend to the Board of Governors that the employment of the chancellor be terminated and that the chancellor be demoted or dismissed.
 - v. If a chancellor finds that a chief finance officer has violated this policy, the chancellor may discipline, demote or dismiss the chief finance officer and shall report the violation and the action taken to the president and the board of trustees.
 - vi. Pursuant to North Carolina law, any contract between the University and an entity in which a person has a substantial interest which was entered into in violation of state laws governing conflicts of interest is void.

The provisions of Section 5 are effective July 1, 2001. Initial disclosure forms will be filed on or before October 1, 2001. The provisions of paragraph c.iii., will apply to all contracts entered into after January 1, 2002. The Statement of Economic Interest replaces all disclosure forms due to be filed on or after July 1, 2007; the initial Statement of Economic Interest for people employed or in office on January 1, 2008, must be submitted to the vice president for finance by April 15, 2008.

¹ G.S. 163A-152(5) defines a "business" as, "Any of the following organized for profit:

- a. Association.
- b. Business trust.
- c. Corporation.
- d. Enterprise.
- e. Joint venture.
- f. Organization.
- g. Partnership.
- h. Proprietorship.
- i. Vested trust.
- j. Every other business interest, including ownership or use of land for income."

² G.S. 163A-152(7) Business with which associated. A business in which the covered person or filing person or any member of that covered person's or filing person's immediate family does any of the following:

- a. Is an employee.
- b. Holds a position as a director, officer, partner, proprietor, or member or manager of a limited liability company, irrespective of the amount of compensation received or the amount of the interest owned.

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- c. Owns a legal, equitable, or beneficial interest of ten thousand dollars (\$10,000) or more in the business or five percent of the business, whichever is less, other than as a trustee on a deed of trust.
 - d. Is a lobbyist registered under Article 8 of Chapter 163A of the General Statutes.

For purposes of this subdivision, the term "business" shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

- 1. The covered person, filing person, or a member of the covered person's or filing person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.
- 2. The fund is publicly traded, or the fund's assets are widely diversified.

³ G.S. 163A-152(54) Nonprofit corporation or organization with which associated. Any not for profit corporation, organization, or association, incorporated or otherwise, that is organized or operating in the state primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the covered person, filing person, or any member of the covered person's or filing person's immediate family is a director, officer, governing board member, employee, lobbyist registered under Article 8 of Chapter 163A of the General Statutes or independent contractor. Nonprofit corporation or organization with which associated shall not include any board, entity, or other organization created by this State or by any political subdivision of this state.



AGENDA ITEM

A-3. East Carolina University Board of Trustees Appointment.....David Powers

Situation: East Carolina University (ECU) Board of Trustees has one partial-term vacancy effective February 7, 2020 and ending on June 30, 2023.

Background: Mr. Phil Lewis was elected by the Board of Governors to serve a term on the ECU Board of Trustees on July 1, 2019. Mr. Lewis submitted his resignation effective immediately on February 7, 2020.

Assessment: Mr. Van Isley is recommended for appointment to fill this vacancy.

Action: This item requires a vote by the committee and a vote by the full Board of Governors.

East Carolina University Board of Trustees Appointment

Van Isley

Van Isley is founder and the chief executive officer of Professional Builders Supply, LLC, a full-service building supply company headquartered in North Carolina's triangle region, serving throughout the Carolinas. Isley spent eight years serving as a certified public accountant, working with Price Waterhouse in Raleigh, North Carolina. He then went on to manage operations for a national building dealer in Greenville, SC; Atlanta, GA; and Raleigh, NC. After getting 10 years of building material experience under his belt, Isley founded Professional Builders Supply, LLC.

Isley is a graduate of East Carolina University, where he obtained a bachelor's degree in accounting. Isley is a member of the Board of Directors of the Raleigh/Wake County Home Builders Association. He also serves on the Board of Directors of the Southern Building Materials Association and the College of Business Advisory Council at East Carolina University. Isley, his wife Jennifer, and their sons Jake and Johnny reside in Raleigh, North Carolina.