

Minutes of the
NIU Board of Trustees
LEGISLATION, AUDIT AND EXTERNAL AFFAIRS COMMITTEE
March 6, 2007

CALL TO ORDER

The meeting was called to order by Acting Chair Marc Strauss 10:00 a.m. in Room 233 of NIU Hoffman Estates. Recording Secretary Sharon Banks-Wilkins conducted a roll call of Trustees. Members present were Trustee Myron Siegel (via Teleconference) and Trustee Marc Strauss. Not present was Chair George Moser. Also present were Committee Liaison Kathryn Buettner and Board Parliamentarian Kenneth Davidson. President John Peters joined the meeting in progress.

VERIFICATION OF APPROPRIATE NOTICE OF PUBLIC MEETING

Confirmation of Open Meetings Act public notice compliance was given by Parliamentarian Kenneth Davidson. Though you have no quorum, Mr. Davidson said, we are in a position to go forward. This is an unofficial meeting.

CHAIR'S COMMENTS

We have no quorum, Acting Chair Strauss said, so we will proceed as if these are all informational items and attempt to adhere to the agenda provided. Before we do that, I would like to welcome University Advisory Committee representative Sara Clayton, President of the Operating Staff Council.

MEETING AGENDA APPROVAL

No approval due to lack of quorum.

REVIEW AND APPROVAL OF MINUTES

No approval due to lack of quorum.

PUBLIC COMMENT

No members of the public had registered a written request to address the Board in accordance with state law and Board of Trustees *Bylaws*.

UNIVERSITY REPORT

Agenda Item 7.a. – Northern Illinois Technology Triangle Intergovernmental Agreement

Ken Zehnder, Associate Director, External Affairs, briefed the committee on the Northern Illinois Technology Triangle. This proposal is an intergovernmental agreement to implement broadband Internet connection in the northern Illinois area. Originally, the group was formed to advocate for the installation of high-speed optic fiber along the Illinois 39 corridor. The participants in the discussions were Boone County, the City of Rochelle, the City of Rockford, Ogle County, Winnebago County and NIU. The planning effort was to get the fiber laid and to work with IDOT to try to access their land corridor. We were more successful than we originally envisioned, because the effort resulted in the Department of Transportation not only allowing the land to be used, but they are paying the costs for the installation of the fiber along that corridor. At that point, activating the fiber and providing the extensions to the end users became the focus of the NITT group. An Illinois Commerce Commission grant was available to assist in extending high-speed Internet to the rural areas. The NITT participants sent in an application and were granted a matching million dollar grant on a three-to-one match basis. The potential benefits of the completion of this loop, which would be the I-39 corridor and the existing tollway fiber on Interstate 90

and I-88 are that it will complete a loop and provide for redundancy. Then we will be able to also access the Rockford campus and the rural areas as well as the municipalities along that corridor. Under the intergovernmental agreement, they would be hiring a management group to operate it similar to the way the tollway operates their fiber now for both public and private use. For NIU, it would be strictly public usage and identified, dedicated fiber for university purposes only. The other public fiber would be laid within the same trench but would be separate fiber cables. All but Northern and Rockford have approved the earlier forms of this agreement. Some adjustments have been made to it following review by our legal staff. In reply to a query from Trustee Strauss, Mr. Zehnder stated that the Department of Transportation will own the main fiber along I-39 and if maintenance is required, that will be IDOT's responsibility.

Wally Czerniak, Associate Vice President for Information Technology Services, stated that typically a twenty-year right-to-use license fee is paid to Adesta based on per mile of fiber you get from them. The user has to pay the connection and installation costs to connect to that fiber. Then there is a minor annual fee of less than one or two percent for any maintenance or problems with the fiber if it is accidentally cut or someone has to test it. With IDOT, while we assume it will be similar to the way the tollway operates, they have not made any statements yet. Right now, approval of this item commits NIU, as a part of NITT, to pay dues.

The extension obligations or the configurations that would be developed are on a voluntary participation basis, Mr. Zehnder said, so each individual signatory could participate in those actions that benefited them.

In answer to a question from Trustee Siegel, Mr. Czerniak stated that the benefit for NIU joining this commission is that we will actually be a voting member.

To summarize, Mr. Zehnder said, first, we will be voting on the configuration to take place in the future. Second, we will be eligible for the matching grants for the last mile connections that serve our purposes from I-90 to NIU Rockford, and we can participate in the Illinois Commerce Commission grant matching funds. And third, it is basically to meet our regional mission in northern Illinois.

Acting Chair Strauss said that due to the lack of a quorum under the revisions to the Open Meetings Act, the item would be forwarded to the full Board with the consensus of the committee.

Agenda Item 7.c. – Illinois Higher Education FY08 Budget

The IBHE GRF recommendation for Fiscal Year 2008 for the universities was an increase of \$19.8 million, or 1.5 percent, over 2007, Mr. Zehnder reported. An additional .5 percent, or \$6.6 million, was made available to fund state priorities in teacher preparation and healthcare education. That is money that will be allocated according to the proposals put forward by the universities. The NIU proposal was dedicated to healthcare professions, nursing and mental health. This is an initiative that ties in and contributes to the key workforce needs in Illinois. That is one of the main criteria the Governor's Office and IBHE will be using in making recommendations on this .5 percent additional money. Also, the \$700,000 funding for our CHANCE program, which was an add-on item last year, was included in our base budget this year.

Trustee Siegel disconnected from the meeting at this point.

The 2007 GRF budget for NIU was approximately \$104 million. In 2008, it is proposed at \$105.5 million, an increase of a little over \$1.5 million, or 1.5 percent. The budget priorities identified with this money were to retain critical faculty, address utility cost increases and meet minimum wage increases.

On both the capital and operations side of the budget, we will know more tomorrow when the Governor gives his budget address. The Board of Higher Education recommended \$414.5 million in regular capital projects. The planning funds for Stevens Hall came in at number 10 on the IBHE list at \$1.6 million. The Stevens construction funding for \$17.6 million was at number 19. The cutoff to include all of the Stevens funding is \$292 million. So, if the IBHE was fully funded at their recommendation level, the Stevens project would be completed as well as number 26 on the IBHE list, the NIU Computer Science and Technology Building planning funds.

President Peters presented the case for an increase to our base budget and our capital program to the House Appropriations Committee last week, and the committee chairman indicated there will be another opportunity for the universities to present their cases for their budgets following the Governor's budget address. The Senate Appropriation Hearing is scheduled for March 29.

Agenda Item 7.b. – Illinois General Assembly Substantive Report

Over 5,000 pieces of legislation have been introduced this year, Mr. Zehnder said. For higher education purposes, we are tracking approximately 200 at this point. There are a number of bills addressing scholarships and grants, some of which are subject to appropriation, which makes it hard to get those bills implemented. There are a number of Open Meetings Act adjustments which we will be tracking and working on with General Counsel Ken Davidson. We are also tracking a number of Internet security provisions; screening issues in libraries; and a number of tax provisions, one which would provide a sales tax exemption on textbooks. Task forces have been formed to review textbooks and university rental programs.

Also, we have been tracking some of the more controversial bills. House bill 414, sponsored by Aaron Schock, Peoria, provides for community college housing. Right now, community colleges are not permitted to have dormitory housing owned by the community college. That bill did leave committee with the prevailing thought that in the rural areas, there is some justification for it. It has not been to the floor for a vote as yet. A large part of the concern about this bill was actually addressing House Bill 1434, a reintroduction of the Harper pilot project to allow for baccalaureate degree programs in two areas. They have a new sponsor this year, freshman legislator Fred Crespo. Last year it was heard in the Higher Education Committee. This year, the Speaker allowed it to be placed in the local government committee, giving us a new group of legislators to work with and educate on the issue. That hearing is going to be held tomorrow afternoon, and the bill may or may not be called.

Other bills that we are tracking include House Bill 1621, sponsored by Linda Chapa LaVia. This is a veteran's preference bill that concerns the level at which veterans would be permitted admission to the university, which would alter the way we currently operate. We have been working with Ruth Munson from Elgin on her Social Security identity protection bills and the fact that although the university has made great efforts to provide alternative identification numbers for students, social security numbers are still required for federal grant purposes. Senate Bill 1342, sponsored by Senator Schoenberg was introduced last year in the House and is this year being introduced in the Senate. It is the Governmental Ethics or, more specifically, the Naming Rights Bill. There is concern about how that would impact our ability to work with the Foundation and Athletics, university efforts to raise funds and fund endowed chairs, as well as capital renovations.

Mr. Zehnder explained that House Bill 330, Higher Education Student Assistance Act, is one of a number of bills introduced to accommodate low-income and middle-income family funding levels through MAP grants.

Agenda Item 7.d. – Congressional Report

The Higher Education Reauthorization Act is an issue that this committee has tracked for several years, Ms. Buettner said. With the new Congress, initially there were those that thought it would come up rather quickly for debate and would pass. However, the No Child Left Behind, which is the Elementary Education and Secondary Education Reauthorization Act, is up again for renewal this year. During the beginning of the Bush administration, this was the centerpiece of his elementary and secondary education plan. It is up for reauthorization and seems to be gathering strength in Washington. And so, the Higher Education Reauthorization continues to take a back seat. Through June 30, 2007, the universities will continue to operate under the current Higher Education Reauthorization Act provisions under which we have operated for the past nine years, and we will probably be given another extension. The No Child Left Behind, or the Elementary and Secondary Reauthorization debate, will quickly gain center stage in the educational forums in Washington. Many of you are aware that when the new Speaker came to power, the House switched from Republican to Democrat. They had six proposals for the first hundred hours, and one of those proposals involved the reduction of interest rates for students who borrowed to attend universities or colleges. The rate initially was supposed to be cut in half the first

year. Of course that proved to be too expensive, so there was a formula set up to reduce the interest rate by half over four year's time, and that was passed.

And finally, we came into this new Congress with only the Defense and the Homeland Security bills passed for Fiscal Year 2007. The appropriation bills passed, but the rest of the budget was not passed when this new Congress started. The federal fiscal year begins October 1, so they have been operating on last year's money, which makes it difficult for agencies with no increase. For about six weeks, this congress studied this, made some changes and ended up basically wiping out all of the earmarks across the board. But they were able to increase the Pell awards for the first time in three or four years to \$4,310 per student. So that was a positive for students enrolled in colleges and universities across the country. In addition, within the final budget agreed upon by members of the House, the Office of Science in the Department of Energy, had their budget increased by almost \$200 million. That is a significant benefit to the State of Illinois, because both FermiLab and Argonne make up over 25 percent of the base budget of the Office of Science. So that is a substantial increase in the budget available to FermiLab and Argonne, which also benefits the universities that have relationships with them.

Agenda Item 7.e. – Bush Administration FY08 Budget

President Bush released the recommendations for his FY08 budget early in February. Some of those that apply to higher education are listed in your reports. He also has decided to increase the maximum Pell Grant award to \$4,600, a \$550 increase. This is a positive increase and one we have not had for a significant amount of time. His budget also provides for a consistent increase in gap grant awards. As you know, the universities across the country have been struggling with the gap funding that has emerged because tuition rates are going up and the Pell Grants and federal financial aid programs have not kept pace. So, for the people that are most needy, a gap continues to grow annually between aid and the actual tuition costs and fees. We have spent time addressing that here at NIU, and other universities across the country are dealing with this issue as well. It is becoming a major affordability issue for those who really need access to these grants which are funded on need-based aid. In addition, the President indicated that he wants to continue to eliminate SEOG grants, Perkins Loans and LEAP. He has attempted that for the last two years, and Congress has overruled him both times. I do not expect that to change.

Agenda Item 7.f. – Statement on Auditing Standards (SAS) No. 112

Internal Auditor Director Sharon Downen reported that the Statement on Auditing Standard No. 112 was issued by the Institute of Certified Public Accountants in May 2006 and will affect financial statements for periods ending on or after December 15, 2006, which will affect the university's financial statements for Fiscal Year 2007. The most significant change that will result from this new statement is that the control deficiencies will depend on the potential for misstatements of the financial statements rather than an actual misstatement. We now will be using something that has loosely defined "what if" parameters rather than a well defined "what is" environment. There will be a lot more latitude on the part of our auditors to determine whether or not a deficiency is serious enough to be reported as part of our external audit report. Consequently, there is some probability that the audit report for Fiscal Year 2007 will include more findings, which will not necessarily be reflective of a change in conditions or a decrease in controls, but more likely the application of this new standard.

In answer to a question from Trustee Strauss, Ms. Downen stated that Keith Jackson, Wally Czerniak and she had met on this issue. In our opinion, she said, one of the things that might come up in this situation is the documentation of our controls. We may have controls in place, but the documentation of all those controls may not be as robust as the external auditors might want them to be. We are also paying special attention to our financial statement closing processes as well as some of the IT access controls.

Agenda Item 7.g. – FY05 Compliance Audit

Mr. Buettner reported that the FY05 Compliance Audit, which had previously been submitted to this committee and to the full Board, was accepted on the consent calendar of the Legislative Audit Commission meeting held in December for the third or fourth year in a row. This speaks to the fact that the Auditor General and the staff that run the Audit Commission feel comfortable with the audits that are coming from our independent external auditors.

OTHER MATTERS

Recording Industry Association of America

Ken Davidson, Board Parliamentarian, gave a brief report on the Recording Industry Association of America position on illegal downloading of music by university students. Each of the Board members has been previously advised of what the university is doing, Mr. Davidson said, but members of the public have not been briefed on this, so I will give you some background on what has already occurred. The Recording Industry Association of America is the trade group that represents certain artists and copyright holders of music and music performance and the fixation of music in data form. As such, they are tasked with the role of asserting the legal copyright interests of the artists, engineers and others who have interests in copyrighted music to protect them legally. In the last few years since the passage of the Digital Millennium Copyright Act, an enhancement to federal law to deal with Peer-to-Peer kinds of copyright infringement risks, universities have maintained systems, and with that came certain risks. The industry managed to obtain from Congress protective legislation to deal with the evolving technology. To balance the industrial interests that arose through that statute, the ISP providers, such as the universities, were given certain kinds of safe harbors for which they could qualify and avoid claims of liability. Wally Czerniak, Associate Vice President for Information Technology Services, and the security team in his area work diligently to maintain an awareness of our duties and the factual situations that arise from time to time when our ISP users are tempted to overuse or misuse the services that we provide.

Approximately a week ago, late in the afternoon, I received an e-mail from the executive vice president and general counsel of RIAA as a courtesy notification to let me know that the next morning our IT security officer and registered agent under the Digital Millennium Copyright Act would receive notices via e-mail concerning 28 users of university resources. And in each of these messages, there would be an assertion of certain facts that could constitute violations of the Digital Millennium Copyright Act. As the ISP provider, we were asked to pass on this information sent to our security chief to the users, whether they were employees or students. I communicated that to the President, and we communicated it to the Board of Trustees. We formed an issues group to understand and process what had occurred, what was likely to occur, and to identify resources that could be communicated, should students be the focus, to make sure that they had access to competent legal counsel. Students were the focus, and legal counsel has been arranged. The Student Legal Assistance Office, a component of the Student Association, has limited resources and is simply not equipped to appear in direct representation of their student clients in federal court. However, they are positioning themselves to give initial counsel to any of the students who might seek their guidance and assistance. They have also endeavored to make contacts with specialist practitioners in the Chicago area that might receive referrals in the event litigation should come in some of these cases.

Wally Czerniak stated that he had received an update that morning. We have IP addresses only, not specific people, to track through logs. Tracking takes a minimum of two hours per IP address, and we can only track them if that address has been used within the last two to four weeks. Because there was a limit on this offer and to make sure we gained the students' attention right away, we deactivated their accounts and made calls to their rooms. As of late yesterday afternoon, approximately a third of them had contacted us and been given those letters. These students are preparing to leave for spring break, so we have caused them significant grief by shutting down their systems. However, we are turning them back on as soon as they come in so they have no problems completing their school work.

We have no way of knowing whether those students who were identified actually used that IP address at that time, Mr. Czerniak said. On the requests we served, at least 10 to 15 percent say they did not do this. We are very conscious of due process in our obligations of fair treatment for anyone who might receive an assertion against them, Mr. Davidson said.

The number of downloads they have found seems significant, Mr. Czerniak reported. The RIAA has made the complaint that we open our big networks to the students and, therefore, enable this kind of activity. But that simply is not true. We control the networks that we supply to the students. But for things like P2P and others that are not truly educational, we restrict the flow of traffic and always have. We have been very conscientious about doing due diligence to protect our students and to educate them

on the things that are illegal. We have invested quite a bit in hardware and software to track P2P type programs legally, without violating rights and looking at the data. The problem is that technology is advancing more quickly than the laws, policies and procedures. It takes a while for the laws, the attitudes and the people to change and deal with those issues, and that will continue.

Most of the 13 CIO's from the other universities that were targeted and I met via teleconference last night. While we have no facts as yet, we know that our student use of P2P from a data transport perspective has not increased over the last three years. More importantly, our complaints from the RIAA have been on the decline until this January when all of a sudden we were inundated with requests. It appears that they specifically targeted and did a search of our sites. So when they announced that NIU was number 13 on this list, it was not because usage had gone up. It was because they had looked for it and then found it. The majority of other universities we talked to were clearly supporting the DMCA.

As a point of clarification, Mr. Czerniak said, they are not going after the students who have downloaded the music. They are going after the students who have file-sharing programs on their machines. Most P2P software opens up the machine to that kind of activity, and through that program, whatever content they have on their machines is being shared with the public. So it is not that our students were downloading more and got caught. These students may have legal copies of the software on their machines and then gone to a web site, downloaded something to get one song, and opened up their machines, and everything they had downloaded, to the public. Unfortunately, it is not always obvious what it is going to open up their computers. Every semester we caution students that if they have downloaded certain programs, they should turn them off because they can get them in trouble.

I would like to make one last comment, Mr. Czerniak said. NIU has taken significant affirmative action in this issue. I sit on three different committees – NASULGC, EDUCAUSE and ACUDA – dealing with this. I have been in meetings where we have called the RIAA in and asked what we can do to keep our students from being arrested or fined. We have been very aggressive in trying to deal with this issue. We believe in copyright and the law, we do what we can. NIU pioneered RUCKUS, and there has been a lot of activity in this area by others as well. We have worked with people and spent a lot of time and money to help these record companies and feel we have been targeted unfairly.

There is a basis for some congressional relief on this, Mr. Davidson said, there is debate and discussion occurring in Washington now. As Mr. Czerniak just pointed out, you can innocently have something happen because of the consequences of clicking on something on a web site. And that kind of innocent or accidental infringement or participation in acts towards infringement ought to be protected. It is bad public policy to have the consumer exposed to that kind of risk and then have the judicial systems used against them in this way. There is clearly a basis for remedial action in Congress.

The House Judiciary Committee meets Thursday this week and takes testimony on this very issue, Ms. Buettner said. The two universities that will be representing the 13 of us who received these notices are Purdue and UCLA. So they are already reviewing this in Congress, and I hope they will have a solution for us in the next couple of months.

I am gratified to know that we have attempted to provide some assistance to the students that are caught in this mess, Trustee Strauss said, and also that we have paid attention to what we need to do in order to make a claim that the university is without liability as a contributory infringer.

NEXT MEETING DATE

The next meeting of the Legislation, Audit and External Affairs Committee will be held on Tuesday, June 5, at 10:00 a.m. in Hoffman Estates.

ADJOURNMENT

Trustee Strauss closed the meeting at 11:55 a.m.

Respectfully submitted,

Sharon M. Banks-Wilkins
Recording Secretary