



Annual BOV Meeting - July 28, 2017

Annual BOV Meeting - July 28, 2017

Board of Visitors Meeting Agenda for July 28, 2017

BOV Annual Meeting Agenda - Friday, July 28, 2017.pdf

8:30 - 9:00 a.m.	Continental Breakfast Merten 1205	
9:00 a.m.	Call to Order	
9:00 - 9:05 a.m.	Approval of Minutes (ACTION ITEMS)	ACTION ITEMS
	Executive Committee Meeting Minutes for May 11, 2017	
	Minutes-May 11, 2017 - Executive Committee.pdf	
	Meeting Minutes for May 11, 2017	
	Minutes-May 11, 2017 - Full Board.pdf	
9:05 - 9:20 a.m.	Election of Officers and Committee Appointments	ACTION ITEMS
	Secretary	
	Executive Committee Members-At-Large (2)	
	Committee Appointments	
	Committee Chair and Vice Chair Appointments	
9:20 - 9:50 a.m.	President's Report	Ángel Cabrera
	Closed Session Personnel Matter (Code of VA: §2.2-3711.A.1)	
9:50 - 10:00 a.m.	Board Orientation	
	Legal Overview	Tom Moncure
	Legal Authority of the Board	
	BOV Legal Authority Memo 2017.docx	
	Student Referrals/Admissions	
	BOV Admissions Assistance Memo 7-28-2017.doc	
	Code of Ethics – Annual Review and Certification	
	BOV Code of Ethics - Approved 5.7.2014.pdf	
	Recent Legislation – HR 431	

HR 431 - Encouraging public institutions of higher education in the Commonwealth to protect free speech.pdf

FOIA FAQs for BOV Members

FOIA FAQs for BOV July 2017.docx

10:00 - 10:45
a.m.

New Business

Academic Programs, Diversity, and University Community

APDUC Updates

Faculty Actions

ACTION ITEMS

Faculty Actions - July 28, 2017.pdf

Conferral of Emeritus/Emerita Status

Elections of New Hires

Classified Information Access

ACTION ITEM

BOV Summary Brief for Classified Information Access - 2017.docx

BOV Classified Information Access Resolution 2017.doc

Documents and Records Request Policy

ACTION ITEM

Document and Records Request Policy 7.28.2017.doc

Deficit Authorization Annual Notice

VII-D Deficit Authorization of Section 4-3 01.docx

Key Initiatives Update and FY 2018 Budget – State Impact

VII-E Key Initiatives Update and FY 2018 Budget - State Impact.docx

Six-Year Operating Plan Update

10:45 a.m. -
12:00 p.m.

Closed Session

Honorary Degrees and Special Awards (Code of VA: §2.2-3711.A.10)

Consultation with Legal Counsel (Code of VA: §2.2-3711.A.7)

Public Contract (Code of VA: §2.2-3711.A.29)

Personnel Matter (Code of VA: §2.2-3711.A.1)

12:00 p.m.

Adjournment

12:00 p.m.

Lunch

Merten 1202

**GEORGE MASON UNIVERSITY
BOARD OF VISITORS**

**Annual Meeting
July 28, 2017**

**Hazel Conference Room
Merten Hall 1201**

AGENDA

- 8:30 – 9:00 a.m. Continental Breakfast**
- 9:00 a.m. I. Call to Order**
- 9:00 a.m. – 9:05 a.m. II. Approval of Minutes (ACTION ITEMS)**
A. Executive Committee Meeting Minutes for May 11, 2017
B. Meeting Minutes for May 11, 2017
- 9:05 a.m. – 9:20 a.m. III. Election of Officers and Committee Appointments (ACTION ITEMS)**
A. Secretary
B. Executive Committee Members-At-Large (2)
C. Committee Appointments
D. Committee Chair and Vice Chair Appointments
- 9:20 a.m. – 9:50 a.m. IV. President’s Report**
- V. Closed Session**
A. Personnel Matter (Code of VA: §2.2-3711.A.1)
- 9:50 a.m. – 10:00 a.m. VI. Board Orientation**
A. Legal Overview
1. Legal Authority of the Board
2. Student Referrals/Admissions
3. Code of Ethics – Annual Review and Certification
B. Recent Legislation – HR 431
C. FOIA FAQs for BOV Members
- 10:00 a.m. – 10:45 a.m. VII. New Business**
A. Academic Programs, Diversity, and University Community
1. APDUC Updates
2. Faculty Actions (**ACTION ITEMS**)
a. Conferral of Emeritus/Emerita Status
b. Elections of New Hires
B. Classified Information Access (**ACTION ITEM**)
C. Documents and Records Request Policy (**ACTION ITEM**)
D. Deficit Authorization Annual Notice

- E. Key Initiatives Update and FY 2018 Budget – State Impact
- F. Six-Year Operating Plan Update

- 10:45 a.m. – 12:00 p.m. VII. Closed Session**
- A. Honorary Degrees and Special Awards (Code of VA: §2.2-3711.A.10)
 - B. Consultation with Legal Counsel (Code of VA: §2.2-3711.A.7)
 - C. Public Contract (Code of VA: §2.2-3711.A.29)
 - D. Personnel Matter (Code of VA: §2.2-3711.A.1)

12:00 p.m. VIII. Adjournment

12:00 p.m. Lunch

No public comment will be taken at this meeting.

**BOARD OF VISITORS
GEORGE MASON UNIVERSITY**

**Meeting of the Executive Committee
May 11, 2017
MINUTES**

PRESENT: Rector Davis and Vice Rector Peterson; Visitor Purvis; President Cabrera; and Secretary pro tem Cagle.

ABSENT: Secretary Corley and Visitor Hazel.

I. Rector Davis called the meeting to order at 8:04 a.m.

II. **Closed Session**

Rector Davis recognized Vice Rector Peterson for a motion to go into Closed Session. It was **MOVED** by Vice Rector Peterson and **SECONDED** by Visitor Purvis that the Executive Committee go into a Closed Session under the provisions of Section 2.2-3711.A.29 to discuss a Public Contract, Section 2.2-3711.A.8 to discuss Gifts, Bequests and Fundraising Activities, Section 2.2-3711.A.7 for consultation with Legal Counsel pertaining to possible litigation, Section 2.2-3711.A.1 to discuss a Personnel Matter, and Section 2.2-3711.A.10 to discuss Honorary Degrees and Special Awards.

Rector Davis opened the floor to discussion. There was none.

MOTION CARRIED UNANIMOUSLY BY VOICE VOTE

It was **MOVED** by Vice Rector Peterson and **SECONDED** by Rector Davis that the Executive Committee go back into public session and further moved that by ROLL CALL VOTE affirm that only public business matters lawfully exempted from the open meeting requirements under the Freedom of Information Act were heard, discussed or considered in the Closed Session, and that only such business matters that were identified in the motion to go into a Closed Session were heard, discussed or considered in the Closed Session.

Roll call was taken with all present members responding in the affirmative.

III. **Adjournment**

With no other business matters to come before the Executive Committee, Rector Davis adjourned the meeting at 8:38 a.m.

Respectfully submitted,



Kathy Cagle
Secretary pro tem

**BOARD OF VISITORS
GEORGE MASON UNIVERSITY**

**Meeting of
May 11, 2017
MINUTES**

PRESENT: Rector Davis and Vice Rector Peterson; Visitors Ahmed, Alcalde, Dwoskin, Gruner, Jacquemin, Marquez, Petersen, Purvis, Schar, and Witeck; Faculty Representative Renshaw; Student Representatives Pittman and Suero; President Cabrera; and Secretary pro tem Cagle.

ABSENT: Secretary Corley; Visitors Cumbie, Hazel and Zuccari.

I. Rector Davis called the meeting to order at 1:03 p.m.

II. **Recognitions**

On behalf of the Board of Visitors, Rector Davis welcomed and recognized several groups of outstanding students and Jack Wood award recipients.

A. Recognition of Nationally Ranked Forensic Students

Rector Davis recognized and introduced three Forensic National Champions, noting that for the 29th time in 40 years, Mason's Forensics has finished in the top five nationally in a competitive field of 80 colleges and universities and more than 1400 students: Nathan Leys – the top speaker in the country (unable to attend the meeting), Emma Bleker – the fifth place speaker, and Samantha Jordan – the seventh place speaker. The students were recognized with applause.

B. Recognition of Truman and Goldwater Scholars

Rector Davis recognized and introduced Joe Russell, a Truman Scholarship awardee, noting the prestige of the award and the difficulty of obtaining it in a field of 768 applicants; he was one of 62 recipients in the nation. Mr. Russell was recognized with applause. Rector Davis recognized the Goldwater Scholarship recipients, noting the award is based on academic merit and targeted to undergraduate students in natural sciences, mathematics, and engineering: Zachary Baker and Iris Stone competed against 1,286 applicants and were two of the 240 recipients. Additionally, Lucas Bouck was recognized for achieving an honorable mention in this competition. The students were recognized with applause. President Cabrera recognized and thanked Dr. Peter Pober, Director of Forensics, for his work with the students; Dr. Pober was recognized with applause. President Cabrera recognized and thanked Dr. LaNitra Berger, Director of the Office of Fellowships, for her mentorship and support work with the students. Dr. Berger addressed the Board and gallery, expressing her pride in the students' accomplishments and

explaining the length of the process and the high profile of these awards. Dr. Berger was recognized with applause.

- C. Recognition of the Early Identification Program (EIP) Graduating Students
President Cabrera recognized and introduced the 2017 EIP graduating class. He addressed the students and their parents in Spanish. They responded with applause. President Cabrera provided background on the EIP, noting the students are identified in middle school from all the school districts in Northern Virginia and work with Mason mentors through high school, attending classes at Mason during the summers and academic years, in preparation for college. He called on Khaseem Davis, EIP Director, to provide remarks and introduce the student speaker, Ms. Graciela Pereddo. Mr. Davis thanked Ms. Rhina Alvarado, Ms. Kathy Cagle, and Mr. Scott Nichols for their help in preparing the logistical support for the recognition presentation. He highlighted the statistics and accomplishments of the graduating students and the 82 EIP students who will be transitioning from high school to college this year. Mr. Davis shared a story of Ms. Pereddo when she was admitted in the EIP nine years earlier. Ms. Pereddo spoke on behalf of her fellow graduates by sharing her personal story of being part of the Early Identification Program, now graduating with a Bachelor's degree with a goal of becoming a pediatric nurse practitioner. She thanked the University on behalf of her graduating class for the life-changing opportunity to be part of EIP. Rector Davis asked the EIP Graduates to stand and be recognized. He thanked them and wished them success. The Board and members of the gallery recognized the graduates with applause.
- D. Appreciation Plaque Presentation to Outgoing Student Representatives
Rector Davis recognized the outgoing Student Representatives, Nathan Pittman and Christian Suero. He presented Mr. Pittman and Mr. Suero with plaques of appreciation for their service to the Board of Visitors. Mr. Pittman thanked the Board for the opportunity to serve as a Student Representative. He introduced his successor, Mr. David Kanos, the undergraduate student body president for 2017-2018, noting Mr. Kanos will be the first international student body president at Mason. Mr. Suero thanked the Board for the opportunity to work with them and shared his experience as a Student Representative. He noted the Graduate Student Body elections were in process and his successor would be named the following week. The Board recognized both representatives with applause. Rector Davis thanked them for their contributions and wished them success.

E. Jack Wood Awards Presentation

Rector Davis recognized Traci Kendall, Executive Director of Government and Community Relations for the presentation of the Jack Wood awards. Ms. Kendall provided background information on the awards, noting it is a university and community-wide annual award program to recognize individuals, groups, businesses, and not-for-profits who demonstrate leadership in fostering mutually beneficial relationships between the University and community. She explained the award is named for John C. “Jack” Wood, Mayor of the Town of Fairfax from 1953-1964, who was the driving force for arranging a campus to be located on land adjacent to the town and deeding it to the Commonwealth of Virginia for the University, beginning the “Town-Gown” relationship. Together with John Wood, son of Jack Wood, President Cabrera recognized the following awardees and their respective categories:

1. Delegate Thomas A. “Tag” Greason – Elected Official/Staff Category.
2. Sandy Spring Bank (Jay O’Brien and Annie Bolger received the award on behalf of the bank) – Business/Nonprofit Category.
3. Dr. Daniel Sklarew – Faculty/Staff Category.
4. Epsilon Mu Colony of Beta Theta Pi Fraternity (Kellon Jones, Keaton Cintorino, and Clinton Fitzgerald received the award on behalf of Epsilon Mu) – Student Category.
5. Mason and Partners (MAP) Clinics (Dr. Rebecca Sutter, Dr. Caroline Sutter, and representatives from Prince William Health District, City of Manassas Park, and Fairfax County Department of Neighborhood and Community Services received the award) – Partnership Initiative Category.

(Attachment 1 – Jack Wood Award program and background on each awardee)

Rector Davis thanked the awardees and the Board recognized them with applause. He called for a five minute recess to allow time for the guests to depart.

III. Approval of the Minutes

Rector Davis reconvened the meeting and called for any corrections to the minutes of the Executive Committee meeting and full Board meeting of March 2, 2017. Hearing none, the minutes stood approved as written.

IV. Rector’s Report

Rector Davis reported that his class is finished for the year and he was in the process of grading papers. He noted Commencement would be Saturday, May 20

with Marty Baron, executive editor of *The Washington Post*, as the speaker; he encouraged all Board members to attend.

Rector Davis noted that he had received comments from students about transportation between the Fairfax and Arlington campuses, stating that currently Mason runs a bus from the Fairfax campus to the Metro and then students take the Metro to the Arlington campus. He asked President Cabrera to gather input from students through the student government and determine the demand and cost of using buses between the two campuses.

Rector Davis presented the proposed Board of Visitors Meeting Schedule for 2017-2018, noting the schedule included four regular Board meetings plus the Planning Conference at the end of July 2018. Rector Davis called for a motion to approve the 2017-2018 Meeting Schedule as presented. It was **MOVED** by Vice Rector Peterson and **SECONDED** by Visitor Ahmed to approve the Board of Visitors Meeting Schedule for 2017-2018 as presented. Rector Davis opened the floor for discussion. There was none.

MOTION CARRIED UNANIMOUSLY BY VOICE VOTE
(Attachment 2 – Board of Visitors Meeting Schedule for 2016-2017)

V. President's Report

President Cabrera presented a power point presentation to highlight numerous successes of Mason's students and community. The presentation began with a video of Isabella Nicola who was born with a shortened left arm and no left hand, wanted to play the violin and received a specially designed prosthetic arm through the research of five Mason bioengineering students. President Cabrera continued the presentation that included the following slides: Truman and Goldwater scholarship winners; statistics showing no disparity in the graduation rates between ethnicities; *It's On US* event featuring former Vice President Joe Biden raising awareness to end sexual violence on college campuses; Mason alumnus Nathaniel Provencio who was named *The Washington Post* Principal of the Year; the ADVANCE transfer partnership between Mason and NOVA; Komodo dragon blood research; the impact of R1 classification on research opportunities; Larrie Ferreiro, Pulitzer finalist in History; Charlotte Gill, Carnegie Fellowship winner; Mason's increased national and international reputation and media stories; Mason named one of the top 15 most improved men's basketball teams in the nation; men's indoor track and field won the A-10 championship; women's outdoor track and field won the A-10 championship; meeting enrollment goals of the Strategic Plan; new budget model, Wiley Partnership, the Online Virginia Network, and ADVANCE Partnership; fundraising ahead of goal; total gifts and pledges from 2007 through 2016; endowment growth; foundation assets, liabilities and net

assets; future events that include hosting gubernatorial debates, Commencement featuring Marty Baron, the awarding of the Mason Medal to James W. Hazel, and a new tradition of celebrating faculty accomplishments with four medals that have been endowed by donors. President Cabrera noted the awards as follows:

1. The John Toups Medal – for Excellence in Teaching
2. The Beck Family Medal – for Excellence in Research and Scholarship
3. The Earle Williams Medal – for Excellence in Social Impact
4. The Karen and Hector Alcalde Medal – for Excellence in Diversity and Inclusion

The Board responded with applause and Rector Davis thanked President Cabrera.

VI. Committee Reports

A. Academic Programs, Diversity and University Community Committee

Rector Davis called on Chairman Alcalde to provide a report from the Academic Programs, Diversity and University Community Committee. Chairman Alcalde reported the committee received the following reports:

1. Diversity and Inclusion Update: Report from Rose Pascarell, Vice President of University Life, and Julian Williams, Vice President of Compliance, Diversity and Ethics highlighting initiatives that support student success; student activism; no disparity in graduation rates for Hispanic and African-American students at Mason; Mason's ranking in the top 40 most diverse campus in the U.S. with 74% of undergraduates identifying with underrepresented groups; the percentage of faculty/staff is disproportionate to Mason's students of color particularly in the faculty body; initiatives to recruit, retain, and advance diverse faculty across disciplines and ranks, promoting an organizational culture where diverse members of the Mason community can thrive; increased Title IX support with the addition of a Title IX coordinator and a Title IX investigator; increased internal dialogue around equality and inclusion, including resource commitment, new search committee training to support key initiatives, faculty development programs, and specific efforts that include namings to create a campus climate favorable to recruiting diverse faculty.
2. Outgoing Student Representatives: Christian Suero and Nathan Pittman spoke to the committee on the importance of student involvement and partnership with faculty and administration to strengthen and broaden the Mason community. Chairman Alcalde thanked Mr. Suero and Mr. Pittman for their engagement and service, noting their valuable involvement and insight. She wished them success and looked forward to their continued involvement with Mason.

3. Mason Korea Update: Dr. Steven Lee, President of Mason Korea, provided the Mason Korea Vision for 2020 focused on student enrollment and retention, diversity, experience and support, institutional partnerships, expanded academic programs, faculty development, and financial self-sufficiency, noting the financial forecast for the next five years is increasingly positive and should result in a significant operating surplus.
4. Faculty Handbook Revisions: Keith Renshaw, Chair of Faculty Senate, reviewed the recent Faculty Handbook Revisions, subject to Board approval.
5. Online Virginia Network Authority Board Appointment: Michelle Marks, Vice President for Academic Innovation and New Ventures, provided an overview of a Resolution to appoint a Board member to the Online Virginia Network Authority.

Chairman Alcalde **MOVED** to approve the following Action Items in block:

1. Faculty Handbook Revisions
2. Resolution to appoint James W. Hazel as a non-legislative citizen member to the Board of the Online Virginia Network Authority
3. Faculty Actions: (a) Promotion and Tenure, (b) Conferral of Emerita/Emeritus Status, (c) Elections of New Tenured Hires, and (d) Special Rank Change

The motion was **SECONDED** by Visitor Purvis. Rector Davis opened the floor for discussion. There was none.

MOTION CARRIED UNANIMOUSLY BY VOICE VOTE

(Attachment 3 – Resolution for Online Virginia Network Authority Board Appointment)

B. Finance and Land Use Committee

Rector Davis called on Chairman Peterson to provide a report from the Finance and Land Use Committee. Chairman Peterson noted how difficult it is to determine the tuition rate given the influences that have to come into consideration. He thanked Jennifer “J.J.” Davis, Senior Vice President of Administration and Finance, and her team for their work on the budget and the tough decisions that needed to be made. Chairman Peterson reported the budget included increases in financial aid, StayMason and student support, compensation for faculty and staff, and Strategic Plan funds for IT infrastructure and student experience. He reported the result was a 5.5% increase in tuition, noting that translated to an increase of \$624 for in-state students and \$1788 for out-of-state students. Chairman Peterson **MOVED** and Visitor Jacquemin **SECONDED** the motion to approve the tuition

increase of 5.5%. Rector Davis opened the floor for discussion. There was none.

MOTION CARRIED UNANIMOUSLY BY VOICE VOTE

Chairman Peterson reported the Committee reviewed the Utility Infrastructure Project and the site work impact on pedestrians and traffic. He noted one contractor would be responsible for the work in an effort to get all the work done at the same time. Chairman Peterson reported the Committee reviewed the Six-Year Capital Plan that is submitted every year. Chairman Peterson **MOVED** and Visitor David Petersen **SECONDED** the block motion to approve the Schematic Design for the Utility Infrastructure Project and the Six-Year Capital Plan. Rector Davis opened the floor for discussion. There was none.

MOTION CARRIED UNANIMOUSLY BY VOICE VOTE

Chairman Peterson reported the Committee reviewed the acquisition authorization of Cisco network equipment. He noted this required Board approval because the purchase exceeded the Senior Vice President's authorization of \$2 million. He reported the Investment Policy Statement was also discussed in Committee and no major modifications were necessary. Chairman Peterson **MOVED** and Visitor Jacquemin **SECONDED** the block motion to approve the Resolution for the Acquisition of Cisco Network Equipment and the Investment Policy Statement. Rector Davis opened the floor for discussion. There was none.

MOTION CARRIED UNANIMOUSLY BY VOICE VOTE

(Attachment 4 – Resolution for Acquisition of Cisco Network Equipment)

Chairman Peterson advised the Board that Tom Calhoun, Vice President of Facilities, would be retiring after 13 years at Mason. Chairman Peterson commented that during those years Mr. Calhoun had been instrumental in the construction, renovation, and rebuilding of approximately 60 buildings, creating a "mini city" where people live, work and play. Chairman Peterson noted how knowledgeable Mr. Calhoun was about all phases of the projects and how he got them done effectively and timely. He thanked Mr. Calhoun for his hard work and service to Mason. The Board and gallery recognized Mr. Calhoun with applause. Rector Davis thanked Mr. Calhoun for his leadership and called on him for comment. Mr. Calhoun addressed the Board, noting his previous career in the Navy and that his time at Mason was the longest he had been in any one place. He shared that he enjoyed working with the Board and staff and that he would miss his energizing work at Mason. The Board again recognized Mr. Calhoun with applause.

C. Audit Committee

Rector Davis called on Vice Chairman Gruner, in Chairman Corley's absence, to provide a report from the Audit Committee. Vice Chairman Gruner reported the Audit Committee met in Closed Session to discuss Critical Infrastructure Vulnerability Assessment Information, noting significant progress had been made in this area under the direction of Marilyn Smith, Vice President and CIO, and it continues to be an ongoing challenge. Vice Chairman Gruner reported the Audit Committee met jointly with the Finance and Land Use Committee to review the Auditor of Public Accounts Examination of the FY16 Financial Statement. She noted that Committee also reviewed the Audit Status Report.

D. Development Committee

In the absence of Chairman Hazel and Vice Chairman Zuccari, Rector Davis provided the report from the Development Committee. Rector Davis reported the Committee received an update from Jay O'Brien, Chairman of the George Mason University Foundation Board, regarding activities of the Board of Trustees, noting the recent CASE Checklist indicated the Foundation is on track and follows best practices. Rector Davis reported two students, Bethel Domfeh and Mariam Ghanen, shared with the Committee how their scholarships had impacted their ability to attend Mason. Rector Davis reported the Committee received an update from Janet Bingham, Vice President of University Advancement and Alumni Relations, noting the Campaign Fundraising goal was reached on March 23, 2017, raising \$507 million to date. He reported the faculty is giving \$1 million for the year, a significant increase over the last two years, noting faculty donors had increased by 100%. Rector Davis reported alumni giving is at \$4 million for the year, a significant improvement over last year.

Rector Davis recognized President Cabrera for comment. President Cabrera noted that even though the fundraising raising goal had been reached, the efforts had not stopped. He said the fundraising would continue until the original date of December 2018 and offered the Board the opportunity to be part of the group of people to raise the largest amount of money in George Mason's history. He thanked the Board for their support.

E. Research Committee

Rector Davis called on Chairman Gruner to provide a report from the Research Committee. Chairman Gruner reported the Committee received a report from Kerry Bolognese, Director of Federal Government Relations, concerning the Federal funding outlook for the research budget. Chairman Gruner that the United States is in the middle of the pack in terms of spending

as a percentage of gross domestic product, behind China, Japan, and Korea. She reported that Mr. Bolognese noted several Mason professors and alumni currently tapped by the new Administration including Associate Professor Neomi Rao, nominated as Administrator in the Office of Administration and Regulatory Affairs, and Associate Professor Rachel Brand, nominated to be Associate Attorney General in the Department of Justice. Chairman Gruner reported the Committee received a report from Amy Adams, Program Manager for Scientific Outreach and Education, concerning the Aspiring Scientist Summer Internship Program, noting it is celebrating its 10-year anniversary. She reported the program has grown from a dozen high school students having summer internships to approximately 900 high school and college students from across the U.S. applying for 80 internships. She noted the interns work with Mason professors, resulting in being recognized in peer reviewed scientific journals, international conferences, the creation of diagnostic tests for Lyme disease and TB. Chairman Gruner noted this program is growing the next generation of scientists. She reported 10 – 15% of the interns matriculate to or are already attending Mason, the rest matriculate to the top schools, including MIT and medical schools, and are spreading the word about this program throughout the U.S.

VII. Closed Session

Rector Davis called for a motion to go into Closed Session. It was **MOVED** by Vice Rector Peterson and **SECONDED** by Visitor Gruner that the Board go into a Closed Session under the provisions of Section 2.2-3711.A.10 to discuss Honorary Degrees and Special Awards, Section 2.2-3711.A.29 to discuss a Public Contract, Section 2.2-3711.A.8 to discuss Gifts, Bequests, and Fundraising Activities, Section 2.2-3711.A.7 for consultation with Legal Counsel, and Section 2.2-3711.A.1 to discuss a Personnel Matter. Rector Davis opened the floor to discussion. There was none.

MOTION CARRIED UNANIMOUSLY BY VOICE VOTE

Rector Davis invited the Faculty and Student Representatives to remain in the room for the discussion of Honorary Degrees and Special Awards.

It was **MOVED** by Vice Rector Peterson and **SECONDED** by Visitor Gruner that the Board go back into public session and further moved that by ROLL CALL VOTE affirm that only public business matters lawfully exempted from the open meeting requirements under the Freedom of Information Act were heard, discussed or considered in the Closed Session, and that only such business matters that were identified in the motion to go into a Closed Session were heard, discussed or considered in the Closed Session.

Roll call was taken with all present members responding in the affirmative.

As a result of the Closed Session, the following Action Item was brought to the Open Meeting:

It was **MOVED** by Visitor Witeck and **SECONDED** by Visitor Alcalde that pending the acceptance of the speaker invitation by the candidate reviewed in the Closed Session, the Board approve an Honorary Degree for that person to be awarded at a future Graduation or Commencement. Rector Davis opened the floor to discussion. There was none.

MOTION CARRIED UNANIMOUSLY BY VOICE VOTE

VIII. Adjournment

With no other business to come before the Board, Rector Davis adjourned the meeting at 3:00 p.m.

Respectfully submitted,



Kathy Cagle
Secretary pro tem

Attachment 1: Jack Wood Awards Program

Attachment 2: Board of Visitors Meeting Schedule for 2017-2018

Attachment 3: Resolution – Online Virginia Network Authority Board Appointment

Attachment 4: Resolution – Acquisition of Cisco Network Equipment



The John C. “Jack” Wood Award for Town-Gown Relations

May 11, 2017

The Jack Wood Award for Town-Gown Relations is a university and community-wide annual award program to recognize individuals, groups, businesses, and not-for profits who demonstrate leadership in fostering mutually beneficial relations between the university and the community.

The award is named for John C. “Jack” Wood, Mayor of the Town of Fairfax from 1953-1964. Mayor Wood was the driving force for arranging a campus to be located on land adjacent to the town and deeding it to the Commonwealth of Virginia for the university, thus beginning the Town-Gown relationship.

Attachment 1 – page 1

Elected Official/Staff Category

Delegate Thomas A. “Tag” Greason represents not only the citizens of Loudoun County in Virginia’s General Assembly, but also his alma mater George Mason University. Tag is a champion for the students, faculty and staff of the university and has helped members of the General Assembly better understand the needs of our community. Each year he has been the principal sponsor of budget amendments designed to help the university meet its strategic goals. George Mason University is very fortunate to have an advocate like Delegate Greason working for our students, faculty and staff.

Business/Nonprofit Category

Sandy Spring Bank – Jay O’Brien and Annie Bolger of Sandy Spring Bank have worked tirelessly to partner with George Mason University’s University Life Offices to support the Early Identification and Student Transition and Empowerment Programs by signing on as the Title Sponsor for the Diversity Scholarship Golf Classic for the past eight years.

Through their leadership, creativity and follow-through, students benefit from scholarship funds raised, and local and regional business and community members learn more about George Mason University and its offerings. At the event each year many new participants and sponsors are surprised to learn about everything that Mason does, both on our campuses and beyond. Jay O’Brien and Annie Bolger, the representatives of Sandy Spring Bank, are incredible champions for both Mason and the Fairfax community, and have gone above and beyond in connecting the two for several years.

Faculty/Staff Category

Dr. Daniel Sklarew has been advancing Mason’s Town-Gown partnerships for over 20 years, promoting ecological sustainability and watershed stewardship across Northern Virginia and beyond. In Fairfax County he led the Mason team preparing the County’s first community-wide inventory of greenhouse gas emissions and applied its finding to assist Reston Sustainability Community Partnerships in its energy and

greenhouse gas reduction initiative. In Prince William County he has trained public school teachers to lead Meaningful Watershed Educational Experiences (MWEE) in their classrooms, and has trained Mason student field-interpreters to assist with these experiences since 2009. In Arlington County, Dr. Sklarew was central to co-organizing the Mason/Arlington Earth Week community event hosted at the Arlington Campus, which included the Arlington Green Patriot Award and Operation Rain Barrel. In addition, Dr. Sklarew has strengthened Mason relationships internationally with Japanese and Mexican communities through sustainability and watershed experiences. Most recently, Dr. Sklarew has worked with the King's Park West community, south of our Fairfax campus, to facilitate collection of neighborhood donations to Mason's Pop-up Pantry. Dr. Sklarew has exemplified leadership in advancing mutually beneficial Town-Gown relations between Mason and its neighbors.

Student Category (awarded to an individual or group)

Epsilon Mu Colony of Beta Theta Pi Fraternity has shown a drive to positively represent Mason and assist those within the surrounding community. Last semester Beta raised over \$2,000 for breast cancer research and awareness for local organizations working in that arena; participated in Fear 2 Freedom, assembling survivor kits to be used at local hospitals for victims and survivors of sexual assault; volunteered with the local chapter of the Brother's Brother Foundation, assembling medical kits for doctors, nurses and clinics in communities of dire need; and over the holiday season adopted seven families through the Fairfax County Adopt-a-Family Holiday Program, donating over \$400 worth of gifts for families in need. This semester Beta coordinated and donated over 5,000 non-perishable food items to local food pantries and food banks with an emphasis on serving children from low-income families or in danger of becoming homeless and need a packed lunch for school. The Epsilon Mu Colony of Beta Theta Pi is committed to building relationships of mutual assistance between the University and the greater Northern Virginia community. **Representing Beta Theta Pi are Kellon Jones, Keaton Cintorino and Clinton Fitzgerald.**

Partnership Initiative Category (an initiative between a Mason entity and an external organization(s) that reciprocally benefits both entities)

Mason and Partners (MAP) Clinics are an example of academic-community partnerships at their best. At the request from a Mason alumna working as a Nurse Manager for Manassas Park City Schools, Mason professors **Drs. Rebecca and Caroline Sutter** were approached about providing school-required exams for students who could not afford care. Through partnerships with the **Prince William Health District**, the **City of Manassas Park** and space provided by Manassas Park Community Center, the clinic now operates one 6-hour day per week clinic at that site, and has expanded to two other sites in Springfield and Falls Church through a partnership with **Fairfax County Department of Neighborhood and Community Services**. The goal of the clinic is to serve as a bridge for patients with no access to care into a more permanent healthcare solution. Current estimates suggest that the clinics provide over \$90,000 each month in unreimbursed care, or almost \$1.1 million in care per year. Through the engagement of Mason faculty, students (across numerous disciplines from nursing and language translation to social work and psychology), and numerous community partners, these clinics are successful.

***Congratulations to all
award recipients!***

BOARD OF VISITORS
George Mason University
Meeting Schedule for 2017-2018
Approved - May 11, 2017

Thursday, October 12, 2017	Full Board Meeting
Wednesday, December 13, 2017	Full Board Meeting
Thursday, March 1, 2018	Full Board Meeting
Thursday, May 3, 2018	Full Board Meeting
Thursday, July 26, 2018	Annual Planning Conference
Friday, July 27, 2018	Annual Meeting

Special Full Board or Committee meetings to be scheduled if needed.

**RESOLUTION
OF THE
BOARD OF VISITORS OF GEORGE MASON UNIVERSITY**

WHEREAS, pursuant to Code of Virginia §23.1-3135 (effective July 1, 2017) the Board of Visitors must appoint a non-legislative citizen member to the Board of Trustees of the Online Virginia Network Authority, for an initial term of two (2) years (as provided in 2017 Acts of Assembly Chapter 686, Item 2.);

The Board of Visitors hereby appoints James W. Hazel to be a member of the Board of Trustees of the Online Virginia Network Authority, for a term of two (2) years.

Adopted: May 11, 2017



Tom Davis, Rector
Board of Visitors
George Mason University

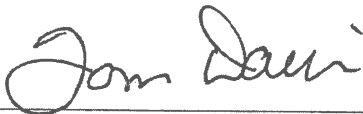
RESOLUTION
OF THE
BOARD OF VISITORS OF GEORGE MASON UNIVERSITY

WHEREAS, the University desires to enter into a contract with Electronic Systems, Inc. (the "Contract"), to acquire certain Cisco network equipment ("Equipment") in the amount of approximately \$2,507,000.00; and

WHEREAS, the total cost of such Contract will exceed \$2,000,000;

The Board of Visitors hereby delegates to the President or the Senior Vice President for Administration and Finance the authority to enter into such Contract in an amount not to exceed \$2,507,000.00.

Adopted: May 11, 2017



Thomas M. Davis, III
Rector
Board of Visitors
George Mason University

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION**

MEMORANDUM

TO: BOARD OF VISITORS

FROM: Thomas M. Moncure, Jr.
University Counsel &
Senior Assistant Attorney General

DATE: July 1, 2017

To assist in your Board of Visitors' service, permit me to review some key legal points and commonly asked questions.

Legal Authority of the Board

George Mason University is a "public educational institution and agency of the Commonwealth." *DiGiacinto v. Rectors and Visitors of GMU*, 281 Va. 127, 135 (2011). The Board of Visitors, which is formally designated as "The Rector and Visitors of George Mason University," is empowered and responsible for directing the affairs of the University, subject at all times to the control of the General Assembly. Code of Virginia §23.1-1500 *et seq.* The Board is established as a corporation and in the fulfillment of its educational mission has "the power to promulgate certain necessary rules and regulations." *George Mason University v. Floyd*, 275 Va. 32, 37 (2008).

Among its expressed powers and responsibilities, the Board is authorized to control and expend funds in accordance with law, to make all needful rules and regulations, and to generally direct the affairs of the University. All property, property rights, duties, contracts and agreements are vested in the Board, which is charged with the care and preservation of the property. The property of the University is nonetheless by law declared "the property of the Commonwealth." Code of Virginia §23.1-1310. The Board is authorized, with the approval of the Governor to sell the Commonwealth's real estate under its control. Code of Virginia §23.1-1301.B.1.. The Board is further empowered to fix tuition, fees and charges; to confer degrees; and to make alterations in curriculum.

Through an assortment of statutes enacted over the years by the General Assembly, the

GMU BOARD OF VISITORS

July 1, 2017

Page 2

universities are subject to a number of rules and regulatory requirements generally applicable to the Commonwealth's operations. Special authority has been granted to the University, in a five year pilot program, to exercise additional financial and administrative authority pursuant to higher education restructuring in the functional areas of information technology, procurement, capital projects and financial operations. § 4-9.02.c.1, Chapter 836 (Budget Act), 2017 Acts of Assembly.

Legal Representation of the Board

By statute, the Attorney General is legal counsel to the Board. The Attorney General has designated me, Brian Walther, Senior Associate University Counsel, David Drummey, Associate University Counsel, and Anne Gentry, Associate University Counsel to provide counsel to the University. We each also hold the additional title of Senior Assistant Attorney General. Our duty is to provide legal advice and represent the University before state and federal courts. The subject matter of our counsel regularly includes contracts, real estate, intellectual property, policy, personnel, students, litigation, regulation, statutory interpretation and research. We confer regularly with the Chief of the Education Section as well as our colleagues at other Universities and in the Office of the Attorney General. Where appropriate and when approved, we will call upon Special (outside) Counsel through the Office of the Attorney General.

As a member of the governing Board of a complex organization, you will necessarily contend with litigation, usually as a defendant. Occasionally, officers and employees (including members of the Board) are named as defendants in "individual" or personal capacities. Should you be served with suit papers, please notify us immediately. Whether sued in their "official" (i.e. representative) or "individual" capacities, members of the Board are entitled to litigation defense for acts or omissions while acting (absent malice or intentional misconduct) in the course and scope of their duties. The Board is occasionally presented a report on the University's pending cases and current legal issues at its regular meetings.

The General Assembly has established, and funds, a self-insurance program for the Commonwealth's officers and employees. Subject to certain well-recognized exceptions to coverage, as in the case of malicious acts or intentional wrongdoing, the Commonwealth's self-insurance program indemnifies individual officers (including members of the Board) from personal liability loss to the limit of \$2 million per claim. Greater detail as to insurance coverage and additional coverage can be obtained from Joyce French, Director of the Office of Risk Management.

Bylaws of the Board of Visitors

GMU BOARD OF VISITORS

July 1, 2017

Page 3

While the Rector by statute presides at meetings, the Board has additionally adopted bylaws to facilitate the informed transaction of business. The Executive Committee is required to periodically review the bylaws and recommend amendments. Code of Virginia §23.1-1306. These protocols, along with key provisions of the Virginia Freedom of Information Act set forth below, govern meetings of the Board, and you should review them carefully. The bylaws also delineate responsibilities of the Board and its officers, and the standing committees, as well as proscribing the principal duties of the President.

Fiduciary Duties

Members of the Board of Visitors have important fiduciary duties with respect to oversight of institutional funds, and have a common law duty of loyalty, care, obedience and disclosure (See, 2013 Op. Va. Att’y Gen. 3). Funds appropriated by the General Assembly may only be expended in accordance with appropriations, and private gifts to the University must also be prudently managed. An important question is always whether the Board has acted with reasonable prudence in the best interests of the University. Board members are generally entitled to rely in good faith on information, opinions and reports of reliable and competent officers and staff.

State and Local Government Conflict of Interests Act

In addition to the common law duty of loyalty, your actions are further dictated by the State and Local Government Conflict of Interests Act. Code of Virginia § 2.2-3100 *et seq.* This Act provides that a knowing violation is punishable as a Class 1 misdemeanor and also provides for civil penalties and forfeitures. As Senior Assistant Attorneys General, we are obliged to report if made aware of “a reasonable basis to conclude that any officer or employee...has knowingly violated any provision” of the Act. Code of Virginia § 2.2-3126.A.2.

Questions about this Act’s definitive application in concrete situations may be answered by the Attorney General through advisory opinions. Code of Virginia § 2.2-312A.3. Binding opinions are the province of the Attorney General when asked for guidance by written inquiry providing all pertinent facts. This is because state law provides that “a state officer or employee shall not be prosecuted...if the alleged violation resulted from his good faith reliance on a written opinion of the Attorney General made in response to his written request for such opinion and the opinion was made after a full disclosure of the facts.” Code of Virginia § 2.2-3121.

General prohibitions, applicable regardless of the amount of money involved, are listed at Code of Virginia § 2.2-3103. In summary, you cannot offer or accept money or anything of value for 1) the performance of your official duties (excepting reimbursement for expenses) or 2) obtaining employment, appointment or promotion for any person with the University or 3)

obtaining a contract for any person or business with the University. You cannot use confidential information for your economic gain or that of another person. You cannot accept any money, loan, gift, service or professional opportunity that is intended to influence you in the performance of your official duties.

This Act further prohibits Board members (including spouses and dependents residing in your home) from having a “personal interest” in any contract with the University, whether due to being a party to the contract or due to a personal interest in a business which has contracted with the institution. Code of Virginia § 2.2-3101. This Act also prohibits a “personal interest” in any transaction or matter being considered by the institution.¹

Notwithstanding the letter of the law, Board members must be cognizant of any situation that has a potential for conflict. George Mason, in § 3 of the Virginia Declaration of Rights, specifically admonished us to guard “against the danger of maladministration.” The mere appearance of impropriety can be as damaging to public confidence as actual conflicts arising from personal interests.

You will also be required under this Act to file a Statement of Economic Interests. Code of Virginia §2.2-3118. This form is to be filed electronically on or before December 15 annually with the Virginia Conflict of Interest and Ethics Advisory Council and is a public document. You are additionally required to take an orientation course on the Act within two months of appointment and biannually thereafter. This course is online at <http://ethics.dls.virginia.gov> by scrolling down to “State Employee and Officer Training Module.”

Freedom of Information Act

Virginia’s Freedom of Information Act governs both the conduct of meetings and access to records. Violations of the Act not only risk possible invalidation of the Board action taken, and monetary liability for costs and fees, but also subject public officers to personal liability for violations “willfully and knowingly” made. A civil penalty of up to \$1,000 for a first violation

¹“Personal interest” is defined in detail in the Act. Briefly, “personal interest” is triggered when you (your spouse or dependent) has ownership in a business exceeding 3% of its total equity, or annual income that exceeds \$5,000 from ownership in the property of a business, or salary or other compensation that exceeds \$5,000 annually, or personal liability incurred or assumed on behalf of a business if the liability exceeds 3% of the asset value of the business. Code of Virginia § 2.2-3101.

GMU BOARD OF VISITORS

July 1, 2017

Page 5

and up to \$5,000 for second and subsequent violations may be imposed against Board members in their individual capacities. Code of Virginia §2.2-3714.

Meetings:

The Board may only meet and transact business in publicly open meetings, except only when closed session discussion is expressly authorized in the law. Code of Virginia § 2.2-3700 *et seq.* This Act lists those exceptional times when Board members may, but are not compelled to, privately meet and discuss business in closed session. It is immaterial that there may be no votes cast or decisions rendered. The more typical “exceptions” for authorized closed sessions include:

- (1) Discussions regarding personnel matters involving specific, identifiable individuals, including interviews of prospective candidates;
- (2) Discussion or consideration of the admission or discipline of specific, identifiable student(s);
- (3) Discussion or consideration of the condition, acquisition of use or disposition of real property for public purposes;
- (4) The protection of the privacy of individuals in personal matters not related to public business;
- (5) Investing public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected;
- (6) Consultation with legal counsel on actual or probable litigation or on other specific legal matters requiring the provision of legal advice;
- (7) Discussion or consideration of gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by the institution;
- (8) Discussion or consideration of honorary degrees or special awards.

Closed Meeting Procedure:

In order to properly convene in closed session to discuss one or more of the above subjects, the law also prescribes specific procedural steps that must be observed. In brief, these are:

- Any closed session must always be preceded by motion presented and

passed in public session (a) identifying the subject matter for discussion in closed session; (b) stating the purpose of the meeting; and (c) providing the statutory exception authorizing the matter to be discussed privately.

The minutes must reflect the motion and action taken.

- During the ensuing closed session, Board members must restrict discussions to the matter identified by their public motion authorizing the closed session.
- A roll call is taken in open session immediately following the closed meeting for each member to individually certify that, to the best of his or her knowledge, discussions in private session were properly restricted.
 - Immediately following the closed session, the Board must also report out and individually vote in public session on any action necessary as a result of discussion in closed session. No official action may be taken or decision made in closed session.
- Voting by secret or written ballot, or by proxy, is prohibited.

Records:

Any records created in the transaction of public business, to include paper and all electronic forms, are subject to disclosure. Exclusions to record disclosure may apply, but the presumption is that all records are open to the public and any exclusions must be affirmatively asserted. You should consider a dedicated email account for University business. Public records created on personal email accounts or devices are also subject to disclosure as the ownership of such accounts or devices has no bearing on the determination of what constitutes a public record. Code of Virginia §42.1-77.

Public Notice & Board Member Communications

The meeting of three or more Board members for the purpose of discussing or transacting any public business, in a work session or on a committee, requires public notice. The Freedom of Information Act recognizes that more than two may be in attendance at certain purely social or civic gatherings, but public business cannot be discussed or transacted under such circumstances. Code of Virginia §2.2-3707.

Communications by email or other instantaneous means of electronic messaging have created questions as to whether these exchanges constitute meetings under the Act. While the Virginia Supreme Court has answered with a highly qualified “no,” our recommendation is to limit any contemporaneous electronic communications to only one other Board member at a time. Should you desire to send an email to all Board members, it is our strong suggestion that you route the email and replies through the Chief of Staff or other appropriate University official for dissemination. See, *Hill v. Fairfax County School Board*, 284 Va. 306 (2012).

GMU BOARD OF VISITORS

July 1, 2017

Page 7

Conclusion

The foregoing is intended neither as a thorough examination of all relevant legal principles, nor of application of rules to specific facts and circumstances. This memorandum is intended to briefly acquaint you with the broad perimeters of the law as affects your service on the Board.

Please let us know if you have any specific questions. Members of the Board should feel free to contact Brian, David or Anne at any time for legal advice, noting the caveat above regarding conflicts of interest. One of us is required to be present at all your meetings. Code of Virginia §23.1-1303.B.1. Our telephone number is (703) 993-2619, and as I am retiring prior to your next meeting, can be reach Brian outside normal business hours by cell phone (703) 585-5910, or by e-mail at bwalther@gmu.edu.

To: Board of Visitors
From: Ángel Cabrera, President
Date: July 28, 2017
Subject: Requests for Admissions Assistance

We understand that with your position as a George Mason University Board of Visitor member you will probably be approached by colleagues, friends, etc., seeking assistance. One of the most common requests is for admissions assistance. The following are some guidelines and background to help you manage these requests.

First, the Privacy of Student Records document produced by University Counsel provides legal guidance related to sharing of information on student admissions.

Second, we welcome Board of Visitor members to offer the following assistance to potential applicants:

- Write letters of recommendation to the Dean of Admissions on the behalf of a specific applicant.
- Request a visit/campus tour for family/friends that are interested in Mason.
- Refer a prospective student/applicant to the Office of Admissions for personal follow up with a counselor.

Third, we ask that you refrain from the following:

- Requesting/obtaining specific information on applicants such as admissions decisions.
- Requesting that an admission decision be made on any specific applicant.
- Making any promises to an applicant regarding admissions or special treatment.

Your service to and representation of George Mason University is appreciated, and we look forward to another successful and productive year of collaboration to move the university forward.

Thank you.

George Mason University
Board of Visitors
Code of Ethics

It is important that members of the Board of Visitors of George Mason University and all George Mason University employees conduct themselves with the highest degree of honor and integrity and understand that public service is a public trust. Ethical conduct in our relationships with each other, members of the public, our students, other state agencies, and private entities is of critical importance during service to the public through serving George Mason University.

1. The Board will uphold the University's Mission, Vision, and Values and will always act in the best interests of the University.

2. The Board shall adhere to all applicable state and federal laws and regulations and Board Policies and Bylaws.

(a) The Board shall comply with the Commonwealth of Virginia's State and Local Government Conflict of Interests Act, Virginia Code §2.2-3100 *et.seq.*, avoiding conflicts of interest as defined by law, and shall report promptly to the Rector any potential conflicts. This includes the timely filing of the annual financial disclosure statement and any other required documents.

i. Visitors shall not have a personal interest in a contract or transaction with the University which would appear to influence the performance of their official duties. A personal interest includes an interest of an immediate family member. Visitors shall not request special consideration or personal prerogative for admissions, employment, or contracts for business.

ii. Visitors shall not seek or accept gifts or business or professional opportunities which would appear to influence the performance of their official duties.

(b) The Board shall adhere to the requirements of the Virginia Freedom of Information Act.

(c) Visitors have a duty to report their own potential or actual violations of the Code of Ethics or those of other Visitors to the Rector immediately upon realization or discovery. If the Rector is personally faced with such a conflict, he or she shall report it to the Vice Rector, who will act in his or her place.

(d) Visitors shall participate in all training required by law.

3. Visitors shall certify that they have read and understand this Code of Ethics by signing the Code annually. Potential or actual violations of the Board Code of Ethics shall be reviewed in the following manner:

(a) The Rector will consult with the Visitor in question and attempt to resolve the potential or actual noncompliance. If that consultation fails to resolve the matter, then

(b) The Rector shall convene the Executive Committee to meet with the Visitor in question and attempt to resolve the potential or actual noncompliance. If that consultation fails to resolve the matter, then

(c) The Rector shall convene the full Board to determine corrective action, as appropriate. The Executive Committee shall report to the Governor in writing any instances of breach of ethical conduct, and the corrective action the Board has elected to take. Upon sufficient cause, the Board may determine by majority vote of the membership to recommend to the Governor that a member be removed as provided for in § 2.2-108 of the Code of Virginia.

Approved May 7, 2014

I certify that I have read and understand this Code of Ethics.

Signature: _____ Printed Name: _____ Date: _____

2017 SESSION

ENROLLED

HOUSE RESOLUTION NO. 431

Encouraging public institutions of higher education in the Commonwealth to protect free speech.

Agreed to by the House of Delegates, February 22, 2017

WHEREAS, Article I, Section 12 of the Constitution of Virginia states that "the freedoms of speech and of the press are among the great bulwarks of liberty, and can never be restrained except by despotic governments . . . [and] any citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right"; and

WHEREAS, public institutions of higher education in the Commonwealth have historically embraced a commitment to freedom of speech in institutional policy and should be citadels of free speech and inquiry; and

WHEREAS, public institutions of higher education in the Commonwealth are subject to the provisions of the Constitution of Virginia and the First Amendment to the United States Constitution and the authority of the General Assembly; and

WHEREAS, the House of Delegates views freedom of speech as being of such paramount importance that each public institution of higher education in the Commonwealth should ensure free, robust, and uninhibited debate and deliberation by enrolled students, whether on or off campus; and

WHEREAS, the House of Delegates has determined that it is a matter of statewide concern that each public institution of higher education officially recognize freedom of speech as a fundamental right; now, therefore, be it

RESOLVED by the House of Delegates, That the public institutions of higher education in the Commonwealth be encouraged to protect free speech; and, be it

RESOLVED FURTHER, That the House of Delegates hereby communicate the urgent need for the governing board of each public institution of higher education in the Commonwealth to develop and adopt a policy on free speech that specifies, at a minimum, that:

1. The primary function of a public institution of higher education is the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate; and

2. It is not proper for a public institution of higher education to shield individuals from speech that is protected by the First Amendment, including ideas and opinions that such individuals find unwelcome, disagreeable, or deeply offensive; and, be it

RESOLVED FINALLY, That the Clerk of the House of Delegates transmit a copy of this resolution to the chief executive officer of each public institution of higher education in the Commonwealth, requesting that each such chief executive officer further disseminate copies of this resolution to the governing boards of their respective institutions so that they may be apprised of the sense of the Virginia House of Delegates in this matter.

ENROLLED

HR431ER



COMMONWEALTH of VIRGINIA

Office of the Attorney General

202 North 9th

Education Section

July 2017

What Every BOV Member Absolutely *has* to Know about FOIA

Do not underestimate the importance of Virginia's Freedom of Information Act (FOIA). This is very serious business. These are *laws* -- not just corporate bylaws or operating protocols that you may disregard. Violations risk invalidation of board decisions and expose the University and you personally to embarrassment, litigation, and civil penalties of up to \$5,000.¹ The greatest loss, however, is the resulting damage to public confidence in you and the University. In fact, the Governor could publicly request your resignation.

The idea behind FOIA (which was first enacted in 1968) is that the Commonwealth's business is the people's business. FOIA ensures that citizens have the right to inspect and copy public records and to attend public meetings.²

FOIA governs many aspects of the operation of Boards of Visitors, and has wide application to conduct of members, even when they are not at meetings. All members must be aware of the basic requirements of FOIA.

These FAQs are designed to give the Board of Visitors ("BOV" or "Board") members a basic understanding of their personal responsibilities under FOIA and to insure that you are aware that FOIA compliance is your responsibility. This material is not comprehensive. It does not cover all aspects of FOIA. Whenever you have any concerns, questions, or uncertainties about FOIA or its application, you should contact your institution's counsel.

¹ § 2.2-3714

² § 2.2-3700(B) states "By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked."

Virginia's Freedom of Information Act: Synopsis

Documents and Email

- FOIA broadly guarantees public access to public records, including your notes and correspondence concerning University business. This includes e-mail, digital documents (such as texts stored on your personal cell phone or documents on the cloud), and even preliminary drafts of documents.³ There are numerous exemptions, which are all fact-specific.⁴ Always be sensitive to the potential for public disclosure of your written communications. Any request by the press or any person to inspect your documents should be brought immediately to the University's attention to ensure a timely and proper reply. Oral and informal requests to you are FOIA requests. Any request for records, regardless of the nature of the request, is a FOIA request.

Meetings

- Unlike the private sector, the public (including employees of the institution) and press have a right to be present at your board and committee meetings.⁵
- All meetings of the BOV, including its committees and subcommittees plus any other group or entity appointed by the BOV to advise it or exercise delegated power, must be conducted in public session with at least three working days advance public notice of meeting time and location.⁶ It does not matter that a meeting involves no actual voting or transaction of business, such as, for example, retreats.⁷ A meeting exists in the eyes of the law whenever three or more Board members meet and discuss any University matter.⁸ Voting on any University action must always be conducted in public session.⁹ Voting by secret ballot or proxy is always prohibited.¹⁰
- Once properly convened and in open session, discussions regarding certain limited topics can be held in closed session.¹¹ The justification for closed session does not depend on whether a subject may be very sensitive or delicate or political, or that a confidential setting might better encourage candid exchanges.¹² Closed sessions must be specifically authorized by FOIA.¹³ This can be a difficult adjustment for those more accustomed to the corporate boardroom.

³ 2.2-3701

⁴ See § 2.2-3705.1-3705.8.

⁵ § 2.2-3700

⁶ § 2.2-3707

⁷ § 2.2-3701 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body."

⁸ § 2.2-3701

⁹ § 2.2-3711(B)

¹⁰ § 2.2-3710 (A) "Unless otherwise specifically provided by law, no vote of any kind of the membership, or any part thereof, of any public body shall be taken to authorize the transaction of any public business, other than a vote taken at a meeting conducted in accordance with the provisions of this chapter. No public body shall vote by secret or written ballot, and unless expressly provided by this chapter, no public body shall vote by telephone or other electronic communication means."

¹¹ § 2.2-3711

¹² § 2.2-3712

¹³ § 2.2-3712

- Also, to go into closed session, certain specific procedural steps must be taken, including:¹⁴
 - Advance public notice for the meeting must have been given.
 - During the meeting in public session, the Board must vote on a motion authorizing closed session. This public motion must reasonably identify both the purpose for the closed session and the subject for discussion.¹⁵
 - While in closed session, the discussion must be related only to the topic identified in the public motion. Take care not to digress into any unrelated areas or other subjects, even if those topics would be eligible for closed session with a proper motion. It is your responsibility both as a matter of law and common sense that you stick to the subject matter described in the motion authorizing the closed session.¹⁶
 - Any action the Board wishes to take as a result of discussions in closed session must be voted on in public session.
 - When discussion in closed session is adjourned, the chair of the meeting should immediately direct the opening of doors and inviting public/staff into the room for open session.
 - Once back in open session, each member of the body will then be required to publicly certify that his or her discussion in closed session was proper and related to the permitted subject set forth in the motion convening the closed session.¹⁷
 - The law requires that your general counsel or an Office of the Attorney General's representative must be invited to all BOV and committee meetings, including all closed sessions. This also protects the BOV in the event the discussion in closed session is questioned.

- Some BOV members may participate by phone *provided* (1) there is a quorum of the board or committee physically convened at the main location. (2) all locations are announced ahead of time as places the public and press may participate (3) all locations are equipped with speakerphones, and (4) there is no interruption in communication between or among locations.¹⁸ There is a limited exception for personal or medical matters. In order to use this exception, the Board must have previously adopted a policy permitting its members to participate electronically due to personal or medical matters.¹⁹

¹⁴ For “closed session” procedures *see*: § 2.2-3712.

¹⁵ § 2.2-3712(A)

¹⁶ § 2.2-3712(C)

¹⁷ § 2.2-3712(D)

¹⁸ § 2.2-3708(B)

¹⁹ § 2.2-3708.1

Frequently Asked Questions

Table of Contents

FOIA GENERALLY	7
What does FOIA do?	7
FOIA requires that some records be withheld and some meetings be closed, right?	7
Who does FOIA apply to?	7
MEETINGS	8
Meetings Generally.....	8
Can we meet without telling anyone?	8
Can less than a quorum of the BOV – say three or four members – get together informally to discuss affairs of the institution?	8
Can't I even go to a cocktail party or dinner with two (or more) other BOV members?.....	8
The BOV wants to take a bus tour of campus and our new facilities during a break at our Board meeting. Any problem with this?	9
Who can come to our meetings?.....	9
Do we have to tape record our meetings?	9
Do we have to have minutes taken?.....	9
Closed Meetings.....	10
What are the exceptions to open meetings? When can we hold a closed meeting?	10
When are we <i>required</i> to go into closed session?	11
What must we do to go in order to into closed session?	11
What if we are in open session with only the Board and President in attendance, and we want to discuss something that we would ordinarily discuss in closed session. Can't we do that without going through the formalities since there is no one we need to exclude?	11
What can we discuss in closed sessions?.....	11
Who is permitted to go into a closed session with the BOV?	11
Who decides when closed session is appropriate?	12
What do we do when we have finished our closed session discussions?	12
May BOV members talk with other people about matters that were discussed in closed session?	12
Are we required to take minutes in closed session?	12
We hold an annual retreat. This is a very informal work/training session. No business is conducted and no action is taken. Do we have to advertise this meeting and allow the press and members of the public to attend?.....	13
What is an executive session?	13
Electronic Communication Meetings.....	13
May the entire board hold a meeting by telephone or video?.....	13
May individual board members participate by telephone or video?	13
How much notice must be given of telephone or video meetings?.....	13

May members of the board call in from different locations?	14
May a member call in from wherever he or she happens to be at the time of the meeting?	14
If a remote location is noticed for the convenience of a member, then the member decides to attend at another location, may we then omit the original location?	14
Is it sufficient to only allow public access to the 'main' meeting?	14
What if I have an emergency or personal matter?.....	14
May we use email to communicate between meetings?	14
What if a phone or video feed goes out or there is some other problem with communication during the meeting?	15
May a member call in on the telephone so long as he does not vote, speak or participate?	15
Emergency Meetings	15
What if the University or BOV have an emergency? Can we meet without 3 days' notice?.....	15
If we have an emergency, may we have an electronic meeting without 3 days' notice?.....	16
If an emergency telephone meeting is held, must public access be provided?	16
RECORDS	16
What does FOIA require regarding public records?.....	16
What is a "public record"?	16
Don't FOIA requests have to be in writing?	16
Are there exceptions to the requirement that we produce requested records?	17
How long do I have to produce records in response to a FOIA request?	17
Would a FOIA request require me to give an account of some event I witnessed, for example, write a description of a discussion I had with another BOV member?	17
What about my personal documents, including for example, handwritten notes such as those from meetings or discussions with alumni, email at home on my personal computer, etc.?	17
PENALTIES	18
So what if we violate FOIA? What's the big deal?	18

FOIA GENERALLY

What does FOIA do?

In general terms, FOIA defines what a meeting is and requires that all meetings be open to the public.²⁰ It also prohibits discussion of public business among members outside of meetings.²¹ There are, however, exceptions to these general meeting requirements that each member should be familiar with.²²

FOIA also requires that all public records (with some limited exceptions) be made available upon request to members of the public for inspection and copying.²³

All public records and meetings are *presumed* open. The BOV and the institution have the burden of proving that there was a legitimate reason for closing meetings or withholding records.²⁴

FOIA also requires that its open government provisions be liberally construed, and its exemptions be narrowly construed. This means that you should always err on the side of leaving meetings open rather than closing them, and releasing documents rather than withholding them.²⁵

Whenever you have specific questions about FOIA or its requirements, please do not hesitate to contact your counsel with the Attorney General's Office.

FOIA requires that some records be withheld and some meetings be closed, right?

Wrong. The exemptions to disclosure of records and for closed sessions are discretionary, not mandatory. There is no penalty for *releasing* records that *could* be withheld under a FOIA exemption (though other provisions of federal and state law, such as FERPA, may prohibit disclosure). There is also nothing that says a meeting *must* be closed just because it *could* be closed under a meetings exemption under FOIA. Please contact counsel if you have concerns about federal or state law that might prohibit release of information.

Who does FOIA apply to?

FOIA applies to all public bodies. In the context of state colleges and universities, that means that FOIA applies to the institution and all of its officers (including members of the BOV) and employees.²⁶ It also applies to the operations of the BOV itself together with all of its committees and subcommittees plus any other groups or entities appointed by the BOV to advise the BOV or exercise delegated functions. For example, a presidential search committee set up to make recommendations to the BOV is subject to FOIA.

²⁰ § 2.2-3700

²¹ § 2.2-3707

²² §§ 2.2-3707.01 and 2.2-3711

²³ § 2.2-3704

²⁴ § 2.2-3700(B)

²⁵ § 2.2-3700(B)

²⁶ § 2.2-3700

MEETINGS

Meetings Generally

Can we meet without telling anyone?²⁷

FOIA requires that all meetings of the BOV or any committee or subcommittee be advertised to the public for at least three working days prior to the meeting. The notice requirements of FOIA are very specific. The secretary to the BOV will handle the details of complying with these. Members of the BOV, however, should be aware that any meeting called must be far enough in advance that the secretary has time to properly prepare the notice and advertise the meeting for three work days. Also, any materials supplied to the BOV members before the meeting must also be made available for public inspection at the same time the materials are provided to the BOV, with the exception of documents that are specifically exempt under FOIA from disclosure.²⁸ This includes any materials one BOV member sends to all other members!

If your bylaws call for more notice for meetings than FOIA does, you must comply with the stricter provisions of the bylaws.

Can less than a quorum of the BOV - say three or four members - get together informally to discuss affairs of the institution?

No. A gathering of three or more members of the BOV where business is discussed is illegal, unless the gathering has been properly posted at least three working days prior to the meeting. It does not matter that a quorum was not present.²⁹ It does not matter that the members took no official action. If more than two BOV members serve on a university-related foundation's board, FOIA will likely be violated.

This prohibition is generally against *three or more* members discussing public business. *Two* members may discuss public business in person, on the phone, or otherwise, with one notable exception. The exemption exists where two members constitute either the entirety or a quorum of a committee or subcommittee, or other group that has been designated by the Board or Rector to advise the BOV or has been delegated some responsibility by the BOV, then any discussions between them must be properly advertised as a meeting. Otherwise, the gathering is an illegal "meeting" under FOIA.³⁰

Can't I even go to a cocktail party or dinner with two (or more) other BOV members?

Yes, of course you can. While there, you may even discuss business with *one other* member at a time.

Three members, however, may *not* jointly discuss public business. Nor may a third member be listening to the conversation.

²⁷ For details *see*: § 2.2-3707.

²⁸ § 2.2-3707F

²⁹ § 2.2-3707

³⁰ § 2.2-3701

Please keep in mind that this prohibition applies at *all* times and in *all* places – including, for example, lunches, dinners, and social occasions held in conjunction with BOV meetings or at annual professional conferences. For example, if a BOV holds a luncheon between the morning and afternoon sessions of a meeting, the BOV must, both advertise the luncheon as a meeting and have the luncheon open to members of the public, or ensure that no public business is discussed. That’s a difficult task, but a mandatory one.³¹

The BOV wants to take a bus tour of campus and our new facilities during a break at our Board meeting. Any problem with this?

No, no problem – *provided* arrangements are made also for members of the press and public to be present whenever any institutional business is discussed. That means you might need a big bus if any discussions will take place on the bus. (This was a real-life problem at a University recently.)³²

Who can come to our meetings?

Anybody who wants to. All meetings must be open to the public. Any member of the public (including, of course, press, employees, and students) has a right to attend, to listen, and to make a video or audio recording of any meeting. The BOV can put reasonable restrictions on recording to ensure that actions of the press or public do not disrupt the meeting.

You will, at times, have outside consultants present at your meetings. They will not be familiar with FOIA and may expect or request confidentiality that FOIA does not permit. The BOV and university staff should provide these consultants with information that will reduce the conflict between their expectations and what FOIA requires.

Do we have to tape record our meetings?

No. Recording meetings is not required. However, proper minutes must be taken and draft minutes, and later final minutes, must be posted to the web. The secretary to the BOV will ordinarily have this responsibility.³³

Do we have to have minutes taken?

Yes. FOIA requires that minutes be taken of every meeting, including retreats or work sessions. Also, draft minutes that fairly reflect actions taken must be posted on the web within 10 days following the meeting. Final approved meeting minutes must be posted within three working days of final approval of the minutes.³⁴

³¹ § 2.2-3701

³² § 2.2-3700 ensures “free entry to meetings of public bodies wherein the business of the people is being conducted.”

³³ § 2.2-3707

³⁴ § 2.2-3701.1

Closed Meetings

What are the exceptions to open meetings? When can we hold a closed meeting?³⁵

FOIA has 48 exceptions to the open meetings requirement, with more being proposed by the General Assembly each year. The exceptions most likely to be utilized by BOVs to justify closed sessions are:

- (1) *the personnel exception*: discussion, consideration, or interviewing of prospective candidates for employment; or the discussion of assignment, appointment, promotion, performance, demotion, salaries, discipline, or resignation of *specific* employees. This exception does *not* apply to discussion of members of the BOV themselves. BOV members may not go into closed session to discuss the performance of individual board members or the election of BOV officers. The personnel exception is also inapplicable to discussions of general school policy or operations – for example, reorganization – that would refer to reassignment or laying off of employees – unless the discussion centers upon *specific* employee(s).
- (2) *the scholastic record exception*: discussions or consideration of admission or disciplinary matters, or other matters that would involve disclosure of information in scholastic records (as defined in the act) of specific student(s). Generally speaking, however, the student or his lawyer is entitled to attend those closed sessions.
- (3) *the real property exception*: discussion or consideration of the acquisition or disposition of real property where open discussion would adversely affect the bargaining position or negotiating strategy of the institution. This exception does not apply once the real property has been acquired or disposed of, and does not include potential use of real property.
- (4) *the investment exception*: discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the institution would be adversely affected. This exception might occasionally be invoked during discussion of endowment funds investment.
- (5) *the legal advice exception*: consultation with legal counsel for legal advice on specific matters, and briefings by staff members or consultants pertaining to actual or probable litigation.
- (6) *the development exception*: discussion or consideration of matters related to gifts, bequests, and fund-raising activities, and grants and contracts for services or work to be performed by the institution.
- (7) *the honorary degree exception*: the discussion or consideration of honorary degrees or special awards.
- (8) *the terrorism exception*: the discussion of plans to protect public safety as it relates to terrorist activity or specific cybersecurity threats or vulnerabilities.
- (9) *the contract exception*: the discussion of the award of a public contract involving the expenditure of public funds where discussion in open session would adversely affect the bargaining position or negotiating strategy of the institution. Foundation contracts do not involve the expenditure of public funds and are not appropriate for closed meetings.

You should *always* consult with legal counsel well in advance of going into any closed meeting. The above are brief descriptions of exceptions for going into closed sessions – the “basics”. In each case, there are additional, specific legal criteria or requirements to be considered.

³⁵ For full list of exceptions see: § 2.2-3711(A). The Statute does refer to the exemptions for “closed meetings” but as will be discussed, a more accurate description is that they are a ‘closed session’ within a meeting. The terminology “closed session” will be used in these FAQs.

When are we *required* to go into closed session?

You are never required by law to go into closed session. FOIA gives the BOV the option of doing so when the topic of discussion falls within a FOIA open meetings exception.

What must we do to go in order to into closed session?

First, all meetings must have been properly noticed (discussed above). FOIA does not really permit a "closed meeting." All meetings are open, but for limited purposes, you may go into a "closed session." This is the case even if the only subject of the meeting is proper for closed session. A closed session may be held as a small part of a larger, open meeting, or a meeting may be called and noticed specifically for the purpose of having a closed session. But in any event, all meetings must first be convened as an open meeting, and then proper procedures must be followed to go into closed session. Closed sessions must be followed by an open session certification that the closed meeting was proper.

A detailed motion must be made to go into closed session. That motion, which must be included in the open meeting's minutes, must identify: (1) the closed session's specific subject matter; (2) the closed session's specific purpose; and (3) the specific exemption under §2.2-3711(A) that applies. General references to FOIA or to the subject matter of the meeting do not suffice.³⁶

Your counsel can provide the Rector with a "script" to use for going into closed session.

What if we are in open session with only the Board and President in attendance, and we want to discuss something that we would ordinarily discuss in closed session. Can't we do that without going through the formalities since there is no one we need to exclude?

You certainly may hold the discussion without going into closed session, but there are some shortcomings to that approach, including that minutes would have to be taken, whereas minutes would not be mandated in closed session.³⁷

What can we discuss in closed sessions?

Once the BOV properly goes into closed session, you may discuss only those specific matters identified in the motion to go into closed session. For example, if the BOV went into closed session to discuss "personnel matters – specifically the salary of the president," the BOV could not discuss any other matter, not even a different personnel matter, even if that other matter might have been the proper subject of a closed session had it been included in the motion.³⁸

It's easy to stray from the topic identified in the motion for closed session. One responsibility of your counsel is to watch closely and call any deviation to your attention. Ultimately, however, it is the BOV's responsibility to police itself and stick to the topic stated in the motion to go into closed session.

Who is permitted to go into a closed session with the BOV?

Just because the BOV goes into closed session, it does not mean that everyone other than BOV members must be excluded. The BOV can allow any persons to attend that the Board feels

³⁶ § 2.2-3712

³⁷ § 2.2-3712(D)

³⁸ § 2.2-3712

are necessary to the discussion. That said, it is best to *only* allow those who are necessary to the discussion

BOVs are required by law to invite and include counsel in all meetings, including closed sessions.³⁹

Who decides when closed session is appropriate?

The BOV as a whole is responsible for deciding whether to go into closed session and who should be included and excluded. The BOV decides to go into closed session through passage of the motion to do so. As a matter of governance, the BOV as a whole should also actively decide who should stay and not rely solely on the rector, the secretary to the BOV or the President to make that call.⁴⁰

Can we vote in closed session?

No. Any action that is required as a result of discussions in closed session must be taken after going back into *open meeting*. The BOV may, however, take non-binding votes in closed session – straw-polls, of sorts – to get a sense of how a public vote will go. Members are not legally bound to vote in open meeting as they indicated they would in closed session.

What do we do when we have finished our closed session discussions?

The BOV must reconvene, by motion, in open session following closed session, even if they have no more business to conduct. After the room is opened and visitors are informed that the meeting is now open, each member of the body must affirm by roll call or recorded vote that only those matters identified in the motion to close the meeting were discussed. Any member who believes matters outside the scope of the motion were discussed is to say so prior to the vote.

Failure to certify that the meeting was properly held does not affect the validity or confidentiality of matters discussed in the closed session or action taken on those matters later in open session. Deviation from the proper subject of the closed session and failure of a unanimous certification vote could, however, subject the BOV to harsh public criticism and individual members to monetary penalties.⁴¹

May BOV members talk with other people about matters that were discussed in closed session?

There is no *legal* prohibition against BOV members revealing discussions held in closed sessions; nor may the BOV itself prohibit such. BOV members are officers of the Commonwealth, and within legal parameters, each must decide how to best execute their responsibilities to the Commonwealth and the institution. Common sense, professional norms, and individual consciences must dictate BOV members' actions. One notable exception from Federal law: FERPA does generally prohibit all school officials, including BOV members, from revealing information obtained from student records. Other privacy requirements outside of FOIA may exist under federal and state law. Please consult counsel if you have questions.

Are we required to take minutes in closed session?

³⁹ § 23.1-1303

⁴⁰ § 2.2-3712

⁴¹ § 2.2-3712(D), (E)

No. There is no requirement that minutes be taken in closed session.⁴²

We hold an annual retreat. This is a very informal work/training session. No business is conducted and no action is taken. Do we have to advertise this meeting and allow the press and members of the public to attend?

Absolutely. Any get-together of three or more members at which the business or operations of the institution are discussed is a "meeting" under FOIA. Retreats, dinners and work sessions are no exception. They must be properly advertised, and must be open unless an exemption applies to a specific matter under discussion.⁴³

What is an executive session?

The term executive session no longer has any legal significance. Under FOIA there is a meeting and you are either in open session or closed session. For that reason, we strongly suggest that BOVs abandon using the terminology "executive session." Further, it is common for BOV members and others to confuse "executive session" and "executive committee."

Electronic Communication Meetings

May the entire board hold a meeting by telephone or video?

Generally, no. Under FOIA, meetings to discuss or transact public business generally may not be conducted by telephone, video, or other electronic communication means. The one, limited exception, are those instances where the Governor has declared a state of emergency.

May individual board members participate by telephone or video?

Yes, so long as the board observes a few requirements. First, a quorum of the board must be physically present at one primary meeting location. Second, the board must notice the remote location as a meeting location at least three business days prior to the meeting. Third, the remote meeting location must be open to the public just like any meeting of the board. For example, if you wish to call in from your home, you will need to open that location to the public. Finally, the board must hold at least one meeting annually where members are physically present and no members participate by electronic communication.⁴⁴

How much notice must be given of telephone or video meetings?

The notice required for telephone meetings is three (3) working days – the same as for other meetings.

⁴² § 2.2-3712(H)

⁴³ § 2.2-3701

⁴⁴ §2.2-3708

May members of the board call in from different locations?

Yes, with some limitations. First, a *quorum* of the body *must* be physically assembled at the main meeting location. If a quorum is not gathered in one place, members may not transact business. If a quorum *is* gathered in one location, other members may call in from remote locations provided the locations were advertised in the notice and other statutory requirements are met.

May a member call in from wherever he or she happens to be at the time of the meeting?

No. In order to conduct a telephone meeting, each remote location must have been determined in advance and advertised to the public as a remote location of the meeting. Further, each and every location from which any member is participating in the meeting must be open to the public, and must be equipped with a speakerphone so the public can hear and participate. Any person attending the meeting at any of the meeting locations must be given the same opportunity to address the BOV as persons attending the primary location where the quorum is located.

If a remote location is noticed for the convenience of a member, then the member decides to attend at another location, may we then omit the original location?

No. Once a location is noticed as a remote location, public access must be provided at that location unless the entire meeting is cancelled and re-noticed for at least 3 days later.

Is it sufficient to only allow public access to the 'main' meeting?

No. Every location of the meeting (that is, every location from which a member of the body participates) must be noticed as a public location and must be provided public access. The public at each location must have full access; that is, they must be able to hear (and see, in the case of video) and fully participate, including comment, to the same extent as the public at the 'main' meeting location. Also, at least one copy of the agenda and materials made available to the members of the body must at the same time be made available for public inspection; and a copy of those advance materials *and* materials distributed to the members of the body at the meeting must be made available for public inspection at *all* meeting locations.

What if I have an emergency or personal matter?

FOIA permits BOV with unexpected emergencies or personal matters to participate via phone or video. In order to do so, the BOV must have adopted written policy permitting BOV members to call in due to unexpected emergencies or personal matters.⁴⁵ A quorum of the BOV must still be physically assembled at the main meeting location.

May we use email to communicate between meetings?

Yes. There is nothing improper or illegal about using email in and of itself. Email provides a fast, efficient means of communication for you in your public service life, just as it does for you in your personal and professional life. Nothing prohibits the use of standard email for general communication between or among members.

⁴⁵ § 2.2-3708.1

It is important to note, however, that the *nature of e-mail use* will determine the legality of its use. No *lawful* meeting may be held by email. That is to say, if three or more members of a public body (or a quorum if less than three) do communicate by *instant* e-mail (otherwise known as IM, AIM, or 'chat', or if members are present at computers to simultaneously receive and send e-mail, that may well constitute an *illegal* meeting.

Where use of e-mail more resembles traditional communication through ordinary mail, with significant delay between receipt and response, then there is no "meeting" under FOIA. Where an exchange of e-mails resembles an assemblage of members of a public body, in that e-mails are being sent and responded to in quick fashion such that there is a feature of simultaneity, then such an exchange may be a "meeting" under FOIA, albeit an unlawful meeting.

BOV members should exercise *extreme caution* in the use of email. Use of distribution lists (that is, sending the same email to either the entire BOV or even to just two other members) could set the stage for an illegal meeting. Consider, for example, that a BOV member sends an email to all members of the BOV, and two of those members happen to be sitting at their computers – not an unlikely situation. If those two members respond to the message using function "reply all" within a short timeframe, we have an *illegal meeting*, subjecting the members to public criticism and the monetary penalties of FOIA.

Keep in mind, though, that emails are "records" under FOIA and must be produced in response to a request. (See below under "Records.") Be careful what you write!

What if a phone or video feed goes out or there is some other problem with communication during the meeting?

If, during the meeting, there is any interruption in the audio or video communication at any location – whether the primary location or a remote location – the meeting must be suspended immediately and may not be resumed until repairs are made.

May a member call in on the telephone so long as he does not vote, speak or participate?

A member may call in from a location that has not been noticed provided the member *only listens*, and does not otherwise participate in any manner. However, the more conservative, and safer, approach would be to avoid this scenario.

Emergency Meetings

What if the University or BOV have an emergency? Can we meet without 3 days' notice?

Yes. Notice that is "reasonable under the circumstances" must be given. In an emergency, notice must be given to the public and to BOV members at the same time. While "emergency" is not defined under FOIA, an emergency is best thought of as an extremely urgent situation beyond the BOV's control. Delay or procrastination on the part of the BOV or institution does not make for an "emergency" under FOIA.⁴⁶

⁴⁶ § 2.2-3707(D)

If we have an emergency, may we have an electronic meeting without 3 days' notice?

Yes. An "emergency" is an unforeseen circumstance rendering the notice required by FOIA impossible or impracticable, and which requires immediate action. If an emergency telephone meeting is called, reasonable notice under the circumstances must be provided the public. Generally, that would mean providing notice to the same persons as in a non-emergency by the most expedient method possible. Notice must be given to the public contemporaneously with that given members of the body.⁴⁷

If an emergency telephone meeting is held, must public access be provided?

Yes. At an emergency telephone meeting, public access must be provided at all locations, just as in a non-emergency. Except for the requirement of the 3 days' notice, bodies must meet all other telephone meeting requirements; for example, minutes must be kept. (See above.) Further, the minutes of the meeting must state the nature of the emergency.⁴⁸

RECORDS

What does FOIA require regarding public records?

In general, FOIA requires that unless an exception applies, all records in the possession of a public employee or officer (including BOV members) that relate to public business must be made available to Virginia citizens and members of the media upon request. They are entitled to read and inspect the document and to make copies. (Generally, institutions find it easier to simply provide requestors with copies rather than requiring the requestor to make the copies.) We generally refer to a request for public records as a "FOIA request."⁴⁹

What is a "public record"?

Public records are basically anything the institution and its officials and employees use to transact public business and record data, whether produced by them or others. Records include (among other things) paper documents such as copies of letters, contracts, memos, etc. Also included are video tapes and audio tapes; digital documents on computer hard drives and servers; and text messages on cell phones - in short, anything that records or documents public business - whether written on a digitally stored or chiseled onto a rock, or anything in-between. If it's about public business, it's a public record.⁵⁰ This includes anything in a member of the BOV's home or work computer or otherwise in their possession.

Don't FOIA requests have to be in writing?

Absolutely not. Any request made for records is a FOIA request, whether made orally, by letter, by email, or by carrier pigeon. Nor does the person requesting records have to use any

⁴⁷ § 2.2-3707, § 2.2-3708

⁴⁸ § 2.2-3707

⁴⁹ § 2.2-3704

⁵⁰ § 2.2-3701 ("Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photo stating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. Records that are not prepared for or used in the transaction of public business are not public records.)

magic words, such as “records,” or “FOIA.” The requestor is not required to tell you why he or she is asking for the records or what they intend to do with them; nor should you ask.

Whenever *anyone* asks you for *anything* related in *any way* to the business of your institution, you should report it immediately to the institution’s FOIA officer – even if you do not have any records you believe to be responsive to the request. Others within the institution may have records responsive, and the institution is under a very tight time frame within which to produce the records or object to production.⁵¹

Are there exceptions to the requirement that we produce requested records?

Yes. In fact, there are well over a hundred exceptions. Your responsibility as a BOV member is to report any request for records to your institution’s FOIA officer or counsel. They will help you and others determine what exemptions might apply and how best to respond to the request.⁵² The role of the FOIA officer is to assist in document collection to be responsive. Legal questions should be directed to legal counsel.

How long do I have to produce records in response to a FOIA request?

The institution has only 5 working days to initially respond. The institution’s FOIA officer will assist you and others in gathering documents and properly responding to the request. Even if the institution invokes the permitted extension of time, a final response must be made within 12 work days of the initial request, unless other arrangements are worked out between the FOIA officer and the requestor.

Never attempt to respond to a FOIA request on your own without consulting your counsel and institution’s FOIA officer.

Would a FOIA request require me to give an account of some event I witnessed, for example, write a description of a discussion I had with another BOV member?

No. FOIA only requires the production of already-existing documents. FOIA does not require you to create new documents. At times, though, an institution may find it preferable for any number of reasons to create a new document rather than producing the existing documents that were requested. That’s fine, so long as the requester agrees.

What about my personal documents, including for example, handwritten notes such as those from meetings or discussions with alumni, email at home on my personal computer, etc.?

First, understand that *any* record (letter, memo, scribbled note, email, audio recording, or any other) that in any way relates to the business of the University is *not* a personal record, it is a *public record*. This is the case no matter where it resides – whether on campus, in your personal computer, in the cloud or in the glove compartment of your car. So in the event of a FOIA request to you, to the University, or to anyone at the University, those records must be produced if responsive to the request.⁵³

⁵¹ § 2.2-3700

⁵² To view the exclusions *see*: 2.2-3705.1-2.2-3705.8.

⁵³ § 2.2-3701

PENALTIES⁵⁴

So what if we violate FOIA? What's the big deal?

First, the big deal is that members of the BOV are entrusted with the public confidence, and a FOIA violation is breach of that trust. The General Assembly has determined that, with specific exceptions, the public's right to open government must not be violated. Extreme embarrassment to both the University and you personally can result from FOIA violations.

Beyond that, any citizen can file a complaint in court if he believes FOIA has been breached. It is up to the officer or employee to prove that an exception to FOIA was appropriate. If not successful, the offending officer or employee can be personally fined up to \$2000 for the first occurrence and up to \$5000 for additional occurrences.

⁵⁴ For violations and penalties *see*: § 2.2-3714.

ACTION ITEM

**Academic Programs, Diversity and University Community Committee
July 28, 2017**

CONFERRAL OF EMERITUS/EMERITA STATUS

<u>LAST NAME</u>	<u>FIRST NAME</u>	<u>EFFECTIVE DATE</u>
Denham	Susanne	7/28/2017
<u>TITLE:</u>	University Professor Emerita	
<u>LOCAL ACADEMIC UNIT:</u>	Psychology (CHSS)	
<hr/>		
Greenwood	Pamela	7/28/2017
<u>TITLE:</u>	Term Associate Professor Emerita	
<u>LOCAL ACADEMIC UNIT:</u>	Psychology (CHSS)	
<hr/>		



College of Humanities and Social Sciences
 4400 University Drive, MS 3A3, Fairfax, Virginia 22030
 Phone: 703-993-8720 Fax: 703-993-8714

To: S. David Wu, Provost and Executive Vice President
 Ángel Cabrera, President

From: Deborah A. Boehm-Davis^{JD}, Dean
 College of Humanities and Social Sciences

Subject: Emerita Designation for Susanne Denham

Date: June 5, 2017

On the recommendation of the Department of Psychology, I am pleased to recommend Dr. Susanne Denham for appointment as University Professor Emerita, effective upon approval of the BOV.

Dr. Denham received her Ph.D. in applied developmental psychology in 1985 from the University of Maryland Baltimore County. She began teaching at George Mason University that same year, and retired as a University Professor on June 1, 2017.

Dr. Denham's areas of research specialization include: (1) Socio-emotional development in young children, and (2) Assisting parents and teachers to become better socializers of emotional competence. She has published two books, over 140 peer-reviewed journal articles and book chapters, a very large number of conference presentations and posters, and several other publications (e.g., technical reports, book reviews). Dr. Denham has received extensive external funding, including from the National Institutes of Mental Health, National Institute for Child Health and Human Development (in partnership with Head Start and the Administration for Children and Families), the W.T. Grant Foundation, the John Templeton Foundation, and the National Science Foundation. She has served on numerous editorial boards, and is past co-editor of the journal *Social Development* as well as current editor of the journal *Early Education and Development*.

While at Mason, Dr. Denham taught numerous courses at both the undergraduate and graduate levels. She also chaired and served on numerous dissertation committees and honors thesis committees. Across the years, her university, college and department service has been extensive.

Approve Disapprove 
 S. David Wu, Provost and Executive Vice President 6/7/17
Date

Approve Disapprove 
 Ángel Cabrera, President 6/9/17
Date

This memo certifies that the criteria have been met by this Emeritus candidate according to the Faculty Handbook requirements: full-time Associate or Full Professor with ten or more years of continuous academic service, home unit and/or Dean recommendation, Provost recommendation, and the President's recommendation.



College of Humanities and Social Sciences

4400 University Drive, MS 3A3, Fairfax, Virginia 22030
Phone: 703-993-8720 Fax: 703-993-8714

To: S. David Wu, Provost and Executive Vice President
Ángel Cabrera, President

From: Deborah A. Boehm-Davis, ^{ub}Dean
College of Humanities and Social Sciences

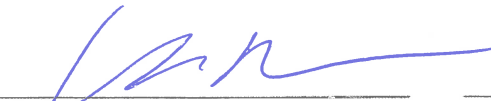
Subject: Emerita Designation for Pamela Greenwood

Date: June 5, 2017

On the recommendation of the Department of Psychology, I am pleased to recommend Dr. Pamela Greenwood for appointment as Term Associate Professor Emerita effective upon approval by the BOV.

Dr. Pamela Greenwood began her career at Mason in 2004 as a term faculty member with both instructional and research responsibilities. She retired in 2016 as a Research Associate Professor. During her time at Mason, Dr. Greenwood taught several sections of several courses at both the undergraduate and graduate levels. These courses include: PSYC 100: Basic Concepts in Psychology, PSYC 317: Cognitive Psychology, PSYC 701: Cognitive Bases of Behavior, PSYC 734: Seminar in Human Factors and Applied Cognition, PSYC 768: Advanced Topics in Cognitive Science (specifically, The Aging Brain). In addition, Dr. Greenwood was a member of the graduate faculty and served on numerous dissertation committees and honors thesis committees.

Dr. Greenwood's primary research interests include: (a) understanding the relationship between cognitive change and brain change over the course of cognitive training, (b) understanding how training-related cognitive change is related to change in cortical thickness, white matter integrity, and functioning connectivity, particularly in ventral and dorsal attention networks, and (c) investigating the modulation of cognitive training with non-invasive brain stimulation. She served on the editorial board at *NeuroImage*, served as an ad hoc reviewer for numerous journals, and reviewed for several National Institutes of Health and National Science Foundation panels.

Approve Disapprove _____  _____ 7/12/17
S. David Wu, Provost and Executive Vice President Date

Approve Disapprove _____  _____ 7/13/17
Ángel Cabrera, President Date

This memo certifies that the criteria have been met by this Emeritus candidate according to the Faculty Handbook requirements: full-time Associate or Full Professor with ten or more years of continuous academic service, home unit and/or Dean recommendation, Provost recommendation, and the President's recommendation.

ACTION ITEM

Academic Programs, Diversity and University Community Committee

July 28, 2017

ELECTIONS OF NEW HIRES

<u>LAST NAME</u>	<u>FIRST NAME</u>	<u>EFFECTIVE DATE</u>
Buck Louis	Germaine M.	10/1/2017
<u>TITLE:</u>	Dean	
<u>LOCAL ACADEMIC UNIT:</u>	College of Health and Human Services	
Additional Title: Professor without Term		
Correa-Cabrera	Guadalupe	8/25/2017
<u>TITLE:</u>	Associate Professor without Term	
<u>LOCAL ACADEMIC UNIT:</u>	Schar School of Policy and Government	
<hr/>		
Peiperl	Maury A.	8/1/2017
<u>TITLE:</u>	Dean	
<u>LOCAL ACADEMIC UNIT:</u>	School of Business	
Additional Title: Professor without Term		
Uzuner	Ozlem	8/25/2017
<u>TITLE:</u>	Associate Professor without Term	
<u>LOCAL ACADEMIC UNIT:</u>	Information Sciences and Technology (VSE)	
<hr/>		



Office of the Provost
4400 University Drive, MSN 3A2
Fairfax, Virginia 22030
Phone: 703.993.8770; Fax: 703.993.8871

**Procedural Checklist for New Faculty
Being appointed to Tenured (Without Term) Positions**

This form must be submitted, in hard copy, to the Provost Office by the Dean/Director immediately upon receipt of a signed offer letter.

Germaine M. Buck Louis

Faculty Member's Name and Title

College of Health and Human Services

Local Academic Unit

Reference checks have been conducted.

Sexual harassment prevention training has been scheduled for TBD Date

One-half page justification for appointment, to include a description of the benefit of this hire for the department, school, etc., as well as the rationale for selecting this candidate over others.

Dr. Buck Louis is a distinguished researcher and professor in the field of epidemiology, where her research interests primarily focus on the interplay between environmental chemicals and lifestyle on human reproduction and development. She currently serves as the Director and Senior Investigator of the Intramural Population Health Research, Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD), at the National Institute of Health. Her personal record, commitments, and contacts promise a vigorous course for the College of Health and Human Services.

Dean/Director

7/13/17

Date



Office of the Provost
4400 University Drive, MSN 3A2
Fairfax, Virginia 22030
Phone: 703.993.8770; Fax: 703.993.8871

**Procedural Checklist for New Faculty
Being appointed to Tenured (Without Term) Positions**

This form must be submitted, in hard copy, to the Provost Office by the Dean/Director immediately upon receipt of a signed offer letter.

Guadalupe Correa-Cabrera Associate Professor without Term

Faculty Member's Name and Title

Schar School of Policy and Government

Local Academic Unit

Reference checks have been conducted.

Sexual harassment prevention training has been scheduled for Fall 2017
Date

One-half page justification for appointment, to include a description of the benefit of this hire for the department, school, etc., as well as the rationale for selecting this candidate over others.

Dr. Correa-Cabrera went through the normal hiring process and the School's tenure committee. She was highly rated by the search committee, the faculty, and the tenure committee. Based on her past experience, we anticipate that she will be a productive researcher (she already is writing grant applications that will go through the School), popular instructor (her evaluations from previous courses are high), and active member of the faculty (she already is making contact with colleagues). Dr. Correa-Cabrera brings expertise in political science, which we need to bolster, as well as border politics and policies, which are new for us.

Mark J. Rozell

Dean/Director

Date



Office of the Provost
4400 University Drive, MSN 3A2
Fairfax, Virginia 22030
Phone: 703.993.8770; Fax: 703.993.8871

**Procedural Checklist for New Faculty
Being appointed to Tenured (Without Term) Positions**

This form must be submitted, in hard copy, to the Provost Office by the Dean/Director immediately upon receipt of a signed offer letter.

Maury Peiperl

Faculty Member's Name and Title

School of Business

Local Academic Unit

Reference checks have been conducted.

Sexual harassment prevention training has been scheduled for TBD
Date

One-half page justification for appointment, to include a description of the benefit of this hire for the department, school, etc., as well as the rationale for selecting this candidate over others.

Dr. Peiperl areas of teaching and research interests are top management learning, executive careers, change management, talent strategy and global mobility. He has taught, researched and consulted in these areas in some 32 countries on 6 continents. He currently serves as the as Pro-Vice-Chancellor and Director of Cranfield School of Management at Cranfield University.

Outside his teaching and research, Dr. Peiperl sits on the boards of several companies, as well as the UK anti-trafficking charity, HERA, and the Alumni Council of the Harvard Graduate School of Arts and Sciences.

7/13/17

Dean/Director

Date



Office of the Provost
4400 University Drive, MSN 3A2
Fairfax, Virginia 22030
Phone: 703.993.8770; Fax: 703.993.8871

Procedural Checklist for New Faculty Being appointed to Tenured (Without Term) Positions

This form must be submitted, in hard copy, to the Provost Office by the Dean/Director immediately upon receipt of a signed offer letter.

Özlem Uzuner, Professor of Information Sciences and Technology

Faculty Member's Name and Title

Dept. of Information Sciences and Technology

Local Academic Unit

Reference checks have been conducted.

Sexual harassment prevention training has been scheduled for TBD
Date

One-half page justification for appointment, to include a description of the benefit of this hire for the department, school, etc., as well as the rationale for selecting this candidate over others.

Dr. Uzuner is a tenured Associate Professor, since 2013, at the State University of New York at Albany. She is currently in the Department of Computer Science, with an affiliate position at MIT in the Computer Science and Artificial Intelligence Laboratory. Dr. Uzuner received her Ph.D. in Technology Management and Policy from MIT in 2005. She is an internationally recognized expert in natural language processing, data analytics, and their applications to medical records. She will bring great visibility to Mason in this area, will have many potential collaborators on the Mason faculty, and she will contribute to our multidisciplinary data analytics engineering program. Her research will also be of interest to INOVA and will help support our partnership with them. She has a very strong publication record and research funding exceeding \$2M.

Kenneth S. Ball

Digitally signed by Kenneth S. Ball
DN: cn=Kenneth S. Ball, o=George Mason University,
ou=Volgenau School of Engineering, email=ball@gmu.edu, c=US
Date: 2017.07.11 10:45:45 -0400

7-11-17

Dean/Director

Date

ITEM NUMBER VII.B:

Exclusion of the Board of Visitors from the National Industrial Security Program personal security clearance requirement.

PURPOSE OF ITEM:

This Action Item is required to avoid the requirement for members of the Board of Visitors to obtain personal security clearances.

BRIEF NARRATIVE:

Under the provision of the National Industrial Security Program the senior management officer and the Facility Security Officer must always be cleared to the level of the Facility Clearance Level (FCL). The University has a Top Secret FCL which allows researchers to work on classified contracts up to and including the Top Secret level. Both the President and the Facility Security Officer possess the required Top Secret clearances. Other officials as determined by the "Cognizant Security Agency" (CSA) must be granted personal security level clearances or be excluded by formal resolution. Our CSA, the Defense Security Service, has determined that the Board of Visitors must be effectively excluded from all classified information disclosed to the organization. This exclusion must be made a matter of record by the University's executive body. This is a recurring exclusion that must be executed whenever a change to membership of the Board of Visitors occurs. The wording of the exclusion is the wording provided by our CSA and we have been instructed not to vary from it.

STAFF RECOMMENDATION:

Staff recommends Board approval

RESOLUTION ON CLASSIFIED INFORMATION ACCESS

WHEREAS, current Department of Defense Regulations contain a provision making it mandatory that the Senior Management Official and Facility Security Officer meet the requirements for eligibility for access to classified information established for a contractor facility clearance; and

WHEREAS, said Department of Defense Regulations permit the exclusion from the requirements for access to classified information of certain members of the Board of Directors and other officers, provided that this action is recorded in the corporate minutes.

NOW THEREFORE BE IT DECLARED that the Senior Management Official and Facility Security Officer at the present time do possess the required eligibility for access to classified information; and

BE IT RESOLVED that in the future, when any individual enters upon any duties as Senior Management Official or Facility Security Officer, such individual shall, if they do not already possess such, immediately make application for the required eligibility for access to classified information; and

BE IT RESOLVED AND DIRECTED that the following members of the Board of Directors and other officers shall not require, shall not have, and can be effectively and formally excluded from access to all CLASSIFIED information disclosed to the University and shall not affect adversely University policies or practices in the performance of classified contracts for the Department of Defense or the Government contracting activities (User Agencies) of the National Industrial Security Program.

Board Officers:

Thomas M. Davis - Rector
- Secretary

Jon M. Peterson - Vice Rector

Board Members:

Mahfuz Ahmed	Karen Alcalde	Horace L. Blackman
Anjan Chimaladinne	Stephen Cumbie	Claire Dwoskin
James W. Hazel	Wendy Marquez	David Petersen
Nancy G. Prowitt	Shawn Purvis	Tracy Schar
Robert Witeck	Lisa Zuccari	

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of George Mason University, this day of 28 July 2017

- Secretary

GEORGE MASON UNIVERSITY

BOARD OF VISITORS

DOCUMENT AND RECORDS REQUEST POLICY

In order to facilitate the orderly transaction of business, and to make the most efficient use of administrative staff, it is the policy of this Board that all requests by individual members for University documents and records, subject to review by Counsel for disclosability, shall be directed to the Secretary of the Board of Visitors or to the Secretary pro tem in the absence of the Secretary of the Board of Visitors.

This policy shall remain in effect for one year.

Adopted by the Board of Visitors on July 28, 2017.

Secretary
Board of Visitors

ITEM NUMBER VII.D.:

**Deficit Authorization Annual Notice
Section 4-3.01 Requirements (INFORMATION)**

PURPOSE OF ITEM:

This item provides a copy of Section 4-3.01 to members of the Board of Visitors.

BRIEF NARRATIVE:

Section 4-3.01 of the 2016 Appropriation Act prohibits agencies from obligating or expending general fund amounts in excess of appropriations or obligating or expending at a rate that would result in expenditures in excess of non-general fund revenue collections and appropriations, without prior approval by the Governor.

Consistent with this provision, the agency head is directed to acknowledge the receipt of this notification

The heads of agencies with governing boards must also provide each board member with a copy of this notice and of §4-3.01.

STAFF RECOMMENDATION:

For Board information only.

§ 4-3.00 DEFICIT AUTHORIZATION AND TREASURY LOANS

§ 4-3.01 DEFICITS

a. GENERAL:

1. Except as provided in this section no state agency shall incur a deficit. No state agency receiving general fund appropriations under the provisions of this act shall obligate or expend moneys in excess of its general fund appropriations, nor shall it obligate or expend moneys in excess of nongeneral fund revenues that are collected and appropriated.

2. The Governor is authorized to approve deficit funding for a state agency under the following conditions:

a) an unanticipated federal or judicial mandate has been imposed,

b) insufficient moneys are available in the first year of the biennium for start-up of General Assembly-approved action, or

c) delay pending action by the General Assembly at its next legislative Session will result in the curtailment of services required by statute or those required by federal mandate or will produce a threat to life, safety, health or property.

d) Such approval by the Governor shall be in writing under the conditions described in § 4-3.02 a Authorized Deficit Loans of this act and shall be promptly communicated to the Chairmen of the House Appropriations and Senate Finance Committees within five calendar days of deficit approval.

3. Deficits shall not be authorized for capital projects.

4. The Department of Transportation may obligate funds in excess of the current biennium appropriation for projects of a capital nature not covered by § 4-4.00 Capital Projects, of this act provided such projects 1) are delineated in the Virginia Transportation Six-Year Improvement Program, as approved by the Commonwealth Transportation Board; and 2) have sufficient cash allocated to each such project to cover projected costs in each year of the Program; and provided that 3) sufficient revenues are projected to meet all cash obligations for such projects as well as all other commitments and appropriations approved by the General Assembly in the biennial budget.

b. UNAUTHORIZED DEFICITS: If any agency contravenes any of the prohibitions stated above, thereby incurring an unauthorized deficit, the Governor is hereby directed to withhold approval of such excess obligation or expenditure. Further, there shall be no reimbursement of said excess, nor shall there be any liability or obligation upon the state to make any appropriation hereafter to meet such unauthorized deficit. Further, those members of the governing board of any such agency who shall have voted therefore, or its head if there be no governing board, making any such excess obligation or expenditure shall be personally liable for the full amount of such unauthorized deficit and, at the discretion of the Governor, shall be deemed guilty of neglect of official duty and be subject to removal therefore. Further, the State Comptroller is hereby directed to make public any such unauthorized deficit, and the Director, Department of Planning and Budget, is hereby directed to set out such unauthorized deficits in the next biennium budget. In addition, the Governor is directed to bring this provision of this act to the attention of the members of the governing board of each state agency, or its head if there be no governing board, within two weeks of the date that this act becomes effective. The governing board or the agency head shall execute and return to the Governor a signed acknowledgment of such notification.

c. TOTAL AUTHORIZED DEFICITS: The amount which the Governor may authorize, under the provisions of this section during the current biennium, to be expended from loans repayable out of the general fund of the state treasury, for all state agencies, or other agencies combined, in excess of general fund appropriations for the current biennium, shall not exceed one and one-half percent (1 1/2%) of the revenues collected and paid into the general fund of the state treasury as defined under § 4-2.02 b of this act during the last year of the previous biennium and the first year of the current biennium.

d. The Governor shall report any such authorized and unauthorized deficits to the Chairmen of the House Appropriations and Senate Finance Committees within five calendar days of deficit approval. By August 15 of each year, the Governor shall provide a comprehensive report to the Chairmen of the House Appropriations and Senate Finance Committees detailing all such deficits.

ITEM NUMBER VII.E.:

Key Initiatives and FY 2018 Budget – State Impact (INFORMATION)

PURPOSE OF ITEM:

To brief the Board of Visitors on updates to the FY 2018 operating budget, strategies and initiatives.

BRIEF NARRATIVE:

The Senior Vice President for Administration and Finance will provide an update on the FY 2018 operating and capital budget. Primarily those updates will be a review of the State General Fund.

Further, there will be a discussion regarding upcoming financial matters that will come before the Board of Visitors for consideration and deliberation in the September 2017 – May 2018 timeframe.

STAFF RECOMMENDATION:

For Board information only.