GOVERNANCE AND THE PURSUIT OF ACADEMIC EXCELLENCE AT THE STATE UNIVERSITY OF NEW YORK: RECOMMENDATIONS FOR POSITIVE CHANGE

Submission by the State University of New York to the Committee on Governance
New York State Commission on Higher Education

Introduction

This paper responds to the request of the Governance Committee of the New York State Commission on Higher Education for analysis of the governance of the State University of New York (SUNY) and suggestions for changes. These ideas were developed through a SUNY-wide process of consultation.

SUNY was created as part of the government of the State and is the partner of other State government institutions in providing affordable, accessible, and excellent public higher education. SUNY looks forward to working with its partners in reexamining existing structures with a view to improving the delivery of its educational services.

SUNY receives public funds and is accountable for them. It necessarily works closely with the Governor, the Legislature, the Attorney General, the Office of the State Comptroller, and, of course, the State Education Department. The understanding and commitment of each of these offices form the partnership without which SUNY would not be able to deliver affordable, accessible, and excellent higher education. Of course, SUNY would like to see that partnership deliver higher levels of investment and a stream-lined, regulatory environment. These steps would enable the entire system to achieve the goal of academic excellence at the top of the Governor's and Legislature's agenda and maximum efficiencies, savings, and return on investment.

SUNY receives millions of dollars from the State and owes a duty to the State to be accountable for the monies it receives and spends. SUNY also owes a duty to the State to be a national leader in cutting-edge research and to provide students with the best possible education. Innovative approaches to governance can enable SUNY to provide the highest quality education to nearly half a million students of diverse socio-economic backgrounds located on 64 campuses throughout the state, pursue new programs and research opportunities that will bring needed jobs to New York State, and, at the same time, maintain buildings and comply with the complex law and regulations governing higher education in New York.

I. Redefine SUNY As a Public Legal Entity, *sui generis*

We believe that SUNY's structure with diverse campuses and programs under a single board of trustees best serves the mission of affordable, accessible, and excellent public higher education and, therefore, should be preserved. At the same time, redefinition of

SUNY would be in line with recommendations of prior Commissions[1] and help SUNY attain the highest level of accomplishment among systems of public higher education without losing accountability.

Legal Redefinition of SUNY

SUNY governance should be in line with the governance principles of most of the leading public universities in the United States. Redefinition could take a number of forms. By recommending a constitutional amendment, the Commission would be urging the State to express its understanding of SUNY's requirements and importance. The amendment would evidence the State's commitment to public higher education and determination not to allow politics to interfere with education. It would increase the prestige of SUNY, help ensure autonomy in governance, and promote the role of SUNY in advancing economic development.

The constitutional amendment should

- Require the State to provide support for SUNY,
- Acknowledge the SUNY Board's control and autonomy to carry out its mission,
- Provide that no law other than a general law shall be enacted that abrogates the powers of the SUNY Board, and
- Clarify SUNY's role in economic development.

To support the latter, the amendment would specify that the Article VII, §8 of the State Constitution, which prohibits gifts and loans of State money/property in support of private interests, does not apply.

II. Statutory Reform

The Commission should recommend that New York add to the management flexibility first provided to SUNY in 1948 and expanded in 1985, 1996, and 1998. The Commission thus should recognize that SUNY now is a mature system of public higher education and recommend that the State, as SUNY's partner, reexamine and change the way it holds SUNY accountable for management of educational operations and programs and for handling public funds.

A. Tuition

[1] Committee on Higher Education (Heald Committee), *Meeting the Increasing Demand for Higher Education in New York State* (1960); *Report of the Temporary State Commission on the Future of Postsecondary Education in New York* (1977) (Nils Y. Wessell, Chairman); Independent Commission on the Future of the State University, *The State University of New York: The Challenge and The Choice* (1985) (Ralph P. Davidson, Harold L. Enarson, Co-Chairmen); The Board of Trustees, State University of New York, *Rethinking SUNY* (1995).

Education Law §355(2)(h)(4) prohibits SUNY from setting tuition and/or imposing differential tuition for programs leading to like degrees. While SUNY establishes tuition by rulemaking, tuition decisions are determined in concert with the Legislature and the Executive because tuition revenues are available to SUNY only through enacted appropriations. Education Law §355(2)(h)(4) should be amended to authorize SUNY to set appropriate tuition for each campus prior to the adoption of the State budget. State Finance Law §4 should be amended to provide that the SUNY Board of Trustees may expend tuition and user-fee revenues without appropriation. In order that such revenues not be treated as State monies, State Finance Law §121 should be amended to provide that such revenues are not deposited into the State Treasury.

B. Procurement

Requirements for prior approval add to SUNY's time and cost of doing business and impede SUNY's ability to take advantage of opportunities. Therefore, the Commission should recommend the following amendments to existing law:

- Amend State Finance Law §§112(2) and (3) to provide SUNY flexibility to enter into contracts/procurements without pre-approval for: goods and services; leases; contracts and permits whereby SUNY gives consideration other than money; and capital construction contracts. Section 112 requires that State agency contracts be reviewed and approved by the State Comptroller prior to taking effect and allows the State Comptroller to take up to three months (with the possibility of extensions) to conduct this review. Relief from this pre-approval process would enable SUNY to undertake procurement more efficiently, while preserving accountability through post-audit.

- Amend Economic Development Law Art. 4-C to exempt SUNY from provisions requiring publication of procurement opportunities. Under this law, the monetary thresholds for publication are so low as to require publication in situations in which competitive procurement is not required. Elimination of the publication requirement would foster greater efficiency in procurement.

- Amend Education Law §355(4)(a) to allow for the transfer or interchange of amounts appropriated to SUNY without limitation, thus giving SUNY flexibility to address educational and economic needs as they arise.

- Allow SUNY to enter into revenue contracts up to $1 million with post audit review rather than prior approval. The current limit of $10,000 does not allow SUNY to take advantage of short-term revenue opportunities.

As a general matter, *post facto* audits, instead of pre-audits, would ensure accountability without external micromanagement that has caused delays and lost opportunities.

SUNY's Trustees should delegate more transactional business to the Chancellor (with a requirement to report quarterly or otherwise to the Trustees). Such delegation would reduce delay and Board involvement in minor University transactions such as land purchases and sales (below a certain level), capital financing and bonding (to the extent transaction partners would permit), requests for formal action to the State Education Department or other state agencies, and the like.

C. Property

SUNY needs effectively and efficiently to manage its own resources and facilities. It also needs the ability to undertake and finance capital projects in support of its educational, economic development, and health care missions by means available to private entities. To reduce costs and increase efficiency, the Commission should recommend the following amendments to existing law:

- Amend the Education Law, Public Lands Law, and State Finance Law to exempt SUNY from restrictions related to the transfer, lease, sale, or other disposal of real property and personal property.

- Amend Education Law §355(2)(s) to authorize SUNY to lease or otherwise make available its real property and facilities to any public or private entity for a purpose in support of SUNY's mission. Generally, SUNY may lease its real property and capital facilities only to the State University Construction Fund and Dormitory Authority (DASNY). Without special legislation, SUNY may not lease property to other tenants to facilitate construction of research, housing, economic development, and other facilities and cannot make real property interests available as security for industrial development agencies or private financing of such facilities.

Exempt SUNY from provisions of Public Lands Law §§3, 30-a, and 33 and State Finance Law §167 that control and restrict how and to whom SUNY may transfer real property and personal property. For example, SUNY may not transfer surplus property directly to a private not-for-profit corporation even if to advance SUNY's educational or public service mission.

D. SUNY Construction: The Needs of the State University Construction Fund (Fund)

Changes in the construction industry, the multi-billion dollar capital program currently being managed by the Fund, and new multi-year capital plans under development mean that the Fund needs to be better equipped and more flexible in order better to fulfill its statutory mission to expedite the construction, rehabilitation or improvement of facilities for SUNY. Flexibility does not mean loss of accountability. The following, in addition to application of new procurement flexibility rules as advocated above with respect to SUNY itself, will assist the Fund in providing the facilities that SUNY needs as quickly as possible:

- The Fund should be able to conduct procurements subject only to its own procurement guidelines. Post-audit of the Fund procurement practices, instead of pre-audit, would insure that such procurements are fair and open to competition. This change would allow projects to start sooner. Thus, the Fund should be included in the flexibility proposal set forth in section B, above.

- In order to deliver the facilities that SUNY needs in a time frame that keeps SUNY competitive with other institutions, the Fund needs to be able to determine the staffing, support services, and equipment that it needs, especially as SUNY's capital program continues to grow. Such determinations would be made within the amount made available to the Fund for its operating budget. Since Fund operating funds come directly from bond proceeds, post-audit of the Fund's operating costs and its determination of staffing levels would provide sufficient accountability for Fund operations.

- Authorizing the Fund and campuses to deliver capital projects, where appropriate, by the design/build and construction manager/at risk and other emerging project delivery methods will keep the Fund and SUNY on the cutting edge of college and university construction practices. Allowing the Fund to use these project delivery methods will allow the Fund to have the same, or similar, tools for project delivery as does the Dormitory Authority. Thus, SUNY campuses could choose which entity – the Fund, DASNY or the campus – would be best for a specific project.

E. Human Resources

Universities require flexibility in hiring in order to compete for talent and to provide the best education. Therefore, the Commission should recommend a review of SUNY's personnel system.

In regard to litigation, the Commission should recommend authorization for gap insurance coverage to allow for settlement of cases prior to the initiation of litigation (once litigation commences, losses are paid from the Court of Claims fund).

III. Academic Program Review and Master Plan Amendments

The Commission should recommend a reexamination of the SUNY and State Education Department (SED) review and approval process with respect to academic programs. The goals of such a review would be to make the process more efficient and responsive to New York State's emerging needs, while at the same time maintaining appropriate quality controls. Currently, review and approval of new academic programs, even a change in the name of a degree, can take up to 18 months. Pre-screening, for example, would ensure that final proposals are ready for review (1-2 day turnaround), decrease time in the review process, and facilitate campus applications for expedited review of proposals.

- SED should develop mechanisms for expedited review, e.g., for campuses that already have registered degrees at particular levels in certain situations (e.g., baccalaureate) in established disciplinary areas.

- SUNY and SED should collaborate to remove redundancies in the program approval process and review and reduce SUNY and SED requirements for new/revised programs.

- Amend Education Law §§237 and 354 to provide SUNY an 8-year master planning cycle, like that followed by independent and proprietary institutions, rather than the present 4-year cycle. Pursuant to Education Law §237, the Board of Regents prepares a master plan for higher education in New York, and for such purpose solicits and reviews plans submitted by SUNY and all independent and proprietary colleges and universities. Putting SUNY on the 8-year cycle would enhance flexibility and efficiency in planning and implementation.

IV. Academic Health Centers

SUNY's academic medical centers require intimate relationships with hospitals. In the case of SUNY university hospitals, the centers need them to compete in today's health care market by allowing creative financing mechanisms, flexible purchasing, and improved handling of malpractice cases. Accountability would be assured through post-audit.

- Increased flexibility in regard to purchasing and investment, subject to post-audit, will allow hospitals to compete and to be better partners with affiliated hospitals in delivery of care. Eliminating the fringe benefit tax on program funds from hospital to medical school will enhance academic excellence and the delivery of health care.

- Legislative action and collaboration with collective bargaining units to foster the development of practice plans among SUNY schools of pharmacy, nursing, and social work in support of their respective academic missions.

- Legislative action in conjunction with the New York State Department of Health to provide training programs within SUNY Academic Health Centers direct access to Graduate Medical Education funds (direct and indirect) absent health system intermediaries.

V. Community Colleges

Under existing statutes, the funding of SUNY's community colleges is shared among three parties (state, local sponsors, and students) while governance rests with the local boards of trustees with some oversight by the SUNY Board of Trustees. Despite the language of the Education Law granting operational oversight of the community colleges to the local boards of trustees, some local legislative bodies act on the belief that fiscal

support bestows operational authority and attempt to exert more control over community colleges than the statutes authorize.

The statutorily divided responsibility for the public funding of community colleges also is problematic. Year after year, some local sponsors have been unable adequately to fund the capital needs and operating budgets of their community colleges.

To address these issues, SUNY recommends that successful practices of bifurcation – such as the respective roles of the local boards and the SUNY Board of Trustees – be maintained. Elsewhere, SUNY recommends a fresh look and new approaches.

SUNY recommends that the current state and local sponsor shares of community college capital budgets be funded fully by the State without any negative impact on the capital funding for the State-operated campuses. With respect to community college operating budgets, SUNY recommends consideration of a number of options, including (1) a requirement that local sponsors adhere to the funding provisions in existing statutes, (2) funding models of other similar state systems to see where they offer lessons for New York, and (3) wider use of the New York State model of regional community colleges. The goal is a reliable funding system that recognizes the individual missions and circumstances of each community college.

Further, SUNY recommends strengthening the local community voice in the operation and governance of the community colleges through local boards of trustees through strict adherence to existing Plan C legislation.

VI. Research, Fundraising, and Entrepreneurship

The Research Foundation, the campus foundations, and the auxiliary service corporations (ASC) are integral to an overall SUNY advancement strategy. These organizations enable SUNY to increase external support from sponsored research, fundraising, and entrepreneurial activities. The flexibility provided by these entities enables SUNY to be nationally competitive; SUNY models are comparable with those of other public university systems.

The Research Foundation, a 501(c)(3) not-for-profit corporation established in 1951, is responsible for the advancement of education, research, and discovery through sponsored programs administration (7,900 research projects with total expenditures of more than $725 million annually), technology transfer (284 new invention disclosures, 193 patent applications, 33 patents, and 45 licenses, with $10.8 million annually in royalties), 18 affiliated corporations (enabling SUNY campuses to form alliances with public and private partners, nationally and globally, to achieve economic prosperity statewide), and human resources and payroll support (for over 17,000 employees statewide funded by external grant support). The Research Foundation voluntarily complies with State laws dealing with ethics, provides reports to the State Legislature on its activities, and is audited by external auditors and at the State and Federal levels. The role of the Research

Foundation needs to continue to be recognized and supported. Steps to reduce its flexibility harm competitiveness and limit opportunities significantly to increase non-State sources of support.

SUNY campus based foundations are central to enhanced fundraising activities to secure alumni, corporate, and foundation support at the campus level. Campus foundations accept contributions and expend funds in support of campus activities and need to continue to do so. Campus foundations need to be held to their philanthropic missions in support of higher education, particularly such goals as scholarships, professorships, capital needs, and other campus priorities. While campus foundations should meet all appropriate audit and reporting requirements, they should not be held back by over-regulation or otherwise restricted from having the flexibility to compete with other philanthropies seeking support from donors.

Auxiliary service corporations (ASC) enable campuses to provide services requested by students and faculty. ASCs also allow campuses the opportunity to enter into entrepreneurial ventures at the campus level to generate income through the provision of other goods and services by taking advantage of the unique opportunities offered by the campus environment such as running a restaurant, conference center, or the like. Auxiliary Service Corporations must meet SUNY rules and regulations and meet audit and reporting requirements. They also should not be over-regulated nor restricted from functioning when their activities can benefit both the campus community and overall campus finances by the generation of entrepreneurial revenues.