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November 6, 2019

TO: Honorable Members of the Assembly Committee on Government Accountability and Oversight
FROM: Ray Cross, UW System President
RE: Assembly Bill 370 Testimony - In Opposition

Thank you, Chairman Steffen and committee members, for holding this public hearing on AB 370 and for giving us the opportunity to express our concerns with this proposal. I want to be up front that this will be a longer testimony than normal for me, but given the complexity of these issues and the fact we take them very seriously, please bear with me as I walk through each part of the bill.

I am here to speak in opposition to this bill. On the whole, AB 370 will significantly hamstring the ability for the Board of Regents, UW System, and Chancellors to manage the institutions. It will make it extremely difficult to engage with our affiliated organizations, and it does not address the concerns about liability that have been expressed to me by legislators, except for the provisions outlined in sections 1-10 of the bill suggested by UW System.

In sum, we currently follow the principles laid out in statute, which provide for the Board of Regents to govern the university through the adoption of policies and rules, which the UW System administration and the Chancellors implement. AB 370 concerns me greatly, because there are many provisions that will conflict with existing statutes.

Governance Powers

I am going to quote statute and highlight a few principles of how the law currently directs us to operate the university within the framework provided by the Board of Regents:

36.09(1)a Responsibilities of the Board of Regents (emphasis added):

*"The primary responsibility for **governance of the system** shall be vested in the board which shall enact policies and promulgate rules for governing the system, plan for the future needs of the state for university education, ensure the diversity of quality undergraduate programs while preserving the strength of the state's graduate training and research centers and **promote the widest degree of institutional autonomy within the controlling limits of system-wide policies and priorities established by the board.**"*

I want to emphasize the Board's primary responsibility is governing the System through enacting policies and rules while promoting "the widest degree of institutional autonomy."

Now, how does that differ from administration?

36.09(2)a *Responsibilities of the President (emphasis added):*

*The president shall be president of all the faculties and **shall be vested with the responsibility of administering the system under board policies and shall direct a central administration which shall assist the board and the president** in establishing system-wide policies in monitoring, reviewing and evaluating these policies, in coordinating program development and operation among institutions, in planning the programmatic, financial and physical development of the system, in maintaining fiscal control and compiling and recommending educational programs, operating budgets and building programs for the board...*

It is clear that the statutes distinguish between the role of governance and administration of the System. Further, the statutes give specific administrative responsibilities to the Chancellors as well.

36.09(3)a *Responsibilities of the Chancellors (emphasis added):*

*The chancellors shall be the executive heads of their respective faculties and institutions and **shall be vested with the responsibility of administering board policies under the coordinating direction of the president and be accountable and report to the president and the board on the operation and administration of their institutions...***

This bill specifically prohibits the Board of Regents from delegating “governance powers or duties,” which are defined in the bill as, “powers or duties that rise above duties related to administration or operation, and include the power to approve policies or budgets or to specify the mission of the system or an institution” to the UW System President, Chancellors, and administrative officers. This proposed phrase created in statute is vague and violates historical distinctions between governance and administration. There are no powers or duties that rise above administration, other than governance. However, the bill allows the Board to explicitly delegate authority to a committee of the Board, an institutional board, a committee of an institution, or another group, which specifically avoids the System President and the Chancellors.

This bill also requires that the hiring of all limited appointees be made by the Board of Regents directly. In fact, it specifically prohibits the Board of Regents from delegating the authority to hire limited appointees, with few exceptions. There are approximately 1,400 limited appointees within UW System. It is not realistic for the Board to review resumes, interview candidates, and hire individuals for all these positions, but rather to establish the policies and rules under which administration makes these hires.

I believe these provisions, as well as the ones I will outline regarding affiliated organizations, are in conflict with the statutory principles I outlined earlier. By limiting the Board’s ability to delegate traditional administrative responsibilities and then requiring the Board to assume administrative responsibilities, new positions will need to be created to support the Board. It is the responsibility of the System office to support the Board in these administrative functions according to 36.09(2)a of the statutes.

Affiliated Organizations

Background

AB 370 also makes many changes to the way the university engages affiliated organizations. First, I want to take a moment to explain what these organizations are, their value, and how we manage them. The UW System has defined three types of affiliated organizations: primary fundraising foundations, real estate foundations, and other affiliated organizations.

It is important for us to agree upon the definition of and nomenclature for each type of affiliated organization. We need to understand the differences between a primary fundraising foundation, a real estate foundation, and what is referred to as an other affiliated organization. They are all affiliated organizations with a unique purpose and relationship with the university, which influences how they should be monitored and managed. Our policies attempt to reflect this nuance. I can assure you we are making progress to appropriately monitor and manage these relationships.

The reason the discussion related to affiliated organizations began at the legislative level is because of the situation involving UW-Oshkosh's foundation. I agree with members of the legislature and the Legislative Audit Bureau, which has done two audits on this area, that these relationships with affiliated organizations have risk – including reputational and financial risk.

However, these organizations also offer much to our students, our faculty, our staff, and our institutions, in the form of donations, scholarships, opportunities, support, and community engagement. We must take great care when creating policies to consider the risk of losing the benefits they offer. We all want these relationships to thrive. They must all be accountable, transparent, and managed responsibly. Additionally, the differences between these affiliated organizations are dramatic. At UW-Stevens Point, the differences between the Paper Science foundation and the Friends of the Schmeckle Reserve are dramatic. At UW-Madison, the differences between the University of Wisconsin Foundation and the Wisconsin Youth Symphony Orchestra requires a different approach. At UW-Green Bay, the differences between the alumni association and the fundraising foundation requires an understanding of the different levels of risk and value. A one-size-fits-all approach will be harmful. These organizations are distinct and have varying levels of risk, but they all benefit students, the university, and the state.

Area of Support

As I mentioned earlier, there is one provision in this bill that is positive, but I also want to be clear that this does not outweigh the negative provisions.

The most important change is the one we suggested to the authors, which are the changes in sections 1-10 of the bill that relate to the guaranty of debt. If the legislature is concerned about addressing the liability that the University faced in the UW-Oshkosh situation, then this is the best way to fix the statute to solve that issue.

Areas of Concern

Perhaps the most problematic piece of this bill related to affiliated organizations is the creation of a new definition for "UW-affiliated organizations." As I mentioned earlier, we separated affiliated organizations into three different types, and we have policies that manage them accordingly. The bill's definition

combines them under one umbrella and places requirements on them without respect to materiality, type of organization, mission, risk, and finances.

This bill also prohibits the Board of Regents from delegating authority to enter into an agreement or obligation involving a UW-affiliated organization. In addition, the bill makes anyone who does this without permission from the Board personally liable, and it requires their dismissal. Absolutely, the Board should approve certain overarching agreements with certain affiliated organizations based on the level of risk. But, this will effectively make it impossible for any of our institutions to have meaningful relationships and agreements with its affiliated organizations if they have to go to the Board for approval of all routine and operational agreements. The statutes, Board of Regent policies, and UW System Policies, already strictly lays out who has authorization to sign certain contracts, at what amounts, and who else must approve it, for all different types of hiring, procurement, and contracts.

This bill also places a prospective limitation on the ability for an individual to be employed by an institution and an affiliated organization unless there is approval by the Chancellor and the Board of Regents. Once again, this engages the Board of Regents unnecessarily in the administrative functions of the institutions. But it will also harm the ability of our smaller institutions to raise funds and attract faculty and staff.

Lastly, the bill requires several new reporting requirements related to affiliated organizations. We have done extensive work in response to the Legislative Audit Bureau's audits of affiliated organizations. Part of this work includes developing new policies and ways of reporting on our relationships with affiliated organizations. I am always in favor of making sure we accurately report information; however, I want to do it the right way and recognize that generating reports takes significant time and resources. We believe our new policies and our new cost-benefit analysis do a good job of capturing our relationships with our affiliated organizations. These additional reports will only confuse the issue further and likely necessitate hiring additional staff to ensure compliance.

Thank you again for the opportunity to respectfully voice my concerns regarding AB 370 and how it will affect the governance of the university and our relationships with affiliated organizations. I am happy to answer any of your questions now.



WISCONSIN
UNIVERSITY OF WISCONSIN-MADISON

Assembly Committee on Government Accountability and Oversight

2019 Assembly Bill 370

University of Wisconsin System Affiliated Organizations

November 6, 2019

Good afternoon Chairman Steffen and members of the Assembly Committee on Government Accountability and Oversight. My name is Laurent Heller and I am the Vice Chancellor for Finance and Administration for the University of Wisconsin-Madison. Thank you for the opportunity to testify today on Assembly 370 (AB 370), which deals with the governance of UW-affiliated organizations, instances of delegated authority by the UW System Board of Regents, and a number of other items around these topics. I would also like to thank Representative David Murphy for meeting with us on a previous version of this proposal. We agree that these are important issues and appreciate him raising them but, based on the University of Wisconsin-Madison's experience with these topics, we believe this legislation is unnecessary and that key elements of the bill would be overly burdensome to UW institutions, the Board of Regents, and our affiliated organizations.

I would like to start by recognizing the vital contributions of the affiliated entities that support the university generally, and UW-Madison in particular. These organizations represent a wide array of private sector interests, from the Madison Youth Symphony to the Friends of the Arboretum, and are essential in maintaining a vibrant, connected, and world-class university and we appreciate the partnerships we have with them.

In accordance with UW System Administrative Policy 362, UW-Madison has identified 33 affiliated entities. All these entities make significant contributions to our academic mission, our guiding principle - the Wisconsin Idea - and the entire state of Wisconsin.

In particular, UW-Madison has a strong alliance with the Wisconsin Foundation and Alumni Association (WFAA). WFAA is a non-profit organization, separate from the university, which was formed in 1945 by alumni and donors. In FY 2017-18, alone, they were responsible for transferring a record \$279 million to UW-Madison. While WFAA is one of the easiest examples to identify, there are other affiliated organizations that do great work for a variety of purposes across the state in support of our university.

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As you can imagine, this support is indispensable to the university and initiatives like Bucky's Tuition Promise, which provides free tuition and segregated fees for all in-state students at UW-Madison whose household adjusted gross income is \$60,000 or less. It is important to ensure that universities and the public can benefit from these supportive organizations while also maintaining confidence that public resources are being used appropriately.

UW-Madison appreciates the authors' intention of providing more transparency and accountability in regard to UW institutions and the relationships they maintain with outside, or affiliated, groups. We also recognize that responsible resource stewardship in our relationships with affiliates is imperative. We believe that our recent policy changes have yielded excellent results.

The University of Wisconsin System and Board of Regents recently updated its policies governing foundations and created new policies guiding protocols with affiliated organizations and real estate foundations. These actions that manage relations with these organizations already address much of what this bill sets out to accomplish, especially regarding accountability and transparency.

For instance, in order to comply with UW System Administrative Policy 362, UW-Madison has developed a process to identify affiliated organizations, as we mentioned before. Chief Business Officers in all divisions across our campus are surveyed by the Financial Information Management team, which works under the direction of the UW-Madison Controller, to collect this data. The Financial Information Management team aggregates the survey results and documents the information provided. They then follow up with all divisions that identified an affiliated organization that received support from UW-Madison valued at \$100,000 or more. These specific divisions are then required to complete a cost-benefit report under the direction of UW System. These reports capture any direct salary support, facilities support, and indirect support to the affiliated organizations. This process allows campuses to identify and report to UW System and the Board of Regents affiliated organization interactions. We are proud of this strong policy and the work we are doing to comply with it.

The additional provisions in this bill increase administrative burden both on campuses across the state and for the Board of Regents. Prohibitions on the Board from delegating authority would result in campuses and the System, as a whole, being less agile and able to respond to the needs of the state. There is also concern that this bill would treat affiliated organizations with an overly broad and one-size-fits-all definition even though there are a wide variety that differ in size, mission, and many other factors. We believe this bill would include far more organizations than the 33 that have been identified by UW-Madison already, and would handle them all the same.

On behalf of the University of Wisconsin-Madison I would like to thank you for your time and for allowing me to detail how important affiliated organizations are to our campus and across the entire System. At this time, I would be happy to answer any questions you may have.



HOWARD MARKLEIN

STATE SENATOR • 17TH SENATE DISTRICT

November 6, 2019

Assembly Committee on Government Accountability and Oversight Testimony on Assembly Bill 310

Thank you Chairman Steffen and committee members for hearing Assembly Bill 310 (AB 310), which allows local units of government to use its best estimate of its valuation factor in order to adopt a resolution and hold a referendum to increase its levy beyond the allowable limit. Thank you Rep. Sinicki for co-authoring this bipartisan legislation.

The idea for this legislation originally came from Green County, a portion of which I represent. In 2014, Green County wanted to pass a referendum to exceed its levy limit. However, it was unable to do so because of the net new construction information that was required to write the statutorily prescribed ballot question. 2013 Wisconsin Act 310 fixed this problem for Green County, but not for any other local units of government in the state.

Under current law, local governments have the ability to exceed levy limits through voter approval of a referendum. In an odd-numbered year, a local government may call a special election to hold the referendum. However, in an even-numbered year, the referendum must be held during the spring primary or general election or the fall partisan primary or fall general election.

Current law prescribes the way that the ballot question must be worded. For example, the question requires that a local government know its net new construction numbers prior to submitting the referendum question to the voters. Unfortunately, net new construction numbers are not available until mid-August. This means that in an even-numbered year it is impossible to hold the referendum on either spring election date. In addition, it is very hard, if not impossible, to hold the referendum during the fall elections due to timelines associated with adopting local budgets in October and November and the need to mail property tax bills in mid-December.

For example, under current law, 2018 could have looked like this for a local unit of government wanting to exceed its levy limit for 2019:

August 9 – Net New Construction numbers are released

August 14 – August Primary (Not enough time to prepare ballots with accurate numbers)

October – November – Local unit of government develops budget for the following year

November 6 – Fall Election (Not enough time to prepare and pass a budget)

Mid-December – Property tax bills mailed to residents

AB 310, an expansion of 2013 Wisconsin Act 310, allows all local units of government in Wisconsin to use its best estimate of its net new construction numbers, based on the most current

data available to it, to write its ballot question. This means that in an even-numbered year, local governments will have the opportunity to hold a referendum at the fall primary. This will ensure certainty for governments as they are creating budgets for subsequent years.

Additionally, under an amendment I have introduced with Representative Novak, the ballot question remains statutorily defined, while still giving local units of government the flexibility to use estimated numbers. The amendment also clarifies that special elections may not be called in even-numbered years and must be held on regularly scheduled elections.

Under the bill and amendment, 2018 could have looked like this:

August 9 – Net New Construction numbers are released

August 14 – August Primary with the ballot question for exceeding levy limits using estimated net new construction numbers

October – November – Local unit of government develops budget for the following year knowing if the referendum passed

November 6 – Fall Election

Mid-December – Property tax bills mailed to residents

SB 291, the companion legislation to AB 310, received a public hearing in the Senate Committee on Agriculture, Revenue, and Financial Institutions on August 20, 2019.

This bill is supported by the Wisconsin Counties Association, the League of Wisconsin Municipalities, and the Wisconsin Towns Association. Thank you again to the committee for hearing this proposal, and your timely action on the bill.



DAVE MURPHY

State Representative • 56th Assembly District

**Assembly Committee on Government Accountability and Oversight
Public Hearing, November 6, 2019
Assembly Bill 370**

Testimony of State Representative Dave Murphy and Michael Moscicke

Mr. Chair and members of the committee, thank you for hearing Assembly Bill 370 today.

As chair of the Assembly Committee on Colleges and Universities, one of my primary responsibilities is to support the University of Wisconsin System and ensure that the investment our state has made through state tax dollars, tuition dollars, and returning federal tax dollars over the past century and a half is protected.

Incidents involving shady real estate deals with organizations affiliated with universities, along with subsequent Legislative Audit Bureau reports on university finances and risk management, have left me with little faith that we are doing all we can to safeguard the future of our public universities from fraud, manipulation, and corruption. I was dismayed to hear about the lack of cooperation some institutions provided the LAB. I was shocked to learn that over a nine year period, over a quarter billion dollars flowed from our universities into affiliated organizations and a large amount of those transactions had no vendor number.

In the face of these startling revelations, UW System administration has slowly implemented only a handful of LAB recommendations, which I'm sure you will hear more about today from the LAB director. Instead of owning past failures and doing everything possible to prevent future manipulation of the system, I have seen delays, push-back, and shirking of responsibility at every turn.

I'm concerned that regents aren't provided with the information and tools necessary to carry out their statutory duties. I'm concerned that System administration is not collecting and categorizing data on money flowing out to affiliated organizations, instead of in to universities. I'm concerned that when there are bad actors in critical administrator roles, we have little means to identify their abuse of power until it is too late, at great cost to our students, taxpayers, and the reputation of our public universities.

When situations like this arise, that erode the public's confidence in our university, it costs the university donations and takes years to recover.

Our university system is strong, but Assembly Bill 370 is focused on addressing a very specific issue raised by our Audit Bureau. It will not solve every problem under the sun; however, I am confident that it will dramatically increase transparency of these financial relationships and empower the Legislative Audit Bureau to successfully carry out future audits of the UW System. I've met with the LAB, faculty, staff, students, administrators, regents, affiliated organizations, and other stakeholders about this bill. It has gone through significant redrafting to ensure that the appropriate information is

collected by the university without imposing an unnecessary burden or harming the critical relationships our institutions have built with outside organizations and donors.

This is an important bill. If we do nothing, then we are to blame the next time the university falls victim to fraud and abuse. This bill implements common sense risk management procedures and ensures critical financial decisions are seen and made by the people state statute says should be making them.

Given the importance and complexity of this bill, I have asked my legislative aide to provide a detailed run down of legislation.

Assembly Bill 370 improves university decision-making regarding financial transactions with affiliated organizations by focusing on accountability and transparency.

Under the accountability component, we clearly lay out who is authorized to make decisions, how those decisions are made, and who is on the hook when someone does something they were not authorized to do.

Under the transparency component, we create a system in which individuals making decisions for the university have access to *all* of the necessary information to ensure that conflicts of interest are identified and handled appropriately and ultimately that decisions are made in the best interest of the university.

In our extensive conversations with the Legislative Audit Bureau, university stakeholders, and university administrators, we determined that certain information is currently not collected by the university and yet the Board of Regents, or their designees, would need access to this information in order to make a well informed decision about a financial commitment to an outside organization established specifically to support an institution.

AB 370 identifies and collects the following information for use by the regents and their designees:

- **A complete list of UW affiliated organizations.**

AB 370 accomplishes this by creating a statutory definition for a “UW affiliated organization.” This action was specifically recommended by the Legislative Audit Bureau. Like UW System Administration’s current definition, it provides that such an organization must meet four criteria:

1. It must be legally distinct from a UW institution,
2. It must be organized and operated for the benefit or in support of a UW institution,
3. It is permitted to use a UW institution’s name, resources, or employees, and
4. It is not a state agency or other entity established in statute, such as a public authority.

This definition ensures that all the appropriate organizations are identified. For example, fundraising foundations, real estate foundations, and booster clubs specifically created to benefit an institution would be included; however, businesses that simply pay to use an institutions name or engaged in a contract with a UW campus would not be included because they were not created specifically to benefit or support a UW institution.

Unlike the UW System definition, we do not broadly exclude groups that could present significant risk to the university. We also do not cut off our reporting threshold at \$100,000 in annual administrative support. LAB has raised the concern that smaller organizations, exempted under the current UW System policy, that do not receive administrative support from the UW may actually present more risk to the university if they are not appropriately managed.

You may hear today that this definition is too broad and may present an administrative burden on a university. We must emphasize that each of these relationships is entered into voluntarily by the university, and it has always been the responsibility of the university to appropriately manage risk and ensure that organizations that are supposed to benefit the institution, actually do. The risk to the UW's finances, legal liability, and reputation is far too great to simply overlook smaller organizations tied to each campus.

- **Potential conflicts of interest of employees who oversee financial relationships with affiliated organizations.**

As recommended by the Legislative Audit Bureau, the bill requires certain UW employees to file a statement of economic interest with the state.

High level administrators (chancellors, deans, and directors), employees responsible for signing contracts on behalf of an entire institution, and UW employees who are also a board member or officer of an affiliated organization would now be required to file statements of economic interest with the state. Given these employees' sensitive roles, these reports are necessary to protect the state and university from conflicts of interest. Volunteers with the university, who are not officially employees and employees who are serving on boards or as officers of organizations that fall outside the definition of "UW affiliated organization" would not be required to file such a statement.

- **Public records related to affiliated organizations.**

Materials provided to UW employees by affiliated organizations in the course of their work would now specifically be enumerated in statute as public records. Although such materials are already covered under public records law, LAB struggled to obtain this information from certain UW institutions. This clarification would aid UW institutions in adhering to the law. AB 370 also alleviates a major concern of fundraising foundations by specifically excluding UW affiliated organization donor information from public records law.

These materials, already provided to some campus administrators, will help UW System Administration, the Board of Regents, and the Audit Bureau identify financial commitments and potential conflicts of interest in the relationships that exist between a campus and an affiliated organization.

- **Data regarding resources and employee effort dedicated to supporting affiliated organizations.**

Any future UW employee holding employment with an affiliated organization would track time both with that organization and with the UW to ensure overlap is not occurring. In the future, dual appointments would also have to be approved by the institution and Board of Regents.

Each relationship with a UW affiliated organization would be regularly evaluated by UW System, at an interval determined by the Board of Regents. Use of an institution's name, space, resources, or employees by each affiliated organization would be assessed a fair market value and tracked. Payments made to affiliated organizations must be tracked. This information would be compiled and presented to the Board of Regents in an annual report.

The board currently receives an annual report on these relationships; however, this report does not include enough information for board members to actually carry out their fiduciary duty to protect the university and state. In fact, the last report offered in October covering all affiliated organizations across the state was discussed by only a committee of the board for less than 20 minutes, involved only one board member question, and did not identify actual financial figures for the amount spent by each campus on each affiliated organization.

All of this information will now be more easily audited by the LAB, ensuring that the appropriate people are accountable for their oversight responsibilities to the university and the public.

In order to make the best use of this information, AB 370 implements the following accountability measures:

- **Unauthorized financial guaranties made by a chancellor or another university official will not be recognized as a public debt.**

As requested by UW System, this provision ensures that any unauthorized and inappropriate guaranties made by an employee of the university would not be enforceable in a court of law.

- **The bill clarifies that the Board of Regents may delegate administrative authority to chancellors but that governance authority should be delegated to boards, committees, and other groups.**

A clear division between *setting* policies and budgets and *administering* policies and budgets will ensure transparency in decision-making and aid the board in carrying out its governance responsibilities to the fullest extent without relying too much on the very administrative officers the board is responsible for overseeing. Every institution already has structures set up for vetting decisions in this manner. In fact, this model is how UW System was originally set up to operate by the legislature in the 1970s and how the University of Wisconsin largely operated prior to the 1970s.

This clarification of statutory responsibility does not tie the hands of chancellors, who will still be empowered to carry out their administrative responsibilities and decisions without being micro-managed. It simply ensures that major budgetary and policy decisions are made by the board or their designees. This check is necessary to prevent future problems like those we had at UW–Oshkosh.

- **The bill prohibits the Board of Regents from delegating its responsibility to appoint high ranking administrative officers.**

Under current law, the Board of Regents is responsible for approving all limited (meaning at-will) appointments at the time they are hired. Statutes make no mention of the ability for this responsibility to be delegated, while similar statutes regarding academic appointments explicitly state that this responsibility may be delegated. It is likely that the statutes were drafted this way to prevent an increase in administrative positions without board authorization. In practice, the board has permitted

chancellors to carry out this responsibility without board oversight. Our bill explicitly prohibits the board from delegating away this responsibility, ensuring that all highly paid, at-will administrators must be approved by the board at their time of appointment, in a similar fashion to the way that the board already approves faculty tenure appointments.

There are far more faculty appointments than limited appointments; meaning the board should be able to resume this statutory responsibility without significant administrative burden. More importantly, having the board authorize all future high-level administrative positions will provide it with a critical connection to administrators that the board is responsible for overseeing.

- **Finally, the bill requires explicit Board of Regents authorization for a UW institution to enter into a financial obligation with an affiliated organization.**

This provision ensures that all financial obligations entered into with affiliated organizations will be appropriately authorized by the board.