FIRST SPECIAL MEETING OF THE
AD HOC COMMITTEE ON BOARD GOVERNANCE
OF THE UNIVERSITY OF LOUISVILLE
BOARD OF TRUSTEES

2:00 p.m., March 9, 2017

President’s Conference Room, Grawemeyer Hall

In Open Session

I. Call to Order

II. Priorities/Timeline/Process

III. Discussion of Shared Governance

IV. Memorandum of Understanding with the Foundation

V. Bylaws Revisions (discussion draft)
   • Senate Bill 107 Key Provisions

VI. Financial Transactions and Reporting Policy
    (proposal for consideration/draft resolution)

VII. AGB Resources and Access

VIII. Other Business

IX. Adjournment

Committee Members
Bonita Black, Chair
Brian Cromer
James Rogers
Enid Trucios-Haynes
Illustrative Memorandum of Understanding Between a Public Institution or System and an Affiliated Foundation

Note: AGB commends this illustrative memorandum of understanding to their members for consideration when drafting or revising their own such documents. The following illustrative document includes examples of best practice that each foundation and public institution or system should consider based upon their own needs and relationships. Foundations and institutions are encouraged to consult with legal counsel when developing an MOU to ensure that the final document conforms to federal and state laws and policies.

THIS AGREEMENT was entered into as of this ____ day of ______, 20__, by and between the __________________ [name of institution or system (the Institution)] and the __________________ [name of the foundation (the Foundation)].

The Foundation was organized and incorporated in _____ [year] for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations, and others for the benefit of the Institution.

The Foundation exists to raise and manage private resources supporting the mission and priorities of the institution, provide opportunities for students, and contribute to institutional excellence.

The Foundation is dedicated to assisting the Institution by fostering a culture of philanthropy, growing the endowment, and providing financial and other support for long-term academic and other institutional priorities. [Note: The MOU should identify specific functions such as real-property management or other entrepreneurial work assumed by the foundation in addition to or in lieu of fundraising responsibilities.]

As stated in its articles of incorporation, the Foundation is a separately incorporated 501(c)(3) organization and is responsible for identifying and nurturing relationships with potential donors and other friends of the Institution; soliciting cash, securities, real and intellectual property, and other private resources for the support of the Institution; and acknowledging and stewarding such gifts in accordance with donor intent and fiduciary responsibilities.

The Institution designates the Foundation as the repository of private gifts made in support of the Institution unless otherwise specified by the donor. This provision might address whether the foundation can endorse checks made out to the university for gifts.

In connection with its fundraising and asset-management activities, the Foundation retains personnel with expertise in advancement services, fundraising, gift planning, investment management, and other capacities necessary for the fulfillment of its mission and works with the Institution to assist and advise in such activities. [Note: Not all foundations retain personnel; in such instances, personnel conducting foundation business report to other institutional staff, but the foundation board may be engaged in assessment processes and hiring and compensation decisions.]
The Foundation and the Institution will jointly establish gift-acceptance policies, naming policies, and provisions for the establishment of scholarships, chairs, and other endowed purposes.

Consistent with its mission to help to advance the plans and objectives of the Institution, the Foundation is allowed to associate the name "Institution" in connection with the operations of the foundation; however, the Foundation will operate under its own seal and logotype and shall not use the university seal or other identifying marks in the promotion of its business and activities. \[Note: It is not unusual for foundations, upon mutual agreement, to have the authority to use the institution's seal and marks.\]

In consideration of the mutual commitments herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

**INSTITUTION OR SYSTEM RESPONSIBILITIES**

- The Governing Board of the Institution is responsible for overseeing the mission, leadership, and operations of the institution.
- The Governing Board of the Institution is responsible for determining philanthropic and strategic priorities.
- The Governing Board of the Institution is legally responsible for the performance and oversight of all aspects of Institution operations.
- The Governing Board of the Institution is responsible for the employment, compensation, and evaluation of all Institution employees, including the President or Chancellor ("President"). \[Note: In some cases, the foundation may provide funds to supplement the compensation of the institution's chief executive. The governing board, however, remains solely responsible for setting total compensation and evaluating the performance of the chief executive.\]
- The Institution President is responsible for communicating on a regular basis the priorities and long-term plans of the Institution, as approved by the Governing Board, to the Foundation.
- The Institution recognizes that the Foundation is a separate, private corporation with the authority to keep all records and data confidential, consistent with the law.
- The President of the Institution shall serve as an ex-officio member of the Foundation Board and shall assume a prominent role in fundraising activities. \[Note: This can be with or without vote. Consult legal counsel for the most appropriate structure, and factor that into the language.\]
- The Chief Executive of the Foundation shall be included as a member of the Institution President's cabinet and senior administrative team. \[Note: If the foundation is totally independent, the chief executive should have regular access to this group, and language in this document should reflect this.\]
The Institution shall include the Foundation as an active and prominent participant in strategic planning for the Institution.

The Institution shall establish and enforce policies that support the Foundation’s ability to respect the privacy and confidentiality of donor records.

The Institution shall ensure that gift funds and other privately contributed resources are used in compliance with donor intent.

The Institution recognizes that the Foundation bears major responsibility for fundraising. University representatives will coordinate fundraising initiatives, including major gifts solicitations with the Foundation. [Note: When a foundation supports a system or institution for which multiple affiliated entities raise and manage private support, the MOU should indicate how the organizations work together to most effectively identify, cultivate, solicit, and steward donors. The MOU might also clarify, without comprehensively detailing, the relationship between the foundation and alumni association or other affiliated entities.]

The President and other senior administrators of the Institution will work in conjunction with the leadership of the Foundation Board of Directors and the Foundation Chief Executive to identify, cultivate, and solicit prospects for private gifts.

FOUNDATION RESPONSIBILITIES

The Foundation shall maintain its status as a separately incorporated 501(c)(3) nonprofit organization created to raise, manage, distribute, and steward private resources to support the various priorities of the Institution. [Note: Language should be added to clarify the exact entity the foundation supports—for example, a system-wide university, a single campus, an academic unit within the university, or a campus within the system.]

The Foundation Board of Directors is responsible for the control and management of all assets of the Foundation, including the prudent management of all gifts, consistent with donor intent.

The Foundation is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws that clearly addresses the board’s fiduciary responsibilities, including expectations of individual board members based upon ethical guidelines and policies. The Foundation will apprise the institution of significant changes made to the bylaws.

The Foundation shall establish and enforce policies to identify and manage potential conflicts of interest and ensure that foundation assets do not directly or indirectly unduly benefit an individual or other person.
The Foundation is responsible for the employment, compensation, and evaluation of all its employees, including the Foundation Chief Executive. The Institution President will be included as a prominent participant in discussion and decision making regarding the hiring, assessment, and termination of the Foundation Chief Executive. [Note: MOU language should clarify whether the foundation has its own employees or relies on institution employees to fulfill its responsibilities.]

The Foundation may earmark a portion of its unrestricted funds to a discretionary fund for the President of the Institution and will either transfer a percentage of those funds annually to the Institution in compliance with state law and university policies or reimburse appropriate presidential expenditures. [Note: All such expenditures must comply with the IRS 501(c)(3) code and be consistent with the foundation’s mission. Such funds will be audited as part of the foundation’s annual independent audit.]

Fundraising

• The Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of the Institution.

• The Foundation is responsible for planning and executing comprehensive fundraising and donor-acquisition programs in support of the strategic priorities identified by the President and Institution Governing Board. These programs include annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate. [Note: When there are shared responsibilities for fundraising, or if the institution is responsible for all fundraising activities, language should be added that clarifies each entity’s roles and responsibilities. For example: The university wishes to hire the expertise of the foundation to provide coordination and assistance in the operation, development, accounting, management, and marketing activities of the university development office. Or the foundation wishes to provide such services, not as an employee or agent of the university, but as an independent organization.]

• The Foundation will establish, adhere to, and periodically assess its gift-management and acceptance policies. It will promptly acknowledge and issue receipts for all gifts and provide appropriate recognition and stewardship of such gifts.

• The Foundation shall not accept grants from state or federal agencies, except in special circumstances that are approved by the Foundation Board of Directors and the governmental agency. [Note: Some foundations, such as those serving in support of university health centers, can be called upon to accept and manage governmental grants].
• The Foundation shall establish and enforce policies to protect donor confidentiality and rights. [Note: See the “Donor Bill of Rights” developed by the American Association of Fund-Raising Counsel (AAFRC), Association for Healthcare Philanthropy (AHP), Council for Advancement and Support of Education (CASE), and the Association of Fundraising Professionals (AFP).]

Asset Management

• The Foundation will receive, hold, manage, invest, and disburse contributions of cash, securities, patents, copyrights, and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred gift instruments.

• The Foundation will establish prudent asset-allocation, disbursement, and spending policies that adhere to applicable federal and state laws including the Uniform Prudent Investor Act (UPIA) and the Uniform Prudent Management of Institutional Funds Act (UPMIFA).

• The Foundation will engage an independent accounting firm annually to conduct an audit of the Foundation’s financial and operational records and will provide the Institution with a copy of the annual audited financial statements, including management letters. [Note: Management letters, including concerns and/or recommendations about management practices, are typically shared with institutional presidents or chancellors in those cases where the foundation is dependent or interdependent].

• The Foundation will establish internal controls and other enterprise risk management practices commensurate with the Board’s fiduciary responsibility.

Entrepreneurial Activities

• The Foundation will explore current opportunities, including acquisition and management of real estate or personal property on behalf of the Institution, for future allocation, transfer, or use.

• The Foundation may serve as an instrument for entrepreneurial activities for the Institution and engage in such activities as purchasing, developing, or managing real estate for campus expansion and student housing, or participating in joint ventures that advance the mission of the institution. It also may hold licensing agreements and other forms of intellectual property, borrow or guarantee debt issued by their parties, or engage in other activities to increase foundation revenue with no direct connection to an institutional purpose.
FINANCES AND ADMINISTRATION

Transfer of Funds

- The Foundation will transfer funds to the designated entity within the Institution in compliance with applicable laws, Institution and Foundation policies, and gift agreements. [Note: Disbursement policies should be developed in collaboration with institution administrators to facilitate effective financial planning while ensuring that gift funds are spent in a timely manner and in compliance with donor intent.]

- The Foundation will disclose any terms, conditions, or limitations imposed by donor or legal determination on the gift. The Institution will abide by such restrictions and provide appropriate documentation.

- The Foundation’s disbursements on behalf of the Institution must be reasonable business expenses that support the Institution, are consistent with donor intent, and do not conflict with the law. [Note: Expenditures for luxury travel, presidential residences, or other donor cultivation activities perceived as lavish or conferring undue benefits on institution or foundation staff have repeatedly compromised the reputations of colleges and universities. Both foundation and institution boards have a responsibility to ensure that such risks are effectively managed.]

- All requests for Foundation funds other than regular disbursements and expense reimbursements must be submitted to the Foundation by the President of the Institution or his or her designee.

Funding

- The Foundation, in collaboration with the Institution, is responsible for establishing a financial plan to underwrite the cost of Foundation programs, operations, and services.

- In consideration for Foundation services including, but not limited to, those enumerated in this agreement, the Institution will provide the Foundation with fair and reasonable compensation or payment for services. The amount of compensation will be negotiated on an annual basis by ____ [date] of the preceding year.

- In consideration of Foundation services, the Institution will also provide in-kind support including: [list major in-kind support such as staff, office space, and technology]. [Note: Institution support for foundation services may be detailed in a separate contract for services. Also, if the foundation does not receive any funding from the institution or system, then language should specify this.]
• The Foundation has the right to use a reasonable percentage of the annual unrestricted funds; assess fees for services; or assess fees on gifts, endowed funds, and other investments. [Note: The use of fees and assessments should be decided in consultation with institution administrators, applied uniformly, and disclosed to donors.]

• The Foundation, at its own expense, will provide office space, computer and telephone systems, utilities, adequate personnel, office supplies, and other such services that may be necessary or required to fulfill its responsibilities and obligations. [Note: Depending on the degree of independence of the foundation, and if state law permits, the institution may help the foundation by providing support that may include personnel, office space, utilities, and services, or it may contract with the foundation for the services it provides; language should take this into account. Language should also be added to clarify whether the institution or the foundation owns the computer server and the records on the server. Institution gifts-in-kind should be appropriately reported in the foundation's annual report.]

• The Foundation shall maintain, at its own expense, copies of the plans, budgets, and donor and alumni records developed in connection with the performance of its obligations.

• The Foundation will provide access to data and records to the Institution on a need-to-know basis in accordance with applicable laws, Foundation policies, and guidelines. The Foundation will provide copies of its annual report and other information that may be publicly released. [Note: State regulations and case law should be taken into consideration to ensure that data-sharing practices are compatible with expectations regarding foundation and donor privacy.]

TERMS OF THE MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding, made this ___ [day] of ______ [month], 20__ [year], by and between the board of the Institution and the Foundation (an Internal Revenue Code 501(c)(3) nonprofit corporation), is intended to set forth policies and procedures that will contribute to the coordination of their mutual activities.

To ensure effective achievement of the items of the agreement, the Institution and Foundation officers and board representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities. The Institution and Foundation will review and amend this agreement at least every five years.

Either party may, upon 90 days prior written notice to the Chief Executive and Board Chair of the other party, terminate this agreement. The party initiating termination of the agreement must act in good faith to provide an opportunity for a meeting to include Institution and Foundation executives and Board Chairs (or the Board Chairs’ designees) of both parties within 30 days of initial written notice of intention to terminate the agreement.
Notwithstanding the foregoing, either party may terminate this MOU in the event the other party defaults in the performance of its obligations and fails to cure the default within a reasonable time after receiving written show cause notice to the Chief Executive and Board Chair of the defaulting party.

Should the Institution choose to terminate this agreement, the Foundation may require the Institution to pay, within 180 days of written notice, all debt incurred by the Foundation on the Institution's behalf, including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Should the Foundation choose to terminate this agreement, the Institution may require the Foundation to pay debt it holds on behalf of the Foundation in like manner.

Consistent with provisions appearing in the Foundation's bylaws and its articles of incorporation, should the Foundation cease to exist or cease to be an Internal Revenue Code 501(c)(3) nonprofit corporation, the Foundation will transfer its assets and property to the Institution, to a reincorporated successor Foundation, to another 501(c)(3) organization affiliated with the Institution, or to the state or federal government for public purposes, in accordance with the law and donor intent.

IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed by their duly authorized officers as of the day and date first above written.

____________________________  ______________________________
Chair                                  Chair
Board of The Institution               Board of The Foundation

____________________________
Date: __________________________

____________________________
Date: __________________________

____________________________  ______________________________
President or Chancellor                  Chief Executive
The Institution                          The Foundation

____________________________
Date: __________________________

____________________________
Date: __________________________
ACKNOWLEDGMENTS

With thanks to the members of the AGB MOU Task force, for their review and revision of the illustrative memorandum of understanding and the development of the associated recommendations regarding purposes, principles and practices.

The AGB MOU Task Force

David Bass, Task Force staff; director of foundation programs and research, AGB

Carol Cartwright, president emerita, Kent State University; consultant, AGB Consulting

Ed Davis, president, Texas A&M Foundation

Brian Flahaven, director, legislative, foundation, and recognition programs, Council for Advancement and Support of Education

Thomas K. Hyatt, partner, Dentons; senior fellow, AGB

James L. Lanier, Jr., former vice chancellor for institutional advancement and CEO, East Carolina University Foundation; senior fellow, AGB

Kathleen S. Mehfoud, chair and former university rector, University of Mary Washington Foundation

Thomas C. Meredith, former commissioner of higher education, Mississippi University System; senior fellow, Ingram Center for Public Trusteeship and Governance; consultant, AGB Consulting

Donna Vuchinich, president and CEO, University of Hawaii Foundation

John Walda, president and CEO, National Association of College and University Business Officers

ADDITIONAL RESOURCES


The Governance Committee (Foundation Boards), by Jim Lanier. AGB Press, 2014.
BY-LAWS OF THE BOARD OF TRUSTEES OF
THE UNIVERSITY OF LOUISVILLE

ARTICLE 1: OFFICES

Section 1.1 REGISTERED OFFICE AND PRINCIPAL OFFICE

Until altered as provided by law, the Registered Office of the University of Louisville shall be the address stated in its Charter and Articles of Incorporation as amended and its principal office shall be Belknap Campus, Louisville, Jefferson County, Kentucky 40292.

Section 1.2 OTHER OFFICES

The University may maintain other offices at such places, within and without the Commonwealth of Kentucky, as its Board of Trustees may from time to time establish.

ARTICLE 2: THE BOARD OF TRUSTEES

Section 2.1 GENERAL POWERS

The government of the University shall be vested in a Board of Trustees, which shall consist of such number of persons having such voting rights, serving such terms and appointed by such means as provided in the Kentucky Revised Statutes. In exercising its powers as derived from the Kentucky Revised Statutes, and implemented in its By-Laws and the governmental procedures for the University, the Board of Trustees as the governing body of a state agency shall exercise its powers and authorities in a manner consistent with applicable policies set by the Commonwealth of Kentucky.

Section 2.2 MEETINGS

The annual meeting of the Board shall be held in September of each year. At said annual meeting the Board shall elect its officers and the at-large member of the Executive Committee. A regular meeting of the Board of Trustees shall be at least quarterly, subject to modification as directed by the Board. Special meetings of the Board shall be held at the call of the Chair or the President of the University, or upon the request of at least three members of the Board. In April of each year the Secretary of the Board shall certify the attendance of each Board member at each of the meetings of the Board held since the previous April to the Chair of the Board of Trustees who in turn shall forward said certification to the Governor of the Commonwealth of Kentucky.
Section 2.3 NOTICE TO TRUSTEES OF MEETINGS

Reasonable notice, orally or in writing, of each Regular and Special Meeting of the Board of Trustees shall be given by the person calling it or by the Secretary to the members of said Board, but such notice may be waived by any person entitled thereto. Attendance of a Trustee at any meeting shall constitute waiver of notice of such meeting, except when such Trustee attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the Board of Trustees need be specified in the notice, or waiver of notice of such meeting.

Section 2.4 QUORUM

A majority of all the Trustees shall constitute a quorum of the Board of Trustees, which shall act by a majority of those present at a meeting at which a quorum is present; but in the absence of a quorum a meeting may be recessed from time to time by consent of a majority of the members present, without notice other than by announcement at the meeting.

Section 2.5 ORGANIZATION OF MEETINGS OF THE BOARD OF TRUSTEES

The Chair of the Board of Trustees shall preside at all meetings thereof. In the absence of the Chair, the Vice-Chair shall preside, but if both of them be absent, a Chair pro tempore shall be chosen at the meeting from among the members of the Board there present. Such Chair shall be vested with all the powers and duties of the Chair. The Secretary of the Board shall act as Secretary of all meetings thereof. In the absence of a Secretary, the Chair shall appoint a Secretary pro tempore.

Section 2.6 EXECUTIVE SESSIONS OF THE BOARD OF TRUSTEES

Executive sessions of the Board and any of its committees shall remain confidential except for reports to be made only by the Board Chair or a designated spokesperson or the President of the University. The President may be excused from any executive session at which the President’s performance or compensation is being evaluated.

Section 2.7 COMMITTEES OF THE BOARD

A. IN GENERAL

In addition to the Executive Committee required by statute, the Board shall establish any committees, standing or ad hoc, required for the conduct of its business. The Board will define the membership composition and charge to such committees. The Board Chair will make appointments to such
committees after receiving recommendations from the Board members. The Board Chair will designate the Chair of each committee. The President shall be an ex officio, without a vote, member of all committees except the Audit committee. For any standing committees, the membership composition and charge will be kept in an appendix to these bylaws. Said appendix will change from time to time as may be necessary without any amendment of these by-laws.

B. EXECUTIVE COMMITTEE

The Executive Committee shall consist of the officers of the Board of Trustees, one at-large member of the Board who shall be elected by the Board, [and] one of the three constituency chairs who shall be a member, and the past Chair of the Board as ex officio, non-voting so long as he or she is continuing as a member of the Board of Trustees. In the case of the constituency member of the Executive Committee, the seat shall be filled on a rotating annual basis by the Faculty Senate chair, the Student Government Association president, or the Staff Senate chair. The Committee shall, under the powers delegated to it in accordance with the Kentucky Revised Statutes, act for the Board of Trustees during the interim between meetings of the Board. The Executive Committee shall carry out assignments given it by the Board of Trustees and make such reports to the Board as required by it. Actions taken by the Executive Committee shall be reported to the Board for ratification except when the Board specifically authorizes an action to be taken on its behalf, such action will be reported only.

Section 2.8 RULES OF ORDER

The rules contained in the current edition of Robert's Rules of Order, Newly Revised, shall govern the Board in all cases to which they are applicable and in which they are not inconsistent with these By-Laws, any special rules of order this Board may adopt and any statutes applicable to the Board.

ARTICLE 3: OFFICERS

Section 3.1 OFFICERS OF THE BOARD

The officers of the Board of Trustees shall be a Chair, a Vice-Chair, a Secretary, and a Treasurer, and such other officers and assistant officers as the Board may appoint.

Section 3.2 DUTIES OF THE CHAIR

A Chair, who shall be annually elected by the Board of Trustees from among its members for a term of one year, shall preside at all meetings of the Board of Trustees and shall perform such other and further duties and have such powers as are usually performed
and possessed by similar officers of like institutions of higher education and shall perform such other duties and have such additional powers as may from time to time be prescribed by the Board of Trustees.

Section 3.3 DUTIES OF THE VICE-CHAIR

A Vice-Chair, who shall be annually elected by the Board of Trustees from among its members for a term of one year, shall perform all the duties and have all the powers of the Chair during the absence or disability of the latter.

Section 3.4 DUTIES OF THE SECRETARY

A Secretary, who shall be elected annually by the Board from among its members for a term of one year, shall keep the minutes of all proceedings of the Board of Trustees, and shall see that proper minutes and records are kept of all proceedings of Committees of the Board including the Executive Committee. The Secretary shall make and keep proper records which shall be attested. In addition, the Secretary shall keep such other books and records as may be required by the Board of Trustees and shall have charge of the corporate seal. The Secretary shall generally perform such other and further duties as may be required by the Board of Trustees. In the absence of the Secretary or in the event of disability, the duties shall be performed by any Trustee or any Assistant Secretary who may be appointed by the Chair.

Section 3.5 DUTIES OF THE TREASURER

A Treasurer, who shall be elected annually by the Board from among its members for a term of one year, shall have general supervision over the financial matters of the University and shall see that reports as to the financial condition of the University are made to the Board of Trustees, as may be required by the Board. The Treasurer generally shall perform such other and further duties as may be required by the Board of Trustees. In the absence of the Treasurer or in the event of disability, the duties shall be performed by any Trustee or Assistant Treasurer who may be appointed by the Chair.

Section 3.6 OTHER OFFICERS

The Board of Trustees shall have authority to appoint such other officers, agents and employees as may be desired.

ARTICLE 4: MISCELLANEOUS PROVISIONS

Section 4.1 CONFLICT OF INTEREST

All members of the Board of Trustees shall disclose any known conflict of interest and shall avoid participating in any decision
or advocating any subject matter before the Board in which a member of the immediate family of a Board member has a conflict of interest. When a member learns that a business transaction presents a conflict of interest, that member must make an immediate, full disclosure to the Board of his or her interest in the subject. The member shall not participate in any discussion of or decision on the issue. Disclosures are necessary for business transactions which would result in conflict of interest. Failure of a member to make a disclosure shall void any resulting agreement at the option of the University. University remuneration to a faculty or staff Trustee and financial aid to a student Trustee shall not be considered a financial or other conflict of interest. This policy shall not prohibit a Trustee, an organization which employs a Trustee, or an organization in which a Trustee has financial interest from pursuing a University purchase or contract to be awarded by competitive bidding. However, such Trustee must first inform the other Trustees and notify the newspaper having the largest circulation in Jefferson County of his or her intent to participate in bidding for a University business transaction.

Section 4.2 DIPLOMAS, DEGREES AND CERTIFICATES

All diplomas, degrees and certificates of the University shall carry the signature or a facsimile signature of the Chair of the Board of Trustees, the President, the Dean of the academic unit, and the Registrar.

Section 4.3 TRUSTEE EMERITUS

A person whose term(s) as a Trustee has expired as of July 1970 and thereafter and who has expressed a willingness to continue supporting the University of Louisville, shall, upon the recommendation of the Executive Committee, be conferred the permanent title of Trustee Emeritus.

ARTICLE 5: AMENDMENT OF BY-LAWS

Section 5.1 IN GENERAL

The Board of Trustees may alter or amend these By-Laws and may adopt new ones, but notice of any proposed changes shall be given at the previous regular or special meeting.

I HEREBY CERTIFY that these By-Laws were duly adopted by the Board of Trustees of the University of Louisville as required by law, this 13th day of November, 2008.

[Signature]  
Chair of the Board of Trustees  

[Signature]  
Assistant Secretary
FINANCE COMMITTEE

The Committee on Finance shall consist of a Chair and at least six additional members duly appointed by the Chair of the Board of Trustees at its annual meeting or as soon thereafter as possible. The Treasurer of the Board of Trustees shall also be a member of the Committee on Finance. The Committee shall consider the budget recommendations of the President, and shall submit its recommendations thereon to the Board as a whole. At the meeting of the Board when it considers the annual Operating Budget, the Committee Chair shall make a report on the University's financial situation.

AUDIT COMMITTEE

The Committee on Audit shall consist of a Chair and at least six additional members duly appointed by the Chair of the Board of Trustees at its annual meeting or as soon thereafter as possible. The Committee shall recommend the designation of an independent auditor and shall cause to be prepared and submitted to the Board of Trustees at least once a year an audited statement of the financial condition of the University as of the close of the fiscal year and of the receipts and expenditures for each year. The Committee may request any designated independent auditor, or any officer or employee of the University to appear before it to report on the financial condition of the University and answer any questions the Committee might have. The Committee shall also receive other audit reports pertaining to the institution and recommend any changes they deem appropriate to financial control and accounting systems. The President of the University shall not be an ex officio member of the Audit Committee, but may, upon invitation of the Committee, attend any meeting.

PERSONNEL COMMITTEE

A Committee on Personnel shall consist of a Chair and at least six additional members, all of whom shall be members of the Board of Trustees and duly appointed by the Chair of the Board of Trustees at its annual meeting or as soon thereafter as possible. The Committee on Personnel shall consider all nominees from whatever source for a university-wide award or for the granting of any honorary degree from the University. The Committee shall be involved in all discussion of and recommendations to the Board of Trustees of those to be considered for such awards or such honorary degrees, and for conferring proper names on University property. The Committee on Personnel shall consider all recommendations for promotion within the University and the awarding of tenure thereto. After reviewing such nominees, the Committee shall make its recommendations to the Board of Trustees. The Committee shall have referred to it all matters concerning disagreement on whether or not promotion or tenure should or should not be granted and shall make its recommendations to the Board of Trustees.

ACADEMIC AND STUDENT AFFAIRS COMMITTEE

The Committee on Academic and Student Affairs shall consist of a Chair and at least six additional members, including representatives of the faculty and Student Government Association, and duly appointed by the Chair of the Board of Trustees at its annual meeting or as soon thereafter as possible. The Committee
By-Laws of the Board of Trustees  
University of Louisville

By Academic and Student Affairs shall consider all recommendations for academic centers, institutes, degree granting programs and other academic entities. Additionally, the Committee will receive regular reports, at least annually, from the President regarding policies affecting the academic enterprise or the welfare of students.

TRUSTEES AWARD COMMITTEE

The Trustees Award Committee shall consist of a Chair and six additional members, including representatives of the faculty and Student Government Association and duly appointed by the Chair of the Board of Trustees at its annual meeting or as soon thereafter as possible. The Committee shall consider all recommendations and nominations for faculty (full- or part-time; undergraduate, graduate, or professional, even groups of faculty) who have had an extraordinary impact on students. The Committee shall make its recommendations to the Board of Trustees for approval in time for presentation to the award winner at the May University Commencement ceremonies.

NOMINATING COMMITTEE

The Nominating Committee shall consist of a Chair and two additional members of the Board and duly appointed by the Chair of the Board of Trustees at its annual meeting or as soon thereafter as possible. The Committee shall solicit nominations from among the members of the Board of Trustees when making its recommendations for the annual election of officers. The Nominating Committee shall consult with all Trustees prior to presenting its recommendations to the Board for election at the annual meeting.

COMPENSATION COMMITTEE

The Committee on Compensation shall consist of the Vice Chair of the Board, who shall serve as the Chair of the Committee, the Treasurer of the Board, who shall serve as the Vice Chair of the Committee, and three other members of the Board, along with the Chair of the UofL Foundation, Inc., who shall serve as an ex officio member, and all members shall be duly appointed by the Chair of the Board of Trustees at its annual meeting or as soon thereafter as possible. The Compensation Committee shall consider and recommend to the Board of Trustees all compensation for the President of the University.

BYLAWS AND POLICIES COMMITTEE

The Bylaws and Policies Committee shall consider and recommend to the Board of Trustees all changes to Bylaws and Policies and assure the Board’s Bylaws reflect the direction of the Board of Trustees.

STRATEGIC PLANNING COMMITTEE

The Strategic Planning Committee shall consider and recommend to the Board of Trustees any strategic plan affect the University, e.g., the 21st Century University Initiative.
University of Louisville Board of Trustees
Policy Statements and Operational Guidelines

BOT 1.0 Policy Statements

1.1 Ethics Statement

In all matters entrusted to the Board of Trustees of the University of Louisville, the Board, individually and collectively, is committed: to uphold the public trust in the University of Louisville; to carry out its responsibilities in accordance with the laws of the Commonwealth; to act with care and make informed decisions; to comply with University policies applicable to the Board of Trustees; to refrain from actions which put a Trustee’s personal or professional interests in conflict with that of the University and to abstain from any action or vote where appropriate; and, to avoid the use of Trustee appointment to obtain any private benefit. Further, neither the Chair of the Board nor a majority of Board members shall have a contractual, employment, or personal financial interest in the University.

1.2 Philanthropy Statement

The Board of Trustees recognizes that every member of its board has an ethical responsibility to lead by example through personal philanthropy that reflects personal financial means. The Trustees accept, therefore, as the University of Louisville increasingly seeks private support that they will achieve 100% trustee participation in annual donor giving.

BOT 2.0 Operational Guidelines

2.1 All new Trustees will attend a formal orientation as soon as practicable after being appointed to the Board.

2.2 The Board will hold an annual retreat.

2.3 For any meeting of any Committee of the Board of Trustees, other than Committee meetings which are scheduled for those dates on which regularly scheduled Board of Trustees or Committee meetings are to be held, every effort will be made to provide at least four business days notice of same.

(Revised: February 21, 2007)
AN ACT relating to gubernatorial appointments and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

⇒ Section 1. KRS 63.080 is amended to read as follows:

(1) Except as provided in subsection (2) of this section and otherwise provided by law, any person appointed by the Governor, either with or without the advice and consent of the Senate, may be removed from office by the Governor for any cause the Governor deems sufficient, by an order of the Governor entered in the executive journal removing the officer.

(2) (a) Except as provided in subsections (3) and (4) of this section, members of the board of trustees of the University of Kentucky, the board of trustees of the University of Louisville, members of the board of regents respectively of Eastern Kentucky University, Western Kentucky University, Morehead State University, Kentucky State University, Northern Kentucky University, Murray State University, and the Kentucky Community and Technical College System[], and members of the Kentucky Board of Education and the Council on Postsecondary Education[] shall not be removed except for cause.

(b) Members of the Kentucky Board of Education and the Council on Postsecondary Education shall not be removed except for cause.

(c) A member of a board of trustees or board of regents specified in paragraph (a) of this subsection may be removed for cause as follows:

1. The Governor or the board of trustees or board of regents, as applicable, shall notify, in writing, the member and the Council on Postsecondary Education that the member should be removed for cause and shall specify the conduct warranting removal;

2. The member shall have seven (7) days to voluntarily resign or to provide evidence to the Council on Postsecondary Education that the member's conduct does not warrant removal;
3. Within thirty (30) days after receipt of notice from the Governor or the board, the Council on Postsecondary Education shall review the written notice, investigate the member and the conduct alleged to support removal, and make a nonbinding recommendation, in writing, to the Governor as to whether the member should be removed, a copy of which shall also be provided to the Legislative Research Commission;

4. The Governor shall then make a determination, in writing, whether the member should be removed and shall notify the member, the applicable board, the Council on Postsecondary Education, and the Legislative Research Commission of the determination; and

5. If the Governor's determination is to remove the member, the Governor shall remove the member by executive order, and shall replace the member with a new appointment according to the applicable statutes for the board of trustees or board of regents.

(d) For the purposes of this subsection, a member may be removed for cause for conduct including but not limited to malfeasance, misfeasance, incompetence, or gross neglect of duty.

(3) For a board specified in subsection (2)(a) of this section that is required by law to have proportional representation in its membership based on residence, political affiliation, gender, minority racial composition, or professional qualifications, the Governor or other appointing authority may remove any member of the board and replace him or her with another individual in order to bring the membership into compliance with the statutory proportional representation requirement for the board, provided that the Governor or other appointing authority shall:

(a) Only exercise the removal authority granted in this subsection if appointment at the end of the next expiring term of a member, or at the end
of the next expiring term of members if two (2) or more members' terms expire at the same time, cannot cure the deficiency in the proportional representation requirement;

(b) Remove the fewest number of members necessary to bring the membership into compliance with the proportional representation requirement for the board;

(c) Identify the order in which the members were appointed to their current terms on the board and, beginning with the most recently appointed member who may be removed and replaced to bring the membership into compliance with the proportional representation requirement, remove the member or members according to the length of their tenure on the board, without taking into account any prior term of service on the board by the member;

(d) Provide any member proposed to be removed with the following:

1. Written notice, at least seven (7) days prior to the member's removal from the board, stating the statutory proportional representation requirement that the member does not satisfy; and

2. An opportunity during the seven (7) day notice period for the member to voluntarily resign or to provide evidence to the Governor or other appointing authority that the member does satisfy the proportional representation requirement or that another member on the board who also does not satisfy the requirement has a shorter tenure than the member proposed to be removed;

(e) Replace any removed member with only those individuals who will bring the board into compliance with the proportional representation requirement;

and

(f) Appoint any new member in the same manner as provided by law for the
(d) For a board of trustees or board of regents specified in subsection (2)(a) of this section, the Governor may remove for cause all appointed members of the board and replace the entire appointed membership as follows:

(a) The Governor shall notify, in writing, the board and the Council on Postsecondary Education that the entire appointed membership of the board should be removed for cause and shall specify the conduct warranting removal;

(b) The board or its members shall have seven (7) days to voluntarily resign or to provide evidence to the Council on Postsecondary Education that the conduct of the board or of individual members does not warrant removal;

(c) Within thirty (30) days after receipt of notice from the Governor, the Council on Postsecondary Education shall review the written notice, investigate the board and the conduct alleged to support removal, and make a nonbinding recommendation, in writing, to the Governor as to whether the appointed board membership should be removed, a copy of which shall also be provided to the Legislative Research Commission;

(d) The Governor shall then make a determination, in writing, whether the entire appointed board membership should be removed and shall notify the members, the Council on Postsecondary Education, and the Legislative Research Commission of the determination; and

(e) If the Governor's determination is to remove the entire appointed membership of the board, the Governor shall remove the members by executive order, and shall replace the members with new appointments according to the applicable statutes for the board of trustees or board or regents.
For the purposes of this subsection, the entire appointed membership of a board of trustees or board of regents may be removed for cause if the board is no longer functioning according to its statutory mandate as specified in the enabling statutes applicable to the board, or if the board membership's conduct as a whole constitutes malfeasance, misfeasance, incompetence, or gross neglect of duty, such that the conduct cannot be attributed to any single member or members.

Section 2. KRS 164.011 is amended to read as follows:

(1) There is hereby created and established a Council on Postsecondary Education in Kentucky as an agency, instrumentality, and political subdivision of the Commonwealth and a public body corporate and politic having all powers, duties, and responsibilities as are provided to it by law, appointed for a term set by law pursuant to Section 23 of the Constitution of Kentucky. The council shall be composed of the commissioner of education, a faculty member, a student member, and thirteen (13) citizen members appointed by the Governor. The citizen members shall be confirmed by the Senate under KRS 11.160, and the commissioner of education shall serve as a nonvoting ex officio member. Citizen council members shall be selected from a list of nominees provided to the Governor under the nominating process set forth in KRS 164.005. If the General Assembly is not in session at the time of the appointment, persons appointed shall serve prior to confirmation, but the Governor shall seek the consent of the Senate at the next regular session or at an intervening extraordinary session if the matter is included in the call of the General Assembly.

(2) By no later than thirty (30) days after May 30, 1997, the Governor's Postsecondary Education Nominating Committee shall submit nominations to the Governor as set forth in KRS 164.005. On making appointments to the council, the Governor shall assure broad geographical and political representation; assure equal representation of the two (2) sexes, inasmuch as possible; assure no less than proportional
population using the most recent census or estimate data from the United States Census Bureau. If the determination of proportional minority representation does not result in a whole number of minority members, it shall be rounded up to the next whole number. The membership may include one (1) graduate of the institution who resides outside the Commonwealth, but he shall not be reimbursed for out-of-state travel.

(6) Vacancies among the appointed members of the board occurring by death, resignation, or any other cause, other than expiration of a term, shall be filled by appointments made by the Governor for the remainder of the unexpired term, subject to the qualifications set forth in this section.

(7) Unless specifically approved by the board of trustees under the provisions of KRS 164.367, no member of the teaching or administrative staff of the university shall be directly or indirectly interested in any contract with the university for the sale of property, materials, supplies, equipment, or services, with the exception of compensation to the faculty, staff, and student members.

(8) The inability of the board to hold regular meetings, to elect a chairperson annually, to establish a quorum, to adopt an annual budget, to set tuition rates, to conduct an annual evaluation of the president of the university, to carry out its primary function to periodically evaluate the institution's progress in implementing its mission, goals, and objectives to conform to the strategic agenda, or to otherwise perform its duties under Section 9 of this Act shall be cause for the Governor to remove all appointed members of the board and replace the entire appointed membership pursuant to subsection (4) of Section 1 of this Act.

Section 9. KRS 164.830 is amended to read as follows:

(1) The board of trustees of the University of Louisville shall constitute a body corporate, with the usual corporate powers, and shall possess all the authorities,
immunities, rights, privileges, and franchises usually attaching to the governing bodies of Kentucky public higher educational institutions. *A majority of the voting members of the board shall constitute a quorum for the transaction of business.*

Powers of the board shall include the following:

(a) Appointment of a president, all faculty members, and other personnel and determination of the compensation, duties, and official relations of each. No relative of a board of trustee member shall be employed by the university.

(b) Suspension or removal of the president, officers, faculty, agents, or other personnel that it is authorized to appoint, except that no president, professor, or teacher shall be removed except for incompetence, neglect of or refusal to perform his duty, or for immoral conduct and that the removal shall be made in accordance with procedures established by law for state institutions.

(c) Election of a *chairperson, a* vice chairperson *to act in the absence or temporary disability of the chairperson,* and any other officers as it deems wise, including the annual election of a six (6) member executive committee which shall have the powers that the board delegates to it and shall operate under the rules the board shall establish under its authority to make bylaws, rules, and regulations consistent with this chapter. The committee shall have one (1) member representing the students, faculty, and nonteaching personnel with the group alternating each year. The initial appointment to the executive committee after *the effective date of this Act* [May 30, 1997], shall be a faculty member, to be followed by a student and a nonteaching personnel, respectively.

(d) Receipt, retention, and administration, on behalf of the university, subject to the conditions attached, all revenues accruing from endowments, appropriations, allotments, grants or bequests, and all types of property.

(e) Requirement of reports from the president, officers, faculty, and employees as
it deems necessary and proper from time to time.

(f) Granting degrees to graduates of the university, prescription of conditions
upon which postgraduate honors may be obtained, and conferment of
honorary degrees.

(g) The board shall periodically evaluate the institution's progress in
implementing its missions, goals, and objectives to conform to the strategic
agenda. Officers and officials shall be held accountable for the status of the
institution's progress.

(h) The board shall adopt bylaws, rules, and regulations for the governance of
its members, officers, agents, and employees, which shall reference the
member removal and replacement provisions of Section 1 of this Act, and
the board shall enforce obedience to those bylaws, rules, and regulations.

(2) Board members shall receive no compensation for serving on the board, but shall
be reimbursed for travel expenses for attending meetings and performing other
official functions, consistent with the reimbursement policy for state employees.

Board members who reside outside the Commonwealth shall not be reimbursed
for out-of-state travel expenses.

(3) The provisions of KRS 164.030, 164.200, and 164.410, shall be applicable to the
University of Louisville except where inconsistent with the purposes of KRS
164.810 to 164.870.

Section 10. The General Assembly finds and declares that one or more of the
boards specified in Section 1 of this Act has a current membership that is not in
compliance with statutory proportional representation requirements, or that one or more
of the boards has a history of appointments being made that do not meet those statutory
requirements. Additionally, the General Assembly finds and declares that one or more of
the boards specified in Section 1 of this Act has a current membership that is no longer
functioning according to its statutory mandate, or that one or more of the boards has a
history of failing to function according to its statutory mandate. Therefore, the General
Assembly further finds and declares that the Governor or other appointing authority shall
have the power to remove certain members of a board and replace those members with
new appointees, consistent with and as specified in Sections 1 to 9 of this Act.

Section 11. Because the membership of certain boards may not currently be in
compliance with the proportional representation requirements provided by law, an
emergency is declared to exist, and this Act takes effect upon its passage and approval by
the Governor or upon its otherwise becoming a law.
RECOMMENDATION:

The Chair of the Ad Hoc Committee on Board Governance recommends adoption of the following Board policies defining the University financial matters that must be brought before the Board of Trustees:

I. **Approval of Annual Budget:** The President is responsible under Section 2.1.2 of the Redbook for preparing and recommending to the Board of Trustees for Board review and approval an annual budget for the University.

II. **Approval of Financial Transactions:** Consistent with the President’s responsibility under Section 2.1.2 of the Redbook for recommending major actions to the Board of Trustees for final action, the President is responsible for recommending to the Board of Trustees for Board review and approval the following financial transactions:

   (a) Any long-term debt financing transaction.
   (b) Capital projects that involve University-owned land or which are for the University’s use when the estimated cost of acquisition, construction, reconstruction, improvement, or structural maintenance is estimated at $1,000,000 or more, regardless of fund source, except in the case of an expenditure determined by the President to be necessary because of an emergency (e.g., natural disaster or unforeseen mechanical, electrical, or structural breakdown that makes a facility or structure unusable.) Expenditures made in response to an emergency shall be initiated and then reported to the Board at its next meeting.
   (c) Changes in scope of an approved University capital project that exceed fifteen percent (15%)
   (d) The acquisition or disposition of property by lease when the transaction involves an annual rental of over $250,000 per year or a term longer than five (5) years.
   (e) Disposition of an interest in University real property, other than via lease, for a total amount in excess of $500,000.
   (f) Financial transactions not provided for in the annual operating budget with a value in excess of $250,000, including loans, guarantees, or fund transfers of any kind from the University to another person or organization, including an affiliated or related entity.

The President or his designees shall have the authority to approve all financial transactions not requiring prior approval by the board of Trustees.

III. **Periodic Reporting Regarding Financial Matters:** The President or his designee(s) shall report to the Board no less than annually on (a) the University’s audited annual financial reports; (b) a
budget-to-actual analysis; (c) the financial support provided by the University of Louisville Foundation, Inc. and its affiliates; (d) the status of the University’s long-term debt obligations; (e) the receipt of gifts and pledges; and (f) the University’s strategies for managing cash and short-term investment funds.

BACKGROUND: The Board of Trustees is a body corporate, under the name of Board of Trustees of the University of Louisville, with the usual corporate powers, and possessing all the authorities, immunities, rights, privileges, and franchises usually attaching to the governing bodies of Kentucky public higher educational institutions. It may receive, retain and administer, on behalf of the University, subject to the conditions attached, all revenues accruing from endowments, appropriations, allotments, grants or bequests, and all types of property, pursuant to KRS 164.830.

This resolution responds to SACSCOC Core Requirement 2.2 and Comprehensive Standard 3.10.3 and recommendations offered by the Kentucky Auditor of Public Accounts in the December 14, 2016 Report on the Examination of the Governance of the University of Louisville Foundation and its Relationship to the University of Louisville.

Committee Action:  
Passed:  
Did Not Pass:  
Other:  

Board Action:  
Passed:  
Did Not Pass:  
Other:  

__________________________
Assistant Secretary