

Meeting No. 1,155

THE MINUTES OF THE BOARD OF REGENTS  
OF  
THE UNIVERSITY OF TEXAS SYSTEM

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December 3, 2016

Austin, Texas

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OF  
THE UNIVERSITY OF TEXAS SYSTEM  
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MEETING NO. 1,155

SATURDAY, DECEMBER 3, 2016.--The members of the Board of Regents of The University of Texas System convened a special called meeting at 4:05 p.m. via telephone conference call on Saturday, December 3, 2016, in the Board Room, Ninth Floor, Ashbel Smith Hall, 201 West Seventh Street, Austin, Texas, with the following participation:

ATTENDANCE.--

Present

Chairman Foster  
Vice Chairman Hicks  
Vice Chairman Hildebrand  
Regent Aliseda  
Regent Beck  
Regent Cranberg  
Regent Hall  
Regent Pejovich  
Regent Tucker  
Regent Joseph, Student Regent, nonvoting

In accordance with a notice being duly posted with the Secretary of State and there being a quorum present, Chairman Foster called the meeting to order in Open Session.

RECESS TO EXECUTIVE SESSION.--At 4:06 p.m., the Board recessed to convene in Executive Session pursuant to *Texas Government Code* Sections 551.071, 551.073, and 551.074 to consider the matters listed on the Executive Session agenda.

RECONVENE IN OPEN SESSION.--The Board reconvened in Open Session at 4:30 p.m. to consider the following actions on Executive Session items and to consider the following agenda item.

1. U. T. System Board of Regents: Discussion with Counsel on pending legal issues

No action was taken on this item.

- 2a. U. T. Austin: Discussion and appropriate action regarding proposed negotiated gifts with potential naming features including the potential reallocation of Available University Funds, previously allocated to U. T. Austin for the support of online and on-campus enrollment growth, for strategic purposes to benefit U. T. Austin including support of educational purposes aligned with potential gifts

See the related Open Session item on Page 5 for action taken concerning this Item.

- 2b. U. T. System Health Institutions: Discussion and appropriate action regarding proposed negotiated gifts with potential naming features

No action was taken on this item.

- 2c. U. T. System: Discussion and appropriate action regarding proposed negotiated gifts with potential naming features including the potential reallocation of Available University Funds, previously allocated to U. T. Austin for the support of online and on-campus enrollment growth, for strategic purposes to benefit U. T. Austin including support of educational purposes aligned with potential gifts

See the related Open Session item on Page 5 for action taken concerning this Item.

- 3a. U. T. Austin: Discussion and appropriate action regarding employment contract for Thomas J. Herman as Head Football Coach (Regents' *Rules and Regulations*, Rule 10501, Subsection 2.2.12, regarding Athletic Employment Agreements and Rule 20204, regarding highly compensated employees)

Vice Chairman Hicks moved that the Board, acting upon the recommendation of the Board's Athletics Liaison, the Chancellor, the Deputy Chancellor, the Executive Vice Chancellor for Academic Affairs, and President Fenves, approve terms of compensation for Thomas J. Herman as Head Football Coach at The University of Texas at Austin with a term of five years within the parameters discussed in Executive Session and as consistent with the Regents' *Rules and Regulations*, Rule 20204 and Rule 10501.

He further moved that President Fenves be authorized to conclude negotiations; to draft an employment agreement for Coach Herman in coordination with and subject to the approval of the Chancellor, the Deputy Chancellor, the Executive Vice Chancellor for Academic Affairs, and the Vice Chancellor and General Counsel; to execute the agreement; and to take ancillary steps necessary to facilitate and effect the agreement, subject to the approval of the Chancellor, the Deputy Chancellor, the Executive Vice Chancellor for Academic Affairs, and the Vice Chancellor and General Counsel.

Vice Chairman Hicks said this motion is made with the understanding that the source of funding for the contract provisions will come entirely from athletic revenues, that no state-appropriated funds or tuition revenues will be used, that details of proposed compensation will be made available to the public as soon as feasible following Board action, and that the employment agreement resulting from approval of terms of compensation will be submitted for Board ratification via a future Consent Agenda.

He further moved that the Board find that the approved terms of compensation are in the best interest of U. T. Austin and The University of Texas System.

The motion was seconded, and Regent Cranberg commented that he is supportive of the motion, largely because the structure of Coach Herman's contract has changed from Coach Strong's contract to be more performance-oriented, particularly with respect to the obligation to mitigate and offset in the unexpected event of an early termination. Referencing the guarantee structure of past contracts, Regent Cranberg said he takes little comfort in that the contracts are funded by athletics revenues and not state-appropriated revenues or tuition, because the financial success for athletic programs directly contributes to the campus and are made possible by the U. T. brand and investments in the athletics program. He noted that he has been critical of the past contracts, but is pleased to see that current contracts are much more performance-driven. He asked that as the Board considers the structure of assistant coaches contracts in the future, that the same alignment between success on the field and financial success is kept firmly in mind.

The motion carried. Regent Hall was not present for the vote on this item.

Note: The attached term sheet for Coach Herman was made available to the press following the meeting.

**Head Football Coach Tom Herman**

**Basic Compensation Terms**

**Term:** Five years, ending December 31, 2021

**Annual Compensation:**

Year One:	\$5,250,000
Year Two:	\$5,500,000
Year Three:	\$5,750,000
Year Four:	\$6,000,000
Year Five:	\$6,250,000

**Non-Guaranteed Incentive Payments:**

1. Post Season (up to \$575,000 maximum):
  - a. Big 12 Conference Champion \$100,000
  - b. Appear in Bowl Game other than Major 6 \$ 25,000  
Win Bowl Game other than Major 6 \$ 50,000  
OR  
Appear in Major 6 Bowl Game \$ 50,000  
Win Major 6 Bowl Game \$ 50,000  
OR  
Appear in College Football Playoffs Semi-Final Game \$100,000  
Appear in College Football Playoffs Final Game \$125,000
  - c. College Football Playoffs Champion \$250,000  
OR  
College Football Playoffs Top 5 Final Ranking \$180,000  
OR  
College Football Playoffs Top 6-10 Final Ranking \$120,000
2. Coaching Recognition (up to \$150,000 maximum):
  - a. National Coach of the Year (only one per season) \$100,000
  - b. Any Coach of the Year other than National Coach of the Year \$ 50,000

**Retention Payment:** \$1,000,000 one-time payment if employed by UT Austin as of December 25, 2019

**Termination by Coach:** \$3,000,000 guaranteed payment to UT Austin for each remaining contract year of the unexpired term of the contract (partial month to be pro-rated), *plus* the dollar amount equal to the total compensation UT Austin will be obligated to pay any assistant coaches on Coach's staff at the time Coach terminates the contract who are not retained on the new head football coach's staff and who remain employed by UT Austin 60 days after Coach terminates.

**Termination without Cause by UT Austin:** \$5,000,000 guaranteed payment to Coach for each remaining contract year of the unexpired term of the contract (partial month to be pro-rated). UT Austin will offset from such payment 100% of any post-termination football-related income Coach receives or is due for such football-related work through the end of the contract term.

- 3b. U. T. System: Discussion and appropriate action regarding individual personnel matters relating to appointment, employment, evaluation, compensation, assignment, and duties of presidents (academic and health institutions), U. T. System Administration officers (Executive Vice Chancellors and Vice Chancellors), other officers reporting directly to the Board (Chancellor, General Counsel to the Board, and Chief Audit Executive), and U. T. System and institutional employees

No action was taken on this item.

#### AGENDA ITEM

U. T. System Board of Regents: Discussion and appropriate action regarding authorization for expanded flexibility in use of approximately \$40 million in Available University Funds, previously allocated to U. T. Austin for the support of online and on-campus enrollment growth, for strategic purposes to benefit U. T. Austin including but not limited to support of educational purposes that complement and maximize positive impacts from potential gifts

This item was considered before action was taken in Open Session on Items 2a and 2c (see Page 2).

Chairman Foster called on Chancellor McRaven for comments on the proposal for expanded flexibility for the use by The University of Texas at Austin of previously allocated Available University Funds (AUF) (see also Executive Session Items 2a and 2c concerning related potential negotiated gifts).

Chancellor McRaven reminded members of the Board of a previous allocation on August 21, 2014, of \$56.4 million in AUF for U. T. Austin's Extended Campus Program. After further review, U. T. Austin re-scoped the Program, which required only \$16.4 million of AUF. After consulting with the President of U. T. Austin, Chancellor McRaven recommended that the Board approve the reallocation of the remaining \$40 million in AUF to the U. T. Austin Dell Medical School for support to the neurosciences and the brain health initiative.

Regent Cranberg asked for assurance that as the \$40 million was originally purposed for not only an Extended Campus, but also for enrollment growth, that the repurposing of this money for the new purpose would not inhibit the plans of U. T. Austin to pursue enhanced enrollment plans at its business and engineering schools. President Fenves provided assurance that the cost of enrollment expansion, both start-up and faculty recurring costs, would not come back to the Board for additional funding for start-up costs.

Vice Chairman Hildebrand then moved that The University of Texas System Board of Regents authorize the Vice Chancellor for External Relations, the Chancellor, the President of U. T. Austin, and the Dean of Dell Medical School to conclude negotiations necessary to finalize, approve, and accept gifts and to finalize and execute agreements consistent with the terms and conditions outlined and recommended in Executive Session, including potential naming features.

He also moved that the Board authorize the Chancellor to take actions necessary to reallocate the undistributed balance held for U. T. Austin out of the August 21, 2014, Special Available University Fund allocation, which the Board directed be used for the support of online and on-campus enrollment growth, with the further authorization that these funds may be used to effect the educational purposes associated with the potential gifts and for other strategic purposes as determined by the President and the Chancellor to be of benefit to U. T. Austin.

The motion was seconded and carried. Regent Hall was not present for the vote on this item.

ADJOURNMENT.--At 4:39 p.m., there being no further business, the meeting was adjourned.

/s/ Carol A. Felkel  
Secretary to the Board of Regents

February 7, 2017