

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION

ACTION REQUEST

EXH	MOTION	Brandon
	SECOND	Taylor
	ACTION	APPROVED BY THE REGENTS
NOTE:	JUN 16 2005	

Subject: Procedure for Handling Potential Conflicts of Interest Involving a Regent

Action Requested: Approval of "Supplemental Procedure to Bylaw 1.14 for Handling Potential Conflicts of Interest Involving a Regent"

Regents' Bylaw 1.14 provides a general framework for managing conflicts of interest involving a Regent or an executive/senior officer of the University. The Regents have expressed an interest in ensuring that potential conflicts involving a Regent are both identified and properly managed.

The attached supplemental procedure details methods for responding to instances where a potential conflict involving a Regent has been identified. The procedure requires disclosure of potential conflicts and describes the processes to be used to evaluate the situation and arrive at options to manage any potential conflict. The procedure provides for a staged analysis and, if a potential conflict is identified, requires presentation of options for management of the conflict.

Upon approval, Regents' Bylaw 1.14 will be updated to include a reference to the supplemental procedure.

The proposed "Supplemental Procedure to Bylaw 1.14 for Handling Potential Conflicts of Interest Involving a Regent" will ensure proper identification and management of potential conflicts involving a Regent. I therefore recommend approval of this procedure.

Respectfully submitted,



Sally J. Churchill
Vice President and Secretary of the University

June 2005

Attachment

Supplemental Procedure to Bylaw 1.14 for Handling
Potential Conflicts of Interest Involving a Regent

One of the fundamental fiduciary duties of a Regent is the “duty of loyalty,” which is defined as having a mandate to be faithful to an organization’s best interest, and not to use the position or knowledge gained as a Regent for personal advantage at the organization’s expense. Obligations under the duty of loyalty include disclosure of real and potential conflicts of interest. State law defines what constitutes a real conflict of interest for a Regent and prohibits the University of Michigan from entering into any transaction where such a conflict exists. Under the applicable statute (MCL 15.301 et seq.) the University may not contract with a vendor with which a Regent has a pecuniary interest of such substance that it would induce the Regent to promote the contract for the Regent’s own personal benefit.

Regents’ Bylaw Section 1.14 further requires management of those situations where there exists even the appearance of a potential conflict that might affect the independence of a Regent’s judgment.

To ensure that the high standards expected of the Regents are met, each Regent must disclose to the vice president and secretary of the University, with updates as needed, those activities and financial interests that are or could potentially constitute situations where the independence of the Regent’s judgment could be affected. A Regent may consult with the vice president and general counsel as to which matters should be submitted to the vice president and secretary for analysis and management.

The vice president and secretary will review these disclosures and, with advice and consultation from the president, the chair of the Board of Regents and the chair of the Personnel, Compensation and Governance Committee of the Board of Regents, will consult with the Office of the General Counsel and the executive vice president and chief financial officer as to which matters may constitute an actual conflict. The Regent may request an opinion on the matter from the vice president and general counsel. After consultation and advice, the president will determine if the University administration should treat the situation as one involving a real conflict of interest as defined by the applicable statute. If the affected Regent does not concur, the matter will be referred to the full Board for action.

In situations where a real conflict of interest is identified, the vice president and secretary will notify the president. The president will take all necessary steps to

ensure that the University of Michigan does not enter into any transaction prohibited by statute with the organization from which the conflict arises.

In situations where a potential effect on the independence of the judgment of a Regent is identified, the vice president and secretary will consult with the chair of the Board of Regents and with the Office of the Vice President and General Counsel. The vice president and general counsel will also provide advice, on request, as to options available to manage situations to avoid even the appearance of a potential conflict. The vice president and general counsel will inform the chair of the Board of Regents, the president, and the vice president and secretary of his or her recommendations.

Options that the vice president and general counsel will consider include requiring the president to manage such items so that the Regent is not involved, and requesting the Regent to refrain from any participation or discussion of the matter and to abstain from voting on the matter unless the Regent is required for a quorum and the matter at hand requires timely adoption to allow for orderly administration of University affairs. At any meeting of the Regents where a Regent intends to abstain, the Regent will announce that there is a potential for the appearance of a conflict and therefore he or she will not be participating in either the discussion or vote on the matter.