SB79-16/17: Resolution Requesting the Expeditious Addition of a Student Representative on the University of Montana Foundation Board of Trustees

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The Associated Students of the University of Montana
Resolution Requesting the Expeditious Addition of a Student Representative
on the University of Montana Foundation Board of Trustees
04/12/2017
SB79 - 16/17

Authored by: Sam Forstag, ASUM President;
Sponsored by: Elle Fettig, ASUM Senator; Braden Fitzgerald, ASUM Senator;
Elizabeth Engebretson, ASUM Vice President

Whereas, the Associated Students of the University of Montana (ASUM) represents and serves
as the official voice for the over 11,000 students of the University of Montana (UM) student
body;

Whereas, decisions made by the University of Montana Foundation (UM Foundation) Board of
Trustees directly impact UM students in a wide variety of areas;

Whereas, meaningful student participation within the UM Foundation Board of Trustees would
provide a significant benefit to the both the UM Foundation’s pursuit of its philanthropic mission
and UM students’ vested interest in one of our campus’s largest annual funding sources;

Whereas, ASUM is cognizant of the substantial value that the UM Foundation adds to our
University, and of the significant resources that the Foundation and Foundation Trustees help
provide to the University of Montana campus and students;

Whereas, ASUM passed a resolution on September 7th, 2016, and submitted a formal proposal to
the same effect, requesting the creation of an ex officio student seat on the UM Foundation
Board of Trustees to be filled annually by the ASUM President 1, 2;

Whereas, a March 21st, 2017 letter from Mary Olson, Chair of the UM Foundation Board of
Trustees rejected ASUM’s proposal for the creation of an ex officio student representative,
noting that: “the Trustees concluded that the goal of improving engagement with students does
not require creation of an ex officio Trustee position for the ASUM President” 3;

Whereas, this same March 21st, 2017 letter instead suggested the alternative that “a UM
Foundation staff member and one or more Trustees attend a Senate meeting in the fall and
spring of each year” 3;

Whereas, a March 21st, 2016 letter from former UM Foundation President Shane Giese on behalf
of the UM Foundation Board of Trustees stated that “as a separate private organization, the
Foundation’s Board and Committee meetings are private, and therefore are not open to the
public” 4;

Whereas, the UM Foundation Board of Trustees’ bylaws are not currently publicly available,
making verification of said bylaws and specific request to work within currently set bylaw
constraints necessarily difficult and imprecise;

1 Forstag, Sam and Engebretson, Elizabeth. "SB10-16/17: Regarding Student Representation on the UM Foundation Board of
2 Forstag, Sam. “Proposal to Create a Student Seat on the University of Montana Foundation Board of Trustees” (2016)
3 Olson, Mary. 21 March, 2017
4 Giese, Shane. 21 March, 2016
Whereas, Foundation representatives attending the April 5th, 2017 ASUM meeting stated that a large portion of Board work and decision-making takes place outside of the twice-annual full Board meetings;

Whereas, the regular attendance and participation of the UM Foundation President & CEO as a ‘staff liaison’ at full Board of Trustees meetings and with committees including the Board Governance Committee and Executive Committee serves as a useful model for meaningful participation by an annually-appointed student representative;

Whereas, a similar request from students to the Montana State University (MSU) Alumni Foundation Board of Directors, a similarly structured and purposed organization, was accepted and expeditiously honored in fall of 2016 by instituting a student seat without the immediate changing of the MSU Alumni Foundation Board of Directors’ bylaws;

Whereas, Article II, Section 9, of the Montana Constitution delineates the publics’ ‘Right to know,’ and reads:

“Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure”

Whereas, Article II, Section 8 of the Montana Constitution delineates the publics’ ‘Right of participation,’ and reads:

“The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.”

Whereas, Section 2-3-203 of Montana Code Annotated reads:

“(1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.”

Whereas, student participation in processes requiring strict confidentiality exists across UM, including Collective Bargaining negotiations, all administrative search committees, complex Discrimination Grievance cases, pay negotiations for professional staff, campus appeals committees, Beverage Contract negotiations, and the President’s Cabinet;

5 MT Const. art II, § 9
6 MT Const. art II, § 8
7 2-2-203, MCA
Whereas, the UM Foundation is incorporated under the Montana Secretary of State as a ‘public benefit without members’;

Whereas, a 2015 study of University-affiliated Foundations classification under public records laws found that the issue has been raised in at least 20 states, “and in at least 11 of them, the classification favors the finding that foundations are the alter ego of their universities and subject to public-records laws.”

Therefore, Let it Be Resolved, that the Associated Students of the University of Montana (ASUM) finds the University of Montana Foundation (UM Foundation) Board of Trustees’ suggested alternative to the creation of a permanent student seat on the Board of Trustees to be woefully inadequate as a standalone means of incorporating meaningful student participation and involvement in the various Board decisions that directly impact University of Montana students;

Therefore, Let it Further Be Resolved, that ASUM urges the UM Foundation Board of Trustees to reconsider and reverse its decision to decline ASUM’s proposal to institute a permanent, annually-appointed student representative to serve on the Board at the soonest possible juncture;

Therefore, Let it Further Be Resolved, that ASUM urges the UM Foundation proceed forthwith with appointing the 2017-18 ASUM President as an ex-officio seat on the UM Foundation Board of Trustees to begin serving no later than the Board’s fall meeting, with the goal of institutionalizing this avenue of student representation and involvement through an eventual amendment of the Board’s bylaws;

Therefore, Let it Further Be Resolved, that ASUM requests that any such student representative serving on the Board of Trustees serve as a student liaison in at least two Board Committees to ensure the opportunity for meaningful and reasonable student involvement in the UM Foundation’s decision-making process, which was previously characterized as largely occurring via Board Committees;

Therefore, Let it Further Be Resolved, that the appointment of the ASUM President to the Board of Trustees should by no means preclude instituting additional avenues of student involvement, input, and participation between the UM Foundation and ASUM, such as those suggested in Board Chair Mary Olson’s March 21st letter to ASUM President Sam Forstag;

Therefore, Let it Further Be Resolved, that ASUM asks that the UM Foundation issue a formal response to the continued question of instituting a permanent student representative on the UM Foundation Board of Trustees no later than April 19th, 2017;

Therefore, Let it Further Be Resolved, that if a response which sufficiently addresses the ongoing issue of a lack of opportunity for meaningful student involvement and participation with the UM Foundation Board of Trustees is not issued by the aforementioned date, ASUM will proceed to
investigate and pursue avenues of legal action regarding the Constitutionality of continuing to
deny students access and participation in UM Foundation Board of Trustees meetings;

Therefore, Let it Further Be Resolved, that a copy of this resolution be sent to: Mary Olson,
Chair of the UM Foundation Board of Trustees; Cindy Williams, Interim President & CEO of the
UM Foundation; Bill Mercer, Chair of the Governance Committee of the UM Foundation Board
of Trustees; Sheila Stearns, Interim President of the University of Montana; Levi Birky, Montana
University System Student Regent; Paul Tuss, Chair of the Montana Board of Regents; Fran
Albrecht, Vice Chair of the Montana Board of Regents.

Passed by Committee: ______________________________, 2017

Passed by ASUM Senate: ______________________________, 2017

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Connor Fitzpatrick, Chair of Relations & Affairs

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Elizabeth Engebretson Chair of the Senate

5 MT Const. art II, § 9
6 MT Const. art II, § 8
7 2-2-203, MCA
8 Peters, Jonathan W., and Jackie Spinner. "How university foundations try to avoid public scrutiny—and what reporters can