

**Written Testimony of  
Penn State President Graham Spanier  
On Proposals Amending the  
Right-to-Know Law  
August 7, 2007**

Dear Chairperson Josephs, and Members of the House State Government Committee:

Thank you for this opportunity to comment on the several legislative and administration proposals which seeks to amend the State's Right-to-Know law in ways that will have a profound negative impact on Pennsylvania's state-related research universities.

First, let us be reminded that Penn State **already** opens its financial books to you and the public. The online version alone represents 5,000 pages of budget detail. In fact, every year, as required by The Higher Education Fiscal Information Disclosure Act, we deliver detailed reports on our finances to the General Assembly and post the same information on our website. These reports (described in more detail in an addendum) answer nearly every conceivable question about how we spend taxpayers' funds except for the individual salaries of our employees.

**Legislative proposals to include state-related universities in the State's Right-to-Know law go far beyond making Penn State accountable for how it spends public funds.** Nobody would argue the point that the public has a right to know how public funds are spent. But these proposals will fundamentally change the way we operate, the way our trustees govern, and the way the university administers their policies. Frankly, we will have to operate in a way that will make us less nimble and less competitive with many other major research universities in the nation.

The fiscal information disclosure requirements in our annual appropriations bill currently provide the right balance of access to information and public accountability without adding crippling new costs, which would diminish the excellence of the University and make it less competitive nationally. It remains the most appropriate mechanism to guarantee higher education accountability and public access to information.

Adding state-related universities to the Right-to-Know law would have serious unintended consequences not in the best interests of the Commonwealth. We worry about the creation of a new and expensive bureaucracy to control and process requests for information, (and perhaps extensive and expensive litigation over the law's meaning and effect.)

Examples of unintended negative consequences of applying Right-to-Know provisions to state-related universities are:

- By opening all files to the public, including vendors, the university would suffer a substantial loss of competitive leverage in negotiating contracts for the purchase of goods and services, leading to increased financial and operational costs.

- Revenues from the lease and sale of intellectual property would likely fall, since if the terms of such agreements became public, prospective corporate partners would be reluctant to pay any more than the lowest paying partner.
- Right-to-Know could block the University's opportunity to invest its endowment in various attractive funds, which will not permit their specific investment strategies and holdings to be publicly disclosed. We have already been so notified by some of our investment funds.
- Right-to-Know will severely limit the University's opportunity to enter into contracts with outside entities that do not permit the terms of their agreements to become public due to competitive concerns (examples include our lucrative partnerships with Nike, Highmark, Pepsi, Barnes and Noble, and others).
- Each year Penn State spins out companies and licenses technology. The details of the deals surrounding licensing fees, royalty structure, and equity stake vary with each technology. If, through Right-to-Know, the details of these deals were publicly available, the ability to negotiate the best terms would be compromised. Right-to-Know would make Pennsylvania's public research universities, and as a result the Commonwealth, less attractive, for such partnerships. This would hurt Pennsylvania's economic development goals.
- Penn State ranks second in the nation in grants and contracts from Industry...about \$100 million per year. It is well recognized that contracts with industry can be challenging. Making details of contracts publicly available will threaten our competitive position with Universities outside of Pennsylvania, as well as with private universities within PA with whom we compete.
- Right-to-Know could compromise donor confidentiality. The following information and activities are presently confidential. Exposing these elements and other information of similar content to the public eye would have a chilling effect on donors and would negatively impact our private fundraising productivity: individual donor gift histories; donor gift agreements; the payment vehicles donors use to satisfy their pledges; the assets donors use to satisfy their pledges (i.e. securities, real estate, artwork, etc.); donor research profiles and wealth estimates; donor contact reports, including confidential meetings with a donor's personal legal or financial advisor; expenses associated with donor identification, cultivation, solicitation and stewardship; and minutes of staff and volunteer meetings involving donor strategies.
- Right-to-Know will create a further erosion in privacy rights of individuals whose personal/confidential information is part of documents falling within the scope of open records requests.
- Right-to-Know could hinder incentive and merit pay programs for faculty. It could allow competing universities to raid the Commonwealth's research institutions.

- Right-to-Know will chill certain economic development activities if proprietary/confidential business information is subject to disclosure under the Act.
- Right-to-Know would require various departments and student organizations to invest enormous resources in researching and copying all kinds of detailed information requested by advocacy groups and protesters intending to deliberately interfere with and halt normal operation of the university. Unreasonable and repetitive requests could paralyze our operation.
- Making individual salary information public would increase administrative costs, pose a constant detriment to employee morale, severely inhibit the use of merit as a basis for the salary structure and reward system, limit management flexibility, and make the University more vulnerable to increased competition and raiding from other institutions for quality faculty members.
- All in all, we anticipate that the proposed Right to Know legislation would result in a multi-million dollar hit for Penn State.

Speaking of Penn State's competitors, why do several of the Right-to-Know proposals include state-related universities, yet omit state-aided universities? This is baffling. It is as if the drafters of such legislation are determined to put the state-related universities at a competitive disadvantage and reduce us to a lesser competitive status. Like the University of Pennsylvania, a state-aided university, Penn State and Pitt are members of the highly selective Association of American Universities, and are major national research universities. In the latest published National Science Foundation's rankings of research expenditures Penn State ranked 9<sup>th</sup> in the nation – Penn was 10<sup>th</sup>. We compete with Penn, CMU, Cornell and other major national research universities for faculty, public and private research dollars, students, and so on.

Yet while Penn, Drexel, and twenty-four other institutions collectively receive well over \$100 million in nonpreferred appropriations from the General Assembly, they are not included in such proposals. Why? I am guessing that someone must have correctly determined that it would put them in a competitive disadvantage, or that their receipt of public funds was a sufficiently small portion of their budget to not make them "public" for purposes of open records. Like these other institutions left out of Right-to-know, Penn State receives a small portion of its budget from the state – less than 10%, yet these proposals would open up the entire university to open records, regardless of its impact on our ability to compete.

Subjecting Penn State to Right-to-Know does far more than feed the prurient interests of newspaper editors who are looking for a headline about how much Coach Paterno makes. I would point out that no tax dollars and no tuition dollars support his salary. As you know, our Board of Trustees has a long-standing policy regarding the privacy of individual salaries. What we are concerned about is the impact that opening up university salaries would have on Penn State's ability to compete in a global marketplace for the best faculty and research scholars who we ask to come to Penn State to teach and do critical research that supports the state's economy and quality of life. That's what's at stake -- Penn State's ability to teach, do research and serve the Commonwealth and its citizens -- and that's why I wanted to personally attest to the impact of these proposals before you.

Addendum to President Spanier's  
Testimony on Right-to Know,  
August 7, 2007

Penn State University fully agrees with the need for strict fiscal accountability to the citizens of Pennsylvania, the General Assembly, and the Administration. To this end, we supported the Higher Education Fiscal Information Disclosure Act in 1994 that was championed by Senator James Rhoades and Representative Jess Stairs, Chairs of the House and Senate Education Committees.

The Rhoades-Stairs disclosure approach was designed specifically for Pennsylvania's major research universities, and continues to be the most appropriate higher education accountability mechanism. Under this act, state-related universities must report:

- The academic and administrative budgets for current and prior years including revenue and expenditures;
- The number of employees by academic rank and number of administrators, and staff;
- The median and mean salaries of administrators, faculty, and staff;
- The non-salary compensation of administrators, faculty and staff;
- A statement of the institution's retirement policies;
- A policy statement on reduction of tuition for employee's family members;
- Service contracts including legal, instructional, management accounting, architecture, public relations, and maintenance;
- A list of goods and services in excess of \$1,000; and
- A list, by unit, of expenses of travel.

The reports are due within 180 days of the close of each fiscal year. In addition, Penn State posts its reports on a specially designed Public Accountability Web Site: <http://www.psu.edu/ur/accountability.html>. At this site you will find direct links to the University's operating budget, Fact Book, Common Data Set, crime statistics, and other data sources for all twenty-four Penn State locations.