STATEMENT ON OPEN MEETING LAWS

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Before we begin today, I want to take a moment to address a question that has arisen about why The Regents consider compensation matters in closed session.

An argument has been made that under California's open meeting laws, compensation matters should only be acted upon in open session.

This represents a fundamental misunderstanding both of the law and the way The Regents do business.

Let me explain what I mean by that.

Those who make the argument are looking at the Bagley-Keene Act that applies to state agencies generally. But the law that applies to the University of California is not Bagley-Keene but rather the specific provisions in the Education Code that specify the circumstances where the Regents may meet in closed sessions.

In other words, there are two different laws and the argument that compensation matters should be dealt with by the Regents only in open session ignores the law that applies to the Regents.

That law does say that the Regents must take final action in open session on the salaries of certain officers – the President, Chancellors, Vice Presidents, and principal officers of the Regents. The Regents have complied faithfully with that requirement since it was adopted. But there are those who are saying that the Regents are violating this requirement by taking preliminary committee action in closed session.

In making that claim, they misunderstand the way the Regents do business.

The Regents act through committees. The Bylaws require that, except in the most unusual circumstances, all matters be considered and acted upon by a committee before coming before the full Board.

In other words, The Regents take <u>two</u> kinds of action.

First they take actions in <u>committee</u>. But these actions are recommendations to the Board; they aren't board decisions.

This second action is the full <u>Board</u> decision on that recommendation.

So in looking at today's agenda, you'll see a number of closed session committee items

labeled "action." That only means that the committee will take "action" to the extent it is forwarding recommendations to the Board for its approval.

The reason the committee recommendations on compensation matters are acted upon in closed session is simple: discussions that take place in arriving at the committee recommendations involve, among other matters, evaluation of the performance of individuals.

In the context of such evaluations, individuals are entitled to protection of their privacy interests. This is clearly exempted from open meeting requirements under Section 92032 of the Education Code permitting closed session for "appointments, performance, and compensation of University personnel."

As I mentioned, when recommendations for the President, Chancellors, Vice Presidents, and principal officers of The Regents are ready for final action, they are acted on in open session. Actions for others whose compensation is properly acted on by The Regents in closed session, including full details of their total compensation package, is reported out after approval by the full Board.

These practices conform to the Education Code and are embodied in the principles of executive compensation adopted by The Regents in 1992 and amended in 1993.

The Regents will be taking up a number of other items in closed session. I want to make clear the basis in law why they are in closed session and make reference to the statute that applies in each case:

1. 10CXX, Compensation of Livermore Lab Director, joint meeting of DOE Oversight and Compensation -- closed session under Ed Code section 92032(b)(7) for compensation of personnel

2. Review of University Personnel, Board – closed session under 92032(b)(7)for performance of personnel

3. 2XX, Board, Appointment of Livermore Lab Director – closed session under 92032(b)(7) for appointment of personnel

4. 1CXX, Compensation Committee, Review of Individual Compensation Issues – closed session under 92032(b)(7) for performance of personnel

5. 2CXX, Compensation Committee, Compensation Structure for President and Chancellors – closed session under 92032(b)(7) for performance and compensation of personnel

6. 3CXX, Compensation Committee, Job Slotting for Various Positions – closed session under 92032(b)(7)for performance and compensation of personnel

7. 1CX, Compensation Committee, Compensation for Athletic Directors and Coaches – closed session under 92032(b)(7) for compensation of personnel

8. 2CX, Compensation Committee, Compensation of specified individuals – closed session under 92032(b)(7) for compensation of personnel

9. 3CX, Compensation Committee, Collective bargaining benefit issues – closed session under Government Code section 3596 for collective bargaining matters

10. 502X, Finance Committee, Ground Lease – closed session under 92032(b)(6) for disposition of property

11. 503X, Finance Committee, Collective Bargaining Matters – closed session under Government Code section 3596 for collective bargaining matters

12. 701X and following, Finance Committee, General Counsel report and recommendations – closed session under section 92032(b)(5) for litigation.

13. 302X, 303X, Educational Policy Committee, Major Donor reports – closed session under 92032(b)(3) for gifts and bequests

14. 902XX, Audit Committee, Status of Active Investigations – closed session under 92032(b)(7) for performance of personnel

I should add that every item that goes on The Regents' agenda is carefully reviewed by the General Counsel to determine that they meet the statutory exceptions to the Open Meeting law that permit closed sessions and they have verified each of the items is properly noticed for closed session.

Moreover, each of the items – as well as all other items on the agenda – have been properly titled in accordance with the requirement that a brief general description be provided for each item that are in open session or in closed session.

The Regents have a strong record conducting their business in compliance with Open Meeting law requirements. Suggestions to the contrary reflect a misunderstanding of that law as it applies to Regents' meetings, are without foundation, and to the extent the media ignores the law and the protections of individual privacy rights, it is irresponsible.