

**SPECIAL MEETING**  
**BOARD OF REGENTS**  
**NEVADA SYSTEM OF HIGHER EDUCATION**

System Administration, Las Vegas  
4300 South Maryland Parkway, Board Room

Tuesday, June 18, 2019

Video Conference Connection from the Meeting Site to:  
System Administration, Reno  
2601 Enterprise Road, Conference Room  
and  
Great Basin College, Elko  
1500 College Parkway, Berg Hall Conference Room

Members Present:

Mr. Kevin J. Page, Chairman  
Dr. Jason Geddes, Vice Chairman  
Dr. Patrick R. Carter  
Ms. Amy J. Carvalho  
Mrs. Carol Del Carlo  
Mr. Trevor Hayes  
Mr. Sam Lieberman  
Mrs. Cathy McAdoo  
Mr. Donald Sylvantee McMichael Sr.  
Mr. John T. Moran  
Ms. Laura E. Perkins  
Mr. Rick Trachok

Members Absent:

Dr. Mark W. Doubrava

Others Present:

Dr. Thom Reilly, Chancellor  
Ms. Crystal Abba, Vice Chancellor, Academic and Student Affairs  
Mr. Zelalem Bogale, Deputy General Counsel, System Administration  
Mr. Andrew Clinger, Chief Financial Officer  
Mr. Michael Flores, Chief of Staff to the Chancellor  
Ms. Mistee Galicia, Deputy General Counsel, Compliance  
Mr. Dean J. Gould, Chief of Staff and Special Counsel to the Board  
Mr. Nate Mackinnon, Vice Chancellor, Community Colleges  
Mr. James Martines, Deputy General Counsel, Real Estate  
Mr. Joe Reynolds, Chief General Counsel  
Dr. Federico Zaragoza, President, CSN  
Mr. P. Sheldon Flom, Vice President, Finance and Business, DRI (sitting  
in for Dr. Kristen Averyt, President, DRI)

Others Present: *(Continued)*

Ms. Sonja Sibert, Vice President, Business Affairs, GBC (sitting in for Ms. Joyce M. Helens, President, GBC)  
Mr. Bart J. Patterson, President, NSC  
Dr. Karin M. Hilgersom, President, TMCC  
Dr. Chris Heavey, Senior Vice Provost, UNLV (sitting in for Dr. Marta Meana, President, UNLV)  
Mr. Vic Redding, Vice President, Administration and Finance, UNR (sitting in for Dr. Marc A. Johnson, President, UNR)  
Dr. Vincent R. Solis, President, WNC

Faculty senate chairs in attendance were: Dr. Arnold Bell, CSN; Dr. Amanda Keen-Zebert, DRI; Mr. George Kleeb, GBC; Ms. Janet Stake (sitting in for Ms. Brigitte Glynn, SA); Ms. Anne Flesher, TMCC; Dr. Janis McKay, UNLV; Dr. Brian Frost, UNR; and Dr. Robert Morin, WNC.

Chairman Page called the meeting to order at 9:00 a.m. with all members present except Regents Del Carlo and Doubrava. Regent McMichael led the Pledge of Allegiance. A moment of silence was held for Regent Del Carlo's sister Santina Giudici and Chairman Page's mother-in-law Patty Tober.

1. Information Only – Public Comment

Dr. Kent Ervin, Nevada Faculty Alliance (NFA), stated the NFA works to empower faculty to be fully engaged in the mission of helping students succeed. Part of faculty empowerment is a comprehensive compensation system that rewards excellence in teaching and research. With the demise of the merit pay system, that is sadly lacking. Recent cost of living adjustments (COLA) have not kept up with inflation. Nevada failed to fully fund its promised 3 percent COLA. All NSHE faculty and classified staff should receive the full 3 percent COLA, as promised by the Governor and mandated by the Legislature in AB 542. Nevada must make good on the missing \$6.4 million, based on the 80 percent in the legislatively approved budgets. At an appropriate time, the Regents should formally request the funding from the Governor and Interim Finance Committee (IFC). The NFA does not believe the institutions should be forced to make up the shortfall, nor should NSHE students. The funds need to be found in budgets or reserves that do not harm instructional programs or faculty searches. Increases in student fees should be a last resort. The cost of the shortfall should be distributed fairly among institution and program budgets according to state funding. NFA finds it distressing that the underfunding has not been explained. There was no discussion of a policy change during the legislative budget process. With a vote on the constitutional status of NSHE coming in 2020, it is important that there be a full discussion of where NSHE is headed. The Board's constitutional powers need to be used to ensure that legislative budgets are followed.

Regent Del Carlo entered the meeting.

1. Information Only – Public Comment

Mr. Scott Huber, NFA, stated TMCC and the NFA were informed of an accounting error as it relates to the funding of COLA. If NSHE is expected to fund the shortfall it should not come from instruction or programs that will impact students.

Dr. Brian Frost, UNR Faculty Senate Chair, thanked the Board for considering the 3 percent COLA. The 3 percent COLA was announced and is deserved by all state workers. The money should come from those that promised it. Regardless of where the internal funds come from it will hurt the institutions and the students. COLA has been historically funded at 80 percent and now without warning or discussion, it is funded at 64 percent. He strongly encouraged the NSHE to have frequent, productive, open and honest communication with the Legislature. NSHE is a major driving force for state growth and that is the message that needs to be sent.

Ms. Donna Healy, UNR Staff Employees Council, shared a Resolution crafted by the Staff Employees Council requesting that NSHE leadership continue to work with the state, legislative and executive branches to find a way to fully fund the legislatively approved 3 percent COLA for all NSHE employees without creating an unfunded liability for NSHE institutions.

Mr. Douglas Unger, Chair of Faculty Senate Chairs, stated faculty strongly support the allocation of the 3 percent COLA adjustment as directed by the 80<sup>th</sup> Legislature in the passage of AB 542. Faculty are disappointed in the allocation of only 64 percent of the funding needed to cover the adjustments and that it is to be passed down to the institutions in what amounts to a \$6.4 million Systemwide base budget cut. This will negatively affect hiring, operations, and students. The Board is encouraged to speak out against this unprecedented underfunding of COLA and to keep petitioning the Governor and Legislature to seek other solutions. This uncorrected error is bad policy and will force the institutions to cannibalize the funding that most directly affects faculty and students.

Dr. Janis McKay, UNLV Faculty Senate Chair, thanked the Chancellor and Board of Regents for investigating strategies to alleviate the funding shortfall that impacts the COLA. Faculty feel demoralized by both the failure of SB 214 and by the last minute and unexpected hit to COLA. The issues have created a perception of state indifference towards higher education in general, and faculty and research in particular. Faculty will continue to work with NSHE and the Board towards sustainable solutions for faculty compensation as well as the successful promotion of higher education going forward.

Mr. Adrian Havas, NFA President-elect, stated the precedent that the state does not need to fund COLA for NSHE faculty and staff is very dangerous. He suggested NSHE use its reserve to fund the COLA rather than ask the institutions to fund the shortfall.

2. Approved – Cost of Living Adjustment for NSHE Classified and Professional Employees  
– The Board approved the Chancellor's recommendation to direct the Presidents to implement a 3 percent cost of living adjustment to all faculty and classified staff in the NSHE with 2.4 percent from the appropriations bill and working with the options outlined for the Presidents to come back by December 2019 with plans to cover the .6 percent shortfall.

Chancellor Reilly stated the Legislature has traditionally appropriated to the Board of Examiners 80 percent of funds necessary to effectuate a COLA for classified and professional employees of NSHE. AB 542 was passed on the last day of the session and appropriated approximately 64 percent of the funds necessary to effectuate a 3 percent COLA beginning July 1, 2019, which is approximately 16 percent less than the 80 percent funding NSHE anticipated. Fully funding a 3 percent COLA for NSHE employees will create an anticipated budget shortfall of approximately \$6.4 million over the biennium.

After considering available options, the Office of the Chancellor recommends that a 3 percent COLA be effectuated for all eligible NSHE classified and professional employees beginning July 1, 2019. The Office of the Chancellor further recommends that the Presidents, as well as NSHE System Administration, be directed to work with faculty and all stakeholders at their respective institutions on how to bridge the shortfall between the funds appropriated by AB 542 for the 3 percent COLA and for the amount actually needed for the Board of Regents to fund the 3 percent. The shortfall is anticipated to cumulatively amount to approximately 0.6 percent of the 3 percent COLA, or approximately \$6.4 million over the biennium, across NSHE. Each President, as well as the Chancellor, shall present to the Board a plan by the December 2019 Board of Regents' meeting. The plan could include, but is not limited to, hiring freezes as necessary, operating budget reductions, reallocation of student fee revenue or a combination of some or all the cost-saving measures. The recommendation is intended to give the Presidents some flexibility on how to bridge the shortfall according to the budgets and immediate needs of their respective institutions.

The Chancellor and his cabinet are committed to working with and supporting each President and NSHE institution throughout the process.

Regent Trachok read into the record Sections 1 and 4 of NRS 353.260: Spending in excess of amount appropriated prohibited; claim void; penalties; and NRS 396.280: Salaries of academic staff. Regent Trachok's opinion is that it would be unlawful for the Board of Regents to authorize a pay raise in excess of the money that was allocated by the Legislature. The Legislature authorized a 2.4 percent COLA. The Board has the authority to go back to the State Board of Examiners.

Vice Chairman Geddes respected Regent Trachok's interpretation of the law, but he felt that the money has not been appropriated until NSHE requests it from the Board of Examiners. He stated the intent of the bill was to provide a 3 percent raise. He indicated he will support the Chancellor's recommendation.

2. Approved – Cost of Living Adjustment for NSHE Classified and Professional Employees  
– (Continued)

Regent Hayes asked for the Chief General Counsel's legal opinion. Chief General Counsel Joe Reynolds reviewed the statutes mentioned by Regent Trachok and disagreed with the assessment. Approximately 1/3 of NSHE's funding comes from student fees and other sources outside of traditional appropriations by the Legislature. To advance a narrow construction of the provision would effectually mean that the Board and other state agencies would be violating the law in the traditional way COLA funding has always been handled. COLA has traditionally been funded at 80 percent and it has always been expected that the state entities will find the additional 20 percent. Chief General Counsel Reynolds stated it is his opinion that the Board would not be in violation of the statutory provision if it were to adopt the Chancellor's recommendation.

Regent Hayes thought the 80 percent funding was not for the agencies to make up the difference, but instead because of expected attrition and vacancies.

In response to a question from Regent Hayes pertaining to agencies that are fully funded by user fees, Chief General Counsel Reynolds stated that is why he feels this statutory prohibition would not apply. A state agency cannot go into debt beyond the allowed budget.

Regent Hayes requested a written analysis from Chief General Counsel Reynolds and opinions from the Governor's Office and the Legislative Counsel Bureau.

Chief Financial Officer Andrew Clinger stated the salary adjustment account has historically been funded at 80 percent. SB 553 authorizes agencies that do not receive state general funds to spend the fees that they collect. Chief Financial Officer Clinger stated the Board would not ask for the salary adjustment funding from the Board of Examiners until late in the fiscal year.

In response to a question from Chairman Page, Chief Financial Officer Clinger stated he reviewed funding back to 2005 and it has always been funded at 80 percent. His recollection was that higher education has been funded at 80 percent for at least 20 years.

Chairman Page asked if any other agency has been funded at less than 80 percent. Chief Financial Officer Clinger stated the Governor's Finance Office and the legislative staff are saying that because higher education is funded with 1/3 student fees and 2/3 general fund appropriations that the calculation has been adjusted to reflect that and that is what they do with other agencies. Historically, that is not how higher education has been funded.

Regent McAdoo asked if no action is taken what are the System's options in the days to come to acquire and then award the balance to employees. Chief Financial Officer Clinger stated that in-between sessions, funds are allocated to an IFC contingency fund which is for situations when an error has been made or there are unexpected expenditures. Without the contingency funds, the Presidents will have to look at cost-cutting measures.

2. Approved – Cost of Living Adjustment for NSHE Classified and Professional Employees  
– (Continued)

Chief General Counsel Reynolds added normally the purpose of the IFC is to allow a funding mechanism in-between sessions to allow agencies to request additional funding to meet expenditures and needs. The difficulty with approaching IFC, in this case, is that NRS 353.269 states that no allocation from the contingency account may be made by the IFC to effectuate salary increases for state officers and employees. There is an exception, but Chief General Counsel Reynolds did not think it applied.

In response to a question from Regent McAdoo, Chief General Counsel Reynolds said he does not think the Chancellor's recommendation to the Board, as structured, would trigger the concerns expressed by Regent Trachok. If the Board awards the 2.4 percent and then directs the Presidents to work with their respective institutions to come up with plans to provide the additional .6 percent, it is consistent with the intent of AB 542 that the Legislature, by law, authorized the Board of Regents to award a 3 percent COLA adjustment.

In response to a question from Chairman Page, Chief General Counsel Reynolds stated it is his opinion that NSHE would not be successful in making a request to the IFC for the additional funding.

Chancellor Reilly reiterated that his office and the institutions will return by December with plans to show that NSHE will not be in debt at the end of the fiscal year.

Regent Trachok asked what the Board's authority under Chapter 396 is to authorize a pay raise for classified staff. Chief General Counsel Reynolds stated that AB 542 is a new law that grants the authority to the Board. NRS 396.370 Subsection 2 specifically grants support of the System to the Board of Regents. NRS 396.380 states the members of the Board of Regents are the sole trustees to receive and disburse all money of the System. When looking at all of these cumulatively, the Board has the authority to direct the institutions to come up with the shortfall.

Vice Chairman Geddes moved approval to adopt the Chancellor's recommendation to direct the Presidents to implement a 3 percent cost of living adjustment to all faculty and classified staff in the NSHE with 2.4 percent from the appropriations bill and working with the options outlined for the Presidents to come back with plans to cover the .6 percent shortfall. Regent Moran seconded.

Regent Perkins stated taking the shortfall from student fees should be the last option.

In response to a question from Chairman Page, Vice Chairman Geddes stated all eligible faculty and classified staff will receive a 3 percent COLA adjustment effective July 1, 2019, as AB 542 directed, and that the Presidents will come back with plans to cover the .6 percent shortfall by December.

2. Approved – Cost of Living Adjustment for NSHE Classified and Professional Employees  
– (Continued)

Chairman Page offered a friendly amendment that the Presidents will bring plans back by December 2019. Vice Chairman Geddes and Regent Moran agreed.

Chancellor Reilly read his recommendation into the record: The Office of the Chancellor recommends that a 3 percent COLA be effectuated for all eligible NSHE classified and professional employees beginning July 1, 2019. The Office of the Chancellor further recommends that the Presidents, as well as NSHE System Administration, be directed to work with faculty and all stakeholders at their respective institutions on how to bridge the shortfall between the funds appropriated by AB 542 for the 3 percent COLA and for the amount actually needed for the Board of Regents to fund the 3 percent. The shortfall is anticipated to cumulatively amount to approximately 0.6 percent of the 3 percent COLA, or approximately \$6.4 million over the biennium, across NSHE. Each President, as well as the Chancellor, shall present to the Board a plan by the December 2019 Board of Regents' Quarterly Meeting. The plan could include, but is not limited to, hiring freezes as necessary, operating budget reductions, reallocation of student fee revenue or a combination of some or all the cost-saving measures. The recommendation is intended to give the Presidents some flexibility on how to bridge the shortfall according to the budgets and immediate needs of their respective institutions.

Regent Trachok reiterated the Legislature has allocated the funds for a 2.4 percent raise and that no action has to be taken by the Board to effectuate that. He is concerned that NSHE is committing to the .6 percent COLA raise from various options and he did not think it was the precedent that the Board wants to set.

Motion carried via a roll call vote. Vice Chairman Geddes and Regents Carvalho, Del Carlo, Lieberman, McMichael, Moran, and Perkins voted yes. Chairman Page and Regents Carter, Hayes, McAdoo, and Trachok voted no. Regent Doubrava was absent.

3. Information Only – New Business – None.

4. Information Only – Public Comment – Dr. Gregory Brown, UNLV, stated this is an embarrassing situation for the state, NSHE, and the Board of Regents. Those teaching and researching rely on the Board to build the budgets and operate the NSHE. The COLA should have been a higher priority.

The meeting adjourned at 9:58 a.m.

Prepared by:

Angela R. Palmer  
Special Assistant and Coordinator  
to the Board of Regents

Submitted for approval by:

Dean J. Gould  
Chief of Staff and Special Counsel  
to the Board of Regents

***Approved by the Board of Regents at its September 5 & 6, 2019, meeting.***