

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

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

Wednesday, January 18, 2023

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. Byron Brooks, Chair  
Mr. Joseph C. Arrascada, Vice Chair  
Mr. Patrick J. Boylan  
Mrs. Susan Brager  
Ms. Heather Brown  
Mrs. Amy J. Carvalho  
Mrs. Michele Cruz-Crawford  
Mrs. Carol Del Carlo  
Mr. Jeffrey S. Downs  
Ms. Stephanie Goodman  
Mr. Donald Sylvantee McMichael Sr.  
Ms. Laura E. Perkins

Members Absent:

Dr. Lois Tarkanian

Others Present:

Mr. Dale A.R. Erquiaga, Acting Chancellor  
Mr. Andrew Clinger, Chief Financial Officer  
Ms. Renee Davis, Interim Vice Chancellor, Academic and Student Affairs  
and Community Colleges  
Mr. James J. Martines, Chief General Counsel  
Ms. Keri Nikolajewski, Interim Chief of Staff to the Board  
Mr. Alejandro Rodriguez, Director of Government Relations  
Mr. Joe Sunbury, Chief Internal Auditor  
Mr. Rhett Vertrees, Assistant Chief Financial Officer  
Ms. Lindsey Sessions (*sitting in for Dr. Kumud Acharya, President, DRI*)  
Ms. Joyce M. Helens, President, GBC  
Dr. DeRionne Pollard, President, NSC  
Dr. Karin M. Hilgersom, President, TMCC

Others Present: (Continued)

Ms. Jean Vock (*sitting in for Dr. Keith E. Whitfield, President, UNLV*)  
Mr. Brian Sandoval, President, UNR  
Dr. J. Kyle Dalpe, Interim President, WNC

Faculty senate chairs in attendance were Mr. Ed Boog, SA; Dr. Amy Cavanaugh, TMCC; and Dr. Eric Marchand, UNR.

Chair Brooks called the meeting to order at 9:00 a.m. with all members present except Regents Brager and Tarkanian. Regent Boylan led the Pledge of Allegiance.

1. Information Only – Public Comment – None.

Regent Brager entered the meeting.

2. Information Only – Legislative Audit Findings – Chief Financial Officer Andrew Clinger provided an overview of the findings and recommendations of three Legislative audits conducted in accordance with Assembly Bill 416 (Chapter 467, *Statutes of Nevada 2021*). The Legislative audits focused on the following areas within the Nevada System of Higher Education: (*Supplemental Material on file in the Board Office.*)

a) Self-Supporting and Reserve Accounts

- Insufficient oversight contributes to questionable use of funding and errors
  - Institutions move expenditures to utilize state funds
    - Board should determine if transfers across different spending categories are appropriate and clarify the policy
    - Develop systemwide monitoring to ensure the procedure is followed
  - Some activities bypass state law
    - Implement controls, including monitoring, to ensure compliance with state law
  - Questionable use of certain student fees
    - Board should clarify intentions regarding acceptable uses of fees
  - Commingling of revenues creates difficulties in determining whether restricted funds are appropriately used
    - Ensure restricted funds are separated from other sources of revenue
  - Inaccurate and incomplete reporting hinders proper oversight
    - Ensure student fee reporting includes relevant detail and compliance with the policy intent
    - Ensure accuracy, completeness, and consistency of systemwide reporting
    - Revise student fee reporting templates and instructions

2. Information Only – Legislative Audit Findings – (Continued)

a) Self-Supporting and Reserve Accounts – (Continued)

- Reserves not adequately managed
  - Reserves lack structure from minimal policy
    - Create Board policy to define targets, how to use funds from reserves, and what level of reserves is appropriate
  - Some sources and uses of reserves may not be appropriate
    - Monitoring of reserves and contingency accounts
  - Student fees are not utilized timely
    - Evaluate high-balance accounts and determine whether fees should be reduced or funds redirected
  - Board policy is needed to ensure other funds are used timely
    - Define self-supporting programs
    - Monitor and report on nonstudent fee-funded programs with high balances

Regent Boylan clarified that NSHE could move funds to help faculty and students with expenses. Chief Financial Officer Clinger stated NSHE move funds around, and they do. The auditors specifically looked at the movement of funds between self-supporting and state funds.

In response to a question from Regent Boylan related to systemwide monitoring, Chief Financial Officer Clinger responded it comes down to resources. The staff in Finance have specific jobs and do not have the resources to oversee what the institutions are doing.

Regent Brager asked if the outside auditors present to the Audit, Compliance and Title IX committee. Chief Financial Officer Clinger stated they typically present in December.

Regent Cruz-Crawford asked how the Board creates the requested policies and the next steps. Chair Brooks stated the Board would have to examine and reassess policies. Chief Financial Officer Clinger noted the audit requires a 60-day report due April 10, 2023, and then a final six-month report due October 10, 2023. The 60-day plan will be presented in March, outlining NSHE's next steps.

Chair Brooks asked why some transactions were not reported to the Board. Chief Financial Officer Clinger stated the particular section discusses the May 1 report for which System Administration sends out a request to the institutions and asks them for their transactions that meet the criteria. All are combined and submitted to the Board. System Administration does not have the resources or ability to run the reports at the System level. System Administration relies on the institutions to provide complete and accurate information.

2. Information Only – Legislative Audit Findings – (Continued)

a) Self-Supporting and Reserve Accounts – (Continued)

Chief Internal Auditor Joe Sunbury stated Internal Audit could set aside time to validate the information independently once discussed with the Audit, Compliance and Title IX Committee Chair.

Chair Brooks referred to Exhibit 7 and asked why the high-ending balances were not reported to the Board. Chief Financial Officer Clinger stated the information presented to the Board is only as good as the information received from the institutions. The auditors identified specific programs underneath the student fee balance report. Chief Financial Officer Clinger stated he would like the ability to pull the information at the System level from the financial system to look at all different levels, but NSHE does not have that capability yet.

Chair Brooks asked if Chief Financial Officer Clinger agreed with the findings and recommendations. Chief Financial Officer Clinger noted the excellent thing about a Legislative Audit is that they find weaknesses in policies and procedures. So, while it may be uncomfortable, it is not a bad thing because it allows the opportunity to correct and provide better information and reports to the Board. He agrees with the recommendations.

Regent Boylan stated it is a Regent’s fiduciary duty to ask uncomfortable questions.

Regent Carvalho stated this has been an exercise in transparency and accountability. In addition, the audit has helped identify deficiencies.

The meeting recessed at 9:58 a.m. and reconvened at 10:10 a.m. with all members present except Regent Tarkanian.

Regent Brager thought this was a fantastic audit and there was nothing to be alarmed about.

In response to a question from Regent McMichael about the 13 recommendations, Chief Financial Officer Clinger responded that all had been accepted, but no policy changes had been implemented yet.

Regent Cruz-Crawford asked whether there is any recourse for students to receive reimbursement if the institutions violated existing policies. Chief Financial Officer Clinger believed it was up to the Board to decide how to proceed.

b) Capital Construction Projects

- State-appropriated operating funds used for capital construction
  - Funding from the state must be used to the greatest extent possible in support of student-based credit instruction

2. Information Only – Legislative Audit Findings – (Continued)

b) Capital Construction Projects – (Continued)

- Clarify that state-appropriated funds are not used for capital construction
- Develop controls to ensure compliance
- Solicitation and management of state-funded projects did not comply with law and policy
  - State law requires NSHE projects funded by at least 25 percent of state appropriations are required to utilize construction management services of the State Public Works Division (SPWD)
    - Develop procedures to ensure the involvement of SPWD when required
    - Ensure compliance with state law
- Project costs exceeded funding
  - Completed construction projects exceeded funding and carried a deficit
    - Monitor construction accounts, identify potential shortfalls, and ensure project scope and modifications
- Change order review not adequate
  - Lack of supporting documentation
  - Unallowed costs
  - Lease purchase agreements lacked controls for change orders
  - Change order terms not always followed
  - Change order process did not follow NSHE policy
    - Develop standardized construction contracts that define allowed overhead and markup profit fees
    - Implement proper controls to ensure institution personnel stay consistent with contract terms
    - Develop policy and procedures to review change order costs thoroughly
- Scope modifications increased project costs
  - Inadequate planning and scope modifications that increased project costs
    - Develop systemwide policies to ensure appropriate project users participate in planning to limit changes
    - Develop systemwide policies to ensure all project costs are identified and included in the project
- Project closeout process can be strengthened
  - Labor Commissioner not notified at project's completion
  - Final payment issued without critical project closeout documentation
  - Project ending balances not reverted timely after closeout
    - Develop procedures to ensure institutions comply with state law
    - Notify the Labor Commission

2. Information Only – Legislative Audit Findings – (Continued)

b) Capital Construction Projects – (Continued)

- Ensure closeout documentation is obtained before the final payment
- Require institutions to develop policies and procedures to monitor project balances to ensure that unused funds are reverted timely
- Nontraditional procurement methods warrant additional review
  - Additional review needed
    - Seek clarification on authority to enter into P3s for construction projects
    - Develop systemwide policies and procedures for the use of P3s
  - Noncompliance regarding project solicitation
    - CMAR projects did not advertise the weights for evaluation criteria as required under NRS
    - Project did not have an executed agreement
      - Develop policies and procedures to ensure capital project solicitations comply with the law and adhere to NSHE policies and procedures
      - Ensure project solicitations include a defined procurement schedule
      - Clarify the use of written agreements with appropriate terms required for design projects

Regent Downs asked where a shortfall comes from and where does a surplus go. Chief Financial Officer Clinger stated when there is a deficit, the institution has to find it in other self-supporting accounts. If there is a surplus, it depends on where the funds came from. If they are state funds, the state expects them to be spent last and reverted first.

In response to a question from Regent Downs asking whether an analysis was completed to determine why there was a shortfall, Chief Financial Officer Clinger responded that the auditors felt it was due to insufficient planning of the project and scope modifications.

Regent Carvalho stated she looks forward to working with Special Counsel Michael B. Wixom for further clarification on P3s.

Regent Brager stated change orders greater than 10 percent require the Chancellor's approval per the policy. Chief Financial Officer Clinger said there were a couple of instances where it did not happen, and there was no difference between a larger and smaller project.

2. Information Only – Legislative Audit Findings – (Continued)

c) Institution Foundations

- Were donations appropriately recorded by the Foundations
  - Ensure the Foundations have adequate policies and related practices governing the issuance and retention of acknowledgment letters or receipts for donor gifts
  - Encourage the Foundation Board, when applicable, to verify key control processes are occurring, including reconciliation of donor management systems to financial software and retention of adequate supporting documentation
  - Develop a policy requiring institutions to routinely review inactive gift accounts and identify opportunities to repurpose funds to utilize accounts when appropriate

Vice Chair Arrascada stated the report has good suggestions that are reasonable. However, the self-supporting summary seems to be written to look egregious. Chief Financial Officer Clinger stated the auditors had highlighted areas where policies either don't exist or are vague. There are opportunities for improvement. He did not think the institutions were doing anything intentionally to skirt the law. Chief Internal Auditor Sunbury added that all auditors will have a slightly different interpretation, and policy enhancements will only make future audits smoother.

Regent Del Carlo noted that audits are for improvement.

In response to Regent Boylan's question about leftover donor funds, Chief Financial Officer Clinger noted it depends on the donor agreement. Chief Internal Auditor Sunbury stated it is an excellent recommendation to determine whether donor funds are sitting around and could be repurposed.

Regent Brown stated recommendations for the Board have been identified. However, the state is saying they are unhappy with what they see. The Board must be transparent and show real strides to fix the highlighted areas.

Regent Goodman stated there was no fraud. However, it is incumbent on the Board to implement the policies and procedures to make improvements.

Chair Brooks stated the Board must move quickly to demonstrate best practice measures in moving forward.

Acting Chancellor Erquiaga thanked Chief Financial Officer Clinger and Chief Internal Auditor Sunbury for their presentation and for working with the institutional business officers. It is in NSHE's best interest to be proactive in its response. He appreciates the Board's response. He accepted all 33 recommendations. The following must happen to provide increased accountability and transparency: 1) Policy and procedure changes from this Board are needed; 2) A need for monitoring and compliance at the System Office level; and 3) Work with Legislators and staff on findings that require legislative action.

2. Information Only – Legislative Audit Findings – (Continued)

Acting Chancellor Erquiaga noted that the 60-day plan must be submitted to LCB on or before April 10, 2023. Preliminary recommendations will be brought to the March Board meeting. To help with the 60-day plan preparation and subsequent work, he will appoint three committees with subject expertise in all three areas and include an outside representative. The committees will be charged with implementing the plan. The six-month report is due October 10, 2023. Policy and procedure changes will be requested at the June and September meetings. The Board will be called upon as the policy maker and fiduciary. The Board sets policy but delegates to the Chancellor and Presidents. The audit calls out that the governance Board decides how much delegation it wants to have in the Chancellor's Office and at the institutional level.

Regent Perkins left the meeting.

Vice Chair Arrascada asked Acting Chancellor Erquiaga the one recommendation he would like to provide. Acting Chancellor Erquiaga noted it would be a question of the Board's view of its governance. He would like the Board to set guardrails on the authority of the institutions and the Chancellor.

Chair Brooks stated he had conversations about intentional areas of focus, and part of those are student success, student experience, and campus growth. Based on the audit findings, there will be opportunities to change policies and procedures. He has discussed expediency with the Board staff, the Chancellor, and his cabinet. He looks forward to everyone being involved and moving quickly through the processes to make improvements.

3. Information Only – New Business

Regent Boylan requested that staff schedule special meetings consistently on Thursday and Friday.

4. Information Only – Public Comment

Kent Ervin stated for transparency and accountability the Board needs to delve deeper into institutional-level expenditures. The fact that the System Office cannot directly monitor institutional-level accounts will shock legislators and the public. Clear policies will avoid interpretations. Policies need to be balanced and goal-oriented to be effective.

The meeting adjourned at 11:09 a.m.

Prepared by:

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Submitted for approval by:

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***Approved by the Board of Regents at its April 21, 2023, meeting.***