

MINUTES
University of Florida Board of Trustees
Committee on Governance
September 21, 2012
Lake Wauberg

1. **Call to Order**

Chair Cameron welcomed the Committee members and other Trustees attending the meeting, and asked Mr. Sowell to confirm a quorum of the Committee, which he did stating that all members were present. Chair Cameron called the meeting to order at 8:16 a.m.

Committee Members present:

Susan Cameron (Chair), David Brown, Marshall Criser, Michael Heekin, Carolyn Roberts, and Steven Scott.

Others Present: Trustees Cheri Brodeur, Chris Corr, Charlie Edwards, Alan Levine, Juliet Roulhac, TJ Villamil, and Al Warrington, President Bernie Machen, Senior Vice Presidents Joe Glover, David Guzick, Jack Payne and Win Phillips, Vice Presidents Jamie Lewis Keith, Paula Fussell, Matt Fajack, Jane Adams, Special Assistant to the President Jamal Sowell, Chief Audit Executive Brian Mikell, Karon Grabel of the Office of the Vice President and General Counsel, Cheryl May of the Office of the Senior Vice President for Academic Affairs and Provost, Director of Public Affairs Janine Sikes, Nathan Crabbe of the Gainesville Sun, Julia Glum of the Florida Independent Alligator

2. **Review and Approval of Minutes**

Chair Cameron noted that the Committee members received copies of the June 7, 2012 and August 28, 2012 (pages 1-7) Committee meetings' minutes and asked for a motion to approve the minutes, which was made by Mr. Criser and seconded by Mr. Brown. After asking for any discussion and hearing none, Chair Cameron asked for all in favor, and all opposed, and the minutes were approved unanimously.

3. **Action Items**

Chair Cameron turned the Committee's attention to the Action Items.

GV1. Resolution R12-109 Creation and Certification of GatorCare Health Management Corporation (DSO)

Chair Cameron asked Ms. Keith and Ms. Fussell to summarize this action item.

Ms. Fussell provided a brief summary of the GatorCare self-insured health insurance program.

- GatorCare is a self-insured health insurance program and will cover UF's graduate assistants on appointment and certain UF health affairs and Shands entities' employees, as well as certain of UF's affiliates that fit under the definition of a UF "controlled group" under ERISA. Shands hospital entities make up approximately half of the participants, but there are 11 employers involved. We'll be implementing this program in January 2013, with a Third Party

Administrator. We're asking that the Direct Support organization be formed now to be ready for implementation.

Ms. Keith briefly summarized the reason for the DSO.

- To make contracting, administration and management of the program, with 11 employers, feasible and efficient, we are proposing to create a DSO primarily for administrative functions. The DSO—rather than 11 separate employers-- would contract with the Third Party Administrator, for example.
- GV1 and Resolution R12-109 authorize the creation of the DSO for this primary purpose, and the Resolution that has been handed out at the meeting to all Trustees clarifies that this is purpose.
- Under the Action Item and Resolution
 - (i) The DSO must obtain 501(C)(3) federal tax-exempt status,
 - (ii) The DSO board must be appointed by the President, as the Board's existing authorities resolution provides for all DSOs,
 - (iii) The DSO must have a representative of the Board (not necessarily a Trustee) and a representative of the President—both appointed by the President under the existing Board resolution for all DSOs,
 - (iv) The DSO is proposed as a Category 2 DSO—meaning that it will have at least one representative of the UF Board (not necessarily a Trustee) on its board for oversight and is not an entity as large and complex as Shands, UFICO, the Foundation and other such Category 1 DSOs,
 - (v) The President will approve all governing documents and all filings to create and obtain tax exemption for the corporation,
 - (vi) The draft Articles and Bylaws are not attached this time as they would be generally under our policy-- because we are still working on them with the 11 employer entities, and we have a January 1 start date for GatorCare.

However, as we have done occasionally, the Action Item instead specifies that the governing documents must contain the terms required under the DSO Internal Operating Memorandum and applicable statute and regulations—and under these and the existing Board resolution for DSOs, the governing documents will provide that: the President will approve the CEO and board members and can remove them for cause, there will be an Audit Committee, and the President will approve the Audit Committee Charter, policies and plans for the DSO. For this DSO, the UF Board will also approve any changes in the Articles—so the primary purpose can't be changed without UF Board Action. Ms. Keith stated that she will report back to the Trustees that the Articles and Bylaws satisfying these requirements have been adopted.

Chair Cameron asked for any discussion. After a brief discussion, Chair Cameron asked for a motion to approve GV1 and R12-109, which was made by Mr. Criser and seconded by Ms. Roberts. After asking for any further discussion, Chair Cameron asked for all votes in favor, and any opposed, and the action and resolution were approved unanimously.

GV2. R12-110 Amendment of Internal Operating Memorandum 01-1

Chair Cameron asked Ms. Keith to summarize the next Action Item. Ms. Keith noted that GV2 and R12-110 are simply an amendment to the Internal Operating Memorandum that lists UF affiliates and assigns them to Category 1, 2 or 3 for oversight—to add the new GatorCare Management Corporation DSO as a Category 2 affiliate, commensurate with its scope, size and complexity.

Chair Cameron asked if there were any questions or discussion and then asked for a motion to approve GV2 and R12-110. Mr. Brown made a motion to approve, which was seconded by Ms. Roberts. After asking for any further discussion, Chair Cameron asked for all votes in favor, and any opposed, and the action and resolution were approved unanimously.

GV3. Bylaws Amendments

Chair Cameron introduced the proposed Bylaws Amendment Action Item.

- The Board discussed in June that the Bylaws need to be updated to address mid-term vacancies in the Chair and Vice Chair positions and indemnification, and Trustee Criser as Governance Chair agreed that he and the Committee would work with the General Counsel to provide a proposal. A lined draft of these initially identified provisions and some additional updates were provided by Jamie Keith. (The draft was mailed to all Trustees on September 7th.)

Chair Cameron asked Ms. Keith to summarize the key proposed changes.

Ms. Keith gave the following overview:

- There are some clean-up amendments to remove obsolete statutory references and the like. Ms. Keith offered to answer any questions on these, but said she wouldn't individually review them, unless the Board wanted her to do so.
- **Section 4.2** preserves the longstanding regular 2-year term of the Chair and Vice Chair, beginning on July 1 and ending on June 30 to align with UF's Fiscal and Academic Years, but is updated to eliminate the restriction that the term begins in odd number years—because that won't necessarily be the case if there is a mid-term vacancy.
- **Section 4.2** also codifies the BOG regulatory requirement that a 2/3 vote of our Board would be necessary to elect an incumbent to a second 2-year term.
- **Section 4.3** addresses only mid-term vacancies. Trustees have been given a pictorial depiction of the proposal, as well as the lined Bylaws.
 - (i) Mike Ford of the General Counsel's Office did benchmarking and we found that there is not a standard best practice, although some principles do emerge. There aren't many public universities with real governing boards like UF's so we looked at system bylaws and the Association of Governing Board's guidance as well. Some are silent on mid-term vacancies, as ours is. We experienced this past April 2012 that such silence in the Bylaws creates a void in leadership and interrupts university business and operations. The California and Oregon systems provide for automatic succession by the Vice Chair to Chair for the remainder of the unexpired term. Texas, Washington state and Wisconsin provide for automatic succession of the Vice Chair to Chair but are silent on the period of service so this is determined on each occasion. The AGB doesn't address mid-term vacancies but advises against one year or shorter service, and generally recommends 2-year service for continuity of leadership.

(ii) The proposal does not adopt any of these approaches wholesale, but takes good governance principles from each. It fosters smooth succession and continuity in leadership for UF in the rare, usually unexpected, and potentially disruptive circumstances of a mid-term vacancy, by providing for automatic succession of the Vice Chair to Chair, and for such service as Chair to be as close to 2 years as possible while also maintaining regular terms that start on July 1 to align with the UF Fiscal and Academic Years.

(iii) To accomplish this, the regular 2-year term is divided into 6 month increments and a Vice Chair's succession to the Chair upon a mid-term vacancy is for a period that is no shorter than 18 months and whatever time is left in the 6 month increment during which the vacancy occurs—and no longer than 2 years and whatever time is left in the 6 month increment when the vacancy occurs. There would always need to be an election before anyone could serve for 3 or 4 years (or any time longer than 2 years plus a portion of the six month increment when a vacancy occurs).

(iv) Vacancy is also defined to include incapacity or abandonment for 30 consecutive days or 45 days total in a 6-month period, unless the Board acts to not treat a particular situation as a vacancy—as well as resignation or removal (when a legal right to remove is exercised).

- **Section 4.5** is clarified to address two distinct types of duties of the Vice Chair respecting the Chair's responsibilities: (i) temporary duties of the Vice Chair when there isn't a vacancy and (ii) succession in the event of a vacancy. It preserves the longstanding rule that the Vice Chair may or may not be elected to succeed an incumbent at the end of a regular 2-year term; while the value of the experience as Vice Chair is recognized and there is a history of Vice Chairs being elected as Chair, the Board has discretion and decides on each occasion.
- **Section 4.7** provides for one or more Assistant Secretaries to provide customary flexibility without inviting more than one.
- **Sections 5.3, 6.0, and 6.1** provide some procedural clarifications and updates—capturing existing definitions of a quorum, confirming that phone participation may be allowed by the Chair, confirming that procedural infirmities are to be objected to upfront or do not affect the validity of action except where law, such as the Sunshine law, otherwise requires (as is the case with good modern bylaws), clarifying that retreats and business meetings are regular meetings because they occur at regular intervals, and allowing for some flexibility in scheduling.
- **Section 7.2** provides an updated and enhanced indemnity for the Trustees and adds coverage for the President. The President is authorized by an existing Board resolution to provide for civil indemnification and insurance of personnel and Trustees, but it wouldn't be appropriate for him to indemnify himself, so it seemed appropriate to add the President to the longstanding Trustee indemnification provision. The Bylaws would require indemnification for Trustees and the President for civil and criminal matters, rather than being discretionary, unless prohibited by law, involving a Board claim against the otherwise indemnified person, or determined by a 2/3 vote of the Board to involve bad faith or willful misconduct. The indemnity has been revised to expressly cover service to affiliates and other entities if due to UF responsibilities. It is made clear that immunity and insurance are to apply first, but if not timely provided or adequate Board indemnification will apply.

Ms. Keith asked if she could answer any questions. No one had questions, but Mr. Heekin said that he had a number of comments and Ms. Cameron moderated a thoughtful Board discussion, starting with Mr. Heekin's comments.

- Mr. Heekin expressed a preference for deferring action on these provisions of the Bylaws and on the application of Section 4.3 (succession in the event of a mid-term vacancy in the Chair position) until the Board could engage in a comprehensive review of Bylaws issues. He also expressed a preference for retaining the election of Chair and Vice Chair in June of odd number years and providing for succession for the remainder of the unexpired term. He suggested a workshop.
- A number of Committee members and other Trustees stated that the workshop is a good idea, but expressed their support for the proposal in GV3 as well-conceived to address the real differences in effect on continuity of leadership, UF operations, and good governance, depending on when in a two-year regular term a vacancy occurs. Support for two-year service was also expressed. A number of Trustees also noted that proceeding with this proposal and the indemnification proposal would not preclude further review of the Bylaws by the Governance Committee or the Board and that it is not unusual to make changes in Bylaws.
- Mr. Warrington, speaking as a Board member who is not on the Committee, agreed, and added that he wants to discuss financial reporting if there is a workshop.
- When there were no further comments, Chair Cameron noted that there can be additional Committee review and work on the Bylaws, with the General Counsel's support, and that she had already discussed with Ms. Keith a project to do some governance benchmarking, as Ms. Keith's office had done on the major provisions in the present proposal.

Chair Cameron asked for a motion to approve the proposed Action Item GV3.

- Mr. Heekin offered that he wants to request two changes: (1) conform references in the Bylaws to the Secretary to be either the "Secretary" or "Corporate Secretary" throughout; and (2) delete clause (b) from Section 7.2 (Indemnification) so that there is not an automatic bar to indemnifying a Trustee or the President where the Board is taking action against the person. He noted that clause (c) already permits the Board to determine that an otherwise indemnified person will not be indemnified because he or she has acted in bad faith or with willful misconduct and this will address the need most appropriately.
- Mr. Heekin also identified several Bylaws issues and provisions for future review, including, for example: (1) consideration of a provision encompassing advice from the Freeh Report on Penn State; (2) having regular reports on a dashboard of metrics; (3) having representatives of our DSOs appear to report and answer questions annually; (4) specifying standards and means for notice of meetings (means and number of days).

Ms. Roberts made a motion to approve GV3, the proposed Bylaws Amendments, and the application of amended Section 4.3 (Vacancy During the Term) to Board Chair Brown's service as Chair and Vice Chair Criser's service as Vice Chair (they would serve for 2 years and 2 months—from April 23, 2012 through June 30, 2014, when the next election would occur), with the two changes requested by Mr. Heekin to conform the references to "Corporate Secretary" and to delete clause (b) from Section 7.2 (Indemnification), as well as to add that a workshop on Bylaws issues will be held with reasonable promptness. Mr. Scott seconded the motion. Chair Cameron asked if there was any more discussion from the Committee. Hearing none, she asked for all in favor of, and any opposed to, the action, which passed unanimously.

Chair Cameron noted that the next Action Item concerns collective bargaining and asked whether there is a need to go into Executive Session. No one desired a discussion on bargaining strategy, so the Committee proceeded to the Action Item.

Action Item GV4. Collective Bargaining Agreement with United Faculty of Florida.

Chair Cameron asked Provost Joe Glover to provide an overview of GV4, which he did.

- The Action Item proposes ratification of a Memorandum of Understanding that has been endorsed by management and the membership of the United Faculty of Florida to allow for the provision of pay to senior faculty under the Salary Plan for Professors for meritorious contributions to UF over a 7 year period while bargaining ensues for a new contract.

Chair Cameron asked for a motion to approve GV4, which was made by Mr. Brown and seconded by Mr. Criser. She asked for any discussion and, hearing none, Chair Cameron asked for all in favor of, and any opposed to, the motion and the action was approved unanimously.

4. Discussion

4.1 Directors and Officers Insurance/Indemnification Update

Chair Cameron then turned to the Discussion Item and asked Ms. Keith to update the Committee on Directors and Officers insurance and indemnification. Ms. Keith noted that the Bylaws have been updated to provide enhanced indemnification, which together with immunity, provide good protection for Trustees. Because we anticipate the cost will not be significant, we are also in the process of applying for Directors and Officers insurance, which will cover non-willful and non-grossly negligent breach of fiduciary duty (and is currently covered by the Bylaws indemnification) and expect to have done so before the December meeting.

5. New Business

There was no new business.

6. Adjourn

Chair Cameron asked for a motion to adjourn, which was made by Ms. Roberts and seconded by Mr. Criser, asked for all in favor and any opposed, and with a unanimous vote in favor adjourned the meeting at 9:10 a.m.