

MINUTES
BOARD OF GOVERNORS
STATE UNIVERSITY SYSTEM OF FLORIDA
AUDIT AND COMPLIANCE COMMITTEE MEETING
FLORIDA INTERNATIONAL UNIVERSITY
MIAMI, FL
JANURARY 31, 2019

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and its Committees are accessible at <http://www.flbog.edu/>.*

Chair H. Wayne Huizenga, Jr. convened the meeting of the Audit and Compliance Committee on January 31, 2019 at 3:33 p.m., in the Graham Center on the campus of Florida International University in Miami, Florida. The following Audit and Compliance Committee members were present: H. Wayne Huizenga, Patricia Frost, Alan M. Levine, Ed Morton, Jay Patel, and Fernando Valverde. The following members of the Board were also present: Tim Cerio, Shawn Felton, Darlene Jordan, Sydney Kitson, Ned Lautenbach, Norman Tripp, Jalisa White, and Zachariah Zachariah.

1. Call to Order

Mr. Huizenga called the meeting to order.

2. Approval of Minutes

Mr. Morton motioned that the Committee approve the minutes of the Audit and Compliance Committee meeting held September 12, 2018, as presented. Mr. Valverde seconded the motion. The minutes were approved.

3. SUS Compliance and Ethics Program Implementation Status

Ms. Leftheris provided the Committee with an update regarding each university's progress in implementing Board of Governors Regulation 4.003. She informed the Committee that all state universities were in full compliance with the regulation.

4. OIGC Charter Revision

Ms. Leftheris provided the Committee with a revised *Office of the Inspector General and Director of Compliance Charter* and described that the charter now formally defines assurance and consulting engagements to align with professional auditing standards. Mr. Morton motioned that the Committee approve revisions to the *Office of the Inspector General and Director of Compliance Charter*. Mr. Patel seconded the motion. The charter revisions were approved.

5. SUS Capital Projects Certifications

Ms. Leftheris provided Committee members with a summary of the State University System Capital Project Certifications that were received by Board of Governors staff. She disclosed two exceptions found in the review. First, pursuant to Section 1013.74(6), Florida Statutes, Florida Polytechnic University is authorized to expend carryforwards reserve balances from prior year operational and programmatic appropriations for legislatively approved fixed capital outlay projects through the 2022-2023 fiscal year. Second, Ms. Leftheris stated that the University of South Florida had identified one project, the Patel Center for Global Solutions, that was primarily funded using \$6.4 million in carryforward funds. In response to this finding, USF Board of Trustees Audit and Compliance Committee Chair Nancy Watkins was appointed to oversee the review of this misuse of funds. In addition, the University's chief audit executive, Virginia Kalil, is conducting a review into the use of carryforward funds for the construction of the center and the current compliance structure in place regarding the use of E&G funds in construction projects.

6. UCF Investigative Report, Misuse of E&G Funds for Construction of (UCF) Trevor Colbourn Hall

Mr. Huizenga provided background information on the University of Central Florida (UCF)'s misuse of E&G Funds for the construction of Trevor Colbourn Hall. He explained that in August 2018, the Auditor General had identified the improper use of E&G funds for the construction of a new building during the operational audit of UCF. At the Board of Governors Facilities Committee meeting held September 13, 2018, UCF's Board of Trustees Chair and the University's President presented their corrective and intended actions. Following that meeting, on September 20, the Board of Trustees hired a national law firm that specializes in corporate investigations, Bryan Cave Leighton Paisner and PricewaterhouseCoopers LLP, to conduct a full investigation with Beverly Seay, UCF's Audit and Compliance Committee Chair, as the sole source of contact and leader of the investigation. Mr. Huizenga explained that the Board of Governors' Inspector General was not assigned to conduct the investigation as the University has demonstrated its willingness to address this matter by hiring the Bryan Cave law firm. He added that Inspector General Julie Leftheris, however, played an active role in the investigation. Mr. Huizenga acknowledged and thanked Beverly Seay and former Board of Governors Audit and Compliance Committee Chair Wendy Link for their efforts in monitoring the investigation before asking Ms. Leftheris to discuss the results of the investigative report.

Ms. Leftheris stated that the investigation took place during the months of September and December 2018 and involved over 56 interviews and 43 witnesses. She explained that the investigation involved the extensive review of Board of Trustees meeting

recordings, minutes and materials, financial and accounting records, and administrative records that included text messages and email accounts. Ms. Leftheris further explained that lead investigator Joey Burby presented the investigation results to the UCF Board of Trustees during their special meeting held on January 18, 2019. The report included numerous recommendations for the University to improve accounting internal controls and oversight.

Ms. Leftheris stated that, based on her involvement and observations throughout the investigation, she believed that Bryan Cave conducted a thorough investigation into the inappropriate use of E&G Funds for the construction of Trevor Colbourn Hall. Ms. Leftheris introduced Bryan Cave's lead investigator Joey Burby and PwC's Bob Gallagher to answer questions regarding the report.

Mr. Huizenga invited UCF Trustee Seay and Joey Burby to discuss the investigation and corrective actions in response to the report. Additionally, he invited members to ask questions of the panel, which included Joey Burby, Bob Gallagher, UCF Board of Trustees Chair Marchena, UCF President Whittaker, UCF Board of Trustees Audit and Compliance Committee Chair Seay, Board of Governors Vice Chancellor and Chief Financial Officer Tim Jones, and Board of Governors Inspector General Leftheris.

Joey Burby introduced himself to the Committee and provided a brief description of his background and experience before joining the Bryan Cave law firm. He previously worked for the United States Department of Justice and the U.S. Attorney's Office in Atlanta as a Federal Prosecutor. At Bryan Cave, he focusses on conducting internal investigations that includes universities and colleges. He leads the firm's Higher Education Internal Investigations and Compliance team.

Mr. Burby described the approach his team took to conduct the investigation and provided brief remarks about the report itself. He said the university's board of trustees mandated that his team "find the facts...no matter what they were -- no matter who they implicated -- and to report those findings to the full board." He said the team was not influenced by anyone outside of the investigation and that the report's findings are theirs. He explained Trustee Seay's role in overseeing the investigation involved ensuring the team received everything they needed from the University, such as access to documents and employees. He emphasized that neither she nor any of the trustees tried to influence the investigative process or findings.

To ensure they had the necessary expertise on their team, Mr. Burby said they retained the services of PricewaterhouseCoopers (PwC) to handle the complex finance and accounting issues they expected to encounter. The PwC team was led by Bob Gallagher, a certified public accountant, certified fraud examiner, and leader of the firm's Southeast Forensics Services practices group.

In describing the investigative process, Mr. Burby reiterated the brief process description Inspector General Leftheris provided in her introductory remarks. Mr. Burby emphasized that they had reviewed thousands of documents and listened to hundreds of hours of audio recordings of board of trustees meetings spanning eight years in an attempt to “leave no stone unturned.”

Mr. Burby said the investigative team worked cooperatively with the Board of Governors and its staff, as well as with the Florida House of Representatives’ Public Integrity and Ethics committee. Ms. Leftheris was provided access to all of the documents and attended almost all of the witness interviews.

Mr. Burby provided the following key facts and investigative summary:

- E&G funds, annually appropriated to a university through the General Appropriations Act, are permitted to be used for specific operating activities per Florida Statutes and Board of Governors Regulations; they are not to be used for the construction of new facilities.
- Between the years 2013 – 2016, the University allocated over \$38M in E&G funds, including over \$37M in E&G carryforward funds (which are E&G funds not spent during the fiscal year for which they were appropriated) towards the Trevor Colbourn Hall (TCH) project, which was to replace the smaller Colbourn Hall building built in the 1970s.
- Of the \$38M allocated to the TCH project, more than \$30M was spent as of the end of August 2018 when the TCH construction was completed. Most of the funds were allocated to the project between the years of 2014-2016, although the funds were actually not spent until 2017-2018.
- The project was initially intended in 2013 as a \$5M-\$8M renovation project for Colbourn Hall. Over the next three years, it evolved into a larger project to construct a new building, with an estimated cost of \$21.3M. The UCF Board of Trustees approved the new building construction phase and cost estimate in 2014. The funding source was not addressed, nor was the fate of Colbourn Hall. In 2015, a new plan emerged to build the new building, as well as renovate Colbourn Hall at the same time with an estimated combined cost of \$38M. This plan was not presented to the board for its approval; it was presented to the Finance and Administration committee but was not voted on. In May 2016, it was decided that Colbourn Hall would be razed and TCH would be increased in size by using the funds that would have been used in the Colbourn Hall renovation. The Board of Trustees approved the razing of Colbourn Hall in July 2016. Because the estimated cost remained at \$38M, the Board of Trustees did not discuss the project’s funding source.
- Construction of TCH began in May 2017, and was completed in July 2018. The Colbourn Hall demolition began late in 2018.

- The investigation found that the University's former Vice President for Administration and Finance and Chief Financial Officer, William F. Merck II was the key figure in all of the decision-making on this project. In addition to his role as the CFO, Mr. Merck was responsible for managing and reporting on the use of E&G funds. He simultaneously oversaw the University's Facilities Department, which among other things is responsible for planning and overseeing the University's capital projects. He had the unique, dual role of making the funding and planning decisions for the TCH project and directing finance and facilities staff to carry out the necessary tasks. Mr. Merck took full responsibility for the decision-making in using E&G funds on this project after the Auditor General's operational audit revealed this issue in August 2018.
- Although Mr. Merck openly acknowledged his role in this matter, Mr. Burby said Mr. Merck declined to be interviewed by the Bryan Cave investigative team. He said Mr. Merck viewed the funding source decision as necessary and justified because Colbourn Hall presented an "emergency" situation that was a health and safety risk for the building's occupants. Additionally, he said Mr. Merck believed there were no other funds available to use for this project. Although these claims were rooted in legitimate concerns, Mr. Burby said, the investigation determined that the evidence did not support the health and safety risk Mr. Merck described. Nor did the evidence support that no other funding was available.
- Despite Mr. Merck's claims that Colbourn Hall's condition warranted emergency action because of its imminent health and safety risks, the investigative team found evidence that Mr. Merck and others involved in the project had consistently presented the Colbourn Hall renovation needs to the Board of Trustees and Board of Governors as routine for an older building; the building was described as safe and habitable. Additionally, it was categorized as a low to medium priority; it was never listed as a top priority for repairs or renovation.
- Regardless of the building's condition, Mr. Burby said that using restricted E&G funds without Board of Trustees or Board of Governors approval was not an appropriate response. Regarding the claim that no other viable funding options existed, Mr. Burby said the University was in a difficult position regarding capital projects funding as was and is the case for all state universities. They found no evidence, however, that there were no other funding options. Other options did exist, explained Mr. Burby; there were auxiliary funds, interest and investment earnings, and donations. None of those funds were subject to the same funding restrictions as E&G funds. Additionally, at Mr. Merck's direction, the University did pursue other non-critical capital projects during this same time period using permissible funds that could have been applied to TCH.
- The investigative team found it more plausible that Mr. Merck and others found using E&G carryforward funds as a convenient solution to the University's aging

infrastructure and a decrease in available state funding. Mr. Burby reiterated that \$37M of E&G carryforward balance were transferred to the construction account before any significant portion of it was spent. By transferring carryforward funds to the construction account, they no longer needed to be reported to the Board of Governors or the state as a carryforward balance, which could potentially be taken away. Finance and Accounting officials, acting under Mr. Merck's direction, reported the transfers of E&G funds for Colbourn Hall as "planned expenditures on deferred maintenance" even after it became clear that the project would involve new construction rather than the repair or renovation of an existing facility.

- The investigative team found no evidence of any improper motive on Mr. Merck's part or that he stood to gain financially from any of these actions. The investigative team believed it is clear that Mr. Merck understood the significance of these decisions to use E&G funds for the new TCH construction project and that he took steps to conceal or downplay that significance. The team found evidence that Mr. Merck was aware of the Board of Governor regulations on the use of E&G funds and that he understood that state auditors might find the TCH project to be in violation of those regulations. He had told others close to the project that funding with E&G funds might result in an audit criticism.
- After the 2018 Auditor General audit uncovered the use of E&G funds for TCH, Mr. Merck acknowledged to several witnesses on multiple occasions that he could not have disclosed the relevant risks to the Board of Trustees because he knew they would not have approved the project.
- The investigative team found no evidence that Mr. Merck or anyone acting at his direction had told the Board of Trustees that the funding source for the TCH project was E&G funds. More significantly, the team found no evidence that Mr. Merck or anyone acting at his direction had explained to the Board of Trustees that the TCH funding source was not permitted under Board of Governors regulation and that the plan might lead to an adverse situation for the University.

Regarding the Board of Trustees' specific question about any other individuals, other than Mr. Merck, who were involved in the decision to construct TCH and to use E&G funds for the project, Mr. Burby urged members to read the report as the answer is not easy to summarize in a sentence or two about what individuals did or knew. The investigative team found that people from multiple University departments were involved in the decision to varying degrees and at different points in time. He reiterated that the decision evolved over multiple years. The transfer of E&G funds also occurred over many years. Staff from the Finance and Accounting Department, Facilities Department, the Academic Affairs Department, and the Provost's office were involved. The investigative report describes the role of all of these individuals as well as that of the University's former President, Dr. John Hitt.

Regarding the University's current President, Dr. Dale Whittaker, Mr. Burby briefly described the investigative team's findings into his role during the time as he served as the University's Provost. Mr. Burby explained that Dr. Whittaker had become the Provost on August 1, 2014. By that time, the Board of Trustees had already approved the TCH construction project at a cost of \$21.3M. Mr. Merck and others had made a decision to commit another \$10M in E&G funds towards the project; the funds had already been transferred to the construction account.

Dr. Whittaker had signed an internal budget document on August 8, 2014, recommending approval by Dr. Hitt for the allocation of an additional \$18M in E&G funds towards what was identified in the document as Colbourn Hall renovations. The investigative team concluded that Dr. Whittaker could not have fairly understood the significance of this document since he had just started at the University. Nor did the investigative team find any evidence that he had understood at that time the details of the project or that the use of E&G funds for the project would violate Board of Governors Regulations. They found that over time, however, Dr. Whittaker did come to understand the nature and scope of the project and had involvement in the decision in 2015 to construct TCH and renovate Colbourn Hall simultaneously at the combined cost of \$38M. They found that he also was involved in the subsequent decision in 2016 to demolish Colbourn Hall and expand TCH. They also found evidence that Dr. Whittaker was provided information reflecting that E&G funds were being used for the TCH project. At the same time, however, they found that Dr. Whittaker was provided vague and conflicting information about the source of funding from Mr. Merck and others. Dr. Whittaker stated to the investigative team that he was not aware of the Board of Governors' restriction on the use of E&G funds for construction projects. The investigative team found no persuasive evidence to the contrary. Dr. Whittaker also stated that although he heard Mr. Merck say that they might receive an audit criticism, he was not concerned because at that time he was not familiar with audits and did not understand the significance. Additionally, Mr. Merck downplayed the significance, which was corroborated by multiple witnesses.

The next question the Board of Trustees asked the investigative team to answer was whether any of the individuals involved in the decision to use E&G funds for the construction of TCH personally profited from the decision. The simple answer, Mr. Burby said, was "no." They found no evidence that anyone, including Mr. Merck, had personally profited.

The Board of Trustees also asked the investigative team to answer two other questions that are related. The first question was whether there controls in place that failed to prevent or detect what happened; and the second was what additional controls should be put in place to ensure that this does not happen again. Although discussed more fully in the report, Mr. Burby provided brief comments in answer to these questions.

He said they found that certain internal controls were either absent or inadequately designed, and as a result failed to prevent or detect this activity. Specifically, Mr. Burby listed the following areas of deficiencies:

- Written policies and procedures regarding the use of state appropriated funds, including E&G funds;
- Training and education of employees on policies and applicable state laws and regulations regarding the use of state appropriated funds;
- Policies designed to ensure independent oversight and approval of significant decisions in the use of appropriated funds;
- Auditing by the University's internal audit department for the proper funding of capital projects; and
- Reporting significant funding decisions to the Board of Trustees so that Trustees can satisfy and fulfill their fiduciary duties and ensure funds were being used properly.

Additionally, the investigative team found that campus departments, such as Finance and Accounting, failed to foster a culture of challenging senior members of the administration and engaging in Whistle-blower activity.

Based on these deficiencies, the investigative team proposed enhancements for consideration, which are enumerated in section IV of the final report. Mr. Burby indicated that President Whittaker or Chair Marchena might discuss them, so he did not.

Mr. Burby concluded his prepared remarks by inviting questions and then turning the floor over to other speakers.

Mr. Marchena asked to speak next. He stated that when he and Dr. Whittaker addressed the Board of Governors in September 2018, after the Auditor General's finding of the misuse of state funds for new building construction was discovered, they promised a thorough and transparent investigation would be conducted. It would be an investigation that followed the facts rather than begin with any preconceived conclusions. He reiterated that the Board of Governors' Inspector General worked closely with the investigative team to provide Board members with high confidence of the investigation's results.

Based on the investigation's results, Mr. Marchena said that Dr. Whittaker moved to terminate four additional senior staff in the Finance and Facilities department immediately after the final report was released. Additionally, Mr. Marchena said he had made recommendations to Board of Trustees members, which were all adopted. They are as follows:

- The former CFO was stripped of the remaining unpaid performance bonuses for the two trailing years to which he would otherwise been entitled. Mr. Marchena stressed that the investigative team found a pattern of behavior by the former CFO, Mr. Merck, to avoid informing the Finance Committee and the Board of Trustees that the approval of the project involved restricted funds. Mr. Merck refused to participate in the investigative interviews but then subsequently sought to discredit the investigation. Mr. Merck has accused several people, including Mr. Marchena, of “impolitic” behavior in the conduct of the investigation. Mr. Marchena stated unequivocally that the only imprudent behavior was Mr. Merck’s decision that he knew best and that he would get TCH built with restricted funds without giving the Board of Trustees a legitimate opportunity to decide the correct course of action.

Based on his own discussions with other CFOs, Mr. Marchena said they all agreed that it was Mr. Merck’s duty to inform, even highlight, for the Board of Trustees the restricted nature of the funds to ensure a decision could be made knowingly. As noted in the investigative report, Mr. Merck stated to multiple people that if he had informed the Board of Trustees of the restricted nature of the funds, they would not have approved the project.

- The Board of Trustees accepted the resignation of the former President, Dr. John Hitt, for his one-year employment agreement with the University. The resignation was effective as of January 10, 2019.
- The Board of Trustees also eliminated Dr. Whittaker’s participation in the performance bonus program for two years. Mr. Marchena emphasized that this recommendation was not made because he believed Dr. Whittaker was in any way knowingly involved in the decision to use restricted funds. As reflected in the investigative report, an internal managerial decision to use restricted funds was made as early as June 2013. This item was first presented to the Board of Trustees’ committee in April 2014. The investigation confirmed that the misuse of restricted funds was not disclosed. Dr. Whittaker was not hired as Provost until August 2014. As supported by the investigative report, Dr. Whittaker has stated that he was not aware the use of the funds was inappropriate. It is because of his oversight role, Mr. Marchena said, that Dr. Whittaker had a heightened duty of inquiry; it is for that reason that he recommended the action with respect to his performance bonus.

Mr. Marchena assured the Board of Governors that he and the Board of Trustees have full confidence in Dr. Whittaker going forward. He will describe his actions to establish a staff culture of compliance, full disclosure, and accountability. Mr. Marchena said he believes Dr. Whittaker will lead the University to pre-eminence, achieve high results under the Board of Governors performance

standards, and will continue to develop UCF into a model of a 21st century university.

- The Board of Trustees also adopted recommendations to reduce the possibility of a similar incident occurring in the future. These include:
 - Separating the positions of CFO from the VP of Administration. At a minimum, Mr. Marchena explained, facilities should not report directly up through the CFO.
 - Developing updated, specific written policies and procedures to ensure the proper use of state appropriated E&G funds.
 - Updating the Whistle-blower program and implementing an education process regarding the availability and use of the program for University staff and faculty.
 - Requiring an independent review by the internal audit office regarding the propriety of the funding sources for any capital projects over \$2M approved by the Board of Trustees but prior to the project's commencement. Internal auditors will also do random verification checks during the project that the use of the capital project funding source is the Board-approved source.
 - Requiring a standard format for all committee and Board of Trustees agenda memoranda for which action will be taken. They will follow a specific format even for oral or PowerPoint presentations in connection with an action agenda item. The essential components for the standardized format will be that all decision points relative to the action item be specifically identified and all pro and con facts relative to each decision point be disclosed to the committee and the Board of Trustees. The specific source of funding and the fiscal impact to the University will be included in a section of the agenda item memorandum and any restrictions on the proposed funding source will be clearly identified. The source of the Board's legal authority to take the action will also be included.

Mr. Marchena concluded his comments by saying the investigative report makes it clear the Board of Trustees did not know that they had approved expending funds inappropriately. In fact, he said, it was concealed from them.

Mr. Marchena announced that he was relinquishing his position of Board chairman, he said, in the hope of making it clear to all concerned that the investigation and the actions they took as a result of it were thorough, objective, and fair.

Mr. Huizenga recognized President Whittaker, who wished to make some comments. Dr. Whittaker offered to answer any questions about his time as UCF's Provost but preferred to focus his comments on his seven months as the University President and the future.

Dr. Whittaker expressed his commitment to identifying what broke down, fixing it, and ensuring it does not happen again. He this is his top leadership priority, and described the following actions the University has taken:

- Separation of the CFO duties from the Vice President for Administration and Finance. After the Board of Governors [September 2018] meeting, Mr. Merck resigned. That separation is now permanent, he said.
- Replacement of E&G funds with those that were appropriate for use. The transferred funds were flexible funds that had been budgeted for other university unit uses.
- Institution of a building moratorium, which is currently in effect, for any new projects greater than \$2M.
- Institution on a permanent basis of the "real time audit on a temporary basis" that Chair Marchena had just described.

After the actions above had been taken, Dr. Whittaker said they went into a "quiet time" where he and others fully cooperated with the Bryan Cave investigative team. He committed not to influence the investigation in any way such as public comment or any other kind of intervention. Additionally, Dr. Whittaker said he had made a personal commitment not to draw any conclusions about personnel actions or any other actions until the report had been done.

After the Bryan Cave investigative report was released, he read it and found a broad and broken sub-culture within one of the units, Facilities, Administration, and Finance, that did not reflect UCF's values. Additionally, the behavior surrounding TCH was found on other capital projects, which are being investigated and will be corrected.

Based on this sub-culture, Dr. Whittaker said he terminated four senior leaders of the four main divisions.

Next, the University decided to realize unrealized gains and move funds which had been mixed between the [Special Purpose Investment Account] SPIA portfolio and investment portfolio to separate the E&G funds and move them back into the SPIA portfolio to permit better tracking of those gains in the future.

Dr. Whittaker said he hired Bob Caslen [retired Lieutenant General Robert L. Caslen Jr.], who had just retired as the Superintendent of West Point Military Academy.

“Superintendent” is the equivalent of a university president. He has experience in managing higher education and, more importantly Dr. Whittaker said, he has high integrity and organizational acumen. Dr. Whittaker hired General Caslen to implement the recommendations made in these reports: the Bryan Cave investigative report, the Florida Auditor General’s operational audit report, a report from Accenture (which Dr. Whittaker had commissioned when the Bryan Cave investigation began to address organizational structures and look at best practices), and a report from the Association of Governing Boards (which he had commissioned to look at board and staff governance).

Dr. Whittaker concluded by saying he is committed to integrity, transparency, and competency in doing the things they are supposed to do right and well. Under his presidency, his top priority is to regain trust in UCF and ensure that every taxpayer, every student, and every donor knows the money they give to UCF is well-spent and accounted for.

Mr. Huizenga asked Board of Governors Chair Ned Lautenbach to make a few comments. Mr. Lautenbach began by acknowledging the Bryan Cave investigative report is not a reflection on the great students and faculty who contribute to the enormous impact UCF has on our state. The report does, however, focus on decisions made by certain individuals who occupied positions of trust at the University and how they breached that trust.

Mr. Lautenbach said that UCF’s former chief financial officer, Mr. Bill Merck, claimed he “had done the wrong thing, but for the right reason.” This statement is indicative of an attitude that is antithetical to the serious fiduciary responsibility entrusted to the senior leaders in the State University System of Florida. Other senior UCF administrators obfuscated the funding source for Trevor Colbourn Hall and mischaracterized the inappropriate expenditures in reports submitted to the Board of Governors office.

In response, and to its credit, the UCF Board of Trustees hired an independent law firm to conduct a thorough investigation that included the full participation of the Board’s Inspector General, Julie Leftheris. Mr. Lautenbach thanked Board of Trustees Audit and Compliance Committee Chair Beverly Seay for her oversight efforts of the investigation and for ensuring the investigative team had full access to university personnel and documents. Although we now know who was involved and how the E&G funds were misused, we may not still know the “why.” Mr. Merck’s alleged “calamity” condition of TCH appears to have been created after the fact as an excuse to justify the means.

The true calamity, Mr. Lautenbach said, was the loss of credibility this serious breach of trust has caused. It is incumbent, he said, upon the Board of Governors and the UCF Board of Trustees to send a message that this behavior will not be tolerated.

Mr. Lautenbach said the University must ensure that the money taken from E&G appropriations must be fully repaid in the same form as it was appropriated. The state funds us in dollars, he said, not in spreadsheet entries, investment accounts, or through unrealized gains. The dollars need to be repaid now, and UCF needs to provide a full and complete accounting of that repayment to the Board of Governors as soon as possible. This includes any other E&G funds inappropriately used for projects as well.

Mr. Lautenbach expressed his concern that the responsibilities delegated by the Board of Governors to the Board of Trustees are not clearly understood by each trustee. Trustee Seay clearly recognizes this delegation of fiduciary responsibility, but he said he knows of at least one board member who has said to him that s/he thinks the punishment is too harsh. Mr. Lautenbach said that any Board of Trustee who thinks this was no "big deal" should step down from the board. He committed that the Board of Governors will continue to review the processes, controls, and practices across the system to prevent this from happening again. University boards of trustees are the first line of defense, and we must have trustees who possess the acumen and willingness to ask the right questions.

Mr. Lautenbach said we need system-wide training for all university trustees and finance staff to ensure they fully appreciate the fiduciary duties entrusted to them and to understand the appropriate use of operating and capital infrastructure fund sources. It must become a required segment of each Trustee Summit, and in the interim, this training responsibility lies with each board to ensure they have a complete understanding of university fund sources and the appropriate uses of those funds.

Regarding UCF's corrective actions in response to the investigative report, Chair Lautenbach addressed whether they were appropriate. President Whittaker took immediate action to terminate the employees involved in the fund transfers, and Mr. Merck had resigned in September 2018. Additionally, the Board of Trustees took action to curtail Dr. Whittaker's participation in the University's performance unit plan for the period he was Provost.

Addressing President Whittaker directly, Chair Lautenbach acknowledged that he [Whittaker] was not responsible for the inappropriate use of E&G funds, but he was aware that it was happening and did not ask why. He encouraged Dr. Whittaker to develop his own understanding of the finance and facilities operations as he rebuilds those teams. Although he is not responsible for knowing everything, as President and CEO of the university, he does have a responsibility for everything.

Mr. Lautenbach said that he and UCF's Board of Trustees Chair will consult on President Whittaker's annual assessment. Mr. Lautenbach urged Dr. Whittaker to focus on rebuilding public trust through a transparent and accountable set of financial controls. As the University's CEO, President Whittaker is directly responsible for ensuring the integrity of those controls.

Mr. Lautenbach asked UCF to present to the Board of Governors a full review of their Strategic Plan. He added that he believes UCF grew too fast and built new facilities at an unprecedented rate. He suggested we step back and look at where the UCF is going, how big it's going to be, and what actions are required.

Secondly, Mr. Lautenbach asked that Board of Governors member Syd Kitson and his [Budget and Finance] Committee should finalize their work described today and look at UCF's reserves to determine their appropriateness.

Thirdly, Mr. Lautenbach requested a review of the UCF Board of Trustees' fiduciary responsibilities to ensure members understand the difference between the different funding classes and their use. This should be done at every university, he said, so that all trustees clearly understand their fiduciary responsibilities and how money is being used. Although trustees should not be too involved in campus operations, Mr. Lautenbach said oversight and understanding of financial expenditures is not operations. Trustees should be deeply involved in finances, where the money comes from, what it should be used for, and how it's being managed.

Lastly, Mr. Lautenbach thanked Mr. Marchena for his leadership in taking action on all the recommendations agreed to in response to this situation and his service as chairman.

Mr. Huizenga asked Vice Chair Syd Kitson to make a few comments. Mr. Kitson thanked the Bryan Cave investigative team for their thorough review into the inappropriate use of education and general funds for the construction of Trevor Colbourn Hall. He said he found their conclusions concerning and indicative of a lack of engagement by the University of Central Florida's Board of Trustees.

Mr. Kitson referred to Board of Governors Regulation 1.001, which requires each board of trustees to be responsible for the administration and financial management of its university. He believes the UCF Board of Trustees and its leadership failed in their fulfillment of this responsibility.

Mr. Kitson said he believes there is a lack of understanding at UCF about the reporting relationships and specifically the relationship between the University President and Board of Trustees. He referenced the organizational charts from three universities in the meeting materials. FSU's and UWF's organizational charts correctly reflect that the

university president reports to the board of trustees. UCF's organizational chart, however, does not align with our constitutional structure in that it shows the UCF Board of Trustees reporting to the UCF President. This is in violation of Board of Governors regulation, and Mr. Kitson expressed his concern that this is part of the misguided attitude and actions exhibited by the university.

In addition to the misuse of E&G funds to construct a new building, the University also moved \$32M of additional E&G funds into construction accounts over numerous years. This exhibits, he said, a planned and calculated intent to deceive the Board of Governors and ultimately our state lawmakers before whom the Board of Governors has sought funding for the entire State University System of Florida.

In reflecting on previous years and the Board of Governors questioning of UCF's insatiable growth, Mr. Kitson said that based on recent findings we can conclude that the University's growth was faster than its infrastructure could support, and it lacked the needed controls to prevent what we have learned about today.

Mr. Kitson said he expects significant change to take place at the UCF. We need to discuss strategically the direction of the University in scaling to a more manageable size with appropriate controls to prevent what he considers a total disregard for the use of taxpayer money.

Finally, Mr. Kitson said the UCF Board of Trustees' decision that this matter is closed is not acceptable. We now know, he said, there were additional, illegal transfers of funds. We still need to identify all of the responsible individuals for these fund transfers and the extent of their involvement. Since the UCF Board of Trustees has indicated they are unwilling to pursue this to the end, Mr. Kitson proposed that the Board of Governors Inspector General seek to answer these questions with our own independent investigation to be funded by UCF. Additionally, he said UCF should support this effort and ask Mr. Burby, with the Bryan Cave law firm, and PwC to be available and continue investigating this matter.

Mr. Kitson recommended the independent investigation by the Board of Governors review the Bryan Cave investigative report and determine what follow-up is needed and to open an investigation into why \$32M of E&G funds had been illegally transferred into separate construction accounts and then just recently transferred back into the E&G accounts.

Mr. Huizenga asked for any other comments. Governor Norman Tripp said that he believes we have a duty to look at who else was involved in the decision-making. Mr. Lautenbach asked the investigators to respond to Mr. Tripp's concern as he believes it was addressed in their investigation. Mr. Burby answered that the report included all the factual findings regarding former University President John Hitt's involvement and

knowledge. They also discussed what he shared in his interview, and they included his subsequent letter to Mr. Burby after his interview, which was different from the information he gave in his interview.

Mr. Morton said the investigative report was very thorough. As Mr. Lautenbach and Mr. Kitson said, we have to look to the future and ensure this does not happen again. He expressed his support for the comments they made and their intent that we conduct our own investigation.

Governor Jay Patel echoed the concerns expressed, and wondered what role the legal office played. Legal counsel has an ethical role as well as fiduciary responsibility to the taxpayers and their employer. He said he did not see anything in the investigative report addressing the legal office's role in this matter. Also, in Mr. Hitt's letter, he said the direction from the Board of Governors was unclear and that they thought everything was fine. Mr. Patel said he believes it is clear to every university president and staff member that we had a \$2M limit on any carryforward, E&G, funds. These are commonsense questions that need to be asked and answered.

Governor Tim Cerio expressed his support for the discussion and said he believes the issues seem to be cultural. For example, Mr. Merck mentioned in a meeting that they might have an audit "hit" but that didn't raise any alarms; people who had concerns were afraid to speak up; and it seemed, from the investigative report, the legal department wasn't involved in the discussions and planning. He said we need to know the status of the carryforward funds now as he believes they have not been repaid.

Mr. Marchena responded to Mr. Cerio's concern about the funds not being repaid and said that they had. He explained that the Board of Trustees will discuss having an accounting firm, like PwC maybe, audit to ensure all of the funds budgeted from E&G into construction programs were put back. Chancellor Marshall Criser asked Board of Governors CFO Tim Jones if we have received confirmation of these transfers. Mr. Jones responded that we have not. Mr. Marchena said they will validate it and reiterated that the transfers have occurred.

Dr. Whittaker said that one of the corrective actions they have taken is to implement a certification process requiring the university's general counsel, CFO, and the president to certify on future projects that the funds had been evaluated and certified to be valid and appropriate and legal. Then the real-time audit will review that the funds certified are the ones actually being used for the project.

Additionally, Dr. Whittaker said that on board agenda items, using the Board of Governors agenda items as an example, they will include the regulation, statute, or constitutional authority as a means to verify that the agenda item is supported by statute and driven by the legal department.

Governor Syd Kitson made a motion to continue the investigation into the misuse of E&G funds, which will be paid for by UCF; to review UCF's Strategic Plan; for the Budget and Finance Committee to review UCF's reserves; and to undertake an education program for each university board of trustees regarding its fiduciary responsibilities. Governor Morton seconded the motion. It passed.

7. OIGC Updates

Ms. Leftheris gave a brief overview of her office's current and upcoming activities. She reported that the Auditor General's Quality Assessment Review of the OIGC determined her office was in conformance with the Standards for the Professional Practice of Internal Auditing. She concluded by mentioning that her office had conducted two internal audit reports since the last Board meeting. They were an audit of the Board of Governors Foundation, Inc. Student Scholarships as well as an audit of the IT Governance within the Board Office. She added the SUS Performance-based Funding Data Integrity Audits and Certifications will be summarized in the Audit and Compliance Committee's March meeting.

8. Concluding Remarks and Adjournment

Mr. Huizenga asked Board members if anyone had any questions or comments. Hearing none, the Audit and Compliance Committee was adjourned at 5:00 p.m.

Timothy Cerio, Chair

Lori Clark, Compliance and Audit Specialist