FLORIDA GULF COAST UNIVERSITY BOARD OF TRUSTEES

Tuesday, March 14, 2017

COHEN CENTER BALLROOM, ROOM # 203
FLORIDA GULF COAST UNIVERSITY

Meeting Minutes

Members:
Present: Trustee Dudley Goodlette – Chair; Trustee Shawn Felton – Vice Chair; Trustee Darleen Cors; Trustee Thieldens Elneus; Trustee Joe Fogg; Trustee Blake Gable (via telephone); Trustee Leo Montgomery; Trustee Kevin Price; Trustee Russell Priddy; Trustee Robbie Roepstorff; and Trustee Ken Smith.

Not Present: Trustee Christian Spilker (Excused Absence).

Others:
Staff: President Wilson Bradshaw; Provost and Vice President for Academic Affairs Ron Toll; Vice President for Administrative Services and Finance and Executive Director of FGCU Financing Corporation Steve Magiera; Vice President for University Advancement and Executive Director of FGCU Foundation Chris Simoneau; Vice President and Chief of Staff Susan Evans; Vice President and General Counsel Vee Leonard; Chief Compliance and Ethics Officer Stacey Chados; Interim Director of Internal Audit Bill Foster; Staff Advisory Council Secretary Cori Bright-Kerrigan; Assistant Director of Board Operations Lauren Schuetz; Project Manager Danielle O’Brien; Director of Media Relations Lillian Pagan; and Executive Assistant to the Vice President and Chief of Staff Tiffany Reynolds.

Item 1: Call to Order, Roll Call, and Opening Remarks
Chair Dudley Goodlette called the meeting to order at 8:31 am. Roll call was taken with 10 of 12 members present, thus meeting quorum requirements. Trustee Kevin Price immediately came in, thus a final roll call of 11 of 12 members present.

Item 2: Employment Agreement effective July 1, 2017 for President-elect Dr. Michael Martin, pending Confirmation by Board of Governors (See Tab #1)
Chair Goodlette stated the first item on the agenda was the employment agreement for President-elect Dr. Michael Martin. He said he was pleased to introduce Mr. Nik Joshi, a partner in the law firm Hultman, Sensenig, + Joshi in Sarasota, who was present to answer any questions the Board might have about the employment agreement.
Chair Goodlette stated that the minutes of September 13, 2016 meeting had been placed in front of each of the Trustees. It was at that September meeting where the report was received from Presidential Search Advisory Committee Chair Ken Smith which outlined the process that would be followed for contract negotiations with the new president. He said he thought it would be helpful to have the minutes for reference to understand where the conversation stood with Dr. Martin and his receptivity to the terms of the contract. Chair Goodlette said that negotiating and finalizing the contract was easy because the Board’s discussion on September 13, 2016 was thorough, as reflected in the minutes. He said the minutes were basically a template for him to explain to Dr. Martin what he as Chair was authorized to negotiate.

Chair Goodlette asked the Trustees to turn to page 23 of the September 13, 2016 minutes, which talked about compensation philosophy, and the next couple of pages, which talked about other issues that were part of the contract. He said if the Board had questions about what was in the contract or why, the minutes could be consulted as the path that was laid out could be seen quite precisely. He said he thought that it was worth remembering that there was no deviation from the action that the Board had taken in the vote on September 13, 2016. He said specifically the minutes laid out options one and two: (1) the three-year contract versus the one-year contract; or (2) what the minutes described as a “no contract.” He said the proposed contract for review was an employee at-will relationship, which was not even a one-year contract. He said it had no term at all.

Chair Goodlette said that each conversation he had with Dr. Martin since he was offered and accepted the position had been extremely courteous. He said Dr. Martin really was looking forward to hitting the ground running. He said there were very few items that Dr. Martin wanted changed on the original draft of the agreement. Chair Goodlette said this underscored the confidence Dr. Martin had in coming to Florida Gulf Coast University and the support he had for the approach that Florida Gulf Coast University had taken as to compensation and expectations. Chair Goodlette said in addition to the president’s base salary, almost everything in terms of bonuses on an annual basis or the Focus Bonus, which was the five-year out bonus, would be tied to performance. He said it was tied to the performance metrics with which all the Trustees were familiar.

Chair Goodlette said that was an overview of the progression thus far, and he appreciated the Board’s confidence in him to negotiate the contract. He added he was comforted by the quality of legal representation received from Mr. Nik Joshi, along with the cooperation from Dr. Martin.

Chair Goodlette said there were four proposed changes to the contract that had come about since the contract was provided in today’s agenda packet. He said the first proposed change was on page 3, the Employment At-Will provision. The Board of Governors asked that a sentence be inserted at the end that states, “To the extent Dr. Martin remains employed as of July 1, 2020, his continued employment with the University will be subject to reappointment by the Board of Governors and, thereafter, subject to annual reappointment by the Board of Governors.” Chair Goodlette explained
that the Board of Governors had done this because Dr. Hitt at University of Central Florida (UCF) and Dr. Genshaft at University of South Florida (USF), who had both been presidents for a long time, had their contracts expire last year. He said routinely what the Board of Governors has done was to extend contracts for one-year terms only, and as contracts were extended, individuals had to come back for reconfirmation. Chair Goodlette said the Board of Governors offered the three-year window to Dr. Martin to start. Because his employment was At-Will, the Board of Governors did not want him to come back for confirmation every year. He said after three years if Florida Gulf Coast University wanted to continue his employment, it would have to go to the Board of Governors for reconfirmation.

Chair Goodlette asked if there were any questions about this change.

Trustee Russell Priddy said he wanted to go on record as opposed to that change. He said his reason was philosophical as he felt the Board of Governors was becoming a Board of Regents and taking away the powers that were delegated to the local Boards.

Chair Goodlette said he was somewhat comforted with stating three years initially. He stated the second proposed change was on page 4, which was a footnote, a technical change to the footnote’s last line, which should read "Board of Governors," not "State University System."

Chair Goodlette reported the third proposed change was on page 7, the Focus Performance Incentive Bonus. He said two language changes were being proposed by the Board of Governors in the third paragraph of Section I. What the FGCU Board of Trustees would be voting on today was the following: “…the Board shall consult with and seek input from the Board of Governors on any bonus exceeding $350,000.” He explained that the language of “consult with and seek input from” was exactly the same as what the Board of Governors currently had with all university presidents around the state on their annual performance review. He said the Board of Governors wanted to be consulted and wanted to know what Florida Gulf Coast University’s intentions were. He said it was not intended to be a performance review, but a consultation. Chair Goodlette said that he and Mr. Joshi agreed that this language could be used in regard to a bonus. He said the amount of $350,000 was precisely consistent with the action the FGCU Board of Trustees took on September 13, 2016, which stated a bonus would be offered after five years to the president if the performance metrics were met, and the bonus would not exceed twice his initial annual salary. He added if the bonus did not exceed $350,000, the Board of Governors would not have to be consulted. He added that the performance bonus was entirely at the discretion of the FGCU Board of Trustees, and there was no vesting. He stated this was the area that required the most conversation with the Board of Governors’ Chancellor and General Counsel.

Trustee Ken Smith said, so, if the Board offered $700,000 as a bonus, and the way that I hear you reading this change, the BOG says ‘no, you can give him $350,000,’ remembering that there will be different chairs of this Board, and different chairs of the Board of Governors, from a compensation perspective that’s the worst case scenario to
put our President in.” He said he agreed with Trustee Priddy, and did not want to be confrontational, but it appeared to him that the Board of Governors would be making the decision when it should be the FGCU Board of Trustees. He said unless Mr. Joshi could provide a regulation or statute that showed the Board of Governors had the authority to make this decision, he thought it put the president in a bad situation. He said he thought that President Hitt at the University of Central Florida last year had received a $450,000 bonus, and questioned if the Board of Governors had approved it. He said he was struggling with giving up the right to decide on the bonus because the FGCU Board of Trustees spent a great deal of time focusing on Florida Gulf Coast University and what it believed were the right decisions. He stated he felt the Board of Governors’ stance was because they were the Board of Governors, they understood better what was right for FGCU’s president, compensation wise, rather than the people who sat around the table and spent an inordinate amount of time focusing on the University. He said at the moment he was not inclined to vote for that change.

Trustee Joe Fogg said this discussion raised a legal question for him: in the end, by statute or regulation, did the Board of Governors have the right to insist on these provisions? He said if so, that would be the end of the discussion; but if not, it would mean that the FGCU Board of Trustees was granting it to them.

Chair Goodlette said in his conversations with the Chancellor and the Chair of the Board of Governors, it was Chair Goodlette’s view that the language the Board of Governors had proposed required the Board of Governors’ approval of anything larger than $350,000. The actual change merely said there was a consultant role; and frankly, it was no different from the recommendation the Board of Governors gave last year when it recommended not giving Dr. Bradshaw a bonus. However, the FGCU Board of Trustees had given the bonus. He said he did not see this language as being quite as harsh. He said he wanted to be clear on the delegation of authority and asked Mr. Joshi to answer Trustee Smith’s question.

Mr. Joshi explained that there was no specific authority under any state law or regulation that currently authorized the Board of Governors to impose language relating to bonus review. He added his conversations with Board of Governors General Counsel Vikki Shirley in Tallahassee had focused on him asking her to show him the authority for such language. Mr. Joshi said Ms. Shirley kept going back to Article 9, Section 7, of the Florida Constitution where the Board of Governors delegated certain authority to the FGCU Board of Trustees. Mr. Joshi said it was his opinion that when the Board of Governors had desired specific authority for purposes of influencing the FGCU Board of Trustees, a regulation along those lines had been issued. He said that was seen with the requirement for the confirmation and reconfirmation process and the need to bring forth the candidate, which was very specific. He said the Board of Governors used the same language for review on the annual evaluation where the FGCU Board of Trustees’ Chair has to essentially consult with the Chair of the Board of Governors or maybe the Chancellor. He said when the Board of Governors desired something, it had implemented a regulation to authorize it. As it stood on that day of March 14, 2017, there was no specific regulation that authorized the language that was being proposed.
Mr. Joshi said he would add to what Chair Goodlette said, that there have been quite a few intense conversations between Mr. Joshi, Chair Goodlette and people in Tallahassee on the issue of the Focus Bonus and the Board of Governors’ role. He said his goal was to protect the FGCU Board of Trustees. He said the initial language and current language were far apart in terms of the Board of Governors’ ability to control that decision, if that gave anyone more comfort.

Trustee Robbie Roepstorff said she was frustrated to hear that the Board of Governors could simply draft a regulation to have this authority. She said she was concerned about “parity to all” and asked if the Board of Governors was doing this to all universities. She stated that throughout her canvasing she found that things were being imposed on us that weren’t being imposed on other universities. She said if the Board of Governors wanted to set parameters and wanted more control and rules, it should tell the universities what the rules are and implement them across the board.

Trustee Shawn Felton agreed with Trustees Smith and Roepstorff. He said he was frustrated because there had been a very good debate at the September 13 FGCU Board of Trustees meeting, and the contract proposal had passed narrowly. He said this gave Chair Goodlette an opportunity to negotiate a new contract with the incoming president. He said the incentive piece with the one-year contract was the bonus piece at the full discretion of the FGCU Board of Trustees. He said FGCU did something very creative on a split vote, and many people had commented they would not get a candidate because of the one-year contract, and yet, they got a “rock star.” He said now this hurdle was before them, and it was frustrating.

Trustee Priddy said it seemed to him that the language should be removed, and if the Board of Governors wanted to pass a resolution later, they could do so. He said that would be the FGCU Board of Trustees holding its ground on what it was challenged to do and was successful in doing.

Trustee Kevin Price said he liked Trustee Priddy’s comment because if the language was removed now and the Board of Governors decided to pass a resolution, it would probably have to be a blanket resolution that was applicable to all universities, and if it was not, then clearly there were other issues that needed to be discussed.

Trustee Fogg said he did not want to belabor the point, but he did not understand what “consultation” and “seek input” meant. He asked if a $700,000 bonus was proposed, and the Board of Governors said no, what would happen.

Chair Goodlette responded he thought it was the same as when the Board of Governors suggested not having a bonus for Dr. Bradshaw. He said the FGCU Board of Trustees did what it thought was the right thing, notwithstanding the consultation and input received from the Board of Governors. He said that was the reason the language was more acceptable to him, and he thought it might be acceptable to this Board. He did not want to impose the automatic, “if it exceeds ‘X’ number of dollars.” He said he thought the language that was included allowed for flexibility. He asked Mr. Joshi to comment.
Mr. Joshi said he thought the language of “consult” and “input” was just that, and there was not any specific language that imposed on the FGCU Board of Trustees an obligation to accept any suggestion that came back from the Board of Governors. However, he thought the FGCU Board of Trustees was free to suggest alternative language if it so desired. He read the language that the Board of Governors was okay with as, “the Board shall consult and seek input from the Board of Governors on any bonus exceeding $350,000.” He suggested to add after that, “…but at all times the FGCU Board of Trustees shall have the final decision-making authority.” He said that would indicate the FGCU Board of Trustees would consult with the Board of Governors, but the FGCU Board of Trustees would have the final determination.

Trustee Fogg suggested using the word “non-binding” in front of “input.” Mr. Joshi said that worked as well.

Trustee Roepstorff complimented Chair Goodlette on the remarkable job he was doing in working with the Board of Governors. She said the way the contract reads, the process called for receiving the Board of Governors’ input prior to the FGCU Board of Trustees giving information. She said the FGCU Board of Trustees would have to go back to the Board of Governors afterward, and she did not feel it was right to do this to a president. She said either the FGCU Board of Trustees had the authority to hire, fire and pay the president or it did not.

Trustee Smith said this was a contract between the FGCU Board of Trustees and Dr. Mike Martin. He said if Dr. Martin succeeded with the metrics after five years, the contract was going to indicate that he would receive a $700,000 bonus. He said Florida Gulf Coast University had a contractual obligation to pay Dr. Martin. He said he thought this change of receiving input from the Board of Governors would only add a layer of confusion for any future FGCU Board of Trustees Chair. He said he wanted to be careful that this does not become an issue because people were not honest about the intent. He said he did not think the change was the right thing to do. He said he took Chair Goodlette and Mr. Joshi at their word that they had brought the Board to a much better place with the change, but still, they had a contract with Dr. Martin. He said if the FGCU Board of Trustees were to be sued, the Board of Governors would not be a party to it as the Board of Governors was not a party to the contract.

Mr. Joshi explained that the issue of the Focus Bonus was completely discretionary, and there was no contract obligation even to give it. It would be the review and evaluation of the FGCU Board of Trustees at that time that would govern the process.

Trustee Smith said if Dr. Martin performed the standards set, he must receive the bonus.

Mr. Joshi said that was correct; if an evaluation process in consultation with Dr. Martin for the performance bonus was agreed to, and he met the standards, he would have to receive the bonus. Then hypothetically, if the Board of Governors said, "No, you are not
doing that" and the FGCU Board of Trustees decided not to do it because the Board of Governors said not to, then there were some property interest arguments that an individual like Dr. Martin could raise.

Trustee Priddy said he would like to move on and just add some language clarifying that it was the role of the FGCU Board of Trustees.

Chair Goodlette mentioned if the Board of Governors decided to do what Trustee Roepstorff said and made a new regulation applicable to all universities stating that any bonus of any kind had to be approved by the Board of Governors, it could be changed and there would be nothing FGCU could do about it. He said that was an approach that he hoped the Board of Governors would pursue, rather than holding up the confirmation of the president.

Mr. Joshi agreed. He said he had mentioned to the Board of Governors Counsel that for the FGCU Board of Trustees to agree to some of the language that had been proposed, which was not in front of the Board today, it would be ceding its rights voluntarily.

Chair Goodlette asked Mr. Joshi if he could take a few minutes to write language consistent with what Trustee Priddy had indicated.

Chair Goodlette asked if there were other issues anyone would like to discuss regarding the content of the draft agreement. No other issues were brought forward. He added Dr. Martin stated that however the contract was sorted out would be fine with him.

Chair Goodlette asked Mr. Joshi if he could suggest some other language be added to “the Board shall consult with and seek input from the Board of Governors on any bonus exceeding $350,000.” Chair Goodlette said the Board could take that out completely and just leave it the way it was, whether or not that inspires the Board of Governors to come back and say they are not prepared to confirm the President. He said he hopes and does not think that would occur. He said anything the Board of Governors added to or took away from what the FGCU Board of Trustees approved would require him as Chair to come back to the FGCU Board of Trustees for approval. He asked that the Board be aware the goal was getting Dr. Martin confirmed on March 30, 2017.

Trustee Smith said he was struggling to understand how the Board of Governors would not approve an individual who has the credentials to run the University of Florida.

Trustee Leo Montgomery said he thought the Board of Governors made decisions as a whole and that it should have an acknowledgment from a person of authority that they would “sell” it to the Board of Governors.

Chair Goodlette said that was a good point and the only member of the Board of Governors that he had discussed this with was Chair Tom Kuntz. He said Chair Kuntz could not discuss this with other members of the Board of Governors because of the same Sunshine laws that constrained members of the FGCU Board of Trustees from
talking with one another about these matters. He said he did not know whether the Chancellor had conversations with other members of the Board of Governors, but he did know that the Chair wanted the FGCU Board of Trustees to consider the changes.

Trustee Priddy asked counsel to repeat the wording that he suggested earlier.

Mr. Joshi said the proposed change to the contract read, “The Board shall consult with and seek input from the Board of Governors on any bonus exceeding $350,000,” and the amended proposal would read, “The Board will consult with and seek non-binding input from the Board of Governors on any bonus exceeding $350,000, but at all times the Board of Trustees shall retain the discretion to make any final decision with respect to the Focus Bonus.”

Trustee Priddy made a motion that the amended language as stated by Mr. Joshi be approved. Trustee Darleen Cors seconded the motion.

Chair Goodlette called for discussion.

Chair Smith asked for the dollar amount to be taken out.

Chair Goodlette said the dollar amount was what the FGCU Board of Trustees agreed to at its September 13 meeting, a performance bonus in an amount equal to twice his base salary.

Mr. Joshi said he thought the Board would want the freedom to make a decision without any consultation up to $350,000.

Trustee Price asked if the verbiage could be modified to save time and not require much back and forth discussion.

Chair Goodlette said he thought the contract contemplated that because it called for an evaluation by July 1 with every effort made to determine the amount and make the payment by the end of August.

Mr. Joshi suggested adding the words “proposed bonus” instead of “bonus,” which would contemplate the discussion of a bonus as opposed to a decision on bonus.

Chair Goodlette said he would come back to that. He stated there was a motion and asked if there was any other discussion.

Trustee Price said he would vote “no” because the wording of “proposed bonus” was not in the motion.

Chair Goodlette asked if the maker of the motion would accept an amendment to the motion to include the language of “proposed bonus.” The response was affirmative from both Trustee Priddy and Trustee Cors.
Mr. Joshi read the new language: “The Board will consult with and seek non-binding input from the Board of Governors on any proposed bonus exceeding $350,000, but at all times the FGCU Board of Trustees shall retain the discretion to make any final decision on a Focus Bonus.”

Trustee Price said he liked that because it implied that it was proposed upward of $350,000, and Chair Goodlette would be able to go to the Board of Governors first for feedback and opinion on the bonus.

Mr. Joshi added there was a distinction within that same phrase because “proposed” was different from “final decision,” and the final decision was completely the FGCU Board of Trustees’ decision.

Trustee Price said it cut out the second meeting.

Trustee Smith said this was a contract that had very specific objectives to meet, and if said individual meets 100 percent of every objective, that individual should receive $700,000. He said it was not proposed, it was calculated. He said he was concerned the wording was not factually correct.

Chair Goodlette read aloud a provision in the contract on the bottom of page 7, and said the Focus Bonus “… was not a retention or longevity bonus and does not vest and the Focus Bonus, if any, will remain subject to the Board’s Focus Bonus evaluation.” He explained the president-elect understands that he has no vested interest in any Focus Bonus.

Trustee Smith said vesting was not what he was talking about. He said the president had a list of metrics and standards to meet, and those were performance based, and FGCU was binding itself to pay this bonus if he performed. He said the Board of Governors could say “no,” but contractually the Focus Bonus would need to be paid. He asked Mr. Joshi if the president met the performance metrics and was here five years and one day, would FGCU owe the president money.

Mr. Joshi said it depended on how the Focus Bonus evaluation guidelines were developed. He said if the guidelines spelled out, "If you meet this criterion, you get this bonus," it would become a right at that point in time.

Trustee Fogg said those metrics had not been set yet. He said in his experience these things tended to be subjective, not just mechanics. He said he thought it would be a question of the Board’s judgment, and the language being considered made it clear that the FGCU Board of Trustees would retain that judgment.

Trustee Felton said on page 25 of the September 13, 2016 minutes, it stated the annual performance maximum of $100,000 each year as outlined in the contract would be at the Board’s discretion, and if the individual "hit the long-term measures that the Board
put forth,” at the end of five years, he or she would receive an award of two times the annual salary. He pointed out that the FGCU Board of Trustees and the Board of Governors would appoint new members in the next five years, and we need to make sure Dr. Martin is successful moving forward.

Trustee Price said the language being suggested was nebulous in a sense to the Board of Governors, as the FGCU Board of Trustees may or may not do what the Board of Governors wanted regarding the bonus. He said he was not implying that it was unclear in terms of Dr. Martin’s performance, and, in fact, in the three areas in which he would be measured, he agreed with Trustee Fogg that they were subjective. He said the first area was titled, “Qualitative Leadership and Human Management Skills.” He said there would be some discretion taken there.

Mr. Joshi responded that the sentence as modified and the motion as voted on is based on the relationship with the Board of Governors, not the relationship with Dr. Martin. He said the issues that Trustee Smith had raised might be addressed in another way. He explained that the way it has been drafted, the intent was whatever the FGCU Board of Trustees used as its process with Dr. Martin for the purpose of the Focus Bonus evaluation, would drive the metrics and/or the bonus dollars put toward those metrics. He said what was being said with this language was the FGCU Board of Trustees would make the final decision, not the Board of Governors.

Mr. Joshi suggested an alternative was that the word “proposed” be changed, and the language could read, “…to consult and seek non-binding input from the Board of Governors prior to the FGCU Board of Trustees deciding the bonus,” and then state that the decision of the bonus remained with the FGCU Board of Trustees. This way it still addressed the issue of not going back and forth with the Board of Governors. Mr. Joshi said it went to the point that Trustee Smith was making that it does not look like the bonus that may have been earned was still discretionary.

Chair Goodlette asked Trustee Price if he had actually meant “prior to” by “proposed.” Trustee Price responded that it was acceptable to him. Trustee Priddy and Trustee Cors agreed to the amendment of the motion.

Trustee Smith said he appreciated the work done by Chair Goodlette and appreciated Counsel’s input as well. He said it was an outstanding contract and his comments were only related to what appeared to be the Board of Governors’ input.

Chair Goodlette asked Vice President and Chief of Staff Susan Evans to state the newly crafted motion. Ms. Evans asked Mr. Joshi to do so.

Mr. Joshi read the old motion: “The Board shall consult with and seek input from the Board of Governors on any bonus exceeding $350,000.” He said it would be amended to the following: “The Board will consult with and seek non-binding input from the Board of Governors prior to the Board of Trustees deciding on any bonus. At all times, the
Board of Trustees shall retain the right to make the final decision with respect to the Focus Bonus.”

Chair Goodlette pointed out the amount had been left out. He asked for further discussion, and there was none. He asked for public comment, and there was none. He asked Ms. Evans to call the vote.

Ms. Evans responded that she would refer to this motion as “Amendment A.” She called the vote. The vote was unanimous in favor of the motion.

Chair Goodlette said “Amendment B” would refer to the first change on page 3 to add, “To the extent Dr. Martin remains employed as of July 1, 2020, his continued employment with the University will be subject to reappointment by the Board of Governors and, thereafter, subject to annual reappointment by the Board of Governors.” He asked if there was any further discussion.

Trustee Smith made a motion to approve “Amendment B” as described above. Trustee Roepstorff seconded the motion.

Chair Goodlette asked for further discussion and public comment. Hearing none, he asked Ms. Evans to call the vote. The vote was unanimous in favor of the motion.

Chair Goodlette said “Amendment C” was the clarifying language in the footnote regarding the Board of Governors, which was on page 4.

Trustee Priddy moved to approve “Amendment C” as described above. Trustee Smith seconded the motion.

Chair Goodlette asked for further discussion, and public comment. Hearing none, he asked Ms. Evans to call the vote. The vote was unanimous in favor of the motion.

Chair Goodlette said there was one more proposed change in the first paragraph on page 13, which was a provision regarding governing law.

Mr. Joshi said it referred to governing law that applied to the contracts and was fairly standard language in all contracts. He explained it protected the FGCU Board of Trustees and the Institution. He read this section of the contract and stated the change was proposed by the Board of Governors Counsel, and in his opinion, it was already encompassed, but the Board of Governors Counsel felt more comfortable adding it. He said the language as currently drafted was in the first paragraph of the Governing Law section and read, “in compliance with the laws of the State of Florida.” He said the Board of Governors wanted to add, “and any and all regulations of the Board of Governors, as may be enacted or amended from time to time.” Mr. Joshi said obviously if that happened it would come to the FGCU Board of Trustees anyway, but that was the Board of Governors’ suggested language.
Mr. Goodlette said his view was that additional language simply clarified and did not empower the Board of Governors to do anything it could not do without FGCU Board of Trustees agreement.

Mr. Joshi said he felt it was superfluous language and not necessary.

Trustee Roepstorff stated this change went against her ethics that the Board of Governors could write up a regulation that could come back and have an impact on a contract that the FGCU Board of Trustees entered into in good faith. She said it was not ethical that the Board of Governors could write a regulation if it did not like something that a university did or if a new Board of Governors wanted to do things another way. She said she could understand state law and federal law that affected everyone across the country. She said she could understand a regulation that would be effective when a contract was up for renewal, but she did not think it was ethical to change contract terms. She asked if that would defeat what was just discussed regarding the FOCUS performance.

Mr. Joshi said there was a notion of ex post facto right under constitutional law and whether or not an individual could go back and retroactively enact a law that impacted upon someone’s rights and obligations. He said the intent of this particular language was to protect the legal rights of the institution. He said what Trustee Roepstorff was bringing up was a good point, but it was more an issue for the other party. He said this language was here to protect the FGCU Board of Trustees because there has been litigation throughout the state with respect to severance pay. Because of that, there has been a push to make sure contracts that are coming into effect in the public sector be construed in compliance with the state’s constitutional law so that was why the language was in this contract. He said to the extent that the Board of Governors came forth with a regulation stating, if anyone puts forth a bonus that was at the institution’s discretion after five years, which would be taking the FGCU Board of Trustees language and making it into a regulation, it would not be applicable given the language that was under that provision. He said that fight would have to be fought at that point in time. He said that regulation would apply to all institutions.

Chair Goodlette said that was the point the FGCU Board of Trustees had made earlier, that the Board of Governors could make any regulation, but it would apply to all institutions.

Mr. Joshi said, hypothetically, if the Board of Governors did anything by regulation that would seem to impact adversely upon Dr. Martin’s rights to obtain a FOCUS Bonus evaluation, that would be subject to legal challenge, and the Board of Governors probably would lose because it would be taking away an earned benefit.

Trustee Priddy made a motion to approve the contract in its entirety with the three approved amendments previously voted on. Trustee Felton seconded the motion.

Chair Goodlette repeated the motion and called for discussion.
Trustee Fogg asked the Chair if he was in agreement with the Board’s decision on the last amendment, as he did not want the Board to approve something that in the Chair’s judgment would adversely impact the process with the Board of Governors. Trustee Fogg said he did not care if the statement was left in or not.

Chair Goodlette said he did not think it mattered, and Mr. Joshi said his interpretation was that it was superfluous language. Mr. Joshi said if he was interpreting the FGCU Board of Trustees thinking correctly, the authority for the proposed language was being questioned and if there was an authority, it would have to comply with that language. With that being said, he did not see the need to have that language in the contract.

Chair Goodlette called for further discussion from the Board or public comment. There was no public comment. The vote was unanimous in favor of the motion.

Item 3: Academic/Student/Faculty Affairs Committee (See Tab #2)

Chair Goodlette said Trustee Christian Spilker was unable to attend the meeting, so he would be handling the Committee’s agenda item. He called on Provost and Vice President for Academic Affairs Ron Toll for the first action item on the FGCU 2015-2016 Annual Accountability Report and the second information item, the Improvement Action Plans.

FGCU 2015-2016 Annual Accountability Report for Board of Governors (Tab #2)

Provost Toll thanked Chair Goodlette for filling in for Trustee Spilker. He said based on Board of Governors Regulation 2.002 submission of an annual Work Plan was required. He said the Committee had been acting under this Regulation for five or six years. He said there was a copy of the Annual Accountability Report for the year 2015-2016, which covered activities across the entire University. He said the report was lengthy, and he would not go through it entirely but would mention some areas where there has been an improvement and some areas that had moved in the opposite direction.

Provost Toll said among the positive highlights for Florida Gulf Coast University there were the following increases: An increase in the percentage of undergraduate students employed earning over $25,000, or continuing their education following graduation; an increase in the median wage being earned by recent graduates; and an increase in tuition revenue, which has nothing to do with any increase in tuition.

Trustee Roepstorff said if the tuition revenue went up, that would be recognized by the Board of Governors.

Provost Toll said he was talking about straight revenue, which was a much simpler calculation than looking at the cost to a degree. He continued by stating there had been an increase in credits earned through distance learning, in four- and six- year
graduation rates, in baccalaureate degrees awarded in programs of strategic emphasis, and in graduate degrees in programs of strategic emphasis.

Provost Toll said on the negative side degree production at the graduate level was still declining; academic progress rate declined fractionally; and University Access Rate declined. He said there had been an increase in expenditures associated with administration and support, which exceeded expenditures for instruction. He said there had been a decline in the endowment value; a decline in the percentage of alumni donors; a decline in research and development expenditures; and an increase in non-recurring Education and General (E&G) funds as compared to recurring Education and General (E&G) funds. He explained that an increase in non-recurring funds was problematic because the University was not able to count on those dollars year after year.

Provost Toll continued to the 10 metrics on page 5 of the report, the format of which was controlled by the Board of Governors. He presented the report for Chair Goodlette’s consideration.

Chair Goodlette stated there was a great deal of very good information, and asked if there were questions.

Trustee Felton asked if there was confidence that the 45.5 percent six-year graduation rate was a true measure and not just a statistical “blip.”

Provost Toll said he would not try to predict the future, but that at that point in time, they continue to see the potential for a 1.5 percent increase. He said additional measures continued to be put in place, which, it was hoped, would reaffirm the numbers.

Trustee Roepstorff asked for an explanation of Metric 3, which reported the “Cost to the Student Net Tuition and Fees for 100 Credit Hours” went up. She asked what brought forth that number.

Provost Toll answered that the calculation was rather complicated. He said the increase was $100, which was an increase of one-half of one percent. He said he was not sure as to the specifics regarding where the $100 figure came from but thought there were several factors that caused it.

Trustee Roepstorff said that the University had been stating it has not raised tuition or fees, but this showed that figure had gone up.

Provost Toll responded that was an issue with Metric 3. He gave an example that if scholarships were increased by $1 million, then that number would go down. He said there were 11 variables that contributed to Metric 3.

Trustee Smith asked if that number would improve if the four-year graduation rate improved.
Vice President Steve Magiera said everything would improve if the graduation rate improved. He responded to Trustee Roepstorff that those 11 different factors that Provost Toll mentioned had changed the way Metric 3 was calculated. He said the first several columns had to do with cost and that was fine, but the next eight columns had to do with how much aid the University was able to provide to the students. He said that was where the University fell short because it did not have the kind of money other schools had. He said the change in the Metric did not benefit FGCU.

Trustee Roepstorff said the key then would be to get more aid for the students.

Chair Goodlette reported that what Mr. Magiera said in regards to Metric 3 was discussed during the visit with the Chair of the Board of Governors, the Chair-Elect, and the Chancellor in October.

Trustee Price said it was discussed that the recalculation of Metric 3 was going to put the University in a rough spot in terms of funding, but the graduation rates had gone up. He asked if the .5 percent increase was what was expected.

Mr. Magiera said Metric 3 had not been in place a year yet, and there had not been time to prepare. He said this was pretty much what was expected.

Provost Toll said zero points were what was expected and, unfortunately, that was what had occurred.

Trustee Montgomery asked if the metrics were going to be used to compare Florida Gulf Coast University to the rest of the universities, and the response was affirmative. He asked if there was anything that could be done short-term or were the figures in place for a year.

Provost Toll said that the Performance Based Funding figures would be in place for a year. He added what was frustrating was there had been more changes to the metrics than were initially suggested. He said Metric 3 caused the movement of several universities, and explained why Florida Gulf Coast University was more than likely to be in the bottom three. He said if Trustee Montgomery was asking what could be done about it, FGCU had been engaged in conversations at the Board of Governors level, and the local delegation was aware of the concerns.

Trustee Montgomery asked if there were any metrics where the numbers could be improved for next year.

Provost Toll reported the Academic Progress Rate saw three years of continuous improvement but, unfortunately, this year saw a slight decline. He said there was a conversation about six-year graduation rate, and while it was good to see the 2.5 percent increase, the figure needed to be much improved. He said there was not a great deal of low-hanging fruit of things that could be done quickly, easily and
inexpensively. He said the University had lived with Performance Based Funding for five years, and prior to this year, had not had to fear being in the bottom three.

Trustee Montgomery said any organization has room for improvement. He said maybe it needed to be shared with the Board of Governors that FGCU was good, but could not be classified as the University of Florida.

Chair Goodlette said there was a conversation in the legislature about roles and responsibilities in developing ways the money was distributed.

Trustee Smith said he liked what Trustee Montgomery said, and suggested moving on, as this report was “water under the bridge.” He said the University needed to quit worrying about being in the money, and focus on success. He said every business had budget and capitalization issues, but at the end of the day needed to concentrate on what it was good at and move forward. He said the University of Florida was not a competitor; Florida Gulf Coast University’s only competition was itself. He said if the four-year graduation rate could be increased, it would improve everything. He said if the right thing was done day in and day out, the metrics would take care of themselves.

Chair Goodlette suggested one of the ways to address the four-year graduation rate was to attract better students, and the University was asking the legislature for funding for an Honors College. He thought this would help the graduation rate.

Trustee Smith said that in looking at the schools that were excelling, it appeared they were consistently looking at analytics. He said FGCU needed to do the same.

Trustee Price said in the absence of time it took to get the resources for analytics, he thought the administration and other people around the state knew the right things to do and could bring clarity. He said the University should continue to move toward resources that may automate that.

Chair Goodlette said he would meet with President Bradshaw before the next meeting and make some proposals.

Provost Toll said last fall at the presidential level a student success task force was constructed. He said there were currently three committees under that task force, one chaired by a faculty member, one chaired by the dean of Undergraduate Studies, and one chaired by Advising. He said those three groups have collected information and will present a report that at some level would be responsive to what Trustee Price was talking about. He said if all three committees pointed out some of the same factors, that would help determine the high priority places to begin.

Chair Goodlette asked what the next steps in that process consisted of.
Provost Toll said some factors would come to light in his second presentation, and others would come to light following the meeting of the three chairs and consolidation of all the ideas.

Chair Goodlette said that process should be expedited.

President Bradshaw said he agreed with Trustee Smith about focusing on what can be done and not what has happened in the past. He quoted an African proverb, “You cannot build a hut for last summer’s rain.” He added that the cost per credit hour for a student at Florida Gulf Coast University had not gone up in five years. He said this fact spoke indirectly to the metric on net cost to the student for 120 credit hours.

Chair Goodlette asked for a motion to approve the Accountability Report.

Trustee Priddy made a motion to approve the Accountability Report. Trustee Thieldens Elneus seconded the motion.

Chair Goodlette called for further discussion.

Trustee Smith said it was important to recognize how extremely positive the rising graduation rate was.

There was no public comment. The vote was unanimous in favor of the motion.

**Item 4: Accountability Report: Improvement Action Plans for FGCU’s Performance Based Metrics (See Tab #2)**

Chair Goodlette called on Provost Toll to present the information item.

Provost Toll said what had been done in direct response to the Accountability Report was to provide Improvement Action Plans for the four metrics where FGCU was flat or saw a decrease. He said a copy of his presentation would be made available to the FGCU Board of Trustees immediately following the presentation.

Provost Toll began with Metric 3 and commented that he could not say too much more than what had been said in prior discussions. He said zero points were calculated for excellence and improvement, and future actions included looking at additional tuition waivers, presidential scholars, and implementing Soar Higher, which was a graduate component to Soar In 4 but gave incentive to undergraduate students to stay at the University. He said the University was working on a course withdrawal policy that would take effect in the next few days called the 3-2 Policy that would limit the number of courses students could withdraw from without academic penalty. He added FGCU was one of the top two universities for students who graduated without excess hours. He said he was not certain of how Block Tuition might work, but it was actively being discussed in Tallahassee.
Chair Goodlette asked if Mr. Magiera would give a summary of how FGCU would be impacted by Block Tuition.

Mr. Magiera said the Legislature had not decided exactly and the latest information reflected it would be left to the individual Boards of Trustees to decide. He said presently FGCU’s average was 14 hours, so if a Block Tuition was set at 12 hours, millions of dollars would be lost. He said if it was set at 15 hours, there would be an increase of millions of dollars.

Chair Goodlette said the current posture of this in Senate Bill 2 was to bring this back to each university’s Board of Trustees to evaluate and analyze what the impact would be on each institution.

Mr. Magiera said that was his understanding, and the legislature was still working on it.

President Bradshaw said if the Block Tuition was set at 15 credits, it would be at a level where students could graduate in four years. He said students who were more motivated could take up to 18 hours with no additional cost. He said there was a justification for 15 hours.

Trustee Roepstorff asked if it would be the Trustees’ decision.

Chair Goodlette said it was not decided yet. The bill was still in committee in the Senate and had a way to go, but the good news was the impact on individual universities was not being ignored. The legislature was recognizing that where the line was drawn was going to have a different impact on different institutions.

Trustee Roepstorff said she could not imagine a logical reason why universities should not have a minimum of 15 credit hours to make it all about the students and their success. She agreed with Dr. Bradshaw; doing that would incentivize those who could take more hours. She asked if the University needed to lobby for this.

Chair Goodlette said Director of Government Relations Jennifer Goen and outside counsel were monitoring this very closely.

Trustee Roepstorff asked if a statement about this issue should be made at FGCU Day at the Capitol or if the FGCU Board of Trustees should endorse Block Tuition for 15 hours.

Chair Goodlette said the Board needed to play it by ear because the principal proponent for the 12 credits was the Senate President. He said the reason for the Senate’s position involved students who could only afford 12 hours.

Trustee Roepstorff said she felt that could be where the University could come in.
Trustee Felton said he respected everyone's position. He said a Block Tuition of 12 hours did not preclude a student from taking more hours, as he could take 15 or 18 hours for the same price. He said what the Senate President was doing was trying to keep the cost to the student low, so that the impact would be on the institution.

Chair Goodlette said Trustee Roepstorff was free to make a motion to take a stand for Florida Gulf Coast University.

President Bradshaw stated he had met with FGCU’s legislative delegation and others, and they understood the logic of a 15-hour Block Tuition. He suggested not doing anything at this time. He said if it was at 12 hours, then it became a revenue issue, but at 15 hours, it was about graduating in four years.

Provost Toll continued with Metric 5, Academic Progress Rate, defined as the percent of first-time-in-college students retained for their second year with a GPA of 2.0 or above. He said they were collecting data, moving forward with additional intrusive advising, developing the Task Force on Student Success, and Presidential scholarships. He showed the performance history of the past five years, reflecting an increase each year until this year, which showed a slight decline.

Provost Toll continued with Metric 7, University Access Rate, which had to do with Pell eligible students in which there was a decline. He said what was interesting was that there were three years of decline, yet 10 excellence points were being scored. He said the concern was how to continue recruiting Pell students.

He said in Metric 9, Bachelor’s Degrees Without Excess Hours, FGCU had done quite a number of things, and in prior years has been in the top three universities in terms of graduating the highest proportion of students without excess hours.

Provost Toll stated those were the action steps that Florida Gulf Coast University would incorporate going forward. He summarized this was a review of the four metrics which were flat or in decline. He said the six metrics where improvement was shown would continue to be worked on for further success.

Chair Goodlette asked Provost Toll to explain to the FGCU Board of Trustees what the “Board of Governors Choice Metric” meant.

Provost Toll said Metric 9 was for all of the 11 universities and was determined by the Board of Governors. With the exception of two universities, all the other universities were given that metric. He said this metric referred to a student who graduated with more than 10 percent of hours required for the degree. He said for most degrees this would mean 132 hours, and a student might pay a penalty for courses above that. He asked Senior Associate Provost and Associate Vice President for Academic Affairs Paul Snyder if the average number of credits taken was 127.
Dr. Snyder said the average was 133 hours. He said that included all the students. He said in Metric 3, one of the things that the Board of Governors chose to do was to solely focus on this factor with exclusions for certain circumstances. That focus greatly disadvantaged FGCU with regard to the cost to the student. He said when the total number of hours accumulated by students was looked at, FGCU actually figured very well, but with the methodology the Board of Governors eventually settled on, FGCU had one of the highest numbers of total hours. He said it was really just a matter of the perspective that was being brought to bear on the issue.

Provost Toll said there were two different definitions for excess hours. The simplistic definition applied to Metric 9, and a more complicated definition applied to Metric 3.

Trustee Priddy asked if the system went to Block Tuition at 15 hours and had a large number of students take 18 hours, would this be one of the metrics that would have to be changed by the Board of Governors.

Provost Toll said not necessarily because the number of hours a student took in any one semester did not affect the total number of hours that had been accumulated at the end of that student’s degree.

Trustee Priddy said if a student was aggressive and wanted to take three additional hours every semester, that would push the total hours beyond 10 percent of what was required for the degree.

Provost Toll said once the student had the credits to graduate, the University had the delegated authority to consider that student an alumnus.

Trustee Montgomery asked Dr. Toll if there were challenges he was facing.

Provost Toll said there were several, and one was related to being out of space. Second, he felt enrollment management needed to be pushed to the level of someone whose full-time job it was to pull together information from across the board. Third, he said there was a situation of not having data analytical capabilities. He explained he was not talking about the quality of the people the University had, but that growth had happened very quickly, and the infrastructure had not caught up.

Trustee Montgomery asked if those areas were being addressed. Provost Toll responded Academic Building 9 (AB9) could be built, and money for completion had been requested, but even if the money was provided, it would be three years before it was ready. He said with regard to enrollment management, certain committees have been put in place to help predict what the students needed and the number of students who would be attending. He said systems were in place where people could go across the SILOS without needing to go up to their vice president. He said with regard to data analytics, some strides are being made.
Trustee Smith said he appreciated the improvement plan, but felt it was the same improvement plan he had seen for three years. He said when he read it, he had no idea what the improvement plan really was. He said he thought what Trustee Montgomery was asking was what the plan specifically called for, what the costs were, and what was needed, and stated he would like to know the same. He asked why graduation rate was not in the improvement plan.

Trustee Roepstorff said the Work Plan was where success needed to be seen. She asked Provost Toll if the University had ever exercised the authority to graduate a student with the required hours.

Provost Toll said there had been very few cases where historically that would have come into play. He said the University was now watching that. He said it did not entail just the 120 hours; it was fulfilling the requirements of the major. He said based on data for the last several years, he knew of two cases.

Trustee Cors agreed with Trustee Smith and said she would like to see some kind of a work plan toward the four-year graduation rate. She said she felt it was getting lost.

Chair Goodlette asked Provost Toll if he wanted to comment.

Provost Toll said he would be happy to bring back essentially what would be an identical set of references with regard to six-year graduation rates. He said the prognostications showed incremental growth in a positive direction, but that was the trend analysis. He said the information available on the dashboards was improved to look at success rate within majors and that sort of thing. He assured that the dashboards existed to keep the FGCU Board of Trustees and everyone else informed and to show what needed to be done.

Trustee Smith said he wanted to know where the sensitivity was to the economic threshold to improve the graduation rate. He said what he was talking about was resource allocation; where funds would be put, and what the payback for these funds would be, not in dollars, but in graduation rate, which ultimately would yield dollars. He asked if more money was put toward something, could it be fixed or exponentially increase the result.

Chair Goodlette asked if there were any other comments and, hearing none, thanked Provost Toll.

**Item 5: Old Business**

Trustee Price said a report from former FGCU President Dr. Roy McTarnaghan had included recommendations on academic load balancing and looking at scheduling a different way. He said he believed it had been requested that we receive a report on that and asked for Chair Goodlette to refresh his memory. Chair Goodlette responded that would be an item on the April 11, 2017 agenda.
Item 6: New Business
Chair Goodlette called for new business. Trustee Priddy congratulated the men’s and women’s basketball programs for the success they had this year.

Trustee Smith said fundraising had exceeded the $100 million goal and congratulated Vice President for University Advancement and Executive Director of FGCU Foundation Chris Simoneau and his committee.

Trustee Price suggested seizing the momentum of the athletic successes and including a report on it on the next agenda.

President Bradshaw said he thought Athletic Director Ken Kavanagh would welcome an opportunity to inform the FGCU Board of Trustees about the dynamics of Athletics, and it would be scheduled for a future meeting.

Item 7: Calls for (1) Executive Session on Matters of Litigation, pursuant to 286.011 (8), F.S. and (2) Executive Session on Collective Bargaining, pursuant to 447.605 (1), F.S.
Chair Goodlette said he would now recognize Vice President and General Counsel Vee Leonard but would make his closing remarks before they went into Executive Session.

Ms. Leonard said that there were two Executive Sessions. Ms. Leonard first asked for an Executive Session on matters of litigation, pursuant to 286.011 (8), F.S., specifically Dr. E. Valerie Smith vs. Florida Gulf Coast University Board of Trustees. She stated the Board was represented by the firm of Thompson, Sizemore, Gonzalez, and Herring.

Ms. Leonard then called for an Executive Session on Collective Bargaining pursuant to 447.605 (1), F.S. She stated the Board was represented by Mike Mattimore of Allen, Norton and Blue in Tallahassee. She asked that the FGCU Board of Trustees meet with her to provide advice on strategy in those two cases.

Item 8: Chair’s Closing Remarks & Meeting Adjournment
Chair Goodlette said before Executive Session commenced he wanted to recognize Staff Advisory Council (SAC) Secretary Cori Bright-Kerrigan and thank her for being there for SAC President Nicole Catalfamo. Next, he said Chief Compliance and Ethics Officer Stacey Chados would be reaching out individually to Trustees, to introduce herself and to explain a little more about Compliance and Ethics programs.

Chair Goodlette said the next meeting was scheduled for April 11, 2017, and another meeting was scheduled for Tuesday, May 9, 2017, which would have a limited agenda to consider the Annual Work Plan. He reminded the Board that FGCU Days at the Capitol were March 27 and 28, and the confirmation hearing before the Board of Governors with Dr. Martin was scheduled for March 29 and 30.
He thanked the Board members for their participation.

The Board moved into another meeting room for the two Executive Sessions requested by Vice President and General Counsel Vee Leonard.

Later, having concluded the Executive Session, Chair Goodlette reconvened the open meeting of the FGCU Board of Trustees at 12:18 p.m. on March 14, 2017, and noted that the Executive Sessions had been terminated.

The meeting immediately was adjourned at 12:18 p.m.

Minutes prepared by Transcription Experts, and reviewed by Lauren Schuetz, FGCU Assistant Director of Board Operations.

Agenda Items:
A. See Tabs #1-2

B. Handouts

Attachment:
A. Record of Votes
### Record of Votes

**FGCU Board of Trustees**  
**DATE: 3/14/2017**

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