

FROM: Chairman John C. von Lehe, Jr., University of South Carolina Board of Trustees

DATE: Wednesday, January 22, 2020

RE: AGB Report

Newly-elected President Bob Caslen recommended to trustees last year that we ask the Association of Governing Boards (AGB) – the nation's premiere organization that strengthens higher education governing bodies such as our board of trustees – to review University of South Carolina governance procedures.

Trustees took the president's advice because we wanted a top-to-bottom review of procedures from an outside entity in which the university community, taxpayers and policymakers could have confidence. AGB has completed that review, and it is attached. Whether or not we agree with many of the findings and conclusions in the report, we will take the opportunity during our upcoming retreat to discuss with AGB what led to them.

AGB recognizes the time and energy that trustees devote as volunteers in support of this institution we love. We cast votes with the best interests of the entire university system in mind. "The consultants were impressed by board members' commitment to the university," AGB senior consultants Richard Legon and Dr. Ellen Chaffee write in the accompanying report. We are proud of AGB's recognition; it is that commitment that drives our work.

Like the SACSOC findings, the AGB report is an opportunity for reflection.

The university is breaking records: for enrollment, test scores and grades of incoming students. University programs – from business to nursing to education – rank among the very best in the nation. Researchers are making a difference, and innovative partnerships with businesses are training students for the jobs of tomorrow.

Make no mistake: our university brand is strong.

We have even more reason to be optimistic thanks to the leadership of President Caslen. According to AGB: "The new president has moved appropriately and aggressively to establish a new tone and his own brand of leadership. And, while he continues to learn about system leadership, his approach is one that merits support, most especially by the governing board."

But even as we celebrate, we acknowledge there is work to do.

With the assistance of AGB, we have begun examining ways to strengthen governance procedures. This includes periodic mandatory training for members and publishing new procedures for future presidential selections. Our goal remains to meet the highest standards of ethical, transparent and accountable board governance, both in word and in action. I have no doubt we are on the right path.

We look forward to open, honest and candid discussions of the topics covered in the AGB report. Please read the report carefully in the spirit of service to our great university. While it is important to read the report, it is also important to keep in mind that AGB, as well as trustees, will present critical context about the topics covered in this report during the upcoming trustees retreat. I am confident that the topics raised in this report, together with substantive discussions during the retreat, will play a key role in helping trustees, as well as university leaders, meet the high expectations to which the university community, elected officials and accreditation institutions hold us as we move forward.

Effective board governance is not solely about stepping up after a crisis, but rather is about consistently fulfilling the board's fiduciary responsibilities. Whether it entails monitoring a risk register or being comfortable asking uncomfortable questions, boards have a duty—indeed, a legal obligation—to know what is going on and to determine for themselves what they need to know.

Protecting the reputation of the institution is perhaps a board's most essential responsibility. Institutional leadership that does not attend to the big issues and ask the most meaningful questions can fall into the trap of being led, rather than leading, and can miss important challenges and strategic opportunity. It is difficult to regain trust and restore a reputation once they are lost.

~Richard Legon

Transforming Board Governance for the University of South Carolina System

By AGB Senior Consultants Richard Legon
and Ellen Chaffee, Ph.D. (January 24, 2020)

Executive Summary

Board governance at the University of South Carolina System (UofSC) made the news in 2019, experiencing a series of breakdowns that led to, among other things, a lawsuit brought by one trustee against the full board, an investigation by the institutions' regional accreditor, two legislative bills to restructure the board, and a number of embarrassing media reports.

To their credit, the board and the new president engaged governance experts in August to advise them on how to begin restoring the credibility of system governance. The consultants were impressed by board members' commitment to the university. Board service is a volunteer role requiring professional-level engagement. UofSC trustees have invested many years in service despite the inevitable impact on their professional and personal lives.

Clearly the trustees' intention is to add value, yet collectively the board demonstrates limited understanding of how best to do so, likely built over decades of following past practice with little self-examination. The consultants found a fundamentally misguided governance culture – one that is a consistent threat to the university system board's ability to address strategic issues in an effective manner and to its reputation. As a result, the board is limited in its strategic focus and fiduciary awareness, inappropriately permits staff control of board responsibilities, and focuses primarily on only one of the eight institutions for which it is accountable. The board displays limited attention to shared governance and focuses too much attention on managerial matters at the expense of strategic and generative issues that will determine the future of higher education in South Carolina.

Legislators elect most trustees in a competitive political process, and the board acts according to a political model. Being politically elected sets up a two-way assumption that board members are responsible to the legislature, confirmed in the board's bylaws, and they have a similar culture including, for example: allegiance to a party, reciprocal-benefit bargaining, personal influence based on longevity and power, multiple loyalties, and appeals to another's self-interest. Predictably, the board also has factions and internal conflicts that do not advance effective governance.

All of these malfunctions are in sharp contrast to fiduciary governance, which is the board's legal obligation and the expected culture of highly effective university and system governing boards everywhere. The problem is less in the board's legal foundation (the bylaws call for trustees to honor their fiduciary responsibility, delegate to management, and recognize that authority exists only in the full board, not individual trustees) and more in its origins and the culture that has arisen, unexamined, over many years.

System and political leaders are at a highly consequential crossroads. What's needed now is a proactive, planned transition from a political culture to a fiduciary governance culture, likely requiring months or years to complete. In a fiduciary culture, the best interests of the institutions are the standard that drives governance, based on legal expectations for loyalty, care, and obedience. Becoming a fiduciary board will require time, leadership, persistence, education, accountability and a willingness to accept some risk factors. It will require new assumptions, skills, perspectives, and behaviors. Changing board culture will not be easy, but it is essential. Changing the number of trustees without also changing the board's culture would have no impact.

Today's report focuses on committing to a substantial transition over time and on more immediate changes that align with best practices and will help remind participants that they are on a new path. Frequent, ongoing board education in the next one to two years is essential as well.

Our recommendations are to:

- Create and follow a planned transition to fiduciary governance, with adequate support and accountability;
- Diversify board membership and input to board decision-making;
- Govern the system and all of its institutions; and
- Change how the board's work gets done – including meetings, committees, agendas, governance education, board-president relationships, bylaws, and governance policies.

Effective board governance demonstrates appropriate accountability. The anticipated 2020 visit from the system's regional accreditor will be the first in what we recommend will be a series of accountability checkpoints. Progress will be expected.

The board is reviewing this report with the consultants at a January 24-25, 2020 board retreat. The board will decide whether, how, and when to follow up on any of the recommendations. One goal of the retreat is to ensure board members understand the recommendations; another is to encourage them to commit to them and start planning for implementation.

Transforming Board Governance for the University of South Carolina System

A report submitted by AGB Senior Consultants Richard Legon and Ellen Chaffee, Ph.D. (January 24, 2020)

Introduction

All governing boards can and should engage in proactive continuous improvement of their governance practices while ensuring that fundamental policies focusing on an institution's academic and reputational standing are current and periodically reviewed. So often, institutions that are compromised by a high-profile issue recognize that board governance has not been optimally effective. Some governing boards, especially those whose action (or inaction) have created risk for their institution or its reputation, have a greater need to improve their governance practices than others. The summer of 2019 was a difficult time for the University of South Carolina System Board of Trustees, and therefore for the system it leads. To its credit, the board leaders and the president recognized that they had no options other than committing to a comprehensive governance review.

In July 2019, the President and the Board of Trustees of the University of South Carolina System asked the Association of Governing Boards of Universities and Colleges (AGB) to facilitate a comprehensive review of board governance, including board structure and engagement, establishing a mutually supportive relationship with the new system president, addressing shared governance, and revisiting the staff/board working relationship. The review addressed multiple areas, however its overall emphasis focused on the following:

- Clarifying the fiduciary responsibilities of the board and its individual members;
- Improving institutional and system governance;
- Building more effective board governance practices with an emphasis on full transparency and integrity;
- Continuing to build strong and ethical board leadership; and
- Developing a comprehensive orientation for new board members and annual education programs for all board members.

AGB consultants Richard Legon and Ellen Chaffee prepared this report based on:

1. Five days on site and additional days on the phone, interviewing trustees, legislators, administrators, students, and faculty.
2. Regular interactions with the board chair and president—in person and by telephone regarding a review by the system's regional accrediting agency and other issues emanating from the recent presidential search and an unexpected intercollegiate athletics issue.
3. Reviewing the bylaws, agendas and minutes of board and committee meetings, and other university governance documents.
4. At the request of the university board and the chair of the Senate Education Subcommittee on S798, testifying before that legislative committee about good governance (see appendix A) in October 2019 as the legislature considered a restructuring of the System governing board.
5. Advising and conferring with university and board leaders as events and this assignment progressed during the fall and early winter.

The governance review revealed a very real need for the board to rethink the nature of its responsibilities, its engagement and its focus—most especially in light of the regional accreditor's expressed concerns about the risk to board member independence. The board, while recognizing the uncertainty of its standing as the legislature continues to consider a legislative restructuring, must recognize the need to change. A number of good-governance practices, if adopted, would substantially increase the board's productivity, reduce risk, and better enable the board to add value to the system and its campuses. In the end, only the board can commit to change and then implement those changes. Clark Kerr's sage admonition that "ultimately an institution can be only as good as the quality of its governing body" is an appropriate consideration for the board of the University of South Carolina System.

Background

The University of South Carolina System Board of Trustees governs a system that enrolls about 50,000 students at eight campuses with 19 locations around the state, including one research university, three regional comprehensive universities, and four associate degree-granting institutions, with a coordinating online college. The president of the University of South Carolina System is also the president of the University of South Carolina-Columbia.

The board consists of 16 members elected by the legislature from each of the state's judicial districts, plus the governor, the state education superintendent, and the president of the alumni association as ex officio voting members. The governor also has an appointee to the board and may designate an individual to fill the governor's seat on the board. As is often the case where governors hold ex officio seats on a governing board, the current governor does not attend board meetings.

In summer of 2019, following the board's selection of a new president, a series of incidents prompted the system's accrediting body (Southern Association of Colleges and Schools Commission on College or SACS) to request information in response to its concern about compliance with one of its primary accreditation standards: the governing board "protects the institution from undue influence by external persons or bodies." While responding to SACS' request, the board also asked AGB for a comprehensive board governance review. Leaving the assessment of accreditation issues to SACS, the AGB consultants were to focus on advancing the board's effectiveness for the future.

The new president immediately launched a proactive effort to meet people on campuses and communities throughout the state, fill key vacancies, share his vision, and lead a more formal strategic visioning process. Nevertheless, additional difficulties continued to arise during the fall semester. Faculty, staff, and students had been expressing concerns about shared governance since the spring, and on October 2nd the research university's Faculty Senate adopted a resolution of no confidence in the Board of Trustees. State legislators proposed a major restructuring of board membership and are now considering a second restructuring bill. An embarrassing series of communication gaffes regarding support for the football coach and AD hit the media. This did not start as, nor did it become, a smooth presidential transition.

After a series of written exchanges throughout the fall, SACS informed the president and the board that the accreditor would monitor its progress on governance improvement and conduct a site visit in 2020. SACS spared the system another hit on its reputation but gave itself every opportunity to explore further whether the board and others are working together to ensure a model of independent fiduciary governance that supports institutional autonomy. So, while the university was not sanctioned by its regional accrediting body, the board should not view the lack of action as indicating support for its governance behavior or vindication of the precipitating events.

What We Found

Colleagues at the University of South Carolina System, as well as external leaders with whom we met, were largely consistent about the specific issues that need to be addressed by a governing board that seemed to lose its bearings in meeting its fiduciary responsibilities. In interviews, through our own observations, and in our policy review, several consistent themes became clear. Together they revealed a governance model that is a consistent threat to the university system's ability to address strategic issues in an effective manner and to its reputation. They pointed to a set of important recommendations that follow in this report.

Specifically, we found the following concerns:

- A university system in which the governing board had become "the story," resulting in a diminution of the system's overall reputation.

- A board structure and level of engagement that consistently limits strategic focus and appropriate fiduciary awareness; based on meeting agendas and the quality of observed conversation and engagement during meetings, the work of the board rarely adds value.
- A board that allows staff to set meeting content and agendas with limited board and committee leadership input, and to control information and meeting proceedings of the board, rather than assuming its own leadership responsibility.
- A governing board that seems to focus much of its sense of accountability on the expectations of external influences (the legislature and the governor) thereby putting its independence, autonomy and appropriate accountability at risk (attracting the interest of its regional accrediting body is no small matter).
- Limited respect for shared governance.
- A lack of requisite governance for the system it serves and all of its institutions.

Colleges and universities are fragile organizations, especially in an environment of public concern about the value proposition of higher education. A more discerning and concerned public is asking whether a degree is worth the price, worth the debt risk, and worth the uncertainty of a job market for college graduates. The story of a higher education institution needs to focus on system achievement and vitality. So, when the most high-profile story of an institution is about the failure of board governance—allowing the intrusion of politics into a system that is designed to resist external influence—the reputation of an institution is negatively affected. Institution reputations are fragile; once damaged it takes years of work to restore—if possible—a more positive perception. Too many public institutions with outstanding and historic academic reputations have been compromised by failures in board governance. It takes those who are in the bullseye of that story to step up, recognize their shortfall and fix it. What we found was a system that was increasingly viewed as a place where governance was failing, which is not how a state system with a highly reputable research institution and accessible, quality institutions throughout the state, can afford to be viewed.

As so often happens, recent incidents had their origins not in individuals, but in a culture and practice with fundamental board governance weaknesses. These governance issues must be recognized and corrected in order to reduce the risk of further threats that could undermine the effectiveness of the UofSC System and its institutions. The good news is that the board now has a significant opportunity to change course for the better, recognizing that good governance is not optional and that it takes work.

POLITICAL versus FIDUCIARY GOVERNANCE

The common denominator, or root cause, of board governance concerns for the UofSC System is that participants seem to engage in their roles with a predilection for political governance rather than fiduciary governance in mind. Although a political approach may have allowed the university system to function for over two centuries, it is not adequate to the demands of today nor is it consistent with the accepted standards for a state agency serving higher education. Each trustee campaigns for the position with legislators who, in turn, elect the trustees. Being elected sets up a two-way assumption that board members are responsible to the legislature

and have a similar culture including, for example: allegiance to a party, reciprocal-benefit bargaining, personal influence based on longevity and power, and appeals to another's self-interest.

Predictably, we met people—board members and others—who believe that the UofSC System trustees report to and are directly accountable to the state legislature, that a trustee owes special responsiveness and loyalty to legislators, and that some legislators expect trustees to respond to their requests for favors. The culture is entrenched as trustees have no term limits, to the point that one-third of the board members have served more than 12 years, some more than 30. The election process further handicaps the board's overall composition because it does not allow for selecting trustees primarily on the basis of needed expertise or the diverse perspectives they can offer to board deliberations.

The requisite fiduciary culture, on the other hand, drives attention and decisions solely toward the best interests of the institution—the who and what for which a board is accountable—just as a trust officer must place the best interests of the trust owner ahead of any other interests. Fiduciary responsibility is a legal obligation defined by loyalty, obedience, and care; it applies to every trustee and to the board itself as an agency of the state (or a corporate body). A core purpose is to fulfill the fundamental expectation of institutional autonomy. Otherwise, institutions of higher learning are at risk of falling captive to ideas or interests that prevent them from fulfilling their mission.

By state law and board bylaws, the UofSC board of trustees is accountable to internal and external stakeholders and to the people of South Carolina for exercising independent judgment on matters such as developing a first-rate higher education system, ensuring compliance with state law, and overseeing the human, financial, capital, intellectual, reputational, and other assets of the institutions and the system. Public officials and accrediting agencies who have official concerns may seek to hold the board accountable on behalf of the people if the board fails to meet its fiduciary responsibilities. Legislators may pass laws, auditors may issue findings, and accreditors may investigate compliance with their requirements, each in accordance with its legal authority. However, no one is entitled to political favors.

Fiduciary decisions are therefore independent decisions that come from each trustee's thoughtful consideration of what will advance the best interests of the institution. Disagreements among trustees can exist and should be aired, but the discussion should focus on the benefit or harm to the institution—to its human, financial and physical assets, to its students, faculty, and staff, and to its reputation and public service mission. It must not be about personal preference, public opinion, the external influence of others, or the desire to be re-elected as a trustee. South Carolina's own policies are clear about fiduciary responsibilities. So, while board members take their seats under a political selection process, they must recognize that the voluntary job they assume is defined by the state's fiduciary standards; the several duties of obedience, loyalty, and care; all of which clarify the board's accountability, limit the authority of individual board members, and protect against conflict of interest.

From a political perspective, a governor or legislator calling any board member to advocate for a specific action could be seen as standard procedure – the caller is a voting member of the board sharing his views with his colleagues, while the other is, in essence, an elector who expects a certain level of loyalty. However, from a board governance fiduciary perspective, the call creates a conflict of interest for the other trustees as well as for the governor or legislator. Best practice in fiduciary organizations is to avoid even the appearance of impropriety. Perhaps the most precious asset of a university or college is board and trustee independence, both real and perceived. Trustees who cannot or will not put the best interests of the institutions and their missions ahead of all other considerations must recuse themselves or resign.

BECOMING A FIDUCIARY BOARD

Boards of trustees are responsible for two organizations - the institution or system they govern and the board itself. The UofSC System Board of Trustees does not seem to have paid sufficient informed attention to its own operations and structure for years, if ever. That must change now. The best interests of the University of South Carolina System require that its board of trustees transform itself into a fiduciary governing board as quickly and thoroughly as possible. Doing so will be a test of trustees' willingness to learn, change, and devote time to a whole new mindset and operating system. The results will include dramatic reduction in risk of damage to the university's reputation, more efficient and effective board and committee meetings, greater opportunity to add value to the campuses and the state, and greater personal satisfaction from one's investment of time and effort into board work. And, it will allow the board to take more control of its own priorities and work. The UofSC board should develop a Code of Conduct that commits all members of the board to a set of specific expectations related to their fiduciary responsibilities. Some 73% of public institution governing bodies adhere to a formal code—an element that is also favored by regional accreditors.

That said, administrators, faculty, staff, students, alumni, legislators, and other constituencies all have roles to play in transforming board governance. This board must devote itself systematically to understanding and making the changes required for effective fiduciary governance. As for other constituencies, we recommend proactive, two-way communication throughout the transformation process. This will facilitate development of essential shared governance, appropriate administrative support for the board's efforts to change, and greater understanding of changes the board makes not only in itself but also in how it makes decisions and interacts with others.

Board Development Plan

The recommendations that follow are challenging and will take time to shape and implement. All of them are important, many of them are interdependent; they may seem overwhelming at first. To help the board and executive officers understand the recommendations, set priorities, and become committed and confident about implementing them, we recommend starting with a

participatory process for developing a 12- to 18-month board development plan—regardless of the disposition of the proposed governance legislation. An outline of a sample plan that tracks with these recommendations is provided in Appendix B.

1. Diversify Board Membership and Input

The UofSC System board experiences very little turnover, which limits the opportunity for fresh perspectives. Excluding the governor and secretary of education as ex officio members, one-third of the 19 current trustees have served more than 12 years. Four have served more than 20 years, two more than 30. Boards that have term limits, and most do, seldom allow service beyond 12 years without at least an interim year off the board.

The board has extremely limited access among its members to expertise and experience in a wide range of issues required to oversee a higher education system. Of the 19 board members other than the governor and education secretary, over half (10) are attorneys, five are in the financial industry, three in health care, and one in real estate. With respect, their collective experience is likely extremely limited in areas such as strategic leadership and management of large organizations, communications, technology, academic affairs, and the higher education sector. With the pace of change occurring and demanded by the public related to higher education, it is incumbent for all governing bodies to remain current and to be seen by their many stakeholders as sufficiently curious and aware of a rapidly changing 21st century sector. The current board does not embody such currency or diversity of backgrounds.

Even more concerning, of the 19 members other than the governor and education secretary, 17 are men and 18 are white. To represent the state's population, board members would include at least five times as many women and minorities as is currently the case. We cannot overstate the significant real and perceived losses that lack of diversity represents to the board, system, and state. Diverse boards and leaders make better decisions, bring broader experiences to the table, affirm institutional commitment to serving all people, provide young people with role models, and are seen as more trustworthy by their many internal and external stakeholders.

The opportunities for rebalancing board membership in the short term are limited to the governor's two appointees and the 16 members who are elected by the legislative assembly, whose terms are equally divided to expire in either 2020 or 2022. Given the long tradition of incumbents seeking and gaining reappointment by the legislature, change is likely to be slow, even if the latest legislation becomes law, albeit with a reduction in the number of overall board members. In these rapidly changing times, the board cannot serve the best interests of the campuses without taking steps to diversify its membership and solicit diverse input through other means.

Recommendations: Diversify Board Membership and Input

1. In order to help diversify board membership, consider the following:

1. Make a formal request urging the governor and the legislature for greater diversity in appointments or approval of candidates for election, including needed demographics and experience.
2. Encourage long-serving board members voluntarily to consider retiring from the board on a phased schedule, perhaps assisting someone else who would be a good trustee in seeking the position.
3. Adopt a policy encouraging trustees to voluntarily resign or decline to pursue another term after serving two terms.
2. In order to bring diverse points of view into board understandings and decisions:
 1. Add selected non-trustees to standing committees to fill gaps in experience.
 2. Add a section on board diversity to the university's new "Equity and Inclusion Plan" and use board monitoring of the plan as an opportunity to learn more about related issues and dynamics. Establish and regularly monitor a comprehensive equity and inclusion dashboard based on the plan.
 3. Support and encourage the president's commitment to increase diversity including hiring women and minorities for executive positions that work with the board and to lead portfolios that are related to the core mission of the System. Consider supporting a high-value program of professional development and hiring practices to increase diverse leadership on the board and campuses.
3. Recommendations to the governor and legislature
 1. Although governors are often ex officio board members, we are unaware of any other state that designates the governor as the public university board chair when present. Governors serving as an ex officio board member who rarely attend board meetings are unable to make decisions with full information. To help ensure governing board independence, best practice is not to have an ex officio position for the governor. Legislation currently being proposed eliminates the seat on the board for the governor; this board might want to signal its support for that part of the legislation.
 2. Study the various methods of naming new trustees for public institutions across the country with the goal of identifying a less political method for South Carolina that will better enable them to perform their fiduciary responsibility.

2. Governing the System and All of its Institutions

Like too many public system governing bodies the UofSC System board focuses most of its attention on the research university; they seem not sufficiently informed (or concerned) about the other universities and colleges for which they are accountable. They rarely address the other institutions' strategic issues at the board level. Those institutions have local advisory commissions that appear to provide a degree of support and advocacy. Commission members are appointed by the governor, but they do not have institutional governance authority. They are important assets to their campuses and the system as a whole, but the Board of Trustees is the fiduciary for all the campuses and must give each of them adequate attention.

Recommendations: Governing the System and All of its Institutions

1. Ensure that trustees are knowledgeable about each institution, its mission, its sustainability, its strengths, and its challenges. Board members who have a geographic loyalty must not appear to favor a regional institution within the system. For example, introducing board members, at the start of board meetings, with name and represented district sends exactly the wrong message about “system-ness.” Among actions that can begin to signal the board’s recognition of its overall responsibilities to the system, the board should rotate its meetings among the campuses, ask the host chancellor for a campus tour and report during the meeting, and meet campus and community leaders. In cooperation with the president, the board chair could meet periodically with the chancellors.
2. Clarify the organization chart of institutions and CEO titles to help trustees and everyone else have a clear concept of the system’s elements and how they relate to one another. Specifically, the relationship of Palmetto College and its chancellor is unclear, going both up and down the chain of command.
3. Recognize that engaging the system as a whole has very significant strategic potential for both the institutions and the state. Consider asking the president for a system strategic planning process as well as one for Columbia.

3. Revise Board Meetings and Committees

Board members will gain a great deal of benefit from redesigning how the board does its business. Their voluntary investment of time and thought in the university system will be much more productive, and they will have the opportunity to help shape the long-term future of the system and its institutions. AGB’s 2014 report from its Commission on the Future of Board Governance challenged governing bodies to become “Consequential Governing Boards” that add value and are appropriately engaged in the new work of boards for a changing environment. More and more boards have developed their own approach to meeting this objective, but most are realizing that doing new work in the old way does not serve the needs of the state or its students. Some two-thirds of all boards have been restructuring their operations, including frequency of meetings, committees and agendas. As the work of boards is changing, so must the manner in which boards do their work.

Recommendations: Revise Agendas, Materials, and Processes

UofSC board time and attention do not focus sufficiently on governance-level matters, governance itself, and board education. The board recently took a positive step by adopting consent agendas for decisions that are not expected to require discussion. If not already done, we suggest a review to determine whether the board could also delegate more decisions to the administration.

A review of recent agendas and minutes indicates that nearly all of the board’s business consists of informational reports by staff and transactional decisions. Granted that our time and access were limited, however we did not see evidence in most documents of substantive

discussions of matters like the opportunities and challenges facing the institutions and the state, a shared vision of the UofSC system's future, or balanced attention to all of the system institutions.

There are some bright spots. In November 2019, the Ad Hoc Committee on Strategic Planning reviewed a Strategic Plan update and the Student and System Affairs Committee considered a white paper organizational assessment of the UofSC System. Minutes of the August breakfast meeting to hear from the new president reflect lively discussion of mostly strategic topics. These and other significant future-oriented issues are prime for board and executive development.

Committee chairs and the executive staff need a strong partnership based on the understanding that the chair's role is to lead the committee and the staff role is to support it. Of course, senior staff members, often representing the president's agenda and play an important role in shaping the board's agendas, however staff must respect board input to the strategic issues that are to appear on agendas and the board must facilitate its own conversations. The board must not cede its rightful and essential leadership responsibilities.

1. Assess each topic on board and committee meeting agendas to determine whether they are about high-level policy issues, decisions that impact the long-range future of the campuses and system, or assurances that key functions are operating effectively with integrity. Boards hire presidents to lead and manage; the job of the board is to support, advise, and even challenge executive leadership, not to second-guess or advise on management's job.
2. Restore leadership for creating agendas to the committee and board chairs, with advice and support from liaison executive leaders. Executives are welcome to make suggestions and provide information, and they should ensure trustees are aware when board attention is required. However, final decisions about board agendas belong to trustees. Committee reports to the full board should be presented by committee chairs.
3. Include all meeting materials with agendas and distribute them at least a week in advance. Expect trustees to have read all materials before the meeting. At the meeting, provide just a few minutes of overview introduction, not the full report. Clearly identify and focus on where decisions or recommendations are required. Identify relevant issues, pros/cons, and topics meriting discussion among trustees.
4. Limit oral staff reports during the committee and board meetings to information trustees request that is not in the written materials. Ensure that the board meeting doesn't appear to be overly scripted—for example having motions and seconds settled in advance of the board consideration of each issue requiring action adds to the sense that the board delegates much of its responsibilities to staff and that board action is foreordained.
5. Include time on every board or committee agenda for board education on governance, higher education, and the UofSC System and its institutions.

Recommendations: Reschedule Committee and Board Meetings

Currently, the UofSC Board meets 10 times per year, alternating between five one-day periods for about half the committees to meet and five one-day periods for the full board and remaining committees to meet. The schedule sets aside 64 hours per year for meetings. Over time,

common practice has become for all trustees to attend all meetings, whether they are voting members or not.

Admirable as universal attendance is in terms of commitment, it is not the best use of trustees' time. There are better and more efficient ways to ensure all trustees have all the information they need or want.

Many trustees travel and some require overnight stays as well as time on the road. Reducing the number of meetings would have many benefits in cost and time. In addition, having fewer meetings allows trustees to spend periodic concentrated time on UofSC System business, away from their other roles, rather than having short meetings much more often. Staff time preparing for and following up on board meetings is also significant and can be put to more productive use with fewer meetings. Our recommendation is to cut from an estimated 64 hours per year on 10 non-consecutive days to 48-60 hours per year on four or five 1.5-day meetings.

1. Hold four to five meetings per year, plus an annual retreat.
2. Increase from about six working hours per meeting to 12 working hours over 1.5 days - for example, all day Friday and Saturday morning.
3. Hold committee meetings the first day, scheduling two at a time if necessary, to allow at least two hours per committee, with committee assignments divided so that no trustee needs to be in two places at once. Limit staff reports during board and committee meetings. Prevalence of staff presentations to the board implies that a board is largely disconnected to issues coming before them. The business of the board and its committees should be the board's business.
4. Whenever possible, round out the meeting with board education or constituent relations events. Bring in experts, key constituents, and the like to inform and discuss major issues. Visit a renovated facility, attend a campus performance.
5. Conclude with a full board meeting on the second morning. Focus committee reports on major current or impending issues/decisions and on recommendations for board action. There is no need to replay the committee meeting for the full board.
6. Incorporate social time among trustees, with executive leadership, and with campus and community constituencies.
7. Plan annual retreats to engage trustees with fundamental challenges, issues, and opportunities, as well as further board governance development.

Recommendations: Revise Board Committees and Charters

The purpose for committees is to engage groups of trustees around core fiduciary and strategic issues so that the board can benefit from their closer consideration and developing insights in those areas. Their recommendations for board action should be well-informed and respected.

1. The UofSC Board's eight existing committees are:
 - Academic Affairs and Faculty Liaison Committee
 - Audit and Compliance
 - Buildings and Grounds
 - Executive and Governance

- Health Affairs
- Intercollegiate Athletics
- Student and System Affairs
- Ad Hoc Strategic Planning

We recommend discontinuing the following committees:

1. Buildings and Grounds does not require a standing committee; essential issues may be addressed in other ways.
 2. Most governing boards maintain an Executive Committee, but they limit its portfolio and role to crisis situations or extremely urgent decisions. Fiduciary responsibility lies in the full board, and today's communications systems make it possible to gather a quorum of the full board in short order. The downside of an Executive Committee is the potential for a handful of trustees, with all good intent, to gradually take on responsibilities that belong to the full board. Board members not serving on an active Executive Committee can feel marginalized.
 3. Health Affairs is another institutional department reporting to the president. If special circumstances, such as major construction, require special attention from the board, an ad hoc committee should suffice.
 4. Intercollegiate Athletics addresses issues that cut across a number of committees of the board. The trend is to eliminate athletics committees as they too often default to becoming a booster club within the board's structure.
 5. Strategic planning is the responsibility of the president. The board's role is to ensure that it happens, advise along the way, and provide final approval. As context for institutional strategic planning, president-led discussions of the long-term future of the university are increasingly important in these changing times. They should be placed periodically on the agenda of the full board or as major retreat topics, and they should include opportunity for trustees to raise and assess alternative futures.
 6. Eliminate the committee that addresses system issues. System issues cut across all committees.
2. We recommend considering fewer standing committees, each of them focused on a core fiduciary responsibility of the board. When a small group is needed to undertake relatively short-term work on behalf of the board, ad hoc task forces with clear charters and end dates work very well. One option for a sensible set of committees follows:
1. Governance - ensure that the board continuously improves in its performance of best board governance practices, including regular board self-assessments and a comprehensive self-assessment with retreat-based discussion of results with follow-up plans every three or four years.
 2. Student Success - ensure that the institutions are fulfilling and improving on their core responsibility
 3. Audit and Compliance--oversee and provide systems that assure the board and executive leaders monitor key indicators of integrity and safety and are prepared to address any emergencies in these areas
 4. Financial Affairs - oversee and provide systems that enable the board and executive leaders to make sound decisions when committing financial resources

5. Risk Assessment—ensure that the board regularly considers the array of risks (upside and downside) that might drive policy and strategy decisions by the board and administration.
6. Executive Committee—board officers and committee chairs, available between meetings of the board as special needs/crises arise.

Adopt through Board action a thoughtfully designed charter for each committee, specifying its purpose, expectations for its performance, authority for decisions or recommendations, membership, and self-evaluation. Each committee should use its charter to guide agenda planning and should review and possibly recommend revisions in its charter every year.

A Special Word about Intercollegiate Athletics and Board Governance

College sports, especially football and basketball, are a focal point at UofSC-Columbia. And football has long been a priority of members of the Board of Trustees, as is true to some extent elsewhere. However, board engagement in college sports requires a clearer understanding of fiduciary responsibility than this board demonstrates. A board that acts more as a fan than a fiduciary can actually cause challenges for the athletics program and the institution.

Clearly the recent publicity surrounding the future of the UofSC-Columbia football coach and the ready press availability of board members demonstrates a misunderstanding of fiduciary responsibilities. While the athletics program involves a substantial financial investment, trustees and boards that overly engage in the management of athletics are clearly operating outside their appropriate scope of accountability.

The governing board must demonstrate appropriate accountability at the governance level; it must focus on mission over management. Selecting coaches, setting salary ranges for coaches and athletics personnel (except for approving unique or significant contract details, as specified in board policy), and commenting on personnel—especially based on wins and losses—are outside the lane of board engagement.

Instead, boards should expect to see data on such issues as student-athlete safety and academic progress, graduation rates of student athletes, risks related to changing NCAA policies related to cost-of-attendance policies, and the behavior of student athletes. It's not about a board weighing in on the next coach, but rather ensuring that the university is running an athletics program that is financially sound and focused on the welfare of student athletes.

The future of this board's Committee on Intercollegiate Athletics is relevant. Over the years, we have witnessed substantial movement among Division I institutions away from a standing committee on athletics; currently only about 10 percent of boards have such a committee. Athletics committees run a high risk of being more booster than fiduciary; and if the institution views athletics programs as integral to the overall mission of the university then the issues attended to by such a committee should be spread among the other related committees of the board such as finance or academic and student affairs.

Board governance at the UofSC System is now a high-profile issue—it has gained the attention of the university’s accrediting agency, the media and policy leaders. It is important that this board recalibrate its engagement with athletics to reflect a fuller awareness of fiduciary engagement and restraint.

4. Provide Board Orientation and Governance Education

All board and trustee work must come from a solid understanding of their fiduciary duty – a simple philosophy, but applying the philosophy requires considerable thought and discussion. Higher education governance is unlike any other role most trustees have ever taken on, and it involves not just learning one’s individual roles, but also helping shape the board’s culture and operations appropriately. With the privilege of near-ultimate authority comes extraordinary responsibility. This recommendation deals with helping trustees more deeply and fully understand to whom they are accountable and the behavior that enhances or undermines their work from their first day of service.

For the foreseeable future, all trustees – not just new ones – need extensive board orientation and governance education. Individual trustees must come to understand and respect the boundaries beyond which their behavior fails the fiduciary test and creates risk for the system and institutions. Some examples of unacceptable behavior include communicating about university or board business with campus personnel other than the president or the president’s designee, acceding to special requests from public officials, getting involved in hiring or firing anyone but the president, failing to know and follow the board’s bylaws and policies, communicating to the public about university or board business unless authorized by the board, and creating cliques within the board that lead to fragmentation and mistrust.

A governing body or individual board member who intentionally or inadvertently intrudes into the management of the institution is creating a fiduciary risk and is clearly disrupting the operations of the institution. Other than essential staff support for board committees and their chairs, the board should limit its interactions to its sole employee—the president. Going beyond that focused reporting line creates disruption and uncertainty for the men and women who report to management of the institution.

A common denominator in many such situations is that non-trustees, even including institutional employees, do not realize the very real limits of authority granted to individual trustees. When non-trustees bring their issues to individual trustees, they typically go away thinking that the trustee will make something happen on their behalf. But the board’s power resides only in the full board. Each trustee is entitled only to a voice and a vote. Not only must trustees get board approval before something can happen on a large scale, but they also have no direct authority as individuals over any system employee – even the president, who reports to the full board, not each trustee.

On a substantive level, trustees must address the issues and decisions that have the greatest impact on the institutions and the future. By design, trustees have limited awareness of the higher education enterprise, institutional challenges and opportunities, and specific issues as they come before the board. Board business is not just transactional - approving or disapproving proposals. Board business is assuring the present and creating the future. This strategic and generative work requires learning, discussion, and time.

Recommendations: Provide Board Orientation and Governance Education

1. Create and pursue a proactive, intensive one- to two-year governance development program that focuses on the areas identified in this report, including one or more additional retreats during 2020, after trustees have had an opportunity to more fully consider these recommendations but before they forget the harm that governance failure can cause.
2. Hire an experienced governance professional to support the board in pursuing exemplary governance.
3. Establish a board Governance Committee, that among other responsibilities should develop a comprehensive orientation program to help new members get off to a strong start. Planning ongoing education for all is absolutely necessary as well, especially during the next couple of years as the board transforms into a fiduciary board.
4. Include planned board education as an agenda item at every board and committee meeting. Focus could rotate among becoming a better board, better understanding the institutions, and better understanding the higher education landscape.
5. Adopt a Code of Conduct for board members and have each member review and sign it annually.
6. Conduct a board self-assessment annually. Engage a consultant to conduct a comprehensive board self-assessment every three to five years.

5. The President and the Board: Ensuring Mutual Objectives

The relationship between the system CEO and the board is fundamental to the overall standing, progress and direction of the University System. The new president has moved appropriately and aggressively to establish a new tone and his own brand of leadership. And, while he continues to learn about system leadership, his approach is one that merits support, most especially by the governing board.

Traditionally, the job of the president is to set the direction of the system and the Columbia campus, while looking to the board for strategic and policy leadership. And, the president looks to the board for support. Boards should feel comfortable engaging on the issues that matter most, asking questions and depending on a transparent level of communications with the president. Boards rely on current data and dashboards that clarify how the system and its institutions are progressing, where problems exist, and addressing risk.

It is particularly important for the current board to be advocates in support of the university system's new leadership, in part due to the controversy surrounding his selection. Ongoing focus on the vote that resulted in his selection is neither appropriate nor helpful. These are challenging times for public higher education and the University of South Carolina System is a media magnet. Board and presidential partnership should be clearly consistent with the collaborative model of advancing the campuses that is essential for the system and state.

As essential as is the board's support of the president, so must be the president's respect and engagement with the board and its members on strategic issues and risks. Presidents who are not sufficiently engaged in a partnership with their board are likely to ultimately come up short in their success or tenure.

Establishing a formal written set of mutual expectations between the board and the president provides a stable but flexible platform that defines what the board expects from the president and what the president should expect from the board. This exercise and compendium should be developed with patience and care and thoughtfully revised as needed. It should be framed directly by the president and board leadership, taken seriously, and periodically reviewed together.

Recommendations: The President and the Board: Ensuring Mutual Expectations

1. Ensure that the board and president are establishing a relationship built on trust, candor and transparency.
2. Develop a meaningful written set of mutual expectations between the president and the board.
3. Urge the president to participate in national meetings that focus on presidential leadership and board governance; likewise encourage board members to attend annual meetings on effective board governance and relationships with the CEO.
4. Establish a Transition Committee in support of the new president—notwithstanding the delayed implementation of such a committee, it can still facilitate connections and demonstrate to a wider audience that the governance partnership is thriving at the University of South Carolina.
5. Ensure an annual assessment process for the president based on expectations, leadership, strategic direction, fundraising and policy advocacy.
 - a. Likewise, the board should establish a periodic assessment process for all members of the board regardless of how they were selected to serve.

Conclusion

The events of last summer arose from a fundamental misconception of the role of the board of trustees, compounded by a focus on the research university to the detriment of attention to the other system institutions and to assessing and improving the board itself. In order to engage in

fiduciary governance instead of political governance, trustees and all who work with them need to learn a new game and play by new rules. Little wonder then, that our recommendations are numerous and wide-ranging.

In summary, our overarching recommendation is to begin with a board development plan (consider the suggestions in Appendix B) that addresses these sets of recommendations:

1. Diversify board membership and input
2. Govern the system and all of its institutions
3. Revise board meetings and committees
4. Provide board orientation and governance education
5. The president and the board: ensure mutual expectations

At the board's January 24-25, 2020 retreat, we will engage trustees in a healthy dialogue about these recommendations and support their efforts to begin shaping a multi-year board development plan.

Appendices:

- A. Testimony before the Senate Education Subcommittee on S798
- B. Sample Board Development Plan
- C. Suggested Bylaws Revisions

Appendix A: Testimony before the Senate Education Subcommittee on S798

Testimony Before the South Carolina Senate Education Subcommittee on S.798
Columbia, South Carolina
October 31, 2019

Richard Legon
Ellen Chaffee, Ph.D.
Association of Governing Boards of Universities and Colleges

Mr. Chairman and distinguished members of the Subcommittee:

I am Richard Legon, immediate past president of the Association of Governing Boards of Universities and Colleges (AGB); I'm joined by my colleague, Dr. Ellen Chaffee who is an AGB senior fellow and former public university president. In addition to advising higher education governing boards, we have each served on institution governing bodies. We welcome the invitation to participate in your deliberations about higher education governance.

The board and president of the University of South Carolina engaged AGB to help guide forward momentum after the governance challenges associated with the recent presidential search process, and they encouraged us to accept your invitation today. Ellen and I are focused on developing and improving the university's board governance, while three other AGB colleagues focus—in concert with institution administrative and academic leadership-- on the overall strategic direction of the University. We bring many (**many**) years of institution leadership and governance expertise to the assignment. Approaching its 100th anniversary, AGB has an exceptional track record of supporting better governance for higher education systems and institutions in every state, and in a number of foreign countries. While AGB may be headquartered in Washington, DC, its roots and commitment are focused on the institutions and students we impact across the country.

We are here this morning to share our thoughts about university governance as you wrestle with important questions about how to ensure a vibrant mission-focused university; we have been invited to share some thoughts about effective board governance at your invitation. We are not here to either defend or indict the governing body of the University for any of its recent actions, nor are we here to take a position on S.798. Board governance can always be improved; the UofSC board's recognition that it must do better and its willingness to embrace continuous improvement are commendable.

Members of the UofSC governing body appear to be dedicated individuals who are somewhat constrained in meeting their fundamental fiduciary responsibilities, as we will describe.

However, it is never helpful for a board's performance, itself, to become the "story"—too many recent high-profile higher education crises are related to board governance failures. This board seems to recognize that it can—must—meet its responsibilities more effectively going forward and it has reached out for assistance to do so.

Of course, this state's legislature plays a significant role in higher education board governance – much more directly in South Carolina, perhaps, than in any other state--and not just with regard to UofSC. Some of the constraints on UofSC's governing board have to do with how its members are selected. We have views and recommendations for your consideration, and we will be happy to respond to your questions.

Context

The days of a higher education governing board that merely rubber-stamps the university administration at one end or micromanages the institution at the other end are long gone. Today's governance focuses on high-level "upstream" engagement, strategic issues, securing the institution's future, effective shared governance, and advocating on behalf of higher education's value proposition. Presidents and governing boards have come to grips with the fact that the 21st century higher education sector is quite literally under siege--with urgings for disruption, change and transformation informing most institution plans. Universities with highly effective board members working together and in partnership with bold and visionary presidents have tremendous strategic advantages over those that do not. Research and experience confirm that boards that understand good governance and have members who bring diverse expertise and perspectives make better decisions than others, especially when working as partners with the president. Board governance today requires a level of engagement that is a careful balancing act—supporting the president but recognizing that the board has a different job that is serious and often complex. It is no longer the honorary position it once was when board governance was a lot about social functions, football tickets, and perks. It's neither about board passivity nor intrusion. It is a responsibility that requires a professional commitment to a voluntary role; it is about being an effective fiduciary.

Let's take a minute to see what universities are facing today. Since the Great Recession (2008-2009), higher education has witnessed a dramatic drop in state financial support for higher education across the country (including here in South Carolina, where state support for universities and colleges relative to the state general fund has declined by about one-third in 10 years[i] and now totals about 10% of UofSC's annual revenues). Many higher ed leaders across the country now refer to their "state" institutions as being "state-located" --rather than state supported. Even where institutions have made significant cost reductions, other costs have continued to increase, and students have had to cover more of the bill. However, the price students are paying today has much to do with the cost shift from the public to the customer.

Faced with the prospect of increased debt, the value proposition of higher education has shifted for many. Parents and prospective students are actually asking whether a higher education degree is worth the price or if it's even needed at all. Much of today's debate is about higher

education's value proposition and how great academic institutions, even flagships such as the University of South Carolina, and the campuses that constitute the system will continue to achieve their missions and meet their public purpose. Many governing boards today are correctly focused on the sustainability of their institutions' business model.

No wonder the pressure for high performing governing boards and institution leadership is heightened throughout higher education. Most of the nation's 50,000 men and women who serve over 20 million postsecondary students are being asked to own and address these strategic challenges. Board members are typically highly successful women and men in their own fields and professions; yet often they do not realize that governing a college or university carries distinct responsibilities most never experience in their day job. As with our colleges and universities themselves, it is incumbent that governing bodies recognize their own obligation to improve how they meet their responsibilities.

Being a member of a highly effective higher education fiduciary body is not only a high honor; it is also a commitment to be accountable to students (perhaps any board's primary responsibility), to other internal stakeholders, to the public, to those who look to the University for its applied research initiatives, and to a state's strategic goals relative to the university's mission, including its role as an economic driver. The future of a state's culture, civic life, economy, and workforce depend on successful universities. And it is the fiduciary body—the governing board—that bears the responsibility under the law to hold the institution, the state's assets, in trust and to ensure that it effectively fulfills its mission and can do so well into the future. While higher education success depends on collaborative leadership, ultimate authority rests with the governing board.

Fiduciary Responsibility and Independence: The Gold Standard

We realize that members of this body hold important responsibilities. You are directly responsible to the citizens in the district you represent. Yours is by definition a political position and structure. Elected officials and trustees who serve on higher education governing bodies have mutually important expectations, yet a very different scope of accountability – you to the people, and trustees to the university and its assets—human, financial and capital—that the state has entrusted to their care.

Trustees hold a university in trust, similar to trust officers in financial institutions. Fiduciary principles, including the duties of Obedience, Loyalty, and Care (reinforced in South Carolina State Code), are the gold standard of voluntary service on a governing body. Trustees are obligated to put the best interests of the institution ahead of everything else. They can meet those obligations best only if they are independent, both individually and as a board. When they are obligated to any other entity, their service to the university's best interests is compromised. Trustees who seek a second (or more) term should be evaluated on their demonstrated commitment to the institution and their effectiveness as a board member, not their service to or agreement with an appointing authority—be it through gubernatorial selection or legislative election.

The process of electing and appointing nearly all public-institution trustees in South Carolina gives the appearance (and perhaps the reality) of a conflict of interest for all board members. We heard diverse answers to the question, “To whom is the board accountable?” Typically, the reply was either “the General Assembly” or “the people of South Carolina.” This discrepancy, which we witnessed in perception and in action, is the primary basis for concern from the university’s accrediting body, the Southern Association of Colleges and Schools Commission on Colleges (SACS-COC).

Independence and fiduciary principles are the essential ingredients of effective board leadership and accountability. The U.S. Supreme Court in 1819 affirmed the primacy of independent governing bodies in the Dartmouth Case. The potential for legislative or gubernatorial intrusion, beginning with the process of board member selection for many South Carolina institutions, compromises the independence of the board members. We infer that trustees feel beholden to those who select them. While some legislators might not intend to hinder or influence governing board members, others have a clear expectation of loyalty and expectation from trustees in the form of who the board is accountable to. This flies in the face of independence and fiduciary responsibility. And, on a practical level it puts the university in the cross hairs of SACS-COC accreditation review--jeopardizing the university’s federal financial support (student assistance and federally supported research grants), now totaling some \$1/2 billion annually, which would clearly harm the university’s reputation and its appeal to stellar faculty, and raise concerns with students and parents who may see the institution as unstable. While few love their accrediting body, its judgment is the key to accessing federal funding and to institutional reputation. If an accreditor is concerned about board independence, then we urge you to likewise be concerned.

Both Ellen and I have traveled widely, likely to every state as well as to countries on every continent, talking with and educating leaders about governance, and helping governing boards to address weaknesses. A significant distinction we have found across the globe is between our model of independence, autonomy, and innovation versus the often-glaring assertion of government dicta on institution direction, leadership, academic content and delivery that has hindered the quality of institutions in many parts of the world. In this country, we expect our universities to be models of excellence, service, research; and we expect trustees to protect institutional autonomy. The primary instrument for those values is the voluntary service of independent fiduciaries who understand their responsibilities and know how best to fulfill them. Requiring board members to periodically campaign, as do those seeking political positions, for a role that requires them to be independent creates an appearance of conflict of interest, and an implicit expectation of reciprocity that is not characteristic of our best institutions and their boards. And again, it risks the expressed concern of SACS.

Some Suggestions for Your Consideration

Our client is the leadership of the University—the president and board of the university system. And while we don’t take a position on S.798, two points jump out: the bill doesn’t seem to address the major variables that impede best practices in governance, such as thoughtful

composition of the board by selecting members who can help with the university's major decisions, and freedom from real or perceived undue external influence.

Board Composition

We have been told that this body will not consider not electing trustees. Although we would like to recommend exactly that, we offer instead some perspective and more modest suggestions for your consideration.

Independence. A number of different trustee-selection processes serve the states.

Gubernatorial appointment is the most common (some direct appointment and most with an advise and consent process). Four states have some boards elected by citizens voting directly for board candidates. Several states have recently added an advisory body structure—similar to how some states select judges—whereby individuals are screened against specific criteria for board service before presenting two or three nominees for each seat from which a governor is expected to make her/his selection. Several states have established a blend between publicly appointed board members and self-perpetuating board members (which is how all private institution governing boards are established). We have worked with public institution governing boards that have both politically appointed and selected board members. It can be a very workable structure that has a fair chance to ensure board independence—so long as all board members are encouraged to resist external pressures on their action, and to recognize their responsibility for confidentiality. There are in fact four states that have some form of legislative election—but even in those few states, there are processes that ensure the independence of the board on which they serve, including seats for self-perpetuating board members.

Diversity. Diversity matters—including gender, race and ethnicity, age, and experience. Your current method of electing trustees makes diversity all but impossible, as is readily apparent. Of the 18 elected and appointed members of the UofSC board, 16 are white men and 10 are from the legal profession. Homogeneity to this degree is a liability that does not serve the state well. We have met these people. As we stated, they are absolutely dedicated to the university and committed to adding value regardless of background. Although this is by no means a commentary on their commitment, highly effective governing boards need the collective wisdom that diverse members can provide. Diverse backgrounds ensure diverse opinions, experiences and ideas. Diverse boards make better decisions, welcome and offer fresh information and perspectives, and inspire wider circles of trust in the communities they serve. A diverse board helps to ensure thoughtful consideration of the changes that the public is demanding of all of higher education.

Qualifications. We urge you to consider establishing a process that encourages candidates who have needed characteristics to apply. Some qualities, such as character and balance by gender and race, might always be addressed; others might emphasize current needs, such as financial, marketing, social media, or construction expertise, or experience in higher education leadership and the academy.

Term limits. Long-serving board members can be a plus, but some appropriate consideration of term limits makes sense. Higher education is a dynamic sector with a mandate for dramatic change. Just as some governing boards are looking for non-traditional and creative leaders for their institution presidencies, so too must a board be able to recruit women and men with fresh views and experience. It is important for internal stakeholders (students, faculty, staff, and donors) to be able to look at the governing body of their institution and “see” what the university needs to be and look like. Many states and nearly all private-university boards have term limits, ranging from about 9 to 12 years. One-third of UofSC’s board members have already served more than 12 years. I hear what I’m saying, and it is probably not sitting well with the colleagues we are working with who currently serve the university, however change is the coin of the realm in today’s higher education. If we are going to reclaim the public’s trust, we need to do different things differently. Our recommendation is not to immediately or abruptly replace current board members, but a phased move to term limits is effective governance.

Freedom from Real or Perceived Undue Influence

Independent boards are accountable for fulfilling their fiduciary duty, meaning they must have no external allegiance and respond to no pressure other than the best interests of the university.

Role of the governor. The current law in South Carolina allows the sitting governor to serve as the de facto board chair at meetings that he or she attends. We cannot find another example of such gubernatorial influence in any other state. While a number of states include the governor as an ex officio board member, none have the governor designated as the board chair. In addition, public officials must understand that they cannot “take off their official hat” when discussing anything having to do with a board’s governance responsibilities. Thus, for example, the mere fact of a public official contacting board members on a given governance matter can be viewed as having a material influence or the appearance of undue influence. Both can compromise the essential value of independence; they create a conflicted situation. The Governor will not “NOT” be viewed as the governor when weighing in—even in the role of chair of the board; it intrudes on effective board governance.

Role of the legislator. We see quite a lot of inappropriate communication in our study of the board, whether it be internal or external, initiated by trustees or by others. This is a major topic for our work as university consultants. We heard about some very concerning expectations and requests that some legislators apparently have made of trustees, and we hope to help both them and you with that going forward. If you all cannot resolve this issue, both here and at other public universities in the state, SACS is likely to notice—and the press and internal stakeholders across the system already are concerned. We hope that at a minimum, legislators will respect and treat board members as independent volunteers who have a job to do that does not include loyalty or service to politically elected leaders. Conflating political influence with board service has the consequence of creating another de facto legislative body.

And, finally a word about board member orientation. We have been told by UofSC board members that orientation to their duties and fiduciary responsibilities is typically cursory at best;

and that it occurs following a board member's election. South Carolina isn't alone in having a minimalist orientation process. Suffice to say that a more robust orientation program merits consideration by the board. And we intend to work with the UofSC board to put meat on the bones of board member orientation. Here is where the legislature and governor can add value by mandating in-service education for all public board members serving institutions across the state—a program that establishes a specific number of hours annually or biennially is something that an increasing number of states have developed under the aegis of their coordinating board. Interestingly, Texas now requires all appointed board members to take an online course (and pass an online exam) before they can vote in a board meeting. Orientation is important.

Conclusion

An iconic leader of higher education once wrote for an AGB national commission on higher education board governance that, “no institution can ever be better than the quality and leadership of its governing board.” He and his fellow commission members recognized that among board structures, a self-perpetuating board is best, and an elected board is the least effective as it, too often, compromises board independence and accountability. Ultimately, when a board defaults (even unintentionally) to operate like a political body, it loses much of its independence.

The University of South Carolina system is one of the state's grand successes. The universities and colleges contribute to the state's economy to the tune of \$5.5 billion annually; they attract and partner with major industries and agencies; they retain thousands of young South Carolinians and attract major talent and investments from around the country and the world. They serve every corner of the state with new providers and outreach services in essential professions like public health, nursing, education, law, and social work. We urge you to help ensure that this vital engine for your future will benefit from leadership that demonstrates best practices in governance.

We welcome your questions and we thank you for allowing us to comment on this important matter.

^[1] https://www.che.sc.gov/CHE_Docs/finance/abstract/Abstract-2017-web.pdf, page 114

Appendix B: Sample Board Development Plan

January 25, 2020

Hear and begin to understand this assessment and consider a draft plan.

Confirm a set of operating rules “starting today” that will help correct some of the more troublesome behavior. Define the consequence for violating any of them. Examples:

1. No conversations about the university or system outside the board room except with the president, chancellor, the chair, and other trustees.
2. All conversations will aim to strengthen, not divide, the full board as a community with unified purpose and best intentions.
3. Annual renewal of commitment to a statement of trustee roles and responsibilities.
4. Indicate intentions regarding voluntary self-limiting terms and future of the Intercollegiate Athletics Committee.

Remainder of 2020 and into 2021 as needed

Build competencies:

- Review and revise bylaws.
- Develop and approve key governance policies.
- Develop and approve new committee structure and charters, job descriptions for non-voting members and Special Advisory Committee.
- Develop and begin to use a new meeting structure and schedule.
- Build board education into every committee and board meeting agenda.
- Develop clear mutual understandings for the board’s and each trustee’s communication with campus constituencies and legislators.
- Review and revise as needed the system organizational chart and leadership titles

Build relationships:

- Chair and president work to build a strong president-chair-board partnership; all share fiduciary responsibility for the system and institutions.
- Committee chairs and executive liaison staff review and revise practices as needed to develop trustee-led partnerships that are informed by institutional realities and needs.
- Create a consistent strategy to provide appropriate board engagement with campus and faculty leaders that fulfills shared governance and fiduciary expectations.
- Academic committee work with provost and faculty to write and gain approval for a board policy on shared governance.
- Create diversity and inclusion goals and metrics for the board itself

Build accountability and sustainability

- Create and pursue a proactive one- to two-year governance education program that focuses on the areas identified in this report.
- Elect and support a board chair with expectations of a leadership role
- Establish goals for the board itself and evaluate results
- Hire a highly experienced board professional

2021

- Conduct a baseline comprehensive board self-evaluation with an 8-hour retreat discussion and planning session based on the results

Continue all of the above, revising and improving as needed.

Appendix C: Suggested Bylaws Revisions and New Board Policies

The Bylaws need updating, and the board needs a set of written policies and procedures to help guide their actions as well.

Recommendations: Board Policies

Written policies are a major ally in board orientation and re-education, and nothing is more helpful in getting a group on the same page than actually writing the page together. Board policies enable prospective and new trustees to find answers to many of their questions on their own time, they provide a common touchstone to reduce misunderstandings, and they enable the board to continuously improve as they update these documents based on new experiences. For example, it had been 11 years since this board conducted a presidential search. It would have been helpful, at least as a starting point, to have documentation of how searches were done in the past. Establish a board manual, including but not limited to policies on:

1. Board roles and responsibilities
2. Trustee roles and responsibilities, including those of ex officio and non-voting members
3. Trustee evaluation and accountability, annual commitment statement
4. Presidential evaluation
5. Presidential search and selection
6. Communication protocols
7. Board orientation and education
8. Board evaluation and accountability
9. Shared governance philosophy and practices

Recommendations: Board Bylaws Revisions

Institution governing board bylaws define the legal expectations of a governing body's structure and responsibilities—they are a “rulebook” of a board's operations. Men and women considering service on a board should read a board's bylaws before they join, so they get a sense of how the board does its job. Bylaws are important and deserve regular attention.

Elements of a public institution's bylaws are mandated by state policy, with little opportunity to update or amend. Beyond the board's fundamental purposes and authority, however, bylaws define the basic framework of how the board does its business, including membership, officers, elections, committees, and amendment procedures. Bylaws define operations that are relatively stable over time, but best practice is to review and amend as needed about every five years. Initiating the review is normally assigned to the board's Governance Committee.

Based on our review of the UofSC System Board's bylaws, we believe that the following changes to this central policy document merit consideration for amendment—both to facilitate a

modernization of the board's work and to clarify current policy. Amending the bylaws will ultimately require input from the board's attorney.

Article II:

Section 1: There needs to be time spent on clarifying the "governor's designee v. the governor serving on the board". It is unique to have a placeholder for the Governor who sits in for the Governor, whose service is both honorific and linked to policy. Consistency in board culture is important, even when it comes to a governor's seat at the table. We urge the legislature to consider changing the relationship of the Governor to UofSC's board.

Section 2: At the end of this section on trustee terms of office, we recommend adding a statement that encourages trustees to consider voluntarily enabling others to serve by not re-applying after 12 years of service.

Article IV: (Board Responsibilities)

Section 1: "and shall provide ultimate accountability to the public and the general assembly"

As pointed out during consultants' testimony in the SC Senate Subcommittee (appendix A), the governing board must recognize both that it is independent of any government agency and that its primary accountability falls under the standards of a fiduciary body—therefore to the mission and assets (human, capital and financial) of the institutions for which it bears ultimate responsibility. We urge this board to delete "and the general assembly."

We also suggest adding "Advocacy on behalf of the UofSC System and its institutions" to the list of board duties in this section.

Article VI: (Officers of the Board)

Section 1: The Governor's service as ex officio chair of the board "when present."

Recognizing that this is a matter of state law and is therefore an appropriate part of the bylaws, this structure is unique to South Carolina and is clearly inefficient board governance. Gubernatorial service on an institution governing board isn't unique, however service as board chair can be viewed as a conflict of interest and most likely would disrupt the continuity of board work over time.

Section 4: "Chair Emeritus"

Designating any member of a governing board as "emeritus" should be linked to specific criteria. And, while we do see few examples of outstanding board leaders being so designated, to establish a presumptive designation seems neither appropriate nor purposeful. We urge that the standard designation be eliminated. The board could develop a policy that defines the emeritus criteria, to which the board would refer when a candidate for the honor arises.

Article VII:

Section 1

Revise as needed to respond to your decisions about our recommendations above for the board's committee structure.

Item D: Consultants recommend that the board chair appoint committee members (subject to state law). Also, while all committees should have a clearly written charge, only those whose focus is an enduring element of fiduciary responsibility should be included in the bylaws. These include committees on governance, finance, and academic affairs; however, they may be named. The bylaws should also include an executive committee with limited powers. The board may establish other standing and ad hoc committees as needed outside the bylaws by approving their charters.

Article VIII:

The board chair should appoint committee chairs and vice chairs. Revise Article VIII as needed to respond to your decisions about our recommendations above for the board's committee structure.

Section 1: There is an implicit focus on the Columbia campus; the bylaws must clarify throughout that the governing board is the responsible fiduciary body for the system and all of its campuses. This is important for all stakeholders to understand as well as for incoming board members. Adding language that reinforces board commitment and oversight of the system and its overall education progress would be an important addition to the board's bylaws. And we urge a specific reference to the board's responsibility to understand and be accountable for educational quality across all of the institutions within the system—perhaps noting the relationship between academic quality and institutional finances (a good point to include in the respective charges for the Academic Affairs Committee and the Finance Committee)

Article IX:

Section 4:

Change meeting material dissemination to 7-10 working days in advance of meetings. In addition, it could be helpful to reference the Board Chair's input to board meeting agendas—in concert with the president and appropriate senior staff.

Section 8:

Add reference to committee agendas.

Article X:

Consultants also recommend referencing (a) consent agendas, (b) strategic issues (or similar term), and (c) board development as standard entries in the order of business.

Article XI:

Consider including reference to the following:

- Coordinate committee meeting agendas between committee chairs and appropriate staff members
- Coordinate board meeting agendas between board chair and president
- Expect board members to remain aware of issues confronting higher education and help ensure that the board has the opportunity to assess their potential impact/risks for the UofSC System.

Article XII:

We urge the addition of language that demonstrates the president's role in providing "Strategic Leadership" to the overall UofSC System

Article XV: (Board of Visitors)

We urge the following adjustments:

- Move the overall purpose of the Board of Visitors to Section 1 (currently Sections 1 and 2 focus on structure and selection of BOV members)
- The apparent role of campus BoV's are advancement and advocacy—we recommend that the detailed committee structure of these bodies is superfluous since the BOV is not a fiduciary body; and therefore, the current committee structure (Executive, Student Affairs, and University Relations) appears duplicative and of little direct value or responsibility
- Add a point about collaboration between the governing body, the campus BOV and the campus foundation.

Article XVI:

We recommend that the governing board's conflict of interest policy be elevated beyond standard state agency requirements and that a "compelling benefit" standard principle be added.

Article XVIII:

Section 3. It is woefully inappropriate for the bylaws to state that the "use of the masculine in the bylaws includes the feminine gender." This obvious implicit bias should be rectified throughout the bylaws (for example the description of the board chair indicates an expectation that only a male shall be selected to lead the board)—21st century governance merits correcting the bylaws and rendering this article moot.