



# South Carolina Commission on Higher Education

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Dr. Bettie Rose Horne, Vice Chair  
Mr. Paul O. Batson, III  
Mr. Tim M. Hofferth  
Ms. Dianne C. Kuhl  
Ms. Allison Dean Love  
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Vice Admiral Charles Munns, USN (ret.)  
Mr. Clark B. Parker  
Mr. Kim F. Phillips  
Ms. Terrye C. Seckinger  
Dr. Jennifer B. Settlemyer  
Mr. Hood Temple  
Dr. Evans Whitaker  
  
Ms. Julie J. Carullo  
Interim Executive Director

**TO:** Admiral Charles L. Munns, Chair, and Members Hofferth, Kuhl, Parker, Seckinger, and Settlemyer, Committee on Governmental & Administrative Affairs

**FROM:** Julie Carullo, Interim Executive Director and Director of External Affairs

**DATE:** May 1, 2015

**RE:** Meeting of the Committee on Governmental & Administrative Affairs, May 7, 2015

The Committee on Governmental & Administrative Affairs (GAAC) is scheduled to meet on **Thursday, May 7, at 9:15 am in the SC Commission on Higher Education's Palmetto Conference Room, 3<sup>rd</sup> Floor.** The meeting is scheduled prior to the full Commission meeting on the same day. An agenda and materials are attached.

If you have questions, please contact me at (803) 737-2292.

*Enclosures*

*cc: Chairman John Finan and Commissioners Batson, Horne, Love, Lynn, Phillips, Temple, and Whitaker*

*CHE Executive Leadership Team*

**SOUTH CAROLINA COMMISSION ON HIGHER EDUCATION**  
**COMMITTEE ON GOVERNMENTAL AND ADMINISTRATIVE AFFAIRS**  
**Palmetto Conference Room, 3<sup>rd</sup> Floor**  
**1122 Lady Street, Columbia, SC 29201**  
**Thursday, May 7, 2015 at 9:15 a.m.**

**\*Attachment**

- 1) **Introductions**
- 2) **\*Approval of Minutes of May 7, 2015**
- 3) **\*Discussion, Legal Counsel for CHE**
- 4) **\*Discussion, Board Governance**
- 5) **Discussion, Retreat Planning**
- 6) **Discussion, CHE Positions**
  - a. **Executive Director**
  - b. **Director Academic Affairs**
  - c. **Director of Finance**
  - d. **Communications and Legal**
- 7) **Status Updates**
  - a. **Policy on Licensure – Commissioner Kuhl**
  - b. **Policy Manual Draft – Commissioner Seckinger**
- 8) **Next Meetings**
  - a. **June 4, 2015, 1:00 pm**
  - b. **October 1, 2015, 1:00 pm**
- 9) **Other Business**
- 10) **Adjournment**

*Pending Approval of the Committee*

**South Carolina Commission on Higher Education  
Committee on Governmental & Administrative Affairs (GAA)  
3<sup>rd</sup> Floor Conference Room  
1122 Lady Street, Suite 300, Columbia, SC 29201  
1:00 p.m. (or 30 minutes upon adjournment) on April 2, 2015**

**Committee Members in Attendance:**

Admiral Charles Munns  
Ms. Diane Kuhl  
Ms. Terrye Seckinger  
Mr. Clark Parker  
Mr. Tim Hofferth  
Dr. Jennifer Settlemyer

**Others in Attendance:**

Ms. Julie Carullo, CHE  
Dr. Argentini Anderson, CHE  
Ms. Tanya Rogers, CHE  
Ms. Beth Bell, Clemson University  
Dr. Kathy Coleman, Clemson University  
Mr. Mike LeFever, SC Independent Colleges & Universities

Chair Admiral Munns called the meeting to order at 1:50 pm. The meeting was held following the full Commission which adjourned later than anticipated.

**1. Introduction**

**2. Approval of minutes of February 2, 2015**

Commissioner Kuhl asked to discuss information in the last paragraph of Item 5 of the minutes under consideration concerning the committee's coordination with the Committee on Academic Affairs and Licensing with respect to clarification of staff responsibility and licensing requirements. After discussion, it was affirmed that Commissioner Kuhl will follow up on the matter with Commissioner Horne, chair of the Committee on Academic Affairs and Licensing. Chair Munns then called for approval of the minutes which were approved.

**3. Discussion, Review of CHE 2015 Legislative Agenda Advocacy Items and Legislative Update and Review for Consideration of Recommended CHE Action, if applicable:**

The committee discussed the veterans' bills, the bond issue and also proposed legislation regarding the separation of the State Technical College System from CHE program approval oversight. Chair

Munns shared that the veterans' bill and the bond issue, both CHE legislative agenda items, were longer-term issues to be addressed; however, the separation from the Technical College System needs to be addressed immediately. Ms. Julie Carullo affirmed that there were not other items to be added to the aforementioned issues.

Commissioner Kuhl suggested that the item relating to "teaching of the constitution" should be added to the GAA agenda. She believes that CHE needs to facilitate this issue because each institution has a different approach. Commissioner Seckinger shared with the committee that the bill has a loyalty clause included which may be a problem as a requirement. Ms. Carullo confirmed the status of the bill under discussion in the House (H.3151) and explained that the statutory provisions need to be modernized because it originated in the 1920s. Ms. Carullo noted that there is not a bill in the Senate on this issue. However, an amendment by Senator Grooms regarding higher education and the teaching of the constitution has been attached to a bill passed by the Senate (S.437). She explained that the bill to which the amendment was attached relates to a requirement of high school students to pass the U.S. citizenship exam as part of their curriculum. Upon questioning, Ms. Carullo confirmed for the committee that CHE collected and delivered information on this matter to Senator Grooms previously as requested. Dr. Kathy Coleman offered comments on the legislation under consideration and suggested that institutions should work with CHE staff to create an acceptable solution that works for all institutions. Commissioners discussed that staff should work with institutions in facilitating a solution for language.

**Commissioner Seckinger moved and Commissioner Settlemyer seconded a motion that CHE will wait for the General Assembly to act. Once the GA has acted, CHE staff will work on facilitation of implementation.**

The following legislative items remain for CHE legislative agenda: veterans' initiatives and the bond bill, as well as the upcoming legislation in subcommittee concerning academic program approval and the technical college system. Staff will coordinate with Commissioners regarding any action items with respect to the upcoming subcommittee on higher education and related to the defunding of CHE in the House budget recommendations.

#### **4. Status Review of Policy Memos for Confidentiality and Licensure Default**

Commissioner Seckinger provided the committee with a CHE policy manual draft that she was developing, noting work on this document was still in process.

#### **5. Discussion and Consideration, Proposal for CHE Discussion of a Board Governance Model.**

Chair Munns updated the committee on the history behind the proposal for consideration of a board governance model. The Commission does not have such a governance model in place. Commissioner Seckinger informed the committee that currently there is no policy manual to govern the Board and speak to the Agency. She reported that she has been speaking to the members in the state about having a global template regarding governance structure. She recommended the book, *Boards That Make a Difference*, by John Carver. Commissioner Seckinger has been working on a template for CHE Board (see above item 4), indicating that she has completed one-third of the draft which she anticipated completing and forwarding to the committee by May 15, 2015. The committee will

provide comments and/or suggestions via email, and then there will be an ends process review at the committee's June meeting.

Commissioner Seckinger then shared that she spoke with Mr. Paul Meyer, a consultant who works with governmental boards, and he can help the committee and Commission with policy structure. She shared his proposal with the committee. Ms. Carullo reminded the committee that CHE as a state agency must follow the state's procurement law in securing a consultant. Commissioner Seckinger proposed that the Board review the proposal, and in June, select the appropriate parts of the proposal that they would like to pursue.

## **6. Retreat, CHE pending events**

The committee discussed having a pre-planned agenda for CHE's fall retreat recommended by the committee with input from the commissioners and the universities. Staff will follow up to solicit feedback for the Committee's use in this process. The committee discussed the length of the retreat and possible topics to include governance of the agency. The committee will work on this item with proposed agenda determined by the June meeting.

Chair Munns shared with the committee that the SC Chamber as part of its Competitiveness Agenda has a meeting on August 8, 2015, and CHE should be involved. It was noted that Dr. Sutton had previously communicated with Chamber President Ted Pitts and Ms. Carullo will follow up with the Chamber regarding participation in this event.

The committee briefly discussed future CHE meetings with the Council of Presidents, and a meeting in October was suggested.

Commission Hofferth expressed his concern that CHE does not have legal counsel on staff considering that there are two lawsuits against the agency presently pending. He also believes that the board should have access to legal representation. Ms. Carullo shared that several years ago CHE explored hiring legal counsel on staff, but its request to do so was denied by the Attorney General. She noted that the agency must coordinate with the state's Attorney General on this matter or in retaining counsel as was the case with the pending litigation. Commissioner Seckinger suggested that CHE should have someone on retainer and should consider adding a retainer for an attorney as a line item on the budget. Staff will explore further. Commissioner Hofferth also stated that the Commission should fill the public relations position which is presently vacant.

**7. Next meeting:** June 4, 2015, 1:00 p.m.

## **8. Other Business**

## **9. Adjournment**

There being no other business, the meeting was adjourned at 3:00 p.m.

### Agenda Item 3: Discussion, Legal Counsel for CHE

**Relevant SC Code of Law Citations Regarding the Hiring of Attorneys:**  
(Citations excerpted 4/28/2015 from SC Code of Laws [www.scstatehouse.gov](http://www.scstatehouse.gov))

**SECTION 1-7-160.** Hiring of attorneys.

A department or agency of state government may not hire a classified or temporary attorney as an employee except upon the written approval of the Attorney General and at compensation approved by him. All of these attorneys at all times are under the supervision and control of the Attorney General except as otherwise provided by law unless prior approval by the State Budget and Control Board is obtained. This section does not apply to an attorney hired by the General Assembly or the Judicial department.

HISTORY: 2008 Act No. 353, Section 2, Pt 10A, eff July 1, 2009.

**SECTION 1-7-170.** Engaging attorney on fee basis.

(A) A department or agency of state government may not engage on a fee basis an attorney at law except upon the written approval of the Attorney General and upon a fee as must be approved by him. This section does not apply to the employment of attorneys in special cases in inferior courts when the fee to be paid does not exceed two hundred fifty dollars or exceptions approved by the State Budget and Control Board. This section does not apply to an attorney hired by the General Assembly or the judicial department.

(B) A public institution of higher learning shall engage and compensate outside counsel in accordance with policies and procedures adopted by the State Budget and Control Board for matters of bonded indebtedness, public finance, borrowing, and related financial matters.

HISTORY: 2008 Act No. 353, Section 2, Pt 10B, eff July 1, 2009; 2011 Act No. 74, Pt VI, Section 9, eff August 1, 2011.

### Process Considerations in Hiring Staff/External Counsel:

#### *Staff Position*

- In seeking hired staff counsel, the agency must submit a letter of request to the SC Attorney General's Office for consideration and approval.
- State Human Resources processes must be followed for the hiring process.
- Final approval of the Attorney General can be given after the agency has furnished the Attorney General's Office with the following satisfactory information and checks on the agency's candidate: 1) Position number, classification level, and proposed annual salary; 2) a SLED background check; 3) A 3-year Department of Revenue tax check; 4) a 10-year Department of Motor Vehicles/Department of Public Safety driver's record check; and 5) a status report from the Commission on Lawyer Conduct.

#### *External Counsel for Specific Representation*

CHE has in the past requested hiring of external counsel for specific representation or purpose. For example, counsel retained for licensing issues under review relating to the Charleston School of Law.

Agencies must request authorization and approval of the Attorney General which is facilitated with the submission of a Form 1 as indicated below.

Excerpted from SC Attorney General Website at <http://www.scag.gov/civil>

***Agency Request for Authorization to Employ Associate Counsel and Form 1***

*For attorneys hired after July 1, 2008, the following billable hourly rates will be applicable to engagement of counsel on and after that date:*

*Attorneys with 10 or more years of experience up to \$150.00 per hour*

*Attorneys with 6 – 9 years of experience up to \$110.00 per hour*

*Attorneys with 3 – 5 years of experience up to \$90.00 per hour*

*Attorneys with up to 3 years of experience up to \$80.00 per hour*

*A copy of a revised Form 1, which can be used to facilitate the approval of attorneys' fees under the new rate structure adopted by the Attorney General's Office, can be found at this [link](#). The Comptroller's Office will not authorize the payment of attorneys' fees on any matter unless a Form 1 has been approved by the Attorney General's Office. It is the responsibility of the agency seeking the approval of rates to certify the years of experience of each attorney for whom approval of a rate is requested. Years of experience are to be indicated as of the date of submission of the Form 1.*

**Motion for Consideration:** With the Commission on Higher Education (CHE) designed and authorized as a Commission to coordinate higher education actions within the state of South Carolina, we face many frequent and urgent issues which require professional legal judgments. As CHE does not currently have ready access to legal opinion, the Governmental and Administrative Affairs Committee recommends to the Commission that it direct and authorize CHE staff to take steps to make available legal advice either through the retention of legal staffing as appropriate to the agency's needs and budget and within the procedures as required through state law.

## **Agenda Item 4: Discussion, Board Governance**

Outline for Discussion points on Board Governance Considerations

*(Underlined/blue text is hyperlinked to resource)*

### **1) Understand Existing authorities**

- a. Resources
  - i. Updated Staff Document identifying statutory agency provisions (See below House Report, Included as Addendum D)
  - ii. [Agency Accountability Report, FY2013-14](#)
  - iii. Recent agency reports submitted to the House and Senate regarding Legislative Oversight Review Requirements:
    - [Office of Senate Oversight, Agency Restructuring & Cost Savings Report pursuant to §1-30-10\(G\), January 13, 2015](#)
    - [House Legislative Oversight Committee, Agency Restructuring & Cost Savings Report pursuant to §1-30-10\(G\), March 31, 2015](#)
- b. Other Resource Needs?

### **2) Contracted Governance Project?**

- a. If undertaken, then first state “The need” for and desired “outcome” from spending time and money on a CHE governance project.
- b. Advance a motion to the Commission to:
  - i. Authorize creation of a governance project
  - ii. Fund the project and commit Commissioner/Staff time and priority.
  - iii. Contract for the Services
    1. SC Consolidated Procurement Code must be followed: §11-35-10 et seq and SC Regulation 19-445, SC Consolidated Procurement Code (accessible at <http://procurement.sc.gov/PS/legal/PS-legal-procurement-law.phtm>)
    2. For contracts of at least \$10,000 and up to \$50,000 the “Competitive Sealed Proposal” process must be followed by the agency in coordination with the SC Office of Procurement Services. The process involves multiple steps with an anticipated timeline of 120 days or more.
  - iv. Establish expected project milestones.
    - a. Before or after new Executive Director?
  - v. Project to define governance and documentation options
- c. Commission training: At retreat
- d. Document creation: Policy manual

**Discussions with Commission:**

Board Governance: A discussion to educate and to seek sense of the Commission on:

- a. Understanding our existing authorities: Staff has updated a review of statutory CHE provisions, and has prepared other documents in response to recent legislative inquiries regarding oversight review. Is this sufficient? If not what is needed and how is it done?
- b. Policy manual: GAAC is in the process of developing a policy manual.
- c. Commissioner and Staff training: Tentatively set for the August retreat. What is the subject and syllabus of the training, who conducts it, and if external how are they hired?
- d. New governance structures: Are any new governance structures required, and if so what and how are they created?