

STATE OF FLORIDA AUDITOR GENERAL

Operational Audit

Report No. 2023-049
November 2022

STATE UNIVERSITY SYSTEM BOARD OF GOVERNORS



Sherrill F. Norman, CPA
Auditor General

Board of Governors and Chancellor

During the period January through December 2021, Marshall Criser, III, served as Chancellor of the Board of Governors and the following individuals served as Members of the Board of Governors:

Sydney "Syd" Kitson, Chair	Ken Jones
Brian D. Lamb, Vice Chair	Darlene Jordan
Tim Cerio	Alan M. Levine
Richard Corcoran ^a	Charles H. Lydecker
Aubrey Edge	Ally Schneifer through 5-31-21 ^b
Patricia L. Frost	Dr. Steven M. Scott
Edward Haddock	Dr. William Self ^c
H. Wayne Huizenga, Jr.	Eric Silagy
Nastassia Janvier from 6-1-21 ^b	Kent Stermon

^a Commissioner of Education.

^b Chair of the Florida Student Association (equivalent to Florida Student Association President referred to in Article IX, Section 7(d) of the State Constitution).

^c Chair of the Advisory Council of Faculty Senates.

The team leader was Craig J. Pohlmann, CPA, and the audit was supervised by Maria G. Loar, CPA.

Please address inquiries regarding this report to Jaime N. Hoelscher, CPA, Audit Manager, by e-mail at jaimehoelscher@aud.state.fl.us or by telephone at (850) 412-2868.

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STATE UNIVERSITY SYSTEM BOARD OF GOVERNORS

SUMMARY

This operational audit of the Board of Governors (BOG) for the State University System (SUS) focused on selected BOG processes and administrative activities and included a follow-up on findings noted in our report No. 2020-032. Our operational audit disclosed the following:

Finding 1: BOG procedures did not always provide for effective review, approval, and amendment of State university Educational & General (E&G) carryforward spending plans or effective monitoring of State university use of E&G appropriation carryforward funds.

Finding 2: BOG regulations and guidance could be enhanced to ensure that State universities and the BOG comply with the statutory requirements governing the implementation and approval of bonus schemes for SUS employees.

BACKGROUND

Pursuant to Article IX, Section 7(d) of the State Constitution, the Board of Governors (BOG) has the duty to operate, regulate, control, and be fully responsible for the management of the State University System. The BOG is composed of 17 members, including 14 citizen members who are appointed by the Governor, subject to confirmation by the Senate, and serve 7-year staggered terms; the Commissioner of Education; the Chair of the Advisory Council of Faculty Senates, or the equivalent; and the President of the Florida Student Association, or the equivalent.

The BOG establishes the powers and duties of the university boards of trustees. The trustees are responsible for setting university policies, which provide governance in accordance with State law and BOG regulations.

FINDINGS AND RECOMMENDATIONS

Finding 1: University Education and General Carryforward Spending Plans

State law¹ requires each university that retains a State operating fund carry forward balance in excess of 7 percent of its State operating budget to submit an Education and General (E&G) carryforward spending plan to the Board of Governors (BOG). According to BOG regulations,² the E&G carryforward spending plans must be submitted to the BOG for approval by a date established by the BOG Chancellor. BOG regulations³ also require each university to prepare an annual fixed capital outlay (FCO) budget

¹ Section 1011.45, Florida Statutes.

² BOG Regulation 9.007, *State University Operating Budgets and Requests*.

³ BOG Regulation 14.003, *Fixed Capital Outlay Projects – University Budgeting Procedures*.

that includes all FCO projects listed by categories, including E&G operating projects, carryforward – major projects, and carryforward – minor projects.

BOG personnel established procedures requiring review of each university E&G carryforward spending plan to evaluate compliance with State law and BOG regulations, including whether prospective expenditures and prospective FCO expenditures comply with the stipulations in State law and agree with university FCO budgets. Authorized proposed expenditures in the E&G carryforward spending plans may include, for example, capital outlay expenditures that meet certain stipulations, operating expenditures that support the university mission and are nonrecurring, and a contingency reserve for expenses incurred as a result of a state of emergency declared by the Governor. In addition, State law requires the BOG to review, approve, and amend, if necessary, the E&G carryforward spending plans by November 15 each year.

During the 2021 calendar year, the BOG Chancellor set October 1, 2021, as the due date for universities to submit E&G carryforward spending plans and FCO budgets. Each of the 12 universities submitted to the BOG by the due date an E&G carryforward spending plan in a packet containing the FCO budget for the 2021-22 fiscal year, and the BOG approved each plan on November 4, 2021.

As part of our audit, we evaluated the sufficiency of BOG E&G carryforward spending plan reviews for 4 selected universities⁴ with proposed expenditures totaling \$726.1 million for the 2021-22 fiscal year. In addition, we compared all university E&G carryforward spending plans to their respective FCO budgets for consistency. We found that:

- The BOG received the E&G carryforward spending plans during the period September 16, 2021, through October 1, 2021, and initiated the plan review and evaluation process. However, before the BOG approved the plans, BOG personnel did not complete the process to determine whether the plans complied with State law and BOG regulations. BOG support for reviews of the 4 university E&G carryforward spending plans indicated that the reviews were completed 42 to 79 days after the plans were approved.

In response to our inquiry, BOG personnel indicated that the time frame from receipt of the plans to the date for submitting agenda items for the BOG November 4, 2021, Board meeting did not provide enough time to complete the review and evaluation of the plans. Notwithstanding this response, since the BOG approved the plans before reviews were completed, there was an increased risk for the approved plans to be inaccurate or noncompliant.

- E&G carryforward spending plan reviews by BOG personnel resulted in certain plan amendments provided to the universities; however, although the amendments must be reflected on each university's end-of-year E&G carryforward spending plan report, universities were not required to amend, reapprove, or resubmit the amended plans to the BOG.

Specifically, after review of a university E&G carryforward spending plan, in January 2022, BOG personnel questioned university personnel about the allowability of proposed expenditures totaling \$1.9 million for unrealized gains on investments, which did not satisfy the statutory requirement for E&G carryforward fund use. In February 2022, university personnel responded by agreeing that the proposed expenditures would be unallowable and would amend the university E&G carryforward spending plan and that the amendment would also be reflected on their end-of-year report. However, the end-of-the year report and BOG personnel E&G carryforward spending plan amendments were not submitted to the BOG for approval and

⁴ The selected universities were Florida State University, University of Central Florida, University of Florida, and University of South Florida.

the university was not required to use the E&G carryforward spending plan amendments to monitor E&G expenditures.

Absent BOG approval of the E&G carryforward spending plan amendments and required university use of such amendments, there is an increased risk that E&G carryforward spending plans and related expenditures may be inappropriate and contrary to State law.

- E&G carryforward spending plans for two universities included reserves totaling \$3.6 million “for various non-recurring expenses during the year” and reserves totaling \$408,454 “to offset possible loss of revenue due to fluctuations in enrollment.” BOG personnel indicated that the reserves were allowed to be included in E&G carryforward spending plans because universities need a reserve fund as a “cost of doing business” and had a legitimate need for amounts they could not foresee related to contingencies. Notwithstanding this response, State law and BOG regulations only include contingency reserves in E&G carryforward spending plans for expenses that will be incurred as a result of a state of emergency declared by the Governor. Since the reserves had no correlation to a declared emergency, inclusion of the reserves in the E&G carryforward spending plans is contrary to State law.
- BOG personnel indicated that, contrary to BOG-required procedures, they did not determine whether prospective FCO expenditures on university E&G carryforward spending plans agreed with university FCO budgets because the FCO budgets and E&G carryforward spending plans represent two different reporting documents and that a comparison of the two was not necessary. Notwithstanding, as part of our audit, we obtained documents from BOG personnel and compared all university FCO budgets to the respective E&G carryforward spending plans. As shown in Table 1, our comparisons found that the documents for 4 universities included differences ranging from \$883,456 (New College of Florida) to \$15,461,162 (Florida State University).

Table 1
Comparison of E&G Carryforward Spending Plans and FCO Budgets
Totals for Minor E&G Carryforward Projects
2021-22 Fiscal Year

University	Minor E&G Carryforward Projects		
	Per FCO Budget	Per E&G Spending Plan	Difference
Florida Polytechnic University	\$ 1,213,963	\$ -	\$ 1,213,963
Florida State University	35,140,571	19,679,409	15,461,162
New College of Florida	4,056,189	4,939,645	(883,456)
University of South Florida	29,912,362	26,176,704	3,735,658

Source: BOG personnel reviewed and approved E&G spending plans and FCO budgets.

In response to our inquiry, BOG personnel indicated that the FCO budget included planned expenditures from prior year and current year E&G resources whereas the E&G carryforward spending plans represent planned expenditures from current resources without consideration of prior year funding. However, reporting planned expenditures differently on the two documents could mislead those who are interested in how E&G carryforward amounts will be used.

Subsequent to our inquiry, BOG personnel updated BOG procedures in May 2022 to no longer require comparisons of FCO budgets to FCO prospective expenditures on E&G carryforward spending plans. However, if universities consistently reported planned expenditures from prior year and current year E&G resources on the two documents, a comparison of FCO budget documents and E&G carryforward spending plans could help identify inconsistencies in the documents, provide a basis for discussions with universities to remedy significant differences and

make plan amendments, and enhance BOG and university monitoring efforts over E&G appropriation use.

Recommendation: BOG procedures for monitoring university E&G carryforward spending plans should be enhanced to require and ensure that the plans limit prospective expenditures to purposes established in State law and are appropriately reviewed, amended, and approved; planned FCO expenditures in the plans are reasonably consistent with university FCO budgets; and universities use the BOG-approved plans to help monitor expenditures of E&G carryforward resources.

Follow-Up to Management's Response

Management's response indicates that reserves identified on carryforward spending plans are authorized pursuant to Section 1011.45(3)(f), Florida Statutes, which authorizes expenditures for "any purpose specified by the board or in the General Appropriations Act." Notwithstanding, such a broad interpretation of Section 1011.45(3)(f), Florida Statutes, serves only to undermine the authorized uses or limitations specifically expressed in that subsection. Consequently, reserves should be limited to the purpose specified in Section 1011.45(3)(g), Florida Statutes, and our finding stands as presented.

Finding 2: Monitoring and Oversight of University Bonus Schemes

Pursuant to the State Constitution,⁵ the BOG has the duty to operate, regulate, control, and be fully responsible for the management of the State University System (SUS). State law⁶ authorizes the BOG to regulate the SUS and adopt a regulation development procedure for the BOG and the university board of trustees (trustees) to use in implementing their constitutional duties and responsibilities. State law⁷ also authorizes universities to implement bonus schemes based on awards for work performance or employee recruitment and retention and requires bonus schemes, including the evaluation criteria by which a bonus will be awarded, to be submitted to and approved by the BOG before its implementation.

Pursuant to BOG regulations,⁸ university trustees may establish and implement one or more plans that authorize the award of bonuses based on employee work performance or for purposes of recruitment and retention. The regulations permit any university bonus scheme that is consistent with the provisions set forth in the regulations to be implemented upon approval by the university trustees and, if the trustee-approved bonus scheme deviates from that authority, the bonus scheme must not be implemented until submitted to and approved by the BOG.

In response to our inquiry, BOG personnel acknowledged that, as long as the university bonus plans comport with the criteria in the regulations and are submitted to the university trustees for approval, the plans are deemed approved by the BOG. BOG personnel also indicated that the framework in the regulations recognizes the fiduciary responsibilities of university trustees to their respective institutions and eliminates the need for universities to submit to the BOG bonus plans that follow the criteria the BOG pre-approved in the regulations. If university trustees determine that a proposed bonus scheme

⁵ Article IX, Section 7(d) of the State Constitution.

⁶ Section 1001.706, Florida Statutes.

⁷ Section 1012.978, Florida Statutes, effective July 1, 2021.

⁸ BOG Regulation 9.015, *University Bonus Plans* (effective November 2021).

deviates from the criteria set forth in the regulations, the bonus scheme must be submitted to the BOG for approval.

Notwithstanding, the BOG may not promulgate regulations that are inconsistent with State law. Furthermore, there appears to be no legal basis for the BOG to delegate to university trustees its statutorily prescribed discretionary authority to approve university bonus schemes or to relieve university trustees of their statutorily prescribed duty to submit the bonus schemes for BOG approval prior to implementation. Accordingly, the BOG regulation governing university bonus schemes does not appear to comply with State law.

Recommendation: BOG regulations and guidance should be reviewed and revised as appropriate to ensure that university bonus schemes are not implemented until submitted to and approved by the BOG pursuant to State law.

PRIOR AUDIT FOLLOW-UP

The Board of Governors had taken corrective actions for findings included in our report No. 2020-032.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida's citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

We conducted this operational audit from April 2022 through June 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This operational audit focused on selected Board of Governors (BOG) processes and administrative activities.

For those areas, our audit objectives were to:

- Evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, rules, regulations, contracts, grant agreements, and other guidelines.
- Examine internal controls designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of records and reports, and safeguarding of assets, and identify weaknesses in those controls.
- Determine whether management had taken corrective actions for findings included in our report No. 2020-032.
- Identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

This audit was designed to identify, for those areas included within the scope of the audit, weaknesses in management's internal controls significant to our audit objectives; instances of noncompliance with applicable laws, rules, regulations, contracts, grant agreements, and other guidelines; and instances of inefficient or ineffective operational policies, procedures, or practices. The focus of this audit was to identify problems so that they may be corrected in such a way as to improve government accountability and efficiency and the stewardship of management. Professional judgment has been used in determining significance and audit risk and in selecting the particular transactions, legal compliance matters, records, and controls considered.

As described in more detail below, for those programs, activities, and functions included within the scope of our audit, our audit work included, but was not limited to, communicating to management and those charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the program, activity, or function; identifying and evaluating internal controls significant to our audit objectives; exercising professional judgment in considering significance and audit risk in the design and execution of the research, interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit findings and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

Our audit included the selection and examination of transactions and records, as well as events and conditions, occurring during the audit period of January 2021 through December 2021 and selected BOG actions taken prior and subsequent thereto. Unless otherwise indicated in this report, these records and transactions were not selected with the intent of statistically projecting the results, although we have presented for perspective, where practicable, information concerning relevant population value or size and quantifications relative to the items selected for examination.

An audit by its nature does not include a review of all records and actions of management, staff, and vendors and, as a consequence, cannot be relied upon to identify all instances of noncompliance, fraud, waste, abuse, or inefficiency.

In conducting our audit, we:

- Reviewed applicable laws, rules, regulations, BOG policies and procedures, and other guidelines, and interviewed BOG personnel to obtain an understanding of applicable processes and administrative activities and the related requirements.
- Reviewed BOG information technology (IT) policies and procedures to determine whether the policies and procedures addressed certain important IT control functions, such as security access, systems development and maintenance, user authentication, and disaster recovery.
- Evaluated BOG procedures designed to prohibit former employees' access to IT data and resources. We examined access privileges for the 10 employees who separated from BOG employment during the audit period to determine whether the access privileges had been timely deactivated.
- Reviewed operating system, database, network, and application security settings to determine whether authentication controls were configured and enforced in accordance with IT best practices.

- Determined whether a comprehensive IT risk assessment had been established for the audit period to document the BOG risk management and assessment processes and security controls intended to protect the confidentiality, integrity, and availability of data and IT resources.
- Determined whether the BOG had implemented a formalized IT governance function to assist in the prioritization and use of IT resources.
- Inquired whether the BOG had any expenses or entered into any contracts under the authority granted by a state of emergency, declared or renewed during the audit period.
- Evaluated whether the BOG provided adequate monitoring and guidance to State universities to facilitate the submittal of and BOG approval for bonus schemes prior to implementation in accordance with the requirements of Section 1012.978, Florida Statutes.
- Evaluated BOG regulations and supporting documentation to determine whether the BOG had provided appropriate guidance regarding remunerations of State university presidents and administrative employees pursuant to Sections 1012.975 and 1012.976, Florida Statutes.
- Determined whether the BOG documented review of the State university 5-year educational plant surveys pursuant to Section 1013.31, Florida Statutes.
- Reviewed BOG records for four selected universities' Educational and General (E&G) carryforward spending plans submitted during our audit period to determine whether the BOG advised and provided adequate guidance to State universities regarding the proper use of E&G carryforward funds consistent with Section 1011.45, Florida Statutes, and BOG Regulation 9.007. Additionally, we examined BOG records to determine whether BOG personnel, pursuant to BOG procedures, compared E&G carryforward spending plans and fixed capital outlay budgets to identify differences and the reasonableness of BOG actions to resolve the differences.
- Reviewed BOG policies, procedures, and instructions related to the capital improvement plans prepared by the universities to determine whether the plans complied with Section 1013.64(4)(a), Florida Statutes.
- Reviewed and evaluated BOG procedures for preparing the University-wide 3-year Public Education Capital Outlay priority list to determine whether the list complied with Sections 1001.706(12) and 1013.64(4)(a), Florida Statutes.
- Reviewed BOG policies and procedures to determine if the BOG established and implemented an ethics policy to ensure compliance with annual ethics requirements, including the annual Florida Commission on Ethics financial disclosure filing, and whether the required BOG employees timely filed financial disclosures pursuant to Section 112.3145, Florida Statutes.
- Reviewed BOG procedures for allocating non-resident student tuition waivers to universities to evaluate compliance with Section 1009.26(20), Florida Statutes.
- Examined BOG records to determine whether the BOG-implemented procedures provided proper guidance to universities, and the BOG monitored university submittals, to ensure that fees assessed by universities (student activity and service, student financial aid, student health, athletic, and capital improvement trust fund fee) during the audit period complied with Section 1009.24, Florida Statutes.
- Communicated on an interim basis with applicable officials to ensure the timely resolution of issues involving controls and noncompliance.
- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.
- Prepared and submitted for management response the findings and recommendations that are included in this report and which describe the matters requiring corrective actions. Management's response is included in this report under the heading **MANAGEMENT'S RESPONSE**.

AUTHORITY

Section 11.45, Florida Statutes, requires that the Auditor General conduct an operational audit of each University on a periodic basis. Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.

A handwritten signature in blue ink that reads "Sherrill F. Norman". The signature is fluid and cursive, with the first name being the most prominent.

Sherrill F. Norman, CPA
Auditor General


MANAGEMENT'S RESPONSE



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MEMORANDUM

TO: Sherrill F. Norman, Auditor General

FROM: Marshall Criser III, Chancellor 

DATE: November 7, 2022

RE: Management Response – 2022 Board of Governors Operational Audit

I offer my thanks to you and your staff for their diligence and thoroughness in conducting this operational audit. As reflected in our response below, we have carefully reviewed and considered your findings and related recommendations for the Board of Governors.

Below is the official management response to the two findings you presented to us in the Preliminary and Tentative Findings Report.

Finding 1: BOG procedures did not always provide for effective review, approval, and amendment of State University Educational & General (E&G) carryforward spending plans or effective monitoring of State university use of E&G appropriation carryforward funds.

Recommendation: BOG procedures for monitoring university E&G carryforward spending plans should be enhanced to require and ensure that the plans limit prospective expenditures to purposes established in State law and are appropriately reviewed, amended, and approved; planned FCO expenditures in the plans are reasonably consistent with university FCO budgets; and universities use the BOG-approved plans to help monitor expenditures of E&G carryforward resources.

Board of Governors Response: Before responding to the recommendation, we offer the following additional information:

1. The P&T states that the 'BOG Chancellor set October 1, 2021, as the due date for universities to submit E&G carryforward spending plans...' While this is an accurate statement, the report fails to explain that Section 1011.45(2), Florida

Florida Agricultural and Mechanical University | Florida Atlantic University | Florida Gulf Coast University | Florida International University
Florida Polytechnic University | Florida State University | New College of Florida | University of Central Florida
University of Florida | University of North Florida | University of South Florida | University of West Florida

Statutes, establishes September 30 as the deadline for the submission of plans to the university boards of trustees. The reader is led to believe that the Board does not request the plans with sufficient time to adequately review the spending plans. Section 1011.45(2), Florida Statutes, states:

The spending plan shall be submitted to university's board of trustees for review, approval, or, if necessary, amendment by September 30, 2020 and each September 30 thereafter. The Board of Governors shall review, approve and amend, if necessary, each university's carry forward spending plan by November 15, 2020, and each November 15 thereafter.

Based on the statutory deadline, we established October 1 as the deadline for submission to the Board, although universities may submit earlier if the board of trustees has approved the plan. The amount of time allowed by statute to receive and review by Board staff and submit to the Board of Governors for approval is limited. The time allowed is even shorter in that agenda materials for board meetings are generally due two weeks in advance of the meeting to allow for the proper briefing of all Board members.

2. When the Board approves the carryforward spending plans, staff informs the Board there are additional questions that must be reconciled. The Board acknowledges this by including in the motion for approval, that staff have additional questions that must be addressed by the universities.
3. The \$1.9 million for unrealized gains on investments, identified by Board staff, only represents .2 percent of the total carryforward spending plan funds of \$998 million.
4. The \$3.6 million identified on the carryforward spending plans as reserves would fall under section 1011.45(3)(f) Florida Statutes, which states 'Any purpose specified by the board or in the General Appropriations Act.' Therefore, we do believe a university reserve is authorized pursuant to this statute.

As universities and Board staff become more familiar with the carryforward spending process, the review of the plans is becoming quicker. The review of the 2022-2023 carryforward spending plans were completed, including responses by universities to questions, well in advance of the Board meeting scheduled for November 10.

November 7, 2022

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We concur with the recommendation, and staff will work on additional guidance that bridges the gap between the current year carryforward spending plans for FCO and the FCO budgets and will review the current regulation on carryforward spending plans for an opportunity to encourage the universities to use the Board of Governors approved plans to help monitor expenditures of E&G carryforward resources.

Finding 2: BOG regulations and guidance could be enhanced to ensure that State universities and the BOG comply with the statutory requirements governing the implementation and approval of bonus schemes for SUS employees.

Recommendation: BOG regulations and guidance should be reviewed and revised as appropriate to ensure that university bonus schemes are not implemented until submitted to and approved by the BOG pursuant to State law.

Board of Governors Response: We concur with the recommendation and will work to ensure alignment between regulations and section 1012.978, Florida Statutes, with respect to university bonus plans.

The Auditor General's report correctly notes that pursuant to the State Constitution, the Board of Governors has the duty to operate, regulate, control, and be fully responsible for the management of the State University System. The Constitution provides the regulatory authority to the Board to implement System-wide policies that affect the universities, including university personnel. The authority over the personnel programs is recognized in law in section 1001.705(2), Florida Statutes, and in the Governance Agreement between the Board of Governors, the Legislature, and the Executive Office of the Governor. Consequently, the Board of Governors has the authority to promulgate a regulation that affects university personnel.