

**Massachusetts Board of Higher Education
EXECUTIVE COMMITTEE**

October 11, 2022
1:30 p.m.

The October 11, 2022 meeting of the Executive Committee of the Board of Higher Education ("BHE" or "the Board") was held virtually on the web-conference platform Zoom.

Meeting Minutes

Committee Members Present: BHE Chair Chris Gabrieli; and Patty Eppinger.

Committee Members Absent: Vice-Chair Sheila Harrity; Bill Walczak; Veronica Conforme; and Commissioner Carlos Santiago (non-voting, ex officio).

Others BHE Members Present: Mary Burns.

Department Staff Present: Constantia Papanikolaou; Elena Quiroz-Livanis.

I. CALL TO ORDER

Board Chair Chris Gabrieli called the meeting to order at 1:37 p.m. Roll call attendance was taken (see above for attendance roster).

II. DISCUSSION

List of Material's Used

BHE Motions 23-12 through 23-15; PowerPoint Presentations

Chair Gabrieli began the meeting by proposing a motion to approve minutes from the Executive Committee's June 13, 2022 meeting. Upon a motion duly made and seconded, the motion to approve the minutes was approved unanimously by all members present, by roll call vote.

Chair Gabrieli introduced BHE Motion 23-12 Approval and Adoption of Regulatory Amendments to 610 CMR 13.00: Financial Review and Risk Monitoring of Institutions of Higher Education, and Receipt and Endorsement of Implementation Procedures. Chief

Legal Counsel Papanikolaou presented the *Financial Assessment and Risk Monitoring (FARM) Regulatory Amendments: Approval and Adoption PowerPoint* presentation and advised the Committee members that there are two parts to the discussion and the motion. The first part involves a request for the Board to approve for promulgation the amendments to the regulation (610 CMR 13) that was posted for public comment this past summer; the purpose of the second part of the discussion and motion is to seek feedback from Committee and Board members about implementation procedures--the proposed surety worksheet-- before the Department finalizes the document.

Chief Legal Counsel Papanikolaou provided a brief background on the Massachusetts FARM law, which the Board is implementing through the regulations. The law requires all private institutions of higher education located in the Commonwealth and authorized to grant degrees to be annually screened and assessed to determine whether they are at risk of imminent closure. She stated that this responsibility is vested in the Board, acting by and through the Department, to conduct screenings and establish the processes to accomplish the work through the regulations, and through the Department's implementation of procedures. She added that the law allows a delegation of the screening process to an accreditor, pursuant to a Memorandum of Understanding (MOU). Institutions also have proactive responsibilities under the law, including a duty to notify the Board of any known financial liabilities or risks; annually post their audited financial statements; and ensure their trustees receive instruction and training at least once every four years on fiduciary and financial metrics.

Chief Legal Counsel Papanikolaou advised that the proposed edits to the regulations seek to add clarity by codifying existing requirements related to reporting and attestation, and also seek to establish new criteria for two unique sections of law which: 1) authorize the Department to impose sanctions on institutions for non-compliances; and 2) authorize the Department to require surety bonds from institution that are determined to be at risk of imminent closure to ensure that funding is available to refund student deposits and protect student records if the institution closes. Ms. Papanikolaou reminded the Committee members that the Board received a detailed presentation on the proposed amendments in June, when the Board authorized the Department to put the regulations out for public comment. She spoke about the public comment period, the two written comments received, and advised that no substantive edits resulted from the public comment process.

Chief Legal Counsel Papanikolaou discussed the timeline and next steps, including the November 11th target date for promulgation. She then summarized the proposed implementation procedure related to the statutory requirement that institutions "at risk of imminent closure" must include a bond with surety or a letter of credit in their

Contingency Closure Plans. Chief Legal Counsel Papanikolaou also summarized the contents of the surety worksheet, stating that it would include the Department's formula, which is based on the statute and BHE's approved criteria in the regulations. Committee member Eppinger thanked Chief Legal Counsel Papanikolaou and the team, stating that she thought the amendments were a great enhancement and that they will protect students. Board member Burns agreed with Eppinger's comment. Chair Gabrieli noted that he believes these are the right tactical next steps. Hearing no further discussion, Chair Gabrieli called for a motion to approve BHE 23-12. Upon a motion duly made and seconded, BHE motion 23-12 was unanimously approved by all members present, by roll call vote.

Chair Gabrieli moved on to introduce the next motion, BHE 23:13 Approval of Bunker Hill Community College's (BHCC) Proposed Alternative Disposition Leasing Process for the Current Charlestown Campus. Interim Deputy Commissioner for Administration and Finance, Joe Wallerstein, provided background and context on the motion through a PowerPoint presentation. He informed the Committee of the relevant statutory authority here, stating that BHE has the overall responsibility for property, real and personal, occupied or owned by the State Universities and Community Colleges. He continued, stating that the BHE is being asked to consider a proposed alternative leasing process for BHCC's Charlestown campus. He stated that, subject to the BHE's vote, BHCC will be presenting this proposal to the Asset Management Board (AMB) of the Division of Capital Asset Management and Maintenance (DCAMM) for approval. Department staff recommendation is for approval, subject to the completion of the public comment process with the understanding that any substantive changes to the proposal will be brought to the Board for approval. A determination of whether a proposed change is substantive will be made by the Commissioner, in consultation with the Board Chair. Chair Gabrieli invited BHCC's Vice President of Administration and Finance, John Pitcher, to provide the Committee information on the logistics of the proposed leasing request.

Vice President Pitcher thanked the Committee members and informed them that a representative from DCAMM is also present in the meeting. He informed the Committee that BHCC intends to monetize thirty-two acres of land, which in return would later on transform BHCC into a contemporary college. He stated that it is a P3 partnership, and the developers would remain in partnership with the institution for the entire lease term. He also advised that the institution is looking to partner with whomever occupies the space, subject to a procurement process. BHCC has received Preliminary AMB and is looking for Final Approval from the AMB on November 3rd. The institution is currently in the process of gathering public comments on the proposal, talking to various stakeholders, and will be attending "open house" meetings on October 20th. Committee

member Eppinger noted that the video presentation was helpful and advised that she needed more context, as this was a unique proposal as she did not recall ever receiving this kind of proposal in the past.

Vice President Pitcher clarified that this will be a DCAMM-managed project, and introduced Ashley Emerson, Project Manager of Public-Private Partnerships, from DCAMM. Mr. Pitcher added that it would take approximately eighteen months to develop the Request for Proposals (RFP), the content of which will seek to ensure the partnership does continue to work and that BHCC will have some control over who the partners are on campus. Ms. Emerson added that the AMB has certain authority to help structure alternative dispositions. She indicated that this approach is commonly used in MA state government projects, and it provides an opportunity to create a mutually beneficial partnership between a public entity and private entity.

Committee member Eppinger asked what was different in this approach compared to the typical operations. BHCC Vice President Pitcher answered that the institution has approximately \$100 million worth of deferred maintenance, and there is no ADA-accessible large space. He stated that they decided they needed to tear everything down, instead of generating \$125 million to refurbish the building which, even then would not still not meet the students' needs. He discussed the established phasing approach to the project, which involved building the new structure on existing property, and moving all the current programs into that structure while continuing the development.

Chief of Staff Quiroz-Livanis asked Interim Deputy Commissioner Wallerstein to discuss the BHE's and EOE's roles in this process. Mr. Wallerstein informed the members that when an institution wants to sell a piece of property, they come before the Board to seek approval. He believes that the BHE will see more similar types of projects. Ms. Quiroz-Livanis noted that Mr. Wallerstein worked closely with Secretary Peyser and EOE staff on capital projects, including this one; she asked him to speak about that. Mr. Wallerstein informed the Committee members that in partnership with DCAMM and EOE, they reviewed the major capital projects on a biannual basis, and the deferred maintenance and critical repair budgets that DCAMM approves. He noted that it does not fall directly under the BHE, but the Department plays a role in it. When it comes to matters that the Board does have authority over, that is when it is an appropriate time to involve them.

Chair Gabrieli asked about the vote Mr. Wallerstein is seeking and the timing. Interim Deputy Commissioner Wallerstein stated that the next step is for BHCC is to seek public comment and once that is closed, the proposal will be brought before AMB for a vote in

December. BHCC Vice President Pitcher added that the reason they have come before the Committee members is because of the apparently competing statutory requirements between public higher education properties being quasi-managed by BHE for disposition, but all-state properties in another regulation are managed by DCAMM. Chair Gabrieli asked for more information about the AMB. DCAMM Project Manager Emerson advised that the AMB is a Board that includes the Commissioner of DCAMM, the Inspector General, and others; they review P3 projects and are granted the authority to review alternative dispositions if it is not a full sale, and if it something less than a full sale they review the interest that the Commonwealth will maintain. She added that in reviewing, approving, and providing oversight of the project through DCAMM, the AMB seeks to ensure the project is feasible and that the Commonwealth is receiving value from it.

Chair Gabrieli expressed his concerns that some of Board members may possibly feel like this is a high-level policy decision of some importance, and that additional information, including context and background would be warranted. He informed Mr. Pitcher that they would need to offer an additional presentation at the full BHE meeting next week. Ms. Quiroz-Livanis suggested also asking Secretary Peyser to also provide more context at the October 18th meeting. Chair Gabrieli agreed and while he expressed some hesitation with moving forward he indicated that he was prepared to call the motion for a vote, subject to the understanding that additional information will be presented at the next BHE meeting before the full board takes the motion up. Hearing no further discussion, Chair Gabrieli called for a motion to approve BHE 23-13. Upon a motion duly made and seconded, BHE motion 23-13 was unanimously approved by all members present, by roll call vote.

Chair Gabrieli introduced BHE Motion 23-14 New Institution Application of the American University of Greece (AUG) to Award Degrees. Chair Gabrieli recognized that a representative from the institution, AUG President David Horner, was present and was available to speak to the motion and answer any questions. President Horner thanked the Executive Committee members for the opportunity to apply and present, and Department staff for their work. He added that while the institution has been in existence for decades, this proposal presents an opportunity for the institution to strengthen its ties within Massachusetts. Hearing no further discussion, Chair Gabrieli called for a motion to approve BHE 23-14. Upon a motion duly made and seconded, BHE Motion 23-14 was unanimously approved by all members present, by roll call vote.

Chair Gabrieli introduced BHE Motion 23-15 Affirmation and Amendment of the FY2023 Endowment Incentive Program Guidelines for the FY23 GAA Budget Appropriation. Mr. Wallerstein informed the members that this program was established under statute and

has been funded several times, most recently with the ARPA bill that passed last December. This motion is to affirm previous guidelines, amend dates, and acknowledge the new round of funding appropriated for this budget cycle. Board member Burns commented that is a great idea for colleges. Hearing no further discussion, Chair Gabrieli called for a motion to approve BHE 23-15. Upon a motion duly made and seconded, the motion was approved unanimously by all members present, by roll call vote.

Chair Gabrieli moved on to Advisory Council updates and asked Committee member Eppinger for an update on the Academic Affairs and Student Success (AA&SS) Advisory Council. Committee member Eppinger spoke retrospectively about the work of the AA&SS Council and the Department, noting that it has been tied to the Equity Agenda. She spoke about Chief Quiroz-Livanis' presentation showing what can be done for students before, during and after post-secondary education. She also stated that the AA&SS Council identified the following focus areas for the academic year: MAICEI; Student Mental Health; STEM Starter Academy; Civic Engagement and Learning; and Community College internships. The recommendation they received for SAT optional testing is to make it permanently optional; work is still being done with specific programs that will continue to require SAT scores.

After no further discussion, Chair Gabrieli concluded the meeting.

III. OTHER BUSINESS

There was no other business.

IV. ADJOURNMENT:

On a motion duly made and seconded, the meeting adjourned at 2:43 p.m.