

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Higher Education Committee

BILL: CS/SB 1270

INTRODUCER: Committee on Higher Education and Senator Oelrich

SUBJECT: Education/Governance

DATE: March 27, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Matthews</u>	<u>HE</u>	<u>Fav/CS</u>
2.	_____	_____	<u>HI</u>	_____
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides a comprehensive revision of law relating to university governance to include:

- Conformity of statute to constitutional authority relating to the powers and duties of the Board of Governors;
- Conformity of statute to constitutional authority relating to the powers and duties of the Legislature;
- Transfer of responsibilities from the State Board of Education or the Commissioner of Education to the Board of Governors or the University Boards of Trustees in certain instances;
- Preservation of the oversight role of the State Board of Education in public education, including in the areas of pre-K through 12 education, and community colleges;
- Deletion of obsolete terminology;
- Deletion of unnecessary references;
- Correction of cross-references; and
- Repeals of obsolete statutes.

This bill substantially amends sections 20.055, 20.15, 23.21, 110.131, 110.181, 112.0455, 112.19, 112.191, 112.313, 112.3135, 112.3145, 120.52, 120.65, 121.021, 121.35, 159.703, 159.704, 159.706, 211.3103, 215.16, 215.32, 215.559, 215.82, 216.0152, 216.251, 220.15, 250.10, 253.381, 255.02, 255.043, 255.102, 280.02, 286.001, 287.064, 287.155, 288.15, 288.17, 288.705, 288.7091, 288.8175, 295.07, 320.08058, 334.065, 377.705, 381.79, 388.43, 403.073, 403.074, 409.908, 413.051, 447.203, 455.2125, 456.028, 464.0196, 489.103, 489.503, 553.71, 633.01, 650.03, 943.1755, 1000.01, 1000.03, 1000.05, 1000.21, 1001.02, 1001.03, 1001.10,

1001.11, 1001.20, 1001.28, 1001.64, 1001.70, 1001.71, 1001.72, 1001.73, 1001.74, 1002.35, 1002.41, 1004.03, 1004.04, 1004.07, 1004.21, 1004.22, 1004.24, 1004.28, 1004.29, 1004.35, 1004.36, 1004.39, 1004.40, 1004.41, 1004.43, 1004.435, 1004.445, 1004.447, 1004.47, 1004.58, 1005.03, 1005.06, 1005.22, 1006.53, 1006.60, 1006.61, 1006.62, 1006.65, 1006.71, 1007.01, 1007.22, 1007.23, 1007.24, 1007.25, 1007.2615, 1007.262, 1007.264, 1007.265, 1007.27, 1007.28, 1007.33, 1008.29, 1008.30, 1008.32, 1008.345, 1008.37, 1008.38, 1008.45, 1008.46, 1009.01, 1009.21, 1009.24, 1009.26, 1009.27, 1009.285, 1009.29, 1009.40, 1009.90, 1009.91, 1009.971, 1010.01, 1010.011, 1010.02, 1010.04, 1010.07, 1010.09, 1010.30, 1010.86, 1011.01, 1011.011, 1011.40, 1011.41, 1011.4106, 1011.411, 1011.48, 1011.82, 1011.90, 1011.91, 1012.01, 1012.80, 1012.801, 1012.93, 1012.98, 1013.01, 1013.02, 1013.03, 1013.11, 1013.12, 1013.15, 1013.16, 1013.17, 1013.171, 1013.19, 1013.25, 1013.28, 1013.31, 1013.46, 1013.47, 1013.52, 1013.60, 1013.64, 1013.65, 1013.74, and 1013.78, F.S.

This bill creates sections 20.155 and 1001.706, F.S.

This bill repeals sections 186.805, 1004.54, 741.03055, 741.03056, 1001.75, 1007.261, 1007.31, 1007.32, 1008.51, 1011.4105, 1012.92, 1012.94, and 1012.95, F.S.

II. Present Situation:

Board of Governors Ballot Initiative

In 2002, Florida voters approved the ballot initiative, *Local Trustees and Statewide Governing Board to Manage Florida's University System*¹, which established both the Board of Governors (BOG) and the local boards of trustees (UBOTs) in the State Constitution. The new Section 7 of Article IX of the State Constitution provides:

- A local UBOT of 13 members to administer each state university;
- A statewide governing board of 17 members to be responsible for the coordinated and accountable operation of the entire university system; and
- A system structured in such a way as to avoid wasteful duplication of facilities or programs.

Membership of the BOG consists of 14 citizen-appointments by the Governor. Three additional members, specifically identified, are the commissioner of education, the chair of the advisory council of faculty senates, or the equivalent, and the Florida student association president. Appointments are subject to Florida Senate confirmation. The constitutional amendment provides for members to serve staggered terms of seven years, as provided by law.

Constitutional Authority Regarding the State and Education

Section 1, Article IX, of the State Constitution provides, in part:

It is...a paramount duty of the state to make adequate provision...for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.²

¹ Ballot Initiative Number 01-07, Passed November 5, 2002.

² s. 1(a), art. IX, of the State Constitution

Conformity of Constitutional Authority with Law

The 2005 Legislature delineated various powers and duties relating to the state university system in accordance with the State Constitution.³ Section 1001.705, F.S., cites s. 7, art. IX, of the State Constitution, in support of the following responsibilities of the Board of Governors:

- Defining each university's mission;
- Defining articulation in conjunction with the Legislature's authority over public schools and community colleges;
- Ensuring the well-planned coordination and operation of the State University System, and avoiding wasteful facility and program duplication;
- Submitting budget requests and accounting for expenditures of appropriations;
- Adopting strategic plans for the State University System;
- Governing admissions and approving, reviewing, and terminating degree programs;
- Operating as the public employer for collective bargaining purposes and establishing a personnel system for state university employees; and
- Complying with local, state, and federal laws.

This section references s. 3, Art. II, of the State Constitution, relating to the separation of powers of three branches of government; s. 1, Art. III, of the State Constitution, which vests the legislative power of the state in the Legislature; s. 8, Art. III, of the State Constitution, which provides the exclusive executive veto power of the Governor and the exclusive veto override power of the Legislature; s. 19, Art. III, of the State Constitution, which requires the Legislature to enact state planning and budget processes and requirements for budget requests by general law; s. 1, Art. VII, of the State Constitution, which requires that the authority to expend state funds be by general law enacted by the Legislature; and s. 1, Art. IX, of the State Constitution, which requires the Legislature to make adequate provision by law for institutions of higher learning, in identifying the Legislature's responsibilities:

- Making provision by law for the establishment, maintenance, and operation of institutions of higher learning;
- Appropriating all state funds through the General Appropriations Act or other law;
- Establishing tuition and fees; and
- Establishing policies relating to merit and need-based financial aid.⁴

Section 1001.705, F.S., also provides language evidencing legislative intent to reenact laws relating to the Board of Governors, the university boards of trustees, the State Board of Education, and the postsecondary education system in accordance with these provisions.

Transfers of Powers and Duties

Section 3(7), ch. 2000-321, L.O.F., provided for the following entities to be abolished in statute:

- The Board of Regents;

³ ch. 2005-285, L.O.F.

⁴ s. 1001.705(1)(c), F.S.

- The State Board of Community Colleges; and
- The Postsecondary Education Planning Committee.

Section 1000.01, F.S., provided for transfer, effective July 1, 2001, of all powers, duties, functions, records, personnel, and property; unexpended balances of appropriations, allocations, and other funds; administrative authority; administrative rules; pending issues; and existing contracts of the Board of Regents from the Board of Regents to the State Board of Education.⁵

OPPAGA Research on Centers and Institutes

The Office of Program Policy Analysis and Government Accountability (OPPAGA) conducted a study on centers and institutes in Florida.⁶ Researchers identified 17 centers, and provided information on the following: year established, affiliated agency or university, activity status, and support for repeal. Four of the entities are inactive, but both the administration at the university or agency, and the directors of the program expressed support for preservation in law. In only one instance was repeal recommended by both the administration at the affiliated institution and the director of the center or institute.⁷

III. Effect of Proposed Changes:

Transfer of Responsibilities

This bill provides for a transfer of responsibilities from the Board of Regents, the State Board of Education, or the Commissioner of Education, to the Board of Governors, in the following areas:

- Issues related to public employment, including retirement programs; ethics; personnel; collective bargaining; and state agency policies;
- Funding, including budget review and approval; bond finance, issuance of revenue certificates; trust funds, such as administration of the Capital Improvement Fee Trust Fund; and allowable expenditure of funds;
- Facilities, including inventories of development and maintenance of state university facilities; approval of construction projects; encouragement of multiple use of facilities; and joint use of facility approval;
- Purchasing and procurement, including competitive bidding and alternate procedures for bidding;
- Accounting, including rulemaking regarding financial records and statements, and supervision over audits of state universities;
- Tuition and fees, including resident status for tuition purposes for state university students; and
- Miscellaneous issues specific to higher education, including authority related to centers and institutes; collegiate license plates; accommodation for disabled persons; faculty practice plans and self-insurance programs; research and development authority designation; gender equity in sports; new program approval criteria; foreign language

⁵ s. 1000.01(5), F.S.

⁶ OPPAGA memo, *Information on Selected Centers and Institutes Considered for Repeal in 2005*, dated January 17, 2007.

⁷ The administration at the Florida A & M University, and the director of the program requested that authority for the Learning Development and Evaluation Center be removed from statute, on the basis that it is unnecessary.

credits and competence; sponsored research contract certification; and education assistance programs.

This bill additionally provides for a specific transfer, effective July 1, 2007, of any powers, duties, functions, records, property, unexpended balances of appropriations, allocations, and other funds; administrative authority and rules; pending issues; and existing contracts of the Board of Regents previously transferred to the State Board of Education, to the Board of Governors.

Relationship of the Board of Governors and the State Board of Education

This bill provides for the Board of Governors to work in consultation with the State Board of Education in certain instances, including regarding the creation of a statewide articulation agreement and an articulation accountability process; maintenance of a statewide course numbering system; adoption of college-level communication and computation skills, and a common placement test; creation of a coordinated K-20 education budget; development of a periodic plan for postsecondary enrollment; maintenance of a management information database; and creation of a state university quality accountability process.

Organizational Issues and Rulemaking

The designation of the Board of Governors of the State University System as part of the executive branch of government is maintained, and the University Board of Trustees is similarly classified. The status of the university board of trustees as a corporation is preserved.

This bill clarifies that both the BOG and the UBOTs are subject to ch.120, F.S., the Administrative Procedures Act, when acting pursuant to statutory authority derived from the Legislature. This is in keeping with the position of the Joint Administrative Procedures Committee, in a letter detailing the repeal of university rules in accordance with ch. 120, F.S.:

...it also seems clear that the Legislature still maintains some authority over the universities and that the universities derive at last some of their powers and duties from the Legislature, not the Florida Constitution.....⁸

Eminent Domain

UBOTs are provided eminent domain authority, subject to approval by the Administration Commission.

Clarifying Issues

This bill clarifies that no student fees are authorized, other than what is allowed by law, and prohibits the BOG from assessing a fee on UBOTs for administrative purposes or otherwise.

This bill specifies that funds provided to state universities in the General Appropriations Act are contingent upon each university complying with tuition and fee policies established in proviso, and tuition and fee policies for state universities provided by law.

⁸ Letter from Brian T. Moore, Senior Attorney, Joint Administrative Procedures Committee, to Steve Pfeiffer, General Counsel, New College of Florida, dated January 5, 2007.

Deletion of Obsolete and Unnecessary Terminology

This bill provides for a deletion of obsolete terminology, unless useful to provide a historical context. This includes references to the Board of Regents, the State Board of Community Colleges, and the Council for Education Policy Research and Improvement.

This bill provides for repeal of laws that created specific programs that are no longer in existence such as the Databank on Older Floridians and the Learning Development and Evaluation Center. This bill also repealed authority that is now unnecessary in statute, such as a section of law that provided powers and duties of university presidents, and specific courses reviewed by a center at a particular university.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Public Employer Status Designation

In *Florida Public Employees Council 79, AFSCME, AFL-CIO v. Public Employees Relations Commission*, the Court reviewed the basis for determining that the UBOTs are public employers of their own universities, for purposes of collective bargaining.⁹ The Court deemed statutory authority which classifies the individual UBOT as public employers without merit, as BOG exclusively possesses the power to designate public employer status, emanating from its constitutional authority.

Admissions Authority

In *NAACP, Inc. v. Florida Board of Regents*, the plaintiff challenged an admissions rule of the Board of Governors, under the Administrative Procedures Act (APA).¹⁰ In determining whether APA application is appropriate, the Court applied the long-established test for whether a constitutional provision is self-executing:

The basic guide, or test...is whether or not the provision lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment.¹¹

Here, the Court ruled the APA inapplicable, as the Board of Governors power to adopt rules regarding university admissions flows directly from the Constitution.

Delineation of Various Powers and Duties

In an action filed in the Second Judicial Circuit in 2004, plaintiffs challenged the constitutionality of various provisions in law relating to the State Board of Education and the Board of Governors.¹² In its final summary judgment, issued on February 28, 2007, the court struck down nine statutes in their entirety, and ruled unconstitutional a subsection of a tenth statute.¹³ The Office of the Attorney General filed a motion for rehearing March 7, 2007. Therefore, the case is still open and its outcome indeterminate at this time.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

⁹ 871 So.2d 270 (Fla. 1st DCA 2004).

¹⁰ 876 So.2d 636 (1st DCA 2004).

¹¹ *R.A. Gray v. Bryant*, 125 So.2d 846, 851 (Fla. 1960).

¹² *Floridians for Constitutional Integrity v. State Board of Education and the Board of Governors* (2004-CA-003040).

¹³ The statutes found unconstitutional are: sections 1001.02; 1001.03; 1001.74; 1001.75; 1004.03; 1004.22; 1006.71; 1008.32; 1008.46; and subsection (11) of s. 1009.21, F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
