

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 7237 PCB EPC 10-04 State University System

**SPONSOR(S):** Education Policy Council; Weatherford

**TIED BILLS:** **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Education Policy Council	13 Y, 0 N	Valenstein	Lowell
1)				
2)				
3)				
4)				
5)				

**SUMMARY ANALYSIS**

On March 24, 2010, the Chair of the Board of Governors (BOG), the Chancellor of the State University System, legislative leaders and the Governor signed an agreement acknowledging their shared constitutional authority for the state universities as set forth in the Constitution of the State of Florida. As a result of the agreement, the BOG filed a notice of dismissal, with prejudice, of their claims in the 2007 lawsuit filed against the Legislature. The presiding officers agreed to file legislation in accordance with the framework set forth in the governance agreement and to exercise their best efforts to accomplish the final passage of the legislation.

PCB EPC 10-04 implements the provisions of the governance agreement by amending statutes relating to the operation of the State University System as follows:

- Creates the Higher Education Coordinating Council to act as an advisory board to the Legislature, the State Board of Education and the BOG.
- Eliminates the requirement of legislative approval for certain programs that lead to licensure and repeals the specific statutory authority for certain programs.
- Repeals s. 1001.74, F.S., relating to the powers and duties of the university boards of trustees in recognition of the BOG's exclusive authority to delegate power and duties to the university boards of trustees.
- Acknowledges the BOG is responsible for the personnel programs for university employees, requires the BOG to confirm the presidential selection by a university board of trustees, and states the Department of Management Services will continue to control the state group insurance and retirement plans.
- Exempts state universities from certain requirements regarding communications and data processing.
- Allows a university to participate in the SUNCOM Network at the university's discretion.
- Acknowledges the BOG's authority to adopt regulations when acting pursuant to its constitutional duties and responsibilities.
- Requires the BOG to comply with the Administrative Procedure Act when acting pursuant to statutory authority, unless specifically authorized or required to adopt regulations.
- Authorizes the Department of State to remove certain rules from the Florida Administrative Code.
- Authorizes the BOG to approve: certain flexible tuition policies; requests to establish a fee not specifically authorized in law; and requests to increase certain existing fees.
- Requires the BOG to consider certain factors when reviewing fee proposals and flexible tuition policies.

The fiscal impact of the bill is indeterminate. (See FISCAL COMMENTS)

The effective date provided is July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### *The Board of Governors of the State University System and the University Boards of Trustees*

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

- A local board of trustees 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 Constitution provides for members to serve staggered terms of seven years, as provided by law.

The 2005 Legislature<sup>2</sup> codified the powers and duties of the BOG and the 2007 Legislature<sup>3</sup> extensively revised the statutes clarifying the powers and duties of the BOG and the university boards of trustees.

##### *Board of Governors Lawsuit*

In 2007, a lawsuit was filed by Bob Graham, Lou Frey, Jr., Talbot "Sandy" D'Alemberte, Joan Ruffier, Bruce Hauptle, James Jones, Howard Rock, Eric Shaw, Manoj Chopra and Frederick Strobel against Ken Pruitt, President of the Florida Senate and Marco Rubio, Speaker of the Florida House of Representatives, on behalf of the Florida Legislature. An amended complaint added the Board of Governors to the list of plaintiffs.

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<sup>1</sup> Ballot Initiative Number 01-07, Passed November 5, 2002.

<sup>2</sup> ch. 2005-285, L.O.F.

<sup>3</sup> ch. 2007-217, L.O.F.

The plaintiffs seek a declaration of rights concerning the validity of various statutes relating to the governance of the state university system, alleging that these statutes are contrary to fundamental and basic constitutional principles and are, therefore, unconstitutional. The plaintiffs seek to clarify the scope of the BOG's constitutional authority and identify the entity with authority to set tuition and fees for the State University System of Florida.

On March 24, 2010, the Chair of the BOG, the Chancellor of the State University System, legislative leaders and the Governor signed an agreement acknowledging their shared constitutional authority for the state universities as set forth in the Constitution of the State of Florida.<sup>4</sup>

As a result of the agreement, the BOG filed a notice of dismissal, with prejudice, of their claims<sup>5</sup> in the lawsuit and the presiding officers agreed to file legislation in accordance with the framework set forth in the governance agreement and to exercise their best efforts to accomplish the final passage of the legislation.

### State University System Governance Agreement

The governance agreement provides a framework for the collaborative exercise of joint authority by the BOG and the Legislature for Florida's public higher education in accordance with their respective state constitutional responsibilities provided in Article IX of the Florida Constitution.

The components of the governance agreement include master planning and coordination of Florida's higher education systems; strategic planning; university governance; financial aid; the Administrative Procedures Act and BOG regulations; tuition; and fees.

### **Master Planning & Coordinating Florida's Higher Education Systems**

A Higher Education Coordinating Council (council) will be established to identify unmet needs and to facilitate solutions to disputes regarding the creation of new degree programs and the establishment of new institutes, campuses, or centers. The council will consist of the following members: the Chancellor of the State University System of Florida; the Chancellor of the Florida College System; the Commissioner of Education; the Executive Director of the Independent Colleges and Universities of Florida; the Executive Director of the Commission for Independent Education; and two members representing the business community, one appointed by the President of the Senate and one by the Speaker of the House of Representatives.

The council will make recommendations to the Legislature, the State Board of Education and the BOG. Recommendations will be consistent with the following guiding principles:

- To achieve within existing resources a seamless academic educational system that fosters an integrated continuum of kindergarten through graduate school education for Florida's students;
- To promote consistent education policy across all educational delivery systems, focusing on students;
- To promote substantially improved articulation across all educational delivery systems;
- To promote a system that maximizes educational access and allows the opportunity for a high quality education for all Floridians;
- To promote a system of coordinated and consistent transfer of credit and data collection for improved accountability purposes between the education delivery systems.

The BOG will provide staff to support the work of the council.

### **State University System Strategic Planning Meeting**

The Chancellor of the State University System, the BOG Chair, and the Legislature's presiding officers will hold higher education strategic planning meetings once each year to discuss: budgets, budget requests, and accountability; strategic planning, including mission alignment, enrollment growth, anticipated university requests for major academic program expansion, and other significant policy and fiscal matters to promote collaboration and communication between the BOG and the Legislature; and

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<sup>4</sup> State University System Governance Agreement, March 24, 2010.

<sup>5</sup> The lawsuit is ongoing, as the other plaintiffs remain parties to the case.

issues regarding entities that have both statewide responsibility and state university system responsibility, such as the Florida Solar Energy Center.

### **University Governance**

The BOG and the Legislature agreed the BOG has exclusive authority for delegating powers and duties to the university boards of trustees. The BOG and the Legislature also agreed the BOG has exclusive authority for the personnel programs of the state universities; and the BOG must confirm the presidential selection of a university board of trustees as a means to acknowledging that system cooperation is expected; and that the Department of Management Services will maintain control over state university employees for state group insurance and state retirement programs.

The BOG and the Legislature agreed the BOG will maintain its current authority for regulation of data and technology, and that state universities will be exempt from the requirements of ch. 282, F.S., regarding communication and data processing.

The BOG and the Legislature agreed that the BOG will continue to report on and account for the expenditure of funds as required by the Legislature and will provide data to the Legislature as required by general law and by the Legislature. The BOG and the Legislature support the BOG's accountability initiative, university work plans, and consolidated annual reporting. The BOG will engage in continuous collaboration with Legislative leadership on the accountability measures, the use of data, and BOG recommendations derived from such data.

### **Financial Aid Programs**

The BOG and the Legislature agreed the BOG may establish financial aid programs that may be funded with state funds provided by the Legislature, funds from donors, or a combination of funding sources. The BOG will report and account to the Legislature on all such financial aid programs.

### **Administrative Procedures Act & BOG Regulations**

The BOG and each university will adopt regulations and policies establishing due process procedures to be accorded to any party whose substantial interests are adversely affected by any final action of the BOG or its constituent universities in the performance of its constitutional duties or responsibilities. The due process procedures adopted by the BOG must be prominently published on the BOG and universities' web sites.

The BOG will follow the Administrative Procedure Act<sup>6</sup> when adopting rules as may be required to implement legislatively delegated authority that arises from the Legislature's general police power to provide for public health, safety, and welfare or the Legislature's powers of eminent domain and sovereign immunity, and when the Legislature delegates to the BOG authority for subjects outside the scope of the BOG's constitutional authority.

The BOG and the universities may also adopt regulations to implement legislative authority in the areas of tuition and fees, management and oversight of state lands, public buildings, and public construction.

### **Tuition**

The Legislature will establish base tuition and the BOG will establish the tuition differential pursuant to law.<sup>7</sup> Within the tuition authority granted by the Legislature to the BOG, the Legislature delegates to the BOG the flexibility to consider and approve flexible tuition policies, including block tuition and the charging of market-rate tuition for non-credit, online, and continuing education courses, provided the tuition policies do not increase the state's fiscal liabilities or obligations.

### **Fees, Fines, Deposits & Surcharges**

The Legislature delegates to the BOG the authority to establish the fees included in s. 1009.24 (13)(a)-(r), (14), and (15), F.S.<sup>8</sup> Additionally, the BOG may further delegate to the university boards of trustees

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<sup>6</sup> Ch. 120, F.S.

<sup>7</sup> S. 1009.24(16), F.S.

<sup>8</sup> The existing fees the governance agreement delegates to the BOG include: an application fee, an orientation fee, a fee for security, access or identification cards, certain registration fees, a fee for late-payment of tuition, a fee for certain health-related charge, a fee for

the authority to establish fees that are charged to recover the cost of services, fines, and fees set at market rates.

The BOG may review and approve a fee proposal submitted by a university board of trustees to establish a new fee. The governance agreement provides guidelines for the BOG to consider when approving a request for a new fee, including: the purpose to be served or accomplished; whether there is a demonstrable student-based need for the fee that is not being met by existing services, operations or another fee; whether alternative resources are available to meet the need; whether the financial impact on students is warranted in light of other charges assessed to students; and whether restrictions, limitations, or conditions should be placed on the use of the fee.

The BOG may also review and approve a fee proposal submitted by a university board of trustees to increase an existing fee included in s. 1009.24(13)(a)-(r), (14), and (15), F.S., that has an established cap. The governance agreement provides guidelines for the BOG to consider when approving a request to increase the current cap for an existing fee, including: the services or operations currently being funded by the fee; whether those services can be performed more efficiently to alleviate the need for any increase; the additional or enhanced services or operations to be funded by the fee increase; whether alternative resources are available to meet the need; and whether the financial impact on students is warranted in light of other charges assessed to students for tuition and associated fees.

### **Effect of Proposed Changes**

PCB EPC 10-04 amends statutes relating to the operation of the State University System to implement the provisions of the governance agreement. PCB EPC 10-04 addresses the following areas:

#### **Master Planning & Coordinating Florida's Higher Education Systems**

PCB EPC 10-04 creates the Higher Education Coordinating Council (council) to identify unmet needs and to facilitate solutions to disputes regarding the creation of new degree programs and the establishment of new institutes, campuses, or centers. The council is comprised of the following members: the Commissioner of Education; the Chancellor of the State University System of Florida; the Chancellor of the Florida College System; the executive director of the Commission for Independent Education; the president of the Independent Colleges and Universities of Florida; and two members representing the business community, one appointed by the President of the Senate and one by the Speaker of the House of Representatives.

PCB EPC 10-04 requires the council to act as an advisory board to the Legislature, the State Board of Education and the BOG. Recommendations of the council must be consistent with the following guiding principles:

- To achieve within existing resources a seamless academic educational system that fosters an integrated continuum of kindergarten through graduate school education for Florida's students;
- To promote consistent education policy across all educational delivery systems, focusing on students;
- To promote substantially improved articulation across all educational delivery systems;
- To promote a system that maximizes educational access and allows the opportunity for a high-quality education for all Floridians;
- To promote a system of coordinated and consistent transfer of credit and data collection for improved accountability purposes between the educational delivery systems.

PCB EPC 10-04 requires the BOG to provide administrative support for the council.

#### **State University System Strategic Planning Meeting**

PCB EPC 10-04 expresses legislative intent that the BOG align the missions of each university with certain factors relating to students, faculty, research, and statutorily required strategic and

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materials and supplies, housing rental rates, charges for collection efforts, charge for loan service, fee for certain off-campus course offerings, library fees and fines, duplicating and copying fees, fees for the late return of rental equipment, returned check fee, traffic and parking fines, transportation access fees, child care fees, fee for replacing transcripts and diplomas, admissions deposits, and a service charge for paying tuition in installments.

accountability plans. PCB EPC 10-04 also revises provisions relating to the criteria established by the BOG for the review and approval of new programs to reflect constitutional responsibilities of the BOG. The BOG must ensure well-planned development, coordination, and operation of the State University System and the BOG must avoid wasteful duplication of facilities and programs. Additionally, the BOG must submit an annual report with information regarding the programs the BOG reviewed and the outcome of the review.

PCB EPC 10-04 eliminates the requirement of legislative approval for certain programs that lead to licensure. As legislative approval is no longer necessary, PCB EPC 10-04 repeals the specific statutory authority for the following programs:

- Masters in science degree in speech-language pathology at Florida International University;
- Bachelor of science in nursing at University of West Florida;
- Masters in science degree in nursing at University of West Florida;
- Master's in social work at Florida Atlantic University;
- Chiropractic medicine degree program at Florida State University;
- Bachelor of science degree in long-term care administration at Florida Gulf Coast University;
- The School of Engineering and bachelor of science degree programs in bioengineering, environmental and civil engineering management at Florida Gulf Coast University.

\*The repeal of these sections of law does not terminate the programs.

#### University Governance

As agreed to in the governance agreement, the BOG has exclusive authority to delegate power and duties to the university boards of trustees. In recognition of the BOG's exclusive authority, PCB EPC 10-04 repeals s. 1001.74, F.S., relating to the powers and duties of the university boards of trustees.

PCB EPC 10-04 also exempts state universities from the requirements of ch. 282, F.S., regarding communications and data processing. PCB EPC 10-04 allows a state university to participate in the state-maintained SUNCOM communications system at the university's discretion and clarifies that state universities are not required to use the SUNCOM communications system.

PCB EPC 10-04 provides that the BOG is responsible for establishing the personnel program for all employees of state universities. The BOG must confirm the presidential selection by a university board of trustees as a means of acknowledging that system cooperation is expected. Additionally, the Department of Management Services will continue to control the state group insurance and retirement plans for State University System personnel.

#### Administrative Procedures Act & BOG Regulations

PCB EPC 10-04 acknowledges that the BOG and the university boards of trustees may implement their constitutional duties and responsibilities through regulations.

PCB EPC 10-04 requires the BOG to comply with the Administrative Procedure Act when it is acting pursuant to statutory authority derived from the Legislature; however, the BOG may adopt regulations instead of rules when the BOG is expressly authorized or required by law.

PCB EPC 10-04 authorizes the BOG to delegate its statutory power or duty to a university board of trustees, but requires the university board of trustees to be subject to the requirements of the Administrative Procedure Act to the same extent as the BOG. Additionally, PCB EPC 10-04 provides that the authority to adopt rules or regulations is included in the delegation.

PCB EPC 10-04 requires that the BOG's regulation development procedure for regulations authorized or required by law provide for: notice to the public; an opportunity for public comment; a process for challenging a statement of general applicability that has not been properly adopted as a regulation; a process for challenging an unlawful regulation; a process for challenging an emergency regulation; and publication of the regulation development procedure on the BOG's and the universities' websites. PCB EPC 10-04 also provides that judicial review must be sought in the appellate district where the university is located or where the BOG maintains its headquarters.

PCB EPC 10-04 authorizes the Department of State to remove rules from the Florida Administrative Code that have been superseded by BOG and university boards of trustees' regulations adopted pursuant to their constitutional or specific statutory authority.

*Tuition, Fees, Fines, Deposits & Surcharges*

PCB EPC 10-04 authorizes the BOG to approve a proposal from a university board of trustees to implement flexible policies for tuition as long as the policies are in alignment with the university's mission and the policies do not increase the state's liability or obligations, including but not limited to the Bright Futures Scholarship program and the Florida Prepaid Tuition Program. Flexible tuition policies include: block tuition; block tuition differential; market rate tuition for graduate level online courses; and market rate tuition for graduate level continuing education courses.

When reviewing a proposal to implement a flexible tuition policy, PCB EPC 10-04 requires the BOG to consider: whether the proposed tuition flexibility policy is aligned with the mission of the university; whether the proposed tuition flexibility policy increases the state's fiscal liabilities or obligations and, if so, requires the BOG to deny the proposal; whether any restrictions, limitations, or conditions should be placed on the policy; and how the proposed tuition flexibility policy will be implemented to honor the advance payment contracts of students who are beneficiaries of prepaid tuition contracts under s. 1009.98, F.S.

PCB EPC 10-04 authorizes the BOG to approve a university board of trustees' proposal to establish a fee that is not specifically authorized by law. PCB EPC 10-04 provides guidelines the BOG must consider when approving the proposal. The BOG must consider: whether there is a demonstrable student-based need for the fee that is not currently being met through existing university services, operations, or another fee; whether the financial impact on students is warranted in light of other charges assessed to students; whether restrictions, limitations, or conditions should be placed on the use of the fee; and whether there are outcome measures to indicate if the purpose for which the fee was established is accomplished.

If the BOG approves a proposal to establish a new fee, PCB EPC 10-04 requires a university to establish a fee committee to recommend to the university president and the university board of trustees how the fee will be spent and to address any subsequent changes to the fee.

PCB EPC 10-04 limits the aggregate sum of fees established pursuant to the new authority to no more than 10 percent of tuition. PCB EPC 10-04 also prohibits any such fee from being included in an award under the Bright Futures Scholarship Program. Additionally, PCB EPC 10-04 prohibits the transfer of any revenues from a fee established pursuant to the new authority to an auxiliary enterprise or a direct support organization.

PCB EPC 10-04 authorizes the BOG to approve a university board of trustees' proposal to increase the current cap for certain existing fees, including:

- An application fee;
- An orientation fee;
- A fee for security, access, or identification cards;
- A fee assessed for special types of registration;
- A fee assessed for late payment of tuition and fees;
- A fee for the replacement of transcripts and diplomas; and
- A nonrefundable admissions deposit.

When reviewing a proposal to increase the current cap for an existing fee, PCB EPC 10-04 requires the BOG to consider: the services or operations currently being funded by the fee; whether those services or operations can be performed more efficiently to reduce the need for an increase; the additional or enhanced services to be funded by the fee increase; whether alternative resources are available to meet the need; and whether the financial impact on students is warranted in light of other charges assessed to students.

PCB EPC 10-04 requires the BOG to submit an annual report to the President of the Senate, the Speaker of the House of Representatives, and the Governor summarizing the tuition and fee proposals received by the BOG during the preceding year and the actions taken by the BOG in response to such proposals.

PCB EPC 10-04 requires fees for services to be based on reasonable costs of services.

PCB EPC 10-04 limits an increase to an existing fee or a new fee established to a maximum of once each fiscal year and requires the fee increase to be implemented beginning with the fall term.

## B. SECTION DIRECTORY:

- Section 1. Amends s. 110.181, F.S., conforming a cross-reference to changes made by the act.
- Section 2. Amends s. 112.19, F.S., requiring the Board of Governors to adopt regulations rather than rules to implement certain educational benefits.
- Section 3. Amends s. 112.191, F.S., requiring the Board of Governors to adopt regulations rather than rules to implement certain educational benefits.
- Section 4. Amends s. 120.81, F.S., providing that state universities are not required to file certain documents with the Administrative Procedures Committee.
- Section 5. Amends s. 282.0041, F.S., revising definitions regarding information technology services to conform to changes made by the act.
- Section 6. Amends s. 282.703, F.S., revising provisions regarding the participation of state universities in the SUNCOM Network.
- Section 7. Amends s. 282.706, F.S., revising provisions regarding the use of the SUNCOM Network by state university libraries.
- Section 8. Amends s. 287.064, F.S., conforming a cross-reference to changes made by the act.
- Section 9. Amends s. 1000.05, F.S., requiring the Board of Governors to adopt regulations rather than rules regarding discrimination.
- Section 10. Amends s. 1001.705, F.S., revising provisions relating to responsibility for the State University System under the State Constitution; deleting legislative findings and intent; providing the constitutional duties of the Board of Governors; providing the constitutional duties of the Legislature; deleting a duty relating to the participation of state universities in the SUNCOM Network.
- Section 11. Amends s. 1001.706, F.S., revising powers and duties of the Board of Governors; providing that the Board of Governors has the authority to regulate the State University System and may adopt a regulation development procedure for the board and university boards of trustees to use in implementing their constitutional duties and responsibilities; authorizing the Board of Governors or its designee to adopt regulations; providing requirements for the regulation development procedure; providing requirements for judicial review of certain challenges; revising the Board of Governors' powers and duties relating to accountability and personnel; providing legislative intent that the Board of

Governors align the missions of universities with certain factors; providing requirements for a mission alignment and strategic plan; affording opportunities to certain universities.

- Section 12. Amends s. 1001.72, F.S. providing that the board of trustees is the university's contracting agent.
- Section 13. Creates s. 1004.015, F.S., creating the Higher Education Coordinating Council; providing for membership; providing guiding principles for council recommendations to the Legislature, State Board of Education, and Board of Governors.
- Section 14. Amends s. 1004.03, F.S., revising provisions regarding review and approval of new programs at state universities by the Board of Governors; requiring an annual report of the review of proposed new programs; eliminating the requirement that certain programs be approved by the Legislature.
- Section 15. Amends s. 1004.07, F.S., requiring the Board of Governors to adopt regulations rather than rules relating to student withdrawal from courses due to military service.
- Section 16. Amends s. 1006.54, F.S., requiring university boards of trustees to adopt regulations rather than rules regarding documents distributed to libraries.
- Section 17. Amends s. 1006.60, F.S., revising provisions regarding state university codes of conduct to authorize the adoption of regulations rather than rules.
- Section 18. Amends s. 1006.65, F.S. requiring the Board of Governors to adopt regulations rather than rules regarding safety issues in courses offered by state universities.
- Section 19. Amends s. 1007.264, F.S., requiring the Board of Governors to adopt regulations rather than rules regarding admission requirements for students with disabilities.
- Section 20. Amends s. 1007.265, F.S., requiring the Board of Governors to adopt regulations rather than rules regarding graduation requirements for students with disabilities.
- Section 21. Amends s. 1009.24, F.S., reorganizing certain provisions of law regarding state university student fees; authorizing the Board of Governors to approve flexible tuition policies requested by a university board of trustees; providing that certain fees be based on reasonable costs of services and used for certain purposes; authorizing the Board of Governors to approve a proposal from a university board of trustees to establish a new student fee, increase the cap for an existing fee, or implement flexible tuition policies; providing guidelines for review of proposals; requiring an annual report; prohibiting certain fees from exceeding a specified amount, being included in certain scholarship awards, and being used for certain purposes; requiring a fee committee to make recommendations regarding a new fee; providing restrictions on fee increases; requiring the Board of Governors to adopt regulations.
- Section 22. Amends s. 1009.26, F.S., requiring the Board of Governors to adopt regulations rather than rules regarding fee waivers.
- Section 23. Amends s. 1010.04, F.S., providing that the Board of Governors shall adopt regulations rather than rules for purchases and leases.

- Section 24. Amends s. 1010.62, F.S., defining the term “auxiliary enterprise” for purposes of revenue bonds and debt.
- Section 25. Amends s. 1011.43, F.S., requiring university boards of trustees to adopt regulations rather than rules for administration of certain scholarships and loans.
- Section 26. Amends s. 1011.90, F.S., revising provisions regarding management information maintained by the Board of Governors.
- Section 27. Amends s. 1013.02, F.S., requiring the Board of Governors to adopt regulations rather than rules to implement provisions of law regarding educational facilities.
- Section 28. Amends s. 1013.10, F.S., authorizing regulations for the use of educational buildings and grounds.
- Section 29. Amends s. 1013.12, F.S., requiring the Board of Governors to adopt regulations rather than rules regarding firesafety inspections.
- Section 30. Amends s. 1013.28, F.S., requiring the Board of Governors to adopt regulations rather than rules regarding disposal of real property.
- Section 31. Amends s. 1013.30, F.S., requiring the Board of Governors to adopt regulations rather than rules regarding university campus master plans.
- Section 32. Amends s. 1013.31, F.S., requiring the Board of Governors to adopt regulations rather than rules for determining facility space needs.
- Section 33. Amends s. 1013.47, F.S., requiring the Board of Governors to adopt regulations rather than rules regarding building standards.
- Section 34. Amends s. 1013.74, F.S. authorizing the Board of Governors to adopt regulations rather than rules regarding authorization for fixed capital outlay projects.
- Section 35. Repeals ss. 1001.74, 1004.21, 1004.38, 1004.381, 1004.3811, 1004.382, 1004.383, 1004.386, and 1004.64 and subsection (13) of section 1004.22, F.S. and providing legislative intent for the repeal of certain sections.
- Section 36. Requiring each state university to identify and submit to the Board of Governors a list of certain rules that have been superseded by regulations; providing for submission of such rules and certain rules of the Board of Governors to the Department of State; authorizing the Department of State to remove certain rules from the Florida Administrative Code.
- Section 37. Provides an effective date of July 1, 2010.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS.

D. FISCAL COMMENTS:

Master Planning & Coordinating Florida's Higher Education System

PCB EPC 10-04 creates a Higher Education Coordinating Council to identify unmet needs and facilitate solutions to disputes regarding the creation of new postsecondary educational programs. To the extent the recommendations of the Council reduce or eliminate duplication of programs, the state may avoid additional costs for duplicative services. To the extent articulation and access are improved, costs for students may decrease. The Board of Governors is required to provide administrative support for the council, which may result in additional costs to their administrative budget. The exact costs are indeterminate, but likely insignificant.

Administrative Procedures Act & BOG Regulations

There is anticipated cost savings for the state universities due to PCB EPC 10-04 directing the Department of State to remove all rules identified by the BOG and state universities that have been superseded by regulations adopted by the BOG or the universities. Without this direction, the BOG and state universities would have to spend thousands of dollars on legal notices to repeal most of their rules.<sup>9</sup>

University Governance

Currently, state universities are required to use the SUNCOM Network for communications services unless provided a specific exemption. PCB EPC 10-04 removes this requirement, but it allows the universities and their libraries to use the SUNCOM Network. In the 2009-10 fiscal year, 10 state universities are using the SUNCOM Network for a portion of their communication services; projected billings are \$3.2 million. It is unknown how many of the universities would continue to use the SUNCOM Network once they are no longer required to do so. To the extent the universities discontinue the current level of services provided by SUNCOM, other SUNCOM customers may see an increase in the cost for communications services. The exact amount is indeterminate at this time.

Tuition, Fees, Fines, Deposits & Surcharges

PCB EPC 10-04 authorizes the Board of Governors to consider and approve flexible tuition policies as requested by a university. Such policies may not increase the state's fiscal liability or obligations including, but not limited to, any fiscal liability or obligation related to the Florida Prepaid College Program and the Bright Futures Scholarship Program. To the extent flexible policies are approved, the cost may increase for students to attend a state university; however, the exact amount is indeterminate. These policies may increase revenues available to the universities. There is no fiscal impact on the state.

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<sup>9</sup> Email correspondence from the Joint Administrative Procedures Committee, April 2, 2010.

PCB EPC 10-04 authorizes the Board of Governors to consider and approve university proposals to increase the current caps for the following existing fees:

- Application fee – capped at \$30;
- Orientation fee – capped at \$35;
- Security/access/ID card fee – capped at \$10 per card or \$15 for a replacement card;
- Registration fee for audit and zero-hours – no cap;
- Service charge for tuition and fee payment plans – capped at \$15;
- Late registration fee – capped at \$100;
- Late payment fee – capped at \$100;
- Transcript or additional diploma fee – capped at \$10 per item; and
- Admissions deposit – capped at \$200.

PCB EPC 10-04 also authorizes the Board of Governors to consider and approve university proposals to implement a new fee. The aggregate sum of any fees established pursuant to this authority that a student must pay to register for a course cannot exceed 10 percent of tuition. Any such fee cannot be included in Bright Futures Scholarship award. Fee revenue cannot be transferred to a direct-support organization or an auxiliary enterprise and cannot be used to secure debt.

In reviewing university proposals to increase an existing fee or to establish a fee not specifically authorized by law, the Board of Governors is required to consider whether the financial impact on students is warranted in light of other charges assessed to students for tuition and associated fees. To the extent such proposals are approved, costs for students to attend a university and the revenues generated by the university may increase by an indeterminate amount. There is no fiscal impact on the state.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

PCB EPC 10-04 does not appear to require a city or county to expend funds or to take any action requiring the expenditure of funds.

PCB EPC 10-04 does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate.

PCB EPC 10-04 does not appear to reduce the percentage of state tax shared with counties or municipalities.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

PCB EPC 10-04 requires the BOG to adopt rules when acting pursuant to its statutory authority derived from the Legislature, unless expressly authorized or required by law to adopt regulations.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**