



# The Florida Senate

*Interim Project Report 98-69*

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Committee on Education

Senator John Grant, Chairman

## COMMUNITY COLLEGE GOVERNANCE

### SUMMARY

Florida's community college system is sound. It is characterized by local autonomy for each of the 28 colleges, but they do not have taxing authority. Rather, a state-level board coordinates and negotiates a system-wide budget with the Legislature. It also maintains a statewide data base that has the potential to inform numerous policy decisions. These functions provide adequate balance for the system itself.

Negative perceptions about the governance of this one system often turn out to be complaints about how it interacts with others -- the State University System and the public school districts. It is in the state's interest for these three systems to act as one.

Therefore, the Legislature should not change the governance of the community college system itself, but should look for ways of increasing incentives for cooperation and coordination among the three different systems that share responsibility for postsecondary education. A statewide board should have regulatory authority to implement policy initiatives that require the cooperation and coordination of schools, colleges, and universities.

The recent procedures used to employ a new executive director for the State Board of Community Colleges were consistent with rule and law. The Legislature will need to change the law if it wants additional or different procedures or employment practices.

### BACKGROUND

The Senate Education Committee's interim study of community college governance examined two current community college issues to determine any possible needs for modification of statutory policy.

### Governance

Recent changes enacted by the Legislature have opened the area of workforce development to all community colleges. This opportunity has created a field of competition among colleges, school districts, and, in some instances, proprietary schools for students and job training programs. In addition, growing public demand for access to baccalaureate programs has caused several community colleges to consider various options for offering 4-year degree programs on their campuses. These forces are threatening to change the 40-year-old mission of the colleges and, correspondingly, raise the possibility of changes in the governance structure of the institutions and their state administrative board.

### Selection Process

The State Board of Community Colleges recently appointed an executive director as it is authorized to do by s. 240.311(4), F.S. After several months of deliberation the board chose a last minute applicant who had not participated in the lengthy, formal selection process. Although the selectee is a well known employee of the board and is generally acknowledged as being well qualified for the position, the board's action raised questions about the method by which it made its choice.

### METHODOLOGY

The interim study of community college governance was conducted in two parts. The staff of the Senate Education committee reviewed the governance structure of the community college system and its relationship to state higher education policy initiatives. The system structure was compared to governance models from other states to see if they might contain elements that could enhance the operation of Florida's colleges. Of particular consideration was the manner in which the different systems supported working relationships between community colleges and universities in addressing public education needs.

In addition to a review of governance studies and models, informal interviews posing questions regarding governance were conducted with community college presidents, university provosts, the Chancellor of the State University System, and the Executive Director of the State Board of Community Colleges.

The General Counsel of the Florida Senate reviewed the procedures used by the State Board of Community Colleges in selecting a new Executive Director to determine if the process complied with all relevant rules and laws.

The review consisted of interviews with state board members and other parties participating in the selection process and an examination of documents pertinent to the issue.

## FINDINGS

### Community College Governance

Section 240.301, F.S., declares the primary mission of the 28 public community colleges to be one of responding to community needs for postsecondary academic and degree career education (this latter term is the statutory replacement for the term “postsecondary vocational education”). The law further defines the mission as preparing students for jobs that require less than a bachelor’s degree and providing “lower level undergraduate instruction and awarding associate degrees.”

The State Board of Community Colleges was established by s. 240.305, F.S. The law gives the board the responsibility for overseeing and coordinating the colleges; however, it clearly states that the institutions are to be governed and operated with maximum local autonomy. The board membership is composed of the Commissioner of Education, one community college student, and 11 lay citizens appointed by the Governor.

The board’s powers and duties are spelled out in s. 240.311, F.S., and generally relate to its responsibility for coordinating the operation and maintenance of the community college system. Among the most important duties of the board, in addition to hiring an executive director, are those requiring it to:

- recommend an annual system-wide budget to the Commissioner of Education for inclusion in the commissioner’s budget request to the Governor,

- provide for and coordinate the implementation of the community college program fund, and
- adopt and submit to the Legislature a 3-year priority list of system capital outlay projects.

The law also makes it clear that the actions of the State Board of Community Colleges are not to supersede the statutory powers and duties granted to the individual college boards of trustees.

Pursuant to s. 240.313, F.S., each of the 28 community college districts is an independent legal entity created to operate a community college. Section 240.317, F.S., expresses the legislative intent that community colleges are political subdivisions of the state to be operated by district boards of trustees composed of members appointed by the Governor, approved by at least four members of the State Board of Education, and confirmed by the Senate.

Each local board of trustees is a corporate body that is empowered by law to:

- adopt administrative rules,
- sue or be sued,
- buy and sell property,
- employ a president, and
- provide and maintain instructional programs and other services for the community.

Each community college is an independent, self-governing unit and is not subject to the control of the State Board of Community Colleges.

A comparison of the governance structure of Florida’s community college system with structures in other states reveals as many differences as similarities. No one system or model is best. The states differ along a continuum of control ranging from highly centralized state level management to almost total local autonomy. Florida falls somewhere in the middle.

The State Board of Community Colleges provides more administrative support than regulation. Its most prominent role is to coordinate and negotiate a system-wide budget for all the colleges with the Legislature. It also implements and maintains a statewide management information system that includes a comprehensive database of individualized information on community college students, faculty, and funding. This management information system provides a central resource that is essential to Florida’s performance based funding initiatives as well a wealth of data for research.

Local boards of trustees control almost every other aspect of a community college's operation; however, they have no taxing authority and are dependent on revenue from student tuition and the budget negotiated by the state board. Both of these features indicate a "sound" governance system, according to national experts.

Conversations and interviews with state and local community college officials reflected a relatively high level of satisfaction with the current governance structure. Local college leaders are protective of the independence their institutions enjoy. They cite local control as being key to the ability of a college to carry out its mission and meet the education and training needs of the communities it serves. State administrators agree; however, they do acknowledge that more state level authority in some management areas would enable them to improve system-wide coordination and services.

Accountability, or the lack of it, is one area for which the governance structure of the community college system has received criticism. The institutions are governed by appointed boards of trustees who are only indirectly accountable to the communities they serve and are not accountable at all to the State Board of Community Colleges.

This perception of exercising authority without responsibility has created concern on the part of the state board and among the colleges. Several of the schools are working hard at dispelling this perception by taking a leadership role in implementing performance-based funding. By participating in efforts like Performance-Based Incentive Funding for workforce development programs, they are demonstrating their willingness to be held fiscally accountable by receiving state funding for what they produce. Yet system critics persist despite these efforts.

The community college governance structure appears to operate well internally, for matters specific to the day-to-day operation of the colleges. The same can be said for the State University System and public school systems that operate postsecondary career training programs. All three levels have independent governance systems that serve the schools and institutions well.

These systems are tested, however, when the implementation of state policy calls for coordinated

effort and cooperation with one another. Under this view, the three systems should operate as though they constituted "all one system," a term used by demographer Harold Hodgkinson to describe Florida's opportunities and problems.

Community colleges, state universities, and public school districts are all in competition for the state postsecondary education dollar. The funding formulae for the three systems remain enrollment-driven -- the more students, the more state funding. The system or the institution that controls the program controls the enrollment and the money.

New state policy initiatives threaten each individual sector while promising to improve the system as a whole. These threatening initiatives include performance based budgeting, especially for workforce development programs, and state efforts to increase access to baccalaureate degrees. While these efforts are designed to increase efficiency and to focus on helping students rather than institutions, they also mean sharing the money.

None of the governance systems are designed to promote sharing of authority with an external system. Cooperating and coordinating efforts with another governing entity may be listed among a board's statutory duties and responsibilities; however, these efforts are difficult to measure and are not likely to be priorities for any of the boards.

The Postsecondary Education Planning Commission (PEPC) created by s. 240.145, F.S., is charged with the responsibility of coordinating the efforts of postsecondary institutions in the state. The commission is an advisory body. It makes recommendations regarding higher education to the Legislature and the State Board of Education; however, it has no authority to implement or regulate its proposals. Therefore, the commission is in the posture of attempting to coordinate higher education efforts in the state by suggestion -- an endeavor with limited prospects for success.

It is in the public's best interests to have the educational and training activities of postsecondary education delivery systems coordinated, especially with programs that can be offered by more than one system. Coordination helps keep the focus of the programs on the needs of the communities being served -- which is why the delivery systems and the programs were organized in the first place.

### Executive Director Selection Process

Following are the answers provided by the Senate General Counsel to questions about the legality of the recent selection process for an executive director of the Florida Community College System.

**Question 1** — Did any of the procedures used by the State Board of Community Colleges between September 12, 1997 and May 20, 1998 violate any state law or administrative rule governing the search for, or selection of the board's new Executive Director?

**Answer --** Section 240.311(4), F.S., provides that "The State Board of Community Colleges shall appoint . . . an executive director of the community college system." Beyond that, there are no statutory requirements pertaining to the search, selection, or procedures to be followed leading up to the appointment of a new executive director. Further, the state community college board adopted no formal rule of procedure governing its own actions in this regard. The procedure that was followed, which consisted of the use of a Search committee, how that committee was authorized and appointed, the authority to expand or reopen the search, the method of voting, the procedure followed at Search committee meetings to select the names to be forwarded to the State Board of Community Colleges, and the final selection process used by the board, were determined on an ad hoc basis as the board and its Search committee went about completing the task.

On September 12, 1997, at the State Board of Community Colleges meeting in Fort Myers, the board ratified a search process that had been recommended to it the morning before by its Policies and Procedures Committee. The board chairman appointed the Search committee. The committee first met on October 10, 1997, at which time it specified a deadline for applications **and specifically reserved the right to reopen the search if there was not sufficient diversity in the pool of applicants.** The search committee next met on November 13, in Jacksonville, at which time the pool of candidates was reduced to 10. Dissatisfaction was expressed with the scope and diversity of the applicant pool. The next four search committee meetings in January, February, and March further reduced the number of applicants in the pool. The final Search committee meeting was a telephone conference call on April 30, 1998, that concluded with

a slate of five nominees that would be recommended to the State Board of Community Colleges.

The board's Policies and Procedures Committee first determined, on September 11, 1997, on the advice of board counsel, that the board could add candidates to the pool of finalists recommended to it. The next day, September 12, 1997, the full State Board of Community Colleges approved this policy. The issue of adding to or going outside of the pool next surfaced formally at the October 10, 1997, meeting of the Search committee. Again, on the advice of Board Counsel, the Search committee chairman announced that the board could go outside the slate recommended to it by the Search committee. There never appeared to be any serious doubt that the State Board of Community Colleges could stray outside of, reject, or add to the list of nominees given to it by the search committee.

Accordingly, it appears that the search and selection procedures followed by the State Board of Community Colleges, and by its Search committee, did not violate any search/selection statute or administrative rule of procedure formally promulgated by the board.

**Question 2** — Did any member of the State Board of Community Colleges violate the Sunshine Law at any time between September 12, 1997, and May 20, 1998, in the course of searching for and selecting the board's new executive director?

**Answer --** The State Board of Community Colleges is comprised of 13 members — one student member; 11 other citizen-members, all chosen and commissioned by the Governor; and the Commissioner of Education, or his designee, sitting *ex officio*.

The 13 member search committee appointed by the Board Chairman was a hybrid consisting of several members of the State Board of Community Colleges, the lobbyist for the Florida Association of Community Colleges, various faculty members and students from the community college and state university systems, and the out-going Executive Director until his retirement on December 31, 1997.

There is no doubt that the Sunshine Law, s. 286.011, F.S., applied to the State Board of Community Colleges and to its search committee that functioned as an arm of the board in carrying out the preliminary stages of the board's statutory prerogative.

Furthermore, there are at least three places in the minutes of the various meetings where the State

Board's General Counsel (and several places where members themselves acknowledged their Board Counsel's advice and warning that the search and selection process was fully subject to the Sunshine Law) stated that there could be no legal discussion outside the search committee meetings on business that was or could become search committee business and that individual board and/or search committee members were not to discuss the search or the process of the search or selection outside the duly called and noticed public meetings.

Also, the search committee chairman, in his memorandum dated October 3, 1997, addressed to all members of the search committee, again told them that they "may not communicate with each other regarding the business of the Committee except during public meetings of the Committee."

Based on a formal inquiry directed to all 13 members of the State Board of Community Colleges, its secretary, its General Counsel, the Association's lobbyist, and several other individuals who played peripheral roles in the search and selection process, there is no evidence of violation of the Sunshine Law, with one documented exception.

In mid to late January, 1998, a state board member telephoned the chairman of the state board who had appointed himself to, and also served on the board's search committee. The board member's purpose in placing the call was to discuss an academic matter unrelated to the search/selection process; however, at the beginning of the conversation the board member used the opportunity to lobby the chairman, "strictly in (the chairman's) role as a search committee member," to include as many "credible political types as possible in the five nominees slated to be sent to the state board by the search committee. The board member then suggested three candidates by name. The board chairman's response was that "he would take (the board member's) request under advisement." The board member believes that his telephone conversation with the board chairman did not violate the Sunshine Law because: he was speaking to the board chairman in the chairman's role as a search committee member, not as a member of the State Board of Community Colleges; Attorney General's Opinion 96-35 allows a covered [school] board member to prepare and circulate an informational memorandum to other [school] board members as long as the written memorandum is available for inspection and copying under Chapter 119, F.S., and as long as the responsive memoranda and comments are not solicited or supplied

to the sender; and there really was no two-way conversation because the chairman's response was simply to say he would take the board member's request under advisement; in other words, it was more akin to an acknowledgment of receipt of information than a bilateral exchange and crystallization of ideas.

Although the board member may have a technical defense based on the above factors, his call raises significant Sunshine Law issues from the legislative oversight perspective because it was verbal not written, it evoked a response from the recipient, the board chairman did in fact have a dual role (state board member and Search committee member), and the board member's lobbying effort, although directed to the chairman in his role as search committee member, would come before the board chairman for final decision in his collegial role as a member of the State Board of Community Colleges — a fact that must have been apparent to the board member at the time he digressed into lobbying the chairman on the issue of the search committee's nominees.

With the one exception described in the previous paragraphs, there is no evidence that the search or selection process resulting in the appointment of a new Executive Director for the State Community College System was done in violation of s. 286.011, F.S., the Sunshine Law.

## RECOMMENDATIONS

1. With the possible exception of increasing the State Board of Community Colleges' regulatory authority on system-wide management issues, the governance structure of the State Community College System should not be changed.
2. The Postsecondary Education Planning Commission should be provided with the authority necessary to function as a state higher education coordinating commission in the implementation of state policy initiatives that transcend the jurisdictions of school boards, community colleges, and the State University System. This would mean granting PEPC limited regulatory authority on issues that require the cooperation and coordination of schools, colleges, and universities in order to effectively deliver academic services to the public.
3. If the Legislature wants the State Board of Community Colleges to follow a particular method of searching for and selecting its next executive director, the law must be changed to prescribe such a method.

### **COMMITTEE(S) INVOLVED IN REPORT** (*Contact first committee for more information.*)

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### **MEMBER OVERSIGHT**

Senator Burt and Senator Kurth