

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1924

SPONSOR: Governmental Oversight and Productivity Committee and Senator Grant

SUBJECT: State University System

DATE: March 31, 1999 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------|
| 1. | Rhea | Wilson | GO | Favorable/CS |
| 2. | _____ | _____ | ED | _____ |
| 3. | _____ | _____ | FP | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |

I. Summary:

The committee substitute revises eligibility for participation in the optional retirement program for employees of the State University System (SUS). A fee exemption for certain postsecondary students is provided. Further, requirements for issuance of bonds by a SUS direct-support organization (DSO) are modified. The committee substitute defines the term “continuing contract” for purposes of a university president’s contracting authority, as well. State universities are authorized to accept credit cards and debit cards and to absorb the costs of using these cards. The committee substitute modifies financing agreement requirements for DSOs and the Florida Institute of Phosphate Research. Additionally, the committee substitute transfers the program of statewide medical education from the Board of Regents (BOR) to the Department of Health. Reports are required from institutions receiving funds from the Brain and Spinal Cord Injury Rehabilitation Trust Fund. The committee substitute also repeals program language related to the Women’s Athletics Trust Fund.

This committee substitute amends the following sections of the Florida Statutes: 121.35, 239.117, 240.235, 240.233, 240.35, 240.2093, 240.227, 240.289, 240.299, 243.19, 243.20, 243.22, 378.101, 381.0403, 413.613, 471.005.

This committee substitute repeals section 240.5335, Florida Statutes.

II. Present Situation:

Optional Retirement Program - Chapter 121, F.S., creates the Florida Retirement System (FRS) Section 121.35, F.S., requires the Division of Retirement (the “division”) to establish an Optional Retirement Program (ORP) under which contracts providing retirement and death benefits may be purchased for eligible members of the State University System (SUS) who elect to participate in the program. The benefits that are provided are provided through individual contracts or individual certificates issued for group annuity contracts. These contracts may be

fixed, variable, or a combination of the two.¹ Under the section, the state is required to contribute toward the purchase of these optional benefits.

Eligibility to participate in the ORP is limited to persons who are:

- ▶ otherwise eligible for membership in the FRS;
- ▶ employed or appointed for no less than one academic year; and
- ▶ who are employed in specified positions in the SUS.²

Under s. 121.35(2)(a)2., F.S., one of the groups eligible for participation in the ORP are persons in positions classified as administrative and professional (A & P) which are exempt from the career service under the provisions of s. 110.205(2)(d), F.S., except that only those positions that are included in the SUS Executive Service, or those which the division determines meet the following criteria, are eligible to participate:

- ▶ The duties and responsibilities of the position must include either the formulation, interpretation, or implementation of academic policies, or the performance of functions which are unique or specialized within higher education and which frequently involve the support of the academic mission of the university; and
- ▶ Recruiting to fill vacancies in the positions must be conducted in the national or regional market. The employer is required to submit an application, including a certification that the position meets the criteria for eligibility, to the division for each administrative and professional position not in the Executive Service for which it seeks eligibility for the ORP.

According to the Division of Retirement, approximately 15,240 SUS employees are currently eligible to participate in the ORP. As of June 30, 1998, there were 9,427 persons participating in ORP (including faculty and administrative and personnel positions). Staff of the BOR report that 30% of the A & P Pay Plan, or 1,318 employees, are in positions that currently require a petition to participate in the program. Examples of classes included in this category include: Coordinator, Equal Opportunity Programs; Specialist, Financial Planning; and Inspector General. BOR staff report that there are currently 67 A & P positions that have been deemed eligible based on the statutory criteria for eligibility and 1,251 positions that are potentially eligible by virtue of the eligibility criteria.

Currently, a state university or the BOR is required to contribute on behalf of each participant in the ORP an amount equal to the normal cost portion of the employer retirement contribution which would be required if the participant were a regular member of the FRS, plus the portion of

¹Section 403(b) of the Internal Revenue Code.

²The specified positions are: (1) positions classified as instructional and research faculty which are exempt from the career service under s. 110.205(2)(d), F.S.; (2) positions classified as administrative and professional which are exempt from the career service under s. 110.205(2)(d), F.S., provided that only those positions that are included in the SUS Executive Service, or those which the division determines meet the following criteria, are eligible to participate; and (3) the Chancellor and the university presidents.

the contribution rate required in s. 112.363(8), F.S., that would otherwise be assigned to the Retiree Health Insurance Subsidy Trust Fund, less an amount approved by the Legislature which must be deducted by the division to provide for administration of the program. The employer must also contribute on behalf of each participant in the program an amount equal to the unfunded actuarial accrued liability portion of the employer contribution which would be required for members of the FRS. Contributions required for social security by each employer and each participant must be maintained for each participant in the program and are in addition to the retirement contribution specified in s. 121.35(4), F.S.

Postsecondary Student Fees - Section 239.117, F.S., provides that certain postsecondary student fees are exempt from the payment of registration, matriculation, and laboratory fees. Under s. 239.117(4)(c), F.S., a student for whom the state is paying a foster care board payment for whom the permanency planning goal is long-term foster care or independent living, or who is adopted from the Department of Children and Family Services after December 31, 1997, is exempt. Additionally, under s. 240.235(5)(a), F.S., any student for whom the state is paying a foster care board payment for whom the permanency planning is long-term foster care or independent living, or who is adopted from the Department of Children and Family Services after December 31, 1997, is exempt from the payment of all undergraduate fees, including fees associated with enrollment in college-preparatory instruction or completion of college-level communication and computation skills testing programs. As well, under s. 240.35, F.S., fees associated with enrollment in college-preparatory instruction or completion of the college-level communication and computation skills testing program are not required to be paid by these persons.

State University System Direct-Support Organizations - Section 240.299, F.S., authorizes the formation of state university direct-support organizations (DSOs). DSOs are organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a state university or for the benefit of a research and development park or research and development authority affiliated with a state university. Each DSO must be reviewed by the BOR and certified to be operating in a manner consistent with the goals of the university and in the best interest of the state. The chair of the BOR may appoint a representative to the board of directors and the executive committee of a university DSO. The president of the university for which the DSO is established, or a designee, must serve on the board of directors and the executive committee of any DSO. The BOR is authorized to permit the use of property, facilities, and personal services at any state university by any university DSO. Each DSO must make provisions for an annual postaudit of its financial accounts. Section 240.128, F.S., prohibits a university or DSO from accepting or purchasing facilities for which the state will be asked for operating funds unless there has been prior approval for acquisition granted by the Legislature.

State University Contracting - Section 243.151, F.S. authorizes state universities to negotiate, and upon approval of the BOR, enter into agreements to lease land under its jurisdiction to for-profit and nonprofit corporations for the purpose of erecting facilities and accommodations to serve the needs and purposes of the university. Universities are also authorized to enter into agreements with such corporations whereby income-producing building, improvements, and facilities to serve the needs and purposes of the university are acquired by purchase or lease-purchase by the university upon approval of the BOR and approval of the project by the Legislature. Agreements must be entered into as a result of publicly announced competitive bids

or proposals, except that the university may enter into an agreement with a university direct support organization which must then enter into subsequent agreements for financing and constructing the project after receiving competitive bids or proposals. The facility must conform to construction standards and codes applicable to university facilities.

The provisions of s. 240.2093(2), F.S., authorize the BOR to approve the issuance of revenue bonds or other forms of indebtedness by a DSO when such revenue bonds or other forms of indebtedness are used to finance or refinance capital projects which are to provide facilities necessary and desirable to serve the needs and purposes of the university, as determined by the system wide strategic plan adopted by the BOR, and when the project has been approved by the Legislature.

Section 240.227(12), F.S., requires university's to comply with the provisions of s. 287.055, F.S., the "Consultants' Competitive Negotiations Act" (CCNA) for the procurement of professional services and authorizes the university presidents to approve and execute all contracts for planning, construction, and equipment for projects with building programs and construction budgets approved by the BOR. The CCNA governs the acquisition of professional, architectural, engineering, landscape architectural, and surveying and mapping services. Current law sets the thresholds for a "continuing contract" for all agencies at \$500,000 for construction and at \$25,000 for study activities.

Credit and Debit Card Payments at State Universities - Section 240.289, F.S., permits state universities to accept credit cards, charge cards, or debit cards as payment for goods, service, tuition, and fees. Agreements with credit card companies must comply with s. 215.322, F.S., and rules established by the BOR.

Section 215.322, F.S., contains provisions relating to the acceptance of credit cards, charge cards, or debit cards by state agencies, units of local government, and the judicial branch. The state purpose of the section is to encourage state agencies, the judicial branch, and units of local government to make their services more convenient to the public and to reduce the administrative costs of government by acceptance of payments by credit cards, charge cards, and debit cards to the maximum extent practicable. A state agency may accept credit cards, charge cards, or debit cards in payment for goods and services upon the recommendation of the Office of Planning and Budgeting and with prior approval of the Treasurer.

Section 215.322, F.S., authorizes the Treasurer to establish contracts with one or more financial institutions for processing credit card, charge card, or debit card collections. Any state agency which accepts payment by these methods must use one of these contractors unless the agency obtains authorization from the Treasurer to use another contractor which is more advantageous to the agency.

Section 215.322, F.S., requires the Treasurer to adopt rules governing the establishment and acceptance of credit cards, charge cards, or debit cards by state agencies. The rules must require utilization of a standardized contract between the financial institution and the agency. A substitute agreement may be used if approved by the Treasurer. An agency must be permitted to impose a convenience fee upon the person making the payment. The convenience fee may not exceed the cost to the state of contracting for such card services.

The Treasurer's rules governing the acceptance of credit cards by state agencies are found in Chapter 4C-4, F.A.C. The rules establish procedures for the following functions: providing a process for state agencies to request approval for credit card, charge card, and debit card acceptance; utilizing a standard contract, adopted by the Treasurer, between the service provider and the agency; permitting an agency accepting payment by credit card to impose a convenience fee upon the person making the payment; and annual reporting requirements for state agencies accepting credit cards, charge cards or debit cards.

The Treasurer's rules provide that convenience fees may not be imposed if prohibited by state law or card company regulations; that the convenience fee may be related to convenience to the consumer, such as eliminating a need to make a payment in person; and provide that convenience fees should be assigned to payment methods such as telephone, automatic response units, or other non-standard payment processing methods.

Florida Institute of Phosphate Research - Section 378.101(1), F.S., creates the Florida Institute of Phosphate Research (FIPR). The FIPR is authorized to administer the Phosphate Research Trust Fund. The FIPR is authorized to develop work products relating to research which is subject to trademark, copyright, or patent protection. Proceeds from these work products are deposited in the Phosphate Research Trust Fund. The fund is subject to the service charge imposed pursuant to ch. 215, F.S.

Community Hospital Education Act - Section 381.0403, F.S., the Community Hospital Education Act, establishes in the BOR a program for statewide medical education. The program provided continuing medical education programs for interns and residents on a statewide basis. Additionally, the BOR, in conjunction with the Community Hospital Education Council, is required by s. 381.0403(4), F.S., to establish an ongoing statewide program of family practice residencies.

Brain and Spinal Cord Injury Rehabilitation Trust Fund - Section 413.613, F.S., establishes the Brain and Spinal Cord Injury Rehabilitation Trust Fund. Subsection (3) of this section provides for distribution of not more than \$500,000 annually to the University of Florida and the University of Miami to conduct spinal cord and brain injury research. Subsection (4) requires the BOR to establish a program review process including a prospective program plan, research design, proposed outcomes, an annual report of research activities and findings. Prospective program plans are submitted to the BOR and funds are released upon acceptance of the proposed program plans. The BOR is authorized to spend up to \$10,000 of state funds for the program review.

Engineering - Section 471.003, F.S., prohibits any person other than a duly registered engineer from practicing engineering. Subsection (6) of s. 471.005, F.S., defines the term "engineering" to include "teaching of the principles and methods of engineering design."

Women's Athletics Trust Fund - Section 240.5335, F.S., provides for the Women's Athletics Trust Fund. The stated purpose of the trust fund is to enhance women's athletics within the SUS by increasing private financial support. The section required university foundations to solicit and receive gifts from private sources to provide matching funds to the trust fund challenge grants. The act requires each university foundation to establish a Women's Athletics Trust Fund as a

depository for private contributions and state matching funds. The foundation has the responsibility for the maintenance and investment of its trust fund and for the administration of the program and that university. According to the Board of Regents, the Legislature did not fund the trust fund and the trust fund was eliminated. Statutory language related to the program, however, remains in statute.

III. Effect of Proposed Changes:

Section 1. The committee substitute expands eligibility to participate in the SUS Optional Retirement Program (ORP). Specifically, the committee substitute eliminates the requirement that only positions that are included in the SUS Executive Service or positions with responsibilities in the formulation, interpretation, or implementation of academic policies, or the performance of functions which are unique or specialized within higher education and which frequently involve the support of the academic mission of the university, and which require recruitment in the national or regional market, are eligible.

Sections 2 - 4. The committee substitute changes the date on fee waiver sections related to persons for whom the state is making foster care payments from December 31, 1997 to May 5, 1997.

Section 5. The committee substitute amends s. 240.2093(2), F.S., to require legislative approval for university DSOs to issue bonds only in those instances when the Legislature will be asked for operating funds or funds to purchase the facility. Approval of bonds is subject to s. 243.151, F.S.³

Section 6. The committee substitute amends s. 240.227, F.S. (1998 Supp.) to define “continuing contract” for professional services under the provisions of s. 287.005, F.S., for purposes of a university president’s contracting authority, to mean contracts for which construction costs do not exceed \$1 million or the fee for study activity does not exceed \$100,000.

Section 7. The committee substitute amends s. 240.233, F.S., to add a new subsection (8). The committee substitute provides that a Florida resident who is denied admission as an undergraduate to a state university for failure to meet the high school grade point average requirement may appeal the decision to the university and request a recalculation of the grades earned in up to three credits of advanced fine arts courses. The university is required to provide the student a notification of the admissions decision. The university is required to recalculate the student’s

³Section 243.151, F.S. (1998 Supp.) provides each university with the authority to negotiate and, upon approval of the BOR, to enter into agreements to lease land to for-profit and nonprofit corporations for the purpose of erecting facilities and accommodations for the university, as determined by the strategic plan. The agreements may be for a term no longer than 99 years or the life expectancy of the facilities, whichever is shorter. Additionally, each university is authorized to enter into agreements with for-profit and nonprofit corporations whereby income-producing buildings, improvements, and facilities necessary and desirable to serve the needs and purposes of the university are acquired by purchase or lease-purchase by the university, upon approval of the BOR and approval of the project by the Legislature. When the agreements provide for lease-purchase of facilities erected on land that is not under the jurisdiction of the university, the agreement must include provision for the eventual ownership of the land and facility by the state. Agreements for lease-purchase may not exceed 30 years or the life expectancy of the permanent facility constructed, whichever is shorter. Notwithstanding any other provision of law, the BOR may enter into an agreement for the lease-purchase of a facility under this section for a term greater than 1 year when the term has been approved by the Legislature as part of the project.

grade point average using the additional courses and advise the student of any changes in the student's admission status. The committee substitute defines fine arts courses to include courses in music, drama, painting, sculpture, speech, debate, or a course in any art form that requires manual dexterity. Advanced level fine arts courses include fine arts courses identified in the course code directory as Advanced Placement, Pre-International Baccalaureate, or International Baccalaureate or fine arts courses taken in the third or fourth year of a fine arts curriculum.

Section 8. As an alternative to the provisions of s. 215.332, F.S., the committee substitute amends s. 240.289, F.S., to permit state universities to accept credit cards and debit cards for the payment of tuition and fees without the imposition of a convenience fee for such card services.⁴ The costs incurred by the universities may be absorbed by the universities as a cost of doing business. The committee substitute authorizes universities to use any source of nonappropriated funds to cover the costs of accepting such cards. The committee substitute also permits universities to negotiate credit card contracts and debit card contracts with financial institutions whereby a compensating balance may be placed on deposit with the financial institutions to cover the costs of accepting credit cards and debit cards. The committee substitute permits acceptance of credit card or debit card payments at any location where compensation is received for goods, services, tuition, or fees, whether the payor makes payment in person or by electronic means.

Section 9. The committee substitute amends s. 240.299(5), F.S., to provide that legislative approval for university DSOs to enter into agreements to finance, design and construct, lease, lease-purchase, purchase, or operate facilities will only be required in instances when the Legislature state will be asked for operating funds or for funds to purchase the facility.

Section 10. The committee substitute modifies the current requirement that proceeds received by the Florida Institute of Phosphate Research for patents, copyrights, or trademarks be deposited in the Phosphate Research Trust Fund. The committee substitute requires such proceeds to be deposited in an established account of the not-for-profit foundation of the SUS institution with administrative responsibility for the institute. Further, the committee substitute provides that the trust fund is not subject to the service charge imposed by ch. 215, F.S.

Section 11. The committee substitute amends s. 243.19, F.S., to provide that it is essential to provide additional assistance to institutions for higher education by enabling those institutions to coordinate their budgetary needs with the timing of receipt of tuition revenues in a manner similar to programs authorized for school districts within the state.

Section 12. Section 243.20, F.S., is amended by the committee substitute. The term "project" is modified to include a loan in anticipation of tuition revenues by an institution for higher education. The committee substitute also modifies the term "cost" so that in the case of a loan in anticipation of tuition revenues, the term "cost" means the amount of the loan in anticipation of tuition revenues that does not exceed the amount of tuition revenues anticipated to be received by the borrowing institutions for higher education in the 1-year period following the date of the loan, plus costs related to the issuance of the loans, or bonds the proceeds of which fund the loans, and

⁴As noted *supra*, the provisions of s. 215.322, F.S., do not require an agency to assess a convenience fee. The rules of the Treasurer relating to acceptance of credit cards permit, but do not require, a state agency to assess a convenience fee.

any related costs of debt service reserve funds associated therewith. Additionally, the committee substitute defines the phrase “loan in anticipation of tuition revenues” to mean:

a loan to an institution for higher education under circumstances in which tuition revenues anticipated to be received by the institution in any budget year are estimated to be insufficient at any time during the budget year to pay the operating expenses or other obligations of the institution in accordance with the budget of the institution. The loans are permitted within guidelines adopted by the authority consistent with the provisions for similar loans undertaken by school districts under s. 237.151, F.S., excluding provisions applicable to the limitations on borrowing relating to the levy of taxes and the adoption of budgets in accordance with law applicable solely to school districts.

Section 13. The committee substitute amends s. 243.22, F.S., to include a loan in anticipation of tuition revenue, among enumerated authorized loans.

Section 14. The committee substitute amends s. 381.0403, F.S., to move the program for community hospital education from the BOR to the Department of Health. According to the BOR, funding for the program was transferred to the department in 1998. Appointment of the administrator will be by the Secretary of the department instead of the Chancellor of the SUS.

Section 15. The committee substitute amends s. 413.613, F.S., which provides for the Brain and Spinal Cord Injury Rehabilitation Trust Fund. The committee substitute requires each university that receives funding under the subsection to produce an annual report of research activities and findings, including an executive summary, which is to be submitted to the President of the Senate, the Speaker of the House of Representatives, the Secretary of the Department of Labor, and the Board of Regents by September 1 of each year. The committee substitute eliminates the program review process currently required and assigned to the BOR.

Section 16. Section 471.005(6), F.S., is amended to remove from the definition of “engineering” for purposes of ss. 471.001-471.037, F.S., teaching the principles and methods of engineering design.

Section 17. The committee substitute repeals s. 240.5335, F.S., the Women’s Athletics Trust Fund program.

Section 18. The committee substitute provides for an effective date of July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If personnel of the SUS who are not currently eligible for the SUS optional retirement program choose to participate when eligibility standards are modified, some investments companies may benefit.

C. Government Sector Impact:

According to the Division of Retirement, employer contribution costs will not change regardless of the employee's choice to participate in the optional retirement funds. Under the committee substitute, an additional 1,251 persons will be eligible to participate; however, the division advises that it is unlikely that all of these employees will choose to participate. According to staff of the Board of Regents, between 58% - 65% of eligible employees would elect to participate. The FRS contribution for these employees is estimated to be in the range of \$2.2 - \$4 million.

Administrative costs currently incurred by state universities, the BOR, and the Division of Retirement, when certifying the eligibility of positions to participate in the SUS Optional Retirement Program, should be eliminated.

Increasing the threshold that would be applicable to state universities for "continuing contracts" under the "Consultants' Competitive Negotiation Act" should reduce the administrative costs associated with these activities because the universities would not be required to seek extra bids.

The fiscal impact of authorizing an alternative procedure for acceptance of credit cards by state universities has not been determined.

The Phosphate Research Trust Fund will no longer be subject to the service charge imposed by ch. 215, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Representatives of the universities and the BOR report that the provision requiring legislative approval limits the ability of DSOs to transact certain types of business (e.g., buying and financing facilities) to once a year (right after the legislative session and upon legislative approval). The universities advise that this diminishes the flexibility of DSOs to transact business for which the DSOs were created and that current limitations make it difficult to take advantage of opportunities that arise during the course of the year.

The BOR reports experiencing difficulty in finding external consultants to conduct the requisite program review required by the Brain and Spinal Cord Injury Rehabilitation Program. According to the BOR, the area of research is highly specialized and many of the consultants who could perform the required program review have previously worked with the institutions, currently work with them, or plan to work with them in the future. Accordingly, the BOR recommends repealing s. 413.613(4), F.S., and amending s. 413.613(3), F.S., to require each university to submit an annual report of their research activities and findings to the presiding officers of the Legislature, the BOR, and the Secretary of the Department of Labor and Employment Security.

Universities report that the requirement that engineering faculty be registered engineers contributes to hiring difficulties. In addition, engineering design courses may be taught as early as the freshman year. The Board of Professional Engineers indicates that individuals teaching at this level are not normally registered.

VIII. Amendments:

None.