

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2108

SPONSOR: Education Committee & Senator Pruitt

SUBJECT: Education Governance Reorganization

DATE: April 8, 2001 REVISED: 4/10/01 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable/CS</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/6 amendments</u>
3.	_____	_____	<u>AED</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This Committee Substitute requires the reorganization of the governance of Florida’s education system to commence July 1, 2001, and outlines specific tasks and due dates for the implementation process. Current law and the Florida Constitution establish January 7, 2003, as the date when the elected State Board of Education, including the Commissioner of Education, must be replaced by appointed officials, but they do not address transition.

The bill amends the Education Governance Reorganization Act of 2000 (part I of ch. 229, Florida Statutes) and creates new sections of statute to require the reorganization to occur mostly by “type two transfer,” which merges an agency or governmental unit into another structure but retains all the former statutory requirements and tangible and fiscal attributes, including staff and funds. The intent is that, by creating the structural units required to implement the new system, by allowing them a year to operate under the laws, rules, and guidelines that regulated the previous units, it will become apparent which statutory changes are needed. During the interim between the 2001 and 2002 Legislative Sessions, the bill directs that amendments to rewrite the Florida School Code be drafted with the assistance of the affected organizational units.

The Committee Substitute directs the Governor to appoint the members of the Florida Board of Education but does not abolish the elected State Board of Education. The boards will share responsibilities from July 1, 2001, until January 7, 2003. The new board will appoint a chairperson, but the elected Commissioner will be the head of the Department of Education.

The following boards are abolished by a type two transfer to the appointed Florida Board of Education:

- Board of Regents
- State Board of Community Colleges
- Articulation Coordinating Committee
- Education Standards Commission

The Governor will appoint an 11-member Board of Regents for each state university, and they will have responsibility formerly given to the state-level Board of Regents for appointment, compensation, and evaluation of the university presidents.

The following boards are abolished but merged into new boards with amended responsibilities:

- State Board of Independent Colleges and Universities
- State Board of Nonpublic Career Education
- Postsecondary Education Planning Commission

The changes in responsibility include:

- The board that replaces the Postsecondary Education Planning Commission has responsibility for K-12 education as well;
- The two boards with jurisdiction for nonpublic colleges and career schools are merged into one; and
- Certain independent colleges are not under the jurisdiction of the newly created Commission for Independent Education but under the jurisdiction of the Division of Colleges and Universities¹

The Commissioner remains head of the Department of Education and appoints the heads of the following Divisions:

- Division of Public Schools
- Division of Colleges and Universities
- Division of Community Colleges
- Division of Independent Education

The following units are under the Commissioner of Education, instead of within divisions: Legal; Communications; Strategic Planning and Budget Development; General Administration; Assessment and Accountability; Data Management, Education Technology and an Education Data Warehouse; Access and Opportunity; Office of Student Financial Assistance; Policy Research and Development; Personnel; Workforce and Economic Development; Educational Facilities; and Inspector General.

¹ In this bill, a nonpublic college is under the jurisdiction of the Division of Universities if it is SACS accredited, 4-year baccalaureate-level, located and chartered in Florida, and not-for-profit. These are the requirements for the students at a college to be eligible for the William L. Boyd, IV, Florida Resident Access Grant, s. 240.605, F.S.

This bill amends the following sections of Florida Statutes: 229.001, 229.002, 229.003, 229.004, 229.005, 229.006, 229.085, and 228.082.

It creates the following sections of Florida Statutes: 229.0031, 229.0061, 229.007, 229.0072, 229.0073, 229.0074, 229.008, 229.0081, 229.0082, 229.0083, and 229.0084.

It repeals the following sections of Florida Statutes: 229.0865, 240.145, 240.147, 240.209(2), 240.227, 240.307, and 240.311(4).

II. Present Situation:

In November 1998, Florida voters approved changes in the State Constitution to mandate a new public education governance system led by an appointed, rather than elected, State Board of Education and Commissioner of Education. The amended section reads as follows:

Section 2. State board of education. -The state board of education shall be a body corporate and have such supervision of free public education as provided by law. The state board of education shall consist of seven members appointed by the governor to staggered 4-year terms, subject to confirmation by the senate. The state board of education shall appoint the commissioner of education.²

January 7, 2003, is the date specified in the Constitution for the new system to go into effect.

The Commissioner of Education appointed a Blue Ribbon Committee on Education Governance. Based on the Blue Ribbon Committee Recommendations, the 2000 Legislature passed HB 2263, the Florida Education Governance Reorganization Act of 2000.³

The law, part I of ch. 229, F.S., follows the constitutional directive and generally embraces the majority recommendations of the Blue Ribbon Committee on Education Governance. A Florida Board of Education is created consisting of seven citizen members appointed by the Governor to oversee education in the state and appoint a Commissioner of Education. Organizationally, the Florida Board of Education and the Commissioner of Education are to establish and operate an Office of the Board of Education consisting of subunits for state universities, community colleges, and public schools, each to be headed by a chancellor; and a unit for nonpublic and nontraditional schools to be headed by an executive director. The law also: provides for institutional boards of regents for the 10 state universities, repeals all state level education boards and commissions and transfers their powers and duties to the Florida Board of Education, and repeals several chapters and sections of the existing School Code that create the current organizational and administrative structure of the state's education system. All of these changes are to take effect January 7, 2003, to coincide with the constitutional date for the Florida Board of Education to assume authority.

To assure a smooth transition to the new system, The Reorganization Act created the Education Governance Reorganization Transition Task Force. The task force, composed of 11 members

² Article IX, Section 2 of the State Constitution

³ Ch. 2000-321, L.O.F.

appointed by the Governor, President of the Senate, and Speaker of the House of Representatives, and housed in the Governor's Office of Planning and Budgeting, is charged with the responsibility for making a series of recommendations to the Legislature over the next two years for statutory changes that will implement the new education system.⁴ The first set of recommendations was presented to the Legislature on March 1, 2001. Its major recommendations to the Legislature include:

- Clearly state in law the goals of the system, which are called collectively "The Vision." The Vision includes the following guiding principles, which mandate that the new governance structure will:
 - Be a coordinated, seamless system for kindergarten through graduate school;
 - Be student centered in every facet;
 - Maximize education access and academic success for all Floridians;
 - Safeguard equity and refuse to compromise academic excellence;
 - Emphasize local control of institutions.
- Establish in law the major components of the new education system and initiate the transition effective July 1, 2001.
- On that date, give statutory authority and support to an interim Florida Board of Education to begin the implementation of the new governance structure.
- Assign to the Florida Board of Education authority to address all issues that affect education, kindergarten through graduate school (called in the bill "seamless K-20 education system").
- Authorize the board and the commissioner to reorganize the Department of Education.
- Authorize appointment to university boards of regents and establish duties and authority of postsecondary institutions.
- Enact a comprehensive accountability system to assess the effectiveness of the public education system.
- Manage the transition process to assure that, by January 7, 2003, a seamless, kindergarten through graduate school system of public education focuses control for day-to-day operation at the local level and limits the state to administrative and support activities.
- Reinforce the need for strong coordination, but do not place the Partnership for School Readiness in the Florida Department of Education for purposes of administration.

Revise the mission statement of the Florida on-line high school and house the school within the Division of Public Schools.⁵

The 1999 Legislature passed the School Readiness Act, (s. 411.01, F.S.) and created the Florida Partnership for School Readiness, which is responsible for establishing "an integrated and quality seamless service delivery system for all publicly funded early education and child care programs operating in this state." Assigned to the Executive Office of the Governor for administrative purposes, the Partnership is responsible for determining the amount of school readiness funds a local school readiness coalition should receive and transferring the funds to each coalition that has a fully approved school readiness plan.

⁴ Florida Senate Education Committee, *Reorganization of Education Governance* (Interim Project 2001-011) November 2000.

⁵ Education Governance Reorganization Transition Task Force, *Recommendations to the Florida Legislature*, March 1, 2001.

The 2000 Legislature created the Agency for Workforce Innovation as a fully independent administrative entity under the Department of Management Services to deliver workforce, Work and Gain Economic Self-sufficiency (WAGES) Program, and unemployment compensation services. The agency is responsible for providing employment related services, which can include childcare for working parents.

The 2000 Legislature also created the Legislative Budget Commission (s. 11.90, F.S.), a standing joint committee of the Legislature. The commission is responsible for reviewing and approving or disapproving agency requests to amend original approved budgets; reviewing agency-spending plans; issuing instructions and reports concerning zero-based budgeting, and taking other actions related to fiscal matters of the state.

III. Effect of Proposed Changes:

The committee substitute contains the major recommendations of the Education Governance Reorganization Transition Task Force. Because it is an omnibus act, amending and creating a number of statutes with substantive changes, the following section-by-section analysis provides a brief statement of the changes to be made to the present situation by each section of the bill.

Section 1. Changes the name of part I of ch. 229, F.S., to *Florida Education Governance Reorganization Transition Implementation Act*.

Section 2. Amends s. 229.002, F.S., the *declaration of policy and guiding principles*, with minor changes designed to clarify that the public system of education does not guarantee high student achievement in every case, but provides a high-quality education.

Section 3. Amends s. 229.003, F.S., *Florida Education Governance Reorganization*, to:

- Delete the effective date of January 7, 2003. The effective date will be the date the bill becomes law, unless otherwise provided.
- Change the names of several divisions to be created in the Florida Board of Education.
- Change the required number of members on university boards of regents from nine to 11, and add a student body president as a nonvoting member.
 - Members must be confirmed by the Florida Senate in the regular legislative session immediately following the appointment
 - Membership does not require state residency, but the bill encourages the Governor to consider regional representation.
 - The bill deletes a requirement that all members of the board of Florida Atlantic University must reside in the service area, with 3 from Broward County, 3 from Palm Beach County.
 - Note, however, that Section 13 of the bill requires that a board of regents may not have a majority of its members from a single county.
- Abolish the state-level Board of Regents and transfer its powers and duties by type two transfer to the Florida Board of Education.
- Abolish the State Board of Community Colleges and transfer its powers and duties by type two transfer to the Florida Board of Education.

- Abolish the Postsecondary Education Planning Commission and recreate it as the “K-20 Policy and Research Commission.”
 - *Note: Not a type two transfer.* The previous powers and duties are not transferred by inference. The bill provides, in this section, for the transfer of all personnel, unexpended balances of appropriations and allocations. Section 4 of the bill provides the powers and duties and membership.
 - The commission will be assigned for administrative purposes to the Office of Program Policy Analysis and Government Accountability (OPPAGA).
- Abolish the Articulation Coordinating Committee and the Education Standards Commission and transfer their powers and duties by a type two transfer to the Florida Board of Education.
 - The Education Practices Commission is not abolished. It remains administratively housed in the Department of Education.⁶
- Require the Commissioner of Education to reorganize the Department of Education by including in the office of the commissioner general areas of operation that are common to all delivery sectors, and create the following offices and divisions:
 - Offices of Technology and Information Services, Workforce and Economic Development, and Educational Facilities
 - Division of Public Schools
 - Division of Colleges and Universities
 - Division of Community Colleges
 - Division of Independent Education
 - Merge the State Board of Independent Colleges and Universities with the State Board of Nonpublic Career Education in a newly created single Commission for Independent Education administratively housed in the Division of Independent Education.
- Repeal subsection (6) of s. 229.003, F.S., which relocates the powers and duties of the current boards, divisions, and offices to the Florida Board of Education and abolishes them effective January 7, 2003.

⁶ The duties of the Articulation Coordinating Committee are in s. 240.115, F.S., and include a number of activities designed to eliminate barriers to student movement to a higher level of education or to another institution at the same level. The Education Standards Commission is governed by ss. 231.245 and 231.546, F.S.; the Education Practices Commission is governed by ss. 231.261 and 231.2615, F.S. These statutes remain in effect.

Section 4. Creates s. 229.0031, F.S., to define the powers and responsibilities of the K-20 Policy and Research Commission.

- Its nine members are appointed to 6-year staggered terms: five appointed by the Governor, two each by the President of the Senate and the Speaker of the House of Representatives. None may be an elected official.
 - *Note: The appointment of members by legislators was not a task force recommendation but is necessary if the commission is placed with OPPAGA, which is a legislative entity.*
- The first executive director will be appointed by the Education Governance Reorganization Transition Task Force and confirmed by the Commission.

The commission will provide state policymakers with objective and independent information that will support an educational system in accord with the Vision and Guiding Principles. Specific types of information required include:

- Review annually the activities of research centers and institutes supported with state funds. The purpose is to assess the return on the state's investment.
 - Currently, the state universities have about 450 centers and institutes, funded with over \$252 million in four categories:
 - SUS Appropriated Funds (\$7.6 million, 30.8 percent),
 - Contracts and Grants (\$146 million, 57.8 percent),
 - Fees for Service (20.7 million, 8.2 percent),
 - Private Funds and Other Funds, (\$8.1 million, 3.2 percent).
 - At Florida State University, the Leadership Board for Research and Public Service has a similar responsibility.
- Explore emerging issues, including successful and innovative educational programs.
- Prepare a master plan for the education system. Currently the Postsecondary Education Planning Commission produces a master plan, but it does not include education at the kindergarten – high school level. The plan will be submitted to the Commissioner, who will review and report annually on its implementation. The Commissioner may recommend revision of the Master Plan.
- Evaluate programs as requested by the Legislature or the Florida Board of Education.

In addition to the duties given in the bill, currently the Postsecondary Education Planning Commission has the following additional duties. These responsibilities are not transferred:

- Recommend guidelines for the development of institutional roles, review plans of boards and institutions and relay them to the State Board of Education and Legislature.
- Recommend contracts with independent institutions to conduct programs consistent with the state master plan.
- Recommend rules concerning planning and coordination of educational programs.
- Recommend criteria for establishing new community colleges and universities.
- Recommend establishment of branch campuses. A branch campus may not be established without this review.
- Review public postsecondary education budget requests for compliance with the state master plan.

- Review the design and implementation of the accountability processes.

Section 5. Amends s. 229.004, F.S., the *Florida Board of Education*. Adds a reference to the newly created implementation process and the accountability system created in Section 9 of the bill and to conform terminology. In addition, this section provides that the members of the Florida Board of Education:

- Serve without compensation
- Do not necessarily serve part-time

Section 6. Amends s. 229.005, F.S., *Florida education governance officers*. Deletes references to the appointed Commissioner of Education, since the elected commissioner serves until January 7, 2003. Instead, the bill assigns to the elected commissioner tasks required to implement the transition activities. The commissioner:

- Serves as secretary of the Florida Board of Education and chief executive officer of the education system.
- Appoints the chancellors and executive director.
 - The bill gives these officials the additional title of “division vice president” to conform to the recommendation that the system should resemble a business as much as possible, instead of a bureaucracy.

Section 7. Amends s. 229.006, F.S., *Education Governance Reorganization Transition Task Force*. Updates its responsibilities and deletes obsolete due dates. The bill assigns a final report to the task force, due March 1, 2003, to report the status of full implementation of the “seamless K-20 education system.”

This section also gives the Education Governance Reorganization Transition Task Force authority to suspend any implementation activity of the Florida Board of Education or the commissioner. By majority vote and report to the State Board of Education, the task force can suspend an activity.

Section 8. Creates s. 229.0061, F.S., *Florida’s K-20 education system; guidelines for implementation; guidelines for structure, functions and organization*. Some key provisions are:

- The Florida Board of Education may appoint committees to assist it.
- Members of the Florida Board of Education are to focus on high-level policy decisions. The implication is that the day-to-day operational decisions will be delegated to staff.
- The bill acknowledges the importance of a technology plan based on common data definitions. The implication is not necessarily that definitions of terms such as “full-time-equivalent” must be identical, but that the set of data definitions be common throughout the system. For instance, a full-time-equivalent student at a university will be defined by a number of semester credit hours, and a full-time-equivalent student in a short training course will be defined by a number of clock hours, but the definitions will be common to the system.

The bill assigns levels of responsibility to the organizational units, including the Legislature, the Florida Board of Education, the education governance officers, and the local and regional boards. The Florida Board of Education has 10 responsibilities, including the duty to:

- Enforce education policies and goals.
- Recommend the education budget and authorize resources. The bill stipulates that the budget must include a multi-year plan for projects that will require state funding for more than 1 year.
- Adopt education plans.
- Enforce accountability standards and measures.
- Assess data to monitor and report performance.
- Assist and intervene when needed.
- Provide information. This provision is to assure information currently residing in the databases of the State Board of Community Colleges and the state-level Board of Regents will not be affected. This data is essential for administration, evaluation, and research conducted by the state and federal governments.
- Establish the mission of each public university, college, and community college. Currently the university missions are established by the universities and by rules and guidelines of the state-level Board of Regents.
- Approve new degree programs above the master's degree level.
- Approve new undergraduate medical education programs or colleges, new graduate medical education programs, and Programs in Medical Sciences (PIMS) that are partnerships between two or more public higher education institutions or between public and private higher education institutions.

The bill establishes the duties of the Commissioner and requires the statewide functions to be located in his office. The duties include proposing action on issues before the board and for enforcing compliance with the mission and goals of the system. The statewide functions are also listed in s. 229.003, F.S., amended by Section 3 of the bill. The functions include: Legal; Communications; Strategic Planning and Budget Development; General Administration; Assessment and Accountability; Data Management, Education Technology and an Education Data Warehouse; Access and Opportunity; an Office of Student Financial Assistance; Policy Research and Development; Personnel; Workforce and Economic Development; Educational Facilities; and Inspector General.

The Chancellors and Executive Director of the divisions within the department are called vice presidents as well and have supervisory and administrative duties common to current division directors, and the following additional powers:

- Evaluate the performance of each education institution under the division and report widely the results of the evaluation.
- Direct governing boards to take corrective action to improve unsatisfactory performance. These directions will be pursuant to law and rules of the Florida Board of Education, so as to avoid apprehension in the field that this authority might lead to micromanagement.
- Direct and oversee the accountability system.

The community college boards of trustees, the university boards of regents, and school boards will:

- Develop the budget and strategic plan.
- Measure and enforce performance.
- Report information that is timely and accurate.
- Report directly to the governance officers about education issues.
- Develop local policies and programs to meet needs of students, communities and area employers. These policies are to be within law and rules of the Florida Board of Education. The boards have broad latitude.
- Hold presidents and appointed superintendents responsible for institution and school performance.

The presidents and superintendents will:

- Administer budgets and programs efficiently and effectively.
- Lead the agency to accomplish its mission and goals.
- Monitor education performance.
- Report financial and performance data.
- Link the evaluations of instructional staff with student performance.

Section 9. Creates s. 229.007, F.S., *Florida's K-20 education performance accountability system*. States legislative intent that the accountability system be implemented to assess the effectiveness of Florida's seamless K-20 education delivery system and provide answers to the following questions:

What is the public getting in return for funds it invests in education?

How is Florida's K-20 education system performing in terms of educating its students?

How are the major delivery sectors performing to promote student achievement?

How are individual schools and postsecondary education institutions performing their responsibility to educate their students as measured by how students are performing and how much they are learning?

The bill gives the following responsibilities:

- The Florida Board of Education is to recommend to the Legislature performance standards for the system as a whole.
- The Legislature is to establish system wide performance measures and standards.
- The measures and standards are to provide Floridians with information on how well the K-20 system educates its students.
- The performance measures and performance standards must be based primarily on student achievement.

In addition to allowing for additional performance measures to be identified by law or rule, the bill establishes the following mission, goals, and measures:

Mission - To increase the proficiency of all students within one seamless, efficient system, by providing them with the opportunity to expand their knowledge and skills through learning opportunities and research valued by students, parents, and communities, and to maintain an accountability system that measures student progress toward the following goals:

- Highest student achievement, as measured by:
- Student FCAT performance and annual learning gains; the number and percentage of schools that improve at least one school performance grade designation or maintain a school performance grade designation of "A" pursuant to s. 229.57, F.S., graduation or completion rates at all learning levels; and other measures identified in law or rule.
- Seamless articulation and maximum access, as measured by:
 - The percentage of students who demonstrate readiness for the educational level they are entering, from kindergarten through postsecondary education and into the workforce;
 - The number and percentage of students needing remediation;
 - The percentage of Floridians who complete associate, baccalaureate, professional, and postgraduate degrees;
 - The number and percentage of credits that articulate;⁷
 - The extent to which each set of exit-point requirements matches the next set of entrance-point requirements.
- Skilled workforce and economic development, as measured by:
 - The number and percentage of graduates employed in their areas of preparation;
 - The percentage of Floridians with high school diplomas and postsecondary education credentials;
 - The percentage of business and community members who find that Florida's graduates possess the skills they need.
- Quality efficient services, as measured by:
 - Cost per completer or graduate;
 - Average cost per noncompleter at each educational level;
 - Cost disparity across institutions offering the same degrees;
 - The percentage of education customers at each educational level who are satisfied with the education provided.

Section 10. Creates s. 229.0072, F.S., *Reorganization implementation process*. In this section, the bill reiterates the appointment processes and due dates and stipulates that the Florida Board of Education will operate under the direction of the State Board of Education until January 7, 2003. The bill provides all the necessary administrative authority and responsibility, plus the following additional responsibilities of the Florida Board of Education:

- Establish a technology plan with a month-by-month timeline and monthly progress reports. This requirement is the only one that is not to be subject to review and approval of the State Board of Education.
- Adopt rules.
 - Any rule not approved by the State Board of Education within 45 days takes effect.

⁷ The word "articulate" in this context means, "transfer to a higher level of education."

- Prepare a “unified” K-20 budget for the Governor and Legislature. The budget must define the needs of the divisions within the department.
- Establish policies for the community colleges and universities to use in selecting presidents.
- Establish advisory boards.
- Advise the State Board of Education regarding the issuance of bonds.
 - Note: the issuance of bonds will be further addressed in the exercise of rewriting the Florida School Code, which this section of the bill requires the Florida Board of Education to recommend by January 1, 2002.
- Establish a work plan and time line for the orderly transition, including the devolution of appropriate duties to the university boards of regents.
- Develop and review recommendations on issues of statewide importance, such as technology systems and facilities.

This section of the bill restates the responsibilities and duties of the elected commissioner as they relate to the Florida Board of Education and the reorganization process.

Section 11. Creates s. 229.0073, F.S., *Reorganization of the Department of Education*. The Commissioner’s Education Reorganization Workgroup will provide oversight and direction as the department undergoes reorganization. The seven members include:

- A member of the Senate and the House of Representatives
- The Commissioner of Education
- The Governor or his designee
- The chairman of the Education Governance Reorganization Transition Task Force
- The Chancellors of the Division of Colleges and Universities and Community Colleges

Both the task force and the State Board of Education have approval authority, and the task force, by majority vote, may veto any implementation activity (provided in section 7 of the bill).

Primarily, the new provisions in this section apply to the Division of Independent Education, the Office of Student Financial Assistance, the Office of Technology and Information Services, and the Office of Workforce and Economic Development.

The Office of Technology and Information Services is to:

- Develop a technology plan for the one system of education.
- Make budget recommendations to the commissioner.
- Provide data collection and management for the system.
- Coordinate services with other state, local, and private agencies.
- Develop a method to address the need for a statewide approach to planning and operations of library and information services to achieve a single K-20 education system library information portal and a unified higher education library management system.
- House the Florida Virtual High School (formerly the Florida On-Line High School).

The Division of Independent Education:

- Does not have jurisdiction over the state's 27 colleges that are SACCS accredited, 4-year baccalaureate-level, located and chartered in Florida, and not-for-profit.
 - These are the requirements for the students at a college to be eligible for the William L. Boyd, IV, Florida Resident Access Grant, s. 240.605, F.S.
 - These colleges are under the jurisdiction of the Division of Colleges and Universities.
- Has the new responsibility to serve as the advocate for the identified institutions.
- The executive director will afford students and parents educational opportunities apart from the public system.
- Houses a new commission to oversee licensing of independent postsecondary institutions, consumer protection, and program improvement.
 - The commission is named and its membership specified in section 12 of the bill.
 - The commission has responsibility for all the duties and responsibilities in ch. 246, F.S., that relate to the State Board of Independent Colleges and Universities and the State Board of Nonpublic Career Education.

The Office of Workforce and Economic Development is to evaluate the role of each sector of education in Florida's workforce and economic development, assess the work skills and careers provided, and report the effectiveness of each sector to the Florida Board of Education. This responsibility addresses the dual delivery system provided by the state community colleges and the school district technical centers. The bill does not affect the dual delivery system, but requires this assessment of effectiveness.

The Office of Student Financial Assistance will provide access to and administer state and federal grants, scholarships, and loans pursuant to program criteria and eligibility requirements. In current law, each program assigns administrative duties either to the eligible institution or the department. These laws remain in effect.

Section 12. Creates s. 229.0074, F.S., *Division of Independent Education*. In addition to the responsibilities given to the division in section 11 of the bill, this section makes advocacy its primary mission: It is to serve as an advocate for the institutions and homes that provide education in nongovernmental settings. The advocacy includes necessary educational services and funds for families and schools in the independent sector.

Except for postsecondary institutions under the jurisdiction of the commission, the division has no regulatory authority. Rather, it is to guard against policies that might place regulation or mandates on the independent education community.

The executive director is to interact regularly with the providers, provide a mechanism to receive input from them in the development of articulation, strongly represent them in the department, and articulate their concerns in all relevant government settings and at all levels. This representation must be informed enough to reflect consensus or differences of opinion of the providers.

The specific duties are to establish a clearinghouse of information and to convey the best practices of independent schools for the benefit of public schools.

Commission for Independent Education - The Commission for Independent Education is administratively housed in the division. Its responsibilities combine those assigned in current law to the State Board of Independent Colleges and Universities (ss. 246.011-246.151, F.S.) and the State Board of Nonpublic Career Education (246.201-246.231, F.S.). Amendments to these laws will be proposed for the 2002 Legislative Session to combine the various requirements and clarify responsibilities.

Institutions under the jurisdiction of the current boards are classified in three ways: licensed, authorized, and exempt from licensure. All of the institutions under the jurisdiction of the State Board of Nonpublic Career Education are licensed. The terms “authorized” and “exempt from licensure” apply only to colleges under the jurisdiction of the State Board of Independent Colleges and Universities:

- A college is authorized without oversight by the board if all of its programs are religious.
- A college may be exempt in three categories:
 - Because of its accreditation
 - Because of its accreditation plus other requirements for eligibility for the Florida Resident Access Grant
 - Because of the acceptance of its students by accredited colleges (“credit-trading”)

In the bill, colleges that are eligible to enroll students who receive the Florida Resident Access Grant (FRAG) are removed from this oversight and included in the Division of Colleges and Universities. Of the total number of institutions under the new board’s jurisdiction, 609 are licensed, 103 authorized, and 24 exempt. The following chart shows the number of institutions currently in these categories:

Licensed		Authorized		Exempt	
Colleges*	69	Religious	103	Accredited ^Ψ	21
Schools [§]	540	Colleges ^Ψ		FRAG eligible ^Ψ	27
				Credit trading ^Ψ	2
Total	609	Total	103	Total	50

*Licensed by State Board of Independent Colleges and Universities

§Licensed by State Board of Nonpublic Career Education

Ψ Not licensed

The bill establishes members for the commission and states that its membership is to be consistent with an independent rulemaking commission. In current law, that term is used to describe the State Board of Independent Colleges and Universities but not the State Board of Nonpublic Career Education.⁸ Of the 10 members, 5 must be from colleges, 3 from schools, and 2 are lay members. The institutional representatives are:

⁸ Section 246.031, F.S.

- One from a regionally accredited college (licensed or exempt), currently 15 institutions.
- Two from a college accredited by a national accrediting agency (licensed or exempt), currently 39 institutions.
- One from one of the religious colleges or from one of the two credit-trading colleges, currently 105 institutions.
- Two from schools licensed and accredited by a national accrediting agency, currently 125 institutions.
- One from a non-accredited, licensed school, currently 408 institutions.
- One from a college that offers both degree-level programs and non-degree programs, currently 21 institutions.

No later than July 1, 2001, The Governor must appoint the new members to 3-year staggered terms.

Section 13. Creates s. 229.008, F.S., *Boards of regents of the state universities*. In addition to the provisions elsewhere in the bill, this section provides that:

- The members receive no compensation but may be reimbursed for expenses.
- The Governor may remove a regent upon the recommendation of the Florida Board of Education or for cause.
- There is no state residency requirement, except that a majority may not be from any one county.
- Terms are 4 years, members may be reappointed once.
- Chairpersons serve 2 years and may be reselected for one additional consecutive term.
- A member who is absent three consecutive meetings may be removed.
- The university president is the executive officer and corporate secretary of the board, is responsible for the operation of the university, and sets the agenda for meetings in consultation with the chairperson.

As soon as they are appointed, the boards of regents will commence professional orientation, training, and development activities. They must submit to the Florida Board of Education action plans and timelines for the devolution of duties to them.

Section 14. Creates s. 229.0081, F.S., *Powers and duties of university boards of regents*. Notwithstanding the provisions of chapter 240, F.S., this section gives the boards of regents authority to govern and set policy for the universities.

Beginning July 1, 2002, the boards of regents will establish student fees, including matriculation fees, tuition, and other fees, within proviso in the General Appropriations Act and law. Matriculation fees and tuition may vary no more than 10 percent below and 15 percent above the established fee in the General Appropriations Act.

The boards of regents will select, evaluate, and establish compensation for the presidents.

- The task force recommended that the selection of the presidents be exempt from the Sunshine Law, but that provision is not in the bill. According to Article I, s. 24(c) of the

Florida Constitution, any bill that contains an exemption may not contain other substantive provisions.

- Section 10 of the bill requires the Florida Board of Education to establish policies for boards of regents to use in selecting presidents.

In addition to the responsibilities stated in other sections, the boards of regents will:

- Approve undergraduate and graduate degree programs up to and including the master's degree level.
 - The Florida Board of Education will adopt criteria.
- Deal with real property in accordance with provisions of the Florida Board of Education.
- Establish codes of student conduct.
- Evaluate the student judicial system using a committee of at least 50 percent students.
- Administer the personnel program.
- Govern admission of students.
- Maintain a personnel exchange program.
- Assure that any challenge grant program to be matched with state funds is consistent with the mission of each institution.
- Approve state matching funds for private contributions.
- Work with the other universities, community colleges, and district school boards.
- Authorize the rent or lease of parking facilities under certain conditions, notwithstanding s. 216.262(1), F.S., which states that a state agency may not provide or sell perquisites without the approval of the Division of Management Services.
- Implement the university facilities plan.
- Establish a procurement program for goods, materials, equipment, and services.
- Supervise faculty practice plans for the academic health science centers.
- Establish policies relating to credit and non-credit educational offerings.

The boards conduct the following activities in consultation with the President:

- Define and develop a strategic plan including goals and objectives. (Note: Section 8 of the bill requires the Florida Board of Education to adopt each university's mission.)
- Provide for academic freedom and academic responsibility.
- Submit to the Chancellor a budget request including fixed capital outlay.

Section 15. Creates s. 229.0082, F.S., *university presidents; powers and duties*. In addition to provisions included elsewhere in the bill, this section requires each president to:

- Recommend rules consistent with the university mission.
- Prepare a budget request and operating budget.
- Administer personnel procedures.
- Govern admissions.
- Handle contracts under certain conditions that are in current law.
- Be custodian of university property.
- Establish the internal academic calendar
- Administer the athletics program.

- Recommend establishment and termination of programs at the undergraduate and master's degree level.
- Award degrees.
- Recommend a schedule for matriculation fees, tuition, and other fees.
- Approve internal procedures of student government organizations.
- Maintain pertinent data and information.

The bill gives authority for the president to adjust property records and dispose of state-owned tangible personal property. The university will retain money received from disposition of property and may use it to acquire property or for operating expenses.

Section 16. Creates s. 229.0083, F.S., *School Readiness Act; legislative intent; division of responsibilities*. This section of the bill declares the Legislature's intent that school readiness programs must not be construed as part of the Seamless K-20 education system. The School Readiness Act, s. 411.01, F.S., does not relieve parents of their obligation to prepare their children for school and does not create an obligation for the state to provide school readiness programs. Notwithstanding any laws to the contrary, the Florida Partnership for school readiness is assigned to the Agency for Workforce Innovation for administrative purposes.

The agency must prepare and submit to the Governor and the Legislative budget Commission a plan for distributing school readiness funds based on a performance funding formula. The Florida Partnership for School Readiness will coordinate services, provide leadership, and focus on improving the educational quality of school readiness programs. The DOE must implement the school readiness-screening instrument recommended by the Partnership and incorporate school readiness data into the K-20 data warehouse for longitudinal tracking.

Section 17. Creates s. 228.0084, F.S., a statement that schools, school districts, nor the state may guarantee that students will avail themselves of the opportunities provided to attain high academic achievement.

Section 18. Amends s. 228.082, F.S., the *Florida On-Line High School*.

- Renames the high school the Florida Virtual High School. Houses it in the commissioner's office for administrative purposes. The Orange County District School Board is the temporary fiscal agent.
- Provides a mission that the school is primary provider of an option for:
 - Students who do not have access to higher-level courses.
 - Students seeking the early award of a high school diploma.
- By FY 2003-2004, rather than being funded in the category of a grant-in-aid, the bill requires self-sufficiency through the Florida Education Finance Program.
- Requires the board of trustees to raise funds to support future endeavors.

Section 19: Beginning with the 2002-2003 fiscal year, this section requires the Department of Education to cease expending funds received from indirect cost allowance without appropriation by the Legislature.

Section 20. Effective June 30, 2002, repeals s. 229.8065, F.S., which exempts the Knott Data Center and Projects, Contracts, and Grants Programs from s. 216.023, F.S., which requires an agency to submit a legislative budget request. On that date, those programs will be required to submit a budget request, and the Legislature will appropriate their funds.

Section 21.

Repeals:

- Section 240.145, F.S., which relates to the Postsecondary Education Planning Commission.
- Section. 240.147, F.S., which relates to the appointment of an Executive Director of the community college system.
- Section. 240.209(2), F.S., which relates to the powers and duties of the commission.
- Section. 240.227, F.S., which relates to the Board of Regents appointment of a Chancellor of the State University System.
- Section. 240.307, F.S., which relates to powers and duties of university presidents.
- Section. 240.311(4), F.S., which relates to the appointment of members of the State Board of Community Colleges.

Section 22. Provides an effective date of upon becoming a law, except as otherwise provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill provides on page 46, lines 2 and 3, that each board of regents is transitioning from operating as a state agency to a “. . . body corporate employer without state agency status.” That these boards are not intended to have state agency status under the bill would not appear to exempt them from open government requirements. The courts apply a “totality of factors” test in determining if an entity is subject to public records and meetings requirements. In *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*,⁹ the Florida Supreme Court noted that the totality of factors test presents a mixed question of fact and law. The factors taken into consideration include: (1) the level of public funding; (2) commingling of funds; (3) whether the activity was conducted on publicly-owned property; (4) whether services contracted for are an integral part of the public agency’s chosen decision-making process; (5) whether the entity is performing a governmental function or a function which a public agency otherwise would perform; (6) the extent of the public agency’s involvement with, regulation of, or control over a private entity; (7) whether the private entity was created by a public agency; (8) Whether the public agency has a substantial financial interest in the private entity; and (9) for whose benefit the private entity is functioning. The boards would meet many of the

⁹ 596 So.2d 1029 (Fla. 1992).

provisions contained in the totality of factors test and, as a result, it would appear that open government requirements would apply.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The systematic changes in the governance structure could eventually affect the fees required of institutions to support governmental operations, such as the fees assessed independent postsecondary education institutions for licensing, but the effect cannot be determined at this time.

B. Private Sector Impact:

Beginning July 1, 2002, the bill authorizes the university boards of regents to set student fees for university students, within proviso in the General Appropriations Act and law. The fees may vary as much as 15 percent above and 10 percent below the amount established in the General Appropriations Act. This authority could require some students to pay higher fees, and some lower.

C. Government Sector Impact:

The bill changes many functions primarily to relocate rather than to create governmental duties. Some of the changes may generate additional costs to the state, but they cannot yet be predicted.

VI. Technical Deficiencies:

Section 20.03(10), F.S., defines a “commission” to mean

... unless otherwise required by the State Constitution, means a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and exercising limited quasi-legislative or quasi-judicial powers, or both, independently of the head of the department or the Governor.

The bill places the Postsecondary Education Planning Commission, which is re-created as the K-20 Policy and Research Commission in the Office of Program Policy Analysis and Government Accountability (OPPAGA). The OPPAGA is not a department, part of the Office of the Governor, or the Executive Office of the Governor. Further, the duties of the K-20 Policy and Research Commission are neither quasi-legislative nor quasi-judicial, but are instead more advisory in nature. As such, the K-20 Policy and Research Commission does not fit within the statutory definition of a commission. The K-20 Policy and Research Commission would be more correctly designated as a “council” under s. 20.03(7), F.S., which is defined as

. . . an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.

VII. Related Issues:

The K-20 Policy and Research Commission is created within the Office of Program Policy Analysis and Government Accountability (OPPAGA), which is part of the legislative branch of government, but the bill provides the Governor with the majority of appointments to this commission. The Governor is given 5 appointments, the President of the Senate is given 2 appointments and the Speaker of the House is given 2 appointments.

The duties of the OPPAGA include program evaluation and justification reviews.

VIII. Amendments:

#1 by Governmental Oversight & Productivity Committee:

Technical amendment to correct the number of board members of a university.

#2 by Governmental Oversight & Productivity Committee:

Technical amendment to correct a reference to who may vote.

#3 by Governmental Oversight & Productivity Committee:

Clarifies that a university board of trustees may cover the costs of defending a board member in a civil suit for an act or omission arising out of the performance of his or her duties.

#4 by Governmental Oversight & Productivity Committee:

Delegates rulemaking authority for university health support organizations to the local university boards.

#5 by Governmental Oversight & Productivity Committee:

Clarifies that universities are within the definition of “agency” for purposes of sovereign immunity.

#6 by Governmental Oversight & Productivity Committee:

Delegates rulemaking authority for direct-support organizations to the local university boards.