

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

**BILL:** CS/CS/SB 1786

**INTRODUCER:** Policy and Steering Committee on Ways and Means; Higher Education Committee and Senator Oelrich

**SUBJECT:** Postsecondary Education

**DATE:** April 20, 2010

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harkey</u>	<u>Matthews</u>	<u>HE</u>	<u>Fav/CS</u>
2.	<u>Bryant</u>	<u>Coburn</u>	<u>WPSC</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill clarifies the authority of the Board of Governors (BOG) concerning the operation of the State University System, as well as delegates authority from the Legislature to the BOG concerning certain fees and rulemaking. The bill implements an agreement regarding the governance of the state universities which was signed by legislative leaders, BOG officials and the Governor on March 24, 2010. As part of the agreement, BOG withdrew from the lawsuit, which was filed to determine the scope of the board's constitutional authority over state universities.

This bill amends sections 110.181, 112.19, 112.191, 120.81, 282.0041, 282.703, 282.706, 287.064, 1000.05, 1001.705, 1001.706, 1001.72, 1004.03, 1004.07, 1006.54, 1006.60, 1006.65, 1007.264, 1007.265, 1009.24, 1009.26, 1010.04, 1010.62, 1011.43, 1011.90, 1013.02, 1013.10, 1013.12, 1013.28, 1013.30, 1013.31, 1013.47, and 1013.74, Florida Statutes.

The bill creates section 1004.015, Florida Statutes.

The bill repeals sections 1001.74, 1004.21, 1004.38, 1004.381, 1004.3811, 1004.382, 1004.383, 1004.386, 1004.64, Florida Statutes, and subsection (13) of section 1004.22, Florida Statutes.

## II. Present Situation:

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

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

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

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

The 2005 Legislature<sup>2</sup> codified the powers and duties of the BOG and the 2007 Legislature<sup>3</sup> extensively revised the statutes clarifying the powers and duties of the BOG and the university boards of trustees. In 2007, a group of Florida citizens and the BOG filed a lawsuit against the President of the Senate and the Speaker of the House of Representatives seeking further clarification of the BOG's constitutional authority over the state university system.<sup>4</sup> On March 22, 2010, the BOG voted to dismiss its claims in the lawsuit, and on March 24, 2010, the Chair of the BOG, the Chancellor of the State University System, legislative leaders and the Governor signed an agreement regarding the shared power of the BOG and the Legislature in governance of the state university system.

### **State University System Governance Agreement**

The agreement acknowledges the Legislature's authority for the state's public education system under s. 1(a), Article IX of the state constitution and the BOG's authority for the state university system under s. 7(c), Article IX of the state constitution. The key elements of the agreement are outlined below:

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

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

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

<sup>4</sup> *Bob Graham et al v. Ken Pruitt, President of the Florida Senate and Marco Rubio, Speaker of the Florida House of Representatives*, Case No. 2007-CA-1818.

### Governance

- The BOG has exclusive authority for delegating powers and duties to the university boards of trustees;
- The BOG has exclusive authority for the personnel programs of the state universities, except that the BOG must confirm the presidential selection by a university board of trustees, and the Department of Management Services must maintain control over state university employees for state group insurance and state retirement programs;
- The BOG's current authority for regulation of data and technology will be maintained, and state universities will be exempt from the requirements of ch. 282, F.S., regarding technology;
- The BOG will continue to report on and account for the expenditure of funds as required by the Legislature and will provide data to the Legislature as required by general law and by the Legislature; and
- The BOG's accountability initiative, university work plans, and consolidated annual reporting will continue, and the BOG will collaborate with the Legislature on the use of data from these plans and reports.

### Planning and Coordination

- The Chancellor of the State University System, the BOG Chair and the Legislature's presiding officers will hold a higher education strategic planning meeting once each year to discuss significant policy and fiscal matters including budgets, mission alignment, enrollment growth, program expansion, and issues involving entities that have both statewide responsibility and state university system responsibility;
- A Higher Education Coordinating Council will be established to identify unmet needs and to facilitate solutions to disputes regarding the creation of new degree programs and the establishment of new institutes, campuses, or centers;
- The council will make recommendations to the BOG, the State Board of Education and the Legislature concerning articulation, consistent education policy across all educational delivery systems, access to higher education, and transfer of credit;
- The BOG will provide staff to support the work of the council; and
- The council will consist of the following members:
  - The Chancellor of the State University System of Florida;
  - The Chancellor of the Florida College System;
  - The Commissioner of Education;
  - The President of the Independent Colleges and Universities of Florida;
  - The Executive Director of the Commission for Independent Education; and
  - Two members representing the business community, one appointed by the President of the Senate and one by the Speaker of the House of Representatives.

### Rules and Regulations

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

- The BOG will follow the Administrative Procedures Act<sup>5</sup> when adopting rules to implement legislatively delegated authority that arises from the Legislature's general police powers to provide for public health, safety, and welfare or its powers of imminent domain and sovereign immunity, and when the Legislature delegates to the BOG authority for subjects outside the scope of the BOG's constitutional authority; and
- The BOG and the universities will adopt regulations to implement legislative authority in the areas of tuition and fees, management and oversight of state lands, public buildings, and public construction.

### Tuition and Fees

- The Legislature will establish tuition and the BOG will establish the tuition differential pursuant to law;
- The BOG may approve flexible policies, including undergraduate and graduate block tuition and the charging of market-rate tuition for non-credit, on-line, and continuing education courses, provided such policies and charges do not increase the state's fiscal liabilities or obligations;
- The Legislature delegates to the BOG the authority for fees established in s. 1009.24 (13)(a)-(r), (14), and (15), F.S.;<sup>6</sup>
- The BOG may further delegate to the university boards of trustees fees that are charged to recover the cost of services, fines, and fees;
- A university board of trustees may request and the BOG may approve a new fee or an increase to an existing fee with an established cap;
- When approving a university request for a new fee, the BOG must consider the purpose to be served, whether there is a student-based need for the fee, whether alternative resources are available to meet the need, whether the financial impact on students is warranted in light of other charges assessed to them, and whether restrictions should be placed on the use of the fee;
- When approving a fee increase, the BOG must consider the services or operations currently being funded by the fee; whether more efficiency could alleviate the need for the fee increase; the additional or enhanced services to be funded by the fee increase, whether alternative resources are available to meet the need, and whether the increase is warranted in light of other charges assessed to students, and
- When approving a proposal for flexible tuition policies, the BOG must consider whether the proposed policy is aligned with the mission of the university, whether the policy would increase the state's fiscal liabilities or obligations, whether restrictions or limitations should be placed on the policy, and how students' prepaid tuition contracts will be honored when the policy is implemented.

### Financial Aid Programs

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<sup>5</sup> ch. 120, F.S.

<sup>6</sup> The delegated fees are for: application, orientation, security access or ID card, registration, late-payment of tuition, health-related charge, materials and supplies, housing rental, collection efforts, loan service, off campus course offerings, library, duplicating and copying, late return of rental equipment, returned checks, traffic and parking, child care, transcripts and diploma replacement, admissions deposits, and paying tuition in installments.

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

### **The BOG Strategic Plan**

The BOG adopted the SUS Strategic Plan 2005-2013 on June, 2005. The Board established system goals for 2012-2013 in the following areas:

- Goal 1: Access to and production of degrees
- Goal 2: Meeting statewide professional and workforce needs
- Goal 3: Building world-class academic programs and research capacity
- Goal 4: Meeting community needs and fulfilling unique institutional responsibilities

The Strategic Plan includes mission and vision statements for each constituent university.<sup>7</sup> The university strategic plans and factbooks are available on the BOG website.<sup>8</sup>

The BOG has developed a planning and accountability framework to help maximize the SUS's capacity to meet state economic development needs through education and research and development. The multi-year university work plans and annual reports reflect each institution's unique mission and focus on core strengths within the context of SUS goals and regional and statewide needs. The 2009 Annual Report,<sup>9</sup> the first installment in the process, provides an overview of the system's historical performance on a range of measures, with an emphasis on performance during the last five years for which data are available on any given metric. The report highlights SUS-level performance on key measures and outlines the system's progress on indicators related to the BOG Strategic Plan. The report provides detailed data for the individual institutions.

### **III. Effect of Proposed Changes:**

This proposed committee substitute would amend statutes relating to the operation of the state university system. The bill addresses the following areas:

#### **Governance**

- Repeals s. 1001.74, F.S., governing the powers and duties of the university boards of trustees;
- Exempts state universities from the requirements of ch. 282, F.S., regarding technology;
- Authorizes a state university to participate in the state-maintained SUNCOM communications system in its discretion;
- Establishes legislative intent to support the BOG's accountability initiative and university work plans;
- Recognizes that the BOG's authority for delegating powers and duties to the university boards of trustees includes the flexibility to align the mission of each university with the unique characteristics of that university;

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<sup>7</sup> [http://www.flbog.org/about/doc/strategicplan/StrategicPlan\\_05-13.pdf](http://www.flbog.org/about/doc/strategicplan/StrategicPlan_05-13.pdf)

<sup>8</sup> <http://www.flbog.org/resources/factbooks/>

<sup>9</sup> <http://www.flbog.edu/resources/publications/accountability.php>

- Provides that the BOG is responsible for the personnel program for the universities, except for state group insurance and retirement which will be controlled by the Department of Management Services;
- Requires BOG confirmation of the university board of trustees' selection of the university president;
- Provides that the BOG will approve new degree programs and will report annually to the legislature regarding requests for new programs and the BOG's decision regarding the proposals;
- Provides that the BOG is responsible for university facilities pursuant to ch. 1013, F.S.

### **Planning and Coordination**

- Establishes a 7-member Higher Education Coordinating Council to:
  - Identify unmet needs;
  - Facilitate solutions to disputes regarding the creation of new degree programs and the establishment of new institutes, campuses, or centers; and
  - Make recommendations to the BOG, the State Board of Education and the Legislature concerning articulation, consistent education policy across all educational delivery systems, access to higher education, and the transfer of credit;
  - Be comprised of the Chancellor of the State University System of Florida, the Chancellor of the Florida College System; the Commissioner of Education; the President of the Independent Colleges and Universities of Florida; the Executive Director of the Commission for Independent Education; and two members representing the business community, one appointed by the President of the Senate and one by the Speaker of the House of Representatives; and
  - Be supported by staff from the BOG.

### **Rules and Regulations**

- Declares that the BOG and the university boards of trustees may implement their constitutional power through regulations;
- Makes the BOG subject to the Administrative Procedures Act when it is acting pursuant to statutory authority but authorizes the BOG to adopt regulations instead of rules when it is expressly authorized or required by law to do so;
- Requires that if the BOG delegates a statutory power or duty to a university board of trustees, the authority to adopt rules or regulations is included in the delegation;
- Declares that a university board of trustees that is subject to the requirements of the Administrative Procedures Act when implementing legislatively delegated authority may adopt regulations rather than rules;
- Directs the Department of State to remove from the Florida Administrative Code the BOG rules that have been superseded by BOG regulations; and
- Requires that the BOG's procedure for regulations authorized or required by law must provide for:
  - Notice to the public;
  - Opportunity for public comment;

- A process for challenging a statement of general applicability that has not been properly adopted as a regulation, an unlawful regulation and an emergency regulation; and
- Publication of the regulation development procedure on the BOG's and the universities' websites.
- Provides that judicial review of regulations that implement legislatively delegated authority will be in the appellate district in which the BOG headquarters is located or in which the main campus of the university is located, as applicable.

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### **Tuition and Fees**

- Authorizes the BOG to approve flexible policies for tuition and fees as long as the policies are in alignment with the university's mission and do not increase the state's liability or obligation for the Bright Futures Scholarship program or the Florida prepaid tuition program;
- Requires fees for services to be based on reasonable costs of services;
- Authorizes the BOG to establish a new fee that is not specifically authorized by law and limits the aggregate sum of new fees to no more than 10 percent of tuition;
- Authorizes the BOG to approve a university board of trustees' proposal to increase the current cap for certain existing fees;<sup>10</sup>
- Authorizes the BOG to approve a university board of trustees' proposal to implement block tuition, block tuition differential, or market-rate tuition for graduate-level online courses or graduate-level continuing education courses;
- Requires the BOG, when approving a new fee, to consider the purpose to be served, whether there is a student-based need for the fee, whether the financial impact on students is warranted in light of other charges assessed to them, whether restrictions should be placed on the use of the fee and whether there are outcome measures to indicate if the purpose for which the fee was established is accomplished;
- Requires the BOG, when reviewing a proposal to increase the cap on a fee, to consider the services or operations currently being funded by the fee, the additional or enhanced services to be funded by the fee increase, whether alternative resources are available to meet the need, and whether the increase is warranted in light of other charges assessed to students;
- Requires the BOG to submit an annual report to the President of the Senate, the Speaker of the House of Representatives, and the Governor summarizing the tuition and fee proposals received by the board during the preceding year and the actions taken by the board in response to such proposals;
- Prohibits the transfer of any revenues from a new fee to an auxiliary enterprise or a direct support organization;
- Requires a university where the BOG has approved the establishment of a new fee to establish a fee committee to recommend to the university board of trustees and the university president how the fee will be spent; and

<sup>10</sup> The BOG could approve an increase in the current cap for the fees for: application, orientation, security access, or ID cards, special types of registration, late payment of tuition, transcripts and diploma replacement, and a nonrefundable admissions deposit.

- Limits an increase to an existing fee or a new fee to a maximum of once each fiscal year and requires the fee increase to be implemented beginning with the fall term.

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

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

If new fees and fee increases were approved by the BOG, students would incur a higher cost for enrollment at a state university.

**C. Government Sector Impact:**

The BOG will incur the cost of providing staff support to the Higher Education Coordinating Council.

If new fees or fees increases were approved by the BOG, state universities would receive additional revenues.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Policy and Steering Committee on Ways and Means on April 20, 2010:**



The committee substitute:

- Requires that judicial review of regulations under Chapter 120, Florida Statutes, must be sought in the appellate district in which the headquarters of the Board of Governors is located or in which the main campus of the state university is located, as applicable.
- Provides that flexible tuition polices may include undergraduate or graduate block tuition.
- Requires that, when reviewing proposed flexible tuition policies, the Board of Governors must consider how the proposed policy will be implemented to honor advance payment contracts of students with prepaid tuition contracts under section 1009.98, Florida Statutes.

B. Amendments:

None.