STORAGE NAME: h0755a.ed
DATE: April 11, 1997

HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
EDUCATION APPROPRIATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: HB 755

RELATING TO: Postsecondary Education

SPONSOR(S): Representative Constantine

STATUTE(S) AFFECTED: Sections 110.131, 235.055, 240.1201, 240.147, 240.205, 240.209, 240.214, 240.227, 240.289, 243.151, 287.012, 240.225, 240.247, 240.4988(4), 287.017(3), Florida Statutes.

COMPANION BILL(S): SB 228 (similar) and SB 1414 (similar)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) COLLEGES AND UNIVERSITIES YEAS 10 NAYS 0
(2) FINANCE AND TAXATION (W/D)
(3) EDUCATION APPROPRIATIONS YEAS 13 NAYS 0
(4)
(5)

I. SUMMARY:

The bill represents several substantial policy shifts toward deregulating the State University System (SUS), including these provisions:

1. **Record Keeping Flexibility:** The bill deletes the SUS reporting requirements for OPS employees, and modifies accountability to be consistent with Performance Based Program Budgeting.

2. **Purchasing Flexibility:** The bill provides that the SUS can establish its own purchasing rules outside the Department of Management Services (DMS), and increases the threshold for the purchase of goods and equipment from $500,000 to $1,000,000.

3. **Presidential Authority:** The bill authorizes university presidents to approve contracts and purchase goods and equipment, up to $1,000,000, subject to BOR rules; and adjust property records.

4. **Land Acquisition Efficiency:** The bill permits the SUS to expedite with certain guidelines, the acquisition of land.

5. **Other Issues:** The bill establishes National Hispanic Scholars, National Achievement Scholar finalists, and National Merit Scholars and finalists as residents for tuition purposes; and repeals obsolete rulemaking requirements.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

See Section-By-Section Research.

B. EFFECT OF PROPOSED CHANGES:

See Section-By-Section Analysis.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Some rulemaking responsibilities of the Board of Regents are reduced where unnecessary. The BOR will be developing and implementing rules governing a purchasing program for the State University System.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

(2) what is the cost of such responsibility at the new level/agency?

(3) how is the new agency accountable to the people governed?

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

NOT APPLICABLE

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

(4) Are families required to participate in a program?

(5) Are families penalized for not participating in a program?

b. Does the bill directly affect the legal rights and obligations between family members?

NOT APPLICABLE

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

NOT APPLICABLE

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

D. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 110.131(6)(a), F.S., deleting certain reporting requirements for the Board of Regents for certain OPS employees.

Present Situation:

Currently, the Board of Regents (BOR) is exempt from certain required record keeping activities pursuant to s. 110.131, F.S. The BOR must report to the Department of Management Services (SMA) details relating to the actual employee. The BOR contends that this information is contained within the State Automated Management Accounting Subsystem (SAMAS), maintained by the State Comptroller.

The BOR is authorized in s. 240.209(3)(f), F.S., to establish and maintain systemwide personnel programs for all of its employees. Additionally, the BOR must submit any reports concerning SUS personnel programs as required by the Department of Management Services for other state employees.

Effect of Proposed Change:

The BOR would be exempt from the record keeping requirements of s. 110.131, F.S., eliminating duplicative record keeping.

Section 2. Amends s. 235.055, F.S., deleting from this section of law the Board of Regents authority to construct educational facilities on leased property.

This section of the bill is a conforming provision for Section 10 of the bill. With respect to the BOR, the authority to construct educational facilities on leased property, under certain conditions, has been moved by this bill to s. 243.151, F.S., with some changes. Please refer to Section 10 for Present Situation and Effect of Proposed Changes.

Section 3. Amends s. 240.1201(10), F.S., to classify as residents for tuition purposes, National Hispanic Scholars, National Achievement Scholar finalists, and National Merit Scholars finalists.

Present Situation:

Nonresidential National Hispanic Scholars, National Achievement Scholars, and National Merit Scholars and Finalists are assessed nonresident tuition which is currently $166.52 per student credit hour.

Effect of Proposed Change:

Those nonresident National Hispanic Scholars, National Achievement Scholar finalists, or National Merit Scholar finalists would be considered residents for tuition purposes. Residents are assessed $40.75 per student credit hour.

Section 4: Amends s. 240.147(4), F.S., correcting a reference to the State University System limited access report. Currently, s. 240.147(4) incorrectly references the limited access report as s. 240.209(3)(r) which is the subsection authorizing the BOR to promulgate rules. The correct limited access program report reference is within s. 240.209(3)(s), F.S.

Section 5: Amends s. 240.205, F.S., by permitting the Board of Regents to approve contracts for goods and services on behalf of a university over $1,000,000, and deletes the requirement that the contracts be in accordance with Chapter 287.

Present Situation:

Presently, the Board of Regents must approve and execute contracts for goods and services on behalf of a university that are over $500,000. This threshold was established in 1979. The BOR indicates that this provision allows smaller general construction projects to be administered at the local level pursuant to established construction guidelines.

Effect of Proposed Changes:

This section of the bill would increase from $500,000 to $1,000,000 the amount beyond which the BOR is required to acquire real or personal property on behalf of a university. This modification would permit the university more flexibility in acquiring real or personal property without seeking approval by the Board of Regents.

The reference to Chapter 287, F.S., is removed from this section of the bill to conform to Section 6 of the bill which authorizes the BOR to administer its own purchasing program.

Section 6: Amends s. 240.209(3)(r), F.S., authorizing the Board of Regents to adopt rules for purchasing; and, creates 240.209(9), F.S., a process to expedite property acquisition through the Department of Environmental Protection.

Present Situation:

Currently, the Department of Management Services (DMS) has the authority to delegate to the State University System DMS's Chapter 287, F.S., functions and duties as they pertain to the State University System. The Board of Regents contends that every time a change is made to Chapter 287, F.S., there is confusion as to whether the change falls within the universities' delegated authority.

Section 253.025, F.S., governs the acquisition of state lands for purposes other than preservation, conservation, and recreation. It sets out guidelines that must be followed by state agencies seeking to acquire land. Within s. 253.025(2), F.S., prior to any state agency initiating any land acquisition, the agency shall coordinate with the Division of State Lands to determine the availability of existing, suitable, state-owned lands in the area and the public purpose for which the acquisition is being proposed.

Effect of Proposed Changes:

Authorizes the State University System to establish in rule, its own purchasing procedures to administer an acquisition program for the purchase of real and personal property and contractual services pursuant to s. 240.205(6), F.S. The bill amends s. 240.205(6), F.S., to no longer require compliance with Chp. 287, F.S. The Department of Management Services and the Comptroller are supportive of authorizing the State University System to establish its own procurement and acquisition program in rule.

Although the State University System would not be subject to the general provisions contained within Chapter 287, F.S., specific provisions such as s.287.055, F.S., (Consultants Competitive Negotiation Act) and s. 287.093, F.S., et seq., (Minority Business Enterprises) would still be applicable. This is due to specific definitional sections contained within these sections of Chapter 287, F.S., which will apply to the State University System.

This section of the bill exempts the Board of Regents from s. 253.025, F.S., and authorizes the Board of Regents, with the consent of the Board of Trustees of the Internal Improvement Trust Fund, to sell, convey, transfer or purchase real property, and establishes a procedure for the State University System. The BOR would still be required to secure appraisals and surveys, but in order to expedite a purchase, could contract with one or more appraisers on the list of approved appraisers maintained by the Division of State Lands, without competitive selection. This new process would not abrogate the authority delegated to the Board of Trustees of the Internal Improvement Trust Fund or the Division of State Lands to approve a contract for purchase of state lands or to require policies and procedures to obtain clear legal title to the purchased land.

This language has been negotiated between the Division of State Lands in the Department of Environmental Protection and the State University System.

Section 7: Amends s. 240.214, F.S., revising the accountability process to maintain consistency with the performance based program budgeting process.

Present Situation:

In 1991, the Legislature enacted Chapter 91-55, Laws of Florida, to provide for the systematic, ongoing evaluation of quality and effectiveness in the State University System. The provisions of the accountability law focus on undergraduate outcomes and contain ten measures:

1. Student credit hours generated
2. Faculty contract hours of instruction
3. Pass rates on professional licensure exams
4. Assessing institutional quality through surveys

5. Time and number of credits required for the degree
6. Enrollment, progression, retention and graduation rates
7. Student course demand
8. Analysis of administrative and support function
9. Analysis of cumulative debt of students
10. Production of classroom contact hours

Effect of Proposed Change:

This section of the bill would delete the measures set forth in law and replace them with those measures defined through performance based budgeting. The performance based budgeting measures must also reflect the elements of teaching, research, and service inherent in the missions of the institutions within the State University System.

Section 8: Amends s. 240.227, F.S., authorizing university presidents to enter into contracts for goods and services up to $1,000,000, and also allows university presidents to adjust university property records and dispose of state-owned tangible personal property.

Present Situation:

Currently, presidents serve as the chief administrative officer of their respective universities. As the agency head, they are given broad authority to manage their institutions. They are subject to the governance authority of the BOR via rule and state law.

The state Comptroller has the authority to adjust property records of state agencies. In prior years, surplus property that was written off was sold and the generated revenue remained on campus. In 1995, however, this provision was modified and the revenue generated from the sale of surplus property now goes to the state and is expended as general revenue. The universities indicate that there is little incentive for the universities to aggressively market surplus property since the money does not remain on campus.

Effect of Proposed Changes:

The threshold for contracts the president may execute and approve without approval of the BOR would be raised from $500,000 to $1,000,000.

University presidents would be permitted to adjust property records and dispose of state owned tangible personal property in accordance with rules established by the BOR. The revenue gained from its sale would be retained by the university, and may be disbursed for the acquisition of property or operating expenditures.

Section 9: Amends s. 240.289, F.S., to permit credit card use by the universities.

Present Situation:

Under current law, state agencies must receive the total payment due for a fee, fine, or assessment. Credit card companies charge a certain percent-of-purchase fee for the use of the card. This user fee ranges anywhere from 2 to 6 percent depending on the type of card, ie., Visa, MasterCard, Discover, or American Express. At a business establishment, restaurant, etc., this fee is usually paid by the merchant (ultimately passed on to the consumer in the form of higher prices). The merchant must pay the user fee to the credit card company for processing the billing to the banking institution extending the credit on the charge card. Due to the university being a state agency and the "merchant" in cases of tuition payments, they are not permitted to deduct the user fee from the money owed.

Current law permits agencies to charge a surcharge to cover user fees, but the two primary credit card companies, MasterCard and Visa, will not accept this arrangement. Their view is that it lowers the value of the credit card and places an undue financial burden on the cardholder.

In the past, universities have deposited tuition revenue in a one-day or extremely short term investment to cover the user fees charged by the credit card companies. After reviewing this procedure, the Treasurer considered interest generated on tuition to be state money and therefore this type of arrangement can no longer occur. Additionally, short term interest rates have declined, making this arrangement impractical in the immediate future.

<u>Effect of Proposed Change:</u>

Credit cards could be accepted for fee payment by the universities. The BOR has indicated that the universities will be required to cover the costs associated with credit card acceptance.

Section 10: Amends s. 243.151, F.S., to authorize universities to construct educational facilities on leased property.

<u>Present Situation:</u>

Currently, s. 235.055, F.S., permits the Board of Regents, under certain conditions, to construct educational facilities on leased property. The current law permits the Board of Regents to construct educational facilities on leased property where the lease is not less than 40 years. The BOR may enter into short term leases for the use of land owned by any person on which temporary or relocatable facilities are to be used.

<u>Effect of Proposed Change:</u>

The authority for the BOR to construct educational facilities on leased property, contained within s. 235.055, F.S., is moved to an existing section of law dealing with university lease agreements, s. 243.151, F.S.

Additional authority is provided to the Board of Regents to approve university requests to construct educational facilities on land that is owned by a direct-support organization or a governmental agency, if the university has acquired at least a 40 year lease on the property. The BOR may also approve a university to enter into a short term lease for the use of land or buildings upon which capital improvements may be made. If sufficient land is not available from governmental or Direct Support Organization (DSO) sources, they can acquire a short term lease from a private landowner or developer.

Section 11: Amends s. 287.012, F.S., to exclude the BOR and the SUS from the definition of "agency" as it pertains to part I of Chapter 287, F.S., relating to purchasing guidelines.

Present Situation:

Part I of Chapter 287, F.S., governs procurement by state agencies and establishes the powers, duties, and functions of the division of purchasing in the Department of Management Services relating to state agency procurement.

Section 287.012, F.S., defines "Agency" to mean any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of government.

Effect of Proposed Changes:

The BOR would be excluded from the definition of state agency for the general provisions contained in Part I of Chapter 287 as it relates to state agency procurement rules by the Department of Management services. This section of the bill conforms with the various other sections of the bill authorizing the BOR to establish purchasing guidelines by rule to govern SUS procurement practices.

Section 12: Repeals the following sections of Law:

Section 240.247, F.S.-- Salary Discrimination Based on Gender Study Act. The SUS equity accountability program provides for this type of reporting mechanism.

Section 240.4988(4), F.S.-- Rulemaking requirement regarding the Theodore R. And Vivian M. Johnson Scholarship Foundation and Trust Fund.

Section 287.017(3), F.S.-- The requirement that the SUS be subject to the rules adopted pursuant to the state purchasing categories. The deletion of this subsection will exempt the SUS from Department of Management Services' rules regarding statutorily established purchasing categories. According to the Board of Regents, it is their intent to still require the universities to use competitive bidding and thresholds pursuant to BOR rule. This is a conforming section of the bill to permit the BOR to establish its own purchasing program in rule.

Section 240.225, F.S.-- Permits the delegation of authority for purchasing from DMS to the State University System. Currently, the DMS can delegate the authority to manage purchasing in the State University System to the Board of Regents. The BOR contends that every time the law is revised regarding purchasing for state agencies, they must be delegated additional authority from DMS. There is sometimes confusion as to whether or not the change falls within the universities' delegated authority.

There was no indication from the DMS during the 1996 Legislative Session that there exists a problem with permitting the BOR to establish its own purchasing program by rule. This conforms the statutes to the changes made in sections 6, 8, and 11 of the bill.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The revenue generated from the sale of surplus property is currently deposited into the General Revenue Fund. This bill provides that the revenue will be retained by each university, which will cause a corresponding decrease in the General Revenue Fund. From 7/96 to 12/96, the proceeds from the sale of surplus property generated approximately $200,000 in revenues.

There will be an indeterminate loss of nonresident tuition from those out-of-state National Hispanic Scholars, National Achievement Finalists, and National Merit Scholars and Finalists who presently pay nonresident tuition. In Fall 1996, there were 440 nonresident national scholars who were assessed $166.52 per credit hour for tuition. Tuition for in-state students is currently $40.75 per credit hour, which is $125.77 less per credit hour than nonresident tuition. This bill allows current and future nonresident national scholars who attend public community colleges and universities in Florida to pay in-state tuition.

The bill enables the universities to accept credit card payment for tuition and fees. Universities will incur expenses associated with the credit card companies “percent-of-purchase” fee for the use of the card. In 1996, the Board of Regents indicated that if 25% of all students in the SUS take advantage of fee payment by credit card, the annual fees would be approximately $1.2 million.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   None.

2. Recurring Effects:

   None.

3. Long Run Effects Other Than Normal Growth:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   None.

2. Direct Private Sector Benefits:

   None.

3. Effects on Competition, Private Enterprise and Employment Markets:

   None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 25, 1997, the Committee on Colleges and Universities passed HB 755 with the following two amendments:

* Amendment #1: Strikes provisions within s. 235.195, F.S., relating to PECO funding for joint-use facilities. The amendment strikes language to conform s. 235.195, F.S., with current statute and practice.

* Amendment #2: This amendment modifies the incorrect reference to National Achievement Scholars to make the reference National Achievement finalists.

On April 11, 1997, the Committee on Education Appropriations passed HB 755 with the following three amendments:

* Amendment #1: Adds two sections to the bill which require each state university and community college to maintain an equity plan to increase the representation of women and minorities in faculty and administrative positions, require the development of a plan for achievement of equity and of a budgetary incentive plan, and provide for an appropriation.

* Amendment #2: Provides that the Board of Regents shall comply with the provisions of s. 287.055, F.S., for the procurement of professional services as defined therein.

* Amendment #3: Provides that the university presidents shall comply with the provisions of s. 287.055, F.S., for the procurement of professional services as defined therein.

VII. SIGNATURES:

COMMITTEE ON COLLEGES AND UNIVERSITIES:

Prepared by:	Legislative Research Director:
Scott Jenkins	Betty Tilton Ph.D.

AS FURTHER REVISED BY THE COMMITTEE ON EDUCATION APPROPRIATIONS:

Prepared by:	Legislative Research Director:
Ruth Storm Feiock	John Newman