

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1680

SPONSOR: Governmental Oversight and Productivity Committee

SUBJECT: Cabinet Reorganization/Education

DATE: March 28, 2000 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

As a result of the adoption of Amendment No. 8 to the State Constitution, the Commissioner of Education will not be a Cabinet member on January 7, 2003. Under the amendment, there will be a Commissioner of Education who will be appointed by a seven-member State Board of Education. Members of the State Board of Education will be appointed by the Governor and confirmed by the Senate.

The committee substitute assigns the State Board of Education responsibility for all levels of education in the state. The State Board of Education is designated the head of the Department of Education. Four departmental divisions are created with directors: (a) the Commissioner of Education heads the Division of Administration; (b) the Commissioner of Community Colleges heads the Division of Community Colleges; (c) the Superintendent of Public Instruction heads the Division of Public Schools; and (d) the Chancellor heads the Division of Universities. The Bureau of Student Financial Assistance is assigned to the Division of Administration. Further, the State Board of Independent Colleges and Universities and the Board of Nonpublic Career Education are assigned to the Division of Administration for administrative support.

The Board of Regents and the State Board of Community Colleges are eliminated, as well. University boards of trustees for each university are established, with members appointed by the Governor. Except for universities with statewide mission (UF, FSU, FAMU), a majority of board members must be from the regional service area. Powers of the State Board of Education are established relative to universities and community colleges. The power of the Commissioner of Education to waive statutes or rules is repealed, but the State Board of Education is authorized to waive rules.

A task force is created which will review statutes and rules, as well as identify specific organizational and other issues which need legislative implementation. An initial report is due by January 1, 2001, and a final report is due by January 1, 2002.

The effective date of the committee substitute is January 7, 2003.

**II. Present Situation:**

Article IV of the State Constitution establishes the executive branch of state government and provides that the “. . . supreme executive power shall be vested in a governor.” Nevertheless, the State Constitution requires the Governor to share some executive powers with six elected cabinet officers:

- ▶ The Attorney General
- ▶ The Commissioner of Agriculture
- ▶ The Commissioner of Education
- ▶ The Comptroller
- ▶ The Secretary of State
- ▶ The Treasurer

In addition to constitutional responsibilities, the Legislature has designated each cabinet member as a department head with statutory duties. Cabinet officers also share powers and duties when sitting as the Governor and Cabinet. When in this form, the Governor and Cabinet may constitute a department head or a board. This collegial form of state government is unique to Florida.

Article IX, s. 1 of the State Constitution, provides that:

[t]he education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made *by law* for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require [*emphasis added*].

The State Constitution provides for the division of supervisory responsibilities over the system of public education in Florida. It creates a State Board of Education and a Commissioner of Education which are to have supervisory authority *as provided in law*. Additionally, the State Constitution provides that the school boards<sup>1</sup> of the 67 school districts,<sup>2</sup>

. . . shall operate, control and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein and the 67 school districts all have constitutionally-created supervisory authority of the education system. This supervisory authority has been more specifically assigned in statute.

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<sup>1</sup>Article IX, s. 4(a) of the State Constitution, provides that each school district has a school board composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law.

<sup>2</sup>Article IX, s. 4(a) of the State Constitution, provides that each county is a school district, though contiguous counties may combine their school districts.

Additionally, the Legislature has created a number of entities with statutorily-assigned duties related to education.

The Legislature is responsible for designing the system of schools, colleges, and universities that make up the state's education system. The Florida School Code consists of chapters 228 through 246, F.S. General provisions for education are established in ch. 228, F.S., and the functions, powers, and duties of the State Board of Education, the Commissioner of Education, and the Department of Education are established in ch. 229, F.S.

Section 228.041, F.S., provides that the state system of public education consists of publicly supported and controlled schools,<sup>3</sup> institutions of higher education,<sup>4</sup> other educational institutions, and other educational services that are provided or authorized by the Constitution and laws of Florida. *Other educational institutions* is defined to mean . . . [o]ther state-supported institutions primarily of an educational nature shall be considered part of the state system of public education. The educational functions of other state-supported institutions which are not primarily of an educational nature but which have specific educational responsibilities shall be considered responsibilities belonging to the state system of public education.

**The State Board of Education** - Under Article IX, s. 2 of the State Constitution, the Governor and Cabinet constitute a State Board of Education that has “. . . such supervision of the system of public education as is provided by law.” The Governor is chair of the board, and the Commissioner of Education is the secretary and executive officer.<sup>5</sup> Section 229.053, F.S., provides:

The State Board of Education is the *chief policymaking and coordinating body* of public education in Florida. It has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of law conferring duties upon it for the improvement of the state system of public education. Except as otherwise provided herein, it may, as it shall find appropriate, delegate its general powers to the Commissioner of Education or the directors of the divisions of the department.

Section 229.053, F.S., assigns specific duties to the State Board of Education. These duties include, among others, adoption of comprehensive educational objectives for public education and comprehensive long-range plans and short-range programs for the development of the state system of public education; exercising general supervision over the divisions of the Department of Education as necessary to ensure coordination of educational plans and programs, to resolve controversies, minimize problems of articulation and transfers, to assure students acquire competency prior to moving to the next level, and to ensure maximum utilization of facilities; and

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<sup>3</sup>Section 228.041, F.S., defines *public schools* to mean . . . kindergarten classes; elementary and secondary school grades and special classes; adult, part-time, vocational, and evening schools, courses, or classes authorized by law to be operated under the control of school boards; and developmental research schools to be operated under the control of the State University System.

<sup>4</sup>*Institutions of higher education* are defined to mean . . . all state-supported educational institutions offering work above the public school level, other than community colleges, that are authorized and established by law, together with all activities and services authorized by law to be administered by or through each of those institutions.

<sup>5</sup>Section 229.012, F.S.

adoption of minimum and uniform standards of college-level communication and computation skills.

**Commissioner of Education** - Article IV, s. 4(g) of the State Constitution, also provides that the Commissioner of Education “. . . shall supervise the public education system in the manner prescribed by law.” The Legislature has designated the Commissioner of Education as the chief educational officer of the state and delegated specific authority to the commissioner.<sup>6</sup> These powers, however, are often statutorily-checked by requiring the commissioner to obtain approval of the State Board of Education or by making the commissioner a member of a collegial body related to education. For example, the commissioner is authorized to suspend a community college president for cause *with the approval of* the State Board of Education.

Among the powers of the Commissioner of Education stated in s. 229.512, F.S., are the appointment of staff necessary to carry out his or her powers and duties; power to suspend, for cause, with the approval of the State Board of Education, a public community college president; the duty to advise and counsel with the State Board of Education on all matters pertaining to education and to recommend actions and policies that should be acted upon or adopted, and to execute approved acts or policies; and to call special meetings of the State Board of Education as the commissioner deems necessary. Duties of the Commissioner of Education are also provided in s. 229.551, F.S.

The Commissioner of Education is required to review rules of the State Board of Education and of the Department of Education on a periodic basis, as determined by the commissioner. He or she is to recommend revisions or repeals to eliminate obsolete, excessively restrictive, and unnecessary requirements applicable to school districts in the construction, renovation, remodeling, leasing, or repair of facilities and related matters affecting the physical quality of classrooms.<sup>7</sup> The commissioner is also required to recommend to the Legislature the revision or repeal of provisions in the Florida Statutes.<sup>8</sup>

The Commissioner of Education is also delegated rulemaking authority to implement the school code, with the exception of provisions relating to state universities and community colleges and the Florida School for the Deaf and the Blind.<sup>9</sup> Far more significant is the power that has been delegated to the Commissioner to waive requirements of chs. 230-239, F.S., upon the request of a school board, with the exception of requirements relating to civil rights, and student health, safety, and welfare.<sup>10</sup> The commissioner is not permitted to grant waivers for any provisions of law pertaining to the allocation and appropriation of state and local funds for public education; the election, compensation, and organization of school board members and superintendents; graduation and state accountability standards; financial reporting requirements; public meetings; public records; or due process hearings governed by ch. 120, F.S. Prior to granting approval, the

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<sup>6</sup>Section 229.512, F.S.

<sup>7</sup>Section 229.513(1), F.S.

<sup>8</sup>Section 229.513(2), F.S.

<sup>9</sup>Section 229.515, F.S.

<sup>10</sup>Section 229.592(9), F.S.

commissioner must report pending requests to the State Board of Education on a monthly basis. The commissioner must report to the Legislature all approved waiver requests on an annual basis.

In addition to the authority to waive provisions of the school code, the Legislature has delegated authority to the Commissioner of Education to waive rules of the State Board of Education if a school board has submitted a written request to the commissioner for approval.<sup>11</sup> Requests for waiver of statute or rule must indicate at least how the general statutory purpose will be met, how granting the waiver will assist schools in improving student outcomes related to the student performance standards adopted, and how student improvement will be evaluated and reported. In considering any waiver, the commissioner must ensure protection of the health, safety, welfare, and civil rights of the students and protection of the public interest.<sup>12</sup> Upon denying a request for a waiver, the commissioner must state with particularity the grounds, or basis for the denial. The commissioner is required to report the specific statutes and rules for which waivers are requested and the number and disposition of these requests to the State Board of Education for use in determining which statutes and rules stand in the way of school improvement.<sup>13</sup>

The Commissioner of Education also sits on numerous boards, commissions, and other public-private entities.<sup>14</sup> Further, the commissioner is required by statute to make appointments to various boards, commissions and other entities.<sup>15</sup>

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<sup>11</sup>Section 229.592(9)(b), F.S.

<sup>12</sup>Section 229.592(9)(c), F.S.

<sup>13</sup>Section 229.592(9)(d), F.S.

<sup>14</sup>The Commissioner of Education sits on the following entities: Child Welfare Standards and Training Council under s. 402.40, F.S.; Clean Fuel Florida Advisory Board under s. 403.42, F.S.; State Board of Community Colleges under s. 240.307, F.S.; Commission on Community Service under s. 14.29, F.S.; Criminal Justice Executive Institute Policy Board under s. 943.1755, F.S.; Criminal Justice Standards and Training Commission under s. 943.11, F.S.; Board of Directors, Drug Abuse Resistance Education under s. 233.0664, F.S.; Drug Policy Advisory Council under s. 397.333, F.S.; State Board of Education under Art. IX, s. 2, State Constitution and ss. 20.15 and 229.012, F.S.; Education Technology Foundation under s. 239.251, F.S.; Board of Directors, Enterprise Florida, Inc., under s. 288.901, F.S.; Council on Equity in Athletics under s. 240.533, F.S.; Health Information Systems Council under s. 381.90, F.S.; Board of Directors, High School Athletics Governing Organization under ss. 232.63, 232.64 and 232.65, F.S.; Instructional Materials Committee under s. 233.07, F.S.; Board of Trustees of the Internal Improvement Trust Fund under s. 253.02, F.S.; Governor's Committee on Interstate Cooperation under s. 13.05, F.S.; Juvenile Justice Standards and Training Commission under s. 985.406, F.S.; Martin Luther King, Jr. Institute for Nonviolence Advisory Board under s. 240.632, F.S.; Occupational Access and Opportunity Commission under s. 413.83, F.S.; Occupational Forecasting Conference under s. 216.136, F.S.; Political Party State Executive Council under s. 103.091, F.S.; Coordinating Council on Radon Protection under s. 404.056, F.S.; Board of Regents under s. 240.207, F.S.; Partnership for School Readiness under s. 411.01, F.S.; SMART Schools Clearinghouse under s. 235.217, F.S.; Technology Council under s. 282.3091, F.S.; Commission for Transportation Disadvantaged under s. 427.012, F.S.; Violent Crime Council under s. 943.031, F.S.; WAGES Board of Directors under s. 414.026, F.S.

<sup>15</sup>The Commissioner of Education makes appointments to: Agricultural and Livestock Fair Council under s. 616.21, F.S.; Council for the Florida School of Arts under s. 242.65, F.S.; Building Construction Industry Advisory Committee under s. 489.509, F.S.; Charter School Review Panel under s. 228.056, F.S.; Child Abuse Death Review Committee under s. 383.402, F.S.; College Reach-out Program Advisory Council under s. 240.61, F.S.; State Board of Community Colleges under s. 240.307, F.S.; Comprehensive Health Information System Advisory Council under s. 408.05, F.S.; Department of Education, Councils and Committees under s. 20.15, F.S.; Deputy Commissioners under s. 20.15, F.S.; Board of Directors, Direct-Support Organizations under s. 229.8021, F.S.; Distance Learning Network Advisory Council under s. 241.003, F.S.; Economic Development Liaison under s. 288.021, F.S.; Education Success Incentive Council under s. 228.502, F.S.; Employment Task Force for Adults with Disabilities under s. 239.5144, F.S.; Board of Directors, Endowment Foundation for Florida's Graduates under s. 446.609, F.S.;

**Department of Education** - Section 20.15, F.S., establishes the Department of Education and designates the Commissioner of Education as the agency head. The Commissioner of Education exercises general supervision over the activities and divisions within the Department of Education. Nine divisions are established within the Department of Education:<sup>16</sup>

1. The Division of Community Colleges.<sup>17</sup>
2. The Division of Public Schools and Community Education.<sup>18</sup>
3. The Division of Universities.
4. The Division of Workforce Development.<sup>19</sup>
5. The Division of Human Resource Development.
6. The Division of Administration.
7. The Division of Financial Services.
8. The Division of Support Services.
9. The Division of Technology.

Section 20.15, F.S., however, places limitations on the Commissioner of Education's ability to hire based upon the particular division of the department. Of the nine divisions created within the department by ch. 20, F.S., seven divisions have directors that are appointed by the commissioner. These appointments, however, are *subject to approval by the State Board of Education*.<sup>20</sup> Though not explicitly stated, it would be expected that executives and other employees within those seven divisions would come directly under the commissioner's firing authority.

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Task Force on Gender Equity in Education under s. 228.2001, F.S.; Board of Directors, Healthy Kids Corporation under s. 624.91, F.S.; Board of Directors, High School Athletics Governing Organization under s. 232.63, F.S.; Impaired Educators Recovery Network Program Staff under s. 231.263, F.S.; Instructional Materials Committees under s. 233.07, F.S.; Instructional Technology Grant Review Panel under s. 229.603, F.S.; Joint Developmental Research School Planning, Articulation, and Evaluation Committee under s. 228.054, F.S.; Advisory Board for Multiagency Service Network for Students with Severe Emotional Disturbance under s. 230.2317, F.S.; Satellite Facilities Review Committee under s. 235.198, F.S.; Council of Student Financial Aid Advisors under s. 240.421, F.S.; Student Financial Aid Eligibility Appeals Committee under s. 240.4042, F.S.; Teacher Preparation Program Committee under s. 240.529, F.S.; Selection Committee, Teacher of the Year under s. 231.6255, F.S.; Teaching Profession Enhancement Grant Advisory Committee under s. 240.5291, F.S.; and Commission on the Status of Women under s. 14.24, F.S.

<sup>16</sup>Section 20.15(3), F.S.

<sup>17</sup>Section 20.15(5)(c), F.S., provides that the State Board of Education and the Commissioner of Education are to assign such powers, duties, responsibilities, and functions as are necessary to ensure the coordination, efficiency, and effectiveness of community colleges, except those duties specifically assigned to the Commissioner of Education in ss. 229.512 and 229.551, F.S., the duties concerning physical facilities in ch. 235, F.S., and the duties assigned to the Division of Workforce Development in ch. 239, F.S.

<sup>18</sup>Section 20.15(5)(a), F.S., provides that the State Board of Education and the Commissioner of Education are to assign to this division such powers, duties, responsibilities, and functions as are necessary to ensure the greatest possible coordination, efficiency, and effectiveness of education for students in prekindergarten through 12th grade, for secondary school vocational education, and for community education.

<sup>19</sup>Section 20.15(5)(b), F.S., provides that the State Board of Education and the Commissioner of Education must assign to the division such powers, duties, responsibilities, and functions as are necessary to ensure the greatest possible coordination, efficiency, and effectiveness of workforce development education.

<sup>20</sup>Section 20.15(4), F.S.

The remaining two departmental divisions created in ch. 20, F.S., have boards that serve as division directors. In the case of the Division of Universities, whose division director is the Board of Regents, the chancellor is the chief administrative officer of the board and the chancellor is responsible for appointing all employees of the board.<sup>21</sup> These employees serve under his or her direction and control and not under the control of the commissioner. Additionally, the Division of Community Colleges, whose division director is the State Board of Community Colleges, is provided the authority to appoint an executive director for the state community college system.<sup>22</sup> The executive director is in charge of the offices of the board, including appointment and termination of staff.

The commissioner is required by law to appoint a Deputy Commissioner for Educational Programs.<sup>23</sup> Additionally, the commissioner is required by law to appoint a Deputy Commissioner for Planning, Budgeting, and Management.<sup>24</sup> No restrictions appear to apply on these two appointments.

Thus, it appears that there are only seven divisions within the Department of Education over which the Commissioner of Education has direct hiring and firing ability and, even in those divisions, hiring of division directors is subject to approval of the state board of education.

The Department of Education is required to identify all functions that contribute to or comprise the state system of educational accountability and to establish within the department the necessary organizational structure, policies, and procedures for effectively coordinating such functions. These policies and procedures are required to clearly fix and delineate responsibilities for various aspects of the system and for overall coordination of the system.<sup>25</sup> Additionally, as part of the system of educational accountability, the department is required to:

- ▶ Develop minimum performance standards for various grades and subject areas;
- ▶ Administer the statewide assessment testing program;
- ▶ Develop and administer an educational evaluation program;
- ▶ Review school advisory councils of each district;
- ▶ Conduct program evaluations;
- ▶ Maintain a listing of college-level communication and computation skills and to submit to the State Board of Education for approval;
- ▶ Maintain a listing of tests and other assessment procedures which measure and diagnose student achievement of college-level communication and computation skills and to submit to the State Board of Education for approval;

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<sup>21</sup>Section 240.209(2), F.S.

<sup>22</sup>Section 240.311(4), F.S.

<sup>23</sup>Section 20.15(2)(a), F.S., provides that the Deputy Commissioner of Educational Programs has such powers, duties, responsibilities, and functions as are necessary to ensure the greatest possible coordination, efficiency, and effectiveness of kindergarten through 12th-grade education and vocational and continuing education programs.

<sup>24</sup>Section 20.15(2)(b), F.S., provides that the Deputy Commissioner for Planning, Budgeting, and Management has such powers, duties, responsibilities, and functions as are necessary to ensure the greatest possible coordination of policies, programs, and procedures for the statewide system of education and the department.

<sup>25</sup>Section 229.551, F.S.

- ▶ Develop or contract for, and submit to the State Board of Education for approval, tests which measure and diagnose student achievement of college-level and communication and computation skills; and
- ▶ Perform any other functions that may be involved in educational planning, research, and evaluation or that may be required by the commissioner, the State Board of Education or law.

**Other Educational Entities** - The Legislature has created a number of entities with statutorily-assigned duties relating to education:

- ▶ Articulation Coordination Committee
- ▶ Board of Career Education
- ▶ Board of Community Colleges
- ▶ Board of Independent Colleges and Universities
- ▶ Board of Independent Postsecondary Vocational, Technical, Trade, and Business Schools
- ▶ Board of Nonpublic Career Education
- ▶ Board of Regents
- ▶ Postsecondary Education Planning Commission

**Articulation Coordination Committee** - This commission's membership is required to represent public and nonpublic postsecondary institutions.<sup>26</sup> The commission studies degree programs, identifies levels of courses, and makes recommendations to the State Board of Education regarding the levels of courses.

**Board of Career Education** - The State Board of Education constitutes the State Board of Career Education.<sup>27</sup>

**Board of Community Colleges** - The Board of Community Colleges is composed of the Commissioner of Education, one student, and 11 lay citizens appointed by the Governor, approved by four members of the State Board of Education, and confirmed by the Senate in regular session.<sup>28</sup> The Board of Community Colleges is the director of the Division of Community Colleges in the Department of Education.<sup>29</sup>

Duties of the Board of Community Colleges are provided in s. 240.311, F.S. This section provides that the board:

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<sup>26</sup>Section 229.551(1)(f), F.S.

<sup>27</sup>Section 229.053(2)(k), F.S.

<sup>28</sup>Section 240.307, F.S.

<sup>29</sup>Sections 20.15(4) and 240.311, F.S.



- ▶ Is responsible for the operation and maintenance of the community college system<sup>30</sup> in a coordinated, efficient, and effective manner.
- ▶ May adopt rules which must be submitted to the State Board of Education for approval.

Other duties are provided in s. 240.311, F.S. Further, duties of the board also may be assigned by the Commissioner of Education and the State Board of Education as necessary to ensure the coordination, efficiency, and effectiveness of community colleges, except those duties specifically assigned to the Commissioner of Education in ss. 229.512-229.551, F.S., the duties concerning physical facilities in ch. 235, F.S., and the duties assigned to the Division of Workforce Development in ch. 239, F.S.<sup>31</sup>

The Board of Community Colleges is authorized to appoint, and may suspend or dismiss, an executive director of the community college system.<sup>32</sup> No statutory provision requires Senate confirmation of the executive director. The executive director serves as executive officer and as secretary to the board. The executive director is authorized to appoint and terminate staff, to represent the board before the Legislature and the State Board of Education, and prepare legislative budget requests for the system.

**Board of Independent Colleges and Universities** - The State Board of Independent Colleges and Universities is established in the Department of Education. The department provides administrative services to the board, including payroll, procurement, and legal counsel to the board, but all duties prescribed by law are exercised independently of the department.<sup>33</sup> The board appoints, on the recommendation of its chairperson, executives, deputies, clerks, and employees of the board.<sup>34</sup>

**Board of Nonpublic Career Education** - The State Board of Nonpublic Career Education is created in the Department of Education.<sup>35</sup> The board has nine members appointed by the Governor, and which are confirmed by the Senate.<sup>36</sup> The department provides administrative services to the board, including payroll, procurement, and related administrative functions.<sup>37</sup> The board appoints, on the recommendation of its chairperson, executives, deputies, clerks, and

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<sup>30</sup>*Community colleges* are defined to mean . . . all educational institutions which are operated by local community college district boards of trustees under specific authority and regulations of the State Board of Education and which offer courses and programs of general and academic education parallel to that of the first and second years of work in institutions in the State University System, of career education, and of adult continuing education.

<sup>31</sup>Section 20.15(5), F.S.

<sup>32</sup>Section 240.311(4), F.S.

<sup>33</sup>Section 246.031, F.S.

<sup>34</sup>Section 246.041(1)(h), F.S.

<sup>35</sup>Section 246.205(1), F.S.

<sup>36</sup>Section 246.205(2), F.S.

<sup>37</sup>Section 246.205(1), F.S.

employees of the board.<sup>38</sup> All other powers, duties, and functions prescribed by law are exercised independently. Powers and duties of the board include:<sup>39</sup>

- ▶ Holding meetings to administer ss. 246.201-246.231, F.S.;
- ▶ Prescribing and recommending to the State Board of Education rules as required by ss. 246.201-246.231, F.S.;
- ▶ Administering ss. 246.201-246.231, F.S., and executing rules adopted by the State Board of Education for the establishment and operation of independent schools;
- ▶ Appointing executives, deputies, clerks, and employees;
- ▶ Maintaining records;
- ▶ Cooperating with other state and federal agencies in administering ss. 246.201-246.231, F.S.;
- ▶ Preparing an annual budget;
- ▶ Transmitting all fees, donations, and other receipts of money to the State Treasurer to be deposited in the General Revenue Fund;
- ▶ Providing an annual report to the Governor, Senate President and Senate minority leader, Speaker of the House and House minority leader;
- ▶ Causing to be investigated criminal justice information;
- ▶ Serving as a central agency for collection and distribution of current information regarding institutions licensed by the board; and
- ▶ Establishing and publicizing the procedures for receiving and responding to complaints from students, faculty, and others about schools or programs licensed by the board.

Additionally, the board may sue or be sued; enter into contracts with the Federal Government, other departments of the state, or individuals; receive bequests and gifts; appoint committees to assist in developing standards; issue a license to any school subject to the sections under its jurisdiction; with the approval of the State Board of Education, establish and operate a branch office in the southeastern part of the state; and establish and administer a statewide, fee-supported financial program through which funds will be available to complete the training of a student who enrolls in a nonpublic school that terminates a program or ceases operation before the student has completed his or her program.

**Board of Regents** - The Board of Regents (BOR) is created as a corporate body with all attendant powers.<sup>40</sup> The BOR consists of the Commissioner of Education and 13 citizens of the state. The 13 other members are selected from the state at large, representative of the geographical areas of the state; have been residents and citizens for a period of at least 10 years prior to their appointment (one who is registered as a full-time student in the State University System and a resident for at least 5 years). These members are appointed by the Governor, approved by three members of the Cabinet, and confirmed by the Senate.

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<sup>38</sup>Section 246.207(1)(f), F.S.

<sup>39</sup>Section 246.207, F.S.

<sup>40</sup>Section 240.205, F.S.

The BOR is required to appoint a Chancellor who is qualified by training and experience to understand the problems and needs of the state in the field of postsecondary education.<sup>41</sup> The Chancellor is the chief administrative officer of the board and is responsible for appointing all employees of the BOR. The Chancellor serves at the pleasure of the BOR and the employees of the BOR serve under his or her direction and control. There is no statutory requirement that the Chancellor be confirmed by the Senate.

Duties of the BOR include:

- ▶ Developing a plan for the future expansion of the State University System;
- ▶ Appointing or removing the president of each university;
- ▶ Approving new degree programs;
- ▶ Preparing legislative budget requests;
- ▶ Establishing student fees;
- ▶ Establishing and maintaining systemwide personnel programs for all State University System employees;
- ▶ Recommending to the Legislature proposed changes in the Capital Improvement Trust Fund and building fees;
- ▶ Terminating programs at the state universities;
- ▶ Adopting a systemwide strategic plan;
- ▶ Coordinating and providing for educational television;
- ▶ Seeking the cooperation and advice of superintendents and board members of local school districts in the state in performing its duties; and
- ▶ Adopting rules.

Additional duties are provided in s. 240.209(5), F.S.

**Postsecondary Education Planning Commission** - The Postsecondary Education Planning Commission is created within the Department of Education.<sup>42</sup> It is housed within the office of the Commissioner of Education, but it exercises its responsibilities independently. The commission is composed of 11 members of the general public and one full-time student representing the postsecondary education system. Each member is appointed by the Governor, approved by three members of the State Board of Education other than the Governor, and confirmed by the Senate.<sup>43</sup> The commission is authorized to appoint an executive director to serve at its pleasure. The executive director is the chief administrative officer of the commission and is responsible for appointing all employees and staff members of the commission who serve under his direction and control.<sup>44</sup> Duties of the commission include:

- ▶ Serving as an advisory body to the State Board of Education and other state agencies on all matters relating to postsecondary education;

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<sup>41</sup>Section 240.209(2), F.S.

<sup>42</sup>Section 240.145, F.S.

<sup>43</sup>Section 240.145(2), F.S.

<sup>44</sup>Section 240.145(4), F.S.

- ▶ Coordinating the efforts of postsecondary institutions in Florida and providing independent policy analyses and recommendations to the State Board of Education;
- ▶ Preparing a master plan for postsecondary education and updating the plan every five years;
- ▶ Recommending guidelines for the development of institutional roles;
- ▶ Recommending contracts with independent institutions to conduct programs;
- ▶ Recommending to the State Board of Education rules concerning the planning and coordination of postsecondary education programs;
- ▶ Advising the State Board of Education regarding new programs, institutions, campuses, and instructional centers;
- ▶ Recommending to the State Board of Education criteria for establishment of new community colleges and state universities;
- ▶ Recommending to the State Board of Education and the Legislature establishment of additional branch campuses;
- ▶ Reviewing instructional centers;
- ▶ Reviewing budget requests for compliance with the state master plan; and
- ▶ Assisting the State Board of Education in the conduct of its postsecondary educational responsibilities.

A review of the number of employees and amounts appropriated for education for fiscal years 1999-2000 and 1998-1999 is provided below.

<b>EDUCATIONAL UNITS BY FTEs AND APPROPRIATION</b>				
<b>Budget Entity</b>	<b>FY 99-00 FTEs</b>	<b>FY 99-00 Funds</b>	<b>FY 98-99 FTEs</b>	<b>FY 98-99 Funds</b>
Div. of Public Schools	118.00	\$8,436,644,455	125.00	\$8,037,258,339
Div. of Community Colleges	53.00	\$550,569,565	52.00	\$521,194,305
Div. of Universities	166.00	\$2,349,485,877	166.00	\$2,257,458,655
Workforce/Admin. Funds	95.00	\$818,641,528	95.00	\$795,251,817
Other	453.00	\$2,161,708,164	446.00	\$1,876,418,142
<b>Total Education</b>	<b>885.00</b>	<b>\$14,317,049,589</b>	<b>884.00</b>	<b>\$13,487,581,258</b>

Amendment No. 8 to the State Constitution, which passed by a margin of 55.5 percent to 44.5 percent, removes the Commissioner of Education from the Cabinet in January 2003, but still provides for a commissioner who will be appointed by a seven-member State Board of Education. Under the amendment, members of the State Board of Education will be appointed by the Governor and confirmed by the Senate.

**Blue Ribbon Committee on Educational Governance** - The Commissioner of Education appointed a Blue Ribbon Committee on Educational Governance during the 1999 legislative

interim. Thirty-five members were appointed to the committee.<sup>45</sup> The organizational meeting of the committee was held September 27 and 28, 1999, in Tallahassee, Florida. Meetings were scheduled for October 29, 1999, in Tampa, Florida; November 29 and 30, 1999, in Boca Raton, Florida; and January 18 and 19, 2000, in Tallahassee, Florida. The committee issued a report in February, 2000, that contained a majority and minority recommendation. The majority recommendation provides for the State Board of Education to head all levels of education in the state and to appoint a Commissioner of Education as the Chief Executive Officer of the Department of Education. The majority recommendation provides for the repeal of the Board of Regents and the State Board of Community Colleges. The Commissioner appoints a chancellor who heads the Division of K-12 Education; a chancellor who heads the Division of Community Colleges; and a chancellor who heads the Division of State Universities. An executive director of the Florida Partnership for School Readiness and a chancellor of the Division of Non-Public Education is also provided for in the recommendation.

The minority recommendation creates a State Board for Education Planning and Coordination and a Chief Executive Officer. Under the minority recommendation, current boards are not repealed, and the State Board of Education and the Commissioner of Education, are limited to jurisdiction over K-12.

**Senate Interim Project No. 00-52** - The Committee on Governmental Oversight and Productivity studied the issues presented by the changes to the Cabinet during the 1999 legislative interim. Two options relating to the educational governance system were identified in the report for legislative consideration. The first was to designate the State Board of Education as the head of the Department of Education. The second was to limit the jurisdiction of the State Board of Education to K-12 and designate another agency head. The type of authority and the level of autonomy each of the various educational boards has could be considered and modified under either option.

**Education Option 1.** As a board of gubernatorial appointees, the State Board of Education is a viable option for head of the Department of Education. On the other hand, the future Commissioner of Education does not appear to be an authorized choice as the position will be appointed by a board and not the Governor. The commissioner could serve as the executive director of the department, however.

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<sup>45</sup>Membership on the Blue Ribbon Committee on Educational Governance included: David Armstrong, Executive Director, Community College System; Lucille Casey; Senator Anna Cowin (represented by Kyleen Fischer); Mimi Hardman; Patrick Heffernan, Floridians for School Choice; Stephanie King, 2000 Florida Teacher of the Year; Alice Bennett; Bill Cramer, Tommy Thomas Chevrolet; Sandra Fradd, Univ. of Miami, School of Education; George Haynie, Deputy Comm. of Education; Kathy Hoffman; John Kirtley; John Carvelli; former Senator Charlie Crist, Deputy Secretary, Dept. of Business and Professional Regulation; Nat Glover, Sheriff Duval Co.; Tom Healy, State University System; Marilyn Evans-Jones; Philip Lewis; Representative Evelyn Lynn; Phil Morgaman, The Insurance Group; Representative Bill Posey; Penny Ralston, Florida State University; Alex Sink, Nations Bank; Mercedes Toural; Jarl T. Young; Stevan McCrory; Robert A Morris; Bill Proctor, Executive Director, Postsecondary Ed. Planning Commission; Phoebe Raulerson; Carmen Sorondo; Senator Daniel Webster (represented by Kathleen Mears); Carlos Migoya, First Union National Bank; Steve Permut, Univ. of S. Florida; Sherry Plymale; Matty Rodriguez-Walling, Miami-Dade County Schools; Albert Thomas; John Winn, Education Policy Director, EOG; Tom Jandris, ECS.

Under the amendment, the State Board of Education will have jurisdiction over the system of *free* public education as provided by law. The addition of the word *free* does not appear to limit the ability of the Legislature to delegate broader jurisdiction to the board, however, as the State Constitution still provides that the jurisdiction of the board is *as provided by law*.

There are some issues that the Legislature may want to consider which might affect this choice. Specifically, as the State Board of Education is created by the State Constitution, the ability of the Legislature to establish member qualifications may be questioned. The Florida Supreme Court has held that where the State Constitution specifies qualifications for a constitutional office, the Legislature may not add or otherwise change these requirements unless expressly or impliedly authorized to do so by the State Constitution. What is less clear from precedent is whether the Legislature may specify qualifications for a constitutional office when the State Constitution is silent on the issue.

The amendment does not establish member qualifications, but neither does it contain explicit language authorizing the Legislature to establish qualifications. Further, the amendment does not provide that members are to be chosen *as is provided by law*, which would provide the Legislature with some leeway. Implied authority to establish qualifications could be inferred by the lack of stated qualifications in the State Constitution, coupled with the ability of the Legislature to determine the jurisdiction and duties of the State Board of Education. On the other hand, it could be argued that, as the amendment provides only for gubernatorial appointment and Senate confirmation, the Legislature is limited to confirmation. Given these circumstances, the ability of the Legislature to establish qualifications for members of the future board is uncertain. A similar question is raised regarding the establishment of qualifications for the future Commissioner of Education, as well as the ability of the Legislature to confirm the appointee.

**Education Option 2.** In the alternative, the Legislature could limit the jurisdiction of the State Board of Education to K-12, much as the Board of Community Colleges and the Board of Regents are limited to specific jurisdictional areas. Where each board has only limited jurisdiction, however, no entity has administrative oversight or responsibility for coordinating the education system as a whole. As a result, under this option, an officer or board with oversight over the boards should be designated. Further, what level of authority this officer or board should have over the boards should be determined. Given the current structure of the department, that is, where some divisions are headed by boards and not the department head, the Legislature could designate a department head consisting of gubernatorial appointees selected from the State Board of Education, the State Board of Community Colleges, and the Board of Regents. The members of all of these boards are already, or will be, gubernatorial appointees who are confirmed by the Senate.

EDUCATION	
OPTION NUMBER	DESCRIPTION OF OPTION
Option 1.	Designate the State Board of Education as the head of the Department of Education and provide that the Commissioner of Education is the executive director of the department.

<b>Option 2.</b>	Designate the State Board of Education as the head of a division of K-12 only and provide that the Commissioner of Education is the executive director of the division.
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Under either Option 1. or Option 2., the Legislature could review whether to strengthen the authority of the department head by limiting the authority of the divisions in the Department of Education that are headed by boards. Specifically, the Division of Community Colleges is not headed by the department head but by the Board of Community Colleges. Likewise, the Division of Universities is headed by the Board of Regents. While the current department head sits on both boards, the arrangement limits the authority of the department head over large portions of the public educational system, and disperses accountability. The Legislature has broad discretion under the State Constitution to establish the type of authority that each board is to have. As a result, the Legislature could create a stronger department head and narrowly define the authority of the State Board of Education, and the other statutory boards of the department, if desirable.

**III. Effect of Proposed Changes:**

**State Board of Education** - The committee substitute retains the State Board of Education as the chief policymaking and coordinating body for education in the state. The State Board of Education is made responsible for all levels of education.

As required by the State Constitution, the committee substitute provides that the Governor appoints board members to staggered 4-year terms, and that the Senate confirms the members. The committee substitute also provides that the board is a part-time citizen board, that its members are to represent geographical areas of the state, and that its members should reflect the racial, ethnic, and gender diversity of the state. The committee substitute provides that members may be reappointed to the board. The chairman is elected by majority vote to a 2-year term, but cannot succeed himself or herself. The board is required to meet at least once per month.

**Department of Education** - The department designates the State Board of Education as the head of the Department of Education. The committee substitute establishes only four divisions in the DOE:

- ▶ **Division of Administration** - Entities assigned here include: Bureau of Student Financial Assistance; State Board of Independent Colleges and Universities; Board of Nonpublic Career Education.
- ▶ **Division of Community Colleges**
- ▶ **Division of Public Schools (K-12)**
- ▶ **Division of Universities.**

The committee substitute provides that the divisions will be headed by the following:

- ▶ **Commissioner of Education** heads the Division of Administration.
- ▶ **Commissioner of Community Colleges** heads the Division of Community Colleges.
- ▶ **Superintendent of Public Instruction** heads the Division of Public Schools.
- ▶ **Chancellor** heads the Division of Universities, State University System.

The State Board of Education is authorized to appoint the Commissioner of Education, the Commissioner of Community Colleges, the Superintendent of Public Instruction, and the Chancellor. The appointees for these positions must be selected from candidates of national caliber and respected and proven organizational leadership with established experience in administering broad-based policy.

Authorization is provided to the State Board of Education to place the positions of Commissioner of Education, Commissioner of Community Colleges, the Superintendent of Public Instruction and the Chancellor in the Executive Service of the State University System or in pay grade 950 or above of the Senior Management Service for the purpose of establishing salaries and benefits.

The committee substitute eliminates the Board of Regents.

The committee substitute establishes university boards of trustees for each university. The Governor appoints members of the boards of trustees of the universities. Except for boards of universities with statewide mission (UF, FSU, FAMU), boards must have a majority of their members from the regional service area. Powers of the university boards are established, but these powers do not include budget or course approval authority, as those powers are placed in the State Board of Education.

The committee substitute also eliminates the Board of Community Colleges and establishes powers and duties of the State Board of Education relative to community colleges.

The committee substitute removes the power of the Commissioner of Education to waive statutes or rules, but retains authority for the State Board of Education to waive rules.

The State Board of Education is assigned responsibility for career education.

The committee substitute provides for the establishment of the Educational Governance Transition Task Force. The committee substitute provides that the task force will have eleven members:

- ▶ Three members appointed by the Governor
- ▶ Two members appointed by the Senate President
- ▶ Two members appointed by the Speaker of the House
- ▶ Two members appointed by the Commissioner of Education
- ▶ One member appointed by the Board of Regents and
- ▶ One member appointed by the State Board of Community Colleges.

The task force is housed for administrative purposes, and is staffed by, the Department of Education. The organizational meeting of the task force is to take place no later than October 1, 2000. The members of the task force elect a chair by majority vote. Members of the task force serve without compensation, but are reimbursed for per diem and travel as provided in s. 112.061, F.S.



The purpose of the task force is to review the Florida Statutes and rules related to educational governance in Florida and, based upon the changes made to that structure by Senate Bill 1680, recommend amendments to statutes and rules, identify organizational, technological, and other problems, and suggest solutions to those problems. An initial report is due by January 1, 2001, and the final report is due by January 1, 2002. The task force terminates upon submission of the final report.

The effective date of the committee substitute is January 7, 2003.

**IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

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

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Article IV, s. 6 of the State Constitution, prescribes who is authorized to head a department. Under that provision, a board appointed by the Governor may be designated as an agency head. As the State Board of Education is composed of persons appointed by the Governor, this board is an authorized option to head the Department of Education.

Under Art. IV, s. 6 of the State Constitution, cabinet officers and statutory officers who are appointed by the Governor may be designated by the Legislature as department heads. The Florida Supreme Court has established two rules regarding the establishment of qualifications for officers. First, where the State Constitution specifies qualifications for a constitutional office, the Legislature may not add or otherwise change these requirements, unless expressly or impliedly authorized to do so by the State Constitution.<sup>46</sup> Second, the Legislature may statutorily require any qualifications it desires for statutorily-created, non-constitutional offices.<sup>47</sup>

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<sup>46</sup>*Ibid*; *State v. Ex rel. Askew v. Thomas*, 293 So.2d 40 (Fla. 1974).

<sup>47</sup>*State ex rel. Landis v. Ward*, 158 So.2d 273 (Fla. 1934).

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

While the current State Board of Education does not sit as a full-time board, its current members are full-time, paid state officers who reside in Tallahassee, Florida. Meetings of the State Board of Education occur while the Governor and Cabinet meet. As a result, there are no additional travel and per diem costs (unless the Governor and Cabinet meet outside of Tallahassee). The members of the future board will not be full-time, paid officers and they may not all reside in the same location. As a result, there will be an increase in travel and per diem costs.

Elimination of the Board of Regents will eliminate costs associated with that entity. Under the committee substitute, there will still be a Division of Universities, with a Chancellor, so costs for that division may remain somewhat constant.

Creation of a board of trustees at each state university could result in an unknown increase in costs. These costs may be minimized, however, because each university currently has a president and a staff associated with the president's office which could provide much of the necessary staff support for the university boards. Additional staffing, as well as per diem and travel costs may be necessary, however.

Elimination of the Board of Community Colleges will eliminate costs associated with that entity. Under the committee substitute, there will still be a Division of Community Colleges, with a Commissioner of Community Colleges, so costs for those entities may remain somewhat constant. Boards of trustees already exist for each community colleges, so an increase in costs at this level is unlikely.

There will be costs associated with the task force created by the committee substitute, as each member receives per diem and travel. Staff of the Department of Education will provide administrative support to the entity, however, which should help to minimize costs associated with the task force.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Typically, boards are created as part-time boards without identifying them as such. For example, boards housed in the Department of Business and Professional Regulation are not identified as “part-time” boards, but the members do not hold “full-time” 40-hour, paid positions as board members. The same is true of members of school district boards, and others. By specifically stating the “part-time” nature of the State Board of Education, a distinction is made in statute which could call into question the nature and status of other boards.

While the committee substitute provides for the modification of the educational governance structure by modifying portions of the *Florida Statutes*, many more amendments will be necessary to provide for consistency.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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