

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1540

SPONSOR: Senator Villalobos

SUBJECT: Reorganization within the Department of Education

DATE: February 1, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	O'Farrell	ED	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	AED	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill reenacts and amends s. 20.15, F.S., relating to the organizational structure of the Department of Education. The department is headed by the appointed State Board of Education. Also, the bill deletes reference to the elected board's functions and structure. The bill specifies that the appointed Commissioner of Education is the Executive Director for the department and deletes the requirement for the Commissioner to appoint three specific Deputy Commissioners.

The Commissioner may appoint the directors of all divisions, subject to State Board of Education approval and the State Board and the Commissioner may assign necessary powers, duties, and functions to divisions.

The bill adds the Division of Vocational Rehabilitation to s. 20.15, F.S., renames two current divisions, and deletes the provisions establishing the Board of Regents and the State Board of Community Colleges as directors for specific divisions. The following divisions are eliminated: the Division of Professional Educators; the Division of Administration; the Division of Financial Services; the Division of Support Services; and the Division of Technology.

The bill deletes obsolete references to specific boards, boards of trustees, and commissions. All members of the university, college, and community college district boards of trustees must be appointed according to chapter 240, F.S.

The bill amends s. 20.15, F.S., and provides that the act takes effect on January 7, 2003.

II. Present Situation:

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

Section 2. State board of education.-The state board of education shall be a body corporate and have such supervision of the system of free public education as is provided by law. The state board of education shall consist of seven members appointed by the governor to staggered 4year terms, subject to confirmation by the senate. The state board of education shall appoint the commissioner of education.¹

As well, other amendments were made by the voters to the State Constitution, including changing the composition of the Florida Cabinet and the members' assigned constitutional duties.² This amendment removes the Commissioner of Education from the Cabinet. January 7, 2003, is the date specified in the Constitution for the new education system and the Cabinet changes to go into effect.

The Florida Education Governance Reorganization Act of 2000 (Ch. 2000-321, L.O.F.) provided for the repeal of specific provisions of law (effective January 7, 2003) subject to prior legislative review. The Florida Board of Education did not address this section in its recommendations for revisions to the Florida School Code.

Head of the Department of Education

The Department of Education is an administrative and supervisory agency under the policy direction of the State Board of Education. The current statutory head of the Department of Education is the Commissioner of Education, a cabinet officer. The law (s. 229.76, F.S.) requires the department to be located in the offices of the Commissioner. Section 229.0072(5)(b), F.S., requires the Commissioner to begin the reorganization of the Department of Education as a state agency of the Governor, but does not specify the entity to replace the current head of the agency.

Chapter 20, F.S., provides for the organizational structure of the executive branch of government and defines the head of a department as the individual or board in charge of the department. The powers and duties of each department head are specified in s. 20.05, F.S. The structure of the Department of Education is established in s. 20.15, F.S., and in various provisions of the school code. The section specifies the structure and functions for the elected State Board of Education and includes the appointment powers of the State Board and the Commissioner, as well as functions for specific divisions, division directors, and deputy commissioners.

The State Constitution (Article IV, section 6) limits the available choices as a department head. Under Constitutional Amendment No. 8, there will be fewer options in 2003. The available choices will be: (1) the Governor; (2) the Lieutenant Governor; (3) the Attorney General; (4) the

¹ Article IX, Section 2 of the State Constitution currently provides that the Governor and the Cabinet constitute a State Board of Education that has "... such supervision of the system of public education as is provided by law." By law (s. 229.012, F.S.), the Governor is chair of the State Board of Education and the Commissioner of Education is the secretary and executive officer.

² The revisions to Article IV, Section 4(a) of the State Constitution provide that the Cabinet will be comprised of an attorney general, a chief financial officer, and a commissioner of agriculture.

Chief Financial Officer; (5) the Commissioner of Agriculture; (6) the Governor and Cabinet; (7) an officer who is appointed by and serves at the pleasure of the Governor; or (8) a board whose members are appointed by and serve at the pleasure of the Governor.

- Appointed Board

The revision to the State Constitution provides that the jurisdiction of the State Board of Education is as provided by law. Also, it provides for gubernatorial appointment of board members and Senate confirmation but does not establish member qualifications. The law (s. 229.004, F.S.) specifies that the board is a citizen board composed of residents of the state who are subject to Senate confirmation. By law, confirmation is not required for the Florida Board of Education members to perform the duties prescribed in chapter 2001-170, L.O.F., the Education Governance Reorganization Implementation Act.

As a board of gubernatorial appointees, the State Board of Education is a viable option for head of the Department of Education. However, the Commissioner of Education does not appear to be an authorized choice since the position will be appointed by a board and not the Governor. The appointed Commissioner could serve as the executive director for the department but not a Secretary. As defined in s. 20.03(6), F.S., an executive director is the chief administrative employee or officer of a department headed by a board or the Governor and Cabinet. By contrast, a secretary is an individual who is appointed by the Governor to head a department and who is not otherwise named in the constitution.

Designating an appointed board as a department head would consolidate more authority, as well as accountability, in the Governor. There may, however, be some remaining issues for resolution if the Legislature designates the State Board of Education as the head of the Department of Education and the Commissioner of Education as the executive director. The future position of the Commissioner of Education is affected by the issues of confirmation and qualifications. These issues depend upon the status of the Commissioner as a constitutional or statutory officer or as an employee. If the Commissioner is a constitutional officer, the ability of the Legislature to establish qualifications for the position and to require Senate confirmation could be questioned.³

The State Constitution does not specify qualifications for the appointed Commissioner nor does it require Senate confirmation for the appointee. It is unclear whether the Legislature may impose qualifications for constitutional offices when the State Constitution is silent on the issue and when the State Constitution fails to give express authority by the phrase “as is provided by law.”

- Other Options

Instead of an appointed board, the Legislature could designate the Governor, the Lieutenant Governor, the Governor and Cabinet, or an elected cabinet officer as a department head. However, this designation would affect the ability of the Legislature to specify the qualifications for the statutory office because the State Constitution, not the Legislature, establishes the qualifications of these officers.

³ Legal commentary suggests that an office may be considered a constitutional office when the appointment or election is provided for in the Constitution. Fla Jur 2d Civil Servants 11.

Reorganized Department of Education

Chapter 2001-170, L.O.F., includes some changes to the department's structure and contemplates further changes. Specifically, the law establishes the following as governance officers and division heads: the Chancellor of Public Schools; the Chancellor of Community Colleges; the Chancellor of Colleges and Universities; and the Executive Director of Independent Education. The law (s. 229.0074, F.S.) establishes the Division of Independent Education but does not specifically establish the other divisions in chapter 229, F.S. Rather, the law directs reorganization efforts towards establishing these divisions.

The law (s. 229.0061(2)(c), F.S.) specifies the statewide functions for the Commissioner's office to support the new board and the K through 20 education system. As well, the reorganization efforts must include an Office of the Commissioner, comprised of specific general areas of operation that are common to all delivery sectors and specific offices.

Senate Interim Project 2002-215, School Code Review

The Senate Education Committee staff reviewed s. 20.15, F.S., relating to the organization of the Department of Education. The sunset review process was guided by the following principles adapted from the Florida Education Governance Implementation Act (Ch. 2001-170, L.O.F.):

- Recommendations will support an articulated, coordinated k-20 education system.
- Recommendations will focus on the student and access to education.
- Recommendations will not jeopardize equity.
- Recommendations will support local flexibility and decision making.

Also, the sunset review process was based on the following general assumptions:

- Recommended statutory changes will be effective January 7, 2003.
- There will be a single State Board of Education, as specified in the constitutional revisions, although a different statutory name may be assigned to the board.
- There will be a single Commissioner of Education, as specified in the constitutional revisions, although a different statutory name may be assigned to the position.
- Appointed entities will not be authorized to waive statutes.

III. Effect of Proposed Changes:

Section 1. The bill reenacts and amends s. 20.15, F.S., to specify the appointed State Board of Education's powers and duties for supervising the system of free education. The board is a body corporate and is the head of the Department of Education. Also, the bill deletes reference to the elected board's functions and structure.

The bill specifies that the appointed Commissioner of Education is the Executive Director for the Department of Education. Also, the bill deletes the requirement for the Commissioner to appoint the following:

- the Deputy Commissioner for Educational Programs;
- the Deputy Commissioner for Planning, Budgeting, and Management; and
- the Deputy Commissioner for Technology and Administration.

The bill adds the Division of Vocational Rehabilitation to the organizational structure of the Department of Education and renames the following divisions:

- the Division of Public Schools and Community Education as the Division of Public Schools; and
- the Division of Universities as the Division of Colleges and Universities.

The bill deletes the following divisions: the Division of Professional Educators; the Division of Administration; the Division of Financial Services; the Division of Support Services; and the Division of Technology.

The bill deletes the provision establishing the Board of Regents as the director for the Division of Universities and the State Board of Community Colleges as the director for the Division of Community Colleges. The Commissioner may appoint the directors of all divisions, subject to State Board of Education approval. Also, the State Board and the Commissioner may assign necessary powers, duties, and functions to the divisions. The bill deletes the current requirement for them to assign powers, duties, and functions to specific divisions.

The Commissioner's appointment authority is amended to specifically exclude the members of the Commission for Independent Education and to delete references to the Board of Regents, the State Board of Community Colleges, the community college districts boards of trustees, the Postsecondary Education Planning Commission, the State Board of Independent Colleges and Universities, and the State Board of Nonpublic Career Education. All members of the university, college, and community college district boards of trustees must be appointed according to chapter 240, F.S.

Section 2. The bill provides that the act takes effect on January 7, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. None. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be some minimal costs associated with the reorganized structure of the Department of Education, although the exact amount is unknown at this time. As well, it is anticipated that the reorganization will result in some efficiencies. The bill does not require any staff reductions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

If the Legislature establishes the appointed State Board of Education as the head of the department, the Legislature may wish to reconsider the following:

- placement of the inspector general in the Office of the Commissioner. (Section 20.055(3), F.S., requires the inspector general to report to and be under the general supervision of the agency head.).
- placement of the Department of Education in the Office of the Commissioner as required in s. 229.76, F.S.

VIII. Amendments:

None.