

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1520

SPONSOR: Education Committee and Senator Constantine

SUBJECT: State Universities

DATE: April 10, 2003      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable/CS</u>
2.	<u>                    </u>	<u>                    </u>	<u>GO</u>	<u>                    </u>
3.	<u>                    </u>	<u>                    </u>	<u>AED</u>	<u>                    </u>
4.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>
5.	<u>                    </u>	<u>                    </u>	<u>RC</u>	<u>                    </u>
6.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

**I. Summary:**

This committee substitute implements staggered terms for the Board of Governors as required by s. 7, Art. IX of the State Constitution. Service on the Board of Governors is without compensation, but members may be reimbursed for travel expenses. The Board of Governors shall comply with the public disclosure requirements of s. 24, Art. I of the State Constitution, chapter 119, F.S., and s. 286.011, F.S.

The committee substitute implements staggered terms and makes conforming changes to the membership of the university boards of trustees as required by s. 7, Art. IX of the State Constitution.

The committee substitute makes conforming changes to law to continue authorization for the state universities to participate in direct deposit of funds, pretax benefits programs, consolidated financing of deferred-payment purchases, and self-insurance under workers' compensation.

The committee substitute revises the criteria for determining residency for tuition purposes and for reclassifying a student who was initially denied residency for tuition purposes.

The committee substitute recreates and modifies the Florida Uniform Management of Institutional Funds Act. The committee substitute eliminates requirements relating to the historic dollar value which restricted the expenditure of endowment funds when the value of the gift fell below the original and subsequent donations.

The committee substitute requires the University of South Florida to play the University of Central Florida in college football on an annual basis under a home and home format.

The committee substitute substantially amends ss. 17.076, F.S., 110.161, F.S., 112.215, F.S., 287.064, F.S., 440.38, F.S., 1001.71, F.S., 1001.74, F.S., 1004.24, F.S., and 1009.21, F.S.

The committee substitute creates s. 1010.10, F.S., and two unnumbered sections of law.

The committee substitute repeals s. 1001.71(1), (3), and (4), F.S.

## **II. Present Situation:**

### Governance of the state universities

Prior to January 7, 2003, each state university was governed by a 13 member board of trustees. The Governor appointed 12 members to a university board with the student body president serving as the 13<sup>th</sup> member. The appointees were subject to Senate confirmation. Members were not required to be state residents, but the Governor was directed to consider diversity and regional representation in the appointments. Appointments were for 4-year staggered terms with a maximum service of eight years. Members could be removed by the Governor for cause or upon recommendation by the State Board of Education. Each board of trustees was responsible for governing the university in accordance with law and rules of the State Board of Education.

Prior to January 7, 2003, the State Board of Education exercised oversight authority over the state universities as a component part of the K-20 education system.

In the 2002 General Election, the state amended the State Constitution to create a Statewide Board of Governors to govern, operate, regulate, control, and be fully responsible for the management of the state university system. The responsibilities include defining university missions, defining articulation with public schools and community colleges, coordinating and operating the university system, and avoiding wasteful duplication of facilities or programs. In addition, the Board of Governors is directed to establish the powers and duties of the university boards of trustees. The Board of Governors' management of the state university system is subject to the power of the Legislature to appropriate for the expenditure of funds. The Board of Governors must account for the expenditure of funds as provided by law.

The Board of Governors consists of 17 members: 14 members appointed by the Governor subject to confirmation by the Senate, the Commissioner of Education, the Chair of the Advisory Council of Faculty Senates or the equivalent, and the president of the Florida Student Association or the equivalent. The appointed members serve staggered terms of seven years as provided by law.

Local Boards of Trustees are created in the State Constitution to administer each public university. The board of trustees consists of 13 members: six appointees by the Governor subject to confirmation by the Senate, five appointees by the Board of Governors subject to confirmation by the Senate, the chair of the faculty senate or the equivalent, and the president of the student body. The appointed members serve staggered terms of five years as provided by law.

The Governor has appointed the Board of Governors. The Governor and the Board of Governors have made their respective appointments to the new university boards of trustees. The Board of

Governors met on January 7, 2003, and adopted, with some modifications, the provisions of law relating to state universities as resolutions of the Board of Governors.

State universities as public corporations

Pursuant to s. 84, ch. 2002-387, L.O.F., state universities are no longer state agencies; rather, state universities are public corporations of the state. Some laws may need to be amended to reflect the legal status of the state universities and to ensure continued authorization and compliance with the law. In particular, the following areas need to be addressed:

- Direct Deposit of Funds – Section 17.076, F.S., defines a beneficiary for purposes of the direct deposit of funds under the Comptroller’s authority as any person drawing salary or retirement benefits from the state or receiving any lawful payment from state funds. Beginning in the 2003-2004 fiscal year, and pursuant to s. 1011.4105, F.S., the state universities may transition from the state accounting system (FLAIR) to the university’s accounting system. Five universities have received initial approval from the Department of Banking and Finance to transition to a university accounting system: the University of South Florida, the University of Central Florida, Florida Gulf Coast University, Florida Atlantic University, and New College. These institutions still require State Board of Education approval for the transition. A state university that moves to its own accounting system after July 1, 2003, would likely initiate its own payroll processing beginning in January, 2004. In order to maintain the confidentiality of the direct deposit information and to preserve state resources from being expended to obtain direct deposit authorizations from each current state university employee, the Department of Banking and Finance has indicated to the state universities that s. 17.076, F.S., would require amendment.
- Pretax benefits program – Section 110.161, F.S., authorizes state employees to participate in the State Employees Pretax Benefits Program. An employee is defined to include an authorized and established position in the executive, legislative, or judicial branch, including employees of the State Board of Administration. The Pretax Benefits Program is established and maintained by the Department of Management Services (DMS). In order for a pretax program to qualify for preferential tax treatment under federal law, only employees of the state may be participants. According to DMS, university personnel likely remain state employees for purposes of the pretax program as long as they remain on the state payrolls. However, DMS is concerned that once a state university begins processing its own payroll, the preferential tax treatment could be jeopardized if the Internal Revenue Service determines that the university employees are no longer employees of the state, but of the university. Accordingly, DMS has advised the state universities to seek clarification by amending s. 100.161, F.S., to specifically include state university employees within the definition of employees for purposes of the pretax benefits program.
- Deferred Compensation – Section 112.215, F.S., defines employee, in pertinent part, for the purposes of the deferred compensation program to include an employee of a state agency. Prior to January 7, 2003, state university employees were employees of a state agency and could therefore participate in the state deferred compensation program. Section 1001.72, F.S., redefines a state university as a public corporation of the state.

Accordingly, an amendment to include state university employees may be required for continued participation of the university employees in the state deferred compensation program.

- Consolidated Financing of Deferred Payment Purchases – Section 287.064, F.S., provides that the Division of Bond Finance of the State Board of Administration shall plan and coordinate deferred-payment purchases made on or behalf of the state or its agencies, or its community colleges. Prior to January 7, 2003, a state university qualified for consolidated financing of deferred payment purchases for certain equipment as a state agency notwithstanding that no state university has actually used the consolidated financing. Section 1001.72, F.S., redefines a state university as a public corporation of the state. Accordingly, an amendment to include a state university may be required to continue authorization for state university participation in the deferred payment purchases program.
- Self-Insurance – Section 440.38, F.S., provides that the state and its boards, bureaus, departments, and agencies, and all of its political subdivisions that employ labor are self-insurers for purposes of workers' compensation coverage unless they elect to procure and maintain workers' compensation insurance. Prior to January 7, 2003, a state university qualified as a self-insurer under s. 440.38, F.S., as a state agency. Section 1001.72, F.S., redefines a state university as a public corporation of the state. Accordingly, an amendment to include a state university within the list of authorized self-insurers for workers' compensation coverage may be required to continue current authorization.

#### Determination of residency status for tuition purposes

Section 1009.21, F.S., provides that students shall be classified as residents or nonresidents for the purpose of assessing tuition in community colleges and state universities. According to the Office of Program Policy Analysis and Government Accountability, general revenue subsidizes approximately 75 percent of tuition and fees of students classified as residents, while nonresidents are required to pay 100 percent of their tuition and fees. In general, most students qualify for residency for tuition purposes if the student, or his or her parent if the student is a dependent, resides in the state for at least 12 months prior to the student's qualification as a resident at a public institution of higher learning. Section 1009.21, F.S., does not provide that the 12 month prior residency requirement must be the 12 months immediately prior to the initial enrollment. Accordingly, nonresident students may request reclassification once they have resided in the state for at least one year. Moreover, s. 1009.21, F.S., is silent on the type of evidence needed to establish state residency requirements for a reclassification request.

Institutions are therefore applying varying standards for documenting residency. OPPAGA has recommended revising the criteria for determining in-state tuition in its February 17, 2003, report to the Joint Legislative Auditing Committee on ways to reduce the cost of state government paid by taxpayers. In particular, the report recommends requiring an individual, or the parents or adult relative if the individual is a dependent child, to demonstrate 12 months of state residency immediately prior to the individual's first day of class at an institution of higher learning to establish residency for tuition purposes. In addition, the report recommends requiring convincing evidence such as employment or income necessary to maintain a domicile in the state to reclassify a student as a resident for purposes of tuition. OPPAGA has opined that the

amendments to the residency determination would save the state approximately \$28 million each year.

#### Institutional and Endowment Funds

Prior to January 7, 2003, state and private universities were governed by the Florida Uniform Management of Institutional Funds Act (former s. 240.127, F.S., (2001)). The act provided greater certainty in the administration of permanent endowment funds. Until adoption of the act, institutions were unsure whether traditional common-law trust rules applied to endowments. Specifically, the act authorized the institutions to invest endowment funds for long-term growth while maintaining authority to make short-term distributions from the endowment. In exercising the investment authority, the institution is bound by the exercise of ordinary business care and prudence under the circumstances. In return, the act mandated that, absent donor intent to the contrary, the institution could not spend endowment funds beyond the point in which the endowment was less than the historic dollar value of the fund. Unfortunately, due to below average returns in long-term capital appreciation assets such as stocks, many endowment funds are below the value of the original gift. Chapter 2002-387, L.O.F., repealed the act, thereby authorizing institutions to spend beyond the value of the original gift, but also exposing the institutions to the uncertainty of what laws apply to the management of endowment funds. Most institutions have not frozen their accounts, but the University of Central Florida and the University of Miami have.

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

#### Section by Section Analysis:

##### Section 1:

The committee substitute makes conforming changes to s. 17.076, F.S., to continue authorization for a state university to participate in direct deposit of funds without obtaining a reauthorization from the state university employee. The pre-constitution public records exemption is not expanded; rather, it allows the Department of Management Services to release the names of authorized financial institutions and the account numbers of beneficiaries of a state university employee to a state university for direct deposit purposes. The state university must maintain the confidentiality of the records.

##### Section 2:

The committee substitute makes conforming changes to s. 110.161, F.S., to continue authorization for state university participation in a pretax benefits program. The employees of a state university were previously subject to s. 112.215, F.S., as state employees. However, s. 1001.72, F.S., redefines a state university as a public corporation of the state. Accordingly, the revision is needed to clarify that the employees of a state university may participate in the pretax benefits program without jeopardizing preferential tax treatment under the Internal Revenue Code.

##### Section 3:

The committee substitute makes conforming changes to s. 112.215, F.S., to continue authorization for state university participation in a deferred compensation program. The state

universities were previously subject to s. 112.215, F.S., as a state agency. However, s. 1001.72, F.S., redefines a state university as a public corporation of the state (s. 84, ch. 2002-387, L.O.F.).

Section 4:

The committee substitute makes conforming changes to s. 287.064, F.S., to continue to authorize the Division of Bond Finance of the State Board of Administration to plan and coordinate deferred-payment purchases made on behalf of state universities. The state universities were previously subject to s. 287.064, F.S., as a state agency. However, s. 1001.72, F.S., redefines a state university as a public corporation of the state (s. 84, ch. 2002-387, L.O.F.).

Section 5:

The committee substitute makes conforming changes to s. 440.38, F.S., to continue to authorize a state university to self-insure for purposes of workers' compensation coverage. The state universities were previously subject to s. 440.38, F.S., as a state agency. However, s. 1001.72, F.S., redefines a state university as a public corporation of the state (s. 84, ch. 2002-387, L.O.F.).

Section 6:

The committee substitute provides staggered terms for the university boards of trustees. The Governor's six appointments to each university board of trustees, beginning July 1, 2003, shall be appointed to serve as follows: one member for a 3-year term, three members for 4-year terms, and two members for 5-year terms. The Board of Governors' five appointments to each university board mirrors the Governor's appointments with the only change being that two members shall be appointed to serve 4-year terms.

The committee substitute repeals the requirement for consideration of diversity and regional representation for appointment to a university board of trustees as the requirement may be constitutionally infirm. See State v. Grassi, 532 So.2d 1055, 1056 (Fla. 1988) *citing State ex. rel. Askew v. Thomas*, 293 So.2d 40, 42 (Fla. 1974) (statutes imposing additional qualifications for office are unconstitutional where the constitution provides those requirements); Compare Holley v. Adams, 238 So.2d 401, 405 (Fla. 1970) (upholding resign to run law as an additional requirement on eligibility to be a candidate as opposed to qualification for office).

The committee substitute eliminates the authority of the Governor to remove a member of the university board of trustees upon recommendation of the State Board of Education or for cause. A member of the university board of trustees is now a constitutional officer subject to removal for cause as provided in s. 7, Art. IV of the State Constitution. Member term-limits for university boards of trustees are repealed.

Section 7:

The committee substitute makes a conforming change to the amendment contained in section 2 of the bill analysis relating to the pretax benefits program conducted by a state university. The Department of Management Services shall maintain authority over state university employees for purposes of administering the cafeteria plan under s. 110.161, F.S.

Section 8:

The committee substitute amends the financial audit provisions of a self-insurance program council established by the State Board of Education under s. 1004.24, F.S. The financial audit

must be conducted in conformance with the audit requirements of the Auditor General under s. 11.45, F.S.

Section 9:

The committee substitute revises the criteria for determining resident status for tuition purposes at community colleges and state universities. The committee substitute substantially implements the in-state tuition recommendations of the Office of Program Policy Analysis and Government Accountability (OPPAGA) February 17, 2003, report to the Joint Legislative Auditing Committee on ways to reduce the cost of state government paid by taxpayers. In order to establish residency for tuition purposes, an individual, or the parents or adult relative if the individual is a dependent child, must demonstrate 12 months of state residency immediately prior to the individual's first day of class at an institution of higher learning. The reclassification criteria is revised to require an individual, or his or her parents if the individual is a dependent child, to present documentation that supports permanent residency such as permanent full-time employment or the purchase and residence in a home in the state for the previous 12 months. OPPAGA has opined that the amendments to the residency determination would save the state approximately \$28 million each year.

Section 10:

The committee substitute provides staggered terms for the Board of Governors. Beginning July 1, 2003, four members are appointed to serve 6-year terms, five members are appointed to serve 5-year terms, and five members are appointed to serve 4-year terms.

Members of the Board of Governors serve without compensation but may be reimbursed for travel and per diem expenses as provided in s. 112.061, F.S.

The Board of Governors is subject to the public disclosure requirements of s. 24, Art. I of the State Constitution, chapter 119, F.S., and s. 286.011, F.S.

Section 11:

The committee substitute recreates the Florida Uniform Management of Institutional Funds Act as s. 1010.10, F.S. The act is modified to authorize an institution to expend endowment funds despite the value of the endowment falling below the historic dollar value of the original and subsequent gifts. The recreation of the act is made retroactive to January 7, 2003.

Section 12:

The committee substitute requires the University of South Florida to play the University of Central Florida in college football on an annual basis under a home and home format. The institutions have been unsuccessful in scheduling the game and accordingly need legislative intervention.

Section 13:

The committee substitute eliminates nonconforming provisions of the terms and membership of a university board of trustees as discussed in section 6 of the committee substitute.

Section 14:

The committee substitute takes effect upon becoming a law with the exception of the Florida Uniform Management of Institutional Funds Act, which takes effect 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. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Certain nonresident students would be required to pay full out-of-state tuition and fees if they do not meet the revised eligibility determinations for residency. To the extent that nonresidents are on full scholarships, more scholarship funds would be used.

**C. Government Sector Impact:**

According to the Office of Program Policy Analysis and Government Accountability, the revisions to the determination and reclassification of residency for tuition purposes would save approximately \$28 million per year.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.