

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.)

Prepared By: Education Committee

BILL: CS/SB 1920

SPONSOR: Education Committee and Senator Lynn

SUBJECT: Postsecondary Education

DATE: April 13, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>EA</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill defines the constitutional duties of the Board of Governors of the State University System and the Legislature with respect to operation of the State University System.

State universities are defined as state agencies for purposes of the delineation of constitutional authority. It preserves, however, university exemptions from state agency requirements that predate the bill.

The bill expresses Legislative intent to reenact laws relating to the postsecondary education system in accordance with the bill.

Finally, the bill prohibits any member of the statewide Board of Governors of the State University System, and any member of a state university board of trustees, from having any employment or contractual relationship as a legislative lobbyist requiring annual registration and reporting pursuant to s. 11.045, F.S.

This bill creates an unnumbered section of the Florida Statutes and amends s. 11.045, F.S.

II. Present Situation:

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 13th 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. 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 people 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 must 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. Each 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.

Finally, Article III, s. 18 of Article III of the State Constitution confers upon the Legislature the duty to prescribe a code of ethics for all state employees and nonjudicial officers, prohibiting conflict between public duty and private interests. The Legislature has implemented the following standards for state officers and legislators:

“No member of the Legislature, appointed state officer, or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of 2 years following vacation of office. No member of the Legislature shall personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.”¹

¹ Section 112.313(9)(a)3, F.S.

Currently, members of the Florida Elections Commission are also prohibited from lobbying state or local government while serving on the Commission.²

III. Effect of Proposed Changes:

This bill defines the constitutional duties of the Board of Governors of the State University System to include the following responsibilities:

- Operating, regulating, controlling, and being fully responsible for the management of the State University System;
- Defining the distinctive mission of each constituent university;
- Defining the articulation of each constituent university in conjunction with the Legislature's authority over the public schools and community colleges;
- Ensuring the well-planned coordination and operation of the State University System;
- Avoiding wasteful duplication of facilities or programs within the State University System;
- Accounting for expenditure of funds appropriated by the Legislature for the State University System as provided by law;
- Submitting a budget request for legislative appropriations for the institutions under the supervision of the board as provided by law;
- Adopting strategic plans for the State University System and each constituent university;
- Approving, reviewing, and terminating State University System degree programs;
- Governing admissions to the state universities;
- Serving as the public employer with respect to all public employees of state universities for collective bargaining purposes;
- Establishing a personnel system for all state university employees with certain exceptions for statewide programs that are administered by the Department of Management Services; and
- Complying with, and enforcing for institutions under the board's jurisdiction, all applicable local, state, and federal laws.

The bill specifically authorizes the board to delegate these requirements to a designee.

State universities are defined as state agencies for purposes of the delineation of constitutional authority. It preserves, however, university exemptions from state agency requirements that predate the bill.

Additionally, the bill provides the following Legislative responsibilities:

- Making provision by law for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require;
- Appropriating all state funds through the General Appropriations Act or other law;

² Section 106.24(1)(b), F.S.

- Establishing tuition and fees;
- Establishing policies relating to merit and need-based student financial aid;
- Establishing policies relating to expenditure of, accountability for, and management of funds appropriated by the Legislature or revenues authorized by the Legislature;
- Maintaining the actuarial and fiscal soundness of centrally administered state systems by requiring state universities to continue to participate in programs such as the Florida Retirement System, the state group health insurance programs, the state telecommunications and data network, and the state casualty insurance program;
- Establishing and regulating the use of state powers and protections;
- Establishing policies relating to the health, safety, and welfare of students, employees, and the public while present on the campuses of institutions of higher learning.

Additionally, the bill expresses Legislative intent to reenact laws relating to the postsecondary education system in accordance with the bill.

Finally, the bill prohibits any member of the statewide Board of Governors of the State University System, and any member of a state university board of trustees, from having any employment or contractual relationship as a legislative lobbyist requiring annual registration and reporting pursuant to s. 11.045, F.S.

The bill takes effect upon becoming a law.

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:

Board of Governors; Art. IX, Section 7 of the State Constitution

Section 7, Art. IX of the State Constitution provides that the Board of Governors shall operate, regulate, control, and be fully responsible for the management of the whole university system. The courts have not interpreted this provision with respect to the extent of the powers and duties of the Board of Governors. A lawsuit was filed on December 21, 2004, against the Board of Governors and the State Board of Education seeking a declaratory action, among other things, regarding the Board of Governor's powers and duties with respect to the state university system. The results of this lawsuit may have an impact on the bill with respect to the management of the state universities.

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

None.

B. Private Sector Impact:

Any current member of the Board of Governors or state university boards of trustees who personally represents another person or entity for compensation before the Legislature will be required to either cease representation of that person or entity for compensation, or resign from the respective board.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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