

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill implements both section 7 of Article IX of the State Constitution, which establishes a 17-member Board of Governors to govern the State University System and a 13-member board of trustees for each public university, and ch. 2005-285, L.O.F. (HB 1001).

B. EFFECT OF PROPOSED CHANGES:

Background

In the 2002 General Election, Floridians amended the State Constitution to require, effective January 7, 2003, a single state university system comprised of all public universities with a 13-member board of trustees administering each university and a 17-member statewide board of governors to govern the state university system (see Section 7 of Article IX of the State Constitution). The 2003 Legislature enacted ch. 2003-392, L.O.F., to reflect the adoption of this amendment.

The 2005 Legislature enacted ch. 2005-285, L.O.F., (see HB 1001) to clarify the lines of authority and constitutional duties of the Board of Governors and the Legislature with regard to the State University System and to declare the intent of the Legislature to reenact laws relating to the Board of Governors of the State University System, the university boards of trustees, the State Board of Education, and the postsecondary education system in accordance with the findings stated in the bill.

Effect of Proposed Changes

HB 7257 updates the Florida Statutes to reflect the recent changes to the State Constitution with regard to the State University System and the enactment of HB 1001 by the 2005 Legislature to delineate constitutional responsibilities of the Board of Governors and Legislature relating to state universities. More specifically, the bill:

- Repeals certain statutory provisions that are no longer necessary because they fall entirely within the constitutional responsibilities of the Board of Governors.
- Provides the statutory organizational structure for the Board of Governors and the board's staff:
 - Removes the Division of Colleges and Universities from the Department of Education,
 - Requires DOE to continue to provide certain support services for the BOG, including inspector general services, and
 - Updates statutory references as needed to reflect the new structure.
- Outlines the powers and duties of the Board of Governors.
- Stipulates the oversight enforcement authority of the Board of Governors.
- Revises the powers and duties of university boards of trustees.
- Clarifies the powers and duties of the State Board of Education, Commissioner of Education, and Department of Education within the statutory organizational structure by removing powers and duties that relate solely to state universities and requiring the State Board of Education work in

conjunction with the Board of Governors on matters that involve universities as well as other education sectors.

- Revises provisions relating to the Commission for Independent Education.
- Requires the Board of Governors and university boards of trustees to adopt rules pursuant to ch. 120, F.S., (Administrative Procedures Act) when acting pursuant to authority derived from the Legislature. Authorizes the Board of Governors and university boards of trustees to adopt rules pursuant to ch. 120, F.S., when exercising the powers, duties, and authority granted by Section 7, Article IX of the State Constitution.
- Revises provisions relating to determination of resident status for tuition purposes in accordance with OPPAGA recommendations; ties determination to initial enrollment.
- Revises provisions relating to state university tuition and fees:
 - Provides for undergraduate tuition to be set in the General Appropriations Act.
 - Delegates authority for graduate and professional student tuition to the Board of Governors or the board's designee.
 - Delegates authority for out-of-state fees to the Board of Governors or the board's designee.
 - Delegates authority for other fees and fines, including local fees, to the Board of Governors or the board's designee.
 - Permits the use of Activity and Service fees for technology.
 - Permits universities to "change" rather than just "increase" the Athletic, Health, and Activity and Service fees.
 - Requires a 3 year phased-in increase in the percentage of funds from the student financial aid fee that must be used for need-based aid.
- Authorizes university boards of trustees to waive tuition and out-of-state fees under certain conditions.
- Provides guidelines for determining "space available" for purposes of state employee fee waivers, prohibits use of such waivers for certain courses, and eliminates supervisor approval requirement except in cases where the course is during normal working hours.
- Revises statutory provisions relating to revenue bonds and debt for state universities.
- Revises provisions relating to the Major Gifts programs.
- Expands employees covered by the limitation on use of public funds for compensation to include university provosts and community college presidents.
- Revises minimum space utilization standards for postsecondary educational facilities and requires a review of the standards a minimum of every 5 years.
- Requires approval by the Administration Commission in the exercise of eminent domain by a university or community college board of trustees. *Note: the Administration Commission is composed of the Governor and the members of the Cabinet and is created in s. 14.202, F.S.*

- Removes the naming prohibition regarding certain university facilities and provides for Board of Governors approval for the naming of certain university facilities.
- Repeals certain centers, institutes, campuses, and programs for which specific statutory authority is no longer needed.
- Adds references to the Board of Governors where appropriate, such as the recipient of a report.
- Updates or removes obsolete terminology, such as the Board of Regents and the State Board of Community Colleges.
- Corrects drafting errors and makes conforming changes.

C. SECTION DIRECTORY:

Section 1: Amends s. 20.055, F.S., relating to agency inspectors general, to require the Office of Inspector General of the Department of Education to perform all required duties and responsibilities for the State University System under the direction of the Chancellor of the State University System.

Section 2: Amends s. 20.15, F.S., relating to the Department of Education, to delete the Division of Colleges and Universities, require the State Board of Education and Commissioner of Education to consult with certain educational entities in assigning responsibilities within the department, and require the department to provide certain support services to the Board of Governors.

Section 3: Creates s. 20.155, F.S., relating to the Board of Governors of the State University System, to set up the organizational structure of the board by providing for certain rights and privileges, the head of the board, personnel, and certain powers and duties.

Section 4: Amends s. 23.21, F.S., relating to definitions for purposes of paperwork reduction, to update obsolete terminology.

Section 5: Amends s. 110.131, F.S., relating to other-personnel-services temporary employment, to update obsolete terminology.

Section 6: Amends s. 110.181, F.S., relating to Florida State Employees' Charitable Campaign, to correct a cross-reference.

Section 7: Amends s. 112.0455, F.S., relating to the Drug-Free Workplace Act, to remove obsolete rulemaking provision.

Section 8: Amends s. 112.19, F.S., relating to death benefits for law enforcement, correctional, and correctional probation officers, to update terminology.

Section 9: Amends s. 112.191, F.S., relating to death benefits for firefighters, to update terminology.

Section 10: Amends s. 112.313, F.S., relating to standards of conduct for public officers, employees of agencies, and local government attorneys, to revise definition of "employee" to include provosts and update obsolete terminology.

Section 11: Amends s. 112.3135, F.S., relating to the definition of "agency" for purposes of restrictions on employment of relatives, to update obsolete terminology.

Section 12: Amends s. 112.3145, F.S., relating to the definition of "state officer" for purposes of disclosure of financial interests and clients represented before agencies, to update obsolete terminology.

Section 13: Amends s. 120.52, F.S., relating to definitions for purposes of the Administrative Procedures Act, to revise the definition of “agency” to include the Board of Governors and state university boards of trustees when acting pursuant to statutory authority derived from the Legislature and to revise the definition of “educational unit” to clarify that ch. 120 applies to state universities when acting pursuant to statutory authority derived from the Legislature.

Section 14: Amends s. 120.65, F.S., relating to the services and travel expenses of administrative law judges, to include the Board of Governors in the entities that must reimburse the Division of Administrative Hearings.

Section 15: Amends s. 121.021, F.S., relating to definitions for purposes of the Florida Retirement System, to update obsolete terminology.

Section 16: Amends s. 121.051, F.S., relating to participation in the Florida Retirement System, to prohibit participation in the Florida Retirement System for certain state university faculty appointed on or after July 1, 2006 and require such faculty to participate in the optional retirement program, and correct a cross-reference.

Section 17: Amends s. 121.35, F.S., relating to the optional retirement program for the State University System, to require that certain state university faculty appointed on or after July 1, 2006, participate in the optional retirement program, update obsolete terminology, and transfer authority from the State Board of Education to the Board of Governors.

Section 18: Amends s. 159.703, F.S., relating to the creation of research and development authorities, to update obsolete terminology and effective date.

Section 19: Amends s. 159.704, F.S., relating to the procedure for being designated as a research and development authority, to update obsolete terminology.

Section 20: Amends s. 159.706, F.S., relating to the grandfather clause for research and development authorities, to include those authorities designated by the Board of Regents prior to July 1, 2001.

Section 21: Amends s. 211.3103, F.S., relating to the levy of tax on severance of phosphate rock, to update obsolete terminology.

Section 22: Amends s. 215.16, F.S., relating to appropriations and reductions from the General Revenue Fund for public schools, state institutions of higher learning, and community colleges, to remove unnecessary language.

Section 23: Amends s. 215.20, F.S., relating to certain income and trust funds, to conform.

Section 24: Amends s. 215.32, F.S., relating to state funds and segregation of trust funds, to include trust funds under the management of the Board of Governors.

Section 25: Amends s. 215.559, F.S., relating to the Hurricane Loss Mitigation Program, to remove obsolete terminology.

Section 26: Amends s. 215.82, F.S., relating to validation of certain bonds and when required, to correct a cross-reference.

Section 27: Amends s. 216.0152, F.S., relating to the inventory of state-owned facilities or state-occupied facilities, to update obsolete terminology.

Section 28: Amends s. 216.251, F.S., relating to limitations on salary appropriations, to remove reference to the State Board of Education.

Section 29: Amends s. 220.15, F.S., relating to apportionment of adjusted federal income, to update obsolete terminology.

Section 30: Amends s. 250.10, F.S., relating to appointment and duties of the Adjutant General regarding education assistance programs, to include the Board of Governors in the development of such programs and the adoption of rules.

Section 31: Amends s. 252.385, F.S., relating to public shelter space for purposes of hurricane evacuation, to update obsolete terminology.

Section 32: Amends s. 253.381, F.S., relating to sales of unsurveyed marshlands to upland owners, to remove reference to the State Board of Education.

Section 33: Amends s. 255.02, F.S., relating to boards authorized to replace buildings destroyed by fire, to remove obsolete language.

Section 34: Amends s. 255.043, F.S., relating to art in state buildings, to remove obsolete language.

Section 35: Amends s. 255.102, F.S., relating to contractor utilization of minority business enterprises, to require the Office of Supplier Diversity to adopt rules in collaboration with the Board of Governors.

Section 36: Amends s. 280.02, F.S., relating to definitions for purposes of the Florida Security for Public Deposits Act, revising definition of "public deposit" to include state university.

Section 37: Amends s. 286.001, F.S., relating to the filing, maintenance, retrieval, and provision of copies of statutorily required reports, to update obsolete terminology.

Section 38: Amends s. 287.012, F.S., relating to definitions for purposes of procurement, to revise definition of "agency" to include the Board of Governors.

Section 39: Amends s. 287.064, F.S., relating to consolidated financing of deferred-payment purchases, to correct a cross-reference.

Section 40: Amends s. 287.155, F.S., relating to the purchase of motor vehicles by certain entities, to update obsolete terminology.

Section 41: Amends s. 288.15, F.S., relating to powers of the Division of Bond Finance, to include the Board of Governors as an entity authorized to cooperate with the division.

Section 42: Amends s. 288.17, F.S., relating to revenue certificates issued by the Division of Bond Finance, to update obsolete terminology.

Section 43: Amends s. 288.7091, F.S., relating to duties of the Florida Black Business Investment Board, Inc., to include the Board of Governors in the entities with whom the Investment Board must develop memoranda of understanding.

Section 44: Amends s. 288.8175, F.S., relating to linkage institutes between postsecondary institutions in this state and foreign countries, to remove Department of Education approval and require that each linkage institute be governed by an agreement between the Board of Governors and State Board of Education with a counterpart organization in a foreign country.

Section 45: Amends s. 295.07, F.S., relating to preference in appointment and retention for purposes of veterans, to include certain equivalent positions.

Section 46: Amends s. 320.08058, F.S., relating to collegiate license plates, to update obsolete terminology.

Section 47: Amends s. 381.79., F.S., relating to the Brain and Spinal Cord Injury Program Trust Fund, to update obsolete terminology.

Section 48: Amends s. 403.073, F.S., relating to the state goal, agency programs, and public education regarding pollution prevention, to update obsolete terminology.

Section 49: Amends s. 403.074, F.S., relating to technical assistance by the Department of Environmental Protection, to update obsolete terminology.

Section 50: Amends s. 409.908, F.S., relating to reimbursement of Medicaid providers, to update obsolete terminology.

Section 51: Amends s. 413.051, F.S., relating to the operation of vending stands by eligible blind persons, to update obsolete terminology.

Section 52: Amends s. 440.491, F.S., relating to reemployment of injured workers, to correct a cross-reference.

Section 53: Amends s. 447.203, F.S., relating to definitions for purposes of public employees, to designate the Board of Governors or the board's designee as the "public employer" of and "legislative body" for public employees of state universities and revise definition of "managerial employees" to conform.

Section 54: Amends s. 455.2125, F.S., relating to consultation with postsecondary education boards prior to adoption of changes to training requirements for professions regulated by the Department of Business and Professional Regulation, to update obsolete terminology.

Section 55: Amends s. 456.028, F.S., relating to consultation with postsecondary education boards prior to adoption of changes to training requirements for professions regulated by the Department of Health, to update obsolete terminology.

Section 56: Amends s. 489.103, F.S., relating to exemptions for purposes of construction contracting, to update obsolete terminology.

Section 57: Amends s. 489.503, F.S., relating to exemptions for purposes of electrical and alarm system contracting, to update obsolete terminology.

Section 58: Amends s. 553.71, F.S., relating to definitions for purposes of the Florida Building Code, to add "board of trustees" to conform.

Section 59: Amends s. 633.01, relating to the powers and duties of the State Fire Marshal, to correct cross-references.

Section 60: Amends s. 650.03, F.S., relating to a federal-state agreement and interstate instrumentalities, to update obsolete terminology.

Section 61: Amends s. 943.1755, F.S., relating to the Florida Criminal Justice Executive Institute, to update obsolete terminology.

Section 62: Amends s. 1000.01, F.S., relating to the Florida K-20 education system, to reference institutions of higher learning and other public education programs Florida residents may need, and

transfer certain powers, duties, et al, that were transferred from the Board of Regents to the State Board of Education, to the Board of Governors, effective July 1, 2006.

Section 63: Amends s. 1000.03, F.S., relating to the function, mission, and goals of the Florida K-20 education system, to remove duplicative language, limit State Board of Education oversight to non-state university system matters, and include Board of Governor oversight for the State University System.

Section 64: Amends s. 1000.05, F.S., relating to discrimination against students and employees in the Florida K-20 public education system, to assign responsibilities for implementation of equal opportunity policies to the Commissioner of Education and State Board of Education and to the Board of Governors, and limit the functions of the Office of Equal Educational Opportunity to those relating to school districts and community colleges.

Section 65: Amends s. 1000.21, F.S., relating to systemwide definitions for the Florida K-20 Education Code, to define the "Board of Governors" as the Board of Governors of the State University System.

Section 66: Amends s. 1001.02, F.S., relating to general powers of the State Board of Education, to remove powers and duties that relate solely to state universities and require the State Board to work in conjunction with the Board of Governors on matters that involve universities as well as other education sectors, provide for exceptions, revise reporting requirements relating to financial aid, and conform.

Section 67: Amends s. 1001.03, F.S., relating to specific powers of the State Board of Education, to provide for exceptions to statewide enforcement by the State Board, require the State Board to work in conjunction with the Board of Governors when managing information databases and common placement testing for public postsecondary education, and remove state universities from cyclic review of academic programs by the State Board.

Section 68: Amends s. 1001.10, F.S., relating to the general powers and duties of the Commissioner of Education, to include the Board of Governors in the K-20 budget recommendation and revise reporting requirements.

Section 69: Amends s. 1001.11, F.S, relating to other duties of the Commissioner of Education, to require annual report and remove certain provisions to conform.

Section 70: Amends s. 1001.20, F.S., relating to the Department of Education under the direction of the state board, to transfer responsibilities regarding the determination of need for investigations of state universities by the Office of Inspector General from the Commissioner of Education to the Chancellor of the State University System.

Section 71: Amends s. 1001.25, F.S, relating to educational television, to correct a cross-reference.

Section 72: Amends s. 1001.28, F.S, relating to distance learning duties of the Department of Education, to add the Board of Governors to the entities whose powers and duties are not changed by the provisions of this section.

Section 73: Amends s. 1001.64, F.S, relating to powers and duties of community college board of trustees, to correct a cross-reference.

Section 74: Amends s. 1001.70, F.S., relating to the Board of Governors, to include provisions regarding travel and per diem expenses for members of the board and provide postsecondary access guidelines.

Section 75: Creates s. 1001.706, F.S., to outline the powers and duties of the Board of Governors.

Section 76: Amends s. 1001.71, F.S., relating to membership of the university boards of trustees, to clarify the boards are part of the executive branch of state government and remove certain board member requirements.

Section 77: Amends s. 1001.73, F.S., relating to university boards acting as trustees, to replace the State Board of Education with the Board of Governors, correct a cross-reference, and subject certain agreements to the provisions of s.1010.62.

Section 78: Amends s. 1001.74, F.S., to revise the powers and duties of university boards of trustees.

Section 79: Amends s. 1002.35, F.S., relating to the New World School of Arts, to require the State Board of Education to consult with the Board of Governors in the assignment of university partnerships for the school and to update terminology.

Section 80: Amends s. 1002.41, F.S., relating to home education programs, to conform and prohibit requiring curriculum documentation under certain conditions.

Section 81: Amends s. 1004.03, F.S., relating to program approval of public postsecondary education, to transfer responsibilities of the State Board of Education to the Board of Governors regarding new program approval at state universities.

Section 82: Amends s. 1004.04, F.S., relating to public accountability and state approval for teacher preparation programs, to include the Board of Governors as a recipient of a department report.

Section 83: Amends s. 1004.07, F.S., relating to student withdrawal from courses due to military service, to provide that policies of school districts and community colleges follow State Board of Education guidelines and policies of state universities follow Board of Governors guidelines.

Section 84: Amends s. 1004.21, F.S., to remove legislative intent and reference constitutional provisions providing that state universities are part of the executive branch and are administered by boards of trustees.

Section 85: Amends s. 1004.22, F.S., relating to divisions of sponsored research at state universities, to replace the State Board of Education with the Board of Governors and require universities to follow guidelines of the Board of Governors when creating divisions of sponsored research.

Section 86: Amends s. 1004.24, F.S., relating to authorization by the State Board of Education to secure liability insurance, to replace State Board with the Board of Governors or the board's designee.

Section 87: Amends .s 1004.25, F.S., relating to payment of costs of civil actions by state universities, to permit recovery of certain attorney's fees.

Section 88: Amends s. 1004.28, F.S., relating to direct-support organizations, to define "property," provide for guidelines and rules of the Board of Governors, replace references to the State Board of Education with the Board of Governors, and require compliance with s. 1010.62 where appropriate.

Section 89: Amends s. 1004.29, F.S., relating to university health services support organizations, to reference rules and guidelines of the Board of Governors and replace the State Board of Education with the Board of Governors.

Section 90: Amends s. 1004.39, F.S., relating to the college of law at Florida International University, to remove obsolete language and replace the State Board of Education with the Board of Governors.

Section 91: Amends s. 1004.40, F.S., relating to the college of law at Florida Agricultural and Mechanical University, to remove obsolete language and replace the State Board of Education with the Board of Governors.

Section 92: Amends s. 1004.41, F.S., relating to the J. Hillis Miller Health Center at the University of Florida, to authorize the University of Florida board of trustees to utilize certain revenues.

Section 93: Amends s. 1004.43, F.S., relating to the H. Lee Moffitt Cancer Center and Research Institute, to transfer State Board of Education responsibilities to the Board of Governors.

Section 94: Amends s. 1004.445, F.S., relating to the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute, to transfer State Board of Education responsibilities to the Board of Governors.

Section 95: Amends s. 1004.58, relating to the Leadership Board for Applied Research and Public Service, to provide for the Department of Education to staff the Leadership Board, revise the purpose of the board, and include the Board of Governors as a report recipient.

Section 96: Amends s. 1005.03, F.S., relating to the designation "college" or "university," to remove obsolete terminology.

Section 97: Amends s. 1005.06, F.S., relating to institutions not under the jurisdiction or purview of the Commission for Independent Education, to remove obsolete terminology.

Section 98: Amends s. 1005.21, F.S., revising provisions relating to the powers and duties of the Commission for Independent Education, to require the Department of Education to provide the commission certain salary rate and positions.

Section 99: Amends s. 1005.22, F.S., revising powers and duties of the Commission for Independent Education relating to rule-making, budget requests, expenditure of funds, and reporting; and providing conforming provisions.

Section 100: Amends s. 1006.53, F.S., relating to religious observances, to remove reference to the State Board of Education rules and require each public postsecondary institution to adopt its own policy.

Section 101: Amends s. 1006.60, F.S., relating to codes of conduct and disciplinary measures for students and student organizations and providing rulemaking authority, to include rules adopted by the Board of Governors.

Section 102: Amends s. 1006.61, F.S., relating to penalties for participation by students in disruptive activities at public postsecondary educational institutions, to include Board of Governors policies for students who attend state universities.

Section 103: Amends s. 1006.62, F.S., relating to expulsion and discipline of students of community colleges and state universities, to include rules or regulations of the Board of Governors for students who attend state universities.

Section 104: Amends s. 1006.65, F.S., relating to safety issues in courses offered by public postsecondary educational institutions, to require the State Board of Education to adopt rules for community colleges and require the Board of Governors to adopt rules for state universities.

Section 105: Amends s. 1006.71, F.S., relating to gender equity in intercollegiate athletics, to transfer responsibilities relating to state universities from the Commissioner of Education and the State Board of Education to the Chancellor of the State University System and Board of Governors, and add the Legislature as a recipient of both annual assessments.

Section 106: Amends s. 1007.01, F.S., relating to the legislative intent, purpose, and role of the State Board of Education regarding articulation, to require the State Board of Education and the Board of Governors to recommend articulation policies and guidelines to the Legislature.

Section 107: Amends s. 1007.22, F.S., relating to articulation and postsecondary institution coordination and collaboration, to encourage institutional boards to establish programs to maximize articulation.

Section 108: Amends s. 1007.23, F.S., relating to the statewide articulation agreement, to provide purpose, require the State Board of Education and the Board of Governors to enter into a statewide articulation agreement, remove the State Board rule reference, and revise provisions relating to admissions, and provide for investigation of complaints and penalties for failure to comply with the statewide articulation agreement or legislative intent.

Section 109: Amends s. 1007.24, F.S., relating to the statewide course numbering system, to provide purpose and legislative intent, require the Commissioner of Education to work in conjunction with the Chancellor of the State University System when appointing members of faculty committees for the statewide course numbering system, and require the State Board of Education to receive input from the Board of Governors when approving course levels.

Section 110: Amends s. 1007.25, F.S., relating to general education courses, common prerequisites, and other degree requirements, to provide purpose and transfer responsibilities relating to state universities from the State Board of Education to the Board of Governors.

Section 111: Amends s. 1007.262, F.S., relating to foreign language competence and equivalence determinations, to conform and provide an exemption.

Section 112: Amends s. 1007.264, F.S., relating to admission to postsecondary educational institutions for impaired and learning disabled persons, to transfer responsibilities relating to state universities from the State Board of Education to the Board of Governors.

Section 113: Amends s. 1007.265, F.S., relating to graduation, study program admission, and upper-division entry for impaired and learning disabled persons, to transfer responsibilities relating to state universities from the State Board of Education to the Board of Governors.

Section 114: Amends s. 1007.27, F.S., relating to articulated acceleration mechanisms, providing purpose, conforming provisions, and removing obsolete study language.

Section 115: Amends s. 1007.28, F.S., relating to computer-assisted student advising system, to require the Department of Education to establish and maintain the system and require the State Board of Education and Board of Governors to specify in the statewide articulation agreement the roles and responsibilities for the system.

Section 116: Amends s. 1007.33, F.S., relating to site-determined baccalaureate degree access, to conform.

Section 117: Amends s. 1008.29, F.S., relating to college-level communication and mathematics skills examination (CLAST), to provide purpose, require the State Board of Education to work in conjunction with the Board of Governors regarding minimum passing scores and exemptions from testing requirements, and authorize the State Board and Board of Governors to set certain exam fees for their respective institutions.

Section 118: Amends s. 1008.30, F.S., relating to common placement testing for public postsecondary education, to remove reference to State Board of Education rules and require each public postsecondary institution to provide certain modifications for students with disabilities, and require the

State Board to work in conjunction with the Board of Governors regarding certain college-prep requirements.

Section 119: Amends s. 1008.32, F.S., relating to State Board of Education oversight enforcement authority, to limit authority to school districts and community colleges and their respective boards.

Section 120: Creates s. 1008.321, F.S., relating to the Board of Governors oversight enforcement authority.

Section 121: Amends s. 1008.345, F.S., relating to the implementation of the state system of school improvement and education accountability, to include the Board of Governors as a recipient of certain information, require both the State Board of Education and Board of Governors approval of CLAST skills and certain tests and assessment procedures, and require the Department of Education to perform certain functions required by the Board of Governors.

Section 122: Amends s. 1008.37, F.S., relating to postsecondary feedback of information to high schools, to remove reference to State Board of Education rules and require the Commissioner of Education report to the Board of Governors.

Section 123: Amends s. 1008.38, F.S., relating to the articulation accountability process, to require the State Board of Education to work in conjunction with the Board of Governors in developing articulation accountability measures and establishing an articulation accountability process.

Section 124: Amends s. 1008.45, F.S., relating to the community college accountability process, to conform.

Section 125: Amends s. 1008.46, F.S., relating to the state university accountability process, to include the Board of Governors in the process of identifying standards and goals and transfer responsibilities of the State Board of Education to the Board of Governors.

Section 126: Amends s. 1009.01, F.S., relating to definitions for purposes of educational scholarships, fees, and financial assistance, to revise the definition of "out-of-state fee."

Section 127: Amends s. 1009.21, F.S., relating to determination of resident status for tuition purposes, to expand purpose to include determination of eligibility for state financial aid awards and tuition assistance grants, revise definitions and qualification process, provide for reclassification and documentation requirements, and remove State Board of Education rule-making provisions.

Section 128: Amends s. 1009.24, F.S., revising provisions relating to state university tuition and fees.

Section 129: Amends s. 1009.26, F.S., relating to fee waivers, to transfer responsibilities relating to state universities from the State Board of Education to the Board of Governors, remove reference to rules of the State Board, authorize university boards of trustees to waive tuition and out-of-state fees under certain conditions, and require an annual report to the Board of Governors.

Section 130: Amends s. 1009.265, F.S., revising requirements relating to state employee fee waiver approval, providing guidelines for determining space available, and prohibiting use of waiver for certain courses.

Section 131: Amends s. 1009.27, F.S., relating to deferral of fees, to remove references to rules of the State Board of Education.

Section 132: Amends s. 1009.285, F.S., relating to fees for repeated enrollment in college-credit courses, to remove reference to definitions and fee levels established by the State Board of Education.

Section 133: Amends s. 1009.29, F.S., relating to increased fees for funding financial aid programs, to replace reference to the State Board of Education with the State Board of Administration.

Section 134: Amends s. 1009.40, F.S., relating to general requirements for student eligibility for state financial aid awards, to conform.

Section 135: Amends s. 1009.90, F.S., relating to duties of the Department of Education, to include the Board of Governors as a report recipient and require the department to calculate amount of need-based aid required to offset fee increases recommended by both the State Board of Education and Board of Governors.

Section 136: Amends s. 1009.91, F.S., relating to assistance programs and activities of the department, to require an annual report to the Board of Governors for information relating to state universities.

Section 137: Amends s. 1009.971, F.S., relating to the Florida Prepaid College Board, to update obsolete terminology.

Section 138: Amends s. 1009.98, F.S., relating to the Florida Prepaid College Program, to correct a cross-reference.

Section 139: Amends s. 1010.01, F.S., relating to uniform records and accounts, to transfer responsibilities relating to state universities from the State Board of Education to the Board of Governors and require a uniform classification of accounts for both boards.

Section 140: Amends s. 1010.011, F.S., relating to definitions for purposes of financial matters and planning and budget, to revise the definition for certain terms.

Section 141: Amends s. 1010.02, F.S., relating to financial accounting and expenditures, to transfer responsibilities relating to state universities from the State Board of Education to the Board of Governors.

Section 142: Amends s. 1010.04, F.S., relating to purchasing, to transfer responsibilities relating to state universities from the State Board of Education to the Board of Governors.

Section 143: Amends s. 1010.07, F.S., relating to bonds or insurance required, to transfer responsibilities relating to state universities from the State Board of Education to the Board of Governors.

Section 144: Amends s. 1010.09, F.S., relating to direct-support organizations, to transfer responsibilities relating to state universities from the State Board of Education to the Board of Governors.

Section 145: Amends s. 1010.30, F.S., relating to required audits, to transfer supervision of state universities from the State Board of Education to the Board of Governors.

Section 146: Creates s. 1010.62, F.S., relating to revenue bonds and debt for state universities, to establish the process for revenue bonds and debt for state universities.

Section 147: Amends s. 1010.86, F.S., relating to administration of capital improvement and building fees trust funds, to transfer administration of the trust funds from the State Board of Education to the Board of Governors.

Section 148: Amends s. 1011.01, F.S., relating to the establishment of the budget system, to transfer responsibilities relating to state universities from the State Board of Education to the Board of Governors and include coordination requirements between the two boards.

Section 149: Amends s. 1011.011, F.S., relating to the legislative capital outlay budget request, to require the State Board of Education to work in conjunction with the Board of Governors for the universities budget request for educational facilities construction and fixed capital outlay needs.

Section 150: Amends s. 1011.40, F.S., relating to budgets for universities, to transfer State Board of Education responsibilities to the Board of Governors and provide for direct university distribution of appropriated funds.

Section 151: Amends s. 1011.41, F.S., relating to university appropriations, to include a contingency provision requiring compliance with certain tuition and fee policies and provide that failure by one university to comply will not affect the others.

Section 152: Amends s. 1011.4106, F.S., relating to trust fund dissolution, to provide requirements for the expenditure of tuition and fee revenues from local accounts and provide for repeal of appropriations under certain conditions.

Section 153: Amends s. 1011.48, F.S., relating to establishment of educational research centers for child development, to transfer State Board of Education responsibilities to the Board of Governors and correct a cross-reference.

Section 154: Amends s. 1011.82, F.S., relating to requirements for participation in Community College Program Fund, to correct a cross-reference.

Section 155: Amends s. 1011.90, F.S., relating to state university funding, to transfer State Board of Education responsibilities to the Board of Governors.

Section 156: Amends s. 1011.91, F.S., relating to additional appropriations, to provide an exception, include a cross-reference, transfer State Board of Education responsibilities in matters of filing budgets to the Board of Governors, transfer State Board responsibilities for approval of the operating budget for concession funds to the university boards of trustees, and provide for repeal of appropriations and deposits to the State Treasury under certain conditions.

Section 157: Amends s. 1011.94, F.S., relating to the trust fund for university major gifts, to remove references to New College, transfer State Board of Education responsibilities to the Board of Governors, remove authority for encumbrances, and revise match provisions.

Section 158: Amends s. 1012.01, F.S., limiting definitions for purposes of personnel.

Section 159: Amends s. 1012.80, F.S., relating to participation by employees in disruptive activities at public postsecondary education institutions, to transfer responsibilities relating to state universities from the State Board of Education to the Board of Governors.

Section 160: Amends s. 1012.801, F.S., relating to employees of the Division of Colleges and Universities, to update obsolete terminology.

Section 161: Amends s. 1012.93, F.S., relating to faculty members and test of spoken English, to remove reference to rules of the State Board of Education and New College, require proficiency in English of certain faculty members, and require Board of Governors approval of any test.

Section 162: Amends s. 1012.97, F.S., relating to university police, to authorize state universities to provide for police officers.

Section 163: Amends s. 1012.975, F.S., relating to remuneration of state university presidents and limitations on compensation, to revise definitions and expand employees covered by limitation on compensation from public funds to include provosts and community college presidents.

Section 164: Amends s. 1012.98, F.S., relating to the School Community Professional Development Act, to remove obsolete language.

Section 165: Amends s. 1013.01, F.S., relating to definitions for purposes of educational facilities, to exclude the Board of Governors from the definition of "board."

Section 166: Amends s. 1013.02, F.S., relating to the purpose and rules of chapter 1013, to transfer the responsibilities relating to state universities from the State Board of Education to the Board of Governors.

Section 167: Amends s. 1013.03, F.S., relating to functions of the Department of Education as it pertains to educational facilities, to include the Board of Governors for functions relating to state universities, revise utilization standards and require minimum five year review, require a report to the appropriate entity by all postsecondary institutions that request funding for additional classrooms, eliminate references to a specific office within the department, and remove obsolete language.

Section 168: Amends s. 1013.12, F.S., relating to casualty, safety, sanitation, and firesafety standards and inspection of property, to transfer responsibilities relating to state universities from the State Board of Education to the Board of Governors and require both boards be recipients of the annual report.

Section 169: Amends s. 1013.15, F.S., relating to lease, rental, and lease-purchase of educational facilities and sites, to subject lease or lease-purchase agreements entered into by university boards of trustees to s. 1010.62 provisions.

Section 170: Amends s. 1013.16, F.S., relating to conditions for construction of facilities on leased property, to require leases executed by a university board of trustees be subject to s. 1010.62 provisions.

Section 171: Amends s. 1013.17, F.S., relating to university leasing in affiliated research and development park, to transfer responsibilities of the State Board of Education to the Board of Governors and subject leases to s. 1010.62 provisions.

Section 172: Amends s. 1013.171, F.S., relating to university lease agreements for land and facilities, to authorize university boards of trustees to enter into certain agreements, transfer responsibilities of the State Board of Education to the Board of Governors, conform, and subject agreements to s. 1010.62 provisions.

Section 173: Amends s. 1013.19, F.S., relating to purchase, conveyance, or encumbrance of property interests above surface of land and joint-occupancy structures, to subject any contract executed by a university board of trustees to s. 1010.62 provisions.

Section 174: Amends s. 1013.25, F.S., relating to when university or community college board of trustees may exercise power of eminent domain, to require approval by the Administration Commission rather than the State Board of Education.

Section 175: Amends s. 1013.28, F.S., relating to disposal of property, to transfer responsibilities relating to state universities from the State Board of Education to the Board of Governors.

Section 176: Amends s. 1013.31, F.S., relating to educational plant survey, localized need assessment, and PECO project funding, to eliminate references to specific offices within the

Department of Education, remove references to State Board of Education rules and the term “college,” update obsolete terminology, and require Board of Governors approval of state university surveys.

Section 177: Amends s. 1013.46, F.S., relating to advertising and awarding contracts and the prequalification of a contractor, to remove reference to State Board of Education rules.

Section 178: Amends s. 1013.47, F.S., relating to substance of contract, contractors to give bond, and penalties, to include reference to Board of Governors rules.

Section 179: Amends s. 1013.52, F.S., relating to cooperative development and joint use of facilities by two or more boards, to require Board of Governors review and approval for state university proposals.

Section 180: Amends s. 1013.60, F.S., relating to legislative capital outlay budget request, to require information submitted by a university board of trustees be approved by the Board of Governors prior to submission to the Commissioner of Education.

Section 181: Amends s. 1013.63, F.S., relating to University Concurrency Trust Fund, to transfer the trust fund from the Department of Education to the Board of Governors and remove reference to the State Board of Education.

Section 182: Amends s. 1013.64, F.S., relating to funds for comprehensive educational plant needs and construction cost maximums for school district capital projects, to transfer responsibilities relating to state universities from the State Board of Education to the Board of Governors.

Section 183: Amends s. 1013.65, F.S., relating to educational and ancillary plant construction funds, Public Education Capital Outlay and Debt Service Trust Fund, and allocation of funds, to require copies of each allocation and reallocation be provided to the Board of Governors.

Section 184: Amends s. 1013.74, F.S., relating to university authorization for fixed capital outlay projects, to correct a cross-reference, transfer responsibilities of the State Board of Education to the Board of Governors, and subject projects to s. 1010.62.

Section 185: Amends s. 1013.78, F.S., relating to approval required for certain university-related facility acquisitions, to provide an exception.

Section 186: Amends s. 1013.79, F.S., relating to University Facility Enhancement Challenge Grant Program, to remove findings and intent language, transfer responsibilities of the State Board of Education to the Board of Governors, and remove naming prohibition.

Section 187: Repeals s. 186.805, F.S., relating to the Data Bank on Older Floridians; s. 388.42, F.S., relating to John A. Mulrennan, Sr., Arthropod Research Laboratory; s. 388.43, F.S., relating to the Florida Medical Entomology Laboratory; s. 410.504, F.S., relating to the multidisciplinary center on elderly living environments; s. 1004.32, F.S., relating to New College of Florida; s. 1004.35, F.S., relating to Broward County campuses of Florida Atlantic University; coordination with other institutions; s. 1004.36, F.S., relating to Florida Atlantic University campuses; s. 1004.38, F.S., relating to Master of Science program in speech-language pathology; Florida International University; s. 1004.381, F.S., relating to Nursing degree program at University of West Florida; s. 1004.382, F.S., relating to Master's in social work program at Florida Atlantic University; s. 1004.383, F.S., relating to Chiropractic medicine degree program at Florida State University; s. 1004.50, F.S., relating to the Institute on Urban Policy and Commerce; s. 1004.51, F.S., relating to Community and Faith-based Organizations Initiative; Community and Library Technology Access Partnership; s. 1004.53, F.S., relating to Interdisciplinary Center for Brownfield Rehabilitation Assistance; s. 1004.54, F.S., relating to Learning Development and Evaluation Center; and s. 1004.59, F.S., relating to the Florida Conflict Resolution Consortium.

These sections are repealed to remove existing statutory authority that is no longer necessary for the existence of these entities and this does not affect the authority of a state university or the Board of Governors to continue such entities and their operation and regulation.

Section 188: Repeals s. 288.705, F.S., relating to statewide contracts register; s. 458.3147, F.S., relating to medical school eligibility of military academy students or graduates; s. 689.12, F.S., relating to state lands conveyed for educational purposes; s. 741.03055, F.S., relating to review of premarital preparation courses; pilot programs; questionnaire and curriculum; s. 741.03056, F.S., relating to informational questionnaire; s. 1001.72, F.S., relating to university boards of trustees; boards to constitute a corporation; s. 1007.261, F.S., relating to state universities; admissions of students; s. 1007.31, F.S., relating to limited access programs; s. 1007.32, F.S. relating to transfer students; s. 1007.75, F.S., relating to powers and duties of university presidents; s. 1008.51, F.S., relating to the Council for Education Policy Research and Improvement; s. 1010.60, F.S., relating to State Board of Education; issuance of bonds pursuant to s.11(f), Art. VII, State Constitution; s. 1010.61, F.S., relating to powers; s. 1011.611, F.S., relating to resolution for issuance of revenue certificates; s. 1010.612, F.S., relating to powers to secure revenue certificates; s. 1010.613, F.S., relating to remedies of any holder of revenue certificates; s. 1010.614, F.S., relating to validity of revenue certificates; s. 1010.615, F.S., relating to prohibitions against obligating the state; s. 1010.616, F.S., relating to revenue certificate obligations of the State Board of Education; s. 1010.617, F.S., relating to tax exemption and eligibility as legal investments; s. 1010.618, F.S., relating to supplemental nature of part; construction and purpose; s. 1010.619, F.S., relating to Board of Administration acting as fiscal agent; s. 1011.4105, F.S., relating to transition from state accounting system (FLAIR) to university accounting system; s. 1012.92, F.S., relating to personnel codes of conduct; disciplinary measures; rulemaking authority; s. 1012.94, F.S., relating to evaluations of faculty members; report; and s. 1012.95, F.S., relating to university employment equity accountability program.

Section 189: Provides for an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires in-state undergraduate tuition to be set in the annual General Appropriations Act (GAA). Undergraduate student tuition and fees have a direct effect on Bright Futures Scholarships, the College Prepaid Program, and need based aid. The bill codifies the transfer of control of all other tuition rates and fees to the Board of Governors, or board's designee, which may impact the cost of these degree programs for private citizens.

D. FISCAL COMMENTS:

Current Funding:

In 2005-06, the Legislature appropriated over \$2.6 billion in state funds in support of state university programs, facilities, and students. The \$2.6 billion was appropriated in the following manner:

- \$2,109 million to state universities for education and general activities, medical centers, and the Institute of Food and Agricultural Sciences (IFAS).
- \$98.7 million to state universities for other operating funds that include the following areas: SUCCEED, Moffitt, Financial Aid, scholarship challenge grants, risk management, insurance, and hurricanes.
 - \$51.2 million of the \$98.7 appropriated to state universities is from state matching funds for academic matching grants (University Major Gifts Program).
- \$395.6 million to state universities for fixed capital outlay.
 - \$381.5 million for fixed capital outlay maintenance and new construction projects.
 - \$14.1 million in state matching funds for facilities matching grants (Alec P. Courtelis University Facility Enhancement Challenge Grant Program).

In addition, the Legislature appropriated \$884 million in tuition and fees and authorized universities to retain the funds locally.

AUTHORITY OVER TUITION AND FEES

Revenues:

The bill maintains legislative authority over revenue generated by the state university system. Tuition and fees are appropriated within the General Appropriations Act (GAA); however, state universities currently retain possession of tuition and fees paid by students and do not transfer that revenue to the state for redistribution or reallocation.

The bill requires in-state undergraduate tuition to be set in the annual GAA and codifies the transfer of control of all other tuition rates and fees to the Board of Governors, or the board's designee. In the 2005 GAA the Legislature authorized an increase of 5% for in-state undergraduate tuition. Proviso language in the GAA authorized each board of trustees to set tuition and fees for graduate, graduate professional, and nonresident students within certain limitations. In 2005-06, state universities are estimated to generate and retain nearly \$884 million in tuition and fees from students.

Expenditures:

University tuition and fee increases directly affect the Bright Futures Scholarship Program under sections 1009.53-1009.5385, F.S. The 2005-06 appropriation for Bright Futures Scholarships is \$311.8 million. Currently, 122,215 students participate in the Bright Futures program with 98,200 in state universities at a cost of approximately \$243 million. For 2005-06, the February 2005 financial aid estimating conference projects a \$2.8 million increase in Bright Futures costs for each 1% increase in university tuition and fees.

University tuition and fee increases also directly affect the Florida Prepaid College Program under sections 1009.97-1009.984, F.S. Since the program's inception in 1988, 1,136,851 total contracts have been sold, representing 789,369 students. As of June 30, 2005, there were 741,618 remaining contracts (tuition, local fee, and/or dormitory plans) with \$5.963 billion in future contract benefits and expenses. The majority of these plans are for university tuition and fees. Any tuition increases above expected scenarios could cause mandatory state supplemental payments to the Prepaid Board to meet contractual requirements in future years.

Universities received \$57 million in need-based student financial assistance state funds for fiscal year 2005-06. The majority of these funds are appropriated to the Office of Student Financial Assistance (OSFA) for the Florida Student Assistance Grant (FSAG) program where they are distributed to state

universities for grants to applicable Florida students. State universities received \$37 million for FSAG in 2005-06. An additional amount of student financial assistance state funds (\$20.2 million in 2005-06) is appropriated directly to state universities. Proviso requires that a minimum of 71% of the funds be allocated for need-based financial aid.

CHANGES IN FISCAL POLICY

The bill clarifies statutory fiscal policy related to the State University System. In most cases, the statutes are modified to maintain the existing legislative control, or legislative transfer of control, over fiscal matters. The bill does however make the following changes in fiscal policy.

Out-of-state Students:

The bill requires the Board of Governors, or the board's designee, to establish:

1. Out-of-state tuition and fees at an amount sufficient to offset the full cost of instruction and
2. A limit of non-resident enrollment at each university not to exceed 10 percent of total enrollment or the university's actual non-resident enrollment percentage during the 2004 fall term, whichever is greater.

The state university averages for out-of-state tuition and fees for fiscal year 2005-06 are:

Non-resident undergraduate, full-time student
 30 hours - \$15,910.89 Cost per hour - \$530.86

Non-resident graduate, full-time student
 24 hours - \$21,080.24 Cost per hour - \$878.39

The state university percentages of residents and non-residents for Fall 2004 were as follows:

Institution	Florida Residents	% total	Non-Florida Residents	% total	TOTAL	% total
UF	44,144	90.52%	4,621	9.48%	48,765	100.00%
FSU	34,129	87.78%	4,751	12.22%	38,880	100.00%
FAMU	10,889	83.11%	2,213	16.89%	13,102	100.00%
USF	40,361	94.54%	2,332	5.46%	42,693	100.00%
FAU	23,743	92.03%	2,055	7.97%	25,798	100.00%
UWF	8,608	88.83%	1,082	11.17%	9,690	100.00%
UCF	40,074	93.43%	2,818	6.57%	42,892	100.00%
FIU	32,082	91.50%	2,979	8.50%	35,061	100.00%
UNF	14,210	96.72%	482	3.28%	14,692	100.00%
FGCU	5,752	92.36%	476	7.64%	6,228	100.00%
New College	556	80.46%	135	19.54%	691	100.00%
SUS Summary	254,548	91.40%	23,944	8.60%	278,492	100.00%

Graduate and Professional Students:

The bill requires the Board of Governors, or the board's designee, to establish tuition for graduate and professional programs. Current tuition rates are as follows:

Resident graduate, full-time student ranges from
 24 hours - \$5,317.84 to \$5,969.44 – Average \$5,766.27
 Cost per hour - \$221.58 to \$248.73 – Average \$240.26

Non-resident graduate, full-time student ranges from
24 hours - \$20,047.44 to \$22,085.52 – Average \$21,076.44
Cost per hour - \$835.31 to \$920.23 – Average \$878.19

Resident professional, full-time student ranges from
Annually - \$13,735.01 to \$18,431.58

Non-resident professional, full-time student ranges from
Annually - \$35,661.28 to \$52,337.78

Student Financial Aid Fee:

The bill requires a 3 year phased-in increase in the percentage of funds from the student financial aid fee that must be used for need-based aid. For awards provided prior to the 2007-2008 academic year the percentage stays at the current 75% minimum. In the 2007-2008 academic year the percentage increases to 80%, in the 2008-2009 academic year the percentage increases to 85%, and in the 2009-2010 academic year the percentage increases to 90%.

The current statutory requirement is a minimum of 75%. For fiscal year 2004-05, university expenditures statewide for need-based were reported as follows:

Need-Based New Awards from Fee Revenue	Number of Students	Percent of Total Awards	Amount Awarded	Percent of Total Awards
Undergraduate	27,046	75.44%	\$22,945,349	75.71%
Graduate	6,231	82.94%	\$5,877,767	86.50%

Activity and Service Fee:

The bill amends authorized expenditures from the student activity and service fees to include technology.

Revenue bonds, certificates of participation (COPs), and debt for state universities:

The bill clarifies laws related to revenue bonds, COPs, and debt for state universities.

Current law is modified to include procedures and restrictions on all forms of revenue bonds and debt activities carried out by universities. These provisions clarify the oversight and limitation on the use of auxiliary and local fee revenue for revenue bonds and debt activities. Though certain university debt is considered indirect state debt in terms of the state’s annual reporting, it still can potentially impact the state as outlined below:

Reasons University Debt Matters:

- University System Historically Part of State
- Significant State Resources Subsidize University Operations and Infrastructure
- Certain Types of University Debt Impact State’s Debt Position
- University Debt Could Impact State’s Credit Rating Under Extreme Circumstances
- Any Default on University Debt Could Adversely Affect State’s Reputation in Credit Markets
- Lenders (Bondholders) Likely to Seek State Funding for Any University Bond Defaults

Miscellaneous fees and fines:

The bill removes amount restrictions on several currently authorized university fees and fines. Certain fees and fines must be limited to a “cost recovery” basis when applicable.

Limitation on Compensation:

Current law limits a state university president from receiving more than \$225,000 in remuneration annually from public funds. For purposes of this provision:

- Remuneration is defined as salary, bonuses, and cash-equivalent compensation paid to a state university president by his or her employer for work performed, excluding health insurance benefits and retirement benefits.
- Public funds are defined as funds appropriated from the General Revenue Fund, funds appropriated from state trust funds, tuition and fees, or any funds from a state university trust fund.

The bill expands employees covered by this limitation to include state university provosts and community college presidents.

Educational Facilities:

A recent draft report by OPPAGA relating to higher education facilities,¹ finds that standards and formulas used to calculate postsecondary space needs for purposes of selecting and funding higher education facility construction projects are outdated and may inaccurately portray the need for space. Section 1013.03(2), F.S., provides the utilization standards used for determining postsecondary space needs. Adjustments to the current utilization standards may generate a different level of need for classroom space and thus could change the funding required to meet such need.

The draft report recommends that the Legislature consider amending s. 1013.03(2), F.S., which currently establishes 40 hours per week and 60% occupancy as minimum utilization rates for classroom facilities. To better reflect how institutions currently use classroom space, OPPAGA recommends changing the standard to at least 50 hours per week and 70% occupancy as the minimum utilization rates.

To ensure that current postsecondary space needs generation formulas used in the educational plant survey do not inaccurately portray the need for additional facilities, OPPAGA recommends that the Department of Education and Board of Governor's staff review and revise these formulas with input from all relevant stakeholders from the various disciplines. These formulas should be reviewed and updated every 3 to 5 years.

The bill implements these recommendations by requiring utilization standards of space be reviewed and updated at least every 5 years; increasing minimum utilization rates from 40 to 50 hours per week and 60 to 70 percent per station; and requiring institutions to report maximum utilization strategies when requesting fixed capital outlay funding for additional classrooms.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

In 2002, an initiative proposal amended the state constitution to create a separate governing board to manage the state university system. As an initiative proposal, the effect of the proposal on the branches of government was determined by the Florida Supreme Court before its placement on the ballot. *Advisory Opinion to the Attorney General Re Local Trustees and Statewide Governing Board*

¹ March 2006 Draft Report, OPPAGA, *Higher Education Facility Planning Process Is Designed Reasonably Well; Improvements Could Maximize State Resources*

to *Manage Florida's University System*, 819 So.2d 725 (2002). Significant issues relating to the construction of the amendment have been raised; most importantly, to what extent the amendment intended to limit the power of the Legislature.

The amendment, which became section 7 of Article IX of the State Constitution, established a 13-member board of trustees to administer each public university and a separate 17-member board of governors to govern the state university system.

HB 7257 updates the Florida Statutes to reflect the recent changes to the State Constitution with regard to the State University System and the enactment of HB 1001 by the 2005 Legislature to delineate constitutional responsibilities of the Board of Governors and Legislature relating to state universities.

Separation of Powers

Legislative power is impacted initially by the placement of these boards in the constitution. The constitution now dictates a form of governance for the state university system within the constitutional choice of a 2-tiered governance system.

At oral argument before the Supreme Court, all sides agreed that the Board of Governors would be a part of the executive branch of state government. Under Article IV of the Florida Constitution an executive branch agency operates, regulates, controls, and is responsible for the management of the powers and duties entrusted to it by law. The essence of the executive power is the implementation of the laws, as opposed to making the laws (legislative) or judging the laws (judicial).

The sponsor of the amendment characterized this proposal to the Florida Supreme Court as not substantially affecting the legislative branch. In its brief, the amendment's sponsor, Education Excellence for Florida (EEF) stated that

[t]he drafters... realized that the governance system... would be located within the executive branch. The only descriptive terms used in the Title "manage", Ballot Summary "administer" "operation", and Text "administer," "administered" "operate, regulate, control" "management" of the proposed amendment are those calling for the exercise of executive responsibility.

In contrast, the power to appropriate is clearly a legislative function.

Initial Brief of Education Excellence for Florida, p. 22, *Advisory Opinion to the Attorney General Re Local Trustees and Statewide Governing Board to Manage Florida's University System*, 819 So.2d 725 (Fla. 2002).

In his argument before the Court, counsel for EEF stated that "[w]e have had a board of governance system since 1905 and until 2001 and that was in the executive branch. It did not perform any legislative functions.... This would do no more than put that in the constitution, where it would perform an executive function." Oral Argument of Robin Gibson, Fla. Sup. Ct., May 9, 2002, *Advisory Opinion to the Attorney General Re Local Trustees and Statewide Governing Board to Manage Florida's University System*, Case No. SC02-449,

Contrary arguments were raised by counsel for Floridians for Education Reform (FER) which appeared in opposition to placing the amendment on the ballot. The FER argued that the intent of the amendment is to take away all legislative power and give the Legislature nothing but the purse, which would have a significant adverse impact on the fundamental powers of the legislative branch. *Id.* The FER specifically argued that "the proposed amendment would effectively eliminate the Legislature's authority to adopt programs, create legislative bodies, or even provide for scholarships in the university system." Initial Brief of Floridians for Education Reform, p.17, *Advisory Opinion to*

the Attorney General Re Local Trustees and Statewide Governing Board to Manage Florida's University System, Id.

In its opinion, the Court rejected the FER position and gave an initial construction of the proposal. The Court held that the amendment did not substantially alter the functions of more than one branch of government. The Court advised that “[e]ven though the proposed amendment interacts with ... [section 1 of Article IX which directs the legislature to provide for the establishment, maintenance, and operation of institutions of higher learning], it does not substantially affect or change ... [it].” *Advisory Opinion to the Attorney General Re Local Trustees and Statewide Governing Board to Manage Florida's University System*, 819 So.2d 725, 730 (Fla. 2002). The Court construed the responsibilities of the Board of Governors as equivalent to the powers and duties exercised by the Florida Board of Education. *Id.* at 729. The Board of Education clearly was not empowered or authorized to exercise any of the Legislature's power.

The legislative power described in Article III is the power to enact a law or to declare what the law shall be. The legislative power includes the power to make the laws on any subject not specifically prohibited by the constitution. The legislative power is not limited to laws involving the spending and taxing powers of the state and those subjects do not fairly describe the extent of the essence of legislative power. In fact, Florida recognizes a particularly stringent form of the non-delegation doctrine and stringently enforces the separation of the powers clause, see e.g., *Askew v. Cross Key Waterways, et al.*, 372 So.2d 913 (Fla. 1978) which precludes an executive entity from the exercise of essential legislative functions. Moreover, in its execution of the law an executive entity may act only within designated limitations which constrain it from exercising its own discretion to determine what the law is. *State v. Atlantic Coast Line Railroad Company*, 47 So. 969 (Fla. 1908).

In light of these specific constitutional provisions and the Florida Supreme Court's 2002 advisory opinion, the amendment cannot be construed to imply that the Legislature has lost all of its power to enact any law that the executive Board of Governors is charged with enforcing. In this regard, the Legislature has an appropriate role in defining the executive powers to be exercised by the Board of Governors and the legislative power of the Legislature. *State v. Kaufman*, 430 So.2d 904 (Fla. 1983).

Construing the Constitution

The Florida courts comprise the branch that judges the laws—that construes the meaning of terms of the constitution. The Legislature too, through its lawmaking function, also plays a significant role in refining the meaning of the Florida Constitution.

In fact, “where a constitutional provision may well have either of several meanings, it is a fundamental rule of constitutional construction that, if the Legislature has by statute adopted one, its action in this respect is well-nigh, if not completely, controlling.” *Greater Loretta Improvement Association v. State ex rel. Boone*, 234 So.2d 665 (Fla. 1970).

In the case of the 2002 amendment, construction begins with the Supreme Court's holding that the powers of the branches were not substantially altered. It is appropriate that the Legislature define and harmonize its legislative powers vis-à-vis the new executive entity. Myriad statutes will need examination dependent on the Legislature's policies. The judicial branch is not empowered to undertake this type of policy review and revision of the laws required in this instance.

When the Legislature has exercised its constitutional role in implementing and construing the Constitution, the courts will uphold the construction unless “manifestly erroneous.” *Kaufman, Id.* at 907.

B. RULE-MAKING AUTHORITY:

Background

While the Florida Legislature establishes public policy, the executive branch has the power to issue rules having the force and effect of law. Rules provide a way of informing the regulated public of how agencies intend to apply laws and deter the improper implementation of policies, thereby helping to protect the people of Florida from administrative agencies' noncompliance with legislative mandates or case-by-case decision making without regard to published policy. The average Florida citizen is as affected, if not more affected, by these agency rules than by court rulings.

In ch. 120, F.S., the Administrative Procedures Act (APA) outlines a comprehensive administrative process by which agencies exercise the authority granted by the Legislature while offering opportunities for citizen involvement. This process subjects state agencies to a uniform procedure in enacting rules and issuing orders and allows citizens to challenge an agency's decision. The APA serves to protect the citizens of Florida from thousands of unauthorized rules that would otherwise be in effect.²

Effects of the bill

The bill requires the Board of Governors and university boards of trustees to adopt rules, under ch. 120, F.S., when acting pursuant to authority derived from the Legislature. The bill authorizes the Board of Governors and university boards of trustees to also adopt rules pursuant to ch. 120, F.S., when exercising the powers, duties, and authority granted by s. 7, Article IX of the State Constitution. This eliminates the need for the Board of Governors and university boards of trustees to have two different rules or regulation processes unless they so choose.

An example of authority derived from the Legislature, which would require rule-making pursuant to ch. 120, F.S., is s. 1012.97, F.S. This section of law authorizes each state university to create a university police force that is empowered to enforce state laws and local ordinances. This section sets out minimum requirements for university police officers and it requires universities to adopt rules, in concurrence with FDLE. Without this legislative grant of authority, universities would not be able to create a police force with the authority to enforce state and local law. This is purely a legislative act that does not derive in any way from the Board of Governor's constitutional grant of authority. If universities were not required to follow ch. 120, F.S., when adopting rules that implement duties assigned by the Legislature, there would be no legislative oversight over 11 different law enforcement agencies that the Legislature itself created.

The bill also replaces references to rule-making of the Department of Education with the State Board of Education.

The bill transfers rule-making authority in certain areas from the State Board of Education to the Board of Governors (for example, equal opportunity, safety issues in courses, financial records, purchasing, etc.) when the issue relates to state universities. The State Board of Education retains rule-making authority in these areas for school districts and community colleges.

The bill removes an obsolete reference to Board of Regents rule-making authority relating to the Drug-Free Workplace Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

² Joint Administrative Procedures Committee, *A Pocket Guide to Florida's Administrative Procedure Act, 2005-2006*, at introduction.