

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7149 PCB SLC 07-16 Higher Education Governance
SPONSOR(S): Policy & Budget Council and Representative Pickens
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Schools & Learning Council	14 Y, 0 N	Tilton	Cobb
1) Policy & Budget Council	28 Y, 0 N, As CS	Leznoff	Hansen
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

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. Ch. 2005-285 L.O.F included legislative intent 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 of the legislation. This bill is in accordance with said intent.

CS/HB 7149 further revises 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.

CS/HB 7149 transfers the inspector general function for the state universities from the Department of Education to the Board of Governors. Specific Appropriation 167 in the House proposed budget provides \$112,235 for the Board of Governors to hire an Inspector General.

The bill has an effective date of July 1, 2007.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—HB 7149 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.

Section 1, Article IX , of the State Constitution provides, in part:

It is . . . a paramount duty of the state to make adequate provision . . . for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.¹

The 2005 Legislature enacted ch. 2005-285, L.O.F., 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

CS/HB 7149 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 the Department of Education to continue to provide certain support services for the Board of Governors, and
 - Updates statutory references as needed to reflect the new structure.

¹ S.1(a), art.IX, of the State Constitution
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- Outlines the powers and duties 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.
- 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 state university tuition and fees.
- Authorizes university boards of trustees to waive tuition and out-of-state fees under certain conditions.
- 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.*
- Repeals certain centers 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 expand the definition of “state agency” to include the Board of Governors 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 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, certain powers and duties, and requiring an Office of Inspector General.

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 and add the board’s designee.

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. 121.35, F.S., relating to the optional retirement program for the State University System, to update obsolete terminology and transfer authority from the State Board of Education to the Board of Governors.

Section 17: Amends s. 159.703, F.S., relating to the creation of research and development authorities, to update obsolete terminology and effective date.

Section 18: Amends s. 159.704, F.S., relating to the procedure for being designated as a research and development authority, to update obsolete terminology.

Section 19: 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 20: Amends s. 211.3103, F.S., relating to the levy of tax on severance of phosphate rock, to update obsolete terminology.

Section 21: 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 22: 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 23: Amends s. 215.559, F.S., relating to the Hurricane Loss Mitigation Program, to update obsolete terminology by adding a reference to Florida International University and correct cross-references.

Section 24: Amends s. 215.82, F.S., relating to validation of certain bonds and when required, to correct a cross-reference.

Section 25: Amends s. 216.0152, F.S., relating to the inventory of state-owned facilities or state-occupied facilities, to update obsolete terminology.

Section 26: Amends s. 216.251, F.S., relating to limitations on salary appropriations, to remove reference to the State Board of Education with regard to the State University System and include the designee of the Board of Governors.

Section 27: Amends s. 220.15, F.S., relating to apportionment of adjusted federal income, to update obsolete terminology.

Section 28: 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 29: 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 30: Amends s. 255.02, F.S., relating to boards authorized to replace buildings destroyed by fire, to remove obsolete language.

Section 31: Amends s. 255.043, F.S., relating to art in state buildings, to remove obsolete language.

Section 32: 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 33: 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 34: 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 35: Amends s. 287.064, F.S., relating to consolidated financing of deferred-payment purchases, to correct a cross-reference.

Section 36: Amends s. 287.155, F.S., relating to the purchase of motor vehicles by certain entities, to remove obsolete terminology.

Section 37: 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 38: Amends s. 288.17, F.S., relating to revenue certificates issued by the Division of Bond Finance, to update obsolete terminology.

Section 39: Amends s. 288.705, F.S., relating to statewide contracts register, to remove obsolete terminology.

Section 40: 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 41: Amends s. 288.8175, F.S., relating to linkage institutes between postsecondary institutions in this state and foreign countries, to remove the requirement for 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 42: Amends s. 295.07, F.S., relating to preference in appointment and retention for purposes of veterans, to include certain equivalent positions.

Section 43: Amends s. 320.08058, F.S., relating to collegiate license plates, to update obsolete terminology.

Section 44: Amends s. 334.065, F.S., relating to the Center for Urban Transportation Research, to update obsolete terminology.

Section 45: Amends s. 377.705, F.S., relating to the Solar Energy Center, to update obsolete terminology.

Section 46: Amends s. 381.79., F.S., relating to the Brain and Spinal Cord Injury Program Trust Fund, to update obsolete terminology.

Section 47: Amends s. 388.43, F.S., relating to the Florida Medical Entomology Laboratory, 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. 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..

Section 53: 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 54: 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 55: Amends s. 464.0196, F.S., relating to the Florida Center for Nursing, to prescribe appointing authorities.

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. 627.06281, F.S., relating to public hurricane loss projection model, to update terminology.

Section 60: Amends s. 627.06292, F.S., relating to reports of hurricane loss data and associated exposure data, to update terminology.

Section 61: Amends s. 633.01, relating to the powers and duties of the State Fire Marshal, to correct cross-references.

Section 62: Amends s. 650.03, F.S., relating to a federal-state agreement and interstate instrumentalities, to update obsolete terminology.

Section 63: Amends s. 943.1755, F.S., relating to the Florida Criminal Justice Executive Institute, to update obsolete terminology.

Section 64: Amends s. 1000.01, F.S., relating to the Florida K-20 education system, to 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 January 7, 2003.

Section 65: 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 66: 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 relating to school districts and community colleges to the Commissioner of Education and State Board of Education and policies relating to state universities 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 67: 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 68: 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 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 69: Amends s. 1001.03, F.S., relating to specific powers of the State Board of Education, to require the State Board to develop articulation accountability measures and establish an articulation accountability process in conjunction with the Board of Governors, provide for exceptions to statewide enforcement by the State Board, require the State Board to work 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 70: Amends s. 1001.10, F.S., relating to the general powers and duties of the Commissioner of Education, to provide exceptions, include the Board of Governors in the K-20 budget recommendation, and revise reporting requirements.

Section 71: Amends s. 1001.11, F.S., relating to other duties of the Commissioner of Education, to require the Commissioner of Education to work in cooperation with the Board of Governors regarding requests for PECO funds, to require annual report, and remove certain provisions to conform.

Section 72: Amends s. 1001.20, F.S., relating to the Department of Education under the direction of the state board, to eliminate responsibilities regarding the determination of need for investigations of state universities by the Office of Inspector General.

Section 73: 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 74: Amends s. 1001.64, F.S., relating to powers and duties of community college boards of trustees, to correct a cross-reference.

Section 75: 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 76: Creates s. 1001.706, F.S., to outline the powers and duties of the Board of Governors.

Section 77: 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 78: Amends s. 1001.72, F.S., to revise provisions relating to university boards or trustees acting as corporations.

Section 79: 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 80: Amends s. 1001.74, F.S., to revise the powers and duties of university boards of trustees.

Section 81: Amends s. 1002.35, F.S., relating to the New World School of Arts, to require the State Board of Education with the Board of Governors to assign university partners for the school and to update terminology.

Section 82: Amends s. 1002.41, F.S., relating to home education programs, to conform.

Section 83: 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 84: 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 85: Amends s. 1004.07, F.S., relating to student withdrawal from courses due to military service, to provide for rules by the State Board of Education and Board of Governors.

Section 86: Amends s. 1004.21, F.S., to remove legislative intent and provide that state universities are part of the executive branch and are administered by boards of trustees.

Section 87: 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 88: 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 89: 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 90: 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 91: Amends s. 1004.35, F.S., relating to Broward County campuses of Florida Atlantic University, to add reference to Board of Governors.

Section 92: Amends s. 1004.36, F.S., relating to Florida Atlantic University campuses, to transfer responsibilities from the State Board of Education to the Board of Governors.

Section 93: Amends s. 1004.39, F.S., relating to the college of law at Florida International University, to transfer responsibilities from the State Board of Education to the Board of Governors and remove obsolete language.

Section 94: 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 95: 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 96: 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 97: Amends s. 1004.435, F.S., relating to cancer control and research, to transfer responsibilities from the State Board of Education to the Board of Governors.

Section 98: 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 99: Amends s. 1004.447, F.S., relating to the Florida Institute for Human and Machine Cognition, Inc., to require annual reporting to the Board of Governors.

Section 100: Amends s. 1004.47, F.S., relating to solid and hazardous waste management research, to update terminology.

Section 101: Amends s. 1004.58, relating to the Leadership Board for Applied Research and Public Service, to include the Board of Governors as a report recipient and provide for the Chancellor of the State University System to serve as a Board member and staff the Board.

Section 102: Amends s. 1005.03, F.S., relating to the designation “college” or “university,” to remove obsolete terminology.

Section 103: 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 104: Amends s. 1005.22, F.S., to remove obsolete reference.

Section 105: 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 106: 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 107: 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 108: 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 109: 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 110: 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 111: Amends s. 1007.01, F.S., relating to the legislative intent, purpose, and role of the State Board of Education and the Board of Governors regarding articulation, to require the State Board of Education and the Board of Governors to recommend articulation policies and guidelines to the Legislature.

Section 112: 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 113: Amends s. 1007.23, F.S., relating to the statewide articulation agreement, to require the State Board of Education and the Board of Governors to enter into a statewide articulation agreement, require the State Board to adopt the agreement in rule, and revise provisions relating to admissions.

Section 114: Amends s. 1007.24, F.S., relating to the statewide course numbering system, to require the Department of Education, in conjunction with the Board of Governors, to develop, coordinate, and maintain a statewide course numbering system; to require the Commissioner of Education to work in conjunction with the Chancellor of the State University System to perform certain duties; and, require the State Board of Education to receive input from the Board of Governors when approving course levels.

Section 115: Amends s. 1007.25, F.S., relating to general education courses, common prerequisites, and other degree requirements, to transfer responsibilities relating to state universities from the State Board of Education to the Board of Governors.

Section 116: Amends s. 1007.2615, F.S., relating to acceptance of American Sign Language credits as foreign language credits, to conform.

Section 117: Amends s. 1007.262, F.S., relating to foreign language competence and equivalence determinations, to conform and provide an exemption.

Section 118: Amends s. 1007.264, F.S., relating to admission to postsecondary educational institutions for impaired and learning disabled persons, to require the State Board of Education and the Board of Governors to consult on the adoption of rules for their respective institutions.

Section 119: Amends s. 1007.265, F.S., relating to graduation, study program admission, and upper-division entry for impaired and learning disabled persons, to require the State Board of Education and the Board of Governors to consult on the adoption of rules for their respective institutions.

Section 120: Amends s. 1007.27, F.S., relating to articulated acceleration mechanisms, to conform and remove obsolete study language.

Section 121: Amends s. 1007.28, F.S., relating to computer-assisted student advising system, to require the Department of Education, in conjunction with the Board of Governors, 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 122: Amends s. 1007.33, F.S., relating to site-determined baccalaureate degree access, to conform.

Section 123: Amends s. 1008.29, F.S., relating to college-level communication and mathematics skills examination (CLAST), to 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 to authorize the State Board and Board of Governors to set certain exam fees for their respective institutions.

Section 124: 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 to develop and implement a common placement test and specify certain college-prep requirements.

Section 125: 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 126: 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 127: 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 to report to the State Board of Education, the Board of Governors, the legislature, and district school boards on student performance.

Section 128: 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 129: Amends s. 1008.45, F.S., relating to the community college accountability process, to conform.

Section 130: 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 131: 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 132: Amends s. 1009.21, F.S., relating to determination of resident status for tuition purposes, to modify State Board of Education rule-making provisions and authorize rulemaking by the Board of Governors.

Section 133: Amends s. 1009.24, F.S., to revise provisions relating to state university tuition and fees.

Section 134: 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 135: Amends s. 1009.27, F.S., relating to deferral of fees, to remove references to rules of the State Board of Education.

Section 136: 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 137: 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 138: Amends s. 1009.40, F.S., relating to general requirements for student eligibility for state financial aid awards, to conform.

Section 139: 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 140: 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 141: Amends s. 1009.971, F.S., relating to the Florida Prepaid College Board, to update obsolete terminology.

Section 142: 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, require a uniform classification of accounts for both boards, and require state universities to file financial statements.

Section 143: 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 144: 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 145: 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 146: 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 147: 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 148: 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 149: 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 150: 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 151: 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 152: 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 153: 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.

Section 154: Amends s. 1011.411, F.S., relating to budgets for sponsored research at universities, to correct cross-reference.

Section 155: Amends s. 1011.42, F.S., relating to university depositories, to authorize certain fund transfers.

Section 156: 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.

Section 157: Amends s. 1011.82, F.S., relating to requirements for participation in Community College Program Fund, to correct a cross-reference.

Section 158: Amends s. 1011.90, F.S., relating to state university funding, to transfer State Board of Education responsibilities to the Board of Governors.

Section 159: 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 and transfer State Board responsibilities for approval of the operating budget for concession funds to the university boards of trustees.

Section 160: Amends s. 1011.94, F.S., relating to the Trust Fund for University Major Gifts, to redesignate the section as the University Major Gifts Program, remove references to trust funds and New College, and replace references to the State Board of Education with Board of Governors.

Section 161: Amends s. 1012.01, F.S., to limit definitions for purposes of personnel.

Section 162: 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 163: Amends s. 1012.801, F.S., relating to employees of the Division of Colleges and Universities, to update obsolete terminology.

Section 164: 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 165: Amends s. 1012.98, F.S., relating to the School Community Professional Development Act, to remove obsolete language.

Section 166: 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 167: 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 168: 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 and Chancellor of the State University System for functions relating to state universities and remove obsolete language.

Section 169: Amends s. 1013.11, F.S., relating to postsecondary institutions assessment of physical plant safety, to provide for the Chancellor of the State University System to receive and convey reports.

Section 170: 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 that both boards receive the annual report.

Section 171: 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 172: 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 173: 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 174: 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 175: 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 176: 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 177: Amends s. 1013.28, F.S., relating to disposal of property, to require boards to hold title and to transfer responsibilities relating to state universities from the State Board of Education to the Board of Governors.

Section 178: 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, provide for duties of the Chancellor of the State University System, and require Board of Governors approval of state university surveys.

Section 179: 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 180: 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 181: 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' or Chancellor's review and approval for state university proposals.

Section 182: Amends s. 1013.60, F.S., relating to legislative capital outlay budget request, to require information approved by the Board of Governors be submitted to the Commissioner of Education for inclusion in the comprehensive budget request for educational facilities.

Section 183: 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 184: 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 185: 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 186: Amends s. 1013.78, F.S., relating to approval required for certain university-related facility acquisitions, to provide an exception.

Section 187: Repeals s. 186.805, F.S., relating to the Data Bank on Older Floridians and s. 1004.54, F.S., relating to Learning Development and Evaluation Center. 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. 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. 1001.75, F.S., relating to powers and duties of university presidents; 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. 1008.51, F.S., relating to the Council for Education Policy Research and Improvement; 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: Requires that if rules of the Board of Governors or university boards of trustees in the Florida Administrative Code are repealed, the repeals must be pursuant to chapter 120, F.S.

Section 190: Provides for an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

CS/HB 7149 transfers the inspector general function for the state universities from the Department of Education to the Board of Governors. Specific Appropriation 167 in the House proposed budget provides \$112,235 for the Board of Governors to hire an Inspector General.

The fiscal impact of the remainder of HB 7149 is expected to be minimal.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

CS/HB 7149 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 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.

CS/HB 7149 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,

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 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.

Recent Challenge

In an action filed in the Second Judicial Circuit in 2004, plaintiffs challenged the constitutionality of various provisions in law relating to the State Board of Education and the Board of Governors. *Floridians for Constitutional Integrity v. State Board of Education and the Board of Governors* (2004-CA-003040). In an amended summary final judgment issued on March 28, 2007, the court declared ss. 1002.02, 1001.03, 1004.03, 1004.22, 1006.71, 1008.32, 1008.46, and 1009.21(11), F.S., unconstitutional to the extent they purport to give the State Board of Education control and authority over the State University System.

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

CS/HB 7149 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

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

assigned by the Legislature, there would be no legislative oversight over 11 different law enforcement agencies that the Legislature itself created.

CS/HB 7149 also replaces references to rule-making of the Department of Education with the State Board of Education.

CS/HB 7149 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.

CS/HB 7149 removes an obsolete reference to Board of Regents rule-making authority relating to the Drug-Free Workplace Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

None.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 13, 2007, the Policy & Budget Council adopted 11 amendments and reported the bill favorably with a Council Substitute. The amendments:

- Change the effective date of the transfer from the State Board of Education to the Board of Governors of powers, duties, rules, etc., that were previously transferred to the State Board from the Board of Regents from July 1, 2007 – the effective date of the bill -- to January 7, 2003 – the date the constitutional amendment creating the Board of Governors took effect.
- Clarify that colleges eligible to participate in the FRAG program remain under the jurisdiction of the Department of Education.
- Require the State Board and the Board of Governors to enter into an articulation agreement that preserves Florida's "2 + 2" system of articulation.
- Clarify that the spending authority provided in the GAA is for tuition and out-of-state fees.
- Appropriate all moneys received by universities from student fees, federal sources, and private sources unless otherwise provided in the GAA.
- Redesignate the Trust Fund for Major Gifts as the University Major Gifts Program; remove references to trust funds and New College; and replace references to the State Board with Board of Governors.
- Require that if rules of the Board of Governors or university boards of trustees in the Florida Administrative Code are repealed, the repeal must be pursuant to ch. 120, F.S.
- Provide that if the Board of Governors delegates a power or duty, the rule-making authority is also delegated.
- Authorize certain transfers.
- Delete language requiring the State Board of consult with other entities when assigning duties, responsibilities, and functions to divisions within the Department of Education.

This analysis is drafted to the council substitute.