

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Higher Education Appropriations Committee

BILL: CS/SJR 2308

INTRODUCER: Education Pre-K - Committee and Senator Carlton

SUBJECT: Education Governance

DATE: March 5, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Matthews</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Bryant</u>	<u>Hamon</u>	<u>HI</u>	<u>Pre-meeting</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	<input checked="" type="checkbox"/>	Statement of Substantial Changes
B. AMENDMENTS.....	<input type="checkbox"/>	Technical amendments were recommended
	<input type="checkbox"/>	Amendments were recommended
	<input type="checkbox"/>	Significant amendments were recommended

I. Summary:

If approved by the Legislature, this joint resolution would place before the electorate in November 2008 the option to amend the State Constitution to restructure education governance in the following manner:

- Restore the Commissioner of Education as an elected official accountable to the voters;
- Restore the elected Commissioner of Education as a member of the State Cabinet;
- Restore the State Board of Education as an elected body, comprised of the Governor and Cabinet, accountable to the voters;
- Revise the membership of the Board of Governors of the State University System from 14 appointed members serving 7-year terms, to 5 appointed members serving 4-year terms;
- Revise the membership of the university boards of trustees to eliminate the role of the Board of Governors, an appointed body, in appointing members to the university boards of trustees and require the Governor, an elected official, to make the appointments;
- Revise the authority of the Board of Governors to administer the State University System, as provided by law;

- Revise the authority of the university boards of trustees to administer their state universities, as provided by law; and
- Provide a schedule for implementation of the amendment if adopted by the voters.

This resolution substantially amends section 4 of Article IV and sections 2 and 7 of Article IX of the State Constitution. Additionally, the resolution creates an unnumbered section in Article XII of the State Constitution.

II. Present Situation:

State Cabinet

Article IV of the State Constitution establishes the executive branch of government and provides that the "...supreme executive power shall be vested in a governor." Nevertheless, the State Constitution subdivides the executive power by providing for three elected cabinet officers in addition to the Governor: the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.

Prior to 2003, there were six elected members on the state cabinet, which were the: (1) Attorney General; (2) Commissioner of Agriculture; (3) Comptroller; (4) Secretary of State; (5) Treasurer; and (6) Commissioner of Education. In 1998, Florida voters approved a ballot initiative that was effective January 7, 2003. This initiative retained the Commissioner of Agriculture and the Attorney General, merged the Treasurer and Comptroller into one state cabinet office, the Chief Financial Officer, and removed the Secretary of State and the Commissioner of Education from the state cabinet.¹

State Board of Education

Article IX, s. 2 of the State Constitution establishes the State Board of Education and authorizes the board to supervise the system of free public education as provided by law. The board consists of seven members appointed by the Governor to staggered 4-year terms, subject to confirmation by the Senate. The board appoints the Commissioner of Education.

Prior to 2003, the State Board of Education was comprised of the Governor and Cabinet and supervised the system of public education as provided by law. In 1998, the voters approved a ballot initiative that was effective January 7, 2003. The initiative revised the composition of the State Board of Education to make the board an appointed body comprised of members appointed by the Governor.² Additionally, the authority of the board to supervise public education as provided by law was modified to be the supervision of the system of *free* public education as provided by law (emphasis added).³

Commissioner of Education

Article IX, s. 2 of the State Constitution provides that the State Board of Education appoints the Commissioner of Education. The commissioner serves as the chief executive officer of the K-20 education system and operates in a support capacity to the State Board of Education.⁴

¹ Ballot Initiative Number 8, passed Nov. 3, 1998.

² *Id.*

³ *Id.*

⁴ s. 1000.03(2)(c), F.S.

Prior to 2003, the voters elected a Commissioner of Education to supervise the public education system in a manner prescribed by law. In 1998, the voters approved a ballot initiative that was effective January 7, 2003. The initiative eliminated the voters' role in selecting the Commissioner of Education and required the appointed State Board of Education to select the Commissioner of Education.⁵

State University System

Article IX, s. 1 of the State Constitution provides that the Legislature is authorized to establish, maintain, and operate institutions of higher learning that the needs of the people may require.

Board of Governors of the State University System

In 2002, the State Constitution was amended to establish a Board of Governors for the State University System.⁶ The board is comprised of 17 appointed members who serve staggered 7-year terms, the Commissioner of Education, the chair of the advisory council of faculty senates, and the president of the Florida student association. The amendment provided that the board shall operate, regulate, control, and be fully responsible for the management of the State University System. Additionally, the amendment provided that the Board of Governors was to establish the powers and duties of the university boards of trustees. The amendment expressly limited the management authority of the board to the authority of the Legislature to appropriate and account for expenditures.

Before 2000, the Board of Regents, a statutory body, administered the State University System as provided by law. The board was statutorily directed to appoint or remove university presidents, approve new degree programs, establish student fees within statutory guidelines, establish personnel and payroll programs for all university employees, terminate university programs, prepare university budgets for submission to the Legislature, and adopt rules for the system, among other things.⁷ Subsequent to the approval of the restructuring of the State Board of Education by the voters in 1998, the Florida Board of Education was established to transition the public education system into a K-20 system supervised by an appointed State Board of Education.⁸ The Board of Regents was abolished effective January 7, 2003, and the powers, duties, personnel, and property were transferred to the Florida Board of Education.⁹ In 2002, the restructured State Board of Education assumed supervision of the K-20 education system. In 2002, the Education Code was revised to fully incorporate the university board of trustees into the K-20 education system.¹⁰ Before this law became effective, a group called the "Education Excellence for Florida" succeeded in obtaining sufficient signatures to place an initiative before the Florida Supreme Court for review and ultimately on the ballot. In its review of the ballot title and summary, the Florida Supreme Court stated that the proposed initiative "does not substantially affect or change" section 1 of Article IX.¹¹ The initiative was approved by the electorate on November 5, 2002.

⁵ Ballot Initiative Number 8, passed Nov. 3, 1998

⁶ Article IX, s. 7 of the State Constitution.

⁷ See former s. 240.209, F.S., (repealed by ch. 2002-387, L.O.F.)

⁸ See s. 4, ch. 2000-321, L.O.F.

⁹ See s. 3, ch. 2000-321, L.O.F.

¹⁰ ch. 2002-387, L.O.F.

¹¹ Advisory Opinion to the Attorney General Re Local Trustees, 819 So.2d 725, 730 (Fla. 2002).

In 2004, litigants in *Floridians for Constitutional Integrity, Inc., et al. v. State Board of Education and Board of Governors*, Case No. 04-CA-3040, filed in the 2nd Judicial Circuit in and for Leon County, Florida, alleged that the Board of Governors has all authority over the State University System, including the power to set the policy and direction of the State University System and to set tuition and fees. Additionally, the litigants claimed authority over the granting of baccalaureate degrees at community colleges. The litigants entered into a settlement agreement with the Board of Governors, nominally a defendant, and the State Board of Education over the State Board's role in higher education. In 2005, s. 1001.705, F.S., was created, which statutorily delineated the authority of the Legislature and the Board of Governors with respect to the governance of the State University System.¹² The Legislature, in its discretion as the constitutional policy-making body, delegated additional authority to the Board of Governors to administer the system. In 2007, the Legislature revised the statutes relating to the Board of Governors and university boards of trustees to conform to the current constitutional provisions.¹³ The act took effect on July 1, 2007. Six days later, a lawsuit was filed against the Legislature by a group of plaintiffs.¹⁴ The Board of Governors subsequently intervened as a party in support of the lawsuit. The case is scheduled for a hearing on May 13, 2008, although there are pending motions to dismiss the complaint.

University Boards of Trustees

Article IX, s. 7 of the State Constitution provides that a board of trustees shall administer each public university. The amendment provides that the Board of Governors establishes the powers and duties of the university boards of trustees. The university boards consist of 13 members, six citizen members appointed by the Governor and five citizen members appointed by the Board of Governors. The chair of the faculty senate and the president of the student body are also members. Each appointed member is subject to Senate confirmation. The appointed members serve staggered 5-year terms.

Prior to 2001, the university boards of trustees did not exist. Universities were administered by the Board of Regents as provided by law. With the abolition of the Board of Regents in 2001, the Governor was directed to appoint for each state university a 13-member board of trustees to govern the university in accordance with law and Florida Board of Education rule.¹⁵ Each board of trustees was statutorily given the authority to perform the following functions in accordance with the rules of the Florida Board of Education: select a president; approve and terminate programs; administer the personnel program; govern admission of students; use, maintain, and control university property; adopt rules to implement duties; and perform other enumerated functions.¹⁶ In 2002, the Education Code was revised to fully incorporate the university board of trustees into the K-20 education system.¹⁷

¹² s. 1, ch. 2005-285, L.O.F.

¹³ ch. 2007-217, L.O.F.

¹⁴ *Bob Graham, et al. v. Ken Pruitt, President of the Florida Senate*, Case No. 07-CA-1818.

¹⁵ ss. 13 and 14, ch. 2001-170, L.O.F. (Section 3, ch. 2001-170, L.O.F., required the Governor to appoint a 12-member board of trustees with an additional student body representative as a voting member. Section 13, ch. 2001-170, L.O.F., required the Governor to appoint a 13-member board with an additional student body president member by November 1, 2007.)

¹⁶ s. 14, ch. 2001-170, L.O.F. (formerly s. 229.0081, F.S., repealed by ch. 2002-387, L.O.F.)

¹⁷ ch. 2002-387, L.O.F.

III. Effect of Proposed Changes:

This joint resolution, if adopted by the voters, would revise the governance structure for public education in the state.

Commissioner of Education

The voters of the state would elect a Commissioner of Education rather than the current method, which allows an appointed body to appoint the commissioner. In addition, the appointed State Board of Education is replaced with the Governor and Cabinet. Finally, the Commissioner of Education is authorized to supervise the public education system as provided by law.

Accordingly, the joint resolution restores education governance to its 1998 structure with respect to the commissioner, cabinet, and state board, and makes these officials accountable to the people.

Board of Governors of the State University System

The joint resolution retains the Board of Governors in the governance structure of state universities. The Board of Governors would now administer the State University System, rather than attempting to govern individual universities. This provision would put the resolution of the repeated and ongoing litigation and governance dispute among the Board of Governors, state universities, and the Legislature in the hands of the people, rather than the judiciary.

Additionally, the joint resolution revises the appointed membership and terms of the Board of Governors from 14 members serving 7-year terms, to 5 members serving 4-year terms. The commissioner of education, chair of the advisory council of faculty senates, and the president of the Florida student association will continue to serve as members.

University Board of Trustees

The joint resolution retains the authority of the university boards of trustees to administer their universities, while maintaining accountability by law. Members of the board of trustees would be appointed by the Governor, rather than dual appointments by the Governor and Board of Governors.

Implementation Schedule

The joint resolution provides an implementation schedule to ensure the orderly transition to the proposed education governance structure, if adopted by the voters. Upon the effective date of the proposed amendment, the terms of the current education officers would terminate, and the Governor would appoint the new members with the exception of the Commissioner of Education and the university boards of trustees.

The Governor and Cabinet would appoint an interim commissioner until the next general election following the adoption of the proposed amendment. At that point, the commissioner would be elected by the voters. As a result, the election of the Commissioner of Education would occur on the same election cycle as the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture.

Members of the university boards of trustees would continue to serve out their terms. Upon the expiration of their original appointments, the Governor would appoint members to the university boards of trustees.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Joint Resolutions to Amend the State Constitution

Under Section 1, Article XI, of the State Constitution, constitutional amendments may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The proposed amendment must then be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. Submission of the amendment at an earlier special election requires both affirmative vote of three-fourths of the membership of each house of the Legislature and limitation to a single amendment or revision, pursuant to Section 5 of Article XI of the State Constitution.

Regarding the standard of review for amendments that are proposed by the Legislature, the Florida Supreme Court has typically applied a presumption of validity to these amendments.¹⁸

Paragraph (e) of Section 5, Article XI, of the State Constitution, requires 60 percent voter approval for a constitutional amendment to pass.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

¹⁸ Thomas R. Rutherford, *The People Drunk Or The People Sober? Direct Democracy Meets the Supreme Court of Florida*, 15 STTLR 61, 75 (2002).

C. Government Sector Impact:

The joint resolution would reduce the number of members serving on the Board of Governors, thereby reducing costs with respect to travel and per diem expenses.

The Division of Elections within the Department of State has indicated that in the past the average non-recurring cost of compliance with the publication requirement for a constitutional amendment has been \$60,000; however, this cost can be substantially greater depending on the advertising inches required by a joint resolution.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

The committee substitute provides that members of the university boards of trustees would serve out their original appointments. Upon expiration of their original appointments, the Governor would appoint members to the university boards of trustees.

B. Amendments:

None.