

**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 Budget Subcommittee on Higher Education Appropriations

**BILL:** CS/CS/SB 1752

**INTRODUCER:** Budget Subcommittee on Higher Education Appropriations, Higher Education Committee and Senators Oelrich and Lynn

**SUBJECT:** Postsecondary Education

**DATE:** February 29, 2012      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harkey</u>	<u>deMarsh-Mathues</u>	<u>HE</u>	<u>Fav/CS</u>
2.	<u>Bryant</u>	<u>Hamon</u>	<u>BHI</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| 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:**

This bill provides tuition and academic flexibility to research universities that meet standards established in the bill for a state university of national preeminence. The standards relate to selectivity of admissions, student retention, total annual research expenditures, national ranking among public universities, size of endowment, amount of annual giving, faculty membership in a national academy, and doctoral degrees awarded, among other criteria.

A university that is found by the Board of Governors (BOG) to meet at least 11 of the 14 criteria in the bill could:

- Charge differentiated or market-rate tuition for undergraduate and graduate programs beginning with the 2012-2013 academic year; and
- Require incoming freshmen students to take from nine to twelve credits in a set of courses specifically determined by the university.

The bill requires that Florida Prepaid College contracts purchased prior to a university's receipt of the authorization to charge market-rate tuition and fees must be honored and the beneficiaries

will be exempt from paying the tuition increases. Beneficiaries of contracts purchased the year a university becomes eligible to charge market-rate tuition and fees, or thereafter, would have to pay the difference between the highest rate of tuition and fees covered by the contract and the university's tuition.

This bill creates s. 1001.7065, Florida Statutes.

## II. Present Situation:

### Research Universities

The significance and status of university research is measured in a number of ways: by the accomplishments of its research faculty, the volume of research conducted at the institution, and the amount of funds expended on research, among other measures. In the United States, rankings of universities by the Carnegie Foundation for the Advancement of Teaching,<sup>1</sup> the Center for Measuring University Performance,<sup>2</sup> and U.S. News and World Report<sup>3</sup> contribute to the public perception of a research university's standing in relation to other universities. The University of Florida is the only one of Florida's state universities in the Association of American Universities (AAU),<sup>4</sup> an organization of 61 top research universities in the United States and Canada.

### Legislative Authority for the State's Public Education System

The State Constitution requires the Legislature to make adequate provision by law for a statewide system of free public schools and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.<sup>5</sup> The BOG's management of the system is subject to the powers of the Legislature to appropriate for the expenditure of funds, and the BOG must account for such expenditures as provided by law.<sup>6</sup> Under the State Constitution, the Legislature is responsible for state budgeting, planning, and appropriations.<sup>7</sup>

### Management of the State University System

In 2002, Florida voters approved the ballot initiative, Local Trustees and Statewide Governing Board to Manage Florida's University System,<sup>8</sup> which established the BOG in the State Constitution.<sup>9</sup> The BOG has constitutional authority for the coordinated and accountable operation of the state university system. The 2005 Legislature<sup>10</sup> codified the powers and duties of the BOG and the 2007 Legislature<sup>11</sup> extensively revised the statutes clarifying the powers and duties of the BOG and the university boards of trustees. In 2007, a group of Florida citizens and the BOG filed a lawsuit against the President of the Senate and the Speaker of the House of Representatives seeking further clarification of the BOG's constitutional authority over the state

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<sup>1</sup> <http://classifications.carnegiefoundation.org/index.php?key=782>

<sup>2</sup> <http://mup.asu.edu/research.html>

<sup>3</sup> <http://colleges.usnews.rankingsandreviews.com/best-colleges>

<sup>4</sup> <http://www.aau.edu>

<sup>5</sup> Fla. Const., Art. IX, Section 1.

<sup>6</sup> Fla. Const. Art. IX, Section 7(d).

<sup>7</sup> Fla. Const., Art. III, Section 19.

<sup>8</sup> Ballot Initiative Number 01-07, passed November 5, 2002.

<sup>9</sup> Fla. Const., Art. IX, Section 7.

<sup>10</sup> ch. 2005-285, L.O.F.

<sup>11</sup> ch. 2007-217, L.O.F.

university system.<sup>12</sup> On March 22, 2010, the BOG voted to dismiss its claims in the lawsuit, and on March 24, 2010, the Chair of the BOG, the Chancellor of the State University System, legislative leaders and the Governor signed an agreement regarding the shared power of the BOG and the Legislature in the governance of the state university system.

The State University System Governance Agreement acknowledged the Legislature's authority for the state's public education system under s. 1(a), Article IX of the State Constitution and the BOG's authority for the state university system under s. 7(c), Article IX of the State Constitution. The legislation codifying the elements of the agreement,<sup>13</sup> maintained the Legislature's authority to establish the cost of resident undergraduate tuition and the universities' authority to establish graduate and professional program tuition and fees and out-of-state fees for all programs. The legislation gave the BOG the authority to approve flexible policies for tuition and fees as long as the policies are in alignment with the university's mission and do not increase the state's liability or obligation for the Bright Futures Scholarship program or the Florida Prepaid College program. The Legislature delegated to the BOG the authority to establish a new fee that is not expressly authorized by law and limited the aggregate sum of such new fees to no more than ten percent of tuition. The BOG was authorized to approve a university board of trustees' proposal to implement block tuition, block tuition differential, or market-rate tuition for graduate-level online courses or graduate-level continuing education courses. The transfer of any revenues from a new fee to an auxiliary enterprise or a direct support organization was expressly prohibited. A university fee committee was required to recommend to the university board of trustees and the university president how a proposed new fee would be spent. An increase to an existing fee or establishment of a new fee was limited to a maximum of once each fiscal year and the legislation required the fee increase to be implemented beginning with the fall term.

#### **The Stanley G. Tate Florida Prepaid College Program**

The Stanley G. Tate Florida Prepaid College Program allows purchasers to buy prepaid contracts to pay the registration fees of beneficiaries at Florida community colleges and state universities, in advance of enrollment.<sup>14</sup> Because the contracts cover the cost of future university attendance, any significant increase in tuition and fees requires consideration of the effect on the prepaid contracts already sold and those that will be sold in the future.

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

The bill would exempt state research universities of national preeminence from statutory limits on the amount of tuition and fees they could charge students and would authorize the universities to establish tuition at differentiated and market rates. The bill states that the tuition and academic flexibility afforded certain universities in the bill stems from the 2010 State University System Governance Agreement.

While market rate is not defined in the bill, the term generally means the amount buyers are willing to pay for a product. In a paper on flexible tuition policies, which was used by the BOG

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<sup>12</sup> *Bob Graham et al v. Ken Pruitt, President of the Florida Senate and Marco Rubio, Speaker of the Florida House of Representatives*, Case No. 2007-CA-1818.

<sup>13</sup> ch. 2010-78, L.O.F.

<sup>14</sup> s. 1009.98, F.S.

tuition and fees workgroup in considering market-rate tuition for on-line graduate courses, the following comments describe market price:

If the market is efficient and rational expectations prevail, then market value and market price are equal. The market price for a program may be determined empirically or may require gradual calibration. In any event, markets are self correcting. If the market price is excessive, then demand will fall or supply will increase. Here are some suggestions to be used in determining market price.

1. Average the price of five comparable programs
2. If unable to perform (1), use the tuition rate for out of state students
3. The market price cannot exceed the larger of (1) or (2)<sup>15</sup>

Notwithstanding s. 1009.01, F.S., which defines tuition, out-of-state fee, and tuition differential fee, and s. 1009.24, F.S., which establishes the cost of undergraduate tuition, authorizes university fees, and limits the amounts and uses of the fees, a university that substantially meets 11 of 14 academic and research excellence standards will be able to establish resident and nonresident student tuition and fees at differentiated and market rates, with the approval of the university board of trustees and the Board of Governors. The 14 standards of excellence are:

1. An average weighted grade point average of 3.8 or higher on a 4.0 scale and an average SAT score of 1800 or higher for incoming freshman during the fall term, as reported annually.
2. A top 50 ranking on at least two well-known and highly respected national public university rankings reflecting national preeminence while using the most recent rankings.
3. A freshman retention rate of 90 percent or higher for full-time, first-time-in-college students, as reported annually to the Integrated Postsecondary Education Data System (IPEDS).
4. A six-year graduation rate of 70 percent or higher for full-time, first-time-in-college students, as reported annually to the IPEDS.
5. Six or more faculty members at the state university who are members of a national academy, as reported annually by the Center for Measuring University Performance for the Top American Research Universities. (TARU) annual report.
6. Total annual research expenditures, including federal research expenditures, of \$200 million or more, as reported in the TARU annual report.
7. Total annual research expenditures in diversified nonmedical sciences of \$100 million or more, based on data reported annually by the National Science Foundation (NSF).
8. A top 100 public university national ranking for research expenditures in five or more science, technology, engineering, or mathematics fields of study, as reported annually by the NSF.
9. One hundred or more total patents awarded by the United States Patent and Trademark Office for the most recent 3-year period.
10. Two hundred fifty or more doctoral degrees awarded annually, as reported in the TARU annual report.

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<sup>15</sup> Glover, J., "Flexible tuition policies: Definitions, background and discussion," August 2010, on file with the Higher Education Committee.

11. Two hundred or more post-doctoral appointees annually, as reported in the TARU annual report.
12. A national quality ranking higher than predicted based on available financial resources rankings, as reported annually by U.S. News and World Report.
13. An endowment of \$400 million or more, as reported in the TARU annual report.
14. Annual giving of \$50 million or more, as reported in the TARU annual report.

Two state universities, the University of Florida and Florida State University, meet at least 11 of the standards, as follows:

<b>Standard</b>	<b>Threshold</b>	<b>University of Florida</b>	<b>Florida State University</b>
GPA/SAT Score	3.80/1800	4.20/1914	3.90/1839
Number of top-50 rankings in more than one national ranking	2	4	3
Freshman retention rate reported to IPEDS <sup>16</sup>	90 %	96 %	92 %
6-year graduation rate for full-time, full-time-in-college students	70%	84%	74%
National Academy members on faculty	6	23	7
Total annual research expenditures	\$200 million	\$584 million	\$182 million
Total annual research expenditures in diversified nonmedical sciences	\$100 million	\$457 million	\$182 million
Ranking in top 100 public universities for research expenditures in 5 or more STEM fields	Top 100	8	7
Patents awarded in 3-year period	100	133	52
Doctoral degrees awarded	250	841	343
Number of post-doctoral appointees	200	585	241
National ranking in quality relative to resources <sup>17</sup>		Financial resources # 49 Overall # 58	Financial resources # 208 Overall # 101
Endowment	\$400 million	\$1 billion	\$410 million
Annual giving	\$50 million	\$203 million	\$47 million
Number of criteria met	11	13	11

Source: The Board of Governors, February 29, 2012.

The University of South Florida meets five of the criteria and the University of Central Florida meets four of the criteria. Thus, it is likely that the University of Florida and Florida State University will be the only universities authorized to charge market-rate tuition and fees in the near future.

<sup>16</sup> <http://nces.ed.gov/ipeds/>.

<sup>17</sup> <http://colleges.usnews.rankingsandreviews.com/best-colleges>.

University fees that are used to secure revenue bonds or to secure debt must be maintained at the appropriate level to meet all debt service obligations of the university.

The bill appears to give the BOG some discretion in determining if a university “substantially” meets the standards. The bill also authorizes the BOG to grant additional authority and flexibility to universities, within its constitutional powers.

The bill authorizes a university that meets 11 of the 14 standards to require incoming freshmen students to take from nine to twelve credits in a set of courses specifically determined by the university. The credit for those courses could not be earned through accelerated mechanisms, transfer, or other mechanisms. However, the bill clarifies that all of a student’s credits earned in accelerated classes, up to the statutory limits, will count toward graduation at the student’s request.

The bill requires Florida Prepaid College contracts purchased prior to a university’s receipt of the authorization to charge market-rate tuition and fees to be honored and the beneficiaries to be exempt from paying the tuition increases. Beneficiaries of contracts purchased the year of a university’s receipt of the authorization to charge market-rate tuition and fees and thereafter would have to pay the difference between the highest rate of tuition and fees covered by the contract and the university’s tuition.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Students enrolled at the University of Florida and Florida State University would pay higher tuition and fees than students at other state universities. The bill authorizes the increases to begin in academic year 2012-2013, which would affect students currently enrolled. There is no limit on the amount of the increase, because the universities that

meet the criteria in the bill are exempt from the statutes that limit the amounts of tuition and fees.

First-time-in-college students who entered the university with a number of credit hours for accelerated courses who were required to take the nine to twelve credit hours of courses that could not be earned through accelerated mechanisms, transfer, or other mechanisms could have little opportunity to take an elective course or change majors. Such students could incur a cost for excess hours if they exceeded the baccalaureate degree program completion requirements under s. 1009.286, F.S.

**C. Government Sector Impact:**

The universities that met the criteria in the bill could significantly increase the revenue they receive from tuition and fees charged to students. The amount of the increase will depend upon how the market rate is determined, and, ultimately, on what the market will bear.

The Florida Prepaid College program may be unable to create a new plan offering to cover the new market-rate tuition at recognized universities because the tuition is not capped.

**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.)

**CS/CS by Higher Education Appropriations:**

The committee substitute:

- Does not waive the entire statute for university fees (s.1009.24, F.S.), but limits the flexibility on the fees to freedom from percentages and dollar amount limitations in the statute;
- Substitutes a 6-year graduation rate of 70 percent or higher as a standard of excellence in lieu of using as a standard the amount of unallocated funds as a percent of total budget;
- Adds sources of data for each of the standards; and
- Clarifies that while acceleration courses do not satisfy the requirements for special university classes for incoming freshmen, all acceleration credits up to the statutory limits must be applied toward graduation at the student's request.

**CS by Higher Education on February 16, 2012:**

The committee substitute does not reenact the 21st Century Technology, Research, and Scholarship Act, but, rather provides tuition and academic flexibility to research universities that meet criteria established in the bill for a state university of national preeminence. A university that is found by the BOG to meet at least 11 of the 14 criteria in the bill could charge market-rate tuition for undergraduate and graduate programs and require incoming freshmen students to take from nine to twelve credits in a set of courses specifically determined by the university. Florida Prepaid C college contracts purchased prior to the enactment of the bill would be honored and the beneficiaries would be exempt from paying the tuition increases. Beneficiaries of contracts purchased after the effective date of the bill would have to pay the difference between the highest rate of tuition and fees covered by the contract and the university's tuition.

**B. Amendments:**

None.