

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7129      PCB EDC 12-02      State Universities of Academic and Research Excellence and National Preeminence

**SPONSOR(S):** Education Committee, Proctor

**TIED BILLS:**                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Education Committee	11 Y, 7 N	Graf	Klebacha
1) Appropriations Committee	18 Y, 5 N	Heflin	Leznoff

### SUMMARY ANALYSIS

The bill establishes the State Universities of Academic and Research Excellence and National Preeminence Act (Act). The Act is a collaborative partnership between the Board of Governors (BOG) and the Legislature to elevate the academic and research excellence and national preeminence of the highest performing state research universities in Florida.

A state research university that substantially meets 11 of the 14 academic and research excellence standards established in the bill may:

- Establish student tuition and fees at differentiated and market rates; and
- Require incoming first-time-in-college students to take 9-12 credit hours of coursework specifically determined by the university at the university.

A qualified Prepaid Program beneficiary is exempt from the payment of any increase in tuition and fees if an advance payment contract for such qualified beneficiary predates the first year an SUS institution receives tuition and fee authority; and if the advance payment contract for such qualified beneficiary remains in effect. A qualified Prepaid Program beneficiary who enters into an advance payment contract in the first year an SUS institution receives tuition and fee authority, or in the years thereafter, must pay the difference between the highest rate of tuition and fees covered by the advance payment contract and the tuition and fees assessed by the SUS institution of national preeminence that such qualified beneficiary attends.

Additionally, a state research university that substantially meets the requirements of the bill must submit a tuition and fee rate proposal annually by May 31 detailing the requested budget authority in the Education and General Student and Other Fees Trust Fund needed to implement the new tuition structure to the BOG with the university work plans.

Finally, a state research university that substantially meets the requirements of the bill must maintain fees used to pledge or secure debt at an appropriate fee level to meet all debt service obligations of that university.

The bill will result in an increase in appropriations to provide sufficient budget authority in the Education/General Student and Other Fee Trust Fund to accommodate the expenditure of additional revenues generated by the approved increased tuition and fee rate proposal.

See FISCAL COMMENTS.

The bill shall take effect upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **State University System of Florida**

The State University System of Florida (SUS) provides students with undergraduate and graduate level instruction leading to baccalaureate, masters, doctoral, and professional degrees. SUS institutions also conduct research and engage in public service.<sup>1</sup> The SUS is comprised of the following 11 institutions:<sup>2</sup>

- Florida Agricultural and Mechanical University
- Florida Atlantic University
- Florida Gulf Coast University
- Florida International University
- Florida State University
- New College of Florida
- University of Central Florida
- University of Florida
- University of North Florida
- University of South Florida
- University of West Florida

As set forth in the Florida Constitution, state-level governance of the SUS is provided by the Board of Governors (BOG) and Legislature.<sup>3</sup> The BOG is comprised of 17 members – the Commissioner of Education, the chair of the Advisory Council of Faculty Senates or the equivalent, the Florida Student Association president, and 14 citizen-appointments by the Governor. Governor appointees must be confirmed by the Florida Senate.<sup>4</sup>

Each institution in the SUS is governed locally by a board of trustees<sup>5</sup> comprised of 13 members – the chair of the faculty senate or the equivalent, the president of the student body of that institution, six members appointed by the Governor, and five members appointed by the BOG. The members appointed by the Governor and the BOG must be confirmed by the Florida Senate.<sup>6</sup> The local boards of trustees must govern their institutions in accordance with BOG rules and regulations.<sup>7</sup> Each local board's responsibilities include strategic planning and adopting policies regarding admissions, educational programming, administration, personnel, contracts, grants, and facilities.<sup>8</sup>

##### **State University System Governance**

###### Present Situation

###### *Board of Governors*

The BOG is the constitutionally created body required to “operate, regulate, control, and be fully responsible for the management of the whole university system.”<sup>9</sup> The BOG’s responsibilities include defining the distinctive mission of each SUS institution and its articulation with public schools and Florida College System (FCS) institutions, ensuring the well-planned coordination and operation of the

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<sup>1</sup> Art. IX, s. 7, Fla. Const.

<sup>2</sup> Section 1000.21(6), F.S.

<sup>3</sup> Art. IX, s. 7(d), Fla. Const.

<sup>4</sup> *Id.*

<sup>5</sup> Art. IX, s. 7(c), Fla. Const.; s. 1001.71(1), F.S.

<sup>6</sup> Section 1001.71(1), F.S.

<sup>7</sup> Art. IX, s. 7(c), Fla. Const.; *see also* Florida Board of Governors Regulation 1.001 (Feb. 16, 2012).

<sup>8</sup> Florida Board of Governors Regulation 1.001(3)-(7).

<sup>9</sup> Art. IX, s. 7(d), Fla. Const.

system, and avoiding wasteful duplication of facilities or programs.<sup>10</sup> The BOG, or the BOG's designee has responsibility for:<sup>11</sup>

- Defining the distinctive mission of each SUS institution.
- Defining the articulation of each SUS institution in conjunction with the Legislature's authority over the public schools and the FCS institutions.
- Ensuring the well-planned coordination and operation of the SUS.
- Avoiding wasteful duplication of facilities or programs within the SUS.
- Accounting for expenditure of funds appropriated by the Legislature for the SUS as provided by law.
- Submitting a budget request for legislative appropriations for the institutions under the supervision of the BOG as provided by law.
- Adopting strategic plans for the SUS and each SUS institution.
- Approving, reviewing, and terminating degree programs of the SUS.
- Governing admissions to the SUS institutions.
- Serving as the public employer to all public employees of the state universities for collective bargaining purposes.
- Establishing a personnel system for SUS institutions' employees.<sup>12</sup>
- Complying with, and enforcing for institutions under the BOG's jurisdiction, all applicable local, state, and federal laws.

The BOG's oversight of the SUS is subject to the Legislature's power to appropriate funds, as well as the Legislature's responsibility to provide 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>13</sup>

### *Legislature*

With regard to the SUS, the Legislature is responsible for:<sup>14</sup>

- Making provision by law for the establishment, maintenance, and operation of institutions of higher learning and other public education programs.
- Appropriating state funds for the SUS through the General Appropriations Act or other law.
- Establishing tuition and fees.
- Establishing policies relating to merit- and need-based student financial aid.
- Establishing policies relating to the expenditure of, accountability for, and management of funds appropriated by the Legislature or revenues authorized by the Legislature, including but not limited to, policies relating to: budgeting; deposit of funds; investments; accounting; purchasing, procurement, and contracting; insurance; audits; maintenance and construction of facilities; property; bond financing; leasing; and information reporting.
- Maintaining the actuarial and fiscal soundness of centrally administered state systems by requiring SUS institutions to continue to participate in programs such as the Florida Retirement System, state group health insurance programs, and the state casualty insurance program.
- Establishing and regulating the use of state powers and protections, including, but not limited to, eminent domain, certified law enforcement, and sovereign immunity.
- Establishing policies relating to the health, safety, and welfare of students, employees, and the public while present on the campuses of SUS institutions.

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<sup>10</sup> Art. IX, s. 7(d), Fla. Const.; ss. 1001.705 and 1001.706, F.S.

<sup>11</sup> Section 1001.705(2), F.S.

<sup>12</sup> Although the Florida Board of Governors are responsible for establishing a personnel system for all state universities, the Department of Management Services shall retain control over the state group insurance and retirement plans established in ss. 110.123, 110.1232, 110.1234, 110.1238, and 110.161, and in chapters 121, 122, and 238. Section 1001.705(2)(k), F.S.

<sup>13</sup> Art. IX, s. 1(a) and 7(d), Fla. Const.; ss. 1001.705 and 1001.706, F.S.

<sup>14</sup> Section 1001.705(3), F.S.

## *State University System Governance Agreement*

In 2007, a group of citizens filed a lawsuit against the Legislature, which sought to clarify the scope of the BOG's constitutional authority and identify the entity that has the authority to set SUS tuition and fees. Subsequently, this lawsuit was joined by the BOG.

On March 24, 2010, the Chair of the BOG, the Chancellor of the SUS, legislative leaders and the Governor signed an SUS Governance Agreement acknowledging their shared constitutional authority for the state universities as set forth in the Constitution of the State of Florida. The components of the SUS Governance Agreement include master planning and coordination of Florida's higher education systems, strategic planning, university governance, financial aid programs; the Administrative Procedures Act and BOG regulations, tuition and fees. As a result of the SUS Governance Agreement, the BOG filed a notice of dismissal, with prejudice, of their claims in the 2007 lawsuit filed against the Legislature. The presiding officers agreed to file legislation in accordance with the framework set forth in the governance agreement and to exercise their best efforts to accomplish the final passage of the legislation.<sup>15</sup>

Legislation enacted in 2010 amended various sections of Florida law to implement the provisions of the governance agreement by:<sup>16</sup>

- Creating the Higher Education Coordinating Council to identify unmet needs and to facilitate solutions to disputes regarding the creation of new degree programs and the establishment of new institutes, campuses, or centers; and serve as an advisory board to the Legislature.
- Expressing legislative intent that the BOG align the missions of each university with factors relating to students, faculty, research, and statutorily required strategic and accountability plans.
- Eliminating the requirement of legislative approval for certain programs that lead to licensure and repealing the specific statutory authority for certain programs at specified SUS institutions.
- Repealing section 1001.74, Florida Statutes, relating to the powers and duties of the university boards of trustees in recognition of the BOG's exclusive authority to delegate power and duties to the university boards of trustees.
- Acknowledging the BOG is responsible for the personnel programs for university employees, requiring the BOG to confirm the presidential selection of a university board of trustees, and stating that the Department of Management Services will continue to control the state group insurance and retirement plans.
- Exempting state universities from certain requirements regarding communications and data processing.
- Allowing a university to participate in the state-maintained SUNCOM Network communications services at the university's discretion.
- Acknowledging the BOG's authority to adopt regulations when acting pursuant to its constitutional duties and responsibilities.
- Requiring the BOG to comply with the Administrative Procedure Act when acting pursuant to statutory authority, unless specifically authorized or required to adopt regulations.
- Authorizing the Department of State to remove from the Florida Administrative Code rules superseded by BOG and university boards of trustees' regulations adopted pursuant to their constitutional or specific statutory authority.
- Authorizing the BOG to approve university board of trustees' proposal to: implement flexible tuition policies<sup>17</sup> as long as such policies are aligned to a university's mission and the policies do not increase the state's liability or obligations, including but not limited to the Bright Futures

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<sup>15</sup>Florida Legislature, *State University System Governance Agreement* (March 24, 2010); see also ch. 2010-78, L.O.F.; staff of the Florida House of Representatives, *Legislative Bill Analysis for HB 7237* (2010).

<sup>16</sup> Chapter. 2010-78, L.O.F.; staff of the Florida House of Representatives, *Legislative Bill Analysis for HB 7237* (2010).

<sup>17</sup> Flexible tuition policies include block tuition, block tuition differential, market rate tuition for graduate level online courses, and market rate tuition for graduate level continuing education courses. Section 1009.24(15)(a)3., F.S.

Scholarship program and the Florida Prepaid Tuition Program; establish a fee not specifically authorized in law; and increase the cap for certain existing fees<sup>18</sup>.

- Requiring the BOG to consider certain factors when reviewing fee proposals and flexible tuition policies: the services or operations currently being funded by the fee; whether those services or operations can be performed more efficiently to reduce the need for an increase; the additional or enhanced services to be funded by the fee increase; whether alternative resources are available to meet the need; and whether the financial impact on students is warranted in light of other charges assessed to students.
- Requiring the BOG to submit an annual report to the President of the Senate, the Speaker of the House of Representatives, and the Governor summarizing the tuition and fee proposals received by the BOG during the preceding year and the actions taken by the BOG in response to such proposals.
- Requiring that fees for services be based on reasonable costs of services.
- Limiting an increase to an existing fee or a new fee established to a maximum of once each fiscal year and requiring the fee increase to be implemented beginning with the fall term.

On December 30, 2010, the Second Judicial Circuit of Leon County entered summary judgment in favor of the Legislature in the 2007 lawsuit, holding among other things, that the Legislature's power to appropriate SUS funding includes the authority to establish tuition and fee levels.<sup>19</sup>

### *Conversations with SUS Institution Presidents*

In January 2012, each SUS institution president participated in conversations with the House Education Committee regarding ideas to facilitate institutional and system excellence. The goal of these conversations was to elicit input and suggestions regarding actions that would best serve SUS institutions, while also strengthening Florida's state university system. The conversations included discussions on institutional mission; tuition flexibilities; and accountability standards to increase productivity, raise quality, and maximize state and student investments in higher education.

Representatives from the Southern Regional Education Board (SREB) and the Office of Program Policy Analysis and Government Analysis (OPPAGA) presented data to show how Florida's universities compare nationally based on widely used performance measures.<sup>20</sup> Such measures typically include basic indicators of institutional performance such as graduation rate and freshman retention rate.

The SUS graduation rate and freshman retention rate are strong compared to the largest public university systems in the country. Specifically, the SUS ranks fourth among the ten largest public university systems on six-year graduation rate and second on freshman retention rate. However, despite Florida's competitive national standing in graduation and retention rates, the BOG and the university board of trustees recognize that there is room for improvement.<sup>21</sup> Currently, only one of the SUS's eleven public institutions is a member of the Association of American Universities (AAU), the University of Florida.<sup>22</sup>

The AAU is an invitation-only, nonprofit association of 59 U.S. and 2 Canadian preeminent public and private research universities. AAU was founded in 1900 to advance the international standing of U.S.

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<sup>18</sup> The cap may be increased for the following fees: an application fee; an orientation fee; a fee for security, access, or identification cards; a fee assessed for special types of registration; a fee assessed for late payment of tuition and fees; a fee for the replacement of transcripts and diplomas; and a nonrefundable admissions deposit. Section 1009.24(14)(a)-(g) and (15)(a)2., F.S.

<sup>19</sup> *Graham, et al. v. Atwater and Cretul*, Final Summary Declaratory Judgment, Case No. 2007-CA-1818(2<sup>nd</sup> Cir. Ct. Dec. 30, 2010).

<sup>20</sup> Florida Legislature, *House Education Committee Meeting Packets* (Jan. 12, 2012; Jan 13, 2012; Jan. 18, 2012; and Jan. 19, 2012), available at

<http://myfloridahouse.gov/Sections/Documents/publications.aspx?CommitteeId=2591&PublicationType=Committees&DocumentType=Meeting%20Packets&Session=2012&SessionId=70> (last visited Feb. 17, 2012).

<sup>21</sup> State University System of Florida, Board of Governors, *State University System Graduation and Retention Rates Are Nationally Competitive*, Information Brief (Sept. 28, 2011), available at <http://www.flbog.org/resources/publications/infobriefs.php> (last visited Feb. 23, 2011).

<sup>22</sup> Association of American Universities, *Member Institutions and Years of Admission*, available at <http://www.aau.edu/about/article.aspx?id=5476> (last visited Feb. 17, 2012).

research universities. Today, AAU focuses on issues that are important to research-intensive universities, such as funding for research, research and education policy, and graduate and undergraduate education.<sup>23</sup>

### Effect of Proposed Changes

The bill creates the State Universities of Academic and Research Excellence and National Preeminence Act and establishes a collaborative partnership between the BOG and the Legislature to raise the academic and research excellence and national preeminence of the highest performing state research universities in Florida. This partnership is based on the SUS Governance Agreement that affirmed the commitment of the BOG and the Legislature to continue collaboration on accountability measures, the use of data, and recommendations derived from such data.

## **Tuition and Fees**

### Present Situation

SUS institutions generate revenues by assessing tuition<sup>24</sup> and fees. Undergraduate tuition for Florida resident students is established by the Legislature<sup>25</sup>; and tuition for graduate and professional students, and out-of-state fees<sup>26</sup> for all programs are established by the board of trustees for each SUS institution and approved by the BOG.<sup>27</sup> The board of trustees for each SUS institution may establish the following fees subject to the approval of the BOG: activity and service fee, health fee, athletic fee, and tuition differential fee<sup>28</sup>. The Legislature establishes the financial aid fee, Capital Improvement Trust Fund fee, building fee, and distance learning course fee as a specified dollar amount or percent of tuition<sup>29</sup>. In addition, the board of trustees for each SUS institution may assess additional fees upon approval by the BOG.<sup>30</sup> Revenue generated from these fees<sup>31</sup> must be expended as provided in law.<sup>31</sup>

During 2011-2012, the tuition and fee average for Florida's public universities increased by 11.8 percent to \$5,626 per year, moving the SUS from 48<sup>th</sup> to 45<sup>th</sup> rank in cost of tuition and fees nationally. During the same period, the national tuition and fee average increased by 8.3 percent, albeit representing a higher tuition and fee average relative to Florida, at \$8,244.<sup>32</sup>

The Legislature appropriates budget authority in the Education and General Student and Other Fees Trust Fund to authorize universities to expend the revenues collected from tuition and fees. Universities have the authority to expend funds up to an amount not exceeding the budget authority appropriated annually in the General Appropriations Act (GAA). If tuition and fee revenue collections exceed the appropriated level of budget authority in the trust fund, the BOG may request additional authority on

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<sup>23</sup> Association of American Universities, *About AAU*, available at <http://www.aau.edu/about/default.aspx?id=58> (last visited Feb. 17, 2012).

<sup>24</sup> Tuition is defined as the "basic fee charged to a student for instruction provided by a public postsecondary educational institution in the state. A charge for any other purpose shall not be included within this fee." Section 1009.01(1), F.S.

<sup>25</sup> Effective July 1, 2011, the resident undergraduate tuition for lower-level and upper-level coursework shall be \$103.32 per credit hour. Section 1009.24(4)(a), F.S.

<sup>26</sup> Out-of-state fee is defined as the "additional fee for instruction provided by a public postsecondary educational institution in this state, which fee is charged to a student who does not qualify for the in-state tuition rate pursuant to s. 1009.21. A charge for any other purpose shall not be included in this fee." Section 1009.01(2), F.S.

<sup>27</sup> Section 1009.24(4)(c), F.S.

<sup>28</sup> Tuition differential is defined as the "supplemental fee charged to a student by a public university in this state." The amount of this fee for undergraduate courses is limited to the extent that the "aggregate sum of undergraduate tuition and fees, including the tuition differential fee at a state university system institution may not exceed the national average of undergraduate tuition and fees at 4-year degree-granting public postsecondary educational institutions." Sections 1009.01(3) and 1009.24(16)(b)4., F.S.

<sup>29</sup> Section 1009.24(4), (7), (8)-(13), and (15)-(17), F.S.; Florida Board of Governors Regulations 7.001(6) and (14) (Nov. 4, 2010) and 7.003(4), (5), (16), (17), and (23) (Nov. 4, 2010).

<sup>30</sup> Section 1009.24 (14), F.S.

<sup>31</sup> Section 1009.24, F.S.

<sup>32</sup> State University System of Florida, Board of Governors, *New National Rankings Released for States' Tuition and Fees*, Press Release (Oct. 26, 2011), available at <http://flbog.edu/pressroom/news.php?id=418> (last visited Feb. 23, 2012).

behalf of the university through a budget amendment that must be approved by the Legislative Budget Commission (LBC) if the request exceeds \$1,000,000.<sup>33</sup>

### Effect of Proposed Changes

Beginning with the 2012-2013 academic year, the bill authorizes a state research university that substantially meets the academic and research excellence standards established in the bill to increase student tuition and fees to differentiated and market rates in addition to the tuition differential fee once each academic year beginning with the Fall term, notwithstanding the percentages and dollar amount limitations under current law as approved by that SUS institution's board of trustees and the BOG<sup>34</sup>.

For the 2012-2013 fiscal year, an institution qualified for additional tuition and fee authority provided by the bill is required to submit a tuition and fee proposal to the BOG for approval. Upon approval by the BOG, an amendment may be proposed on behalf of the institution to increase the budget authority from the Education and General Student and Other Fees Trust Fund to accommodate the expenditure of additional revenues generated by the approved increased tuition and fee rate proposal. Such budget amendment would not be required to be adopted by the LBC, but would be added to the institutions' budget authority for the 2012-2013 fiscal year after a 14 day consultation period if there is no objection by the chair and vice-chair of the LBC or the Speaker of the House and President of the Senate. Beginning in the 2013-2014 fiscal year, and thereafter, an institution qualified for additional tuition and fee authority provided by the bill is required to submit a tuition and fee proposal by May 31 of each year to provide adequate time for the BOG to include the necessary budget authority from the trust fund in their annual Legislative Budget Request (LBR).

The authority to establish student tuition and fees at differentiated and market rates is contingent upon the BOG verifying that the SUS institution substantially meets at least 11 of the following 14 academic and research excellence standards:

- 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 fall semester incoming freshman, as reported annually.
- A top 50 ranking on at least two well-known and highly respected national public university rankings, reflecting national preeminence, using most recent rankings.
- 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).
- A 6-year graduation rate of 70 percent or higher for full-time first-time-in-college students, as reported annually to the IPEDS.
- 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).
- Total annual research expenditures, including federal research expenditures, of \$200 million or more, as reported annually by the TARU.
- Total annual research expenditures in diversified nonmedical sciences of \$100 million or more, as reported annually by the National Science Foundation (NSF).
- A top 100 university national ranking for research expenditures in five or more science, technology, engineering, or mathematics fields of study, as reported annually by the NSF.
- One hundred or more total patents awarded by the United States Patent and Trademark Office for the most recent 3-year period.
- Two hundred fifty or more doctoral degrees awarded annually, as reported by TARU.
- Two hundred or more post-doctoral appointed annually, as reported by TARU.
- A national ranking in quality higher than predicted based available financial resources rankings, as reported annually by U.S. News and World Report.
- An endowment of \$400 million or more, as reported annually by the TARU.
- Annual giving of \$50 million or more, as reported annually by the TARU.

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<sup>33</sup> Section 216.181(11), F.S.

<sup>34</sup> Section 1009.24, F.S.

To ensure uniformity and objectivity, the bill requires that data for the academic and research excellence standards be obtained from the following nationally recognized sources:

### Integrated Postsecondary Education Data System

IPEDS is a “system of interrelated surveys conducted annually by the U.S. Department of Education’s National Center for Education Statistics (NCES). IPEDS gathers information from every college, university, and technical and vocational institution that participates in the federal student financial aid programs. The Higher Education Act of 1965<sup>35</sup>, as amended, requires institutions that participate in federal student aid programs [to] report data on enrollments, program completions, graduation rates, faculty and staff, finances, institutional prices, and student financial aid. These data are made available to students and parents through the *College Navigator* college search Web site and to researchers and others through the *IPEDS Data Center*.”<sup>36</sup>

IPEDS data are categorized in seven areas: institutional characteristics, institutional prices, enrollment, student financial aid, degrees and certificates conferred, student persistence and success, and institutional human and fiscal resources.<sup>37</sup> These data are commonly used as the foundation of state and national reports.

### The Center for Measuring University Performance

The Center for Measuring University Performance (Center) is a research enterprise focused on comparative performance of major research universities.<sup>38</sup> The Center publishes an annual report, *The Top American Research Universities* (TARU), which provides analysis and data to assess the performance of research universities based on nine research-specific measures.<sup>39</sup> The TARU report includes institutions with a certain level of federal research expenditures.<sup>40</sup> These data are the same or similar to data used by nationally recognized ranking systems.

### The National Science Foundation (NSF)

NSF is an independent federal agency created by Congress in 1950 “to promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense; and for other purposes.”<sup>41</sup> NSF ranks institutions based on research and development expenditures in science and engineering fields.<sup>42</sup>

### U.S. News and World Report

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<sup>35</sup> The Higher Education Opportunity Act (HEOA) was enacted on August 14, 2008, and reauthorizes the Higher Education Act (HEA) of 1965, as amended. U.S. Department of Education, *Higher Education Opportunity Act-2008*, available at <http://www2.ed.gov/policy/highered/leg/hea08/index.html#ipeds> (last visited Feb. 15, 2012).

<sup>36</sup> Integrated Postsecondary Education Data System, About IPEDS, available at <http://nces.ed.gov/ipeds/about/> (last visited Feb. 15, 2012); see also Pub. L. No.110-315, 122 Stat. 3102 (Aug. 14, 2008).

<sup>37</sup> Integrated Postsecondary Education Data System, About IPEDS, available at <http://nces.ed.gov/ipeds/about/> (last visited Feb. 20, 2012).

<sup>38</sup> The Center for Measuring University Performance, *The Center for Measuring University Performance*, available at <http://mup.asu.edu/index.html> (last visited Feb. 16, 2012).

<sup>39</sup> The Top American Research Universities, *2010 Annual Report*, available at <http://mup.asu.edu/research.html>, (last visited Feb. 15, 2012).

<sup>40</sup> The 2010 report used \$40 million as the cutoff for federal research expenditures in fiscal year 2008. The same dollar cutoff was used for fiscal year 2007 federal research expenditures. The Top American Research Universities, *2010 Annual Report*, available at <http://mup.asu.edu/research.html>, (last visited Feb. 15, 2012).

<sup>41</sup> 42 U.S.C.A. s. 1861; see also National Science Foundation, *About the National Science Foundation*, available at <http://www.nsf.gov/about/> (last visited Feb. 15, 2012).

<sup>42</sup> National Science Foundation, *Academic Research and Development Expenditures: Fiscal Year 2009*, available at [http://www.nsf.gov/statistics/nsf11313/content.cfm?pub\\_id=4065&id=2](http://www.nsf.gov/statistics/nsf11313/content.cfm?pub_id=4065&id=2) (last visited Feb. 15, 2012).



The U.S. News and World Report publishes a report ranking colleges and universities on sixteen key measures of quality. The measures fall into seven broad categories: peer assessment; graduation and retention rates; faculty resources (e.g., class size); student selectivity (e.g., average admissions test scores of incoming students); financial resources<sup>43</sup>; alumni giving; and only for national universities and national liberal arts colleges, graduation rate performance and high school counselor undergraduate academic reputation ratings.<sup>44</sup> One particular ranking identified in the bill compares each university's national ranking on available financial resources to each university's national quality ranking.

## Florida Prepaid College Program

### Present Situation

The Stanley G. Tate Florida Prepaid College Program (Prepaid Program) is offered to assist families in planning and saving for a college education.<sup>45</sup> The program is administered by the Florida Prepaid College Board.<sup>46</sup>

The Prepaid Program is a qualified tuition plan, which is a tax advantaged college plan authorized by section 529 of the Internal Revenue Code. Contributions to these plans grow tax-deferred, and when the qualified beneficiary<sup>47</sup> is ready for college, withdrawals for qualified higher education expenses are exempt from federal income and State of Florida taxes.<sup>48</sup>

The Prepaid Program provides for the purchase of advance payment contracts<sup>49</sup> for postsecondary education. These advance payment contracts lock in many of the costs associated with attendance at institutions within the FCS and SUS at the time such advance payment contract is purchased. For a qualified beneficiary to attend a FCS or SUS institution, the locked-in costs include registration fees, tuition differential fee<sup>50</sup>, and local fees for 120 semester credit hours at a FCS or SUS institution. Additionally, a separate contract may also be purchased for university dormitory costs.<sup>51</sup>

The benefits of a Prepaid advance payment contract activate automatically in the qualified beneficiary's projected year of high school graduation.<sup>52</sup>

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<sup>43</sup> Financial resources are measured by the average spending per full-time-equivalent student on instruction, research, public service, academic support, student services, and institutional support for specified years. U.S. News and World Report, *Methodology: Undergraduate Ranking Criteria and Weights*, available at <http://www.usnews.com/education/best-colleges/articles/2011/09/12/methodology-undergraduate-ranking-criteria-and-weights-2012> (last visited Feb. 15, 2012).

<sup>44</sup> U.S. News and World Report, *Methodology: Undergraduate Ranking Criteria and Weights*, available at <http://www.usnews.com/education/best-colleges/articles/2011/09/12/methodology-undergraduate-ranking-criteria-and-weights-2012> (last visited Feb. 15, 2012).

<sup>45</sup> Section 1009.98(1), F.S.; Florida Prepaid College Plans, *Compare Plans*, <http://www.myfloridaprepaid.com/compare-plans/> (last visited Feb. 21, 2012).

<sup>46</sup> Section 1009.971(1), F.S.

<sup>47</sup> A qualified beneficiary is "a resident of [Florida] at the time a purchaser enters into an advance payment contract on behalf of the resident; a nonresident who is the child of a noncustodial parent who is a resident of [Florida] at the time that such parent enters into an advance payment contract on behalf of the child;" or "a graduate of an accredited high school in [Florida] who is a resident of [Florida] at the time he or she is designated to receive benefits of the advance payment contract." Section 1009.97(3)(f), F.S.

<sup>48</sup> 26 U.S.C. s. 529(b)(1); Florida Prepaid College Plans, *Comparing 529 Plans*, available at <http://www.myfloridaprepaid.com/newsroom/media-kit.aspx>; see also Internal Revenue Service, *Special IRS Web Section Highlights Back-to-School Tax Breaks; Popular 529 Plans Expanded, New \$2,500 College Credit Available*, available at <http://www.irs.gov/newsroom/article/0,,id=213012,00.html> (last visited Feb. 21, 2012).

<sup>49</sup> Advance payment contract is defined as a contract entered into by the Florida Prepaid College Board and a purchaser. A purchaser is a person who makes or is obligated to make advance registration or dormitory residence payments in accordance with an advance payment contract. Section 1009.97 (3)(a), (b), and (e), F.S.

<sup>50</sup> Section 1009.24(16), F.S.; see also Florida Board of Governors Regulation 7.001(6) and (14).

<sup>51</sup> Rule 19B-5.001, F.A.C.

<sup>52</sup> A Prepaid Contract may be utilized up to three years prior to the projected college enrollment date if the child graduates from high school early. Additionally, if a beneficiary does not start college immediately after his or her high school graduation, the beneficiary's account stays current for 10 years from the date of graduation and may be extended by written request to the Board. Rule 19B-5.003(4) and (5), F.A.C.

### Effect of Proposed Changes

The bill exempts a qualified beneficiary from the payment of any increase in tuition and fees if an advance payment contract for such qualified beneficiary predates the first year a state research university receives tuition and fee authority under the bill, and if the advance payment contract for such qualified beneficiary remains in effect.

If a qualified beneficiary enters into an advance payment contract in the first year a state research university receives tuition and fee authority under the bill, or in the years thereafter, they are responsible for the difference between the highest rate of tuition and fees covered by the advance payment contract and the tuition and fees assessed by the university that they attend.

Currently under the university plan the Florida Prepaid College Board pays the SUS institutions based on the number of credits hours invoiced for a qualified beneficiary multiplied by the applicable tuition, local fee, and tuition differential fee rate covered by the qualified beneficiary's advance payment contract.<sup>53</sup> Under current law, a SUS institution is authorized to increase tuition and fees by no more than 15 percent of the total tuition and fees each year relative to the tuition and fees charged by that institution in the preceding fiscal year.<sup>54</sup> As a result, due to prepaid contract beneficiaries being exempt from additional tuition and fees provided under the bill, any increase in tuition or fees by a state research university that meets the requirements of the bill would need to be absorbed by that university.

### **Acceleration Mechanisms**

#### Present Situation

Articulated acceleration mechanisms are available to secondary and postsecondary students attending public educational institutions and serve to shorten the time necessary for a student to complete the requirements for a high school diploma and a postsecondary degree. Such mechanisms allow Florida schools to increase the depth of study in a particular subject and expand available curricular options.<sup>55</sup> Articulated acceleration mechanisms include dual enrollment, early admission, Advanced Placement (AP), the International Baccalaureate (IB) Program, the Advanced International Certificate of Education (AICE) Program, and credit by examination. Credit earned through the Florida Virtual School also provides additional opportunities for early graduation and acceleration.<sup>56</sup>

#### Effect of Proposed Changes

The bill authorizes a state research university eligible under the bill to require incoming first-time-in-college students to take 9-12 credit hours of coursework specifically determined by the university at the university. The specified coursework may not be earned through transfer credit or articulated acceleration mechanisms such as Advanced Placement (AP), the International Baccalaureate (IB) Program, the Advanced International Certificate of Education (AICE) Program, credit by examination, Dual Enrollment, and College Level Examination Program (CLEP).

### **BOG Responsibilities**

The bill encourages the BOG to identify and grant additional authority and flexibilities to facilitate achievement of institutional and system goals. In addition, the BOG is encouraged to identify state university programs of academic and research excellence and make recommendations to the Legislature for flexibilities designed to elevate such programs on national rankings.

Finally, the bill requires the BOG to oversee the implementation of this section.

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<sup>53</sup> E-mail, Florida Prepaid College Board (Feb. 22, 2012).

<sup>54</sup> Section 1009.24(16)(b)3., F.S.

<sup>55</sup> Section 1007.27(1), F.S.

<sup>56</sup> *Id.*; s. 1007.22(2), F.S.

**B. SECTION DIRECTORY:**

**Section 1.** Creates s. 1001.765, relating to state universities of academic and research excellence and national preeminence; to establish the State Universities of Academic and Research Excellence and National Preeminence Act, establish a collaborative partnership between the BOG and the Legislature, establish authorities for tuition and fee flexibilities, establish academic and research excellence standards, outline requirements regarding bonding of fees, establish procedures for obtaining budget authority, establish requirements related to specified courses; and establish BOG responsibilities.

**Section 2.** Provides that the bill shall take effect upon becoming a law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The bill authorizes a state research university that substantially meets the requirements of the bill to submit to the BOG, an increased tuition and fee rate proposal by May 31 detailing the requested budget authority needed to implement the proposal.

For the 2012-2013 fiscal year, each state university meeting the requirements for preeminence as of February 1, 2012, shall submit to the BOG for approval the university's proposal for increasing tuition and fee rates for the 2012-2013 academic year no later than May 31, 2012. Upon approval of the university's proposal by the BOG, the BOG shall request an amendment to 2012-13 fiscal year appropriations to increase budget authority in the Education/General Student and Other Fee Trust Fund to accommodate the expenditure of additional revenues generated by the approved increased tuition and fee rate proposal.

Subsequently, each year by May 31, a state university meeting the requirements for preeminence shall submit to the BOG the university's tuition and fee rate proposal. Upon approval of the university's proposal the BOG shall include in its Legislative Budget Request the increase in budget authority necessary to accommodate tuition and fee revenues generated by the university's approved rates in the Education/General Student and Other Fees Trust Fund.

The bill requires a state research university that substantially meets the requirements of the bill to maintain fees that are used to pledge or secure debt at an appropriate fee level to meet all debt service obligations of that university.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

None. This bill does not appear to affect county or municipal governments.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 21, 2012, the Education Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarified 2 of the 14 academic and research excellence standards established in the bill. The amendment:

- Removed the limitations on the criteria that a top 100 university national ranking for research expenditures in five or more science, technology, engineering, or mathematics fields of study be based on public universities. By so doing, the amendment expanded such ranking to include both public and private universities.

Replaced the source for data on total patents awarded from IPEDS to the United States Patent and Trademark Office.