

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 Committee on Education

BILL: SB 1402

INTRODUCER: Senator Diaz

SUBJECT: Higher Education

DATE: January 31, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bouck	Sikes	ED	Pre-meeting
2.			AED	
3.			AP	

I. Summary:

SB 1402 modifies postsecondary education policies, primarily those policies related to the state university performance and recognition. Specifically, the bill:

- Modifies the preeminent state research universities program by changing the sources of data for associated metrics and removing the emerging preeminent state research university designation.
- Replaces the State University Programs of Excellence program with the State Universities of Distinction program, and establishes requirements.
- Requires the State University System (SUS) Performance-Based Incentive metrics regarding graduation rates to include specific metrics for Florida College System (FCS) transfer students and Pell Grant recipients.
- Authorizes FCS institution and state university policies relating to the provision of digital materials for students may include either an opt-in or opt-out provision.
- Requires the SUS legislative budget request to include specified data about the number of university administrators and faculty, and requires the Board of Governors of the SUS to define administrator and faculty classifications.
- Authorizes that a member of the Phosphate Research and Activities Board may serve more than 180 days after the expiration of his or her term.

The bill has no impact on state revenues or expenditures.

The bill takes effect on July 1, 2020, unless otherwise specified.

II. Present Situation:

The State University System (SUS) is comprised of 12 public universities.¹ The Board of Governors (BOG) of the SUS is required to operate, regulate, control, and be fully responsible for the management of the whole university system.²

Preeminent State Research Universities Program

The preeminent state research universities program is a collaborative partnership between the BOG and the Legislature to raise the academic and research preeminence of the highest performing state research universities in Florida.³ Academic and research excellence standards are established in law,⁴ which include:

- 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).⁵
- A 4-year graduation rate of 60 percent or higher for full-time, first-time-in-college students, as reported annually to the IPEDS. However, for the 2018 determination of a state university's preeminence designation and the related distribution of the 2018-2019 fiscal year appropriation associated with preeminence and emerging preeminence, a university is considered to have satisfied this graduation rate measure by attaining a 6-year graduation rate of 70 percent or higher by October 1, 2017, for full-time, first-time-in-college students, as reported to the IPEDS and confirmed by the BOG.
- Six or more faculty members at the state university who are members of a national academy, as reported by the Center for Measuring University Performance in the Top American Research Universities (TARU)⁶ annual report or the official membership directories maintained by each national academy.
- Total annual research expenditures, including federal research expenditures, of \$200 million or more, as reported annually by the National Science Foundation (NSF).
- Total annual research expenditures in diversified nonmedical sciences of \$150 million or more, based on data reported annually by the 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.
- Four hundred or more doctoral degrees awarded annually, including professional doctoral degrees awarded in medical and health care disciplines, as reported in the BOG Annual Accountability Report.
- Two hundred or more postdoctoral appointees annually, as reported in the TARU annual report.

¹ Art. IX, s. 7(b), Fla. Const. The state universities are defined in s. 1000.21(6), F.S.

² Art. IX, s. 7(d), Fla. Const.

³ Section 1001.7065(1), F.S.

⁴ Section 1001.7065(2), F.S.

⁵ IPEDS is the Integrated Postsecondary Education Data System. It 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. National Center for Education Statistics, *About IPEDS*, <https://nces.ed.gov/ipeds/about-ipeds> (last visited Jan. 25, 2020).

⁶ The Top American Research Universities (TARU) report offers analysis and data intended to help understand American research university performance. A key feature of the report is classification of universities into groups based upon nine specified quality indicators. The Center for Measuring University Performance, *Top American Research Universities*, <https://mup.umass.edu/Top-Universities> (last visited Jan. 25, 2020).

- An endowment of \$500 million or more, as reported in the BOG Annual Accountability Report.

A state university that meets 11 of the 12 academic and research excellent standards specified in law⁷ based on data from specified sources is designated a “preeminent state research university.”⁸ Currently, the University of Florida, Florida State University, and the University of South Florida (Tampa) are designated as preeminent state research universities.⁹

A state university that meets at least 6 of the 12 academic and research excellence standards is identified as an “emerging preeminent state research university.”¹⁰ Currently, Florida International University and the University of Central Florida are designated as emerging preeminent state research universities.¹¹

State University System Programs of Excellence

In 2018,¹² the BOG was required to establish standards and measures whereby individual degree programs that objectively reflect national excellence in state universities could be identified, and make recommendations to the Legislature by September 1, 2018, regarding the enhancement and promotion of such programs.¹³

The goal of this initiative was to achieve and improve upon world-class, nationally recognized university programs of excellence within the SUS. The BOG approved a framework to identify programs of excellence that:¹⁴

- Provide opportunities for all 12 SUS institutions to participate.
- Allow for universities to elevate both research and academic programs that are nationally recognized.
- Allow for programs across disciplines and degree levels to be recognized.
- Encourage institution collaboration.
- Address key areas important to Florida.
- Provide for flexibility in implementation.

⁷ Section 1001.7065(2), F.S. The standards include: incoming freshman academic characteristics (average weighted GPA and average SAT score); institutional ranking nationally; freshman retention rate; 6-year graduation rate; national academy membership of institution faculty; research expenditures and patents awarded annually; doctoral degrees awarded annually; postdoctoral appointees annually; and institutional endowment.

⁸ Section 1001.7065(3)(a), F.S.

⁹ Board of Governors, *2019 System Accountability Plan* (Oct. 30, 2019), available at https://www.flbog.edu/wp-content/uploads/2019_System_Accountability_Plan_FINAL_2019-10-30.pdf, at 10.

¹⁰ Section 1001.7065(3)(b), F.S.

¹¹ Board of Governors, *2019 System Accountability Plan* (Oct. 30, 2019), available at https://www.flbog.edu/wp-content/uploads/2019_System_Accountability_Plan_FINAL_2019-10-30.pdf, at 10.

¹² Section 3, ch. 2018-4, L.O.F.

¹³ Section 1001.7065(7), F.S.

¹⁴ Board of Governors, *Programs of Excellence Report* (Sept. 2018), available at https://www.flbog.edu/wp-content/uploads/0273_1154_8738_10.3.2-AREC-03b-Programs-of-Excellence-Report_CE.pdf.

The BOG requested \$30 million for this initiative in its 2019-2020 legislative budget request.¹⁵ This request was not funded by the 2019 Legislature.

State University System Performance-Based Incentive

The SUS Performance-Based Incentive is awarded to state universities using performance-based metrics that are identified in law¹⁶ and adopted by the BOG.¹⁷ The BOG model contains ten performance metrics that evaluate each state university on the following:¹⁸

- Percent of bachelor's graduates employed (earning \$25,000+) or continuing their education.
- Median wages of bachelor's graduates employed full-time.
- Average cost to the student (net tuition per 120 credit hours).
- Four-year graduation rate (Full-time, first-time-in-college students).
- Academic progress rate (2nd year retention with GPA above 2.0).
- Bachelor's degrees awarded in areas of strategic emphasis.
- University access rate (percent of undergraduate students with a Pell-grant).
- Graduate degrees awarded in areas of strategic emphasis – all institutions but New College of Florida (NCF).
- Freshman in the top 10 percent of graduating high school class – for NCF only.
- BOG choice - percent of bachelor's degrees without excess hours.
- University board of trustees (BOT) choice.¹⁹

The BOG must adopt benchmarks to evaluate each state university's performance on the metrics to measure institutional excellence or need for improvement and minimum requirements for eligibility to receive performance funding.²⁰

Each fiscal year, the amount of funds available for allocation to the state universities based on the performance-based funding model consists of the state's investment in performance funding plus institutional investments, which include funds deducted from the base funding of each state university in an amount provided in the General Appropriations Act (GAA).²¹

¹⁵ Board of Governors, *State University System of Florida, Education and General, 2019-2020 Executive Summary, Universities and Special Units* (Sept. 13, 2018), available at https://www.flbog.edu/wp-content/uploads/0273_1152_8727_8.8.1.2-BUD-10a-2019-20-LBR_SUS-Executive-Summary-updated-8-31.pdf.

¹⁶ Section 1001.92(1), F.S.

¹⁷ *Id.* Florida law specifies metrics, and authorizes the BOG to approve other metrics in a formally noticed meeting. *Id.*

¹⁸ Board of Governors, *Performance Funding Model Overview* (Nov. 2019), available at <https://www.flbog.edu/wp-content/uploads/Overview-Doc-Performance-Funding-10-Metric-Model-Condensed-Version-Nov-2019.pdf>.

¹⁹ For the 2019 performance calculation, the BOT choice metrics include research and development funded from external sources; bachelor's degrees awarded to minority students; national ranking; participation in research course; bachelor's degrees awarded annually; ranking of annual number of licenses/options executed; participation in online courses; postdoctoral appointees; and adult undergraduates enrolled. Board of Governors, *2019 Performance-Based Funding Model, Final Metric Score Sheet*, available at <https://www.flbog.edu/wp-content/uploads/2019-20-PBF-Final-Metric-Score-Sheet.pdf>, at 4-5.

²⁰ Section 1001.92(1), F.S.

²¹ Section 1001.92(2), F.S.

Textbook and Instructional Materials Affordability

Present Situation

In 2008, the federal government²² and Florida Legislature²³ addressed measures to reduce costs and make textbooks more affordable for needy students. Since 2016,²⁴ each FCS institution and state university BOT has been authorized to adopt policies in consultation with textbook and instructional materials providers, including bookstores, which allow for the use of innovative pricing techniques and payment options for textbooks and instructional materials. Such policies are authorized to include bulk pricing arrangements that enable students to purchase course materials or texts that are delivered digitally; delivered through other technologies that are, or the licenses of which are, required for use within a course; or delivered in a print format.²⁵

FCS institution and state university BOT innovative pricing techniques and payment options policies may only be approved if there is documented evidence that the options reduce the cost of textbooks and instructional materials for students taking a course and if the policy includes an opt-in provision for students.²⁶ An institution may not automatically enroll students in services that provide textbooks or other materials electronically, students must opt in to such programs.

State University Administration and Faculty

A 2010 study of higher education costs at 198 leading public and private colleges and universities found a 39 percent increase between 1993 and 2007 in instructional spending per student, but a 61 percent increase in administrative spending per student.²⁷ Data from the National Center for Education Statistics show that doctoral research universities spend about 17 cents on administration for every dollar spent on instruction.²⁸

The Office of Program Policy Analysis and Government Accountability (OPPAGA) reports that from 2010 to 2016, the number of state university staff with administrative duties increased at a

²² The Higher Education Opportunity Act (Public Law 110-315).

²³ Section 1004.0085, F.S.

²⁴ Section 3, ch. 2016-236, L.O.F.

²⁵ Section 1004.085(4), F.S. Such policies are often called “inclusive access.” Where previously students might have been assigned textbooks individually, now many institutions are signing up whole classes of students to automatically receive digital course materials at a discounted rate, rather than purchasing individually. Every student has the same materials on the first day of class, with the charge included as part of their tuition. Many institutions automatically sign up students for such services, requiring students to opt-out if they do not wish to receive such digital materials or services. Inside Higher Education, *‘Inclusive Access’ Takes Off*, <https://www.insidehighered.com/news/2017/11/07/inclusive-access-takes-model-college-textbook-sales> (last visited Jan. 2, 2020). For federal financial assistance, an institution may include the cost of textbooks and supplies as part of tuition and fees if the institution has an arrangement with a publisher or other entity that makes books or supplies cheaper, provides a way for students to get timely access to materials, and includes a student opt out provision. Section 668.164(c) (2)(i), C.F.R.

²⁶ Section 1004.085(4), F.S.

²⁷ American Council of Trustees and Alumni, Institute for Effective Governance, *How Much is Too Much? Controlling Administrative Costs through Effective Oversight* (July 2017), available at <https://www.goacta.org/images/download/controlling-administrative-costs.pdf>, at 2. The report attributed part of the growth on rising compliance costs; the number of federal requirements placed on colleges and universities grew by 56 percent between 1997 and 2012. *Id.*

²⁸ *Id.* at 7. At similar private universities the figure was about 25 cents spent on administration for each dollar spent for instruction.

faster rate than that of faculty.²⁹ Most of growth was due to the increase in non-faculty administrators, which includes coordinators, directors, managers, and associate and assistant vice-presidents.³⁰ During that time the percentage of staff with administrative duties ranged from 29 percent to 34 percent of the total university staff.³¹

The BOG defines in regulation³² the position of university president, university administrative employees, and university teaching faculty or medical school faculty for the purpose of regulating remuneration for such employees.

Phosphate Research and Activities Board

The Florida Industrial and Phosphate Research Institute is housed within Florida Polytechnic University (FPU)³³ and the Phosphate Research and Activities Board is tasked with monitoring the expenditure of funds appropriated to FPU from the Phosphate Research Trust Fund.³⁴ The board consists of five members.³⁵ The Governor is required to appoint two persons representing the phosphate mining or processing industry and one member representing a major environmental conservation group in the state.³⁶ The Secretary of Environmental Protection or his or her designee and the president of FPU are required to serve as board members.³⁷

Members of the board appointed by the Governor are appointed to 3-year terms.³⁸ A board member may continue to serve until a successor is appointed, but not more than 180 days after the expiration of his or her term.³⁹ A board member is eligible for reappointment to subsequent terms.⁴⁰

III. Effect of Proposed Changes:

The bill modifies postsecondary education policies, primarily those policies related to the state university performance and recognition. Specifically, the bill:

- Modifies the preeminent state research universities program by changing the sources of data for associated metrics and removing the emerging preeminent state research university designation.

²⁹ Office of Program Policy and Government Accountability, *OPPAGA Research on State University System Administrative Positions and Salaries*, Presentation to House Higher Education Appropriations Subcommittee (Mar. 14, 2017). During that time, the increase in administrators (which includes executive positions, faculty with administrative duties, and other administrators) was 12 percent, and the increase in faculty with no administrative duties was 6 percent. *Id.*

³⁰ *Id.*

³¹ *Id.* The percentage of administrative staff reached a high of 34 percent of total university staff in 2014, but then decreased to 30 percent in 2016. Between 2010 and 2016, the percentage of administrative staff relative to other types of positions has remained about the same (29 percent compared to 30 percent). *Id.*

³² Board of Governors Regulation 9.006.

³³ Section 1004.346(1), F.S.

³⁴ Section 1004.346(2), F.S.

³⁵ Section 1004.346(2)(b), F.S.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Section 1004.346(2)(c), F.S.

³⁹ *Id.*

⁴⁰ *Id.*

- Replaces the State University Programs of Excellence program with the State Universities of Distinction program, and establishes requirements.
- Requires the State University System (SUS) Performance-Based Incentive metrics regarding graduation rates to include specific metrics for Florida College System (FCS) transfer students and Pell Grant recipients.
- Authorizes FCS institution and state university policies relating to the provision of digital materials for students may include either an opt-in or opt-out provision.
- Requires the SUS legislative budget request (LBR) to include specified data about the number of university administrators and faculty, and requires the Board of Governors of the SUS to define administrator and faculty classifications.
- Authorizes that a member of the Phosphate Research and Activities Board may serve more than 180 days after the expiration of his or her term.

Preeminent State Research Universities Program

The bill amends s. 1001.7065, F.S., to change the data sources for specified metrics to the BOG Accountability Plan⁴¹ from the BOG Annual Accountability Report, the Integrated Postsecondary Education Data System (IPEDS), or the Top American Research Universities (TARU) report. Therefore, the bill requires that data reported annually in the BOG Accountability Plan, which is more timely than IPEDS or other sources, be used to determine whether an institution is designated as a preeminent state research university. The bill also repeals the emerging preeminent state research university designation and associated requirements.

The provisions relating to metrics for the designation of preeminent state research universities are effective upon becoming a law.

State University System Programs of Excellence

The bill modifies s. 1001.7065, F.S., to replace the SUS Programs of Excellence with a State Universities of Distinction program, which requires the BOG to establish standards and measures to identify state universities that focus on one core competency unique to the SUS that:

- Achieves excellence at the national or state level;
- Meets state workforce needs; and
- Fosters an innovation economy that focuses on areas such as health care, security, transportation, and science, technology, engineering, and mathematics (STEM), including supply chain management.

The bill requires the BOG to annually submit such programs to the Legislature by January 1 for funding.

⁴¹ Board of Governors Regulation 2.002 requires the BOG to institute a planning and performance monitoring system for state universities designed to inform strategic planning, budgeting, and other policy decisions for the State University System; the BOG must annually submit the university accountability plans and the system summary of the university plans to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The Board of Governors *2019 System Accountability Plan* is available at https://www.flbog.edu/wp-content/uploads/2019_System_Accountability_Plan_FINAL_2019-10-30.pdf.

This bill provision aligns with a recent BOG initiative targeting Universities of Distinction as a path towards excellence that will produce high-quality talent to diversify Florida's economy, stimulate innovation, and provide a return on investment to the state.⁴² In its 2020-2021 legislative budget request (LBR), the BOG has requested \$67,000,000 for the Universities of Distinction program.⁴³

The provisions relating to the State Universities of Distinction program are effective upon becoming a law.

State University System Performance-Based Incentive

The bill amends s. 1001.92, to modify the performance-based metrics that determine each university's performance rating and distribution of the annual appropriation by, beginning in the 2021-2022 fiscal year:

- Clarifying that the 4-year graduation rate is for first-time-in-college students, and adding to the metric a 2-year graduation rate for full-time 2+2 associate in arts degree transfer students from FCS institutions.⁴⁴
- Adding an additional metric relating to students who receive a Pell Grant, to require a metric for the 6-year graduation rate for students who are awarded a Pell Grant in their first year.

The bill authorizes the BOG to approve other metrics in a publicly noticed meeting, and specifies that benchmarks and data may not be adjusted after the BOG receives university performance data.

Such changes to the performance metrics may prompt state universities to increase their focus on encouraging FCS transfer students to complete their degree programs in two years. Universities may also increase their focus on encouraging Pell Grant students to complete their degree programs within six years.

Textbook and Instructional Materials Affordability

The bill modifies s. 1004.085, F.S., to require that each FCS institution and state university BOT that adopts innovative pricing techniques and payment options policies include either an opt-in or opt-out provision for students. Therefore, if an institution adopts such a policy, the institution may automatically assign all students in a course to receive digital materials or other pricing payment options unless the student opts out of the policy.

⁴² Board of Governors, *Universities of Distinction* (draft document), available at <https://www.flbog.edu/wp-content/uploads/University-of-Distinction.pdf>.

⁴³ Board of Governors, *Pillars of Excellence, 2020-2021 Proposed Allocation*, available at https://www.flbog.edu/wp-content/uploads/PBF_PRE_UofD_11-22-19.pdf.

⁴⁴ The changes to this metric do not distinguish between full-time or part-time students. Institutions that serve a large part-time population of students may find it difficult to be compared to those serving the traditional, full-time student. Additionally, institutions such as New College of Florida and Florida Polytechnic University may have a cohort size that may be currently too small to fully participate in this metric. Board of Governors, *2020 Legislative Bill Analysis* (Jan. 30, 2020).

State University Administration and Faculty

The BOG is required to prepare an LBR for the SUS for inclusion in the K-20 LBR.⁴⁵ The bill amends s. 1011.90, F.S., to require that the BOG LBR must also include 5-year trend information on the number of faculty and administrators at each state university and the proportion of full-time equivalent (FTE) membership is dedicated to instruction and research compared to administration. The bill specifies that the growth rate of administrators at any state university may not exceed the growth rate of faculty. The bill also provides, consistent with current BOG regulation, that the BOG must define faculty and administrator classifications, and must also report the definitions in the LBR. The requirement to define personnel classifications provides the authority for the BOG to establish in regulation pay schedules for the various personnel classifications.

Phosphate Research and Activities Board

The bill modifies s. 1004.346, F.S., to remove the limitation that a board member may not serve more than 180 days after the expiration of his or her term, which prevents vacancies on the board by allowing that member to serve on the board until a replacement is appointed or that member is reappointed.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁴⁵ Section 1001.706(4)(b), F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The modifications to the metrics in the State University System Performance-Based Incentive program may affect a state university's excellence and improvement scores, which may affect the distribution of performance funds to that university.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1001.7065, 1001.92, 1004.085, 1004.346, and 1011.90.

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

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

None.

B. Amendments:

None.