

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 Appropriations Subcommittee on Education

BILL: PCS/SB 72 (847972)

INTRODUCER: Appropriations Subcommittee on Education; and Senator Stargel

SUBJECT: Postsecondary Education

DATE: January 28, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bouck, Dew</u>	<u>Sikes</u>	<u>ED</u>	Favorable
2.	<u>Underhill</u>	<u>Elwell</u>	<u>AED</u>	Recommend: Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 72 modifies provisions relating to preeminent state research universities, the prioritization of capital outlay projects at Florida College System (FCS) institutions, the carry forward of operational funds at state universities and FCS institutions, state student financial aid, and textbook affordability at public postsecondary institutions. Specifically, the bill:

- Revises the data for academic and research excellence standards of preeminent research universities by using more timely performance data and requiring the standards to be reported annually in the BOG Accountability Plan.
- Removes funding associated with the emerging preeminent state research university designation and creates State Universities of Distinction.
- Modifies a criterion for new construction, remodeling, or renovation projects at FCS institutions that have not been previously state funded to be added to the Public Education Capital Outlay (PECO) priority list.
- Modifies reporting deadlines and spending plan provisions relating to the carry forward of operational funds at state universities and FCS institutions.
- Replaces the State University System Programs of Excellence with the State Universities of Distinction program, and establishes requirements.
- Aligns student eligibility, maximum awards, fund distribution, remittance deadlines, and reporting requirements between the four Florida Student Assistance Grant programs.
- Clarifies initial and renewal award requirements for the Benacquisto Scholarship Program.
- Provides that pricing and payment options relating to textbook affordability may include either an opt-in or opt-out provision for students.

- Removes the limitation that prohibits a Phosphate Research and Activities Board member from serving more than 180 days after the expiration of his or her term, until a successor is appointed.
- Directs the Board of Governors to define in regulation the university faculty and administrative personnel classifications.

The bill has no impact on state revenues or expenditures.

The bill takes effect on July 1, 2020.

II. Present Situation:

The present situation for each relevant portions of the bill is discussed under the Effect of Proposed Changes of this bill analysis.

III. Effect of Proposed Changes:

Public Education Capital Outlay

Present Situation

Florida's Public Education Capital Outlay (PECO) program provides funding for capital outlay projects for Florida's public education system, including universities, colleges, public schools and other state owned educational facilities that have no other source for funding for capital outlay. As specified by the Florida Constitution,¹ the PECO program is funded by gross receipts taxes on utilities, including electricity and natural gas, and communication services (cable, wireless, telephone landline, miscellaneous services, and direct to home satellite tax bases).

The Commissioner of Education (commissioner) must annually submit to the Governor and to the Legislature an integrated, comprehensive budget request for educational facilities construction and fixed capital outlay needs for school districts, Florida College System (FCS) institutions, and state universities, subject to provisions in law.² The commissioner must use estimates for PECO funds by the Revenue Estimating Conference³ in determining the budget request. In addition, the commissioner, in consultation with the appropriations committees of the Legislature, must provide annually an estimate of funds for FCS institutions and state universities in developing three-year priority lists required in law.⁴

FCS institutions and state university boards of trustees (BOT) request funds for projects based on the 3-year priority list, to be updated annually, which is submitted to the Legislature in the legislative budget request (LBR) at least 90 days prior to the legislative session.⁵ The State Board of Education (SBE) submits a 3-year priority list for FCS institutions, and the Board of Governors of the State University System (BOG) submits a 3-year priority list for state

¹ Art. XII, s. 9, Fla. Const.

² Section 1013.60(1), F.S., and applicable provisions of ch. 216.

³ The Revenue Estimating Conference develops official information with respect to anticipated state and local government revenues as the conference determines is needed for the state planning and budgeting system. Section 216.136(3), F.S.

⁴ Section 1013.60(1), F.S.

⁵ Section 1013.64(4), F.S.

universities. The lists reflect decisions by the SBE and BOG concerning program priorities that implement the statewide plan for program growth and quality improvement in education.⁶

In 2019,⁷ the process by which FCS projects are evaluated for inclusion on the priority list was modified. Projects considered for prioritization are required to be chosen from a preliminary selection group consisting of previously state-funded projects that have not been completed, and the top two priorities of each FCS institution. The SBE is required to develop a points-based prioritization method to rank projects for consideration that awards points for the degree to which a project meets specific criteria compared to other projects.⁸ The criteria specified in law⁹ may be weighted, but no weight may exceed the criterion regarding space needs due to increased instructional capacity.¹⁰

A new construction, remodeling, or renovation project that has not received an appropriation in a previous year may not be considered for inclusion on the required prioritized list, unless:

- A plan is provided to reserve funds in an escrow account, specific to the project, into which must be deposited each year an amount of funds equal to 0.5 percent of the total value of the building for future maintenance;
- There are sufficient excess funds from the allocation provided pursuant to the LBR within the 3-year planning period which are not needed to complete the projects for which state funds were previously appropriated which have not been completed;¹¹ and
- The project has been recommended based on results relating to an educational plant survey.¹²

Effect of Proposed Changes

The bill modifies s. 1001.03, F.S., to replace the existing sufficient excess PECO funds criterion for a specified new construction, remodeling, or renovation project to be added to the priority list. The bill changes the criterion to specify that an FCS project may only be included on the priority list if there is sufficient capacity within the cash and bonding estimate of funds by the Revenue Estimating Conference to accommodate the project within the three-year PECO funding cycle. This modification aligns the requirements for new FCS projects to be considered on the priority list with those for the State University System (SUS) projects.¹³

⁶ Section 1013.31, F.S.

⁷ Section 3, ch. 2019-103, L.O.F.

⁸ On Sept. 20, 2019, the SBE approved a prioritized list of PECO for 2020-2021 and the FCS PECO project priority methodology.

⁹ Section 1001.03(18)(a), F.S.

¹⁰ Section 1001.03(18)(b), F.S.

¹¹ The SBE must continually maintain a list of all public education capital outlay projects for which state funds were previously appropriated which have not been completed. The list must include an estimate of the amount of state funding needed for the completion of each project. Section 1001.03(18)(d), F.S.

¹² Section 1013.31, F.S. Educational plant surveys must be completed every five years, and reflect the capacity of existing facilities in school districts, FCS institutions, and state universities, as well as projections of facility space needs. *Id.*

¹³ Section 1001.706(12)(c), F.S.

End-of-Year Balance of Funds – State Universities and Florida College System Institutions

Present Situation

At the end of each fiscal year, state operational funds for state agencies and departments revert to the fund from which they were appropriated for reappropriation by the Legislature.¹⁴ However, state universities¹⁵ and FCS institutions¹⁶ are authorized to carry forward unexpended amounts in operating funds for subsequent fiscal years.

Each state university, and FCS institution with a final FTE of 15,000 or greater for the prior year, must maintain a minimum carry forward balance of at least 7 percent of its state operating budget. If such university or FCS institution fails to maintain a 7 percent balance in state operating funds, the university and FCS institution must submit a plan to the BOG and SBE, respectively, to attain the 7 percent balance of state operating funds within the next fiscal year.¹⁷ An FCS institution with a final FTE less than 15,000 for the prior must maintain a carry forward balance of at least 5 percent, or submit a similar plan to the SBE.¹⁸

A state university or FCS institution that retains a state operating fund carry forward balance in excess of the required minimum must submit a spending plan for its excess carry forward balance. The spending plan must be submitted to the state university or FCS institution BOT for approval by September 1, 2020, and each September 1 thereafter.¹⁹ The BOG must review, approve, and amend, if necessary, each university's carry forward spending plan by October 1, 2020, and each October 1 thereafter.²⁰ The SBE must review and publish each FCS institution's carry forward spending plan by October 1, 2020, and each October 1 thereafter.²¹

The carry forward spending plan for each state university, and FCS institution with a final FTE of 15,000 or greater for the prior year, must include the estimated cost per planned expenditure and a timeline for completion of the expenditure. The law specifies authorized expenditures, which include nonrecurring operating expenditures that support the university's or FCS institution's mission.²²

Effect of Proposed Changes

The bill modifies provisions in ss. 1011.45 and 1013.841, F.S., relating to the carry forward of operational funds by state universities and FCS institutions to align fund approval activities and provide greater flexibility in spending plan expenditures. Specifically, the bill:

- Modifies the submission and approval dates by an institution BOT, BOG, and SBE, to require that:

¹⁴ Section 216.301(1)(a), F.S.

¹⁵ Section 1011.45, F.S.

¹⁶ Section 1013.841(1), F.S.

¹⁷ Sections 1011.45(1) and 1013.841(3)(a), F.S.

¹⁸ Section 1013.841(2)(a), F.S.

¹⁹ Sections 1011.45(2) and 1013.841(2)(b), F.S.

²⁰ Section 1011.45(2), F.S.

²¹ Section 1013.841(2)(b), F.S.

²² Sections 1011.45(3) and 1013.841(4), F.S.

- The spending plan be submitted to the state university or FCS institution BOT for approval by September 30, 2020, and each September 30 thereafter.²³
- The BOG review, approve, and amend, if necessary, university spending plans, and the SBE review and publish FCS institution spending plans by November 15, 2020, and each November 15 thereafter.
- Removes the requirement that operating expenditures that support the mission of the state university or FCS institution mission be nonrecurring.
- Authorizes the spending plans of state universities and FCS institutions to include a commitment of funds to a contingency reserve to assist in addressing unforeseen circumstances that may arise, including natural disasters and other emergencies.²⁴

Preeminent State Research Universities Program

Present Situation

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.²⁵ A state university that meets 11 of the 12 academic and research excellence standards specified in law is designated a “preeminent state research university”.^{26 27} A state research university that meets at least six of the 12 standards is designated as an “emerging preeminent state research university.”²⁸ In identifying the performance of each state university against the standards, the BOG is required to use the state university data as published by the national sources specified in statute.

If an increase in the appropriation for preeminent state research universities is provided, each designated preeminent state research university must receive an equal amount of funding, and each designated emerging preeminent state research university must receive an amount of funding that is equal to one-quarter of the total increased amount awarded to each designated preeminent state research university.²⁹

Effect of Proposed Changes

The bill modifies s. 1001.7065, F.S., to require the academic and research excellence standards for preeminent state research universities be reported annually in the BOG Accountability Plan³⁰

²³ The deadline is consistent with current laws that require the chief financial officer of a state university or FCS institution to certify, annually by September 30, the unexpended amount of state funds remaining in the general fund of an institution as of June 30 of the previous fiscal year. Sections 1011.45(4) and 1011.84(3)(e), F.S.

²⁴ Current law authorizes state universities to spend the minimum carry forward balance of 7 percent for a demonstrated emergency, subject to state university BOT and BOG approval. Section 1011.45(5), F.S.

²⁵ Section 1001.7065(1), F.S.

²⁶ 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; four-year graduation rate; national academy membership of institution faculty; research expenditures (2 measures); research expenditure national ranking; patents awarded annually; doctoral degrees awarded annually; postdoctoral appointees annually; and institutional endowment.

²⁷ Section 1001.7065(3)(a), F.S.

²⁸ Section 1001.7065(3)(b), F.S.

²⁹ Section 1001.7065(5)(c), F.S.

³⁰ 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

and amends the standards to provide the BOG with the flexibility to access and utilize the most up to date data available.

The bill preserves the designation of emerging preeminent universities, removes the funding component for emerging preeminent universities, and provides that the funding for preeminent universities will be determined annually by the Legislature.

State University System Programs of Excellence

Present Situation

In 2018,³¹ 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.³²

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:³³

- 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.

The BOG requested \$30 million for this initiative in its 2019-2020 legislative budget request.³⁴ This request was not funded by the 2019 Legislature.

Effect of Proposed Changes

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

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.

³¹ Section 3, ch. 2018-4, L.O.F.

³² Section 1001.7065(7), F.S.

³³ 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.

³⁴ 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.

- 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 by January 1 for funding.

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.³⁵

Financial Aid and Tuition Assistance Programs

Present Situation

Various student financial aid and tuition assistance programs have been created to assist students in accessing and continuing higher education in Florida. Student financial assistance available in Florida³⁶ includes a variety of grant and scholarship programs outlined in law³⁷ or SBE rule³⁸ and loans through Federal Student Aid.

Florida Student Assistance Grant Program

The Florida Student Assistance Grant (FSAG) Program, created in 1972, is Florida's largest need-based grant program, consisting of FSAG Public, FSAG Public Postsecondary Career Education (FSAGCE), FSAG Private, and FSAG Postsecondary.³⁹ The FSAG Program provides state student assistance grants to students who meet general eligibility requirements⁴⁰ and stipulations specific to each program.

For each of the programs, except FSAGCE, the Department of Education is required to establish a maximum expected family (EFC) contribution that is used in determining eligibility to receive a grant award.⁴¹ For the 2019-2020 academic year, the maximum EFC for FSAG Public and FSAG Postsecondary matches the maximum EFC established for Pell: 5576.^{42 43}

³⁵ Board of Governors, *Universities of Distinction* (draft document), available at <https://www.flbog.edu/wp-content/uploads/University-of-Distinction.pdf>.

³⁶ See Florida Student Financial Aid, *Office of Student Financial Assistance*, <http://www.floridastudentfinancialaid.org/> (last visited Dec. 11, 2019).

³⁷ See ss. 1009.50-1009.894, F.S.

³⁸ See Rule 6A-20.001 - 20.111, F.A.C.

³⁹ Florida Department of Education Office of Student Financial Assistance, *Annual Report to the Commissioner 2018-19* (2019), at 11, available at <https://www.floridastudentfinancialaidsg.org/pdf/annualreportcurrent.pdf>.

⁴⁰ Section 1009.40, F.S.

⁴¹ Sections 1009.50(2)(c), 1009.51(2)(c), and 1009.52(2)(c), F.S.

⁴² Florida Department of Education Office of Student Financial Assistance, *Florida Student Assistance Grant (FSAG) Allocations*, available at <https://www.floridastudentfinancialaidsg.org/PDF/PSI/1920-09.pdf>.

⁴³ See Federal Student Aid, *Office of the U.S. Department of Education*, <https://ifap.ed.gov/dpccletters/GEN1901.html> (last visited Jan. 19, 2020).

The FSAG Program is administered by participating institutions in accordance with SBE rule.⁴⁴ A total of \$269,396,012 was appropriated for the FSAG Program for the 2019-2020 fiscal year.⁴⁵ The current maximum award amount of \$2,610 has not changed since 2013.⁴⁶

Similarities and differences in specified provisions across the FSAG programs are depicted in the table below.

	FSAG Public	FSAGCE	FSAG Private	FSAG Postsecondary
Student Eligibility ⁴⁷	Degree-seeking and enrolled in at least 6 hours at an FCS institution or state university.	Certificate-seeking and enrolled in a career center or FCS institution at least half-time. ⁴⁸	Full-time, degree-seeking enrollment at an eligible independent nonprofit college or university. ⁴⁹	Full-time, degree-seeking enrollment at an eligible private nursing school or an eligible independent college or university. ⁵⁰
Grant Award	Between \$200 and weighted average of cost of tuition and fees for 30 hours at state universities, up to 110 percent of the program, or as specified in the GAA. ⁵¹	Between \$200 and the student’s unmet need for the cost of education, which may not exceed the average annual cost of tuition and other registration fees, or as specified in the GAA. ⁵²	Between \$200 and the amount of demonstrated unmet need for tuition and fees, not to exceed an amount equal to the average tuition and other registration fees for 30 credit hours at state universities plus \$1,000 per academic year, or as specified in the GAA. ⁵³	Similar to FSAG Private.

⁴⁴ Sections 1009.50(6), 1009.505(5), 1009.51(6), and 1009.52(7), F.S. *See also* Rule 6A-20.031, F.A.C. Postsecondary educational institution administrative responsibilities for state student aid and tuition assistance programs are outlined in Rule 6A-20.002, F.A.C.

⁴⁵ Florida Department of Education Office of Student Financial Assistance, *Annual Report to the Commissioner 2018-19* (2019), at 5, available at <https://www.floridastudentfinancialaidsg.org/pdf/annualreportcurrent.pdf>. *See also* Specific Appropriation 75, ch. 2019-115, L.O.F.

⁴⁶ Florida Department of Education Office of Student Financial Assistance, *Annual Report to the Commissioner 2016-17* (2019), at 10, available at <https://www.floridastudentfinancialaidsg.org/pdf/annualreportcurrent.pdf>.

⁴⁷ A demonstrated unmet need of less than \$200 renders an applicant ineligible for a state student assistance grant. Sections 1009.50(2)(a), 1009.51(2)(a), and 1009.52(2)(a), F.S. *See also* Rule 6A-20.031, F.A.C.

⁴⁸ Section 1009.505(3)(a), F.S. “Half-time” means the equivalent in clock hours at a public postsecondary career certificate program of 6 semester credit hours at a FCS institution. Section 1009.505(2)(b), F.S.

⁴⁹ An eligible independent college or university is nonprofit, baccalaureate-degree-granting, accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, and located in and chartered as a domestic corporation by the state. Section 1009.51(2)(a), F.S.

⁵⁰ An eligible nursing diploma school must be approved by the Florida Board of Nursing, and an eligible independent college or university must be licensed by the Commission for Independent Education. Section 1009.52(2)(a), F.S. The Commission for Independent Education has statutory responsibilities in matters relating to nonpublic, postsecondary, educational institutions, including the licensure of independent schools, colleges, and universities. Florida Department of Education, *Commission For Independent Education*, <http://www.fldoe.org/policy/cie/> (last visited Dec. 16, 2019).

⁵¹ Section 1009.50(3), F.S. The amount is specified in the GAA. *Id.* *See s.* 1009.50(2)(a), F.S. The legal requirement is contained in s. 1009.40(3), F.S.

⁵² Section 1009.505(3)(a), F.S.

⁵³ No student may receive an award for more than the equivalent of 9 semesters or 14 quarters of full-time enrollment. Section 1009.51(2)(a), F.S.

Priority in Distribution of Funds	Priority given to students with the lowest total family resources. ⁵⁴	No provision.	Identical to FSAG Public.	Identical to FSAG Public.
Reporting Requirement	Report disbursed students to DOE. ⁵⁵	Similar to FSAG Public.	Similar to FSAG Public.	Similar to FSAG Public.
Audit	No provision.	No provision.	Biennial financial and program audit. ⁵⁶	Identical to FSAG Private.

In addition, the FSAG Public, FSAG Private, and FSAG Postsecondary programs provide for deposit of funds appropriated by the Legislature for grants through the FSAG program into the State Student Financial Assistance Trust Fund.⁵⁷ The FSAGCE program does not have this provision.

For the 2018-2019 fiscal year, amounts disbursed through the FSAG Program include:

- A total of \$234,334,619 for FSAG Public, disbursed to 156,301 students with an average award amount of \$1,499.55.⁵⁸
- A total of \$3,144,476 for FSAGCE, disbursed to 4,305 students with an average award amount of \$730.42.⁵⁹
- A total of \$24,500,519 for FSAG Private, disbursed to 16,338 students with an average award amount of \$1,499.60.⁶⁰
- A total of \$6,799,009 for FSAG Postsecondary, disbursed to 6,281 students with an average award amount of \$1,082.47.⁶¹

Benacquisto Scholarship Program

The Benacquisto Scholarship Program (scholarship)⁶² was created in 2014 to reward a Florida high school graduate who achieves recognition as a National Merit Scholar (NMS)⁶³ or National

⁵⁴ Section 1009.50(2)(c), F.S.

⁵⁵ Sections 1009.50(2)(d) and 1009.50(4)(d), F.S. All eligible students are required to be reported. Rule 6A-20.031(7), F.A.C.

⁵⁶ Section 1009.51(4)(e), F.S. The DOE retains the ability to suspend or revoke an institution’s eligibility to receive future moneys from the trust fund for the program or request a refund of any moneys overpaid to the institution.

⁵⁷ Sections 1009.50(5), 1009.51(5), and 1009.52(6), F.S.

⁵⁸ Florida Department of Education (DOE) Office of Financial Assistance, *End-of-Year-Report 2018-19* (Sept. 3, 2019), at 4, available at https://www.floridastudentfinancialaidsg.org/PDF/PSI/FSAGPU_2018_2019.pdf.

⁵⁹ Florida Department of Education (DOE) Office of Financial Assistance, *End-of-Year-Report 2018-19* (Sept. 3, 2019), at 5, available at https://www.floridastudentfinancialaidsg.org/PDF/PSI/FSAGCE_2018_2019.pdf.

⁶⁰ Florida Department of Education (DOE) Office of Financial Assistance, *End-of-Year-Report 2018-19* (Sept. 3, 2019), at 4, available at https://www.floridastudentfinancialaidsg.org/PDF/PSI/FSAGPR_2018_2019.pdf.

⁶¹ Florida Department of Education (DOE) Office of Financial Assistance, *End-of-Year-Report 2018-19* (Sept. 3, 2019), at 6, available at https://www.floridastudentfinancialaidsg.org/PDF/PSI/FSAGPO_2018_2019.pdf.

⁶² The scholarship was renamed in 2016 from the Florida National Merit Scholar Incentive Program to the Benacquisto Scholarship Program. Section 26, ch. 2016-237, L.O.F.

⁶³ Florida Department of Education Office of Student Financial Assistance, *Annual Report to the Commissioner 2018-19* (2019), at 17, available at <https://www.floridastudentfinancialaidsg.org/pdf/annualreportcurrent.pdf>. The National Merit Scholarship Corporation (NMSC) is a private, not-for-profit organization that operates without government assistance to recognize and honor academically talented students. National Merit Scholarship Corporation, Mission, <https://www.nationalmerit.org/s/1758/interior.aspx?sid=1758&gid=2&pgid=395> (last visited Dec. 11, 2019). NMSC organizes the National Merit Scholarship Program, which began in 1955 as an academic competition for recognition and scholarship. High school students enter the National Merit Program by taking the Preliminary SAT/National Merit

Achievement Scholar (NAS)⁶⁴ and enrolls in a baccalaureate degree program at an eligible Florida public or independent postsecondary educational institution.⁶⁵

In addition to achieving recognition as an NMS or NAS, in order to be eligible for an award under the scholarship, a student must:⁶⁶

- Be a state resident as determined by statute and SBE rules;
- Earn a standard Florida high school diploma or its equivalent pursuant to statute, unless:
 - The student completes a home education program pursuant to statute,⁶⁷ or
 - The student earns a high school diploma from a non-Florida school while living with a parent who is on military or public service assignment out of this state;
- Be accepted by and enroll in a Florida public or independent postsecondary educational institution that is regionally accredited; and
- Be enrolled full-time in a baccalaureate degree program at an eligible regionally accredited Florida public or independent postsecondary educational institution during the fall academic term following high school graduation.

In 2018, eligibility was expanded to allow out-of-state students to qualify for a scholarship.⁶⁸

Scholarship recipients attending a public postsecondary institution, who qualify as a Florida resident, receive an award equal to the institutional cost of attendance minus the sum of the student's Florida Bright Futures Scholarship and NMS or NAS award. Scholarship recipients attending a public postsecondary institution, who qualify as non-residents of Florida, receive an award equal to the institutional cost of attendance for a Florida resident minus the student's NMS award. Eligible students who attend independent postsecondary educational institutions in Florida each receive scholarship awards equal to the highest cost of attendance for a resident of this state enrolled at a Florida public university, as reported by the BOG, minus the sum of the student's Florida Bright Futures Scholarship and NMS or NAS award.⁶⁹

A student must earn all credits for which he or she was enrolled and maintain a 3.0 or higher grade point average to be eligible for a renewal award. A student may receive an award for up to 100 percent of the number of credit hours required to complete a baccalaureate degree program.⁷⁰

Scholarship Qualifying Test (PSAT/NMSQT), which serves as an initial screen of approximately 1.6 million entrants each year, and meeting the program participation requirements. National Merit Scholarship Corporation, *National Merit Scholarship Program*, <https://www.nationalmerit.org/s/1758/interior.aspx?sid=1758&gid=2&pgid=424> (last visited Dec. 11, 2019).

⁶⁴ The National Merit Scholarship Corporation discontinued the National Achievement Scholarship Program with the conclusion of the 2015 program. National Merit Scholarship Corporation, *National Achievement Scholarship Program*, <http://www.nationalmerit.org/s/1758/interior.aspx?sid=1758&gid=2&pgid=433> (last visited Dec. 26, 2019).

⁶⁵ Section 1009.893(2), F.S.

⁶⁶ Section 1009.893(4)(a), F.S.

⁶⁷ Section 1002.41, F.S.

⁶⁸ Section 22, ch. 2018-4, L.O.F. See s. 1009.893(4)(b), F.S.

⁶⁹ Section 1009.893(5)(b), F.S.

⁷⁰ Section 1009.893(5)(a), F.S. The National Achievement Scholarship Program has since been discontinued. National Merit Scholarship Corporation, *supra* note 57.

For the 2019-2020 fiscal year, \$21,372,911⁷¹ was appropriated to fund 1,416 scholarship recipients.⁷²

Effect of Proposed Changes

Florida Student Assistance Grant Program

The bill provides flexibility and aligns specific requirements across the FSAG programs.

Specifically, the bill:

- Establishes that the maximum award amount for each FSAG program as specified in the General Appropriations Act (GAA).
- Allows a student who received a FSAG award in the fall or spring term to receive the FSAG award during the summer, if funds are available.⁷³
- Removes the requirement that institutions must prioritize the distribution of grant funds to students with the lowest family resources, thus allowing an institution to provide the grant funds to students who have the greatest unmet need.
- Specifies that, for all FSAG programs, institutions must report to the DOE all eligible students, regardless of actual disbursements.⁷⁴
- Modifies the fund distribution formula to include part-time and full-time eligible students, and requires that the formula account for changes in the number of eligible students across all FSAG programs.
- Establishes a disbursement deadline of 30 days after the end of regular registration each term and deadline of 60 days after the end of regular registration each spring term for return of undisbursed funds, which aligns to other financial aid programs, in accordance with DOE rule. However, the bill authorizes an exception to the remittance deadline if the institution documents to the DOE how the institution plans to disburse awards to students for the subsequent summer term. Such reporting and remittance deadlines may ensure that returned funds can be disbursed to qualified students prior to the end of the fiscal year.
- Removes the required DOE need analysis for the FSAG Public, FSAG Private, and FSAG Postsecondary programs to specify that a grant may not be made to a student whose expected family contribution exceeds one and one-half times the maximum Pell Grant-eligible family contribution.⁷⁵
- Requires institutions receiving funds through the FSAG Public and FSAGCE programs to prepare the same biennial report currently required of the FSAG Private and FSAG Postsecondary programs. The requirement specifies that:

⁷¹ Specific Appropriation 68, ch. 2019-115, L.O.F.

⁷² Education Estimating Conference on Student Financial Aid, *Executive Summary* (March 2019), available at <http://edr.state.fl.us/Content/conferences/financialaid/archives/190315financialaid.pdf>.

⁷³ All students entering a SUS university with fewer than 60 semester hours credit are required to earn at least 9 semester hours prior to graduation by attendance at one or more summer sessions. BOG Regulation 6.016. Allowing students to use FSAG awards during the summer may assist students to fulfill this requirement, take more credits in a year, and graduate on-time in four years.

⁷⁴ Reporting all eligible students, rather than only those students who received a disbursement, is consistent with requirements in rule 6A-20.031(7), 6A-20.032(7), and 6A-20.033(7), F.A.C.

⁷⁵ Expected Family Contribution is calculated using a student's: family size; family's taxed and untaxed income, assets, and benefits; and number of family members who will attend college or career school during the year. Federal Student Aid, *How Aid is Calculated*, <https://studentaid.gov/complete-aid-process/how-calculated#efc> (last visited Dec. 23, 2019).

- Each institution that receives moneys through the FSAG program must prepare a biennial report that includes a financial audit, conducted by the Auditor General, of the institution's administration of the program and a complete accounting of moneys allocated to the institution for the program to the DOE by March 1 every other year.
- The DOE may conduct its own annual or biennial audit of an institution's administration of the program and its allocated funds in lieu of the required biennial report and financial audit report.
- The DOE may suspend or revoke an institution's eligibility to receive future moneys for the program or request a refund of any moneys overpaid to the institution for the program if the DOE finds that an institution has not complied and specifies that any refund requested must be remitted within 60 days after notification by the DOE.

Benacquisto Scholarship Program

The bill modifies s. 1009.893, F.S., to clarify requirements for initial eligibility and modify scholarship renewal provisions. Specifically, the bill:

- Removes an outdated reference to the National Achievement Scholar program.
- Requires scholarship renewal students to be enrolled full-time. However, the bill authorizes a student to be enrolled less than full-time and receive funding for one term to complete his or her degree, if the student has less than 12 credits remaining to graduate.⁷⁶
- Specifies that a student's renewal status is not affected by subsequent changes in the residency status of the student or the student's family.
- Authorizes that students who fail to meet renewal requirements due to a verifiable illness or other documented emergency may be granted an exception pursuant to law.⁷⁷
- Specifies that a student may receive an award for up to five years following high school graduation and may not receive the award for more than 10 semesters, which may encourage students to complete degree programs in a timely manner and may lower some program costs.

Textbook and Instructional Materials Affordability

Present Situation

In 2008, the federal government⁷⁸ and Florida Legislature⁷⁹ addressed measures to reduce costs and make textbooks more affordable for needy students. Since 2016,⁸⁰ 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

⁷⁶ Modifying provisions relating to full-time enrollment will more closely align the law with DOE implementation of the scholarship program.

⁷⁷ Section 1009.40(1)(b)4., F.S.

⁷⁸ The Higher Education Opportunity Act (Public Law 110-315).

⁷⁹ Section 1004.0085, F.S.

⁸⁰ Section 3, ch. 2016-236, L.O.F.

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.⁸¹

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.⁸² An institution may not automatically enroll students in services that provide textbooks or other materials electronically, students must opt-in to such programs.

Effect of Proposed Changes

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.

Phosphate Research and Activities Board

Present Situation

The Florida Industrial and Phosphate Research Institute is housed within Florida Polytechnic University (FPU)⁸³ and the Phosphate Research and Activities Board is tasked with monitoring the expenditure of funds appropriated to FPU from the Phosphate Research Trust Fund.⁸⁴ The board consists of five members. 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. The Secretary of Environmental Protection or his or her designee and the president of FPU are required to serve as board members.⁸⁵

Members of the board appointed by the Governor are appointed to 3-year terms. 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. A board member is eligible for reappointment to subsequent terms.⁸⁶

⁸¹ 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.

⁸² Section 1004.085(4), F.S.

⁸³ Section 1004.346(1), F.S.

⁸⁴ Section 1004.346(2), F.S.

⁸⁵ Section 1004.346(2)(b), F.S.

⁸⁶ Section 1004.346(2)(c), F.S.

Effect of Proposed Changes

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.

Remuneration of State University Administrative Employees***Present Situation***

A state university administrative employee may not receive more than \$200,000 in remuneration annually from appropriated state funds. However, university teaching faculty or medical school faculty or staff are not limited to how much compensation they can receive each year from appropriated state funds. State law does not direct the Board of Governors (BOG) to identify which employee classifications are exempt from the remuneration cap.^{87 88} However, the BOG defines in regulation 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.⁸⁹

Effect of Proposed Changes

The bill modifies s. 1012.976, F.S., to require the BOG to define in regulation the university faculty and administrative personnel classifications.

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.

⁸⁷ See ss. 1012.976(2) and 1012.976(3), F.S.

⁸⁸ State of Florida Auditor General, *Operational Audit, State University System Board of Governors, Report 2020-032*, (September 2019), at 3-4, available at https://flauditor.gov/pages/pdf_files/2020-032.pdf. The Auditor General (AG) finding cited the BOG for creating a definition of university teaching faculty that included those who provide indirect instructional support. The AG indicated that the BOG definition “may undercut the dichotomy between administrative employees and teaching faculty contemplated in state law.” The AG recommended that the BOG review and revise the regulation to ensure definitions of teaching faculty are consistent with state law.

⁸⁹ Board of Governors Regulation 9.006.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Providing for Florida Student Assistance Grant (FSAG) Program summer awards may provide additional financial assistance to students who attend during the summer term.

Establishing a deadline for the return of undisbursed funds to the Department of Education may provide opportunities for additional students to receive an FSAG program scholarship. Returned funds may then be repurposed to fund other eligible students at the same or another institution.⁹⁰

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1001.03, 1001.7065, 1004.085, 1004.346, 1009.50, 1009.505, 1009.51, 1009.52, 1009.893, 1011.45, 1012.976 and 1013.841.

This bill repeals section 11 of chapter 2019-116, Laws of Florida.

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

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

PCS by Appropriation Subcommittee on Education on January 29, 2020:

⁹⁰ In the 2019 General Appropriations Act, student financial aid funds may be reallocated among the FSAG programs, the children and spouses of deceased and disabled veterans scholarship program, the Florida Work Experience program, and the Rosewood Family and Florida Farmworker scholarships. Specific Appropriation 75, s.2 ch. 2019-115, L.O.F.

The committee substitute makes the following changes to the bill:

- Removes the requirement that participating institutions in the Florida Student Assistance Grant program prioritize the distribution of grant funds to students with the lowest family resources.
- Modifies the appointment term of members to the Florida Industrial and Phosphate Research Institute board, to allow board members to serve until their replacement is named. Removes the limitation that prohibits a Phosphate Research and Activities Board member from serving more than 180 days after the expiration of his or her term, until a successor is appointed.
- Modifies the remuneration statute for state universities, directing the Board of Governors to define in regulation the university faculty and administrative personnel classifications.
- Modifies the Academic and Research Excellence Standards subsection so that the BOG Accountability Plan is the source for the measures rather than third-party sources. Revises the data for academic and research excellence standards of preeminent institutions by using more timely performance data and requiring the standards to be reported annually in the BOG Accountability Plan.
- Modifies the preeminence statute to preserves the designation of emerging preeminent universities, removes funding component for emerging preeminent universities, and changes the funding for preeminent universities to be determined annually by the Legislature.
- Removes the repeal of section 11, ch. 2019-116, L.O.F., as that provision is no longer necessary because the award cap was permanently removed from law in 2019.

B. Amendments:

None.