

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/SB 7026 Higher Education Finances
SPONSOR(S): Appropriations and Appropriations Committee on Education
TIED BILLS: IDEN./SIM. BILLS:

FINAL HOUSE FLOOR ACTION: 109 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/SB 7026 passed the House on April 28, 2023, as amended. The Senate concurred in the House amendment to the Senate bill and subsequently passed the bill as amended on April 28, 2023.

The bill provides flexibility for state universities and Florida College System (FCS) institutions regarding the use of funds in areas relating to the use of carry forward fund balances, contracting for professional services, compensation of employees, including for bonuses, and the waiver of out-of-state fees for student athletes receiving an athletic scholarship. Specifically, the bill:

- removes restrictions on certain uses of carry forward fund balances, including caps on maintenance and remodeling projects and the requirement that funds only be used for nonrecurring operating expenditures;
- removes the requirement that state universities comply with certain procurement processes and authorizes the Board of Governors to establish regulations for universities to follow;
- increases the limitation on the annual compensation of state university employees paid from public funds and for FCS administrative employees paid from state funds;
- amends requirements related to SUS institution employee bonus programs; and
- authorizes state universities and FCS institutions to waive out-of-state fees for student athletes receiving an athletic scholarship.

The bill may have an indeterminate fiscal impact. See Fiscal Comments.

The bill was approved by the Governor on May 17, 2023, ch. 2023-95, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Postsecondary Educational Institution Funding

Present Situation

Procurement Regulations for Universities

The Board of Governors (BOG) must develop guidelines for university boards of trustees relating to the acquisition of real and personal property, the sale and disposal of the approval and execution of contracts for the purchase, sale, lease, license, or acquisition of commodities, goods, equipment, contractual services, leases of real and personal property, and construction.¹

Each board of trustees is required to comply with requirements related to the procurement of professional services.² Professional services includes services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.³ Procurement of professional services requires a prequalification process based on qualifications, which is then followed by negotiations to establish a fair, competitive, and reasonable price for the desired services.⁴

Postsecondary Tuition and Fees

Under Florida law, “tuition” is defined as the basic fee charged to a student for instruction provided by a public postsecondary educational institution in the state.⁵ All students enrolled in college credit programs at state universities and Florida College System (FCS) institutions are required to pay fees, except students that are exempt or those whose fees are waived. The BOG may set tuition for graduate and professional programs and out-of-state fees for all state university programs. Except as otherwise provided in law, the sum of tuition and out-of-state fees assessed to nonresident students must be sufficient to offset the full instructional cost of serving such students. The BOG is authorized to adjust out-of-state fees or tuition for graduate programs and professional programs as long the adjustments do not exceed 15 percent in any year.⁶

The resident undergraduate tuition rate for the State University System (SUS) is currently set in statute at \$105.07 per credit hour.⁷ Out-of-state fees for universities vary by institution, ranging from \$521.02 (at the University of South Florida) to \$897.06 (at the University of Florida) per credit hour for the 2022-23 academic year.⁸

For FCS institutions, the tuition rates are also set in statute.⁹ For baccalaureate programs, the tuition rate is \$91.79 per credit hour, and the out-of-state fee is indexed to the nearest state university.¹⁰ For all other college credit programs, the tuition rate is \$71.98 and the out-of-state fee is \$215.94 per credit

¹ Section 1001.706(7), F.S.

² *Id.*

³ Section 287.055(2)(a), F.S.

⁴ Section 287.055, F.S.

⁵ Section 1009.01(1), F.S.

⁶ Section 1009.24, F.S.

⁷ Section 1009.24(4)(a), F.S.

⁸ State University System of Florida, Tuition and Required Fees, 2022-23, available at https://www.flbog.edu/wp-content/uploads/2023/01/2022-2023-SUS-Tuition-and-Fees-Report_updated-with-footnote.pdf.

⁹ Section 1009.23, F.S.

¹⁰ Section 1009.23((3)(b)), F.S.

hour. The boards of trustees for FCS institutions are allowed to vary tuition and out-of-state fees by no more than 10 percent below and 15 percent above the rates established in statute.¹¹

Waivers from specified fees are authorized for certain students who meet identified criteria. Some waivers are mandatory, while others are permissive for institutions. For example, each university board of trustees is authorized to waive tuition and out-of-state fees for purposes that support and enhance the mission of the university.¹²

End-of-Year Carry Forward Balances

Currently, each state university is required to maintain a minimum carry forward balance of at least 7 percent of its state operating budget.¹³ If a university retains a state operating fund carry forward balance in excess of 7 percent, it must submit a spending plan for the excess carry forward balance to the BOG.¹⁴ The authorized expenditures in the spending plan include:

- Commitment of funds to a public education capital outlay project for which an appropriation has previously been provided that requires additional funds for completion and which is included in the BOG's prioritized list of projects.
- Completion of renovation, repair or maintenance projects, up to \$5 million per project and replacement of a minor facility that does not exceed 10,000 gross square feet in size up to \$2 million.
- Completion of a remodeling or infrastructure project, including a project for a developmental research school, up to \$10 million per project, if such project is recommended in the education plant survey.
- Completion of a repair or replacement project necessary due to damage caused by a natural disaster for buildings included in the educational plant survey.
- Operating expenditures that support the university mission and that are nonrecurring.
- Any purpose specified by the board or in the GAA.
- A commitment of funds to a contingency reserve for expenses incurred as a result of a state of emergency declared by the Governor.¹⁵

Additionally, there are limitations on the use of funds for comprehensive educational plant needs.¹⁶ University boards of trustees are authorized to utilize funds appropriated for the replacement of minor facilities provided the cost does not exceed \$1 million in cost or 10,000 gross square feet in size.¹⁷ If the work associated with repair or renovation is greater than or equal to the cost of replacement, the work associated with the minor facility is considered a replacement and beyond the scope of maintenance.¹⁸

Currently, each FCS institution with a final FTE of less than 15,000 for the prior year must maintain a minimum carry forward balance of at least 5 percent of its state operating budget.¹⁹ If a FCS institution carries a balance forward in excess of 5 percent, it must submit a spending plan to its board of trustees.²⁰ Each FCS institution with a final FTE of 15,000 or greater must maintain a carry forward balance of at least 7 percent of its state operating budget.²¹ If a FCS institution with a final FTE of 15,000 or greater carries a balance forward in excess of the 7 percent, it must submit a carry forward

¹¹ Section 1009.23(4), F.S.

¹² Section 1009.26(9), F.S.

¹³ Section 1011.45(1), F.S.

¹⁴ Section 1011.45(2), F.S.

¹⁵ Section 1011.45(3), F.S.

¹⁶ Section 1013.01, F.S., defines the term "educational plant" to mean the "educational facilities, site, and site improvements necessary to accommodate students, faculty, administrators, staff, and the activities of the educational program of each plant."

¹⁷ Section 1013.64(1)(h), F.S.

¹⁸ Section 1013.64, F.S.

¹⁹ Section 1013.841(2)(a), F.S.

²⁰ Section 1013.841(2)(b), F.S.

²¹ Section 1013.841(3)(a), F.S.

spending plan with estimated expenditures.²² The authorized expenditures in the spending plan may include:

- Commitment of funds to a public education capital outlay project for which an appropriation was previously provided, which requires additional funds for completion, and which is included in the prioritized projects list adopted by the State Board of Education (SBE).
- Completion of a renovation, repair, or maintenance project up to \$5 million per project;
- Completion of a remodeling or infrastructure project, up to \$10 million per project;
- Completion of a repair or replacement project necessary due to damage caused by a natural disaster for buildings included in the education plant survey.
- Operating expenditures that support the FCS institution's mission that are nonrecurring; or
- Any purpose approved by the SBE or specified in the GAA.
- A commitment of funds to a contingency reserve for expenses incurred as a result of a state of emergency declared by the Governor.²³

The price of construction materials and services increased by 12.6 percent in 2022 as compared to 2021.²⁴ The significant increases in construction costs, in conjunction with the statutory limitations on the amount of funds that may be used for maintenance, remodeling, or infrastructure projects, has created challenges for both SUS and FCS institutions.

Limitations on Compensation for State University and FCS Institution Employees

Currently, a state university employee or FCS institution administrative employee may not receive more than \$200,000 from state appropriated funds in salary, bonuses, or cash-equivalent compensation, excluding health and retirement benefits, from a university or college for work performed.²⁵ The term "appropriated state funds" means funds appropriated from the General Revenue Fund or funds appropriated from state trust funds.²⁶

Bonuses for State University Employees

In 2021, the Legislature authorized the board of trustees of a state university to implement a bonus scheme based on awards for work performance or employee recruitment and retention. Prior to implementation, the board of trustees must submit the bonus scheme, including the evaluation criteria by which a bonus will be awarded, to the BOG for approval.²⁷

Effect of the Bill

The bill requires the BOG to develop regulations for university boards of trustees relating to procedures for contracting for construction of new facilities, or for additions, remodeling, renovation, maintenance, or repairs to existing facilities. Such regulations must be developed no later than October 1, 2023. The bill also removes the requirement that universities must comply with requirements relating to the procurement of professional services unless the contracts were executed, extended, or amended on or before September 30, 2023.

The bill authorizes a state university or FCS institution to waive the out-of-state fee for a student who is an intercollegiate athlete receiving an athletic scholarship. Additionally, the bill authorizes FCS institutions to provide fee waivers for interns and individuals over the age of 60, in the same manner currently permitted for state universities.

²² Section 1013.841(3)(b), F.S.

²³ Section 1013.841(4), F.S.

²⁴ Florida Construction News, *Construction material costs post double-digit increases in 2022*,

<https://www.floridaconstructionnews.com/construction-material-costs-post-double-digit-increases-in-2022-FloridaConstructionNews>

(last visited Apr. 6, 2023).

²⁵ Sections 1012.886 and 1012.976, F.S.

²⁶ *Id.*

²⁷ Section 1012.978, F.S.

The bill provides more flexibility to universities and colleges regarding the use of carry forward fund balances by:

- Removing the restriction from using the funds on only nonrecurring expenditures;
- Removing the caps on using the funds for renovation, repairs, or maintenance projects; replacement of minor facilities; and completion of remodeling or infrastructure projects; and
- Allowing state universities to use the funds for escrow accounts that are required for a new construction, remodeling, or renovation project to be considered for state funding.²⁸

For SUS institutions, the bill removes the definition of “state appropriated funds” and defines the term “public funds” to mean funds appropriated from the General Revenue Fund, funds appropriated from state trust funds, or tuition and fees. The bill increases the limit on compensation a state university employee may receive annually from public funds from \$200,000 to \$250,000. The bill provides for the same increase, from \$200,000 to \$250,000, to the limit on compensation from state appropriated funds for a FCS institution administrative employee.

The bill removes the cost and space restrictions, currently \$1 million in cost or 10,000 gross square feet, respectively, for which funds from the Public Education Capital Outlay and Debt Service Trust Fund may be used to replace minor facilities at state universities.

The bill amends the authorized bonus program for state universities by requiring each board of trustees to submit an annual report to the BOG related to any such bonuses and requiring the BOG to develop a regulation governing these bonus programs.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

²⁸ See s. 1001.706(12)(c), F.S.

The bill does not increase or decrease state revenues or expenditures. To the extent state universities and FCS institutions utilize the additional flexibility provided by the bill, their revenues and expenditures will be affected by an indeterminate amount.