HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 931 Postsecondary Educational Institutions
SPONSOR(S): Education & Employment Committee and Higher Education Appropriations Subcommittee, Roach and others
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/SB 958

FINAL HOUSE FLOOR ACTION: 82 **Y's** 34 **N's** **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 931 passed the House on April 26, 2023, and subsequently passed the Senate on May 2, 2023,

Intellectual freedom and viewpoint diversity are essential to the education of Florida's college and university students. Research shows that without support for the principles of intellectual freedom and viewpoint diversity students at colleges and universities may self-censor or feel unable to express their opinions to faculty or their classmates. Continuing Florida's efforts to cultivate public postsecondary educational institution campuses with a wide range of perspectives on diverse issues critical to the public discourse, the bill directs each state university to establish an Office of Public Policy Events (OPPE). The bill requires that each OPPE organize, publicize, and stage debates or group forums that address a range of public policy issues.

The U.S. Supreme Court has consistently struck down mandatory political loyalty oaths, particularly in the education setting. To ensure that faculty, staff, and students at Florida's public postsecondary educational institutions are hired or admitted based on merit rather than ideological perspective, the bill prohibits the use of political loyalty tests in the institution's hiring, admissions, or promotion processes. Public postsecondary educational institutions are prohibited from requiring or soliciting a person to identify a commitment to or support a partisan, political, or ideological set of beliefs or other specified ideologies or movements.

The bill updates the reporting deadline for the required Intellectual Freedom and Viewpoint Diversity survey results from September 1 to December 31, annually, beginning December 31, 2024.

The bill designates the Florida Student Association (FSA) as the nonprofit advocacy group for Florida's State University System students and requires the FSA to adopt bylaws providing due process protections for its president.

The fiscal impact of the bill can be absorbed within existing resources. *See* Fiscal Comments, *infra*.

The bill was approved by the Governor on May 15, 2023, ch. 2023-83, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Intellectual Freedom and Viewpoint Diversity Assessments

Present Situation

Intellectual Freedom and Viewpoint Diversity in Higher Education

In January 2015, the Committee on Freedom of Expression at the University of Chicago produced a free speech policy statement (referred to as the "Chicago Statement") that affirmed the centrality of unfettered debate to the university's mission.[1] The statement provided in part:

> [I]t is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Although the University greatly values civility, and although all members of the University community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.

The Chicago Statement continues a tradition of institutions and organizations affirming the importance of the free expression and sharing of ideas on college and university campuses.[2]

The 2017 National Survey of Student Engagement revealed that most students surveyed (64 percent) felt that postsecondary coursework generally respected the expression of diverse ideas, and that their postsecondary institution generally demonstrated a commitment to diversity (71 percent).[3] This was reflected when specific forms of diversity were considered, such as gender, religious affiliation, or disability status. When political affiliation was considered, only half of students surveyed felt their postsecondary institution was generally supportive of different political ideas.[4]

The Campus Free Expression Act became Florida law in 2018.[5] Under the law, outdoor areas of campus are considered traditional public forums for individuals, organizations, and guest speakers. A public institution of higher education may create and enforce restrictions that are reasonable and content-neutral on time, place, and manner of expression and that are narrowly tailored to a significant institutional interest. Restrictions must be clear and published and must provide for ample alternative means of expression.[6] A public institution of higher education may not otherwise designate any area of campus as a free-speech zone or create policies restricting expressive activities to a particular outdoor area of campus.[7] A person whose expressive rights are violated may bring an action against a public institution of higher education in a court of competent jurisdiction to obtain declaratory and injunctive relief, reasonable court costs, and attorney fees.[8]

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[1] University of Chicago, *Report of the Committee on Free Expression* (2015), *available at* https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf.

[2] *See* American Council on Education, *Statement on Academic Rights and Responsibilities* (June 23, 2005), *available at* https://www.acenet.edu/Documents/Statement-on-Academic-Rights-and-Responsibilities-2005.pdf; American Association of University Professors, *1940 Statement of Principles on Academic Freedom and Tenure* (1940), *available at* https://www.aaup.org/file/1940%20Statement.pdf.

[3] National Survey of Student Engagement, *2017 Topical Module: Inclusiveness and Engagement with Cultural Diversity*, *available at* https://scholarworks.iu.edu/dspace/bitstream/handle/2022/23392/NSSE_2017_Annual_Results.pdf?sequence=1&isAllowed=y.

[4] *Id*.

[5] Section 6, ch. 2018-4, L.O.F.

[6] Section 1004.097(3)(c), F.S.

[7] Section 1004.097(3)(d), F.S.

[8] Section 1004.097(4), F.S.

In April 2019, the chancellor of the State University System, all twelve state university presidents, and the chair of the Florida College System (FCS) Council of Presidents signed resolutions affirming their commitment to providing for free expression on campus.[9] FCS institutions and state universities further acknowledge their responsibility to foster and protect faculty rights to intellectual freedom in their collective bargaining agreements with faculty unions.[10]

In 2023, according to the Foundation for Individual Rights in Education (FIRE), only four out of the eleven state universities in Florida that FIRE evaluated had policies that did not inhibit free expression.[11] A national survey revealed, in part, that:

- 22 percent of students would have felt very uncomfortable publicly disagreeing with a professor about a controversial topic;
- 29 percent of students felt that the college administration did not make it clear that free speech was protected on campus;
- 60 percent of students felt they could not express their opinion on a subject because of how students, a professor, or the administration would respond; and
- 60 percent of students could recall at least one time during their college experience when they did not share their perspective for fear of how others would respond. Students who identified as conservative were more likely to report a prior self-censorship incident (72 percent for conservative students, 55 percent for liberal students).[12]

In 2021, the Legislature passed legislation requiring an individual freedom and viewpoint diversity survey to be administered by all FCS and State University System (SUS) institutions. The State Board of Education (SBE) and the Board of Governors (BOG) were required to select or create an objective, nonpartisan, and statistically valid survey to assess intellectual freedom and viewpoint diversity at FCS institutions and state universities. The surveys were required to be designed to capture the extent to which competing ideas and perspectives are presented on campus as well as the extent to which those surveyed feel free to express their beliefs and viewpoints on campus and in the classroom. All FCS institutions and state universities must conduct the survey annually and the SBE and the BOG must compile and annually publish the survey results beginning September 1, 2022.[13] Both the SBE[14] and the BOG[15] timely published the first required reports in the fall of 2022.

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[9] Foundation for Individual Rights in Education, *Spotlight of Speech Codes 2023*, https://www.thefire.org/research-learn/spotlight-speech-codes-2023 (last visited Apr. 30, 2023) [hereinafter *Spotlight on Speech*]; Executive Office of the Governor, *Governor Ron DeSantis Calls on State Colleges and Universities to Adopt Free Speech Resolution* (Apr. 15, 2019), https://www.flgov.com/2019/04/15/governor-ron-desantis-calls-on-state-colleges-and-universities-to-adopt-free-speech-resolution/.

[10] *See, e.g., Tallahassee Community College and United Faculty of Florida 2020-2021* (Oct. 15, 2020), *available at* https://blogs.tcc.fl.edu/labor-negotiations/wp-content/uploads/sites/13/2020/10/TCC-UFF_2020-21_FINAL.pdf; *Collective Bargaining Agreement: The Florida State University Board of Governors and the United Faculty of Florida General Faculty Bargaining Unit 2019-2022* (Oct. 30, 2020), *available at* https://hr.fsu.edu/sites/g/files/upcbnu2186/files/PDF/Publications/UFF_CBA_Updated_2021.pdf.

[11] *Spotlight on Speech*, *supra* note 9. The four Florida universities with policies that were not found to inhibit free speech include the University of Florida, Florida State University, the University of South Florida, and the University of North Florida. Florida has twelve public universities but FIRE has never rated Florida Polytechnic University.

[12] College Pulse, et al., *College Free Speech Rankings: What's the Climate for Free Speech on America's College Campuses?* (2020), at 2 and 53-59, https://reports.collegepulse.com/college-free-speech-rankings, (enter name and e-mail in designated fields to download report) (last visited Apr. 30, 2023).

[13] Section 1001.706(13), F.S.

[14] Florida Department of Education, Division of Florida Colleges, *Intellectual Freedom and Viewpoint Diversity 2022 Florida College System Institutions, available at* https://www.fldoe.org/core/fileparse.php/7724/urlt/FCS-IFVD.pdf.

[15] Florida Board of Governors, *Intellectual Freedom and Viewpoint Diversity 2022 Survey*, *available at* https://www.flbog.edu/wp-content/uploads/2022/08/SUS_IF-SURVEY_REPORT_DRAFT__2022-08-16.pdf.

Effect of the Bill

The bill updates the annual reporting requirements for the SBE and the BOG so that the survey results must be reported by December 31 each year, beginning December 31, 2024.

The bill requires that each state university establish an Office of Public Policy Events (OPPE). The purpose of the OPPE is to facilitate the advancement of knowledge through sponsorship of events featuring open discussion and debate of contested public policy issues from diverse perspectives.

The bill defines "debate" as an event at which two or more participants speak in favor of opposing approaches to the same public policy dispute, after which each participant is allotted time to address and rebut the position presented by the opposing speakers. The bill defines "group forum" as an event at which two or more speakers address a public policy dispute from divergent or opposing perspectives, after which each participant is allotted time to address questions from the audience and to comment on the other speakers' positions.

Each OPPE must organize, publicize, and stage no less than four events during the academic year, including debates or group forums that address, from multiple, divergent, and opposing perspectives, an extensive range of public policy issues widely discussed and debated in society at large. At least two such events must occur during the fall semester and at least two events must occur during the spring semester. Such events must represent a wide range of views on opposing sides of public policy issues from within and outside the campus community. As needed to ensure a broad set of perspectives on any given topic, the OPPE is authorized to provide per diem and travel expenses to speakers from outside the state university community.

Additionally, the OPPE must maintain a permanent, publicly accessible, searchable, and up-to-date calendar in print, on the office's website, and on each state university's website listing all of the events sponsored by the OPPE and all other debates, group forums, and events open to the entire campus community at the state university that address public policy issues. Beginning September 1, 2024, and annually thereafter, each OPPE must report to the BOG data reflecting prior academic year statistics detailing the following:

- the number of debates and group forums;
- in chronological order, the calendars itemizing the title of each event, the name and institutional affiliation of the speaker or speakers, and the office, institute, department, program, or organization that sponsored the event;
- the number of enrolled students attending each event; and
- expenditure information relating to any per diem or reimbursement for travel expenses.

Finally, the OPPE must make publicly available, in an online format, a complete video record of every debate or group forum organized by the OPPE. Such recordings must be made available within 10 days after the event and remain accessible on the OPPE's website for five years. Additionally, the recording must be maintained within the library of the state university where the event was held.

The bill authorizes the responsibilities of an OPPE office to be assigned to an existing administrative office within a state university, with the approval of the university board of trustees and the BOG. However, the state university must still appoint a director of public policy events responsible for fulfilling the statutory duties of the OPPE. An OPPE office must report directly to the university's office that is responsible for compiling and reporting the Integrated Postsecondary Education Data System's graduation rate survey or Office of General Counsel.

Events hosted by the OPPE must be open to all members of the campus community and to the general public, unless restricting attendance to such event is necessary to achieve a compelling governmental interest.

Political Loyalty Tests in Employment and Admissions

Present Situation

Background

Diversity, Equity, and Inclusion (DEI) initiatives are intended to provide equal access as well as a more welcoming and inclusive environment for underrepresented minorities within an institution.[16] The impetus behind DEI initiatives is the belief that having a more diverse representation coupled with creating space where everyone feels a sense of belonging and can bring their authentic selves to work, is better for the business.[17]

However, research indicates that DEI initiatives may have negative impacts that directly undermine the reported goals of the programs.[18] The presence of DEI initiatives can lead to lower evaluations and perceptions of members of the organization based on the implication that individuals are not present due to merit but simply to satisfy the DEI initiative's goals.[19] This impact is not only external, the individuals themselves can be led to underestimate their own competence and ability due to the presence of a DEI initiative.[20] The mere presence of a DEI initiative within an organization can undermine the very purpose the DEI initiative allegedly serves.

DEI in Medical School Admissions, Curriculum, and Hiring

Many of the nation's top medical schools have begun to include DEI questions in their secondary applications.[21] A secondary application provides the medical school applicant the opportunity, through essays or short narrative answers, to explain their interest in a program and how their life experiences align with the school's mission and values.[22] Based on a review of medical school application essays, 72 percent of the top 50 medical schools and 80 percent of the top 10 medical schools include at least one DEI question in their secondary applications.[23] The Florida Atlantic University E. Schmidt College of Medicine, for applicants in 2021-2022, posed the following prompt:[24]

> As a community FAU Schmidt COM has made a commitment to be anti-racist and address systemic racism in education and healthcare. Institutionalized racism can be defined as "macro level systems, social forces, institutions, ideologies, and processes that interact with one another to generate and reinforce inequities among racial and ethnic groups." As a future medical student at FAU, how can you play an active role in addressing and dismantling systemic racism?

According to a review of the University of Florida College of Medicine (UFCOM) policies and procedures as well as publications the UFCOM appears to incorporate the principles of DEI into every

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[16] *See* Florida International University, *Diversity Equity and Inclusion Institutional Goals*, https://dei.fiu.edu/our-foundations/institutional-goals/index.html (last visited Apr. 30, 2023).
[17] *Id.*
[18] Fortune, Michelle Frank, *The problem with diversity and inclusion initiatives*, May 18, 2022, https://fortune.com/2022/05/18/problem-diversity-inclusion-initiatives-dei-women-careers-work-leadership-stereotypes-michele-frank/ (last visited Apr. 30, 2023).
[19] *Id.*
[20] *Id.*
[21] Do No Harm, *Only DEI Advocates Need Apply: 72 Percent of Top-Ranked Medical Schools Inject Identity Politics in Key Admissions Process Step*, p. 4, *available at* https://donoharmmedicine.org/research/2022/only-dei-advocates-need-apply/ (last visited Apr. 30, 2023) [hereinafter *Only DEI Advocates Need Apply*].
[22] *Only DEI Advocates Need Apply* at 3.
[23] *Only DEI Advocates Need Apply* at 4.
[24] *Only DEI Advocates Need Apply* at 6.

aspect of the medical school process.[25] As recently as October 2022, the homepage for the UFCOM included statements about the "existence and persistence of systemic oppression and racism that endanger the lives of people of color" and links to "anti-racism" resources to permit potential UFCOM applicants to self-educate on these issues and become part of the solution.[26]

Additionally, UFCOM explicitly states its intention to enhance "recruitment and retention of underrepresented groups to its student body, residency training programs, faculty and staff positions."[27] The UFCOM even holds its Accepted Students Weekend at the end of UFCOM's "diversity week."[28] The UFCOM includes "anti-racist" principles into its student code of ethics, requiring all students to adopt these principles as a requirement of attending the institution.[29]

The UFCOM incorporates its DEI strategies into the hiring and retention of faculty.[30] The UFCOM diversity statement provides that it is "committed to diversity, inclusion and health equity through the efforts of actively finding, developing and including the best talent to support our vision of being 'a premier institution focused on promoting health and alleviating human suffering through exceptional education, discovery, innovation and patient-centered health care of the highest quality."[31] The diversity statement also concludes that reducing marginalization must be a "key outcome" of faculty development.[32]

The University of Florida, as an institution, invested more than $5 million in DEI and racial justice programs[33] and included "diversity and equity accomplishments" as elements in the annual evaluations of top administrators.[34]

Compelled Speech

The U.S. Supreme Court (Court) has repeatedly held that the right to free speech protected by the first amendment to the constitution protects an individual from being compelled to speak. "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."[35] Stated even more plainly, the Supreme Court has held that free speech principles prohibit the government from telling people what they must say.[36] Additionally, an individual is also protected from being compelled to host or accommodate the speech of another.[37]

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[25] Do No Harm, *Dedicated to DEI: The University of Florida College of Medicine is infusing equity and "anti-racism" into its Doctor of Medicine program*, Nov. 2022, available at https://donoharmmedicine.org/research/2022/dedicated-to-dei-the-university-of-florida-college-of-medicine/ (last visited Apr. 30, 2023) [hereinafter *Dedicated to DEI*].
[26] *Dedicated to DEI* at 5.
[27] *Dedicated to DEI* at 7.
[28] University of Florida, College of Medicine, *UF College of Medicine Statement on Diversity, available at* https://osa.med.ufl.edu/files/2014/10/Statement-on-Diversity.pdf.
[29] *Dedicated to DEI* at 9; University of Florida, College of Medicine, Office of Student affairs, *Code of Ethics*, https://osa.med.ufl.edu/policies-procedures/code-of-ethics/ (last visited Apr. 30, 2023).
[30] *Dedicated to DEI* at 13.
[31] University of Florida College of Medicine, *Diversity Statement*, p. 3, *available at* https://med.ufl.edu/wordpress/files/2022/10/3-03-Diversity-Statement.pdf.
[32] *Id.*
[33] Florida Board of Governors, *Combined SUS DEI Response*, at 3, *available at* https://drive.google.com/file/d/1vQbcRDZmWzewqD_vuFx97zjTIscoG1O8/view.
[34] *Dedicated to DEI* at 15; University of Florida, Human Resources, *Florida Equity Report 2021-2022*, at 38, *available at* https://data-apps.ir.aa.ufl.edu/public/diversity/UF%20Equity%20Report%202022.pdf.
[35] *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943).
[36] *Rumsfeld v. Forum for Academic and Institutional Rights*, 547 U.S. 47, 61 (2006).
[37] *See Hurley v. Irish–American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557 (1995) (state law cannot require a parade to include a group whose message the parade's organizer does not wish to send) and *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974) (right-of-reply statute violates editors' right to determine the content of their newspapers).

The Court has consistently struck down mandatory political loyalty oaths, particularly in the education setting.[38] The Court established a four-part test for reviewing the constitutionality of such oaths, requiring that:

- The oath may not infringe on First or Fourteenth Amendment rights;
- Employment may not be conditioned on an oath that one has not engaged in, or will not engage in, protected speech activities;
- Employment may not be conditioned on an oath denying past or avoiding future associational activities protected by the Constitution; and
- The oath may not be so vague that a person of ordinary intelligence must guess at its meaning.[39]

Equity and Access in Florida's Universities

BOG Regulation 2.003 governs state university system institution policies and procedure regarding equity and access for both students and employees.[40] The regulation prohibits discrimination on the basis of race, color, national origin, sex, religion, age, disability, marital status, veteran status, or any basis protected by applicable law.[41] Covered individuals include prospective and enrolled students, prospective and current employees, and university program invitees.[42] However, this does not prohibit an institution from using legal methods to achieve a broadly diverse student body, faculty and staff.[43]

Each state university system institution must:

- make available classes, programs, facilities, employment, and services without regard to the protected status or category of an individual;
- establish policies, procedures, and reporting mechanisms that prohibit and address unlawful discrimination; and
- establish a designated office or person responsible for the development and implementation of the equal employment opportunity program at each university.[44]

Relating to equal opportunity in employment, each state university system institution must:

- Offer equal opportunity and access in employment to all qualified individuals without regard to the protected status or category of the individual.
- Maintain an annual equity plan for remedying underutilization of women and minorities, as applicable, in senior-level administrative positions and by faculty rank and/or tenure status.[45]

In compliance with state, federal, and NCAA requirements regarding equal opportunity and access to students to participate in intercollegiate athletics, as well as in intramural, club, or recreational athletics, each state university system institution must develop an equity plan addressing sex equity in sports offerings and funding, including the proper level of support for women's athletic scholarships.[46]

Finally, the BOG requires an annual Florida Equity Report, subject to the following requirements:

- At a minimum, each university's equity report must include information on the institution's progress in implementing strategic initiatives and performance related to equity and access as

[38] *See, e.g.*, *Baggett v. Bullitt*, 377 U.S. 360 (1964); *Elfbrandt v. Russell*, 384 U.S. 11 (1966); and *Keyishian v. Board of Regents*, 385 U.S. 589 (1967).
[39] *Cole v. Richardson*, 405 U.S. 676 (1972).
[40] Florida Board of Governors, Regulation 2.003.
[41] Florida Board of Governors, Regulation 2.003(1).
[42] *Id.*
[43] Florida Board of Governors, Regulation 2.003(1)(b). State university system institutions are expressly prohibited from using admissions criteria that include preferences on the basis of race, color, national origin, disability, religion, or sex. Florida Board of Governors, Regulation 6.001(3).
[44] Florida Board of Governors, Regulation 2.003(2).
[45] Florida Board of Governors, Regulation 2.003(3).
[46] Florida Board of Governors, Regulation 2.003(4).

they pertain to academic services, programs, and student enrollment; equity in athletics; and employment.
- Each university's equity report shall assess sex equity in athletics, as well as representation by race and sex in student enrollment, senior level administrative positions and by faculty rank and/or tenure status.[47]
- Each equity report shall include a web citation of the university's nondiscrimination policy adopted by its university board of trustees.
- Such reports are to be submitted to the BOG by September 30th of each year.
- Each university board of trustees or designee shall approve the annual Florida Equity Report for its institution prior to submission to the BOG.
- The BOG shall annually assess the progress of each university's plan and advise the Governor and the Legislature regarding compliance.[48]

Preferences in High Education Admissions

The BOG has adopted Regulation 6.001 prohibiting Florida's universities from using admissions criteria that include preferences on the basis of race, color, national origin, disability, religion, or sex.[49]

Effect of the Bill

The bill prohibits any public institution of higher education from requiring or soliciting a person to complete a political loyalty test as a condition of employment by, admission into, or promotion within such institution. Additionally, public institutions of higher education are prohibited from giving preferential consideration to a person for an opinion or actions in support of a partisan, a political, or an ideological set of beliefs or another person or group of persons based on the person's or group's race or ethnicity or support of a specified ideology or movement.

The bill provides that a political loyalty test includes compelling, requiring, or soliciting a person to identify commitment to or to make a statement of personal belief in support of:
- Any ideology or movement that promotes the differential treatment of a person or a group of persons based on race or ethnicity, including an initiative or a formulation of diversity, equity, and inclusion beyond upholding the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution or a theory or practice that holds that systems or institutions upholding the equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution are racist, oppressive, or otherwise unjust; or
- A specific partisan, political, or ideological set of beliefs.

The bill explicitly states that a political loyalty test does not include fidelity to, or an oath or effort taken to uphold, the United States Constitution or the Florida Constitution.

The bill authorizes the SBE and the BOG to adopt rules and regulations, respectively, to implement these provisions. Such rules and regulations may provide penalties for the willful violation of these prohibitions.

The bill provides a severability clause for these provisions.

Due Process for Students Participating in Student Government

Present Situation

[47] Annual goals shall be developed and included in the equity report to address each area of underutilization. For each year in which prior year goals were not achieved, each university shall provide a narrative explanation and a plan for achievement of equity. Florida Board of Governors, Regulation 2.003(5)(b)1.
[48] Florida Board of Governors, Regulation 2.003(5).
[49] Florida Board of Governors, Regulation 6.001(3).

Student Governments at State Universities

Current law creates a student government on the main campus of every state university.[50] A state university student government is required to be comprised of at least a student body president, a student legislature and a student judiciary.[51] Each student government is required to adopt internal procedures that provide for the operation and administration of the student government as well as the fulfillment of all statutory duties including, but not limited to, establishing procedures for the suspension, removal, and discipline of officers of the student government.[52] The statutory requirements for university student governments are mirrored in the BOG regulations.[53]

Student government organizations exist statutorily and are a part of the university at which they are established.[54] Actions taken by student government entities are subject to the approval of the university.[55] When a student government acts, it acts under the color of state law and such actions are considered state action.[56]

In 2021, the Legislature established additional due process protections for students participating in student governments. Every university student government body must include a provision in its internal procedures permitting an officer that is disciplined, suspended, or removed from office to appeal directly to the vice president of student affairs or other designated senior university administrator. Neither the student government nor the university may impose any conditions precedent on such an appeal.[57]

Florida Student Association

The Florida Student Association (FSA) is a nonprofit entity established to advocate on behalf of Florida's State University System (SUS) students. The FSA consists of the 12 university student body presidents.[58] The president of the FSA serves as the student member of the BOG.[59] Additionally, the FSA nominates a student to serve on financial aid appeals committees.[60]

Effect of the Bill

The bill officially designates the FSA as the nonprofit advocacy group for SUS students and requires the FSA president's due process rights be protected to the extent other students participating in student government activities have their due process rights protected. The chancellor of the BOG is authorized to designate an alternate entity if the FSA fails to meet the standard established in law.

The bill requires that the board of directors of the FSA be comprised of the 12 SUS institution student body presidents. The chair of the board of directors must be annually selected by the members of the board and shall also serve as the president of the FSA.

The bill requires the FSA to adopt bylaws that provide for the following:

- Due process for the removal or impeachment of the president of the FSA. Such due process must provide that the president of the FSA may be removed by the majority vote of members of

[50] Section 1004.26(1), F.S.
[51] Section 1004.26(2), F.S.
[52] Sections 1004.26(3) and (4)(a), F.S.
[53] Florida Board of Governors Regulation 6.014.
[54] Section 1004.26(1), F.S.
[55] *See, e.g.*, Florida Board of Governors Regulation 6.014(5); Florida State University Board of Trustees Regulation FSU-3.001(3).
[56] *See Ala. Student Party v. Student Gov't Ass'n of the Univ. of Ala.*, 867 F.2d 1344, 1345 (11th Cir. 1989).
[57] Section 1004.26(4)(d), F.S.
[58] Florida Student Association, *About Us*, https://www.linkedin.com/company/florida-student-association (last visited Apr. 30, 2023).
[59] Art. IX, s. 7(d), Fla. Const. and s. 1001.70(1), F.S.
[60] Section 1009.42(1), F.S.

the board of directors. The grounds for removal of the president of the FSA are limited to malfeasance, misfeasance, neglect of duty, incompetence, permanent inability to perform official duties, or conviction of a felony.

- Procedures for the suspension and removal of the president of the FSA following the conviction of a felony.
- Procedures for a president of the FSA who has been disciplined, suspended, or removed from his or her position to directly appeal such decision to the vice chancellor for academic and student affairs for the BOG. The bylaws may not place any condition precedent on the exercise of such right granted by this paragraph and the FSA may not elect a new president until the exhaustion of the appeals process or any other due process rights afforded by law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments, *infra*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Each university must have an OPPE that is responsible for the duties outlined for the office in the bill. The BOG estimates the fiscal for each institution will vary, but will be approximately $483,692 and can be absorbed within existing resources.[61]

Only when necessary because the OPPE cannot readily find an advocate from within the state university community, the bill allows for an institution to cover per diem and travel expenses for certain speakers. The BOG estimates the costs to be approximately $200,000 per institution, which can be absorbed within existing resources.[62]

[61] Email from Tim Jones, Senior Vice Chancellor, Finance/Administration and CFO, Board of Governors, dated March 10, 2023, (on file with the House Higher Education Appropriations Subcommittee).
[62] *Id*.