

STORAGE NAME: h1933s1.go

DATE: April 8, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: CS/HB 1933 (PCB CU 99-05)

RELATING TO: State University System

SPONSOR(S): Committees on Governmental Operations and Colleges & Universities, Representative Casey and others

COMPANION BILL(S): SB 270 (compare), CS/SB 1924 (compare), and HB 887 (compare)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COLLEGES & UNIVERSITIES YEAS 8 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
 - (3) EDUCATION APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

This bill modifies statutory provisions relating to state employee fee waivers to be consistent with proviso in the General Appropriations Act and provides that the credit hours generated by students using the waivers are fundable to the extent provided in the General Appropriations Act.

The bill modifies provisions relating to the issuance of bonds by university direct support organizations and provisions relating to the financing, design and construction, lease, lease purchase, purchase, or operation of facilities by direct support organizations to only require legislative approval in those instances when the state will be asked for operating funds or funds to purchase the facility.

The bill increases the thresholds that are applicable to state universities for "continuing contracts" under the "Consultants' Competitive Negotiation Act" from \$500,000 to \$1 million for construction and from \$25,000 to \$100,000 for study activities.

The bill expands eligibility for participation in the State University System Optional Retirement Program to all positions classified as Administrative and Professional (A&P); requires approval of the Board of Regents to name a school, college, or center for a living person; repeals unnecessary rule-making authority relating to employee recognition programs; provides an alternative methodology for calculating the GPA for certain students who fail to meet the initial GPA required for admission to a state university; permits the general office of the Board of Regents, like the state universities, to carry forward unexpended funds; provides an alternative to the procedures set forth in s. 215.322, F.S., that universities may follow in accepting credit cards and/or debit cards; and modifies reporting requirements for universities receiving funding from the Brain and Spinal Cord Injury Rehabilitation Trust Fund.

The bill repeals statutory provisions relating to the Women's Athletic Trust Fund.

The bill revises the definition of the term "Engineering" to exclude "teaching of the principles and methods of engineering design."

The overall fiscal impact of the bill is indeterminate.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

See SECTION-BY-SECTION ANALYSIS.

B. EFFECT OF PROPOSED CHANGES:

See SECTION-BY-SECTION ANALYSIS.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The requirement that the Board of Regents and the state universities promulgate rules relating to employee recognition programs is repealed.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Expanding the eligibility to participate in the State University System Optional Retirement Program (ORP) to all positions that are classified as Administrative and Professional (A&P) should reduce the administrative workload on the state universities, the Board of Regents, and the Division of Retirement that is currently associated with certifying on a case-by-case basis the eligibility of an A&P position to participate in the ORP.

Increasing the thresholds that would be applicable to the state universities for "continuing contracts" under the "Consultants' Competitive Negotiation Act" should reduce the need for extra bids for these services.

The modifications to the provisions relating to the Brain and Spinal Cord Injury Rehabilitation Trust Fund eliminate the program review requirements involving the Board of Regents. Universities receiving funding pursuant to s. 413.613 (3), F.S., would be required to submit annual reports of their research activities and findings.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

No agency or program is eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

The bill does not purport to provide services to families or children.

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

The bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends ss. 110.1099, 121.35, 240.209, 240.2093, 240.2094, 240.2111, 240.227, 240.233, 240.271, 240.272, 240.289, 240.299, 413.613, and 471.005, F.S.

Repeals s. 240.5335, F.S.

E. SECTION-BY-SECTION ANALYSIS:

SECTION 1. Amends s. 110.1099, F.S, to clarify provisions relating to state employee fee waivers.

Present Situation: Current law authorizes full-time state employees to receive tuition waivers to enroll in up to six credit hours of tuition-free courses on a space available basis at a state university. Provisions relating to the use of state employee fee waivers can be found in s. 110.1099, F.S.; s. 240.209, F.S.; and the General Appropriations Act (GAA). Section 110.1099, F.S., which relates to education and training opportunities for state employees, provides that state employees may be authorized to receive fundable tuition waivers on a space available basis or

vouchers to attend work-related courses at public universities. Provisions in ch. 240, F.S., and the GAA do not reference "work-related" or "fundable".

During the 1998 interim, staff of the House of Representatives Committee on Colleges & Universities conducted a review of the state employee fee waiver program and the impact of the program on state universities. One of the recommendations of that study was to modify statutory provisions relating to employee fee waivers to be consistent with the proviso language in the GAA and to remove reference to "fundable" from s. 110.1099, F.S.

Effect of Proposed Changes: Provisions relating to state employee fee waivers are modified to be consistent with proviso language in the GAA. Pursuant to provisions of the GAA and negotiated collective bargaining agreements, state agencies are authorized to issue waivers to full-time employees to permit such employees to enroll for up to 6 credit hours of tuition-free courses per term at a state university on a space-available basis. References to "fundable" are removed from s. 110.1099, F.S.

SECTION 2. Amends s. 121.35, F.S., to expand eligibility for participation in the State University System Optional Retirement Program.

Present Situation: Employees of the State University System (SUS) are eligible to participate in the Florida Retirement System (FRS). The Florida Retirement System is administered by the Division of Retirement. Section 121.35, F.S., directs the Division of Retirement to establish an optional retirement program (ORP) for the State University System. Participation in the ORP is currently limited to persons who are otherwise eligible for membership in the Florida Retirement System; who are employed or appointed for no less than one academic year; and who are employed in one of the following State University System positions:

- (1) positions classified as instructional and research faculty.
- (2) certain positions classified as administrative and professional. (Only positions that are included in the SUS Executive Service or those which the Division of Retirement determines meet specific statutory criteria are eligible under this category.)
- (3) the Chancellor and the university presidents.

If a state university or the Board of Regents (BOR) wishes to seek eligibility to participate in the ORP for an Administrative and Professional (A&P) position not in the Executive Service, they must submit an application, including a certification that the position meets certain eligibility criteria, to the Division of Retirement for each such position. To be eligible to participate, the division must determine the position meets the following criteria:

- (1) The duties and responsibilities of the position include either the formulation, interpretation, or implementation of academic policies, or the performance of functions which are unique or specialized within higher education and which frequently involve the support of the academic mission of the university.
- (2) Recruiting to fill vacancies in the position must be conducted within the national or regional market.

Current law requires each employer (a state university or the Board of Regents) to contribute on behalf of each participant in the ORP an amount equal to the normal cost portion of the employer retirement contribution which would be required if the participant were a regular member of the FRS, plus the portion of the contribution rate required in s. 112.363(8), F.S., that would otherwise be assigned to the Retiree Health Insurance Subsidy Trust Fund, less an amount approved by the Legislature which must be deducted by the division to provide for administration of the program. The employer must also contribute on behalf of each participant in the ORP an amount equal to the unfunded actuarial accrued liability portion of the employer contribution which would be required for members of the FRS. Contributions required for social security by each employer and each participant must be maintained for each participant in the ORP and are in addition to the retirement contribution specified in s. 121.35(4), F.S.

Staff of the Board of Regents report that 30% of the A&P Pay Plan, or 1,318 employees, are in positions that currently require a petition to participate in the ORP. Examples of classes included in this category include: Coordinator, Equal Opportunity Programs; Specialist, Financial Planning; and Specialist, Inspector General. BOR staff report that there are currently 67 A&P positions that have been deemed eligible based on the statutory criteria for eligibility and 1,251 positions that are potentially eligible by virtue of the eligibility criteria.

The Office of Human Resources of the Board of Regents has oversight responsibility for policies relating to benefits offered to employees of the State University System. This includes the ongoing responsibility to identify enhancements to the benefits offered and an obligation to identify means to streamline the administration of the various benefits currently offered. BOR staff report that the current criteria used to determine ORP eligibility for participation in the ORP causes confusion during the hiring process and creates administrative problems at the universities. They further report that expanding the eligibility to participate in the ORP to all A&P employees would provide a significant advantage to the SUS in terms of labor market competition. The ability to recruit and retain a top-notch workforce in public higher education can depend largely on the quality of benefits offered to the employees.

The Board of Regents has recommended expansion of the positions eligible to participate in the ORP to include all A&P positions.

Effect of Proposed Changes: Eligibility for participation in the Optional Retirement Program for the State University System is expanded to include all positions classified as Administrative & Professional.

If the entire A&P Pay Plan gains eligibility for the ORP, the SUS indicates that a one-time election would be held for employees gaining the new ORP eligibility status. The election would provide these employees with the option of participating in the ORP or remaining in the FRS. BOR staff estimate that between 58% and 65% of the employees in these positions would elect participation in the ORP if given the opportunity for choice in a one time election scenario. These figures are based on cumulative employee election statistics since the inception of the ORP on July 1, 1984.

SECTION 3. Amends s. 239.117, F.S., 1998, Supplement, related to postsecondary student fees exemptions.

Present Situation: Currently, this section provides that a student for whom the state is paying a foster care board payment, or for whom the permanency planning goal is long-term foster care or independent living, or who is adopted from the Department of Children and Family Services after December 31, 1997, is exempt from the payment of registration, matriculation, and laboratory fees.

Effect of Proposed Changes: Provides an exemption from these fees for a student adopted from the Department of Children and Family Services after May 5, 1997, rather than December 31, 1997. This will presumably allow additional students to qualify for the student fee exemption.

SECTION 4. Amends s. 240.235, F.S., 1998 Supplement, relating to fees.

Present Situation: Currently, this section provides that a student for whom the state is paying a foster care board payment, or for whom the permanency planning goal is long-term foster care or independent living, or who is adopted from the Department of Children and Family Services after December 31, 1997, is exempt from the payment of all undergraduate fees, including fees associated with enrollment in college-preparatory instruction or completion of college-level communication and computation skills testing programs.

Effect of Proposed Changes: Provides an exemption from these fees for a student adopted from the Department of Children and Family Services after May 5, 1997, rather than December 31, 1997. This will presumably allow additional students to qualify for the student fee exemption.

SECTION 5. Amends s. 240.35, F.S., 1998 Supplement, related to student fees.

Present Situation: Currently, this section applies to fees charged for college credit instruction leading to an associate in arts degree, an associate in applied science degree, or an associate in science degree and noncollege credit college-preparatory courses defined in s. 239.105, F.S.

Effect of Proposed Changes: Provides an exemption from these fees for a student adopted from the Department of Children and Family Services after May 5, 1997, rather than December 31, 1997. This will presumably allow additional students to qualify for the student fee exemption.

SECTION 6. Amends s. 240.209, F.S., relating to powers and duties of the Board of Regents.

Present Situation: Current law authorizes full-time state employees to receive tuition waivers to enroll in up to six credit hours of tuition-free courses on a space available basis at a state university. Provisions relating to the use of state employee fee waivers can be found in s. 110.1099, F.S.; s. 240.209, F.S.; and the General Appropriations Act (GAA). Section 240.209, F.S., which relates to powers and duties of the Board of Regents, authorizes the board to permit full-time SUS employees who meet academic requirements to enroll for up to 6 credit hours of tuition-free courses per term on a space-available basis. Provisions in s. 110.1099, F.S., and the GAA do not require employees to "meet academic requirements."

During the 1998 interim, staff of the House of Representatives Committee on Colleges & Universities conducted a review of the state employee fee waiver program and the impact of the program on state universities. One of the recommendations of that study was to modify statutory provisions relating to employee fee waivers to be consistent with the proviso language in the GAA.

Section 267.062, F.S., prohibits the naming of any state building, road, bridge, park, recreational complex, or other similar facility for any living person except as specifically provided by law. Rule 6C-9.005, F.A.C., authorizes the president of a state university to recommend for the consideration of the BOR a name for any building or other facility on the campus. Chancellor's Memorandum, CM-F-03.00-03/97, requires a university president to submit requests to award honorary degrees to distinguished individuals to the Chancellor for consideration by the Executive Committee of the Board of Regents. A letter requesting the approval, including biographical data and other materials describing outstanding services or contributions made by the individual, are required at least 30 days in advance of the award by the university. The president may award the honorary degree after notice of the Executive Committee's approval. Neither statute, BOR rule, or Chancellor's Memorandum address the naming of schools or colleges for an individual.

Effect of Proposed Changes: Provisions relating to state employee fee waivers are modified to be consistent with proviso language in the GAA. Pursuant to provisions of the GAA and negotiated collective bargaining agreements, state agencies are authorized to issue waivers to full-time employees to permit such employees to enroll for up to 6 credit hours of tuition-free courses per term at a state university on a space-available basis.

Approval of the Board of Regents will be required to name a school, college, or center at a state university for a living person.

SECTION 7. Amends s. 240.2093, F.S., to modify provisions relating to the issuance of bonds by university direct support organizations.

Present Situation: The provisions of s. 240.299, F.S., authorize the formation of university direct support organizations (DSOs). DSOs must be organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a state university or for the benefit of a research and development park or research and development authority affiliated with a state university. Each DSO must be reviewed by the Board of Regents (BOR) and certified to be operating in a manner consistent with the goals of the university and in the best interest of the state. The chair of the BOR may appoint a representative to the board of directors and the executive committee of a university DSO. The president of the university for which the DSO is established, or the president's designee, must also serve on the board of directors and the executive committee of any university DSO. The BOR is authorized to permit the use of property, facilities, and personal services at any state university by any university DSO. Each DSO must make provisions for an annual postaudit of its financial accounts.

The provisions of s. 240.128, F.S., prohibit a university or university DSO from accepting or purchasing facilities for which the state will be asked for operating funds unless there has been prior approval for acquisition granted by the Legislature.

Section 243.151, F.S., authorizes state universities to negotiate, and upon approval of the BOR, enter into agreements to lease land under its jurisdiction to for profit and nonprofit corporations for the purpose of erecting facilities and accommodations to serve the needs and purposes of the university. Universities are also authorized to enter into agreements with such corporations whereby income-producing buildings, improvements, and facilities to serve the needs and purposes of the university are acquired by purchase or lease-purchase by the university upon approval of the BOR and approval of the project by the Legislature. Agreements must be entered into as a result of publicly announced competitive bids or proposals, except that the university may enter into an agreement with a university direct support organization which must then enter into subsequent agreements for financing and constructing the project after receiving competitive bids or proposals. The facility must conform to construction standards and codes applicable to university facilities.

The provisions of s. 240.2093(2), F.S., authorize the BOR to approve the issuance of revenue bonds or other forms of indebtedness by a DSO when such revenue bonds or other forms of indebtedness are used to finance or refinance capital projects which are to provide facilities necessary and desirable to serve the needs and purposes of the university, as determined by the systemwide strategic plan adopted by the BOR, and when the project has been approved by the Legislature.

Representatives of the universities and the BOR report that the provision requiring legislative approval limits direct support organizations from transacting certain types of business (e.g. buying and financing facilities) to once a year after the legislative session. The universities maintain that this diminishes the flexibility to transact business for which the DSOs were created and makes it impossible to take advantage of opportunities that arise during the year.

Effect of Proposed Changes: Legislative approval for university direct support organizations to issue bonds will only be required in instances when the state will be asked for operating funds or funds to purchase the facility. Approval of such bonds are subject to the provisions of s. 243.151, F.S.

SECTION 8. Amends s. 240.2094, F.S., relating to State University System management flexibility.

Present Situation: Section 240.2011, F.S., defines the State University System as: the Board of Regents of the Division of Universities of the Department of Education, with a central office located in Leon County; the University of Florida; the Florida State University; the Florida Agricultural & Mechanical University; the University of South Florida; the Florida Atlantic University; the University of West Florida; the University of Central Florida; the University of North Florida; the Florida International University; and the Florida Gulf Coast University. The provisions of s. 240.2094, F.S., permit funds for the operation of the State University System to be requested and appropriated within budget entities, program components, program categories, lump sums, or special categories. Funds appropriated to the SUS may be transferred to traditional categories for expenditure by the Board of Regents. The Board of Regents must provide each university an approved budget based upon the appropriations act, and the universities must develop an annual operating budget that allocates funds by program component and traditional expenditure category.

No lump-sum plan is required to implement the special categories, program categories, or lump-sum appropriations. Upon release of the appropriations to the Board of Regents, the Comptroller must transfer or reallocate funds to or among accounts established for each university within each budget entity for disbursement purposes. The Board of Regents must maintain records to account for the original appropriation.

Effect of Proposed Changes: The Board of Regents must provide the general office of the Board of Regents, as well as each university, an approved budget based on the appropriations act. The general office must also develop an annual operating budget that allocates funds by program component and traditional expenditure category. Upon release of the appropriations to

the Board of Regents, the Comptroller must transfer or reallocate funds to or among accounts established for each university and the general office of the board.

SECTION 9. Amends s. 240.2111, F.S., to delete Board of Regents rule-making authority and authorize state universities to establish employee recognition programs.

Present Situation: Section 240.2111, F.S., requires the Board of Regents and each university to promulgate rules for an employee recognition program, describes the components of the program, and authorizes the expenditure of funds for recognition and awards.

Effect of Proposed Changes: The rule-making requirements relating to employee recognition programs are repealed. State universities are required to “establish,” rather than “promulgate rules for,” employee recognition programs.

SECTION 10. Amends s. 240.227, F.S., to modify the definition of “continuing contract” for purposes of a university president’s contracting authority.

Present Situation: Subsection 240.227(12), F.S., requires university presidents to comply with the provisions of s. 287.055, F.S., the “Consultants’ Competitive Negotiations Act,” for the procurement of professional services and authorizes university presidents to approve and execute all contracts for planning, construction, and equipment for projects with building programs and construction budgets approved by the BOR.

Provisions of the “Consultants’ Competitive Negotiation Act” govern the acquisition of professional architectural, engineering, landscape architectural, and surveying and mapping services. Current law sets the thresholds for a “continuing contract” for all agencies at \$500,000 for construction and at \$25,000 for study activities. These thresholds were established in 1988 by the provisions of ch. 88-108, L.O.F. For purposes of the “Consultants’ Competitive Negotiation Act,” the term “agency” means the state, a state agency, a municipality, a political subdivision, a school district, or a school board.

State universities reportedly have a large number of construction projects that are managed by professionals with a “continuing contract.” Prior to the establishment of the “continuing contract” for professional services, universities experienced a backlog of projects due in part to the amount of time required to select architects and engineers. The enactment of the “continuing contract” provision in s. 287.055, F.S., provided a more efficient means for handling the workload. The universities indicate that inflation alone over the past decade has reduced the purchasing power of the \$500,000 maximum by 34 percent. In addition, the SUS has increased the usage of architects and engineers in the design and construction stages of many maintenance projects in order to improve the quality of the work performed.

State universities also report an increase over the past decade in study activity under a “continuing contract”. The Campus Master Planning process and the increased complexity that accompanies large campuses require specialized expertise in developing solutions for urgent problems. The universities suggest that the effectiveness of the “continuing contract” provision is limited by the current \$25,000 maximum.

Effect of Proposed Changes: This bill increases the thresholds that are applicable to state universities for “continuing contracts” under the “Consultants’ Competitive Negotiation Act” to \$1 million for construction and \$100,000 for study activities.

SECTION 11. Amends s. 240.233, F.S., relating to admission of students to state universities.

Present Situation: Section 240.233, F.S., authorizes each university to govern its admissions of students, subject to the provisions of that section and rules of the Board of Regents. The Board of Regents has established minimum state level admissions policies for first-time-in-college students and for students transferring without having AA degrees from Florida public community colleges. Higher admissions standards may be required by each university.

According to the *Counseling for Future Education Handbook* the admissions policies include a list of required high school courses considered to be the best preparation for entry to college. The

required high school courses include: 4 units of English (3 with substantial writing); 3 units of Mathematics (Algebra I and above); 3 units of Natural Science (2 with substantial lab); 3 units of Social Science; 2 units of Foreign Language (in the same language); and 4 electives from these subject areas.

To determine admission eligibility, a student's grade point average (GPA) is calculated by the university to which the student applies. The GPA used to determine eligibility for admissions is calculated using grades earned in the required courses described in the preceding paragraph. Additional weights are normally assigned to grades of D or better in Honors, Advanced Placement, International Baccalaureate, and other advanced courses. If the GPA calculated for purposes of admission is less than 3.0, a sliding scale is used to determine eligibility. The sliding scale allows the opportunity for an applicant to balance a low GPA with a high test score or to balance a low test score with a high GPA. For example, a student with a GPA of 2.9 would need a minimum SAT score of 970 (or the equivalent).

Effect of Proposed Changes: The bill provides an alternative methodology for calculating the GPA used to determine initial eligibility for admission to a state university. A Florida resident who is denied admission as an undergraduate to a state university for failure to meet the high school GPA requirement would be permitted to appeal the decision to the university and request a recalculation of the GPA, which would include the grades earned in up to three credits of advanced fine arts courses. For purposes of this GPA calculation, fine arts courses include courses in music, drama, painting, sculpture, speech, debate, or a course in any art form that requires manual dexterity. "Advance level fine arts courses" include fine arts courses identified in the course code directory as Advanced Placement, pre-International Baccalaureate or International Baccalaureate or fine arts courses taken in the third or fourth year of a fine arts curriculum.

SECTION 12. Amends s. 240.271, F.S., relating to State University System funding.

Present Situation: Funding policy for the State University System is set forth in s. 240.271, F.S. That section provides that the allocation of appropriated funds to the universities must be based on enrollment plans approved by the Legislature and program cost categories. The enrollment planning plus program cost data must be used as the basis for preparing the legislative budget request. The enrollment plan of a university that fails to meet its planned enrollment by more than 5% for any 2 consecutive years must be reduced. If the actual enrollment exceeds planned enrollment by more than 5%, an explanation of the excess must be provided with the next year's enrollment plan. The BOR is directed to allocate to each university the student fees collected by the university other than revenues generated by enrollment growth in excess of 5% above the planned enrollment.

In addition to enrollment-based appropriations, provision is also made for the establishment of categorical programs, such as research and public service, based upon institutional mission. Appropriations by the Legislature and allocations by the BOR are to be based upon full costs and priorities established by the Legislature. In addition, the Legislature may, by line item, identify programs of extraordinary quality for the utilization of state funds to be matched by nonstate and nonfederal funds.

The Board of Regents must establish and validate a cost-estimating system and report as part of its legislative budget request the actual expenditures for the previous fiscal year. The report must include total expenditures from all sources.

Section 110.1099, F.S., relating to education and training opportunities for state employees, provides that student credit hours generated by state employee fee waivers are "fundable" hours. The term "fundable" is not defined. No additional funding was provided by the 1998 Legislature specifically targeting credit hours generated by students using employee fee waivers. The Colleges & Universities Committee interim report on employee fee waivers recommends the removal of references to "fundable" from s. 110.1099, F.S.

Effect of Proposed Changes: Provisions relating to the funding of state employee fee waivers are added to the section of law relating to State University System funding. Student credit hours generated by a student using an employee fee waiver will be funded as provided for in the General Appropriations Act.

SECTION 13. Amends s. 240.272, F.S., relating to carry forward of unexpended funds.

Present Situation: Section 240.272, F.S., directs the Executive Office of the Governor to, on July 1 of each year, certify forward all unexpended funds appropriated or provided pursuant to s. 240.209, F.S. or s. 240.271, F.S. Any unexpended funds in the current year operating budget must be carried forward by the Board of Regents for use by the university to which the funds were allocated. Of the unexpended funds certified forward, any unencumbered amounts may be transferred to university carryforward accounts on September 1 of each year. Any certified forward funds remaining undisbursed on December 31 of each year must be transferred to university carryforward accounts. The carryforward must not exceed 5% of the total operating budget of a university. Funds carried forward must be expended for building an escrow account for major equipment purchases; for scientific, technical, or other equipment; for matching challenge grant programs; for library resources; for minor repairs, renovations, or maintenance; for major studies or planning processes; for maintaining access to course offerings in the event of a revenue shortfall; or for expanding access to course offerings, as approved by the Board of Regents.

Effect of Proposed Changes: The general office of the Board of Regents, like the state universities, will be permitted to carry forward unexpended funds.

SECTION 14. Amends s. 240.289, F.S., to modify provisions relating to the use of credit cards and/or debit cards in the university system.

Present Situation. Section 240.289, F.S., permits state universities to accept credit cards, charge cards, or debit cards as payment for goods, services, tuition, and fees. Agreements with credit card companies must be pursuant to the provisions of s. 215.322, F.S., and in accordance with rules established by the Board of Regents.

Section 215.322, F.S., contains provisions relating to the acceptance of credit cards, charge cards, or debit cards by state agencies, units of local government, and the judicial branch. The intent of the Legislature is to encourage state agencies, the judicial branch, and units of local government to make their services more convenient to the public and to reduce the administrative costs of government by acceptance of payments by credit cards, charge cards, and debit cards to the maximum extent practicable. A state agency may accept credit cards, charge cards, or debit cards in payment for goods and services upon the recommendation of the Office of Planning and Budgeting and with prior approval of the Treasurer.

Section 215.322, F.S., requires the Treasurer to adopt rules governing the establishment and acceptance of credit cards, charge cards, or debit cards by state agencies. The rules must require utilization of a standardized contract (developed by the Treasurer) between the financial institution and the agency. A substitute agreement may be used if approved by the Treasurer. An agency must be permitted to impose a convenience fee upon the person making the payment. The convenience fee may not exceed the cost to the state of contracting for such card services.

Section 215.322, F.S., authorizes the Treasurer to establish contracts with one or more financial institutions for processing credit card, charge card, or debit card collections. Any state agency which accepts payment by credit card, charge card, or debit card must use one of these contractors unless the agency obtains authorization from the Treasurer to use another contractor which is more advantageous to the agency.

The Treasurer's rules governing the acceptance of credit cards by state agencies are found in Chapter 4C-4, F.A.C. According to staff of the Joint Administrative Procedures Committee, the most recent rules relating to acceptance of credit cards became effective January 27, 1999. The rules establish procedures for the following functions: providing a process for state agencies to request approval for credit card, charge card, and debit card acceptance; utilizing a standard contract, adopted by the Treasurer, between the service provider and the agency (the Treasurer may approve a substitute agreement developed by an agency if the terms of the substitute agreement are acceptable); permitting an agency accepting payment by credit card to impose a convenience fee upon the person making the payment; and annual reporting requirements for state agencies accepting credit cards, charge cards, or debit cards.

The Treasurer's rules provide that convenience fees may not be imposed if prohibited by state law or card company regulations; that the convenience fee may be related to convenience to the consumer, such as eliminating a need to make a payment in person; and note that the convenience fee should be assigned to payment methods such as telephone, automatic response units, or other non-standard payment processing methods.

Earlier rules requiring the collection of a service fee when taxes, license fees, tuition, and other statutorily prescribed revenues are paid by use of credit cards have been repealed.

The state universities have requested authority to accept credit cards and/or debit cards for the payment of tuition and fees under conditions other than those set forth in s. 215.322, F.S.

Effect of Proposed Changes: As an alternative to the provisions set forth in s. 215.332, F.S., state universities would be authorized to accept credit cards and/or debit cards for the payment of tuition and fees without the imposition of a convenience fee for such card services. (As noted previously, the provisions of s. 215.322, F.S., do not require an agency to assess a convenience fee. The rules of the Treasurer relating to acceptance of credit cards permit but do not require a state agency to assess a convenience fee.) Universities would be authorized to absorb the cost incurred by the university in accepting credit cards and/or debit cards as a cost of doing business. Universities would be permitted to utilize any source of nonappropriated funds to cover the costs of acceptance of the cards. Universities would also be authorized to negotiate credit/debit card contracts with financial institutions whereby a compensating balance could be placed on deposit with the financial institution to cover the costs of acceptance of credit cards and debit cards. Universities would also be authorized to accept credit cards and debit cards at any location where collections are transacted for the compensation of goods, services, and tuition and fees, either in person or by electronic means.

SECTION 15. Amends s. 240.299, F.S., to modify provisions relating to the financing, design and construction, lease, lease purchase, purchase, or operation of facilities by direct support organizations.

Present Situation: The provisions of s. 240.299, F.S., authorize the formation of university direct support organizations (DSOs). The DSO must be reviewed by the Board of Regents (BOR) and certified to be operating in a manner consistent with the goals of the university and in the best interest of the state. University DSOs are authorized to enter into agreements to finance, design and construct, lease, lease-purchase, purchase, or operate facilities necessary and desirable to serve the needs and purposes of the university, as determined by the systemwide strategic plan adopted by the Board of Regents, upon approval of such agreements by the Board of Regents and approval of the project by the Legislature. Such projects are subject to the provisions of s. 243.151, F.S.

The provisions of s. 240.128, F.S., prohibit a university or university direct support organization from accepting or purchasing facilities for which the state will be asked for operating funds unless there has been prior approval for acquisition granted by the Legislature.

Section 243.151, F.S., authorizes state universities to negotiate, and upon approval of the Board of Regents, enter into agreements to lease land under its jurisdiction to for profit and nonprofit corporations for the purpose of erecting facilities and accommodations to serve the needs and purposes of the university. Universities are also authorized to enter into agreements with such corporations whereby income-producing buildings, improvements, and facilities to serve the needs and purposes of the university are acquired by purchase or lease-purchase by the university upon approval of the Board of Regents and approval of the project by the Legislature. Agreements must be entered into as a result of publicly announced competitive bids or proposals, except that the university may enter into an agreement with a university direct support organization which must then enter into subsequent agreements for financing and constructing the project after receiving competitive bids or proposals. The facility must conform to construction standards and codes applicable to university facilities.

Effect of Proposed Changes: Legislative approval for university direct support organizations to enter into agreements to finance, design and construct, lease, lease-purchase, purchase, or operate facilities will only be required in instances when the state will be asked for operating funds or funds to purchase the facility.

SECTION 16. Repeals s. 240.5335, F.S., relating to the Women's Athletic Trust Fund.

Present Situation: The 1985 Legislature enacted ch. 85-362, L.O.F., establishing the Women's Athletics Trust Fund to provide the opportunity for each state university to receive and match challenge grants for women's athletics. University foundations were directed to solicit and receive gifts from private sources to provide matching funds to the trust fund challenge grants. Funding for the Trust Fund was to be appropriated by the Legislature. The amount appropriated for the trust fund would then be allocated by the Board of Regents to each university on the basis of one \$5,000 challenge grant for each \$7,500 raised from private sources.

Staff of the Board of Regents report that funding has never been appropriated for the Women's Athletics Trust Fund and accordingly recommend repeal of the statutory provisions relating to the trust fund.

Effect of Proposed Changes: Statutory provisions relating to the Women's Athletics Trust Fund (s. 240.5335, F.S.) are repealed.

SECTION 17. Amends s. 413.613, F.S., revising reporting requirements relating to the Brain and Spinal Cord Injury Rehabilitation Trust Fund.

Present Situation: Section 413.613, F.S., establishes the Brain & Spinal Cord Injury Rehabilitation Trust Fund. Subsection (3) of this section provides for distribution of not more than \$500,000 annually to the University of Florida and the University of Miami to conduct spinal cord and brain injury research. Subsection (4) requires the Board of Regents to establish a program review process including a prospective program plan, research design, proposed outcomes, and an annual report of research activities and findings. Prospective program plans are submitted to the Board of Regents and funds are released upon acceptance of the proposed program plans. The Board of Regents is authorized to spend up to \$10,000 of state funds for the program review.

Because the area of research is so specialized, the Board of Regents reports experiencing difficulty in finding external consultants to conduct the requisite program reviews who are either not currently working with faculty at each institution or have worked with them in the recent past or plan to in the near future. The Board of Regents recommends repealing s. 413.613(4), F.S., and amending s. 413.613(3), F.S., to require each university to submit an annual report of their research activities and findings to the presiding officers of the Legislature, the Board of Regents, and the Secretary of the Department of Labor and Employment Security.

Effect of Proposed Changes: Statutory provisions relating to the program review of the Brain and Spinal Cord Research Program are repealed. Each university receiving funding from the Brain and Spinal Cord Injury Rehabilitation Trust Fund would be required to submit an annual report of research activities and findings to the presiding officers of the Legislature, the Board of Regents, and the Secretary of the Department of Labor and Employment Security.

SECTION 18. Amends s. 471.005, F.S., to provide that for the sole purpose of teaching the principles and methods of engineering design, a person employed by a public or independent postsecondary educational institution licensed or exempt from licensure is not required to register as a registered engineer.

Present Situation: Section 471.003, F.S., prohibits any person other than a duly registered engineer from practicing engineering. Subsection (6) of s. 471.005, F.S., defines the term "Engineering" to include "teaching of the principles and methods of engineering design." Universities report that the requirement that engineering faculty be registered engineers contributes to hiring difficulties. In addition, engineering design courses may be taught as early as the freshman year. Information received from the Board of Professional Engineers indicates that individuals teaching at this level are not normally registered.

Effect of Proposed Changes: Provides that for the sole purpose of teaching the principles and methods of engineering design, notwithstanding the provisions of s. 471.005(6), F.S., a person employed by a public postsecondary educational institution, or by an independent postsecondary educational institution licensed or exempt from licensure pursuant to the provisions of ch. 246,

F.S., is not required to register under the provisions of ss. 471.001 - 471.037, F.S., as a registered engineer.

SECTION 19. Amends s. 378.101, F.S., relating to the Florida Institute of Phosphate Research.

Present Situation: The Florida Institute of Phosphate Research is empowered to administer the Phosphate Research Trust Fund which is currently subject to the 7 percent service charge imposed pursuant to ch. 215, F.S. Currently, any proceeds received by the institute are deposited in the Phosphate Research Trust Fund for use as provided by law.

Effect of Proposed Changes: Provides that the Phosphate Research Trust Fund shall **not** be subject to the service charge imposed pursuant to ch. 215, F.S.; and provides that any proceeds received by the institute shall be deposited in an established account of the not-for-profit foundation of the State University System institution with administrative responsibility for the institute for use consistent with law and the mission of the institute.

SECTION 20. Amends s. 243.19, F.S., relating to the Counties Higher Educational Facilities Authorities Law revising the findings and declaration of necessity section of this law.

Present Situation: Section 243.19, F.S., establishes that it is the purpose of this section to provide a measure of assistance and an alternate method to enable institutions of higher education in each county of this state to provide the facilities and structures which are sorely needed to assist youth in achieving required learning levels and development of their intellectual and mental capacities.

Effect of Proposed Changes: Revises findings and declaration of necessity language to include that it is essential to provide additional assistance to institutions for higher education by enabling those institutions to coordinate their budgetary needs with the timing of receipt of tuition revenues.

SECTION 21. Amends s. 243.20, F.S., relating to definitions for the Counties Higher Educational Facilities Authorities Law.

Present Situation: Section 243.20 contains definitions of terms related to the Counties Higher Educational Facilities Authorities Law.

Effect of Proposed Changes: Revises the definition of "project" to provide that the term also includes a loan in anticipation of tuition revenues by an institution for higher education; revises the definition of "cost" to provide that in the case of a loan in anticipation of tuition revenues, the term "cost" means the amount of the loan in anticipation of tuition revenues that does not exceed the amount of tuition revenues anticipated to be received by the borrowing institutions for higher education in the 1-year period following the date of the loan, plus costs related to the issuance of the loans, or bonds the proceeds of which fund the loans, and any related cost of debt service reserve funds associated therewith; and defines "loan in anticipation of tuition revenues" to mean a loan to an institution for higher education under circumstances in which tuition revenues anticipated to be received by the institution in any budget year are estimated to be insufficient at any time during the budget year to pay the operating expenses or other obligations of the institution in accordance with the budget of the institution.

SECTION 22. Amends s. 243.22, F.S., relating to the powers of the Counties Higher Educational Facilities Authority.

Present Situation: Section 243.22, F.S., provides that the purpose of the authority shall be to assist institutions for higher education in the construction, financing, and refinancing of projects, and for this purpose the authority is authorized and empowered.

Effect of Proposed Changes: Amends paragraph (12) related to the making of loans to include a loan in anticipation of tuition revenues.

SECTION 23. Provides an effective date of July 1, 1999, except as otherwise provided herein.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See FISCAL COMMENTS.

2. Recurring Effects:

See FISCAL COMMENTS.

3. Long Run Effects Other Than Normal Growth:

See FISCAL COMMENTS.

4. Total Revenues and Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

Staff of the Board of Regents project that if the eligibility to participate in the SUS Optional Retirement Program is expanded to include all A&P positions, between 58% - 65% of the employees would elect to participate. The FRS contribution for these employees is estimated to be in the range of \$2 - 2.2 million.

The administrative costs currently incurred by state universities, the Board of Regents, and the Division of Retirement when certifying the eligibility of positions to participate in the SUS Optional Retirement Program should be eliminated.

Increasing the thresholds that would be applicable to state universities for "continuing contracts" under the "Consultants' Competitive Negotiation Act" should reduce the administrative costs associated with these activities because universities would not be required to seek extra bids.

The fiscal impact of authorizing an alternative procedure for acceptance of credit cards by state universities is indeterminate.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its April 8, 1999, committee meeting, the Committee on Governmental Operations adopted five amendments to HB 1933 and reported the bill favorably, as amended, as a committee substitute. The amendments have been incorporated into this analysis of the committee substitute and a brief explanation is given here to assist the reader.

Amendment 1, is a technical amendment suggested by House Bill Drafting to eliminate any single subject requirement problems; amendment 2, allows private educational institutions to acquire loans in anticipation of tuition revenues; amendment 3, is a title amendment making the bill an act relating to postsecondary education to encompass the additional amendments; amendment 4, provides that proceeds received by the Florida Institute of Phosphate Research will be deposited in the account of the not-for-profit foundation of the State University System institution with administrative responsibility for the institute and providing that the trust fund shall not be subject to the service charge imposed pursuant to ch. 215, F.S.; and amendment 5, provides that foster care students who are adopted from the Department of Children and Family Services after May 5, 1997, rather than December 31, 1997, are exempt from the payment of registration, matriculation, laboratory fees, undergraduate fees including fees associated with enrollment in college-preparatory instruction or completion of college-level communication and computation skills testing programs, and provides conditions.

VII. SIGNATURES:

COMMITTEE ON COLLEGES & UNIVERSITIES:

Prepared by:

Staff Director:

Betty H. Tilton, Ph.D.

Betty H. Tilton, Ph.D.

STORAGE NAME: h1933s1.go

DATE: April 8, 1999

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AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:
Prepared by: Staff Director:

Jimmy O. Helms

Jimmy O. Helms