

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2062

SPONSOR: Senator Horne

SUBJECT: State University System/Rulemaking (RAB)

DATE: March 27, 2000 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>deMarsh-Mathues</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

### Board of Regents (BOR)

The bill authorizes the BOR to adopt systemwide rules for the following:

- to implement provisions of law conferring duties on the board;
- to plan for the future needs of the State University System;
- to plan the programmatic, financial, and physical development of the system;
- to review and evaluate the instructional, research, and service programs at the universities;
- to coordinate program development among the universities; and
- to monitor the fiscal performance of the universities.

The bill allows the BOR to establish fees within specific fee caps and fee ranges. Other fees may also be established. The board may also adopt rules relating to the appointment, employment, and removal of personnel which delegate the board's authority to the Chancellor or the universities. The board must adopt those rules to provide for a coordinated, efficient systemwide program and must delegate to the universities authority to implement the program consistent with adopted rules and applicable collective bargaining agreements.

The bill authorizes the Board of Regents to specifically perform the following functions:

- Allow the waiver of any or all application, course registration, and related fees for persons who supervise student interns for institutions in the State University System.
- Manage systemwide enrollment.
- Establish policies relating to credit and non-credit education offerings by universities in the State University System.
- Establish and regulate faculty practice plans for the academic health science centers.

### Universities and Presidents

The bill allows each university to adopt specific procedures or policies for waiving the late payment fees for minor underpayments. The bill allows the adoption of rules by university presidents to implement the law for the operation and administration of the university. The rules

must include the specific powers and duties set forth in s. 240.227, F.S. The bill provides specific activities related to the university presidents' power to appoint university personnel and provide for compensation and other conditions of employment. The bill removes the reference to board rule for university personnel who are exempt from chapter 110, F.S.

The bill provides university presidents with specific authority to use, maintain, protect, and control university-owned or university-controlled buildings and grounds, property and equipment, name, and trademarks and other proprietary marks, and the financial and other university resources. The authority may include placing restrictions on commercial activity, access to facilities, firearms, food, tobacco, alcoholic beverages, and the distribution of printed materials, animals, and sound. The president's authority includes prioritizing the use of university space, property, equipment, and resources and the authority to impose charges for the use of those items. University presidents also may adjust property records and dispose of certain property under the procedures established by BOR rules.

Specific rulemaking is also provided for the following:

- approving the internal procedures of student government and providing purchasing, contracting, and budgetary-review processes;
- providing for the use and protection of data and technology; and
- ensuring compliance with federal laws, regulations, and other requirements.
- administering the law relating to the powers and duties of universities for patents, copyrights, and trademarks section.

Each university president may adopt rules: to admit students, subject to law and rules of the Board of Regents; to implement provisions of law relating to delinquent accounts; and to administer provisions of law relating to divisions of sponsored research at state universities.

The bill allows each university to adopt a code of student conduct and appropriate penalties for violations and adds to the existing list of penalties. Universities may adopt, by rule, a code of student conduct and appropriate penalties for violations of rules by student organizations. The code and penalties are to be administered by universities. The bill specifies the penalties that may be included and limits the imposition of authorized sanctions to certain acts or omissions. Universities may also establish and adopt by rule codes of appropriate penalties for violations governing student academic honesty. The bill specifies the penalties that may be included.

The bill provides an effective date (July 1, 2000). This bill amends s. 240.209, F.S., s. 240.227, F.S., s. 240.229, F.S., s. 240.233, F.S., s. 240.241, F.S., s. 240.261, F.S., and s. 240.291, F.S.

## **II. Present Situation:**

### **State Board of Education**

The State Board of Education is the chief policy making and coordinating body of public education. Part I of chapter 229, F.S., provides for the powers and duties of the State Board. The law (s. 229.053(1), F.S.) provides for the State Board's general rulemaking authority. The board has authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of law conferring duties on it for improving the state system of public education.

**Board of Regents and the State University System**

Part II of chapter 240, F.S., defines the state university system and consists of the Board of Regents (BOR), as well as ten specific institutions. The BOR is responsible for adopting systemwide rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement provisions of law conferring duties on the board. Other rules that must be adopted include those for administering a program for the maintenance and construction of state university facilities, for ensuring compliance with procurement requirements, and for administering an acquisition program for property and contractual services. The State Board of Education must approve all rules adopted by the Board of Regents (BOR) prior to filing them with the Department of State, with an exception for rules that are not adopted by the State Board of Education within 60 days of BOR adoption.

Section 240.209, F.S., enumerates the powers and duties of the BOR, including the following:

- planning for the future needs of the State University System;
- planning the programmatic, financial, and physical development of the system;
- reviewing and evaluating the instructional, research, and service programs at the universities;
- coordinating program development among the universities; and
- monitoring the fiscal performance of the universities.

University presidents must adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the law governing the operation and administration of the university. The rules (s. 240.227(1), F.S.) must be consistent with the university's mission and statewide rules and policies. The rules must also assist in the development of the university in a manner which complements the missions and activities of the other universities.

University presidents are also responsible for appointing university personnel and for providing compensation and other conditions of employment consistent with applicable collective bargaining agreements and BOR rules for university personnel who are exempt from the provisions of chapter 110, F.S. As well, the presidents must administer personnel programs established by the BOR and any applicable collective bargaining agreements under BOR supervision.

The law (s. 240.229, F.S.) sets forth the universities' powers relating to patents, copyrights, and trademarks. Each university governs the admissions of students, subject to s. 240.233, F.S., and BOR rules. The law (s. 240.241, F.S.) provides for the creation of divisions of sponsored research by a state university, with the approval of the Department of Education.

Under s. 240.261, F.S., each university may adopt by rule a uniform code of appropriate penalties for violations of rules by students and employees. The code is administered by the university president. The law specifies the types of penalties that may be included. Each university is required to adopt rules for the lawful discipline of any student, faculty member, or member of the administrative staff who intentionally acts to impair, interfere with, or obstruct the orderly conduct, processes, or functions of a state university.

Under s. 240.291, F.S., universities must exert every effort to collect delinquent accounts, to charge off or settle uncollectible accounts, and to employ the services of a collection agency under certain circumstances.

Section 240.235, F.S., relates to fees and allows each university to establish separate activity and service, health, and athletic fees. The law also requires each university president to establish a student activity and service fee on the main campus and allows the president to do so on a branch campus or center. The process and restrictions on subsequent increases are set forth in law.

### **Administrative Procedures Act**

In enacting chapter 99-379, L.O.F., the Legislature amended chapter 120, F.S., (the Administrative Procedures Act) to clarify an agency's authority to adopt rules. Subsection (1) of s. 120.536, F.S., as amended, provides that a grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency must be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute.

To ensure compliance with s. 120.536(1), F.S., s. 120.536(2)(b), F.S., required that each agency, by October 1, 1999 provide to the Joint Administrative Procedures Committee a list of each rule or portion of a rule adopted by that agency prior to June 18, 1999 which exceeds the rulemaking authority permitted by s. 120.536, F.S. For those rules of which only a portion exceeds the rulemaking authority permitted by this section, the agency must also identify the language of the rule which exceeds this authority. The Joint Administrative Procedures Committee combined the lists and provide the cumulative listing to the President of the Senate and the Speaker of the House of Representatives.

The Legislature must, at the 2000 Regular Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted.

- By January 1, 2001, each agency must initiate proceedings pursuant to s. 120.54, F.S., to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist.
- By February 1, 2001, the Joint Administrative Procedures Committee must submit to the President of the Senate and the Speaker of the House of Representatives a report identifying those rules that an agency had previously identified as exceeding its rulemaking authority for which proceedings to repeal the rule have not been initiated.
- As of July 1, 2001, the Joint Administrative Procedures Committee or any substantially affected person may petition an agency to repeal any rule, or portion thereof, because it exceeds the rulemaking authority permitted by this section.
- Not later than 30 days after the date of filing the petition if the agency is headed by an individual, or not later than 45 days if the agency is headed by a collegial body, the agency must initiate rulemaking proceedings to repeal the rule, or portion thereof, or deny the petition, giving a written statement of its reasons for the denial.

In submissions (Fall 1999) to the Joint Administrative Procedures Committee, nine universities and the Board of Regents identified a total of 261 rules which appear (in whole or in part) to exceed the rulemaking authority permitted by s. 120.536, F.S.

### III. Effect of Proposed Changes:

**Section 1.** The bill amends s. 240.209, F.S., to authorize the Board of Regents to adopt systemwide rules for the following:

- to implement provisions of law conferring duties on the board;
- to plan for the future needs of the State University System;
- to plan the programmatic, financial, and physical development of the system;
- to review and evaluate the instructional, research, and service programs at the universities;
- to coordinate program development among the universities; and
- to monitor the fiscal performance of the universities.

The bill also allows the Board of Regents to establish the following fee caps and fee ranges:

- nonrefundable application fee capped at \$30;
- admissions deposit fee for the University of Florida College of Dentistry capped at \$200;
- orientation fee capped at \$35;
- fee for security, access, or identification cards (annual fee capped at \$10 per card and replacement fee capped at \$15);
- registration fees for audit and zero-hours registration (service charge capped at \$15 for paying tuition in installments and a late-registration fee of \$50 to \$100);
- late-payment fee range of \$50 to \$100.

The bill also allows each university to adopt specific procedures or policies for waiving the late payment fees for minor underpayments.

The Board of Regents may also establish fees for the following:

- miscellaneous health-related charges for services provided at cost by the university health center which are not covered by the health fee set under s. 240.235(1), F.S.
- materials and supplies to offset the cost of materials or supplies that are consumed in the course of the student's instructional activities, excluding certain costs.
- housing rental rates and miscellaneous housing charges for services provided by the university at the request of the student.
- charge representing the reasonable cost of efforts to collect payment of overdue accounts.
- service charge on university loans in lieu of interest and administrative handling charges.
- off-campus course offerings when the location results in specific, identifiable increased costs to the university.
- library fees and fines, including charges for damaged and lost library materials, overdue reserve library books, interlibrary loans, and literature searches.
- duplicating, photocopying, binding, microfilming, copyright services, and standardized testing only to those who receive the services.
- fees and fines relating to the use, late return, and loss and damage of facilities and equipment.
- unpaid checks returned to the university, as authorized by s. 832.07(1), F.S.
- traffic and parking fines, charges for parking decals, and transportation access fees.
- child care and services offered by the Educational Research Center for Child Development.
- transcripts and diploma replacement capped at \$10 per item.

The board may also adopt rules relating to the appointment, employment, and removal of personnel which delegate the board's authority to the Chancellor or the universities. The bill clarifies that the board must adopt those rules to provide for a coordinated, efficient systemwide program and must delegate to the universities authority to implement the program consistent with adopted rules and applicable collective bargaining agreements. The bill removes the references in s. 240.209(3)(p), F.S., to specific provisions in law relating to the administration of a program for the maintenance and construction of facilities in the State University System and to secure or otherwise provide workers' compensation coverage.

The bill replaces the references in s. 240.209(3)(q), F.S., to s. 287.0945, F.S., with s. 373.607, F.S., relating to minority business enterprise procurement goals for water management districts. Section 287.0945, F.S., was repealed by chapter 96-320, F.S.

The bill removes the references in s. 240.209(3)(q)(r) and (t), F.S., to the adoption of rules and creates s. 240.209(11), F.S., which authorizes the adoption of rules needed to administer this section of law.

The bill authorizes the Board of Regents to specifically perform the following functions:

- Allow the waiver of any or all application, course registration, and related fees for persons who supervise student interns for institutions in the State University System.
- Manage systemwide enrollment.
- Establish policies relating to credit and non-credit education offerings by universities in the State University System.
- Establish and regulate faculty practice plans for the academic health science centers.

**Section 2.** The bill amends s. 240.227, F.S., to allow rather than require the adoption of rules by university presidents to implement the law related to the operation and administration of the university. The rules must include the specific powers and duties set forth in s. 240.227, F.S.

The bill specifies the university presidents' power to appoint university personnel and provide for compensation and other conditions of employment: recruitment, non-reappointment, benefits and hours of work, evaluation, recognition, inventions and works, learning opportunities, academic freedom and responsibility, promotion, assignment, demotion, transfer, tenure and permanent status, ethical obligations and conflicts of interest, restrictive covenants, disciplinary actions, complaints, appeals and grievance procedures, and separation and termination from employment, consistent with applicable law, collective bargaining agreements, and Board of Regents rules. The bill removes the reference to board rule for university personnel who are exempt from chapter 110, F.S.

The bill removes the reference to specific rulemaking in s. 240.227, F.S.(11), F.S., relating to the personnel exchange program. The bill provides university presidents with specific authority to use, maintain, protect, and control university-owned or university-controlled buildings and grounds, property and equipment, name, and trademarks and other proprietary marks, and the financial and other university resources. The authority may include placing restrictions on commercial activity, access to facilities, firearms, food, tobacco, alcoholic beverages, and the distribution of printed materials, animals, and sound. The president's authority includes

prioritizing the use of university space, property, equipment, and resources and the authority to impose charges for the use of those items. University presidents also may adjust property records and dispose of certain property under the procedures established by rules of the Board of Regents.

The bill removes reference in this section to administering personnel programs established by the Board of Regents and also to adopting rules for entering into agreements related to student exchange programs.

Specific rulemaking is also provided for the following:

- approving the internal procedures of student government and providing purchasing, contracting, and budgetary-review processes;
- providing for the use and protection of data and technology, including information systems, communication systems, computer hardware and software, and networks; and
- ensuring compliance with federal laws, regulations, and other requirements applicable to the university.

University presidents may adopt rules to implement s. 240.227, F.S.

**Section 3.** The bill amends s. 240.229, F.S., relating to the powers and duties of universities for patents, copyrights, and trademarks, to provide specific rulemaking authority to administer this section.

**Section 4.** The bill amends s. 240.233, F.S., relating to the admission of students to universities, to allow each university president to adopt rules relating to the admission of students, subject to this section of law and rules of the Board of Regents.

**Section 5.** The bill amends s. 240.241, F.S., relating to divisions of sponsored research at state universities, to allow each university president to adopt rules as needed to administer this section.

**Section 6.** The bill amends s. 240.261, F.S., relating to disciplinary measures, to allow each university to adopt a code of student conduct (rather than a uniform code) and appropriate penalties for violations by students and employees. The bill adds the following to the list of penalties (unless otherwise provided by law): reprimand; restitution; completion of any student judicial process or sanction; restrictions on the use of or removal from university facilities; community service; educational requirements; or expulsion.

Universities may adopt, by rule, a code of student conduct and appropriate penalties for violations of rules by student organizations. The code and penalties are to be administered by universities. The bill specifies the penalties that may be included. Further, the bill limits the imposition of authorized sanctions to acts or omissions in violation of rules adopted by the university or the Board of Regents, and county and municipal ordinances, as well as federal or state law.

Universities may also establish and adopt by rule codes of appropriate penalties for violations governing student academic honesty. The bill specifies the penalties that may be included (e.g., reprimand, reduction of grade, denial of admission or further registration, invalidation of academic credit or degree, and revocation of a degree, if it is determined that the student has made false, fraudulent, or incomplete statements in the application, residence affidavit, or accompanying documents or statements related to admission or graduation from the university).

**Section 7.** The bill amends s. 240.291, F.S., relating to delinquent accounts, to allow universities to adopt needed rules to implement this section of law. This includes setoff procedures, payroll deductions, and restrictions on the release of transcripts, the award of diplomas, and access to other university resources and services.

**Section 8.** The bill provides an effective date (July 1, 2000).

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Section 1 of the bill authorizes the Board of Regents to establish fees. In some cases, the bill establishes statutory fee caps or fee ranges for certain services. However, in other cases there are no fee caps or fee ranges specified. The statutory fee caps are set for the following:

- nonrefundable application fee capped at \$30;
- admissions deposit fee for the University of Florida College of Dentistry capped at \$200;
- orientation fee capped at \$35;
- fee for security, access, or identification cards (annual fee capped at \$10 per card and replacement fee capped at \$15);
- registration fees for audit and zero-hours registration (service charge capped at \$15 for paying tuition in installments and a late-registration fee of \$50 to \$100);
- late-payment fee range of \$50 to \$100.
- transcripts and diploma replacement capped at \$10 per item.

Students and others will be subject to the fees and fines specified in rule. The extent to which the statutory fees and fines in the bill reflect current fees and fines is unknown.



C. Government Sector Impact:

The fiscal impact will depend upon the extent to which the fee caps and fines are sufficient to cover the costs of the activities and services specified in the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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