

**STORAGE NAME:** h2283.grr

**DATE:** April 11, 2000

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
GOVERNMENTAL RULES & REGULATIONS  
ANALYSIS**

**BILL #:** HB 2283 (PCB CCCP 00-02a)

**RELATING TO:** Postsecondary Education Institutions

**SPONSOR(S):** Committee on Community Colleges and Career Prep and Representative Harrington

**TIED BILL(S):**

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

- (1) COMMUNITY COLLEGES & CAREER PREP YEAS 11 NAYS 0
- (2) GOVERNMENTAL RULES & REGULATIONS
- (3) FINANCE & TAXATION
- (4) EDUCATION APPROPRIATIONS
- (5)

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**SUMMARY:**

The Florida Legislature has placed an emphasis on the reduction of burdensome and redundant paperwork and reporting requirements. Additionally, in the past two years, there have been efforts to "clean up" the Florida Statutes by identifying and deleting obsolete language, and to provide specific statutory authority for all agency rules. Over the interim period, the Committee on Community Colleges and Career Prep conducted a study to identify ways to streamline reporting requirements within the Florida Community College System. With the help of the State Board of Community Colleges (SBCC), several items were noted for change to improve efficiency, decrease duplicative reports, eliminate obsolete language, and provide needed rule authorization.

In 1999, the Legislature passed SB 1288, which contained several provisions related to Community College and Workforce Development education fees. While SB 1288 made some necessary changes, there are still student fee provisions that create a dual fee structure for college-credit students and workforce development (vocational certificate programs) students.

The bill creates a fee structure for workforce development programs that is more closely aligned with college-credit programs by extending the assessment of a technology fee to workforce development students; reducing the financial aid fees authorized to be assessed for workforce development students; and authorizing the establishment of a separate activity and service fee for workforce development students.

The bill increases local flexibility in distribution of workforce development financial aid awards; codifies current practice regarding a ceiling for fee waivers (for workforce development postsecondary student fees) and language in last year's GAA implementing bill, allowing incubator facilities to be *leased*; deletes obsolete language; and removes language related to unnecessary and duplicative reporting requirements.

The bill provides statutory authority for the State Board of Education to adopt rules related to the classification of students as residents for tuition purposes, and transfers rule-making authority from the State Board of Education to the SBCC relating to, minimum standards for community colleges and the Division of Community Colleges. However, the State Board of Education maintains final authority, as they approve all SBCC rules.

The bill makes changes to the SBCC's powers and duties, requiring the SBCC to specify, by rule, minimum standards of operation for each community college; authorizing rules relating to instructional sites and special purpose centers; and requiring the adoption of rules relating to accreditation and procedures for withdrawal and forgiveness.

The bill makes changes regarding "individuals who have disabilities" and vocational certificate basic skills testing to align them with federal codes and definitions.

The bill changes provisions relating to notification of alternative options for remediation. The bill requires each board of trustees to make notification in the college catalog that private providers for remediation may be available to the student.

According to the Department of Education (DOE), the bill will have a negative fiscal impact on fee revenues. However, according to the Division of Community Colleges the bill will have an overall positive fiscal impact on fee revenues. The bill provides an effective date of July 1, 2000.

**I. SUBSTANTIVE ANALYSIS:**

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                                         |                                        |                                         |
|-----------------------------------|-----------------------------------------|----------------------------------------|-----------------------------------------|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Less Government

The bill makes changes to the SBCC's powers and duties, requiring the SBCC to specify by rule minimum standards of operation for each community college; authorizing rules relating to modifying district boundary lines, additional centers, instructional sites and special purpose centers; and requiring the adoption of rules relating to accreditation and procedures for withdrawal and forgiveness.

The bill requires each community college to include in its schedule of classes a statement related to the availability of alternative options for remediation courses; maintain a list of information regarding alternative remediation options, including course offerings and costs; and display materials provided by alternative providers.

B. PRESENT SITUATION:

The Florida Legislature has placed an emphasis on the reduction of burdensome and needless paperwork. Additionally, in the past two years, there have been efforts to "clean up" the Florida Statutes by identifying and deleting obsolete language, and to provide specific statutory authority for all agency rules. Over the interim period, the Committee on Community Colleges and Career Prep conducted a study to identify ways to streamline reporting requirements within the Florida Community College System. With the help of the State Board of Community Colleges, which was already evaluating their internal reporting structure to reduce paperwork, several items were noted for change to improve efficiency, decrease duplicative reports, eliminate obsolete language, and provide needed rule authorization.

Student Fees

In 1999, the Legislature passed SB 1288, which contained several provisions related to Community College and Workforce Development education fees. While SB 1288 made some necessary changes, there are still student fee provisions that create a dual fee structure for college-credit students and workforce development (vocational certificate programs) students. Currently two students, taking the same course but having different education objectives, may be paying different fees. The 1999 legislation did not authorize the assessment of a technology fee or an activity and service fee for workforce development programs. These fees are currently assessed for college-credit and college preparatory courses.

Financial aid fees collected under the authorization of s. 239.117(8), F.S., are deposited into a separate workforce development student financial aid fee trust fund of the school district or community college. These funds are then dispersed in accordance with a nationally recognized system of need analysis approved by the State Board for Career Education.

Fee waivers are authorized in s. 239.117(5), F.S., for community colleges and school districts up to an amount established in the General Appropriations Act (GAA). In s. 239.5142(2), F.S., local educational institutions are authorized to waive fees up to an amount equal to 8 percent of the institutions workforce development enrollment hours. However, s. 239.5142(2), F.S., has been recommended for repeal due to obsolete language in subsection (1).

The Commissioner of Education is required to provide to the State Board of Education, no later than December 31 of each year, a schedule of fees for workforce development education. According to the Department of Education, school district cost data is not available in time to ensure a quality analysis in time to meet the agenda deadlines for the December State Board of Education meeting.

Current law contains obsolete, date specific language referring to the implementation of fee schedules for workforce development programs.

### **Workforce Development Education**

The current workforce development funding system is designed to reward the community colleges and school districts, offering successful programs in areas that fulfill the workforce needs of the state, through the use of performance based funding. However, current law does not allow the funding formula to include any mechanism through which community colleges and school districts may be exempt from the performance criteria while creating new or expanding existing programs.

The Workforce Development Capitalization Grant Program is a program by which funds are awarded to community colleges and school districts on a competitive basis. Funds are currently used for costs associated with the creation or expansion of workforce development programs, but are not authorized to be used for upgrading existing programs.

### **Rule Authorization and Report Reduction**

Recent changes in the Administrative Procedures Act (APA), make it necessary for all promulgated rules to be supported by specific statutory rule-making authority. Agencies were given a period of 2 years to review rules and either repeal rules for which they had no specific authority or request rule authorization. In addition, it has been the intent of the Legislature to delete obsolete language and repeal obsolete and out-dated statutes.

### ***Reporting Requirements for apportionment of State funds***

Current law requires students enrolling in any course that he or she has previously taken, other than college-credit courses in which the student earned a D or an F, be classified as lifelong learning students for purposes of reporting full-time equivalents for state funding. The process required to accomplish this reclassification to lifelong learning is lengthy and burdensome.

### **Incubator Facilities**

Current law does not allow for incubator facilities to be leased. However, language in section 46 of last year's General Appropriations Act (GAA) implementing bill allowed for community colleges to lease an incubator facility for the 1999-2000 year only.

### Vocational-Preparatory Instruction

Students who enroll in a certificate career education program must complete an entry-level exam within the first 6 weeks of admission to the program. Prior to the passage of SB 1124 in 1998 (ch. 98-58, L.O.F.), the 6-week requirement only applied to students being admitted to certificate career education programs of *450 hours or more*. The deletion of the 450-hour requirement was made at the request of the Department of Education (DOE). However, according to the DOE, implementation of this provision has caused undue hardship on students, the school districts and community colleges.

Federal regulations prohibit aptitude tests as a qualification standard for admission unless the aptitude test scores relate directly to job performance (29 CFR 30).

### Students with Disabilities

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of disability by *public entities* and *recipients of federal assistance*. Subtitle A of title II of the Americans with Disabilities Act of 1990 (the Act), prohibits discrimination on the basis of disability by *public entities*. Title II of the ADA extends this prohibition of discrimination to include all services, programs, and activities provided or made available by State and local governments or any of their instrumentalities or agencies, regardless of the receipt of Federal financial assistance. (28 CFR PART 35)

Section 504 requires colleges and universities, *as recipients of federal assistance*, to "make such modifications to...academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student..."

The ADA requires colleges and universities, *as public entities*, to "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making modifications would fundamentally alter the nature of the service, program, or activity." These laws further require the assurance that "no qualified individual with a disability" shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by any public entity." (28 CFR 35)

The ADA defines "disability," with respect to an individual, as

1. A **physical or mental impairment** that substantially limits one or more of the major life activities of such individual;
2. A record of such an impairment; or
3. Being regarded as having such an impairment.

If an individual meets any one of these three tests, he or she is considered to be an individual with a disability for purposes of coverage under the Americans with Disabilities Act. (28 CFR 35)

Both the ADA and Section 504 define “**physical or mental impairment**” to include *visual impairments, hearing impairments, and speech impairments; mental or psychological disorders; and specific learning disabilities.* (28 CFR 35)

Sections 240.152 and 240.153, F.S., dealing with reasonable substitutions in postsecondary education, are not as inclusive as federal law. The sections provide for reasonable substitutions for individuals with *selected* disabilities. These disabilities *do not include speech impairments, physical impairments, other than hearing impaired and visually impaired, or mental impairments.*

### **Remediation Options**

Current law requires community colleges to notify students of alternative remediation options. Such notification may be in the form of a written listing OR a prominent display of information on alternative remediation options. The list or display must include options provided by the community college, adult education programs, and programs provided by private sector providers. The list of providers or display materials must include all providers requesting to be included. The written list must provide students with specific contact information and full costs (tuition, lab fees and materials) of each listed option.

Current law limits students electing a private provider for remedial instruction to 12 credits of college-level courses until the student passes the college placement exam.

Section 240.117(4), F.S., places the same restriction on students taking remediation courses at a community colleges. However, a student may continue to take degree-earning course work if they are still taking the remediation courses at a community college and are demonstrating satisfactory performance in the degree-earning course work.

## **C. EFFECT OF PROPOSED CHANGES:**

### **Student Fees**

The bill creates a fee structure for workforce development programs that is more closely aligned with college-credit programs by extending the assessment of a technology fee to workforce development students; reducing the financial aid fees authorized to be assessed for workforce development students to the same percentage charged to students enrolled in college-credit courses; and authorizing the establishment of a separate activity and service fee for students enrolled in non-college credit workforce development courses.

The bill increases local flexibility in the distribution of awards from the workforce development student financial aid fee trust fund of each school district or community college. The bill requires that awards be distributed in accordance with a nationally recognized system of need analysis, but provides for each school board or community college district board of trustees to choose the system(s) used.

The bill codifies current practice regarding a ceiling for fee waivers (for workforce development postsecondary student fees). It provides that the total value of fee waivers may not exceed 8 percent of a school district’s or community college’s postsecondary vocational certificate program enrollment hours *or* an amount established in the GAA. In addition, the bill places the fee waiver language in a more relevant section of statute (s. 239.117, F.S., versus s. 239.5142, F.S.).

The bill changes the deadline by which the Commissioner of Education must provide to the State Board of Education a schedule of fees for workforce development education. The deadline is changed from December 31 to January 31 of each year.

The bill deletes obsolete, date specific language referring to the implementation of fee schedules for workforce development programs.

### **Workforce Development Education**

The bill allows for the workforce development funding formula to include a performance exemption for new or significantly expanded workforce development education programs for a period not to exceed 2 years from the implementation of the new or significantly expanded program. If a performance funding formula containing these exemptions were to be adopted, it would allow new or significantly expanded programs to be exempted from performance funding until the programs have actually performances to be measured.

The bill also expands the uses for Workforce Development Capitalization Grant funds, allowing them to be used for upgrading existing programs to established industry standards, in accordance with program updates conducted by the Division of Community Colleges and the Division of Workforce Development.

### **Rule Authorization and Report Reduction**

The bill provides statutory authority for the State Board of Education to adopt rules relating to the classification of students as residents for tuition purposes, in order to implement s. 240.1201, F.S.

The bill transfers rule-making authority from the State Board of Education to the State Board of Community Colleges (SBCC) relating to, minimum standards, definitions and guidelines for community colleges and the Division of Community Colleges, planning, contracting, program offerings and classification, curriculum development, graduation requirements, college calendars, program service areas, student admissions, conduct and discipline, budgeting, business and financial matters, student services, reports, and the community college program fund. However, the State Board of Education maintains final authority, as they approve all SBCC rules.

The bill makes changes to the SBCC's powers and duties, requiring the SBCC to specify, by rule, minimum standards of operation for each community college; authorizing rules relating to modifying district boundary lines, additional centers, instructional sites and special purpose centers; and requiring the adoption of rules relating to accreditation and procedures for withdrawal and forgiveness.

The bill also removes out-dated and duplicative reporting requirements related to distance learning.

### ***Reporting Requirements for apportionment of State funds***

The bill eliminates unnecessary, burdensome paperwork by striking language which requires a lengthy conversion process. Students are to be reported under the category that fits the course they take rather than being converted to lifelong learning status. However, the bill maintains the requirement that students repeating any course, other than a college-credit course in which a D or F was earned, may not be used in the calculation of full-time equivalent enrollments for state funding.

### **Incubator Facilities**

The bill amends s. 240.3341, F.S., codifying the language in last year's implementing bill, allowing incubator facilities to be *leased*. According to the Division of Community Colleges, the change would allow institutions to establish incubator facilities without having to use the PECO process. This could save community colleges up to 5 years in delayed use of a facility. It also deletes obsolete language that was added in order to implement specific Appropriation 154 of the 1999-2000 General Appropriations Act.

### **Vocational-Preparatory Instruction**

The bill changes the requirement related to basic skills assessment in s. 239.213, F.S., to apply only to certificate career education programs *of 450 hours or more*.

The bill amends language in subsection (3) of s. 239.213, F.S., to make it consistent with changes related to "individuals who have disabilities" in sections 6 and 7 of this bill.

The bill provides that students of registered apprenticeship programs may be exempted from this section, pursuant to federal regulations (29 CFR 30).

### **Students with Disabilities**

The bill adds speech impairments, and physical or mental impairments as defined by State Board of Education rule to the list of disabilities making an individual eligible for a reasonable substitution under ss. 240.152 and 240.153, F.S. The bill also replaces "degree career" with "other postsecondary" to ensure that all postsecondary providers are subject to the provisions of these sections.

### **Remediation Options**

Although the bill removes all *current* language regarding notification of alternative providers for remediation education, it does add a provision requiring each community college board of trustees to print in the college catalog a statement making students aware that private providers for remediation may be available.

This places the primary responsibility of informing students of alternative remediation options offered by private sector providers on the private providers. The removal of current language would not prohibit private providers from displaying materials on community college campuses, provided that such materials conform with the each institution's rules and guidelines on posted materials. However, the duty or option to post such materials would clearly lie with the private sector provider not the community college.

#### D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends subsection (9) of s. 239.115 F.S., allowing for performance exemptions in the workforce funding formula for new or significantly expanded workforce development education programs.

Section 2: Amends subsections (5), (6), (8), and (18) of s. 239.117, F.S.; adds subsection (19) to s. 239.117, F.S., codifying current practice concerning fee waiver practices for workforce development programs; changing the due date for a

schedule of fees for workforce development education; removing obsolete, date-specific language regarding the implementation of a fee schedule; providing local flexibility in distributing local level financial aid awards; and authorizing district school boards and community college boards of trustees to establish a separate activity and service fee.

- Section 3: Amends subsections (2) and (3) of s. 239.213, F.S., applying basic skills assessment only to certificate career education programs of *450 hours or more*; amending language to make the section consistent with changes related to “individuals who have disabilities” in sections 6 and 7 of the bill; providing exemptions for students in registered apprenticeship programs.
- Section 4: Amends 239.514, F.S., authorizing the use of Workforce Development Capitalization Incentive Grant funds to be used to upgrade workforce development programs to established industry standards.
- Section 5: Amends s. 240.1201, F.S., adding subsection (11), authorizing the State Board of Education to create rules regarding resident status for tuition purposes.
- Section 6: Amends s. 240.152, F.S., aligning the definition of “individuals who have disabilities,” as it relates to postsecondary education, with federal definitions.
- Section 7: Amends s. 240.153, F.S., aligning the definition of “individuals who have disabilities,” as it relates to postsecondary education, with federal definitions.
- Section 8: Amends paragraphs (g) and (j) of subsection (3), paragraph (c) of subsection (5), and paragraph (d) of subsection (8) of s. 240.311, F.S., requiring the State Board of Community Colleges (SBCC) to specify by rule, minimum standards of operation for each community college; providing rule-making authority relating to modifying district boundary lines, additional centers, instructional sites and special purpose centers; requiring the adoption of rules relating to accreditation and procedures for withdrawal and forgiveness; transferring rule authorization from the State Board of Education to the SBCC relating to the implementation of the community college program fund; removing out-dated and duplicative reporting requirements related to distance learning.
- Section 9: Amends subsection (3) of s. 240.321, F.S., deleting all current language; and requiring each community college board of trustees to make notification in the college catalog that private providers for remediation may be available to students.
- Section 10: Amends s. 240.325, F.S., transferring rule-making authority from the State Board of Education to the SBCC relating to minimum standards, definitions and guidelines for community colleges and the Division of Community Colleges; authorizing rules relating to modifying district boundary lines, additional centers, instructional sites and special purpose centers; and requiring the adoption of rules relating to accreditation and procedures for withdrawal and forgiveness.
- Section 11: Amends subsection (3) of s. 240.3341, F.S., codifying the language in last year’s GAA implementing bill, allowing incubator facilities to be *leased*; deleting obsolete language.



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Section 12: Amends subsections (7), and (10) of s. 240.35, F.S., deleting obsolete, date-specific language; clarifying intent of language related to increased matriculation fees added in SB 1288 (ch. 99-249, L.O.F.) last year; providing a more stringent standard for uses of activity and service fees.

Section 13: Amends paragraph (c) of subsection (1) of s. 240.359, F.S., eliminating unnecessary, burdensome paperwork.

Section 14: Provides an effective date of July 1, 2000.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Workforce development students will pay the same fees as college-credit students. The fees they pay will be increased by a technology fee, may be increased by an activity and service fee, and may be lowered by a reduction in the financial aid fee. According to the Division of Community Colleges, this would equal an aggregate increase of \$2.55/credit hour for workforce development students.

D. FISCAL COMMENTS:

According to the Department of Education, 75 percent of the school districts currently assess the 10 percent financial aid fee. A reduction of 5 percent would impact the school districts significantly with regards to financial aid for vocational certificate programs. They estimate a loss of revenues of \$800,000 - \$1,000,000.

The Division of Community Colleges estimates a total change in revenue of \$1,275,659. This total can be broken down as follows:

ADDING A TECHNOLOGY FEE FOR WORKFORCE PROGRAMS

New Fee	Revenue Change
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Resident	\$1.80	\$630,536
Non-Resident	\$5.40	\$ 90,136

ADDING A STUDENT ACTIVITY FEE FOR WORKFORCE DEVELOPMENT PROGRAMS

	New Fee	Revenue Change
Resident	\$3.50	\$1,227,444
Non-Resident	\$3.50	\$ 58,494

REDUCING STUDENT FINANCIAL AID FEE FOR WORKFORCE PROGRAMS

	Current Fee	New Fee	Revenue Change
Resident	\$ 3.50	\$1.75	(\$613,722)
Non-Resident	\$14.04	\$7.02	(\$ 117,238)

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The 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:

The 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:

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

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill provides both the State Board of Education and the State Board of Community Colleges with rulemaking authorization for various responsibilities provided in the bill.

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C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VI. SIGNATURES:

COMMITTEE ON COMMUNITY COLLEGES AND CAREER PREP:

Prepared by:

Staff Director:

Maria L. Eckard

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AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES & REGULATIONS:

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