

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7051 PCB HEC 19-01 Higher Education
SPONSOR(S): Education Committee, Higher Education & Career Readiness Subcommittee, Byrd
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1744

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Higher Education & Career Readiness Subcommittee	14 Y, 0 N	Bishop	Bishop
1) Public Integrity & Ethics Committee	17 Y, 0 N	Mitz	Rubottom
2) Education Committee	15 Y, 0 N, As CS	Bishop	Hassell

SUMMARY ANALYSIS

The bill increases higher education transparency and accountability by:

- Requiring the Board of Governors (BOG) to develop and annually deliver a training program for trustees. Trustees must complete the training within 1 year of appointment and reappointment.
- Allowing the presiding member of either house of the Legislature, the Chief Financial Officer, or any member of the board for which an investigation is sought, to require the BOG Inspector General to investigate allegations of waste, fraud or financial mismanagement by a state university or its board of trustees.
- Requiring the Commissioner of Education to report to the State Board of Education (SBE) any findings by the Auditor General that a district school board or FCS institution is acting without statutory authority or contrary to state law. The SBE must then require the district school board or FCS institution board of trustees to document compliance with the law.
- Requiring the Chancellor of the State University System (SUS) to report to the BOG any findings by the Auditor General that a state university is acting without statutory authority or contrary to state law. The BOG must then require the university board of trustees to document compliance with the law.
- Revising SUS direct-support organization (DSO) public records exemptions to ensure that auditors reports, management letters, any information necessary for auditor's reports, any information related to the expenditure of funds, and any supplemental data requested by the BOG, university board of trustees, the Auditor General, and OPPAGA are public records.
- Strengthening oversight of DSOs by FCS institutions boards of trustees by requiring each board to establish thresholds for approval of purchases, acquisitions, projects, and issuance of debt.
- Revising FCS institution DSO requirements relating to personal services.
- Prohibiting FCS institutions from transferring state appropriations to any DSO with a fund balance of greater than \$50 million, unless such funds are pledged for capital projects.
- Requiring all FCS institutions to report annually to the Legislature the amount of state appropriations transferred to any DSO during the previous fiscal year, the purpose for which the funds were transferred and the remaining balance of any funds transferred.
- Prohibiting FCS boards of trustees from authorizing the use of state funds for travel expenses by any FCS institution DSO.
- Deleting an exemption to the prohibition against the giving of any gift, either directly or indirectly, to a political committee by a FCS institution DSO.
- Requiring conformity between annual capital outlay budget, university capital improvement plans and university master plans.
- Allowing the BOG to have approval authority over some elements in the 10-year master plan and increasing oversight of long-term facilities planning.

The bill is effective July 1, 2019.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7051c.EDC

DATE: 3/29/2019

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

State University Boards of Trustees

Each State University System institution has a 13-member Board of Trustees, which include the following:¹

- six citizen members appointed by the Governor subject to Senate confirmation
- five citizen members appointed by the Board of Governors (BOG) subject to Senate confirmation
- chair of the faculty senate or the equivalent; and
- the president of the student body of the university.

Appointed members serve staggered five-year terms. There is no state residency requirement for board members, but the Governor and BOG are required to consider diversity and regional representation when making appointments.²

The powers and duties of state university boards of trustees are outlined in BOG Regulation.³ Florida law does not specifically address training requirements for state university trustees. However, the BOG requires trustees to attend an orientation session held by the BOG. Trustee orientation serves to educate new trustees about the governance roles and responsibilities of the BOG and boards of trustees; the goals established in the BOG 2025 Strategic Plan for the State University System (SUS); the accountability measures implemented by the BOG, including performance-based funding; the mechanics of university funding; and an overview of Florida's Sunshine and ethics laws and the SUS audit and compliance functions.⁴ In addition, the BOG hosts a Trustee Summit each November to address an array of topics relevant to effective board leadership.

Other states have been more prescriptive in outlining the fiduciary responsibilities of university trustees. The New York Board of Regents issued a Statement on the Governance Role of a Trustee or Board Member,⁵ which provides certain fundamental information regarding the stewardship role that members fulfill. In 2014, the General Assembly of Virginia enacted legislation requiring formal training for governing boards and outlined specific elements that must be included in the training.⁶

State University Direct Support Organizations

A university direct-support organization (DSO) is a Florida corporation not for profit, incorporated under the provisions of chapter 617 and approved by the Department of State⁷. Each of the 12 state

¹ Section 1001.71(1), F.S.

² *Id.*

³ State University System of Florida Board of Governors, Regulation 1.001, *University Board of Trustees Powers and Duties*, available at https://www.flbog.edu/documents_regulations/regulations/1_001%20PowersandDuties%20.pdf

⁴ State University System of Florida Board of Governors, *Trustee Appointment and Development*, available at <https://www.flbog.edu/trustees/> (last visited February 20, 2019).

⁵ New York Board of Regents and the State Education Department, *Statement on the Governance Role of a Trustee or Board Member* (February 2007) available at http://www.regents.nysed.gov/about/statement_governance#D

⁶ Code of Virginia, Section 23.1-1304. *Governing boards; additional duties; educational programs*, available at <https://law.lis.virginia.gov/vacode/title23.1/chapter13/section23.1-1304/>

⁷ Section 1004.28(1)(a)1., F.S.

universities have at least one DSO. The DSOs are organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to, or for the benefit of, a state university.⁸ Each DSO has been reviewed and certified by the university BOT to be operating in a manner consistent with the goals of the university and in the best interest of the state.⁹

Beginning July 1, 2019 and annually thereafter, state university BOTs must report to the Legislature the amount of state appropriations transferred to any DSO during the previous fiscal year, the purpose for which the funds were transferred, and the remaining balance of any funds transferred.¹⁰

Currently, all records of state university DSOs, other than the auditor's report, management letter, and any supplemental data requested by the BOG, university BOT, the Auditor General, and the Office of Program Policy Analysis and Government Accountability are confidential.¹¹

Auditor General

The Auditor General is required to annually conduct a financial audit of each state university and FCS institution.¹² Financial audit objectives¹³ are to determine whether the universities and FCS institutions and their officers with administrative stewardship responsibilities:

- present financial statements in accordance with generally accepted accounting principles; and
- comply with various provisions of law, rules, regulations, contracts, and grant agreements that are material to the financial statements.

Operational audits are required of each state university and FCS institution at least once every three years.¹⁴ Operational audit objectives¹⁵ include:

- Evaluating management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, rules, regulations, contracts, grant agreements, and other guidelines;
- Examining internal controls designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of records and reports, and safeguarding of assets, and identifying weaknesses in those controls;
- Determining whether management had taken corrective actions for applicable prior audit findings; and
- Identifying statutory and fiscal changes that may be recommended to the Legislature pursuant to s. 11.45(7)(h), F.S.

Although audit findings are reported by the Auditor General and corrective actions are suggested, there is currently no oversight function in law that requires a state university or FCS institution to rectify noncompliance.

⁸ Section 1004.28(1)(a)2., F.S.

⁹ Section 1004.28(1)(a)3., F.S.

¹⁰ Section 1004.28(2)(b), F.S.

¹¹ Section 1004.28(5)(b), F.S.

¹² Section 11.45(2)(c), F.S.

¹³ Auditor General of Florida, Presentation to Joint meeting of House Public Integrity & Ethics Committee, Higher Education Appropriations Subcommittee, and Higher Education & Career Readiness Subcommittee. (January 9, 2019), available at [https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2999&Session=2019&DocumentType=Meeting Packets&FileName=pie 1-9-19.pdf](https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2999&Session=2019&DocumentType=Meeting%20Packets&FileName=pie%201-9-19.pdf).

¹⁴ Section 11.45(2)(f), F.S.

¹⁵ Auditor General of Florida, Presentation to Joint meeting of House Public Integrity & Ethics Committee, Higher Education Appropriations Subcommittee, and Higher Education & Career Readiness Subcommittee. (January 9, 2019), available at [https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2999&Session=2019&DocumentType=Meeting Packets&FileName=pie 1-9-19.pdf](https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2999&Session=2019&DocumentType=Meeting%20Packets&FileName=pie%201-9-19.pdf).

The Office of the Inspector General is required to investigate substantiated allegations of waste, fraud, or financial mismanagement within a state university if the BOG determines that a state university board of trustees is unwilling or unable to address such allegations. However, there is no mechanism in place to require the Inspector General to investigate substantiated allegations at the request of any other state entity or official.

Florida College System Direct Support Organizations

A Florida College System (FCS) institution direct-support organization (DSO) is a Florida corporation not for profit, incorporated under the provisions of chapter 617 and approved by the Department of State¹⁶. Each of the 28 FCS institutions have at least one DSO. The DSOs are organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to, or for the benefit of, a FCS institution.¹⁷ Each DSO has been reviewed and certified by the FCS institution board of trustees (BOT) to be operating in a manner consistent with the goals of the institution and in the best interest of the state.¹⁸

FCS institution BOTs are currently authorized to permit the use of property, facilities, and personal services at their institution by the DSO.¹⁹ “Personal services” includes full-time or part-time personnel as well as payroll processing.²⁰ Currently, 28 of the FCS institutions allow their DSOs to use personal services that are funded through FCS institution funds.

FCS institution DSOs are currently prohibited from giving, either directly or indirectly, any gift to a political committee for any purpose other than those certified by a majority roll call vote of the governing board of the DSO at a regularly scheduled meeting as being directly related to the educational mission of the institution.²¹

University Facilities Planning

Florida law²² provides comprehensive budgeting requirements for state agencies to report all facilities needs in the annual budget process, including a 5-year facilities plan covering all capital outlay needs.²³ Such plans are required to identify anticipated funding sources for capital projects only for the first year of the plan. Accordingly, the Board of Governors requires universities to submit a 5-year capital outlay plan as part of the annual legislative budget request process with the focus on state appropriations requests. The capital improvement plan does not specify anticipated funding sources for capital outlay projects funded by non-state sources. Universities also must adopt 10-year campus master plans, updated every five years, that serve multiple purposes of local land use planning, infrastructure planning and facilities planning for expected university needs, including the long term fiscal considerations.²⁴ The Board of Governors may add elements to the statutory element of the Campus Master Plan,²⁵ however the Board of Governors has no review or approval authority over those long term plans involving major public capital investment.

¹⁶ Section 1004.70(1)(a)1., F.S.

¹⁷ Section 1004.70(1)(a)2., F.S.

¹⁸ Section 1004.70(1)(a)3., F.S.

¹⁹ Section 1004.70(3)(a), F.S.

²⁰ Section 1004.70(1)(b), F.S.

²¹ Section 1004.28(4), F.S.

²² Chapter 216, L.O.F.

²³ Section 216.043, F.S.

²⁴ Section 1013.30, F.S.

²⁵ Section 1013.30(4), F.S.

Annual capital outlay budgets,²⁶ must be adopted by Boards of Trustees, but there is no requirement that those budgets conform to the longer term planning documents. A recent House investigation established that one university was not budgeting non-state funded projects in its capital outlay budget and that its Board of Trustees was not involved in the funding decision on multiple projects.²⁷

Effect of Proposed Changes

State University Boards of Trustees

The bill requires the Board of Governors (BOG) to develop and annually deliver a training program for state university trustees. Trustees must complete the training within 1 year of their appointment to a university BOT. Training must include information on trustee responsibilities relating to:

- Statutory, regulatory, and fiduciary, obligations of the board.
- Establishment of internal process controls and accountability mechanisms.
- Oversight of planning, construction, maintenance, expansion and renovation projects.
- Establishment of policies to promote college affordability.
- Creation and implementation of institution-wide rules and regulations.
- Institutional ethics and conflicts of interest.
- Best practices for board governance.
- Current national and state issues in higher education.

Auditor General

The bill allows the presiding member of either house of the Legislature, the Chief Financial Officer, or any member of the board for which an investigation is sought, to require the BOG Inspector General to investigate allegations of waste, fraud or financial mismanagement by a state university or its board of trustees.

The bill also requires the Commissioner of Education to report to the State Board of Education (SBE) any findings by the Auditor General that a district school board or FCS institution is acting without statutory authority or contrary to state law. Similarly, the Chancellor of the SUS must report to the Board of Governors any findings by the Auditor General that a state university is acting without statutory authority or contrary to state law. If such a finding is reported, the SBE or BOG must require the district school board, FCS institution board of trustees, or state university board of trustees to document compliance with the law.

State University Direct Support Organizations

The bill requires that state university BOTs that transfer any state appropriation to a DSO for capital projects must transfer those funds in accordance with the provisions outlined in s. 1003.73(4), F.S., including that state university BOTS may not transfer in excess of \$1 million in funds that are appropriated to the state university in the General Revenue Fund, the Education Enhancement Trust Fund, and the Education/General Student and Other Fees Trust Fund between the Education and General Activities Category and other program categories.

Similar to provisions currently in place for FCS institution DSOs, the bill narrows the provisions relating to the confidentiality of records of a state university DSO. Pursuant to the bill, auditors reports,

²⁶ Sections 1011.012 and 1013.61, F.S.

²⁷ Florida House of Representatives, *Report on Investigation Into Unauthorized Use of Appropriated Funds for Fixed Capital Outlay Projects at the University of Central Florida*, p. 21, available at

<https://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=2999&Session=2019&DocumentType=Action%20Packets&FileName=pie%203-14-19.pdf>

management letters, any information necessary for auditor's reports, any information related to the expenditure of funds, and any supplemental data requested by the BOG, university board of trustees, the Auditor General, and OPPAGA are all public records.

FCS Institution Direct Support Organizations

The bill strengthens the oversight of DSOs by FCS institution BOTs by requiring each board to establish thresholds for approval of purchases, acquisitions, projects, and issuance of debt. FCS institution DSOs that use funds for personal services must also comply with requirements for other state employees, pursuant to s. 1012.976, F.S.

No later than July 1, 2019, the transfer of any state appropriation by a FCS institution BOT to any DSO with a fund balance of greater than \$50 million may include only funds pledged for capital projects. In addition, the bill requires each FCS institution BOT to annually report on the amount of appropriated funds that are transferred to a DSO, the purpose for each transfer, and the remaining balance, if any, of funds transferred.

The bill prohibits FCS institution BOTs from permitting the use of state funds for travel expenses by any FCS institution DSO. The bill also removes an exemption that allowed FCS institution DSOs to give, either directly or indirectly, any gift to a political committee, if it was certified by a majority roll call of the DSO governing board at a regularly scheduled meeting as being directly related to the educational mission of the FCS institution.

University Facilities Planning

The bill requires that a university's annual capital outlay budget be consistent with its most recent 5-year capital improvement plans. Those plans constitute amendments of the capital improvements element of the campus master plan. In addition, 5-year capital improvement plans will be required to include anticipated funding sources for all projects in all years.

The bill also requires that the Board of Governors be provided notice and an opportunity to review campus master plans as well as the authority to approve those elements of the master plan required by BOG regulation as well as the capital improvements element of the master plan. This will increase Board of Trustees involvement in the planning of capital project funding and improve oversight by the Board of Governors.

B. SECTION DIRECTORY:

Section 1. Amends s. 1001.706, F.S.; requiring the BOG to annually deliver trustee training addressing the role of state university trustees in governing institutional resources and protecting the public interest; requiring each trustee to participate in training within one year of appointment; allowing specific persons to require the Office of the Inspector General to investigate specified allegations of waste, fraud, or financial mismanagement of a state university or its board of trustees.

Section 2. Amends s. 1004.28, F.S.; revising public records exemptions for state university direct-support organizations.

Section 3. Amends s. 1004.70, F.S.; requiring a FCS institution board of trustees to prescribe certain regulations to limit the services, activities, and expenses of its direct-support organizations; providing requirements for transfer of state appropriations; prohibiting transfer of funds to certain FCS institution direct-support organizations; deleting an exception to the prohibition against direct-support organizations donating gifts to a political committee; requiring the disclosure of certain financial documents.

Section 4. Amends s.1008.32, F.S.; requiring the commissioner of education to report audit findings to the SBE under certain circumstances; requiring school districts and FCS institutions to document compliance with law under certain circumstances.

Section 5. Amends s. 1008.322, F.S.; requiring the chancellor of the SUS to report audit findings to the BOG under certain circumstances; requiring state universities to document compliance with law under certain circumstances.

Section 6. Amends s. 1011.012, F.S.; revising requirements for certain capital outlay budgets; requiring each university board of trustees to adopt a capital improvement plan; providing requirements for such plan.

Section 7. Amends s. 1013.30, F.S.; authorizing the BOG to approve certain plan elements; automatically amending master plan upon adoption of capital outlay budget and capital improvement plan; requiring notice and review by the BOG.

Section 8. Amends s. 1013.35, F.S.; conforming provisions to changes made by the act.

Section 9. Repeals s. 1013.61, F.S., relating to annual capital outlay budget.

Section 10. Providing an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Revised trustee training requirements may result in minimal costs to the Board of Governors.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

N/A

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

The Board of Governors has constitutional responsibility for the management of the state university system, subject to the appropriation power of the legislature²⁸. In addition, the legislature has authority to regulate the ethics of all non-judicial officers, which includes the university trustees.²⁹ The trustee training required in Section 1 of the bill affects planning and accountability for public funds, legislatively regulated fees, ethics and conflicts of interests while entrusting control of the required training with the Board of Governors.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2019, the Education Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment requires that:

- A university's annual capital outlay budget be consistent with its most recent 5-year capital improvement plans, which will amend the capital improvements element of the campus master plan; and
- 5-year capital improvement plans include anticipated funding sources for all projects in all years.

The BOG must be provided notice and an opportunity to review campus master plans. The BOG also has the authority to approve those elements of the master plan required by BOG regulation and the capital improvements element of the master plan.

The bill analysis is drafted to the committee substitute as adopted by the Education Committee.

²⁸ Sec. 7(d), Art. IX, FL. CONST.

²⁹ Sec. 8(g)-(h), Art. II, FL. CONST.