

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Education Postsecondary

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BILL: SB 958

INTRODUCER: Senator Perry

SUBJECT: Postsecondary Educational Institutions

DATE: March 21, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jahnke	Bouck	HE	<b>Pre-meeting</b>
2.			AED	
3.			FP	

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**I. Summary:**

SB 958 modifies provisions related to intellectual freedom and viewpoint diversity, the use of political loyalty tests in hiring and admissions, and due process for students participating in student governments. Specifically, the bill:

- Revises the date the State Board of Education and Board of Governors (BOG), respectively, must annually compile and publish the Intellectual Freedom and Viewpoint Diversity survey results.
- Directs the Board of Governors to create the Office of Public Policy Events (OPPE) within the State University System (SUS), to organize, publicize, and stage debates, group forums, and lectures at each SUS institution that address, from multiple, divergent, and opposing perspectives, an extensive range of public policy issues widely discussed and debated in society at large.
- Prohibits the use of political loyalty tests in a state university's hiring, admissions, or promotion process.
- Extends due process protections to each university's student body president that serves on the Florida Student Association.

The fiscal impact of the bill can be absorbed within the existing resources of the BOG and SUS institutions. See section V.

The bill is effective July 1, 2023.

**II. Present Situation:**

The Present Situation is included in the Effect of Proposed Changes section of the analysis.

### III. Effect of Proposed Changes:

#### Intellectual Freedom and Viewpoint Diversity Assessments

##### *Present Situation*

##### Intellectual Freedom and Viewpoint Diversity in Higher Education

In January 2015, the Committee on Freedom of Expression at the University of Chicago produced a free speech policy statement (referred to as the “Chicago Statement”) that affirmed the centrality of unfettered debate to the university’s mission.<sup>1</sup> The statement provided in part:

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

The Chicago Statement continues a tradition of institutions and organizations affirming the importance of the free expression and sharing of ideas on college and university campuses.<sup>2</sup>

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

The Campus Free Expression Act became Florida law in 2018.<sup>5</sup> Under the law, outdoor areas of campus are considered traditional public forums for individuals, organizations, and guest speakers. A public institution of higher education may create and enforce restrictions that are reasonable and content-neutral on time, place, and manner of expression, and that are narrowly tailored to a significant institutional interest. Restrictions must be clear and published and must

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

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

<sup>3</sup> National Survey of Student Engagement, *2017 Topical Module: Inclusiveness and Engagement with Cultural Diversity*, available at [https://scholarworks.iu.edu/dspace/bitstream/handle/2022/23392/NSSE\\_2017\\_Annual\\_Results.pdf?sequence=1&isAllowed=y](https://scholarworks.iu.edu/dspace/bitstream/handle/2022/23392/NSSE_2017_Annual_Results.pdf?sequence=1&isAllowed=y).

<sup>4</sup> *Id.*

<sup>5</sup> Ch. 2018-4, s. 6, Laws of Fla.

provide for ample alternative means of expression.<sup>6</sup> A public institution of higher education may not otherwise designate any area of campus as a free-speech zone or create policies restricting expressive activities to a particular outdoor area of campus.<sup>7</sup> A person whose expressive rights are violated may bring an action against a public institution of higher education in a court of competent jurisdiction to obtain declaratory and injunctive relief, reasonable court costs, and attorney fees.<sup>8</sup>

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

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

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

<sup>6</sup> Section 1004.097(3)(c), F.S.

<sup>7</sup> Section 1004.097(3)(d), F.S.

<sup>8</sup> Section 1004.097(4), F.S.

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

<sup>10</sup> See, e.g., Tallahassee Community College and United Faculty of Florida, *Tallahassee Community College and United Faculty of Florida 2020-2021* (Oct. 15, 2020), available at [https://blogs.tcc.fl.edu/labor-negotiations/wp-content/uploads/sites/13/2020/10/TCC-UFF\\_2020-21\\_FINAL.pdf](https://blogs.tcc.fl.edu/labor-negotiations/wp-content/uploads/sites/13/2020/10/TCC-UFF_2020-21_FINAL.pdf); Florida State University and United Faculty of Florida, *Collective Bargaining Agreement: The Florida State University Board of Governors and the United Faculty of Florida General Faculty Bargaining Unit 2019-2022* (Oct. 30, 2020), available at [https://hr.fsu.edu/sites/g/files/upcbnu2186/files/PDF/Publications/UFF\\_CBA\\_Updated\\_2021.pdf](https://hr.fsu.edu/sites/g/files/upcbnu2186/files/PDF/Publications/UFF_CBA_Updated_2021.pdf).

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

<sup>12</sup> College Pulse, et al., *College Free Speech Rankings: What's the Climate for Free Speech on America's College Campuses?* (2020), at 2 and 53-59, [https://marketplace.collegepulse.com/img/2020\\_college\\_free\\_speech\\_rankings.pdf](https://marketplace.collegepulse.com/img/2020_college_free_speech_rankings.pdf) (last visited Mar. 15, 2023).

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

### Board of Governors

The BOG operates, regulates, controls, and is fully responsible for the management of the whole university system.<sup>16</sup> For each constituent university, the BOG, or the board’s designee, is responsible for cost-effective policy decisions appropriate to the university’s mission, the implementation and maintenance of high-quality education programs within law, the measurement of performance, the reporting of information, and the provision of input regarding state policy, budgeting, and education standards.<sup>17</sup>

### ***Effect of Proposed Changes***

#### Intellectual Freedom and Viewpoint Diversity Assessment

The bill modifies ss. 1001.03 and 1001.706, F.S., to revise the date the SBE and the BOG, respectively, must annually compile and publish each institution’s intellectual freedom and viewpoint diversity assessment from September 1 to December 31, beginning on December 31, 2024.

#### The Office of Public Policy Events within the State University System

The bill creates s. 1001.93, F.S., to establish the Office of Public Policy Events (OPPE or office) within the SUS. The bill requires the BOG to establish, fund, and staff an OPPE. The OPPE is required to have a satellite office at each state university within the SUS.

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

<sup>13</sup> Section 1001.706(13), F.S.

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

<sup>15</sup> Florida Board of Governors, *Intellectual Freedom and Viewpoint Diversity 2022 Survey*, available at [https://www.flbog.edu/wp-content/uploads/2022/08/SUS\\_IF-SURVEY\\_REPORT\\_DRAFT\\_2022-08-16.pdf](https://www.flbog.edu/wp-content/uploads/2022/08/SUS_IF-SURVEY_REPORT_DRAFT_2022-08-16.pdf).

<sup>16</sup> Fla. Const. Art. IX, s. 7.

<sup>17</sup> Section 1001.706(1), F.S.

The OPPE is required, at a minimum, to organize, publicize, and stage a substantial number of debates, group forums, and individual lectures at each state university that address, from multiple, divergent, and opposing perspectives, an extensive range of public policy issues widely discussed and debated in society at large. The bill specifies that the debates, group forums, and lectures must include speakers who represent widely held views on opposing sides of the most widely discussed public policy issues of the day and who hold a wide diversity of perspectives from within and outside of the state university community.

The bill specifies that if the OPPE is unable to readily find an advocate from within the state university community who is well-versed in a perspective, the office is required to invite a speaker who is able to represent such perspective. For those speakers from outside of the state university community, the OPPE must provide per diem and travel expenses.

The bill requires the OPPE to maintain a permanent, publicly accessible, searchable, and up-to-date calendar in print, on the office's website, and on each state university's website listing all of the events sponsored by the office and all other debates, group forums, and individual lectures open to the entire campus community at the state university that address public policy issues. Beginning September 1, 2024, and annually thereafter, the OPPE is responsible for providing a printed and electronic copy of the previous academic year's calendar for each state university to the Governor, the Legislature, and each SUS institution. The bill requires the calendars to be arranged chronologically and kept in the library system of each state university. The calendars must contain the following:

- Title of the event or lecture.
- Name and institutional affiliation of the speaker or speakers.
- The office, institute, department, program, or organization that sponsored the event.

The OPPE is required to make publicly available, in an online format, a complete video record of every debate, group forum, and individual lecture organized by the office. Such video recordings must be made available within 10 days after the event and remain accessible on the OPPE's website for five years. Additionally, the video recordings must be permanently preserved, and made available to the public, through the library of the state university where the event was held.

The bill authorizes the responsibilities of OPPE satellite offices to be assigned to an existing administrative office within a state university, at the discretion of the BOG and board of trustees of a state university. The bill requires the state university to appoint a Director of Public Policy Events responsible for fulfilling the statutory duties of the office. Each OPPE satellite office is required to report directly to the university's office that is responsible for compiling and reporting the Integrated Postsecondary Education Data System's graduation rate survey or Office of General Counsel.

Finally, the bill requires each event or lecture organized by the OPPE to be open to all students, faculty, and staff of the state university and to the general public, unless restricting attendance to such an event is necessary to achieve a compelling governmental interest.

## Political Loyalty Tests in Hiring and Admissions

### *Present Situation*

Diversity, Equity, and Inclusion (DEI) initiatives are intended to provide equal access as well as a more welcoming and inclusive environment for underrepresented minorities within the institution.<sup>18</sup> The impetus behind DEI initiatives is the belief that having a more diverse representation coupled with creating space where everyone feels a sense of belonging and can bring their authentic selves to work, is better for the business.<sup>19</sup>

However, research indicates that DEI initiatives may have negative impacts that directly undermine the reported goals of the programs.<sup>20</sup> The presence of DEI initiatives can lead to lower evaluations and perceptions of members of the organization based on the implication that individuals are not present due to merit but simply to satisfy the DEI initiative's goals.<sup>21</sup> This impact is not only external, the individuals themselves can be led to underestimate their own competence and ability due to the presence of a DEI initiative.<sup>22</sup> The mere presence of a DEI initiative within an organization can undermine the very purpose the DEI initiative allegedly serves.

### Diversity, Equity, and Inclusion in Florida Public Postsecondary Institutions

A position statement by the Southern Association of Colleges and Schools (SACS) describes the benefits of diversity, equity, and inclusion policies in postsecondary institutions.

By creating and sustaining an equitable and inclusive institutional culture, colleges and universities can foster a community in which all members can be respected and appreciated for their differences, and in which all learners can be engaged to reach their full potential. Promoting diversity, equity and inclusion is an opportunity for institutions to recruit students of all backgrounds, identities, and abilities; to support them, adapt teaching methods and use technology to meet their needs and break down barriers to learning; and to successfully guide, mentor, retain, and graduate them.<sup>23</sup>

A statement by the presidents of the Florida College System (FCS) echoes the SACS statement in its description of DEI as a tool “to increase diversity of thought as well as the enrollment and the success of underrepresented populations.” However, this statement also warns that DEI “initiatives and instruction in higher education under the same title have come to mean and

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<sup>18</sup> See Florida International University, *Diversity Equity and Inclusion Institutional Goals*, <https://dei.fiu.edu/our-foundations/institutional-goals/index.html> (last visited Mar. 15, 2023).

<sup>19</sup> *Id.*

<sup>20</sup> Fortune, Michelle Frank, *The problem with diversity and inclusion initiatives*, May 18, 2022, <https://fortune.com/2022/05/18/problem-diversity-inclusion-initiatives-dei-women-careers-work-leadership-stereotypes-michele-frank/> (last visited Mar. 15, 2023).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Southern Association of Colleges and Schools, Commission on Colleges, *Diversity, Equity and Inclusion* (Dec. 2020), available at <https://sacscoc.org/app/uploads/2019/08/DiversityStatement.pdf>.

accomplish the very opposite and seek to push ideologies such as critical race theory and its related tenets.”<sup>24</sup> The statement continues:

To be clear in this environment, the FCS presidents, by and through the FCS Council of Presidents (COP), will ensure that all initiatives, instruction, and activities do not promote any ideology that suppresses intellectual and academic freedom, freedom of expression, viewpoint diversity, and the pursuit of truth in teaching and learning. As such, our institutions will not fund or support any institutional practice, policy, or academic requirement that compels belief in critical race theory or related concepts such as intersectionality, or the idea that systems of oppression should be the primary lens through which teaching and learning are analyzed and/or improved upon.

Specifically, by February 1, 2023, the FCS presidents commit to having fully evaluated and removed any institutional instruction, training, and policies opposed to the forms of discrimination described in this statement.<sup>25</sup>

On December 28, 2022, the Executive Office of the Governor directed the colleges and universities to provide a comprehensive list of all staff, programs and campus activities related to diversity, equity and inclusion and critical race theory.<sup>26</sup> The list must include costs associated with administration of each program or activity, including a description of the activities, paid positions and how much of the money is provided by the state.<sup>27</sup> The results of the survey for the State University System indicated that state universities spend approximately \$34.5 million on such activities, with about \$20.7 million from state funds.<sup>28</sup>

### Compelled Speech

The U.S. Supreme Court (Court) has repeatedly held that the right to free speech protected by the first amendment to the constitution protects an individual from being compelled to speak. “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”<sup>29</sup> Stated even more plainly, the Court has held that free speech principles prohibit the government from telling people what they must say.<sup>30</sup> Additionally, an individual is also protected from being compelled to host or accommodate the speech of another.<sup>31</sup>

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<sup>24</sup> Florida College System, *Florida College System Presidents Statement on Diversity, Equity, Inclusion and Critical Race Theory* (Jan. 18, 2023), available at <https://www.fldoe.org/core/fileparse.php/5673/urlt/FCSDEIstatement.pdf>.

<sup>25</sup> Florida College System, *Florida College System Presidents Statement on Diversity, Equity, Inclusion and Critical Race Theory* (Jan. 18, 2023), available at <https://www.fldoe.org/core/fileparse.php/5673/urlt/FCSDEIstatement.pdf>.

<sup>26</sup> Executive Office of the Governor, Memorandum # 23-021, *Higher Education Program and Activity Survey* (Dec. 28, 2022).

<sup>27</sup> *Id.*

<sup>28</sup> Florida Board of Governors, *Combined SUS DEI Response*, available at [https://drive.google.com/file/d/1vQbcRDZmWzewqD\\_vuFx97zjTIscoG1O8/view](https://drive.google.com/file/d/1vQbcRDZmWzewqD_vuFx97zjTIscoG1O8/view).

<sup>29</sup> *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943).

<sup>30</sup> *Rumsfeld v. Forum for Academic and Institutional Rights*, 547 U.S. 47, 61 (2006).

<sup>31</sup> See *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557 (1995) (state law cannot require a parade to include a group whose message the parade's organizer does not wish to send) and *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974) (right-of-reply statute violates editors' right to determine the content of their newspapers).

The Court has consistently struck down mandatory political loyalty oaths, particularly in the education setting.<sup>32</sup> The Court established a four-part test for reviewing the constitutionality of such oaths, requiring that:

- The oath may not infringe on First or Fourteenth Amendment rights;
- Employment may not be conditioned on an oath that one has not engaged in, or will not engage in, protected speech activities;
- Employment may not be conditioned on an oath denying past or avoiding future associational activities protected by the Constitution; and
- The oath may not be so vague that a person of ordinary intelligence must guess at its meaning.<sup>33</sup>

#### Equity and Access in Florida's State Universities

The Board of Governors (BOG) Regulation 2.003 governs state university system institution policies and procedure regarding equity and access for both students and employees.<sup>34</sup> The regulation prohibits discrimination on the basis of race, color, national origin, sex, religion, age, disability, marital status, veteran status, or any basis protected by applicable law.<sup>35</sup> Covered individuals include prospective and enrolled students, prospective and current employees, and university program invitees.<sup>36</sup> However, this does not prohibit an institution from using legal methods to achieve a broadly diverse student body, faculty and staff.<sup>37</sup>

Each state university system institution must:

- Make available classes, programs, facilities, employment, and services without regard to the protected status or category of an individual;
- Establish policies, procedures, and reporting mechanisms that prohibit and address unlawful discrimination; and
- Establish a designated office or person responsible for the development and implementation of the equal employment opportunity program at each university.<sup>38</sup>

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

- Offer equal opportunity and access in employment to all qualified individuals without regard to the protected status or category of the individual.
- Maintain an annual equity plan for remedying underutilization of women and minorities, as applicable, in senior-level administrative positions and by faculty rank and/or tenure status.<sup>39</sup>

In compliance with state, federal, and National Collegiate Athletic Association (NCAA) requirements regarding equal opportunity and access to students to participate in intercollegiate

<sup>32</sup> See, e.g., *Baggett v. Bullitt*, 377 U.S. 360 (1964); *Elfbrandt v. Russell*, 384 U.S. 11 (1966); and *Keyishian v. Board of Regents*, 385 U.S. 589 (1967).

<sup>33</sup> *Cole v. Richardson*, 405 U.S. 676 (1972).

<sup>34</sup> Florida Board of Governors, Regulation 2.003.

<sup>35</sup> Florida Board of Governors, Regulation 2.003(1).

<sup>36</sup> *Id.*

<sup>37</sup> Florida Board of Governors, Regulations 2.003(1)(b) and 6.001(3). State university system institutions are expressly prohibited from using admissions criteria that include preferences on the basis of race, color, national origin, disability, religion, or sex.

<sup>38</sup> Florida Board of Governors, Regulation 2.003(2).

<sup>39</sup> Florida Board of Governors, Regulation 2.003(3).



athletics, as well as in intramural, club, or recreational athletics, each state university system institution must develop an equity plan addressing sex equity in sports offerings and funding, including the proper level of support for women's athletic scholarships.<sup>40</sup>

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

- At a minimum, each university's equity report must include information on the institution's progress in implementing strategic initiatives and performance related to equity and access as they pertain to academic services, programs, and student enrollment; equity in athletics; and employment.
- Each university's equity report shall assess sex equity in athletics, as well as representation by race and sex in student enrollment, senior level administrative positions and by faculty rank and/or tenure status.<sup>41</sup>
- Each equity report shall include a web citation of the university's nondiscrimination policy adopted by its university board of trustees.
- Such reports are to be submitted to the BOG by September 30th of each year.
- Each university board of trustees or designee shall approve the annual Florida Equity Report for its institution prior to submission to the BOG.
- The BOG shall annually assess the progress of each university's plan and advise the Governor and the Legislature regarding compliance.<sup>42</sup>

#### Preferences in State University Admissions

The BOG adopted regulation 6.001 prohibiting Florida's universities from using admissions criteria that include preferences on the basis of race, color, national origin, disability, religion, or sex.<sup>43</sup>

#### ***Effect of Proposed Changes***

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

The bill specifies that a political loyalty test includes compelling, requiring, or soliciting a person to identify commitment to or to make a statement of personal belief in support of:

- Any ideology or movement that promotes the differential treatment of a person or a group of persons based on race or ethnicity, including an initiative or a formulation of diversity, equity, and inclusion beyond upholding the equal protection of the laws guaranteed by the 14th Amendment to the United States Constitution or a theory or practice that holds that

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<sup>40</sup> Florida Board of Governors Regulation 2.003(4).

<sup>41</sup> Annual goals shall be developed and included in the equity report to address each area of underutilization. For each year in which prior year goals were not achieved, each university shall provide a narrative explanation and a plan for achievement of equity. Florida Board of Governors Regulation 2.003(5)(b)1.

<sup>42</sup> Florida Board of Governors Regulation 2.003(5).

<sup>43</sup> Florida Board of Governors Regulation 6.001(3).

systems or institutions upholding the equal protection of the laws guaranteed by the 14th Amendment to the United States Constitution are racist, oppressive, or otherwise unjust.

- A specific partisan, political, or ideological set of beliefs.

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

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

The bill provides a severability clause for these provisions.

## **Due Process for Students Participating in Student Government**

### ***Student Governments at State Universities***

Each state university has a student government on its main.<sup>44</sup> A state university student government is required to be comprised of at least a student body president, a student legislature, and a student judiciary.<sup>45</sup> Each student government is required to adopt internal procedures that provide for the operation and administration of the student government as well as the fulfillment of all statutory duties including, but not limited to, establishing procedures for the suspension, removal, and discipline of officers of the student government.<sup>46</sup> The statutory requirements for university student governments are mirrored in Board of Governors (BOG) regulation.<sup>47</sup>

Student government organizations are a part of the university at which they are established.<sup>48</sup> Actions taken by student government entities are subject to the approval of the university.<sup>49</sup> When a student government acts, it acts under the color of state law and such actions are considered state action.<sup>50</sup>

In 2021, the Legislature established additional due process protections for students participating in student governments. Every university student government body must include a provision in its internal procedures permitting an officer that is disciplined, suspended, or removed from office to appeal directly to the vice president of student affairs or other designated senior university administrator. Neither the student government nor the university may impose any conditions precedent on such an appeal.<sup>51</sup>

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<sup>44</sup> Section 1004.26(1), F.S.

<sup>45</sup> Section 1004.26(2), F.S.

<sup>46</sup> Sections 1004.26(3) and (4)(a), F.S.

<sup>47</sup> Florida Board of Governors Regulation 6.014.

<sup>48</sup> Section 1004.26(1), F.S.

<sup>49</sup> See, e.g., Florida Board of Governors Regulation 6.014(5); Florida State University Board of Trustees Regulation FSU-3.001(3).

<sup>50</sup> See *Ala. Student Party v. Student Gov't Ass'n of the Univ. of Ala.*, 867 F.2d 1344, 1345 (11th Cir. 1989).

<sup>51</sup> Section 1004.26(4)(d), F.S.

### ***Florida Student Association***

The Florida Student Association (FSA) is a nonprofit entity established to advocate on behalf of Florida's State University System (SUS) students. The FSA consists of the 12 university student body presidents.<sup>52</sup> The president of the FSA serves as a student member of the BOG.<sup>53</sup> Additionally, the FSA nominates a student to serve on financial aid appeals committees.<sup>54</sup>

### ***Effect of Proposed Changes***

The bill designates the FSA as the nonprofit advocacy group for SUS students. With the approval of the BOG, the Chancellor of the SUS is authorized to designate an alternate entity if the FSA fails to meet the standard established in law.

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

Additionally, the bill requires the FSA to adopt bylaws similar to the internal procedures required of student governments units at each state university. Specifically:

- A due process for the removal or impeachment of the president of the association. The due process must provide that the president of the association may be removed by the majority vote of members of the board of directors. The bill specifies that grounds for removal of the president of the association are limited to malfeasance, misfeasance, neglect of duty, incompetence, permanent inability to perform official duties, or conviction of a felony.
- Procedures for the suspension and removal of the president of the association following the conviction of a felony.
- Procedures for a president of the association who has been disciplined, suspended, or removed from his or her position to directly appeal such decision to the Vice Chancellor for Academic and Student Affairs for the Board of Governors. The bylaws may not place any condition before a president may appeal such decision. The association may not elect a new president until the exhaustion of the appeals process or any other due process rights established in the bill.

The bill takes effect on July 1, 2023.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

<sup>52</sup> Florida Student Association, *About FSA*, <https://www.floridastudentassociation.com/about> (last visited Mar. 15, 2023).

<sup>53</sup> Art. IX, s. 7(d), Fla. Const. and s. 1001.70(1), F.S.

<sup>54</sup> Section 1009.42(1), F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires the Board of Governors (BOG) to establish, fund, and staff an Office of Public Policy Events (OPPE). The BOG estimates it would require 1 FTE and \$179,393 in salaries, benefits, and expenses.<sup>55</sup>

Each university must have a satellite OPPE that is responsible for the duties outlined for the office in the bill. The BOG estimates the fiscal for each institution will vary, but will be approximately \$484,718 and can be absorbed within existing resources.<sup>56</sup>

The bill allows for an institution to cover per diem and travel expenses for certain speakers, which the BOG estimates to be approximately \$200,000 per institution, which can be absorbed within existing resources.<sup>57</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>55</sup> Email, Tony Lee, Assistant Vice Chancellor, Public Policy and Advocacy, Board of Governors (Mar. 15, 2023).

<sup>56</sup> *Id.*

<sup>57</sup> Email, Tony Lee, Assistant Vice Chancellor, Public Policy and Advocacy, Board of Governors (Mar. 15, 2023).

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 1001.03, 1001.706, 1004.097, and 1004.26.

This bill creates section 1001.93 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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