History of Higher Education Governance in Florida

Beginning in 2001 through 2002, the Florida Legislature made changes to the statutory responsibilities with respect to K-20 education in Florida. Resulting from these statutory changes, a board of trustees was established for each public university, empowered with all operating authority. Florida Statutes, Chapters 1000 through 1013, which are commonly referred to collectively as the Education Code, delineate the statutory responsibilities for the boards of trustees. Although some interim steps in the process of devolution became effective in 2001 and 2002, the Education Code established January 7, 2003, as the effective date for the full devolution of authority over state universities from the state level to the respective institutional levels.

In November 2002, before the new statutes could take full effect in 2003, Florida voters approved an amendment to Article IX, Section 7, of the Florida Constitution, to reorganize the State University System of Florida, effective January 7, 2003. This amendment to the Florida Constitution created a seventeen-member statewide Board of Governors with the exclusive authority to operate, regulate, control, and be fully responsible for the management of the entire university system, subject only to the power of the state legislature to appropriate for the expenditure of funds. The Board of Governors (BOG) is a subsequent entity to the former Board of Regents. The amendment also established a thirteen (13) member board of trustees for each university with the powers and duties as established by the Board of Governors. The boards of trustees established in the constitutional amendment were consistent with the boards of trustees established in the Education Code.
One Florida appellate court has held that, as a result of the passage of this constitutional amendment, those provisions of the Education Code that attempt to regulate universities in areas under the authority of the Board of Governors have been implicitly repealed.

On January 7, 2003, the Board of Governors adopted by resolution certain parts of the Education Code relating to the powers of the university boards of trustees. [2] The BOG also adopted some rules of the former Board of Regents relating to various areas of governance. The Board of Governors did not adopt all provisions of the Education Code, especially those areas dealing with K-12 education, but did resolve “that in addition to the duties and responsibilities of the boards of trustees enumerated herein, the universities shall have those duties and responsibilities specifically set forth in the K-20 Education Code, Title XLVIII, Florida Statutes, and shall act consistent with those responsibilities.” The Board of Governors has expressed its intention to adopt specifically the provisions of the Education Code or similar provisions. The universities have continued to operate in compliance with the statutory structure in the absence of specific direction to the contrary issued by the Board of Governors.

In June 2007, the legislature once again conducted a comprehensive rewrite to the statute regarding governance in higher education. This became effective on July 1, 2007; however, in late July former Governor Bob Graham filed a law suit to clarify the roles of the Board of Governors, the legislature and the respective boards of trustees. At its July 2007 meeting, the Board of Governors voted to join this lawsuit and broadened the complaint to clarify these respective roles in governing public higher education in Florida. The Court ruled that the complainants did not have standing to file the lawsuit. The Complaint was revised and refilled. On May 13, 2008, a hearing was held on the motion to dismiss. Counsel for the Legislature stipulated on the record that the Board of Governors had standing to assert the tuition and fees claims, but continued to challenge
the Board's standing to seek declaratory relief on the claims pertaining to the powers
and duties of the trustees and the APA rulemaking requirements imposed on the BOG
and the BOTs. After the hearing, the judge did not rule and could not predict when a
ruling would occur due to his busy schedule.

For purposes of SACS reaffirmation, FAMU has continued to reference the applicable
school code provisions pending formal action of the Board of Governors and further
clarification from the courts regarding the statutory provisions or similar governing rules.

Florida Statute 1001.706 delineates the powers and duties of the Board of Governors,
including powers and duties relating to finances and accountability. In part the statute
states:

(a) The Board of Governors, or the board's designee, shall account for
expenditures of all state, local, federal, and other funds. Such accounting
systems shall have appropriate audit and internal controls in place that will
enable the constituent universities to satisfactorily and timely perform all
accounting and reporting functions required by state and federal law and rules.
(b) The Board of Governors shall prepare the legislative budget requests for the
State University System, including a request for fixed capital outlay, and submit
them to the State Board of Education for inclusion in the K-20 legislative budget
request. The Board of Governors shall provide the state universities with fiscal
policy guidelines, formats, and instruction for the development of individual
university budget requests.
Florida Statute 1001.74 delineates the powers and duties of the boards of trustees, including powers and duties in regard to finances and in regard to accountability. In part, the statute states:

(a) To the extent delegated by the Board of Governors pursuant to s. 1001.706, each board of trustees shall account for expenditures of all state, local, federal, and other funds. Such accounting systems shall have appropriate audit and internal controls in place that will enable the university to satisfactorily and timely perform all accounting and reporting functions required by state and federal law and rules.

(b) Each board of trustees shall submit an institutional budget request, including a request for fixed capital outlay, and an operating budget to the Board of Governors for approval in accordance with guidelines established by the Board of Governors.