

The New Interest in Charter Universities and State Performance Contracts

Executive Summary

Charter and enterprise universities emerged as major issues in recent legislative sessions. Although charter colleges or universities have been debated previously in a few states, they are still relatively new and untested concepts in higher education policy. Charter and enterprise universities, or similar designations, redefine an institution's relationship to the state and are largely outgrowths of shifts in state funding capacity. To some observers, these redefined relationships are steps toward the privatization of public colleges and universities; to others, they are steps that can reaffirm public purposes and government commitments. In many cases, only public flagship/research universities or special purpose colleges with a strong resource base are likely to benefit from new definitions or designations. Performance contracts, management agreements, and memorandums of understanding are the vehicles to "operationalize" a redefined higher education-state government relationship. Only time will tell whether these developments endure.

This policy brief examines the implications of these developments and explores whether performance contracts, management agreements, and memoranda of understanding are workable vehicles to ensure pursuit of public purposes, accountability, stable and predictable levels of financial support, and fiscal and management flexibility. This brief also explores the implications of these developments for institutional and state-level governance. It focuses largely on developments in Colorado, Virginia, and Washington. It concludes that such contracts and agreements are an intriguing development, but suggests that states and higher education institutions and the governing boards interested in pursuing them should proceed with due diligence and caution.

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Is Public Higher Education Moving Toward Charter Status?

Granting state universities charter status, enterprise status, or some similar designation, was a major topic in several recent legislative sessions and was watched closely in many others. Granting charter or enterprise status was viewed by some observers as a new and creative response to intense funding pressures on public colleges and universities, pressures resulting from weakened state economies, Medicaid and corrections obligations, new and expanded tax cuts—and for many institutions, new spending to accommodate a demographic upturn in high school graduates and college enrollments. The most substantial changes were in Colorado and Virginia, although other states considered changes as well. Enterprise status legislation was passed in Colorado in 2004; Virginia did not grant charter status to the three institutions that desired it (the University of Virginia, Virginia Tech, and the College of William & Mary), yet still enacted significant changes that alter the state-higher education relationship. Other significant changes occurred in Massachusetts, Ohio, Texas, and Washington.

A creative response or not, the seeking of such status is viewed by higher education leaders such as former American Council on Education and University of Illinois president Stan Ikenberry as evidence that public colleges and universities are becoming more like their private counterparts—less dependent on state dollars, more dependent on private support, and less attuned to state and citizen needs. “There is a concern that the public mission or character of public colleges and universities may be shifting and that market forces and competitive instincts are becoming more decisive in shaping institutional policy, priorities, and decisions,” Ikenberry says. “To many, academic priorities and program directions appear to be more closely aligned with private or corporate funding sources.”

Public institutions, particularly research universities and selective colleges, increasingly are characterizing themselves or their actions in the language of “privatization,” using terms such as “market-smart,” “independent,” “consumer-focused,” “autonomous” and “full-cost pricing.” As tuition increases that exceed inflation and family income go into effect, keen observers and higher education leaders like Ikenberry question whether the social compacts between states and their universities are being abandoned.

Scholars such as David Breneman, dean of education at the University of Virginia, argue that talk of privatization is exaggerated and unrealistic and urge caution in using the language of privatization to describe recent developments. The language implies access to private financial resources of a magnitude that does not exist for public institutions, he notes. Although state appropriations have declined as a percentage of institutional revenues, especially for public research universities, states still invest substantial amounts of dollars into all sectors of public higher education, and usually of increasing amounts. Breneman quotes a figure of \$1.2 trillion for collective endowments or increased tuition revenues that would be needed to replace the \$60 billion in state appropriations for operating expenses reported for fiscal 2004, a figure that is inconceivable. The language also

implies that institutions would willingly abandon the several legal protections that come with state agency or state subdivision status, legal protections found not only in state constitutions but in the federal tax code and in major court decisions.

Performance Contracts, Management Agreements, and Memorandums of Understanding. Comprehensive and universitywide in scope, such tools as contracts, memorandums of understanding, and management agreements make operational the charter legislation (or other efforts) to devolve authority from the state to institutions, including the precious area of tuition setting authority. The first state to experiment with charter status was Maryland. In 1992, St. Mary's College, a small public institution, was granted special legislative status as a public honors college. St. Mary's signed a memorandum of understanding with the governor as an assurance of stable appropriations. The move gave St. Mary's the ability to increase tuition if appropriations did not meet inflation, a lump-sum budget, and regulatory flexibility and procedural autonomy in many operational areas.

The concept of universitywide, comprehensive performance contracts and management agreements is, on the surface, quite attractive. For state governments, they can spell out precise expectations for colleges and universities, assure a level of performance and accountability in areas tied to institutional mission—including contributions to the state's educational and economic priorities, and its regions or communities—and tie such performance to future funding levels. Ideally for institutions, performance contracts may have the advantage of changing the context for discussion about state support. They can express what can reasonably be expected of state government in terms of funding and other support, perhaps providing a guaranteed funding floor through a block grant tied to inflation. They could relate such funding expectations to tuition revenues, giving universities maximum tuition flexibility to cover shortfalls or to fund institution-determined initiatives, and provide a high degree of administrative, operational, and fiscal freedom.

Colorado and Virginia are employing performance contracts, management agreements, and memorandums of understanding as the vehicles to delineate new mutual expectations between the state and their public colleges and universities resulting from new legislation. In Washington, eligible institutions have sought approval of proposed contracts that were authorized in the 2004 legislative session. (Massachusetts has instituted performance contracts, but for only two of its public institutions at this time.)

In Colorado and Virginia, public colleges and universities are able to enter into negotiated agreements with their state governments. With some notable restrictions, the contract terms and conditions will permit institutions to set their own tuition and be free of much of the regulation of state agencies. In return, state leaders are asking for specific assurances, including evidence of contributions to the state's future with benchmarks and accountability measures to prove it. The contract approaches are all multiyear and subject to renewal.

In Colorado, under the state's "enterprise status" legislation, each public university governing board has negotiated a performance contract with the state higher education coordinating agency, the Colorado Commission on Higher Education. The contracts are a

result of severe budget reductions caused by a constitutional limitation on tax revenues. The reductions led to companion legislation creating student stipends (vouchers) to resident undergraduates and separate fee-for-service contracts (for the state's graduate/research universities) that replaced direct appropriations. Each institution is freed from several state controls. In turn, colleges and universities must address student access and success, institutional efficiency, and state needs.

Virginia passed the "Restructured Higher Education Financial and Administration Operations Act" in 2005. Although not granting the charter status desired by the University of Virginia, the College of William & Mary, and Virginia Tech, the act states that all Virginia public colleges and universities must develop a six-year academic, financial, and enrollment plan that outlines tuition and fee estimates, enrollment projections, and detailed plans for meeting statewide objectives. Each institution must accept a number of accountability measures, including meeting benchmarks related to accessibility and affordability. The act also provides substantial institutional autonomy in business affairs. The level of autonomy an institution attains will depend on its financial and management capacity. Those institutions with the most capacity will develop a management agreement with executive officials submitted through the governor's budget for approval by the General Assembly. Such an agreement will define the additional authority an institution could exercise in its financial, capital, procurement, personnel, and information technology operations. Initial agreements will be for three years; subsequent ones will be for five years.

The Washington State legislation initially applies to a select number of colleges and universities. In response, the University of Washington had proposed an eight-year rolling contract with review in four years by a committee representing the governor, legislature, the Higher Education Coordinating Board, and the university. The contract sought core funding per student at a percentile of peer or competitor institutions over an average six-year period. It also emphasized the university's contribution to state goals in the following areas: research, quality, service and scholarship; affordability; access and diversity; building a skilled workforce; and fulfillment of the state's economic development goals. It also proposed to provide evidence of efficiency and indicators and benchmarks on each goal, to be reported biennially.

As an early AGB public policy paper observes, these developments suggest that the college or university is an independent or quasi-independent entity openly engaging in a contract discussion with a client—the state.

What is unclear in the above states is under what circumstances either party would be free to walk away from the contract negotiation, which should be possible if the agreements truly fit the definition of a contract. That seems unlikely, for in reality, there is only one client for an institution—the state. The universities have nowhere else to turn, nor does the state realistically have other options, particularly if large numbers of students are involved.

Stable and predictable funding and tuition control. From the institutional viewpoint, the single most important issue that seems to emerge in charter debates and performance contract and management agreement conversations is revenue predictability and stability. In today's economic and fiscal climate, achieving such stability often means claiming the full power to set tuition—the achievement of tuition autonomy. It should be noted that nearly all governing boards of public colleges and universities have the authority to set tuition for their campuses by virtue of legislation or state constitution, although in several states this is done under parameters set by the state-level coordinating board or the legislature. As Breneman notes, however, “even when authority rests with the governing board, a governor or legislature can respond to increases in tuition by imposing an effective 100 percent tax rate on the state appropriation, thereby threatening to offset tuition increases with state budget cuts.” If developments in Colorado, Virginia, and Washington are any guide, most political leaders will be unwilling to surrender too much authority over tuition, and certainly not all of it.

Breneman notes two economic downsides and one political downside to giving institutions full control over their own prices: “The political downside is that governors and legislators achieve significant political benefits from being able to step in and freeze (or reduce) tuition when circumstances temporarily permit it. Such actions play well among middle-class parents worried about the rising price of college, making this a form of control that elected leaders may be reluctant to give up. And even if one governor or legislature adopts such a policy, successors may seek to reverse it.” A tuition freeze also leverages institutional cost savings, efficiency, and productivity enhancements.

The economic downsides of full tuition autonomy, according to Breneman, are the potential loss of access to higher education, particularly for students from low-income families, and the limited ability of less-selective public universities (which is most institutions) to raise tuition without driving away students. “These two issues obviously are connected, and they reflect the difficulty of implementing this ... model for all students and colleges rather than just the select few,” Breneman says. The number of public universities positioned to operate this way is generally limited to the flagship campuses in each state or to other special-purpose institutions. “Any attempt at uniform treatment statewide is bound to fail, and that will pose political difficulties in some jurisdictions,” he writes.

Breneman sees a second downside—the need to provide sufficient need-based financial aid so that low-income students are not priced out by higher tuition: “Ideally, any state that moves to this market model (also called high tuition/high aid) should see increased funding for its state financial-aid agency as a major responsibility, requiring that agency to disburse funds solely on the basis of financial need.” Or the state can require (by language in the contract) that tuition dollars be funneled to lower-income students in the form of institutional aid that supplements state and federal need-based dollars. The University of Colorado has pledged that 20 percent of its tuition increase will go to financial aid. At the University of Virginia, even before approval of its management agreement, is aid being targeted to lower and middle-income students to ensure that the university remains affordable. (In Texas, the University of Texas System has made a similar pledge with a hope that

combined institutional, state, and federal aid will cover college costs for most lower and middle-income students.)

In Colorado, tuition increases are limited to inflationary growth. Higher increases must be justified to the legislature and governor. A battle between the University of Colorado and the governor over a proposed 28 percent increase for fall 2005 shows the difficulty of attempting to justify further increases. The eventual increase was scaled back. In Virginia, the new legislation reaffirms the responsibilities of each institution's board of visitors to set tuition and attempts to provide predictability and stability for state funding and tuition increases. In a formula devised earlier by the State Council on Higher Education (the state's higher education coordinating agency), if the state fails to meet two-thirds of the cost of education at an institution (called base adequacy), then tuition increases can cover the difference; that is, tuition, can cover more than one-third of the cost of education. Tuition increases to do so would have to be phased in over a five-year period. Tuition is also dependent on enrollment projections for the six-year period covering the management agreements, for they will help determine the general fund revenues for base adequacy and, subsequently, any needed tuition increases. In Washington State, tuition increases for existing students would be set at a yearly maximum, adjusted for inflation. But if appropriations fall short, then the university would shift enrollment targets downward and/or raise tuition further. The goal is steady per-student funding.

In Colorado, Virginia and Washington, the state governments, and especially higher education, seek guaranteed and steady levels of financial support for the length of the contract through a combination of state appropriations and tuition. Base adequacy, core funding, or state cost models form the base for financial support, usually on a per-student basis. These funding models may be viewed as fair, generous, or restrictive, but they are nevertheless in the contract, either through negotiation or adoption of an already accepted model. If state appropriations cannot provide steady per-student funding, then institutions can backfill shortfalls with tuition. By explicitly tying allowable tuition increases to state funding shortfalls, the contracts and agreements do offer some level of financial predictability and stability. At least that's the objective. Already, the dispute in Colorado over how high tuition can rise shows how precise the language in a contract needs to be. It's accurate to say that performance contracts and management agreements provide a modest degree of tuition flexibility, but not full tuition autonomy.

Regulatory Flexibility. Relief from several of the strictures that apply to state agencies is a feature of the Colorado, Virginia, and Washington contracts and management agreements. The performance contracts and management agreements provide colleges and universities explicit freedoms in explicit areas—enhanced performance and accountability assurances being centrally traded features for regulatory flexibility.

As Breneman has noted, “bureaucratic intrusion” has been a periodic target for public institution leaders in nearly all states, who express frustration at rules and regulations that do not recognize higher education's differences from other state government agencies or its need for greater flexibility to pursue its public mission. (Institutions that are created by

state constitutions usually are free of most of these controls.) Before a state moves in this direction under a contract (or free-standing legislation), it should conduct an assessment of the administrative and organizational strength of each institution, including its ability to effectively handle procurement, construction planning and oversight, investment management, financial processing, and other activities.

A unique part of the Virginia law is the levels of autonomy that the state can grant its public institutions. Three levels are specified, with so-called Level III institutions being able to exercise maximum authority over spending, capital projects, procurement, personnel, and information technology. This level likely will be granted to the state's three universities that originally sought charter status in 2004, but all institutions that meet certain of the agreed-upon state objectives will be eligible for targeted financial incentives ranging from interest earnings on tuition and fees to retention of unexpended state appropriations.

Some of these higher levels of autonomy in operational areas will be granted to institutions after they enter into memorandums of understanding with the state. The MOUs must be submitted to the appropriate cabinet secretary, who can accept or deny the request, with notification then made to the General Assembly. The MOUs will then be incorporated into the management agreements.

Colorado institutions under performance contracts receive a large degree of freedom on the creation of new academic programs, which will no longer be regulated by the Colorado Commission on Higher Education, as long as programs fall within institutional missions. Institutions are also free from most restrictions on state appropriations because such appropriations now come only in the form of student vouchers, and fee-for-service contracts for graduate education and research. Washington's proposed performance contract would contain negotiated provisions in facilities, purchasing, investments, and other management areas.

Regulatory flexibility has little to do with privatization, and more to do with efficiency and smart government. It has been granted to institutions in several states over the years through legislation or executive action, most notably in New Jersey in the mid-1980s and mid-1990s. But are contracts good for achieving regulatory flexibility? It may be that performance contracts and management agreements can accelerate regulatory flexibility for colleges and universities and can thus be viewed as a positive development. Regulatory flexibility is not an end in itself, however. Nor is it just about achieving efficiency; it is about the freedom to achieve public purposes. It has been granted in Colorado and Virginia to achieve not just institutional purposes, but specific, articulated state goals and priorities.

Accountability and Public Purposes. As a condition of entering into a management agreement, Virginia's higher education act requires institutions to develop detailed plans for meeting statewide objectives as indicated by performance on a variety of accountability measures. Among the nine statewide goals in the act are access, affordability, student retention and timeliness-to-degree, economic development, efficiency of operations, and

improved connections with the state's K-12 system. The nine goals, initiated by the governor and legislature, attempt to address the need for colleges and universities to address the future educational needs of the state. The act directs the state council to develop institutional performance standards to measure whether the institutions are meeting the state's objectives. In September 2005, the council approved 20 measures for four-year institutions and 18 measures for two-year colleges. The governor will be responsible for developing financial and administrative management standards—cabinet secretaries for additional standards. These metrics will be submitted through the executive budget process for legislative approval. Once approved, they will be used for annual certification decisions on institutional responses and progress on the nine goals. Minimum thresholds and base-level data will be developed to target and measure performance.

Colorado institutions have explicit accountability provisions in their performance contracts. These are demanded by the state. In addition to respecting the tuition provision, Colorado institutions must ensure expanded student access and implement the Colorado core curriculum (which emphasizes math, science, history, writing, and critical thinking and is intended to facilitate better student transfer, mobility, and progression to a degree in four-years). All core courses are to be reviewed by institutions, and those that do not satisfy the requirement are to be removed. Colleges also have to implement a pay plan for faculty that emphasizes teaching and research performance, and they must report publicly how performance is measured and how differential pay is awarded. Colorado institutions are also required to put measures in place to address grade inflation and publicly report data on the distribution of grades in each department. They are also required to develop measures to better prepare teachers to work in K-12 schools, including provisions that address learning of low-income students and learning differences between boys and girls.

In the University of Washington and Washington State University contracts, indicators, benchmarks, and targets on several goals for 2010 were proposed. Although the legislature elected not to approve the proposed contracts, a new budget proviso for all six Washington universities was passed that links core funding improvements in institutional operating budgets to improvements in retention and timeliness-to-degree, access for low-income students, quality measures of degree and research programs, and students' workforce readiness. An earlier legislative proviso on accountability applied to the 2003-05 biennium. The measures are to be reported through the Higher Education Coordinating Board to the legislature by November 2006. The indicators, benchmarks, and targets in the contracts appear to expand the accountability standards in the budget provisos.

Without question, performance contracts and management agreements in Colorado, Virginia, and Washington contain provisions to strengthen accountability and commitment to public purposes. The classic trade-off—more regulatory relief and flexibility in return for greater accountability—is not unexpected. What may not be so expected is the promised commitment to specific state goals or priorities. Even though these goals and priorities are negotiated elements, one can presume they are in the contracts at the states' insistence, that they require measurement and reporting, and that they are subject to change for the next contract period.

What Are the Implications for Institutional and State-Level Governance?

Charter or enterprise universities, and performance contracting and management agreements (along with their related elements of tuition control, regulatory relief, and accountability) all have direct ramifications for higher education governance.

Having in place effective governance with the capacity for solid, consistent policymaking is critical to the success of current reforms. As Ikenberry observes, in several states, institutional governance of public universities and colleges may have to be reexamined and reformed. He writes: “Public governing boards tend to be relatively small—7 to 12 members—with a range of talent and perspectives that may or may not align with or be adequate in the face of the board’s expanded responsibilities. The size of some boards will need to be increased. Sources of appointment or election from diverse sources should be considered.” Whatever the pool from which board members are recruited to public institutions, he continues, “the process should be reformed to yield higher quality outcomes,” for generally, it is the board that enters into the contract on behalf of the institution or university system. Indeed, Virginia’s legislation includes a provision making permanent a nominating committee to help screen potential trustee candidates before they are submitted to the governor for board vacancies. The nominating committee was created earlier through an executive order by Democratic Gov. Mark Warner.

If charter status is deemed an institutional or university system priority, it is important that trustees be engaged in policy discussions about proposed institutional or system models for regulatory flexibility and financial stability and predictability so that they may advocate to elected leaders and other stakeholders the advantages to be attained, and provide assurances that public missions will not be abandoned. It has been said that trustees have a foot in both camps—one in that of the state and the other in that of higher education. That being the case, it behooves board members to determine the advantages that charter status has for both. Due diligence is called for. Trustees must be able to articulate publicly the benefits that will accrue not only to institutions, but to states, citizens, students, businesses, and other stakeholders if the public asset they hold in trust—the university—is to grow and prosper under a charter or enterprise designation and its accompanying performance contract.

The granting of greater independence and deregulation under charter designation will require boards to be more vigilant about monitoring and ensuring the institutional performance and accountability that may be called for in a performance contract or memorandum of understanding. If states grant greater tuition autonomy, some process for public input when deciding tuition increases (such as public hearings and student testimony) may be necessary to ensure that boards get a full picture of the impact of their potential decisions. Such input could also demonstrate that they possess not only the authority, but the wisdom and concern for the public good to justify it. The power to set tuition, which resides with the governing board in the vast majority of states, is still an authority that has to be used within the context of the state economy and state politics. With or without a

contract, agreement, or clarifying legislation, tuition can become a public policy issue that, if mishandled by the board, will have repercussions with constituents and policymakers.

For contracts to be a possibility, state higher education policy and regulatory entities need to have sufficient capacity to negotiate and oversee them. Those entities that will be successful will have a clear focus on higher education policy and the future of the state. They will have the authority and monies to provide financial incentives, and to apply performance objectives and regulation when necessary. The entity must have a broad mission and authority over all education providers, public, private, and for-profit, because all of these providers can and do help achieve public purposes—some, of course, to a greater degree than others.

The outline of such an entity has been proposed through the San Jose, Calif.-based National Center for Public Policy and Higher Education (www.highereducation.org). One can hope that states will see this entity as one overseen by citizen board members as opposed to an executive or legislative agency or office that may not survive, transcend partisan politics, terms of office, or institutional or parochial interests. These citizen board members will need to engage in public discourse on critical state problems. Colorado, Washington, and Virginia, by moving to or by considering performance contracting and management agreements, have strengthened their statewide policy capacity, if for no other reason than to ensure that an entity exists to monitor and enforce contracts on behalf of the state. One can also hope that by strengthening that capacity, they have not reawakened a more regulatory approach to state policy leadership.

Does Charter Status Have a Future?

Future movement in the states toward greater institutional freedoms is likely to depend on states' fiscal conditions. If state economies are strong and funding for public higher education rebounds toward levels near those of the late 1990s, the momentum to alter the historical, if not the legal, state-higher education relationship through a charter or similar designation will flag. All states are not out of the fiscal woods, however, and a new round of economic difficulty may yet provide new impetus for a second round of proposals that seek to redefine the relationship.

One needs to be reminded that changing the legal definition of a public institution is no small matter. In most states, it is only the public flagship/research universities or special purpose public colleges that can pursue new definitions or designations; they have the student market and the ability to charge higher tuition, and access to research support and/or substantial private gift dollars that the majority of public institutions and community colleges lack. In several states, the modern public flagship/research university is changing because of the underlying nature of its funding sources. States must ask themselves whether there is a limit as to how far they want these changes to go. Ikenberry suggests that institutions will be less "state," but no less "public," continuing to meet expansive public purposes while getting fewer state dollars. But even as financial support diminishes,

the legal and constitutional protections (both federal and state) that public colleges and universities enjoy as political subdivisions of state government are substantial. Charter status does not change that legal definition, but any status that would, such as a 501(c)3 designation, should be rejected.

Performance contracts and management agreements are an intriguing concept. Developments in Colorado, Virginia, Washington bear watching over the next several months and years as they are being implemented. Some say that it's possible that many of the implicit expectations of a social compact between society and higher education can be made explicit in a performance contract between state government and its colleges and universities.

Are performance contracts a good idea for institutions in terms of financial stability and predictability? Maybe. If they can provide stable funding by committing states to a certain level of appropriations through a multiyear commitment, backfilled by allowable levels of tuition increases, they may work.

Are contracts a good idea for advancing the state? Ideally, yes. If there is an agreed-upon public agenda for higher education that encourages institutions and states together to address access, participation, affordability, and the state's future in a new economy and that agenda is widely supported, then a contract could help achieve the agenda and prompt parties to update the agenda when the contract is renegotiated. But it might be just as desirable for states to develop a public agenda and then seek to align institutional agendas with it through persuasion, incentives, and rewards. As a former governor asks, "If everyone buys into the state agenda, why is a contract even necessary?" Requiring institutions to funnel tuition increases back into institutional student aid offers no guarantees that state purposes will be fully served or that the neediest students will get the aid (institutions may use it for attracting other students). Smaller public institutions and community colleges are, by and large, unable to entertain such new relationships, and are almost totally reliant upon state and federal need-based aid to serve their needy students.

Thus, performance contracting is not without skeptics. Some say there's a risk that minutiae and tactics could overwhelm the spirit of the contract and overall strategic goals. Some observers say this may be happening in Colorado, where the goals for institutions to meet as specified in the state's performance contracts are very explicit and prescriptive. Others say that by having states or state agencies pre-approve contracts and agreements, colleges and universities are subjecting themselves to increased state oversight and surrendering as much if not more autonomy as they may be attaining.

Ironically, contracts may not provide the flexibility states or institutions may require to address the elements of a public agenda. Individual institution agreements or performance contracts may precisely define institutional activities, but if these are not tied back to overall state objectives (e.g., raising overall participation and college completion rates), they may present only isolated institutional contributions rather than cross-sector contributions and collective responsibilities. Several other state policy priorities that require higher edu-

cation's resources and attention require multiple institutions and collaborative actions, but such arrangements may be difficult to administer under individual performance contracts. Other caveats: In some states, a future legislature cannot be bound by the acts of a previous one, which could complicate renegotiation or compliance.

Performance contracts can be viewed as a way to renew the social compact, to set out mutual expectations for states, society, and institutions. However, their intricacies may prove difficult and make them unwieldy in the long run. Some argue that single-purpose performance contracting for specific activities—the production of more teachers or nurses, for example—wherein the state purchases university services (or universities bid to offer such services), are more likely than universitywide, comprehensive performance contracts resulting from the granting of charter status. Similar contracts to access faculty expertise have existed for years.

States may also want to consider more loosely negotiated “compacts” with institutions. The most recent and most noticeable is in California. In spring 2004, Republican Gov. Arnold Schwarzenegger reached a six-year agreement with the California State University and the University of California Systems. (The agreement is a variation on earlier compacts reached between the two university systems and previous governors.) The agreement provides 3 percent increases in base budgets through 2006-07 and 4 percent increases through 2010-11, and tuition increases of set percentages through 2006-07, ranging from 8 to 14 percent per year through 2006-07, and tied to per capita income in the remaining years unless higher percentages are justified (no greater than 10 percent). The agreement also allows for enrollment growth each year—8,000 at CSU and 5,000 at UC. Not unlike the funding stability sought under performance contracts, the compact is far less cumbersome and complicated. It may not have the appearance of legality and enforceability of a performance contract, but it nonetheless appears to be a workable agreement that satisfies both the state and institutions.

Questions for State Policymakers

David Breneman in an earlier AGB public policy paper posed several questions for state policymakers to consider as they debate the pros and cons of new arrangements with public institutions. Adapted for this paper, they bear repeating:

- What are the prospects for state support of public colleges and universities? Has the state established a clear policy of reducing state appropriations, or have reductions resulted from a series of short-run decisions that call for review?
- What is the state's policy regarding access to and persistence in higher education for its citizens? How critical is low public tuition to the success of that policy? Does the state supply adequate need-based financial aid to offset rising public tuitions?
- Three critical financial variables influence access to higher education: the size of the state appropriation to each institution (which in turn influences tuition), the

level of tuition, and the availability of need-based state financial aid. Does the state have policies that ensure that these variables are not set in isolation from one another, but rather are coordinated to meet state objectives?

- Does your state face rising numbers of potential college students as part of the “echo” baby boom? If so, are policies sufficiently flexible to create near-term capacity to serve these students (including partnering with independent institutions or other providers in targeted disciplines)? If public institutions gain more autonomy, what will ensure an adequate supply of places?
- Does the state have the capacity to establish and enforce performance expectations as a trade-off for granting colleges and universities regulatory relief?
- Does your state governing or coordinating board have the capacity to provide objective policy analysis on these proposals and to help broker the elements of a new bargain between the state and its colleges and universities?
- Is the state prepared to relinquish control over tuition levels in recognition of the changing financial circumstances of public higher education? Will the state be able to sustain policies that treat institutions differently—some with high tuition and high aid and others with low tuition and high state support—with a consequent shift in state subsidies?
- Will the types of changes discussed in this paper work for all of the public colleges and universities in the state, or will they have to be limited to the most selective institutions? What are the implications of these new approaches for community colleges and open-enrollment regional state universities?

Sources

This policy brief is a condensed version of two earlier AGB publications, supplemented by a hosted conversation in Washington, D.C., on June 6, 2005. The two publications are David Breneman’s “Are the States and Higher Education Striking a New Bargain?”, an AGB Public Policy Paper from April 2004, and “The Dangers of Public Higher Education’s Unplanned Future,” an article by Stanley Ikenberry in AGB’s July/August 2004 *Trusteeship* magazine. Additional sources are, “State Capacity for Higher Education Policy,” a special supplement to the July 2005 National Crosstalk, a publication of the National Center for Public Policy and Higher Education, and the State Governance Action Annual 2005 from AGB’s Center for Public Trusteeship and Governance.



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