

June 2008

# State Governance Action Report

Alabama ◊ Alaska ◊ Arizona ◊ Arkansas ◊ California ◊ Colorado ◊ Connecticut  
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Iowa ◊ Kansas ◊ Kentucky ◊ Louisiana ◊ Maine ◊ Maryland ◊ Massachusetts ◊ Michigan  
Minnesota ◊ Mississippi ◊ Missouri ◊ Montana ◊ Nebraska ◊ Nevada ◊ New Hampshire  
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Oregon ◊ Pennsylvania ◊ Rhode Island ◊ South Carolina ◊ South Dakota ◊ Tennessee ◊ Texas  
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By the

Ingram Center for Public Trusteeship and Governance  
Association of Governing Boards of Universities and Colleges

**AGB** ASSOCIATION OF  
GOVERNING BOARDS  
OF UNIVERSITIES AND COLLEGES

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This is the fifth edition of the State Governance Action Report that has been produced since 2000 by AGB's Ingram Center for Public Trusteeship and Governance. Focusing primarily on state and higher education policies directly affecting governance, trusteeship, and institutionally related foundations, this issue of the Report reminds us that America's unique form of governance remains unsettled in many states and subject to tinkering in several others. Much of the policy discussions and legislation described in this issue is intended to improve board, trustee, and institutional performance and the achievement of state goals and higher education agendas. Long-term measurable results, however, may be hard to assess. The budget shortfalls noted in the Report also affect public institutions' relationships with their states as proposals to either reexamine or restructure governance, accountability, and reporting requirements emerge from state policymakers. Some institutions have realized that the state is no longer the senior partner in terms of investment, but still the senior partner in terms of control.

Without question, the national imperative to educate more of our students successfully until completion of a degree or certificate has major implications for governance, including the ability of governance systems to leverage improved performance from the institutions they oversee. The uncertain fiscal climate and budget shortfalls affect not only college and university operations, but also student access and affordability. Nevertheless, adhering to their public missions, many institutions are willing to commit to affordability, cost management and productivity, higher degree productivity, and transparency facilitated by effective governance. The emerging College Promise project undertaken by New Jersey's state colleges and universities, still being finalized this summer, may be the best example. But several statewide efforts described in this report are underway to address these issues and create a broad public agenda for higher education: Illinois, Kentucky, Louisiana, Ohio, and Texas, just to name some.

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Vice President for Public Sector Programs, AGB

# State Policy Developments Overview

The slowing national economy has headed the news, but the effect on states has been just as profound. Almost half of the states are facing budget cuts in the upcoming year, and many of them have already undergone mid-year budget tightening to address shortfalls as revenue collections have failed to meet expectations. Given public higher education's reliance on state support, universities in some states facing severe budget problems (**Alabama**, **Arizona**, and **Florida**, in particular) are coping with substantial reductions in their operating budgets.

Despite tight budgets, governors across the country have ambitious plans for higher education. Their state-of-the-state speeches this year have emphasized the role of public higher education in creating jobs and spurring economic growth, training workers for an evolving economy, and increasing the educational attainment of state residents. In their speeches, governors asked more of governing boards and higher education leaders in such areas as improving transfer rates from two-year to four-year institutions, opening doors for non-traditional students, and integrating higher education and secondary education.

► Read state-of-the-state speech excerpts relating to higher education at:  
[www.agb.org/speeches](http://www.agb.org/speeches)

Some governors, such as Ted Strickland of **Ohio** and Deval Patrick of **Massachusetts**, have been implementing reorganization plans for higher education this spring that were part of their early legislative priorities. Others, namely Bob Riley of **Alabama** and Bobby Jindal of **Louisiana**, have sought to impose additional ethical requirements on higher education leaders, although both struggled in their efforts. AGB has also been active in the discussion over the ethical responsibilities of board members, releasing *The New Ethics of Trusteeship*, a report on the new fiduciary expectations of public college and university trustees.

Legislatures have been actively engaged in higher education governance as well. The **Louisiana** Legislature has demonstrated a willingness to consider ceding control over tuition to university boards this session, and the **New Jersey** Legislature has introduced proposals to improve accountability at public colleges and universities. However, political gamesmanship and power struggles are inescapable at times, as is evidenced in **Florida**. There, key legislators attempted to radically alter the governance structure of the State University System as a result of a dispute with the Board of Governors.

A willingness to work together in **Massachusetts** drove Gov. Patrick's reorganization plan to strengthen the presence of the executive office in higher education governance, as it passed with the overwhelming support of the legislature. The plan creates a secretary of education with broad powers and provides the governor with control over the appointment of the chair of the University of Massachusetts Board of Trustees, a unique power for a governor.

In **Ohio**, Gov. Strickland's new chancellor of higher education released his ten-year strategic plan for the newly named University System of Ohio. The plan calls for offering more degree programs at regional campuses to provide lower cost options closer to home for students. The plan also seeks to provide more avenues for students to receive college credit and suggests a significant funding increase from the state for higher education.

Funding higher education is not just an issue in Ohio though. Several states have been working on how to counteract reductions in state support or fund increasing demands for access to higher education without resorting to major tuition increases or eliminating state scholarship programs. **California**, long a leader in low-cost, high-quality higher education, has seen one funding proposition for community colleges fail at the ballot this year and currently has a second proposition in the signature-gathering phase. That student-led proposition would create an additional tax on incomes over \$1 million, with revenues to be divided between higher education and K-12 education.

Two other states with low tuitions, **Louisiana** and Florida, are addressing responsibilities for setting tuition. The Louisiana Legislature, which controls tuition at state colleges and universities by requiring two-thirds legislative approval for any proposed tuition increase, is considering a much-needed change to allow governing boards a trial run at setting tuition. It is also considering allowing Louisiana State University to charge a supplemental student operations fee to improve the university's financial health.

**Florida**, which already allows some universities to charge a supplemental fee through its tuition surcharge program, expanded the surcharge program this spring to allow additional universities to increase tuition above the base rate. It is also still in the midst of a bitter battle between the Board of Governors and the legislature over tuition-setting authority. In response to the board's suit to gain control over tuition-setting authority, state legislators introduced a bill to effectively abolish the board and place oversight responsibilities in an elected secretary of education. The proposal had substantial early momentum as it easily passed the Senate, but stalled in the House.

However, the Florida Legislature did pass legislation this past session to expand access in a cost-conscious fashion by creating the Florida College System under the oversight of the board of education to oversee the continued expansion of two-year institutions offering four-year degrees in workforce-related fields. In contrast, **California** is addressing the issue of community college success by considering legislation that would launch a pilot project to improve the transfer rate of students from the community college system to the university systems.

Other states have also recently focused legislative efforts on community colleges. **Wyoming** governor Dave Freudenthal created a blue-ribbon panel on community colleges last year that resulted in legislative changes concerning oversight and coordination this

year. The **West Virginia** Legislature acknowledged the unique mission of community colleges this past session by changing their governance structure, as some community colleges in the state had long shared governing boards with four-year institutions. The legislature provided each community college that shared its board with a four-year institution its own governing board this session, noting that two-year and four-year institutions have different missions. The legislature also approved Vision 2020, a plan to prioritize objectives for higher education, improve accountability, and create goals and a blueprint for achieving them by 2020, all in an effort to improve workforce quality and educational attainment of the state.

**New Jersey** is also addressing the issue of accountability, but is doing so in response to a state watchdog report that highlighted concerns at state universities. Active legislation focuses on financial accountability and audits, empowering the Commission on Higher Education to create and enforce standards. Among other components, the legislation requires an institutional board committee to oversee professional services contracts and provides the commission with oversight of universities' facilities plans.

Ultimately, states are looking to higher education to drive their success, and **Kentucky** has been particularly active in that regard. Recently, the Kentucky Council on Postsecondary Education renewed its focus on the state's goal to improve the quality of life of its citizens through the release of its Double the Numbers plan and accompanying Project Graduate. The plan seeks to double the number of college graduates in the state over the next 12 years under the belief that the quickest way to improve quality of life is to increase the number of degree holders. The plan is an extension of Kentucky 2020, the state's public agenda for higher education enacted and pursued for a decade. The council has also begun Project Graduate to recruit former students just shy of graduation back to college to finish their degrees. At the same time, the state faced a lawsuit over the political composition of governing boards and controversy over the search for the council's president that threatened to derail progress towards the state's ambitious goals. Although the former issue was effectively resolved, Kentucky is still searching for a full-time council president.

Louisiana and Texas are two other states also working on master plans for higher education, both with AGB's assistance. The **Louisiana** Board of Regents is nearing conclusion of its new master plan, which was delayed two years by Hurricanes Katrina and Rita. The new master plan is evolving into a major public agenda for Louisiana's public colleges and universities that will likely mean new expectations for the involvement of the four university systems and their boards of Supervisors.

In **Texas**, the Higher Education Coordinating Board continues to champion the need for progress on the state's higher education plan, Closing the Gaps by 2015. The plan calls for reducing the disparities in the college-going rates between different ethnic groups while increasing enrollment by 630,000 students and increasing the number of bache-

lor's degrees, associate's degrees, and certificates awarded to 210,000 annually. The coordinating board, as well as system and institutional executives, are regularly educating, updating, and orienting the state's governing boards on the plan and progress towards its goals. Governing boards have been increasingly engaged in supporting system and campus initiatives that increase student participation and success, especially for underserved populations.

However, some states have been unable to avoid budget cuts affecting higher education that threaten to derail the success of programs, such as Kentucky's Double the Numbers plan, that require enrollment growth and increased outreach. As states such as Kentucky face tight budgets, institutions and their governing boards will be asked to achieve more with fewer resources. Under these conditions, it is crucial for states to support good governance practices and board members who embody the spirit of citizen trusteeship. Only then can governing boards be effective stewards of higher education and work collaboratively with state legislatures and governors.



### **The New Ethics of Trusteeship: How Public College and University Trustees Can Meet Higher Public Expectations**

*By David Leslie and Terry MacTaggart*

In this new Center publication, David Leslie and Terry MacTaggart outline several examples of new state policies that raise the bar for boards of trustees. Leslie and MacTaggart urge boards to take self-regulatory steps to strengthen policies that ensure internal resolution and compliance regarding ethics and conflicts of interest, and they examine several suggested practices from public institutions that could help boards conform to new expectations and changing norms. The authors also encourage states to refrain from enacting legislation that inad-

vertently places too many restrictions on public governing boards or discourages citizens from serving on them.

It is becoming increasingly important to our states and communities that public institutions have more fully engaged boards whose members understand conflict of interest, disclosure, board and institutional ethics, educational effectiveness, and their full fiduciary responsibilities to the college, university, or university system and state citizens.

► Download or purchase the report at: [www.agb.org/ethics](http://www.agb.org/ethics)

# Promoting Good (and Bad) Governance Practices and Policies in the States

This year, leaders in several states, often working together, succeeded in promoting effective governance practices through policy changes or defeated proposals that threatened the autonomy and independence of citizen governance. In other states, new master plans or public agendas will require effective governance practices in order to be successful.

Perhaps the clearest example of state leaders working together to support public higher education governance was in **Virginia**, where the governor and General Assembly extended the Virginia Commission on Higher Education Board Appointments. The commission, a creation of former governor Mark Warner back in 2002 (with AGB's assistance), screens candidates for the governing boards of the state's colleges and universities to determine their merit and qualities for service. The legislation writing the commission into law had set a July 2008 sunset date, but with the support of current governor Tim Kaine the General Assembly repealed the sunset date, thus allowing the commission to continue its good work.

This spring, the Virginia General Assembly also demonstrated an awareness of the conditions necessary for effective governance when it refused to advance legislation that would have transferred appointing power for a majority of seats on the College of William and Mary Board of Visitors to its alumni association in the midst of a highly charged political situation. In addition, the General Assembly respected the privacy of institutional presidents' correspondence by refusing legislation that would have made such documents public records.

Similarly, legislators in **Mississippi** defeated a proposal that would have interfered with the work of trustees in conducting presidential searches. Angered by what they perceived to be a lack of openness in the search process for the Mississippi State University president, legislators inserted into a bill a requirement that the Mississippi Board of Trustees of State Institutions of Higher Learning reveal the names of all finalists for institutional presidencies in order to receive any state funding. However, the requirement was dropped in conference committee. Imposing such a requirement on the board would have deterred many qualified candidates who were interested in a presidency but did not want their current employer to know.

In **West Virginia**, the governor, legislature, and the state's community colleges worked together to promote effective governance over the objections of some community college alumni. The state currently has five boards that govern both a community college and a four-year university, despite the institutions' different missions. With the increasing complexity of oversight responsibilities facing boards, leaders there worried that continuing such an arrangement could impair the ability of those boards to effectively oversee both institutions. This year, the state provided the five community colleges with their own board focused solely on the issues and mission of that institution.

In response to a report by the State Commission of Investigation, a state watchdog agency, the **New Jersey** Legislature is focused on improving accountability and oversight mechanisms at state universities. With some substantial caveats, the two similar plans currently under consideration in the legislature are largely in line with best practices. Both plans would require institutional governing boards to create several policies that are crucial for all boards to have, including whistleblower and code of conduct policies, and would impose several auditing and financial accountability standards.

The more extensive of the plans also outlines several new responsibilities of the Commission on Higher Education, including examining institutional capital plans in light of debt load and making recommendations on institutional board member appointments. Examining capital plans in light of systemwide debt could justifiably fit within the commission's role as a coordinating and oversight agency, but involving the commission in board member selection would significantly expand the customary responsibilities of a coordinating and oversight agency.

The more extensive plan also outlines a set of committees required of each institutional board and would require institutional boards to involve all board members in development and fund-raising, a noble but short-sighted requirement. While fund-raising is critical to modern public universities, board members all have different strengths. More generally, such a requirement also constitutes a legislative interference in internal board operations, as board planning and implementation needs to be directed at the board, not legislative, level.

The New Jersey situation serves as a natural example of AGB's argument in *The New Ethics of Trusteeship* that governing boards need to take an active role in addressing ethical and accountability issues to preclude action by the state. In light of the state watchdog agency report and the problems at the University of Medicine and Dentistry of New Jersey (UMDNJ) that prompted the report, institutional boards in New Jersey have already been making significant pre-legislative changes to strengthen their governance.

While promoting good governance practices and resisting those that harm effective governance may seem like an easy sell to governors and legislators, politics and privilege can still impede efforts at improving governance, as Gov. Bob Riley of **Alabama** can attest. Riley and two-year system chancellor Bradley Byrne have been waging an uphill battle over the past year to reform the state's community college system, which has been subject to conflicts of interest, some involving state legislators. With the support of Riley, Byrne tried to institute a ban prohibiting legislators from working in the two-year system. However, a court injunction stopped the ban. Legislation was also introduced to effect a ban, but lawmakers did not support it. While Byrne, Riley, and others continue their efforts to insulate Alabama's two-year system from political corruption, the immediate future is not promising.

Similarly in **Florida**, several key legislators attempted to undermine the state's public university governance structure this spring. As the Board of Governors of the State Uni-

versity System pursued a lawsuit to wrestle control over tuition away from the legislature, legislative leaders reacted by attempting to pass a constitutional amendment that would have eliminated the board and replaced it with cabinet-level oversight of higher education. The amendment had substantial early momentum, but stalled in the House as the session ended.

Proponents argued that the amendment would increase accountability by putting elected officials in charge of higher education, as it sought to replace governor-appointed citizen trustees with the attorney general, commissioner of agriculture and consumer services, chief financial officer, and commissioner of education (all elected cabinet members). However, arguing that such a structure improves accountability would require that voters evaluate and elect cabinet members based upon their governance of higher education instead of their primary cabinet responsibilities. In addition to concerns over accountability, such an oversight mechanism would cut against good governance practices in many respects. It would have politicized higher education, removed citizen oversight, and resulted in a board that would be too small to effectively oversee such a large system.

Adoption of the Florida amendment would also have perpetuated the constant change in higher education governance that has plagued the state. In 2001 the legislature dissolved the Board of Regents, which governed the State University System, and delegated oversight responsibilities to institutional boards of trustees. However, voters then created the Board of Governors through a constitutional amendment in 2002 to oversee the university system. Since this substantial change, higher education governance has been in flux as the Board of Governors, local boards of trustees, and the legislature have struggled to determine the division of responsibilities and establish viable working relationships. Simply not enough time has passed to determine if the current governance structure is working before adopting a radically different structure. Perhaps most disconcerting is the possibility that legislative assaults on the governance structure will continue, particularly as the lawsuit over tuition-setting authority is decided.

Like Florida, **Massachusetts** is facing a potential politicization of board operations as a result of Gov. Deval Patrick's reorganization plan for higher education. The plan passed with substantial legislative support and provides him with substantial immediate influence over the direction of higher education by granting him 5 immediate appointments on the Board of Higher Education, the state coordinating board, and the University of Massachusetts System board (plus any additional vacancies in the near future). Most importantly though, the legislation provides Patrick with an authority, unique among governors, to appoint the UMass system board chair and brings with it the potential to subject the university system to statehouse politics and the electoral cycle, a sharp divergence from the autonomy that characterizes healthy governance and allows for long-range planning.

However, it should be noted that during his tenure as governor, Patrick has also showed a concern for merit selection of trustees by restoring Massachusetts' Public Education

Nominating Council. The council is a screening committee that is providing Patrick with qualified candidates for board service under the leadership of an experienced and knowledgeable council chair.

Also like Florida, this spring **Oklahoma** faced a constitutional amendment that would have been extremely damaging to the work of governing boards. The amendment passed one chamber easily before stalling at the end of the session. The Oklahoma amendment was particularly troublesome because it would have allowed governors to replace up to 40 percent of gubernatorial appointments on any board in the first 12 months of the governor's term. The amendment would have meant that a governor could almost immediately construct a board dominated by his or her appointments and remove trustees with whom he or she disagreed. This would have subjected boards and the institutions they govern to potentially wild swings in composition and direction every four years and subjected trustees to removal for making unpopular but important decisions.

Some states are undertaking strategic plans and ambitious public agendas to expand access and improve graduation rates that will require more from governing boards if the plans and agendas are to succeed. **Ohio**, for example, has recently released a strategic plan that holds great promise for the state. A common theme in plans such as Ohio's is the use of lower division and community college campuses to improve access for non-traditional students and lower the cost of delivering baccalaureate degrees.

These plans and agendas also often set lofty goals for the state and for higher education, goals which require substantial state investment and require governors, legislatures, the business community, and governing boards to understand the necessity of interpreting progress towards such goals in the context of state support. A potential example is **Kentucky**, where the state's postsecondary council has announced a goal to double the number of college graduates by 2020. The postsecondary council's goal seeks to achieve Kentucky's 1997 public agenda to increase opportunity, degree production, income, and the overall quality of life of state residents. However, higher education in Kentucky is facing a 6 percent budget cut between this year and last year that will make even maintaining enrollment and student success at current levels a challenge, much less increasing degree production.

Ohio faces a similar situation, as the University System of Ohio's ten-year strategic plan sets as a primary goal increasing the number of students in higher education by almost 50 percent. The plan also calls for increasing state support by \$1,100 per full time student at the same time. Although such a substantial increase in state support will be hard for the legislature and governor to appropriate, the funding increase is essential to the goal of expanding enrollment, as most progress will be made in underserved populations that often require additional outreach and academic support. As such, the success of the chancellor, governing boards, and institutional leaders in achieving the plan's academic goals cannot be judged outside of progress toward the plan's goals for financial support.

# State Budgets and Higher Education

Late spring and early summer means budget season in many states, as legislators work on governors' budget proposals or adjust their state's biennial budget as revenue projections change. This spring, 29 states are setting their annual budgets, 3 are beginning their biennial budget cycle, and 18 are in the middle of their biennial budget. Although the states are all on different budget cycles, one thing that is uniting many states is tighter finances for the 2009 fiscal year.

The National Conference of State Legislatures reported in April that 23 states will face budget shortfalls totaling more than \$26 billion for the 2009 fiscal year and that 16 states are facing about \$12 billion in current year budget shortfalls. Projected shortfalls for 2009 range up to almost 21 percent in Arizona, although the highest shortfall in absolute terms will be in California, where the shortfall is expected to reach over \$15 billion in the upcoming fiscal year.

States are pursuing all kinds of strategies to close holes and balance their budgets, including temporarily under-funding pensions, delaying debt payments, utilizing rainy day funds, and increasing taxes on items such as cigarettes. Of course, states are also cutting spending wherever possible, including higher education. Below is a sampling of state budget situations as reported by newspapers and government websites, and the effects of the budget situations on funding for higher education.

## **Alabama**

Alabama adjourned its 2008 regular legislative session without approving an education budget for the upcoming fiscal year, forcing Gov. Bob Riley to call a special session to pass an education budget. Riley's original proposal for 2009 included budget cuts of over 13 percent for four-year institutions and 9 percent for two-year institutions that would have meant a loss of \$130 million between Auburn University and the University of Alabama and a loss of almost \$43 million for the state's two-year institutions. Riley's proposal, which first went to the House, saw representatives add \$30 million in funding for four-year institutions and \$7.4 million in funding for two-year institutions. Once in the Senate though, the budget stalled as key senators wanted to add an additional \$25 million for higher education and higher education lobbyists were unwilling to only accept a conditional appropriation for that amount.

In the special session, legislative leaders failed to restore the \$25 million in question for higher education. Instead, the budget that was passed cut \$5 million from higher education and redirected the money to K-12 transportation costs. The final budget resulted in a \$156.6 million cut to higher education, an 11.2 percent reduction in state support. The University of Alabama is planning to cut 300 jobs and cancel construction projects to cope with the budget cuts.

## Alaska

State lawmakers increased the University of Alaska's operating budget 7 percent from last year's and are funding the university system in a single appropriation, as opposed to funding institutions individually. The change was utilized as a means to insulate the management of the system from politics. The state also allocated \$48 million in the capital budget for deferred maintenance, up from \$12 million, and \$73 million for new construction projects.

## Arizona

In April, Gov. Janet Napolitano endorsed the legislature's plan to cope with an estimated \$1.2 billion hole in the state's current fiscal year budget. The plan avoided most cuts by tapping into reserves and pushing some payments into the next fiscal year, but higher education was not spared. State universities under control of the board of regents (the University of Arizona, Arizona State University, and Northern Arizona University) were asked to reduce spending by a combined \$14.7 million. The reduction had been anticipated by the universities, which had been leaving many positions unfilled.

For the 2009 fiscal year, the state is looking at a nearly \$2.2 billion deficit plus almost \$300 million in payments that have been deferred from 2008. Early projections by the board of regents, based on a smaller budget deficit, were that the state universities would lose a combined \$100 million in funding.

## Arkansas

Arkansas is facing a projected \$107 million decrease in revenue for the second annual budget of its biennial cycle, meaning that the state's \$4 billion budget will be cut. Higher education stands to lose about \$32 million, although cuts likely won't be finalized until October. Among colleges and universities identified, the University of Arkansas stands to lose \$4.7 million, the University of Central Arkansas \$2.2 million, and Northwest Arkansas Community College \$1 million.

## California

A projected \$15.2 billion deficit in a \$144.2 billion budget for the upcoming year prompted Gov. Arnold Schwarzenegger to propose borrowing against future profits of the state lottery in order to ease spending cuts. The governor's most recent budget proposal would also restore \$196 million to the University of California and California State University that had been cut in earlier budget proposals, resulting in roughly flat funding from 2007-08 at the University of California. At California State University, the funding restoration would still leave the system with a \$288 million funding reduction while it faces \$124 million in mandatory cost increases.

## Colorado

Colorado Gov. Bill Ritter signed the state's \$18.4 billion budget for the 2009 fiscal year into law in April. The budget includes an increase in

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"The Department of Higher Education is working closely with college presidents on a long-term funding strategy. This is no easy task, getting all of the college and university presidents onto the same page. As someone who graduated from a public university in Colorado 30 years ago, as someone who worked his way through college and law school, as someone whose education has opened door after door, this is a priority for me."

- Colorado Gov. Bill Ritter, in his state-of-the-state speech

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higher education funding of over \$65 million, or 9 percent, on the heels of a 7.5 percent increase in the 2008 fiscal year as the state reverses years of declines in higher education funding.

### **Connecticut**

Gov. Jodi Rell reversed course in June and decided cut \$160 million from state agencies' budgets to avert a deficit. The University of Connecticut will lose \$6.7 million as a result of the cuts. Earlier this spring, Rell and the General Assembly had decided not to make cuts to the previously approved budget despite lowering 2009 revenue projections.

### **Delaware**

The \$3.4 billion budget proposed by Gov. Ruth Ann Minner in January called for a spending increase of \$125 million over the current year, but recent estimates are that the state would face a \$217 million shortfall under Minner's budget. A joint committee currently working on eliminating the shortfall has cut 1 percent, or \$2.4 million, from higher education's share of the budget.

### **Florida**

The Florida Legislature approved a \$66.2 billion budget for 2009 in May, a sharp reduction from 2008's almost \$72 billion budget. However, the \$72 billion budget faced mid-year cuts totaling \$1.6 billion due to slumping revenue. Revenue projections have continued to shrink, and state revenue projections for 2009 have dropped by \$3 billion from earlier this spring.

The University of Florida faces a \$47 million budget cut for the upcoming year over and above a mid-year \$22 million cut this past October. It has already begun to reduce undergraduate enrollment in response to the 2009 cuts, cutting this fall's transfer student enrollment by 1,000 students and reducing enrollment by an additional 3,000 students over the next 3 years. The university has also outlined on its website its plan for paring the budget, a plan which includes laying off 130 faculty and staff and keeping 290 currently open positions vacant. Florida State University is coping with its \$32 million loss by reducing enrollment by 2,000 students and reducing its general budget by 9.5 percent.

Among other state universities, the University of South Florida (USF) has lost \$17 million in the current fiscal year and will lose \$19 million in the upcoming year, Florida International University (FIU) has lost \$10.4 million in the current fiscal year and will lose \$11.9 million in the upcoming year, and Florida Atlantic University (FAU) faces a \$9.6 million cut for 2009. USF is also cutting an additional \$15 million from its budget in anticipation of mid-year cuts by the state in the upcoming fiscal year. The state funding cuts have meant that USF will lay off 70 employees and keep 380 current openings vacant, including 170 faculty positions. At FIU, which is planning for a \$36 million reduction over the next 3 years, 17 degree programs will be cut and 176 employees will be laid off. For FAU, the cuts mean that 34 employees will be laid off, 100 current open-

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#### *Update*

Just a day after signing the 2009 budget, Gov. Charlie Crist ordered all state agencies, including colleges and universities, to cut spending by an additional 4 percent. While USF planned for such a cut, other state universities will have to determine how to further reduce their budgets.

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ings will remain vacant, and some degree programs at satellite campuses will be terminated.

Other higher education programs were not spared either. A state matching funds program for higher education that received \$74 million last year received no funding for the upcoming fiscal year. Tuition increases will only be able to mitigate a small portion of the funding loss, as the board of governors agreed with the legislature to limit tuition increases to 6 percent at state universities for the upcoming academic year. However, the legislature has recently been allowing some universities to charge differential tuition and create new fees to generate revenue.

## **Hawaii**

Concerned over a slowdown in revenue growth, state lawmakers cut Gov. Linda Lingle's proposed 2009 budget this past legislative session. Projections forecasted a 3.9 percent growth in revenue in the state for 2009, but the legislature used a 3.5 percent growth estimate instead. Facilities maintenance at the University of Hawaii survived the legislature's cuts, receiving \$71 million.

However, since that budget was approved, revenue projections have soured. At the end of May, the state's Council of Revenues released updated projections of a 2 percent growth in revenue, meaning that the state could face a \$90 million shortfall in its 2009 budget. Additionally, the council's projections for 2008 forecasted a current-year shortfall of \$27 million. In response to the projections, Lingle cut \$33 million from the 2009 budget, with \$3.9 million of that coming from the University of Hawaii.

► Find up-to-date information on state budgets at: [www.agb.org/budgets](http://www.agb.org/budgets)

## **Illinois**

The Illinois General Assembly passed a \$59 billion state budget just before the end of its legislative session in May, representing a 2.1 percent spending increase over the current year. Under the legislative budget, higher education would receive a 2.1 percent increase. However, Gov. Rod Blagojevich has argued that the revenue projections are too optimistic and has met with legislative leaders to close a hole that he estimates at \$2.1 billion.

The passed budget is an improvement for higher education over previous proposals. A Senate proposal would have provided higher education with essentially flat funding, and the governor's budget request called for higher education to receive a \$170 million increase in state general funds, but to lose \$144 million in other state funds, resulting in a less than 1 percent net increase. Under the governor's proposal, state universities would have lost \$14 million in state funds and the community college board would have lost \$5 million. However, the state universities retirement system would have received a \$40 million boost, as the state has focused on reducing pension underfunding.

## **Kansas**

Gov. Kathleen Sebelius had proposed a \$20 million increase in the operating budget for the state's public colleges and universities for the upcoming fiscal year, but the legisla-

ture could only guarantee \$10 million for the institutions, with the remaining \$10 million failing to materialize after updated revenue projections were significantly less than earlier estimates.

### **Kentucky**

With Kentucky facing a projected budget shortfall of approximately \$900 million over the next biennium, Gov. Steve Beshear proposed a biennial budget of \$18.5 billion, up only 2 percent from the current \$18.1 billion biennial budget. Beshear's budget would have cut funding for higher education by 12 percent on top of a 3 percent mid-year cut this fiscal year. However, the final \$18.8 billion budget approved by the legislature reduced the 12 percent cut to 3 percent and retained \$60 million for the state's "bucks for brains" matching funds program. Since the budget passed, the state budget director asked some state agencies (excluding higher education) to submit plans for an additional 4.5 percent cut, although reductions could be larger or smaller than 4.5 percent.

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*Total 2008-09 Cuts in Recurring Appropriations to Kentucky Institutions (in millions)*

\$13.5	Kentucky Community and Technical College System
\$10.1	University of Louisville
\$20	University of Kentucky

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### **Maine**

State appropriations to the University of Maine System this year increased by about \$300,000 to \$185.7 million. The system has responded to the relatively flat funding with tuition increases averaging 10 percent at its seven campuses and has already eliminated 91 positions to reallocate about \$6 million in the upcoming fiscal year.

### **Maryland**

The University System of Maryland Board of Regents were able to maintain their tuition freeze for in-state undergraduates for a third consecutive year, as the system received a 9.4 percent increase in appropriations. Community colleges also received a 9 percent increase in state appropriations, or \$21.2 million. The general fund budget as a whole grew 3.7 percent.

### **Massachusetts**

The House passed a state budget that will increase funding for the University of Massachusetts by 5 percent, or \$24.2 million. The budget includes an increase of 3 percent, or \$13 million, for community colleges. The Senate largely followed the House's education budget, increasing funding for the University of Massachusetts by 5.6 percent, or \$26.4 million. The budget will now go to a conference committee to resolve differences.

### **Michigan**

Proposals passed in the House would increase funding for universities and community colleges by about 3 percent, with increases for individual institutions varying slightly.

### **Minnesota**

The Minnesota State Legislature passed the state's biennial budget just before adjournment in May. The state faced a projected deficit of \$935 million for the 2008-09 fiscal year alone, but the deficit was eliminated through dipping into state reserves for \$500 million, changing the tax structure for international corporations, and making over \$300 million in program cuts. Higher education will lose \$21.7 million in the 2008-09 fiscal

year and \$33.5 million in the year following, with the University of Minnesota losing \$12.3 million in state support and the Minnesota State Colleges and Universities losing \$7.9 million for the 2008-09 fiscal year.

### **Mississippi**

The legislature approved an increase of \$9.8 million for the state's eight public universities, but \$1 million of the increase will go to pay for a systemwide audit, which used to be paid for by the state.

### **Missouri**

The Missouri General Assembly passed the state's \$22.4 billion budget in May, which represents a \$957 million increase in spending from the previous year. The University of Missouri System received a 4.2 percent increase in appropriations. Higher education as a whole experienced a 7 percent increase due to state funding for several capital projects and an increase in the state scholarship program, which can be applied to tuition at private institutions.

### **Nevada**

The state is facing a projected revenue shortfall of \$898 million for the current biennial budget running through June 2009, which represents an almost 13 percent deficit. An earlier projection had predicted a shortfall of \$565 million, and on that projection Gov. Jim Gibbons had ordered state agencies to cut their spending by 4.5 percent. The Nevada System of Higher Education (NSHE), which oversees all of the state's higher education, lost a combined \$46.4 million in funding for the 2008 and 2009 fiscal years as a result of the 4.5 percent cut. With the new projection, agencies are being asked to create plans to reduce their spending by 10 to 14 percent in preparation for the 2009-11 biennial budget. In previous biennia, the state budget has increased 15 to 20 percent because of rapid growth, but the upcoming biennial budget will likely only increase by 3 percent.

In response to the governor's request for a plan on how to cut the NSHE budget by 14 percent, James Rogers, NSHE chancellor, released a scathing memorandum highlighting the effects of the budget cut, which would total \$96 million on top of the previous cut. He noted that "with three-fourths of the System's hard costs in personnel, accomplishing a change of this magnitude 'on a dime' will not work because of required contractual notice provisions." He also outlined the impact a cut would have on various programs and noted that if he wanted to offset the cut, he would have to increase tuition for every student in the system by \$1,500 a year.

### **New Hampshire**

The state, in the middle of its biennial budget cycle, is projected to have a surplus of \$6 million at the end of the current year, but could have a \$180 million deficit by the end of next year. To close a potential hole for the end of the current year and into 2009, Gov. John Lynch called a special session in June to allow him to bond school building if

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#### *Update*

Gov. Jim Gibbons called a special session for the end of June to address the budget shortfall, which the most recent projections now anticipate to be \$1.16 billion.

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#### *Update*

Gov. John Lynch and the legislature cut an additional \$30 million from the 2009 budget in June, with the University System of New Hampshire losing \$2.5 million.

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needed to balance the budget. Lawmakers will also vote on several ways to raise revenue, including increasing cigarette taxes, to avoid a future shortfall without cutting spending. Earlier this spring, the governor and legislature cut \$50 million in 2008 spending and instituted hiring, purchasing, and travel freezes to improve the budget situation. The cuts included \$2 million in support for the University of New Hampshire (out of \$96 million in state support) and \$1 million in support for the state's community colleges (out of \$33 million in state support).

### **New Jersey**

Gov. Jon Corzine's proposed \$33 billion budget for 2009 would reduce state spending by \$500 million from 2008 spending levels, although the real effects of the budget cuts approach \$2.7 billion when taking into account mandatory cost pressures and increases in the school funding formula. Under Corzine's proposal, overall support for higher education would drop by \$76 million, to \$2.1 billion. The state's senior colleges and universities would have to absorb \$63 million of the cuts (just over a 4 percent reduction), with county colleges facing an \$11 million drop in support (4.7 percent) and private colleges and universities losing \$2 million, or 10 percent.

Budget negotiations with legislators are going on behind closed doors, but it appears that any restoration of funding cuts is likely to go to hospitals and municipalities, which suffered the steepest cuts in Corzine's budget.

### **New York**

The New York Legislature passed an \$80.5 billion state operating fund budget for the upcoming fiscal year that represents a 4.5 percent increase from the current year's budget. Higher education received a 2.7 percent increase for the upcoming year, and also received an \$80 million increase in capital funds, 14 percent more than it received last year. In creating the budget, the state confronted a budget gap estimated at \$5.2 billion this year, although the state balanced the budget through bonding, using state reserves, and some increased taxes. However, the state is facing a \$5 billion budget gap next year that will grow to \$8.8 billion by the 2011-12 fiscal year.

Since the budget passed, Gov. David Paterson has directed state agencies, including the State University of New York (SUNY), to cut spending by 3.35 percent due to concern over the economy. The spending cut would mean a loss of \$38.8 million for SUNY from state operating funds. More significantly though, the cut includes spending of revenue generated from non-state sources such as tuition and hospital operations, meaning that SUNY would have to cut an additional \$109 million in spending. SUNY agreed to the \$38.8 million cut, but when asked to submit a plan to the governor detailing the \$109 million in cuts, SUNY responded with a proposal to cut \$72 million.

### **North Carolina**

The state is projecting a budget surplus of \$152 million for the current fiscal year, but has revised its economic growth estimates downward for next year from 4.7 percent to

3.5 percent. As a result, the budget being finished in the House (to be passed to the Senate) would increase spending by about 3.2 percent and would only fund \$14 million of the University of North Carolina's request for \$34 million to cope with increased enrollment at its constituent campuses. However, it is expected that the Senate will allocate the remaining \$20 million for the university.

### **Ohio**

The legislature is working on a bill to resolve a budget hole estimated at \$733 million through the end of the 2008-09 fiscal year. The bill will involve eliminating jobs, closing mental hospitals, and increasing gambling revenue. The \$733 million hole is the best-case scenario, with worst-case scenarios forecasting a \$1.9 billion shortfall. If the shortfall is more than \$733 million, the governor plans to use the state's rainy day reserves, leaving higher education largely untouched.

### **Oklahoma**

Gov. Brad Henry's proposed 2009 budget included a \$57 million increase (5.4 percent) for institutions under the control of the board of regents. However, the legislature passed a \$7.1 billion standstill budget that will prevent any cuts to state agencies, but will leave most funding (including higher education) at 2008 levels.

### **Pennsylvania**

Work is just beginning on Gov. Ed Rendell's \$28.3 billion 2008-09 general fund budget, which would increase spending by 4.2 percent. His plan would increase funding for the state's community colleges and the State System of Higher Education by 3 percent and increase support for the state-related universities (Penn State, University of Pittsburgh, and Temple and Lincoln universities) by 1.5 percent.

### **Rhode Island**

The state cut its 2008 budget by \$168 million this spring to cope with a budget deficit, but higher education was largely spared from the mid-year cuts. However, Gov. Donald Carcieri proposed \$17.8 million in cuts to higher education for the upcoming fiscal year as he expected a budget deficit of \$384 million, which represents 11 percent of state spending. More recent projections are for the budget gap to be \$50 to \$55 million larger than originally projected, with any additional cuts to higher education as a result of the larger gap still unknown.

### **South Carolina**

The state's \$7 billion budget passed by the legislature and approved by Gov. Mark Sanford cuts funding for most state agencies between 2.5 and 5 percent, with higher education funding being cut by 2.9 percent.

### **Tennessee**

Tennessee is facing significant budget problems as it works to close a \$315 million gap for the current fiscal year. Revenue projections for the 2008-09 fiscal year have also

soured, dropping by \$468 million since Gov. Phil Bredesen's January budget proposal. The governor's new proposal to close the budget gap calls for cutting higher education funding by \$55.8 million, or about 5 percent. In addition, the new proposal reduces funding for capital maintenance at state colleges and universities by over \$37 million.

The University of Tennessee is responding to its share of the cuts - \$21.1 million - by planning to hold open vacant positions and cut three academic programs at its Knoxville campus. The programs are audiology and speech pathology, industrial and organizational psychology, and dance.

### **Utah**

Utah's public institutions of higher education received an ongoing funding increase of \$38.8 million (a 4.8 percent increase) for the upcoming 2009 budget.

### **Vermont**

House and Senate leaders agreed to a \$1.2 billion general fund budget that represents a 3 percent increase in spending. Higher education will receive a 2.5 percent increase in funding, although funds for that increase will be drawn from lawsuit settlement money that is not guaranteed. The forecast for 2010 is much gloomier however, as the state is already forecasting a general fund shortfall of \$45 million assuming that state spending increases by 3 percent. Outside of the general fund, the state is also facing a shortfall for a healthcare program in 2010 that is possibly as large as \$57 million.

### **Virginia**

The state ended up passing a \$77 billion biennial budget for 2008-10 after confronting a projected \$2 billion shortfall for the biennium. Higher education received a 2 percent increase in state general fund support from 2007-08 to 2008-09.

### **Washington**

The state is in the middle of its biennial budget, but Gov. Chris Gregoire signed off on \$291 million in supplemental spending for the upcoming fiscal year. Higher education will receive \$16.6 million in supplemental funds, largely for capital projects at technical and community colleges.

### **Wisconsin**

Facing a \$527 million budget hole for the current biennium, the Wisconsin legislature sent their fix to Gov. Jim Doyle, who vetoed portions of it. The legislative fix would have delayed some school aid until the next fiscal year, used reserves, and borrowed against future payments from tobacco companies. Doyle vetoed delaying school aid payments, limited the amount of money tapped from state reserves, and lessened the amount borrowed from future tobacco payments. In its place, he slashed state spending, with road maintenance taking a \$100 million hit. It is not yet clear where the other spending cuts will come from or whether funding for higher education will be cut.

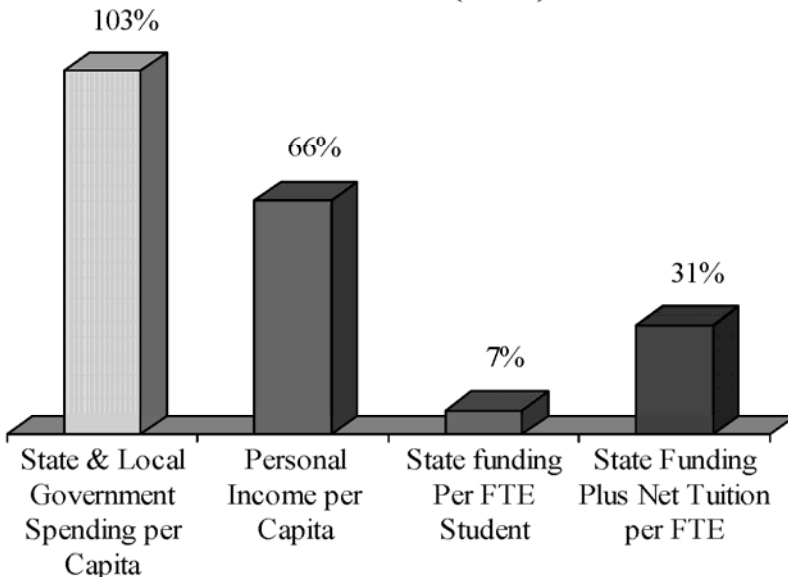
While any budget cuts affecting the University of Wisconsin are unknown, the system will definitely have to absorb a \$25 million funding lapse and account for increased costs of the Wisconsin GI Bill, which was recently expanded to provide full tuition remission for veterans and some family members. Previously it had only provided 50 percent tuition remission. The program is expected to cost \$40 million over the next two years, with the state only providing \$9 million in funding. In order to close at least part of the funding gap, 3 percent of the 5.5 percent tuition increase at all four-year institutions in the University of Wisconsin System would be directed toward funding the program.

**Wyoming**

Wyoming passed an \$8.1 billion budget for the biennium this year, an increase of \$535 million over the previous biennial budget. However, the previous budget later swelled by \$800 million through supplemental appropriations and later legislation requiring appropriations.

The budget passed for the 2009-10 fiscal years appropriates \$244 million for community colleges plus an additional \$91 million in capital construction at community colleges. In 2007-08, the state’s community colleges received \$285 million in combined appropriations and capital construction funds, but then received \$160 million in supplemental funding, largely for capital expenditures, in the 2007 session. The budget also appropriated \$455 million in the upcoming biennium for the University of Wyoming. In 2007-08, the University of Wyoming received \$447 million in appropriations, with an additional \$30 million following in supplemental appropriations, largely for a matching funds program for capital construction.

**Constant Dollar Growth (CPI) 1970 to 2005**



*Chart by Paul Lingenfelter, president, State Higher Education Executive Officers  
Presented at AGB’s National Conference on Trusteeship, April 2008*

# Board Member Selection, Board Composition, and Board Operations

## New Jersey State Commission of Investigation

In light of a scandal at the University of Medicine and Dentistry of New Jersey, the New Jersey State Commission of Investigation (SCI), a watchdog agency designed to combat organized crime and government corruption, investigated the state's public universities in 2007. The commission investigated UMDNJ, the New Jersey Institute of Technology, Rutgers University, Rowan University, and Ramapo College of New Jersey in the areas of oversight, accountability, and governance, ultimately releasing a report that found significant problems in overseeing expenditures, making sound fiscal decisions, corruption in contracting, and political intrusion in institutional governance.

### *SCI Recommendations for the Commission on Higher Education*

The SCI report emphasized in its recommendations that the state needs to find ground between the overly burdensome structure overseeing higher education that was abolished in 1994 and the almost complete autonomy that has characterized state universities in the period since then. SCI's goal for the system is to establish effective independent oversight and improve transparency and accountability without subjecting the system to over-regulation. In order to achieve this goal, the report recommended several changes in the structure and responsibilities of the New Jersey Commission on Higher Education (CHE).

One of the primary structural changes suggested was to elevate CHE to cabinet-level status through legislation so that the commission would have a direct report to the governor. As part of this elevation, the governor would appoint the executive director of CHE. In addition, the report suggested that the board be expanded and that the commission develop merit criteria to aid the governor in appointing board members.

The report also argued for the need to increase the powers and responsibilities of the commission in order to improve oversight. In particular, it suggested that CHE be in charge of the constituent colleges' compliance with state-level Sarbanes-Oxley style legislation and a code of ethics (both not yet in place), and as a supplement that CHE be given more authority to investigate the governance and operation of state institutions. The report also suggested that the commission be more involved in coordinating higher education policy and budget requests across the system.

Because many of the oversight mechanisms are not in place, the report recommended that CHE be legislatively granted authority to establish, administer, and enforce oversight capabilities, including Sarbanes-Oxley type regulations addressing accounting, internal controls, audit, conflict of interest, code of conduct, and whistleblower policies,

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“Especially critical is the need to restore and bolster the public's badly shaken confidence with the establishment of a mechanism to ensure meaningful and effective oversight, accountability and transparency – not through blanket restoration of unnecessary and burdensome bureaucracy but through a carefully targeted overhaul of the State's existing governance apparatus.”  
- SCI report

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and penalties for non-compliance with the regulations.

### *Institutional Governance Recommendations*

Although some problems were due to ineffective state oversight, SCI also found significant problems in board operations at the institutions examined. To remedy these problems, SCI suggested that legislation improving the quality of institutional governing boards be enacted. Their legislative suggestions include more than doubling the size of institutional boards in light of increasing workloads and scopes of responsibilities, requiring each institutional board to develop a set of qualifications for nominees, and creating a nominating committee to recruit, screen, and recommend prospective members. CHE would also be required to create a model set of qualifications and a board appointment advisory committee for institutional boards.

In what may be too cumbersome a process to be effective, SCI recommended that candidates for a board seat be voted on by the institutional board and then be passed on to the CHE committee, which would screen the candidates before passing them along to the governor for appointment. AGB has long advocated for screening committees, but the process of passing through two screening committees may discourage qualified volunteers from joining boards and would slow down the selection process. In addition, the SCI report argues for a coordinating and oversight role for CHE, and board member selection would be overstepping the responsibilities typically granted to coordinating agencies.

The SCI report was also not shy about proposing changes in institutional board membership and committee structure, although the recommendations generally reflect best practices. SCI recommended an essential committee structure for institutional boards that includes audit, executive, compensation, and nominating committees, as well as a professional services committee to evaluate external contracts. It also suggested that each institutional board be required to have at least one member with financial or accounting expertise and that restrictions on out-of-state board members be reduced, especially in the case of alumni.

The need for boards to undergo regular training on best practices, laws and regulations affecting the board, and governance and fiduciary responsibilities was also highlighted in the report, as was the need for the entire board to take an active role in development strategies and fund-raising to help stave off a need for ever-increasing state appropriations.

An additional area of examination in the report was the institutions' reliance on lobbying, which SCI believed to be overwhelming and leading to waste and abuse. As a result of these concerns, SCI concluded that controls should be placed on lobbying, although the practice should not be prohibited. Instead, outside lobbying contracts should have to be reviewed by the professional services committee and publicly approved by the board. CHE should also regulate the activities of university lobbyists to prevent political intrusion.

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“The process by which Boards of Trustees are appointed should be revamped to minimize partisanship created by the undue intrusion of politics. In recent years, far more time and energy have been spent in Trenton positioning political allies for appointment to such positions than on efforts to scrutinize college and university operations and ensure accountable and transparent governance.”  
- SCI report

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### *Looking Forward*

The commission called for an examination of academic, educational policy, and funding issues facing the state's universities, although it suggested they would be better addressed by a task force created by the governor and legislature. The task force should also examine the charters of the state's colleges and universities to evaluate whether they need updating and create a plan for academic excellence and effective administration.

SCI released its report to the governor and legislature, as it does not have the authority to implement its recommendations. Since the release, SCI has turned its attention to community colleges. Although no formal investigation has been launched and the community colleges have not been involved in any scandal, SCI has asked community colleges in the state to submit substantial documentation relating to operations.

### *Legislative Reaction*

Two bills introduced in the New Jersey Legislature in 2008 would enact several changes recommended in the SCI report. Although different, both bills have several identical provisions. They would both expand the responsibilities of CHE to include creating and administering financial accountability standards (including enforcement) and establishing internal control standards for the state's public four-year colleges and universities. Both bills would also impose several auditing requirements on institutional governing boards, beginning with requiring each board to have an audit committee. Boards would also be required to employ an internal audit staff and to retain an independent outside auditor to conduct annual audits.

Employee conduct was also addressed, as both bills would require boards to run a criminal background check of all new employees and create a whistleblower policy that includes procedures for protecting whistleblowers from retaliation. All board members, senior administrative staff, and key financial staff would be required to file a conflict-of-interest disclosure and abide by a code of conduct adopted by the board.

The bills do contain differences though, as the Assembly bill (AB 2407) would impose some additional requirements that the Senate bill (SB 1609) lacks. It would require the external auditor to be rotated periodically and would also require institutional governing boards to retain an independent financial consultant (approved by CHE) to evaluate the institution's internal controls and report to the board and CHE.

However, the Senate bill is a more comprehensive bill and includes several provisions not in the Assembly bill. The Senate bill addresses lobbying and facilities development and would create a secretary of higher education. Per SCI report recommendations, the Senate bill would also eliminate residency requirements of board members and require more institutional board committees than just audit. Each institutional board would have to establish an executive committee, a compensation committee, a nominations and gov-

ernance committee, and a professional services committee to evaluate professional services contracts.

The new cabinet-level secretary of higher education outlined in the Senate bill would be a gubernatorial appointment and serve as executive director of CHE. The Senate would have to advise and consent on the appointment, which would require consultation with and recommendations from CHE as well. The CHE board would expand to 15 members from its current 11 in the legislation and would also be responsible for making recommendations to the governor and institutional boards regarding institutional board member appointments.

The Senate bill would bar government affairs personnel (including contractors) from involving institutions in campaign contributions, endorsements, or partisan activities. It would also require all government affairs personnel to register with the state and require that all government affairs personnel contracts be discussed and approved in an open session of the board.

Under the Senate bill language, each institution would have to submit a long-range facilities plan to CHE for its review that details facilities needs and the institution's plan to address them in the next 5 years. CHE would be charged with considering the long-term implications, including debt, deferred maintenance, and relation to the institution's programs in responding to the plan. In addition, the legislation would allow the New Jersey Educational Financing Authority to issue bonds to organizations affiliated with public institutions for the construction of dormitories, but the affiliated organization would still be subject to state prevailing wage and contracting laws. The authority would also be able to provide tax-exempt short-term working capital loans for institutions through bonding.

Finally, the Senate bill would also require:

- Each institutional board to develop and implement fund-raising strategies that involve all board members
- An institution to petition CHE for approval to change the institution's mission and to include the long-term costs and a cost-benefit analysis of the change in the petition
- CHE to hold an annual meeting with all public and private institutions concerning new degree programs
- Any institution creating an extension site to serve over 100 students to submit its plan to CHE for review
- CHE to be responsible for recommending beneficial opportunities for joint purchasing and other arrangements to the institutions.

## Hawaii SB 2668

After the passage of the constitutional amendment creating the candidate advisory council for the University of Hawaii Board of Regents in 2006 and the enabling legislation in

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“The concentration of power in Trenton [through the cabinet-level secretary of education] would politicize higher education in our view. This idea that we would be better off if we had a ‘seat at the table’ persists, but our funding eroded before the Department of Higher Ed [a cabinet agency] was abolished.”

- Paul Shelly, New Jersey Association of State Colleges and Universities

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2007, the state legislature returned to the topic in 2008 with legislation that would clarify some residency, notification, and privacy requirements.

The bill would rename the council the regents candidate advisory council and require all members of the board (except the student member) to live in the geographic area that they represent. Previously there was no residential requirement. The bill would also impose a ten day limit on the length of time the governor can take to notify the council of a vacancy on the board. However, it would double (to 60 days) the subsequent length of time the council would have to present candidates to the governor, presumably to give the council more time to screen candidates.

Perhaps most importantly, the legislation would distinguish what information would be considered public and what would be considered private. The bill would allow the council to keep private all information it gathers and considers regarding a candidate's interest, qualifications, and fitness for the board, including applications, interviews, deliberations, background checks, and financial information. However, when the council presents names to the governor for consideration it would have to publicly release all the names. Once a candidate is appointed, the council would then have to disclose all information regarding the appointed candidate that is required by law.

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► Gov. Linda Lingle filed a Notice of Intent to Veto SB 2668 on June 23.

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### **Kentucky Board Composition Lawsuit**

The Kentucky attorney general filed a lawsuit in 2007 against the governor claiming that the governing boards of Kentucky's public colleges and universities were too heavily Republican, against a state law that requires the boards to reflect the political makeup of registered voters. Currently, about 58 percent of registered voters in the state are Democrats, but two-thirds of former governor Ernie Fletcher's board appointments were Republican.

The lawsuit was settled in March 2008, and an agreement was reached that Gov. Steve Beshear would restore the required political balance on the boards by appointing Democratic trustees as upcoming board terms ended. As a result, all boards will be in compliance with state law by 2010.

### **Massachusetts HB 4488**

Gov. Deval Patrick proposed his reorganization plan for education in Massachusetts to the General Court, which overwhelmingly passed it in the 2008 session. Patrick's plan will create an Executive Office of Education that will be led by a new cabinet-level secretary of education. The secretary will supervise all three education boards in Massachusetts (the boards of Early Education and Care, Elementary and Secondary Education, and Higher Education).

The secretary will be provided with substantial power relating to higher education. He or she will have the final say over the hiring of the commissioner of higher education,

See the latest developments at [www.agb.org/statepolicy](http://www.agb.org/statepolicy)

will occupy a voting seat on the Board of Higher Education and the University of Massachusetts System (UMASS) board, and will have to approve budget and capital outlay requests, mission statements, and master plans at each institution of higher education and the Board of Higher Education.

The legislation will provide the governor with additional power as well. The reorganization will remove the ex-officio seats of the commissioner of early education and care and the commissioner of elementary and secondary education on the Board of Higher Education and replace them with governor-appointed seats. It will also add two governor-appointed seats to both the Board of Higher Education and the UMASS board, and provide the governor with the authority to appoint the chair of the UMASS board.

### **Mississippi Presidential Search Process**

This spring, several legislators voiced their opposition over what they considered to be a closed search policy for campus presidents utilized by the Mississippi Board of Trustees of State Institutions of Higher Learning (IHL). In particular, legislators have complained over the search for the next president of Mississippi State University, where the most recent president only held the position for two years before resigning.

In order to force disclosure of candidates' names, the House adopted a controversial amendment to SB 3118 that would withhold all funding for institutions under control of the IHL until the board adopted a policy to identify the names of the five finalists under consideration for a vacancy and allow public comment on the candidates. However, the amendment was dropped in conference committee.

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“We need to be careful that what we do does not reduce the pool of candidates. If their institution knows they’re on the list [of candidates], how long do you think that institution is going to keep them around?”  
- State Representative Tommy Reynolds

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IHL had argued that the search process for campus presidents is transparent and that representatives from the university community are involved in the search process. It also argued that keeping the names of candidates confidential resulted in more robust pool of qualified applicants. Gov. Haley Barbour acknowledged that requiring disclosure of candidates could be detrimental to the search process as well.

### **Oklahoma HJR 1074**

The Oklahoma Legislature considered a constitutional amendment this session that would have allowed the governor to replace up to 40 percent of gubernatorial appointments on any agency, board, or commission within the first 12 months of his or her term. The 40 percent did not include any expiring terms or other vacancies. The constitutional amendment would have included the Oklahoma State Regents for Higher Education and the Board of Regents for the Oklahoma Agricultural and Mechanical Colleges, and would have to be approved by to the state’s voters in the 2008 general election in order to take effect. The House passed the resolution, but it stalled in the Senate.

### **Utah HB 190**

Sweeping changes to higher education governance in Utah failed to pass in the 2008 session. House Bill 190 would have made the commissioner of higher education a gu-

bernatorial appointment, as the commissioner is currently appointed by the State Board of Regents. The legislation also would have allowed institutional boards of trustees to select institutional presidents with the consent of the state board. Currently, the situation is reversed so that the state board selects institutional presidents with the consultation of institutional boards.

Institutional boards would also have been granted the power to provide a list of nominees to the governor for appointment to their respective boards, a list from which the governor would have to choose. An earlier version of the bill would have included providing institutional boards the authority to set tuition and fees and set the undergraduate curriculum, including degree programs. Currently the state board sets tuition and fees and controls the curriculum to avoid unnecessary duplication.

With the end of the session approaching, the bill was included in a larger interim bill to create a task force on workforce needs and higher education governance (HB 490), but that bill did not reach concurrence before the session ended.

### **Virginia Governing Boards**

Several bills in Virginia addressed the size and composition of governing boards in the 2008 legislative session, with changes at Longwood and Virginia State universities passing, but a change at William and Mary being abandoned. Longwood's board will increase by two members while Virginia State's board will increase by four members, with one additional member required to be a resident. All boards in Virginia are appointed by the governor.

However, by far the most significant change was that sought at William and Mary. Legislation introduced by Robert Marshall, a delegate highly critical of then-president Gene Nichol over the Wren Cross and the sex workers art show controversies, would have altered the board of visitors by providing the alumni association with nine seats on the seventeen seat board. However, Nichol resigned from his post in February when his contract was not renewed and the legislation was left in committee.

Also left in committee was a bill introduced in the Virginia House of Delegates this session that would have removed the Freedom of Information Act (FOIA) exemption for the working papers and correspondence of public university presidents.

### **Virginia HB 776**

This spring the Virginia General Assembly repealed the sunset provision that would have terminated the Virginia Commission on Higher Education Board Appointments in July. Then-Gov. Mark Warner created the commission in 2002 as a screening committee to evaluate candidates based upon merit, experience, sound judgment, and proven leadership, and the legislature subsequently wrote the commission into statute with a sunset date. The repeal of the sunset in order to maintain the commission passed both chambers unanimously and had the support of current Gov. Tim Kaine. AGB assisted in the creation of the commission in 2002.

# Community Colleges

## Alabama Ethics

In April 2008, a circuit court judge granted a temporary injunction against implementation of two-year college system chancellor Bradley Byrne's policy requiring legislators serving on college payrolls to take vacation time to attend to legislative duties. The two-year college system quickly appealed the injunction.

In the mean time, the legislature – hardly the uninterested third party as several influential legislators work in the two-year system – worked on legislation that would have effectively overridden the prohibition on double dipping. The bills would have allowed any government employee to serve in public office and take paid or unpaid leave to attend to their official duties. Both bills failed to pass this session.

The legislature also worked on reorganizing the governance of the two-year college system. Over the winter, a consultant's report criticized the two-year system for being governed jointly with K-12, a criticism that the previous two-year chancellor had made as well. The reorganization bill, SB 600, would have created the State Board of Postsecondary Education to oversee the already existing department of postsecondary education, which is currently overseen by the board of education. All powers and responsibilities concerning the two-year system would have been transferred from the board of education to the board of postsecondary education. That bill too failed to pass the legislature this session.

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“If this goes forward this will allow one of the very big problems that has been within our system for a long time to continue and will be allowed to continue by an act of legislature. I think that's an astonishing development.”  
- Byrne, on the legislation to allow double dipping to continue

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A separate bill, HB 541, would have provided the Legislative Council the power to review policies of the board of education regarding the two-year system. The Legislative Council is an interim committee of House and Senate leaders that reviews policies of state agencies pursuant to the Administrative Procedures Act. Normally, higher education boards are not subject to the Administrative Procedures Act because the institutional board serves as a review panel, but the legislation essentially claimed that the board of education does not oversee the two-year college system. The bill passed a House committee on a voice vote ordered by a legislator affected by the double dipping ban (before the injunction) over the opposition of several legislators who sought a recorded vote, but later stalled.

## Alabama HB 222

Gov. Bob Riley vetoed House Bill 222, which was passed at the end of the session. The primary purpose of the bill was to require job notices for the chancellor of the two-year college system and presidents of the state's two-year colleges to be posted for at least 30 days before a selection was made, but the bill also would have enacted an upper time limit on the searches and require that interim appointments not last for more than 6 months. The bill was a response to the quickly conducted hiring process of the current two-year system chancellor Bradley Byrne.

In his veto message, Riley said that the bill failed to give board members enough credit that they will seek to hire the best candidate and run the search process in the most effective manner, whether it is a quick search or a lengthy search. He also noted that in most cases, boards provide more than the legally required amount of notice of a vacancy.

### **Arizona HB 2496**

This bill would have established the State Board for Community Colleges. The board would have had three representatives from business and private industry, four members of the general public, a community college president, and representatives from the board of education, board of regents (which governs the state's public universities), and a community college district board. The legislation outlined a multitude of responsibilities of the board that would largely have focused on coordinating the community college system and working with the board of education and the board of regents to develop common course numbers, improving transfer and articulation agreements, and addressing matters concerning statewide education.

One of the largest coordinating responsibilities would have been to develop a statewide plan for the community college system that included statewide goals, particularly focused on the role of the community college system in workforce and economic development, and create accountability and performance measures for the goals.

The legislation noted that the state board must recognize the importance of local control and limited the board to reviewing or recommending new programs offered at community colleges. It also specifically prohibited the board from having any authority over the selection of community college presidents or chancellors. Arizona currently has no statewide governing or coordinating body for its community college system, although the state used to have the State Board of Directors for Community Colleges, which was terminated in 2003.

### **California SB 1585**

Highlighting the fact that 70 percent of incoming community college students have to take lower-level courses, Senate Bill 1585 aims to increase the number of students from this group who produce transfer-quality work and ultimately transfer to a four-year institution. In order to achieve this, the bill would require the chancellor of the California community colleges to establish a Transfer Success Pilot Program. The pilot program would last for five years and involve outreach, counseling, improved monitoring of student progress, and sharing of best practices to aid student success in improving academic achievement and transfer rates. Up to ten community colleges would be selected.

The bill outlines requirements that participating community colleges and students would have to follow, including regular contact with four-year institutions and creating educational plans for students. As part of the pilot program, California State University (CSU)

would also be required to establish an outreach program to maintain a presence at the state's community colleges and to provide students with opportunities to visit CSU campuses. The same outreach program would be requested at the University of California. Upon the pilot program's conclusion, the community college chancellor would have to report to the legislature on its results.

*The bill is still under consideration in the Assembly.*

### **North Carolina SB 1065 (2007)**

This legislation will allow community colleges to seek approval from the State Board of Community Colleges to implement a tuition surcharge of up to one-third of the state-wide tuition rate in order to fund new instructional programs that are necessary to bring industry to the area. The tuition surcharge will only apply to students enrolled in the new programs.

### **West Virginia HB 3215**

Gov. Joe Manchin signed a bill in March that will create separate boards for the five remaining community colleges that share their governing boards with one of the state's four-year institutions. The change was seen by legislators as a needed modernization of the state's community colleges, which are focused on workforce development and thus have a much different role than four-year institutions. The community college system supported the measure, although some community college alumni expressed concern over losing the colleges' affiliation with four-year institutions.

### **Wyoming HB 17**

This bill implements many of the recommendations of the 2007 Governor's Blue-Ribbon Commission on Community Colleges (see next page). Along with requirements to make accounting and auditing more uniform, the bill includes a reporting requirement for foundations to the Wyoming Community College Commission (WCCC) on the status of their endowment matching programs.

The bill provides the WCCC with some additional oversight over community colleges, including the authority to change community college service areas after a public hearing and review and the ability to terminate funding for programs with low enrollments. The WCCC will also be charged with responding to county commissioners when the community college does not create a program requested by the commissioner. Finally, the WCCC will be charged with coordinating a statewide strategic plan and presenting annual reports to the governor and legislature as part of its oversight responsibilities.

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“The colleges are political subdivisions governed by local boards and are not currently required to cooperate to develop a statewide strategic plan. This recommendation will require the WCCC and the seven colleges to collaboratively develop a statewide strategic plan for the delivery of educational services to the citizens of all 23 Wyoming counties and it is likely to lead to increased cooperation both between the WCCC and the colleges and among the colleges.”

- Governor's Blue-Ribbon Commission on Community Colleges' report

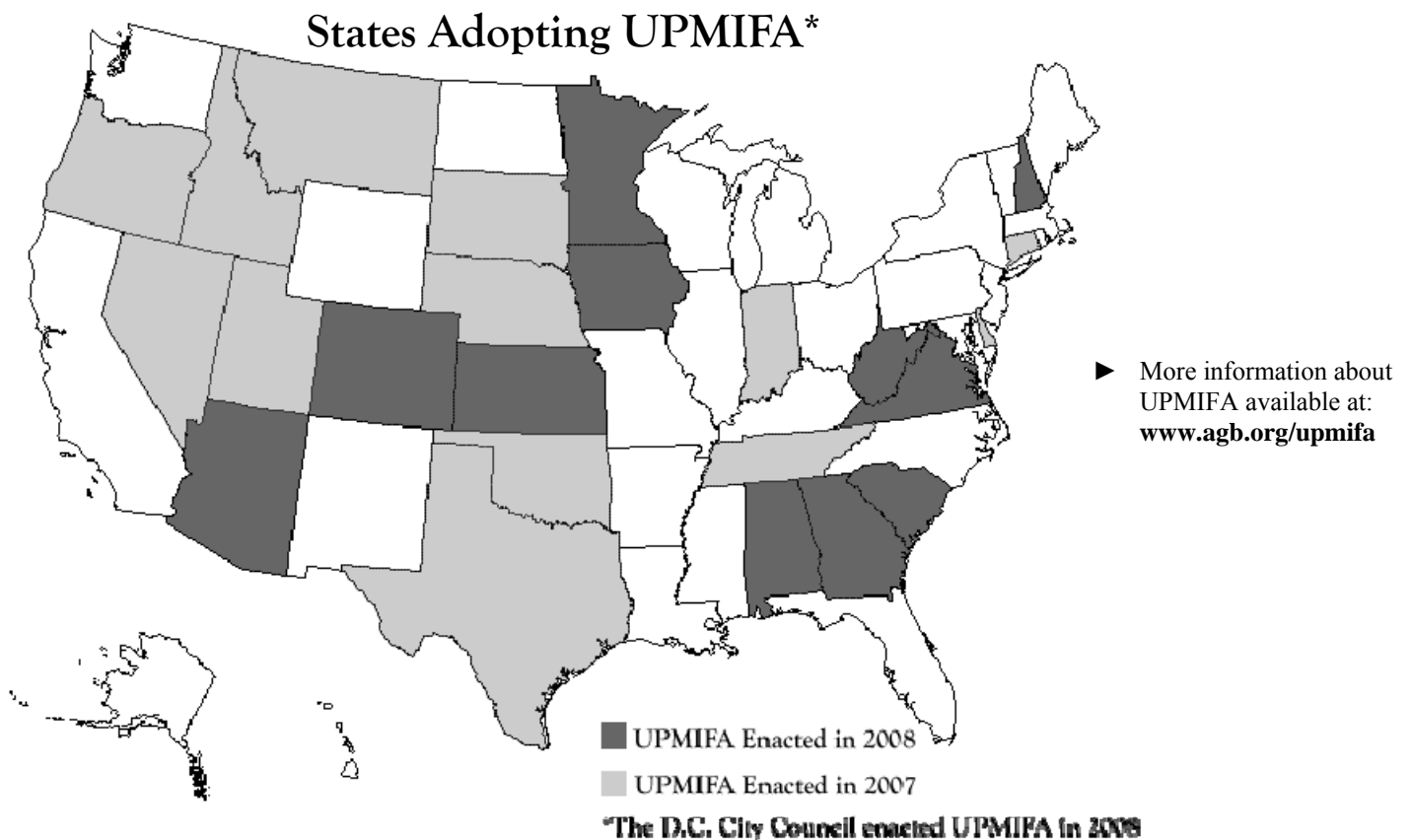
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## Wyoming Governor's Blue-Ribbon Commission on Community Colleges (2007)

Gov. Dave Freudenthal's commission released its report in September 2007. Breaking into subcommittees on governance and structure, funding and accountability, and priority workforce training, the 16-member panel ultimately approved 35 recommendations to be submitted to the governor. Among them were:

- a state match program for dormitory construction, as student demand for housing at community colleges has overwhelmed campus and community availability
- that the Wyoming Community College Commission (WCCC) be given the authority to conduct external audits of the community colleges
- that the WCCC be given more information on the management of state funds by the colleges and their foundations
- that the WCCC and community colleges develop a biennial strategic plan
- that the WCCC remain a seven member coordinating board

The commission also made several recommendations on ways to improve workforce development and the use of the private sector in developing programs, including requiring private sector organizations to contribute to the costs of community college programs when they are the primary or exclusive beneficiaries of students from those programs.



# Institutionally Related Foundations

## Colorado HB 08-1002

HB 08-1002 is a reintroduction of a 2006 bill, SB 06-152, which passed both chambers but was vetoed by then-Gov. Bill Owens. Both bills allow Mesa State College to invest its own funds and, if the college elects to do so, would require it to develop a written investment policy that is updated annually and create an Investment Advisory Committee to make recommendations regarding investments. However, while the 2006 bill applied the same provisions to the Colorado School of Mines, the 2008 bill applies the same provisions to the Colorado State University System instead. Both bills prohibit all boards impacted from requesting appropriations to replace any losses incurred as a result of managing their own investments and require the boards to report annually to the state auditor and legislative budget committee on investment performance.

## Mississippi PEER Committee Report (2007)

The Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) released a report on the legal status and oversight of foundations to the legislature in July.

The report largely outlined current oversight responsibilities, concluding that several agencies have oversight over part of university foundation operations but that no agency has complete oversight over foundations. While acknowledging that the Mississippi Board of Trustees of State Institutions of Higher Learning (IHL) has expanded its oversight recently, the report encouraged the IHL to take an even larger role to ensure the integrity of foundations. In particular, the report suggested that the IHL prohibit foundation board members from serving on the boards of other university-affiliated organizations, that it prohibit people from serving on foundation boards if the foundation does business with a company that the member has a significant interest in, that IHL staff be authorized to conduct reviews of foundation contracts with the university, and that institutional presidents approve all supplemental compensation provided by the foundation. It also suggested that the legislature may want to extend additional oversight over the foundations if the IHL did not.

The report also addressed the authority of the PEER committee to review foundations, concluding that the PEER committee could increase its oversight of foundations if there were complaints. While the committee noted that it could not likely review information regarding specific donor records or internal operations, if prompted by a complaint it could review university foundations' operations to ensure that they are in compliance with IHL rules and fulfilling the terms of the foundations' agreements and contracts with the university.

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"[Mississippi state law] provides the legal requirements concerning conflict of interest policies for non-profit corporations in our state. As long as the university affiliated entity's conflicts policies comply with state law, the IHL Board should refrain from imposing additional, unnecessary restrictions on the private entities, which could potentially jeopardize the 501 (c) (3) status of the entities."

- N. Van Gillespie, special assistant attorney general, commenting on the report draft on behalf on the IHL

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IHL issued a response to a report draft, appended to the final report, that noted concerns over the prohibition on serving on more than one foundation or affiliated organization board and the conflict of interest provision. It argued that the prohibition on multiple board service may hinder communication and coordination between the auxiliary organizations. Regarding conflict of interest, the response noted that the state already has conflict of interest requirements that apply to non-profits, and that the university extending greater control over foundations and auxiliary organizations could possibly jeopardize the 501(c)(3) status of the foundations.

Following the PEER report, the IHL board has drafted a rewrite of its rules to require that foundations and affiliated organizations focus their university-related activities on the institutional president's priorities and that the institutional president authorize donations to foundations and affiliated organizations.

### **New Mexico State University Foundation Open Records Complaint (2007)**

In November 2007, the New Mexico assistant attorney general released an opinion responding to a complaint under New Mexico's Open Meetings and Inspection of Public Records acts regarding New Mexico State University (NMSU) and its foundation. The complainant sought access to records concerning the identity of donors to the NMSU Foundation that the foundation had provided to the university. NMSU had denied the complainant's request, arguing that the donor records were confidential and the property of the foundation. The assistant attorney general's opinion found that the records were not subject to disclosure, citing a New Mexico law requiring private support organizations to provide their supported government agency with an annual audit that includes donor information, but which is not considered a public record.

The complaint also sought access to all emails regarding the foundation sent from the NMSU email account of a vice president at the university who served in a dual role at the foundation. The assistant attorney general found that the emails from the university account regarding foundation matters were private records because they concerned a private foundation and not university business, although she acknowledged that it would not be implausible for a court to find otherwise.

### **Oklahoma SB 1373**

Gov. Brad Henry signed legislation that will issue \$100 million in bonds to catch up with the backlog of gifts waiting to be matched in Oklahoma's endowed chair matching funds program, but which will also limit the state's contribution after July 1 of this year. The state has about \$230 million in qualifying gifts waiting to be matching, with more than half of that due to recent gifts of \$35 million to the University of Oklahoma - Tulsa and \$100 million to Oklahoma State University.

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“It is crucial that we fully fund endowed chairs and reduce their backlog in our colleges and universities. By doing so, we will reaffirm our commitment to top-quality instruction and research in our institutions of higher learning.”

- Gov. Brad Henry, in his state-of-the-state speech

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The legislation also requires that after the state catches up to donations currently awaiting a match, state matching funds monies will be capped at \$5 million a year for donations made in the 2008-09 fiscal year and later, with no more than \$4 million going to the comprehensive universities and no more than \$1 million going to the other state's other public colleges and universities. For the future matching funds programs, the state will match gifts of less than \$250,000 at a 1:1 ratio, and for gifts of more than \$250,000 will match \$1 of state money for every \$4 of private money.

### **Virginia SB 130**

This bill adds some records relating to fund-raising at public institutions of higher education to the exemption from the Freedom of Information Act. Records relating to fund-raising strategies for identifiable donors and prospective donors are now exempt, as is wealth information, contact information, and personal information about donors and prospective donors collected by the university. However, the amounts, dates, purposes, and terms of gifts are not protected, and donor anonymity is not protected unless specifically requested by the donor.

### **West Virginia SB 287**

This bill establishes the "Bucks for Brains" program, officially titled the West Virginia Research Trust Fund, under the administration of the Higher Education Policy Commission. The fund will serve as a matching funds program for West Virginia and Marshall universities to improve scientific research that will increase economic development, technology transfer, and commercialization and patenting of technological research.

The legislature made a one-time allocation of \$50 million from the state surplus this budget cycle for the trust fund, with \$35 million directed to West Virginia University and \$15 million to Marshall University. The institutions will have five years to match the trust funds with private donations on a one-to-one basis to fund new faculty and research staff positions and support students, staff, and infrastructure. Both institutions will have to create a plan that outlines current research initiatives, proposed initiatives for the new endowment proceeds, and alternative sources of funding for research and submit it to the commission, which will report annually to the governor and legislature on the success of the program.

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"West Virginia must be a player in the 21st century world economy, and to do so we need to develop more intellectual and financial capital. "Bucks for Jobs" achieves both these goals by leveraging smart, interconnected investments in economic development, higher education and work force training."

- Gov. Joe Manchin, in his state-of-the-state speech

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# Governance, Coordination, and Accountability

## Florida Governance Saga

The never-ending struggle over the governance of higher education in Florida continued in 2008. The summer of 2007 saw former Gov. Bob Graham and others file a suit, later joined by the board of governors, against the legislature over tuition-setting authority. The suit was thrown out by a circuit court judge in January 2008 because of the plaintiffs' lack of standing, although the plaintiffs have since resubmitted their suit, emphasizing the impact of tuition on them in an effort to demonstrate standing. In the meantime, the board of governors originally sought to raise tuition 8 percent this year but agreed to the legislature's recommendations for a 6 percent increase, acknowledging that the legislature could simply reduce funding to counteract the board's tuition increase.

The 2008 legislative session saw the next step in the struggle over control of the university system through the introduction of a constitutional amendment that would have effectively abolished the board of governors and made other changes to higher education governance. The amendment, Senate Joint Resolution 2308, easily passed the Senate but stalled in the House.

The amendment would have reduced the board to nine members from seventeen and terms would have been reduced to four years from seven. More importantly, all constitutional responsibilities of the board regarding the system would have been stricken, leaving future legislation to determine what, if any, responsibilities the reduced board would have.

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"I'm opposed [to the amendment] because I don't think the system is broken, and I don't know what we're fixing. I am happy having an independent Board of Governors. I think the less we can politicize our state university system, the better, and I'm afraid we're bringing politics back in."  
- State Senator Nan Rich

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In place of the board, the commissioner of education and the State Board of Education would have assumed governance responsibilities for the university system. However, both the position of the commissioner and constitution of the board of education would have changed in the amendment. The commissioner is currently appointed by the governor, but the amendment would have elevated the commissioner to an elected cabinet-level position. Florida last had an elected commissioner of education in the cabinet in 1998, but since that time the board of education has selected the commissioner. The amendment would also have dramatically changed the board of education. Currently it is composed of seven appointees and the commissioner, but under the amendment the board would consist of the governor and the cabinet.

The boards of institutions that are part of the State University System would also have seen a change, as the board of governors appoints five members to each institutional board in the university system. These appointments would have been given to the governor so that he or she would appoint the entire board for each institution, with the exception of ex-officio faculty and student representatives.

Another substantial change called for in the amendment was the creation of the Florida College System, which would have encompassed all two and four-year institutions not offering graduate degrees. The system would have been overseen by the Florida College Board, a newly created board consisting of the commissioner of education and six members appointed by the governor for four-year terms. The college board would have served as a coordinating board and would not have supplanted institutional boards, with future legislation needed to outline the college board's responsibilities and powers. The idea of the Florida College System is consistent with one of the Pappas Consulting Group's recommendations, which is that Florida should have a subsystem focused on undergraduate education. However, the Pappas report envisioned some already existing state universities focusing more on undergraduate education, whereas the proposed system would largely serve as a vehicle for community colleges to expand their baccalaureate degree offerings.

While the wholesale changes encompassed in the constitutional amendment failed, the creation of the Florida College System passed through separate legislation, Senate Bill 1716. However, the bill does not create a Florida College Board, as did the amendment. Instead, the commissioner of education and board of education will oversee the system.

In creating the system, the bill also created the Florida College System Task Force and the State College Pilot Project. The task force, the majority of which will be community college presidents, has been charged with recommending an approval process for new degree programs and a funding model for the system, identifying workforce needs for increased bachelor's degrees, monitoring the pilot project, and suggesting what types of degree programs should be offered without needing the approval of the board of education. The task force will submit a report to the governor, board of education, and legislative leaders by March 2009, with a final report scheduled for 2010.

The pilot program, consisting of nine community colleges already offering four-year degrees, will have a focus similar to the task force's. The pilot program will report recommendations to the legislature in 2009 regarding an approval process for the transition of community colleges to baccalaureate-degree-granting institutions, criteria to meet for institutions wishing to transition, and a funding criteria for the college system. Despite offering four-year degrees, institutions in the pilot program will have to maintain their primary mission, keep an open admissions policy for associate degree and workforce education programs, continue outreach to underserved populations, provide remedial education, and participate in the statewide articulation agreement.

Senate Bill 1716 allows community colleges that grant bachelor's degrees to change their name from "community college" to "college" as long as they receive approval from their institutional board and the board of education and meet the above requirements for institutions in the pilot project regarding mission, admissions, outreach, remedial education, and articulation. Finally, given that the college system seeks to expand access and

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"On the surface, this doesn't do anything bad. The problem is going to come when these new colleges start vying against the university system for funding that the university system is getting, predicated on the fact that they are a baccalaureate-awarding institution."

- State Senator Jim King, on the Florida College System proposal

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reduce costs, all participants in the college system will have to provide their degree programs at a substantially lower cost to students and the state than similar degree programs at state universities.

## Ohio Strategic Plan

As part of the creation of the University System of Ohio, new chancellor of higher education Eric Fingerhut was charged with creating a ten-year plan for the system. His plan was released in March and stressed the need to increase Ohio college graduates, retain more graduates, and attract more out-of-state graduates. In particular, it sets out a goal of increasing statewide enrollment by 230,000 students in ten years, a 49 percent increase. A significant portion of that increase is expected through doubling the number of people over 24 enrolled in higher education.

The plan identifies several ways to increase the number of degree-holding Ohio residents, including making degree programs easier to find geographically, creating low-cost degree options, and accelerating high school seniors' tracks into college. One of the most significant goals for the system identified in the report is to make core associate and baccalaureate degree programs available within 30 miles of every Ohio resident. To do so, the system will increase the role of community colleges and branch campuses and allow them to offer core degree programs. Given the plan's goal to drive down student costs, the emphasis on utilizing branch campuses and community colleges will result in lower cost options for four-year degrees than are currently available at the state's main four-year university campuses. At the same time, main campuses will be provided with the flexibility to set their own tuition so long as they can meet the financial need of all students.

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"Some observers are surprised by the sheer number and breadth of Ohio's public universities. The temptation is to conclude that we have too many, and to try and prune the system. But the fact is that Ohio, the seventh largest state in the union, has about the average number of schools per capita. ... The focus should not, therefore, be on the number of institutions, but on whether they are performing at the level that the state needs."  
- Ohio Strategic Plan for Higher Education

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The plan also calls for increasing the number of high school students continuing on to college. One component of the plan is the creation of the "Seniors to Sophomores" program, in which high school students will spend their senior year on a college campus free of tuition and then enroll in college the following year as a sophomore. Another method is the creation of dual admission programs so that students can apply for admission to a community college and public university at the same time, thus providing a seamless educational path. In addition, high school students will be given more opportunities to take advanced placement and college courses in high school to earn credits earlier.

Several new programs will also be created to lower high school drop out rates and encourage those students to continue on to an associate or baccalaureate degree program. Students over 18 who are behind schedule to graduate from high school will be recruited for a program that will combine high school graduation and college readiness. In addition, programs at adult workforce centers that are equivalent to the technical programs offered at community colleges will be accepted for college credit, and adult basic education centers will offer college prep courses.

Fingerhut’s plan also highlights the important role of the business community and workforce needs in shaping higher education. It will seek to adapt college programs to regional employment demand to ensure that the university system is producing enough program graduates to meet workforce needs. It calls for a compact between the business community and the university system to increase student internships, increase the number of adults in the workforce who receive training that qualifies for college credit, and jointly market higher education in the state.

Other elements of the plan include studying how to improve African-American male success, expanding opportunities for veterans and seniors, improving spending efficiencies, and involving private colleges to ease credit transfer and improve recruitment of international students to Ohio.

Institutions in the system will have a list of 20 measurements on access, quality, affordability and efficiency, and economic leadership to gauge their progress towards the plan’s goals for 2017. In addition to traditional measurements, the list includes increasing the number of bachelor’s degree recipients who have taken a course at a community college, being the top in the country in industrially-financed research spending, and doubling the size of institutional endowments per student.

All universities will also join the Voluntary System of Accountability (a collection of information on student experiences at public colleges maintained by two education associations) to make student outcome, student satisfaction, and cost data available, and community colleges will be required to join a similar accountability system. Four-year institutions will each prioritize at least one program unique to the institution, such as health care or engineering, that the institution will be expected to excel in. To help fund the system’s objectives, the plan requested that the state gradually increase its state support for the system to the national average per full-time student. Currently, Ohio public education receives \$1,000 less per student than the national average.

### **Illinois Public Agenda for Higher Education**

In 2007, the Illinois General Assembly passed House Joint Resolution 69, which asked the Illinois Board of Higher Education (IBHE) to create a Task Force on Higher Education and the Economy for the purpose of developing a master plan for higher education.

The master plan, still under development but entitled *A Public Agenda for Illinois Higher Education: Planning for College and Career Success*, will have to create goals for college preparation, participation, affordability, degree completion, research and economic development, and learning assessment. It will also have to outline the responsibilities of the different educational sectors, identify accountability measures, recommend coordination strategies, and suggest responsibilities and a timeline for implementation.

As part of the plan, the legislation requires the task force to define the public needs for higher education through analyses of state demographic, economic, and educational attributes, and to examine how the higher

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“While the Illinois economy is stronger than those of many upper Midwestern states, it has some clear weaknesses. Particularly noticeable is the region-to-region variation and the dependence on established companies, rather than emerging companies, for its economic vitality. Illinois is very much in the middle of the pack with regard to innovation assets. Illinois universities are in the top 10 states in all major fields with regard to research and development expenditures, with particular strength in math and computer science. This has not translated into entrepreneurial activity that is driving a revitalized economy.”

- The National Center for Higher Education Management Systems’ summary observations and findings regarding public needs

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education system currently meets the public needs. The National Center for Higher Education Management Systems (NCHEMS) has been providing data to the task force regarding Illinois' population growth, demographic shifts, future workforce needs, and Illinois' standing in relation to the rest of the country on several key benchmarks to help identify the public needs and how the state is meeting them.

The task force, composed of four legislators and twenty gubernatorial appointments nominated by the IBHE, is currently working on the plan and has been holding public hearings to solicit feedback. A preliminary report is scheduled to be released in August with the final report to be delivered to the General Assembly and governor in October.

### **Kentucky Double the Numbers (2007)**

The Kentucky Council on Postsecondary Education released *Double the Numbers: Kentucky's Plan to Increase College Graduates* in October 2007. The plan, aimed at refocusing goals and renewing commitments to achieve the national average in quality of life by 2020, is a follow up to the council's 2005 strategic plan and the 1997 Kentucky Postsecondary Education Improvement Act. *Double the Numbers* concluded that the Kentucky is not catching up to the national average in quality of life quickly enough and argues that increasing the number of college degrees is the quickest way to increase quality of life. Thus, the plan focuses on increasing bachelor's degree production and offers five strategies to double degree production in order to achieve the 1997 goals. The strategies include:

- Raising high school graduation rates and the number of students continuing to postsecondary education through intervention programs to reduce dropouts and increasing opportunities to earn college credit during high school
- Increasing the number of GEDs awarded and the number of GED graduates continuing on to college
- Enrolling more community college students and enhancing services aiding transfer to four-year institutions
- Increasing the college-going and graduation rate through outreach, improved financial aid, and alternative methods of program delivery
- Attracting more college-educated out-of-state workers.

The council has also focused heavily on adult learners with previous college experience, and at the end of 2007 launched Project Graduate. The project encourages former students who are just shy of degree requirements to return and finish their degrees. It includes outreach programs, counselors, and web sites to make the process easier for former students.

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"We've absolutely tweaked a nerve. We had no idea how positive the response would be."

- Brad Cowgill, former director of the Kentucky Council on Postsecondary Education, on the success of Project Graduate

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### **University of North Carolina Tomorrow (2007)**

The University of North Carolina Tomorrow Commission released its final report in December 2007. The final report identified several challenges facing the state and high-

lighted the role of the university and its campuses in addressing them. The challenges included:

- North Carolina's global readiness
- Access to higher education
- Improving public education
- The economic transformation of North Carolina and its communities
- Public health
- The environment
- The university's outreach and engagement

In light of state needs, the report offered several suggestions, the first of which was that the university examine and adjust its constituent campuses' missions to ensure that their programs serve the state and regions and that the campuses maximize resources without unnecessary duplication. Regarding faculty and staff, the commission recommended that the university plan for the wide-scale faculty retirement that will be taking place in the near future, increase efforts to attract and retain high-quality faculty and staff, and lead campuses in placing a greater value on faculty involvement in applied research and outreach as part of the tenure and promotion process to enhance the state's competitiveness. The commission also suggested that the university continue establishing accountability and performance measures to gauge success.

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“In many instances, it is proficiency with the soft skills, along with the ability to think innovatively and creatively, that will carry students from one job or career to another. The technical skills required of students are changing so rapidly that we are preparing students today to work in jobs that do not yet exist, with technologies that have not yet been invented, to solve problems that are still unknown.”  
- University of North Carolina Commission final report

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The university had put its long-range planning process on hold while the commission conducted its work and is planning to review the commission's recommendations for incorporation into its plan. The university-wide plan will also inform campuses' responses to the commission's recommendations.

### **Virginia HB 1124**

In 2006, the Virginia General Assembly authorized management agreements between the commonwealth and Virginia Tech, the College of William and Mary, and the University of Virginia that provided them with Level 3 status, which offers a high level of autonomy in operations for the institutions.

In the 2008 session, the legislature unanimously approved a similar four-year management agreement with Virginia Commonwealth University (VCU) to provide it with Level 3 status and allow it more flexibility in capital projects, leases, procurement, human resources, information technology, and finance and accounting, including control over tuition and fees. The agreement can be extended, modified, or terminated by the governor or General Assembly.

In exchange for the flexibility, the management agreement calls for the institution to meet 12 goals relating to maintaining affordable access for all residents, including community college transfers, improving Virginia's economic development, meeting the

commonwealth's professional and geographic needs, improving operational efficiencies, and increasing external research and technology transfer.

In addition to the goals, the agreement contains additional institutional requirements, including requiring the university to implement several new scholarship programs and to match any state research funds allocated above current levels on a one-to-one basis.

However, the agreement does not remove all state oversight of the university. VCU will have to report monthly to state agencies and legislative committee chairs and will have to provide information to the auditor of public accounts. It also does not exclude the university from public information and conflict of interest provisions that pertain to government agencies, employees, and officers.

This session, the legislature offered institutions without Level 3 status additional areas of operational authority through SB 442 and HB 1390. All institution boards can vote to seek memoranda of understanding with the state in two out of the three areas of information technology, procurement, and capital projects. The initial memoranda would be for a three-year term with subsequent terms for five years and the board would have to propose targets for new educational measures to judge the success of the operational authority.

### **Washington Substitute HB 2783**

Finding that the nature of students' paths to and through higher education are changing and that information concerning transfer and articulation policies and processes in the state are insufficient, the legislature passed HB 2783 to require the Washington Higher Education Coordinating Board to form several work groups of education leaders to address these issues. Among them would be a work group to develop a transfer student bill of rights that included student representatives, a work group to develop a plan to monitor the success and progress of transfer students, a work group to provide recommendations for determining how to identify the transferability of a course at the time the student registers for it, and a work group to develop a web-based academic planning tool. The enactment of the bill was contingent upon financing in the 2008 appropriations bill.

However, Gov. Chris Gregoire vetoed the bill. In her veto message, she noted that many of the work groups would be duplicative, but that she would also ask the already existing groups to address new issues raised in the legislation and to bring recommendations to the state's P-20 council.

### **Washington HB 2641**

This bill will create a pilot performance agreement program for the state's four-year public institutions. The program will require each individual institution to work with a state performance agreement committee to jointly develop a six-year plan for the institution. The state committee will be composed of representatives from the governor's office, the office of financial management, the higher education coordinating board, the

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office of the superintendent of public instruction, and members of the House and Senate. The legislature will have to approve the plans, which will also be tied into the statewide strategic master plan for higher education.

The performance agreements will have to address:

- quality, student progress, and articulation outcome measures
- long-term goals and benchmarks for degree production
- the level of resources necessary to meet performance and degree production goals
- diversity indicators
- capital priorities

Institutions would be allowed to negotiate for freedom from some rules governing state agencies as part of the terms of the agreement.

The enactment of the agreements is contingent upon the legislature's appropriated funds and capital budget matching those in the plans. If the funds are less than those called for in the agreements, then the agreements will be redrafted to match the legislative appropriations.

### **West Virginia SB 595**

In 2008, the West Virginia Legislature created Vision 2020: An Education Blueprint for Two Thousand Twenty. The plan focuses on the role of education in economic and workforce development and requires the State Board of Education, the Higher Education Policy Commission (HEPC) and the Council for Community and Technical College Education (CCTCE) to each develop a master plan for their component of education that will be approved by a legislative committee. Each public college or university will also have to create a compact with the HEPC or CCTCE that outlines strategies for meeting the blueprint's goals and how the HEPC or CCTCE can support the institution in that objective, proposes changes needed in the institution's mission to meet the goals, assesses the education needs of the local community, and offers approaches for using existing resources to improve access while controlling costs, among other objectives.

The blueprint created a list of objectives to serve as the highest priorities for public higher education in West Virginia. This includes a state-level facilities plan and funding mechanism (as the state currently has none), increasing the academic rigor of the state's institutions, improving degree completion rates, recruiting more older students for the state's community and technical colleges, and encouraging emphasis on STEM fields.

The legislation also focused on creating an effective accountability system for public higher education that will hold boards and institutions accountable for achieving their goals and objectives. The accountability system will be designed by the HEPC and CCTCE to promote collaboration among the parties responsible for public higher education and collection and distribution of data to inform state-level policy decisions.

Improving access to higher education for rural areas of the state was also addressed through the legislation's establishment of geographic areas of responsibility for the state's regional universities and community colleges. The success of programs in an institution's geographic area of responsibility, as well as the progress towards state objectives, will be noted on a statewide report card to be created by the HEPC. The report card containing trends and progress towards goals will be utilized to inform education policy making.

## P-20 Coordination

### **Illinois HB 1648 (2007)**

This bill creates the Illinois P-20 Council, which will serve as a statewide coordinating council to make recommendations for increasing college access and success, improving accountability, easing the post-secondary transition, and other items. The governor or his or her designee will serve as the chairperson of the council and legislative, business and education leaders, and gubernatorial appointees will serve as voting members. The council will have to coordinate all stages of education, align the high school curriculum with postsecondary expectations, and reduce the need for college remediation, among other duties. It will also articulate a framework for systematic education improvement and serve as an advisory board for state agencies and officials on policies for lifelong learning.

### **Kansas P-20 Council**

Gov. Kathleen Sebelius issued an executive order in March creating the Governor's P-20 Education Council. The council is charged with creating guiding principles and vision and mission statements for the education system, and will develop a plan with benchmarks for reaching the state's vision.

In developing the plan, the council has been asked to focus on standards-based improvement in coherence and coordination among the various departments, institutions, and organizations responsible for P-20 education. It is also been asked to coordinate the implementation of the plan and evaluate it, including the role of funding in program improvement.

The council, which includes gubernatorial appointments from education organizations and the business community, appointments by the boards of education and regents, and ex-officio members, has no deadline for its report to the governor.

### **Maine Advisory Council**

Maine Gov. John Baldacci established the Pre-K Through Adult Advisory Council by executive order in April to recommend a plan to the governor to achieve several goals. The goals are to increase the percentage of Maine adults with college degrees to 30 percent, increase the high-school to college-going rate from 55 percent to 70 percent, better leverage resources, and improve administrative efficiencies. The council, established as a result of a 2004 task force that urged the governor to create an advisory council to establish a collaborative culture among the education sector, includes the commissioner of education, board chairs, chancellors, and presidents of the state's higher education systems, K-12 education leaders, and members of the business community. Recommendations are due back to the governor by January 2009.

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38 states have a combined 40 P-20, K-16, or similar councils, with more than half of those councils being created since 2005. The origin of the councils is roughly equally divided between executive order, legislation, and board resolution or other informal means.  
- The Education Commission of the States

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# Tuition and Finance Policy

## California Proposition 92

California Proposition 92 was voted down in the February primaries, with over 57 percent of voters opposing it. The proposition, entitled the Community College Governance, Funding Stabilization, and Student Fee Reduction Act, would have made several changes to the way in which California's community colleges are governed and funded. It would have outlined the nature of the community college district boards and the Board of Governors of the California Community Colleges in the state constitution, thus superseding the current statutory status of the boards, and increased the size of the board of governors from 16 members to 19 by increasing representation from students, district board members, employees, and faculty. The board of governors would also have been given the authority to hire and fire the chancellor and executive staff. Currently, that authority rests with the governor.

While the governance changes did not generally elicit a strong reaction, the funding changes generated strong opinions, as the state, like many others, faces a looming budget shortage and fierce competition for funds. Proposition 92 would have reduced student fees at California community colleges (which are currently the lowest in the nation) and put a cap on fee increases that would be tied to increases in the cost of living. It would have offset the reduction in student fees through a change in the funding formula for the community colleges that would increase revenue.

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“Proposition 92 requires more state funding and reduces student fees for one segment of higher education without regard to the needs of all of higher education. Since it does not create or identify any new revenue sources, unprotected state programs such as the University of California and California State University would be competing for a smaller share of available state funds.”

- Resolution of the University of California Board of Regents opposing Proposition 92

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Currently, community colleges are funded jointly with K-12 education, with the funding level based upon the number of students enrolled in K-12 education (community college enrollment is not included). The new formula would have left the formula for K-12 intact, but created a separate community college funding formula based upon the number of 17-25 year-olds in the state. The total increase in funding would be capped at 5 percent annually. Currently, the K-12 population is decreasing in California while the population of 17-25 year-olds is increasing, meaning that community colleges would have received approximately \$300 million more in each of the first three years of the new funding formula. In future years, the formula would probably not have been utilized, as a separate proposition mandates that K-14 education receive at least a minimum portion of the state budget (currently about 40 percent) that would have been greater than the proposed formula.

## California Tuition Freeze Initiative

Students & Families for Tuition Relief Now, a student-led ballot initiative in California, is seeking to freeze tuition for five years at institutions that are part of the University of California (UC) or California State University (CSU) and to limit tuition and fee in-

creases to the increase in the Consumer Price Index afterwards. In order to offset the freeze, the initiative is seeking to impose a 1 percent surcharge on incomes of over \$1 million to generate revenue, with 60 percent of the surcharge directed to UC and CSU and the remaining 40 percent going to K-12 education and the community colleges. In addition, as a requirement to receive the surcharge revenue, the UC board would have to establish a College Affordability Funding Accountability Panel that would provide an annual campus-by-campus accountability update to the public regarding how UC and CSU spent the surcharge revenue.

Student organizers are collecting signatures to get the proposal on the November ballot, but an identical bill has also been introduced in the California State Legislature. That bill, AB 2372, is in an Assembly committee.

### **Florida Tuition Surcharge**

Last year, the Florida Legislature allowed some state universities to impose a tuition surcharge outside of the state's Bright Futures scholarship programs. This session, the Senate considered two bills to allow more institutions to impose a tuition surcharge by redefining the surcharge qualification criteria, passing one of them (HB 745). The legislation last year created funding level 1 and funding level 2 criteria, but both bills this year did away with funding level 2 and in its place allowed institutions that have external research awards or externally awarded research contract expenditures of over \$100 million to impose the 30 percent surcharge. The University of Central Florida will qualify under the new criteria and Florida International University would likely qualify within a year.

SB 320, which did not pass, also would have implemented two provisions to improve student efficiencies in completing degrees. First, it would have created a 50 percent tuition surcharge for students who exceeded 150 percent of the required credit hours for a degree. Second, it would have required the department of education to develop performance-based budgeting to reward community colleges that increase the percentage of students that graduate with less than 120 percent of the required credit hours and reduce the number of dropouts.

### **Florida SB 8-C (2007)**

In the Florida Legislature's third special session in October 2007, called largely to focus on Florida's budget crisis, the legislature approved a bill to allow university boards of trustees to impose a technology fee of up to 5 percent to be used to enhance instructional technology resources beginning in the 2009-10 academic year. In the 2008 regular session, the legislature extended the 5 percent technology fee to the state's community colleges through SB 1774.

The 2007 bill also tied tuition increases to the rise in the Consumer Price Index every year for the state's community colleges and four-year universities, unless otherwise noted in the General Appropriations Act. In 2008, however, the legislature agreed with

the board of governors on a 6 percent tuition increase at the state universities.

### **Hawaii HB 2978**

This bill, awaiting Gov. Linda Lingle's action, would establish a funding formula task force composed of university and community college leaders and a legislative appointee to develop a funding formula for the University of Hawaii campuses. The legislation also calls for a consultant to assist the task force in achieving a funding formula that is simple and transparent, linked to full-time equivalent enrollment, recognizes the different student education costs in different types of programs, ensures efficient use of state resources, and recognizes each campus' unique mission. If enacted, the task force would report interim results prior to the 2009 legislative session and final results prior to the 2010 session.

### **Louisiana Tuition Control**

Louisiana is currently the only state for which tuition and fee increases at state colleges and universities require super-majority approval of the legislature. Not surprisingly, as a result public institutions in Louisiana have among the lowest tuitions in the country. In order to increase funding for higher education, the Louisiana Board of Regents is making an attempt this legislative session to gain control over tuition and fee increases for the system boards.

One bill under consideration, HB 734, would allow each board to set resident tuition for its institution(s) for the 2008-09 through 2011-12 academic years. However, tuition and fee increases would be limited to between 3 and 5 percent annually, depending upon how much lower the institution's tuition is than the average of its peers. If the institution's tuition is 0 to 10 percent less than its peers, the tuition increase limit would be 3 percent; 10 to 20 percent less, the increase limit would be 4 percent; and if the institution's tuition is more than 20 percent less than its peers, then the limit would be 5 percent. Tuition increases would have to be approved by the Joint Legislative Committee on the Budget. The bill also requires each management board of a college system to establish a tuition increase waiver policy for hardship cases.

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"No one [in the Legislature] likes to vote for tuition increases. They consider it like voting for a tax. But you have to have adequate resources to provide quality education."  
- Joseph Savoie, Louisiana commissioner of higher education

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The bill originally received majority (but not supermajority) support in the House, and stalled as a result. However, the bill was revived and passed the House with supermajority support on its second try.

A separate bill still under consideration, HB 677, would allow the Louisiana State University Board of Supervisors to impose a \$500 increase in the operational fee on full-time students, with part-time students facing a proportional increase. The fee would be exempted from the state merit scholarship program and would also be waived in hardship cases.

## Maryland Tuition Freeze

The tuition freeze at the institutions that are part of the University System of Maryland will continue for a third straight year, as state appropriations increased 9.4 percent to offset a loss of increase in tuition revenue.

## North Carolina SB 1065 (2007)

This legislation will allow community colleges to seek approval from the State Board of Community Colleges to implement a tuition surcharge of up to one-third of the statewide tuition rate in order to fund new instructional programs that are necessary to bring industry to the area. The tuition surcharge will only apply to students enrolled in the new programs.

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“We realize that these are economically uncertain times for many Maryland families. In fact, we are serving more and more students who are first-in-family to attend college and for whom cost is a major factor in their decision to complete their degrees or to apply at all. Moderating tuition increases is key to ensuring access to opportunity and a better quality of life for all Maryland citizens.”

- Clifford M. Kendall, chair, University System of Maryland Board of Regents

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## Oklahoma HB 3397

The Oklahoma Legislature passed an update to HB 2103 of 2007, which required two and four-year institutions to provide a guaranteed tuition option to students starting in the fall of 2008. HB 3397 will relieve community colleges from having to offer a guaranteed tuition rate.

## On the Radar...

Performance funding is likely to be a hot topic in the near future as states look to quantify the results of their investment in higher education. **Arkansas** Governor Mike Beebe said this spring that he wanted to develop a new funding formula for the 2009 legislative session that links a portion of state appropriations to retention and graduation rates. Since then, the Arkansas Higher Education Coordinating Board has approved changes to the funding formula, tying 10 percent of funding to students completing their semester coursework. The remaining 90 percent of funding will still be based upon student enrollment at the beginning of the semester. The change had the endorsement of the governor, but whether he will make additional changes next year is unknown.

**Michigan** Governor Jennifer Granholm has also been a proponent of performance funding, although it is still too early to tell if any of her proposals will pass the legislature. Her budget proposal called for appropriations increases to be distributed based upon degree completion, low-income enrollment, and research and technology transfer. An additional factor in determining increases in her proposal was to reward institutions more heavily for producing graduates in STEM and health-related fields, such as nursing.

Other states in the early stages of discussions regarding performance funding include **Louisiana** and **Texas**.



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