

# State Governance Action Report 2011

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Ingram Center for Public Trusteeship and Governance



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## Introduction

The content of this edition of the State Governance Action Report was informed by newspaper reports, online reports, state and institutional Web sites, and conversations with state and higher education leaders. It is current through February 1, 2011. Much of this legislative activity comes at a time when the fiscal conditions of states are reaching their trough. Ramifications of budget cuts from the last two fiscal years have had a direct bearing on many of the proposals and developments described in this report, and it is likely that further changes will occur as states look to reduce spending and streamline government operations.

Activities in the states mentioned within this report revolve around several issues, but most prominent are the inter-related themes of:

1. budget reductions for higher education;
2. the pervasive emphasis on degree production and college completion; and
3. redefined relationships between higher education and state government as seen in:
  - structural governance changes;
  - efforts to expand institutional autonomy and fiscal flexibility, especially around tuition setting authority; and
  - an emphasis on funding institutions based more on college completion and less on enrollment and capacity-building.

The current recession continues to be the worst economic downturn since the Great Depression. Referencing the biannual report *[The Fiscal Survey of States](#)*, released on December 1, 2010, by the National Governors Association (NGA) and the National Association of State Budget Officers (NASBO), NGA Executive Director Raymond Scheppach predicts that state revenues will not return to 2008 levels until 2013 or 2014. With many budget pressures, including but not limited to Medicaid, pension obligations, deferred infrastructure investments, and assistance for unemployed persons, discretionary funds such as those for higher education are taking a major hit.<sup>1</sup> According to AGB's October 2010 *[Survey Report on the Financial Conditions of Public Institutions and University Systems](#)*, respondents in 30 states reported three rounds of cuts (cuts from fiscal year 2009 to fiscal year 2010, mid-year cuts in fiscal year 2010, and predicted cuts for fiscal year 2011). With the absence of stimulus funds, and overall enrollment increases to accommodate demand, state support per student is declining significantly. For many states, private support (tuition and fees from students) now constitutes a greater share of financing than public support (state appropriations). Although raising tuition is the primary means to generate revenue and replace lost appropriations, concerns continue to emerge regarding its effect on affordability and student retention.

Aligned with last year's observations, the 2010 legislative cycle and the 2011 fiscal year have prompted increased state action regarding degree productivity and attainment levels. Degree completion is a major initiative in the several statewide plans and commissions described in this report. Guided by the work and momentum of Complete College America, Lumina Foundation, Gates Foundation, Common Core Standards Initiatives, the Southern Regional Education Board, the College Board, the National Association of System Heads, as well as President Obama's call for America to lead the world in college degree attainment, state and higher education leaders are striving to reduce costs, increase degree productivity, and strategically align academic opportunities with workforce-development goals. In

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<sup>1</sup> *State Outlook: Fiscal and State Policy Issues Affecting Postsecondary Education*. American Association of State Colleges and Universities. November 2010.

February 2011, the 50 governors will convene in Washington at the winter meeting of the National Governors Association around the 2010-11 NGA initiative, “Complete to Compete,” a year-long effort on higher education productivity, college completion, and degree attainment. This will likely prompt continued attention in the states regarding college completion.

Higher education governance changes are also on the minds of many state officials. While the statewide coordinating agency is being reinvigorated in Arkansas, other possible changes include the creation of a coordinating board in Oregon and the elimination of one in New Jersey. In Washington, the governor has proposed a merger of the state’s K-12 and higher education agencies. In Connecticut, the existence and costs associated with CSUS’s central office have also posed lively governance discussions.

Spurred by spiraling fiscal conditions, some university systems and institutions are advocating for greater autonomy and flexibility to promote efficiencies that will save time and money while increasing access. With a realization that reduced funding levels and budget cuts will continue, colleges and universities advocate for regulatory relief. Public systems and institutions have pursued (or are pursuing) deregulation of tuition, operations, capital outlay, procurement, and human resources. The most interesting or prominent proposals are in Louisiana, New Jersey, and Oregon. With declining resources and state and higher education agendas promoting degree completion prominently, state funding models are becoming more performance-based. Developments in this area began in Ohio and Indiana; other states attempting to move in this direction are Illinois, Nevada, and Virginia.

In the November 2010 midterm elections, higher education was a major topic in many state political campaigns, most visibly in gubernatorial races. Colleges and universities are seen as economic drivers having a direct impact on economic and workforce development. Despite the economic downturn and the possibility of dramatic cuts to higher education, many governors (27 of them new as of this January) and state legislators are talking about the contributions of higher education to their state’s intellectual capital.

In addition to the activities of the National Governors Association, the National Conference of State Legislatures reports in their *Top 11 Issues* that “redesigning higher education” is ranked as number five among state legislative issues for the 2011-2012 biennium. Looking ahead, governors and legislatures will press for change in public higher education around achieving statewide goals.

The following summary and analysis of the issues, developments, and proposals percolating in several states is not intended to be comprehensive, but nonetheless provides a near complete view of higher-education-governance policy in the states.

## Developments, Proposals, and Legislation

### *Commissions and statewide-planning initiatives*

At least 10 states have established special commissions or statewide strategic planning groups. **California** and **New Mexico** are currently developing state master plans, while **Colorado** and **Illinois** are working on implementing the recommendations from a recent strategic plan and a public agenda for college and career success. A special task force in **New Jersey**, and special commissions or advisory committees in **Arkansas**, **Connecticut**, **Texas**, **Utah**, **Vermont**, and **Virginia**, are considering how to improve access and productivity in higher education, while simultaneously addressing workforce needs. Additionally, governors in **Maine**, **Missouri**, **North Dakota**, and **Ohio** proposed how they might address the needs of public higher education in their states. And bringing all the pieces together, a legislators' retreat in **North Carolina** educates lawmakers about pertinent public policy issues in higher education.

In October 2010, the University of **California's** [\*Commission on the Future\*](#) released its draft of recommendations to the University's Board of Regents. Some questions the commission considered included: how to teach more students with fewer state-provided resources; how to reach out and connect with rising immigrant and minority populations; how to ease the pressure of unrelenting population growth on the environment; and how to continue to create and attract new industries and jobs for the state. The recommendations gaining the most attention include reducing time to degree, modifying transfer policies, and creating an online pilot program (cyber campus) where all courses in certain disciplines could be taught online. Additionally, the report addresses some of the major fiscal challenges facing the system, one being "growing unfunded liabilities for retiree pension and health benefits." Issues surrounding costs and investments in pension programs have come to the forefront in recent weeks, as many executives have threatened to sue the UC system if their pension plans are not increased. UC President Mark Yudof and Chairman of the Board of Regents Russell Gould have noted that the 1999 board policy, which the executives cite, does not entitle them to higher pensions. However, many executives are pressing forward, asking for pension increases to be retroactive to 2007; it is reported that this would cost the system \$51 million. If executives win and pension increases are implemented, it could cost the system \$5.5 million per year.

California is updating its statewide *Master Plan for Higher Education*. In a September 2010 letter, the [Joint Legislative Committee](#) on California's Master Plan for Higher Education acknowledged the 50<sup>th</sup> anniversary of the plan, while stating two objectives for the new plan: "to generate and energize a broad public dialogue regarding the future of higher education in California; and to conduct a comprehensive needs-based assessment to determine what our people and our state require of our higher education system." In one year, the 2010 joint committee came up with the following preliminary findings: a need for agreed state goals for higher education; universal access for all students who desire a postsecondary or higher education credential; expanded financial aid and affordability; educational quality assurances; greater preparation for workforce development; effective articulation and coordination; accountability (fiscal and programmatic); and sufficient funding to meet state goals and institutional missions. Through [Assembly Concurrent Resolution 184](#), the work of the joint legislative committee will continue through November 30, 2012.

In April 2010, **New Mexico's** Higher Education Department (NMHED) also began the process of drafting a new master plan, [Building New Mexico's Future: A Master Plan for Higher Education in New Mexico](#). The process was guided by questions such as: what are the strengths and weaknesses of the current postsecondary education system and how can higher education make greater contributions to the citizens of the state? The idea is that this plan will provide guidance for both public and private institutions. Its development included input from various stakeholders: faculty, students, institutional presidents, governing boards, business and industry leaders, legislators, and representatives from other state agencies.

Upon receipt of policy concerns facing postsecondary education, issue papers were written and distributed to inform hearings that constituents attended. The five issue papers focused on governance, funding models, seamlessness (PK-20 education), equity and access, and the state's economy. The governance-issue paper raised several questions related to organizational structure, the different support needed for two- and four-year institutions, and whether a multi-tiered governing "system," which would oversee the activities of universities and community colleges, should be considered. Dr. Viola Florez, cabinet secretary of higher education, led planning efforts and submitted a draft report in November 2010. As stated, some of the recommendations include a legislatively established PK-20 Council; increasing need-based aid for low-income students; creating a statewide longitudinal data tracking system; attracting more adult workers to enroll in college or to return to complete their degrees; and establishing a statewide plan for economic development.

In **Colorado**, outgoing Governor Bill Ritter received recommendations from his Higher Education Strategic Planning Steering Committee. The committee presented [\*The Degree Dividend: A Strategic Plan for Higher Education in Colorado\*](#) in November 2010. The committee was established in 2009, when Governor Ritter articulated his commitment to improving higher education. The committee's work details significant declines in state investments for higher education. Simply put, the plan states that Colorado is at risk of not producing enough college-educated citizens to sustain workforce needs and that this risk could have a negative effect on business and industry. The committee also recommended higher statewide taxes on income, property, and sales to support higher education. (Currently, Colorado ranks 49th for funding per full-time equivalent student.) If this tax recommendation gains support, it will appear on ballots in November 2011. Although Governor Ritter established the Higher Education Strategic Planning Steering Committee, the newly elected governor, John Hickenlooper, will move the plan forward.

In **Illinois**, pursuant to a senate joint resolution, the Higher Education Finance Study Commission recently released the December 2010 [\*Illinois Public Agenda for College and Career Success\*](#). The 23-member commission was convened by the Illinois Board of Higher Education. Over a five-month period, the commission considered higher-education funding levels and degree productivity as compared to peer states, incentives for degree completion and/or postsecondary credentials, tuition and financial aid policies, and initiatives to promote degree completion among underserved populations. From these core areas of study, several recommendations were developed. First and foremost, the commission recommends "ensuring adequacy and predictability of higher education revenues." Illinois has fallen significantly behind regarding state payments to public colleges and universities. The lack of appropriations provides major planning challenges and has resulted in tuition and fees increases. An interesting point of consideration is that while leaders are considering this recommendation, some public universities in Illinois are still waiting for payments from the state for the 2011 fiscal year, which began July 1, 2010.

Additionally, the commission also encouraged a reduction of unfunded state mandates to promote efficiencies. For example, the elimination of mandates regarding state university retirement system contributions (six-percent rule), construction administrative fees, and veteran grants/waivers could save over \$50 million. Another recommendation promotes performance-based funding instead of funding based on enrollment. The following principles would be used to measure performance: encouraging the enrollment of at-risk students; differentiating between institutional missions; tying some level of funding to completion; and demonstrating educational quality. It is also a recommendation of the commission to "alter the state's current financial aid policy to ensure that affordability goals are met, particularly for the most vulnerable students." The state's financial aid program is underfunded and the number of eligible participants is increasing. The commission considered various approaches to address issues of student access and success. Many of these methods connected financial aid to increased access and degree

completion. The commission's *Public Agenda* was submitted to Illinois Governor Pat Quinn and the Illinois General Assembly.

In **New Jersey**, by [executive order](#), Governor Chris Christie established the New Jersey Higher Education Task Force. The task force studied many aspects of higher education, including how to improve New Jersey's capacity to serve students. Currently, New Jersey loses more in-state students to out-of-state colleges and universities than any state. Christie appointed former New Jersey Governor Thomas Kean to chair the task force, which submitted a [final report](#) of recommendations to Governor Christie in December 2010. Final recommendations became available on January 4, 2011.

Among over 70 recommendations, the report addresses current governance structures (particularly statewide coordination and oversight, institutional autonomy and flexibility, access and affordability, public-private partnerships, medical education, capital investments, and workforce needs). The recommendations prompted [new executive orders](#) that will establish a Governor's Higher Education Council, which would be led by a secretary of higher education, and a newly created advisory committee to provide recommendations for graduate medical education. Although the task force recommendations call for the [New Jersey's Presidents' Council](#), leaders from over 50 public and private institutions, to remain intact, it is likely that the aforementioned initiatives will prompt follow-through on a task force recommendation to eliminate the state Commission on Higher Education, the current state coordinating agency.

Another recommendation relates to a previous proposal to merge Rutgers University in New Brunswick with the Robert Wood Johnson Medical School and the School of Public Health of the University of Medicine and Dentistry of New Jersey. (Plans to merge these institutions were also considered in 2003 and 2006.)

Regarding institutional governance, and with the exception of Rutgers, the report states that public colleges and universities should initiate the trustee nomination process by reviewing candidates and presenting them to the governor for approval and confirmation. Additionally, the report states that all boards of trustees should establish audit committees, appoint internal auditors, and engage in annual audits conducted by external persons. This language is similar to [legislation](#) enacted in the closing days of Governor Jon Corzine's administration, aimed at ensuring accountability and transparency. The legislation mandates that governing boards of public research institutions and state colleges and universities establish audit committees and adopt codes of conduct.

One victory for the Presidents' Council came in the form of a task force endorsement of their report, *Regulatory Relief and Unfunded Mandates*. Recommendations encourage the legislature to change worker compensation, collective bargaining, and civil service status for state college employees.

In **Arkansas**, and through a new study developed as a result of participation in Complete College America, the National Center for Higher Education Management Systems (NCHEMS) released the report, [Increasing the Competitiveness of the Arkansas Workforce for a Knowledge-Based Economy: How do Current Higher Education Policies Help or Get in the Way?](#), funded by the Winthrop Rockefeller Foundation. Many of the proposals relate to how the state can increase the population of persons with higher education degrees and postsecondary certificates, and how the state can reward institutions that focus on degree productivity, especially those investing in programs that align with state workforce needs. The funding formula would change to fund institutions based on both completion and enrollment. The report also calls for reduced remedial courses, adding that this is costly to limited state resources for education. Together, many of the report's proposals aim to align with Governor Mike Beebe's plan to double the number of college graduates by 2025 and increase funding for higher education by one percent this fiscal year.

It is important to note that this report also calls for stronger, more effective statewide coordination of higher education in Arkansas. Currently, the Arkansas Department of Higher Education is responsible for implementing the policies of the Arkansas Higher Education Coordinating Board. As called for in the report, the department needs more authority to mandate changes that will promote statewide goals and an overall public agenda for higher education. Currently, the department must seek consensus from institutional presidents regarding policy decisions before making recommendations to the board for final approval.

In **Connecticut**, a bi-partisan [Legislative Oversight Committee](#) also examined higher education governance and administrative functions of the Connecticut State University System (CSUS). In addition, the committee reviewed how strategic approaches for cost savings have been implemented across the system. The [final report](#) was released in December 2010 and recommended system personnel restructuring, noting that the system did not need more central office employees and going so far as to note that CSUS could operate without a central administrative office. Although it is unlikely that the office will be abolished, half of all system staff positions could be eliminated.

Additionally, on December 13, 2010, Governor Jodi Rell's appointed working group also released its [report](#) on CSU. Brenda Sisco, acting secretary of the Office of Policy and Management, chaired the group. As with the legislative committee's report, the working group recommended abolishing the system office, which governs four campuses. The report also stated that salary increases and personnel/administrative decisions have caused the system office to spend beyond its means. Although former Governor Rell proposed that the system office be eliminated in her [FY2012 - FY2013 Biennium Tentative Budget](#), the newly inaugurated governor, Dan Malloy, inherits this decision and the findings of both reports.

In **Texas**, through a 2009 [executive order](#), Governor Rick Perry directed "the Texas Higher Education Coordinating Board (THECB), in cooperation with Texas public institutions of higher education, to undertake a broad and comprehensive review of system-wide opportunities for cost efficiencies." To gain a variety of perspectives, THECB named an [Advisory Committee on Higher Education Cost Efficiencies](#). This 20-member committee, composed of education and business leaders, took on this directive. In August 2010, the committee released a draft report and in November 2010 a [final report](#) was submitted to the governor. One of the core recommendations was to tie state funding to degree completion and student retention, as opposed to traditional practices of funding for enrollment. The committee recommended that the legislature move the Performance Incentive Fund (PIF) into the university Instruction and Operations (I&O) formula using the THECB's recommended outcomes-based methodology. The committee also recommended that the legislature fund programs that will result in significant research dollars. Several short- and long-term goals were proposed, and officials will monitor the impact of these recommendations and present an analysis of results by January 31, 2011.

In **Utah**, [Governor Gary Herbert's Education Excellence Commission](#) reported in October 2010 that Utah must dramatically increase its population of adults with college degrees and certificates by 2020. The 25-member commission of higher education and K-12 leaders has met monthly since April 2010. Recommendations included statewide education reform and long-range planning, advocating that 66 percent of adults should have higher education degrees or postsecondary certificates; currently, 48 percent have these credentials. The commission called for aligning education with economic and workforce development initiatives, funding institutions based on mission achievement, and capitalizing on technology infrastructure.

In December 2010, the Utah Board of Regents approved the [Higher Ed Utah 2020 Plan](#). The recommendations include increasing need-based aid, expanding online courses, the integrating technology into instruction, and fully-capitalizing on the capacity of community colleges. Ultimately, the plan aims

to increase the percentage of adults with degrees or credentials. Utah is emphasizing the importance of connecting higher education and business/industry to meet state workforce needs. While the governor considers all the recommendations provided, institutional presidents are reviewing the new plan and establishing priorities for their respective colleges and universities.

In **Vermont**, a proposal, [Compact with the State of Vermont](#), was released by legislators and higher education officials. The “compact,” written by the Advisory Commission on Higher Education Funding, focuses on degree attainment, calling for an 18 percent increase in the percentage of adults with a two- or four-year degree by 2019. Additionally, leaders addressed state funding issues for higher education. Leaders considered how to increase funding in the midst of difficult financial conditions.

**Virginia** is also working on strategies to boost degree productivity while examining ways to fund public higher education. Through [executive order](#), Governor Bob McDonnell established the Commission on Higher Education Reform, Innovation, and Investment, a 44-member group that includes presidents, legislators, and business leaders. After meetings focusing on economic opportunity, reform-based investment, and affordability and access, the commission proposed several action goals, some of which the governor pledged to introduce during the January 2011 General Assembly session. An example is the [“Preparing for the Top Jobs of the 21<sup>st</sup> Century: Virginia Higher Education Opportunity Act of 2011”](#), which will commit the Commonwealth to 100,000 additional degrees over the next 15 years.

To spur economic opportunity, the commission recommended reviewing academic degree programs by market demand and earning potential, and by establishing public-private research initiatives. As issues of affordability remain concerns for everyone in education, the commission recommends increasing need-based financial aid; establishing a “rainy-day” fund was also proposed to cushion budgets during tough economic times, thus reducing the likelihood of dramatic tuition increases that affect affordability. In his State of the Commonwealth Address, Governor McDonnell stated that he will seek a minimum of \$50 million in new funding, which will be directed toward increasing college access and affordability, addressing the major goal of increasing the number of Virginians with bachelor degrees, including a push in STEM fields, and aligning K-12 curriculums with college-readiness standards, thus cutting down on remediation which can be costly to the state. It is also possible that the Virginia State Code could be modified to establish a new funding formula, one that would account for revenue shortfalls and prevent subsequent, drastic increases in tuition and fees.

Commission governance and restructuring refinements include institution performance strategies “with appropriate participation by executive, legislative, and institutional representatives.” Reports state that institutional performance metrics and corresponding incentives should be:

- revised and “tailored to specific outcomes on state policy priorities, especially those related to economic impact and innovation”; and
- the product of an “executive-legislative-institutional working group to reduce costs and enhance efficiency by increasing managerial autonomy with accountability at the institutional level.”

In **Maine**, debate raged over the increasing costs of higher education and the ability of institutions to meet their public purposes. Governor-elect Paul LePage called for leaders at four- and two- year institutions and K-12 officials to “sit-down” and discuss what factors are driving revenues and expenditures.<sup>2</sup> LePage is pushing a five-year high school plan that would encourage students to attend high school an additional year while earning an associate’s degree. This plan stems from concern that community colleges are at maximum capacity and that universities may be out of reach for some as tuition has increased at twice the rate of inflation. Although LePage is not certain how much funding higher education will receive from

<sup>2</sup> Shepherd, Michael. “Gov.-elect LePage Discusses Plans for Higher Education.” *The Free Press*. November 13, 2010.

the February 2011 budget process, he affirms that postsecondary education is a priority on his agenda. In **Missouri**, Governor Jay Nixon stated his expectations for fiscal year 2012 at a Higher Education Summit hosted by his administration. Facing a budget deficit, the governor's biggest concerns for higher education relate to funding and statewide collaboration. The governor wants more emphasis placed on institutional missions and performance. He went on to state the need for "a multi-year, sustainable funding model that strikes the right balance among state budget appropriations, tuition and [institutional] cost reductions."<sup>3</sup> In addition, and with emphasis on the benefits of cooperation, the governor called for greater administrative efficiencies and sharing of services to achieve economies of scale. He asked leaders to consider this approach for academic programs, citing the sharing of faculty among institutions as one cost-saving measure. Nixon's adoption of the new Common Core Standards for English and math will also allow the administration to focus on high school completion, college readiness, and degree completion. Aiming for significant growth by 2025, the governor announced his goal of increasing the percentage of adults with college degrees from 37 percent to 60 percent.

**North Dakota's** Governor Jack Dalrymple is also aiming to tie a certain percentage of state appropriations to outputs such as graduation rates and the number of transfer students completing their degrees at four-year institutions. It is likely that Governor Dalrymple will propose the creation of a commission on higher education to coordinate these efforts. As the governor continues to develop possible campus performance measures, he will collaborate with the Board of Higher Education and institutional leaders.

In **Ohio**, Governor John Kasich has raised speculation about whether higher-education reforms launched in 2007 by former Governor Ted Strickland and his appointed chancellor, Eric Fingerhut, will continue. These reforms include a [10-year strategic plan](#) that emphasizes degree productivity, system collaboration instead of institutional competition, and performance-based budgeting. As stated in the plan, the focus is on graduating more students, keeping more graduates in Ohio, and attracting more degree holders from out of state. To accomplish these goals, the plan calls for more state funding and a commitment to offering core degree programs at regional- and community-college campuses to improve access for nontraditional students. A significant goal for the system is to make core associate- and baccalaureate-degree programs available within 30 miles of every Ohio resident. Overall, the plan calls for increasing statewide enrollment by 230,000 students in 10 years, a 49 percent increase. Through programs like [Seniors to Sophomores](#), in which high school students spend their senior year on a college campus free of tuition and then enroll in college the following year as a sophomore, enrollments have increased. Institutions in the system have a list of 20 measurements on access, quality, affordability, and efficiency to gauge their progress toward goals for 2017.

In **North Carolina**, in an effort to build a greater capacity for higher education issues in the state, a recent [legislators' retreat](#) focused on pertinent public policy issues and urged many legislators to invest sufficiently in public higher education. Since reports provide that future budget reductions and cuts may be unavoidable, speakers and participants discussed measures to provide relief for institutions. Former governors Jim Hunt and James Holshouser articulated the importance of governors and legislators working together to progress public higher education. This eighth annual legislators' retreat was sponsored by the James B. Hunt, Jr. Institute for Educational Leadership and Policy.

### *New efforts for deregulation and autonomy*

Higher education sees deregulation and autonomy as the means to achieve efficiency and economies of scale, while many state leaders see stronger state oversight, cost control, and centralization as the means.

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<sup>3</sup> Office of Missouri Governor, Jay Nixon. Gov. Nixon's remarks at Higher Education Summit. August 17, 2010. [http://governor.mo.gov/newsroom/speeches/2010/education\\_summit.htm](http://governor.mo.gov/newsroom/speeches/2010/education_summit.htm).

Some would categorize this as a tension between market forces and central planning, arguing that a better balance is needed between the two. The financial crisis could be the catalyst that brings that balance.

Several states are considering similar proposals regarding operational controls, whether separate from, or in combination with, granting greater tuition flexibility. Dramatic efforts have been proposed in **Colorado, Florida, Idaho, Illinois, Louisiana, New Jersey, New York, Nevada, and Oregon**. The outcome of several legislative proposals and developments will depend not only on fiscal and budget conditions, but on the support of the states' governors.

Institutions in **Colorado** focused on [Senate Bill 003](#), the final product of many discussions regarding tuition flexibility, state-operating changes for higher education (fiscal rule changes), and the identification of alternative revenue sources. The state passed this legislation to provide public colleges and universities with tuition flexibility, up to 9 percent in increases per year.

In **Florida**, there is an issue over which entity—the legislature or the Board of Governors (BOG)—has the prerogative to set student tuition and fees at the state's 11 public colleges and universities. In December 2010, Chief Circuit Judge Charles Francis [ruled](#) that the legislature (not the Board of Governors) has the authority to set tuition. The ruling was in response to a lawsuit by former governor and U.S. Senator Bob Graham, who argues that the BOG should have the authority to set tuition because this practice would lessen the politics associated with tuition levels. The BOG was created in 2002 by an amendment to the state's constitution: "At issue [is] whether the state constitutional amendment voters adopted in 2002 to establish the Board rescinded the Legislature's power for setting tuition and fees and transferred it to the board."<sup>4</sup> It is likely that this court decision will be appealed in the First District Court of Appeals and could eventually make its way to Florida's Supreme Court.

While the legislature may set overall tuition guidelines, the Florida Board of Governors has recently considered [special tuition requests](#) submitted by institutional boards of trustees. For example, the Board of Governors recently approved "block tuition" for the University of Florida, allowing the university to offer a flat tuition rate, instead of charging per credit hour.

In **Idaho**, the legislature passed and Governor C.L. Otter signed legislation providing regulatory relief in procuring equipment and bidding on capital projects. [House Bill 688](#) simplifies purchasing processes for public colleges and universities for a three-year "test" period. This new flexibility takes the state Department of Administration out of the design and construction equation regarding purchases and contracts. During this period, the state Board of Higher Education will oversee these transactions.

Officials in Idaho are also considering how to improve tuition policies. In November 2010, [Senate Joint Resolution 101](#) was passed in order to amend the state constitution and enable the University of Idaho to set tuition charges. This resolution amended the constitution to permit the board of regents of the University of Idaho to impose rates of tuition and fees on all students enrolled in the university. At the time the University of Idaho was established, the constitution stated that the university must provide a tuition-free education to undergraduate students. The university could charge fees, but they could not be put toward faculty and staff salaries. The constitutional amendment was enacted to allow the University of Idaho to charge tuition, thus providing additional revenue to the institution.

Idaho officials also created a Higher Education Stabilization Fund. [House Bill 544](#) created this "rainy-day" account to aid public colleges and universities during times of state funding shortfalls and subsequent budget cuts. Initial revenue for the fund will come from interest on tuition and fees.

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<sup>4</sup> Kallestad, Brent. "Judge: Legislature has authority to set tuition." The Miami Herald. December 30, 2010.

Deteriorating financial conditions in **Illinois** resulted in budget-allocation problems for higher education. As a result, [Senate Bill 642](#) was enacted, allowing public colleges and universities to borrow against outstanding receivables from the state. Institutions needed this borrowing ability as they were not receiving appropriations or being reimbursed by the state for expenses incurred, creating institutional cash flow problems. Prior to the enactment of this bill, institutions were only permitted to borrow for capital projects; now, they are permitted to borrow for operations, as well. With future revenues as collateral, particularly tuition and fees, this borrowing capacity has allowed institutions to obtain much-needed funds to pay employees and maintain operations.

In **Louisiana**, hot-button issues are centered around system and institutional autonomy and flexibility. In June 2010, Governor Jindal signed [House Bill 1171](#), the Louisiana Granting Resources and Autonomy for Diplomas Act (LA GRAD Act). The LA GRAD Act connects performance to autonomy, allowing some institutions operational flexibility. To benefit from the LA GRAD Act, institutions must commit to specific performance objectives included in contracts with the Louisiana Board of Regents (BOR, the statewide coordinating authority). Performance targets relate to degree productivity, annual financial audits, and organizational data for evaluations of efficiencies. The BOR will assess each institution's progress and submit an annual report to the legislature. At the end of the six-year test period, a comprehensive review of each institution's efficiency status will be examined. If these new performance contracts are found to be beneficial (to both institutions and the state), the Joint Legislative Committee on the Budget can recommend that these performance contracts be renewed. *Note: As a result of new tuition flexibility, most institutions raised tuition an additional 5 percent for academic year 2010-2011.*

Additionally, on January 31, 2011, during a statewide conference led by the Louisiana Board of Regents, Governor Jindal released his [legislative package](#) for public higher education. This includes expanding the scope of the LA GRAD Act as well as the key components listed below:

- redefining the state funding formula for colleges and universities, with consideration given to funding levels at peer institutions;
- allowing carry-over budget authority and the ability of institutions to reinvest funds that are not spent during the fiscal year;
- providing flexibility regarding procurement processes, human resource management, and capital building projects;
- charging students based on credit hours—if students enroll in more than 12 credits (full-time enrollment), they would pay for those credit hours;
- standardizing tuition levels (across the board) at all community colleges, replacing the practice of newer institutions charging higher tuition; and
- indexing operational fees to align with tuition. Currently, this is fixed at 4 percent of 2004 tuition levels. The new plan would increase operational fees as tuition is increased.

Governor Jindal will present his plan to the legislature on March 11, 2011.

Also in Louisiana, a new group was recently incorporated to advocate for more autonomy for Louisiana State University (LSU). The [Louisiana Flagship Coalition](#) is advocating for LSU to have greater autonomy regarding civil service regulations, purchasing, and procurement regulations. LSU would also be able to implement a “flagship fee” in addition to tuition and fees. The coalition states that their proposed levels of autonomy will save \$50 million over the course of five years. If LSU's plans to gain its own autonomy are legislated, it is unknown how this might affect other LSU system institutions and other institutions and university systems in the state.

In **New Jersey**, it is notable that leaders of the New Jersey Association of State Colleges and Universities proposed a [new model](#) for financing the state’s public colleges and universities. The 2010 paper, [A New Model of Financing Public Colleges and Universities](#), emphasizes access for middle-income students and “proposes creation of new public service corporations not only as a means of generating new revenue to replace diminished state investment, but also as a means of enhancing transparency, accountability and public trust.”<sup>5</sup> These corporations would be publically owned and governed by their own boards of trustees.

In a separate development, Governor Christie signed [Senate Bill 920](#), extending public-private partnerships for institutions of higher education. Amending the New Jersey Economic Stimulus Act of 2009, this legislation permits public institutions to enter into private partnerships related to construction and capital projects. Additionally, these partnerships provide an added benefit by not requiring payment of property taxes—provided the college or university maintains ownership of the property and it is used to further the educational mission of the institution.

The legislature is also considering Governor Christie’s “tool kit” for higher education, legislation that addresses some of the concerns previously listed by the New Jersey President’s Council. As stated in the task force report, the tool kit would eliminate civil service at the state colleges and universities ([S2026/A2963](#); [S2388/A3220](#)) and authorize the state colleges and universities to conduct collective bargaining ([S2026/A2963](#); [S2337/A3219](#)). Additionally, and with the passage of [Senate Bills 1998 and 2067](#), state colleges and universities are now authorized to purchase workers compensation insurance.

In **New York**, during his [State of the State](#) address, Governor Andrew Cuomo called on “higher education to be the key economic driver [in the state],” adding that, “We look to partner with our great SUNY system [State University of New York], especially across upstate New York in making this a reality.” This attention is reenergizing SUNY and encouraging system Chancellor Nancy Zimpher to propose campus competition for state funds, including incentives for demonstrating positive growth in graduation rates and academic program alignment with state workforce needs. After last year’s defeat of Governor Paterson’s *Public Higher Education Empowerment and Innovation Act*, this new and much-needed confidence from Governor Cuomo is reviving hopes that 2011 may be the year that SUNY finally sees investments from the state.

Although the governor’s February 1, 2011, [proposed budget](#) includes a 10 percent budget cut to both SUNY and the City University of New York (CUNY), the governor is considering measures to provide flexibility regarding procurement processes and public-private partnerships.

In 2010, while Governor David Paterson’s legislation for higher education was vigorously supported by SUNY and CUNY, the [Public Higher Education Empowerment and Innovation Act](#) was not enacted. The bill would have allowed SUNY and CUNY to set their own tuition levels (tied to an average five-year inflation index) and set differential-tuition rates by institution or academic program. Equally important, the systems would have been given authority to retain all tuition revenues, which now revert back to the legislature and are then re-appropriated. The bill also contained provisions to give SUNY and CUNY greater freedom in personnel, purchasing, construction, and contracting. For example, the bill would have allowed CUNY and SUNY to enter into joint ventures and public-private partnerships, provided for more flexible use of real property, streamlined campus construction, and eliminated pre-auditing of expenditures. In return, both systems would have promised greater accountability and transparency on expenditures and tuition revenues.

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<sup>5</sup> Greer, Darryl and Michael Klein. 2010. A new model for financing public colleges and universities. *On the Horizon*. v18, n4, pp.320-336.

The *Empowerment Act* would have given SUNY some of the financial stability and predictability that CUNY currently maintains through the [CUNY Compact](#), the university's financial model. As stated, this model "seeks to provide stable funding through a balance of stakeholder responsibilities: public allocations, private philanthropy, operational efficiencies, revenues from increased enrollment and modest, predictable tuition increases to permit families to plan to meet college costs."<sup>6</sup> In its sixth year (fiscal year 2011-12), the CUNY Compact continues to emphasize institutional collaboration and leveraging revenue sources.

In the early part of 2010, the former Governor of **Nevada**, Jim Gibbons, proposed allowing the Nevada System of Higher Education to function in a more autonomous manner. He proposed tuition revenue retention for campuses, a reclassification of university employees from the state to the university system, greater flexibility on building university facilities, and a carry-over of unspent appropriations to the next fiscal year. In return, the governor expected transparency in finances and accountability for results. He asked the system to work with his legislative staff to begin drafting legislation for the 2011 legislative session. Recently inaugurated, Nevada's Governor Brian Sandoval will continue to support autonomy for the system, saying, "I want to give the university system complete autonomy, give it the ability to move away from the state budget plan, give it the independence it needs."<sup>7</sup> Additionally, in a January 8, 2011 article, it was reported that Governor Sandoval might use some property tax revenues to fund public higher education; this will be confirmed in the unveiling of his budget set for January 24, 2011. This proposed measure is in lieu of raising taxes to balance the state's budget. This proposed shift in funds would reallocate revenue from local governments to public universities.

Additionally, the Nevada System of Higher Education's September 2010 plan, [The State and the System Plan for Nevada's Colleges and Universities Combining Excellence and Austerity to Attain Success](#), focuses on how to increase "the number of Nevadans with degrees, certificates, and workforce skills, along with a strong research enterprise, to support the new economy."<sup>8</sup> Some highlights of the report include efforts to reexamine the state-funding model for higher education and student tuition and fees. The system is working with a group of external consultants to examine the funding formula and whether or not it should change to include performance incentives and a shift from sole funding on enrollment to funding on degree completion and other outcomes.

The system also recommends that the legislature create an NSHE Rainy Day Fund, "a combination of state appropriations and unspent end-of-year funds," within the NSHE state supported operating budget. This fund would capture all unspent monies rather than the current practice of funds being reverted back to the state's general fund. Through addressing other policy issues such as administrative and academic effectiveness and efficiency, the system proposes reporting the cost savings of efficiencies related to human resources, payroll, and purchasing, and support services. Common support services include information technology, libraries, and security/campus police services. Overall, the plan calls for "improvements in quality that must lead to both greater efficiencies and enhanced performance that will translate directly to more students graduating with degrees or certificates to build the state's economy."

Another state that includes several major governance proposals is **Oregon**. In December 2010, a [legislative task force](#) in Oregon proposed a state Higher Education Coordinating Commission that would coordinate the work of all public universities while simultaneously providing universities with greater autonomy. This plan is the latest in a series of governance proposals to provide the system and institutions with regulatory relief. The co-chairmen of the legislative task force, Senator Mark Hass and

<sup>6</sup> "CUNY Board Approves Budget Request And New Tuition Schedule Linked to Compact Funding." CUNY Web site, <http://www1.cuny.edu/mu/forum/2010/11/22/cuny-board-approves-budget-request-and-new-tuition-schedule-linked-to-compact-funding/>. November 22, 2010.

<sup>7</sup> Walters, Kendle. "Gubernatorial debates continue to raise education issues." *The Rebel Yell*. November 1, 2010.

Representative Tobias Read, introduced [Senate Bill 242](#) to establish a Higher Education Coordinating Commission with the authority to “coordinate higher education policy with the Oregon University System and community colleges.” This proposed coordinating commission would include 15 members appointed by the governor and would coordinate the seven universities and 17 community colleges.

The task-force legislation also includes several of the recommendations described in the Oregon University System proposal, *Considerations for Change*. The task force bill aims to:

- eliminate expenditure requirements and permit the system to purchase insurance, property, and build facilities without obtaining prior legislative approval; and
- “redefine [the] Oregon University System as a public university system with more authority and independence to manage affairs, operations and obligations.” (This is a change from state agency status to university system status.)

While the Oregon University System (OUS) supports Senate Bill 242, elements of its own proposal, *Considerations for Change*, also made their way into pending legislation, [House Bill 2118](#). At the core of OUS’s restructuring proposal, a product of the board’s governance and policy committee that was unanimously approved by its governing board (State Board of Higher Education), is a desire for a new relationship with the state. Some components of *Considerations for Change* aim to:

- modify OUS’s relationship with state government, from one rooted in compliance to one rooted in set performance goals for research, enrollment, graduation rates, and degree productivity;
- ensure better agreements regarding tuition accountability, access, and affordability;
- allow tuition paid by students and interest earned on tuition to stay within the university system to support students; and
- allow budget carry-over authority, instead of unspent funds reverting back to the state.

A major difference between the task force legislation and OUS’s proposal is the discretion and authority to establish local governing boards, an option that Portland State University and the University of Oregon support. The task force legislation does not include this provision while the OUS plan does.

The University of Oregon (UO) also continues to advocate its own proposal to prosper through difficult financial conditions. In response to reduced state funding and budget cuts, UO President Richard Lariviere released a 2010 White Paper, [Preserving Our Public Mission through a New Partnership with the State](#). The release of this final white paper prompted attention as it advocates that the university should have its own governing board; the authority to sell approximately \$800 million in state bonds; and state matching funds regarding institutional donations. President Lariviere’s message is currently represented in [Senate Bill 559](#), which would classify the University of Oregon as an “independent public university” and allow it to be governed by its own board of directors. This bill also calls for the university to work with the State Board of Higher Education to develop institutional benchmarks. As stated, the bill would allow the university to:

- purchase its own insurance;
- adopt alternative employee benefit plans and offer alternative retirement programs;
- collectively bargain employee benefit and retirement plans; and
- issue revenue bonds and enter into credit enhancement agreements and financing agreements.

In **South Carolina**, new legislation, the *Higher Education Efficiency and Administrative Policies Act of 2010* ([House Bill 3365](#)), also addressed relief from regulatory oversight for universities. Beginning with fiscal year 2011, regulatory relief came in the form of reporting requirements, streamlining processes with the state Commission on Higher Education (the statewide coordinating entity), and flexibility in personnel

matters and tuition. In addition, public colleges and universities now have more autonomy to develop public-private partnerships.

Addressing efficiencies for South Carolina's technical college system, [House Bill 3841](#) establishes levels of flexibility regarding administrative services for system institutions. The bill states that the level of flexibility is granted based on institutional finances. In other words, with greater financial capability comes greater flexibility in personnel policies, facility and capital improvement projects, procurement, and grant management. This bill also enables technical colleges to enter into property transactions.

In **Washington**, Governor Christine Gregoire could also introduce legislation providing tuition flexibility to colleges and universities. This is one recommendation that came out of the [Governor's Task Force on Higher Education](#). In return for this flexibility, it is likely that there will be more accountability measures, which could include institutional performance plans aligned with state goals and priorities for higher education, specifically incentives for degree completion.

Many states without centralized governance structures engage in ongoing debates regarding the pros and cons of system governance and institutional governance, and Michigan is no exception. In August 2010, a series of news articles and editorials debated how [institutional autonomy](#) works for **Michigan's** public colleges and universities, along with how they might consider shifting to a more [centralized model of governance](#). Institutional presidents articulate that autonomy creates healthy competition and allows institutions to adjust their academic programs to meet the changing needs of their regions. One group, the Business Leaders for Michigan, advocates that the current structure is too costly and unsustainable. The governing boards of all Michigan universities are constitutional and any change in institutional governance structures will be extremely difficult, if not impossible, to accomplish, although some new postsecondary state-level authority, once unthinkable, is not being ruled out given the state's dire fiscal situation. Through the [Michigan Turnaround Plan](#), the Business Leaders group is asking legislators to "rationalize" expenditures for Michigan's 15 public universities and 28 community colleges. The plan proposes that Michigan could reduce costs through the [sharing of services](#), which might include [administrative operations and academic programs](#) at both universities and community colleges. Much depends on the priorities of the new Governor, Rick Snyder, and the legislature.

### ***Privatization of graduate/professional schools***

Under the umbrella of deregulation and autonomy exists the idea of charter schools and privatization of graduate and professional colleges (i.e. graduate business programs, schools of law, etc.). In order to create a model of sustained funding for identified professional schools, two universities are lessening their reliance on state funds through increased tuition dollars. This approach has emerged at the [Sandra Day O'Connor College of Law at Arizona State University](#) and at the [Anderson School of Management at the University of California-Los Angeles](#). The idea is that tuition dollars may provide more stability than state funds. Because certain graduate and professional programs are already highly pursued, and because their institutions have the student market to raise tuition without negatively affecting enrollment, select universities (often the "flagships") are able to raise tuition and "privatize," so-to-speak, certain programs. Currently, the Darden School of Business at the University of Virginia and the School of Law at the University of Michigan operate by this "private" funding model.<sup>9</sup>

### **Governance Restructuring**

On July 23, 2010, **Delaware** Governor Jack Markell signed legislation that implements the recommendations of the [Joint Sunset Committee](#). One recommendation details the elimination of the

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<sup>9</sup> Ryman, Anne. "ASU Weighs Severing State Funding to Aid Law School." *The Arizona Republic*. November 2, 2010. [www.agb.org](http://www.agb.org)

Delaware Higher Education Commission. Consequently, the commission's functions and responsibilities have been shifted to the Office of Higher Education within the Delaware Department of Education. The commission's responsibilities included administering student scholarships, including merit- and need-based aid, administering federal and private scholarship programs, and collecting data on enrollment, degree completion, and college costs. The commission also submitted statewide public higher education information to the Southern Regional Education Board and provided consumers (students and families) with information on colleges and universities to help prepare them for their postsecondary and higher education academic endeavors.

Three additional states, **Louisiana**, **Missouri**, and **South Carolina** proposed bills merging or eliminating their state higher education executive coordinating agencies, although none passed.

In **Louisiana**, Governor Jindal's January 31, 2011, release of his [legislative package](#) for public higher education proposed the consolidation of the state's five higher education boards (the University of Louisiana System, Louisiana Community and Technical College System, Louisiana State University System, Southern University System, and the Board of Regents), into a single entity. The governor reported that this action would create a more streamlined structure for education and thus promote comprehensive approaches for degree completion. *Note: In 2010, controversial legislation ([House Bill 996](#)) called for the elimination of the Louisiana Board of Regents and the consolidation of the boards of the Louisiana State University System, the University of Louisiana System, and the Southern University System into one governing board. This bill to form one board for four-year institutions and one for community and technical colleges was not enacted. Although the speaker of the house sponsored this bill, the House Education Committee did not approve it.*

Additionally, on January 18, 2011, the governor provided a [directive](#) to the Louisiana Board of Regents to consider and study the practicality of merging the Southern University at New Orleans, a historically black university, with the University of New Orleans, a predominantly white institution. If this idea comes to fruition, the governor would like to see the newly formed university as an institution under the umbrella of the University of Louisiana System and would like the university to support Delgado Community College (in the form of classroom space and faculty engagement). The governor stated that his proposal could be a win-win situation, helping the institutions involved stabilize enrollments and improve graduation rates. System leaders are grappling with the newness of the governor's proposal and the possible effects it could have on their constituents and higher education as a whole in Louisiana.

Like Louisiana, **Texas** is also considering the viability of some institutions. Specifically, the state's draft budget proposes [House Bill 1](#), an effort to close four community colleges (Brazosport College, Frank Phillips College, Ranger College, and Odessa College) to save \$39 million. The Texas Association of Community Colleges stated that this action would discontinue services for 12,000 students, affecting programs to prepare high school students for college and decreasing programs aligned with workforce development. Some education leaders worry that if this policy is enacted, institutional closures could have severe effects on local economies, employment, and state workforce priorities.

In **Missouri**, Governor Nixon wanted to [combine](#) the K-12 state agency (Department of Elementary and Secondary Education) with the Department of Higher Education. Since both education agencies (departments) are in the state's constitution, altering their structure requires a vote of the people. Although the legislation passed in the Senate, it did not pass the House. If the plan were enacted, the appointment of commissioners would have gone from the departments' boards to the senate. In the current structure, the governor appoints the members of the state education boards the senate confirms, then board members select commissioners. The new legislation would allow the senate to approve/confirm commissioners.

In **South Carolina**, [House Bill 4227](#) also proposed eliminating the State Commission on Higher Education, wherein its powers and duties would be transferred to institutional boards of trustees. The bill did not progress through the legislature and was not enacted.

Other major governance restructuring initiatives (some of which were mentioned previously) occurred in **Arkansas**, where education leaders are working to strengthen the authority of the existing coordinating agency; **New Jersey**, where a governor's task force is recommending the elimination of the state's coordinating commission; **Oregon**, where pending legislation could create a statewide coordinating agency; and **Washington**, where the governor recently proposed merging the K-12 and higher education coordinating board into one department for statewide education.

In **New Jersey**, recommendations from the Kean Task Force prompted two executive orders, one establishing a [Governor's Higher Education Council](#) led by a Secretary of Higher Education and the other creating an [advisory committee](#) to provide recommendations for graduate medical education. Simultaneously, the task force recommends eliminating the state Commission on Higher Education (the statewide coordinating board).

Similar to the circumstances in Missouri, Governor Gregoire in **Washington** [proposed](#) merging the K-12 board and the Higher Education Coordinating Board (HEC) into a Department of Education.<sup>10</sup> State officials reason that this initiative will save money as well as create an integrated system of education. However, some proponents of this measure articulate that the state will lose sufficient coordination between colleges and universities and that the legislature would lose "independent analysis and guidance" regarding higher education issues.<sup>11</sup> The all-inclusive education department would be led by a secretary of education, to be appointed by the governor. If this proposal, or another action, [SB 5182](#) (currently in the Senate Committee on Higher Education and Workforce Development), receives support from the legislature, Washington's Higher Education Coordinating Board could be eliminated.

### **Board Member Appointments and Member Education**

In **Wisconsin**, it is noteworthy that then-Governor Jim Doyle [vetoed](#) legislation related to Board of Regent appointments based on geographical representation. Many legislators supported [Senate Bill 223](#) to encourage statewide diversity of trustees, while several [former presidents](#) of the University of Wisconsin Board of Regents did not. The governor did not support the bill and made the case that district representation on the board would encourage members to advocate for needs of their areas instead of for the state as a whole.

In **New Mexico**, under former Governor Bill Richardson, higher education leaders rallied support for an [Advisory Committee on Regent Appointments](#). Leaders of the faculty senate at the University of New Mexico [proposed](#) the committee to recommend future candidates for appointments to New Mexico's research universities: the University of New Mexico, New Mexico State University, and the New Mexico Institute of Mining and Technology. With the endorsement of Secretary of Higher Education, Viola Florez, institutional leaders were hopeful that an executive order would be issued under Governor Richardson. In a press release from August 23, 2010, the then-governor endorsed the proposal and indicated that he would issue an executive order to create this committee; however, one has not yet been established. At this time, it is unclear if newly elected Governor Susana Martinez will support this faculty-initiated proposal. States with similar merit screening of citizens for gubernatorial appointments

<sup>10</sup> Grygiel, Chris. "Gregoire: Put K-12, Higher Education Under One Dept. to Save \$." *Seattle Post-Intelligencer*. January 5, 2011.

<sup>11</sup> Long, Katherine. "Higher-education board members criticize plan." *Seattle Times*. January 27, 2011.

to public college and university trusteeship include Hawaii, Kentucky, Massachusetts, Minnesota, North Dakota, and Virginia.

Board member education is another way to ensure that board members and trustees understand their roles and responsibilities and are prepared to make decisions that are in the best interest of their constituents. Noting the importance of these opportunities, the **Ohio** Board of Regents is [considering](#) providing education and training for trustees. In June 2010, the board of regents, which oversees the state's public colleges and universities, established a committee of 12 trustees to discuss the benefits of training for institutional trustees; this initiative developed from an overarching mission to improve communications with trustees. As the ultimate fiduciaries of colleges and universities, trustees have great responsibilities and are accountable to many stakeholders. Currently, Arkansas, Texas, and West Virginia, among others, provide ongoing board education for trustees.

### **Institutionally Related Foundations**

#### *State-matching programs*

In fiscal year 2010, **Florida** did not appropriate state funds for two of its state-matching gift programs: the Major Gifts Matching Program and the Capital Facilities Matching Program. The Major Gifts Matching Program matches endowment gifts of \$100,000 or more, at a rate of 50 percent or more. The Capital Facilities Matching Program matches construction or renovation project gifts at a dollar for dollar rate.

In **Virginia**, Senate Bill 166 established the Community College Scholarship Match Program to provide matching funds to community college foundations and the Virginia Foundation for Community College Education. These funds award scholarships to in-state students who are enrolled in an associates degree program studying science, technology, engineering, math, education, or nursing. Matching funds are capped at \$5 million for each fiscal year.

#### *Open-meeting and record requirements*

In **California**, former Governor Arnold Schwarzenegger vetoed a controversial bill ([Senate Bill 330](#)) designed to create more accountability and transparency in college foundations and open records laws. As written, the bill would have extended the California Public Records Act to include foundations and auxiliary organizations that perform government functions in a public-university system. Anonymous donations would still be allowed unless the donor received a gift from the university in excess of \$500 for his or her contribution. Although this bill passed the state assembly, opponents of the bill argued that it would have a negative effect on donor relations. The then-Governor Schwarzenegger explained his [veto](#) action in a statement to legislators: "While the bill attempts to provide a veil of protection for donors requesting anonymity, as crafted, it will not provide sufficient protection for many who rightfully deserve a level of privacy as part of their giving. Often times, these generous private citizen donors do not want to be in the glare of publicity, and I cannot support a bill that makes it more difficult for our public universities to raise private funds."<sup>12</sup> This response did not resonate with Senator Leland Yee, author of the bill, who cited that similar legislation in Iowa did not result in fewer donations. These issues are on the forefront due to a recent controversy and investigation at California State University, which revealed that auxiliary organizations signed a speaking-event contract with former Alaska Governor Sarah Palin without disclosing how it was funded and how much she was compensated. Similar incidents at three other California institutions have resulted in investigations. Although this legislation was vetoed, reports

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<sup>12</sup> Byrnes, Caitlin. "Schwarzenegger vetoes higher education transparency bill." *Student Press Law Center*. October 1, 2010. [www.agb.org](http://www.agb.org)

indicate that Senator Yee reintroduced these measures in hopes that Governor Jerry Brown might enact these policies.

In another case, **Pennsylvania**'s East Stroudsburg University and the East Stroudsburg Foundation lost an ongoing [legal battle](#) regarding open records and information transparency. In May 2010, after a 15-month legal battle, a state court ruled that the Office of Open Records was within its authority to ask East Stroudsburg University Foundation to provide information on their donors, as well as minutes for their meetings. Part of the opinion stemmed from the fact that the university is part of the State System of Higher Education and is thus considered to fall under the guidelines of a state agency. In addition, because staff members of ESU's foundation were university (state) employees at the time, the court ruled that the foundation was subject to Right to Know Laws. The university and foundation followed up, petitioning the Supreme Court of Pennsylvania to overturn the appellate court ruling, but with no luck. As a result, the foundation board hired a new executive and changed its governance structure. No longer supported by the university, the foundation is now a private nonprofit organization, and employees are no longer considered employees of the university. (Background: Initiated under the previous leadership of the foundation, the initial records request was a result of allegations that the president of the foundation inappropriately used foundation scholarship funds.)

### ***Uniform Prudent Management of Institutional Funds Act (UPMIFA)***

In 2010, four states and one territory (Alaska, Kentucky, Louisiana, New York, and the Virgin Islands) enacted the [Uniform Prudent Management of Institutional Funds Act](#). That brings the number of states with UPMIFA to 46, plus the District of Columbia. The UPMIFA law provides institutions with greater flexibility in spending from endowment funds that have fallen below the "historic dollar value" (HDV) of the original gift. UPMIFA eliminates the concept of HDV, allowing institutions and foundations to make distributions from these "underwater" funds. For further information regarding UPMIFA and underwater endowments, refer to AGB's 2010 survey report, [Spending and Management of Endowments under UPMIFA](#), conducted by AGB in partnership with Commonfund Institute and NACUBO.

### **Closing Observations**

While 2010 produced developments to create efficiencies in operations and instruction, the bottom line is that institutions are still struggling with how to pay their bills and maintain the right balance of faculty and course offerings to get students through the higher education pipeline in a timely manner. Last year, public colleges and universities struggled when implementing cuts to the periphery. This year, trustees and presidents had no choice but to look internally, at the academic core of their institutions. At the same time, increasing degree completion and attainment rates remains a priority of the federal government, governors, and legislators. The aforementioned public higher education issues affect governance practices and often shed light on what legislative and policy changes are needed to achieve state and institutional goals for education.



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