

**COUNCIL FOR EDUCATION POLICY, RESEARCH AND IMPROVEMENT**

**FEASIBILITY OF MULTI-YEAR CONTRACTS  
BETWEEN THE STATE AND PUBLIC UNIVERSITIES**

**EXECUTIVE SUMMARY**

The General Appropriations Act (GAA) for FY 2003-04 included proviso which directed CEPRI to study the feasibility of 5-year contracts between the state and certain universities. The full text of the proviso is as follows:

From the funds in Specific Appropriation 2545, the Council for Education Policy Research and Improvement shall conduct a study of the feasibility of 5-year contracts between the State of Florida and the University of Florida, the State of Florida and Florida State University, and the State of Florida and Florida International University to provide programs and services at a level no less than that currently available to Florida residents. At a minimum the study shall identify the services and programs to be provided by each institution; the desired outcomes of each contract, including performance measure and standards for evaluating the achievement of such outcomes; the procedures to be used to collect data to demonstrate compliance with the terms and conditions of each contract; penalties, if any, for failure to comply with the terms and conditions of each contract; any anticipated obstacles to successful implementation of such contracts, and the cost of each contract to the State. A final report and recommendations, including a draft contract, shall be submitted to the Governor, the Speaker of the House of Representatives and the President of the Senate by November 1, 2003.

Subsequent to the adoption of the GAA, the Speaker of the House directed CEPRI to include the University of Central Florida and the University of South Florida in the study.

During the 2003 legislative session, the University of Florida and Florida State University proposed to the Legislature a new approach to funding: a 5-year contract between the Legislature and the universities that would guarantee each university a certain level of funding while guaranteeing a certain level of performance. The contract proposal also gave each university the authority to set its own tuition.

The Legislature did not want to commit to a contract before studying the concept further, and directed CEPRI, through proviso language, to submit a report on the feasibility of such contracts by November 1, 2003.

Literature reviews, surveys, legal reviews, and interviews were utilized in studying the concept of multi-year contracts. There was a panel discussion of invited university presidents or their representatives at CEPRI's July 9, 2003, meeting. In addition, in an effort to fully utilize the work being undertaken by DOE, departmental activities were monitored regarding the K-20 Education Performance Accountability project. Since CEPRI members wanted all public universities to have the opportunity to participate in activities related to the study, all eleven universities were kept apprised of Council

activities and were invited to give input regarding the contract proposal. Legislative staff and staff from the Governor's office were periodically briefed as the study progressed.

Public hearings were held on August 13, 2003, in Fort Myers; September 10, 2003, in Tampa; and October 8, 2003, in Tallahassee. In addition to being placed on CEPRI's web site on October 1 for consideration by the general public, drafts were submitted directly to DOE Division of Colleges and Universities staff, legislative staff, and staff in the Governor's Office for their review. University personnel were also given copies of the draft report to review on October 1 and were invited to provide input at the October 8 meeting.

### **Findings and Recommendations**

**Legalities of Multi-Year Contracts:** A fundamental question that was researched was whether it is legal to have a multi-year contract with Florida's legislature, as proposed by UF and FSU. Statutory language, court cases, and constitutional language were reviewed to locate citations relevant to the feasibility of multi-year contracts.

The review resulted in four basic conclusions: (1) One legislature can not bind a future legislature; (2) Due to the separation of powers, the executive branch can not bind the legislature in funding executive agreements; (3) Any contracts requiring annual appropriations must include a statement making payment contingent upon an annual appropriation by the Legislature; and (4) The Legislature can not be required to provide annual funding unless the constitution includes such a provision.

**Parties to the Contract:** When UF and FSU first proposed the use of a 5-year contract, it was with the assumption that the contract would be between the Legislature and the universities. However, the proviso language in the General Appropriations Act directing CEPRI to conduct the study did not specify the Legislature as one of the parties. Instead, proviso indicated the contract would be between the State of Florida and each of the universities. Using the broader term "State," rather than the term "Legislature," allowed CEPRI to consider other options that may be more appropriate than the one contained in the original UF/FSU proposal. Considering other options led the Council to determine that the Board of Governors was the most appropriate party to enter into a contractual relationship with the universities, because of its relationship to the universities: Article IX, Section 7, of the State Constitution establishes the Board of Governors as the board that operates, regulates, controls, and is fully responsible for the management of the whole university system (See **Recommendation 1**).

A contract between the Board of Governors and the universities could not guarantee a certain level of appropriations annually, but, with the appropriate statutory structure adopted by the Legislature, it could create a process by which flexibility, funding expectations, and performance goals could be accomplished. Article IX, Section 7, of the Constitution gives the Board of Governors the responsibility for defining "the distinctive mission of each constituent university and its articulation with free public schools and community colleges, ensuring the well-planned coordination and operation of the system,

and avoiding wasteful duplication of facilities or programs.” Contract negotiations would provide an opportunity for the Board of Governors and a university to define expectations for the university’s performance, based on its unique mission. As discussed in the report, the contract would also be a mechanism to provide a direct link between a university’s performance and its ability to have tuition flexibility, thereby closing the gap between mission, performance, and funding.

**Process for Contracting:** The process for developing, negotiating, signing, and monitoring the implementation of a contract is reflected in **Recommendations 2-6**. As reflected in Figure 2 of the report, on page 13, there is a unique role for each of the major players in the process – the universities, the Board of Governors, the Legislature, the Governor, and CEPRI. In fact, for these contracts to successfully be implemented, each of these parties must embrace the concept of performance funding contracts.

CEPRI members believe that all universities should have the opportunity to participate in a contractual relationship with the Board of Governors. The recommendations reflect this, and specify that each university should, prior to negotiating a contract with the Board, develop a proposal that would include objectives, tuition flexibility policies, performance measures and standards, and implementation plans.

**Structure of the Contract Template:** The proviso directing CEPRI to conduct this study specified that a draft contract be included as a part of the report. The draft contract is reflected in Figure 3 on page 19 of the report, and **Recommendations 7-18** address its technical aspects, such as the term of the contract and its execution.

**Fiscal Specifications:** Figure 4 on page 21 reflects the template for the Contract Specifications, which is an attachment to and a part of the contract. It is designed to reflect fiscal and performance expectations that will vary among universities. Fiscal Specifications are addressed in **Recommendations 19-22**. The primary points in these recommendations are:

- **Universities in contractual relationships with the Board of Governors should be given unlimited flexibility in setting tuition and out-of-state fees.**
- **The contract should specify a constant level of funding per planned FTE for enrollment growth. Funded FTE should be that amount of FTE that could be funded within available resources, allowing unfunded enrollment to be funded when financial conditions improve.**
- **The Department of Education should identify adjustments needed to be made to financial aid programs to implement variable fee schedules, such as block fees and differential fees by time of day.**

**Performance Specifications:** The contract process provides an opportunity for the Board of Governors and each university to define expectations for the university’s performance, based on its unique mission. The contract is a mechanism for providing a

direct link between a university's performance and its ability to have tuition flexibility, thereby closing the gap between mission, performance, and funding. **Recommendations 23-32** address the performance expectations. Some expectations would be included in each university's contract; others would be unique to an institution, depending on its mission. Performance expectations that should be addressed in each contract are:

- **Supporting the State Board of Education's Strategic Imperative #1 by increasing the supply of high quality teachers (for those universities with colleges of education);**
- **Supporting State economic development goals by producing graduates in scientific and technical fields, including health;**
- **Assisting students in staying on track for degree and reducing time to degree;**
- **Student access and graduation;**
- **Containing student cost;**
- **Receiving sufficient feedback from students and employers;**
- **Maintaining accreditation by the Southern Association of Colleges and Schools (SACS).**

**Incentives and Penalties:** Proviso required the study to include "penalties, if any, for failure to comply with the terms and conditions of each contract." **Recommendations 32-35** support tuition flexibility as being the reward for meeting performance expectations – and the loss of that flexibility if the university does not meet its performance expectations on critical measures. Specifically, these recommendations provide that:

- **The authority for tuition flexibility and the revenue it can produce should be used as the performance funding reward for universities;**
- **If any performance standards are not met, the university should present to the Board of Governors its plan for improving its performance on the measure(s). Updates on the plan's implementation should be presented to the Board until the university's performance has met the standard(s) specified in the contract.**
- **If the performance standards for any critical measures are not met in a year, then the university should lose its tuition flexibility until its performance has met those standards. The critical measures should be clearly identified in the contract.**

**Data Collection:** The last recommendation, **Recommendation 36**, addresses the need for the university to maintain data and records in accordance with applicable laws and regulations.

### **Recommendations**

- 1. Because of its constitutional responsibilities, the contract should be between the Board of Governors and the university.**
- 2. Role of the Board of Governors: The Board of Governors should take a proactive role regarding contracting with individual universities, recommending to the Legislature objectives, criteria, and an overall process for contract development, adoption, implementation, and monitoring, by January 1, 2004. After the Legislature has established the framework for contracting, the Board should develop rules or guidelines for the process, negotiate contracts with individual universities, monitor implementation, and submit annual reports to the Governor and Legislature.**
- 3. Role of the Legislature: While taking CEPRI's and the Board of Governors' recommendations into consideration, the Legislature should statutorily create the overall framework within which contracts could be developed, thereby reflecting its support of the concept.**
- 4. Role of the Governor: The Governor should signify his support of contracts by signing the legislation that creates the framework within which they could be developed.**
- 5. Role of CEPRI: After submitting the report and recommendations required by the 2003 Legislature, CEPRI should develop criteria for evaluating university proposals. In addition, CEPRI, as an independent entity, should evaluate the process and the contract's impact on students and the university after the first two years of contract implementation. Such an independent review should include input from state policymakers, educators, students, and the general public.**
- 6. Role of the University: Any state university should be able to participate in the contracting process. Prior to beginning the negotiations process with the Board of Governors, the university should develop a proposal that would include specific objectives, tuition flexibility policies, performance measures and standards, and implementation plans.**
- 7. Each state university should be given the opportunity to negotiate a contract with the Board of Governors, subsequent to developing a proposal that would include specific objectives, tuition flexibility policies, performance measures and standards, and implementation plans.**
- 8. The details negotiated in the Contract Specifications should reflect the unique mission of the contracting university.**

9. **As consideration for services rendered by the University pursuant to this contract, the Board of Governors should agree to request the amount of state funds as specified in the Contract Specifications and permit tuition flexibility as authorized by the Legislature and specified in the attached Contract Specifications.**
10. **For the Board of Governors, the Contract Manager responsible for overseeing the implementation of the contract should be the Chancellor or his/her designee. For the university, the Contract Manager should be the president or his/her designee.**
11. **Either party should be able to cancel the contract upon written notification to the other party's Contract Manager. If notice of cancellation is given on or between July 1 and December 31, the cancellation should be effective at the end of the State of Florida fiscal year in which the notice is given. In the event notice is given on or between January 1 and June 30, the cancellation should be effective at the end of the subsequent fiscal year.**
12. **The contract should become effective July 1 of the fiscal year subsequent to its execution by the parties and shall continue in force for a period of three years. By mutual agreement of the parties, the contract should thereafter be extended for additional one year periods.**
13. **The University should agree that its performance of any other services during the term of this contract shall not interfere with the faithful and timely performance of this contract.**
14. **Either party's performance under this agreement is subject to acts of God, war (declared or undeclared), Federal government regulation, terrorism, disaster, strikes, civil disorder, curtailment of transportation facilities, or similar occurrence beyond the party's control, making it impossible, illegal, or impracticable for one or both parties to perform its obligations under this agreement, in whole or in part. Either party may terminate this agreement without liability for any one or more of such reasons upon written notice to the other party within 10 days of such occurrence or receipt of notice of any of the above occurrences.**
15. **The parties to the contract should have three options for resolving disputes: renegotiation, mediation, and cancellation.**
16. **The parties should not be able to change the contract, except in writing by the signature of both parties.**
17. **The chairman of the Board of Governors should sign the contract on behalf of, and after approval by, the Board of Governors.**
18. **The chairman of the university Board of Trustees should sign the contract on behalf of, and after approval by, the Board of Trustees.**

- 19. A constant level of funding per planned FTE should be specified in the contract for enrollment growth. Funded FTE should be that amount of FTE that could be funded within available resources, then unfunded enrollment could be funded when financial conditions improve.**
- 20. Universities in contractual relationships with the Board of Governors should be provided unlimited flexibility to set student tuition and fees.**
- 21. The Department of Education should identify adjustments needed to be made to financial aid programs to implement variable fee schedules, such as block fees and differential fees by time of day.**
- 22. Public Education Capital Outlay (PECO) should not be addressed in the contract at this time.** It may be reasonable to review this issue subsequent to the release of recommendations by DOE's Advisory Council on Educational Facilities.
- 23. To address the State's need for qualified teachers, the contract of each university with a College of Education should emphasize the production of quality teachers.** As stated in *Florida Teachers and the Teaching Professions* (CEPRI, 2003), the production of quality teachers should be a priority of each university that has a College of Education. The College should have the flexibility it needs to design and implement its teacher education programs to meet the contract's performance expectations.
- 24. The Contract Specification should include a performance expectation related to assisting students in staying on track for degree completion. While strategies may vary by institution, universities may consider implementing a Universal Tracking system similar to that implemented by the University of Florida.**
- 25. Each university contract should include performance measures related to student access and graduation.**
- 26. Each university contract should require a specific plan for containing student cost.** The plan should be based on an analysis of the characteristics of the university's student population.
- 27. The contract should ensure that the production of graduates in scientific and technical fields (including Health) and the overall quality of those programs support the State's economic development goals.**
- 28. The contract should ensure that sufficient feedback is being received from students and employers to assist in determining institutional quality.**
- 29. The contract should include a performance expectation that requires the university to maintain its SACS accreditation.**

- 30. The State Board of Education’s definitions, measures, standards, performance improvement targets, rewards and sanctions should be considered during contract negotiations between the Board of Governors and the universities.**
- 31. Any significant changes to the federal Higher Education Act would need to be taken into consideration during contract negotiations to ensure compliance with federal government regulations.**
- 32. The contracts should specify performance outcomes, giving each university the flexibility it needs to achieve those outcomes within current law and rules.**
- 33. The authority for tuition flexibility and the revenue it can produce should be used as the performance funding reward for universities.**
- 34. If any performance standards are not met, the *University* should present to the Board of Governors its plan for improving its performance on the measure(s). Updates on the plan’s implementation should be presented to the Board until the university’s performance has met the standard(s) specified in the contract.**
- 35. If the performance standards for any critical measures are not met in a year, then the *University* should lose its tuition flexibility until its performance has met those standards. The critical measures should be clearly identified in the contract.**
- 36. The contract should require the university to maintain data and records in accordance with ss. 1001.74(16), 1001.75(17), F.S., and other applicable laws and regulations to ensure the quality and continuity of data needed for determining compliance with the terms and conditions of the contract.**