COUNCIL FOR EDUCATION POLICY RESEARCH AND IMPROVEMENT

Contract Specifications

Background:
Over the past several years, Florida's universities have been given increased autonomy by the Legislature. For example, they have been given local boards of trustees, the flexibility to manage personnel systems, the ability to deposit funds outside the State Treasury, the authority to carry forward year-end balances, the responsibility of collectively bargaining at the local level, the authority to control their own positions and rate, the ability to expend funds directly from grants-in-aids appropriation categories, the power to develop their own financial management systems rather than being required to use the state's systems, and the authority to exercise the right of eminent domain with approval of the State Board of Education. They have also been given the ability to set fees within the amount authorized in the General Appropriations Act.

Problem Statement:
The State of Florida has been affected by the downturn of the economy that other states throughout the country have felt in recent years. One way for the Legislature to manage available resources, while funding high-priority programs, has been through budget reductions in various programs. The university system has not been immune to these reductions. At the same time, the universities have had to deal with the demand for increased student enrollment and its impact on instruction, student services, administration, and facilities.

While the universities have the ability to set fees within the amount authorized in the General Appropriations Act, the Legislature does not always give them the flexibility to increase fees. In addition, there have been times in the past in which increased fees were offset through general revenue fund shifts. In other words, general revenue appropriations to the universities were reduced by the same amount as the increase in revenue anticipated from fee increases.

Overview of the Proposed Outcome:

The *University* will be given additional flexibility while meeting specified performance expectations and standards.

Performance Expectations:

<u>Programs and Services:</u>

(NOTE: At CEPRI's August meeting, staff presentations will be given on university programs and services. At the September meeting, performance measures and standards will be recommended.)

Customer Satisfaction:

(NOTE: At CEPRI's June meeting, a staff presentation was given on public perceptions of higher education. At September's meeting, there will be an explanation of on-going student and employer surveys in Florida.)

Student Satisfaction:

Employer Satisfaction:

Fiscal Specifications:

(NOTE: Presentations on Tuition and Financial Aid were given in July. At the August meeting, staff will present options and recommendations for those two issues. The remaining funding issues below will be presented in September.)

Tuition Flexibility:

Financial Aid:

Base Appropriations:

Funding Increases:

Fixed Capital Outlay:

Incentives and Penalties Relating to the Meeting of Performance Standards:

(NOTE: Proposed Incentives and Penalties will be presented at CEPRI's September meeting.)

Governance and Oversight:

Governance, administration and oversight of the *University* will be as specified in Florida law and administrative rules.

Performance Funding Contract for University Services

Choices Mentioned in 8/13/03 Draft Contract

I. Parties

What parties should enter into 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. The proviso language in the General Appropriations Act directing CEPRI to conduct the study did not specify the Legislature as one of the parties, though. 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," allows CEPRI to consider other options that may be more appropriate than the one contained in the original UF/FSU proposal.[1] Various options are discussed below:

1. Legislature: In the attached paper, "Legalities of Multi-year Contracts," citations are given that establish the fact that one legislature can not bind a future legislature, nor can a contract signed by the executive branch bind a legislature. If a contract is signed that requires an annual appropriation, a funding contingency statement must be included, specifying that payment is contingent upon an annual appropriation by the Legislature. The only way to direct the Legislature to provide annual funding is to have such language in the constitution. It appears that, without such constitutional language, having the Legislature be a party to the contract would not be appropriate.

2. Board of Governors: 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. Because of its relationship with each of the universities, the Board of Governors may be the appropriate entity to enter into a contract with each university. As stated above, the contract could not guarantee a certain level of appropriations annually, but it could create a process by which flexibility, funding expectations, and performance goals could be accomplished.

3. State Board of Education: Article IX, Section 2, of the State Constitution establishes the State Board of Education (SBE) and gives it the authority to supervise the system of free public education as provided by law. Section 1001.02, F.S., charges the State Board of Education with the responsibility of being "the chief implementing and coordinating body of public education in Florida." The SBE is also directed to "focus on high-level policy decisions." Because of its responsibility related to K-20 education, it may be appropriate for

[1] Executive branch public officers and employees may enter into contracts on behalf of the state. Section 287.0582, F.S., provides that they can not enter into a contract that binds the state or its executive agencies in excess of 1 fiscal year, unless the following statement is included in the contract: "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

the SBE to periodically be briefed on the implementation of the contract, but its focus on high-level policy decisions could make it an inappropriate choice for signing an operational contract with a university.

4. Governor: There are precedents for governors making funding commitments related to the education system. For example, in 1998, Governor Chiles, via a letter written on June 11, 1998, committed to the federal Office for Civil Rights (OCR) that he would recommend to the Legislature that it fund a total of $7.5 million over a three-year period to assist FAMU in improving programs discussed in the *Florida/United State Office for Civil Rights Partnership Report and Commitments*. In addition, in the material presented to CEPRI at its July 2003 meeting related to contractual efforts in other states, it was revealed that the Maryland legislature placed in statute the requirement that the Governor annually request for St. Mary's College its prior year's budget, plus inflation. Having the Governor of Florida sign the university contract may be an option that is feasible, but may not be the best one to recommend.

As described in the attached document on "Legalities of Multi-Year Commitments," court cases have made it clear that, due to the separation of powers, the Governor's agreements can not bind the Legislature. While the Governor could not bind the Legislature, he could agree to include in his annual Legislative Budget Recommendations a recommendation to fund the university contracts.

However, it seems that recommending that the Governor of Florida sign the contract may remove the flexibility he should have in making his budget recommendations. Section 216.165, F.S., requires the Governor to submit a balanced budget. In other words, it requires his budget recommendations to be within the level of revenue he is recommending for the subsequent fiscal year. In order to develop a balanced budget, the Governor must weigh competing needs throughout the state, taking into consideration the recommendations of state agencies and advisory groups. While having his signature on the contract is one option, it may unduly restrict him in developing his budget recommendations.

STAFF RECOMMENDATION: The contract should be between the Board of Governors and the university.

II. Consideration

How should the university receive funds for services rendered? The decision as to who the parties are in **I. Parties** above would affect which of the following options would be the correct terminology to use in this section:

1. Appropriate: Only the Legislature can appropriate funds. Since it was established in the "Legalities of Multi-Year Contracts" that the Legislature could not be a signatory to the contract, "appropriate" would not be a viable option here.

2. Recommend: In the legislative budgeting process, only the Governor recommends issues to be funded by the Legislature. If he is not a party to the contract, then "recommend" is not the correct term to use here.

3. Request: In the legislative budgeting process, state agencies request that issues be funded. If the Board of Governors is the party entering into the contract with the university, then "request" is the appropriate term to use here.

STAFF RECOMMENDATION: Use the term "request," if the Board of Governors is to be a party to the contract.

III. Point of Contact

A. Who should be the Contract Manager for the State? There are several options for who could be designated as Contract Manager for each of the parties entering into the contract. The Contract Manager is the staff for who would be responsible for overseeing the implementation of the contract. The decision made in **I. Parties** above would affect the choices made here:

1. Chancellor: The Chancellor is the Commissioner's appointee to head the Department of Education's Division of Colleges and Universities. The Chancellor also is the lead staff for the Board of Governors. If the Board of Governors is a party to the contract, the Chancellor would be the appropriate person to serve as Contract Manager for the Board.

2. Commissioner: Section 1001.10, F.S., establishes the Commissioner of Education as the chief educational officer of the state. Article 9, Section 7, of the State Constitution directs that the Commissioner be a member of the Board of Governors. As a member of the Board, it may not be appropriate for the Commissioner to serve as the staff overseeing the implementation of the contract, if the Board is a party to the contract.

3. Governor's staff: If the Governor is a party to the contract, then a viable option for his Contract Manager would be one of his staff, probably either the head of his education unit, the Education Policy Coordinator, or his chief of staff. Neither of these would be appropriate, though, if the Governor is not a party to the contract.

4. Legislative staff: If the Legislature is a party to the contract, then legislative staff should serve as the Contract Manager. As indicated in the "Legalities of Multi-Year Contracts," though, the Legislature should not be a party to the contract. Therefore, it would not be appropriate for legislative staff to serve as the Contract Manager.

STAFF RECOMMENDATION: If the Board of Governors is a party to the contract, then the Chancellor should be the Board's Contract Manager.

B. Who should be the Contract Manager for the University? Two primary choices would be the President and the Provost:

1. President: Section 1001.75, F.S., establishes the university president as the chief executive officer of the university and specifies that the president is responsible for the operation and administration of the university. While the President should be accountable for the contract, it would not be realistic to assume that he/she would be the day-to-day manager of the contract.

2. Provost: The Provost is the chief academic officer and, as such, would be the person most likely to be overseeing the day-to-day implementation of the contract.

STAFF RECOMMENDATION: Since the president is responsible for the operation and administration of the university, he or she should be the Contract Manager. To allow the president the flexibility to assign the day-to-day responsibility to key staff, though, the phrase "or his/her designee" should follow the president's name.

IV. Term of Contract

What should be the effective dates of the contract? Proviso directed CEPRI to study the feasibility of a five-year contract between the state and individual universities. It did not, however, limit CEPRI to recommending only a five-year contract. The questions that need to be considered are:

1. When should the contract go into effect?
2. How long should a contract be in effect?
3. Should each university's contract be the same length?

1. When should the contract go into effect? The two obvious options are "immediately" and "July 1" of the next fiscal year. July 1 would provide a date that is consistent in all contracts and would be consistent with the effective date of the appropriations act.

2. How long should a contract be in effect? UF/FSU proposed that their contract be in effect for five years and the Legislature directed CEPRI to study the feasibility of a five-year contract. Other lengths could be considered, though. For example, the Colorado School of Mines has a ten-year contract with the state's Commission on Higher Education. Since the concept of contracting is new in Florida, though, a time period shorter than five years, such as three years, could also be considered. Another option would be to combine a couple of these concepts: have a 5-year contract that must be reviewed by an independent entity after three years. The term of the contract, then, would be five years.

3. Should each university's contract be the same length? Each university entering into a contract should be capable of operating according to the terms of the contract. Each university, then, should have contracts of equal length.

STAFF RECOMMENDATION: The contract should go into effect on July 1 of the first fiscal year after the contract is signed and should be in effect for a period of five years.

V. Resolution of Disputes

How should disputes relating to the contract be resolved? During the time the contract is in effect, it is reasonable to assume that questions may arise as to the meaning or interpretation of any part of the contract, especially if any of the parties who sign the contract leave during the 5-year period. What process should be used to settle these disputes? Two options are discussed below:

1. Mandatory Arbitration: The American Arbitration Association (AAA) defines arbitration as follows (http://www.adr.org/):

> Arbitration is a process, not unlike court (but much less formal), where an independent neutral person hears evidence and issues a decision, known as an "award". This award is generally final and binding on the parties in the case.

Arbitration is an option for resolving any disputes between the parties that have entered into the 5-year contract. According to the Association's web site, the advantages of using standard rules of arbitration include the following:

- Invoking the AAA's rules in the contract would provide a complete set of rules and procedures, eliminating the need to spell out dozens of procedural matters in the parties' agreement.
- It provides for the selection of a specialized, impartial panel. Arbitrators are selected by the parties from a screened and trained pool of available experts. Under the AAA rules, a procedure is available to disqualify an arbitrator for bias.
- It establishes time limits to ensure prompt disposition of contested issues. An additional feature of the various AAA rules is a special Expedited Procedure, which may be used to resolve smaller claims and other disputes which need a more speedy resolution.

2. State Board of Education: Rather than select arbiters using the AAA process, the State Board of Education could serve as the arbiter. This choice has its disadvantages, though. Any arbiter, by its very definition, must be an independent, neutral person or panel. The State Board of Education and the Board of Governors are too interrelated for the SBE to be considered neutral. For example, the Commissioner of Education is hired by the SBE and, according to s. 1001.10(2), F.S., the Commissioner is to "advise and counsel with the State Board of Education on all matters pertaining to education; to recommend to the State Board of Education actions and policies as, in the commissioner's opinion, should be acted upon or adopted." In addition to his responsibilities to the SBE, the Commissioner is a member of the Board of Governors.

In addition, the Commissioner hires the Chancellor of the university system, who also is the lead staff for the Board of Governors.

3. Court system: It is not unusual for contract disputes to be settled by the courts. Either of the parties could file suit in whatever county was specified in the contract.

STAFF RECOMMENDATION: The contract should include language referencing the rules used by AAA. For example, the following language may be appropriate:

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association [or similar organization] in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any Florida court having jurisdiction thereof.

VI. Execution by the Parties

Who should sign the contract? For each party, there are several options for whose signature should appear on the contract. The decision made in **I. Parties** will affect who actually signs it.

For the State, the options are:

1. <u>Chair of the Board of Governors:</u> If the contract is between the Board of Governors and the university, then it would be appropriate for the chair to sign the contract.

2. <u>Chancellor:</u> If the contract is between the Board of Governors and the university, the signature of the Chancellor would certainly be an option. For the contract to be implemented successfully, though, it will require a commitment from both the chairman and the Chancellor. Having both of their signatures on the contract may be the best option.

3. <u>Commissioner:</u> As the chief educational officer of the state, the Commissioner's signature is an option. However, since the Board of Governors is the controlling board for the university system, it may be more appropriate for the chairman and Chancellor to sign the contract.

4. <u>Chair of the State Board of Education:</u> If the contract is between the State Board of Education and the university, then the chairman should sign it. However, as stated in **I. Parties** above, the SBE's focus on high-level policy decisions could make it an inappropriate choice for signing an operational contract with a university.

5. <u>President and Speaker:</u> As documented in "Legalities of Multi-Year Contracts," the Legislature can not be a party to the contract under the current circumstances, so the signature of its leading officers would not be suitable.

6. <u>Governor:</u> If CEPRI recommends that the Governor be a party to the contract, then his signature would be needed here. However, as described above in **I. Parties**, having the Governor as a party would remove the flexibility he should have in developing in budget recommendations.

STAFF RECOMMENDATION: On behalf of the Board of Governors, and to signal the cooperative commitment of both the Board and the Chancellor, both the Chairman of the Board of Governors and the Chancellor should sign the contract.

VI. Execution by the Parties, cont.

For the university, the obvious choices for signatures are:

1. Chair of the Board of Trustees: Section 1001.74, F.S., provides that the Board of Trustees is responsible for:

> …cost-effective policy decisions appropriate to the university's mission, the implementation and maintenance of high quality education programs within law and rules of the State Board of Education, the measurement of performance, the reporting of information, and the provision of input regarding state policy, budgeting, and education standards.

It would be necessary to have the support of the Board of Trustees before going forward with the implementation of the contract. It would be fitting, then, for the chair of the board to sign the contract on behalf of the trustees, signifying their support.

2. President: Since section 1001.75(5), F.S., specifies that the university president has the authority to "approve, execute, and administer contracts for and on behalf of the university board of trustees," it would be appropriate to have his or her signature on the contract. For the contract to be successfully implemented, it would have to have the full commitment of the President, and his or her signature would represent that commitment.

STAFF RECOMMENDATION: On behalf of the university, and to signal the cooperative commitment of both the local board and the president, both the Chairman of the university Board of Trustees and the President should sign the contract.

COUNCIL FOR EDUCATION POLICY RESEARCH AND IMPROVEMENT

PROCESS FOR UNIVERSITY CONTRACTING

<u>CEPRI</u>

Submit to the Governor and Legislature a report and recommendations, including a draft contract, by November 1, 2003

Develop criteria for evaluating university proposals, including accountability measures.

↓

<u>Board of Governors</u>

Recommend to the Legislature objectives, criteria, and overall process for contract development, adoption, implementation, and monitoring, by January 1, 2004.

↓

<u>Legislature</u>

Statutorily (through proviso, implementing bill, or Florida statutes) create objectives, criteria, and overall process for contract development, adoption, implementation, and monitoring by end of 2004 Legislative Session.

↓

<u>Board of Governors</u>

Based on statutory requirements, develop process for contract negotiations, approval and monitoring by June 1, 2004.

↓

<u>Universities</u>

Prior to beginning negotiations process with the Board of Governors, develop proposal, including specific objectives, performance measures and standards, and implementation plans.

↓

<u>Board of Governors and Universities</u>

Negotiate and sign contract.

Implement contract beginning July 1 of fiscal year following signing of the contract.

Board to submit annual reports to Governor and Legislature by December 1 (the report would cover the implementation of the contract during the prior fiscal year)

THE COUNCIL FOR EDUCATION POLICY RESEARCH AND IMPROVEMENT

Legalities of Multi-Year Contracts

Statutory language, court cases, and constitutional language were reviewed to locate citations relevant to the feasibility of multi-year contracts. That 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. The citations leading to those conclusions are described below:

1. While several court cases could be cited related to the concept of binding the legislature in multi-year contracts, *Ware v. Seminole County et al* 38 So. 2d 432 (Fla.1949) included statements that were direct, easy-to-understand – and were made by the Florida Supreme Court. In affirming part of the judgment, the Court specified that, "To hold otherwise would mean that one legislature could bind a future legislature and interfere with the exercise of its orderly functions. That this cannot be done is too academic to discuss." Note, however, that Section 1009.98, F.S. requires that, "The Legislature shall appropriate to the Florida Prepaid College Trust Fund the amount necessary to meet the obligations of the board to qualified beneficiaries." In this provision, the usually mandatory word "shall" must be considered as precatory rather than mandatory in light of the constitutional principle stated in the *Ware* case and further supported by *Rodriguez v. Superintendent, Bay State Correctional Center.*[1]

2. In *Florida Police Benevolent Association v. State* (Fla. 1st D.C.A. 2002), the District Court of Appeals concluded that: "Plaintiff would have this Court declare, in effect, that the Governor's negotiations bind the legislature….Plaintiff cannot state a cause of action requiring legislative funding of an executive negotiation without offending the separation of powers doctrine."

3. Florida statutes require that any contract entered into by public officers or employees of the executive branch must include a specified "contingency" statement as indicated below, if the contract requires an annual appropriation:

> Section 287.0582, F.S. Contracts which require annual appropriation; contingency statement.--No executive branch public officer or employee shall enter into any contract on behalf of the state, which contract binds the state or its executive agencies for the purchase of services or tangible personal property for a period in excess of 1 fiscal year, unless the following statement is included in the contract: "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

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[1] Cf., *Rodriguez v. Superintendent, Bay State Correctional Center,* 139 F. 3d 270, 272 (1st Cir. 1998) where the court interpreted "shall" to be only precatory where Congress specified a 30 day time limit within which the federal appellate courts should rule on successive habeas corpus petitions.

4. The Florida constitution does provide for multi-year funding commitments in one situation – paying the principal and interest on any bonds authorized pursuant to the constitution. For example, Article XII, Section 9, of the state constitution specifies that funds in the Public Education Capital Outlay and Debt Service Trust Fund (PECO) shall be used in each fiscal year for specified purposes and in a certain priority order. The first priority for use is "[f]or the payment of the principal of and interest on any bonds due in such fiscal year." Thus, it would appear that the Legislature can not be required to provide annual funding unless the constitution includes such a provision.

COUNCIL FOR EDUCATION POLICY RESEARCH AND IMPROVEMENT

University Contracts Study

Addendum to Tab 5-A

1. Performance Funding Contract for University Services (p. 3 of packet)

Consideration: As consideration for services rendered by the *University* pursuant to this contract, the *First Party* agrees to **_____ (appropriate, recommend, or request)** the amount <u>of state funds</u> as specified in the attached Contract Specifications<u> and permit tuition flexibility as authorized by the Legislature and specified in the attached Contract Specifications</u>. The performance of the *First Party* under the terms of this contract is subject to and contingent upon the availability of funds appropriated to the *First Party* and applicable for the purposes of this contract.

2. Process for University Contracting (p. 17 of packet)

a. Near the bottom of the page, after **<u>Universities</u>**, add:

<u>CEPRI</u>

<u>Develop criteria for Board of Governors to use in evaluating university proposals</u>

b. At the bottom of the page, add:

<u>CEPRI</u>
Review implementation of contract after three years

Tuition, Fees, Financial Aid and Access

> *SREB states and states across the nation are grappling with what has been described as the most serious fiscal situation since World War II. No state has been able to balance its budget easily with revenues expected.… Citizens will feel the impact of fee increases in many states. Colleges and universities are reporting tuition increases that are higher than in years past and other college and university fees also are being raised. Purchases of prepaid tuition contracts have been suspended in at least two states…* SREB Legislative Report (June 2003)

The economic down turn of recent years has had a serious impact on funding for state-supported higher education. At the same time, the maturation of the Baby Boom Echo generation has increased the demand for higher education. The combined impact on student access has resulted has been a reexamination of tuition and financial aid policies by many states. Consistent with this, the UF/FSU contract proposal includes a provision that would give the trustees of these institutions the independent authority to set tuition and fees for their institutions. This initiative would probably result in a major change in Florida's financing of higher education and a move away from the longstanding policy of low tuition. This is probably the most controversial component of the contracting proposal. This section of the report will examine Florida's current policies, national trends and the implications of the contract proposal related to student access.

<u>The Need for Coordinated Policies</u>

In "Financing in Sync: Aligning Fiscal Policy with State Objectives", Dennis Jones (2003) notes that the educational mission of public higher education is funded based on a number of policies set at different times by different decision-makers:

1. Policies related to appropriations for general operations
2. Tuition and fee policies
3. State financial aid policies
4. Institutional financial aid policies
5. Federal financial aid policies

He also notes that when funding policies are not aligned, important goals of higher education are not realized:

1. Students find higher education becoming unaffordable and opt out;
2. Taxpayers pay more than their fair share; or
3. Institutions fail to acquire the resources needed to adequately fulfill their missions.

Dennis Jones (2003) also describes the variety of goals that affect tuition and financial aid policies.

<u>Tuition</u>

1. Affordability
2. Revenue
    - Access to courses and programs
    - Efficiency and performance

- Quality and economic development mission

3 Support differential missions and costs

Financial Aid

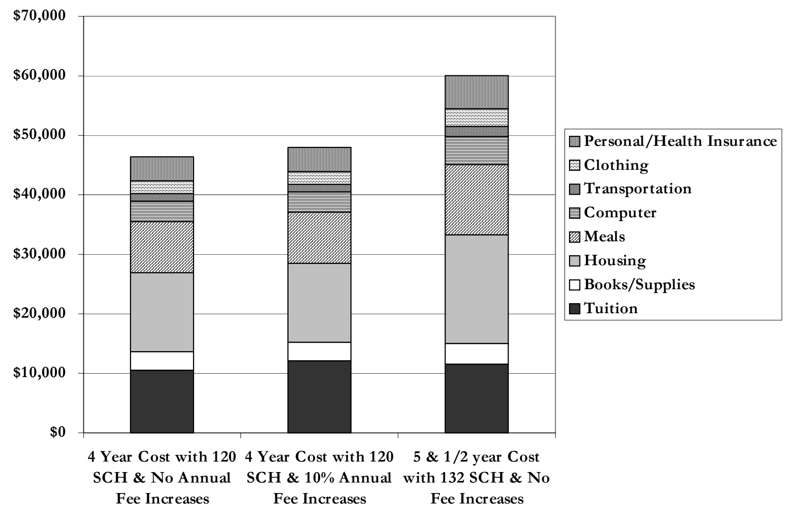
1 Affordability
2 Reward performance
3 Stem the "brain drain"

He cautions that "While the prescription is straightforward— formulate policy… in concert rather than independently—it is seldom followed. These policies are typically made independently." The one place where financial aid and tuition and fee policies are somewhat reconciled is in the financial aid office. Financial aid officers try to assess the individual needs of each student and then assemble a workable financial aid package from available resources that balance a combination of work, grants, and loans from the resources available at the institution. While the financial aid office can usually provide funds to pay for college costs – at least in the form of loans – the office cannot guarantee access to courses.

For example, high tuition and fees is often cited as a barrier to access. On the other hand, both the revenue and cost aspects of tuition and fee policies can affect access. Low tuition could result in a barrier to access if limited revenue impacts funding of courses that are needed in order for students to graduate on time. This is particularly possible during a period when funding from state revenues is being reduced. Figure 1 compares the current annual cost of attending the University of Florida to the cost of attendance with a ten percent increase. If the 2002-03 fees of $2,630 were increased by ten percent, the fee increase would be $263. This amount represents a 2.3 percent increase in the total suggested annual student budget of $11,595. If tuition were to be increased by ten percent for three years, the annual cost would rise to a total increase of $789 per year. This scenario represents a 3.4 percent increase in the total cost of attending college for four years. On the other hand, the cost to the typical student that takes about five and a half years rather than four years and 132 hours rather than 120 to graduate, is increased by $13,642 or over 29 percent.

Therefore, the current trend of students taking more than four years to graduate constitutes a more significant increase in cost than even large increases in tuition. This trend is at risk of becoming more acute as budget reductions and spiraling enrollment constrain student access to courses. If universities were to use revenues from tuition increases to ensure that students were able to take the courses needed to graduate in a timely manner and if incentives and assistance were provided to students to encourage graduation in a shorter time period, tuition increases could actually result in many full-time students saving money.

Figure 1: Tuition Increases Impact Total Cost of Achieving a Degree Much Less than the Time Taken to Graduate

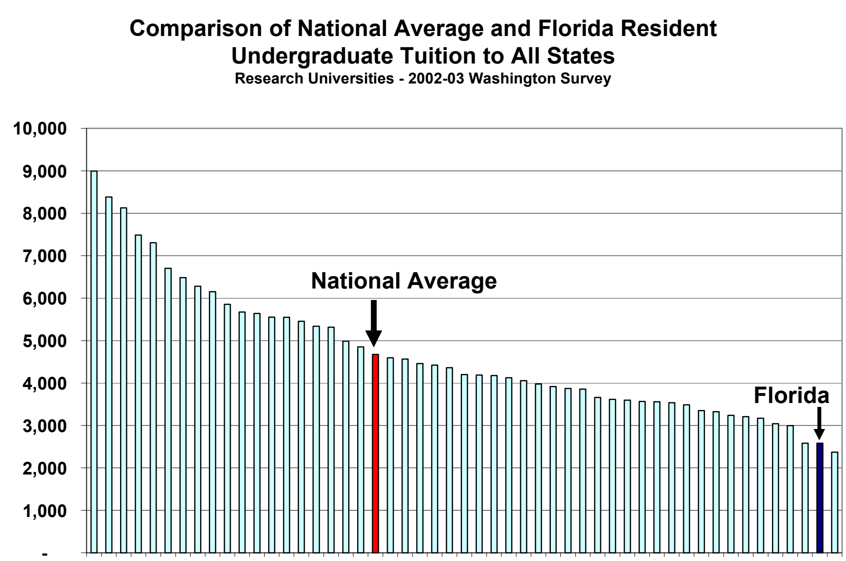


The contract proposal provides an opportunity to place sufficient authority in the hands of one decision body, the university board of trustees, which is close enough to the impact of decisions to orchestrate a coordinated system of fees, student support, and expenditures that can maximize student success. Performance objectives and measures associated with the devolution of tuition and fee-setting authority could ensure that this opportunity is realized. Further benefits could be achieved if policies in other related programs run by the state were brought into alignment with the goal of maximizing access.

Current Florida Policies

Florida has a long tradition of low tuition. For example, the annual survey by the state of Washington ranks Florida as the next to lowest state in resident undergraduate tuition at the major universities for 2002-03 (figure 2).

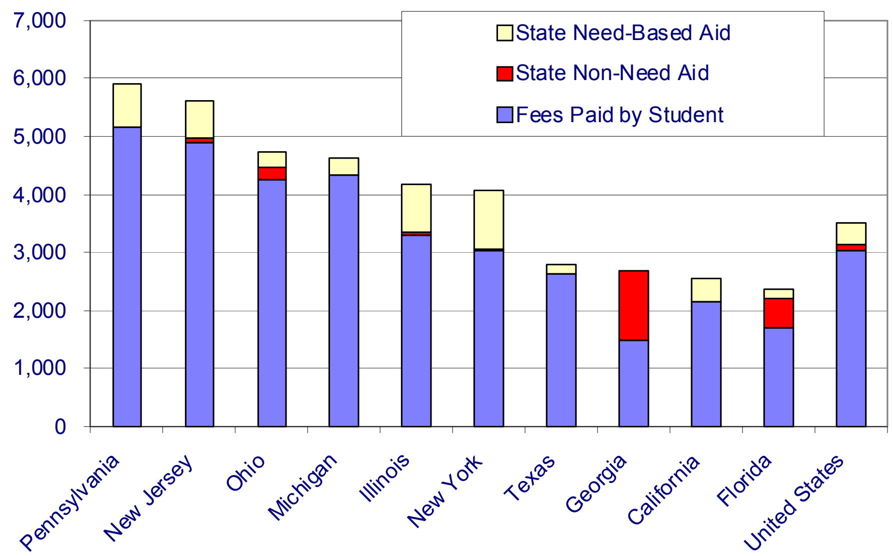
Figure 2



Source: The Washington Higher Education Coordinating Board. Figures are for annual tuition and fees for academic years 2001-02 and 2002-03 at public four-year institutions. Survey results completed January 2003.

Another approach is to look at the net amount of tuition paid by students after subtracting tuition payments by state financial aid programs. Figure 3 compares tuition and student financial aid for the 10 largest states. The total amount represented by each column is the tuition charge for resident students. The yellow portion of the column is the amount paid from state sources, on average, to students for need based financial aid. In other words, it represents the result of dividing all state funded need-based aid by the total number of resident students. The red portion of each column represents the results of the same calculation for non-need based aid (primarily merit aid such as Bright Futures).

Figure 3: Average Tuition, Fees, and Financial Aid per FTE of 10 Large States and U.S.



Sources: NCES Digest of Education Statistics 2001 and NASSGAP Annual Survey of State Grant Programs 2000-01.

This chart again illustrates Florida's low tuition and fees, but also shows the small size of the state's need-based aid program (yellow) and large size of the merit aid program (red). If Florida were to convert the funds in Bright Futures to need-based aid, then the total amount of need based aid would be comparable to most states with relatively high tuition.

The Share of Cost of Higher Education

The extremely low ranking of Florida tuition raises the question of whether Florida policies represent an equitable balance between cost to the student and the taxpayer. In "Higher

Education: Who Pays? Who Benefits? Who Should Pay?", the Carnegie Commission on Higher Education presented one of the earliest and simplest statements on tuition policy; that the division of the cost of higher education between the student and the taxpayer should reflect the share of benefits that are received by the student versus the public at large.

The social benefits of higher education have been described in various reports as:

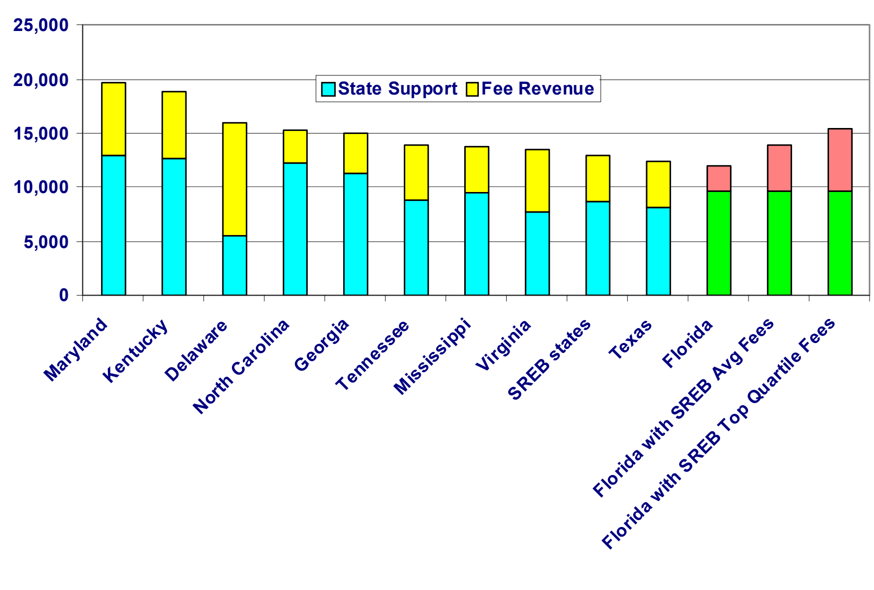
1 Highest and best use of individual talent; maximize the productivity of a society
2 Increase tax revenue
3 Minimize social costs that are correlated with under-education (crime rates and dependency)
4 Informed and educated electorate
5 Increased entrepreneurism
6 Increased technological innovation
7 Contribution to an attractive environment for the relocation of businesses and talented professionals

(Bynner, 2001, NEA, 2003, and Watts, 2001)

It appears that these social benefits could be classified into two categories: benefits related to access and benefits related to the interrelated issues of quality: reputation and research productivity. In the CEPRI report *Equity of University Funding* (January 2003), it was noted that lack of a competitive level of tuition revenue was largely responsible for the low overall funding of Florida's research universities. Figure 4 compares the funding of Florida's three largest research universities to the top ranked states in the southern region. The two columns to the right show how adding regional average or regional upper quartile fee rates to the current level of Florida taxpayer support would improve the competitive funding of these universities.

Figure 4: Revenue per FTE of Research I Universities: Florida vs. Top Funded SREB States

Source: SREB 2000-2001 Funding Report



Personal benefits are also extensive and overlap the social benefits:

1 Higher income,
2 Prestige,
3 Better working conditions,
4 Better potential for promotion,
5 More opportunities to relocate in response to job opportunities.

(Bynner, 2001).

If Florida policies represent a better balance between benefits to society as a whole versus the personal benefits to the student than is typical of other states, then what is the basis of this judgment? The obvious benefit might be that low tuition facilitates access and promotes educational achievement by low income students. How does Florida measure up in evaluations of affordability and access?

In "Measuring Up 2002: The State-by-State Report Card for Higher Education" Florida received an affordability grade of "D-". This grade is based on two measures: the percent of income needed to pay for college expenses minus financial aid, and the size of state aid to low-income students relative to the federal Pell Grant. Tables 1 and 2 demonstrate how Florida was evaluated on each of these measures relative to states that received an "A" grade.

Table 1: Family Ability to Pay

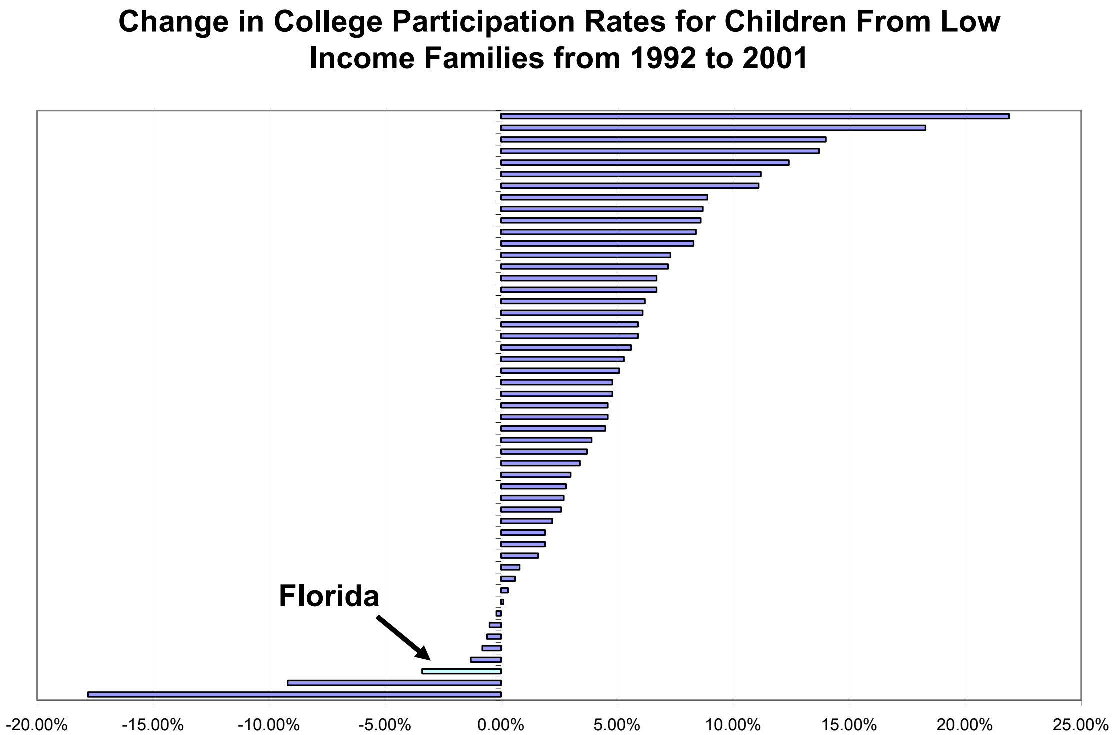
Percent of income needed to pay for college expenses minus financial aid: (average of all income groups)	Florida	Top States
• at community colleges	23%	16%
• at public 4-year colleges/universities	23%	18%
• at private 4-year colleges/universities	62%	32%

Table 2: Strategies for Affordability

	Florida	Top States
State grant aid targeted to low-income families as a percent of federal Pell Grant aid	16%	108%
Share of income that poorest families need to pay for tuition at lowest priced colleges	13%	8%
Average loan amount that all undergraduate students borrow each year	$3,082	$2,928

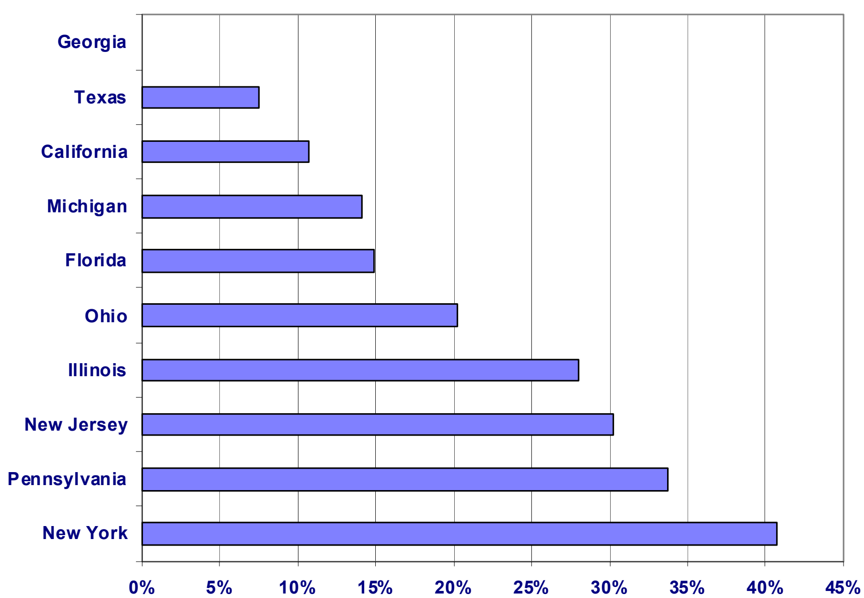
A measures of college participation rates by low-income students presented in the July 2003 issue (133) of "Postsecondary Opportunity" shows consistent results (Figure 5). Again Florida scores very low in college participation by low income students and is one of the few states showing a decline in such participation.

Figure 5



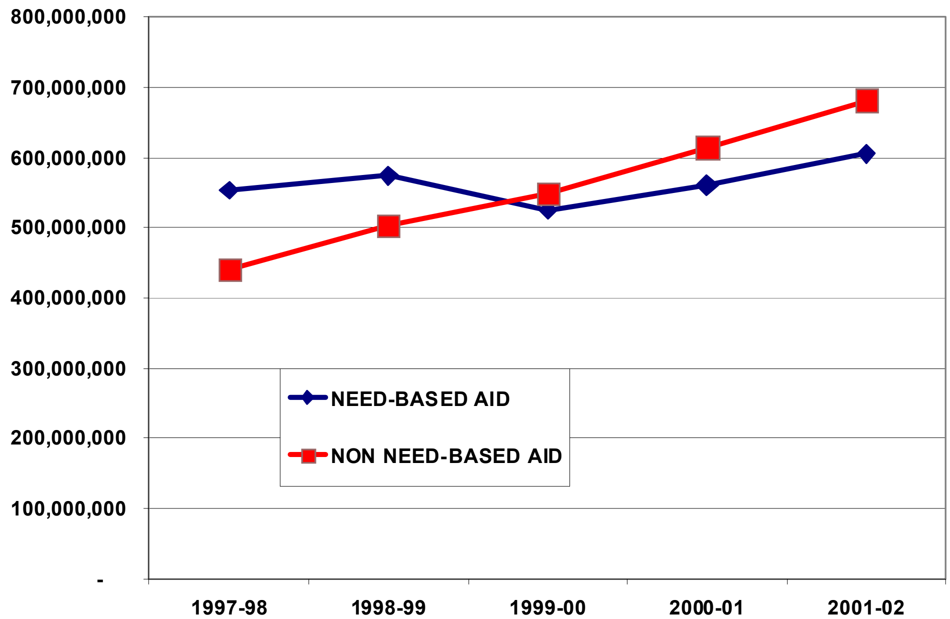
In summary, Florida's tuition policy when combined with the state's financial aid policies does not appear to have been successful in enhancing access. Why does a low tuition policy not inevitably lead to enhanced access? One reason was discussed earlier. Tuition is not the major cost of college and Florida is among the lower states in provision for need based aid (figure 6).

Figure 6: Percent of Undergraduates Receiving Need-Based Aid in Ten Largest States (2000-01)



On the other hand, the chart below illustrates that along with the increases in Bright Futures, Florida has made some gains in providing need-based aid in recent years.

Figure 7: Need vs. Non-Need Based Student Financial Aid in the Florida State University System



Dennis Jones (2003) summarized several problems with a low tuition/high merit aid strategy such as Florida's.

1 It benefits students who would have gone to college anyway
2 It reduces the price of attendance for students who could have afforded to pay more
3 It shifts costs from students and parents to taxpayers
4 It is unlikely to substantially improve either participation or affordability

Summary of Current Florida Policies

1 Current policies emphasize on low tuition and merit aid
2 These policies produce a low ranking among states in success at providing access...
   – Despite low tuition, Bright Futures, Prepaid Tuition program, etc.
3 Current Florida tuition levels provide the state with an untapped and uncommitted revenue opportunity

National Trends

If it is possible to increase tuition and fees while maintaining access through financial aid increases, what about the shift of authority to set tuition to the universities? A recent SHEEO survey revealed a shift away from state tuition and fee policies towards policies determined at the institutional level. The table below shows that in 1996-97, 60 percent of the states had some type of formally stated policy of tuition and fees. By 2002-03, this had declined to 43 percent. More details on recent trends in tuition decisions by states reported are in Appendix 1.

Table 3: State Tuition Policies

Source: State Tuition, Fees, and Financial Assistance Policies, 2002-03 (SHEEO)	2002-03	1996-97
Tuition should be as low as possible	30%	28%
Tuition should be moderate	13%	28%
Tuition should be high	0%	4%
Tuition policy is guided at institutional-level/ no statewide policy exists	37%	23%
Other	20%	17%

The same survey also indicated that unlike Florida, the authority to set fees is already under the authority of university systems and individual universities in most states.

Table 4: Primary Authority for Establishing Tuition

Legislature	4
State Coordinating/Governing Agency	18
System Boards	12
Individual Institutions	16

Source: State Tuition, Fees, and Financial Assistance Policies, 2002-03 (SHEEO)

One unfortunate consequence of these trends has been an emerging problem of student debt. A recent symposium (Institute for Higher Education Policy, 1997) attributes this trend to several factors:

1 The amounts students will have to repay are a rising and significant proportion of potential earnings.
2 The current growth in borrowing has not leveled off.
3 Many have accumulated debt, particularly through credit cards, that could make repaying loans more difficult than in the past.
4 Widespread consumer debt is substantial so students are receiving less help from their parents.

<u>Summary of National Trends</u>

1 A shift of policies towards an emphasis on institutional funding needs.
2 Increased deregulation of tuition decisions by state legislatures.
3 Student debt as a share of potential income continues to grow.

<u>Institutional Differences</u>

With the inclusion of USF, UCF, and FIU in the study in addition to UF and FSU, about 75 percent of the enrollment of the University system is now included in the contract study.

The result is more diversity in the demographics of students who could be affected by a contract. While UF and FSU are residential institutions primarily serving traditional college-age students, USF, UCF, and FIU serve much larger populations of older students who tend to more likely be place-bound by families and careers (figure 8) and part time students (figure 9). As a result, the challenges related to preserving access are greater and opportunities for savings through higher course loads and reduced time to graduation exist to a lesser degree for these institutions than for UF and FSU.

Figure 8: Fall 2001 Headcount Undergraduate Enrollment by Age

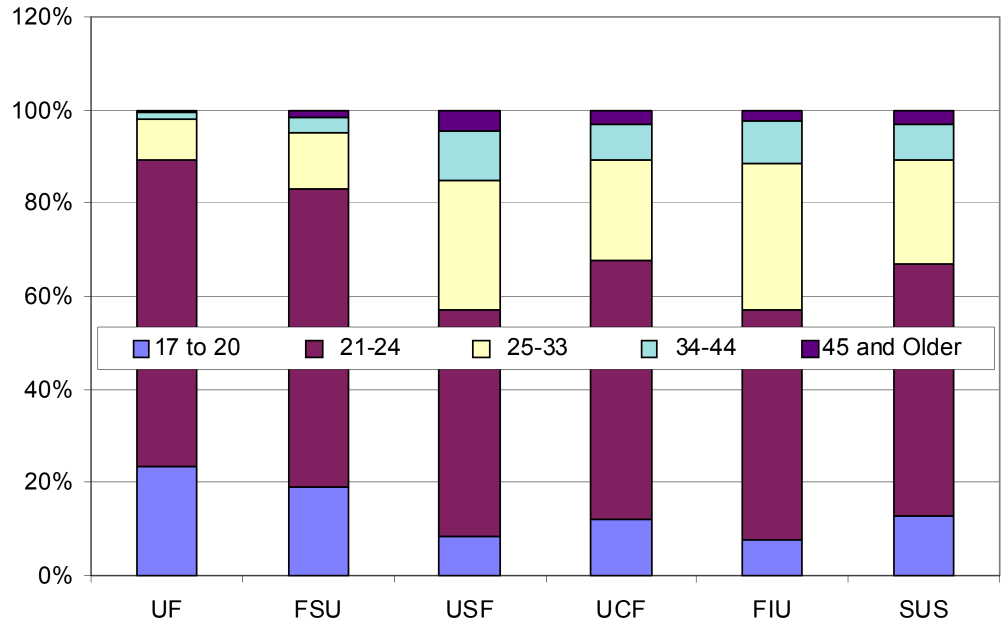
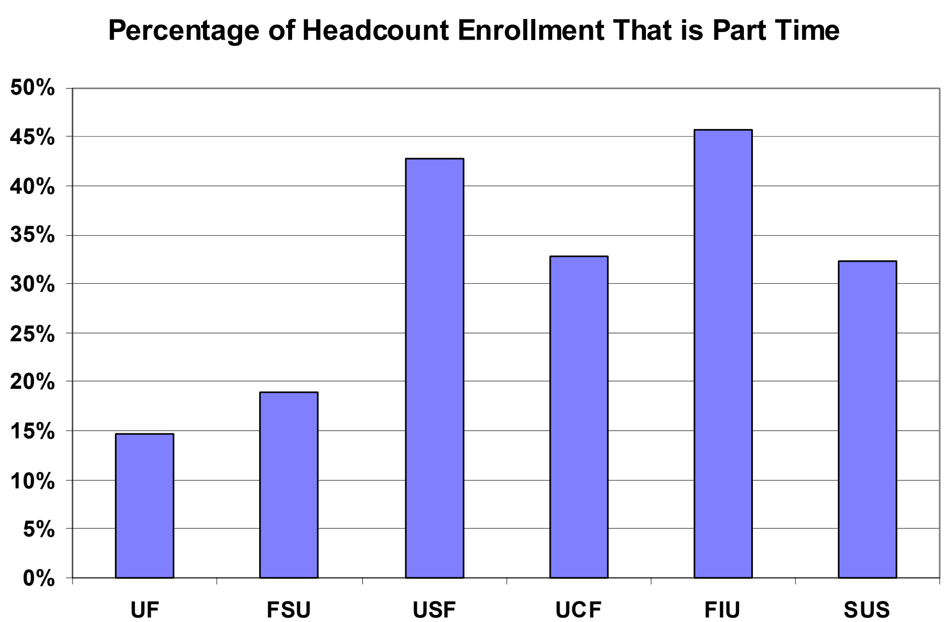


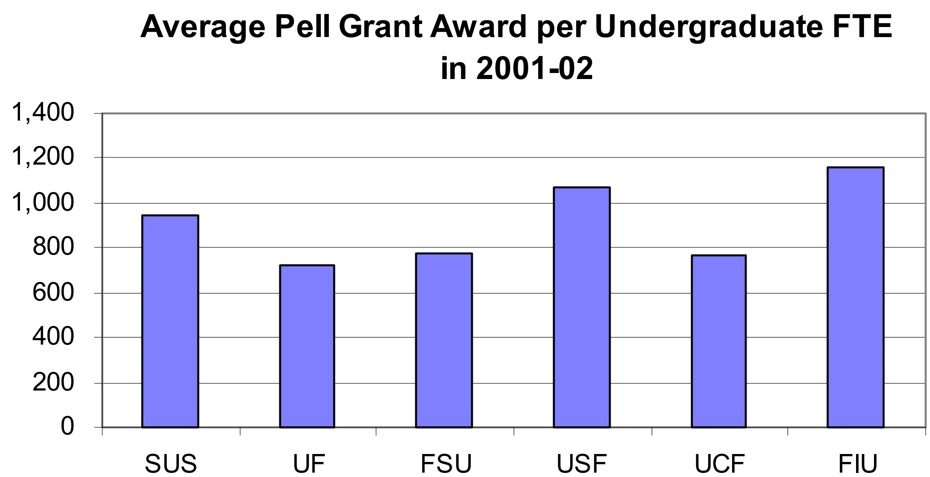
Figure 9



Source: 2001-2002 SUS Fact Book.

There are also differences among the institutions in the proportions of students with financial need. The Pell Grant is the federal need based grant that is available to full time or part time undergraduate students with sufficient demonstrated need. The following chart compares the total value of Pell Grant awards divided by the total undergraduate FTE in 2001-02 for each university in the study. This indicates a higher proportion of students who qualify for need-based aid at USF and FIU than at the other universities.

Figure 10



Source: 2001-2002 SUS Fact Book

In summary, there are different access issues that could be affected by providing university trustees with the authority to set tuition and fees for each university in the study.

Recommendations

- **If a contract is adopted that devolves the authority to set tuition and fee rates to the universities, the contract should include objectives and performance measures that ensure that tuition and fee increases do not adversely affect access.**

- **Individual measures should be adopted that monitor the impact on access by part-time students and students with financial need.**

- **Cumulative student debt should be tracked and monitored to ensure that universities are implementing policies that avoid excessive debt burdens among students.**

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Appendix I: Summary of Tuition and Fee Information from the July 16, 2003 AASCU State Budget and Tuition Update

ALABAMA	
ALASKA	The University of Alaska Board of Regents approved a 10 percent tuition increase for the 2003-2004 academic year.
ARIZONA	The Arizona Board of Regents voted to approve a $1,000 (39.9 percent) resident undergraduate tuition increase for 2003-2004.
ARKANSAS	Resident undergraduate tuition increases for 2003-2004 in the University of Arkansas System will range from 5.9 percent at the Pine Bluff campus to 8.4 percent at the Monticello campus.
CALIFORNIA	UC Regents and CSU Trustees had proposed resident undergraduate fee increases of approximately 25 percent for 2003-2004, but are reconsidering plans in anticipation of further budget reductions.
COLORADO	The Colorado Commission on Higher Education has proposed 2003-2004 resident tuition increases of up to 6 percent for regional universities and up to 9 percent for research universities (except CU) after Gov. Owens vetoed a budget provision allowing for 10% increases
CONNECTICUT	Connecticut State University System trustees approved a 14.5 percent ($335) tuition increase for resident undergraduate students for 2003-2004.
DELAWARE	The University of Delaware will increase resident undergraduate tuition by 11 percent ($580) for 2003-2004.
FLORIDA	
GEORGIA	On May 21, the University System of Georgia Board of Regents approved resident undergraduate tuition increases for 2003-2004 of 10 percent ($202) at regional universities and state colleges, and 15 percent ($418) at research universities.
HAWAII	
IDAHO	Student charges at the state's public universities will increase $267 to $312 for 2003-2004. ?
ILLINOIS	The University of Illinois Board of Trustees approved a 5 percent tuition increase for 2003-2004 on June 27, following Gov. Blagojevich's call to reject an 8 percent increase proposed by

	university leaders.
INDIANA	Tuition and fee increases at the state's public universities average 16.2 percent for resident undergraduates for 2003-2004.
IOWA	
KANSAS	The University of Kansas and Kansas State University plan to seek tuition increases of 20 percent for 2003-2004. Other proposed increases for the coming year range from 9 percent at Fort Hays State to 18.8 percent at Wichita State. The Kansas Board of Regents approved the increases on June 26.
KENTUCKY	University of Kentucky trustees voted on March 18 to raise resident tuition and fees 14.4 percent ($572) for 2003-2004; Morehead State trustees have authorized a 15-18 percent increase, Eastern Kentucky trustees will consider a 9.5 percent increase, and Northern Kentucky is proceeding with a 16.4 percent increase.
LOUSIANA	The University of Louisiana System is proposing a 3 percent tuition increase for 2003-2004.
MAINE	University of Maine System trustees will consider a proposal in June that will boost average 2003-2004 resident undergraduate tuition and fees an average of 7.1 percent ($338).
MARYLAND	University System of Maryland regents voted on July 11 to approve a 2003-2004 tuition proposal that would raise rates up to 22 percent over 2002-2003 levels.
MASSACHUSETTS	UMass trustees voted on March 12 to raise resident fees by $1,000 for 2003-2004 at the system's four undergraduate campuses (an increase of 15.4 percent to 19.5 percent). The State Board of Higher Education voted on June 10 to freeze tuition for 2003-2004, and will ask campuses to use restraint in fee increases.
MICHIGAN	Leaders of Michigan Technological University, Saginaw Valley State University, and Oakland University have indicated that 2003-2004 tuition increases will likely top 10 percent; other state university have not yet commented on prospective tuition increases.
MINNESOTA	Minnesota State Colleges and Universities (MnSCU) Trustees have proposed a 13.9 percent (approximately $400) increase in resident undergraduate tuition for 2003-2004. University of Minnesota regents voted on June26 to raise resident undergraduate tuition 12.4 percent to 14.7 at the system's campuses. Lawmakers limited the universities to an increase of no more than 15 percent for 2003-2004.

MISSISSIPPI	The state's College Board voted on May 15 to keep 2003-2004 tuition rates at 2002-2003 levels, but approved room and board increases ranging from $80 to $390 for the year.
MISSOURI	On May 22, the University of Missouri Board of Curators approved a 19.8 percent increase in resident undergraduate tuition for 2003-2004, an increase of approximately $1,000 for full-time students.
MONTANA	Regents of the state university system have approved a plan that will keep 2003-2004 resident undergraduate tuition charges slightly above or below current levels, with increases ranging from 4.7 percent to 12.2 percent slated for 2004-2005.
NEBRASKA	University of Nebraska Regents voted on June 7 to increase tuition 15 percent for 2003-2004 and 12 percent for 2004-2005.
NEVADA	According to a plan approved by the Board of Regents in April 2002, resident undergraduate tuition will increase 7.6 percent for 2003-2004.
NEW HAMPSHIRE	University System of New Hampshire trustees have approved a 6.8 percent resident undergraduate tuition increase for the fall 2003 semester (approx. $150 at Keene State College and Plymouth State University). Spring rates will depend on the outcome of continuing budget negotiations.
NEW JERSEY	As part of the FY04 budget deal, state colleges and universities must hold 2003-2004 tuition increases to 9 percent or less to receive their full state funding.
NEW MEXICO	According to data supplied to the State Higher Education Executive Officers (SHEEO), state higher education funding will increase 7 percent from FY03 to FY04
NEW YORK	SUNY trustees approved a $950 increase in resident undergraduate tuition for 2003-2004 (28 percent), mirroring the Legislature's recommended increase. CUNY trustees approved a 25 percent increase ($800).
NORTH CAROLINA	A compromise FY04 budget approved by the Legislature calls for a 5 percent resident and non-resident tuition increase at the state's universities for 2003-2004.
NORTH DAKOTA	The Legislature has approved an increase in the existing tuition cap for public colleges and universities. Public campuses will be allowed to increase 2003-2004 resident undergraduate tuition up to 9.9 percent (12.9 percent for The Ohio State University), provided that the campuses use the proceeds for need-based aid or technology

	improvements. The governor has indicated that he supports the higher limit.
OKLAHOMA	The State Regents for Higher Education approved 2003-2004 tuition increases on June 30 that will mean an average tuition/fee increase of $429 for resident undergraduates at the state's regional universities and an increase of just over $800 for resident undergraduates at the University of Oklahoma and Oklahoma State University.
OREGON	The Oregon Board of Higher Education is scheduled to approve 2003-2004 tuition rates on July 18. Several state universities are proposing two rounds of 2003-2004 tuition increases, one in the fall and another in the spring. Fall increases will boost resident undergraduate tuition by as much as 32 percent over 2002-2003 levels.
PENNSYLVANIA	The State System of Higher Education's board of governors is considering a proposal to increase resident undergraduate tuition 5 percent ($220) for 2003-2004, but has deferred final action on that proposal at the request of the governor. On July 11, Penn State trustees approved a 9.8 percent ($788) resident undergraduate increase for 2003-2004.
RHODE ISLAND	
SOUTH CAROLINA	Planned 2003-2004 undergraduate tuition increases at the state's public universities range from 15 percent at USC-Columbia to 37 percent at USC-Beaufort. Winthrop University will increase tuition by 19 percent ($1,052 per year), Francis Marion University plans a 17.5 percent increase, and Coastal Carolina University will likely raise tuition 19 percent. South Carolina State University has decided to forgo a tuition increase in favor of a 9-day employee furlough.
SOUTH DAKOTA	At its meeting on March 13, the South Dakota Board of Regents voted to raise resident tuition and fees 5.8 percent for 2003-2004.
TENNESSEE	The Tennessee Board of Regents approved 2003-2004 tuition/fee increases ranging from 14 to 19 percent (an increase of approximately $400 for undergraduate students).
TEXAS	Gov. Perry has signed a law that allows the state's colleges and universities to set their own tuition rates, effective in the fall.
UTAH	The Utah Board of Regents finalized 2003-2004 resident tuition increases at a meeting on March 14. Those increases range from 6 percent at the College of Eastern Utah to 20.5 percent at Southern

	Utah University.
VERMONT	
VIRGINIA	According to the State Council for Higher Education, resident tuition and instructional fees at the state's public colleges and universities will increase an average of 19.1 percent for 2003-2004 over 2002-2003 levels.
WASHINGTON	The Legislature has authorized resident undergraduate tuition increases of 7 to 9 percent for 2003-2004.
WEST VIRGINIA	On April 24, the Higher Education Policy Commission set maximum limits for 2003-2004 tuition increases, with fou-year institutions facing limits of 7.5 percent to 9.5 percent, depending on the institution.
WISCONSIN	University of Wisconsin System regents approved a plan that would increase resident undergraduate tuition $700 at the Madison and Milwaukee campuses and $500 at other system campuses, an increase of about 18 percent.
WYOMING	Resident undergraduate tuition will increase 2.5 percent (to $2,997) at the University of Wyoming for 2003-2004.