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A NEW LOOK FOR PUBLIC EDUCATION:
THE PROPOSED REVISION
OF FLORIDA'S EDUCATION GOVERNANCE SYSTEM

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I. INTRODUCTION

The Constitution Revision Commission has proposed sweeping and fundamental changes in state control of public education in Florida. First, the commission has proposed replacing the elected State Board of Education—consisting of the Governor and Cabinet—and its elected commissioner of education with appointed substitutes.¹ If this proposal is approved by the voters, more than a century of Cabinet dominance of public education would end. Second, the commission has proposed elevating the Board of Regents, the statutory board currently governing Florida's universities,² to constitutional status.³ If approved by the electorate, this proposal would assure continued power for the regents over the state university system.

This article explores these recommended changes.⁴ Part II discusses the existing law relating to the State Board of Education and the Board of Regents. Part III analyzes the proposed revision pertaining to the State Board of Education and the commissioner of education, including a study of the proposed interrelationships between the respective powers of the State Board of Education and of the Board of Regents. Part IV deals with the proposed grant of constitutional status to the Board of Regents and discusses the effect such a change would have on current legislative power. Finally, Part V assesses the advantages and the possible disadvantages of the proposed changes.

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1. Fla. C.R.C., Rev. Fla. Const. art. IV, § 4 (May 11, 1978) [hereinafter cited as Rev. Fla. Const.]; *id.* art. IX, § 2. The 1968 Florida Constitution provides for six elected Cabinet officers—secretary of state, attorney general, comptroller, treasurer, commissioner of agriculture, and commissioner of education. The revision commission has proposed abandoning these positions entirely. *See id.* art. IV, § 4.

2. FLA. STAT. §§ 240.001, .042 (1977).

3. Rev. Fla. Const., *supra* note 1, at art. IX, § 7.

4. This article will not explore the proposed change in art. IX, § 1 of the Florida Constitution, which provides that the primary purpose of elementary and secondary education in this state shall be to develop the ability of each student to "read, communicate and compute and to provide an opportunity for vocational training."

II. HISTORY OF FLORIDA'S EDUCATIONAL SYSTEM

Florida's education system at the state level—in contrast to the local level—is multifaceted. Day-to-day control over the basic education system, kindergarten through twelfth grade, is exercised by an elected commissioner of education.⁵ In contrast, day-to-day control over the state university system [hereinafter referred to as "SUS"] is exercised by a Board of Regents.⁶ The regents are appointed by the Governor.⁷ In turn, the regents appoint the chancellor, who is the chief executive officer of the SUS and serves as the regents' chief advisor.⁸ Community colleges are regulated by local boards of trustees whose members, like the regents, are appointed by the Governor.⁹ And supervising all of these bodies is the ex-officio State Board of Education [hereinafter referred to as "State Board"], which is charged by the current constitution with supervising this system to the extent provided by law.¹⁰ The State Board consists of the Governor and the Cabinet.¹¹

A. *The State Board of Education*

1. *Pre-1968 System*

Since the ratification of the 1868 constitution, Florida's state education system has been controlled either by the entire Cabinet or by a number of its officers and the Governor, sitting as the State Board of Education.

Under the 1868 constitution, the State Board consisted of three of the then eight Cabinet officers: the superintendent of public instruction, the secretary of state, and the attorney general.¹² The Governor maintained control through his choice of Cabinet appointees since, at that time, the Cabinet was appointed by the Governor.¹³ The board's duties were left to the sole discretion of the legislature.¹⁴ The superintendent of public instruction, referred to as the commissioner of education under the present constitution,¹⁵ exer-

5. FLA. CONST. art. IV, § 4(g); *id.* art. IX, § 2.

6. FLA. STAT. §§ 20.15(3), 240.001 (1977). Section 20.15(6) requires that regents be approved by three Cabinet members and confirmed by the senate.

7. Note that the appointments are for nine-year terms.

8. FLA. STAT. § 240.042(2)(c) (1977).

9. *Id.* §§ 20.15(7), 230.753-.754. Section 20.15(7) further requires that community college trustees be approved by three Cabinet members and confirmed by the senate.

10. FLA. CONST. art. IX, § 2.

11. *Id.*

12. FLA. CONST. of 1868, art. VIII, § 9.

13. *Id.* art. V, § 17. It was not until 1886 that the Cabinet became an elected body. FLA. CONST. of 1885, art. IV, § 20.

14. FLA. CONST. of 1868, art. VIII, § 9.

15. FLA. CONST. art. IV, § 4(a).

cised general supervision over the state education system.¹⁶

The 1885 constitution created the now familiar elected State Board of Education.¹⁷ The Governor and treasurer joined the board, with the Governor replacing the superintendent of public instruction as president of the board.¹⁸ The board's powers were expanded constitutionally to include specifically the power to remove subordinate school officers for cause, to invest and manage state school funds under regulations prescribed by law, and to supervise the schools of higher grades as provided by law.¹⁹ The supervisory duties of the superintendent of public instruction over the public education system were carried forward from the 1868 constitution.²⁰

2. Current Law

The 1968 constitution designated the Governor and Cabinet as the State Board of Education, thereby adding to the board the comptroller and the commissioner of agriculture.²¹ Under this latest constitution, the legislature continues to have discretion to set the boundaries of the State Board's supervisory duties and powers.²² The legislature has assigned the State Board substantial power over policy and coordination of the public education system.²³ Pursuant to statute, the board adopts rules needed to improve the education system; directs the Department of Education,²⁴ which serves as its administrative arm;²⁵ and adopts educational objectives, plans, and programs aimed at developing the system it coordinates.²⁶

The State Board's constitutional supervisory power extends to all levels of the public education system, including the state university system.²⁷ However, while it is empowered to exercise general supervision and control over the Board of Regents, and, as part of this supervision, must approve all Board of Regents rules and regula-

16. FLA. CONST. of 1868, art. VII, § 7; *id.* art. VIII, § 3.

17. FLA. CONST. of 1885, art. XII, § 3.

18. *Id.*

19. *Id.*

20. *Id.* art. IV, § 25; *id.* art. XII, § 2.

21. FLA. CONST. art. IV, § 4; *id.* art. IX, § 2.

22. *Id.* art. IX, § 2.

23. FLA. STAT. § 229.053 (1977). For a more detailed treatment of the statutorily assigned duties and powers of the State Board, see P. Draper, Summary of Statutory Duties and Responsibilities of the State Board of Education, Commissioner of Education, Department of Education, Community College Board of Trustees, and the Board of Regents (Dec. 1977) [hereinafter cited as Summary] (available in the art. IX, § 2 reference file of the Constitution Revision Commission).

24. FLA. STAT. §§ 229.053, .76 (1977).

25. For a more complete analysis of the Department of Education, see Summary, *supra* note 23, at 6-8.

26. FLA. STAT. § 229.053 (1977).

27. FLA. CONST. art. IX, § 2.

tions,²⁸ day-to-day supervision of the state universities as well as important policy questions are actually handled by the regents.²⁹

Under the present constitution, the commissioner of education follows in his predecessor's footsteps: the commissioner is elected and is empowered to supervise the public education system in the manner provided by law.³⁰ The relationship between the commissioner and the State Board is established by general law, with the commissioner serving as the chief administrative officer of the board.³¹ However, the commissioner's responsibilities relating to the university system are limited by statute, for the Board of Regents and the chancellor govern the SUS.³²

B. *The Board of Regents*

The Board of Regents, currently a creature of statute, exercises only those powers and performs only those duties prescribed by the legislature. Under present law, the regents have the primary responsibility for the management of the SUS.³³ The regents are empowered to "govern, regulate, coordinate, and oversee the institutions and agencies" of the SUS.³⁴ Among its various powers and duties, the Board of Regents adopts rules by which the SUS is managed and operated,³⁵ appoints a chancellor to carry out its policies,³⁶ appoints and removes university presidents,³⁷ and approves all state university budgets.³⁸

This division of supervisory power over higher education between the Board of Regents and the State Board of Education has continued basically unchanged since 1905 when the Board of Regents was referred to as the Board of Control.³⁹

28. FLA. STAT. § 240.031(1) (1977).

29. *Id.* § 240.042(2)(a).

30. FLA. CONST. art. IV, § 4(g).

31. FLA. STAT. § 229.512 (1977).

32. *Id.* § 240.001.

33. *Id.*

34. *Id.*

35. *Id.* § 240.042(2)(a).

36. *Id.* § 240.042(2)(c).

37. *Id.* § 240.042(2)(d).

38. *Id.* § 240.042(2)(e).

39. Act of June 5, 1905, ch. 5384, § 19, 1905 Fla. Laws 37 (current version at FLA. STAT. ch. 240 (1977)).

III. PROPOSED REVISION OF THE POWERS AND DUTIES OF THE STATE BOARD OF EDUCATION AND THE COMMISSIONER OF EDUCATION

A. *Proposed Revision to Article IX, Section 2*

The proposed revision places responsibility for the coordination, regulation, and supervision of public education in the hands of a nine-member citizens' board appointed by the Governor.⁴⁰ State Board members would serve six-year terms instead of the current four⁴¹ and would be subject to confirmation by the senate. The Governor would select one of the members to serve as chairperson of the board, and this member would serve in that position at the pleasure of the Governor.⁴² The effective date of this proposed revision requires that Governor Askew's successor choose the State Board membership.⁴³

Only one of the State Board's officers would remain elected: the commissioner of education, who is elected pursuant to the existing constitution and who also serves as a member of the Cabinet.⁴⁴ The commissioner's powers and duties would be basically the same as under present law.⁴⁵ The proposed revision further provides that if the office of elected commissioner of education is abolished, the position of state education chief—commissioner of education—would become an appointed position to be filled by a lay State Board.⁴⁶

Since abolition of the Cabinet is to be considered separately by the voters at the same time an education commissioner is to be elected, the commission adopted, as part of the State Board of Education proposal, a schedule which clearly decides the fate of the elected commissioner if the voters agree to abolish the Cabinet.⁴⁷ The schedule provides that if the voters abolish the Cabinet, the

40. For the text of the revision, introduced as Proposal 194, see Appendix to this issue.

41. FLA. CONST. art. IV, § 5(a); Rev. Fla. Const., *supra* note 1, at art. IX, § 2(b).

42. Rev. Fla. Const., *supra* note 1, at art. IX, § 2(b).

43. FLA. CONST. art. XI, § 5(c) provides that a revision becomes effective on the first Tuesday after the first Monday in January following the election at which it is adopted, unless otherwise specified in the revision. No such exception is contained in this proposed revision. The term of the Governor begins the same day—the first Tuesday after the first Monday in January of the year succeeding the election. See *id.* art. IV, § 5(a).

44. *Id.* § 4(g).

45. Rev. Fla. Const., *supra* note 1, at art. IX, § 2(d), states that the commissioner of education shall administer the board's policies and rules, manage the education program under the jurisdiction of the board, and perform such other duties and exercise such powers as are provided by law. This listing of duties essentially follows the commissioner's duties as provided by general law. See FLA. STAT. § 229.512 (1977).

46. Rev. Fla. Const., *supra* note 1, at art. IX, § 2(c).

47. *Id.* § 2, at Schedule ¶ (b).

commissioner elected in the 1978 election will serve out his or her term in a dual capacity as the State Board of Education's ninth member and chairperson of the board and as a Cabinet officer in a Cabinet with no responsibility for education.⁴⁸ This officer would not be divested of the duties and powers for which he or she was elected until the appointment of a new education chief.⁴⁹ The board would have the authority to choose its own administrative officer to carry out the previous commissioner's duties.⁵⁰ To eliminate confusion, the appointed official filling the commissioner's shoes would be known temporarily as the director of education.⁵¹

The plan of an appointed board served by an elected commissioner was an afterthought. Though substantially mirroring the California system of education—and therefore dubbed by the revisionists as the California Plan—the proposal was adopted after it appeared that the revision product might be split up on the ballot (with the question of Cabinet abolition standing alone), thus necessitating a proposal that could accommodate either an elected or an appointed commissioner.⁵² The original proposal provided for both an appointed State Board and commissioner. It was based on the assumption that the Cabinet would be abolished and with it the office of elected commissioner of education.⁵³

48. Cabinet abolition, if adopted, would not become effective until January 4, 1983, see Rev. Fla. Const., *supra* note 1, at art. IV, Schedule with Regard to Abolition of Cabinet, ¶ (f), while the State Board proposal would take effect four years earlier, on January 2, 1979, see note 43 *supra*.

49. Paragraph (b) of the schedule to art. IX, § 2 was amended by the addition of the words "but shall remain commissioner of education until a new commissioner is appointed by the board," to cover the hiatus between election of the commissioner and appointment of a new commissioner of education which would occur if the office of elected education commissioner were abolished in the 1978 general election. See Amendment 8 to art. IX, § 2, introduced and explained at 2 Transcript of Fla. C.R.C. proceedings 49 (Mar. 8, 1978) (remarks of Chairman Talbot "Sandy" D'Alemberte). This schedule provision was later amended pursuant to a suggestion by the Committee on Style and Drafting (amendment 72, adopted Apr. 14, 1978), but this particular provision remained substantially unchanged. 30 Fla. C.R.C. Jour. 561 (Apr. 14, 1978).

50. Rev. Fla. Const., *supra* note 1, at art. IX, § 2(c); *id.* § 2, at Schedule ¶ (b).

51. *Id.* § 2, at Schedule ¶ (b).

52. Transcript of Fla. C.R.C. proceedings 5-6 (Mar. 9, 1978) (remarks of James Kynes); see CAL. EDUC. CODE §§ 18000-32999 (West 1978).

53. Proposal 194, as originally introduced, provided:

SECTION 2. State board of education.—

(a) ~~There shall be The governor and the members of the cabinet shall constitute~~ a state board of education, which shall be a body corporate and have the responsibility for coordination of the state system of public education. The board shall also have such supervision of the system of public education as is provided by law.

(b) The board shall consist of nine electors, who shall be appointed by the governor and confirmed by the senate for staggered six-year terms. The governor shall appoint a chairperson who shall serve at his pleasure.

B. The Debate

Alteration of the present composition of the State Board of Education was one of 232 issues initially approved by the commission for further study.⁵⁴ The idea received a dismal reception from the commission's Committee on Education. First the committee temporarily passed the idea pending a decision by the Committee on the Executive Article on the issue of Cabinet abolition.⁵⁵ Then, faced with prolonged inaction by the executive committee, the education committee adopted a proposal to replace reference to the Cabinet in the State Board of Education section with a listing of current Cabinet officers.⁵⁶

(c) The board, with approval of the governor, shall appoint a commissioner of education who shall serve at the pleasure of the board. He shall advise and counsel the board and its committees, administer the board's policies, rules, and regulations, direct the department of education, and perform such other duties and exercise such powers provided by law or as the board directs.

SECTION . Schedule.—

(a) The commissioner of education provided for in Article IV in office on the effective date of this revision shall become chairperson of the board of education and serve at the pleasure of the board. If not retained for four years, he shall be fully compensated for the loss of emoluments for the remainder of the term he would have served as commissioner of education.

(b) The other members of the state board of education shall serve a term of six years, except that the terms of the original members shall expire as follows:

(1) The terms of three members shall expire on January 1, 1981;

(2) The terms of three members shall expire on January 1, 1983;

(3) The terms of two members shall expire on January 1, 1985.

(c) Until changed by law, the state board of education shall continue to have the powers, duties and responsibilities granted the state board of education established under Article IX, Section 2 in effect prior to the effective date of this revision.

54. Issue No. 205, Fla. C.R.C., Summary of Proposed Revisions to the Florida Constitution 57 (Sept. 27, 1977), presented the question of whether a "state board of education [should be created] in lieu of the cabinet [which should have] the authority" currently provided by art. IX, § 2. The complete list of issues relating to the State Board was as follows:

§ 2. Whether Article IX, § 2, providing for a state board of education, should be modified to:

(a) remove limitations on the power of the legislature to restructure educational governance in the state.

(b) provide for an independently elected state board of education.

(c) provide for a state board of education composed of non-elected professional educators.

(d) include supervision of private schools.

(e) provide for an elected "chancellor of postsecondary education", to operate under an elected commissioner of education.

(f) create a "state board of education" in lieu of the cabinet having the authority provided by this section.

(g) require the state to provide technical assistance in English, literacy and related curriculum revisions.

Id.

55. Fla. C.R.C., Education Committee Minutes 2 (Oct. 5, 1977).

56. Fla. C.R.C., Education Committee Minutes 4 (Oct. 19, 1977). This proposal was

The first hint of commission sentiment against the elected State Board came when the commission acted on this proposal. Commissioner James W. Kynes, chairperson of the education committee, introduced the proposal and stated the committee's desire that a State Board composed of elected officers be retained.⁵⁷ Commission Chairman Talbot "Sandy" D'Alemberte, who would later emerge as the chief proponent of the lay State Board, then offered an amendment to provide that the State Board would be constituted as prescribed by law permitting the board's membership to be designated by the legislature.⁵⁸

D'Alemberte argued that the elected status of the State Board and commissioner was the "worst form of organization for education of any that's ever been proposed, except possibly [one] which would also have the chancellor [of the Board of Regents] elected."⁵⁹ In support of his amendment, he cited the recommendations of four education study commissions.⁶⁰ These recommendations were later to play a large role in the commission's consideration of his proposal for a lay State Board. The D'Alemberte amendment prevailed by a vote of twenty-three to eight.⁶¹

However, the commission ultimately reversed itself by deciding specifically to require a lay State Board. This proposal, which was adopted as amended on January 12, 1978, provided the basic structure for the final revision.⁶²

As first introduced, the proposal granted coordinative responsibility to the board (in addition to the power of supervision provided by law) in order to make clear that the State Board would continue to have policymaking power, even over the SUS.⁶³ Chairman D'Alemberte was the chief advocate of the proposal, which was also sponsored by Commissioners Thomas Barkdull, Lew Brantley, Mark Hollis, John DeGrove, James Kynes, and Donald Reed. D'Alemberte supported the idea by recalling four education study commissions which—in 1929, 1947, 1967 and 1973—recommended the creation of a lay State Board that would have a role in employing the commissioner of education.⁶⁴ Copies of these studies were

introduced to the commission as Proposal 92.

57. Transcript of Fla. C.R.C. proceedings 272-73 (Nov. 21, 1977).

58. Amendment 1 to Proposal 92, *id.* at 273.

59. *Id.* at 274.

60. See note 64 *infra*.

61. Transcript of Fla. C.R.C. proceedings 315 (Nov. 21, 1977).

62. For the text of Proposal 194, see note 53 *supra*.

63. Transcript of Fla. C.R.C. proceedings 16-19 (Jan. 12, 1978) (remarks of Chairman Talbot "Sandy" D'Alemberte).

64. The Florida Educational Survey Commission, Official Report (1929); Florida Citizens Committee on Education, Education and the Future of Florida (March 1947); State of Flor-

supplied to the commissioners before introduction of the proposal which brought the final revision. A memorandum prefacing the studies, submitted by Chairman D'Alemberte to the commissioners several days before floor consideration of the proposal, quoted the 1973 study to the effect that "[creation of a lay board to coordinate and develop policy for all levels of education] should be brought about even if no other changes are made in the governance of education in Florida."⁶⁵

Chairman D'Alemberte argued that a confused line of authority exists under the current system of education governance.⁶⁶

Consider the plight of an elected Commissioner of Education in Florida. That gentleman is elected by the people of Florida. He works with a system, however, that is in large part appointed by the governor.

The governor appoints the Board of Regents, appoints the community college trustees. And he himself is only a single member of the State Board of Education. He is [only] one of [seven] voting members.⁶⁷

Commissioners Kynes, Birchfield, and Barkdull moved to amend the proposal to provide that the commissioner of education elected in November, 1978 would become chairperson of the board and serve for a term of four years, rather than leave his or her retention to the discretion of the State Board.⁶⁸ Calling this a fairness amendment, Commissioner Kynes argued that the commissioner of education elected in 1978 was entitled to have a voice in education and that, as chairperson of the board, he or she would have a forceful voice in state educational policies.⁶⁹ The commissioners adopted this amendment by a voice vote.⁷⁰

C. *The Sharing of Powers by the Board of Education and the Board of Regents*

The proposed revision would empower the State Board of Educa-

ida, Governor's Commission For Quality Education, *Toward Excellence: Changing Concepts For Education in Florida* (Dec. 22, 1967); State of Florida, The Governor's Citizens' Committee on Education, *Improving Education in Florida* (Mar. 15, 1973) (all available in the art. IX, § 2 reference file of the Constitution Revision Commission).

65. Memorandum from Sandy D'Alemberte to the Commissioners 2 (Jan. 9, 1978) (available in the art. IX, § 2 reference file of the Constitution Revision Commission).

66. Transcript of Fla. C.R.C. proceedings 15 (Jan. 12, 1978).

67. *Id.*

68. Amendment 1 to Proposal 194, *id.* at 16.

69. *Id.* at 63-64.

70. *Id.* at 78.

tion to manage, supervise, and coordinate the state public education system as prescribed by law not inconsistent with the provisions of article IX, section 7, relating to the Board of Regents. Under the proposed article IX, section 7, the Board of Regents would be directed to govern, operate, regulate, control, and be fully responsible for the management of the SUS, subject to the overall coordinative responsibilities of the State Board of Education. Understandably, the question arises whether the State Board would have any powers over the SUS or the Board of Regents.

As originally drafted, the State Board and the Board of Regents proposals did not contain the language referring to the powers granted the other entity.⁷¹ The apparent overlap of power inherent in these seemingly conflicting grants was pointed out by the Committee on Style and Drafting.⁷² The commission then adopted an amendment making the powers of the State Board "not inconsistent" with those granted the Board of Regents.⁷³ A second amendment made the powers of the Board of Regents "subject to the overall [coordinative] responsibilities" of the State Board of Education.⁷⁴ Commissioner Kynes, sponsor of the Board of Regents proposal and cosponsor of the amendments to clarify the overlap of powers, stated during floor debate that the amendment to the State Board of Education provision would give the State Board the overall coordinative responsibility for the entire system of education, which would include the SUS.⁷⁵

This problem is particularly timely. The Board of Regents recently considered a plan defining the specific role of each institution within the SUS as a whole.⁷⁶ One of the plan's initial provisions singled out two of the nine state universities for extensive graduate development; graduate programs at seven other institutions were to be deemphasized.⁷⁷ Arguably, this provision is one which relates to coordination of the system of public education and thus would be within the jurisdiction of the State Board under the proposed revi-

71. For the text of Proposal 194, see note 53 *supra*.

72. Fla. C.R.C., Comm. on Style and Drafting, Report to the Florida Constitution Revision Commission n.38 (Mar. 6, 1978). The problem was brought to the committee's attention in Staff Comments, Style and Drafting Committee (Feb. 14, 1978), presented and discussed at the Feb. 15, 1978 meeting of the committee. See Fla. C.R.C., Style and Drafting Committee Minutes 22-24 (Feb. 14-16, 1978).

73. Amendment 11 to art. IX, § 2, Transcript of Fla. C.R.C. proceedings 75-76 (Mar. 8, 1978) (remarks of LeRoy Collins).

74. Amendment 10 to art. IX, § 7, *id.* at 50.

75. Transcript of Fla. C.R.C. proceedings 52 (Mar. 8, 1978).

76. State University System of Florida, Board of Regents, Systemwide Role and Scope Policy Guidelines of the State University System of Florida (July 1978) (interim draft).

77. *Id.*

sion. If the state system of education were weak in graduate program offerings in a particular geographical area, the State Board would seem to be the proper entity to coordinate university graduate programs to rectify the imbalance.

The solution may depend on whether the State Board's power of coordination with regard to the SUS is defined as intrasystem, the power to coordinate *within*, or intersystem, the power to coordinate *between* different levels of the public education system. Commissioner Kynes has stated that he believes that the State Board's power with regard to the Board of Regents is intersystem only.⁷⁸ The revision history does not clarify this question. However, an argument may be made that only intersystem coordination by the State Board was intended with regard to SUS because the words "overall coordinative powers" were used in the Board of Regents proposal.⁷⁹

IV. BOARD OF REGENTS

A. *The Proposed Revision*

The revision proposed by the Constitution Revision Commission elevates the Board of Regents to constitutional status and assures a unified university system.⁸⁰

Under this proposal the essential components of the board would be substantially similar to those already provided by statute. Consistent with current law,⁸¹ individual regents would be appointed by the Governor to staggered terms; their terms, however, would be reduced from nine to six years except for one member whose term would be two years.⁸² Further, there would be only nine members⁸³ rather than the current ten,⁸⁴ after completion of the transition period between the statutory and constitutional provisions. The transition schedule provides that regents in office on the effective date of the revision serve out the remainder of their terms,⁸⁵ thus raising the possibility that there will be a ten-member board of regents until at least six months after the effective date of the revision.⁸⁶

78. Conversation with Commissioner James Kynes (Apr. 7, 1978).

79. Rev. Fla. Const., *supra* note 1, at art. IX, § 7(b).

80. For the text of the revision, introduced as Proposal 93, see Appendix to this issue.

81. FLA. STAT. § 240.011 (1977).

82. Rev. Fla. Const., *supra* note 1, at art. IX, § 7(c).

83. *Id.*

84. FLA. STAT. § 240.011 (1977).

85. Rev. Fla. Const., *supra* note 1, at art. IX, § 7, Schedule.

86. Whether there will be an oversized Board of Regents depends on whether all 10 statutory positions are filled on January 2, 1979, the effective date of the revision. Its duration depends on how long the grandfathered members remain in office. If no unexpected vacancies

A grant of constitutional status to the governing board of the system of higher education was one of the 232 issues selected for consideration by the commission from more than 800 raised during public hearings held by the commission and from mail and other comments.⁸⁷ A proposal to provide limited constitutional autonomy to the regents, substantially similar to that later adopted by the full commission, was approved unanimously by the commission's Committee on Education.⁸⁸ Commissioner Kynes, chairperson of the committee and sponsor of the proposal, stated that his intent was to "implant in the Constitution the powers that the Legislature, through Statute, has already given the board" to protect the university system from the changing whims of the legislature rather than to make the Board of Regents strictly autonomous.⁸⁹ He noted recent instances of legislative attempts to create censorship boards to review university film offerings as an example of the problem with

occur, the first vacancy of a refillable position would occur December 31, 1979, when Regent J.J. Daniel's term is scheduled to expire. Terms of the current board members are scheduled to expire as follows:

Student regent: Aug. 31, 1979
 Regent No. 1 : Dec. 31, 1979
 " " 2 : Dec. 31, 1980
 " " 3 : Dec. 31, 1981
 " " 4 : Dec. 31, 1982
 " " 5 : Dec. 31, 1983
 " " 6 : Dec. 31, 1984
 " " 7 : Dec. 31, 1985
 " " 8 : Dec. 31, 1986
 " " 9 : Dec. 31, 1987

87. Issue No. 209, Fla. C.R.C., Constitution Revision Commission Issue List (List of 232) 21 (Sept. 28, 1977), framed the question of whether article IX should be revised to provide for a Board of Regents with exclusive control and direction of funds appropriated to SUS.

88. The proposal, approved at the Oct. 19, 1977 meeting of the Committee on Education, provided:

SECTION 7. State university system.—There shall be a single state university system comprised of all public four-year, upper level and graduate institutions of higher learning. The state university system shall be governed by a board of regents.

The board of regents shall operate, regulate, control, and be fully responsible for the management of the state university system subject to the powers of the legislature to authorize the expenditure of monies and the board shall account for such expenditures as provided by law. The board of regents shall be a body corporate composed of nine voting members; additional non-voting members may be provided by law.

The members of the board of regents shall be appointed by the governor subject to confirmation by the senate. The voting members shall serve staggered terms of six years.

Fla. C.R.C., Education Committee Minutes 3 (Oct. 19, 1977).

89. *Id.* at 2. Commissioner Kynes served as Florida's attorney general during 1963-64, and as such he was also a member of the State Board of Education.

current legislative control.⁹⁰ He described his proposal as a middle ground between complete autonomy and a simple grant of constitutional status.⁹¹

Commissioner Yvonne Burkholz,⁹² a member of the committee, moved unsuccessfully to amend the proposal to remove language regarding funding by the legislature. The language provided that the regents would manage the SUS "subject to the powers of the legislature to authorize the expenditure of monies and this board shall account for such expenditures as provided by law."⁹³ Burkholz noted that the language gave only an "illusory" limitation on the proposed board's power; that power of the legislature to appropriate is inherent, and thus the language was superfluous.⁹⁴ Commissioner Kynes opposed her motion on the ground that the language was a recognition that the regents should not be completely autonomous but rather should be responsible to the legislature in spending its appropriation.⁹⁵

Also raised at this meeting was the issue of whether Kynes' proposal required lump sum appropriation to the regents instead of a line item approach, which allows the legislature to specify how an individual recipient of legislatively appropriated funds must spend those funds. The answer to this question was at best unclear, with the two committee witnesses on the subject in disagreement.⁹⁶ Kynes' final word to the committee was that a lump sum appropriation to the SUS was not required by his proposal. He agreed with

90. In vetoing Fla. SB 1230 (1977), Governor Askew said:

The university community is a vital element in a democracy, applying close and necessary scrutiny to our institutions. The university must be free to cultivate a spirit of inquiry and scholarly criticism—to examine ideas in an atmosphere of freedom and confidence. However, it must also seek to maintain the confidence of the community and state it serves.

Government must act with great restraint in considering measures which touch upon the academic atmosphere of a university. Since the existing and recommended procedures in the State University System will deal adequately with the problems this bill was intended to address, I believe Senate Bill 1230 to be unnecessary.

Letter from Governor Reubin Askew to Honorable Bruce Smathers (June 29, 1977) (on file with the Secretary of State, The Capitol, Tallahassee, Florida).

91. Fla. C.R.C., Education Committee Minutes 2 (Oct. 19, 1977).

92. Commissioner Burkholz is a lobbyist for United Teachers of Dade, a teachers' union.

93. Fla. C.R.C., Education Committee Minutes 3 (Oct. 19, 1977).

94. *Id.*; Fla. C.R.C., Education Committee, tape recording of proceedings (Oct. 19, 1977).

95. Fla. C.R.C., Education Committee Minutes 3 (Oct. 19, 1977).

96. Marshall Criser, chairperson of the Board of Regents, said that the major change required by the proposed revision would be that it would end line-item budgeting for education. *Id.* at 1. On the other hand, Dr. Kern Alexander, director of the Institute for Education Finance, University of Florida, Gainesville, Florida, stated that lump sum appropriation would not necessarily be required under the proposal. *Id.* at 2.

one of the witnesses that, on its face, the proposal did not require such a funding method.⁹⁷

The issue of appropriations and the regents' power was again addressed in the committee's report to the commission. The report stated that, among other things, the intent of the proposed revision was to delineate the responsibilities which the regents would exercise in supervising the operation of the SUS while maintaining general legislative power over state monies appropriated to the SUS. The report specifically stated that the "legislative authority over appropriation of funds and post-audit of expenditures by the state university system [would] remain unaltered by constitutional recognition of the board of regents."⁹⁸

The issue of the method of funding (whether by lump sum or by category of appropriation) is particularly important because historically the legislature has exercised much of its control over the higher education system via the appropriations process. An example of the type of control exercised by the legislature is seen in the 1978 general appropriations bill.⁹⁹ In addition to provisos specifying the amount of funds to be expended from a variety of appropriation categories such as salaries and benefits, other personal services, expenses, and operating capital outlay on a particular project or college, the bill also manifests broad policies applicable to the SUS. For instance, under the Division of Universities heading in the bill, an order of priority is specified for providing resources for program levels in the SUS.¹⁰⁰ As an example, the bill directs the establishment of a re-

97. *Id.*

98. Fla. C.R.C., Interim Report by the Committee on Education (Group B) 5 (Nov. 15, 1977). The full declaration of intent is as follows:

It is the intent of this revision of Article IX, New Section 7 to grant constitutional status to the board of regents and to delineate the responsibilities which the board of regents would exercise in supervising the operation of the state university system.

It is the intent of the Committee on Education that the legislative authority over appropriation of funds and post-audit of expenditures by the state university system remain unaltered by constitutional recognition of the board of regents. The proposed revision describes the membership of the board of regents providing for appointment by the governor with confirmation by the Senate. Further, it is the intent of the committee to limit the board of regents to staggered six year terms.

Id.

99. Fla. SB 1100 (1978).

100. *Id.* at 48. The proviso provides in its entirety:

IT IS THE INTENT OF THE LEGISLATURE THAT THE ORDER OF PRIORITY FOR PROVIDING RESOURCES FOR PROGRAMS IN THE STATE UNIVERSITY SYSTEM SHALL BE AS FOLLOWS:

1. UPPER LEVEL UNDERGRADUATE
2. LOWER LEVEL UNDERGRADUATE
3. MASTERS LEVEL GRADUATE
4. DOCTORAL LEVEL GRADUATE
5. ALL REMAINING PROGRAMS

search center at one university and designates it as the "lead agency for the coordination and development of research projects" related to noxious aquatic plant control.¹⁰¹

Should the Board of Regents attain constitutional status, the question will arise whether this type of legislative control will be constitutionally permissible. It is true that the conditions and provisos in the appropriations law do not carry their own enforcement provisions. But the legislature maintains oversight and monitoring procedures to detect noncompliance with its directives, and violations are certain to cause serious repercussions in subsequent appropriations.¹⁰²

Lump sum appropriations for the SUS would give the Board of Regents tremendous flexibility, allowing the regents total control over the distribution of funds within the SUS. A lump sum appropriation would eliminate fifty of fifty-one line items in the 1978 appropriations bill directing how the amount appropriated may be spent. Instead, the bill simply would provide a lump sum for universities with no breakdown as to categories of use.¹⁰³

As noted above, Commissioner Kynes' final word to the commission was that lump sum funding was not required by the revision. In a personal statement to the commission at its last meeting, he refuted such claims, stating:

IT IS FURTHER THE INTENT OF THE LEGISLATURE THAT ADEQUATE RESOURCES SHALL BE PROVIDED TO INSURE HIGH QUALITY IN EACH PROGRAM BEGINNING WITH THE FIRST PRIORITY PROGRAM AND PROCEEDING THROUGH EACH NEXT HIGHEST PRIORITY PROGRAM TO THE EXTENT THAT RESOURCES ARE AVAILABLE. IT IS FURTHER THE INTENT OF THE LEGISLATURE THAT THE BOARD OF REGENTS SHALL CONTINUE TO ALLOCATE THE RESOURCES APPROPRIATED TO THE STATE UNIVERSITY SYSTEM AMONG THE VARIOUS UNIVERSITIES IN SUCH A MANNER AS TO FULFILL THE PRIORITIES ESTABLISHED BY THE LEGISLATURE.

101. *Id.* at 51. The proviso provides in its entirety:

INCLUDED IN ITEMS 404 THROUGH 405 IS \$300,000 TO ESTABLISH A CENTER FOR AQUATIC WEED RESEARCH AS A FUNCTIONAL ELEMENT OF THE INSTITUTE OF FOOD AND AGRICULTURAL SCIENCES OF THE UNIVERSITY OF FLORIDA. THE CENTER IS HEREBY DESIGNATED AS THE LEAD AGENCY FOR THE COORDINATION AND DEVELOPMENT OF RESEARCH PROJECTS RELATED TO NOXIOUS AQUATIC PLANT CONTROL AND IS DIRECTED TO COORDINATE ALL SUCH PROGRAMS WITH OTHER AFFECTED AGENCIES AND THE DEPARTMENT OF NATURAL RESOURCES, AS PRESCRIBED BY SECTION 372.925, FLORIDA STATUTES.

Id. (emphasis added).

102. Conversation with James Zingale, deputy director, Appropriations Committee, Florida Senate (May 15, 1978).

103. *Id.*

It *does not* subvert the inherent power of the legislature to exercise its rightful authority for oversight of the system in the spending of public funds. It *does not* mandate lump sum appropriations, it being recognized by the commission that the approval and oversight of the expenditure of tax revenues is and should be the legislature's prerogative.¹⁰⁴

Throughout the remainder of the commission's proceedings, Commissioner Kynes contended unrelentingly that his proposal was not intended to grant autonomy to the Board of Regents.¹⁰⁵ Basically, a grant of total constitutional autonomy to the regents would confer on the board a legal status equal to that of the legislative or the executive branch of government.¹⁰⁶ The legislature's control over the university system would be restricted to its powers of appropriation, postaudit, and the creation and abolition of institutions. And, of course, restrictions or requirements of the state and federal constitutions would also apply to the regents.¹⁰⁷ Additionally, the legislature would not be able to enlarge, remove, or contract the powers and duties of the regents.¹⁰⁸ But this would result from the mere fact

104. Statement of James W. Kynes to Fla. C.R.C. 8 (May 5, 1978) (emphasis in original) (available in the art. IX, § 2 reference file of the Constitution Revision Commission) [hereinafter cited as Kynes' Statement].

105. Transcript of Fla. C.R.C. proceedings 194 (Nov. 22, 1977) (remarks of James Kynes).

This provision *does not*, and I repeat *does not*, grant autonomy to the regents nor to the state university system. Both the system and the regents are subject to the coordinating authority of the state board of education to insure there be a complete compatibility of our several systems of public education. This would include coordination of K-12, vocational education, community colleges, and the state university system. There is authority for continuing legislative oversight including the power of [the] legislature to deal with policy through the appropriations process and by the full burden placed on the regents to justify both the expenditure of funds in the appropriations stage and by accountability for such expenditures on a post audit basis. Any conclusions that this provision grants autonomy to the regents and the system is erroneous and statements to the contrary are misleading and done only with a motive to throw a smoke screen over an otherwise sound approach. For example, it has been argued that this proposal would enable the regents to merge Florida A & M University and Florida State. That is absurd. That decision would necessarily need legislative approval.

Kynes' Statement, *supra* note 104, at 7.

106. See *People v. Kewen*, 10 P. 393 (Cal. 1886); *State ex rel. Univ. of Minn. v. Chase*, 220 N.W. 951 (Minn. 1928).

107. See J. Beckham, *Constitutional Autonomy and the State University System of Florida* 124-25 (undated) (available from the Institute for Education Finance, University of Florida). This is an extensive treatment of the effect of constitutional autonomy on boards of higher education and the form and nature such status takes, as well as an analysis of the current status of Florida's Board of Regents.

108. *California State Employees Ass'n v. Flournoy*, 108 Cal. Rptr. 251 (Cal. 2d Dist. Ct. App.), *cert. denied*, 414 U.S. 1093 (1973); *State ex rel. Univ. of Minn. v. Chase*, 220 N.W. 951 (Minn. 1928); *King v. Board of Regents*, 200 P.2d 221 (Nev. 1948).

of constitutional mention rather than from any protected status prescribed by the proposal.

B. *The Debate*

Education committee discussions and commission debate revealed that the principal reason for the proposed elevation of the Board of Regents to constitutional status was the amount and nature of control exercised by the legislature over the SUS.

As originally drafted, the revision left little power to the legislature. The regents held total management powers over the SUS "subject only to the power of the legislature to authorize expenditures and require an accounting of such expenditures."¹⁰⁹ Legislative members of the commission railed in unison at this approach, and one of them, Commissioner James, moved that the "subject only" provision be replaced with "as provided by law."¹¹⁰ James explained that his amendment would still grant constitutional status to the regents and provide in the constitution that they would "operate, regulate, control and be fully responsible" for the management of the SUS—but only as provided by law. He stated that without his amendment, Kynes' proposal would give the Board of Regents total constitutional autonomy.¹¹¹

Commissioner Kynes countered James' effort by proposing an amendment to the amendment, making the Board of Regents' powers "as provided by law not inconsistent with this section."¹¹² Kynes said his amendment would make it clear that the responsibility for the management and operation of the internal affairs of the university system was left to the regents.¹¹³ In response to a question by Commissioner Burkholz, Kynes stated that the amendment would prohibit the legislature from addressing academic calendars, admission standards and tuition waivers.¹¹⁴

The amendment as amended was adopted,¹¹⁵ but at the commission's next meeting it was reconsidered and replaced with language offered by Commissioner Ware.¹¹⁶ Ware's amendment limited the

109. See note 88 *supra*.

110. Amendment 1 to Proposal 93, Transcript of Fla. C.R.C. proceedings 166 (Nov. 22, 1977) (remarks of William James).

111. Transcript of Fla. C.R.C. proceedings 167 (Nov. 22, 1977).

112. Amendment to Amendment 1 to Proposal 93, *id.* at 168.

113. Transcript of Fla. C.R.C. proceedings 168 (Nov. 22, 1977).

114. *Id.* at 171-72.

115. *Id.* at 194. The vote was 26-2. 11 Fla. C.R.C. Jour. 201 (Nov. 22, 1977).

116. Language identical to this amendment was proposed at the commission's November 22, 1977 meeting but was withdrawn. *Id.* at 201-02. On introducing his language, Ware stated that it would "assure that the Board of Regents [would] have the authority to operate

power of the Board of Regents under the proposal by inserting the phrase "provided that the Board of Regents shall be subject to general law other than on matters relating exclusively to the educational policy of the state university system."¹¹⁷

In support of his amendment, Ware stated that the proposal as amended previously by the commission¹¹⁸ subjected the Board of Regents to the legislature's power to authorize expenditures of monies. He said he thought that the general laws of the state applicable to subject matter within the state's police power should also control the SUS. "[The present language] concerns me because I think that the general laws of the State of Florida applicable to other subject matters should also control the state university system and things such as program compatibility between the community colleges and the university system."¹¹⁹ He emphasized, however, that his intent was not to affect the proscription against legislative interference.¹²⁰ Rather, he stated that "issues with statewide application" would remain under legislative control.¹²¹

[The amendment says] that there is some level of control that should be uniform around the state, when we have things with collective bargaining, when we have issues of open meetings, when we have issues of how much it's going to cost to send the kids to school, and [whether] the community college programs are going to be coordinated with the university system so that when you complete a community college program those credits are accepted in the universities. Those are issues with state-wide application and not based solely on educational policy.¹²²

Kynes contended that the amendment was unnecessary because the proposal already provided that the board was subject to general law aimed at protecting the general welfare of the state. He stated:

and exclusively take care of the educational policy of the state university system, but not remove legislative control over such things as the Administrative Procedures [sic] Act, the Sunshine Law" *Id.* at 202.

117. Transcript of Fla. C.R.C. proceedings 143 (Dec. 6, 1977).

118. The text of the proposal as previously amended by the commission on Nov. 22, 1977, to which Ware was referring, is:

The board of regents shall operate, regulate, control, and be fully responsible for the management of the state university system as provided by law not inconsistent with this section. The board of regents shall be a body corporate composed of nine voting members; additional non-voting members may be provided by law.

Fla. C.R.C., Proposal 93.

119. Transcript of Fla. C.R.C. proceedings 144 (Dec. 6, 1977).

120. *Id.*

121. *Id.* at 144-45.

122. *Id.*

I think it is abundantly clear . . . that the Board of Regents [under this provision] is subject to the general law as it relates to the general welfare of the state. Matters such as the Sunshine Law and open government and . . . collective bargaining, or what have you, which [are] matter[s] which might be considered by the legislature in overseeing the function of all state agencies.¹²³

C. *The Student Regent*

Under present Florida law, one member of the Board of Regents is a full-time student in the SUS.¹²⁴ The Board of Regents proposal does not speak directly to the issue of a student member. The commission adopted the proposed revision prior to gubernatorial approval of an amendment to the present law granting the student regent the power to vote.^{124.1}

The proposal does, however, provide that one regent shall serve a two-year term and that the qualifications of this regent shall be prescribed by the legislature.¹²⁵ Commission debate indicates that the purpose of providing a two-year term, with the member's qualifications left to legislative discretion, was to leave the question of a student regent to the legislature.¹²⁶ Presumably the legislature will amend the current law to specify that the two-year slot on the constitutional Board of Regents shall be filled by a student of the SUS. Legislative resistance could be bypassed altogether if the Governor appointed a student to a six-year term, which he could do since the qualifications of these members are not addressed in the proposal.¹²⁷

V. CONCLUSION

A. *The State Board of Education and the Commissioner of Education*

The proposed revision of article IX is a needed step toward a more stable and unified public education system for Florida.

Appointment, rather than election, of the central policymaking and coordinating body of the state education system has been recommended by a majority of the education studies completed in Florida to date. The 1929 Educational Commission recommended a lay State Board of Education, appointed by the Governor, which would select its own commissioner of education. It further recom-

123. *Id.* at 146.

124. FLA. STAT. § 240.011(1) (1977).

124.1. Act of June 26, 1978, ch. 78-416, § 10, 1978 Fla. Laws 1368.

125. Rev. Fla. Const., *supra* note 1, at art. IX, § 7(c).

126. 2 Transcript of Fla. C.R.C. proceedings 4 (Mar. 9, 1978) (remarks of James Kynes).

127. Rev. Fla. Const., *supra* note 1, at art. IX, § 7(c).

mended that the commissioner possess certain educational qualifications.¹²⁸ Its major criticism of the education system at the time was that there were no qualifications for the commissioner of education—only that he or she have the ability to write his or her own name and obtain enough votes to be elected. The commission also attacked time restraints rendering the ex-officio board incapable of adequately serving as a State Board.¹²⁹

The 1947 study committee substantially agreed with the recommendations of its predecessor. The committee gave four reasons for replacing the State Board with a non-Cabinet board, finding that the Cabinet board was unable to do the job of coordinating and integrating the public education system. First, the board governs universities by remote control. Second, board members hold position only by virtue of their election to office, so that citizens have no assurance of continuity in the board's work. Third, qualification for a particular Cabinet office does not necessarily make someone qualified to pass on important education questions. Fourth, all Cabinet members are too busy with the jobs to which they were elected to think and plan constructively for a comprehensive education program.¹³⁰

The 1967 commission's recommendations were a variation on the theme of an appointed, lay State Board of Education. This study recommended retaining the Cabinet but putting overall policy questions in the hands of a separate appointed commission.¹³¹

In 1973, the most recent commission¹³² made the appointment of a lay State Board of Education to coordinate all levels of public education its "highest priority recommendation" in the area of governance. However, the committee recommended that this change be effected by statute and that the present State Board of Education retain its constitutional role.

128. The Florida Educational Survey Commission, Official Report 30 (1929) (available in the art. IX, § 2 reference file of the Constitution Revision Commission).

129. *Id.* at 29.

130. Florida Citizens Committee on Education, Education and the Future of Florida 296 (March 1947) (available in the art. IX, § 2 reference file of the Constitution Revision Commission).

131. State of Florida, Governor's Commission For Quality Education in Florida, Toward Excellence: Changing Concepts For Education in Florida 11 (Dec. 22, 1967) (available in the art. IX, § 2 reference file of the Constitution Revision Commission).

132. This commission was composed of 22 individuals from all segments of society: the state legislature (state legislators included Rep. (now Senator) Kenneth H. MacKay, Jr., Rep. Robert M. Johnson, Rep. T. Terrell Sessums, Sen. Henry Saylor, and Sen. James H. Williams), business, industry, labor, and the legal and journalism professions. Constitution Revision Commission members Donald H. Reed, Jr. and Elliott Messer served on the commission.

HIGHEST PRIORITY RECOMMENDATION

The Committee believes that a board to coordinate and develop policy for all levels of education is of such overriding importance that it should be brought about even if no other changes are made in the governance of education in Florida. Therefore, we recommend that:

Recommendation 85: The Legislature should create a lay board to set policy and coordinate the entire state system of public education in Florida. The powers and responsibilities of this board should be statutory and the present State Board of Education should retain its constitutional role.¹³³

Advocates of the proposed change point out that citizen appointees selected for their proven contributions to education would be "more knowledgeable and effective than a cabinet composed of politicians with specific interests" in agriculture, banking, or insurance.¹³⁴ Cabinet officers, they argue, echoing the findings of the education survey commissions, are too busy with other matters to give necessary detailed attention to education,¹³⁵ as well as being subject to the distractions inherent in having to campaign for office every four years.¹³⁶

Clearly an appointed State Board of Education would have more time for coordination and policymaking than an elected board whose officers have many other duties. During 1977, the State Board of Education met twenty-five times, spending an average of only six and one-half minutes per meeting on education policy issues. A recent study of educational policy issues addressed by the State Board of Education shows that the board spent two hours forty-two minutes in 1977 on educational policy matters. The board usually spent a minute or less per meeting on educational policy matters,¹³⁷ though over one-half of the state's yearly budget is spent on education programs.¹³⁸

One of the most outspoken opponents of an appointed education commissioner and State Board of Education has been current Edu-

133. State of Florida, The Governor's Citizens' Committee on Education, *Improving Education in Florida 75* (Mar. 15, 1973) (available in the art. IX, § 2 reference file of the Constitution Revision Commission).

134. *St. Petersburg Times*, Jan. 13, 1978, § B, at 1.

135. *Florida Times-Union*, Jan. 13, 1978.

136. *Orlando Sentinel-Star*, Jan. 26, 1978.

137. Memorandum, Office of the Governor, *Policy Issues for State Board of Education Consideration* (Feb. 20, 1978) (available in the art. IX, § 2 reference file of the Constitution Revision Commission).

138. The 1978-79 appropriations act set aside \$1,770,939,244 to fund recurring day-to-day operations of education institutions, compared to a total budgeted amount of \$2,921,299,218 for all state-funded recurring expenditures. Fla. SB 1100 (1978).

cation Commissioner Ralph Turlington. On several occasions he has denounced the proposed change as a device for removing the voters' right to choose their officials and to have a direct voice in education matters.¹³⁹ He has also defended the existing State Board against charges that it spends only a few seconds each month on education matters, pointing out that Cabinet aides and officers have spent many unrecorded hours behind the scenes studying the issues.¹⁴⁰

Teachers' unions have expressed opposition to the suggested change because they fear giving the Governor more power over education.¹⁴¹ Also, they have voiced doubt that appointed board members, who would most likely be busy business and civic leaders, would have any more time to devote to education than current Cabinet members.¹⁴² Another possible reason for the unions' opposition suggested during the commission's debate was that elected Cabinet officers are more easily influenced by organized interest groups than appointed officials. Commissioner Don Reed, a lawyer and a former legislator, pointed out that teacher unions have an inordinate amount of power over elected officials because of the thousands of votes behind their suggestions.¹⁴³ During commission debate, he remarked to Commissioner Burkholz, a union spokesman: "[W]hen I go before that Cabinet and I'm representing myself and one client, I've got two votes. When you walk in there you have got 35,000. You're at least 34,998 more powerful than I am. And they recognize votes. Believe me, they know how to count votes."¹⁴⁴

A final criticism concerns the confused state of the commission's recommendation. The commission has recommended essentially three methods of governing the state education system—and each is radically different from the others.

On the one hand, the commission recommends an appointed State Board with an appointed executive officer.¹⁴⁵ On the other hand, the commission recommends an appointed board and an

139. Florida Times-Union, Mar. 8, 1978. Commissioner Turlington has reversed his stance on this issue since 1972, when he supported an amendment to art. IX, § 2 to provide that the commissioner of education be appointed by a legislatively established State Board of Education. See FLA. H.R. JOUR. 222-23 (Reg. Sess. 1972). (Note that Turlington was a member of the legislature in 1972).

140. Florida Times-Union, Mar. 8, 1978.

141. St. Petersburg Times, Mar. 19, 1978, § D, at 4, col. 2.

142. *Id.*

143. Transcript of Fla. C.R.C. proceedings 292 (Nov. 21, 1977).

144. *Id.* at 295.

145. This is the recommendation if the revision of art. IV, § 4, abolishing the Cabinet, as well as the revision to art. IX, § 2, is adopted.

elected commissioner.¹⁴⁶ The commission gives the voters still another choice: the legislature would have complete discretion with regard to the state's education governance system, including the choice of having no education system at all.¹⁴⁷ These three alternatives were probably inevitable for both political¹⁴⁸ and practical reasons.¹⁴⁹

On balance, an appointed State Board headed by an appointed executive officer is the best choice. Board members who were elected to serve primarily in other capacities cannot possibly devote the time and energy necessary to develop sound educational policies for Florida. This choice will require the voters to abolish the elected Cabinet as well, because of the current constitutional interrelationship between the two bodies. It is unfortunate that these two issues cannot be separated, but Florida's political structure makes it necessary to deal with the two together.

B. *The Board of Regents*

As noted above, the major impetus behind the revision granting constitutional status to the Board of Regents is to preclude inappropriate legislative involvement in the development and administration of educational policy matters in the SUS and to guarantee the continued existence of the board.¹⁵⁰ In support of the need for such protection from the legislature, Commissioner Kynes cited a recent legislative enactment requiring the creation of a censorship board to review films and course curricula against pornography standards.¹⁵¹ He said such enactments constitute a threat to the stability of the SUS.¹⁵² In defense of the legislature, it has been argued that often legislators propose legislative involvement in the SUS, not seriously intending to affect law, but rather to "draw attention" to

146. This is the recommendation if the revision of art. IV, § 4, abolishing the Cabinet, fails, and the revision of art. IX, § 2 is adopted.

147. If the revision of art. IV, § 4, abolishing the Cabinet, is adopted and the revision of art. IV, § 2 is rejected, then art. IX, § 2 will become a statute which may be amended by the legislature without limit.

148. During the period in which the commission considered the issue, Education Commissioner Ralph Turlington threatened to fight abolition of the elected commissioner and Board of Education if the proposal providing an appointed commissioner and board were adopted.

149. Once it became probable that the question of Cabinet abolition would be balloted separately, the revision of art. IX, § 2, regarding the State Board of Education, which would necessarily be affected, had to be changed to cover the varying contingencies.

150. See text accompanying notes 89-108 *supra*.

151. Fla. C.R.C., Education Committee Minutes 2 (Oct. 19, 1977). The bill referred to was Fla. SB 1230 (1977), by Sen. Pat Thomas and others; it was vetoed by the Governor. FLA. S. JOUR. 1003 (Reg. Sess. 1977).

152. Fla. C.R.C., Education Committee Minutes 2 (Oct. 19, 1977).

a particular problem and to stimulate discussion on the matter.¹⁵³

In addition to his desire that legislative power over the BOR be limited, Commissioner Kynes also supported the proposal as a way of giving due recognition to the status and importance of higher education. In his words,

This proposal is founded on the proposition that constitutional status for the Board of Regents of the State University System not only would be a recognition of the importance of higher education in our state, but also the recognition that this is one of the most important functions of Florida state government.¹⁵⁴

With the exception of these arguments, the revision history is bare of any strong sentiment for or against the proposal to give constitutional status to the Board of Regents. While strong objections were raised originally to the concept of constitutional autonomy for the newly created Board of Regents,¹⁵⁵ the Ware amendment resolved them by making the Board of Regents subject to the state's general laws except with regard to matters relating exclusively to educational policy of the SUS.¹⁵⁶

C. Summary

Education is probably the most important responsibility of the state government. Giving full authority for educational policy matters to a board of officials elected to accomplish other tasks does not make sense. Life in twentieth-century America is just too complex to leave such an important function to people with only a few seconds to spare. We need a full-time board. And the head of that board should be appointed to provide some measure of insulation from the constant clamor of competing interest groups.

There appears to be less reason to constitutionalize the Board of Regents. Legislative interference has on the whole failed in the past, and there does not appear to be much more reason to adopt this proposal than that. Certainly approval of the commission proposal would prevent undue legislative interference in the future. In any event, this proposal and the one creating an appointed State Board of Education are to be voted up or down together. It is worth the former to get the latter.

153. Conversation with Frank Caldwell, staff director, House Committee on Education (July 8, 1978).

154. Fla. C.R.C., Education Committee Minutes 2 (Oct. 19, 1977).

155. See text accompanying note 110 *supra*.

156. See text accompanying notes 116-17 *supra*.

The voters should approve the commission's proposed changes in article IX.

