



National Center for Higher Education Management Systems

Report of a Study Conducted in Response to Senate  
Resolution 171 of the 2013 Regular Session of the  
Louisiana Legislature: Feasibility of Developing a Plan  
for Designating Public Postsecondary Education  
Institutions as Charter Colleges or Universities

Prepared for  
Louisiana Board of Regents

January 2014

## Background

Senate Resolution 171 of the 2013 Regular Session of the Louisiana Legislature (SR 171) “urges and requests the Board of Regents to study and determine the feasibility of developing a plan for designating public postsecondary education institutions as charter colleges or universities.” The resolution directs the Board of Regents to:

1. Study the administrative and financial relationships between the state and public institutions of postsecondary education to determine the extent to which public colleges and universities can manage their operations more effectively and more efficiently if allowed increased flexibility in managing their finances and operations.
2. Examine the statutory, policy, administrative, and other legal issues related to the feasibility and practicability of the restructuring of the traditional administrative and financial relationships between the state and our public institutions of postsecondary education that would be required to facilitate the designation of a public postsecondary institution as a charter college or university.
3. Fully engage the public postsecondary education management boards, the presidents of the public colleges and universities, and the division of administration in all facets of the study.

In response to SR 171, the Louisiana Board of Regents contracted with the National Center for Higher Education Management Systems (NCHEMS) to prepare a draft report which:

- Describes the nature of “charter” (deregulation) initiatives in a limited number of other states.
- Compares Louisiana with these other states and identifies areas of major differences.
- Presents a set of principles/criteria for Louisiana to consider in assessing the feasibility of restructuring the relationships between public higher education institutions and the state.
- Presents conclusions based on research of practices in other states.

## Charter Colleges and Universities

### “Charter” (deregulation) defined

The term “charter” is commonly used to refer to charter schools with public K-12 education systems. The National Resource Charter School Resource Center describes charter schools as schools that “...are publicly funded, independently operated schools that are allowed to operate with more autonomy than traditional public schools in exchange for increased accountability.”<sup>1</sup>

As used in higher education, the term “charter” college or university has most often had a specific meaning, evolving primarily from the experience at St. Mary’s College of Maryland and Colorado School of Mines, and proposals to replicate these models in other states.

In a paper prepared in 2000 for the Pioneer Institute for Public Policy Research in Boston, Robert Berdahl and Terry MacTaggart, identify several characteristics of charter colleges which can be summarized as follows: “Publicly-own institutions managed independent of

most procedural controls imposed by state bureaucracies and higher education systems,” that:

- Are subject to applicable local, state, and federal laws and required to follow standard financial accounting and reporting procedures
- Have their own boards of trustees
- Are accountable through their charters to the state’s higher education coordinating or governing authority
- Enjoy almost complete discretion in managing their administrative affairs, often including, for example, authority to:
  - Contract for services
  - Finance and oversee capital projects
  - Set salaries and titles of employees (especially professional and academic staff)
  - Set tuition rates
  - Build and hold reserves for multiple years
  - Establish foundations for the receipt of private gifts
- Operate within the framework of a “charter” between the institution and the state which:
  - Confirms the name and mission of the institution
  - The level of educational programs (associates, bachelors, masters, doctorate)
  - The funding agreement with the state
  - The specific management authority delegated to the college
  - The educational and other results that are expected to be achieved with a fixed period of time<sup>2</sup>

The agreement between the institution and the state regarding financing is fundamental to the concept of “charter” colleges or universities. In fact, in essentially all the state-level debates about deregulating higher education, the authority of institutions to set tuition rates and manage tuition revenue has been the key issue far outweighing other dimensions of deregulation. For charter colleges, the key elements related to financing include:

- A state commitment to continuing support through state appropriations; and
- Flexibility for the institution to set tuition rates, to manage tuition revenues, and to raise revenues from private sources, subject to requirements to ensure access and affordability through institutional support for need-based student financial aid.<sup>1</sup>

---

<sup>1</sup> The original statute enacted in 1992 granted the institution’s board of trustees of St. Mary’s College of Maryland authority to establish tuition rates subject to the stipulation that “...access to

## Trends in Relationships between States and Public Institutions

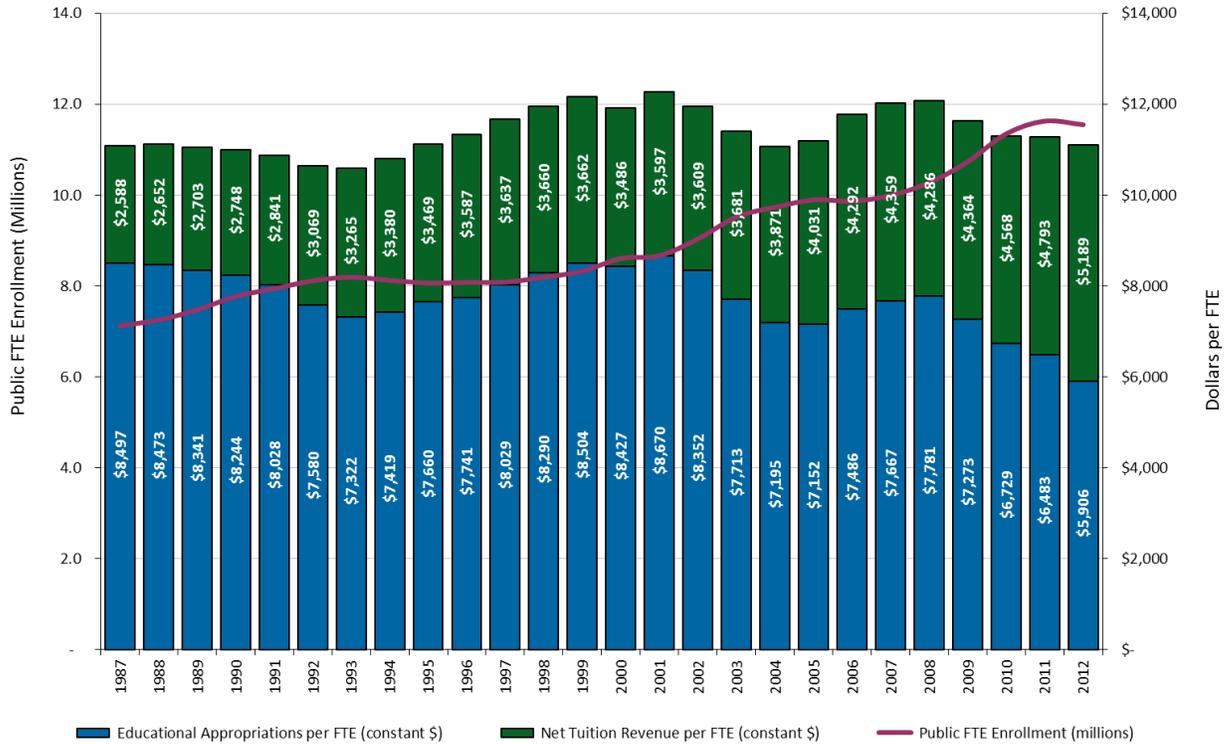
Proposals to establish “charter” universities should be considered in the context of broader trends in the relationships between states and public institutions. There has been a more than 25-year trend toward state deregulation of public higher education following the long-term trend of state’s providing a decreasing share of the funding. In 1987, a year in which funding had recovered from a period of recession in the late 1970s and early 1980s, state appropriations provided on the average approximately 77% of the funding per student and the family share through tuition was only 23%. By 2012 the percentage from state appropriations had dropped to 53% and the family share had increased to 47% (Figure 1). In certain states and sectors, the decrease in the state share of funding per student was even more severe.

Across the United States, calls for deregulation have coincided roughly with the period of recession and sharp cuts in higher education funding. In the early 1980s following the deep cuts in state funding during the recession, Kentucky, Maryland, and New Jersey enacted far reaching reforms granting their public institutions increased management flexibility. In each of these states, the reforms would be further developed over the subsequent 20 years. A major report in 1985 called for reforms in the state budget and regulatory controls of the State University of New York.<sup>3</sup> Other proposals have coincided with recession and severe fiscal stress in the early 1990s, early 2000s, and the Great Recession from 2008 to 2011.

**Figure 1. Public FTE Enrollment and Educational Appropriations per FTE, U.S., Fiscal 1987-2012**

---

the College by State residents is not diminished because of increases in tuition and other fees occasioned by the College’s designation as a public honors college.” (Maryland Statutes, Education Article, Section 14-404 (e) (1) (v)). To establish a predictable level of funding, the statute provided that the state would continue to provide the same level of state support as in 1993, in addition to an amount to “... offset inflation as indicated by the implicit price deflator for State and local government. The statute makes clear, however, that this commitment is no way binds the state to providing funding in the future if economic conditions and other considerations require otherwise (Maryland Statutes, Education Article, Section 14-405 (b)(1)). Even with the grant of authority to set tuition and fee levels, Saint Mary’s College is subject to the policies of and political pressure from the Governor and legislature to curb tuition increases.



Note: Net tuition revenue used for capital debt service are included in the above figures. Constant 2012 dollars adjusted by SHEEO Higher Education Cost Adjustment (HECA).  
 Source: State Higher Education Executive Officers

Accompanying the reduction in the state share has been a fundamental shift in the role of government resulting in less regulatory control as illustrated in Table 1.

**Table 1. Changes in Focus of State’s Role in Higher Education**

From:	To:
Planning for the higher education sector isolated from national or state priorities	Strategic planning linking higher education to the future competitiveness of the country or state.
Centralized control and regulation and limited institutional autonomy	Steering “at a distance,” emphasizing decentralized institutional governance and using finance policy (e.g., performance funding) to ensure that institutions respond to public priorities.
Subsidy of public institutions Resource allocation based on inputs and cost-reimbursement	Funding of institutions based on outcomes. Resource allocation based on performance. Subsidy of students through student grants.
Quality assurance related primarily to public institutions (mainly in-country/state)	Quality assurance related to multiple public and providers (public and private, cross-border, open/distance learning, etc.).
Accountability based on inputs	Accountability based on outcomes/performance and evidence of cost-effective and efficient utilization of resources.

**Source:** Adapted from OECD (2006), McGuinness, A. C., Jr., “A Conceptual and Analytic Framework for Review of National Regulatory Policies and Practices in Higher Education,” paper prepared for discussion of OECD’s Education Committee (EDU/EC (2006)3), OECD, Paris.

Robert Berdahl, author of one of the early comprehensive reviews of state higher education coordination in the US, distinguishes between two kinds of autonomy: “substantive” autonomy and “procedural” autonomy. Substantive autonomy refers to the extent of the authority of institutions to determine their missions, goals, academic programs, and the students they intend to serve, and other “ends.” Procedural autonomy refers to the authority of institutions in essentially non-academic areas such as budgeting, financial management, non-academic staff, purchasing or entering into contracts.<sup>4</sup>

The trend across the states has been to increase the autonomy of institutions for procedural matters in return for increased institutional accountability for substantive issues. Most states, through entities such as the Louisiana Board of Regents, hold institutions accountable for performance in relationship to state goals (a “Public” Agenda), approve institutional missions, new academic programs (especially high-cost graduate and professional programs), and often regulate differences among institutions in admissions standards. The essence of proposals for “charter” colleges and universities and systemwide deregulation actions such as the 2005 Virginia Restructured Higher Education Financial and Administrative Operations Act and the 2010 Louisiana Granting Resources and Autonomy for Diplomas Act (GRAD Act) embody this basic trade off: increased “procedural autonomy” for increased performance and accountability related to public purposes and goals.

### Differences among States in Legal Status of Institutions

Reports in the popular media and from advocates for different models of state/institutional relationships tend to lump changes in several states together to convey an impression of a nationwide trend while ignoring the unique conditions in each state which led to specific changes. Some confuse the limited examples of “charter universities” with broader changes aimed at granting universities more procedural autonomy.<sup>5</sup> It is important to recognize two points about differences among states. First, several states (Maine, Michigan and Pennsylvania, as examples) already grant their public universities comparatively high levels of substantive and procedural autonomy to a greater extent than the frequently cited examples of “charter universities” such as St. Mary’s College of Maryland or the Colorado School of Mines). More than a half-century ago, these states granted high levels of autonomy as a basic level framework for their public higher education systems and not as a consequence of decreased state support. In fact, Michigan as traditionally provided comparatively high levels of public funding for higher education while also granting universities high levels of autonomy. Second, among the states that retain a degree of state control, the “beginning point” in the process of decentralization and deregulation differs greatly. Table 2 illustrates the range of relationships between states and institutions from high to low regulatory control.

**Table 2. Levels of State Control and Institutional Legal Status: United States.**

<b>High Regulatory Control</b>	A. Institution as State Agency	Higher education institutions are treated in a manner similar to other state agencies such as the transportation/highway department
	B. State-Controlled Institution	The distinctiveness of higher education institutions from other state agencies is recognized, but most of the budget and financing policies applied to other state agencies are also applied to postsecondary education
	C. State-Aided Institution	Higher education institutions have a legal status according them substantial autonomy from state government. State provides base, categorical, and capital funding but with expectation of substantial non-state funding (tuition, private giving, etc.).
<b>Low Regulatory Control</b>	D. Corporate Model for Institutional Governance	As in model C, institutions have a legal status (e.g., public corporation) according them substantial autonomy. The expectation of state funding is less certain and may be allocated not in grants to the institution but in the form of vouchers or grants to students to offset tuition charges

*Source:* Adapted from OECD (2006), McGuinness, A. C., Jr., “A Conceptual and Analytic Framework for Review of National Regulatory Policies and Practices in Higher Education,” paper prepared for discussion of OECD’s Education Committee (EDU/EC (2006)3), OECD, Paris.

The tables in Appendices A and B illustrate how state policies and regulations differ according to these four models of state/institutional relationships.

Even within states, the major state research universities (many of which are the states’ Land-Grant Universities), have more procedural autonomy than state universities that evolved from the state’s normal schools/teachers’ colleges. Several university systems, such as the California State University System were originally linked to the state education agency and were deeply embedded in state regulatory controls related to human resources, purchasing, or capital construction. In contrast, the University of California has always had a higher degree of independence from many, but not all, regulatory controls. Some public universities such as Rutgers, the State University of New Jersey, had their origins as private institutions and therefore retain their historical status as public corporations with a degree of independence from state government. In contrast, the New Jersey State Colleges evolved from the state normal schools and, even with deregulation over the past 25 years, have less autonomy from state government than Rutgers.

Several states (e.g., Maine, Michigan, New Hampshire, Pennsylvania, and Vermont) organize their public institutions as public corporations with significant substantive and procedural autonomy from state government (in categories C and D in Table 2). Universities in Michigan have autonomy under the state constitution and no state agency has authority to exercise either substantive or procedural control. Pennsylvania State University is essentially a not-for-profit corporation organized to serve public purposes. Penn State receives state appropriations, has senior state officials on its governing board, and is generally accountable to the Commonwealth of Pennsylvania, but no state agency exercises either substantive or procedural control over the university. The University of Maine System is organized as a corporation for public purposes, and while the system must be accountable to the Governor,

State Legislature, and public for policy and political reasons, it is free from most of the procedural controls that exist in most of other states.

Public universities in the majority of states including Louisiana, however, have a legal status as state agencies (Categories A and B in Table 2) and as such are subject to many of the same financial and procedural controls as other state agencies. In other words, in addition to the oversight of state coordinating boards such as the Louisiana Board of Regents or governing boards such as the Louisiana management boards, public institutions in these states are subject to state laws and regulations under the jurisdiction of other agencies such as the Louisiana Division of Administration or, in some cases multiple agencies including those responsible for purchasing, public works and construction, and information technology.

## **“Charter” University Proposals in Perspective**

### **Different Modes of Deregulation**

Proposals for “charter” colleges or universities represent only a comparatively small number of the proposals and actions over the past twenty-five years to increase the autonomy and management flexibility for public institutions.<sup>2</sup> In fact, most of the states in which public institutions are legally “state agencies” (not public corporations with a degree of legal autonomy) have made incremental changes to increase procedural autonomy over several years. The nature of these changes can be grouped into the following six categories:

1. Changes related to the specific issue of tuition flexibility: Changes that grant institutions authority to increase tuition and, in many cases, to retain tuition revenue. In exchange, states have required universities to agree to allocate a percentage of increased revenue to need-based student financial aid, commit to ensuring access to in-state students, and other performance requirements.
2. Incremental changes related to other specific procedural/operational issues: increasing authority related to issues related to human resource management (e.g., position controls), purchasing, construction contracts, information technology or offering retirement plans as alternatives to the state retirement system. In some cases, these changes have involved deregulation of substantive issues such as academic program approval. In most cases, these changes provide for delegation to a public university the authority to carry out certain functions (e.g., purchasing or entering into and overseeing construction contracts) under the condition that the university abide by the basic requirements (e.g., competitive bidding) applicable to all other state agencies. In other words, the authority is *delegated*, not granted to the university by virtue of its legal status as an independent legal entity.

---

<sup>2</sup> From an international perspective, granting higher education institutions significant autonomy from governmental control is widely recognized as “best practice.” Throughout the world, governments that formerly exercised detailed procedural controls similar to those still used in Louisiana have granted state universities significant autonomy and are now “steering at a distance” and holding institutions accountable for performance rather than detailed compliance with governmental regulations. See: Organisation for Economic Cooperation and Development (OECD) (2008). *Tertiary Education for the Knowledge Society*, Vol. 1. Paris: OECD, pp.91-94.

3. Systemwide deregulation including both tuition flexibility and procedural deregulation granted in exchange for greater performance and accountability through performance or management agreements with the state. Examples include the changes enacted through the 2005 Virginia Restructured Higher Education Financial and Administrative Operations Act and the Louisiana GRAD Act.
4. Changes in the legal status of university systems, thereby granting these entities authority to carry out procedural/operational functions independent of the direct oversight of state agencies. Legislation enacted in 1999 established the University System of Maryland as a public corporation. Legislation enacted in Oregon in 2011 established the Oregon University System as a “public university system” (not a state agency) thereby giving it authority to carry out certain functions that were not possible in the system’s previous status as a state agency. An important point about Maryland and Oregon is that both systems remained accountable to the state for complying with some of the previous state procedural requirements, albeit with some increased independence, even under their new legal status.
5. Proposals to grant increased autonomy to a major public research university either within a university system or as a free-standing university outside the university system. While proposals have been debated in several states since 2010, notably in California and Wisconsin, significant changes were enacted only in Oregon where the Oregon University System was first granted increased procedural/operational autonomy in 2011 and then three universities (the University of Oregon, Oregon State University, and Portland State University) were separated from the university system and given their own governing boards.
6. Changes in the legal status of individual institutions. Examples of these changes are limited and reflect unique circumstances that largely are not applicable to other state and institutional contexts. “Charter” proposals are in this category.

From the public institution’s perspective, the most important regulatory change is the power to set tuition. At issue is not only the need to offset decreases in state funding but also the goal of achieving greater predictability in overall revenue sources.<sup>6</sup> Because the tuition policy is being addressed by a separate task force established by legislative study resolution at the time that this paper was written, this paper focuses primarily on deregulation in other procedural/operational areas

Because of the charge to the Board of Regents in SR 171, the following discussion focuses specifically on the concept of “charter” colleges and universities.

### **Can existing examples of “charter” colleges be replicated?**

Several examples are frequently cited as examples of “charter” colleges: Colorado School of Mines (CSM), Massachusetts College of Art and Design, New College in Florida, and St. Mary’s College of Maryland (SM). Each of these institutions evolved from circumstances unique to the institution and the political and regulatory environment of the state in which they are located. For these reasons, the model has been difficult to replicate on a large scale in other states:

- The institutions’ enrollments are all less than 1,500. As a result, states could delegate increased authority to these institutions without the complications that would be

- entailed in applying these changes to far larger institutions and to the public higher education system as a whole.
- Each institution had a unique mission distinguishing it clearly from other public institutions: highly focused liberal arts or “honors” colleges in the cases of St. Mary’s and New College or specialized missions as in the case of the Colorado School of Mines and the Massachusetts College of Art and Design.
  - New College had its origins as a private institution which was taken over by the State of Florida. It now functions as an independent unit within the overall governing authority of the Florida Board of Governors, the statewide governing authority.
  - Prior to being granted increased autonomy, both SM and CSM had their own governing boards and had strong track records of effective governance. Neither was a unit of a university system (a system similar to the University of Louisiana, Southern University System or Louisiana State University).
  - All four institutions, but especially CSM and SM, had access to significant non-state support through endowments and a strong alumni network, thereby assuring a degree of stability even with reduced state funding.
  - All four institutions could realistically anticipate that by highlighting their unique missions they could attract out-of-state students (within limits established by the state) and use the resulting revenue to offset reduced state funding.

The case of CSM as a model for institutions in other states is seriously clouded by the overall policy context in Colorado over the past two decades. The state enacted legislation in 2001 that allowed the Colorado Commission on Higher Education to enter into a performance agreement with CSM whereby the college had tuition-setting authority at a higher rate than at other public institutions, and received funding through a block grant in return for certain performance and accountability requirements. The larger context, however, was set by efforts to exempt all public institutions from the tuition and fee limitations of the Taxpayer Bill of Rights (TABOR) constitutional amendment passed in 1992. In 2004, Colorado enacted far-reaching legislation that changes the way that the state allocated funding in a manner that allowed the public institutions to qualify for “enterprise” status under the TABOR amendment. The effect of this change, in theory, would have freed the institutions from limits on tuition and fee increase, but the state legislature has since insisted on limits on tuition increases.<sup>7</sup>

The model of St. Mary’s College of Maryland has not been replicated for single public institutions either in Maryland or other states—except to the extent that elements of the SM plan can be found in the cases of the Colorado School of Mines and the Massachusetts College of Art and Design. As studies of the St. Mary’s case have documented, the model’s initial success depended greatly on exceptional leadership from the institution’s prominent and politically influential board of trustees and president.<sup>8</sup> The success also could be attributed to the conditions at the time of expanding enrollments from both in-state and out-of-state students who could afford to pay higher tuition rates than charged at other public institutions in order to have access to the institution’s unique mission as a public “honors” college. The college is now facing serious leadership and financial challenges in the current environment of declining student demand and public concerns about tuition increases and affordability.<sup>9</sup>

### **Other “Charter” proposals**

While the model of single public institutions being designated as “charter” universities has not been adopted, the basic concepts (increased procedural autonomy in return for commitments to performance and accountability) have been behind other large-scale changes. One of the first large-scale proposals was the 2003 plan advanced by the University of Virginia, Virginia Tech and the College of William and Mary. Under this plan, the three institutions would be designated as Commonwealth Chartered Colleges. The state would have limited its financial contributions to the universities to less than would traditionally have been provided and in exchange the universities would be exempted from some state regulations concerning personnel, procurement, and capital projects. Central to the proposal, the universities would have been given full control of tuition in exchange for a commitment to need-based student financial aid. The institutions would have been designated as public corporations, not state agencies, to get around provisions in the Virginia State Constitution governing the disposition of non-state revenues generated by state agencies. The specific proposal was rejected but elements of the proposal were eventually enacted in the 2005 Virginia Restructured Higher Education Financial and Administrative Operations Act.<sup>10,11</sup>

Eight years have passed since enactment of the Virginia Restructuring Act. Over this time, legislation has been enacted to refine provisions of the original Act, including the Higher Education Opportunity Act of 2011 which establishes long-term goals for the Commonwealth and makes other policy changes, but the basic framework of the Restructuring Act remains.<sup>12</sup>

The University of Virginia and other Virginia institutions are considering proposals for the next stage of reform. While acknowledging the benefits to the university of operational/procedural reforms, the draft report of a University of Virginia working group makes clear that the institution sees the need for more fundamental change.<sup>13</sup> Despite the priority of gaining increased tuition flexibility, the Virginia legislature has continued to constrain tuition through the budget process.

The Virginia restructuring clearly sparked interest in other states, but with the exception of the GRAD Act in Louisiana, no other states have enacted similar systemwide proposals. Virginia and Louisiana differ significantly in the extent to which the promised autonomies were actually implemented. In Virginia, the Commonwealth granted institutions increased procedural autonomy as promised by the Restructuring Act.<sup>14</sup> In Louisiana, it is clear from interviews with representatives of the Board of Regents and management boards that few of the promised autonomies under the GRAD Act have been implemented. As noted above, the changes enacted in Oregon and several other states incorporated the basic idea of a tradeoff between increased autonomy and accountability for increased performance, but these changes are in only the early stages of implementation.

Proposed changes in Ohio modeled to an extent on Virginia did not advance beyond preliminary legislative negotiations. A provision in the 2011 Ohio Budget bill (section 3345.81 of House Bill 153) signed into law on June 30, 2011, called for the Chancellor of the Ohio Board of Regents to “develop a plan for designating public institutions of higher education as charter universities.” The provision called for the plan to specify:

- The manner in which a state institution of higher education may become eligible for restructured financial and operational authority, and performance measures and criteria to determine eligibility. The performance measures and criteria shall address

the institution's ability to manage successfully its administrative and financial operations without jeopardizing the financial integrity and stability of the institution.

- Specific areas of financial and operational authority that are subject to increased flexibility;
- The nature and term of the management agreement required between the state and an institution.

In response to this charge, the Chancellor released an “Enterprise University Plan for Ohio,” outlining in broad terms a proposal that would grant all 14 Ohio public universities regulatory relief in several specific areas. It also proposed that universities be eligible for two higher levels autonomy provided they entered into an agreement with the Board of Regents and met certain benchmarks. A key requirement for increased levels of autonomy would have been that universities allocate from 10 to 20 percent of their state funding for instruction to a state merit-based scholarship program.<sup>15</sup>

Legislation to implement the plan was never introduced after months of negotiation. Among the issues that stalled development of the bill were:

- The requirement that universities reallocate state funding to merit-based scholarship program, thereby in effect reducing state support
- A sense that the proposed regulatory relief was on largely technical issues that did constitute sufficient justification for even deeper cuts in state funding than the universities had already experienced
- Reluctance of the state legislature to relinquish its authority to set tuition caps and to otherwise control tuition increases.<sup>16</sup>

Compared to Louisiana, the Ohio public universities have significant substantive and procedural autonomy. Each university is governed by an independent governing board. Through a series of incremental changes dating back over three decades, the State of Ohio has granted the institutions significant management flexibility on matters such as purchasing, construction contracts, risk management, and development of alternative human resource policies.<sup>17</sup> For this reason, the proposed increased autonomy under the “Enterprise University” plan was not seen as significant to the future sustainability and competitiveness of the institutions. The major challenge state universities face relates to significant reductions in state funding. The state legislature in a number of other states retains authority to control tuition increases, but Louisiana is the only state in the nation which requires a two-thirds vote of the legislature to approve an increase.

## **Lessons for Louisiana from Other States**

This report focuses explicitly on the charge to the Louisiana Board of Regents to “study and determine the feasibility of developing a plan for designating public postsecondary education institutions as charter colleges or universities.” NCHEMS focused specifically on the proposition that Louisiana might designate institutions as “charter” universities—either on the basis of a single institution or as a “pilot” to be extended over time to other institutions. To assess the feasibility, NCHEMS interviewed the sponsor of SR 171, representatives of the Board of Regents and the four management boards (LSU, SUS, LCTCS, and U of L System), and the president of the University of Louisiana at Monroe. These interviews

identified the following issues that Louisiana State Legislature should address before designating an institution as a “charter” university.

**What policies should be in place to ensure effective governance and leadership?**

- The experience of St. Mary’s College of Maryland and the Colorado School of Mines is that having an institutional governing board with full legal authority to govern the institution and ensure its financial sustainability is a critical prerequisite for a viable charter institution. Before being granted its special status, SM already had an effective governing board. In the context of a “charter university” proposal, the Louisiana State Legislature should address these questions:
- Given the Constitutional and statutory powers of Management Boards, how could a governing board be established for a single institution currently within the jurisdiction of one of the Management Boards?
- Would a Constitutional amendment be necessary to authorize Management Boards to delegate powers to a local institutional governing board (perhaps following the “Delegations” to institutional boards within the University of North Carolina<sup>18</sup>)?

**What conditions should be established for financial sustainability?**

Key provisions of the enabling legislation for St. Mary’s that were essential for the institution’s sustainability related to: (1) the authority of the board of trustees to set tuition, subject to commitments related to affordability, and (2) assurances regarding sustained state funding adjusted annually for inflation (subject always to the ultimate authority of the legislature to establish funding based on the realities of state fiscal conditions). These provisions are fundamental to the concept of “charter universities.” In the context of a “charter university” proposal, the Louisiana State Legislature should address these questions:

- Given the current limits on the authority to increase tuition in Louisiana, is the delegation of this authority to the governing board of a charter institution a realistic possibility?
- Is it realistic to expect the Louisiana State Legislature to make a long-term commitment to sustained state appropriations to a single institution over multiple legislative sessions?

**What should expectations be regarding capacity to raise private funding to replace reductions in state funding?**

Before being granted special status, St. Mary’s College had a strong track record of fund raising and alumni relations backed by the prestige and personal resources of members of the board of trustees. As David Breneman has stressed, it is unrealistic to expect most public universities to replace state funding with revenues from private sources.<sup>19</sup> Even exceptionally well-endowed universities such as the University of Virginia that receive less than 10% of their revenue from the state recognize that continued state support is essential for them to fulfill their public missions. In the context of a “charter university” proposal, the Louisiana State Legislature should address these questions:

- Is there a long-term financial plan for the proposed charter institution that provides evidence of sustained private funding?

- Would the institution’s governing board have sufficient flexibility under state law to manage private investments?
- Who would assume the risk if the institution fails? The State of Louisiana?

**What would Charter institution obligations be under the Louisiana State Retirement System and Group Health Insurance Plans?**

Interviews with management board representatives underscored the costs incurred by institutions associated with the Unfunded Accrued Liability under the state pension fund and the state’s group health benefits program. In other states that have considered major deregulation initiatives, most notably Virginia and Oregon, removing some or all public higher education institutions from the state pension and health insurance programs has been a significant issue. Because higher education employees tend to be younger and pursue healthier lifestyles compared to the larger pool of state employees, they contribute significantly to the overall viability of the state’s health insurance program. In Oregon, for example, the Governor insisted that university employees remain within the state health program in order to ensure its viability. In states with significant unfunded liabilities in their pension programs, continued contributions on behalf of university employees are critical to strategies to reduce deficits. In the context of a “charter university” proposal, the Louisiana State Legislature should address these questions:

- Would a “charter” institution be obligated to continue participation in and making contributions to the state pension and health programs?
- If the institution wished to “opt out” of either program, would it first be obligated to pay for its share of accrued liabilities or otherwise “buy out” its participation in the state programs?

**Would a single charter university have the capacity to assume responsibility for other procedural/operational autonomies?**

Interviews with the management board representatives emphasized costs associated with continued detailed regulatory controls by the Division of Administration in areas such as purchasing, capital construction contracts, travel, and “tables of organization” (position control). The GRAD Act authorizes granting of increased management flexibility for several of these areas, subject to a determination by the Division of Administration that the institution has the capacity to assume these responsibilities. As noted above, the nationwide trend over the past two decades has been for states to delegate responsibility for such operational/procedural matters to system and institutional governing boards -- provided that the boards can demonstrate that they comply with the requirements and principles (e.g., competitive bidding) applicable to all other state agencies. Most of these “delegations” have been established by state statute and are not implemented only at the discretion of a state agency. In the context of a “charter university” proposal, the Louisiana State Legislature should address these questions:

- What conditions (indicators of capacity) should be in place before a charter university is granted additional operational autonomy?
- Would granting operational autonomy to a single institution undermine efforts to achieve greater deregulation of these areas across the whole public higher education system?

- How would delegating these authorities to single institutions affect efforts to achieve economies-of-scale in purchasing, information technology and other areas *within* or *among* systems (e.g., the LSU University Pilot Procurement Code)?

**What changes in the Constitutional and statutory authority of the Board of Regents would be necessary to implement a “charter” university proposal?**

The essence of “charter” university proposals is that institutions are granted certain “procedural” autonomy (management and operational flexibility) in return for a commitment to meet certain “substantive” performance expectations established by the state. St. Mary’s College continued to operate within the academic and financial oversight of the Maryland Higher Education Coordinating Board. Similarly, the Colorado School of Mines operates under a performance agreement with the Colorado Commission on Higher Education. In the context of a “charter university” proposal, the Louisiana State Legislature should address these questions:

- Should there be a performance agreement between the Board of Regents and a “charter” institution?
- Should the Board of Regents retain authority to approve the charter institution’s mission?
- Should the Board of Regents continue to approve new academic programs at the charter institution or should it allow the institution to develop new academic programs provided they are consistent with the institution’s mission?

## Conclusion

The stated purpose of Senate Resolution 171 was “to study and determine the feasibility of developing a plan for designating public postsecondary education institutions as charter colleges or universities.” This study identifies, based on the experience of other states, the challenges that Louisiana would face in implementing the specific model of “charter universities.” Nevertheless, the research and analysis conducted in this study makes clear that, from a comparative perspective, Louisiana public higher education institutions remain among the most tightly controlled public institutions in the country in terms of key state procedural/operational regulations. The GRAD Act held out the possibility of increased operational flexibility provided an institution met certain performance expectations. Nevertheless, the Act made these autonomies contingent upon approval by the Division of Administration (DOA). The DOA has been reluctant to grant these autonomies and, in the face of severe budget costs, appears to have increased central controls. As noted above, most other states, including those in which public universities have a legal status of state agencies, have made incremental changes to delegate authority to system and institutional governing boards (comparable to the Louisiana management boards) for key decision areas related to matters such as purchasing, construction contracts, travel, tables of organization (position control) and information technology Louisiana should act, as have most other states, to deregulate and delegate responsibility to the management boards for these procedural/operational matters. The lesson from other states is that deregulation is more often a multi-year process with changes made on an incremental basis as opportunities arise rather than a single, onetime, large-scale reform.

Even if “charter universities” are not an immediately feasible alternative, Louisiana should act immediately to grant the management boards, and in some cases, individual universities, the procedural/operational autonomies that most states now grant their public universities. These changes should be made not only because of reduced state funding but because they represent widely recognized best practice in the relationship between state governments and public higher education institutions. Within the current state regulatory constraints, Louisiana will have great difficulty in developing the highly effective and efficient public higher education system needed to respond to meet the challenges of the 21<sup>st</sup> Century.

- <sup>1</sup> National Charter School Resource Center (2013). Understanding Charter Schools. Retrieved from <http://www.charterschoolcenter.org/priority-area/understanding-charter-schools>
- <sup>2</sup> Berdahl, R. O. and MacTaggart, T. (2000). *Charter Colleges: Balancing Freedom and Accountability*. Boston: Pioneer Institute for Public Policy Research. White Paper No. 10. <http://pioneerinstitute.org/download/charter-colleges-balancing-freedom-and-accountability/>
- <sup>3</sup> State University of New York (1985). Independent Commission on the Future of the State University of New York. Albany: SUNY.
- <sup>4</sup> Berdahl, Robert O. (1971). *Statewide Coordination of Higher Education* (Washington, D.C.: American Council on Education), pp. 10.-12.
- <sup>5</sup> See Martin, James and Samels, James E. (2005). "Charter University: A New Paradigm," *University Business*, November. 2005. Retrieved at: <http://www.questia.com/library/1G1-138654879/charter-university-a-new-paradigm-the-capitalist>; Petro, J. (2011) *An Enterprise University Plan for Ohio*. Columbus: University System of Ohio. Retrieved at: <https://www.ohiohighered.org/files/uploads/enterprise-university-plan/Enterprise-Universities-Plan-WEB.pdf>; Lewin, Tamar (2011). "Public Universities Seek More Autonomy as Financing from States Shrink," *New York Times*, March 2, 2011. Retrieved at: [http://www.nytimes.com/2011/03/03/education/03colleges.html?\\_r=0](http://www.nytimes.com/2011/03/03/education/03colleges.html?_r=0)
- <sup>6</sup> Breneman, David W. (2004). *Are the States and Public Higher Education Striking a New Bargain?* Washington, D.C.: Association of Governing Boards of Universities and Colleges. Public Policy Series, No. 4-02. Retrieved from: <http://agb.org/sites/agb.org/files/u3/Breneman.pdf>
- <sup>7</sup> Western Interstate Commission for Higher Education (2009). *An Evaluation of Colorado's College Opportunity Fund and Related Provisions*. Boulder: WICHE. Retrieved at: <http://www.wiche.edu/info/publications/policyCOF.pdf>
- <sup>8</sup> Berdahl, Robert O. (1998). "Balancing Self-Interest and Accountability: St. Mary's College," MacTaggart, T. eds., *Seeking Excellence Through Independence*. San Francisco: Jossey-Bass Publishers. Chapter 4, pp. 59-83
- <sup>9</sup> DeSantos, N. (2013). "St. Mary's College of Maryland's Leader Faces Questions Over Enrollment Shortfall," *Chronicle of Higher Education*, May 31, 2013 Retrieved at <http://chronicle.com/blogs/ticker/st-marys-college-of-md-s-leader-faces-questions-over-enrollment-shortfall/61149>
- <sup>10</sup> Breneman (2004).
- <sup>11</sup> Couturier, Lara (2006). "Checks and Balances at Work: The Restructuring of Virginia's Public Higher Education System," The National Center for Public Policy and Higher Education, June 2006. Retrieved at: [http://www.highereducation.org/reports/checks\\_balances/virginia.pdf](http://www.highereducation.org/reports/checks_balances/virginia.pdf)
- <sup>12</sup> Commonwealth of Virginia, State Council of Higher Education for Virginia (2013). Higher Education Opportunity Act (Restructuring). <http://www.schev.edu/Restructuring/restructuring.asp>
- <sup>13</sup> University of Virginia (2013). "A Defining and Differentiated Vision for UVA as a Unique and Pre-eminent Public University." Presidential Working Papers. University of Virginia Strategic Planning Initiative, Public University Working Group. Draft, April 2013. Retrieved at: [http://strategicplanning.virginia.edu/sites/strategicplanning.virginia.edu/files/Emergent\\_Ideas\\_Public\\_University.pdf](http://strategicplanning.virginia.edu/sites/strategicplanning.virginia.edu/files/Emergent_Ideas_Public_University.pdf)
- <sup>14</sup> Alessio, J. (2011). "Transitioning from the Restructuring Act to Opportunity Act." Presentation to the Higher Education Advisory Committee, June 30, 2011. Retrieved at: <http://www.schev.edu/council/presentations/RestructuringReview06-30-11a.pdf>
- <sup>15</sup> University System of Ohio (2011). *An Enterprise University Plan for Ohio*. Columbus: Ohio Board of Regents. Retrieved at <https://www.ohiohighered.org/files/uploads/enterprise-university-plan/Enterprise-Universities-Plan-WEB.pdf>
- <sup>16</sup> Farkas, Karen (2012). Plan to create "Enterprise Universities" in Ohio remains stalled," *The Plain Dealer*, April 22, 2012. Retrieved at:

[http://www.cleveland.com/metro/index.ssf/2012/04/plan\\_to\\_create\\_enterprise\\_univ.html](http://www.cleveland.com/metro/index.ssf/2012/04/plan_to_create_enterprise_univ.html)

<sup>17</sup> Petrick, R. (2001). *The Case for Further Deregulation of Higher Education in Ohio*. Columbus: The Ohio Board of Regents, July 6, 2001.

<sup>18</sup> North Carolina Board of Governors. Delegations of Duty and Authority to Boards of Trustees. The Code of the University of North Carolina. 100.1 Retrieved at: [http://www.northcarolina.edu/policy/index.php?pg=dl&id=s4210&inline=1&return\\_url=%2Fpolicy%2Fin dex.php%3Fpg%3Dtoc%26id%3Ds11](http://www.northcarolina.edu/policy/index.php?pg=dl&id=s4210&inline=1&return_url=%2Fpolicy%2Fin dex.php%3Fpg%3Dtoc%26id%3Ds11)

<sup>19</sup> Breneman, David W. (2004). *Are the States and Public Higher Education Striking a New Bargain?* Washington, D.C.: Association of Governing Boards of Universities and Colleges. Public Policy Series, No. 4-02. Retrieved from: <http://agb.org/sites/agb.org/files/u3/Breneman.pdf>

**APPENDIX A. FINANCING, BUDGETING, AND ACCOUNTABILITY REGULATION IN DIFFERENT MODELS OF STATE/INSTITUTIONAL RELATIONSHIP**

Function	Institution as State Agency	State-Controlled Institution	State-Aided Institution	Corporate Model for Institutional Governance
<b>Financing</b>	<p>All funds received deposited in general fund and subject to appropriation control</p> <p>Fees and charges prescribed by legislature</p> <p>Financial responsibility for tertiary education operations would be vested solely in state government</p>	<p>Operating fee collections deposited in state general fund</p> <p>Tuition levels prescribed by legislature</p> <p>Service and activity fees, auxiliary enterprise revenues, etc. treated as “non-budgeted” funds</p> <p>State government is primarily responsible for financing tertiary education operations</p>	<p>All funds raised by institution are retained by the institution</p> <p>Fees and charges established by institutional governing boards</p> <p>Only state general funds are subject to state appropriation</p> <p>Financial responsibility is shared by state and institution</p>	<p>Institutions have total control over all funds</p> <p>State appropriations made to third-party state agency for purposes of contracting for services and enrollment opportunities</p> <p>Ultimate financial responsibility vested in corporate institutions</p>

Function	Institution as State Agency	State-Controlled Institution	State-Aided Institution	Corporate Model for Institutional Governance
<b>Budgeting</b>	<p>The budget request would reflect a spending plan</p> <p>Specific work-load factors would serve as basis for level of institutional request</p> <p>Relative efficiency would be major criterion</p> <p>Legislature would approve spending level for various programs, major activities, and objects of expenditure within programs and activities. Adherence to approved expenditures would be expected</p>	<p>Variety of formulas and incremental bases may be employed</p> <p>Detailed budget requests are prepared and submitted by institution, although major funding decisions are based on activity levels, base budgets, or other broad factors</p> <p>Funding bases tend to be perceived as spending plans rather than funding vehicles</p>	<p>State support based on a general allocation formula, e.g., \$/FTE resident student</p> <p>Appropriation is on a lump-sum basis</p>	<p>Contract amounts determined through negotiation or external indices</p> <p>Basic state-level budget decisions would be number of spaces or levels of services to be “purchased”</p>
<b>Accountability</b>	<p>Accountability would focus on process considerations—adherence to spending plans, personnel policies, etc.—and relatively little attention would be given to effectiveness of services provided</p>	<p>Major focus of oversight tends to be on process considerations with relatively little attention being given to effectiveness of services provided</p>	<p>Financial records must be auditable</p> <p>Accountability reporting established as a parallel process and tends to focus more on effectiveness</p>	<p>Financial records must be auditable</p> <p>Accountability provisions specified in contract that specifies meaning of “satisfactory performance.”</p>

**Source:** McGuinness, A.C., Jr (2003). The States and Higher Education Financial Management: A Comparative Study of State–Institutional Relationships in the United States. National report prepared for OECD/IMHE project, On the Edge: Securing a Sustainable Future for Higher Education.

**APPENDIX B: PROCEDURAL REGULATIONS RELATED TO DIFFERENT MODELS OF STATE/INSTITUTIONAL RELATIONSHIP**

<b>Regulatory area</b>	<b>Institution as State Agency</b>	<b>State-Controlled Institution</b>	<b>State-related Institutions</b>	<b>Corporate model</b>
<b>Setting tuition and fees</b>	State government sets tuition	State board or “buffer agency” sets tuition	State board or “buffer agency” sets tuition guidelines; institutions set tuition	Institutions set tuition; no state guidelines
<b>Handling of tuition revenue</b>	Tuition revenue is deposited in the state general fund; institutions receive budget allocations based on expenditure plan	Tuition revenue deducted from state appropriation	An assumed amount of tuition revenue is included in determining the allocation to the institutions; institutions may retain tuition revenue in excess of estimates within defined parameters	Institutions retain tuition revenue
<b>Personnel</b>	All tertiary education personnel, professional and non-professional, are state civil service employees subject to all requirements and benefits of the state civil service	Only the nonprofessional staff are state civil service members; professional (exempt staff) are employed by the tertiary education system or institution	All tertiary education employees are employees of the tertiary education system or institution and are not subject to state personnel requirements	All tertiary education employees are employees of the tertiary education system or institution and are not subject to state personnel requirements
<b>Salary schedules and rates</b>	Salaries of all tertiary education personnel are set by state-approved salary schedules and rates as approved by the state legislature	Salary increases for all tertiary education personnel are established by state legislature in the budget process; institutions are authorized to make specific salary decisions not subject to state salary schedules	Salary rates and increases are established by a tertiary education system board but individual institutions make specific salary decisions and rates, subject to overall board approval	Individual institutions make decisions regarding salary rates and increases not subject to review external to the institution

Regulatory area	Institution as State Agency	State-Controlled Institution	State-related Institutions	Corporate model
<b>Collective bargaining</b>	The state (e.g., the Governor) handles negotiations for all state employee groups including tertiary education; the state (e.g., the governor and state legislature) decides on and level of salary adjustments and other changes. Institutions are obligated to implement the negotiated agreements (e.g., providing funding for salary increases whether or not additional state funding is earmarked for this purpose)	State tertiary education board negotiates agreements for all tertiary education employees with statewide bargaining agents. State board assumes responsibility for including funding for agreements in budget requests and budget allocations to institutions	State authorizes collective bargaining but the decision to have collective bargaining is made institution-by-institution. No statewide collective bargaining agreement and no statewide bargaining agents	No collective bargaining at the state, system or institutional levels
<b>Position control</b>	Institutions are subject to state general government position controls (e.g., each institution has a specific authorized number of positions and must get state agency approval to exceed that number) without regard to the source of funding for the position	Institutions are subject to state general government position controls but are provided flexibility in managing positions within state guidelines and approved budgets; position controls apply only to state-funded positions	Tertiary education system and institutions are authorized to make personnel decisions subject to system regulations but are exempt from state government requirements	Each institution is authorized to make personnel decisions within their budgets and not subject to external tertiary education system or state oversight or approval

Regulatory area	Institution as State Agency	State-Controlled Institution	State-related Institutions	Corporate model
<b>Purchasing – supplies and instructional materials</b>	All purchases (except for small purchases, e.g., less than \$1,000) must be made through the state purchasing agency	Institutions are authorized to make purchasing up to a certain amount provided that the funds are in the institution’s budget but must follow state purchasing procedures (e.g., competitive bids) All purchasing above that amount must be approved by state agency	Tertiary education system establishes purchasing requirements separate from state government	Individual institutions may make purchases according to their own policies and not subject to state or tertiary education system requirements
<b>Purchasing – major equipment</b>	All purchases must be made through the state purchasing agency	Institutions are authorized to make purchasing up to a certain amount provided that the funds are in the institution’s budget but must follow state purchasing procedures (e.g., competitive bids) All purchasing above that amount must be approved by state agency	Tertiary education system establishes purchasing requirements separate from state government	Individual institutions may make purchases according to their own policies and not subject to state or tertiary education system requirements
<b>Contracts</b>	All contracts must be entered into according to state regulations (e.g., Requests for Proposals (RFPs) and competitive bidding) and approved by a state agency (e.g., department of administration)	All contracts beyond a specific amount must be entered into according to state regulations (e.g., RFPs and competitive bidding) and approved by a state agency (e.g., department of administration)	State tertiary education board establishes regulations for contracting separately from state government	Individual institutions are authorized to enter into contracts without external review by either state tertiary education board or state agency

Regulatory area	Institution as State Agency	State-Controlled Institution	State-related Institutions	Corporate model
<b>Capital or investment projects</b>	All capital projects (e.g., new buildings as well as renovation of existing facilities) are under the control of a state building agency (planning, architectural services, contracting and managing the project)	All capital projects must be approved through a state capital project process, but the tertiary education system has flexibility regarding selection of architects, contractors, etc., within state regulations	Tertiary education board approves capital projects above a certain cost, and submits proposals to the state for review. State tertiary education board is responsible for planning, selection of architects, contractors, etc.	Institutions are authorized to undertake capital projects provided that funding is available
<b>Travel</b>	All travel must be approved by state agency, made through a state-approved agency and only through state-approved providers (e.g., airlines). Travel reimbursement is through the state agency	Tertiary education institutions are authorized to approve travel but must use state-approved travel agencies and providers; reimbursement is through the tertiary education institution	Institutions are authorized to approve travel and reimburse travel expenses provided they meet state tertiary education system requirements	Institutions are authorized to make their own travel arrangements and handle their own travel reimbursements according to their own policies
<b>Automobiles</b>	Tertiary education officials must use automobiles through the state-operated motor pool	Tertiary education officials must purchase or lease automobiles through the state and use them according to state regulations	Tertiary Education system establishes guidelines for purchase/lease of automobiles, but individual institutions may establish their own policies	Individual institutions establish their own policies
<b>Auditing</b>	Pre-audit of institutional expenditures by a state agency	Post-audit of institutional accounts by a state agency	Post-audit of accounts by a specialized tertiary education entity or independent auditor	Institutions have internal auditing procedures and utilize an independent auditor

**Source:** McGuinness, A.C., Jr (2003). The States and Higher Education Financial Management: A Comparative Study of State–Institutional Relationships in the United States. National report prepared for OECD/IMHE project, On the Edge: Securing a Sustainable Future for Higher Education.