

## Faculty Guidance Senate Bill 266

*This document was prepared by the University of South Florida  
Office of the General Counsel (OGC), and  
will be updated as more information is made available.*

This guidance addresses the implementation of Senate Bill 266 (SB 266), which was signed by Governor DeSantis on May 15, 2023 and took effect on July 1, 2023. This guidance addresses three broad areas within the law: (1) state prohibitions on expenditures related to diversity, equity, and inclusion; (2) powers and duties of university presidents related to faculty employment; and (3) updates to the requirements of the state's general education curriculum for bachelor's degree programs.

Implementation of several of the new statutory provisions, including defining key terms, is dependent upon regulations to be developed by the Florida Board of Governors (BOG). The BOG action is pending. Implementation could also be affected by legal challenges. The university will update and expand this guidance based on developments.

### **1. Prohibition on funding for programs that advocate for diversity, equity, and inclusion**

Under this new law, SUS institutions, including university direct support organizations, may not expend funds on programs and campus activities that advocate for diversity, equity and inclusion, promote or engage in political or social activism, or violate sec. 1005.05 Florida Statutes.<sup>1</sup> The terms and scope of these prohibitions are not defined in the law, instead the BOG is tasked with developing a regulation to define these terms and implement this statutory provision. As of the date of this guidance BOG action is pending.

The BOG promulgates regulations by posting a draft regulation and then taking public comments on the draft regulation. The public comment process is followed by a noticed public meeting(s) for discussion and debate, and then a public vote to adopt or reject the regulation. As with the BOG's Post-Tenure Faculty Review Regulation, USF leadership will review the proposed regulation with the Board of Trustees and consult with university shared governance bodies to determine if a university comment is appropriate.

Regardless of whether the university submits a comment to the BOG, any member of the USF community is free to submit their own comments. Comments from individuals or groups should indicate that the comment is not made on behalf of the university. While there is no exact deadline by which the BOG must adopt this new regulation, their regulation development process can take several weeks or months to complete.

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<sup>1</sup> Sec. 1005.05 is currently enjoined and unenforceable pending appeals.

**A. Exceptions to the prohibition on expenditures**

There are several statutory exceptions to the prohibition on the use of funds to “advocate for diversity, equity and inclusion” and “promote or engage in political or social activism”, such as programs or activities required for:

- compliance with general or federal laws or regulations;
- obtaining or retaining institutional or discipline-specific accreditation;
- access programs for military veterans, Pell Grant recipients, first generation college student, nontraditional students, “2+2” transfer students from the Florida College System, students from low-income families, or students with unique abilities.
- Student Organizations: Programs and activities funded by student fees to support student-led organizations are also exempt from the prohibition on expenditures. Student-led organizations may also continue to use university facilities pursuant to university policies, regardless of funding source.

Based on these statutory exemptions, it appears likely that grant requirements that may conflict with the statute, but which are being made to comply with federal law or regulations governing the grant are exempt from the prohibition. Programs and activities required or authorized by general laws, such as state procurement laws, are also likely exempt. It is also likely that programs and activities to comply with existing accreditation requirements from SACSCOC and other discipline-specific accrediting bodies are exempt. Programs seeking accreditation for the first time or with a new accreditor may require consultation with the BOG prior to meeting the expenditure exemption. Programs and activities to support access to higher education and student-led organizations that are funded through student fees are both exempt from the prohibition.

The university is currently assessing the impact of the expenditure limitation on programs and activities that do not appear to be exempt under the new law. It is unlikely that a full assessment of impacts can be completed until after the BOG regulation with definitions is formally adopted by the BOG.

**B. Guidance for Faculty Pending BOG Action**

Until we have more clarity from the BOG, faculty should continue to provide instruction consistent with the academic rigor and practices of their respective fields and disciplines with attention to historical and scientific evidence established by scholarly methods and protocols.

Faculty may choose to use the following optional statement in their syllabi, which is adapted from guidance originally developed for compliance with House Bill 7 from 2022 (HB 7). HB 7 is currently enjoined and enforceable pending further action by the court handling the case, but the court’s injunction does not affect a faculty member’s option to include the following notice in their syllabi during any upcoming semester.

*It is fundamental to the University of South Florida's mission to support an environment where divergent ideas, theories, and philosophies can be openly exchanged and critically evaluated. Consistent with these principles, this course may involve discussion of ideas that you find uncomfortable, disagreeable, or even offensive.*

*In the instructional setting, ideas are intended to be presented in an objective manner and not as an endorsement of what you should personally believe. "Objective" means that the idea(s) presented can be tested by critical peer review and rigorous debate, and that the idea(s) is supported by credible research.*

*In this course you may be asked to engage with complex ideas and to demonstrate an understanding of the ideas. Understanding and engaging with an idea does not require you to believe it or to agree with it.*

## **2. Powers and Duties of SUS Presidents Regarding Faculty Employment**

The new law states that State University System (SUS) presidents have the final authority for hiring decisions for the provost, deans, and full-time faculty. The new law does not address staff or administration hiring. The president may delegate hiring authority to an executive management team, the provost, or deans. The university president, or designee, may receive nonbinding recommendations from the faculty and others when making hiring decisions.

The bill codifies what has been the longstanding practice at SUS institutions where presidents have historically served as the final hiring authority for university employees. However, because of institutional commitments to shared governance and efficiency, university presidents regularly delegate faculty hiring processes to academic administrators and faculty search committees, who provide recommendations to the hiring official, usually the dean or provost. The hiring official has not historically been bound to follow any of those recommendations and the bill codifies this practice in statute as well. As such, USF does not currently expect any widespread changes to its existing faculty hiring practices and processes and we will be examining our current delegations of authority to ensure compliance with the new law.

Also under the new law, the university president, or designee, is now the final level of appeal for faculty employment actions, which replaces the option of external arbitration in USF regulations and the USF-UFF faculty collective bargaining agreement (CBA). This change was effective July 1, 2023 (Effective Date) and requires the university to amend its regulations and policies to comply with the law.

The university is also contractually obligated to negotiate a replacement for the current arbitration provisions in the CBA so that it is consistent with the new law. Any changes to the CBA will be bargained for in noticed bargaining sessions open to the public. USF has begun consultations with the UFF on this change. No part of this guidance should be taken as stating a position of the UFF.

Pending additional guidance from the BOG or legal developments the university will process arbitrations as follows:

- faculty grievances that reached the arbitration stage prior to Effective Date will be processed to external arbitration;
- grievances filed after the Effective Date will not be processed to external arbitration; and
- grievances filed prior to Effective Date, but that have not reached arbitration by the Effective Date will not be processed to external arbitration.

**3. Updates to the Requirements of the State’s General Education Curriculum for Bachelor’s Degree Programs**

SB 266 introduces several changes to the state’s general education course requirements for bachelor’s degrees, which are initiated by the appointment of a joint faculty committee by the Chair of the Board of Governors and the Chair of State Board of Education. By January 1, 2024, this faculty committee will make recommendations to the Articulation Coordinating Committee (ACC)<sup>2</sup> on “the removal, alignment, realignment, or addition of general education core courses that satisfy the requirements provided in the statute,” which include requirements that:

General education core courses may not distort significant historical events or include a curriculum that teaches identity politics, violates s. 1000.05, or is based on theories that systemic racism, sexism, oppression, and privilege are inherent in the institutions of the United States and were created to maintain social, political, and economic inequities... [and that] [c]ourses with a curriculum based on unproven, speculative, or exploratory content are best suited as elective or specific program prerequisite credit, not general education credit.

The operative terms of these provisions are not defined in the bill, but rather delegated to the BOG to address as part of its implementation of the statute. As of the date of this guidance, BOG action is pending. It is difficult to project a timeline for implementation of the new requirements because: (1) the requirements appear to be partially dependent upon a final decision in the legal case regarding sec. 1000.05, which is currently enjoined pending appeals; and (2) the recommendations to the ACC are not due until January 1, 2024. As of the date of this guidance, USF is not expecting to make amendments based on the new law to its general education courses or course catalog that would take effect prior to the ACC submission deadline of January 1, 2024. The university will continue to closely monitor developments and update this guidance as needed.

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<sup>2</sup> <https://www.fldoe.org/policy/articulation/committees/articulation-coordinating-committee-ov/>