

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 315 w/CS Florida Institute for Human and Machine Cognition
SPONSOR(S): Benson
TIED BILLS: HB 491 **IDEN./SIM. BILLS:** SB 1414 (i)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Higher Education (Sub)	5 Y, 0 N	Tilton	Bohannon
2) Education K-20	27 Y, 0 N w/CS	Tilton	Bohannon
3) Education Appropriations (Sub)	15 Y, 0 N	Mizereck	Mizereck
4) Appropriations			
5)			

SUMMARY ANALYSIS

The Institute for Human and Machine Cognition (IHMC) has existed as an interdisciplinary research unit of the University of West Florida (UWF) since 1990. IHMC is currently headed by a director who reports to the President of the University of West Florida.

HB 315 w/CS establishes the Florida Institute for Human and Machine Cognition, Inc., in law as a Florida not-for-profit corporation organized under the provisions of ch. 617, F.S., and located at UWF. The corporation is authorized to create not-for-profit subsidiaries to fulfill its mission with prior approval of the State Board of Education (SBE). The corporation and its subsidiaries are instrumentalities of the state; subject to public records and meetings requirements; authorized to secure patents, copyrights, and trademarks in its own name; and not subject to the provisions of ch. 287, F.S., relating to procurement of personal property and services.

In addition, HB 315 w/CS requires the SBE to enter into an agreement with the not-for-profit corporation by July 1, 2003, and sets forth certain provisions that must be included in the agreement. HB 315 w/CS also requires the corporation to enter into an affiliation agreement with UWF by August 1, 2003 and specifies certain items to be provided for in the agreement including but not limited to, use of the university's moneys, facilities, furnishings, equipment, personnel, or services.

The not-for-profit corporation must be managed by a board of directors, the membership of which is prescribed in the bill. The board of directors serves without compensation. The corporation is to be administered by a chief executive officer (CEO) who is appointed by and serves at the pleasure of the board of directors. HB 315 w/CS prescribes the powers and duties of the CEO. The officers, directors, and employees of the corporation or any subsidiary would be governed by the code of ethics for public officers and employees set forth in Part III of Chapter 112, F.S.

There are a number of drafting issues which are discussed in Section III. C. of this analysis.

The fiscal impact of HB 315 is indeterminate. See FISCAL COMMENTS section.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0315e.ap.doc
DATE: April 22, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

HB 315 w/CS establishes, in law, the Florida Institute for Human and Machine Cognition, Inc., at the University of West Florida (UWF) and requires the State Board of Education (SBE) to enter into an agreement with the corporation. HB 315 w/CS also requires the corporation to enter into an affiliation agreement with UWF.

HB 315 also permits the not-for-profit corporation to create subsidiaries to fulfill its mission, with prior approval of the SBE.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

STATE UNIVERSITIES

State universities are governed by a constitutionally-created Board of Governors. In addition, each university is administered by a local board of trustees.

At its January 7, 2003 meeting the Board of Governors adopted a number of resolutions including a resolution that delegated and delineated powers of local boards of trustees. The Board of Governors authorized each university board of trustees to, for example, establish a personnel program for all its employees; to acquire real and personal property; and to enter into contracts.

To provide additional flexibility with regard to research and training programs, state universities are authorized to create divisions of sponsored research to serve the function of administration and promotion of the programs of research, including sponsored training programs, of the university at which they are located. State universities may also use direct support organizations to provide flexibility with regard to their research programs. Direct support organizations are not-for-profit corporations that are organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a state university, a research and development park, or a research and development authority affiliated with a state university.

Section 1004.23, F.S., authorizes each state university, in its own name, to perform all things necessary to secure letters of patent, copyrights, and trademark on any work products and to enforce its rights therein. A university must consider contributions by university personnel in the development of trademarks, copyrights, and patents and must enter into written contracts with such personnel establishing the interests of the university and such personnel in each trademark, copyright, or patent. In addition, state universities are authorized to license, lease, assign, or otherwise give written consent to any person, firm, or corporation for the manufacture or use thereof, on a royalty basis or for such consideration as the university deems proper. Patents and royalties may generate significant revenue for state universities. An article in the *Palm Beach Post* (September 5, 2001) reported that a licensing agreement by FAU involving genetic markers could increase the university's revenue from research-related inventions, \$1.2 million at the time of the article, by more than fiftyfold. The same article

reported that Gatorade has generated more than \$61.5 million for the University of Florida since 1973 and that Taxol has produced more than \$170 million for Florida State University since 1992. Universities may use these funds to support a variety of university activities.

CENTERS AND INSTITUTES

According to a recent report by the Council for Education Policy, Research and Improvement (CEPRI)¹, the Institute for Human and Machine Cognition (IHMC) is one of 512 Type 1, 2, and 3 centers and institutes located at 10 of Florida's 11 state universities. The CEPRI report observed that centers and institutes address a variety of issues and concerns and produce both tangible (scientific discoveries and technological advancements) and intangible (basic knowledge and intellectual advancement) products and services that are vital to the state's economy and well-being. The report further found that because they are purposefully designed to be more flexible and entrepreneurial than academic departments, centers and institutes respond quickly to issues and problems from a variety of stakeholders throughout the state and nation.

Centers and institutes receive funding from both internal and external sources. They receive state revenue generated dollars through specific legislative appropriations as well as university budget allocations. They also receive revenue from external sources such as federal, state, and local governmental agencies as well as private sources. Centers and institutes generate money for state universities through overhead costs. Overhead is the money that universities charge for using their facilities and faculty. According to the CEPRI report, centers and institutes receive only a percentage of the overhead costs they generate. Millions of overhead dollars each year are used to fund a variety of university research activities and positions.

IHMC is categorized as a Type 2 institute. According to CEPRI, there are 226 Type 2 institutes located throughout state universities. The majority of Type 2 institutes receive state appropriated funds through university budget allocations. State funds to support Type 2 institutes are not routinely allocated to the universities as funds specifically designated to operate centers and institutes, but are typically part of the lump sum legislative appropriation made to individual universities for their overall operations. The universities decide, based on their own mission and priorities, what portion of those funds will be allocated to support center and institute activities and staff. The report also notes that the majority of faculty affiliated with Type 2 centers and institutes conduct their research, public service, and instruction activities as part of their overall university assignment, not in addition to it.

THE INSTITUTE FOR HUMAN AND MACHINE COGNITION (IHMC)

According to IHMC's 2002 Annual Report², IHMC was established in 1990 as an interdisciplinary research unit of the University of West Florida (UWF). The report notes that since that time IHMC has grown into one of the nation's premier research institutes investigating a broad range of topics related to understanding cognition in both humans and machines with a particular emphasis on building computational tools to leverage and amplify human cognitive and perceptual capacities. IHMC has a staff of 98 and current funding in force exceeds \$23 million. Federal research agencies continue to be IHMC's primary sponsors. IHMC reports that research partners have included entities such as Army, National Science Foundation, NASA, Navy, Air Force, Noikia, Sun Microsystems, Fujitsu, Procter & Gamble, Boeing, and IBM among others. Since 1999, the IHMC Director has reported to the President of the University of West Florida.

EFFECTS OF THE BILL

¹ Council for Education Policy, Research, and Improvement, **PUBLIC POSTSECONDARY CENTERS AND INSTITUTES**, January 2003

² INSTITUTE FOR HUMAN AND MACHINE COGNITION, 2002 ANNUAL REPORT

HB 315 w/CS establishes, in law, the Florida Institute of Human and Machine Cognition, Inc. at the University of West Florida (UWF), as a Florida not-for-profit corporation organized under the provisions of chapter 617, F.S. The corporation is authorized to create not-for-profit subsidiaries that are organized under the provisions of chapter 617, upon the prior approval of the State Board of Education, to fulfill its mission. Unlike similar provisions in s. 288.901, F.S., creating Enterprise Florida, Inc. as a not-for-profit corporation, this bill does not specifically require the not-for-profit corporation to be "registered, incorporated, organized, and operated in compliance with chapter 617".

The bill provides that the corporation and any authorized and approved subsidiary :

- Would be an instrumentality of the state pursuant to s. 768.28, F.S.
- Would not be an agency of the state within the meaning of s. 20.03(11), F.S.
- Would be subject to open meetings and public records requirements.
- Would be authorized to receive, hold, invest, and administer property and moneys acquired from any private, local, state, and federal sources, as well as technical and professional income generated from practice activities of the institute.
- Would be authorized to secure comprehensive general liability protection, including professional liability protection, for the corporation and its subsidiaries.
- Would be authorized to enter into affiliation agreements with other universities or research institutes.
- Would not be subject to the provisions of ch. 287, F.S., which relates to procurement of personal property and services.

HB 315 w/CS authorizes the corporation, in its own name, to perform all things necessary to secure letters of patent, copyrights, and trademarks on any work products and to enforce its rights therein. Unlike similar provisions for state universities in s. 1004.23, F.S., the bill does not specifically require the corporation to consider contributions by the university or university personnel in the development of trademarks, copyrights, and patents and to enter into written contracts with the university or university personnel establishing the interests of the university and such personnel in each trademark, copyright, or patent. The impact of omitting this provision is unknown.

The officers, directors, and employees of the corporation or any subsidiary would be governed by the code of ethics for public officers and employees set forth in Part III of Chapter 112, F.S.

The bill identifies specific items that must be included in the articles of incorporation of the corporation and any subsidiary.

The affairs of the corporation must be managed by a board of directors, the membership of which is prescribed in the bill. The board of directors must serve without compensation. The initial board consists of the president of UWF, the chair of the UIWF board of trustees, the chair of the SBE or their designees; three representatives of state universities; and nine members of the public. The process for appointment and provisions regarding terms are prescribed in the bill.

HB 315 w/CS requires the State Board of Education (SBE) to enter into an agreement with the not-for-profit corporation that provides for approval by the SBE of the articles of incorporation of the not-for-profit corporation by July 1, 2003 and the articles of incorporation of any subsidiary created by the corporation; utilization of facilities and personnel; and annual postaudits. In the event that the agreement between the not-for-profit corporation and the SBE is terminated for any reason, all property automatically reverts to full ownership by UWF.

It is not clear why the bill requires the State Board of Education to enter into an agreement relating to a corporation established at UWF. The State Board of Education may not be the appropriate entity given recent governance changes resulting from Amendment 11. It is also not clear under what

circumstances the agreement could be terminated since this bill requires rather than permits or authorizes the SBE to enter into such an agreement.

HB 315 w/CS also requires the corporation to enter into an affiliation agreement with UWF by August 1, 2003 and specifies certain items to be provided for in the agreement including but not limited to, use of the university's moneys, facilities, furnishings, equipment, personnel, or services.

The corporation must be administered by a chief executive officer (CEO) who is appointed by and serves at the pleasure of the board of directors. The CEO must establish programs that fulfill the mission of the IHMC; has control over the budget and moneys appropriated or donated to IHMC as well as technical and professional income generated or derived from research activities of IHMC; appoints personnel and establishes the compensation, benefits, and terms of service of such personnel; controls the use and assignment of space and equipment within the facilities; and is empowered to create the administrative structure necessary to carry out the mission of IHMC. The CEO must annually report to the Commissioner of Education on the activities of IHMC and state budget allocation expenditures. The CEO must provide a copy of the annual report to the Governor and Cabinet, the President of the Senate, the chair of the State Board of Education, and the University of West Florida.

The CEO must appoint a council of scientific advisers comprised of leading researchers and scientists to review programs and recommend research priorities and initiatives to maximize the state's investment in IHMC. Appointments to the council of scientific advisers serve two-year terms, may be reappointed, and must be ratified by the board of directors of the not-for-profit corporation.

Income generated by university faculty from research activities at IHMC must be shared between the IHMC and UWF as determined by the CEO and the appropriate university president or the president's designee.

IHMC personnel are eligible to hold concurrent appointments at affiliated academic institutions. University faculty are eligible to hold concurrent appointments at IHMC.

HB 315 w/CS authorizes the SBE, the Auditor General, and the Office of Program Policy Analysis and Government Accountability to require and receive any detail or supplemental data relative to the operation of the corporation or any of its subsidiaries. The SBE must annually certify to the Governor, the Senate President, and the Speaker that the corporation and any subsidiaries are complying with the provisions of this bill and are acting in the best interest of the state.

C. SECTION DIRECTORY:

Section 1. Creates s. 1004.447, F.S., relating to the Florida Institute of Human and Machine Cognition.

Section 2. Provides that the act takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
See FISCAL COMMENTS.

2. Expenditures:
See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
See FISCAL COMMENTS.

D. FISCAL COMMENTS:

The fiscal impact of this bill is indeterminate.

IHMC's 2001-2002 Annual Report to the Division of Colleges and Universities projects 2002-2003 expenditures from state funds to be \$2.2 million and expenditures from Contract and Grant funds to be \$8.0 million. The state funds are recurring and in UWF's base budget. The extent to which any of the funds in UWF's base budget must be transferred to the corporation is not known. Any transfer would result in a corresponding reduction in UWF's base budget.

Income generated by university faculty from research activities at the IHMC will be shared between the IHMC and UWF as determined by the CEO and the appropriate university president or president's designee. The extent to which practice activities of IHMC may generate technical or professional income is unknown.

The impact of the proposed changes on persons currently employed by IHMC through UWF, particularly with regard to benefits such persons may enjoy as university employees (for example, the ability to participate in the Florida Retirement System and the State Group Health Insurance Program), is unknown.

HB 315 authorizes the corporation to secure comprehensive general liability protection for the not-for-profit corporation and its subsidiaries. The cost of such protection and the source of funds to secure the coverage is unknown.

The loss of research overhead to UWF, if any, generated by activities of IHMC is unknown.

The loss of potential revenues to UWF from patents, royalties, and trademarks, if any, which would go to the corporation rather than UWF under the provisions of the bill is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
Not applicable.

2. Other:
None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

HB 315 w/CS establishes, in law, the Florida Institute for Human and Machine Cognition, Inc. at the University of West Florida (UWF), as a Florida not-for-profit corporation organized under the provisions of chapter 617, F.S. Unlike similar provisions in s. 288.901, F.S., creating Enterprise Florida, Inc. as a not-for-profit corporation, this bill does not specifically require the not-for-profit corporation to be “registered, incorporated, organized, and operated in compliance with chapter 617”.

It is not clear why the bill requires the State Board of Education to enter into an agreement relating to a corporation located at the University of West Florida. The State Board of Education may not be the appropriate entity given recent governance changes resulting from the implementation of Amendment 11 which created the Board of Governors as the governing entity for state universities.

HB 315 w/CS authorizes the corporation, in its own name, to perform all things necessary to secure letters of patent, copyrights, and trademarks on any work products and to enforce its rights therein. Unlike similar provisions for state universities in s. 1004.23, F.S., the bill does not specifically require the corporation to consider contributions by the university or university personnel in the development of trademarks, copyrights, and patents and to enter into written contracts with the university or university personnel establishing the interests of the university and such personnel in each trademark, copyright, or patent. The impact of omitting this provision is unknown.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 14, 2003, the Committee on Education K-20 adopted a strike-all amendment and reported HB 315 favorably with a CS. The CS:

- Establishes the Florida Institute for Human and Machine Cognition, Inc., as a not-for-profit corporation organized under chapter 617, F.S., rather than creating a separate not-for-profit corporation for the sole purpose of governing and operating IHMC and requiring the SBE to enter into an agreement with that not-for-profit corporation;
- Exempts the corporation from the provisions of ch. 287, F.S. rather than notwithstanding the provisions of s. 287.057, F.S., relating to procurement of commodities or contractual services, and permitting the institute and its subsidiaries to enter into contracts and agreements with or without competitive bidding,
- Makes the officers, directors, and employees of the corporation subject to the code of ethics for public officers;
- Permits the corporation to secure patents, copyrights, and trademarks in its own name;
- Requires the corporation to enter into an affiliation agreement with UWF which must include, but is not limited to, provisions relating to use of university moneys, facilities, furnishings, equipment, personnel, and services;
- Authorizes the SBE, the Auditor General, and OPPAGA access to information regarding operation of the corporation and its subsidiaries;
- Requires the SBE to annually certify that the corporation and any subsidiaries are complying with the law and are acting in the best interest of the state.

On April 21, 2003, the Education Appropriations Subcommittee adopted a strike-all amendment that made the following changes.

- Clarifies that the corporation is subject to the provisions of Chapter 617
- Replace references to the State Board of Education with references to the Board of Governors
- Requires that the articles of incorporation of the corporation and any subsidiaries be approved by the Board of Governors
- Clarifies the method of appointment for members of the board of directors

- Subjects board members and employees to code of ethics for public officers
- Adds new language, similar to that already in place for universities, regarding patents, trademarks, and copyrights
- Requires the corporation to enter into an affiliation agreement with UWF
- Requires the Board of Trustees of UWF to certify annually to the Governor, the Legislature, and the Board of Governors that the corporation and any subsidiaries are complying with the requirements of the bill and are acting in the best interest of the state.