

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 315 Florida Institute of 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		Tilton	Bohannon
3) Education Appropriations (Sub)			
4) Appropriations			
5)			

SUMMARY ANALYSIS

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

HB 315 establishes IHMC in law and modifies its governance structure. HB 315 requires that a not-for-profit corporation be created for the sole purpose of governing and operating IHMC. In addition, the State Board of Education (SBE) must enter into an agreement with that not-for-profit corporation. HB 315 sets forth certain provisions that must be included in the agreement.

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 board of directors is authorized to secure comprehensive general liability protection for the not-for-profit corporation and its subsidiaries.

IHMC is to 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; 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; is empowered to create the administrative structure necessary to carry out the mission of IHMC; must annually report on the activities of IHMC and state budget allocation expenditures; and 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.

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: h0315b.edk.doc
DATE: April 8, 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 establishes, in law, the Institute for Human and Machine Cognition (IHMC) at the University of West Florida and requires the State Board of Education (SBE) to enter into an agreement with a not-for-profit organization to govern and operate the IHMC.

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.

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

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

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. The CEPRI report notes that the state funds were not allocated to the universities as funds specifically designated to operate centers and institutes, but were part of the lump sum legislative appropriation made to individual universities for their overall operations. The institutions decided, based on their own mission and priorities, what portion of those funds would 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 \$23,000,000. 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

HB 315 establishes the Florida Institute of Human and Machine Cognition (IHMC) at the University of West Florida (UWF), in law, and requires the State Board of Education (SBE) to enter into an agreement for the utilization of the facilities of the UWF with a not-for-profit corporation organized solely for the purpose of governing and operating IHMC. The not-for-profit corporation will be acting as an instrumentality of the state and must govern IHMC in accordance with the terms of an agreement between the SBE and the not-for-profit corporation. The SBE agreement with the not-for-profit corporation must provide for approval by the SBE of the articles of incorporation of the not-for-profit corporation; utilization of facilities and personnel; annual postaudits; and nondiscriminatory employment practices. In the event that the agreement between the not-for-profit corporation and the SBE is terminated for any reason, the SBE must assume governance and operation of any IHMC-owned property and equipment.

It is not clear why the bill requires the State Board of Education to enter into an agreement relating to an institute housed 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

² INSTITUTE FOR HUMAN AND MACHINE COGNITION, 2002 ANNUAL REPORT

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

The not-for-profit corporation is permitted to create subsidiaries.

The not-for-profit corporation must be managed by a board of directors, the membership of which is prescribed in the bill. The initial board consists of the president of UWF and the chair of the SBE or their designees; four representatives of state universities; and no fewer than nine nor more than 13 members of the public. The process for initial appointment is prescribed in the bill. Each director has one vote. The board of directors is authorized to secure comprehensive general liability protection for the not-for-profit corporation and its subsidiaries.

IHMC will 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 will be shared between the IHMC and UWF as determined by the CEO and the appropriate university dean or vice president. IHMC personnel are eligible to hold concurrent appointments at affiliated academic institutions. University faculty are eligible to hold concurrent appointments at IHMC.

The bill declares that the not-for-profit corporation and its subsidiaries are not agencies within the meaning of s. 20.03(11), F.S.

HB 315 notwithstanding the provisions of s. 287.057, F.S., and permits the "institute and its subsidiaries" to enter into contracts with or without competitive bidding, in their discretion. The bill authorizes the not-for-profit corporation to have subsidiaries but does not authorize the "institute" to have subsidiaries. See Section III.C.

HB 315 designates the "institute" as a corporation primarily acting as an instrumentality of the state, pursuant to s. 768.28(2), F.S., for purposes of sovereign immunity. The bill does not structure the institute as a corporation but requires the creation of a not-for-profit corporation to govern and operate IHMC. See Section III.C.

C. SECTION DIRECTORY:

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

Section 2. Provides an effective date of July 1, 2003.

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 IHMC 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 dean or vice president. 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 board of directors of the not-for-profit 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.

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:

It is not clear why the bill requires the State Board of Education to enter into an agreement relating to an institute housed 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 Florida Board of Governors.

There are several inconsistencies within the bill with regard to use of the terms "institute" and "not-for-profit corporation". In some instances, the bill appears to use the terms interchangeably, while in other instances the two terms appear to refer to separate entities.

Subsection (1) establishes the "institute" at UWF. Subsection (2) requires the SBE to enter into an agreement with a "not-for-profit corporation" to govern and operate the "institute".

Subsection (2) also designates the "not-for-profit corporation" as an instrumentality of the state and permits the "not-for-profit corporation" to create subsidiaries.

Subsections (4) and (8) also mention the "not-for-profit corporation" and its subsidiaries.

The provisions of Subsection (9) apply to "the institute and its subsidiaries". However, the bill does not authorize the institute to have subsidiaries.

Subsection (10) designates the "institute" as a "corporation" acting as an instrumentality of the state for purposes of sovereign immunity. The bill does not structure the institute as a corporation but requires the creation of a not-for-profit corporation to govern and operate the IHMC. The bill makes no specific reference to sovereign immunity for the not-for-profit corporation.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A