

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 319 w/CS Governance of State Universities

**SPONSOR(S):** Mealor

**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Higher Education (Sub)	6 Y, 0 N	Britton	Bohannon
2) Education K-20	22 Y, 0 N w/CS	Britton	Bohannon
3) Education Apps. (Sub)			
4) Appropriations			
5)			

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### SUMMARY ANALYSIS

In the 2002 General Election, Floridians amended the State Constitution to require a single state university system comprised of all public universities, with a board of trustees administering each university and a board of governors governing the state university system.

The bill amends the Florida Statutes to reflect the adoption of this constitutional amendment by establishing the Board of Governors as a body corporate comprised of: 14 members appointed by the Governor and subject to confirmation by the Senate; the Commissioner of Education; the chair of the Advisory Council of Faculty Senates or the equivalent; and the president of the Florida Student Association or the equivalent. The appointed members serve staggered seven year terms.

The bill revises statutory provisions relating to university boards of trustees. Each university will be administered by a university board of trustees comprised of 13 members, 6 of whom are appointed by the Governor and 5 of whom are appointed by the Board of Governors. These 11 members are subject to confirmation by the Senate. The chair of the faculty senate or the equivalent, and the president of the student body of the university serve as the final 2 members of the board. The appointed members serve staggered 5 year terms.

The bill restores the Uniform Management of Institutional Funds Act (UMIFA) to the Florida Statutes. UMIFA provides national guidelines for educational institutions in executing their fiduciary responsibilities in the investment and expenditure of permanent endowment funds.

The bill also amends the section of statutes relating to the Trust Fund for University Major Gifts, by updating terminology to reflect the creation of the Board of Governors, and by capping state matching for gifts.

The fiscal impact of this bill is indeterminate.

The section of the bill regarding the UMIFA has a retroactive effective date of January 7, 2003. The rest of the bill will take effect on July 1, 2003.

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

**STORAGE NAME:** h0319c.edk.doc

**DATE:** April 8, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

#### B. EFFECT OF PROPOSED CHANGES:

##### **Board of Governors / State Universities**

Prior to January 7, 2003, each state university was governed by a 13 member board of trustees. Each member was appointed by the Governor and subject to confirmation by the Senate. Each board of trustees was vested, by law, with the authority to govern and set policy for its university as necessary to provide proper governance and improvement of the university in accordance with law and rules of the Florida Board of Education.

In the 2002 General Election, Floridians amended the State Constitution to require a single state university system comprised of all public universities, with a board of trustees administering each university and a board of governors governing the state university system. The amendment took effect January 7, 2003.

The bill amends the Florida Statutes to reflect the adoption of this constitutional amendment by establishing the Board of Governors as a body corporate comprised of: 14 members appointed by the Governor and subject to confirmation by the Senate; the Commissioner of Education; the chair of the Advisory Council of Faculty Senates or the equivalent; and the president of the Florida Student Association or the equivalent. The appointed members serve staggered seven year terms.

The bill also revises statutory provisions relating to university boards of trustees. Each university will be administered by a university board of trustees comprised of 13 members, 6 of whom are appointed by the Governor and 5 of whom are appointed by the Board of Governors. These 11 members are subject to confirmation by the Senate. The chair of the faculty senate or the equivalent, and the president of the student body of the university serve as the final 2 members of the board. The appointed members serve staggered 5 year terms.

##### **Uniform Management of Institutional Funds Act (UMIFA) / Trust Fund for University Major Gifts**

UMIFA was drafted in the early 1970s to provide greater certainty in the administration of permanent endowment funds and to permit investment for long-term growth while preserving the ability of colleges, universities, or affiliated foundations to make short-term distributions from the endowments. Until UMIFA, most endowments were investing endowment funds, primarily for current income and limiting spending to a portion of dividends, interest, rents, and royalties earned (that is, they were heavily invested in bonds, forgoing capital gains to favor income). There was uncertainty about whether traditional trust rules applied to endowments.

UMIFA's primary goal is to free institutions from income-allocation investment concerns, allowing more contemporary investment for growth over the long term. It allows the institutions to focus on the best

investment strategy and distribution policy for the overall health (both long and short-term) of the institution.

The bill restores the Uniform Management of Institutional Funds Act (UMIFA) to the Florida Statutes, UMIFA was omitted in error from last year's School Code Rewrite. The version of UMIFA in this bill differs from the version in place prior to the School Code Rewrite. Since last year, the National Commission on Uniform Laws has issued a new draft of UMIFA. This new version of UMIFA provides new guidelines that respond to the current market situation where many gifts designated for endowment have fallen below their historical market value (once an endowment has dipped below its historic gift value, all spending from the fund is stopped). The bill will allow our public and private institutions to continue to conserve the long term value of endowments while also continuing distributions consistent with the donor's wishes.

The section of the bill regarding the UMIFA will take effect retroactively, January 7, 2003.

The bill also amends the section of statutes relating to the Trust Fund for University Major Gifts. The trust fund was originally established to enable each university and New College to provide donors with an incentive in the form of matching grants.

The bill updates terminology to reflect the creation of the Board of Governors and adds language requiring the proceeds of investments to be used to support university priorities as established by a university's board of trustees. In addition, the bill caps state matching for any gift at \$3 million a year, with the total for any gift capped at \$15 million over 5 years.

The bill, except where otherwise noted, will take effect July 1, 2003.

C. SECTION DIRECTORY:

**Section 1:** Creates s. 1001.70, F.S., establishing the 17 member Board of Governors as a body corporate.

**Section 2:** Amends s. 1001.71, F.S., revising composition and terms of university boards of trustees.

**Section 3:** Creates s. 1010.10, F.S., creating the Florida Uniform Management of Institutional Funds Act; providing definitions; providing for expenditure of endowment funds by a governing board; providing for standard of conduct; providing investment authority; providing for delegation of investment management; providing for investment costs; providing for uniformity of appreciation and construction.

**Section 4:** Amends s. 1011.94, F.S., revising provisions relating to use of proceeds; replacing references to State Board of Education with Florida Board of Governors; providing limitations on matching funds.

**Section 5:** Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The fiscal impact of this bill is indeterminate. The bill does cap state matching for any gift at \$3 million a year, with the total for any gift capped at \$15 million over 5 years.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

This bill will cap state matching funds, therefore, distributing the state's financial burden over a longer period of time. This will in-turn give the state greater financial flexibility.

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take action which requires the expenditure of funds.

2. Other:

This bill does not appear to have any constitutional issues.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

An analysis prepared by the Department of Education (DOE) suggests the phrase "beginning July 1, 2003" in sections 1 and 2 of the bill is inaccurate, in that the staggering of terms would only occur on July 1, 2003.

In addition, DOE reports that the provision in section 2, requiring that the chair and vice chair be selected at the first regular meeting after July 1 conflicts with the resolution by the Board of Governors stating that such selection should occur at the first regular meeting.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On April 7, 2003, the Committee on Education K-20 adopted an amendment adding two new sections to the bill's original text.

The amendment creates s. 1010.10, F.S., restoring the Florida Uniform Management of Institutional Funds Act to the Florida Statutes, after it was inadvertently omitted from last year's school code rewrite. The version of

UMIFA in the amendment reflects the most recent draft from the National Conference of Commissioners on Uniform State Law. The amendment provides definitions, as well as providing for the expenditure of endowment funds by a governing board. The amendment further provides for a standard of conduct, an investment authority, the delegation of investment management, investment costs, and uniformity of appreciation and construction.

The amendment also amends s. 1011.94, F.S., by revising provisions relating to use of proceeds, replacing references to State Board of Education with Florida Board of Governors, and providing limitations on matching funds.

The bill, as a committee substitute, was reported favorably out of committee by a vote of 22 Yeas to 0 Nays.