



CHAMBER ACTION

The Committee on Education K-20 recommends the following:

Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to state universities; creating s. 1001.70, F.S.; establishing the Board of Governors; providing membership and terms of office; amending s. 1001.71, F.S.; revising membership of university boards of trustees and terms of office; creating 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 a standard of conduct; providing investment authority; providing for delegation of investment management; providing for investment costs; providing for release of restrictions on use or investment; providing for uniformity of application and construction; providing for retroactive effect; amending s. 1011.94, F.S., relating to the Trust Fund for University Major Gifts; revising provisions relating to use of proceeds; replacing references to State Board of Education with Board of



HB 0319

2003
CS

28 | Governors; providing limitations on matching funds;
29 | providing effective dates.

31 | Be It Enacted by the Legislature of the State of Florida:

33 | Section 1. Section 1001.70, Florida Statutes, is created
34 | to read:

35 | 1001.70 Board of Governors.--Pursuant to s. 7(d), Art. IX
36 | of the State Constitution, the Board of Governors is established
37 | as a body corporate comprised of 17 members as follows: 14
38 | citizen members appointed by the Governor subject to
39 | confirmation by the Senate; the Commissioner of Education; the
40 | chair of the advisory council of faculty senates or the
41 | equivalent; and the president of the Florida student association
42 | or the equivalent. The appointed members shall serve staggered
43 | 7-year terms. In order to achieve staggered terms, beginning
44 | July 1, 2003, of the initial appointments, 4 members shall serve
45 | 2-year terms, 5 members shall serve 3-year terms, and 5 members
46 | shall serve 7-year terms.

47 | Section 2. Section 1001.71, Florida Statutes, is amended
48 | to read:

49 | 1001.71 University boards of trustees; membership.--

50 | (1) Pursuant to s. 7(c), Art. IX of the State
51 | Constitution, each local constituent university shall be
52 | administered by a university board of trustees comprised of 13
53 | members as follows: 6 citizen members appointed by the Governor
54 | subject to confirmation by the Senate; 5 citizen members
55 | appointed by the Board of Governors subject to confirmation by



HB 0319

2003
CS

56 the Senate; the chair of the faculty senate or the equivalent;
57 and the president of the student body of the university. The
58 appointed members shall serve staggered 5-year terms. In order
59 to achieve staggered terms, beginning July 1, 2003, of the
60 initial appointments by the Governor, 2 members shall serve 2-
61 year terms, 3 members shall serve 3-year terms, and 1 member
62 shall serve a 5-year term and of the initial appointments by the
63 Board of Governors, 2 members shall serve 2-year terms, 2
64 members shall serve 3-year terms, and 1 member shall serve a 5-
65 year term. University boards of trustees shall be comprised of
66 ~~12 members appointed by the Governor and confirmed by the Senate~~
67 ~~in the regular legislative session immediately following his or~~
68 ~~her appointment. In addition, the student body president elected~~
69 ~~on the main campus of the university pursuant to s. 1004.26~~
70 ~~shall serve ex officio as a voting member of his or her~~
71 ~~university board of trustees. There shall be no state residency~~
72 ~~requirement for university board members, but the Governor and~~
73 ~~the Board of Governors shall consider diversity and regional~~
74 ~~representation.~~

75 (2) Members of the boards of trustees shall receive no
76 compensation but may be reimbursed for travel and per diem
77 expenses as provided in s. 112.061.

78 ~~(3) The Governor may remove a trustee upon the~~
79 ~~recommendation of the State Board of Education, or for cause.~~

80 ~~(4) Boards of trustees' members shall be appointed for~~
81 ~~staggered 4-year terms, and may be reappointed for additional~~
82 ~~terms not to exceed 8 years of service.~~



HB 0319

2003
CS

83 ~~(3)(5)~~ Each board of trustees shall select its chair and
84 vice chair from the appointed members at its first regular
85 meeting after July 1. The chair shall serve for 2 years and may
86 be reselected for one additional consecutive term. The duties of
87 the chair shall include presiding at all meetings of the board
88 of trustees, calling special meetings of the board of trustees,
89 and attesting to actions of the board of trustees, ~~and notifying~~
90 ~~the Governor in writing whenever a board member fails to attend~~
91 ~~three consecutive regular board meetings in any fiscal year,~~
92 ~~which failure may be grounds for removal.~~ The duty of the vice
93 chair is to act as chair during the absence or disability of the
94 chair.

95 ~~(4)(6)~~ The university president shall serve as executive
96 officer and corporate secretary of the board of trustees and
97 shall be responsible to the board of trustees for all operations
98 of the university and for setting the agenda for meetings of the
99 board of trustees in consultation with the chair.

100 Section 3. Effective upon this act becoming a law and
101 operating retroactively to January 7, 2003, section 1010.10,
102 Florida Statutes, is created to read:

103 1010.10 Florida Uniform Management of Institutional Funds
104 Act.--

105 (1) POPULAR NAME.--This section shall be known by the
106 popular name the "Florida Uniform Management of Institutional
107 Funds Act."

108 (2) DEFINITIONS.--As used in this section:



109 (a) "Endowment fund" means an institutional fund, or any
 110 part thereof, not wholly expendable by the institution on a
 111 current basis under the terms of the applicable gift instrument.

112 (b) "Governing board" means the body responsible for the
 113 management of an institution or an institutional fund.

114 (c) "Institution" means an incorporated or unincorporated
 115 organization organized and operated exclusively for the
 116 advancement of educational purposes, or a governmental entity to
 117 the extent that it holds funds exclusively for educational
 118 purposes.

119 (d) "Institutional fund" means a fund held by an
 120 institution for its exclusive use, benefit, or purposes. The
 121 term excludes a fund held for an institution by a trustee that
 122 is not an institution. The term also excludes a fund in which a
 123 beneficiary that is not an institution has an interest other
 124 than possible rights that could arise upon violation or failure
 125 of the purposes of the fund.

126 (e) "Instrument" means a will, deed, grant, conveyance,
 127 agreement, memorandum, electronic record, writing, or other
 128 governing document, including the terms of any institutional
 129 solicitations from which an institutional fund resulted, under
 130 which property is transferred to or held by an institution as an
 131 institutional fund.

132 (3) EXPENDITURE OF ENDOWMENT FUNDS.--

133 (a) A governing board may expend so much of an endowment
 134 fund as the governing board determines to be prudent for the
 135 uses and purposes for which the endowment fund is established,
 136 consistent with the goal of conserving the purchasing power of



HB 0319

2003
CS

137 the endowment fund. In making its determination, the governing
138 board shall use reasonable care, skill, and caution in
139 considering the following:

- 140 1. Purposes of the institution.
- 141 2. Intent of the donors of the endowment fund.
- 142 3. Terms of the applicable instrument.
- 143 4. Long-term and short-term needs of the institution in
144 carrying out its purposes.
- 145 5. General economic conditions.
- 146 6. Possible effect of inflation or deflation.
- 147 7. Other resources of the institution.
- 148 8. Perpetuation of the endowment.

149
150 Expenditures made under this paragraph will be considered to be
151 prudent if the amount expended is consistent with the goal of
152 preserving the purchasing power of the endowment fund.

153 (b) A restriction upon the expenditure of an endowment
154 fund may not be implied from a designation of a gift as an
155 endowment, or from a direction or authorization in the
156 instrument to use only "income," "interest," "dividends," or
157 "rents, issues, or profits," or "to preserve the principal
158 intact," or words of similar import.

159 (c) The provisions of paragraph (a) shall not apply to an
160 instrument if the instrument so indicates by stating, "I direct
161 that the expenditure provision of paragraph (a) of subsection
162 (3) of the Florida Uniform Management of Institutional Funds Act
163 not apply to this gift" or words of similar import.



HB 0319

2003
CS

164 (d) This subsection does not limit the authority of a
165 governing board to expend funds as permitted under other law,
166 the terms of the instrument, or the charter of the institution.

167 (e) Except as otherwise provided, this subsection applies
168 to instruments executed or in effect before or after the
169 effective date of this section.

170 (4) STANDARD OF CONDUCT.--

171 (a) Members of a governing board shall invest and manage
172 an institutional fund as a prudent investor would by considering
173 the purposes, distribution requirements, and other circumstances
174 of the fund. In satisfying this standard, the governing board
175 shall exercise reasonable care, skill, and caution.

176 (b) A governing board's investment and management
177 decisions about individual assets shall be made not in isolation
178 but in the context of the institutional fund's portfolio of
179 investments as a whole and as a part of an overall investment
180 strategy having risk and return objectives reasonably suited to
181 the fund and to the institution.

182 (c) Among circumstances that a governing board shall
183 consider are:

184 1. Long-term and short-term needs of the institution in
185 carrying out its purposes.

186 2. Its present and anticipated financial resources.

187 3. General economic conditions.

188 4. Possible effect of inflation or deflation.

189 5. Expected tax consequences, if any, of investment
190 decisions or strategies.



HB 0319

2003
CS

191 6. The role that each investment or course of action plays
192 within the overall investment portfolio of the institutional
193 fund.

194 7. Expected total return from income and appreciation of
195 its investments.

196 8. Other resources of the institution.

197 9. Needs of the institution and the institutional fund for
198 liquidity, regularity of income, and preservation or
199 appreciation of capital.

200 10. An asset's special relationship or special value, if
201 any, to the purposes of the applicable gift instrument or to the
202 institution.

203 (d) A governing board shall make a reasonable effort to
204 verify the facts relevant to the investment and management of
205 institutional fund assets.

206 (e) A governing board shall diversify the investments of
207 an institutional fund unless the board reasonably determines
208 that, because of special circumstances, the purposes of the fund
209 are better served without diversifying.

210 (f) A governing board shall invest and manage the assets
211 of an institutional fund solely in the interest of the
212 institution.

213 (5) INVESTMENT AUTHORITY.--In addition to an investment
214 otherwise authorized by law or by the applicable gift
215 instrument, and without restriction to investments a fiduciary
216 may make, the governing board, subject to any specific
217 limitations set forth in the applicable gift instrument or in



HB 0319

2003
CS

218 the applicable law other than law relating to investments by a
219 fiduciary:

220 (a) Within a reasonable time after receiving property,
221 shall review the property and make and implement decisions
222 concerning the retention and disposition of the assets in order
223 to bring the portfolio of the institutional fund into compliance
224 with the purposes, terms, distribution requirements, and other
225 circumstances of the institution and with the requirements of
226 this section.

227 (b) May invest in any kind of property or type of
228 investment consistent with the standards of this section.

229 (c) May include all or any part of an institutional fund
230 in any pooled or common fund maintained by the institution.

231 (d) May invest all or any part of the institutional fund
232 in any other pooled or common fund available for investment,
233 including shares or interests in regulated investment companies,
234 mutual funds, common trust funds, investment partnerships, real
235 estate investment trusts, or similar organizations in which
236 funds are commingled and investment determinations are made by
237 persons other than the governing board.

238 (6) DELEGATION OF INVESTMENT MANAGEMENT.--

239 (a) Except as otherwise provided by applicable law
240 relating to governmental institutions or funds, a governing
241 board may delegate investment and management functions that a
242 prudent governing body could properly delegate under the
243 circumstances. A governing board shall exercise reasonable care,
244 skill, and caution in:

245 1. Selecting an agent.



HB 0319

2003
CS

246 2. Establishing the scope and terms of the delegation
247 consistent with the purposes of the institutional fund.

248 3. Periodically reviewing the agent's actions in order to
249 monitor the agent's performance and the agent's compliance with
250 the terms of the delegation.

251 (b) In performing a delegated function, an agent owes a
252 duty to the governing board to exercise reasonable care to
253 comply with the terms of the delegation.

254 (c) The members of a governing board who comply with the
255 requirements of paragraph (a) are not liable for the decisions
256 or actions of the agent to whom the function was delegated.

257 (d) By accepting the delegation of an investment or
258 management function from a governing board of an institution
259 that is subject to the laws of this state, an agent submits to
260 the jurisdiction of the courts of this state in all actions
261 arising from the delegation.

262 (7) INVESTMENT COSTS.--In investing and managing trust
263 assets, a governing board may only incur costs that are
264 appropriate and reasonable in relation to the assets and the
265 purposes of the institution.

266 (8) RELEASE OF RESTRICTIONS ON USE OR INVESTMENT.--

267 (a) With the written consent of the donor, a governing
268 board may release, in whole or in part, a restriction imposed by
269 the applicable instrument on the use or investment of an
270 institutional fund.

271 (b) If written consent of the donor cannot be obtained by
272 reason of the donor's death, disability, unavailability, or
273 impossibility of identification, a governing board may release,



HB 0319

2003
CS

274 in whole or in part, a restriction imposed by the applicable
275 instrument on the use or investment of an institutional fund if
276 the fund has a total value of less than \$100,000 and if the
277 governing board, in its fiduciary judgment, concludes that the
278 value of the fund is insufficient to justify the cost of
279 administration as a separate institutional fund.

280 (c) If written consent of the donor cannot be obtained by
281 reason of the donor's death, disability, unavailability, or
282 impossibility of identification, a governing board may apply in
283 the name of the institution to the circuit court of the county
284 in which the institution is located for release of a restriction
285 imposed by the applicable instrument on the use or investment of
286 an institutional fund. The Attorney General shall be notified of
287 the application and shall be given an opportunity to be heard.
288 If the court finds that the restriction is unlawful,
289 impracticable, impossible to achieve, or wasteful, it may by
290 order release the restriction in whole or in part. A release
291 under this subsection may not change an endowment fund to a fund
292 that is not an endowment fund.

293 (d) A release under this subsection may not allow a fund
294 to be used for purposes other than the educational purposes of
295 the institution affected.

296 (e) This subsection does not limit the application of the
297 doctrine of cy pres.

298 (9) UNIFORMITY OF APPLICATION AND CONSTRUCTION.--This act
299 shall be so applied and construed as to effectuate its general
300 purpose to make uniform the law with respect to the subject of
301 this act among those states which enact it.



HB 0319

2003
CS

302 Section 4. Section 1011.94, Florida Statutes, is amended
303 to read:

304 1011.94 Trust Fund for University Major Gifts.--

305 (1) There is established a Trust Fund for University Major
306 Gifts. The purpose of the trust fund is to enable each
307 university and New College to provide donors with an incentive
308 in the form of matching grants for donations for the
309 establishment of permanent endowments and sales tax exemption
310 matching funds received pursuant to s. 212.08(5)(j), which must
311 be invested, with the proceeds of the investment used to support
312 university priorities as established by the university board of
313 trustees ~~libraries and instruction and research programs, as~~
314 ~~defined by the State Board of Education.~~ All funds appropriated
315 for the challenge grants, new donors, major gifts, sales tax
316 exemption matching funds pursuant to s. 212.08(5)(j), or eminent
317 scholars program must be deposited into the trust fund and
318 invested pursuant to s. 18.125 until the Board of Governors
319 ~~State Board of Education~~ allocates the funds to universities to
320 match private donations. Notwithstanding s. 216.301 and pursuant
321 to s. 216.351, any undisbursed balance remaining in the trust
322 fund and interest income accruing to the portion of the trust
323 fund which is not matched and distributed to universities must
324 remain in the trust fund and be used to increase the total funds
325 available for challenge grants. Funds deposited in the trust
326 fund for the sales tax exemption matching program authorized in
327 s. 212.08(5)(j), and interest earnings thereon, shall be
328 maintained in a separate account within the Trust Fund for
329 University Major Gifts, and may be used only to match qualified



HB 0319

2003
CS

330 sales tax exemptions that a certified business designates for
331 use by state universities and community colleges to support
332 research and development projects requested by the certified
333 business. The Board of Governors ~~State Board of Education~~ may
334 authorize any university to encumber the state matching portion
335 of a challenge grant from funds available under s. 1011.45.

336 (2) The Board of Governors ~~State Board of Education~~ shall
337 specify the process for submission, documentation, and approval
338 of requests for matching funds, accountability for endowments
339 and proceeds of endowments, allocations to universities,
340 restrictions on the use of the proceeds from endowments, and
341 criteria used in determining the value of donations.

342 (3)(a) The Board of Governors ~~State Board of Education~~
343 shall allocate the amount appropriated to the trust fund to each
344 university and New College based on the amount of the donation
345 and the restrictions applied to the donation.

346 (b) Donations for a specific purpose must be matched in
347 the following manner:

348 1. Each university that raises at least \$100,000 but no
349 more than \$599,999 from a private source must receive a matching
350 grant equal to 50 percent of the private contribution.

351 2. Each university that raises a contribution of at least
352 \$600,000 but no more than \$1 million from a private source must
353 receive a matching grant equal to 70 percent of the private
354 contribution.

355 3. Each university that raises a contribution in excess of
356 \$1 million but no more than \$1.5 million from a private source



HB 0319

2003
CS

357 must receive a matching grant equal to 75 percent of the private
358 contribution.

359 4. Each university that raises a contribution in excess of
360 \$1.5 million but no more than \$2 million from a private source
361 must receive a matching grant equal to 80 percent of the private
362 contribution.

363 5. Each university that raises a contribution in excess of
364 \$2 million from a private source must receive a matching grant
365 equal to 100 percent of the private contribution.

366 6. The amount of matching funds used to match a single
367 gift in any given year shall be limited to \$3 million. The total
368 amount of matching funds available for any single gift shall be
369 limited to \$15 million, to be distributed in equal amounts of \$3
370 million per year over a period of 5 years.

371 (c) The Board of Governors ~~State Board of Education~~ shall
372 encumber state matching funds for any pledged contributions, pro
373 rata, based on the requirements for state matching funds as
374 specified for the particular challenge grant and the amount of
375 the private donations actually received by the university for
376 the respective challenge grant.

377 (4) Matching funds may be provided for contributions
378 encumbered or pledged under the Eminent Scholars Act prior to
379 July 1, 1994, and for donations or pledges of any amount equal
380 to or in excess of the prescribed minimums which are pledged for
381 the purpose of this section.

382 (5)(a) Each university foundation and New College
383 Foundation shall establish a challenge grant account for each
384 challenge grant as a depository for private contributions and



HB 0319

2003
CS

385 state matching funds to be administered on behalf of the Board
386 of Governors ~~State Board of Education~~, the university, or New
387 College. State matching funds must be transferred to a
388 university foundation or New College Foundation upon
389 notification that the university or New College has received and
390 deposited the amount specified in this section in a foundation
391 challenge grant account.

392 (b) The foundation serving a university and New College
393 Foundation each has the responsibility for the maintenance and
394 investment of its challenge grant account and for the
395 administration of the program on behalf of the university or New
396 College, pursuant to procedures specified by the Board of
397 Governors ~~State Board of Education~~. Each foundation shall
398 include in its annual report to the Board of Governors ~~State~~
399 ~~Board of Education~~ information concerning collection and
400 investment of matching gifts and donations and investment of the
401 account.

402 (c) A donation of at least \$600,000 and associated state
403 matching funds may be used to designate an Eminent Scholar
404 Endowed Chair pursuant to procedures specified by the Board of
405 Governors ~~State Board of Education~~.

406 (6) The donations, state matching funds, or proceeds from
407 endowments established under this section may not be expended
408 for the construction, renovation, or maintenance of facilities
409 or for the support of intercollegiate athletics.

410 Section 5. Except as otherwise provided herein, this act
411 shall take effect July 1, 2003.

412