

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Legislature created the Florida Alzheimer's Center and Research Institute at the University of South Florida (USF) in 2002,¹ and subsequently renamed it the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute (Byrd Institute) in 2004, in honor of the late father of Johnnie Byrd, Jr., Speaker of the Florida House of Representatives from 2002-2004.²

Current law directs the State Board of Education to enter into an agreement for the utilization of the facilities on the campus of USF to be known as the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute, with a Florida not-for-profit corporation organized solely for the purpose of governing and operating the Byrd Institute. The agreement authority provided to the State Board of Education was transferred to the Board of Governors (BOG) effective July 1, 2007.³

The not-for-profit corporation, considered to be an instrumentality of the state, is authorized to create both not-for-profit and for-profit corporate subsidiaries, upon approval of the BOG, to fulfill its mission.⁴

The affairs of the not-for-profit corporation are managed by a board of directors. The board of directors is comprised of the President of USF and the chair of the BOG, or their designees, five representatives of the state universities, and nine representatives of the public who are neither medical doctors nor state employees. Of the five university representatives, one is appointed by the Governor, two are appointed by the President of the Senate, and two by the Speaker of the House of Representatives. Of the nine public representatives, three are appointed by the Governor, three by the President of the Senate, and three by the Speaker of the House of Representatives. Any vacancy in office must be filled in the same manner as the original appointment. Any director may be reappointed.⁵

The BOG must provide for the following in the agreement with the not-for-profit corporation:

- Approval by the BOG of the articles of incorporation of the not-for-profit corporation.
- Approval by the BOG of the articles of incorporation of any not-for-profit corporate subsidiary created by the not-for-profit.

¹ Ch. 2002-387, L.O.F.

² Ch. 2004-2, L.O.F.

³ Section 1004.445(2)(a), F.S.

⁴ Section 1004.445(2)(a), F.S.

⁵ Section 1004.445(2)(b), F.S.

- Utilization of lands, facilities, and personnel by the not-for-profit corporation and its subsidiaries for research, education, treatment, prevention, and the early detection of Alzheimer's disease and for mutually approved teaching and research programs conducted by USF or other accredited medical schools or research institutes.
- Preparation of an annual financial audit pursuant to s. 11.45, F.S., of the not-for-profit corporation's account, and the account of any subsidiaries, to be conducted by an independent certified public accountant.
- Provision by the not-for-profit and its subsidiaries of equal employment opportunities for all persons regardless of race, color, religion, gender, age, or national origin.

The BOG is authorized to secure comprehensive general liability protection, including professional liability protection, for the not-for-profit corporation and its subsidiaries.

In the event that the agreement between the not-for-profit corporation and the BOG is terminated for any reason, the BOG must assume governance and operation of the facilities.

The Byrd Institute must be administered by a chief executive officer who is appointed by and serves at the pleasure of the board of directors of the not-for-profit corporation. The chief executive officer's duties include:

- Establishing programs that fulfill the mission of the institute in research, education, treatment, prevention, and early detection of Alzheimer's disease. The chief executive officer may not establish academic programs for which academic credit is awarded and which culminate in the conferring of a degree without prior approval of the BOG.
- Controlling the budget and the monies appropriated to the institute from private, state, local, and federal sources.
- Appointing representatives of the institute to carry out the research, patient care, and educational activities of the institute and establishing the compensation, benefits, and terms of services of the representatives.
- Controlling the use and assignment of space and equipment within the facilities.
- Creating the administrative structure necessary to carry out the mission of the institute.
- Reporting to the BOG or its designees.
- Providing the institute's annual report to the Governor, the Cabinet, the Legislature, and the chair of the BOG.
- Developing the annual operating budget detailing the planned use of state, federal, and private funds for the fiscal year and submitting it by August 1 of each year to the Governor, the Cabinet, the Legislature, and the chair of the BOG.

The board of directors of the not-for-profit corporation must create a council of scientific advisers comprised of leading researchers, physicians, and scientists. The council must review programs and recommend research priorities and initiatives to maximize the state's investment in the institute.

Any university or established research institute in Florida may apply to the Byrd Institute for funding of their research. All qualified investigators in the state, regardless of institutional affiliation, must have equal opportunity to compete for the research funding. Grants must be awarded by the board of directors on the basis of scientific merit and preference may be given to proposals that foster collaboration among institutions, researchers, and community practitioners. Proposals must be evaluated on the basis of scientific merit by a peer review panel of independent, scientifically qualified individuals appointed by the council of scientific advisors. The council of scientific advisors and the peer review panel must establish and follow rigorous guidelines for ethical conduct and adhere to a strict policy with regard to conflict of interest.⁶

⁶ Section 1004.445(8)(a), F.S.

Any appropriation to the Byrd Institute provided in a General Appropriations Act must be paid directly to the board of directors of the not-for-profit corporation by warrant drawn by the Chief Financial Officer from the State Treasury.⁷

No state appropriations were made to the Byrd Institute for the 2008-2009 fiscal year. Prior to Fiscal Year 2007-2008, the Institute received a recurring appropriation of \$15 million annually.⁸ The appropriation was reduced to \$13.5 million in Fiscal Year 2007-2008 during Special Session C⁹ and was eliminated in Fiscal Year 2008-2009.¹⁰ Currently, the Institute is using a cash reserve to fund ongoing operations.¹¹

Section 1004.445, F.S., will expire January 1, 2011, unless reviewed and reenacted by the Legislature before that date.

By June 1, 2009, the Division of Statutory Revision of the Office of Legislative Services must certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of s. 1004.445, F.S. The Legislature must review the performance, outcomes, and financial management of the Byrd Institute during the 2010 Regular Session of the Legislature and determine the most appropriate funding source and means of funding the center and institute based on its review.¹²

The Byrd Institute's Current Relationship with USF¹³

The Byrd Institute entered into an affiliation agreement with USF that was approved by the respective boards of both parties on July 18, 2008. Pursuant to the agreement, the parties created a Joint Affiliation Board consisting of three members appointed by the chair of the Byrd Institute Board and four members appointed by the chair of the USF Board of Trustees. The Joint Affiliation Board was delegated the statutory responsibilities, powers, and duties of the Byrd Institute Board; was made responsible for requiring that USF administrative policies relating to finance, audit, personnel, property, and research were followed; and was charged with assuring that funds held by the institute were expended exclusively to benefit the institute's statewide mission. The Joint Affiliation Board also appointed the Dean of the USF College of Medicine as the new chief executive officer of the institute. Under the Joint Affiliation Agreement, the existing Byrd Institute Board continues to function in an advisory/advocacy capacity and the Council of Scientific Advisors is retained. The Joint Affiliation Agreement further provides that the Byrd Institute facility on the USF campus is for the exclusive use of operating the institute and that any appropriation to the institute would be paid directly to the Byrd Institute Board.

Effect of Proposed Changes

CS/HB 443 establishes the Byrd Institute within USF and substantially rewords existing statutory provisions relating to the Byrd Institute. Current statutory provisions relating to the not-for-profit corporation created to govern and operate the Byrd Institute, the agreement between the not-for-profit and the BOG, the council of scientific advisers, application for research funding, and sunset of the Institute are removed.

CS/HB 443 states that the Byrd Institute has a statewide mission to advance research, education, treatment, prevention, and the early detection of Alzheimer's disease and is responsible for distributing competitive grant funds for Alzheimer's disease research.

The bill creates a seven-member board of directors to oversee the management and operation of the Byrd Institute. The Governor, the President of the Senate, and the Speaker of the House of

⁷ Section 1004.445(11), F.S.

⁸ Section 1004.445 (12), F.S. (2006); s. 561.121(1)(a)2., F.S. (2005).

⁹ Ch. 2007-332, L.O.F.

¹⁰ Ch. 2008-113, L.O.F.

¹¹ Telephone conversation with Board of Governors staff.

¹² Section 1004.445(12 & 13), F.S.

¹³ Affiliation Agreement between University of South Florida and Johnnie B. Byrd, Sr. Alzheimer's Center and Research Institute

Representatives each appoint one board member and the USF board of trustees appoint the remaining four board members. Members of the board of directors serve for a 4-year term and may be reappointed. Members of the board of directors may not receive a salary.

The bill requires the board of directors to:

- Approve the institute's annual budget and audit of expenditures.
- Ensure that the institute's funds are expended exclusively to benefit the institute's mission, unless otherwise authorized or directed by the Legislature.
- Ensure that the institute adheres to all administrative policies and procedures of USF including, but not limited to, university policies for finance, audit, personnel, property, and research administration.
- Transmit a copy of the institute's annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the BOG, and the USF Board of Trustees.

The bill allows the board of directors to organize and appoint an advisory council to the Byrd Institute. The duties of the advisory council may include, but are not limited to, the following:

- Meeting the institute's mission.
- Engaging community leaders and other concerned members of the public in supporting the institute's mission.
- Soliciting philanthropic support for the institute.

The bill requires that the Chief Executive Officer (CEO) be appointed by and serve at the pleasure of the president of USF or the president's designee. The CEO must:

- Appoint university faculty and staff to carry out the research, patient care, and educational activities of the institute.
- Administer the daily operation of the institute, including the use and assignment of space and equipment within the institute's facilities.
- Actively seek federal and private sources of grant money and donations for the purpose of funding and conducting research for Alzheimer's disease at the institute.
- Prepare an annual report for the institute which describes the expenditure of all of the institute's funds and provides information regarding research that has been conducted or funded by the institute, including the expected and actual results of the research.

The bill requires the budget of the Byrd Institute to include the moneys appropriated in the General Appropriations Act, donated, or otherwise provided to the Byrd Institute. Any appropriation to the institute must be expended for the purposes specified, including conducting and supporting research and related clinical services, awarding institutional grants and investigator-initiated research grants to other persons within the state through a competitive process, developing and operating integrated data projects, providing assistance to the memory disorder clinics, and providing for the operation of the Byrd Institute.

The bill preserves the Byrd Institute's public records exemption.

The bill requires that, on or before June 30, 2009, the board of directors of the not-for-profit corporation created as an instrumentality of the state pursuant to s. 1004.445, F.S., transfer all unexpended balances, records, functions, facilities, and assets of the institute to USF under the oversight of the board of directors of the Byrd Institute.

B. SECTION DIRECTORY:

Section 1. Amending s. 1004.445, F.S.; establishing the institute within the University of South Florida; providing a mission for the institute; creating a board of directors to oversee the management and operation of the institute; providing for the appointment and terms of service of the members of the board of directors; providing for the election of a chair of the board of directors; providing for the duties of the board of directors; authorizing the board of directors to create an advisory council to the institute; providing that the institute shall be administered by a chief executive officer; providing for the duties of the chief

executive officer; requiring the chief executive officer to actively seek grant moneys to fund research at the institute; requiring the chief executive officer to submit an annual report of the institute's expenditures and research; specifying the sources of funding for the institute; requiring that any appropriation to the institute be expended for certain purposes; specifying certain information that is exempt from public-records requirement; and providing for the transfer of certain assets and records of the institute to the university.

Section 2. Provides an effective date of 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:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

According to the Board of Governors, CS/HB 443 creates the potential for the University of South Florida to request operating funds for the Byrd Institute in their legislative budget request for Plant Operations and Maintenance funding. The estimated request based on cost factors for fiscal year 2009-2010 would be \$1.9 million.¹⁴

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not appear to reduce the percentage of state tax shared with counties or municipalities

¹⁴ Board of Governors analysis of HB 443 (March 3, 2009).

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2009, the State Universities & Private Colleges Policy Committee adopted a strike-all amendment to HB 443 and reported the bill favorably with a committee substitute. The bills differ in the following ways:

HB 443 creates a Florida not-for-profit corporation for the purpose of managing and operating the Johnnie B. Byrd, Sr. Alzheimer's Center and Research Institute and specifies powers and duties of the not-for-profit corporation, its board of directors, and its chief executive officer.

CS/HB 443 creates a seven-member board of directors to oversee the management and operation of the Byrd Institute and provides powers and duties of the board of directors and the chief executive officer of the Byrd Institute.

CS/HB 443 also requires the current board of directors to transfer all unexpended balances, records, functions, facilities, and assets of the institute to the University of South Florida under the oversight of the board of directors of the Byrd Institute on or before June 30, 2009.