

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 443

Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute

SPONSOR(S): Burgin

TIED BILLS:

IDEN./SIM. BILLS: SB 1304

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) State Universities & Private Colleges Policy Committee		Thomas	Tilton
2) Education Policy Council			
3) State Universities & Private Colleges Appropriations Committee			
4) Full Appropriations Council on Education & Economic Development			
5)			

SUMMARY ANALYSIS

The Legislature created the Florida Alzheimer's Center and Research Institute at the University of South Florida (USF) in 2002, and subsequently renamed it the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute (Byrd Institute) in 2004. The State Board of Education (SBE) was required to enter into an agreement for utilization of the facilities of the campus of USF with a not-for-profit corporation organized solely for the purpose of governing and operating the Byrd Institute. On July 1, 2007, the agreement authority was transferred to the Board of Governors (BOG).

HB 443 establishes the Byrd Institute within the University of South Florida. The bill provides a mission statement for the Byrd Institute.

References to the agreement with the SBE and the BOG are removed.

The bill creates a Florida not-for-profit corporation for the sole purpose of managing and operating the Byrd Institute. The not-for-profit corporation is authorized to create for-profit or not-for-profit corporate subsidiaries, or both to fulfill its mission.

The bill removes references to the Board of Governors (BOG) and transfers the duties of the BOG to the board of directors of the not-for-profit corporation.

The bill revises provisions relating to the membership of the board of directors who manage the affairs of the not-for-profit corporation. The bill requires the board of directors to appoint an advisory panel to advise the board and the institute's chief executive officer (CEO) regarding Byrd Institute.

The bill deletes the requirement that the board of directors create a council of scientific advisers.

The bill states that the budget of the Byrd Institute must include all state, private, and federal funds provided to the institute or granted from technical or practice activities at the institute and specifies the purposes for which any appropriation to Byrd Institute must be used.

The bill repeals the 2011 sunset of the statutes relating to the Byrd Institute and the required legislative review of the performance, outcomes, and financial management of the institute.

Under the provisions of the bill, USF may be eligible to request Plant, Operation, and Maintenance funding. See FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT for additional information.

The effective date provided is upon becoming law.

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

STORAGE NAME: h0443.SPCP.doc

DATE: 3/20/2009

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., who was the 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 the University of South Florida 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 Legislature established the Byrd Institute as a not-for-profit corporation, considered to be an instrumentality of the state, and authorized the Byrd Institute to create both not-for-profit and for-profit subsidiaries, upon approval of the Board of Governors, 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 the University of South Florida 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 in the agreement with the not-for-profit corporation for the following:

- Approval by the BOG of the articles of incorporation of the not-for-profit corporation.

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.

- Approval by the BOG of the articles of incorporation of any not-for-profit corporate subsidiary created by the not-for-profit.
- 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 Board of Governors.
- 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 Board of Governors or its designees
- Providing the institute's annual report to the Governor, the Cabinet, the Legislature, and the chair of the Board of Governors.
- 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 Board of Governors.

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 will be give 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

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 this section. The Legislature must review the performance, outcomes, and financial management of the 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.⁸

The Byrd Institute's Current Relationship with USF⁹

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 for 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

HB 443 states that the research 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 Florida not-for-profit corporation to act as an instrumentality of the state for the sole purpose of managing and operating the Byrd Institute. The not-for-profit corporation is authorized to create for-profit or not-for-profit corporate subsidiaries, or both to fulfill its mission.

The bill authorizes the not-for-profit cooperation and its subsidiaries to receive, hold, invest, and administer property and any moneys acquired from private, local, state, and federal sources, as well as technical and professional income generated or derived from practice activities of the institute for the benefit of the institute and the fulfillment of its mission.

The bill revises provisions relating to the membership of the board of directors who manage the affairs of the not-for-profit corporation. The number of members of the board of directors is reduced to seven. Each member of the board of directors is appointed to a 5 year term beginning July 1, 2009 and may be reappointed. Four members must be appointed by the chair of the board of trustees of the University of South Florida, one by the Governor, one by the President of the Senate, and one by the Speaker of the House of Representatives.

The bill requires the board of directors to provide for:

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

⁷ Section 1004.445(11), F.S.

⁸ Section 1004.445(12 & 13), F.S.

⁹ Affiliation Agreement between University of South Florida and Johnnie B. Byrd, Sr. Alzheimer's Center and Research Institute

- Use 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 the USF or other accredited medical schools or research institutes.
- Preparation of an annual financial audit.
- Appointment of an advisory panel to the board of directors and the chief executive officer for the purposes of providing advice and advocacy in meeting the institute's state wide mission, engaging community leaders and other concerned members of the public in supporting the institute's mission, raising public awareness of Alzheimer's disease, and soliciting philanthropic support or the institute.
- Comprehensive general liability protection, including professional liability protection, for the not-for-profit corporation and its subsidiaries, pursuant to s. 1004.24, F.S.

The bill requires the budget of the 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 removes the following references to the Board of Governors:

- requirement for the BOG to enter into an agreement for the utilization of the facilities on the campus of USF;
- requirement for the annual audit report to be provided to the BOG;
- authority of the BOG to require and receive any data relative to the operation of the not-for-profit corporation or any of its subsidiaries;
- authorization to secure comprehensive general liability protection for the not-for-profit corporation and its subsidiaries, pursuant to s. 1004.24, F.S.
- requirement for the BOG to operate the Byrd Institute if the facilities utilization agreement is terminated; and
- reporting relationship between the chief executive officer and the BOG.

The bill removes the requirement that the chief executive officer must develop and submit to the Governor, the Cabinet, the Legislature, and the chair of the Boards of Governors an annual operating budget by August 1 of each year.

The bill deletes the requirement for the board of directors to create a council of scientific advisers.

The bill removes the option for any university or established research institute in Florida to apply to the Byrd Institute for funding of their research, and for any qualified investigator to have equal opportunity to compete for research funding.

The bill deletes the requirement for appropriations to the Byrd Institute to be paid directly to board of directors of the not-for-profit corporation.

The bill deletes the prohibition of the chief executive officer from establishing academic programs for which academic credit is awarded and which culminate in the conferring of a degree, without prior approval of the Board of Governors.

The bill deletes the provisions providing for the expiration of the Byrd Institute.

B. SECTION DIRECTORY:

Section 1. Amends s. 1004.445, F.S., providing a mission statement for the research institute; deleting the provision that requires the State Board of Education to enter into an agreement for the use of the facilities on the campus of the University of South Florida;

requiring a not-for-profit corporation to govern and manage the research institute; authorizing the not-for-profit corporation to create corporate subsidiaries without the approval from the Board of Governors; revising the membership of the board of directors of the not-for-profit corporation; revising the terms of service for the members of the board of directors of the not-for-profit corporation; requiring that the board of directors, instead of the Board of Governors, perform certain duties without the approval of the Board of Governors; providing that management letters in the annual audit report be submitted to the Auditor General and not to the Board of Governors; deleting the authority of the Board of Governors to require and receive any data relative to the operation of the not-for-profit corporation or subsidiary; requiring that the board of directors appoint an advisory panel for itself and the chief executive officer for specific purposes; requiring that the board of directors, not the Board of Governors, secure general liability protection; conforming provisions to changes made by the act; deleting the provision that prohibits the chief executive officer from establishing academic programs for which academic credit is awarded; requiring that the chief executive officer appoint faculty and staff, not representatives of the institute, to carry out certain responsibilities of the research institute; providing that such faculty and staff receive compensation, benefits, and terms of service consistent with university policy; deleting the chief executive officer's reporting relationship to the Board of Governors; deleting the chief executive officer's responsibility to submit an annual operating budget to the Governor, Cabinet, the chair of the Board of Governors, and the Legislature; abolishing the council of scientific advisers created by the board of directors; deleting the requirements for submitting applications for Alzheimer's disease research funding; deleting the statement that the not-for-profit corporation and its subsidiaries are not agencies within the meaning of s. 20.03, F.S.; specifying the sources of funding for the institute; requiring that any appropriation to the institute be expended for certain purposes; deleting the requirement that an appropriation to the research institute be paid directly to the board of directors; deleting obsolete provisions; deleting provisions providing for the expiration of the institute.

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, 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, Operation, and Maintenance funding. The estimated request based on cost factors for fiscal year 2009-2010 would be \$1.9 million.¹⁰

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

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

Although the bill establishes the Byrd Institute as a component part of USF, which is subject to Board of Governors' regulation, the bill removes most references to the Board of Governors, especially those relating to receipt of annual audit reports and data relative to the operation of the Institute, securing liability insurance, and receipt of annual budgetary information. If the Byrd institute becomes a component part of USF, it will be subject to the authority of the Board of Governors in the same manner as other university centers and institutes. This includes the BOG's right to receive annual audit reports, data relative to the operation, budgetary information, approve doctoral programs, etc. Further, if the Byrd Institute is included in the USF Self-Insurance Program, it will be subject to the Board of Governor's regulations relating to university self-insurance programs.¹¹

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

¹⁰ Board of Governors analysis of HB 443 (March 3, 2009).

¹¹ *Id.*