

STORAGE NAME: h129.ei
DATE: February 5, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
EDUCATIONAL SERVICES
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 129
RELATING TO: Investments in Education
SPONSOR(S): Representative Gay
STATUTE(S) AFFECTED: None
COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) EDUCATION INNOVATION
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

HB 129 creates the Florida Education Technology Foundation, a not-for-profit corporation which will be funded through Florida Future Funds, state sponsored funds for private investments. Although some public-private entities are currently created in Florida Statutes, there are no models for an investment fund which consists entirely of private investments. A portion of the earnings are contributed to a statutorily created organization which will use the funds for education.

The Foundation will be governed by a seven member board of directors, with the Commissioner of Education as the director. This board will determine the amount of interest from the Fund which will be contributed to the Foundation. The funds are available for use in kindergarten through the twelfth grade, community colleges and universities and can be used to:

- Purchase or maintain computers and computer technology;
- Train teachers and faculty in the use of computers and technology; and
- Provide scholarships for education in business-related careers.

Since there are not tax incentives in HB 129, there is not a need to establish this entity in Florida Statutes.

If such an entity is established in statutory law, it is an "undertaking of the State" and must either meet the requirement or be exempt from the requirement to deposit any revenue into the State Treasury. Other quasi-public entities which are statutorily established are authorized to handle funds and are often exempt from depositing those funds in the State Treasury. However, the current model for accountability is a direct support organization, which has auditing and public records requirements.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, there is not a state sponsored investment fund established to use private funds to promote education. Most funding for educational systems in Florida comes from the government sector - either local, state, or federal. The state, by statute, has created some quasi-public entities, which combine public and private business, and authorized those organizations to handle funds.

These organizations are generally created through the establishment of a direct support organization. Such entities have several fiscal advantages over state agencies. They can allow donors to designate contributions for a particular purpose; the funds these organizations collect may avoid Florida's constitutionally prescribed revenue cap in Article VII, Section 1(e); and the funds avoid the constitutional requirement in Article IV, Section 4(e) of being deposited with the State Treasurer. A reiterated statutory requirement is found in ss. 215.31 and 215.32, F.S., for funds of "every...undertaking of the state" to be deposited in the State Treasury "unless the law specifically provides otherwise". In the case of a direct support organization, the law provides for the organization to handle funds.

One example of such an organization and established fund is the Florida Endowment Foundation for Vocational Rehabilitation and the Florida Endowment for Vocational Rehabilitation. The endowment is a source of revenue for both public and private sources. There are no provisions to specifically authorize deposit of funds outside of the State Treasury.

A December 1995 House Committee on Governmental Operations report, *Privatization*, discusses the provisions affecting this type of privatization in more detail. The Florida Supreme Court has not been presented with an opportunity to determine whether the qualification, "unless otherwise provided by law" comports with the constitutional standards articulated in Article IV, Section 4(e) requiring the treasurer to keep all state funds. The Florida Constitution does not elaborate upon the meaning of "state funds". If courts were to find that monies controlled by statutorily-created entities qualify as "state funds", and if these courts were to opt for a "plain meaning" interpretation of the treasurer's duties under Section 4(e), they could hold unconstitutional many delegations of revenue-handling authority. The House Committee on Governmental Operations report states that pragmatic concerns regarding the fiscal and structural repercussions of such a finding would probably dissuade the courts from invalidating such a broad array of state activities.

In *O'Malley v. Florida Insurance Guaranty Association*, 257 So.2d 9 (Fla. 1971), the Florida Supreme Court seems to indicate that as long as the Legislature treats funds managed by quasi-public organizations as trust funds, distinct from tax funds, the constitution does not require the deposit of these funds with the treasurer. The *O'Malley* opinion demonstrates the court's overall unwillingness to interfere with policy-related decisions of the Legislature. Separation of powers principles, as set out in Article II, Section 3, dictate a certain level of nonintervention by the judiciary.

These provisions allocate considerable authority to the Legislature, particularly when it discharges fiscal responsibilities. Yet, the Florida Supreme Court, as the ultimate arbiter

of the constitution, is unlikely to abdicate its interpretive responsibilities in this area. Criteria by which the court might determine the meaning of "state funds" await further elucidation. Extrapolating from the court's reasoning in *O'Malley*, future decisions might hinge upon the degree of "publicness" attributable to the funds in question.

The Governmental Operations report states:

By placing restrictive language in the enabling statute, the Legislature may prevent challenges. Potentially, a provision such as "Funds collected by, received by, or held in trust by...do not constitute state funds under Article IV, Section 4(e) of the constitution," could achieve this purpose. Even in the absence of such a provision, courts are unlikely to invalidate delegations of revenue-handling authority on the basis of Section 4(e). Unless statutorily-created entities carry out intrinsically governmental functions or unless they handle "public" funds, courts will probably not require them to deposit their funds in the treasury.

One exemption can be found in section 240.281, F.S., which permits certain funds received by institutions and agencies in the State University System to be deposited outside of the State Treasury. This is an exemption from the provisions of ss. 215.31 and 215.32, F.S., which require funds to be deposited in the State Treasury.

Auditing and public records requirements vary for direct support organizations. An annual audit is generally required of all direct support organizations. Not all direct support organizations are subject to the public records law. Community college and university direct support organizations are statutorily required to make public only their annual audit.

In conclusion, although there are models and guidelines for direct support organizations, there are no current models in Florida Statutes for a state sponsored entity or fund

B. EFFECT OF PROPOSED CHANGES:

This bill creates the Florida Education Technology Foundation, a not-for-profit corporation. Funding for the Foundation will be through established Florida Future Funds, state-sponsored funds through which private investments can be made. Investors in the Fund pledge a portion of the interest earned on their investment in the Fund to the Foundation. The amount of interest donated by the investors and received by the Foundation will be determined by a seven member board of directors, who will govern the activities of the Foundation.

The Foundation will use the funds to:

- Purchase or maintain computers and computer technology;
- Train teachers and faculty in the use of computers and technology; and,
- Provide scholarships for education in business-related careers.

The funds are available for use in kindergarten through the twelfth grade, community colleges, and universities.

The board of directors will be comprised of the Commissioner of Education and six elected members of the corporations and businesses which contribute to the Florida

Future Funds. Board members serve four year terms. The Commissioner serves as chair of the board. The board meets at the call of the chair.

To provide administration and management which maximizes the investment return, the board hires outside administrative and investment managers for the Florida Future Funds. The Commissioner's staff will serve as support staff for the board of directors.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The staff of the Commissioner of Education will serve as support staff of the seven member board of directors of the Florida Education Technology Foundation. This will increase their work.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

Not Applicable.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

(2) what is the cost of such responsibility at the new level/agency?

(3) how is the new agency accountable to the people governed?

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Not Applicable.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

c.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

Not Applicable.

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

(4) Are families required to participate in a program?

(5) Are families penalized for not participating in a program?

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

Not Applicable.

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

If the Foundation and the Fund are created and challenged in court because of the constitutionality questions described in the "Present Situation" the costs of defense could be incurred by the state.

2. Recurring Effects:

Since the Commissioner's staff serves as support staff for the board of directors, there could be an extra workload on the staff. This could require an additional staff person.

3. Long Run Effects Other Than Normal Growth:

As the fund grows, the computers, scholarships, etc. and other designated educational uses of the contributions and pledges to the Foundation could be beneficial to public schools, community colleges, and universities..

4. Total Revenues and Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

2. Recurring Effects:

3. Long Run Effects Other Than Normal Growth:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

If a corporation or business wishes to participate, the cost will be the amount of interest from earnings the board decides should be contributed to the Foundation.

2. Direct Private Sector Benefits:

Businesses can benefit from the investment they make if the fund is successfully managed and realizes earnings.

3. Effects on Competition, Private Enterprise and Employment Markets:

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenue.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties and municipalities.

V. COMMENTS:

The idea behind HB 129 is to provide a mechanism where a private business can make a contribution to the educational system by donating a portion of interest earned on invested principal. The fund will have the potential of earning a higher rate of return on money than if money was managed through the state treasury. This could result in beneficial results to the donations and purchases and scholarships made to education in Florida. However, this type of organization does not have to be created in Florida Statutes. Any group of businesses could establish such an organization without specific statutory authority. HB 129 does not

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provide businesses with an incentive to participate and contribute. One recommendation would be to add an incentive, perhaps a corporate tax incentive. A second suggestion is to add a clause specifically stating that the funds are not state funds and that the principal invested continues to belong to the investor. Only a portion of the interest is donated.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON EDUCATIONAL SERVICES:

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