

STORAGE NAME: h129s1.ei
DATE: February 12, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
EDUCATION INNOVATION
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/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 YEAS 7 NAYS 0
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

CS/HB 129 creates the Florida Education Technology Foundation, a not-for-profit corporation which will be funded through the newly created Florida's Future Investment Funds, state sponsored funds for private investments. The bill is designed to allow business to invest and become involved in Florida's educational process. A portion of the earnings from investments made in Florida's Future Investment Funds may be contributed to the Florida Education Technology Foundation, a statutorily created organization which will use the funds for education.

The foundation will be governed by a eleven member board of directors, comprised of the Commissioner of Education and the State Treasurer or their designees, one appointee each from the Speaker of the House and the President of the Senate, and representatives of the investing businesses. The Chair will be elected by the Board. This board may determine the amount of interest earned and donated 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.

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. The investor, not the state nor the foundation, retains ownership of the initial investment principal. When the average daily balance in the funds exceeds \$2 billion, the intangible personal property tax rate is reduced from 2 mills to 1.85; when it exceeds \$5 billion, the rate drops to 1.70.

The fiscal impact, if any, is indeterminate at this time.

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. However, the state, by statute, has created some quasi-public entities, which combine public and private business, and has authorized those organizations to handle funds.

Direct Support Organizations

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 s. 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.

Intangible Personal Property Tax

Section 199.032, F.S., imposes a tax of 2 mills for each dollar of just valuation of all intangible personal property which has a taxable situs in this state. Intangible personal property, as defined in s. 199.023(1), F.S., includes stocks or shares of unincorporated or incorporated companies, business trusts, and mutual funds.

B. EFFECT OF PROPOSED CHANGES:

Committee Substitute/House Bill 129 creates the Florida Education Technology Foundation, a not-for-profit corporation, and Florida's Future Investment Funds, state-sponsored funds through which private investments can be made. The Legislature's intent is that investors in the fund pledge a portion of the interest earned on their investment in the fund to the foundation; thereby providing a method for business entities to be involved in Florida's educational process.

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The foundation will use the funds to:

- Purchase or maintain computers and computer technology for all levels of education systems in Florida;
- Train teachers and faculty to use and teach 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.

Board of Directors

The eleven member governing board of directors will be comprised of the Commissioner of Education or the Commissioner's designee, the Treasurer or the Treasurer's designee, an appointee by the President of the Senate, an appointee by the Speaker of the House, and seven other members, who will initially be appointed by the Florida Council of 100 from the members of the Florida Council of 100. Three of these will be appointed for one year and four will be appointed for two years.

After the initial appointed terms, these seven board members will be elected by the corporations and businesses who invest in the Florida's Future Investment Fund and will serve four year terms. Each investing corporation will receive one vote for investing up to \$25 million and an additional vote for each additional \$25 million investment. The Chair of the Board of Directors will be elected by the members of the Board. The board will meet at the call of the chair.

Investments and Donations

The State of Florida is relieved of all liability for the actions of the foundation and the fund managers.

Corporations and businesses in this state which place principal as an investment in the fund will retain ownership of that principal; however, the intent of the Legislature is that the investing corporations and businesses contribute a portion of their earned interest on their investment to the Florida Education Technology Foundation. The amount of interest that is earned and donated may be determined by the Board of Directors of the Foundation.

To provide administration and management which maximizes the investment return, the board may hire outside administrative and investment managers for the Florida's Future Investment Fund. However, the Board is charged with prescribing the fund managers' level of prudence and ethical standards. The Legislature's intent is that the administrative fees be as low as possible. The Commissioner's staff will serve as support staff for the board of directors.

The incentive for corporations and businesses to invest in Florida's Future Investment Fund and contribute a portion of their earnings to the Florida Education Technology Foundation is a reduced intangible personal property tax. Tax on securities in the fund will be imposed at the rate of:

- 1.85 mills when the average daily balance exceeds \$2 billion; and,
- 1.70 mills when the average daily balance exceeds \$5 billion.

If the foundation revenues are less than the tax savings in a calendar year, the reduced intangible personal property rates will not be applicable in the following year. Tax savings is defined as:

Tax if imposed under the 2.00 mills minus tax if imposed under the applicable 1.85 or 1.70 mills.

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 eleven member board of directors of the Florida Education Technology Foundation. This will be an increased workload and could require additional staff.

(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?

If a business or corporation's securities in Florida's Future Investment Fund has an average daily balance in excess of \$2 billion, a reduced rate from 2 mills to 1.85 mills on each dollar of the securities' just valuation is imposed for purposes of intangible personal property tax. If the average daily balance exceeds \$5 billion, the reduced rate is 1.70 mills.

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

Not Applicable.

- 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.

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.

A business or corporation qualifies for the reduced intangible personal property rates of 1.85 or 1.70 mills on securities in the Florida's Future Investment Fund when the fund reaches \$2 billion or \$5 billion, respectively. However, it is the intent of the Legislature that contributions are being made to the foundation out of the earnings in the fund. These foundation contributions are to be used for specified educational purposes. Although the education budget could be reduced by the amount of the reduced intangible personal property tax due to the donation, CS/HB 129 does not require the education budget be reduced by the amount of the donation.

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:

The amount of any revenue loss due to the tax reduction is Indeterminate at this time because the tax reductions depend on how many contributions will be made, where the money is currently being invested by the businesses and whether intangible personal property taxes are currently being paid at the 2 mills rate on the money that the businesses invest in the new fund. If intangible personal property taxes are not currently being collected on the monies which businesses will use to invest in the new fund, any tax collected, even at a reduced rate, is additional revenue. However, if the money is currently invested where it pays the 2 mills rate of intangible personal property tax, revenue will be lost due to the reduced rates. Other factors affecting the fiscal impact are: how much of the earnings are donated to the fund, whether the donated monies will be used for educational purposes in the public or private sector, and whether appropriations in the educational budget are reduced by the amount which is donated to the public sector.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

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. Additionally, the business or corporation with average daily balances exceeding \$2 billion will benefit from reduced tax rates of 1.85 (from 2.00) mills for purposes of intangible personal property tax. If the average daily balance exceeds \$5 billion, the reduced millage rate will be 1.70.

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

None known at this time.

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.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

House Bill 129 was prefiled on December 20, 1996, and referred to the Education Innovation Committee on January 9, 1997. On February 12, 1997, the Education Innovation Committee reported the bill favorably as a Committee Substitute. The Committee Substitute adopted by the Education Innovation Committee differed from the original bill in the following ways:

- Changed the name of the Florida's Future Fund to Florida's Future Investment Fund.
- ▶ Increased number on Board of Directors from seven to eleven; the four additional members are the Treasurer or his designee, one appointee each by the President of the Senate and the Speaker of the House, and one more member from the private investing businesses.
- ▶ Changed the initial method of selecting and terms of the members of the Board of Directors. Seven board members are initially appointed by the Florida Council of 100 from the Council membership. Three of the members appointed by the Council

will serve terms of one year and four will serve terms of two years. After this initial time frame of appointed terms from the Council, the businesses which contribute money to the Florida's Future Investment Fund will elect the Directors.

- ▶ Added criteria for voting; each corporation receives a vote for every \$25 million with a minimum of one vote per investor.
- ▶ Allows Commissioner to either serve or appoint a designee to serve. In the Committee Substitute, the Commissioner does not automatically serve as the Chair of the Board; the chair is elected by the members of the Board.
- ▶ Relieves the state of liability for the actions of the foundation or the fund managers.
- ▶ Replaces "contributed to" with "placed in" when referring to investing money in the fund. (This is to show that the principal still belongs to the business investing the money.)
- ▶ Provides that the Board prescribes the level of prudence and ethical standards that the fund managers follow.
- ▶ Provides legislative intent that administrative fees be "as low as possible".
- ▶ Changes requirement that a business pledge to contribute portion of interest to foundation to "intent" language. "It is the intent... for... business...to contribute..."
- ▶ Changes the requirement that Board of Directors "shall" determine the amount of interest donated to they "may" determine.
- ▶ Adds an intangible personal property tax break by decreasing the amount of intangible personal property tax from 2 mills (which is required per s. 199.032, F.S.) to 1.85 mills when average daily balance exceeds \$2 billion and to 1.70 mills when the average daily balance exceeds \$5 billion. If the annual revenue of the foundation is less than the tax savings, the decrease in intangible personal property tax is not allowed the following year. "Tax savings" is defined as the difference between the tax that would be imposed under the 2 mills and the reduced tax of the applicable 1.85 or 1.70.

VII. SIGNATURES:

COMMITTEE ON EDUCATIONAL SERVICES:

Prepared by:

Legislative Research Director:

Ouida J. Ashworth

Peter C. Doherty