

STORAGE NAME: h1793s2.gg

DATE: March 6, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/CS/HB 1793

RELATING TO: Nonprofit Private Schools

SPONSOR(S): Committees on General Government Appropriations and Education Innovation,
and Representative Wise and others

COMPANION BILL(S): SB 1896 (s)

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

- (1) EDUCATION INNOVATION YEAS 8 NAYS 0
 - (2) GENERAL GOVERNMENT APPROPRIATIONS YEAS 8 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill amends the *Florida Industrial Development Financing Act* and the *Private School Corporation Law of 1959* to allow the issuance of bonds to help finance the cost of purchase or construction of property used for, or useful in, the operation of any nonprofit private school established pursuant to Florida Statute or the United States Internal Revenue Code.

Nonprofit private preschool, kindergarten, primary and secondary schools will be able to access the federal tax-exempt bond market through Florida industrial development authorities. The structure would be the same as private corporations use in industrial development bond financing, and as nonprofit private higher education borrowers use in educational facilities authorities.

The bill does not authorize use of public funds. The bill specifically precludes the state, a local agency/authority, or any political subdivision of the state, from pledging its faith and credit to support debt issued through industrial development authorities. Individual borrowers are the only source of bond repayment on their individual debt issues.

This bill has no fiscal impact on state revenues.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapter 159, Part II, F.S., contains the *Florida Industrial Development Financing Act*. The purpose of the act is to enhance economic activity in the state by attracting manufacturing development, business enterprise management, and other activities conducive to economic promotion in order to provide a stronger, more balanced, and stable economy in the state, while providing through pollution control and otherwise for the health and safety of the people. The act allows for the issuance of bonds by local governmental bodies for projects deemed to promote this purpose. The types of projects include:

- research and development parks
- agricultural processing or storage facilities
- warehousing or distribution facilities
- headquarters facilities
- tourism facilities
- public lodging or restaurant facilities
- convention or trade show facilities
- urban parking facilities
- trade centers
- health care facilities
- airport or port facilities
- commercial project in an enterprise zones
- motion picture production facilities
- preservation or rehabilitation of a certified historic structures
- educational facilities
- mass commuting facilities
- social service centers

Subsection 159.27(22), F.S., specifically defines an “educational facility” as “. . . a structure suitable for use as a dormitory or other housing facility or a dining facility, that is operated in the public sector and used for or useful in connection with the operation of an institution for higher education . . .”

The act allows local governments, or bonding authorities formed by such governments, to issue bonds to finance the cost of the projects listed above. Pursuant to section 159.31, F.S., bonds issued pursuant to the act are exempt from state taxation.

A number of states allow nonprofit private primary and secondary schools to use issuing authorities to access the tax-exempt market; these states draw no distinction between nonprofit private higher education and primary-secondary schools. Some states where private primary and secondary schools have actually issued debt through local authorities include: Connecticut, Georgia, Illinois, Indiana, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, and Tennessee.

Chapter 617, F.S., the *Florida Not For Profit Corporation Act*, describes the Florida law governing the not-for-profit corporations conducting affairs in the state. Corporations may be organized under this act for any lawful purpose or purposes not for pecuniary

profit. The chapter outlines the filing requirements, fees and powers of such corporations.

Chapter 623, F.S., the *Private School Corporation Law of 1959*, allows 25 or more adult Floridians to form a private school corporation. The chapter describes specific steps that must be taken, and delineates that a private school corporation shall be a private corporation for charitable and benevolent purposes. Section 623.09, F.S., provides that such corporations are exempt from taxation as provided by Florida law. Section 623.10, F.S., grants such corporations specific powers and duties, including the ability to purchase real and tangible personal property, and to issue notes of indebtedness. Section 623.13, F.S., delineates that any corporation formed pursuant to chapter 623, F.S., must be administered, supervised, operated, financed, and controlled exclusively by private persons and their funds. Public officials are prohibited from engaging in any such affairs of the corporation.

B. EFFECT OF PROPOSED CHANGES:

This bill amends the *Florida Industrial Development Financing Act* and the *Private School Corporation Law of 1959* to allow the issuance of bonds to help finance the cost of purchase or construction of property used for or useful in the operation of any nonprofit private school established pursuant to chapters 617 or 623, F.S., or section 501(c)(3) of the United States Internal Revenue Code.

Nonprofit private preschool, kindergarten, primary and secondary schools will be able to access the federal tax-exempt bond market through Florida industrial development authorities. The structure would be the same as private corporations use in industrial development bond financing, and as nonprofit private higher education borrowers use in educational facilities authorities.

There is no use of public funds. The bill specifically precludes the state, a local agency/authority, or any political subdivision of the state, from pledging its faith and credit to support debt issued through industrial development authorities. Individual borrowers are the only source of bond repayment on their individual debt issues.

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?

N/A

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

The bill may increase obligations of private organizations who choose to utilize the authority granted in the bill to issue bonds.

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

Nonprofit private schools meeting certain criteria will be allowed to issue bonds to help with costs of property used in the school's operation. Tax-exempt financing will be available as an option to these schools without the use of public funds.

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

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

N/A

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

N/A

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

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

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?

Yes. Nonprofit private schools pay the cost of utilizing the bonding option provided for in the bill.

4. Individual Freedom:

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

Nonprofit private schools are given an additional financing option for property through the issuance of bonds under the provisions of the Florida Industrial Development Financing Act.

- 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:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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

N/A

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:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends sections 159.27 and 623.13, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends subsection 159.27(22), F.S., to revise the definition for “educational facility” to include property that comprises the buildings and equipment, structures, and special education use areas that are built, installed, or established to serve primarily the education purposes of operating any nonprofit private preschool, kindergarden, elementary school, middle school, or high school that is established under chapter 617 or chapter 623, F.S., or that is owned or operated by an organization described in section 501(c)(3) of the United States Internal Revenue Code. Also states that bonds issued under this definition shall not be deemed to constitute a debt, liability, or obligation of the state or any political subdivision of the state, or a pledge of the faith and credit of the state or its political subdivisions.

Section 2: Amends section 623.13, F.S., to allow the financing of educational facilities under the Florida Industrial Development Financing Act found in part II of chapter 159, F.S.

Section 3: Provides that the act shall take effect upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

This bill requires no use of public funds. The bill specifically precludes the state, a local agency/authority, or any political subdivision of the state from pledging its faith and credit to support debt issued through industrial development authorities.

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:

Individual borrowers are the only source of bond repayments on their individual debt issues.

2. Direct Private Sector Benefits:

Private primary and secondary education providers benefit by having access to low-cost tax-exempt debt, a form of federal subsidy.

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

This bill does not use any bond issuance capacity reserved for for-profit manufacturing corporations.

D. FISCAL COMMENTS:

None.

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 spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The House Committee on General Government Appropriations adopted one amendment that clarified the definition of "educational facility" as it relates to the *Florida Industrial Development Financing Act*. The amendment was incorporated into CS/HB 1793 resulting in CS/CS/HB 1793 which is the subject of this Bill Research & Economic Impact Statement.

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VII. SIGNATURES:

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