

STORAGE NAME: h3599z.ei
DATE: May 28, 1998

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

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

BILL #: HB 3599 (PCB EI 98-04)
RELATING TO: Educational Facilities/Renting or Leasing Buildings for Conversion
SPONSOR(S): Committee on Education Innovation, Representative Melvin, and others
COMPANION BILL(S): CS/SB 1664

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

- (1) GOVERNMENTAL RULES AND REGULATIONS YEAS 4 NAYS 0
- (2) FINANCE AND TAXATION WITHDRAWN
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

PASSED BY THE LEGISLATURE - CHAPTER #98-264, LAWS OF FLORIDA

HB 3599 passed the Legislature on May 1, 1998 and was presented to the Governor on May 12, 1998. This bill became law without the Governor's signature on May 28, 1998.

II. SUMMARY:

HB 3599 authorizes school boards to rent or lease existing buildings, or space within existing buildings, originally constructed or used for purposes other than education, for conversion to use as educational facilities. Prior to occupying a rented or a leased existing building, the school board shall hold a public meeting to adopt a resolution certifying that the following circumstances apply:

- growth of school-age population in the district has created a need for a new educational facility in a neighborhood where there is little or no vacant land;
- vacant space in existing buildings meets current building and life safety codes;
- use of an existing building is more cost-effective than new construction, including land acquisition and preparation, and demolition of existing structures;
- the building has been examined for safety and conformance with the state minimum building code and the life safety code;
- a certificate of evaluation from the structural engineer has been issued, verifying that the building meets the applicable code requirements, provides safe egress of occupants from the building, provides adequate fire safety, and does not pose a threat to occupants' lives;
- the conversion plans were prepared by a licensed architect or structural engineer and the work was performed by a licensed contractor; and observed by a licensed architect or structural engineer;
- the building has been reviewed, inspected and granted a certificate of occupancy by the local building department; and
- all ceilings, light fixtures, ducts, and registers were constructed or reconstructed to meet state minimum codes.

The bill authorizes district school boards to fund the rental or lease of existing buildings for educational purposes through the school district operations budget or the school district tax for capital outlay. The bill also exempts such agreements from the excise tax on documents for leases and rentals.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Current law provides that district school boards may rent or lease educational facilities or sites. Chapter 230, F.S., which prescribes the powers and duties of school boards, authorizes school boards to enter into lease or lease-purchase arrangements with private individuals or corporations for the rental of necessary grounds and educational facilities for school purposes or for the rental of educational facilities to be erected for school purposes. If the rental agreement is for a period greater than 1 year and is to be paid from funds received from ad valorem taxation, an approving referendum must be held. In addition, the Department of Education (DOE) must approve all such contracts and building plans. The term "educational facilities" as used in s. 230.23(9)(b)5., F.S., refers to the buildings and equipment which are built, installed or established to serve educational purposes and which may lawfully be used.

Section 235.056(2), F.S., also authorizes district school boards to rent or lease educational facilities and sites, defined in s. 235.011(5), F.S., as buildings and equipment, structures, and special educational use areas that are built, installed, or established to serve primarily the educational purposes and secondarily the social and recreational purposes of the community and which may lawfully be used as authorized by the Florida Statutes and approved by boards.

Leases

Pursuant to 235.056(2)(a), F.S., if the lease or rental is for one year or less, the board pays for the facilities or sites through the operations budget or funds from the 2 mill revenue authorized in s. 236.25(2), F.S. If the lease agreement is extended for more than one year, it becomes a multiple year lease, and payment may be authorized from the same type of revenue. All leased educational facilities and sites are subject to the following code requirements:

- (1) Inspection by the district's Uniform Building Code (UBC) inspector before the facility is occupied. All spaces leased after July 1, 1995, must be inspected and be in compliance with either (a) the state minimum building code pursuant to chapter 553 and the life safety codes pursuant to chapter 633, or (b) the State Uniform Building Code for Public Educational Facilities Construction, contained in the State Requirements for Educational Facilities (SREF);
- (2) Plans for renovation or remodeling of leased space must conform to either the state minimum building code and life safety codes or the UBC in the SREF; and
- (3) Annual inspection for fire safety deficiencies and necessary corrections within a reasonable time. If corrections are not made, the inspecting agency may request the commissioner to order that appropriate corrective action be taken in accordance with a schedule determined jointly by the inspecting authority and the board, or, after 30 calendar days' notice to the board, order all or a portion of the plant withdrawn from use until correction of deficiencies. The same funding sources may be used to correct the deficiencies.

During the 1997 Special Session, the Legislature passed Chapter 97-384, LOF, which requires the department to prepare a report on the use of leased space in each school district. The report, due on July 1, 1998, shall include the number of FTE students instructed in leased space, the number of permanent and relocatable leased spaces, the number of prekindergarten stations in permanent facilities, the condition of leased facilities, the finance methods used, and recommendations for change.

Lease-Purchase Agreements

Section 235.056, F.S., authorizes district school boards to enter into lease-purchase arrangements. The lease-purchase must be in compliance with the State Uniform Building Code, pursuant to s. 235.26, F.S., and must be advertised and go through the competitive proposal process with the award going to the best proposer. The lease-purchase must be funded using current or other funds specifically authorized by law for such lease-purchase agreements. The school board, by itself, or through a direct-support organization, nonprofit educational organization or a consortium of district school boards, may provide for separately advertising and receiving competitive bids to provide the lowest cost, if the board determines it best serves the public interest and the pledged revenues are limited to 75 percent of the proceeds of the 2 mill school district tax on capital outlay, pursuant to s. 236.25(2)(e), F.S.

Furthermore, all activities, information and participants associated with lease-purchase agreements are subject to the statutory public records and public business laws. The lease-purchase cannot exceed the useful life of the facility and site for which the agreement is made, or 30 years, whichever is less. Lease-purchase agreements expire on June 30 of each fiscal year, but may be automatically renewed annually, subject to annual appropriations by the board. However, if the board fails to renew the agreement, it is not a default and does not constitute a penalty. The lease-purchase facilities and sites are exempt from ad valorem taxation.

No lease-purchase agreement constitutes a debt, liability, or obligation of the state or a board or shall be a pledge of the faith and credit of the state or a board. The annual rate shall consist of principal and interest with the interest rate calculated as established for government bonds in s. 215.84, F.S.

School District Tax for Capital Outlay

Section 236.25(2), F.S., provides that each district school board may levy up to 2 mills of non-voted, ad valorem tax for capital outlay purposes. Since 1980, the Legislature has amended this statute many times to give school districts more flexibility by authorizing other uses of the local revenue generated by this discretionary capital outlay millage. The General Appropriations Act implementing bills for FY 1993-94 and FY 1994-95 permitted school districts to use unobligated proceeds of the discretionary capital outlay millage levy for one-time, nonrecurring expenditures for classroom instructional materials, including consumable and non-consumable supplies, materials, textbooks, and equipment.

During the 1997 regular and special sessions, the Legislature revised the allowed usage of the 2 mill school district tax for capital outlay. Current law now provides that school districts which have been using this revenue for purposes other than capital expenditures will be allowed a 6 year phase-down period to modify the use of that

revenue. Non-capital expenses shall be annually reduced by 15 percent from the FY 1995-96 spending levels for the next 6 years, beginning in FY 1997-98. After July 1, 2003, all expenditures must be used only for the following allowed capital expenditures:

- Survey recommended construction, renovation, remodeling, maintenance and repair of the education plant. As defined in 235.011(11), F.S., "maintenance and repair" means the upkeep of educational and ancillary plants including, but not limited to, roof or roofing replacement short of complete replacement of membrane or structure; repainting of interior or exterior surfaces; resurfacing of floors; repair or replacement of glass; repair of hardware, furniture, equipment, electrical fixtures, and plumbing fixtures; and repair or resurfacing of parking lots, roads, and walkways. The term does not include custodial or groundskeeping functions, or renovation except for the replacement of equipment with new equipment of equal systems meeting current code requirements, provided that the replacement item neither places increased demand upon utilities services or structural supports nor adversely affects the function of safety to life systems.
- Purchase, lease, or lease-purchase of equipment, educational plants, and construction materials directly related to the delivery of student instruction;
- Opening day collection for the library media center of a new school;
- Purchase, lease-purchase, or lease of school buses; and
- Servicing of payments related to certificates of participation (COPS) issued for any purpose prior to November 24, 1997 (effective date of House Bill 17A or Chapter 97-384, LOF).

Additionally, if a district identifies the need for an ancillary plant in the adopted facilities work program, provides an opportunity for public input as to the relative value of an ancillary plant versus an educational plant, and obtains public approval, the district may then use the 2 mill revenue for the construction, renovation, remodeling, maintenance or repair of an ancillary plant.

If a district uses the 2 mill revenue for unauthorized purposes, it is penalized accordingly in the following fiscal year by an equal dollar reduction in the appropriated operating funds from the Florida Education Finance Program (FEFP). However, these expenditure restrictions do not apply to any school district that certifies to the Commissioner of Education that the district's instructional space needs can be met for the next 5 years from capital outlay sources that the district reasonably expects to receive during that same time period, or from alternative scheduling or construction, leasing, rezoning, or technological methodologies that exhibit sound management

Excise Tax Exemption

Section 201.24, F.S., exempts a school board entering into a rental, lease or lease-purchase agreement for educational facilities and site, pursuant to 235.056(2), F.S., from the excise tax on documents which arise as a result of the agreement.

B. EFFECT OF PROPOSED CHANGES:

HB 3599 authorizes school boards to rent or lease existing buildings or space within existing buildings, originally constructed or used for purposes other than education, for conversion to use as educational facilities. The bill allows an existing building which was constructed to meet all state minimum building codes and life safety codes to be considered as meeting the requirements for use and occupancy as an educational facility, provided that the school board holds a public meeting and adopt a resolution certifying that the following circumstances apply:

- the growth of school-age population in district has created a need for a new educational facility in a neighborhood where there is little or no vacant land;
- the vacant space in existing buildings meets the current state minimum building codes and life safety codes;
- the use of existing building is a cost-saving means when compared with new construction, land acquisition and preparation, and the demolition of existing structures, if applicable;
- examination or supervision of examination by licensed structural engineer of building for suitability, safety, and conformance with state minimum building and life safety codes, including, as a minimum, review of existing documents, building site reconnaissance, and analysis of the building;
- a certificate of evaluation from the structural engineer verifying that the building meets the building and life safety code requirements, provides safe egress of occupants from the building, provides adequate fire safety, and does not pose a threat to occupants' lives;
- conversion plans were prepared by a licensed architect or structural engineer and the work was performed by a licensed contractor and observed by a licensed architect or structural engineer;
- building has been reviewed, inspected and granted a certificate of occupancy by the local building department; and
- all ceilings, light fixtures, ducts, and registers were constructed or reconstructed to meet state minimum codes.

The bill also provides an exemption from the excise tax on documents for leases and rentals of existing buildings to be used as educational facilities.

Finally, HB 3599 allows the costs of renting or leasing buildings or space within existing buildings to be funded through the 2 mill school district tax on capital outlay and secures such rentals and leases as allowable expenditures of these funds during and after the 6 year phase down period.

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?

N/A

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

N/A

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?

N/A

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

The district school board will pay for the lease or rental of educational facilities converted from existing buildings originally used for other purposes. The revenue for the lease or rental cost will be from the local taxpayers through the 2 mill ad valorem levy.

4. Individual Freedom:

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

N/A

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

N/A

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?

The parents and guardians will have input through the local school board and a public meeting which must be held before the board can enter into a rental or lease agreement under the provisions of this bill.

(2) service providers?

N/A

(3) government employees/agencies?

The local school board, with public input and inspection information from a licensed structural engineer and the local building department, will make a decision on whether to lease or rent existing buildings for educational facilities.

D. STATUTE(S) AFFECTED:

Amends sections 235.056, 201.24, and 236.25, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1 amends s. 235.056, F.S., as amended by Chapter 97-384, LOF, to allow a district school board to rent or lease existing buildings, which were originally used for some purpose other than education, for conversion to educational facilities. Requires funding for rentals or leases of 1 year or less be through the operations budget or funds from the 2 mill levy; allows operational funds or 2 mill funds to be used for rentals or leases over 1 year. Requires that building which was constructed to meet all state minimum building and life safety codes will be considered as meeting the requirements for use and occupancy as an educational facility.

Requires school board to hold a public meeting and adopt a resolution before occupying rented or leased space in an existing building. Requires that adopted resolution certify that following circumstances apply:

- growth of school-age population in district has created a need for a new educational facility in a neighborhood where there is little or no vacant land;
- vacant space in existing buildings meets current building and life safety codes;
- use of existing building is a cost-saving means when compared with new construction, including land acquisition and preparation, and demolition of existing structures (if applicable);
- examination or supervision of examination by licensed structural engineer of building for suitability, safety, and conformance with state minimum building and life safety codes, including, as a minimum, review of existing documents, building site reconnaissance, and analysis of the building;
- certificate of evaluation from the structural engineer verifying that based on available documents, building site visits, current knowledge, and professional engineering judgment, the building meets the building and life safety code requirements, provides safe egress of occupants from the building, provides adequate fire safety, and does not pose a threat to occupants' lives;
- conversion plans were prepared by a licensed architect or structural engineer and work was performed by a licensed contractor;
- building conversion was observed by a licensed architect or structural engineer;
- building has been reviewed, inspected and granted a certificate of occupancy by the local building department;
- all ceilings, light fixtures, ducts, and registers were constructed or reconstructed to meet state minimum codes.

Section 2 amends s. 201.24, F.S., allowing exemption of excise tax on documents for leases and rentals of existing buildings for the purpose of using for educational facilities.

Section 3 amends s. 236.25, F.S., authorizing the cost of renting or leasing buildings or space within existing buildings to be paid from the district 2 mill levy. Authorizes as an allowed usage of the 2 mill levy, the cost of renting or leasing existing buildings, which were originally built for other purposes, for conversion to educational facilities.

Section 4 provides for an effective date of July 1 of the year in which enacted.

IV. 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:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

N/A

V. 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 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.

VI. COMMENTS:

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

HB 3599 was originally heard in the House Education Innovation Committee as PCB EI 98-04. Upon becoming a bill, it was referred to the Governmental Rules and Regulations Committee where it passed unanimously on March 10, 1998. On April 16, 1998, the bill passed the House with 109 YEAS and 8 NAYS. After passing the Senate

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on April 30, 1998 with 37 YEAS and 1 NAY, HB 3599 was ordered enrolled and on May 28, 1998, it was presented to the Governor.

VIII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

Legislative Research Director:

Angela Price

David M. Greenbaum

FINAL RESEARCH PREPARED BY COMMITTEE ON EDUCATION INNOVATION:

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