SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2258

SPONSOR: Comprehensive Planning, Local and Military Affairs Committee and Senator Hargrett

SUBJECT: Economic Development

DATE: April 17, 2000 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CA	Favorable/CS
2.	Schmeling	Maclure	CM	Favorable
3.			FP	
4.				
5.				

I. Summary:

This committee substitute creates the Inner City Redevelopment Assistance Grants Program, to be administered by the Office of Tourism, Trade, and Economic Development (OTTED). The committee substitute also creates the Inner City Redevelopment Review Panel within OTTED, charged with reviewing and evaluating all grant proposals under the Inner City Redevelopment Assistance Grants Program.

This committee substitute creates yet unnumbered sections of the Florida Statutes.

II. Present Situation:

Florida has various policies that address aspects of urban development, including the State Comprehensive Plan, Strategic Regional Policy Plans, Local Government Comprehensive Plans, and Community Redevelopment Agencies, among others. In 1996, the Legislature authorized the Florida Department of Community Affairs to undertake a Sustainable Communities Demonstration Project for the development of models to further enhance a local government's capacity to meet current and future infrastructure needs with existing resources. Additionally, the Governor's Commission for a Sustainable South Florida and the Florida Department of Community Affairs, in conjunction with regional and local level governmental entities, have initiated a regional approach to urban revitalization through the "Eastward ho!" initiative in southeast Florida. The Governor has also designated six cities in the state to implement the "Front Porch Florida" initiative.

In 1999, the Legislature enacted the Urban Infill and Redevelopment Act, establishing a voluntary program for local governments to designate urban infill and redevelopment areas for the purpose of holistically approaching the revitalization of urban centers, and ensuring the adequate provision of infrastructure, human services, safe neighborhoods, educational facilities, job creation, and economic opportunity. The act created an incentive program for areas designated as urban infill

and redevelopment areas, including economic incentives for businesses locating or expanding in the area. A matching grant program for local governments was also created.

The Office of Tourism, Trade, and Economic Development (OTTED) is authorized by s. 14.2015, F.S., to provide assistance to the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to provide economic opportunities for all Floridians. To accomplish such purposes, OTTED administers various programs, grants, and activities, and serves as contract administrator for the state with respect to contracts with Enterprise Florida, Inc. (EFI), the Florida Commission on Tourism, and all direct-support organizations, except the tourism direct-support organization. In addition to the duties and responsibilities provided under that statute, OTTED has been assigned, through other statutory provisions, responsibility for administration of various other programs and activities. Some of the principal economic development programs administered by OTTED include: Qualified Target Industry (QTI) Tax Refund Program; qualified defense contractors; economic development transportation grants; high impact performance incentives; base realignment and closure grants; defense planning grants; defense implementation grants; military installation reuse planning/marketing grants; defense-related business adjustment grants; urban high-crime area job tax credit; rural area job tax credit; silicon technology sales tax exemption; brownfield redevelopment; brownfield area guaranteed loan fund; and expedited permitting.

III. Effect of Proposed Changes:

This committee substitute creates the Inner City Redevelopment Assistance Grants Program, to be administered by the Office of Tourism, Trade, and Economic Development (OTTED). In addition, the committee substitute creates the Inner City Redevelopment Review Panel within OTTED, charged with reviewing and evaluating all grant proposals under the Inner City Redevelopment Assistance Grant Program.

Section 1 creates an Inner City Redevelopment Assistance Grants Program to be administered by OTTED. OTTED is required to develop criteria for awarding these grants which give weighted consideration to urban high-crime areas as identified by the Florida Department of Law Enforcement. This criteria also must be weighted to immediate creation of jobs for residents in the targeted areas.

Section 2 establishes the following eligibility requirements for grant proposals:

(1) An eligible grant recipient must serve within one of the 13 urban high-crime job tax credit areas and be:
- a community-based organization;
- a community development corporation;
- a faith-based organization;
- a nonprofit community development organization;
- a nonprofit economic development organization; or
- another nonprofit organization serving the nominated area.

(2) Each applicant must submit a letter of support from the local government serving the targeted urban area.

(3) Each applicant must submit a proposal that includes: a work plan that describes how grant funding will be used; proposed performance measures; and expected, measurable outcomes.
(4) Eligible uses of grant funding must result in the creation of job opportunities for residents of targeted areas.
(5) Applicants are urged to leverage grant funds with other existing resources.

Section 3 creates the Inner City Redevelopment Review Panel within OTTED. The panel must review and evaluate all grant proposals under the Inner City Redevelopment Assistance Grants Program, and must make recommendations, including a priority ranking, reflecting such evaluation. The director of OTTED is required to appoint the seven-member review panel from the following list:

- One member must be affiliated with the Black Business Investment Board;
- One member must be affiliated with the Institute on Urban Policy and Commerce at Florida Agricultural and Mechanical University;
- One member must be affiliated with the Office of Tourism, Trade, and Economic Development;
- One member must be the president of Enterprise Florida, Inc., or the president's designee;
- One member must be the Secretary of the Department of Community Affairs or the secretary's designee;
- One member must be affiliated with Better Jobs/Better Wages of Workforce Florida, Inc., if such body is created; in the alternative, one member must be the president and chief operating officer of the Florida Workforce Development Board; and
- One member must be affiliated with First Job/First Wages Council of Workforce Florida, Inc., if such body is created; in the alternative, one member must be the Secretary of the Department of Labor and Employment Security or the secretary's designee.

Minority and gender representation, and the geographic representation of panel members, must be considered when making appointments to the panel. Members of the review panel are appointed for 4-year terms, and a person may not serve more than two consecutive terms. Panel members must elect a chairperson annually, and a member may not be elected to consecutive terms as chairperson.

All action taken by the review panel must be by majority vote of those present. The director of OTTED, or the director's designee, is to serve without voting rights as secretary to the panel. OTTED must provide necessary staff assistance to the panel.

Section 4 appropriates $5.7 million to OTTED from the General Revenue Fund for fiscal year 2000-2001 to administer the provisions of this committee substitute.

Section 5 provides that the act will take effect July 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Because the committee substitute would authorize grants to be made to faith-based organizations for the creation of job opportunities in urban areas, the question arises as to whether this financial assistance violates the establishment clauses of the Florida Constitution and U.S. Constitution.

Section 3, Article I of the Florida Constitution states:

> There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.

The application of s. 3, Art. I by Florida courts has largely paralleled federal case law regarding the application of the First Amendment of the U.S. Constitution which states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Through the doctrine of selective incorporation, the prohibition in this clause is applicable to the states as well.

The establishment clause is said to erect a "wall of separation" between church and state, which limits, but does not prevent, certain interaction between the state and religious institutions. "The Court has enforced a scrupulous neutrality by the State as among religions, . . . but a hermetic separation of the two is an impossibility it has never required." *Roemer v. Maryland Public Works Bd.*, 426 U.S. 736 (1976). State action which exhibits a preference for or hostility toward any religious belief, activity, or institution will violate this clause unless the action is narrowly tailored to promote a compelling state interest. See *Board of Education of Kiryas Joel Village v. Grumet*, 512 U.S. 687 (1994) (violation to establish a school district within a religious enclave as a favor to that group).

The free exercise clause prohibits restraints on religious activity if the intent or effect is to prevent the religious activity. States can regulate general conduct, however, even when such

regulations inadvertently impact religious practices. The free exercise clause also permits neutrality and accommodation toward religious activity. In *Employment Div. v. Smith*, 494 U.S. 872 (1990), the court upheld a regulation which prohibited the use of peyote, even in religious ceremonies. In *Church of the Lukumi Babalu Aye v. Hialeah*, 508 U.S. 520 (1993), the U.S. Supreme Court struck down a city ordinance forbidding ritualistic animal sacrifice because the ordinance's purpose was to restrain certain practices of the Santeria religion.

Where state action does not expressly exhibit a preference or hostility, but a religious belief or a religious institution derives a benefit or suffers a burden from the neutral law, the "Lemon test" is frequently used to determine any violation of the establishment clause or free exercise clause. See *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Under the three-part test, the law must have a secular (non-religious) purpose; the primary effect of the law must neither advance nor inhibit religion; and the law must not produce any excessive governmental entanglement with religion. Because the Lemon test has not produced clear guidelines, many justices have criticized its application. See *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384, 398 (1993) (Scalia, J., concurring).

States may provide valuable services, such as grants and tax exemptions, on a neutral basis to religious institutions the same as any other similar institution in society without violating the establishment clause. In *Nohrr v. Brevard County Educational Facilities Authority*, 247 So. 2d 304 (Fla. 1971), the Florida Supreme Court upheld the constitutionality of a law that authorized the issuance of revenue bonds for financing construction of facilities for private higher educational institutions, including religiously affiliated institutions, where the Legislature found a public purpose in addressing the urgent need for private institutions to obtain construction financing.

In *Rosenberger v. University of Virginia*, 515 U.S. 819 (1995), the U.S. Supreme Court upheld the right of a religious student organization to receive student activity fee support from a state university for printing its religious newspaper on the same basis as any other eligible student organization publication. In *Roemer v. Maryland Public Works Board*, 426 U.S. 736, 746 (1976), the court recognized that religious institutions may receive an incidental benefit from neutral state action, stating:

> The Court has not been blind to the fact that in aiding a religious institution to perform a secular task, the State frees the institution's resources to be put to sectarian ends. If this were impermissible, however, a church could not be protected by the police and fire departments, or have its public sidewalk kept in repair . . . Neutrality is what is required . . . [However] a secular purpose and a facial neutrality may not be enough, if in fact the State is lending direct support to a religious activity . . . The Court has also taken the view that the State's efforts to perform a secular task, and at the same time avoid aiding in the performance of a religious one, may not lead it into such an intimate relationship with religious authority.

The excessive entanglement prong of the Lemon test prevents the state from too closely monitoring or regulating the internal affairs of a religious institution in order to separate the permissible public support for secular activities from the impermissible public support for religious activities. A related concept prohibits the state from applying even a neutral law that benefits any religious institution that is "pervasively sectarian" in order to avoid supporting its

religious activities. As explained in *Hunt v. McNair*, 413 U.S. 734, 743 (1973), "Aid may normally be thought to have a primary effect of advancing religion when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission . . . ." However, Justice O'Connor, writing for the majority in *Agostini v. Felton*, 521 U.S. 203 (1997), suggested that in the future the court will examine the "excessive entanglement" prong of the Lemon test in the same context as the "primary effect" prong, thus reducing the three part test to two.

At present, cases construing the constitutionality of publicly financed vouchers for parochial and secular private schools are reaching the issue of the relationship between public funding and the establishment of religion. In *Simmons-Harris v. Zelman*, 72 F. Supp. 2d 834 (U.S. Dist. Ct. N.D. Ohio 1999), the federal court granted a summary judgment motion permanently enjoining the State of Ohio from implementing the Ohio school voucher plan for Cleveland on the grounds that it violates the establishment clause by unconstitutionally advancing religion.

Religious Organizations Providing Publicly Funded Services

Nothing in the establishment clause of the First Amendment prohibits a state from contracting with a religious organization to provide social service benefits. "It has long been established, for example, that the State may send a cleric, indeed even a clerical order, to perform a wholly secular task." *Roemer v. Maryland Public Works Bd*. The U.S. Supreme Court noted the successful partnership between public programs and religious providers in *Bowen v. Kendrick*, 487 U.S. 589 (1988). In *Bowen*, the court upheld the constitutionality of the federal Adolescent Family Life Act, which allowed religious organizations to provide publicly funded teen pregnancy counseling, writing:

> [T]hese provisions of the statute reflect at most Congress' considered judgment that religious organizations can help solve the problems [of teen pregnancy]. Nothing in our previous cases prevents Congress from making such a judgment or from recognizing the important part that religion or religious organizations may play in resolving certain secular problems. [I]t seems quite sensible for Congress to recognize that religious organizations can influence values and can have some influence on family life . . . . To the extent that this congressional recognition has any effect of advancing religion, the effect is at most "incidental and remote." (internal cites omitted)

The Florida Legislature has allowed religious organizations to participate in resolving certain secular problems, as evidenced by: s. 430.705(3), F.S., (community diversion pilot project for long term care); chs. 984 and 985, F.S., (juvenile delinquency prevention programs); s. 381.0045, F.S., (targeted outreach for high-risk pregnant women); s. 741.0305, F.S., (marriage preparation course); and ch. 240, F.S., (post-secondary education tuition assistance and scholarship programs).

At the federal level, s. 104 of the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," Pub. L. No. 104-193, authorizes states to contract with charitable, religious, and private organizations to provide services and administer programs established or modified under titles I and II of the act. This provision allows faith-based

organizations to administer welfare programs with public funds, as long as there are secular alternatives. However, the section expressly prohibits the expenditure of funds under the covered programs for sectarian worship, instruction, or proselytization.

The committee substitute provides that faith-based organizations may receive grant funds, and that "eligible uses of grant funding must result in the creation of job opportunities for residents in targeted areas." Because the committee substitute does not specify the types of activities which may be funded, and because the committee substitute does not explicitly prohibit the use of state funds for religious or sectarian purposes, the committee substitute may raise concerns about consistency with the constitutional requirements.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that funds are appropriated, grant recipients, including community-based organizations, community development corporations, faith-based organizations, nonprofit community development organizations, nonprofit economic development organization, and other nonprofit organizations serving the nominated areas, will benefit.

C. Government Sector Impact:

The committee substitute appropriates $5.7 million from the General Revenue Fund to the Office of Tourism, Trade, and Economic Development for the 2000-2001 fiscal year to administer the provisions of this act.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Workforce Florida, Inc., and the related councils mentioned in this committee substitute do not currently exist, but are proposed for creation in CS/SB 2050, 1st Engrossed.

VIII. Amendments:

None.