

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/CS/SB 406

SPONSOR: Commerce and Economic Opportunities Committee, Comprehensive Planning, Local and Military Affairs Committee, Senator Hargrett, and others

SUBJECT: Community Development

DATE: April 6, 2000

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bowman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
2.	<u>Schmeling</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The committee substitute creates the Community and Faith-based Organizations Initiative (initiative) within the Institute on Urban Policy and Commerce at Florida Agricultural and Mechanical University (institute). The purpose of the initiative is to promote community development in low-income communities through partnerships with community and faith-based organizations.

The committee substitute authorizes the Division of Library and Information Services (division) of the Department of State to administer the Community and Library Technology Access Partnership (partnership). The purpose of the partnership is to provide technology access and training, including Internet access, to community and faith-based organizations.

In addition, the committee substitute requires the division to establish a Community High-Technology Investment Partnership (CHIP) program to assist neighborhood facilities in distressed urban communities in securing computers for access by youths between the ages of 5 years and 18 years who reside in these communities.

The committee substitute appropriates \$2.5 million from the General Revenue Fund to the Institute on Urban Policy and Commerce at FAMU for the 2000-2001 fiscal year, and \$1 million to the division for the 2000-2001 fiscal year to implement the partnership and CHIP program. No funding may be used for sectarian or religious purposes.

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

II. Present Situation:

The Institute on Urban Policy and Commerce at Florida Agricultural and Mechanical University (institute) was created by s. 88 of ch. 99-251, L.O.F, to "improve the quality of life in urban

communities through research, teaching, and outreach activities.” The major purposes of the institute are: to pursue research on urban policy issues; to train civic leaders; to assist urban area nonprofit organizations and government agencies; develop data on intercity areas; and support community development efforts of inner-city areas, neighborhood-based organizations, and municipal agencies.

Since its creation, the institute has sponsored a Statewide Florida Community Development Corporation Conference, developed baseline information on Florida’s urban communities, and surveyed community development corporations to gather information on the state of unmet needs in Florida’s urban communities. In November of 1999, the institute announced its partnership with community and faith-based organizations for the purpose of promoting community development in low-income communities.

The 1999 Annual Report to the Legislature of the Information Service Technology Development Task Force identifies a digital divide in Florida where low income and rural populations lack access to the Internet. The report recommends that the State of Florida consider a major expansion of the public library system to provide public Internet access and training to these populations.

The federal Telecommunications Act of 1996 requires telecommunication providers to grant certain telecommunication charge discounts of 50-90 percent for educational entities. These discounts are called e-rate or education rate. While the majority of these discounts are used by schools, many of the public libraries in Florida qualify for these discounts, which facilitate the provisions of Internet access within the public libraries.

The Division of Library and Information Services (division) of the Department of State provides technical and financial assistance to public libraries throughout Florida. Section 257.192, F.S., authorizes the division to accept and administer appropriations for library program grants and to make such grants in accordance with the Florida long-range program for providing library services.

III. Effect of Proposed Changes:

The committee substitute creates the Community and Faith-based Organizations Initiative (initiative) within the Institute on Urban Policy and Commerce at Florida Agricultural and Mechanical University (institute) for the purpose of promoting community development in low-income communities through partnerships with community and faith-based organizations. The initiative is to include the following components:

- Professional skill development.
- Leadership development, including an internship program whereby students serve as interns with community and faith-based organizations and are provided stipends.
- An annual conference to promote “best practices” regarding the creation, operation, and sustainability of community and faith-based organizations.

- The development of course materials related to community development.

In addition, the initiative includes a grant program to provide financial assistance to community and faith-based organizations for partnerships with universities and the operation of programs to build strong communities and future community development leaders. The institute must develop selection criteria for awarding such grants.

The committee substitute also authorizes the Division of Library and Information Services (division) of the Department of State to provide funding for e-rate eligible public libraries, located in distressed areas of the state, to provide technology access and training to community and faith-based organizations as part of a new Community and Library Technology Access Partnership (partnership). In addition, the partnership is to provide a method of assessment to measure the progress that e-rate eligible public libraries are making in training individuals to succeed in the information economy.

To the maximum extent possible, the institute must leverage state funding with federal funding in support of the initiative, and the division and institute are required to leverage resources from the initiative and partnership program to focus efforts on the most distressed communities in the state.

In addition, the committee substitute requires the division to establish a Community High-Technology Investment Partnership (CHIP) program to assist distressed urban communities in securing computers for access by youths between the ages of 5 years and 18 years who reside in these communities. Under this program, neighborhood facilities, including units of local government, not-for-profit faith-based organizations, not-for-profit civic associations or homeowners' associations, and not-for-profit organizations whose missions involve community development, may apply to the division for grants to purchase computers that will be available for use by eligible youths who reside in the immediate vicinity of the neighborhood facility.

Priority consideration for funding under this program must be given to applications submitted by neighborhood churches or by neighborhood-based not-for-profit organizations that have as a principal part of their missions improving conditions for residents of the same neighborhoods in which the organizations are located, as well as to organizations that can demonstrate that they have not been awarded community enhancement or similar community support grants from state or local government on a regular basis in the past.

The division must develop guidelines governing the administration of this program and must establish criteria to be used in evaluating an application for funding. At a minimum, the division must find that:

- The neighborhood that is to be served by the grant suffers from general economic distress;
- Eligible youths who reside in the vicinity of the neighborhood facility have difficulty obtaining access to a library or schools that have sufficient computers; and
- The neighborhood facility has developed a detailed plan for providing youths who reside in the vicinity of the facility with access to any computer purchased with grant funds, including evening and weekend access when libraries and schools are closed, and

promoting the maximum participation of neighborhood youths in use of any computers purchased with grant funds.

The plan required under this section must demonstrate:

- The manner in which eligible youths who reside in the immediate vicinity of the facility will be provided with access to any computer purchased with grant funds, including access during hours when libraries and schools are closed;
- The existence of safeguards to ensure that any computer purchased with grant funds is reserved for the educational use of eligible youths who reside in the immediate vicinity of the facility and is not used to support the business operations of the neighborhood facility or its governing body; and
- The existence, in the neighborhood facility, of telecommunications infrastructure necessary to guarantee access to the Internet through any computer purchased with grant funds.

Before the 2002 Regular Session of the Legislature, the division must evaluate the outcomes of this program and report the results of the evaluation to the Governor, the President of the Senate, and the Speaker of the House of Representatives. At a minimum, the evaluation must assess the extent to which the program has improved access to computers for youths who reside in distressed urban communities. As part of this report, the division must identify any impediments to the effective implementation and utilization of the program and must make recommendations on methods to eliminate any such impediments. In addition, the division must make recommendations as to whether it would be sound public policy to continue the program; whether the program should be expanded to address additional target populations, including, but not limited to, youths in distressed rural communities and adults in distressed urban or rural communities; and whether the list of neighborhood facilities eligible to participate in the program should be revised or whether priority consideration for funding should be revised to emphasize a particular type of neighborhood facility. The report must be submitted by January 1, 2002.

The maximum amount of a grant which may be awarded to any single neighborhood facility under this program is \$2,500, and no funding may be used for religious or sectarian purposes. The sum of \$500,000 is appropriated from the General Revenue Fund to the division to carry out the provisions of the CHIP program.

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 the institute and the division to provide grants to faith-based organizations, 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 stated purpose of committee substitute is to “promote community development in low-income communities through partnerships with community and faith-based organizations.” Because the committee substitute explicitly prohibits the use of state funds for religious or sectarian purposes, the committee substitute most likely meets constitutional requirements. However, the program may be unconstitutional when applied, as the committee substitute does not provide specific guidance on what types of programs and activities may be funded.

For example, funding for an internship may be constitutional, but an internship at a faith-based organization where sectarian material is being taught to the intern may not.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private community and faith-based organizations could be eligible for grants under the initiative and CHIP program.

C. Government Sector Impact:

The committee substitute appropriates \$2.5 million from the General Revenue Fund to the Institute on Urban Policy and Commerce at FAMU for the 2000-2001 fiscal year, and \$1 million to the Division of Library and Information Services for the 2000-2001 fiscal year. Funding may not be used for sectarian or religious purposes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
