

STORAGE NAME: h0409a.jud

DATE: March 30, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 409

RELATING TO: Community and Faith-Based Organization

SPONSOR(S): Representative Bradley and others

TIED BILL(S): None

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

- (1) COLLEGES & UNIVERSITIES (AEC) YEAS 6 NAYS 0
 - (2) COMMUNITY AFFAIRS (PRC) YEAS 9 NAYS 0
 - (3) JUDICIARY YEAS 7 NAYS 1
 - (4) EDUCATION APPROPRIATIONS (FRC)
-

I. SUMMARY:

The bill creates the Community and Faith-based Organizations Initiative (Initiative) to be administered by the Institute on Urban Policy and Commerce (Institute) at Florida Agricultural and Mechanical University (FAMU). The Institute was established in statute by the 1999 Legislature to address social, economic, and physical issues in Florida's urban communities.

The purpose of the Initiative is to promote community development in low-income areas by assisting community and faith-based organizations in their efforts to combat crime, drug addiction, teenage pregnancy, homelessness, and juvenile delinquency.

The bill authorizes the Institute to:

- Conduct job training programs for individuals in community and faith-based organizations;
- Place recent graduates of business and related professional schools in paid internships that do not exceed one year with community and faith-based organizations;
- Organize an annual conference of community and faith-based organizations;
- Fund the development of course materials relating to community development;
- Fund research on economic, operational, and policy issues relating to community development; and
- Fund grants establishing partnerships between universities and community and faith-based organizations.

The bill appropriates \$3 million from the General Revenue fund in fiscal year 2000-2001 to the Institute to administer the Community and Faith-based Organizations Initiative.

The bill has an effective date of July 1, 2000.

The Committee on Community Affairs adopted one amendment that is traveling with the bill. See AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

Less Government: As discussed in the "Effects of Proposed Changes" section, this bill creates the Community and Faith-based Organizations Initiative and assigns new responsibilities to the Institute on Urban Policy and Commerce at FAMU.

2. Lower Taxes Yes No N/A

3. Individual Freedom Yes No N/A

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

Section 240.709, F.S. created the Institute on Urban Policy and Commerce at FAMU. The major purposes of the Institute are to pursue research on urban policy issues confronting the inner-city areas and neighborhoods in the state; to influence the equitable allocation and stewardship of federal, state and local financial resources; to provide training in community planning and design; to assist with the planning, development, and capacity building of urban area nonprofit organizations and government agencies; to develop and maintain a database relating to inner city areas; and to support the community development efforts on inner city areas, neighborhood-based organizations, and municipal agencies.

The Institute must research and recommend strategies concerning critical issues facing the under-served population in urban communities, including but not limited to, transportation and physical infrastructure; affordable housing; tourism and commerce; environmental restoration; job development and retention; child care; public health; life-long learning; family intervention; public safety; and community relations.

The Institute may establish regional urban centers in the inner cities of St. Petersburg, Tampa, Jacksonville, Orlando, West Palm Beach, Ft. Lauderdale, Miami, Daytona Beach, and Pensacola to assist urban communities on critical economic, social, and educational problems affecting the under-served population.

The Institute is responsible for collecting, evaluating, and disseminating pertinent empirical data to influence the equitable allocation and stewardship of federal, state, and local financial resources used to improve the quality of life for Florida residents in urban communities. It serves as a clearinghouse for research on socioeconomic problems and as an advocate for the development of solutions to these problems. The Institute is required to assess the effectiveness of strategies and their impact on communities and to submit an annual report of its findings and recommendations to the Legislature and the Governor.

C. EFFECT OF PROPOSED CHANGES:

The bill creates the Community and Faith-based Organizations Initiative to be administered by the Institute on Urban Policy and Commerce at FAMU. The purpose of the Initiative is to promote community development in low-income areas by assisting community and faith-based organizations in their efforts to combat crime, drug addiction, teenage pregnancy, homelessness, and juvenile delinquency.

The bill authorizes the Institute to:

- Conduct job training programs for individuals in community and faith-based organizations;
- Place recent graduates of business and related professional schools in paid internships that do not exceed one year with community and faith-based organizations;
- Organize an annual conference of community and faith-based organizations;
- Fund the development of course materials relating to community development;
- Fund research on economic, operational, and policy issues relating to community development; and
- Fund grants establishing partnerships between universities and community and faith-based organizations.

The bill also appropriates \$3 million from the General Revenue in FY 2000-01 to the Institute in order to administer the Initiative.

D. SECTION-BY-SECTION ANALYSIS:

SECTION 1: Creates the Community and Faith-based Organizations Initiative to be administered by the Institute on Urban Policy and Commerce at Florida Agricultural and Mechanical University; authorizes the Institute to:

- Conduct job training programs for individuals in community and faith-based organizations;
- Place recent graduates of business and related professional schools in paid internships that do not exceed one year with community and faith-based organizations;
- Organize an annual conference of community and faith-based organizations;
- Fund the development of course materials relating to community development;
- Fund research on economic, operational, and policy issues relating to community development; and
- Fund grants establishing partnerships between universities and community and faith-based organizations.

Appropriates \$3 million from the General Revenue fund in fiscal year 2000-2001 to the Institute in order to administer the Community and Faith-based Organizations Initiative.

SECTION 2: Establishes an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a fiscal impact on local revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Community and Faith-based Organizations Initiative may enhance and promote community development in low-income communities. Additionally, the bill authorizes the Institute on Urban Policy and Commerce at Florida Agricultural and Mechanical University to establish paid internships with community and faith-based organizations.

D. FISCAL COMMENTS:

The bill appropriates \$3 million from the General Revenue fund in fiscal year 2000-2001 to the Institute to administer the Community and Faith-based Organizations Initiative.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action which requires the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues.

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The “Wall of Separation” between Church and State

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 Article I, Section 3 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 towards 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.

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)

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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); chapters 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).

House Bill 409

The bill raises a number of constitutional issues, all relating to the historic boundary between church and the state.

The stated purpose of HB 409 is to “promote community development in low-income communities through partnerships with community and faith-based organizations.” However, the bill does not explicitly prohibit the use of state funds by a religious organization for sectarian worship, instruction, or proselytization, nor does it require that the funds appropriated by the bill be used in compliance with the Establishment Clause of the U.S. Constitution and Article I, Section 3 of the Florida Constitution.

In particular, the bill’s directions to the Institute to conduct job training to enhance the skills of individuals in faith-based organizations, to place recent graduates in paid internships with faith-based organizations and to fund grants establishing partnerships between universities without providing for a limitation on the kind of work the interns will perform or on the use of the grants may raise constitutional questions. For example, if the professional skills training has a direct benefit to the group’s religious mission, or if the interns are involved in religious activities, or if the grants are used to advance a religious purpose, the bill and the training, grants or internships will be subject to constitutional challenge.

While the state may engage faith-based organizations in its secular attempts to relieve social ills, it must do so in a manner cognizant of the Establishment Clauses of the Florida and United States’ Constitutions, particularly in the case where the law specifically directs funds to faith-based organizations. Even a neutral law will fail if it is determined to benefit pervasively sectarian organizations, for instance. *See Hunt v. McNair, supra.*

If the bill contained clear restrictions on the use of state monies by faith-based organizations it would lessen the chances for a constitutional challenge.

Moreover, the bill does not provide for any accountability provisions relating to books and records or auditing of state monies. Such provisions may strengthen the state’s ability to ensure that public monies are not used for religious purposes.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Community Affairs adopted one amendment on March 14, 2000, that is traveling with the bill. The amendment limits the Community and Faith-Based Organizations Initiative to not-for-profits. In addition, the amendment creates the Community and Library Technology Access Partnership to be administered by the Division of Library and Information Services of the Department of State. The Partnership is intended to partner with community and faith-based organizations to provide technology access and training to assist other state efforts to close the digital divide. The amendment specifies activities the Division may conduct as part of the Partnership. The amendment also reduces the appropriation to the Institute from \$3 million to \$2.5 million, and appropriates \$0.5 million to the Division of Library and Information Services to provide Community and Library Technology Access Partnership grants to e-rate eligible public libraries.

VII. SIGNATURES:

COMMITTEE ON COLLEGES & UNIVERSITIES:

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Betty H. Tilton, Ph.D.

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