

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1177 Corporations Not for Profit

SPONSOR(S): Baker

TIED BILLS: IDEN./SIM. BILLS: SB 2056

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Banking & Securities (Sub)	7 Y, 0 N	Sheheane	Billmeier
2) Commerce	19 Y, 0 N	Sheheane	Billmeier
3) Finance & Tax		Levin	Diez-Arguelles
4)			
5)			

SUMMARY ANALYSIS

This bill authorizes corporations not for profit to make distributions to:

- corporations not for profit that are organized and operated for the same or substantially similar purposes as the distributing corporation;
- entities that are organized and operated exclusively for charitable, benevolent, educational, or similar purposes, or are otherwise exempt from federal income tax under s. 501(c), Internal Revenue Code; or
- the United States or one of its possessions, or a state or local government.

The fiscal impact of this bill is uncertain. See "Fiscal Analysis and Economic Impact Statement."

This bill takes effect July 1, 2004.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Corporations Not For Profit

The Florida Not for Profit Corporation Act, codified in chapter 617, F.S., provides for the incorporation of corporations not for profit. A "corporation not for profit" is defined as a corporation no part of the income or profit of which is distributable to its members, directors, or officers.<sup>1</sup> A corporation not for profit may also have no members.<sup>2</sup> "In a Florida nonprofit corporation, no shares of stock are issued and there are no shareholders, but a nonprofit corporation may have one or more classes of members who may be characterized as the proprietors or owners of the nonprofit corporation."<sup>3</sup> Voting rights of members must be set forth in the articles of incorporation or the bylaws of a corporation not for profit.<sup>4</sup>

Directors of a corporation not for profit are responsible for managing the affairs of the corporation subject to any limitations in the articles of incorporation.<sup>5</sup> Officers of a corporation not for profit perform the duties specified in the bylaws or by the board or directors.<sup>6</sup>

##### Limitation on Payment of Dividends and Distribution of Income

By definition of the term "corporation not for profit" in s. 617.01401(5), F.S., a corporation not for profit may not distribute its income or profit to its members, officers, or directors. This prohibition against the distribution of income or profits is repeated in s. 617.0505(1), F.S. Distributions to members, however, are permitted upon liquidation and dissolution.<sup>7</sup>

##### Attorney General Opinion

In a 1999 opinion, the Attorney General responded to a question that asked whether Bonita Community Health Center, Inc., a corporation not for profit, was permitted by law to distribute its excess profits to Lee Memorial Health System, a member of Bonita and also a corporation not for profit.<sup>8</sup> The Attorney General replied that the Legislature has not chosen to extend the authority to corporations not for profit

<sup>1</sup> See s. 617.01401(5), F.S.

<sup>2</sup> See s. 617.0601(1)(a), F.S.

<sup>3</sup> 8A Fla. Jur 2d *Business Relationships* s. 154 (Database Updated January 2004).

<sup>4</sup> *Id.*

<sup>5</sup> See s. 617.0801, F.S.

<sup>6</sup> See s. 617.0841, F.S.

<sup>7</sup> See s. 617.0505(1), F.S.

<sup>8</sup> Op. Att'y Gen. Fla. 99-23 (1999).

to distribute funds to other nonprofit entities engaged in similar activities. The Attorney General further stated that “[u]ntil the Legislature makes it clear that a viable nonprofit corporation may dispense its revenues to like-minded nonprofit entities, [the Office of the Attorney General] may not read such authority into the existing statutes.”<sup>9</sup>

### **Effect of Proposed Changes**

This bill authorizes corporations not for profit to make distributions to:

- corporations not for profit that are organized and operated for the same or substantially similar purposes as the distributing corporation;
- entities that are organized and operated exclusively for charitable, benevolent, educational, or similar purposes, or are otherwise exempt from federal income tax under s. 501(c), Internal Revenue Code; or
- the United States or one of its possessions, or a state or local government.

This bill takes effect on July 1, 2004.

### **C. SECTION DIRECTORY:**

Section 1. Amends s. 617.0505, F.S., providing exceptions to a prohibition against corporations not for profit paying dividends to members, officers, or directors. This section also authorizes a corporation not for profit to make distributions to specific nonprofit corporations or governmental entities.

Section 2. This bill shall take effect July 1, 2004.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The effect on state revenues is uncertain. The bill will permit corporations not for profit to make distributions to state government, but it is not known if any corporation will do so.

#### **2. Expenditures:**

The bill does not appear to have a fiscal impact on the expenditures of state government.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The effect on local governments is uncertain. The bill will permit corporations not for profit to make distributions to local governments, but it is not known if any corporation will do so.

#### **2. Expenditures:**

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

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

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<sup>9</sup> Op. Att’y Gen. Fla. 99-23 (1999).

The bill will permit corporations not for profit to make distributions to other corporations not for profit, but it is not known how many corporations will do so.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The legislation does not require expenditure of funds by local governments, does not reduce the authority to raise revenue, nor reduce the percentage of state tax shared with local governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

N/A