

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2056

SPONSOR: Senators Aronberg and Smith

SUBJECT: Corporations Not for Profit

DATE: April 2, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cibula</u>	<u>Maclure</u>	<u>CM</u>	<u>Fav/1 amendment</u>
2.	<u>Cibula</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

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 substantially amends section 617.0505, Florida Statutes.

II. Present Situation:

Corporations Not For Profit

The Florida Not For Profit Corporation Act, codified in ch. 617, F.S., provides for the incorporation of corporations not for profit. A “corporation not for profit” means a corporation no part of the income or profit of which is distributable to its members, directors, or officers.”¹ “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.”² A corporation not for profit may also

¹ Section 617.01401(5), F.S.

² 8A Fla. Jur 2d *Business Relationships* s. 154 (Database Updated January 2004).

have no members.³ Voting rights of members must be set forth in the articles of incorporation or the bylaws of a corporation not for profit.⁴

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.⁵ Officers of a corporation not for profit perform the duties specified in the bylaws or by the board or directors.⁶

Authority to Distribute Assets

Section 617.0302, F.S., provides the power for a corporation not for profit to manage its affairs and dispose of their assets. Specifically, a corporation not for profit is authorized to:

(10) Acquire, enjoy, utilize, and dispose of patents, copyrights, and trademarks and any licenses and other rights or interests thereunder or therein.

(11) Sell, convey, mortgage, pledge, lease, exchange, transfer, or otherwise dispose of all or any part of its property and assets.

(12) Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with, shares and other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district, municipality, or of any instrumentality thereof.

(14) Make donations for the public welfare or for religious, charitable, scientific, educational, or other similar purposes.

(15) Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

Accordingly, under s. 617.0302, F.S., a corporation not for profit that is a parent corporation or member of another corporation not for profit may distribute its assets to its subsidiary.

The authority of a subsidiary corporation not for profit to distribute assets to a parent corporation, however, is limited by the definition of the term “corporation not for profit.” The term “corporation not for profit” is defined in s. 617.01401(5), F.S., as a “corporation no part of the income or profit of which is distributable to its members, directors, or officers.” This prohibition against the distribution of income or profits to members is repeated in s. 617.0505(1), F.S. Distributions to members are permitted upon liquidation and dissolution.⁷

³ Section 617.0601(1)(a), F.S.

⁴ *Id.*

⁵ Section 617.0801, F.S.

⁶ Section 617.0841, F.S.

⁷ Section 617.0505(1), F.S.

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.⁸ The Attorney General replied that the Legislature has not chosen to extend the authority to corporations not for profit 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.”⁹

III. Effect of Proposed Changes:

The 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 bill takes effect on July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

⁸ Op. Att’y Gen. Fla. 99-23 (1999).

⁹ *Id.*

B. Private Sector Impact:

Corporations not for profit will be authorized to make distributions to other corporations not for profit.

C. Government Sector Impact:

Corporations not for profit will be authorized to make distributions to the federal, state, and local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Commerce, Economic Opportunities, and Consumer Services:

Limits the types of not-for-profit corporations that may make distributions to a member to the following:

- Businesses that hold a license for an ambulatory surgical center and a clinical laboratory;
- Assisted living facilities;
- Hospices; and
- Health maintenance organizations. (WITH TITLE AMENDMENT)