

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 665 Faith-Based and Community-Based Organizations  
**SPONSOR(S):** Baxley  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2134

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Future of Florida's Families</u>	_____	<u>Preston</u>	<u>Liem</u>
2) <u>State Administration</u>	_____	_____	_____
3) <u>Human Services Appropriations (Sub)</u>	_____	_____	_____
4) <u>Appropriations</u>	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The bill provides legislative findings related to the tremendous number of human resources in Florida and designates the Florida Faith-Based Association as a statewide "intermediary organization" to provide assistance to faith-based organizations that are interested in providing social services. The bill specifies duties for the association and requires an annual audited report to the Governor, President of the Senate, and Speaker of the House of Representatives.

The bill has a total fiscal impact of \$1.8 million; \$700,000 for FY2004-2005, \$600,000 for FY2005-2006, and \$500,000 for FY2006-2007.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0665.fff.doc  
**DATE:** March 16, 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:

The bill provides legislative findings related to the tremendous number of human resources in Florida and designates the Florida Faith-Based Association (FFBA) as a statewide intermediary organization to provide assistance to faith-based organizations that have an interest in providing social services. The section defines the term “intermediary organization” for purposes of the bill and specifies duties for the FFBA which include:

- convening meetings of stakeholders to identify regional needs and develop a plan to meet those needs;
- providing training conferences for faith-based and community-based organizations;
- improving collaboration between public and private agencies to help them focus on their shared objectives;
- convening an annual statewide summit of faith-based and community-based leaders as well as representatives of appropriate local, state and federal agencies;
- identifying best practices among faith-based and community-based organizations;
- developing and implementing annual strategic plans;
- producing annual printed and online faith-based resources directories;
- creating a board of directors that would represent each of six regions of the state;
- developing three advisory committees in the areas of spiritual leadership, capacity development, and advocacy; and
- serving as the fiscal intermediary for state and federal grants provided to faith-based and community-based organizations.

The bill also requires an audited report by January 1 of each year to the Governor, President of the Senate, and Speaker of the House of Representatives.

#### C. SECTION DIRECTORY:

**Section 1.** Provides legislative findings related to the need for a statewide intermediary to provide administrative services and assistance to the “armies of compassion” existing in the state and designates the Florida Faith-Based Association (FFBA) as that intermediary. The section defines the term “intermediary organization”, specifies duties for the FFBA, and requires an audited report by January 1 of each year to the Governor, President of the Senate, and Speaker of the House of Representatives.

**Section 2.** Provides for an appropriation from the General Revenue Fund to the Department of Financial Services for distribution to the Florida Faith-Based Association in the amount of \$1.8 million; \$700,000 for FY2004-2005, \$600,000 for FY2005-2006, and \$500,000 for FY2006-2007.

**Section 3.** Provides for an effective date.

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

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

1. Revenues:

None.

2. Expenditures:

Total appropriation of \$1.8 million; \$700,000 for FY2004-2005, \$600,000 for FY2005-2006, and \$500,000 for FY2006-2007.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

### **D. FISCAL COMMENTS:**

The bill provides for a total appropriation of \$1.8 million; \$700,000 for FY2004-2005, \$600,000 for FY2005-2006, and \$500,000 for FY2006-2007. The Legislature has an absolute right to repeal or modify any statute, as long as its actions do not transgress constitutional requirements. Thus, the power of a future Legislature cannot be limited by the acts of a present or prior legislature. The bill appropriates money in future years which makes it appear that acts of this present Legislature would be limiting the power of future Legislatures. <sup>1</sup>

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not affect county or municipal government.

2. Other:

The First Amendment of the U.S. Constitution has long been interpreted to prohibit the use of tax dollars to support religious organizations or for religious purposes. However, what constitutes support, or a religious purpose, is not always clear. The Supreme Court has never ruled that government may not purchase secular goods or services from religious entities. Nonetheless, historically the court has refused to allow the flow of government aid to organizations deemed to be pervasively sectarian. These are defined as organizations whose religious character so permeates

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<sup>1</sup> See *Nue v. Miami Herald Publishing Co.*, 462 So.2d 821 (Fla. 1985); *Internal Improvement Fund v. St. Johns River Co.*, 16 Fla. 531 (Fla. 1878); *Gonzales v. Sullivan*, 16 Fla. 791 (Fla. 1878).

their service delivery as to make it impossible to divorce sacred from secular for purposes of funding the latter.<sup>2</sup>

In what is believed to be the first and only study of the efficacy of faith-based service provision, the principal researcher stated:

The constitutional landscape remains hazy, at best. It is likely that contested provisions of Charitable Choice – including, but not limited to, the exemption of religious providers from anti-discrimination laws - will eventually be settled by the Supreme Court. Even portions of the law that appear to be facially constitutional, however, may be challenged if improperly applied. Our research suggests that states do not have the resources to monitor providers for constitutional compliance, and that many, if not most, congregational leaders do not have sufficient constitutional competence to ensure constitutionally appropriate program implementation.<sup>3</sup>

It would appear that there are opportunities for faith-based organizations to make program choices that might raise constitutional concerns due to an understandable lack of knowledge of and familiarity with the complexities of constitutional law. It would also appear from the literature that such concerns are minimized when funding for nonreligious parts of a program that might have a separate religious component is somehow accounted for. Jim Towey, Director of the White House Office of Faith-Based and Community Initiatives, responded to a question related to direct government funding of any program with a strong religious component by stating:

For example, a program in Los Angeles is built around the Torah, Judaism. Very successful. You can't directly fund that program because it's so centered around spiritual messages and principles. Teen Challenges is very successful in treating addiction. They center theirs around Jesus Christ ... We also find programs, like the Salvation Army and other places, where there are spiritual dimensions to the treatment regimen, but it's separate. It's [the spiritual dimension] not funded with the government money.<sup>4</sup>

There do not appear to be safeguards contained in the bill that ensure that state funding provided to the FFBA, an organization that cites Jesus Christ as its cornerstone, will not be used for religious activities, even inadvertently, and even though it will be serving as an intermediary organization and not as a direct service provider. The opportunity that would appear to present the greatest chance for a blurring of that line is in the training requirement of the bill. One of the mandated duties of the FFBA provided for in the bill is to provide training conferences. The website of the FFBA contains a link to training which is provided by Alpha Ministries. In addition, a FFBA publication states that one of the reasons to join the Florida Faith-Based Association is to attend quality training and receive ministry certification which includes improving ministry skills and working towards FFBA certification...through the use of a 96 hour curriculum developed by Alpha Ministries ...<sup>5</sup> Alpha Ministries, headquartered in Stuart, Florida provides a brief statement related to its training opportunities:

Alpha Ministries is offering a ministry training program designed to prepare and equip those who would minister to others as well as those who would lead the armies of compassion. Alpha Ministry Training is designed to prepare the student for the ministry of loving others as Christ in a variety of settings. The need for training others to share the gospel of grace among the wounded and hurting of today's society is as urgent as it was when the apostle Paul urged Timothy, Thou therefore, my son, be strong in the grace that is in Christ Jesus.<sup>6</sup>

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<sup>2</sup> See Charitable Choice: First Results from Three States, Center for Urban Policy and the Environment, School of Public Policy and Environmental Affairs, Indiana University, 2003.

<sup>3</sup> See Charitable Choice: First Results from Three States, Center for Urban Policy and the Environment, School of Public Policy and Environmental Affairs, Indiana University, 2003.

<sup>4</sup> See Jim Towey, Faith-Based Initiatives, May 2, 2003 at [www.pbs.org](http://www.pbs.org) .

<sup>5</sup> See The Samaritan's Voice, Florida Faith-Based Association, Volume 1, Issue 1.

<sup>6</sup> See [www.flfaithbased.org](http://www.flfaithbased.org)

The bill is not clear about how FFBA is to maintain a separateness between its existing function as a religious organization and its proposed role as an intermediary.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Federal "Charitable Choice" statutes have been enacted in recent years in an effort to encourage state and local governments to contract with faith-based organizations for the delivery of social services. The first such law was passed in 1996 as a seldom-noted provision of The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), the sweeping welfare reform legislation that dramatically changed the provision of public assistance in the United States. Section 104 of the Act allows faith-based service providers to use religious criteria when hiring staff, maintain religious symbols in areas where programs are administered, and use faith-based concepts in providing services. Clients have a right to an alternative secular provider and may not be forced to participate in religious observances or services to receive services. Public funds may not be used for purely sectarian activities, such as worship, instruction, or proselytizing.

Historically, significant funds have gone to social service providers affiliated with and informed by the religious precepts of faith-based organizations; however, inherently or "pervasively" sectarian religious organizations were ineligible to receive public funds prior to 1996. In a major departure from prior practice, Section 104 encouraged government agencies to partner directly with sectarian organizations, including those considered "pervasively sectarian," to provide a wide array of social services. Charitable Choice provisions have subsequently been added to Welfare-to-Work legislation, the Community Services Block Grant Program, the Substance Abuse and Mental Health Services Administration's drug treatment programs, and the Children's Health Act, and President Bush has made a "faith-based initiative" a priority of his administration.<sup>7</sup>

The Florida Faith-Based Association (FFBA) was registered and incorporated in Florida in 2002 and reportedly received 501 (c) 3 status in April of 2003. The Association has a Board of Directors consisting of 5 members and 7 "district chairs" which appear to correspond geographically to districts within the Department of Children and Family Services (specifically districts 2,6,7,9,11,13, and 15). Membership in the association is comprised of both individual and organizational members.

The bill requires the FFBA to carry out a number of functions in its capacity as the statewide intermediary organization, however the details of how some of those functions will be carried out and/or accomplished is not clearly delineated in the bill as written. The FFBA is required by the bill to:

- Convene a minimum of two meetings of stakeholders in each of the six districts – The bill does not specify a time frame for the minimum number of meetings and does not indicate what comprises a "district", what criteria are used to designate "districts", and whether those districts are related to the districts within the organizational structure of the FFBA.
- Provide at least six regional training conferences for faith-based and community-based organizations – The bill does not provide a time frame, does not specify what entity is conducting the training, or what qualifications the trainers have or are required to have.
- Create a board of directors of no less than 12 and no more than 18 members that would represent each of the six districts – The bill does not specify how the membership of the board will be determined, what the working relationship, if any, with the existing FFBA board of directors will be, whether the members are compensated, and what the duties of the board are to be.

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<sup>7</sup> See Personal Responsibility and Work Opportunity and Reconciliation Act of 1996,

- Develop three advisory committees, one each in the areas of spiritual leadership, capacity development, and advocacy – The bill does not specify who will determine the membership, what are the duties of the committees, particularly the spiritual leadership committee, and what is the working relationship with the board of the association in its capacity as the statewide intermediary.
- Develop six regional intermediary organizations and, if necessary, develop local intermediary organizations – The bill does not specify how membership will be determined, what the duties of the intermediary organizations are, and what the working relationship is with the board of the association in its capacity as the statewide intermediary as well as the advisory committees.
- Serve as fiscal intermediary for state or federal grants directed to faith-based organizations and community-based organizations – The bill makes this duty, like the other duties specified in the bill, a mandate rather than a permissive requirement. There is no specific information in the bill related to how this arrangement would work or why it would be a desirable arrangement. Grant moneys are usually awarded and distributed to a specific entity that has applied for such funding, not an unknown intermediary organization.
- Develop private matching funds to the extent that the association would be able to demonstrate total sustainability within 36 months after July 1, 2004 – Matching funds typically represent a special type of cost sharing, usually applicable to grants. Under the terms of a matching grant, the sponsor (private source) awards funds in direct proportion to the funds which the grantee (FFBA) contributes toward the project. The bill does not specify what funds FFBA will be using to match private funding; is it the state moneys appropriated in the bill or moneys from another source?
- Develop specific outcome measures for the quantity and quality of services delivered and the cost effectiveness of those savings – The bill does not specify how this particular provision would work in light of the fact that it does not appear that the FFBA will be a direct service provider.

While the federal charitable choice legislation and the literature related to faith-based organizations and service provision do not appear to contain a definition of the term “faith-based”, the term “faith” is typically defined as “allegiance to duty or a person” or “belief in the traditional doctrines of a religion”.<sup>8</sup> The use of “a” religion would seem to be inclusive of “any and all” religions, not exclusive as in “the religion”. Thus, a faith-based initiative involving faith-based organizations would, by definition, be inclusive of all faiths and diverse in its representation. Logically, an organization serving as an intermediary, providing leadership, guidance and training to faith-based and community-based organizations should have a foundation based on religious inclusiveness.

In a publication of the Florida Faith-Based Association, it is stated

... In the truest sense of the word, the FFBA is not a religious organization. It is an organization of men and women that Jesus describes in the tenth chapter of the book of Luke as Samaritans ... Jesus Christ is the cornerstone of the Florida Faith-Based Association ...<sup>9</sup>

It is unclear how an organization that recognizes only a single religion as its cornerstone and appears to rely heavily on the teachings of a single religious doctrine can define itself as both non-religious and religiously diverse.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

<sup>8</sup> See Merriam Webster’s Collegiate Dictionary, Tenth Edition, 1996.

<sup>9</sup> See “It’s About the Love not the Money”, The Samaritan’s Voice, Florida Faith-Based Association, Vol 1, Issue 1, p. 1.