

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates the Educational Loan Marketing Corporation of Florida as a not-for-profit entity to purchase, service, and otherwise provide access and service as a secondary market for student loans in the state.

B. EFFECT OF PROPOSED CHANGES:

Background

Secondary Loan Market

Secondary markets buy student loans from education lenders providing lenders with fresh capital they can use to originate new student loans. As a result, secondary markets are among the largest holders of student loans. The terms and conditions of a student loan do not change when it is sold to a secondary market. Secondary markets often offer repayment incentives on the loans they hold. These incentives can include principal rebates and interest rate reductions. There are national, regional, and state secondary markets.¹

Private Activity Bonds

Sections 141-147 of the Internal Revenue Code (the Code) relate to private activity bonds, defining such bonds to mean any bond issued as part of an issue which meets the private business use test and the private security or payment test, or which meets the private loan financing test.

Section 146 of the Code provides for the allocation of private activity bonds to each state. Part IV of ch. 159, F.S., relates to private activity bonds, pursuant to s. 146 of the Code. The purpose of part IV is to allocate the state volume limitation imposed on private activity bonds under the Code. The Division of Bond Finance of the State Board of Administration annually determines the amount of private activity bonds permitted to be issued in this state.

The state allocation of private activity bonds is divided among different allocation pools. After any allocation is made to the manufacturing facility pool, 50% of the remaining allocation is received by the 17 regional pools established in law; 25% is received by the Florida Housing Finance Corporation; 5% is received by the state allocation pool; and 20% is allocated to the Florida First Business Pool (FFB Pool).²

The FFB Pool provides written confirmation for private activity bonds to finance FFB projects certified by the Office of Tourism, Trade, and Economic Development (OTTED) as eligible to receive a written confirmation. OTTED has certified two secondary market corporations to participate in the FFB Pool to issue tax-exempt bonds to purchase student loans or to make student loans. They are the Florida Educational Loan Marketing Corporation and the Educational Funding of the South, Inc. According to the Florida First Bond Pool Evaluation Reports, both corporations applied on the basis of providing substantial economic benefit to the state.³

Secondary Markets in Florida

The Florida Educational Loan Marking Corporation (FELMAC) was incorporated as a Florida not-for-profit corporation in accordance with Section 150(d) of the Code in 1997 at the request of Governor Chiles.

¹ <http://www.finaid.org/loans/secondarymarkets.phtml>

² See s. 159.804, F.S.

³ Florida First Business Pool, Evaluation Report of FELMAC, December 13, 2002, at 1 and Evaluation Report of EdSouth, November 1, 2004, at 1.

FELMAC was approved for an allocation of \$33 million in 1997 and utilized the entire amount allocated in a tax-exempt bond issuance. In 1998 FELMAC was approved for \$30 million and was issued bonds totaling \$80 million (\$30 million Tax-Exempt and \$50 million Taxable). The loans went to 113,397 students at 40 institutions – 41% attending vocational trade schools, 34% attending a university, 25% attending a community college.

In 2001 FELMAC was approved for a \$60 million allocation and issued bonds totaling \$185 million (\$125 million Taxable and \$60 million Tax-Exempt). In 2001 the number of institutions utilizing FELMAC loans increased by 38% and the loans benefited an additional 5,000 students. FELMAC also began offering statewide scholarships and programs that focused on nurses and teachers in Florida.⁴

In February 2004, FELMAC merged with Arizona Educational Loan Marketing Corporation, an affiliate of Southwest Student Services Corporation. Southwest is a wholly owned subsidiary of Sallie Mae, a for-profit corporation and the nation's largest secondary market corporation.

Educational Funding of the South, Inc. (EdSouth) is a private not-for-profit, public benefit corporation organized for the sole purpose of funding postsecondary education loans under Title IV of the Federal Higher Education Act of 1965. EdSouth was established as a Tennessee corporation in 1985 and has provided approximately \$3.2 billion to fund over 675,000 Title IV loans for postsecondary students in the states of Tennessee, Florida, Georgia, Alabama, Mississippi, North Carolina, Pennsylvania, Virginia, and Kentucky.⁵ EdSouth was requested by Governor Bush to serve as a secondary market for educational loans in Florida.⁶

In 2002 and 2003, EdSouth was granted a total of \$252 million in tax exempt bonding authority to create the Florida Edloan program to provide low-cost eligible loans to currently certified Florida teachers who return to college for additional certification or advanced degrees and to Florida graduate and undergraduate nurses; two areas of critical need in the state.⁷ In 2004, EdSouth was granted additional tax-exempt bonding authority. These funds will only be used to make new loans (not refinance existing loans or purchase defaulted loans) to Florida residents and to nonresidents enrolled at Florida educational institutions. In addition, EdSouth agreed to fund all costs of issuance and required debt service reserve deposits from taxable financing sources so that all tax-exempt bond proceeds are used to fund Florida student loans.⁸

In the 2005-06 academic year, EdSouth will offer the new Techloan program for biomedical and computer engineers to help Florida expand its talent pool in these two strategic areas.⁹

According to EdSouth, total allocations in Florida have reached \$577 million and total bonds issued in Florida are \$424.2 million. To date, the approximate number of students assisted by EdSouth in Florida is 33,887. In addition, the last \$100 million of allocations was received after EdSouth's last bond issue; therefore, that allocation will be issued in 2005.

Effects of Proposed Changes

The bill creates s. 1009.9997, F.S., establishing the Educational Loan Marketing Corporation of Florida. The corporation is created pursuant to ch. 617, F.S., as a not-for-profit entity separate from the state to purchase, service, and otherwise provide access and service as a secondary market for student loans in the state.

The bill requires the corporation to be administered by an 11-member board of directors; 5 of which are to be appointed by the Governor, 3 appointed by the President of the Senate, and 3 appointed by the Speaker of the House of Representatives. The 11 members are to be appointed through collaboration

⁴ *Id.* at 1-2.

⁵ Florida First Business Bond Pool Evaluation Report of EdSouth, November 1, 2004, at 1.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 2.

⁹ See <http://edsouth.org/programs/fltechloan.aspx>.

by the appointing authorities and must be confirmed by the Senate. The membership of the board of directors must include the following:

- 2 members who are representatives of lending institutions that originate student loans in the state and who have a favorable reputation for skill, knowledge, and experience in the field of higher education loan finance.
- 2 members who are representatives of state universities.
- 2 members who are representatives of community colleges.
- 1 member who represents technical schools that are eligible to receive student loans.
- 1 member who represents independent colleges and universities.
- 2 members who are chosen from a list submitted by the Chief Financial Officer.
- 1 lay citizen who does not derive a majority of his or her income from education or an education-related field.

All members of the board of directors, including the chair, are appointed to serve 3-year terms; however, for the purpose of providing staggered terms, the initial appointments must be made in the following manner: 3 members for 1-year terms, 3 members for 2-year terms, and 5 members for 3-year terms.

The bill provides for the board of directors to:

- Employ or retain such persons as are necessary to perform the administrative and financial transactions and responsibilities of the corporation and to perform other necessary and proper functions not prohibited by law.
- Be reimbursed from moneys of the corporation for expenses incurred as members, consistent with chapters 112 and 287, F.S.

The bill establishes that there must be no liability on the part of, and no cause of action of any nature can arise against, agents or employees of the corporation, members of the board of directors of the corporation, or representatives of the state for any act or omission of the board in the performance of their powers and duties.

The bill requires the board of directors to adopt a plan of operation as well as articles, bylaws, and operating rules, and requires meetings of the board of directors to be subject to public meetings and records requirements provided in s. 286.011, F.S.

The bill provides for the corporation to:

- Sue or be sued,
- Borrow through public bonds and private finance sources in order to meet the demands of the student loan servicing program, and
- Exercise all powers granted to the corporation under not-for-profit provisions in ch. 617, F.S.

The bill establishes legislative intent that tax exemptions provided for in the bill will augment the financial resources of the corporation to better enable the corporation to fulfill its public purpose.

The bill requires that the corporation not be considered a political subdivision of the state; however, the corporation must be exempt from corporate income tax. The revenues of the corporation are funds received for providing services as a secondary student loan market and for conducting all other activities of the corporation; they must not be considered taxes, fees, licenses, or charges for services imposed by the Legislature on individuals, businesses, or agencies outside state government.

Bonds and other debt obligations issued by or on behalf of the corporation are not to be considered state bonds within the meaning set forth in s.215.58(8), F.S. Any bonds issued by the corporation, their transfer, and any income generated from such acts, including any profit made on the sale of bonds, must at all times be free from taxation of every kind by the state and any political subdivision or local unit or other government instrumentality. However, this exemption does not apply to any tax imposed

by income tax provisions in ch. 220, F.S., on interest, income, or profits on debt obligations owned by corporations other than the Educational Loan Marketing Corporation of Florida.

The bill also requires that the corporation not be subject to the procurement provisions of ch. 287, F.S. In addition, policies and decisions of the corporation relating to incurring debt, loan procurement, and service under corporation policies, and all other relating services, are not subject to the Administrative Procedure Act provisions of ch. 120, F.S.

The bill takes effect upon becoming law.

C. SECTION DIRECTORY:

Section 1: Creates s. 1009.9997, F.S., creating the Educational Loan Marketing Corporation of Florida to provide services as a secondary student loan market; providing for a board of directors and specifying membership; providing powers and duties of the corporation; authorizing the corporation to borrow through public bonds and private financial sources; and providing exemptions from taxation, procurement procedures, and administrative procedures.

Section 2: Provides an effective date upon becoming law.

II. 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:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may provide financial benefits to borrowers (former students and their parents), including lower interest rates on their loans and an array of programs to provide financial assistance to students, such as loan forgiveness programs and interest rate reductions for automated and timely payments.

D. FISCAL COMMENTS:

The fiscal impact of the bill is indeterminate.

Start-up costs maybe incurred in order to create the Educational Loan Marketing Corporation of Florida; however, currently no appropriation request has been made.

It is unclear whether or not any profits made by the corporation would be revenue of the corporation or for use by the state, and whether or not any revenue would be used for programs to provide financial assistance to students, such as loan forgiveness programs and interest rate reductions.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

There are several possible issues with how the bill is currently drafted:

- Members of the board must be chosen through a collaborative effort between the Governor, President of the Senate, and Speaker of the House of Representatives. The rationale for the collaboration requirement is not clear.
- The corporation is entirely exempt from ch. 287, F.S., relating to procurement provisions. The necessity for the exemption from the entire chapter is not clear.
- The bill gives the corporation sovereign immunity and protection from liability. It is unclear why such immunity is necessary.
- The corporation is given an exemption from the corporate income tax and provisions of ch. 120, F.S. The necessity for such exemptions is not clear.

It is also unclear whether or not any profits made by the corporation would be revenue of the corporation or for use by the state, and whether or not any revenue would be used for programs to provide financial assistance to students, such as loan forgiveness programs and interest rate reductions.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The sponsor of the bill indicated he will be filing a strike-all amendment to address many of the drafting issues cited in the preceding section.