

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – Members of the board may include representatives from various faiths, faith-based organizations, community-based organizations, foundations, corporations, and municipalities. Serving on the advisory board will create additional responsibilities, obligations, and work for these individuals.

B. EFFECT OF PROPOSED CHANGES:

Federal Welfare Reform and Charitable Choice¹

The debate over 1996 federal welfare reform provisions, that began before enactment and continues today, has become a national dialogue in an attempt to determine the best way to provide assistance to vulnerable populations in need. Discussion has focused on the role of government in social service provision, issues related to moving people from welfare to work, and how to provide adequate coordination between government services and businesses, nonprofits, and community-based organizations. In addition, another provision of the welfare reform effort that remained little noted for a number of years is the concept of financial collaboration between government and the faith community to provide social services. The controversy surrounding this funding relationship “is turning out to be a debate-of-a-lifetime.”²

The federal requirements governing collaborative partnerships between public funding and faith-based³ organizations have evoked conflicting opinions at a time when there is unprecedented enthusiasm on the part of the White House for the contribution of faith communities to social welfare, coupled with a sense that the United States Supreme Court is moving toward a narrower interpretation of the Establishment Clause of the First Amendment. The divide in the discourse occurs because some believe that Charitable Choice brings a welcome end to the exclusion of some religious providers, accompanied by an expansion in the capacity of the faith community to address social issues. Others are concerned that providing government funding to pervasively religious entities or to religiously affiliated programs without sufficient safeguards, could result in Charitable Choice eroding the religious freedom not only of the beneficiaries of social services, but also the providers of those services and taxpayers in general.

The change in thinking represented by Charitable Choice is not the provision of social services by faith-based organizations, nor is it the government funding of religious providers. Many such religiously affiliated organizations, including Catholic Charities, Jewish Family Services, Lutheran Social Services and The Salvation Army have a long and well established history of receiving government funds through contracts and grants to serve the needy. Charitable Choice represents a change in previous

¹ Although the concept of “Charitable Choice” is often used generally in reference to government funding of faith-based social service programs, in actuality, it is a legal term of art that refers to specific legislative provisions that first appeared in the 1996 federal welfare reform law. See The Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Public Law 104-193, Section 104, 1996.

² The Politics of Charitable Choice and the Faith-Based Initiative. Center for Religion and Civic Culture at USC. Religion in the City, Volume 1, Number 4, Summer 2001.

³ While “faith-based organization” is not defined in the law, the term is commonly defined in the literature as including any organization that has any religious affiliation or religious nature to its programming, board and staff requirement, mission statement or origins. Faith-based organizations typically have either a current or past affiliation with a religious denomination and it is the doctrines of that particular faith that give life to the work of the organization. Organizational staff generally share the same faith and are trained in service provision in accordance with shared beliefs. More often than not, services provided by faith-based organizations are delivered in buildings used at other times for religious purposes and which necessarily contain symbols of that faith. See Nathan, R.P. and Wright, D.J. Is “Charitable Choice” Compatible With the First Amendment? Is it a Good Idea? Does it Work? Rockefeller Institute of Government. State University of New York. September 2003.

practice by allowing all faith-based organizations to compete for government funding to provide social services, regardless of their religious nature. As a result, the initiative serves to significantly expand the scope of government financial collaboration with the faith community.

The Florida Experience

Keeping in mind that Charitable Choice became law in 1996 with the passage of federal welfare reform, it would appear that states in general have been somewhat slow to embrace its provisions. A national report card released in late 2000 assigned failing grades to all but 12 states related to their compliance with the requirements of the provisions of Charitable Choice. While acknowledging that some of the states rated as failing were developing new and innovative collaborations with faith-based organizations, they had not reformed their procurement rules in order to meet the practices mandated by federal welfare reform.⁴ In that same report, not only was Florida rated as a failing state, but it was also noted that Florida did not protect the rights of faith-based organizations and that Florida had devolved welfare to counties or regional bodies without requiring compliance with Charitable Choice.⁵

A 2000 research study involving nine states and their implementation of the 1996 charitable choice provisions, stated that the impact of those provisions on financial relationships between government and the faith community appear to be modest. Charitable Choice's detailed guidelines were being codified into formal contracts only in Texas and Wisconsin. "In all states much remains to be done to bring government administrative procedures and procurement policies into sync with the letter and spirit of Charitable Choice."⁶

In a report released in 2002, the Hudson Institute stated that Florida at that time had only a modest amount of activity underway but had taken specific steps to position itself to do more.

The issue of government-faith collaboration is "on the radar screen" at the state level in Florida. This is seen, for example, in the Governor's "Front Porch Florida" initiative; the Faith Community Network within the Department of Juvenile Justice; and in the recent passage by the state legislature of bills providing (a) funding for faith-based rehabilitation programs in state prisons; and (b) earmarking 15 percent of Workforce Investment Act (WIA) youth funds for FBOs. Nonetheless, we did not uncover much activity in terms of new collaborations, with the exception of collaborations in the field of rehabilitative services (e.g., drug/alcohol related services) These initiatives have not been stimulated specifically by Charitable Choice, but by welfare reform more generally.... Devolution and privatization in Florida have led to a diffusion of responsibility for social welfare in a variety of agencies, with an emphasis on local control. This reality made tracking the implementation of Charitable Choice in Florida a great challenge, as state-level agencies often lacked data on what localities were doing. To learn what was happening, our research team contacted regional workforce development boards (these oversee much TANF, WIA, and WtW distribution) to learn about local initiatives. Based on our inquiries, it appears that Florida has yet to experience a blossoming of government-faith partnerships ...⁷

While the same study noted an increase in state contracts with faith-based organizations in states surveyed, it was not able to be determined whether such expansion was the result of increased emphasis on faith-based initiatives or because of the availability of Temporary Assistance for Needy Families (TANF) surplus funds in 1999 and 2000.

The National Conference of State Legislatures (NCSL) conducted a survey of state faith-based initiatives in all 50 states in early 2002.⁸ State TANF representatives and faith-based liaisons were contacted to provide information about TANF-funded programs operated by religious organizations. Many state legislatures weighed the value of contracting with exclusively religious organizations against a number of concerns.

⁴ See Charitable Choice Compliance A National Report Card. The Center for Public Justice. 2000.

⁵ Id.

⁶ Sherman, A.L. The Growing Impact of Charitable Choice. Center for Public Justice. March 2000.

⁷ Sherman, A.L.. Collaborations Catalog: A Report on Charitable Choice Implementation in 15 States. Hudson Institute. March 2002.

⁸ Florida and Georgia did not respond to the survey.

Most states surveyed by NCSL reported being concerned about the capacity and accountability of religious social service providers. These organizations may not be able to comply with state and federal reporting requirements or accurately measure outcomes. States also indicated concern about the lack of interest on behalf of temples, mosques and churches to enter into government contracts. Most states reported that congregations felt they could serve more people by not having to enforce eligibility criteria that would be required under a government contract.⁹

NCSL also reported that states that have implemented faith-based initiatives started with similar first steps. Four of the most common first steps taken by states include:

- Revision of state procurement policies to permit contracting with religious or faith-based organizations.
- Conducting a study of the state's faith-community and their level of involvement and interest in offering social services.
- Holding workshops on grant writing, welfare reform and opportunities for exclusively religious organizations to apply for government funding to provide social services.
- Creation of an office of faith-based initiatives or a state liaison for faith-based and community leaders.¹⁰

In a subsequent report, NCSL noted that states have taken differing approaches to working with faith-based groups and many states have chosen not to work with them because of the controversial nature of church and state partnerships.¹¹

In October 2003, the results of a study done by the Roundtable on Religion and Social Welfare Policy found that state response to Charitable Choice provisions varied widely. For the most part, the response of states to federal Charitable Choice legislation and the more recent administrative initiatives has been moderate. The study cited many likely reasons for the general lack of activity at the state and local level, including the fact that faith-based organizations are already established providers in the social services delivery system, that faith-based organizations are currently eligible to compete for contracts and grants to the same extent as secular service providers, and that such organizations are treated no differently than other service providers in terms of monitoring, auditing, and other administrative functions.

Researchers did determine that in many states, substantive steps have been taken to increase the level of FBO involvement in government-funded services. These actions include: creation of a high-level liaison office to improve communications between the state and FBOs, developing mailing lists and websites to ensure that FBOs are aware of potential contracts, and conducting training to assist FBOs in competing for grants and contracts. But in only a few states do these activities appear to be part of a major initiative, identified personally with the governor or an agency head. Relatively few states have modified their statutes, regulations, or contracting processes to increase the level of FBO service provision, nor do states monitor compliance with restrictions on permissible activities. What has been done, thus far, is more in the realm of outreach and communication than substantive changes in processes and procedures. These activities are not so much directed toward the large, national faith-based service organizations, with which many states have contracted for years.¹²

Florida appears to be moving forward in its efforts to increase involvement by faith-based and community-based organizations in the provision of social services. "Florida is one of the leading laboratories on the faith-based initiative."¹³

Florida is making a leap in faith-based initiatives, carving out more state and federal money for religious groups, even as the state awaits word from the Florida Supreme Court on whether one

⁹ Jarchow, C. Faith-Based Initiatives in Welfare Reform. National Conference of State Legislatures. May 2002.

¹⁰ Id.

¹¹ Harrison, C. Faith-Based Initiatives in Social Service. National Conference of State Legislatures. January 2004.

¹² Ragan, M., Montiel, L. and others. Scanning the Policy Environment for Faith-Based Social Services in the United States. Results of a 50 State Study. The Roundtable on Religion and Social Welfare Policy. Rockefeller Institute of Government. State University of New York. October 2003.

¹³ Towey, J., Director of the White House Office of Faith-Based and Community Initiatives, as quoted in Brumley, J. *Governor shepherding faith groups into state services*. Florida Times Union. March 20, 2005.

of its largest programs breaches the constitutional prohibition against government funding of religion. The state's interest in calling upon more religious and community groups to handle education and social services formerly handled by government parallels action at the federal level and in many states led by GOP governors.

Faith-based wings in Florida prisons, delinquency programs for youth, services for children with disabilities and AIDS prevention in inner cities and rural communities are among millions of dollars in state grants won by religious groups. Religious schools have also received taxpayer-backed vouchers from students in failing schools, and religious day-care centers are in line to receive state money from the universal pre-kindergarten program being implemented.

It's not known exactly how much the state has given faith-based groups, said John Brabson, chairman of Gov. Jeb Bush's Faith-Based and Community Advisory Board... "There are a lot of dollars going to faith-based and community groups and hopefully, some of that is from our efforts," Brabson said.¹⁴

In November 2004, Governor Jeb Bush signed an Executive Order creating a faith-based and community advisory board. The board's mission is to help state government coordinate efforts to utilize and expand opportunities for faith-based and community-based organizations to address social needs in Florida's communities. The 25-member, Governor-appointed board serves as a policy advisor to the Governor on policies, priorities and objectives for the state's comprehensive effort to enlist, equip, enable, empower and expand the work of faith-based, volunteer and other community organizations to the full extent permitted by law.

HB 1373

The bill reportedly codifies the existing advisory board created by Executive Order by establishing the Florida Faith-based and Community-based Advisory Board, assigning it to the Executive Office of the Governor, and providing that it be administratively housed within the Executive Office of the Governor. The board is to consist of 25 members, with 17 being appointed by the Governor; four being appointed by the President of the Senate; and four being appointed by the Speaker of the House of Representatives. Members are to be appointed for four year terms, with the initial terms being staggered. The board shall meet at least once per quarter per calendar year.

The activities of the board are specified and an annual report is required to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives that contains an accounting of its activities and recommended policies, priorities, and objectives for the state's effort to facilitate the involvement of faith-based, volunteer, and other community-based organizations in service provision.

The board is prohibited from recommending any public program that conflicts with the Establishment Clause of the First Amendment to the United States Constitution or s. 3, Art. I of the State Constitution and is abolished June 30, 2010, unless reviewed and saved from repeal by the Legislature.

C. SECTION DIRECTORY:

Section 1. Creates section 14.31, Florida Statutes, relating to the Florida Faith-based and Community-based Advisory Board.

Section 2. Provides for an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹⁴ Cook, N. *State Funding for faith-based groups on the rise*. Tallahassee Democrat. March 20, 2005.

2. Expenditures:

Members of the board are not entitled to compensation for their service, but may be reimbursed for per diem and travel expenses pursuant to section 112.061, Florida Statutes. Since the bill does not specify that the board meetings may be held via teleconference or other electronic means, it would appear the 25 member board will incur expenses to travel to at least 4 meetings per year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

While the bill contains no appropriation for the implementation of the provisions of this bill, expenses will be incurred. The Volunteer Florida Foundation reported that currently the advisory board created by Executive Order is being funded by private sources. A bill filed during the 2003 legislative session creating a similar entity contained an appropriation of \$700,000.¹⁵ A bill filed for consideration during the current session codifying an existing office within the Executive Office of the Governor also contained no appropriation. However, \$100,000 was include in the Governor's recommended budget to support the office.¹⁶

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Since the board is supposed to be "advisory" and is not enacting legislation, awarding state funding, or directly contracting, there appear to be no constitutional issues related specifically to the creation of the board.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

¹⁵ See HB 837.

¹⁶ See HB 447, creating the Statewide Office of Suicide Prevention.

- The bill reportedly codifies an existing Governor-appointed advisory board that was created in November 2004, by Executive Order of the Governor¹⁷ to help state government coordinate efforts to utilize and expand opportunities for faith-based and community-based organizations to address social needs in Florida's communities. The bill does not specify how the transition from a 25-member Governor-appointed board to the newly created 25-member board with a membership appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives, will occur.
- While the Executive Order creating the board which is assigned to the Executive Office of the Governor expires on January 1, 2007 at the end of the Governor's term, the bill provides for the board to be abolished June 30, 2010, which is a number of years after the term of the current Governor ends.
- The bill states that "the purpose of the board is to advise the Governor and the Legislature on policies, priorities, and objectives ..." ¹⁸ Also, the required annual report is to contain "recommendations on policies, priorities, and objectives ..." ¹⁹ It is unclear why the bill specifically prohibits the advisory board from recommending any **public program** that conflicts with the Establishment Clause of the First Amendment to the United States Constitution or s. 3, Art. I of the State Constitution. It would appear the prohibition should be against broader policies rather than more specific programs. It is also unclear why the board would not be prohibited from recommending any **private program** that violated the federal or state constitutions, since most faith-based and community-based programs are private.
- While there are numerous references in the bill to partnerships with government, there appear to be no members currently serving on the board from government entities, there is no mention of government agency representation in the bill, and there is no specific provision connecting the work of the board with executive agency liaisons.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

¹⁷ Executive Order No. 04-245, November 18, 2004.

¹⁸ HB 1373, lines 60-61,

¹⁹ HB 1373, lines 155-158.