

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.)

Prepared By: Education Committee

BILL: CS/SB 862

SPONSOR: Education Committee and Senator Bennett

SUBJECT: Educational Loan Marketing Corporation

DATE: April 20, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>BI</u>	_____
3.	_____	_____	<u>GO</u>	_____
4.	_____	_____	<u>EA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates the Educational Loan Marketing Corporation of Florida as a chapter 617, F.S., not-for-profit entity, which purchases or services student loans, or otherwise serves as a secondary market for student loans in the state.

A 13-member board of directors administers the corporation. The Governor appoints 11 members, the President of the Senate appoints a Senator, and the Speaker of the House of Representatives appoints a Representative to serve on the board. All of the Governor's appointees are subject to Senate confirmation. The bill sets out qualifications for each of the members appointed by the Governor. Members may be reimbursed for expenses but may not otherwise receive compensation. In addition, members are required to file a financial disclosure.

The board must:

- Annually submit a business plan to the Department of Education (department);
- Maintain adequate accounting records and allow the department access to the records as well as allow the department to conduct audits of all records concerning contracted or outsourced functions or services; and
- Annually submit a proposed budget to the department.

The board may employ or retain any person necessary to perform the board's functions as required by law. However, salaries and benefits must be on par with similarly situated public-private entities and the salaries and benefits are subject to approval by the department.

The board may borrow funds and incur debt, including the issuance of revenue bonds, for the corporation's purposes. It may apply for the private activity bond allocation in accordance with part IV of chapter 159, F.S. Bonds issued by the corporation are not considered state bonds.

The corporation is exempt from the state income tax and the corporation's profits and income derived from the sale or servicing of bonds issued by the corporation are exempt from any state or local tax.

This bill creates s. 1009.9997, F.S.

II. Present Situation:

Secondary Loan Markets

Secondary loan markets buy education loans from lenders to allow the lenders to make additional loans available to new students. The purchase of these loans is accomplished through the issuance of tax-exempt private activity bonds or taxable bonds. Tax-exempt private activity bonds are a more attractive bond option because of their tax-friendly status. However, there are federal limits to the amount a state is allocated for private activity bonds. The Division of Bond Finance of the State Board of Administration annually determines the amount of private activity bonds permitted to be issued in Florida.

Secondary loan markets typically benefit three (3) groups: borrowers, the secondary loan market corporation, and loan originators. Borrowers typically benefit if a secondary loan market offers repayment incentives such as interest rate reductions, fee waivers, or capped rates. The amount of the benefit would be at the discretion of the secondary loan market corporation. The secondary student loan market corporation benefits from the spread between the amount owed and the amount actually paid. Loan originators benefit from removing older or loans with a higher default rates off their corporate books and receiving funds up front rather than over the life of the loan.

The Office of Tourism, Trade, and Economic Development (OTTED) has certified two (2) corporations to participate in the private activity bond allocation by issuing tax-exempt bonds to purchase student loans or to make student loans: the Florida Educational Loan Marketing Corporation (FELMAC) and Educational Funding of the South, Inc. (EdSouth).

The Florida Educational Loan Marketing Corporation (FELMAC)

FELMAC was incorporated as a Florida non-profit corporation under Section 150(d) of the Internal Revenue Code in 1997. FELMAC was approved for an allocation of \$33 million in 1997. In 1998, FELMAC was approved for \$30 million and issued bonds totaling \$80 million. The loans went to 113,397 students at 40 institutions. In 2001, FELMAC was approved for a \$60 million allocation and issued bonds totaling \$185 million.

In 2004, FELMAC became affiliated with Southwest Student Services Corporation, a wholly-owned subsidiary of SLM (Sallie-Mae), a for-profit corporation and the nation's largest secondary market corporation.

Educational Funding of the South, Inc., (EdSouth)

EdSouth is a private not-for-profit Tennessee corporation organized for the purpose of funding postsecondary education loans under Part B of Title IV of the Higher Education Act of 1965, as amended¹ and Section 150(d) of the Internal Revenue Code of 1986 as amended.² Under Executive Order 03-166, the Governor authorized EdSouth to serve as a secondary market for education loans in this state.

According to EdSouth, total allocations in the state are in excess of \$577 million and total bonds issued in the state are \$424.2 million. To date, 33,887 students have been assisted by EdSouth in the state.

Other states

States such as North Carolina, South Carolina, and Missouri have created an instrumentality or political subdivision of the state to participate as a secondary market for student loans.

III. Effect of Proposed Changes:

The bill creates the Educational Loan Marketing Corporation of Florida as a chapter 617, F.S., not-for-profit entity, which purchases or services student loans, or otherwise serves as a secondary market for student loans in the state.

Management

An 13-member board of directors administers the corporation. The Governor appoints 13 members, who are subject to Senate Confirmation. In addition, the President of the Senate and the Speaker of the House of Representatives would appoint a Senator and a Representative, respectively, who would serve as non-voting members. The Governor's appointees must be appointed as follows:

- Two 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;
- Two members who are representatives of state universities;
- Two members who are representatives of community colleges;
- One member who represents technical schools that are eligible to receive student loans;
- One member who represents independent colleges and universities;
- Two members who are chosen from a list of five names submitted by the Chief Financial Officer; and
- One lay citizen who does not derive a majority of his or her income from education or an education-related field.

¹ 20 U.S.C. 1071 et seq.

² 26 U.S.C. 150(d)

All of the Governor's appointees serve 3-year terms; however, to provide staggered terms, three members shall be appointed to serve a 1-year term, three members shall be appointed to serve 2-year terms, and five members shall be appointed to serve 3-year terms. Additionally, the board of directors must annually elect a chair and vice chair. Members are required to file financial disclosure in compliance with s. 8, Art. II of the State Constitution or s. 112.3144, F.S., or under s. 112.3145, F.S., as applicable.

Staffing/Compensation

The board members shall not be compensated for their services; however, they may be reimbursed from the corporation's funds for expenses incurred under s. 112.061, F.S.

The board may employ or retain such persons as are necessary to perform the administrative and financial transactions and responsibilities of the corporation as required by law. The corporation is directed to keep expenses, including salaries and benefits, on par with similarly-situated public-private entities with approval of the Department of Education.

The board's functions

The board must:

- Annually submit a business plan to the Department of Education (department);
- Maintain adequate accounting records and allow the department access to the records as well as allow the department to conduct audits of all records concerning contracted or outsourced functions or services; and
- Annually submit a proposed budget to the department.

Financing

The board may borrow funds and incur debt, including the issuance of revenue bonds, for the corporation's purposes. It may apply for the private activity bond allocation in accordance with part IV of chapter 159, F.S. Bonds issued by the corporation are not considered state bonds.

The corporation is exempt from the state income tax and the corporation's profits and income derived from the sale or servicing of bonds issued by the corporation are exempt from any state or local tax. However, the exemption does not apply to any tax imposed by chapter 220, F.S., on interest, income, or profits on debt obligations owned by corporations other than the Educational Loan Marketing Corporation created under the bill.

The proceeds of the corporation must be used for the creation of incentive programs serving state residents, including interest rate reductions for automated and timely payments and programs for students pursuing a degree in areas of critical need in the state. The revenues of the corporation are not considered taxes, fees, licenses, or charges for services imposed by the Legislature on individuals, businesses, or agencies outside state government.

The bill provides for Legislative intent which indicates that the corporation would not receive operational costs from the state other than reasonable start-up costs. Any state funded start-up costs must be repaid by the corporation.

Open Government

The corporation is subject to chapter 119, F.S., and s. 286.011, F.S., with respect to public records and meetings of the board. The bill does not specifically refer to the public records requirements of s. 24, Art. I of the State Constitution. The open government provisions may hinder the corporation's ability to effectively negotiate with the loan originators. However, it is anticipated that it may take a year or longer before the corporation can actively participate in the secondary market.

Effective Date

This bill takes effect upon becoming a law.

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.

B. Private Sector Impact:

The Educational Loan Marketing Corporation of Florida created under this bill would likely compete with EdSouth and Sallie-Mae in the secondary loan market.

The fiscal benefit to student borrowers is indeterminate.

C. Government Sector Impact:

It would be anticipated that there would be start-up costs associated with creating the Educational Loan Marketing Corporation of Florida. The Senate Budget does not currently contain a request for start-up funds.

The fiscal benefit to the state is indeterminate.

VI. Technical Deficiencies:

Subsection (3) provides for the membership qualifications of the board of directors appointed by the Governor. However, the ex officio members³ are listed under the same subsection. It would be advisable to place the ex officio members in the introductory part of subsection (3) to ameliorate any confusion.

On page 3, lines 20 through 28, the bill provides that the chair shall be appointed to serve a 3-year term. However, this part of the bill also provides that the board of directors shall annually elect a chair and vice chair. This creates a potential ambiguity in the chair's length of term as the chair. This ambiguity could be resolved by revising p. 3, line 21 to eliminate the reference to the chair.

It is not clear from the bill whether the Department of Education would conduct an audit of the corporation or whether the corporation, itself, conducts the audit.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

³ The Senator and Representative are appointed by the President of the Senate and the Speaker of the House of Representatives, respectively.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
