

# 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.)

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Prepared By: Banking and Insurance Committee

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BILL: CS/SB 686

INTRODUCER: Banking and Insurance Committee and Senator Bennett

SUBJECT: Educational Loan Marketing

DATE: March 9, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harkey</u>	<u>Matthews</u>	<u>ED</u>	<b>Favorable</b>
2.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<b>Fav/CS</b>
3.	_____	_____	<u>GO</u>	_____
4.	_____	_____	<u>GE</u>	_____
5.	_____	_____	<u>EA</u>	_____
6.	_____	_____	_____	_____

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## I. Summary:

This committee substitute creates the Educational Loan Marketing Corporation of Florida as a chapter 617, F.S., not-for-profit corporation, which purchases or services student loans, or otherwise serves as a secondary market for student loans in the state. The corporation must comply with the provisions of ch. 617, F.S., and s. 501(c)(3) of the 1986 Internal Revenue Code, as amended, relating to tax-exempt organizations.

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. The bill sets out qualifications for each of the board members.

The board is required to submit an annual report to the Legislature and the Department of Education describing the corporation's financial and operational performance for the prior fiscal year. The board is required to submit a business plan and a proposed budget to the Department of Education (department) on an annual basis.

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 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 VI of chapter 159; F.S. Bonds issued by the corporation are not obligations of the state. The board may employ or retain persons necessary to perform the board's functions, but salaries and benefits are subject to

approval by the department and must be comparable with similarly situated public-private entities.

This bill creates the following section of the Florida Statutes: 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. 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 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 loans or loans with 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 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, Incorporated (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 amended<sup>1</sup> and Section 150(d) of the Internal Revenue Code of 1986 as amended.<sup>2</sup> Under Executive Order 03-166, the Governor authorized EdSouth to serve as a secondary market for education loans in this state.

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<sup>1</sup> 20 U.S.C. 1071 et seq.

<sup>2</sup> 26 U.S.C. 150(d)

According to EdSouth, total allocations in the state are in excess of \$900 million and total bonds issued in the state are approximately \$750 million. To date, more than 50,000 students have been assisted by EdSouth in the state.

### **Other States**

Other states, including: Michigan, Missouri, New Mexico, North Carolina, and South Carolina have created these entities as an instrumentality or political subdivision of the state or as a non-profit or not-for-profit corporation to participate as a secondary market for student loans.

## **III. Effect of Proposed Changes:**

**Section 1** creates s. 1009.997, F.S., to establish the Educational Loan Marketing Corporation of Florida as a not-for-profit corporation, which purchases or services student loans, or otherwise serves as a secondary market for student loans in the state. The corporation is required to comply with the provisions of ch. 617, F.S., and s. 501(c)(3) of the 1986 Internal Revenue Code, as amended.

### **Management**

A 13-member board of directors administers the corporation. The Governor appoints 11 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.

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, s. 112.3144, F.S., or 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 travel 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, subject to approval of the Department of Education. The budget is subject to approval by the Department of Education.

**Duties of the Board**

The board is required to:

- Submit a business plan and a proposed budget to the Department of Education on an annual basis;
- 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
- Meet all legal and auditing requirements for records retention.

**Financing; Required Use of Proceeds**

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 VI of chapter 159; F.S. Bonds issued by the corporation are not considered obligations of the state.

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.

**Applicability of the “Government-in-the-Sunshine Law”**

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, Article. 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.

**Annual Report to the Legislature and the Department of Education**

The corporation is required to submit an annual report to the President of the Senate, the Speaker of the House of Representatives, and the Department of Education three months after the end of each fiscal year. The annual report shall describe the corporation’s efforts in achieving performance standards established by the department and the objectives of the annual business plan, and the status of developing and implementing incentive programs, such as, but not limited to, interest rate reductions for automated and timely payments and programs for students pursuing degrees in areas of critical need in the state. The annual report shall also include annual audited financial statements of the corporation for the prior fiscal year.

**Section 2** provides that this bill takes effect upon becoming a law.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

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.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

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.

**B. Private Sector Impact:**

The Educational Loan Marketing Corporation of Florida created under this bill would compete with EdSouth and Sallie Mae in the secondary loan market. The fiscal benefit to student borrowers is indeterminate at this time.

**C. Government Sector Impact:**

The fiscal benefit to the state is indeterminate. It is anticipated that there would be start-up costs associated with creating the corporation. The bill authorizes the corporation to receive a loan from the state to fund start-up costs, but does not appropriate any funds for this purpose.

**VI. Technical Deficiencies:**

The bill authorizes the corporation to receive a loan from the state to fund start-up costs, but does not appropriate any funds for this purpose.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

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

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