

STORAGE NAME: s0564z.ccc

DATE: May 8, 1998

****FINAL ACTION****

****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY COLLEGES AND CAREER PREP
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: SB 564

RELATING TO: Higher Education (Direct Support Organizations)

SPONSOR(S): Senator Kurth

COMPANION BILL(S): CS/HB 3409 by Representative Goode

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) Senate Education Committee YEAS 8 NAYS 0
- (2) Senate Ways and Means Committee (W/D)
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

PASSED BY THE LEGISLATURE - CHAPTER 98-99, LAWS OF FLORIDA

Senate Bill 564 was first heard in the Senate Education Committee on March 4, 1998, and was reported favorably with two amendments. The bill was then withdrawn from the Senate Ways and Means Committee and placed on Special Order Calendar. The bill was considered and amended on second reading on both April 17, and April 22, 1998. The bill was considered and amended on third reading on April 23, and passed the Senate, as amended, with a vote of 38 Yeas and 0 Nays. Senate Bill 564 was taken up by the House and substituted for CS/HB 3409 on April 28, 1998, and passed with a vote of 120 Yeas and 0 Nays.

II. SUMMARY:

The bill amends statutes controlling community college Direct Support Organizations (DSOs) and statewide community college DSOs, including the governance, financing and reporting requirements of these organizations. Additionally, the bill specifies that DSOs are solely responsible for their acts, debts, liabilities and obligations, and that a community college is not responsible for acts, debts, liabilities and obligations assumed or incurred by a DSO solely by reason of certification.

It requires community college boards of trustees to appoint a representative to each community college DSO board of directors and executive committee, and requires the community college president, or the president's designee, to serve on DSO boards and executive committees. It also requires that community college DSOs submit federal Internal Revenue Service forms relating its tax-exempt status to community college boards of trustees, and specifies that a community college DSO may, at the request of the community college board of trustees, provide residency opportunities on or near campus.

Authorizes the chairperson of the State Board of Community Colleges to appoint a representative to the board of directors and executive committee of any statewide community college DSO, and requires the chairperson of the State Board of Community Colleges, or the chairperson's designee, to serve on the board of directors and executive committee of any statewide DSO. It also requires the State Board of Community Colleges to approve agreements between a statewide DSO and another DSO or a center of technology, and requires that a statewide DSO submit federal Internal Revenue Service forms relating its tax-exempt status to the State Board of Community Colleges.

Provides \$1 million as grant and aid to Brevard Community College for fiscal year 1998-99 to support the acquisition of a black beam interferometer for the Open Access Clean Room on the Palm Bay Campus. There may be an indeterminate, though insubstantial, fiscal impact related to increased reporting requirements.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

COMMUNITY COLLEGE PRESIDENTS

Section 240.311, F.S., requires community college boards of trustees to evaluate the presidents "periodically."

ACCOUNTABILITY

Section 240.324, F.S., requires the community college system to develop and implement a plan to assure accountability and efficiency of instruction and administration. The plan does not include all the criteria used for accreditation, although many members of community college boards of trustees report that the accreditation process helps them understand community college operations.

CENTERS OF TECHNOLOGY INNOVATION

Centers of technology innovation are authorized by s. 240.3335, F.S., for public community colleges as designated by the State Board of Community Colleges. A center may be a single college or a consortium of colleges that is authorized to improve conditions in such areas as curriculum, faculty, research, testing, technology transfer, instructional equipment, or industrial partnership. A center may provide instruction, including instruction of secondary school students and teachers. It must have a board of directors which has authority to acquire, lease, and sublease property.

DIRECT SUPPORT ORGANIZATIONS

Direct-support organizations (DSO) are private, not-for-profit corporations that function on behalf of a government entity, such as a community college or university. A DSO generally raises money or other resources on behalf of the entity with which it is affiliated. DSO funds and resources do not go through a governmental appropriation process and are not subject to state budgeting or financial management laws.

Although DSO have existed for some time in private educational entities, there has been a dramatic increase over the past twenty years in the number and resources of DSO associated with both community colleges and universities in Florida and other states. Factors which contributed to an increase in numbers included control of funds, loss of state revenues, protection of the privacy of donors, and flexibility in the use of funds controlled by a direct-support organization. As foundations become more prevalent and assume more importance in the support of public higher education institutions, the promulgation of clear state policies and guidelines become imperative.

During the 1994 interim, the House Committee on Higher Education studied issues associated with DSO in postsecondary education. The purpose of the study was to determine the degree to which postsecondary education governing boards (i.e., the Board of Regents of the State University System, and the local boards of trustees of the community colleges) have retained adequate oversight of DSO associated with their institutions comparable to the boards' oversight of the other operations of the community colleges and universities. Final recommendations of the report included:

- ▶ Budget and expenditure reports should be detailed, formally adopted and closely monitored by governing boards.
- ▶ Public records provisions should be clarified.
- ▶ Formal policies should be adopted by governing boards for fundraising activities.
- ▶ System-wide guidelines should be adopted related to:

- formats for financial audit and budget and expenditure reports;
- approval and reporting of employee compensation;
- avoiding conflict of interest;
- restrictions against gratuitous gifts;
- approval and reporting of employee salary supplements; and
- approval and reporting of athletic program support provided by the DSO.

Florida law requires a DSO to be annually audited by an independent auditor. Although general accounting principles are followed in each audit, varying reporting styles make systemwide comparisons difficult.

In order to receive non-profit status, a DSO is required to submit to the federal government an application describing both general and specific organizational and operational information (Internal Revenue Service, Application for Recognition of Exemption form, Form 1023). Standardized information on the form requires a complete disclosure of all planned fundraising activities as well as statements of mission, purpose, disposition of funds and revenue, and a variety of other compliance issues.

Once recognized as a non-profit entity, each DSO must then annually submit to the federal government its budget and expenditure information (Internal Revenue Service, Return of Organization Exempt From Income Tax form, Form 990). Standardized information on the form includes: itemized and specific assistance given to individuals; benefits paid to or for members; compensation of officers and directors; other salaries and wages; fundraising expenses; accounting fees, legal fees and other fees; office and operating expenses; travel, conference, convention and meeting expenses; depreciation; interest income and expenses; contributions, gifts, grants and other sources of revenue; balance sheet; statement of the accomplishments of the DSO to include the expenditures associated with each accomplishment which must balance to the DSO's total expenditures; liabilities; gain or loss on sale of investments; listing of investments and securities held by the DSO; expenditures for political purposes; analysis of income producing activities; and financial benefits to board members.

Of the three reports, only the statutorily-required annual audit is required to be submitted to the governing board of the institution supported by the DSO (i.e., board of trustees for community colleges and Board of Regents for universities.) The Internal Revenue Service requires that Form 1023 and Form 990 be made available for public inspection.

B. EFFECT OF PROPOSED CHANGES:

COMMUNITY COLLEGE PRESIDENTS

The bill would require the State Board of Community Colleges to specify, by rule, procedures for community college boards of trustees to evaluate presidents *annually*. This codifies current practice.

ACCOUNTABILITY

The bill would require that the institutional assessment efforts related to the criteria for accreditation of the Southern Association of Colleges and Schools be addressed in the accountability plan to improve and evaluate the instructional and effectiveness and efficiency of the community college system. This could provide better information for the accountability process and align the accountability process with accreditation criteria.

CENTERS OF TECHNOLOGY INNOVATION

Centers of technology innovation boards of directors would be prohibited from acquiring, leasing, or subleasing property. A community college board of trustees would be required to approve any transaction or agreement between two DSOs or between a DSO and a center of technology innovation. Likewise, the State Board of Community Colleges would be required to approve any transaction between a statewide DSO and a center of technology innovation. These provisions would potentially increase accountability through the added oversight of centers of technology innovation by the appropriate board.

DIRECT SUPPORT ORGANIZATIONS

A DSO would submit to its governing board (i.e., board of trustees for community colleges and Board of Regents for universities) its application for non-profit status (Form 1023) and its annual tax return (Form 990). Submission of the plans to the governing boards would then make them public records for the open-record purposes of Chapter 120. A community college DSO would also submit its annual audit to the State Board of Community Colleges.

The bill would change the membership of DSO boards of directors to include the community college president or designee and a member appointed by the chairperson of the community college board of trustees. This provision would codify current practice.

These provisions would potentially increase accountability of the DSO by increasing reporting requirements, increasing public inspection of reports, and requiring the participation of the community college president on the DSO board.

Additionally, the bill would delineate that DSOs are solely responsible for their acts, debts, liabilities and obligations, and that a community college would not be responsible for acts, debts, liabilities and obligations assumed or incurred by a DSO solely by reason of certification.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill provides no new rulemaking authority. It does change the frequency of evaluation of community college presidents by the boards of trustees from a periodic to an annual basis

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Expanded reporting requirements would require community colleges to include SACS accreditation criteria in their accountability process, community college DSOs to submit certain documents to community college boards of trustees, and statewide DSOs to submit certain documents to the State Board of Community Colleges.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends ss. 240.299, 240.311, 240.324, 240.331, 240.3315, 240.3335, and 240.363, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 240.299, F.S., to require direct-support organizations (DSO) to submit to the university president and the Board of Regents Federal Internal Revenue Service forms relating to its tax exempt status.

Section 2. Amends s. 240.311, F.S., to provide for the annual evaluation of college presidents by the respective community college board of trustees.

Section 3. Amends s. 240.324, F.S., to provide that a community college instructional and administrative efficiency plan include criteria provided in publications of the Southern Association of Colleges and Schools.

Section 4. Amends s. 240.331, F.S., providing for the appointment of a DSO board member and executive council member by the chairperson of the community college board of trustees and appointment of the community college president to both the board and council. Provides for the DOS to provide residency opportunities on or near campus for students at the request of the board of trustees; requires facilities constructed by a DSO to comply with all construction requirements required by the chapter; and requires DSOs to submit to the board of trustees a copy of Internal Revenue Service forms relating to its tax-exempt status.

Section 5. Amends s. 240.3315, F.S., providing for the appointment of a statewide DSO board member and executive council member by the chairperson of the State Board of Community Colleges and appointment of the Chairperson of the State Board of Community Colleges to both the board and council; provides for the approval of the State Board of Community Colleges for any agreement between a statewide DSO and another DSO or a center of technology innovation; and requires a statewide DSO to submit to the State Board of Community Colleges a copy of Internal Revenue Service forms relating to its tax-exempt status.

Section 6. Amends s. 240.3335, F.S., striking language that authorized centers of technology to acquire, lease or sub-lease property.

Section 7. Amends s. 240.363, F.S., specifies that DSOs are solely responsible for their acts, debts, liabilities and obligations, and that a community college is not responsible for acts, debts, liabilities and obligations assumed or incurred by a DSO solely by reason of certification.

Section 8. Provides \$1 million as grant and aid to Brevard Community College for fiscal year 1998-99 to support the acquisition of a black beam interferometer for the Open Access Clean Room on the Palm Bay Campus.

Section 9. Provides that the act take effect on July 1, 1998.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Provides \$1 million as grant and aid to Brevard Community College for fiscal year 1998-99 to support the acquisition of a black beam interferometer for the Open Access Clean Room on the Palm Bay Campus.

2. Recurring Effects:

Indeterminate. The State Board of Community Colleges anticipates insubstantial increased costs associated with the additional reporting requirements.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

VI. COMMENTS:

N/A

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 4, 1998, the Senate Education Committee reported the bill favorably with two amendments:

Amendment #1: Deleted the word "statewide" from language inserted into a section that does not concern statewide direct-support organizations.

Amendment #2: Deleted a provision that would prohibit a community college from pledging public funds or property to pay for or guarantee the payment of bonds or other obligations issued by a direct-support organization or by a unit of local government on behalf of a direct-support organization

The bill was then withdrawn from Senate Ways and Means and placed on Special Order Calendar. On second reading, on April 17, 1998, two technical amendments were adopted, and two substantive amendments were offered:

Amendment #1 & 2: Corrected technical deficiencies

Amendment #3: Removed language which precluded community colleges from transferring public funds or property to a direct support organization, or pledge public funds or property to pay or guarantee bonds issued by, or on behalf of, a direct support organization

Amendment #4: Allowed for transfer but not pledging of funds

Further consideration of SB 564 was deferred with amendments 3 and 4 pending. On April 22, amendment 4 was withdrawn, and amendment 3 was adopted. The following amendments were also adopted:

Amendment #5: Corrected a technical deficiency

Amendment #6: Appropriated \$1 million to Brevard Community College for a black beam interferometer for the Open Access Clean Room

Amendment #7: Removed language allowing only private contributions to be transferred to DSO

The bill was then ordered engrossed and placed on third reading. On April 23, the bill was read a third time, and a final amendment to clarify transferring and pledging of funds was adopted:

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Amendment #1: Revised Section 7 of the bill, replacing language which would have precluded a community college from transferring public funds or property to a direct support organization, or pledge public funds or property to pay or guarantee bonds issued by, or on behalf of, a direct support organization with language which provides that direct support organizations are solely responsible for their acts, debts, liabilities and obligations, and that a community college is not responsible for acts, debts, liabilities and obligations assumed or incurred by a DSO solely by reason of certification.

VIII. SIGNATURES:

COMMITTEE ON COMMUNITY COLLEGES AND CAREER PREP:

Prepared by:

Legislative Research Director:

Derek E. Hemenway

Theresa A. Klebacha, Ph.D.

FINAL RESEARCH PREPARED BY COMMITTEE ON COMMUNITY COLLEGES AND CAREER PREP:

Prepared by:

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