

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: January 12, 1998 Revised: 3/4/1998 _____

Subject: Higher Education- direct support organizations

| | <u>Analyst</u> | <u>Staff Director</u> | <u>Reference</u> | <u>Action</u> |
|----|----------------|-----------------------|------------------|-------------------------|
| 1. | <u>White</u> | <u>O'Farrell</u> | <u>ED</u> | <u>Fav/2 amendments</u> |
| 2. | <u>_____</u> | <u>_____</u> | <u>WM</u> | <u>_____</u> |
| 3. | <u>_____</u> | <u>_____</u> | <u>_____</u> | <u>_____</u> |
| 4. | <u>_____</u> | <u>_____</u> | <u>_____</u> | <u>_____</u> |
| 5. | <u>_____</u> | <u>_____</u> | <u>_____</u> | <u>_____</u> |

I. Summary:

This legislation would increase oversight of direct-support organizations that benefit community colleges and state universities and would prohibit a community college from using or pledging public funds for a direct-support organization. This prohibition would not apply to funds legally obligated before March 6, 1998. The bill would also change the required evaluation of community college presidents from periodic to annual.

This bill substantially amends the following sections of the Florida Statutes: 240.299, 240.311, 240.324, 240.331, 240.3315, 240.3335, and 240.363.

II. Present Situation:

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

Half of all Florida direct-support organizations are associated with postsecondary education. These organizations are increasingly popular because they add funds as state revenues are reduced, they control their own funds with considerable flexibility, and they protect the privacy of donors.

Community college direct-support organizations are authorized by law to provide residences for students, but they may not use funds from the Community College Program Fund or the Public Education Capital Outlay fund.

According to a report for Fiscal Year 1996, the ten universities had 37 direct-support organizations that controlled assets of approximately \$1.34 billion and the 28 community colleges had 39 direct-support organizations that controlled assets of \$96.0 million.

Direct-support organizations must report on their assets and activities in three reports:

To receive non-profit status, a direct-support organization must submit to the federal government an application describing both general and specific organizational and operational information on Internal Revenue Service Form 1023, Application for Recognition of Exemption. Information on the form includes a disclosure of all planned fundraising activities as well as statements of mission, purpose, disposition of funds and revenue, and other compliance issues.

Florida law requires a direct-support organization to be audited annually by an independent auditor. Although general accounting principles are followed in each audit, various reporting styles make system wide comparisons difficult.

Each organization annually must submit to the federal government its budget and expenditure information on Internal Revenue Service Form 990, Return of Organization Exempt from Income Tax. Information on this 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; fees for accounting and legal assistance; balance sheet; office and operating expenses; travel, conference, convention and meeting expenses; statement of accomplishments; liabilities; gain or loss on sale of investments; listing of investments and securities; expenditures for political purposes; analysis of income producing activities; and financial benefits to board members.

Of the three reports, only the annual audit is required to be submitted to the governing board of the institution supported by the direct-support organization. The Internal Revenue Service requires that Form 1023 and Form 990 be made available for public inspection.

Direct-support organizations for community colleges are encouraged to build student housing near the campuses. Palm Beach Community College and Central Florida Community College have guaranteed bond issues that the direct-support organizations used to support student housing, though community colleges are forbidden by law from giving public funds to direct-support organizations. Legal opinions differ about whether or not these arrangements constitute a pledge of public funds, which would be illegal.

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.

One such center is designated at Brevard Community College, the Brevard Teaching and Research Labs. The center is also a direct-support organization and leases a laboratory building from another direct-support organization, the Florida Education and Research Foundation, Incorporated. This foundation purchased the property and building using proceeds borrowed from Lease Revenue Bonds (Series 1994A) issued by the City of Palm Bay, under an agreement that required Brevard Teaching and Research Labs to make lease payments over 30 years in an amount sufficient to make the required debt service payments. According to audit report No. 13000, the Brevard Teaching and Research Labs has been unable to accumulate resources adequate to meet the requirements of the debt service, and, as of June 30, 1996, Brevard Community College had provided over \$1.7 million in funding for the operations of the laboratories.

In June of 1997, the Joint Legislative Auditing Committee directed the Auditor General to review the transactions of these direct-support organizations, the Brevard Community College Board of Trustees, and several other entities that have conducted business for the college or the organizations. As of this date, that audit has been presented to the Board of Trustees of Brevard Community College, and a response is expected before the audit will be published.

III. Effect of Proposed Changes:

The legislation under consideration would require each direct-support organization for a community college to submit to the president and board of trustees, and each direct-support organization for a university to submit to the president and the Board of Regents, its Form 1023 and Form 990, Internal Revenue Service Application for Recognition of Exemption and annual Return of Organization Exempt from Income Tax.

The bill would require a community college direct-support organization to submit its annual audit to the State Board of Community Colleges as well as to its board of trustees.

For each community college direct-support organization, the bill would change the membership of the Board of Directors to include the president or the president's designee and a member appointed by the chairperson of the board of trustees. The president or a designee would also serve on the executive committee. Any statewide community college direct-support organization would be required to include on its board of directors and executive committee the chairperson of the State Board of Community Colleges or the chairperson's designee and a representative appointed by the chairperson.

The bill would delete authorization for a center of technology innovation to acquire, lease, and sublease property. However, since the only center currently designated is also a direct-support organization, this provision would probably not affect its lease of a laboratory building from Brevard Community College.

The bill would make it illegal for a community college or unit of local government to transfer or pledge public funds or property to a direct-support organization. This provision would prohibit community colleges from guaranteeing bond issues used to construct student housing or other buildings. It would not affect legal obligations for bonds already issued, but would prohibit colleges from entering into them after March 6, 1998.

A community college board of trustees would be required to approve any transaction or agreement between direct-support organizations or between a direct-support organization and a center of technology innovation.

Community college accountability plans would be required to address the issue of institutional assessment efforts. The term “institutional assessment” is one of the criteria used by the Southern Association of Colleges and Schools (SACS) in the accrediting process.

In addition, the proposed legislation would require community college boards of trustees to evaluate the president annually rather than periodically.

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:

Community colleges would be prohibited from guaranteeing bond issues used by direct-support organizations to construct student housing or other buildings.

Brevard Community College has contributed substantially to the Brevard Teaching and Research Labs, presumably with private funds. The labs have incurred substantial debt and a

large loss and might not survive without continued support from Brevard Community College. If this bill became a law, the college's ability to continue its contributions would be strictly limited to private donations the college received.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The word "statewide" on page 4, line 5, should be deleted. The section of the Florida Statutes in which that word would be inserted does not concern statewide direct-support organizations.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Education:

Deletes the word "statewide" from language inserted into a section that does not concern statewide direct-support organizations.

#2 by Education:

Deletes 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.