

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: March 5, 1998 Revised: 03/12/98 \_\_\_\_\_

Subject: Municipalities

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Givens</u>	<u>Austin</u>	<u>CM</u>	<u>Fav/1 amendment</u>
2.	<u>_____</u>	<u>_____</u>	<u>CA</u>	<u>_____</u>
3.	<u>_____</u>	<u>_____</u>	<u>WM</u>	<u>_____</u>
4.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

**I. Summary:**

This bill authorizes municipal governing bodies to expend public funds to attract and retain business enterprises.

The bill specifies that such use of public funds constitutes a public purpose, and the bill defines economic development activities as including but not limited to the following:

- developing or improving local infrastructure;
- issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants;
- leasing or conveying real property and
- making grants to private enterprises for the expansion of businesses to the community

This bill amends section 166.021, Florida Statutes.

**II. Present Situation:**

In Florida, the extent to which public funds can be used to benefit private corporations is dictated, in large measure, by a constitutional provision on pledging credit. Section 10 of Article VII of the State Constitution (Section 10) provides that “neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person.” The section does not, however, prohibit laws authorizing: 1) the investment of public trust funds; 2) the investment of other public funds in obligations of, or insured by, the United States; 3) the issuance by local governments of revenue bonds to finance the cost of capital projects for airports, port facilities, or industrial or manufacturing plants; and

4) a county or municipality to be a joint owner of, or use its taxing power or credit for the joint ownership of electrical energy generating or transmission facilities.

Enacted in 1968, Section 10 represents a combination of prior constitutional provisions that also prohibited governments from using their taxing power or credit in aid of private enterprises or individuals. The Florida Supreme Court has explained that the purpose behind the prohibition is to protect public funds from being exploited in assisting or promoting private ventures when the public would be only incidentally benefited. (*Bannon v. Port of Palm Beach Dist.*, 246 So. 2d 737 (1971).) In evaluating the constitutionality of government activities under Section 10 and its predecessors, the Court has focused on whether a project serves a public purpose. Using this test, the Court has ruled that a private corporation cannot be the primary beneficiary of a project in which taxpayers are being obligated to pay something to someone. The Court, however, has permitted a private entity to be incidentally benefited by projects for which the public was the main beneficiary. (See *State v. Clay County Dev. Auth.*, 140 So. 2d 576 (1962).) Historically, the Court took the approach that fostering economic development and its accompanying community benefits was not a sufficient ground to support the use of public funds to aid a private business. (See *State v. Town of North Miami*, 59 So. 2d 779 (1952).)

The 1968 revisions to the State Constitution made clear that the prohibition against aid to private enterprises did not prohibit laws authorizing local governments to issue nonrecourse revenue bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants. (See s. 10(c), Art. VII, State Constitution.) In this revenue bond context, the Florida Supreme Court has applied a less stringent public purpose test. It has declared that when the use of taxing power or a pledge of credit is not involved, an indirect public benefit can support public participation in an economic development project. The Court has also, in such revenue bond cases, deferred to legislative findings that private economic development serves a public purpose. (*Linscott v. Orange County Indus. Dev. Auth.*, 443 So. 2d 97 (1983).)

As industrial recruitment competition intensifies, many counties are exploring new and innovative incentive packages designed to attract and retain businesses within their borders. Although the Florida Supreme Court has indicated a willingness to relax the public purpose test when the government is not using its taxing power or credit, many counties continue to seek guidance on the extent to which the contribution of public resources toward private economic development will constitute a valid public purpose.

Current law does not specifically authorize municipalities to expend public funds to attract and retain business enterprises. However, the federal government annually allows non-governmental tax exempt private activity bonds to be issued in each state. This allocation is referred to as the state volume limitation, which is approximately \$697,650,000 for Florida in 1996. Florida has created five types of pools designed to finance specific projects with these tax exempt private activity bonds, and has set aside a portion of the state's volume limitation into each pool. The five types of pools are the Manufacturing Facility Bond Pool, Regional Allocation Pools, Florida Housing Finance Agency, State Allocation Pool and the Florida First Business Pool. The Florida manufacturing Facility Bond Pool is allocated the first \$75 million of the state's volume limitation

to finance manufacturing projects. The remaining four types of pools are allocated, on a percentage basis, the remaining state volume limitation after the initial \$75 million allocation to the Manufacturing Facility Bond Pool.

The federal program which authorizes Private Activity Bonds (PABs) does not provide funds for authorized projects; rather, it authorizes local governments to issue or to approve bonds to finance such projects the income of which is exempt from federal income tax liability. The bonds are generally repaid from the revenue stream generated by the project once it is completed. This means that the project owner or developer is responsible for repaying the bondholders rather than the local governmental entity which issued or approved the issuance of the bonds. The PAB program is structured to allow a local governmental entity to lend its tax-exempt status to a developer in order to provide for projects within the local government's jurisdiction.

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

Under the provisions of this bill, municipalities would now have specific authority to expend public funds to attract and retain business enterprises.

The bill defines economic development activities as including, but not limited to, developing or improving local infrastructure; issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants; leasing or conveying real property; and making grants to private enterprises for the expansion of businesses to the community.

The bill declares that the use of public funds towards the achievement of economic goals constitutes a public purpose.

### **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:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Commerce and Economic Opportunities:

Provides that nothing in the amended subsection shall be construed as a limitation on the home rule powers granted by the State Constitution for municipalities.