

STORAGE NAME: h1075s1z.rpp
DATE: May 16, 2000

****FAILED TO PASS THE LEGISLATURE****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
REAL PROPERTY AND PROBATE
FINAL ANALYSIS**

BILL #: CS/HB 1075

RELATING TO: Grants & Aids Appropriations

SPONSOR(S): Committee on Real Property & Probate, Representative Hafner and others

TIED BILL(S):

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

- (1) REAL PROPERTY & PROBATE YEAS 9 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
 - (3) GENERAL APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

A fixed capital outlay grants and aids appropriation is an appropriation of state funds to local government or to a private nonprofit entity for the purchase of real property, or for construction or renovation of improvements to real property. In the past few years, it is has become increasingly common for proviso language in such appropriations made to nonprofit entities to require some form of security interest in the property in order to ensure compliance with the intent of the grant. Those provisos, however, give little guidance as to the specific terms that should be required.

This bill creates s. 216.348, F.S., which provides the conditions a grantee must comply with to receive a fixed capital outlay grants and aids appropriation. The section only applies if the bill appropriating a fixed capital outlay grant refers to the section. A bill appropriating a fixed capital outlay grant may modify the conditions set forth in the new section of law.

This bill does not appear to have a fiscal impact on state or local government.

On May 5, 2000, this bill died in the Committee on General Appropriations. Substantially similar provisions passed at Section 35 of HB 2377, 3rd Engrossed.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill allows for the imposition of additional requirements on private entities which receive a fixed capital outlay grants and aids appropriation.

B. PRESENT SITUATION:

The state appropriates funds to local governments and to private nonprofit entities to purchase, improve, and repair real property. This appropriation is known as a fixed capital outlay grants and aids appropriation.

The term "fixed capital outlay" means "real property (land, buildings, including appurtenances, fixtures and fixed equipment, structures, etc.), including additions, replacements, major repairs, and renovations to real property which materially extend its useful life or materially improve or change its functional use and including furniture and equipment necessary to furnish and operate a new or improved facility, when appropriated by the Legislature in the fixed capital outlay appropriation category."¹

The term "grants and aids" means "contributions to units of governments or nonprofit organizations to be used for one or more specified purposes, activities, or facilities. Funds appropriated under this category may be advanced."²

Effective July 1, 2000, the Florida Single Audit Act, s. 216.3491, F.S., provides uniform state audit requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects; promotes sound financial management, including effective internal controls, with respect to state financial assistance administered by nonstate entities; promotes audit economy and efficiency by relying, to the extent possible, on already required audits of federal financial assistance provided to nonstate entities; provides for identification of state financial assistance transactions in the appropriations act, state accounting records, and recipient organization records; promotes improved coordination and cooperation within and between affected state agencies making state awards and nonstate entities receiving state awards; and ensures, to the maximum

¹ Section 216.011(1)(o), F.S.

² Section 216.011(1)(q), F.S.

extent possible, that state agencies monitor, use, and followup on audits of state financial assistance provided to nonstate entities.

C. EFFECT OF PROPOSED CHANGES:

This bill creates a new section of law which provides conditions with which a grantee³ must comply in order to receive a fixed capital outlay grants and aids appropriation. The section only applies if the bill appropriating a fixed capital outlay grant refers to the section. A bill appropriating a fixed capital outlay grant may also modify the conditions set forth in the new section of law. Specifically, this bill:

- Creates s. 216.348, F.S.
- Provides that this section only applies if the bill granting the appropriation refers to this section.
- Provides definitions of “administering agency”, “grant”, “grantee”, and “fixed capital outlay”.
- Requires a grantee to provide the administering agency with an affidavit by an officer or director of the grantee certifying under oath that the grantee is a nonprofit entity, and requires a written agreement between the administering agency and the grantee.
- Provides that, if the grantee is acquiring real property with the grant, or if the grantee owns the real property upon which an improvement is being constructed, renovated, altered, modified, or maintained with the grant, the grantee must execute, deliver, and record in the county in which the subject property is located, an agreement that states a correct legal description of the real property; sets forth with specificity the buildings, appurtenances, fixtures, fixed equipment, structures, improvements, renovations, and personalty to be purchased pursuant to the grant; and prohibits the grantee from selling, transferring, mortgaging, or assigning the grantee’s interest in the real property, improvements, and personalty, during the term of the agreement, unless the administering agency approves the sale, transfer, mortgage, or assignment; and, in the case of sale, transfer, or assignment, the purchaser, transferror, or assignee must fully assume, in writing, all of the terms and conditions of the agreement. The administering agency, at its discretion, may agree to subordination to a mortgage.
- Provides that, if the grantee is not acquiring real property, or does not own the real property being improved, the agreement must specify: the leasehold or other real property interest the grantee has in the real property; the name of the owner of the real property; the relationship between the owner of the real property and the grantee; and the improvements, renovations, and personalty being purchased. The agreement must: require the grantee to execute and deliver a security instrument, financing statement, or other appropriate document securing the interest of the administering agency in the improvements, renovations, and personalty associated with the grant. The administering agency, in its discretion, may agree to subordination or modification of a security interest.

³ “Grantee” is defined in this bill as “a nonprofit entity, other than a governmental entity, to which the Legislature has appropriated over \$50,000 pursuant to a fixed capital outlay grants and aids appropriation.”

- Further provides that all agreements must: require the grantee to continue the operation, maintenance, repair, and administration of the property in accordance with the purposes for which the funds were originally appropriated and for the period of time expressly specified by the bill appropriating the grant, and if the bill appropriating the grant does not specify a time period, the administering agency must determine a reasonable period of time; provide that if the grantee fails to operate, maintain, repair, and administer the property in accordance with the purposes for which the funds were originally granted, the grantee must return to the administering agency an amount calculated by reference to a formula in the appropriation, on a prorata basis if the length of time is specified in the appropriation, or, if the appropriation is silent, by a formula set forth by the administering agency, which shall be no less than the full amount of the grant less \$100,000 or 10 percent of the grant, whichever is more, for each full year for which the property was used for such purposes. Any funds returned by the grantee must be paid into the state fund from which the grant was originally made.
- Provides that all agreements must: require that the grantee adopt an accounting system, in compliance with generally accepted accounting principles, which must provide for a complete record of the use of the grant money; provide that the provisions of s. 216.3491, F.S., the Florida Single Audit Act, apply; provide that the grantee shall indemnify, defend, and hold the administering agency harmless from and against any and all claims or demands for damages resulting from personal injury, including death or damage to property, arising out of or relating to the subject property or the use of the grant money; require the grantee to purchase and maintain insurance on behalf of directors, officers, and employees of the grantee against any personal liability or accountability by reason of actions taken while acting within the scope of their authority; provide that the administering agency shall be immune from civil or criminal liability resulting from acts or omissions of the grantee and the grantee's agents, employees, or assigns; require the grantee to return any portion of the grant money received that is not necessary to the purchase of the land, or to the cost of the improvements, renovations, and personalty, for which the grant was awarded.
- Provides that an agreement may: require that, during any term or period of construction, or until such time as the grant money is fully and properly spent according to the bill appropriating the grant, the grantee obtain a blanket fidelity bond, in the amount of the grant, issued by a company authorized and licensed to do business in this state, which will reimburse the administering agency in the event that anyone handling the grant monies either misappropriates or absconds with the grant monies, and that all employees handling the grant monies must be covered by the bond; include any other term or condition the administering agency deems reasonable and necessary for the effective and efficient administration of the grant; modify any condition required by this subsection, provided the administering agency deems that such modification is necessary in order to best effectuate the purpose of the grant and provided the bill appropriating the grant, or applicable law, does not otherwise require the condition to be met.
- Requires the administering agency to execute a satisfaction of the agreement in recordable form upon full compliance by the grantee with the terms of the agreement.

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

none

2. Expenditures:

none

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

none

2. Expenditures:

none

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

none

D. FISCAL COMMENTS:

This bill may increase the administrative costs to a nonprofit entity receiving a fixed capital outlay grants and aids appropriation, which would have the effect of lowering the net funds available to the nonprofit entity receiving such an appropriation. This cost should not be substantial.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

In *Brown v. Firestone*,⁴ the Florida Supreme Court stated:

The Florida Legislature is vested with authority to enact appropriations and reasonably to direct their use. In furtherance of the latter power, the legislature may attach qualifications or restrictions to the use of appropriated funds. The authority to enact appropriations is tempered by the limitation . . . that laws making appropriations shall contain provisions on no other subject.⁵

Although a proviso may direct how a particular appropriation is to be spent, it cannot modify statutory law. Accordingly, the provisions in this new section of law created by this bill are not mandatory, in order to allow the greatest flexibility in proviso language, and in order to comply with, for instance, federal matching grant conditions that would be related to a particular appropriation.

B. RULE-MAKING AUTHORITY:

none

C. OTHER COMMENTS:

none

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 4, 2000, the Committee on Real Property & Probate met on the proposed committee substitute (PCS) to HB 1075. Three amendments to the PCS were adopted:

1. This amendment clarifies and matches the responsibilities of grantees that do not own the real property related to the grant and grantees that do own the real property related to the grant. This amendment also clarifies that the restriction upon sale or transfer of the real property, improvements, and personalty only applies during the term of the agreement.
2. The proposed committee substitute requires a grantee to return a portion of the grant to the administering agency should the grantee fail to operate, maintain, repair or administer the property in accordance with the purpose of the grant. This amendment

⁴ *Brown v. Firestone*, 382 So.2d 654 (Fla. 1980).

⁵ *Id.* at 663.

STORAGE NAME: h1075s1z.rpp

DATE: May 16, 2000

PAGE 7

clarifies that this requirement only applies during the term of the agreement, and provides that the time for return of the monies is "no later than upon demand by the administering agency".

3. Changes the phrase "furniture and equipment" to the more comprehensive term "personalty".

The proposed committee substitute, as amended, was reported favorably as a committee substitute.

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

Staff Director:

Nathan L. Bond, J.D.

J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

Jennifer D. Krell

Jimmy O. Helms

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON REAL PROPERTY AND PROBATE:

Prepared by:

Staff Director:

Nathan L. Bond, J.D.

J. Marleen Ahearn, Ph.D, J.D.