

STORAGE NAME: h0505s2a.go

DATE: March 23, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: CS/CS/HB 505

RELATING TO: Direct-Support Organizations

SPONSOR(S): Committees on Community Colleges and Career Prep and Colleges &
Universities, Representative Betancourt and others

TIED BILL(S):

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

- (1) COLLEGES & UNIVERSITIES YEAS 5 NAYS 0
- (2) COMMUNITY COLLEGES & CAREER PREP YEAS 10 NAYS 0
- (3) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
- (4)
- (5)

I. SUMMARY:

CS/CS/HB 505 revises current statutory provisions relating to university direct-support organizations, community college direct-support organizations, and statewide community college direct-support organizations.

CS/CS/HB 505 specifically prohibits such organizations from giving, either directly or indirectly, any gift to a political committee or committee of continuous existence as defined in s. 106.011, F.S., for any purpose that is unrelated to the educational mission of a university, community college, or the State Board of Community Colleges.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes ☐ | No ☐ | N/A ☒ |
| 2. <u>Lower Taxes</u> | Yes ☐ | No ☐ | N/A ☒ |
| 3. <u>Individual Freedom</u> | Yes ☐ | No ☐ | N/A ☒ |
| 4. <u>Personal Responsibility</u> | Yes ☐ | No ☐ | N/A ☒ |
| 5. <u>Family Empowerment</u> | Yes ☐ | No ☐ | N/A ☒ |

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

B. PRESENT SITUATION:

Current law provides for the establishment of direct-support organizations to support public postsecondary education institutions. Direct-support organizations must be organized and operated exclusively to receive, hold, invest, and administer property and to make expenditure to, or for the benefit of a state university, community college, or the Community College System.

The specific statutory provisions relating to the three types of direct-support organizations are generally similar. Each direct-support organization must be reviewed and certified by the appropriate board. Each direct-support organization may use the property, facilities, and personal services of the university or community college. Each direct-support organization must submit an annual audit report as well as copies of its federal Internal Revenue Service Application for Recognition of Exemption form (Form 1023) and its federal Internal Revenue Service return of Organization Exempt from Income Tax form (Form 990).

Each type of direct-support organization has a public records exemption. The identity of donors who desire to remain anonymous is protected for all three types of direct-support organizations. The public records exemption for the state universities is broader than the public records exemption for the community college direct-support organizations and the public records exemption for the Statewide community college direct-support organizations. Information necessary for the auditor's report and any information related to the expenditure of funds are specifically excluded from the public records exemption for the community college direct-support organizations. The public records exemption for statewide community college direct-support organizations is limited to the identity of a donor or prospective donor who desires to remain anonymous and all information identifying such a donor or prospective donor.

There are some restrictions prescribed in statute on the activities of the community college direct-support organizations and the Statewide community college direct-support organizations. There are no specific statutory restrictions on the activities of university direct-support organizations.

A more specific discussion of each type of direct-support organization as well as a list of active direct-support organizations is included in the following sections.

UNIVERSITY DIRECT-SUPPORT ORGANIZATIONS

Section 240.299, F.S., provides for the establishment of university direct-support organizations. A direct-support organization can be described as a quasi-governmental entity, a private corporation performing a government-related function. A university direct-support organization must be a Florida corporation not for profit, incorporated under the provisions of chapter 617, F.S., and approved by the Department of State. The organization must be organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a state university in Florida or a research and development park or a research and development authority affiliated with a state university. The identity of donors who desire to remain anonymous must be protected.

The organization must be reviewed by the Board of Regents and subsequently certified to be operating in a manner consistent with the goals of the university and in the best interest of the state. If an organization is denied certification by the Board of Regents, that organization is prohibited from using the name of the university it serves.

The Board of Regents may permit a university direct-support organization to use the property, facilities, and personal services of a state university. Subject to provisions of law, university direct-support organizations may establish accounts with the State Board of Administration for investment of funds.

The Board of Regents may appoint a representative to the board of directors and the executive committee of any direct-support organization. The president of the university for which the direct-support organization is established, or the president's designee, must serve on the board of directors and the executive committee of any direct-support organization.

Each direct-support organization must submit an annual audit and a management letter to the Auditor General and the Board of Regents. The audit must be conducted by an independent certified public accountant in accordance with rules of the Board of Regents. The Board of Regents and the Auditor General may require any additional information relative to the organization. The anonymity of donors who desire to remain anonymous must be maintained in the auditor's report.

University direct-support organizations currently have a public records exemption for all records of the organization other than the auditor's report, management letter, and any supplemental data requested by the Board of Regents and the Auditor General. Section 240.299, F.S., does not provide a public meetings exemption for university direct-support organizations.

Each direct-support organization must submit to the university president and the Board of Regents its federal Internal Revenue Service Application for Recognition of Exemption form (Form 1023) and its federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).

In response to a recent survey by staff of the Colleges & Universities Committee, the State University System identified 43 active university direct-support organizations. Each of the 10 state universities has at least one direct-support organization. The reported direct-support organizations include:

University of Florida: 15 reported direct-support organizations -- Citrus Research and Education Foundation; Florida Association of Basic Medical Scientists; Florida Foundation Seed Producers; Florida 4-H Foundation; University of Florida Leadership and Education Foundation; Gator Boosters; Southwest Florida Research and Education Foundation; Treasure Coast Agricultural Research Foundation; University Athletic Association; University of Florida National Alumni Association; University of Florida Foundation; University of Florida Orthopedic Tissue Bank; University of Florida Law Center; University of Florida Research and Development Park; University of Florida Research Foundation.

Florida State University: Six reported direct-support organizations -- FSU International Programs Association; FSU Foundation; FSU Alumni Association; The Florida State University Research Foundation; FSU Financial Assistance; Seminole Boosters.

Florida A&M University: Two reported direct-support organizations -- Florida A&M University National Alumni Organization; Florida A&M University Foundation.

University of South Florida: Six reported direct-support organizations -- USF Alumni Association; USF Foundation; USF Medical Services Support Corporation; USF Research Foundation; The Sun Dome, Inc.; USF Charter School, Inc.

Florida Atlantic University: Two reported direct-support organizations -- FAU Foundation; Florida Atlantic Research Corporation.

University of West Florida: Two reported direct-support organizations -- UWF Foundation; Research Foundation of the University of West Florida.

University of Central Florida: Three reported direct-support organizations -- UCF Foundation; The Research Foundation of the University of Central Florida; Golden Knights Club.

Florida International University: Two reported direct-support organizations -- FIU Research Foundation; FIU Foundation.

University of North Florida: Two reported direct-support organizations -- UNF Foundation; UNF Training and Service Institute.

Florida Gulf Coast University: One reported direct-support organization -- FGCU Foundation.

Board of Regents: One reported direct-support organization -- The Board of Regents Foundation, Inc.

COMMUNITY COLLEGE DIRECT-SUPPORT ORGANIZATIONS

Section 240.331, F.S., provides for the establishment of community college direct-support organizations. A community college direct-support organization must be a Florida corporation not for profit, incorporated under the provisions of chapter 617, F.S., and approved by the Department of State. The organization must be organized and operated exclusively to receive, hold, invest, and administer property and to make expenditure to or

for the benefit of a community college in this state. The identity of donors who desire to remain anonymous must be protected.

The organization must be reviewed by the board of trustees of the community college and subsequently certified to be operating in a manner consistent with the goals of the community college and in the best interest of the state. If an organization is denied certification by the board of trustees of the community college, that organization is prohibited from using the name of the community college it serves.

The chair of the community college board of trustees may appoint a representative to the board of directors and the executive committee of any direct-support organization. The president of the community college for which the direct-support organization is established, or the president's designee, must serve on the board of directors and the executive committee of any direct-support organization.

The board of trustees of a community college may permit a community college direct-support organization to use the property, facilities, and personal services of the community college.

Unlike the university direct-support organizations, there are some statutorily prescribed restrictions on the activities of community college direct-support organizations (See s. 240.331(4), F.S.) A community college direct-support organization may, at the request of the district board of trustees, provide residency opportunities on or near campus for students. A direct support-organization that constructs facilities for use by a community college or its students must comply with all requirements of chapter 240, F.S., relating to the construction of facilities by a community college, including requirements for competitive bidding. Finally, any transaction or agreement between two direct-support organizations or between a direct-support organization and a center of technology innovation must be approved by the district board of trustees.

Each community college direct-support organization must submit an annual audit report to the Auditor General, the State Board of Community Colleges, and the board of trustees for review. The audit must be conducted by an independent certified public accountant in accordance with rules of the district board of trustees. The board of trustees and the Auditor General may require any additional information relative to the organization. The anonymity of donors who desire to remain anonymous must be maintained in the auditor's report.

Community college direct-support organizations currently have a public records exemption for all records of the organization other than the auditor's report, any information necessary for the auditor's report, any information related to the expenditure of funds, and any supplemental data requested by the board of trustees and the Auditor General. Section 240.331, F.S., does not provide a public meetings exemption for community college direct-support organizations.

Each direct-support organization must submit to the board of trustees its federal Internal Revenue Service Application for Recognition of Exemption form (Form 1023) and its federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).

In response to a recent survey by staff of the Colleges & Universities Committee, the Community College System identified 36 active community college direct-support organizations. Each of the 28 community colleges reports at least one direct-support

organization. Seven community colleges have more than one direct-support organization. The reported direct-support organizations include:

Brevard Community College: Four reported direct-support organizations -- Cocoa Village Playhouse; Maxwell C. King Center for the Performing Arts; Brevard Teaching and Research Laboratories; and Florida Education and Research Foundation.

Broward Community College: One reported direct-support organization -- Broward Community College Foundation.

Central Florida Community College: Two reported direct-support organizations -- Central Florida Community College Foundation; Patriot Athletic Booster Association.

Daytona Beach Community College: Two reported direct-support organizations -- Coastal Educational Broadcasters, Inc.; Daytona Beach Community College Foundation.

Edison Community College: One reported direct-support organization -- Edison Community College Foundation.

Florida Community College at Jacksonville: One reported direct-support organization -- Florida Community College at Jacksonville Foundation.

Florida Keys Community College: Two reported direct-support organizations -- Florida Keys Educational Foundation; Tennessee Williams Fine Arts Center Founders' Society.

Gulf Coast Community College: Two reported direct-support organizations -- Gulf Coast Community College Foundation; Gulf Coast Athletic Association.

Hillsborough Community College: One reported direct-support organization -- Hillsborough Community College Foundation.

Indian River Community College: One reported direct-support organization -- Indian River Community College Foundation.

Lake-Sumter Community College: One reported direct-support organization -- Lake-Sumter Community College Foundation.

Manatee Community College: One reported direct-support organization -- Manatee Community College Foundation.

Miami-Dade Community College: One reported direct-support organization -- Miami-Dade Community College Foundation.

North Florida Community College: One reported direct-support organization -- North Florida Community College Foundation.

Okaloosa-Walton Community College: One reported direct-support organization -- Okaloosa-Walton Community College Foundation.

Pasco-Hernando Community College: One reported direct-support organization -- PHCC Foundation, Inc.

Palm Beach Community College: One reported direct-support organization -- Palm Beach Community College Foundation.

Pensacola Junior College: Two reported direct-support organizations -- Pensacola Junior College Foundation; WSRE-TV Foundation.

Polk Community College: One reported direct-support organization -- Polk Community College Foundation.

St. Johns River Community College: One reported direct-support organization -- St. Johns River Community College Foundation.

St. Petersburg Junior College: Three reported direct-support organizations -- St. Petersburg Junior College Development Foundation; St. Petersburg Junior College Athletic Boosters; St. Petersburg Junior College Alumni Association.

Santa Fe Community College: One reported direct-support organization -- Santa Fe Community College Endowment Corporation.

Seminole Community College: One reported direct-support organization -- Seminole Community College Foundation.

South Florida Community College: One reported direct-support organization -- South Florida Community College Foundation.

Tallahassee Community College Foundation: One reported direct-support organization -- Tallahassee Community College Foundation.

Valencia Community College: One reported direct-support organization -- Valencia Community College Foundation.

STATEWIDE COMMUNITY COLLEGE DIRECT-SUPPORT ORGANIZATIONS

Section 240.3315, F.S., provides for the establishment of statewide community college direct-support organizations. A statewide community college direct-support organization must be a Florida corporation not for profit, incorporated under the provisions of chapter 617, F.S., and approved by the Department of State. The organization must be organized and operated exclusively to receive, hold, invest, and administer property and to make expenditure to or for the benefit of the Community College System in this state. The identity of donors who desire to remain anonymous must be protected.

The organization must be reviewed by the State Board of Community Colleges and subsequently certified to be operating in a manner consistent with the goals of the Community College System and in the best interest of the state. If an organization is denied certification by the State Board of Community Colleges, that organization is prohibited from using the name of any community college.

The chair of the State Board of Community Colleges may appoint a representative to the board of directors and the executive committee of any direct-support organization. The

chair of the State Board of Community Colleges, or the chair's designee, must serve on the board of directors and the executive committee of any direct-support organization established to benefit the Florida Community College System.

The State Board of Community Colleges may permit a statewide community college direct-support organization to use the property, facilities, and personal services of the Division of Community Colleges.

Unlike the university direct-support organizations, there are some statutorily prescribed restrictions on the activities of statewide community college direct-support organizations (See s. 240.3315(4), F.S.) A statewide community college direct-support organization may not use public funds to acquire, construct, maintain, or operate any facilities. In addition, any transaction or agreement between a statewide community college direct-support organization and any other direct-support organizations or between a statewide direct-support organization and a center of technology innovation must be approved by the State Board of Community Colleges.

Each direct-support organization must submit an annual audit report to the Auditor General and the State Board of Community Colleges for review. The audit must be conducted by an independent certified public accountant in accordance with rules of the State Board of Community Colleges. The State Board of Community Colleges and the Auditor General may require any additional information relative to the organization. The identity of donors who desire to remain anonymous must be maintained in the auditor's report.

Statewide community college direct-support organizations currently have a limited public records exemption for the identity of a donor or prospective donor who desires to remain anonymous and all information identifying such donor or prospective donor. Section 240.3315, F.S., does not provide a public meetings exemption for statewide community college direct support-organizations.

Each direct-support organization must submit to the State Board of Community Colleges its federal Internal Revenue Service Application for Recognition of Exemption form (Form 1023) and its federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).

Staff of the State Board of Community Colleges report one active statewide community college direct-support organization -- The Foundation for Florida's Community Colleges.

POLITICAL COMMITTEE AND COMMITTEE OF CONTINUOUS EXISTENCE

Chapter 106, F.S., contains provisions relating to campaign financing. Subsection 106.11(1), F.S., defines "political committee" as a combination of two or more individuals, or a person other than an individual, the primary or incidental purpose of which is to support or oppose any candidate, issue, or political party, which accepts contributions or makes expenditures during a calendar year in an aggregate amount in excess of \$500. "Political committee" also means the sponsor of a proposed constitutional amendment by initiative who intends to seek the signatures of registered electors. Organizations which are certified by the Department of State as "committees of continuous existence" pursuant to s. 106.04, F.S., are not considered political committees for purposes of Chapter 106, F.S.

Subsection 106.011(2), F.S., defines "committee of continuous existence" as any group, organization, association, or other such entity which is certified pursuant to the provisions

of s. 106.04, F.S. Section 106.04, F.S., provides that a committee of continuous existence is an entity which is involved in making contributions to candidates, political committees, or political parties which meets the following criteria:

- (1) It must be organized and operated in accordance with a written charter or set of bylaws which contain procedures for the election of officers and directors and which clearly define membership in the organization.
- (2) At least 25% of the income of the organization must be derived from dues or assessments payable on a regular basis by its membership.

EXPENDITURES BY DIRECT SUPPORT ORGANIZATIONS TO SUPPORT POLITICAL ACTION COMMITTEES

As noted in previous sections, there are few specific limitations provided in state law regarding the expenditures of university and community college direct-support organizations. In general, expenditures are to be made to benefit the university or community college. In some instance, approval of the appropriate governing body is required. With regard to construction of facilities, community college direct-support organizations must comply with the provisions of chapter 240, including requirements for competitive bidding.

The impetus for this bill was an incident which occurred during the Summer of 1999. Two direct-support organizations, one from a state university and one from a community college, contributed \$449,000 to a political committee in support of a referendum to increase a local sales tax to fund transit projects. Supporters of the contributions suggested that success of the referendum would provide greater access for students by virtue of improved transportation as well as free up local funds to provide increased funding for scholarships at the respective institutions. Such contributions were made in the belief that they were permissible contributions since they were made for the benefit of the university or community college. Opponents of the contributions questioned the appropriateness of using funds from direct-support organizations to support political referendums rather than in support of traditional educational expenditures such as funding for scholarships, faculty travel, or research efforts, especially since the referendum failed.

Opponents of the direct-support organization contributions also questioned the public records exemption provided to direct-support organizations which protects the identity of donors who wish to remain anonymous. Such a protection would allow the use of a direct-support organization by persons wishing to contribute funds indirectly to political committees and committees of continuing existence while maintaining anonymity. No such allegation has been made in this particular case.

The Board of Regents recently authorized the Chancellor to revise the Chancellor's Memorandum, which is an internal policy document, to prohibit state university direct-support organizations from making contributions to political committees and committees of continuing existence. Contributions from community college direct-support organizations are not affected by this action.

C. EFFECT OF PROPOSED CHANGES:

CS/CS/HB 505 specifically prohibits university direct-support organizations, community college direct-support organizations, and statewide community-college direct-support organizations from giving either directly or indirectly, any gift to a political committee or a committee of continuous existence as defined in s. 106.011, F.S., for any purpose that is unrelated to the educational mission of the university, community college, or State Board of Community Colleges.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

CS/CS/HB 505 expressly prohibits direct-support organizations for public postsecondary institutions from expending funds to support political committees or committees of continuous existence.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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 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:

An analysis of CS/SB 890 (which is a companion to the House bill), was prepared by staff of the Committee on Ethics and Elections on March 7, 2000. Although legal research by committee staff failed to identify any case which characterized a direct-support organization in a campaign finance context, staff noted that should a court characterize a direct-support organization as a "private entity" for purposes of Florida's campaign finance laws, the bill's absolute prohibition against contributions to political committees and committees of continuing existence would raise significant constitutional questions. Should a court characterize a direct-support organization as a governmental agency or entity for campaign purposes, there may be no constitutional impediment prohibiting direct-support organizations from contributing to political committee or committees of continuing existence.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 22, 2000, the Committee on Colleges and Universities considered HB 505 and favorably reported the bill as a committee substitute. HB 505 deleted the requirement that the identity of donors to a direct-support organization be protected. CS/HB 505 does not eliminate the current public records exemption for the identity of donors who wish to remain anonymous.

On March 13, 2000, the Committee on Community Colleges and Career Prep considered CS/HB 505 and adopted three amendments to CS/HB 505 which prohibits the use of direct-support organization funds for any purpose that is unrelated to the educational mission of a university, community college, or the State Board of Community Colleges. The committee also reported the bill favorably as a committee substitute.

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VII. SIGNATURES:

COMMITTEE ON COLLEGES & UNIVERSITIES:

Prepared by:

Staff Director:

Betty H. Tilton, Ph.D.

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AS REVISED BY THE COMMITTEE ON COMMUNITY COLLEGES & CAREER PREP:

Prepared by:

Staff Director:

KEN WINKER

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AS FURTHER REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

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