

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

Although for a relatively minimal cost, the Department of State indicates in its analysis that subsection (8) on lines 47 – 53 will require additional monitoring and reporting. See “Fiscal Impact”.

B. EFFECT OF PROPOSED CHANGES:

Background:

From 1988 to 2002, the only state funding for cultural facilities through the Division of Cultural Affairs (division) of the Department of State (department) was moneys appropriated to it for providing grants to counties, municipalities, and qualifying nonprofit corporations for the acquisition, renovation, or construction of “cultural facilities”.^{1 2}

The funding for such facilities was limited to a maximum grant amount of \$5,000 that could be requested in any year; a maximum of \$1.5 million within 5 consecutive fiscal years; and a requirement that a facility or applicant reaching the 5 year cap had to wait at least one year before re-applying.

In 2002, s. 265.702, F.S., relating to regional cultural facilities was created and took effect July 1, 2002.³ This provided a second type of funding mechanism for cultural facilities that mirrored many provisions of the original cultural facilities grant language in s. 265.701, F.S., but was directed to facilities of regional impact for which the assistance available, if appropriated, would be significantly greater than that for other cultural facilities. This section provides that the division may accept and administer moneys that are appropriated to it for providing grants to counties, municipalities, and qualified corporations for the acquisition, renovation, or construction of regional cultural facilities.⁴ In order to be eligible, the cultural facility must:

- Be a fixed facility that is primarily engaged in cultural programs;
- Have educational programs of excellence and facilities, space, and staff dedicated to the development and delivery of such cultural programs;
- Present cultural programs or exhibits that are of national or international renown or reputation;

¹ See s. 265.701, F.S.

² Guidelines for Cultural Facilities Grants, Department of State, defines “cultural facility” as a building which houses an organization whose primary function is the programming, production, presentation, exhibition or any combination of the above functions of any of the cultural disciplines, such as: music, dance, theatre, creative writing, literature, painting, sculpture, folk arts, photography, crafts, media arts, and historical and science museums.

³ See Ch. 2002-267, L.O.F.

⁴ Section 265.702(2), F.S., defines a “qualified corporation” as a corporation that is designated as a not-for-profit corporation pursuant to s. 501(c)(3) or s. 501(c)(4) of the Internal Revenue Code, that is described in and allowed to receive contributions under s. 170 of the Internal Revenue Code, and that is a corporation not for profit incorporated under chapter 617.

- Have, within a 150-mile radius of the facility, a service area that includes regular attendees, clients, or program participants; and
- Have a documented proposed acquisition, renovation, or construction cost of at least \$50 million.

A state grant awarded under this program must be matched by a contribution from the county, municipality, or nonprofit corporation in an amount equal to \$2 for each \$1 awarded. In-kind contributions of goods or services may be counted toward 50 percent of the required match. Any such in-kind contribution, however must be documented and valued at the fair-market value to the facility; directly related to the facility's acquisition, renovation, or construction; and, not be in the form of a lease.

Documented expenditures made for project purposes during the 3 years immediately preceding the award of a grant may be used as in-kind match.

The Florida Arts Council must review each grant application and submit annually to the Secretary of State for approval a list of all applications received and its recommendations, arranged in order of priority. The division may allocate grants only for regional cultural facilities that are approved by the Secretary or for which funds are appropriated by the Legislature.

Unlike the funding for the cultural institutions grants, the regional cultural facilities grant program provides that the annual amount of a grant may not exceed the lesser of \$2.5 million or 10 percent of the total costs of the regional cultural facility. Further, the total amount of the grants for awarded to a regional cultural facility in a 5-year period may not exceed the lesser of \$10 million or 10 percent of the total costs of a regional cultural facility. The total cost of a regional cultural facility is required to be calculated with respect to the primary scope of the original proposal as submitted and is not permitted to include the cost of any additions that change the scope of the facility, such as additional facilities or significant design alterations.

Funding of \$2.5 million each was requested in FY 2003-04, but not appropriated, for the City of Tampa/Tampa Museum of Art – New Museum Facility (ranked #1) and the Miami-Dade County Performing Arts Center/PAVGM: Stage Compensating Lift/Vari-Lite System (ranked #2). These requests are on the FY 2004-05 Regional Cultural Facilities Program Rollover Priority List. According to the department, these organizations also submitted application to the Cultural Facilities Program for the same project.⁵

Effect of Bill:

The bill with CS revises requirements for a regional cultural facility grant award by the Division of Cultural Affairs of the Department of State provided in s. 265.702, F.S. The bill with CS does not change the total annual maximum grant award to a facility nor does it change the total maximum for grants awarded to a facility over a set period of time; however, it does change the maximum number of years from 5 to 10 over which the \$10 million maximum can be reached and what constitutes total cost of a regional cultural facility.

The bill with CS changes requirements of total cost, one of the criteria upon which annual and total maximum grant awards are calculated. Currently, total cost of a facility is calculated on the primary scope of the original proposal submitted and prohibits inclusion of costs of additions that change the scope of the facility, such as additional facilities or significant design alterations. The bill deletes the current prohibition and allows for adjustments to the total project cost by changes in scope to reflect unexpected costs, incorporation of alternatives elected for reasons of aesthetics or cost or modifications of design provided the changes do not exceed 25 percent of the original total cost proposed and do not change the basic nature of the project.

⁵ Information obtained from the Department of State's website relating to regional cultural facilities – www.florida-arts.org/grants/regionalcultural/index.htm.

The bill with CS allows for the use of grant funds to repay funds the county, municipality, or qualified corporation for construction costs incurred for the regional cultural facility from the time of commencement to the time the grant funds are made available. Currently, a facility can only use years of documented expenditures made for project purposes during the 3 years immediately preceding the award of a grant as in-kind match.

Finally, this bill with CS changes the method of valuing endowments created pursuant to the Cultural Endowment Program to provide that such endowments are to be valued at minimum net cost, rather than at market value.⁶

C. SECTION DIRECTORY:

Section 1 amends s. 265.702, relating to regional cultural facilities, to extend a time period to which an award limit applies, allow for project cost increases, and allow a sponsoring entity to reimburse itself for funds expended prior to receiving a grant.

Section 2 amends s. 265.606, F.S., to change the method of valuing endowments under the Cultural Endowment Program.

Section 3 provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not modify a state revenue source.

2. Expenditures:

1. Recurring

General Revenue

Other Personal Services \$14,440.00

According to fiscal information provided by the Department of State (department), rule amendment would be required in the second half of FY 2004-05. Also, according to the department, s. 265.702(8), F.S., created by the bill will require increased monitoring related to expenditures and reporting resulting in the OPS request cited above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The following comments, which could impact both revenues and expenditures of local governments, were made in the fiscal analysis of the bill by the department:

- a. Local government applicants could be put at a minor disadvantage under the priority weight being added to the review criteria on reliability of proposed match being realized. Many local governments, particularly municipalities, are precluded from fully committing their own funds until all other projects funds have been secured. The first application would not likely be affected in scoring but failure to begin work on the project in a timely manner after the first grant is awarded would affect future applications.

⁶ A participant in the program states that the use of a market value standard creates great difficulties in administering the endowment because of the relative volatility of the financial markets.

- b. Extending the timeframe for additional funding eligibility would limit funding opportunities for subsequent phases. If an organization received the \$2.5 million maximum allowed each year, the overall maximum of \$10 million would be reached in 4 years and no further applications [for grant funding] could be made for 6 additional years.

2. Expenditures:

See above comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the department's fiscal analysis, extending the timeframe for additional funding eligibility, from 5 years to 10 years, would limit funding opportunities for subsequent phases. In addition, the department states that if an organization received the maximum \$2.5 million allowed per year, the \$10 million cap would be reached in 4 years and no further applications, therefore, could be made for 6 additional years.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require municipalities or counties to expend funds, does not reduce their authority to raise revenue, and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 265.702, F.S. already provides rulemaking authority that would accommodate changes; however, newly created subsection refers to the implementation of the subsection being "in accordance with rules adopted by the Division of Cultural Affairs of the Department of State". The department states that it will have to amend its current rules to accommodate changes made by this legislation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The following are additional comments on the legislation that were included in the Department of State fiscal analysis:

- Extending the maximum funding period imposed from 5 years to 10 years could extend a 1-year moratorium on new applications to a 6-year wait between grants.
- Prior grantee expenditures are currently eligible as match. Being able to change the same expenditure from local match to state funded would require resubmission/amendment of prior year reports resulting in an inability to close any single fiscal year grant until the entire project was completed.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 17, 2004, the Committee on Commerce adopted one amendment to HB 1209. The amendment removed the grant award criteria revision that would require that the two primary considerations for any grant award would be the quality of the entire project being proposed and the reliability of the prospects of achieving the required match. The bill was then reported favorably with a committee substitute.

On March 29, 2004, the Committee on State Administration adopted one amendment to this bill. The amendment amends s. 265.606, F.S., to provide that endowments under the Cultural Endowment Program are to be valued at cost rather than at market. The bill was then reported favorably with a committee substitute.