

SUPLANTING PROHIBITION ANALYSIS

ARS 8-1183 provides for a prohibition on supplanting of state funds by First Things First expenditures. This section reads:

“Program and grant funds distributed under this chapter and other expenditures by the board pursuant to section 8-1192 shall supplement, not supplant, other state expenditures on, and federal monies received for, early childhood development and health programs. This section shall not prohibit the legislature from appropriating money to board programs or vesting the board with authority to spend additional, legislatively appropriated funds on early childhood development and health programs.” (Emphasis added.)

What does this prohibition on supplanting mean? Webster’s Unabridged Dictionary defines “supplant” as “to take the place of...to replace by something else.” It seems clear the non-supplanting language means that no FTF monies expended are to be used to take the place of any existing state or federal funding for early childhood development and health programs. The intent is to have FTF monies supplement or add to existing expenditure levels.

While the intent of the language appears clear, its practical application may still be subject to some confusion. During the budget process for subsequent year appropriations, the legislature and governor generally take the position that they can fund or not fund anything upon which they agree, as long as it does not violate any law. It can be argued, using the supplanting provision, that the legislature cannot reduce funding in the current or a subsequent year that would reduce the affect of added funding by FTF for any program or service affecting children five and under. That would seem to be a fact question examining why the legislature and governor reduced or eliminated funding and whether or not the action violates the non-supplanting provision. It would likely have to be litigated to obtain a court ruling interpreting the applicability of ARS 8-1192 to the facts involved in the specific instance.

The question that has arisen for the Board is whether the supplanting prohibition allows FTF to fund or add funds to any program that is a state responsibility, but where funds have not been provided previously, or where prior funds have been eliminated or reduced. Nothing in ARS 8-1192 seems to prevent FTF from funding a program that should be a state responsibility. If that were the case, FTF could not expend any funds, since any early childhood development and health program could be interpreted as a state responsibility. The fact that the early childhood system has not been adequately funded is one of the reasons FTF was created. It is also reasonable for FTF to add funds to a program or service at any level as long as it is adding to, not replacing, the funding provided by the legislature. If the legislature decides to reduce or no longer fund a program, it appears FTF has full authority to determine on its own in the future whether or not to provide funding for that program. Therefore, the non-supplanting provision seems to mean that:

(a) FTF cannot enter into an agreement with the governor or the legislature to fund all or part of a program or service that is being funded by the state currently,

(b) Nothing prohibits the Board from funding any program or service which is not being funded, or is being only partially funded, in the year for which First Things First money is allocated, and

(c) It could be problematic for the legislature or governor to reduce funding of a program in which FTF had supplemented the state funding, thereby negating FTF’s supplementation, with the facts for taking the action determining whether or not the FTF funds had supplanted state funds.