



---

# **Health & Human Services Access Subcommittee**

**Wednesday, January 11, 2012  
8:00 – 10:30 AM  
12 HOB**

**Dean Cannon  
Speaker**

**Dennis K. Baxley  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Health & Human Services Access Subcommittee

**Start Date and Time:** Wednesday, January 11, 2012 08:00 am  
**End Date and Time:** Wednesday, January 11, 2012 10:30 am  
**Location:** 12 HOB  
**Duration:** 2.50 hrs

**Consideration of the following bill(s):**

HB 519 Florida Healthy Kids Corporation by Berman  
HB 531 Homelessness by Reed  
HB 625 Disposition of Human Remains by Roberson, K.  
HB 655 Biomedical Research by Coley  
HB 657 Pub. Rec./Biomedical Research by Coley  
HB 803 Child Protection by Diaz  
HB 813 Eligibility for Temporary Cash Assistance and Food Assistance by Smith

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Tuesday, January 10, 2012.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, January 10, 2012.

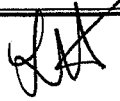
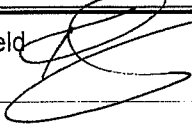
Appearance forms can be found on [myfloridahouse.gov](http://myfloridahouse.gov). Please print and bring 2 copies of the form to the meeting and give them to the administrative assistant.

**NOTICE FINALIZED on 01/09/2012 16:13 by Iseminger.Bobbye**



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 655 Biomedical Research  
SPONSOR(S): Coley  
TIED BILLS: HB 657 IDEN./SIM. BILLS: SB 616

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Holt 	Schoolfield 
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The James and Esther King Biomedical Research Program and William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program award competitive grants and fellowships for biomedical research. The grants are awarded based on criteria and standards developed by the Biomedical Research Advisory Council (Council) and are reviewed by independent peer review panels. The bill makes operational changes to both programs; but does not alter the appropriations to either program.

The bill exempts grant programs under the purview of the Council from the Administrative Procedures Act pursuant to Chapter 120, F.S. The bill adjusts the membership appointment terms to the Council allowing for staggered terms. The bill strikes permissive language outlining the responsibilities of the Council, such that the Council will no longer be responsible for "developing and supervising research peer review panels". The bill provides the Council flexibility by allowing it to solicit applications for any of the three types of research grants allowed every funding cycle. The bill increases the amount of time any balance that is not dispersed from the Biomedical Research Trust Fund within DOH may carry forward from 3 to 5 years.

The bill consolidates duplicative annual progress reports submitted by the King Program and the Bankhead-Coley Program into one report that requires a fiscal-year progress report of program activities and changes the date that the report must be submitted from February 1 to December 15. The bill requires that the progress report include: the state ranking received from the National Institutes of Health and recommendations to further the programs mission. The bill updates the name of an organization that sits on the Council and FL CURED from the Florida/Puerto Rico Affiliate of the American Heart Association to the Greater Southeast Affiliate of the American Heart Association.

The bill has no fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2012.



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Biomedical Research Programs

The 1999 Legislature established the Lawton Chiles Endowment Fund as a result of its settlements with the tobacco industry to enhance or support expansions in children's health care programs, child welfare programs, community-based health and human service initiatives, and biomedical research. Section 215.5602, Florida Statutes, establishes the James and Esther King Biomedical Research Program (King Program) within the Department of Health (DOH) funded from interest earnings on the endowment fund, tobacco surcharge, and General Revenue Fund.<sup>1</sup> The funds appropriated to the program are devoted to awarding competitive grants and fellowships in research relating to prevention, diagnosis, and treatment of tobacco-related illnesses, including cancer, cardiovascular disease, stroke and pulmonary disease.

In 2004, the Legislature created the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program (Bankhead-Coley Program).<sup>2</sup> The Bankhead-Coley Program is established within DOH and is funded by an annual appropriation from the General Revenue Fund.<sup>3</sup> The purpose of the Bankhead-Coley Program is to advance progress towards cures for cancer and cancer-related illnesses through grants awarded through a peer-reviewed process.

Also in 2004, the Legislature created the Florida Center for Universal Research to Eradicate Disease (FL CURED).<sup>4</sup> The purpose of FL CURED is to coordinate, improve, expand, and monitor all biomedical research programs within the state, facilitate funding opportunities, and foster improved technology transfer of research findings into clinical trials and widespread public use.<sup>5</sup>

The research grants and fellowships for biomedical research are awarded based on criteria and standards developed by the Biomedical Research Advisory Council (Council) created within DOH and reviewed by independent peer review panels.<sup>6</sup> The Council is directed to award grants for the King Program and the Bankhead-Coley Program.

The Council consists of eleven members:<sup>7</sup>

- Chief Executive Officer of the Florida Division of the American Cancer Society, or designee;
- Chief Executive Officer of the Florida/Puerto Rico Affiliate of the American Heart Association or designee;
- Chief Executive Officer of the American Lung Association of Florida or designee;
- 4 Governor appointees, of which, two members must have expertise in the field of biomedical research; a member from an in-state research university; and a member representing the general population of the state;
- 2 Senate appointees, of which, a member possessing expertise in the field of behavioral or social research and a member representing a cancer program approved by the American College of Surgeons; and
- 2 House appointees, of which, a member from a professional medical organization, and a member representing a cancer program approved by the American College of Surgeons.

---

<sup>1</sup> Section 215.5602(1) and (12), F.S.

<sup>2</sup> Chapter 2004-2, L.O.F.

<sup>3</sup> Section 215.5602(12), F.S.

<sup>4</sup> Chapter 2004-2, L.O.F.

<sup>5</sup> Section 381.855(1), F.S.

<sup>6</sup> Sections 215.5602(3) and 381.922(3)(b), F.S.

<sup>7</sup> Section 215.5602(3), F.S.

The Council is to advise the State Surgeon General as to the direction and scope of the biomedical research program in addition to:<sup>8</sup>

- Providing advice on program priorities and emphases;
- Providing advice on the overall program budget;
- Participating in periodic program evaluation;
- Assisting in the development of guidelines to ensure fairness, neutrality, and adherence to the principles of merit and quality in the conduct of the program;
- Assisting in the development of linkages with other private and public entities and officials;
- Developing criteria and standards for the award of research grants;
- Developing administrative procedures for the solicitation, reviewing and awarding of grants and fellowships to ensure impartial, high-quality peer review system;
- Developing and supervising research peer review panels;
- Reviewing reports of peer review panels and making recommendations for grants and fellowships;
- Developing and providing oversight regarding mechanisms to disseminate research results.

Members of the council are to serve without compensation, but may receive reimbursement for travel and other necessary expenses incurred in the performance of their official duties.

The Council is required to submit an annual progress report on the state of biomedical in this state to the Florida Center for Universal Research to Eradicate Disease (FL CURED) and to the Governor, the State Surgeon General, and the Speaker of the House of Representatives by February 1. The report must include:<sup>9</sup>

- A list of research projects awarded;
- A list of recipients;
- A list of publications supported awards;
- The total amount of biomedical research funding currently flowing into the state;
- New grants that were funded based on research supported by awarded grants or fellowships; and
- Progress in the prevention, diagnosis, treatment, and cure of diseases related to tobacco use, including cancer, cardiovascular disease, stroke, and pulmonary disease.

The independent peer review panel is required to evaluate three types of awards:

- Investigator-initiated research grants;
- Institutional research grants;
- Predoctoral and postdoctoral research fellowships.

The award applications are reviewed on the basis of scientific merit to ensure that all proposals for research funding are appropriate and are evaluated fairly.<sup>10</sup> The peer review panel process reviews the content of each proposal and establishes a scientific priority score. The priority score is considered in the review process by the Council who makes a recommendation to the State Surgeon General as to what grants or fellowships should be awarded. The Council and peer review panels are directed to establish and follow rigorous guidelines for ethical conduct and adhere to a strict policy with regard to conflict of interest.<sup>11</sup>

Sections 215.5602(7) and 381.922(3)(c), F.S., provides that the meetings of the Council and the peer review panels are subject to the public records and public meetings requirements.

### Annual Grant Funding Cycle

---

<sup>8</sup> Section 215.5602(4), F.S.

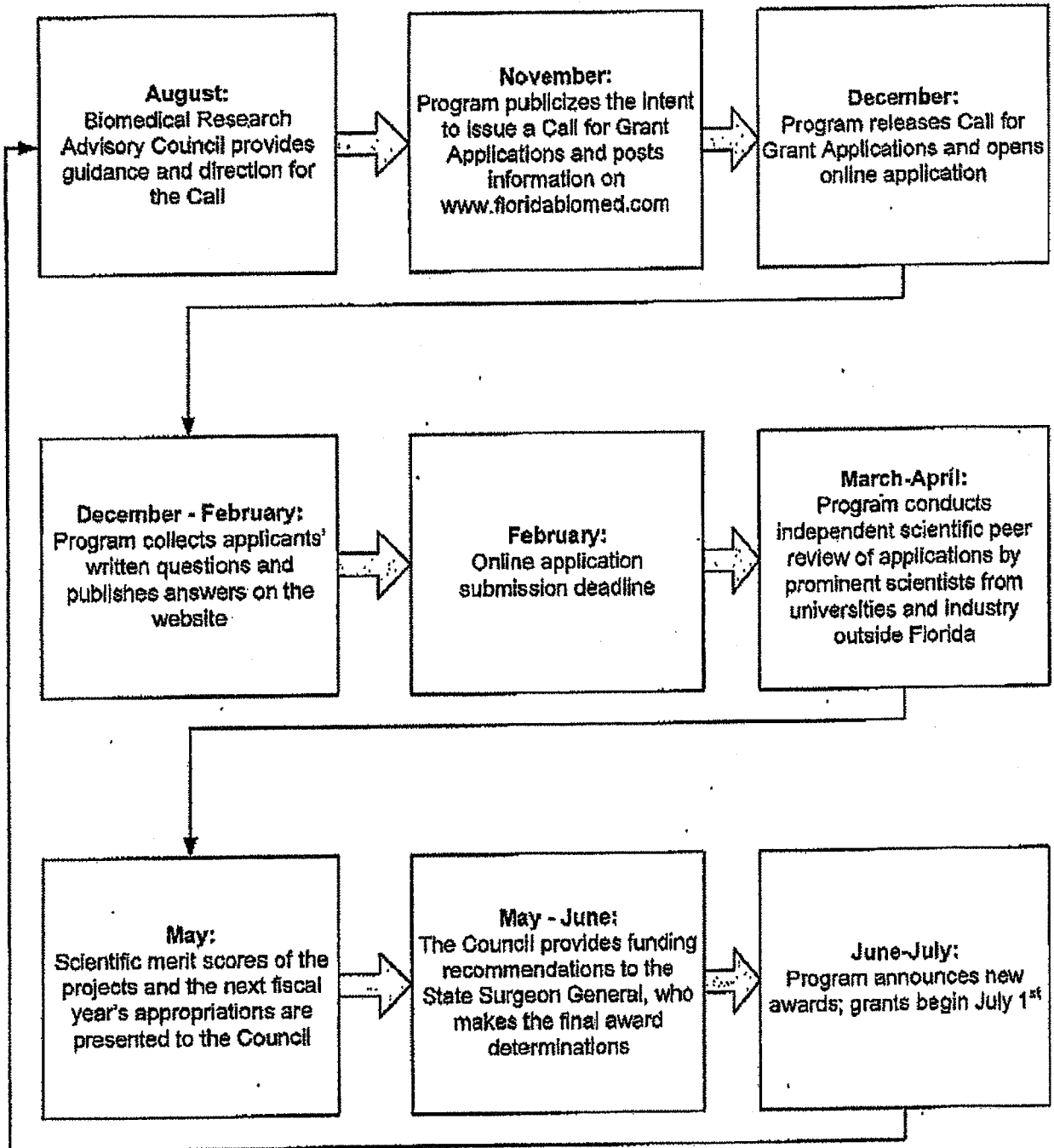
<sup>9</sup> Section 215.5602(10), F.S.

<sup>10</sup> Sections 215.5602(6) and 381.922(3)(b), F.S.

<sup>11</sup> Sections 215.5602(7) and 381.922(3)(c), F.S.

The annual funding cycle for the King and Bankhead-Coley Programs take 12-months to complete.<sup>12</sup> The Call for Grant Applications (the Call) is usually done once per year in December, but may occur more frequently. Having the Call in December, allows researchers time to write their proposals and for DOH to convene peer-review panels and present the results of the Call to the Advisory Council by May after the state budget is passed.

### The James & Esther King and Bankhead-Coley Research Programs Annual Grant Funding Cycle



#### Effects of Proposed Changes

The bill adjust the membership appointment terms to the Council allowing for staggered terms, such that the first two Governor appointees, and the first Senate and House appointees made on or after

July 1, 2012 are for a term of two years instead of three years. According to DOH, Council member appointments tend to run in parallel, resulting in multiple members rotating off of the Council at the same time.<sup>13</sup>

The bill strikes permissive language outlining the responsibilities of the Council, such that the Council will no longer be responsible for “developing and supervising research peer review panels”. According to DOH, Council members intentionally do not have any contact with peer review panels in order to avoid any real or perceived conflict of interest, or allegations of bias or undue influence and believe that a separation between the peer review panels and the Council is the best practice for merit-based, independent grant review.<sup>14</sup> The bill reassigns the duty of appointing peer review panel membership from being the responsibility of the State Surgeon General in consultation with the Council to being the responsibility of DOH. According to DOH, recruiting and assigning peer reviewers is a function and awarded through the competitive bid process to a professional grant management services vendor.<sup>15</sup> Furthermore, neither the Council nor the State Surgeon General has direct involvement in selecting a peer reviewer and utilizing an outside vendor avoids any real or perceived conflict of interest, or allegations of bias or undue influence.

The bill provides flexibility as to the type of grants that may be awarded. Currently, the Council is required to consider funding three types of research grants: investigator-initiated, institutional, and pre-doctoral and postdoctoral fellowships. According to DOH, traditionally pre-and postdoctoral fellowships are not recommended for funding because support is already provided through current funding practices (i.e., senior investigators receive funding and hire pre-and postdoctoral fellows to assist with projects.) The bill allows the Council to solicit applications for one or any combination of the three types of research grants every funding cycle.

The bill increases the amount of time any balance that is not dispersed from the Biomedical Research Trust Fund within DOH may carry forward from 3 to 5 years. According to DOH, this will allow them to offer longer grant periods to researchers enabling them to conduct clinical trials that are more likely to result in a marketable product and is consistent with grant timeframes seen in other research programs such as the National Institutes of Health.<sup>16</sup> In Fiscal Year 2010-2011, approximately \$25.2M in the Biomedical Research Trust Fund was carried forward.<sup>17</sup>

The bill exempts grant programs under the purview of the Council from the Administrative Procedures Act pursuant to Chapter 120, F.S. According to DOH, the program has operated without a rule since 2007, because current law provides permissibility to the department to adopt rules.<sup>18</sup> Current law states, “The department, after consultation with the council, may adopt rules as necessary to implement this section.”<sup>19</sup> In 2007, DOH repealed ch. 64H-1.001, F.A.C. Additionally, the Council prefers to operate without rules to assure flexibility in the grant process allowing them to respond quickly to changing research priorities at the federal level in order to maximize the state’s ability to compete for federal grants.<sup>20</sup>

The bill consolidates duplicative annual progress reports submitted by the King Program and the Bankhead-Coley Program into one report that requires a fiscal-year progress report of program activities and changes the date that the report must be submitted from February 1 to December 15. The bill requires that the progress report include: the state ranking received from the National Institutes of Health and recommendations to further the programs mission. The bill updates the name of an

---

<sup>13</sup> Department of Health, Bill Analysis, Economic Statement and Fiscal Note, House Bill 655, dated December 21, 2011, on file with Health & Human Services Access Subcommittee staff.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Department of Health, Bill Analysis, Economic Statement and Fiscal Note, House Bill 655, dated December 21, 2011, on file with Health & Human Services Access Subcommittee staff.

<sup>17</sup> Email correspondence with DOH budget staff dated January 5, 2012, on file with Health & Human Services Access Subcommittee staff.

<sup>18</sup> *Id.*

<sup>19</sup> Section 215.5602(9), F.S.

<sup>20</sup> *Id.*

organization that sits on the Council and FL CURED from the Florida/Puerto Rico Affiliate of the American Heart Association to the Greater Southeast Affiliate of the American Heart Association.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 20.435, F.S., relating to Department of Health trust funds.

**Section 2.** Amends s. 215.5602, F.S., relating to the James and Esther King Biomedical Research Program.

**Section 3.** Amends s. 381.922, F.S., relating to William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program.

**Section 4.** Amends s. 381.855, F.S., relating to Florida Center for Universal Research to Eradicate Disease.

**Section 5.** Provides an effective date of July 1, 2012.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None identified.

2. Expenditures:

None identified.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None identified.

2. Expenditures:

None identified.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill provides an exemption to the grant programs under the purview of the Council from the requirements of chapter 120, F.S., the Administrative Procedures Act. This bill is tied to a public records bill, House Bill 657, which provides an exemption from public records and public meeting required by chapter 120, F.S., for peer review panels.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

6

1                                   A bill to be entitled  
 2           An act relating to biomedical research; amending s.  
 3           20.435, F.S.; extending the period during which  
 4           certain expenditures may be made from the Biomedical  
 5           Research Trust Fund; amending s. 215.5602, F.S.,  
 6           relating to James and Esther King Biomedical Research  
 7           Program; revising the composition, terms, and duties  
 8           of the Biomedical Research Advisory Council; providing  
 9           that certain types of applications may, rather than  
 10          shall, be considered for funding under the program;  
 11          exempting grant programs under the purview of the  
 12          council from ch. 120, F.S.; requiring the council to  
 13          submit a progress report and specifying contents  
 14          thereof; amending s. 381.922, F.S., relating to  
 15          William G. "Bill" Bankhead, Jr., and David Coley  
 16          Cancer Research Program; providing that certain types  
 17          of applications may, rather than shall, be considered  
 18          for funding under the program; removing a requirement  
 19          for a report to the Governor and the Legislature;  
 20          amending s. 381.855, F.S., relating to Florida Center  
 21          for Universal Research to Eradicate Disease; revising  
 22          composition of an advisory council; providing an  
 23          effective date.

24  
 25       Be It Enacted by the Legislature of the State of Florida:

26  
 27               Section 1. Paragraph (c) of subsection (8) of section  
 28       20.435, Florida Statutes, is amended to read:

29 | 20.435 Department of Health; trust funds.—The following  
 30 | trust funds shall be administered by the Department of Health:

31 | (8) Biomedical Research Trust Fund.

32 | (c) Notwithstanding s. 216.301 and pursuant to s. 216.351,  
 33 | any balance of any appropriation from the Biomedical Research  
 34 | Trust Fund which is not disbursed but which is obligated  
 35 | pursuant to contract or committed to be expended may be carried  
 36 | forward for up to 5 ~~3~~ years following the effective date of the  
 37 | original appropriation.

38 | Section 2. Paragraph (a) of subsection (3), paragraph (b)  
 39 | of subsection (5), and subsections (4), (6), (9), and (10) of  
 40 | section 215.5602, Florida Statutes, are amended to read:

41 | 215.5602 James and Esther King Biomedical Research  
 42 | Program.—

43 | (3) There is created within the Department of Health the  
 44 | Biomedical Research Advisory Council.

45 | (a) The council shall consist of 11 members, including:  
 46 | the chief executive officer of the Florida Division of the  
 47 | American Cancer Society, or a designee; the chief executive  
 48 | officer of the Greater Southeast Florida/Puerto Rico ~~Affiliate~~  
 49 | of the American Heart Association, or a designee; and the chief  
 50 | executive officer of the American Lung Association of Florida,  
 51 | or a designee. The remaining 8 members of the council shall be  
 52 | appointed as follows:

53 | 1. The Governor shall appoint four members, two members  
 54 | with expertise in the field of biomedical research, one member  
 55 | from a research university in the state, and one member  
 56 | representing the general population of the state.



57 | 2. The President of the Senate shall appoint two members,  
 58 | one member with expertise in the field of behavioral or social  
 59 | research and one representative from a cancer program approved  
 60 | by the American College of Surgeons.

61 | 3. The Speaker of the House of Representatives shall  
 62 | appoint two members, one member from a professional medical  
 63 | organization and one representative from a cancer program  
 64 | approved by the American College of Surgeons.

65 |  
 66 | In making these appointments, the Governor, the President of the  
 67 | Senate, and the Speaker of the House of Representatives shall  
 68 | select primarily, but not exclusively, Floridians with  
 69 | biomedical and lay expertise in the general areas of cancer,  
 70 | cardiovascular disease, stroke, and pulmonary disease. The  
 71 | appointments shall be for a 3-year term and shall reflect the  
 72 | diversity of the state's population. An appointed member may not  
 73 | serve more than two consecutive terms. The first two  
 74 | appointments by the Governor and the first appointment by the  
 75 | President of the Senate and the Speaker of the House of  
 76 | Representatives on or after July 1, 2012, shall be for a term of  
 77 | 2 years.

78 | (4) The council shall advise the State Surgeon General as  
 79 | to the direction and scope of the biomedical research program.  
 80 | The responsibilities of the council may include, but are not  
 81 | limited to:

- 82 | (a) Providing advice on program priorities and emphases.
- 83 | (b) Providing advice on the overall program budget.
- 84 | (c) Participating in periodic program evaluation.

85 (d) Assisting in the development of guidelines to ensure  
 86 fairness, neutrality, and adherence to the principles of merit  
 87 and quality in the conduct of the program.

88 (e) Assisting in the development of appropriate linkages  
 89 to nonacademic entities, such as voluntary organizations, health  
 90 care delivery institutions, industry, government agencies, and  
 91 public officials.

92 (f) Developing criteria and standards for the award of  
 93 research grants.

94 (g) Developing administrative procedures relating to  
 95 solicitation, review, and award of research grants and  
 96 fellowships, to ensure an impartial, high-quality peer review  
 97 system.

98 ~~(h) Developing and supervising research peer review~~  
 99 ~~panels.~~

100 (h)~~(i)~~ Reviewing reports of peer review panels and making  
 101 recommendations for research grants and fellowships.

102 (i)~~(j)~~ Developing and providing oversight regarding  
 103 mechanisms for the dissemination of research results.

104 (5)

105 (b) Grants and fellowships shall be awarded by the State  
 106 Surgeon General, after consultation with the council, on the  
 107 basis of scientific merit, as determined by an open competitive  
 108 peer review process that ensures objectivity, consistency, and  
 109 high quality. The following types of applications may ~~shall~~ be  
 110 considered for funding:

- 111 1. Investigator-initiated research grants.
- 112 2. Institutional research grants.

113 3. Predoctoral and postdoctoral research fellowships.

114 (6) To ensure that all proposals for research funding are  
 115 appropriate and are evaluated fairly on the basis of scientific  
 116 merit, the Department of Health State Surgeon General, ~~in~~  
 117 ~~consultation with the council~~, shall appoint a peer review panel  
 118 of independent, scientifically qualified individuals to review  
 119 the scientific content of each proposal and establish its  
 120 scientific priority score. The priority scores shall be  
 121 forwarded to the council and must be considered in determining  
 122 which proposals shall be recommended for funding.

123 (9) The grant programs under the purview of the council  
 124 are exempt from chapter 120 department, ~~after consultation with~~  
 125 ~~the council~~, may adopt rules as necessary to implement this  
 126 section.

127 (10) The council shall submit a fiscal-year ~~an annual~~  
 128 progress report on the programs under its purview ~~state of~~  
 129 ~~biomedical research in this state~~ to the Florida Center for  
 130 Universal Research to Eradicate Disease and to the Governor, the  
 131 State Surgeon General, the President of the Senate, and the  
 132 Speaker of the House of Representatives by December 15 ~~February~~

133 4. The report must include:

134 (a) A list of research projects supported by grants or  
 135 fellowships awarded under the program.

136 (b) A list of recipients of program grants or fellowships.

137 (c) A list of publications in peer reviewed journals  
 138 involving research supported by grants or fellowships awarded  
 139 under the program.

140 (d) The state ranking and total amount of biomedical

141 research funding currently flowing into the state from the  
 142 National Institutes of Health.

143 (e) New grants for biomedical research which were funded  
 144 based on research supported by grants or fellowships awarded  
 145 under the program.

146 (f) Progress towards program goals, particularly in the  
 147 prevention, diagnosis, treatment, and cure of diseases related  
 148 to tobacco use, including cancer, cardiovascular disease,  
 149 stroke, and pulmonary disease.

150 (g) Recommendations that further the program's mission.

151 Section 3. Paragraph (a) of subsection (3) and present  
 152 subsection (4) of section 381.922, Florida Statutes, are  
 153 amended, and subsection (5) is renumbered as subsection (4) of  
 154 that section, to read:

155 381.922 William G. "Bill" Bankhead, Jr., and David Coley  
 156 Cancer Research Program.—

157 (3)(a) Applications for funding for cancer research may be  
 158 submitted by any university or established research institute in  
 159 the state. All qualified investigators in the state, regardless  
 160 of institutional affiliation, shall have equal access and  
 161 opportunity to compete for the research funding. Collaborative  
 162 proposals, including those that advance the program's goals  
 163 enumerated in subsection (2), may be given preference. Grants  
 164 shall be awarded by the State Surgeon General, after  
 165 consultation with the Biomedical Research Advisory Council, on  
 166 the basis of scientific merit, as determined by an open,  
 167 competitive peer review process that ensures objectivity,  
 168 consistency, and high quality. The following types of

169 applications may ~~shall~~ be considered for funding:

- 170 1. Investigator-initiated research grants.
- 171 2. Institutional research grants.
- 172 3. Collaborative research grants, including those that
- 173 advance the finding of cures through basic or applied research.

174 ~~(4) By December 15 of each year, the Department of Health~~  
 175 ~~shall submit to the Governor, the President of the Senate, and~~  
 176 ~~the Speaker of the House of Representatives a report indicating~~  
 177 ~~progress towards the program's mission and making~~  
 178 ~~recommendations that further its purpose.~~

179 Section 4. Paragraph (a) of subsection (5) of section  
 180 381.855, Florida Statutes, is amended to read:

181 381.855 Florida Center for Universal Research to Eradicate  
 182 Disease.—

183 (5) There is established within the center an advisory  
 184 council that shall meet at least annually.

185 (a) The council shall consist of one representative from a  
 186 Florida not-for-profit institution engaged in basic and clinical  
 187 biomedical research and education which receives more than \$10  
 188 million in annual grant funding from the National Institutes of  
 189 Health, to be appointed by the State Surgeon General from a  
 190 different institution each term, and one representative from and  
 191 appointed by each of the following entities:

- 192 1. Enterprise Florida, Inc.
- 193 2. BioFlorida.
- 194 3. The Biomedical Research Advisory Council.
- 195 4. The Florida Medical Foundation.
- 196 5. Pharmaceutical Research and Manufacturers of America.

HB 655

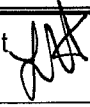

2012

- 197 |           6. The American Cancer Society, Florida Division, Inc.  
 198 |           7. The American Heart Association, Greater Southeast  
 199 | Affiliate.  
 200 |           8. The American Lung Association of Florida.  
 201 |           9. The American Diabetes Association, South Coastal  
 202 | Region.  
 203 |           10. The Alzheimer's Association.  
 204 |           11. The Epilepsy Foundation.  
 205 |           12. The National Parkinson Foundation.  
 206 |           13. The Florida Public Health Institute, Inc.  
 207 |           14. The Florida Research Consortium.  
 208 |           Section 5. This act shall take effect July 1, 2012.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 657 Pub. Rec./Biomedical Research  
**SPONSOR(S):** Coley  
**TIED BILLS:** HB 655 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Holt 	Schoolfield 
2) Government Operations Subcommittee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Currently, the Biomedical Research Advisory Council within the Department of Health and the independent peer review panels that convene to evaluate grant or fellowship applications for the James and Esther King Biomedical Research Program and the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program are subject to the public records and public meetings requirements. The bill attempts to create a new exemption to the public records and public meetings requirements for these two programs.

The bill strikes the language that peer review panels for the King Program or the Bankhead-Coley Program meet the state requirements for public records and public meetings. However, it appears that this change does not meet the requirements for an exemption.

The bill provides a public necessity statement as required by the State Constitution and provides Legislative intent on maintaining confidentiality in the peer review process when awarding grants. The bill further provides that this is practiced by the National Science Foundation and the National Institutes of Health, allows for candid exchange between reviewers, and serves a public good to ensure that decisions are based upon merit without bias or undue influence.

The bill provides an effective date that is the same date that House Bill 655 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

**Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill expands the current exemptions; thus, it appears to require a two-thirds vote for final passage.**



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Public Records and Open Meetings Laws

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of the executive branch and local government be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24 of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its stated purpose. In addition, the State Constitution requires enactment of the exemption by a two-thirds vote of the members present and voting.<sup>1</sup>

Public policy regarding access to government records and meetings also is addressed in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Section 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public.

Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

The public record or public meeting exemptions are subject to the Open Government Sunset Review Act and are scheduled to repeal on October 2<sup>nd</sup> in the fifth year after enactment, unless the Legislature acts to reenact the exemption.<sup>3</sup>

A law that enacts a new exemption or substantially amends an existing exemption must state that the record or meeting is:<sup>4</sup>

- Exempt from s. 24, Art. I of the State Constitution;
- Exempt from inspection and copying pursuant to s. 119.07(1), F.S., or public meetings and records pursuant to s. 286.011, F.S.; and
- Repealed at the end of 5 years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.

---

<sup>1</sup> FLA CONST., article I, s. 24(c)

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Section 119.15(3), F.S.

<sup>4</sup> Section 119.15(4), F.S.

As part of the review process the Legislature is required to consider the following:<sup>5</sup>

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

### Current Applicable Public Record and Public Meeting Exemptions

Current law provides a public record exemption to the Department of Health (DOH) for all personal identifying information contained in records relating to an individual's personal health or eligibility for health related services held by DOH.<sup>6</sup>

### James and Esther King and Bankhead-Coley Research Programs

The James and Esther King Biomedical Research Program (King Program) is established within the Florida Department of Health (DOH) and funded by the proceeds of the Lawton Chiles Endowment Fund, cigarette surcharge, and the General Revenue Fund.<sup>7</sup> The purpose of the King Program is to provide an annual and perpetual source of funding in order to support research initiatives that address the health care problems of Floridians in the areas of tobacco-related cancer, cardiovascular disease, stroke, and pulmonary disease.<sup>8</sup> The funds appropriated to the King Program are to be used to award research grants and fellowships.<sup>9</sup>

The William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program (Bankhead-Coley Program) is established within DOH and is funded by an annual appropriation from the General Revenue Fund.<sup>10</sup> The purpose of the Bankhead-Coley Program is to advance progress towards cures for cancer and cancer-related illnesses through grants awarded through a peer-reviewed process.

The research grants and fellowships are awarded based on criteria and standards developed by the Biomedical Research Advisory Council (Council) created within DOH and subject to review by independent peer review panels.<sup>11</sup> The Council is directed to award grants for the King Program and the Bankhead-Coley Program.

The peer review panel is required to evaluate grant or fellowship applications on the basis of scientific merit as determined by an open competitive peer review panel to ensure that all proposals for research funding are appropriate and are evaluated fairly on the basis of scientific merit.<sup>12</sup> The peer review panel process reviews the content of each proposal and establishes a scientific priority score. The priority score is considered in the review process by the Council who makes recommendations to the State Surgeon General as to what grants or fellowships should be awarded. The Council and peer review panels are directed to establish and follow rigorous guidelines for ethical conduct and adhere to a strict policy with regard to conflict of interest.<sup>13</sup>

Sections 215.5602(7) and 381.922(3)(c), F.S., provides that the meetings of the Council and the peer review panels are subject to the public records and public meetings requirements. Section

---

<sup>5</sup> Section 119.15(6)(a), F.S.

<sup>6</sup> Section 119.0712(1), F.S.

<sup>7</sup> Sections 215.5602 (1) and (12), F.S.

<sup>8</sup> Section 215.5602, F.S.

<sup>9</sup> Section 215.5602(2), F.S.

<sup>10</sup> Section 215.5602(12), F.S.

<sup>11</sup> Sections 215.5602(3) and 381.922(3)(b), F.S.

<sup>12</sup> Sections 215.5602(6) and 381.922(3)(b), F.S.

<sup>13</sup> Sections 215.5602(7) and 381.922(3)(c), F.S.

215.5602(9), F.S., provides that the department, after consultation with the Council, may adopt rules as necessary to implement the King Program.

### **Effects of Proposed Changes**

The bill attempts to create a new exemption to the public records and public meetings requirements. The bill strikes the language that independent peer review panels for the King Program or the Bankhead-Coley Program meet the state requirements for public records and public meetings. However, it appears that this change does not meet the requirements of s. 119.15(4), F.S., since the bill does not provide an explicit exemption to ch. 119, F.S., s. 286.011, F.S., and s. 24, Art. I of the State Constitution. Nor does the bill state that the exemption is repealed at the end of 5 years or that the exemption must be reviewed by the Legislature before the scheduled repeal date.

The bill provides a public necessity statement as required by the State Constitution and provides Legislative intent on maintaining confidentiality in the peer review process when awarding grants. The bill further provides that this is practiced by the National Science Foundation and the National Institutes of Health, allows for candid exchange between reviewers, and serves a public good to ensure that decisions are based upon merit without bias or undue influence.

#### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 215.5602, F.S., relating to James and Esther King Biomedical Research Program.

**Section 2.** Amends s. 381.922, F.S., relating to William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program.

**Section 3.** Provides a public necessity statement and legislative findings for maintaining confidentiality of biomedical grant proposals and scientific peer review panels.

**Section 4.** Provides that the bill take effect on the same date that HB 655 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:  
None identified.

2. Expenditures:  
None identified.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:  
None identified

2. Expenditures:  
None identified.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None identified.

#### **D. FISCAL COMMENTS:**

None identified.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

###### Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new exemption; thus, it requires a two-thirds vote for final passage.

###### Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new exemption; thus, it includes a public necessity statement.

#### B. RULE-MAKING AUTHORITY:

The bill will exempt DOH from having to adopt rules and provide public notice of meetings.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill strikes the language that independent peer review panels for the King Program or the Bankhead-Coley Program meet the state requirements for public records and public meetings. However, it appears that this change does not meet the requirements of s. 119.15(4), F.S., since the bill does not provide an explicit exemption to ch. 119, F.S., s. 286.011, F.S., and s. 24, Art. I of the State Constitution. Nor does the bill state that the exemption is repealed at the end of 5 years or that the exemption must be reviewed by the Legislature before the scheduled repeal date.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1                   A bill to be entitled  
 2           An act relating to public records; amending s.  
 3           215.5602, F.S., relating to the James and Esther King  
 4           Biomedical Research Program; providing an exemption  
 5           from public records and public meetings requirements  
 6           for peer review panels meeting to review certain grant  
 7           proposals; amending s. 381.922, F.S., relating to the  
 8           William G. "Bill" Bankhead, Jr., and David Coley  
 9           Cancer Research Program; providing an exemption from  
 10          public records and public meetings requirements for  
 11          peer review panels meeting to review certain grant  
 12          proposals; providing a statement of public necessity;  
 13          providing a contingent effective date.

14  
 15 Be It Enacted by the Legislature of the State of Florida:

16  
 17           Section 1. Subsection (7) of section 215.5602, Florida  
 18 Statutes, is amended to read:

19           215.5602 James and Esther King Biomedical Research  
 20 Program.—

21           (7) The council and the peer review panel shall establish  
 22 and follow rigorous guidelines for ethical conduct and adhere to  
 23 a strict policy with regard to conflict of interest. A member of  
 24 the council or panel may not participate in any council or panel  
 25 discussion or decision with respect to a research proposal by  
 26 any firm, entity, or agency with which the member is associated  
 27 as a member of the governing body or as an employee, or with  
 28 which the member has entered into a contractual arrangement.

HB 657

2012

29 Meetings of the council are ~~and the peer review panels shall be~~  
 30 subject to the provisions of chapter 119, s. 286.011, and s. 24,  
 31 Art. I of the State Constitution.

32 Section 2. Paragraph (c) of subsection (3) of section  
 33 381.922, Florida Statutes, is amended to read:

34 381.922 William G. "Bill" Bankhead, Jr., and David Coley  
 35 Cancer Research Program.—

36 (3)

37 (c) The council and the peer review panel shall establish  
 38 and follow rigorous guidelines for ethical conduct and adhere to  
 39 a strict policy with regard to conflicts of interest. A member  
 40 of the council or panel may not participate in any council or  
 41 panel discussion or decision with respect to a research proposal  
 42 by any firm, entity, or agency with which the member is  
 43 associated as a member of the governing body or as an employee  
 44 or with which the member has entered into a contractual  
 45 arrangement. Meetings of the council ~~and the peer review panels~~  
 46 are subject to chapter 119, s. 286.011, and s. 24, Art. I of the  
 47 State Constitution.

48 Section 3. The Legislature finds that it is a public  
 49 necessity that information discussed by a peer review panel  
 50 regarding the funding of a biomedical grant proposal be made  
 51 confidential and exempt from the requirements of s. 119.07(1),  
 52 Florida Statutes, and s. 24(a), Article I of the State  
 53 Constitution. The Legislature further finds that maintaining  
 54 confidentiality is a hallmark of scientific peer review when  
 55 awarding grants, is practiced by the National Science Foundation  
 56 and the National Institutes of Health, and allows for candid

57 exchanges between reviewers critiquing proposals submitted for  
 58 funding. The Legislature further finds that maintaining the  
 59 confidentiality of meetings of scientific peer review panels  
 60 serves a public good by ensuring that decisions are based upon  
 61 merit without bias or undue influence.

62 Section 4. This act shall take effect on the same date  
 63 that HB 655 or similar legislation takes effect, if such  
 64 legislation is adopted in the same legislative session or an  
 65 extension thereof and becomes law.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 657 (2012)

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Committee/Subcommittee hearing bill: Health & Human Services  
2 Access Subcommittee  
3 Representative Coley offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:  
7 Section 1. Subsection (7) of section 215.5602, Florida  
8 Statutes, is amended to read:

9 215.5602 James and Esther King Biomedical Research  
10 Program.—

11 (7) (a) The council and the peer review panel shall  
12 establish and follow rigorous guidelines for ethical conduct and  
13 adhere to a strict policy with regard to conflict of interest. A  
14 member of the council or panel may not participate in any  
15 council or panel discussion or decision with respect to a  
16 research proposal by any firm, entity, or agency with which the  
17 member is associated as a member of the governing body or as an  
18 employee, or with which the member has entered into a  
19 contractual arrangement. ~~Meetings of the council and the peer~~

981155 - h657-strike.docx

Published On: 1/10/2012 5:02:34 PM



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 657 (2012)

Amendment No.1

20 ~~review panels shall be subject to the provisions of chapter 119,~~  
21 ~~s. 286.011, and s. 24, Art. I of the State Constitution.~~

22 (b) Meetings of the peer review panel are exempt from s.  
23 286.011 and s. 24(b), Art. I of the State Constitution.

24 (c) Any records generated during a meeting of the peer  
25 review panel which is closed to the public under (b) are  
26 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
27 of the State Constitution.

28 (d) Research applications held by the peer review panel  
29 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.  
30 I of the State Constitution.

31 (e) Paragraphs (b), (c), and (d) are subject to the Open  
32 Government Sunset Review Act in accordance with s. 119.15 and  
33 shall stand repealed on October 2, 2017, unless reviewed and  
34 saved from repeal through reenactment by the Legislature.

35 Section 2. Subsection (3) of section 381.922, Florida  
36 Statutes, is amended to read:

37 381.922 William G. "Bill" Bankhead, Jr., and David Coley  
38 Cancer Research Program.—

39 (3)

40 (c) The council and the peer review panel shall establish  
41 and follow rigorous guidelines for ethical conduct and adhere to  
42 a strict policy with regard to conflicts of interest. A member  
43 of the council or panel may not participate in any council or  
44 panel discussion or decision with respect to a research proposal  
45 by any firm, entity, or agency with which the member is  
46 associated as a member of the governing body or as an employee  
47 or with which the member has entered into a contractual

981155 - h657-strike.docx

Published On: 1/10/2012 5:02:34 PM

Amendment No.1

48 ~~arrangement. Meetings of the council and the peer review panels~~  
49 ~~are subject to chapter 119, s. 286.011, and s. 24, Art. I of the~~  
50 ~~State Constitution.~~

51 (d) Meetings of the peer review panel are exempt from s.  
52 286.011 and s. 24(b), Art. I of the State Constitution.

53 (e) Any records generated during a meeting of the peer  
54 review panel which is closed to the public under (b) are  
55 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
56 of the State Constitution.

57 (f) Research applications held by the peer review panel  
58 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.  
59 I of the State Constitution.

60 (g) Paragraphs (d), (e), and (f) are subject to the Open  
61 Government Sunset Review Act in accordance with s. 119.15 and  
62 shall stand repealed on October 2, 2017, unless reviewed and  
63 saved from repeal through reenactment by the Legislature.

64 Section 3. It is the finding of the Legislature that it is  
65 a public necessity that information discussed by a peer review  
66 panel regarding the funding of a biomedical grant proposal under  
67 the James and Esther King Biomedical Research Program and under  
68 the William G. "Bill" Bankhead, Jr., and David Coley Cancer  
69 Research Program be made exempt from the requirements of s.  
70 286.011, Florida Statutes, and s. 24(b), Art. I of the State  
71 Constitution. It is also the finding of the Legislature that it  
72 is a public necessity that any records generated during a  
73 meeting of the peer review panel under the James and Esther King  
74 Biomedical Research Program, and under the William G. "Bill"  
75 Bankhead, Jr., and David Coley Cancer Research Program, which is

981155 - h657-strike.docx

Published On: 1/10/2012 5:02:34 PM

Amendment No.1

76 closed to the public be made confidential and exempt from the  
77 requirements of s. 119.07(1), Florida Statutes, and s. 24(a),  
78 Art. I of the State Constitution. It is also the finding of the  
79 Legislature that it is a public necessity that research  
80 applications provided to, and reviewed by, the peer review panel  
81 under the James and Esther King Biomedical Research Program and  
82 under the William G. "Bill" Bankhead, Jr., and David Coley  
83 Cancer Research Program, be made confidential and exempt from  
84 the requirements of s. 119.07(1), Florida Statutes, and s.  
85 24(a), Art. I of the State Constitution. The Legislature finds  
86 that maintaining confidentiality is a hallmark of scientific  
87 peer review when awarding grants, is practiced by the National  
88 Science Foundation and the National Institutes of Health, and  
89 allows for candid exchanges between reviewers critiquing  
90 proposals submitted for funding. Consequently, the Legislature  
91 finds that research applications provided to, and reviewed by,  
92 such peer review panels must be held confidential and exempt  
93 from public records requirements. The Legislature further finds  
94 that closing access to meetings of scientific peer review panels  
95 serves a public good by ensuring that decisions are based upon  
96 merit without bias or undue influence. Further, the Legislature  
97 finds that records generated during meetings of the peer review  
98 panels which are closed to the public must be protected for the  
99 same reasons that justify the closing of such meetings.

100 Section 4. This act shall take effect on the same date  
101 that HB 655 or similar legislation takes effect, if such  
102 legislation is adopted in the same legislative session or an  
103 extension thereof and becomes law.

981155 - h657-strike.docx

Published On: 1/10/2012 5:02:34 PM

Amendment No.1

104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129

-----

**T I T L E   A M E N D M E N T**

Remove the entire title and insert:

A bill to be entitled

An act relating to public meetings and public records;  
amending s. 215.5602, F.S.; providing an exemption from  
public meeting requirements for meetings of a peer review  
panel under the James and Esther King Biomedical Research  
Program; providing an exemption from public records  
requirements for records generated during such meeting;  
providing an exemption from public records requirements for  
research applications provided to, and reviewed by, the  
peer review panel; providing for legislative review and  
repeal of the exemptions; amending s. 381.922, F.S.;  
providing an exemption from public meeting requirements for  
meetings of a peer review panel under the William G. "Bill"  
Bankhead, Jr., and David Coley Cancer Research Program;  
providing an exemption from public records requirements for  
records generated during such meeting; providing an  
exemption from public records requirements for research  
applications provided to, and reviewed by, the peer review  
panel; providing for legislative review and repeal of the  
exemptions; providing a statement of public necessity;  
providing a contingent effective date.

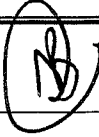



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 531 Homelessness

SPONSOR(S): Reed

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		 Batchelor	Schoolfield 
2) Appropriations Committee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

HB 531 creates and revises multiple sections of Florida Statutes relating to homelessness. Specifically the bill makes the following changes:

- Authorizes the collection of voluntary contributions in the amount of \$1 to be added to motor vehicle registration and driver's license fees, both initial and renewal fees, to aid the homeless.
- Replaces s.414.16, F.S., as it relates to Emergency Financial Assistance Program for Families with s. 414.161, F.S., establishing a homeless prevention grant program to be administered by local homeless continuums of care to provide emergency financial assistance to families facing the loss of their current home due to financial or other crises.
- Limits the amount a lead agency may spend on administrative costs under a Challenge Grant.
- Eliminates a requirement for background check and rehabilitation to combat an addiction under the Housing First Methodology.

The Department of Children and Families estimates a revenue increase of \$20,000 from the collection of voluntary contributions in the amount of \$1.00 to motor vehicle and driver's license fees (initial and renewals). No additional fiscal impact is anticipated for the state.

The bill provides an effective date of July 1, 2012

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### *The Council on Homelessness*

The Council on Homelessness (council) and the State Office on Homelessness (office) were created in 2001 within the Department of Children and Family Services (DCF)<sup>1</sup>. The office coordinates state agency responses to homelessness, serves as a single point of contact on homeless issues in the state, and administers state-funded grant programs that support the activities of the 27 local homeless coalitions<sup>2</sup>. The 17-member council is comprised of representatives of state agencies, counties, homeless advocacy organizations, and volunteers<sup>3</sup>. The council's duties include developing policy and advising the office.<sup>4</sup>

The office administers all homelessness grants through lead agencies. The lead agency has the responsibility for continuum of care plans that help communities or regions envision, plan and implement comprehensive and long term solutions to the problem of homelessness in the community.<sup>5</sup> Lead agencies are also authorized applicants for the Challenge Grant and the Homeless Housing Assistance Grant.

##### *Emergency Financial Assistance Program*

This is a state grant program to provide support to families, with at least one minor child, who are currently without shelter or face the loss of shelter because of the following:<sup>6</sup>

- Nonpayment of rent or mortgage resulting in eviction or notice of eviction;
- Household disaster, which renders the home uninhabitable;
- Other emergency situations defined in rule.<sup>7</sup>

Families may receive up to \$400 during 1 period of 30 consecutive days in any 12 consecutive months.<sup>8</sup> DCF serves approximately 2,000 families a year under this program and utilizes OPS staff to assess eligibility and process payments.<sup>9</sup>

##### *Homeless Housing Assistance Grants*

This state grant program provides homeless housing assistance grants up to \$750,000 annually to lead agencies to acquire, construct, or rehabilitate transitional or permanent housing units for homeless persons.<sup>10</sup> Administrative costs are capped at 5% of the funds awarded.<sup>11</sup>

---

<sup>1</sup>Ch. 2001-98, L.O.F

<sup>2</sup>s.420.622(3), F.S.

<sup>3</sup>s.420.622(2), F.S.

<sup>4</sup>*Id*

<sup>5</sup>s. 420.642(2), F.S.

<sup>6</sup>s. 414.16, F.S.

<sup>7</sup>s. 414.16(1), F.S.

<sup>8</sup>65A-33.011, F.A.C.

<sup>9</sup>DCF Staff Analysis HB 531 (2012). On file with committee staff.

<sup>10</sup>s. 420.622(5), F.S.

<sup>11</sup>s. 420.622(5)(f), F.S.

## *Challenge Grant*

The challenge grant is a state program which includes grants of up to \$500,000 to lead agencies who have developed and implemented a local homeless assistance continuum of care plan to provide services including outreach, emergency shelter, support services, and permanent shelter in the area.<sup>12</sup> The state currently has 28 local homeless Continuum of Care planning areas that receive state aid in grant assistance. Currently, state law does not provide for a limit on or use of grant funds for grant administration costs incurred by lead agencies.

## *Housing First*

The 2009 Legislature established the Housing First Method in s. 420.6275, F.S., to address the long term needs of homeless individuals and families.<sup>13</sup> Solutions to homelessness in both the public and private sectors have primarily been focused on providing individuals and families experiencing homelessness with housing.<sup>14</sup> While emergency shelter may provide access to services for individuals and families in crisis, it often fails to address long-term needs.<sup>15</sup> The "housing first" approach is premised on the belief that vulnerable and at-risk individuals and families who are homeless are more responsive to interventions and social services support after they are in their own housing, rather than while living in temporary/transitional facilities or housing programs.<sup>16</sup>

## *Voluntary Checkoffs*

Voluntary checkoffs provide the opportunity for citizens to make a voluntary donation by checking a box on a form when registering a vehicle or applying for a driver's license. Current statute provides that an organization must seek authorization from the Department of Highway Safety and Motor Vehicles (DHSMV) prior to establishing a voluntary contribution checkoff. Organizations must submit the request to DHSMV, pay an application fee and submit a marketing strategy prior to seeking Legislative authorization for the creation of a new voluntary contribution fee on motor vehicle registration applications.<sup>17</sup>

Additionally, current statute provides that an organization must seek authorization from the Department of Highway Safety and Motor Vehicles (DHSMV) prior to establishing a voluntary contribution checkoff. Organizations must submit the request to DHSMV, pay an application fee and submit a marketing strategy prior to seeking Legislative authorization for the creation of a new voluntary contribution fee on driver's license applications.<sup>18</sup>

The Department of Highway Safety and Motor Vehicles must discontinue the checkoff if less than \$25,000 has been contributed by the end of the fifth year, or if less than \$25,000 is contributed during any subsequent 5-year period.<sup>19</sup>

## **Effect of Proposed Changes**

The bill authorizes the collection of voluntary contributions in the amount of \$1.00 to be added to the motor vehicle and driver's license fees - initial and renewal fees - to aid the homeless. The bill does not require the voluntary contributions be subject to the checkoff procedures and limitations of s. 320.023, F.S., and s. 322.081, F.S. Funds will be placed in a grants and donations trust fund for use by the office to supplement Challenge Grants and Homeless Housing Assistance Grants and to provide

---

<sup>12</sup> s. 420.622(4), F.S.

<sup>13</sup> HB 597 (2009)

<sup>14</sup> s. 420.6275(1)(b), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Beyond Shelter. Founded in 1998. The mission of Beyond Shelter is to develop systematic approaches to combat poverty and homelessness among families with children and enhance family economic security and well-being.

<sup>17</sup> s. 320.023, F.S.

<sup>18</sup> s. 322.0581, F.S.

<sup>19</sup> ss. 320.023(4)(a) and 322.081(4)(a), F.S.



information on homelessness to the public. The effect of this change is estimated to generate an additional \$20,000 a year.

The bill repeals s.414.16, F.S., relating to the Emergency Assistance Program and replaces it with a Homelessness Prevention Grant Program under s.414.161, F.S. The new program will be administered by the Office on Homelessness at DCF, with the concurrence of the Council on Homelessness. The office may provide prevention grants through contracts with local lead agencies for homeless assistance continuums of care. The bill specifies the grant application process and certain preferences for applicants who can leverage additional funds and demonstrate effective programs. Eligibility for the grant program is limited to lead agencies who have implemented a local homeless assistance plan for their area. The grants are capped at \$300,000 and may be used to assist families facing the loss of their current home to pay past due rent and mortgage payments, past due utility bills, and case management. Program administrative costs are capped at 3 percent of the grant award.

The bill caps administrative costs for lead agencies administering Challenge Grants at 8 percent. Challenge Grant awards are up to \$500,000 per lead agency.

The bill amends s.420.6275, F.S., as it relates to the Housing First Methodology, deleting the requirement for the homeless individual or household to complete a background check and any rehabilitation services for alcoholism or substance abuse as a condition of permanent housing. The Housing First Methodology seeks to place the homeless individual into permanent housing as quickly as possible.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 320.02, F.S., relating to registration required; application for registration; forms.

**Section 2:** Amends s. 322.08, F.S., relating to application for license; requirements for license and identification card forms.

**Section 3:** Amends s. 322.18, F.S., relating to original applications, licenses, renewals; expiration of licenses; delinquent licenses.

**Section 4:** Creates s. 414.161, F.S., relating to Homelessness Prevention Grants.

**Section 5:** Amends s. 420.622, F.S., relating to the State Office on Homelessness; Council on Homelessness.

**Section 6:** Amends s. 420.625, F.S., relating to Grant-in-aid program.

**Section 7:** Amends s. 420.6275, F.S., relating to Housing First.

**Section 8:** Repeals s. 414.16, F.S., relating to Emergency Assistance program.

**Section 9:** Provides an effective date of July 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

According to DCF, the voluntary contributions from motor vehicle registrations and renewals, and original or renewal driver's licenses could provide an estimated \$20,000.

#### 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:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

Not applicable. This bill does not appear to affect county or municipal governments.

#### 1. Applicability of Municipality/County Mandates Provision:

None.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1                                   A bill to be entitled  
 2           An act relating to homelessness; amending ss. 320.02,  
 3           322.08, and 322.18, F.S.; requiring the motor vehicle  
 4           registration form and registration renewal form, the  
 5           driver license application form, and the driver  
 6           license application form for renewal issuance or  
 7           renewal extension to include an option to make a  
 8           voluntary contribution to aid the homeless; providing  
 9           for such contributions to be deposited into the Grants  
 10          and Donations Trust Fund of the Department of Children  
 11          and Family Services and used by the State Office on  
 12          Homelessness for certain purposes; providing that  
 13          voluntary contributions for the homeless are not  
 14          income of a revenue nature for the purpose of applying  
 15          certain service charges; creating s. 414.161, F.S.;  
 16          establishing a homelessness prevention grant program;  
 17          requiring grant applicants to be ranked competitively;  
 18          providing preference for certain grant applicants;  
 19          providing eligibility requirements; providing grant  
 20          limitations and restrictions; requiring lead agencies  
 21          for local homeless assistance continuums of care to  
 22          track, monitor, and report on assisted families for a  
 23          specified period of time; amending s. 420.622, F.S.;  
 24          limiting the percentage of funding that lead agencies  
 25          may spend on administrative costs; amending s.  
 26          420.625, F.S.; deleting a cross-reference to conform;  
 27          amending s. 420.6275, F.S.; revising legislative  
 28          findings relating to the Housing First approach to

HB 531

2012

29 homeless; repealing s. 414.16, F.S., relating to  
 30 the emergency assistance program for families with  
 31 children that have lost shelter or face loss of  
 32 shelter due to an emergency; providing an effective  
 33 date.

34

35 Be It Enacted by the Legislature of the State of Florida:

36

37 Section 1. Paragraph (o) is added to subsection (15) of  
 38 section 320.02, Florida Statutes, to read:

39 320.02 Registration required; application for  
 40 registration; forms.—

41 (15)

42 (o) Notwithstanding s. 320.023, the application form for  
 43 motor vehicle registration and renewal of registration must  
 44 include language permitting a voluntary contribution of \$1 per  
 45 applicant to aid the homeless. Contributions made pursuant to  
 46 this paragraph shall be deposited into the Grants and Donations  
 47 Trust Fund of the Department of Children and Family Services and  
 48 used by the State Office on Homelessness to supplement grants  
 49 made under s. 420.622(4) and (5), provide information to the  
 50 public about homelessness in the state, and provide literature  
 51 for homeless persons seeking assistance.

52

53 For the purpose of applying the service charge provided in s.  
 54 215.20, contributions received under this subsection are not  
 55 income of a revenue nature.

56 Section 2. Subsection (7) of section 322.08, Florida

57 Statutes, is amended to read:

58 322.08 Application for license; requirements for license  
59 and identification card forms.—

60 (7) The application form for an original, renewal, or  
61 replacement driver's license or identification card shall  
62 include language permitting the following:

63 (a) A voluntary contribution of \$1 per applicant, which  
64 contribution shall be deposited into the Health Care Trust Fund  
65 for organ and tissue donor education and for maintaining the  
66 organ and tissue donor registry.

67 (b) A voluntary contribution of \$1 per applicant, which  
68 contribution shall be distributed to the Florida Council of the  
69 Blind.

70 (c) A voluntary contribution of \$2 per applicant, which  
71 shall be distributed to the Hearing Research Institute,  
72 Incorporated.

73 (d) A voluntary contribution of \$1 per applicant, which  
74 shall be distributed to the Juvenile Diabetes Foundation  
75 International.

76 (e) A voluntary contribution of \$1 per applicant, which  
77 shall be distributed to the Children's Hearing Help Fund.

78 (f) A voluntary contribution of \$1 per applicant, which  
79 shall be distributed to Family First, a nonprofit organization.

80 (g) A voluntary contribution of \$1 per applicant to Stop  
81 Heart Disease, which shall be distributed to the Florida Heart  
82 Research Institute, a nonprofit organization.

83 (h) A voluntary contribution of \$1 per applicant to Senior  
84 Vision Services, which shall be distributed to the Florida

85 Association of Agencies Serving the Blind, Inc., a not-for-  
 86 profit organization.

87 (i) A voluntary contribution of \$1 per applicant for  
 88 services for persons with developmental disabilities, which  
 89 shall be distributed to The Arc of Florida.

90 (j) A voluntary contribution of \$1 to the Ronald McDonald  
 91 House, which shall be distributed each month to Ronald McDonald  
 92 House Charities of Tampa Bay, Inc.

93 (k) Notwithstanding s. 322.081, a voluntary contribution  
 94 of \$1 per applicant, which shall be distributed to the League  
 95 Against Cancer/La Liga Contra el Cancer, a not-for-profit  
 96 organization.

97 (l) A voluntary contribution of \$1 per applicant to  
 98 Prevent Child Sexual Abuse, which shall be distributed to  
 99 Lauren's Kids, Inc., a nonprofit organization.

100 (m) A voluntary contribution of \$1 per applicant, which  
 101 shall be distributed to Prevent Blindness Florida, a not-for-  
 102 profit organization, to prevent blindness and preserve the sight  
 103 of the residents of this state.

104 (n) Notwithstanding s. 322.081, a voluntary contribution  
 105 of \$1 per applicant to the state homes for veterans, to be  
 106 distributed on a quarterly basis by the department to the State  
 107 Homes for Veterans Trust Fund, which is administered by the  
 108 Department of Veterans' Affairs.

109 (o) A voluntary contribution of \$1 per applicant to the  
 110 Disabled American Veterans, Department of Florida, which shall  
 111 be distributed quarterly to Disabled American Veterans,  
 112 Department of Florida, a nonprofit organization.

113 (p) Notwithstanding s. 322.081, a voluntary contribution  
 114 of \$1 per applicant to aid the homeless. Contributions made  
 115 pursuant to this paragraph shall be deposited into the Grants  
 116 and Donations Trust Fund of the Department of Children and  
 117 Family Services and used by the State Office on Homelessness to  
 118 supplement grants made under s. 420.622(4) and (5), provide  
 119 information to the public about homelessness in the state, and  
 120 provide literature for homeless persons seeking assistance.

121  
 122 A statement providing an explanation of the purpose of the trust  
 123 funds shall also be included. For the purpose of applying the  
 124 service charge provided in s. 215.20, contributions received  
 125 under paragraphs (b)-(p) ~~(b)-(e)~~ are not income of a revenue  
 126 nature.

127 Section 3. Subsection (9) is added to section 322.18,  
 128 Florida Statutes, to read:

129 322.18 Original applications, licenses, and renewals;  
 130 expiration of licenses; delinquent licenses.—

131 (9) The application form for a renewal issuance or renewal  
 132 extension shall include language permitting a voluntary  
 133 contribution of \$1 per applicant to aid the homeless.  
 134 Contributions made pursuant to this subsection shall be  
 135 deposited into the Grants and Donations Trust Fund of the  
 136 Department of Children and Family Services and used by the State  
 137 Office on Homelessness to supplement grants made under s.  
 138 420.622(4) and (5), provide information to the public about  
 139 homelessness in the state, and provide literature for homeless  
 140 persons seeking assistance. For the purpose of applying the

141 service charge provided in s. 215.20, contributions received  
 142 under this paragraph are not income of a revenue nature.

143 Section 4. Section 414.161, Florida Statutes, is created  
 144 to read:

145 414.161 Homelessness prevention grants.-

146 (1) ESTABLISHMENT OF PROGRAM.-There is created a grant  
 147 program to provide emergency financial assistance to families  
 148 facing the loss of their current home due to a financial or  
 149 other crisis. The State Office on Homelessness, with the  
 150 concurrence of the Council on Homelessness, may accept and  
 151 administer moneys appropriated to the Department of Children and  
 152 Family Services to provide homelessness prevention grants  
 153 annually to lead agencies for local homeless assistance  
 154 continuums of care, as recognized by the State Office on  
 155 Homelessness. These moneys shall consist of any sums that the  
 156 state may appropriate, as well as money received from donations,  
 157 gifts, bequests, or otherwise from any public or private source  
 158 that is intended to assist families to prevent them from  
 159 becoming homeless.

160 (2) GRANT APPLICATIONS.-Grant applicants shall be ranked  
 161 competitively. Preference shall be given to applicants who  
 162 leverage additional private funds and public funds, who  
 163 demonstrate the effectiveness of their homelessness prevention  
 164 programs in keeping families housed, and who demonstrate the  
 165 commitment of other assistance and services to address family  
 166 health, employment, and education needs.

167 (3) ELIGIBILITY.-In order to qualify for a grant, a lead  
 168 agency must develop and implement a local homeless assistance



169 continuum of care plan for its designated catchment area. The  
 170 homelessness prevention program must be included in the  
 171 continuum of care plan.

172 (4) GRANT LIMITS.—The maximum grant amount per lead agency  
 173 may not exceed \$300,000. The grant assistance may be used to pay  
 174 past due rent or mortgage payments, past due utility costs,  
 175 provision of case management services, and program  
 176 administration costs not to exceed 3 percent of the grant award.  
 177 The homelessness prevention program must develop a case plan for  
 178 each family to be assisted setting forth what costs will be  
 179 covered and the maximum level of assistance to be offered.

180 (5) PERFORMANCE.—The lead agency must track, monitor, and  
 181 report on each family assisted for at least 12 months after the  
 182 last assistance provided to the family. The goal for the  
 183 homelessness prevention program is to enable at least 85 percent  
 184 of the families assisted to remain in their homes and avoid  
 185 becoming homeless during the ensuing year.

186 Section 5. Paragraph (d) is added to subsection (4) of  
 187 section 420.622, Florida Statutes, to read:

188 420.622 State Office on Homelessness; Council on  
 189 Homelessness.—

190 (4) Not less than 120 days after the effective date of  
 191 this act, the State Office on Homelessness, with the concurrence  
 192 of the Council on Homelessness, may accept and administer moneys  
 193 appropriated to it to provide "Challenge Grants" annually to  
 194 lead agencies for homeless assistance continuums of care  
 195 designated by the State Office on Homelessness. A lead agency  
 196 may be a local homeless coalition, municipal or county

197 government, or other public agency or private, not-for-profit  
 198 corporation. Such grants may be up to \$500,000 per lead agency.

199 (d) A lead agency may spend a maximum of 8 percent of its  
 200 funding on administrative costs.

201 Section 6. Paragraph (d) of subsection (3) of section  
 202 420.625, Florida Statutes, is amended to read:

203 420.625 Grant-in-aid program.—

204 (3) ESTABLISHMENT.—There is hereby established a grant-in-  
 205 aid program to help local communities in serving the needs of  
 206 the homeless through a variety of supportive services, which may  
 207 include, but are not limited to:

208 (d) Emergency financial assistance for persons who are  
 209 totally without shelter or facing loss of shelter, ~~but who are~~  
 210 ~~not eligible for such assistance under s. 414.16.~~

211 Section 7. Paragraph (a) of subsection (2) of section  
 212 420.6275, Florida Statutes, is amended to read:

213 420.6275 Housing First.—

214 (2) HOUSING FIRST METHODOLOGY.—

215 (a) The Housing First approach to homelessness differs  
 216 from traditional approaches by providing housing assistance,  
 217 case management, and support services responsive to individual  
 218 or family needs after housing is obtained. By using this  
 219 approach when appropriate, communities can significantly reduce  
 220 the amount of time that individuals and families are homeless  
 221 and prevent further episodes of homelessness. Housing First  
 222 emphasizes that social services provided to enhance individual  
 223 and family well-being can be more effective when people are in  
 224 their own home, and:

HB 531

2012

225           1. The housing is not time-limited.

226           2. The housing is not contingent on compliance with  
227 services. Instead, participants must comply with a standard  
228 lease agreement and are provided with the services and support  
229 that are necessary to help them do so successfully.

230           ~~3. A background check and any rehabilitation necessary to  
231 combat an addiction related to alcoholism or substance abuse has  
232 been completed by the individual for whom assistance or support  
233 services are provided.~~

234           Section 8. Section 414.16, Florida Statutes, is repealed.

235           Section 9. This act shall take effect July 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 531 (2012)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER

---

1 Committee/Subcommittee hearing bill: Health & Human Services  
2 Access Subcommittee  
3 Representative Reed offered the following:  
4

5 **Amendment (with title amendment)**

6 Remove lines 211-233  
7

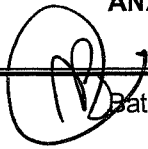

8 -----  
9 **T I T L E A M E N D M E N T**

10 Remove lines 27-29 and insert:  
11 repealing s. 414.16, F.S., relating to



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 813 Eligibility for Temporary Cash Assistance and Food Assistance  
**SPONSOR(S):** Smith  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1128

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		 Batchelor	Schoolfield 
2) Appropriations Committee			
3) Health & Human Services Committee			

**SUMMARY ANALYSIS**

HB 813 eliminates an opt out provision in s. 414.095, F.S., which prohibits the denial of temporary cash assistance and food assistance benefits solely based on a felony drug conviction unless that conviction was for drug trafficking pursuant to s. 893.135, F.S. This will require the Department of Children and Families (DCF) to deny cash assistance benefits and food assistance benefits to any individual who has been convicted of an offense classified as a felony for the possession of a controlled substance on or after July 1, 2012. The bill provides an exception for persons who have successfully completed a treatment program for drug addiction or drug abuse.

The bill also provides to the appointment of an alternate payee to receive benefits on behalf of the children and family if assistance is denied based on a felony drug possession conviction.

This bill is not anticipated to have a significant fiscal impact.

The bill provides an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

###### *Temporary Assistance for Needy Families (TANF)*

Under the welfare reform legislation of 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PWRORA), Public Law 104-193, the Temporary Assistance for Needy Families (TANF) program replaced the welfare programs known as Aid to Families with Dependent Children (AFDC), the Job Opportunities and Basic Skills Training (JOBS) program and the Emergency Assistance (EA) program. The law ended federal entitlement to assistance and instead created TANF as a block grant that provides States, territories and tribes federal funds each year. These funds cover benefits, administrative expenses, and services targeted to needy families. TANF became effective July 1, 1997, and was reauthorized in February 2006 under the Deficit Reduction Act of 2005.<sup>1</sup> States receive block grants to operate their individual programs and to accomplish the goals of the TANF program. DCF administers the TANF program in conjunction with the Agency for Workforce Innovation (AWI).

###### *Temporary Cash Assistance Program (Cash Assistance)*

DCF administers the cash assistance program with TANF funds to help families become self-supporting while allowing children to remain in their own homes.<sup>2</sup> Current law provides that families are eligible for temporary cash assistance for a lifetime cumulative total of 48 months (4 years).<sup>3</sup> DCF reports that approximately 92,979 people are currently receiving temporary cash assistance.<sup>4</sup> The FY 2011-2012 appropriation of TANF funds to support temporary cash assistance was \$177,522,123.

###### *Supplemental Nutrition Assistance Program-SNAP (Food Assistance)*

The Food Assistance Program is a federally funded program to help low-income people buy food they need for good health. The benefits portion of the program is 100% federally funded and administration of the program is split between the state and the federal government.<sup>5</sup> The U.S. Department of Agriculture (USDA) determines the amount of food assistance benefits an individual or family receives. Food assistance benefits are a supplement to a family's food budget. Households may need to spend some of their own cash, along with their food assistance benefits, to buy enough food for a month.<sup>6</sup> DCF reports that approximately 3,311,095 people are currently receiving food stamps at approximately \$450 million dollars annually.<sup>7</sup>

###### *Public Law 104-193 Section 115, Denial of Assistance and Benefits for Certain Drug-Related Convictions*

Public Law 104-193, section 115 states that any individual who is convicted under state or federal law of any offense which is classified as a felony for the possession, use, or distribution of a controlled substance<sup>8</sup> shall not be eligible for any State program funded under part A of the Title IV of the Social

<sup>1</sup> US Dept. of Health and Human Services, Administration on Children and Families  
<http://www.acf.hhs.gov/programs/ofa/tanf/about.html> (last visited on 12/21/11).

<sup>2</sup> DCF Food Assistance Program Fact Sheet, [www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf](http://www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf) (last visited 1/4/12).

<sup>3</sup> Section 414.105, F.S.

<sup>4</sup> DCF Standard Data Reports. <http://www.dcf.state.fl.us/programs/access/StandardDataReports.asp>. (last visited 12/22/11).

<sup>5</sup> DCF ACCESS Florida Food Medical Assistance and Cash Program Policy Manual,  
<http://www.dcf.state.fl.us/programs/access/esspolicymanual.shtml>. (last visited 12/27/11).

<sup>6</sup> DCF Food Assistance Program Fact Sheet, [www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf](http://www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf) (last visited 12/21/11).

<sup>7</sup> DCF Standard Data Reports. <http://www.dcf.state.fl.us/programs/access/StandardDataReports.asp>. (last visited 1/3/12).

<sup>8</sup> As defined in 21.U.S.C.802(6).

Security Act (cash assistance) or for benefits under the supplemental nutrition assistance program (food assistance), as defined in the Food Stamp Act of 1977.<sup>9</sup> The public law specifies that a state may chose to opt-out of this act or may chose to exempt any or all individuals in the state, or limit the time frame for the prohibition.<sup>10</sup> Currently, Florida has opted out of the act and state law provides as follows:

Section 414.095(1), F.S. "Benefits shall not be denied to an individual solely based on a felony drug conviction, unless the conviction is for trafficking pursuant to s. 893.135, F.S. To be eligible under this section an individual convicted of a drug felony must be satisfactorily meeting the requirements of the temporary cash assistance program, including all substance abuse treatment requirements. Within the limits specified in this chapter, the state opts out of the provision of Pub. L. No 104-193, s. 115, that eliminates eligibility for temporary cash assistance and food assistance for any individual convicted of a controlled substance felony."<sup>11</sup>

### *Protective Payees*

The cash assistance program<sup>12</sup> and the food assistance program<sup>13</sup> require participants to satisfy work requirements established in federal law. In the event that a cash assistance or food assistance recipient is noncompliant with the work activity requirements, DCF has authority to terminate cash assistance to the family.<sup>14</sup> In the event that assistance is terminated, DCF will establish a protective payee that will receive cash assistance or food assistance funds on behalf of any children in the home who are under the age of 16.<sup>15</sup> The protective payee shall be designated by DCF and may include:<sup>16</sup>

- A relative or other individual who is interested in or concerned with the welfare of the child or children and agrees in writing to utilize the assistance in the best interest of the child or children.
- A member of the community affiliated with a religious, community, neighborhood, or charitable organization who agrees in writing to utilize the assistance in the best interest of the child or children.
- A volunteer or member of an organization who agrees in writing to fulfill the role of protective payee and utilize the assistance in the best interest of the child or children.

### **Effect of Proposed Changes**

This bill eliminates an opt out provision in s. 414.095, F.S., which prohibits the denial of temporary cash assistance and food assistance benefits solely based on a felony drug conviction unless that conviction was for drug trafficking pursuant to s. 893.135, F.S.

The bill creates a new subsection to s. 414.095, F.S., titled Ineligibility Due to Felony Convictions. Specifically, the bill will permit DCF to deny cash assistance and food assistance benefits to any individual who has been convicted of an offense classified as a felony for the possession of a controlled substance on or after July 1, 2012. A person will be denied cash assistance or food assistance unless the person can provide verification that he or she has successfully completed a treatment program for drug addiction or abuse. DCF reports that they will rely on self attestations by applicants to determine whether or not they have been convicted of a drug felony.

State law which denies cash assistance or food assistance benefits to persons with a felony conviction for drug trafficking if retained in the bill.<sup>17</sup>

---

<sup>9</sup> P.L.104-193, Section 115.

<sup>10</sup> *Id.*

<sup>11</sup> Section 414.095(1), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> P.L. 104-193, Section 815

<sup>14</sup> Section 414.065, F.S.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Section 414.095(1), F.S and Public Law 104-193, Section 115



The bill also specifies that if an individual is deemed ineligible as a result of a felony drug conviction an alternative payee will be designated to receive the assistance on behalf of others in the assistance group (e.g. children or other family in the home).

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 414.095, F.S., relating to eligibility for temporary cash assistance.

**Section 2:** Amends s. 409.2564, F.S., relating to actions for support.

**Section 3:** Amends s. 409.902, F.S., relating to designated single state agency; payment requirements; program title; release of medical records.

**Section 4:** Amends s. 414.045, F.S., relating to cash assistance program.

**Section 5:** Amends s. 414.0652, F.S., relating to drug screening for applicants for Temporary Cash Assistance for Needy Families.

**Section 6:** Amends s. 414.0655, relating to medical incapacity due to substance abuse or mental health impairment.

**Section 7:** Provides an effective date of July 1, 2012.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

DCF could see a reduction in the number of applicants who apply for assistance. This could create a reduction in program expenditures, however the exact amount is not known.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

See A.2. above

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 54 states that an individual may be eligible for cash assistance or food assistance if he or she has successfully completed a drug addiction or drug abuse program, however the bill does not define what "successfully completing a program" means. This would leave the interpretation of this up to DCF.

P.L. 104-193, Section 115 provides that states can prohibit any or all individuals from cash assistance or food assistance if the an individual has been convicted of any offense classified as a felony in the law of the jurisdiction involved and which has an element, the possession, use or distribution of a controlled substance. The bill only specifies the word "possession", and does not include use or distribution of a controlled substance as in the federal law.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to eligibility for temporary cash  
 3           assistance and food assistance; amending s. 414.095,  
 4           F.S.; prohibiting an individual convicted of a felony  
 5           offense from receiving temporary cash assistance or  
 6           food assistance under certain conditions; providing  
 7           conditions under which a person with a felony  
 8           conviction may resume receiving such assistance;  
 9           providing for designation of an alternative payee  
 10          under certain circumstances; amending ss. 409.2564,  
 11          409.902, 414.045, 414.0652, and 414.0655, F.S.;  
 12          conforming cross-references; providing an effective  
 13          date.

14  
 15   Be It Enacted by the Legislature of the State of Florida:

16  
 17          Section 1. Present subsections (2) through (18) of section  
 18          414.095, Florida Statutes, are renumbered as subsections (3)  
 19          through (19), respectively, subsection (1), paragraph (a) of  
 20          present subsection (2), paragraphs (c) and (e) of present  
 21          subsection (14), and present subsection (17) are amended, and a  
 22          new subsection (2) is added to that section, to read:

23               414.095 Determining eligibility for temporary cash and  
 24               food assistance.—

25               (1) ELIGIBILITY FOR TEMPORARY CASH ASSISTANCE.—An  
 26               applicant must meet eligibility requirements of this section  
 27               before receiving services or temporary cash assistance under  
 28               this chapter, except that an applicant shall be required to

29 register for work and engage in work activities in accordance  
 30 with s. 445.024, as designated by the regional workforce board,  
 31 and may receive support services or child care assistance in  
 32 conjunction with such requirement. The department shall make a  
 33 determination of eligibility based on the criteria listed in  
 34 this chapter. The department shall monitor continued eligibility  
 35 for temporary cash assistance through periodic reviews  
 36 consistent with the food assistance eligibility process.

37 ~~Benefits shall not be denied to an individual solely based on a~~  
 38 ~~felony drug conviction, unless the conviction is for trafficking~~  
 39 ~~pursuant to s. 893.135. To be eligible under this section, an~~  
 40 ~~individual convicted of a drug felony must be satisfactorily~~  
 41 ~~meeting the requirements of the temporary cash assistance~~  
 42 ~~program, including all substance abuse treatment requirements.~~  
 43 ~~Within the limits specified in this chapter, the state opts out~~  
 44 ~~of the provision of Pub. L. No. 104-193, s. 115, that eliminates~~  
 45 ~~eligibility for temporary cash assistance and food assistance~~  
 46 ~~for any individual convicted of a controlled substance felony.~~

47 (2) INELIGIBILITY DUE TO FELONY CONVICTION.—Pursuant to  
 48 Pub. L. No. 104-193, s. 115, on or after July 1, 2012, an  
 49 individual convicted of an offense classified as a felony for  
 50 possession of a controlled substance, as defined in the  
 51 Controlled Substances Act, 21 U.S.C., s. 802(6), or pursuant to  
 52 s. 893.135, is not eligible for temporary cash assistance or  
 53 food assistance unless the department receives verification that  
 54 the individual has satisfactorily completed a treatment program  
 55 or regimen for drug addiction or drug abuse. An individual who  
 56 has a felony conviction for drug trafficking is not eligible for

57 | temporary cash assistance or food assistance. If the individual  
 58 | is deemed ineligible for temporary cash assistance or food  
 59 | assistance as a result of a felony drug conviction, an  
 60 | appropriate alternate payee shall be designated to receive the  
 61 | assistance on behalf of the other members of the assistance  
 62 | group.

63 | (3) ~~(2)~~ ADDITIONAL ELIGIBILITY REQUIREMENTS.—

64 | (a) To be eligible for services or temporary cash  
 65 | assistance and Medicaid:

66 | 1. An applicant must be a United States citizen, or a  
 67 | qualified noncitizen, as defined in this section.

68 | 2. An applicant must be a legal resident of the state.

69 | 3. Each member of a family must provide to the department  
 70 | the member's social security number or shall provide proof of  
 71 | application for a social security number. An individual who  
 72 | fails to provide a social security number, or proof of  
 73 | application for a social security number, is not eligible to  
 74 | participate in the program.

75 | 4. A minor child must reside with a parent or parents,  
 76 | with a relative caretaker who is within the specified degree of  
 77 | blood relationship as defined by 45 C.F.R. part 233, or, if the  
 78 | minor is a teen parent with a child, in a setting approved by  
 79 | the department as provided in subsection (15) ~~(14)~~.

80 | 5. Each family must have a minor child and meet the income  
 81 | and resource requirements of the program. All minor children who  
 82 | live in the family, as well as the parents of the minor  
 83 | children, shall be included in the eligibility determination  
 84 | unless specifically excluded.

HB 813

2012

85 (15)~~(14)~~ PROHIBITIONS AND RESTRICTIONS.—

86 (c) The teen parent is not required to live with a parent,  
87 legal guardian, or other adult caretaker relative if the  
88 department determines that:

89 1. The teen parent has suffered or might suffer harm in  
90 the home of the parent, legal guardian, or adult caretaker  
91 relative.

92 2. The requirement is not in the best interest of the teen  
93 parent or the child. If the department determines that it is not  
94 in the best interest of the teen parent or child to reside with  
95 a parent, legal guardian, or other adult caretaker relative, the  
96 department shall provide or assist the teen parent in finding a  
97 suitable home, a second-chance home, a maternity home, or other  
98 appropriate adult-supervised supportive living arrangement. Such  
99 living arrangement may include a shelter obligation in  
100 accordance with subsection (11) ~~(10)~~.

101

102 The department may not delay providing temporary cash assistance  
103 to the teen parent through the alternative payee designated by  
104 the department pending a determination as to where the teen  
105 parent should live and sufficient time for the move itself. A  
106 teen parent determined to need placement that is unavailable  
107 shall continue to be eligible for temporary cash assistance so  
108 long as the teen parent cooperates with the department and the  
109 Department of Health. The teen parent shall be provided with  
110 counseling to make the transition from independence to  
111 supervised living and with a choice of living arrangements.

112 (e) If a parent or caretaker relative does not assign any

113 rights a family member may have to support from any other person  
 114 as required by subsection (8) ~~(7)~~, temporary cash assistance to  
 115 the entire family shall be denied until the parent or caretaker  
 116 relative assigns the rights to the department.

117 (17) ~~(16)~~ PROPORTIONAL REDUCTION.—If the Social Services  
 118 Estimating Conference forecasts an increase in the temporary  
 119 cash assistance caseload and there is insufficient funding, a  
 120 proportional reduction as determined by the department shall be  
 121 applied to the levels of temporary cash assistance in subsection  
 122 (11) ~~(10)~~.

123 Section 2. Paragraph (a) of subsection (11) of section  
 124 409.2564, Florida Statutes, is amended to read:

125 409.2564 Actions for support.—

126 (11)(a) The Department of Revenue shall review child  
 127 support orders in IV-D cases at least once every 3 years when  
 128 requested by either party, or when support rights are assigned  
 129 to the state under s. 414.095(8) ~~414.095(7)~~, and may seek  
 130 modification of the order if appropriate under the child support  
 131 guidelines in s. 61.30. Not less than once every 3 years the  
 132 department shall provide notice to the parties subject to the  
 133 order informing them of their right to request a review and, if  
 134 appropriate, a modification of the child support order. The  
 135 notice requirement may be met by including appropriate language  
 136 in the initial support order or any subsequent orders.

137 Section 3. Subsection (2) of section 409.902, Florida  
 138 Statutes, is amended to read:

139 409.902 Designated single state agency; payment  
 140 requirements; program title; release of medical records.—

141 (2) Eligibility is restricted to United States citizens  
 142 and to lawfully admitted noncitizens who meet the criteria  
 143 provided in s. 414.095(4) ~~414.095(3)~~.

144 (a) Citizenship or immigration status must be verified.  
 145 For noncitizens, this includes verification of the validity of  
 146 documents with the United States Citizenship and Immigration  
 147 Services using the federal SAVE verification process.

148 (b) State funds may not be used to provide medical  
 149 services to individuals who do not meet the requirements of this  
 150 subsection unless the services are necessary to treat an  
 151 emergency medical condition or are for pregnant women. Such  
 152 services are authorized only to the extent provided under  
 153 federal law and in accordance with federal regulations as  
 154 provided in 42 C.F.R. s. 440.255.

155 Section 4. Paragraph (b) of subsection (1) of section  
 156 414.045, Florida Statutes, is amended to read:

157 414.045 Cash assistance program.—Cash assistance families  
 158 include any families receiving cash assistance payments from the  
 159 state program for temporary assistance for needy families as  
 160 defined in federal law, whether such funds are from federal  
 161 funds, state funds, or commingled federal and state funds. Cash  
 162 assistance families may also include families receiving cash  
 163 assistance through a program defined as a separate state  
 164 program.

165 (1) For reporting purposes, families receiving cash  
 166 assistance shall be grouped into the following categories. The  
 167 department may develop additional groupings in order to comply  
 168 with federal reporting requirements, to comply with the data-



169 reporting needs of the board of directors of Workforce Florida,  
 170 Inc., or to better inform the public of program progress.

171 (b) Child-only cases.—Child-only cases include cases that  
 172 do not have an adult or teen head of household as defined in  
 173 federal law. Such cases include:

174 1. Children in the care of caretaker relatives where the  
 175 caretaker relatives choose to have their needs excluded in the  
 176 calculation of the amount of cash assistance.

177 2. Families in the Relative Caregiver Program as provided  
 178 in s. 39.5085.

179 3. Families in which the only parent in a single-parent  
 180 family or both parents in a two-parent family receive  
 181 supplemental security income (SSI) benefits under Title XVI of  
 182 the Social Security Act, as amended. To the extent permitted by  
 183 federal law, individuals receiving SSI shall be excluded as  
 184 household members in determining the amount of cash assistance,  
 185 and such cases shall not be considered families containing an  
 186 adult. Parents or caretaker relatives who are excluded from the  
 187 cash assistance group due to receipt of SSI may choose to  
 188 participate in work activities. An individual who volunteers to  
 189 participate in work activity but whose ability to participate in  
 190 work activities is limited shall be assigned to work activities  
 191 consistent with such limitations. An individual who volunteers  
 192 to participate in a work activity may receive child care or  
 193 support services consistent with such participation.

194 4. Families where the only parent in a single-parent  
 195 family or both parents in a two-parent family are not eligible  
 196 for cash assistance due to immigration status or other

197 limitation of federal law. To the extent required by federal  
 198 law, such cases shall not be considered families containing an  
 199 adult.

200 5. To the extent permitted by federal law and subject to  
 201 appropriations, special needs children who have been adopted  
 202 pursuant to s. 409.166 and whose adopting family qualifies as a  
 203 needy family under the state program for temporary assistance  
 204 for needy families. Notwithstanding any provision to the  
 205 contrary in s. 414.075, s. 414.085, or s. 414.095, a family  
 206 shall be considered a needy family if:

207 a. The family is determined by the department to have an  
 208 income below 200 percent of the federal poverty level;

209 b. The family meets the requirements of s. 414.095(3) and  
 210 (4) ~~414.095(2) and (3)~~ related to residence, citizenship, or  
 211 eligible noncitizen status; and

212 c. The family provides any information that may be  
 213 necessary to meet federal reporting requirements specified under  
 214 Part A of Title IV of the Social Security Act.

215  
 216 Families described in subparagraph 1., subparagraph 2., or  
 217 subparagraph 3. may receive child care assistance or other  
 218 supports or services so that the children may continue to be  
 219 cared for in their own homes or the homes of relatives. Such  
 220 assistance or services may be funded from the temporary  
 221 assistance for needy families block grant to the extent  
 222 permitted under federal law and to the extent funds have been  
 223 provided in the General Appropriations Act.

224 Section 5. Paragraph (c) of subsection (2) of section

HB 813

2012

225 414.0652, Florida Statutes, is amended to read:

226 414.0652 Drug screening for applicants for Temporary  
227 Assistance for Needy Families.—

228 (2) The department shall:

229 (c) Require that any teen parent who is not required to  
230 live with a parent, legal guardian, or other adult caretaker  
231 relative in accordance with s. 414.095(15)(c) ~~414.095(14)(e)~~  
232 must comply with the drug-testing requirement.

233 Section 6. Subsection (2) of section 414.0655, Florida  
234 Statutes, is amended to read:

235 414.0655 Medical incapacity due to substance abuse or  
236 mental health impairment.—

237 (2) Notwithstanding any provision of s. 414.095(3)(a)4. or  
238 5. ~~414.095(2)(a)4. or 5.~~ to the contrary, a participant who is  
239 absent from the home due to out-of-home residential treatment  
240 for not more than 150 days shall continue to be a member of the  
241 assistance group whether or not the child or children for whom  
242 the participant is the parent or caretaker relative are living  
243 in the residential treatment center.

244 Section 7. This act shall take effect July 1, 2012.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 519 Florida Healthy Kids Corporation

SPONSOR(S): Berman and others

TIED BILLS: IDEN./SIM. BILLS: SB 608

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Poche 	Schoolfield 
2) Health & Human Services Committee			

SUMMARY ANALYSIS

The Florida Healthy Kids Corporation is a non-profit organization which, together with other state agencies, administers Florida KidCare, the state's children's health insurance program for uninsured children from birth to age 19 who meet income and eligibility requirements. The Corporation is currently governed by a 12-member board of directors, which includes appointees of the Governor and Chief Financial Officer and members of the health and child care community.

House Bill 519 expands the board to 13 members by providing an additional member to be chosen by the Governor from a list of three candidates proposed by the Florida Dental Association.

The bill does not appear to have a fiscal impact.

The bill provides an effective date immediately upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Florida Healthy Kids Corporation

The Florida Healthy Kids Corporation (Corporation), under contract with the Agency for Health Care Administration (AHCA), performs administrative functions for the Florida KidCare program and administers the State Children's Health Insurance Plan (SCHIP) Florida Healthy Kids program.<sup>1</sup> The Florida Healthy Kids program is one component of the Florida Kidcare Program. The Legislature intends the Corporation to serve as a provider of health services funded by Title XXI of the Social Security Act and target school age children with family incomes below 200% of poverty who do not qualify for Medicaid.<sup>2</sup> The duties of the Corporation are authorized in statute and include, but are not limited to, handling eligibility determination, premium billing and collection, contracting with insurers or providers of health services, and providing reports to the Legislature on Florida KidCare.<sup>3</sup>

The corporation is governed by a 12-member board of directors (board), which is chaired by the Chief Financial Officer or her or his designee.<sup>4</sup> Each member serves a 3-year term of office.<sup>5</sup> The current membership includes:

- The Secretary of Health Care Administration, or designee;
- One member appointed by the Commissioner of Education from the Office of School Health Programs of the Florida Department of Education;
- One member appointed by the Chief Financial Officer from among three members nominated by the Florida Pediatric Society;
- One member, appointed by the Governor, who represents the Children's Medical Services Program;
- One member appointed by the Chief Financial Officer from among three members nominated by the Florida Hospital Association;
- One member, appointed by the Governor, who is an expert on child health policy;
- One member, appointed by the Chief Financial Officer, from among three members nominated by the Florida Academy of Family Physicians;
- One member, appointed by the Governor, who represents the state Medicaid program;
- One member, appointed by the Chief Financial Officer, from among three members nominated by the Florida Association of Counties;
- The State Health Officer or designee; and
- The Secretary of Children and Family Services, or designee.<sup>6</sup>

In 2009, the Legislature passed two separate bills that amended the membership to the board.<sup>7</sup> The first bill, CS/HB 185, was approved by the Governor on May 20, 2009.<sup>8</sup> This bill added a representative nominated by the Florida Dental Association to the board. The second bill, CS/CS/SB 918, was approved by the Governor on June 2, 2009.<sup>9</sup> This bill added the Secretary of Children and Family

---

<sup>1</sup> S. 624.91(5), F.S.

<sup>2</sup> S. 624.91(2)(b), F.S.

<sup>3</sup> S. 624.91(5)(a), F.S.

<sup>4</sup> S. 624.91(6)(a), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> S. 624.91(6)(a), F.S.

<sup>7</sup> See Chapters 2009-41 and 2009-113, Laws of Fla.

<sup>8</sup> See Chapter 2009-41, Laws of Fla.

<sup>9</sup> See Chapter 2009-113, Laws of Fla.

Services, or designee, to the board. According to provisions of statutory construction, the law "last passed" by the Legislature is published with a footnote in statute noting the conflict.<sup>10</sup>

### Florida KidCare Program

The Legislature established the Florida KidCare Program in 1998 to reduce the number of uninsured children in Florida through a combination of Medicaid expansions and public/private partnerships.<sup>11</sup> The Florida KidCare program provides health care coverage to over 1.9 million children in Florida.<sup>12</sup> The Florida KidCare program includes four separate components, each serving a distinct population of Florida's children:

- Medicaid for Children: An entitlement program for qualified children birth through 19;
- Children's Medical Services (CMS) Network: For uninsured children birth through 19 who have special health care needs or ongoing medical conditions (including behavioral health);
- MediKids: For uninsured children ages one through five; and
- Florida Healthy Kids: For uninsured children who do not qualify for Medicaid ages five through 19.<sup>13</sup>

Eligibility for each component of the Florida Kidcare Program is determined largely by family size and household income. Those families with income above 100% but under 200% of the Federal Poverty Level are currently eligible for subsidized health coverage.<sup>14</sup> Families over 200% may also enroll in the program, but at the full cost of their coverage.<sup>15</sup> This full pay option is affordable, guarantee issue coverage available in both the MediKids and Healthy Kids program.

### **Effect of Proposed Changes**

The bill expands the Board of Directors for the Florida Healthy Kids Corporation from 12 to 13 directors. The bill adds a representative of the dental community to the Florida Healthy Kids Corporation board of directors. The member will be appointed by the Governor from a list of three members nominated by the Florida Dental Association.

### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 624.91, F.S., relating to the Florida Healthy Kids Corporation Act.

**Section 2:** Provides the bill is effective upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

---

<sup>10</sup> See Preface to the Florida Statutes, "Statutory Construction"; see also s. 1.04, F.S.

<sup>11</sup> Florida KidCare Coordinating Council, 2011 Annual Report and Recommendations, page 3. Available at <http://www.floridakidcare.org/council/reports/KCC2011summary-Web.pdf>.

<sup>12</sup> See *id.* at page 10, Table 5.

<sup>13</sup> See *supra* FN 3.

<sup>14</sup> See *supra* FN3, Figure 2.

<sup>15</sup> *Id.*

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:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

S. 624.91(6)(a), F.S., lists the members of the board for the Florida Healthy Kids Corporation. As the statute is written, exact membership of the board is confusing. For clarification, the following changes are recommended:

(a) The Florida Healthy Kids Corporation shall operate subject to the supervision and approval of a board of directors. The board shall be comprised of 13 members, each of whom, except the



~~chair, shall serve 3-year terms of office, as follows chaired by the Chief Financial Officer or her or his designee, and composed of 11 other members selected for 3-year terms of office as follows:~~

1. The Chief Financial Officer, who shall serve as chairperson of the board.
- ~~1.2.~~ The Secretary of Health Care Administration, or his or her designee.
- ~~2.3.~~ One member appointed by the Commissioner of Education from the Office of School Health Programs of the Florida Department of Education.
- ~~3.4.~~ One member appointed by the Chief Financial Officer from among three members nominated by the Florida Pediatric Society.
- ~~4.5.~~ One member, appointed by the Governor, who represents the Children's Medical Services Program.
- ~~5.6.~~ One member appointed by the Chief Financial Officer from among three members nominated by the Florida Hospital Association.
- ~~6.7.~~ One member, appointed by the Governor, who is an expert on child health policy.
- ~~7.8.~~ One member, appointed by the Chief Financial Officer, from among three members nominated by the Florida Academy of Family Physicians.
- ~~8.9.~~ One member, appointed by the Governor, who represents the state Medicaid program.
- ~~9.10.~~ One member, appointed by the Chief Financial Officer, from among three members nominated by the Florida Association of Counties.
- ~~10.11.~~ The State Health Officer or her or his designee.
- ~~11.12.~~ The Secretary of Children and Family Services, or his or her designee.
13. One member, appointed by the Governor, from among three members nominated by the Florida Dental Association.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 519

2012

1                   A bill to be entitled  
 2           An act relating to the Florida Healthy Kids  
 3           Corporation; amending s. 624.91, F.S.; revising the  
 4           membership of the board of directors of the Florida  
 5           Healthy Kids Corporation to include a member nominated  
 6           by the Florida Dental Association and appointed by the  
 7           Governor; providing an effective date.

8  
 9   Be It Enacted by the Legislature of the State of Florida:

10  
 11           Section 1. Paragraph (a) of subsection (6) of section  
 12   624.91, Florida Statutes, is amended to read:

13           624.91 The Florida Healthy Kids Corporation Act.—

14           (6) BOARD OF DIRECTORS.—

15           (a) The Florida Healthy Kids Corporation shall operate  
 16   subject to the supervision and approval of a board of directors  
 17   chaired by the Chief Financial Officer or her or his designee,  
 18   and composed of 12 ~~11~~ other members selected for 3-year terms of  
 19   office as follows:

20           1. The Secretary of Health Care Administration, or his or  
 21   her designee.

22           2. One member appointed by the Commissioner of Education  
 23   from the Office of School Health Programs of the Florida  
 24   Department of Education.

25           3. One member appointed by the Chief Financial Officer  
 26   from among three members nominated by the Florida Pediatric  
 27   Society.

28           4. One member, appointed by the Governor, who represents

HB 519

2012

29 the Children's Medical Services Program.

30 5. One member appointed by the Chief Financial Officer  
 31 from among three members nominated by the Florida Hospital  
 32 Association.

33 6. One member, appointed by the Governor, who is an expert  
 34 on child health policy.

35 7. One member, appointed by the Chief Financial Officer,  
 36 from among three members nominated by the Florida Academy of  
 37 Family Physicians.

38 8. One member, appointed by the Governor, who represents  
 39 the state Medicaid program.

40 9. One member, appointed by the Chief Financial Officer,  
 41 from among three members nominated by the Florida Association of  
 42 Counties.

43 10. The State Health Officer or her or his designee.

44 11. The Secretary of Children and Family Services, or his  
 45 or her designee.

46 12. One member, appointed by the Governor, from among  
 47 three members nominated by the Florida Dental Association.

48 Section 2. This act shall take effect upon becoming a law.

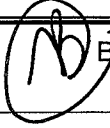
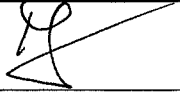


## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 803 Child Protection

**SPONSOR(S):** Diaz

**TIED BILLS:** IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		 Batchelor	Schoolfield 
2) Civil Justice Subcommittee			
3) Appropriations Committee			
4) Health & Human Services Committee			

### SUMMARY ANALYSIS

HB 803 makes substantial changes to various provisions in Chapter 39, F.S., as it relates to the Florida Abuse Hotline, Child Protective Investigations, and the dependency process. Specifically, the bill does the following:

- Amends hotline procedures to specify that the hotline may accept a call from a parent or legal custodian seeking assistance for themselves when the call does not meet the statutory requirement of abuse, abandonment or neglect.
- Permits the Department of Children and Families (DCF) to discontinue an investigation if they determine that a false report of abuse, abandonment or neglect has been filed.
- Requires DCF to maintain one electronic child welfare case file for each child.
- Requires Child Protective Investigators (CPI) to determine the need for immediate consultation with law enforcement, child protection teams, and others prior to the commencement of an investigation.
- Outlines the activities and training requirements for CPI's.
- Requires that monitoring of protective investigation reports are used to determine the quality and timeliness of safety assessments, and teamwork with other professionals and engagement with families.
- Provides DCF with discretion as to whether to file a dependency petition to the court when a child is in need of protection and supervision. Current law which requires that a dependency petition be filed under certain conditions is deleted by the bill.
- The bill amends 39.013, F.S., related to court procedures and jurisdiction to specify that jurisdiction of the court attaches to a case when a petition for injunction to prevent child abuse has been issued pursuant to s. 39.504, F.S.
- The bill makes improvements and changes to the injunction process to prevent child abuse in s.39.504, F.S. and mirrors language in the civil injunction process in Chapter 741, F.S. <sup>1</sup>
- Requires DCF for out-of-home placement of a child to submit fingerprints of any household members who are 18 years of age or older to the state for criminal background and records checks.
- Amends the time frame for parents to comply with a case plan from 9 months to 12 months as it relates to grounds for termination of parental rights. This is a conforming change to other sections of law that already specify 12 months.
- The bill provides specific circumstances in which the court may have maintaining and strengthening families as a permanency goal in the child's case plan when the child resides with a parent.

The bill does not appear to have a fiscal impact. The bill provides an effective date of July 1, 2012.

<sup>1</sup> s. 741.30, F.S.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### *Chapter 39, Florida Statutes*

Chapter 39, F.S., provides Legislative direction for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development; to ensure secure and safe custody; to promote the health and well-being of all children under the state's care; and to prevent the occurrence of child abuse, neglect, and abandonment.<sup>2</sup> The Legislature has established the Florida Abuse Hotline, Child Protection Investigations, and Community Based Care system to help ensure the safety and protection of children.

##### *Florida Abuse Hotline*

DCF operates the Florida Abuse Hotline (hotline), a 24 hour a day 7 day a week hotline that receives calls relating to child abuse or neglect. The hotline serves as a point of contact for people who reasonably suspect or believe that a child is being abused, abandoned or neglected.<sup>3</sup> Callers to the hotline may remain anonymous; however, various professions<sup>4</sup> are required to report to the hotline and are required to provide their name as part of the permanent report.<sup>5</sup> Once a call has been made to the hotline, the operators of the hotline are required to enter all information into the Florida Safe Families Network (FSFN), and determine if the report meets the statutory definition of child abuse, abandonment or neglect by a caregiver.<sup>6</sup> If the report meets the definition it is then referred to the appropriate child investigative office.<sup>7</sup> DCF is required to maintain a master file for each child whose report is accepted by the hotline.<sup>8</sup>

DCF has authorized the hotline to also accept calls which do not meet the criteria for abuse, abandonment or neglect. These are called Special Condition Referrals and include when the parent, adult household member, or other person responsible for the child's welfare:<sup>9</sup>

- Has been or is about to be incarcerated;
- Has been or is about to be hospitalized;
- Has died; or
- Is having difficulty caring for a child to the degree that it appears likely that without intervention, abuse will occur.

---

<sup>2</sup> s. 39.001(1)(a), F.S.

<sup>3</sup> s. 39.201(1)(a), F.S.

<sup>4</sup> s. 39.201(1)(b), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> s. 39.01(1), (2), (44), F.S.

<sup>7</sup> s. 39.201(2)(a), F.S.

<sup>8</sup> S. 39.301, F.S.

<sup>9</sup> *Id.*

## *Child Protective Investigations*

Once a call is received to the hotline and a determination has been made that a child may be a victim of abuse, abandonment or neglect, a Child Protective Investigator (CPI) is sent out for an immediate onsite investigation, if appropriate, or within 24 hours from the time the report was accepted by the hotline.<sup>10</sup> DCF is required to report criminal conduct<sup>11</sup> immediately to county law enforcement in which the alleged conduct has occurred.<sup>12</sup> The CPI is required to inform all parties of the report, once the initial assessment is complete, including the parent, legal custodian or other person responsible for the child's welfare.<sup>13</sup> All investigations are required to be completed within 60 days, unless there is a concurrent criminal investigation, the death of a child is involved, or the child is determined to be missing.<sup>14</sup>

Current statute provides for 2 options for response once the CPI determines the report is complete.<sup>15</sup> If it is determined that child would best be served in the home and child care or other treatment is voluntarily accepted by the child and the parent or legal custodian, the CPI may make the necessary references for treatment.<sup>16</sup> If the child is in need of protection and supervision from the court, DCF shall file a petition for dependency.<sup>17</sup> A petition for dependency is required for all cases classified as high risk, including but not limited to the young age of the parents or legal custodians, the use of illegal drugs, the arrest of parents or legal guardians for the manufacturing, processing, disposing of or storing of any substances in violation of Chapter 893, F.S., and domestic violence.<sup>18</sup>

If the CPI determines that a false report has been filed<sup>19</sup>, the CPI will inform the reporter of criminal penalties and administrative fines associated with false reporting and will work with their supervisor to close the case. If the alleged perpetrator of abuse, abandonment or neglect consents, DCF may refer the report to law enforcement for prosecution of filing a false report.<sup>20</sup>

DCF currently performs child protection investigation services in 60 counties using department staff.<sup>21</sup> In the remaining 7 counties<sup>22</sup>, investigations are conducted by local Sheriff's offices under contract with DCF.<sup>23</sup> There are currently 1,475 CPI's in the state that are either employed through DCF or the sheriff's office.<sup>24</sup>

### *Protective Injunction*

Current law permits a court to issue an injunction to prevent an act of child abuse including protection from acts of domestic violence at any time after a protective investigation has been initiated, and there is reasonable cause for the injunction.<sup>25</sup> An injunction issued pursuant to this section may order an alleged or actual offender to:

---

<sup>10</sup> Rule 65C-29.003, F.A.C.

<sup>11</sup> s. 39.301(2)(b), F.S.

<sup>12</sup> s. 39.301(2)(a), F.S.

<sup>13</sup> Rule 65C-29.003, F.A.C.

<sup>14</sup> s. 39.301(17), F.S.

<sup>15</sup> s. 39.301(9)(a)(b), F.S.

<sup>16</sup> s. 39.301(9)(a), F.S.

<sup>17</sup> s. 39.301(9)(b), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> Rule 65C-29.010, F.A.C.

<sup>20</sup> s. 39.205(5), F.S.

<sup>21</sup> OPPAGA Memorandum, Sheriff's Offices have Advantages for Conducting Child Abuse Investigations, but Quality Cannot be Directly Compared to DCF. (February 26, 2011).

<sup>22</sup> Broward, Citrus, Hillsborough, Manatee, Pasco, Pinellas, and Seminole.

<sup>23</sup> OPPAGA Memorandum, Sheriff's Offices have Advantages for Conducting Child Abuse Investigations, but Quality Cannot be Directly Compared to DCF. (February 26, 2011).

<sup>24</sup> Staff Analysis for CS/HB 279 (2011); (on file with committee staff).

<sup>25</sup> s. 39.504(1), F.S.

- Refrain from further abuse or acts of domestic violence;
- Participate in a specialized treatment program;
- Limit contact or communication with the child victim, other children in the home, or any other child;
- Refrain from contacting the child at home, school, work, or wherever the child may be found;
- Have limited or supervised visitation with the child.; pay temporary support for the child or other family members; the costs of medical, psychiatric, and psychological treatment for the child incurred as a result of the offenses; and similar costs for other family members.
- Vacate the home in which the child resides.<sup>26</sup>

The injunction will remain in effect until modified or dissolved by the court, and is enforceable in all counties in the state,<sup>27</sup> allowing law enforcement to exercise arrest powers in the enforcement of the injunction, if necessary.<sup>28</sup>

### *Petitions*

If during the course of a protective investigation, DCF or law enforcement deems that a child cannot safely remain in a home, because of abuse, abandonment or neglect, the child can be taken into custody.<sup>29</sup> Once a child is taken into custody, DCF will review the facts supporting the removal of the child and determine if sufficient cause exist to file a shelter petition. If sufficient cause does not exist the child shall be returned to their parent or legal custodian.<sup>30</sup> If sufficient cause does exist, DCF shall file a petition and schedule a hearing with the courts, and request that a shelter hearing be held within 24 hours from the removal of the child from the home.<sup>31</sup> Each petition filed shall contain the identity and residences of the parent or legal custodians, and shall identify the name, age and sex of each child named in the petition.<sup>32</sup> Additionally, the petition must detail what voluntary services/and or dependency mediations the parents or legal custodian were offered and what the results were.<sup>33</sup>

At the adjudicatory hearing the court may make the following rulings:<sup>34</sup>

- That the child is not a dependent child and dismiss the case;
- That the child is adjudicated dependent and may remain in the home, under supervision of the court, or be placed in out-of-home care;
- That the child may remain in the home, under the supervision of DCF; adjudication of dependency would be withheld assuming the family complies with the conditions of supervision.

DCF will develop a case plan for each child taken from the home with the goal of achieving permanency for the child.

## **Effect of Proposed Changes**

### *Section 1. Definitions*

The bill amends the definition of “institutional child abuse or neglect” to include a cross reference which provides a definition for “other person” which is referenced in the institutional child abuse or neglect definition.

### *Section 2. Procedures and Jurisdiction of the Court*

<sup>26</sup> s. 39.504(3)(a), F.S.

<sup>27</sup> s. 39.504(30)(c), F. S.

<sup>28</sup> s. 39.504(4), F.S.

<sup>29</sup> s. 39.401(1)(b)(1), F.S.

<sup>30</sup> s.39.401(3)(a), F.S.

<sup>31</sup> s. 39.401(3)(b), F.S.

<sup>32</sup> Fla.R.Jud.Admin.8.310.

<sup>33</sup> *Id.*

<sup>34</sup> s. 39.507, F.S.



The bill amends 39.013, F.S., related to court procedures and jurisdiction to specify that jurisdiction of the court attaches to a case when a petition for injunction to prevent child abuse has been issued pursuant to s. 39.504, F.S. Current law provides that court jurisdiction attaches to a case when petitions for shelter, dependency or termination of parental rights are filed or the child is taken into DCF custody. DCF reports that some courts will not recognize or hear an injunction unless a shelter, dependency or termination of parental rights petition has already been filed. This change will assist DCF by not requiring one of these other petitions when all that may be needed to resolve a situation is an injunction to protect the child.

### *Section 3. Criminal History Records Checks*

The bill amends the requirements for background screening for persons being considered by DCF for the placement of a child. The bill requires that all persons, including parents, undergo a background screening through the State Automated Child Welfare Information System (SACWIS) and a local and statewide criminal check. Additionally, the bill specifies that all household members and visitors 18 years of age or older are required to submit fingerprints to the Florida Department of Law Enforcement (FDLE) as a condition of background screening. Lastly, the bill requires that an out-of-state criminal history records check, for anyone 18 years of age or older, be conducted if the state allows for the release of such records.

### *Section 4. Hotline Reports of Child Abuse, Abandonment or Neglect*

The bill amends hotline procedures to specify that the hotline may accept a call from a parent or legal custodian that does not meet the statutory requirement of abuse, abandonment or neglect if the person is calling on their own behalf for services. If DCF determines that the parent or legal custodian is in need of services to prevent a possible future harm to the child, DCF may make a referral for voluntary community services. DCF is currently making these referrals as "Special Condition Referrals" outlined in their Operating Procedures, without statutory authority. Adding this section to law clarifies current practice. The bill also clarifies that the hotline is the first step in the safety assessment and investigative process.

### *Section 5. False Reports of Abuse, Abandonment or Neglect*

The bill permits that if DCF or its agent determines that a false report of abuse, abandonment or neglect has been filed, DCF may discontinue all investigative services during the course of investigation. Currently, DCF may not discontinue until the investigation has closed. This could help reduce the workload of CPI's by not requiring them to finish an investigation when a false report has been filed.

## *Section 6. Child Protection Investigations*

The bill makes several changes to the current child protective investigation process.

- The bill provides DCF with discretion as to whether to file a dependency petition to the court when a child is in need of protection and supervision. Current law is deleted which requires that a dependency petition be filed when the child needs protection and supervision of the court and when the case is determined to be high risk.<sup>35</sup>
- The bill requires that the case record for each child be electronic and include all information from reports called into the hotline and all services the child and the family has received.
- The bill removes several provisions from current law which provided conditions as to when a child protective investigation is to be performed. This is replaced with a general directive that each report from the hotline which is accepted, will be investigated and provides the following list of activities to be performed, some of which are already in current law:
  - Review all available information specific to the child and family and the alleged maltreatment including past family child welfare history, criminal records checks, and requests for law enforcement assistance provided by the hotline;
  - Interview collateral contacts, which may include professionals who know the child.
  - Conduct face-to-face interviews, including with the child's parent or caregiver;
  - Assess the child's residence;  
*(The following are new requirements proposed by the bill)*
  - Determine the need for immediate consultation with law enforcement, child protection teams, domestic violence shelters and substance abuse and mental health professionals;
  - Document impending dangers to the child based on safety assessment instruments as opposed to a risk assessment instrument which is required in current law. Neither the bill or current law defines "safety" or "risk". It is, therefore, not clear what change is intended by a safety assessment versus a risk assessment.
- The bill provides conditions under which an investigator may close a case and also makes changes to the case review process to identify strengths and weaknesses.

## *Section 7. Protective Investigations of Institutional Child Abuse, Abandonment or Neglect*

The bill clarifies that during a protective investigation of institutional child abuse, abandonment or neglect that the CPI must include an interview with the child's parent or legal guardian as opposed to making an onsite visit to the residence.

## *Section 8. Child on Child Sexual Abuse*

The bill specifies that DCF contracted Sheriff's offices that provide CPI services, or contracted case management personnel as opposed to district staff must follow the procedures in s. 39.307, F.S., involving child-on-child sexual abuse. The bill also removes the 7 day timeframe in which an assessment of service and treatment needs must be completed for a child who is a victim or perpetrator of child-on-child sexual abuse. This allows DCF more time to make the assessment as it often takes more than 7 days.<sup>36</sup>

## *Section 9. Injunctions*

The bill makes improvements and changes to the injunction process to prevent child abuse in s.39.504, F.S., and mirrors language in the civil injunction process in Chapter 741, F.S. The bill requires a petitioner seeking an injunction to file a verified petition or a petition along with an affidavit, specifying

---

<sup>35</sup> s.39.301(9)(b), F.S.

<sup>36</sup> HB 803, DCF Analysis 2012 (on file with committee staff).

the actions of the alleged offender and the remedies sought. The court of jurisdiction is required to set the hearing on the petition to take place as soon as possible. Prior to the hearing, the court may issue a temporary ex parte injunction lasting no more than 15 days. The hearing on the petition must take place within these 15 days, unless good cause is shown otherwise. The bill specifies that before the hearing the alleged offender must be served with a copy of the petition and the temporary injunction if one has been filed. The current injunction process in s.39.504, F.S., does not specify a timeframe for hearings.

The bill also clarifies that the person whom an injunction is against is not automatically a party to subsequent dependency actions.

#### *Section 10. Disposition Hearings*

The bill clarifies that parents are included in the list of adults for which a home study must be conducted when considered for out of home placement for a child. In addition the requirements for the home study are increased to include that DCF must submit fingerprints of any household members who are 18 years of age or older to FDLE for state and criminal background checks, and a records check through State Automated Child Welfare Information System. The bill also provides that DCF has the discretion to submit fingerprints of other visitors in the home who are made known to DCF.

#### *Section 11. Case Plan Development*

The bill provides specific circumstances in which the court may have maintaining and strengthening families as a permanency goal in the child's case plan when the child resides with a parent. The bill adds the date a child was adjudicated dependent to the list of event dates used to measure compliance with the 12 month case plan.

#### *Section 12. Permanency Determination*

The bill makes minor technical wording changes.

#### *Section 13. Judicial Review*

The bill adds the date the child was adjudicated dependent as a starting point when considering extending the goal of reunification in a case plan beyond 12 months.

#### *Section 14. Requirement to file a petition to Terminate Parental Rights*

The bill provides that if a child is still in DCF custody 12 months after the child was sheltered or adjudicated dependent, whichever occurs first, that DCF shall file a petition to terminate parental rights. Current law provides for this to occur at the 12 month judicial review hearing.

#### *Section 15. Termination of Parental Rights*

The bill amends the timeframe for parents to comply with a case plan from 9 months to 12 months as it relates to grounds for termination of parental rights. This is a conforming change to other sections of law (including ss 39.401, 39.6011, 39.621, 39.701, 39.8055, F.S.) that already specify 12 months.

#### *Sections 16, 17 and 18.*

The bill makes conforming changes.

#### *Section 19.*

The bill provides an effective date.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 39.01, F.S., relating to definitions.

**Section 2:** Amends s. 39.013, F.S., relating to procedures and jurisdiction; right to counsel.

**Section 3:** Amends s. 39.0138, F.S., relating to criminal history records check; limit on placement of a child.

**Section 4:** Amends s. 39.201, F.S., relating to mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.

**Section 5:** Amends s. 39.205, F.S., relating to penalties relating to reporting of child abuse, abandonment, or neglect.

**Section 6:** Amends s. 39.301, F.S., relating to initiation of protective investigations.

**Section 7:** Amends s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment or neglect.

**Section 8:** Amends s. 39.307, F.S., relating to reports of child-on-child sexual abuse.

**Section 9:** Amends s. 39.504, F.S., relating to injunction pending disposition of petition.

**Section 10:** Amends s. 39.521, F.S., relating to disposition hearings; powers of disposition.

**Section 11:** Amends s. 39.6011, F.S., relating to case plan development.

**Section 12:** Amends s. 39.621, F.S., relating to permanency determination by the court.

**Section 13:** Amends s. 39.701, F.S., relating to judicial review.

**Section 14:** Amends s. 39.8055, F.S., relating to requirement to file a petition to terminate parental rights; exceptions.

**Section 15:** Amends s. 39.806, F.S., relating to grounds for termination of parental rights.

**Section 16:** Amends s. 39.502, F.S., relating to notice, process, and service.

**Section 17:** Amends s. 39.823, F.S., relating to guardian advocates for drug dependent newborns.

**Section 18:** Amends s. 39.828, F.S., relating to grounds for appointment of a guardian advocate.

**Section 19:** Provides an effective date of July 1, 2012.

**II. 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:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

- Line 345 requires DCF to have a single, standard, electronic record. This limits DCF's ability to use a paper copy of a child's record, if needed, and could have budget implications by requiring the use of an electronic record.
- Line 503 has an incorrect cross reference, paragraph (10)(a) has been changed and the reference no longer applies.
- Line 653 has an incorrect cross reference, subparagraph (10)(b)(2) is not in this section of the bill.
- Lines 1019-1023 are unclear. The language is circular and confusing.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                   A bill to be entitled  
2           An act relating to child protection; amending s.  
3           39.01, F.S.; revising the definition of "institutional  
4           child abuse or neglect"; amending s. 39.013, F.S.;  
5           specifying when jurisdiction attaches for a petition  
6           for an injunction to prevent child abuse issued  
7           pursuant to specified provisions; amending s. 39.0138,  
8           F.S.; revising provisions relating to criminal history  
9           records check on persons being considered for  
10          placement of a child; requiring a records check  
11          through the State Automated Child Welfare Information  
12          System; providing for an out-of-state criminal history  
13          records check of certain persons who have lived out of  
14          state if such records may be obtained; amending s.  
15          39.201, F.S.; providing procedures for calls from a  
16          parent or legal custodian seeking assistance for  
17          himself or herself which do not meet the criteria for  
18          being a report of child abuse, abandonment, or  
19          neglect, but show a potential future risk of harm to a  
20          child and requiring a referral if a need for community  
21          services exists; specifying that the central abuse  
22          hotline is the first step in the safety assessment and  
23          investigation process; amending s. 39.205, F.S.;  
24          permitting discontinuance of an investigation of child  
25          abuse, abandonment, or neglect during the course of  
26          the investigation if it is determined that the report  
27          was false; amending s. 39.301, F.S.; substituting  
28          references to a standard electronic child welfare case

29 for a master file; revising requirements for such a  
 30 file; revising requirements for informing the subject  
 31 of an investigation; deleting provisions relating to a  
 32 preliminary determination as to whether an  
 33 investigation report is complete; revising  
 34 requirements for child protective investigation  
 35 activities to be performed to determine child safety;  
 36 specifying uses for certain criminal justice  
 37 information accesses by child protection  
 38 investigators; requiring documentation of the present  
 39 and impending dangers to each child through use of a  
 40 standardized safety assessment; revising provisions  
 41 relating to required protective, treatment, and  
 42 ameliorative services; revising requirements for the  
 43 Department of Children and Family Service's training  
 44 program for staff responsible for responding to  
 45 reports accepted by the central abuse hotline;  
 46 requiring the department's training program at the  
 47 regional and district levels to include results of  
 48 qualitative reviews of child protective investigation  
 49 cases handled within the region or district; revising  
 50 requirements for the department's quality assurance  
 51 program; amending s. 39.302, F.S.; requiring that a  
 52 protective investigation must include an interview  
 53 with the child's parent or legal guardian; amending s.  
 54 39.307, F.S.; requiring the department, contracted  
 55 sheriff's office providing protective investigation  
 56 services, or contracted case management personnel

57 responsible for providing services to adhere to  
 58 certain procedures relating to reports of child-on-  
 59 child sexual abuse; deleting a requirement that an  
 60 assessment of service and treatment needs to be  
 61 completed within a specified period; amending s.  
 62 39.504, F.S.; revising provisions relating to the  
 63 process for seeking a child protective injunction;  
 64 providing for temporary ex parte injunctions;  
 65 providing requirements for service on an alleged  
 66 offender; revising provisions relating to the contents  
 67 of an injunction; providing for certain relief;  
 68 providing requirements for notice of a hearing on a  
 69 motion to modify or dissolve an injunction; providing  
 70 that a person against whom an injunction is entered  
 71 does not automatically become a party to a subsequent  
 72 dependency action concerning the same child unless he  
 73 or she was a party to the action in which the  
 74 injunction was entered; amending s. 39.521, F.S.;  
 75 requiring a home study report if a child has been  
 76 removed from the home and will be remaining with a  
 77 parent; substituting references to the State Automated  
 78 Child Welfare Information System for the Florida Abuse  
 79 Hotline Information System applicable to records  
 80 checks; authorizing submission of fingerprints of  
 81 certain household members; authorizing requests for  
 82 national criminal history checks and fingerprinting of  
 83 any visitor to the home known to the department;  
 84 amending s. 39.6011, F.S.; providing additional



85 options for the court with respect to case plans;  
 86 providing for expiration of a child's case plan no  
 87 later than 12 months after the date the child was  
 88 adjudicated dependent; conforming a cross-reference to  
 89 changes made by the act; amending s. 39.621, F.S.;  
 90 revising terminology relating to permanency  
 91 determinations; amending s. 39.701, F.S.; providing  
 92 that a court must schedule a judicial review hearing  
 93 if the citizen review panel recommends extending the  
 94 goal of reunification for any case plan beyond 12  
 95 months from the date the child was adjudicated  
 96 dependent, unless specified other events occurred  
 97 earlier; conforming a cross-reference to changes made  
 98 by the act; amending s. 39.8055, F.S.; requiring the  
 99 department to file a petition to terminate parental  
 100 rights within a certain number of days after the  
 101 completion of a specified period after the child was  
 102 sheltered or adjudicated dependent, whichever occurs  
 103 first; amending s. 39.806, F.S.; increasing the number  
 104 of months of failure of the parent or parents to  
 105 substantially comply with a child's case plan in  
 106 certain circumstances that constitutes evidence of  
 107 continuing abuse, neglect, or abandonment and grounds  
 108 for termination of parental rights; revising a cross-  
 109 reference; amending ss. 39.502, 39.823, and 39.828,  
 110 F.S.; conforming cross-references to changes made by  
 111 the act; providing an effective date.

112

HB 803

2012

113 Be It Enacted by the Legislature of the State of Florida:

114

115 Section 1. Subsection (33) of section 39.01, Florida  
 116 Statutes, is amended to read:

117 39.01 Definitions.—When used in this chapter, unless the  
 118 context otherwise requires:

119 (33) "Institutional child abuse or neglect" means  
 120 situations of known or suspected child abuse or neglect in which  
 121 the person allegedly perpetrating the child abuse or neglect is  
 122 an employee of a private school, public or private day care  
 123 center, residential home, institution, facility, or agency or  
 124 any other person at such institution responsible for the child's  
 125 care as defined in subsection (47).

126 Section 2. Subsection (2) of section 39.013, Florida  
 127 Statutes, is amended to read:

128 39.013 Procedures and jurisdiction; right to counsel.—

129 (2) The circuit court has exclusive original jurisdiction  
 130 of all proceedings under this chapter, of a child voluntarily  
 131 placed with a licensed child-caring agency, a licensed child-  
 132 placing agency, or the department, and of the adoption of  
 133 children whose parental rights have been terminated under this  
 134 chapter. Jurisdiction attaches when the initial shelter  
 135 petition, dependency petition, or termination of parental rights  
 136 petition, or a petition for an injunction to prevent child abuse  
 137 issued pursuant to s. 39.504, is filed or when a child is taken  
 138 into the custody of the department. The circuit court may assume  
 139 jurisdiction over any such proceeding regardless of whether the  
 140 child was in the physical custody of both parents, was in the

141 | sole legal or physical custody of only one parent, caregiver, or  
 142 | some other person, or was not in the physical or legal custody  
 143 | of any ~~ne~~ person when the event or condition occurred that  
 144 | brought the child to the attention of the court. When the court  
 145 | obtains jurisdiction of any child who has been found to be  
 146 | dependent, the court shall retain jurisdiction, unless  
 147 | relinquished by its order, until the child reaches 18 years of  
 148 | age. However, if a youth petitions the court at any time before  
 149 | his or her 19th birthday requesting the court's continued  
 150 | jurisdiction, the juvenile court may retain jurisdiction under  
 151 | this chapter for a period not to exceed 1 year following the  
 152 | youth's 18th birthday for the purpose of determining whether  
 153 | appropriate aftercare support, Road-to-Independence Program,  
 154 | transitional support, mental health, and developmental  
 155 | disability services, to the extent otherwise authorized by law,  
 156 | have been provided to the formerly dependent child who was in  
 157 | the legal custody of the department immediately before his or  
 158 | her 18th birthday. If a petition for special immigrant juvenile  
 159 | status and an application for adjustment of status have been  
 160 | filed on behalf of a foster child and the petition and  
 161 | application have not been granted by the time the child reaches  
 162 | 18 years of age, the court may retain jurisdiction over the  
 163 | dependency case solely for the purpose of allowing the continued  
 164 | consideration of the petition and application by federal  
 165 | authorities. Review hearings for the child shall be set solely  
 166 | for the purpose of determining the status of the petition and  
 167 | application. The court's jurisdiction terminates upon the final  
 168 | decision of the federal authorities. Retention of jurisdiction

HB 803

2012

169 in this instance does not affect the services available to a  
 170 young adult under s. 409.1451. The court may not retain  
 171 jurisdiction of the case after the immigrant child's 22nd  
 172 birthday.

173 Section 3. Subsection (1) of section 39.0138, Florida  
 174 Statutes, is amended to read:

175 39.0138 Criminal history and other records checks ~~check~~;  
 176 limit on placement of a child.—

177 (1) The department shall conduct a records check through  
 178 the State Automated Child Welfare Information System (SACWIS)  
 179 and a local and statewide criminal history records check on all  
 180 persons, including parents, being considered by the department  
 181 for placement of a child ~~subject to a placement decision~~ under  
 182 this chapter, including all nonrelative placement decisions, and  
 183 all members of the household, 12 years of age and older, of the  
 184 person being considered, ~~and frequent visitors to the household.~~  
 185 For purposes of this section, a criminal history records check  
 186 may include, but is not limited to, submission of fingerprints  
 187 to the Department of Law Enforcement for processing and  
 188 forwarding to the Federal Bureau of Investigation for state and  
 189 national criminal history information, and local criminal  
 190 records checks through local law enforcement agencies of all  
 191 household members 18 years of age and older and other visitors  
 192 to the home. An out-of-state criminal history records check must  
 193 be initiated for any person 18 years of age or older who resided  
 194 in another state if that state allows the release of such  
 195 records. A criminal history records check must also include a  
 196 ~~search of the department's automated abuse information system.~~

197 The department shall establish by rule standards for evaluating  
 198 any information contained in the automated system relating to a  
 199 person who must be screened for purposes of making a placement  
 200 decision.

201 Section 4. Paragraph (a) of subsection (2) and subsection  
 202 (4) of section 39.201, Florida Statutes, are amended to read:

203 39.201 Mandatory reports of child abuse, abandonment, or  
 204 neglect; mandatory reports of death; central abuse hotline.—

205 (2)(a) Each report of known or suspected child abuse,  
 206 abandonment, or neglect by a parent, legal custodian, caregiver,  
 207 or other person responsible for the child's welfare as defined  
 208 in this chapter, except those solely under s. 827.04(3), and  
 209 each report that a child is in need of supervision and care and  
 210 has no parent, legal custodian, or responsible adult relative  
 211 immediately known and available to provide supervision and care  
 212 shall be made immediately to the department's central abuse  
 213 hotline. Such reports may be made on the single statewide toll-  
 214 free telephone number or via fax or web-based report. Personnel  
 215 at the department's central abuse hotline shall determine if the  
 216 report received meets the statutory definition of child abuse,  
 217 abandonment, or neglect. Any report meeting one of these  
 218 definitions shall be accepted for the protective investigation  
 219 pursuant to part III of this chapter. Any call received from a  
 220 parent or legal custodian seeking assistance for himself or  
 221 herself which does not meet the criteria for being a report of  
 222 child abuse, abandonment, or neglect may be accepted by the  
 223 hotline for response to ameliorate a potential future risk of  
 224 harm to a child. If it is determined by a child welfare

225 professional that a need for community services exists, the  
 226 department shall refer the parent or legal custodian for  
 227 appropriate voluntary community services.

228 (4) The department shall operate ~~establish~~ and maintain a  
 229 central abuse hotline to receive all reports made pursuant to  
 230 this section in writing, via fax, via web-based reporting, or  
 231 through a single statewide toll-free telephone number, which any  
 232 person may use to report known or suspected child abuse,  
 233 abandonment, or neglect at any hour of the day or night, any day  
 234 of the week. The central abuse hotline is the first step in the  
 235 safety assessment and investigation process. The central abuse  
 236 hotline shall be operated in such a manner as to enable the  
 237 department to:

238 (a) Immediately identify and locate prior reports or cases  
 239 of child abuse, abandonment, or neglect through utilization of  
 240 the department's automated tracking system.

241 (b) Monitor and evaluate the effectiveness of the  
 242 department's program for reporting and investigating suspected  
 243 abuse, abandonment, or neglect of children through the  
 244 development and analysis of statistical and other information.

245 (c) Track critical steps in the investigative process to  
 246 ensure compliance with all requirements for any report of abuse,  
 247 abandonment, or neglect.

248 (d) Maintain and produce aggregate statistical reports  
 249 monitoring patterns of child abuse, child abandonment, and child  
 250 neglect. The department shall collect and analyze child-on-child  
 251 sexual abuse reports and include the information in aggregate  
 252 statistical reports.

253 (e) Serve as a resource for the evaluation, management,  
 254 and planning of preventive and remedial services for children  
 255 who have been subject to abuse, abandonment, or neglect.

256 (f) Initiate and enter into agreements with other states  
 257 for the purpose of gathering and sharing information contained  
 258 in reports on child maltreatment to further enhance programs for  
 259 the protection of children.

260 Section 5. Subsections (3) and (5) of section 39.205,  
 261 Florida Statutes, are amended to read:

262 39.205 Penalties relating to reporting of child abuse,  
 263 abandonment, or neglect.—

264 (3) A person who knowingly and willfully makes public or  
 265 discloses any confidential information contained in the central  
 266 abuse hotline or in the records of any child abuse, abandonment,  
 267 or neglect case, except as provided in this chapter, commits ~~is~~  
 268 ~~guilty of~~ a misdemeanor of the second degree, punishable as  
 269 provided in s. 775.082 or s. 775.083.

270 (5) If the department or its authorized agent has  
 271 determined during the course of ~~after~~ its investigation that a  
 272 report is a false report, the department may discontinue all  
 273 investigative activities and shall, with the consent of the  
 274 alleged perpetrator, refer the report to the local law  
 275 enforcement agency having jurisdiction for an investigation to  
 276 determine whether sufficient evidence exists to refer the case  
 277 for prosecution for filing a false report as defined in s.  
 278 39.01. During the pendency of the investigation, the department  
 279 must notify the local law enforcement agency of, and the local  
 280 law enforcement agency must respond to, all subsequent reports

HB 803

2012

281 concerning children in that same family in accordance with s.  
 282 39.301. If the law enforcement agency believes that there are  
 283 indicators of abuse, abandonment, or neglect, it must  
 284 immediately notify the department, which must ensure the safety  
 285 of the children. If the law enforcement agency finds sufficient  
 286 evidence for prosecution for filing a false report, it must  
 287 refer the case to the appropriate state attorney for  
 288 prosecution.

289 Section 6. Section 39.301, Florida Statutes, is amended to  
 290 read:

291 39.301 Initiation of protective investigations.—

292 (1) Upon receiving a report of known or suspected child  
 293 abuse, abandonment, or neglect, or that a child is in need of  
 294 supervision and care and has no parent, legal custodian, or  
 295 responsible adult relative immediately known and available to  
 296 provide supervision and care, the central abuse hotline shall  
 297 determine if the report requires an immediate onsite protective  
 298 investigation. For reports requiring an immediate onsite  
 299 protective investigation, the central abuse hotline shall  
 300 immediately notify the department's designated district staff  
 301 responsible for protective investigations to ensure that an  
 302 onsite investigation is promptly initiated. For reports not  
 303 requiring an immediate onsite protective investigation, the  
 304 central abuse hotline shall notify the department's designated  
 305 district staff responsible for protective investigations in  
 306 sufficient time to allow for an investigation. At the time of  
 307 notification, the central abuse hotline shall also provide  
 308 information to district staff on any previous report concerning



309 a subject of the present report or any pertinent information  
 310 relative to the present report or any noted earlier reports.

311 (2)(a) The department shall immediately forward  
 312 allegations of criminal conduct to the municipal or county law  
 313 enforcement agency of the municipality or county in which the  
 314 alleged conduct has occurred.

315 (b) As used in this subsection, the term "criminal  
 316 conduct" means:

317 1. A child is known or suspected to be the victim of child  
 318 abuse, as defined in s. 827.03, or of neglect of a child, as  
 319 defined in s. 827.03.

320 2. A child is known or suspected to have died as a result  
 321 of abuse or neglect.

322 3. A child is known or suspected to be the victim of  
 323 aggravated child abuse, as defined in s. 827.03.

324 4. A child is known or suspected to be the victim of  
 325 sexual battery, as defined in s. 827.071, or of sexual abuse, as  
 326 defined in s. 39.01.

327 5. A child is known or suspected to be the victim of  
 328 institutional child abuse or neglect, as defined in s. 39.01,  
 329 and as provided for in s. 39.302(1).

330 6. A child is known or suspected to be a victim of human  
 331 trafficking, as provided in s. 787.06.

332 (c) Upon receiving a written report of an allegation of  
 333 criminal conduct from the department, the law enforcement agency  
 334 shall review the information in the written report to determine  
 335 whether a criminal investigation is warranted. If the law  
 336 enforcement agency accepts the case for criminal investigation,

HB 803

2012

337 it shall coordinate its investigative activities with the  
 338 department, whenever feasible. If the law enforcement agency  
 339 does not accept the case for criminal investigation, the agency  
 340 shall notify the department in writing.

341 (d) The local law enforcement agreement required in s.  
 342 39.306 shall describe the specific local protocols for  
 343 implementing this section.

344 (3) The department shall maintain a single, standard  
 345 electronic child welfare case ~~master~~ file for each child whose  
 346 report is accepted by the central abuse hotline for  
 347 investigation. Such file must contain information concerning all  
 348 reports received by the abuse hotline concerning that child and  
 349 all services received by that child and family. The file must be  
 350 made available to any department staff, agent of the department,  
 351 or contract provider given responsibility for conducting a  
 352 protective investigation.

353 (4) To the extent practical, all protective investigations  
 354 involving a child shall be conducted or the work supervised by a  
 355 single individual in order for there to be broad knowledge and  
 356 understanding of the child's history. When a new investigator is  
 357 assigned to investigate a second and subsequent report involving  
 358 a child, a multidisciplinary staffing shall be conducted which  
 359 includes new and prior investigators, their supervisors, and  
 360 appropriate private providers in order to ensure that, to the  
 361 extent possible, there is coordination among all parties. The  
 362 department shall establish an internal operating procedure that  
 363 ensures that all required investigatory activities, including a  
 364 review of the child's complete investigative and protective

365 services history, are completed by the investigator, reviewed by  
 366 the supervisor in a timely manner, and signed and dated by both  
 367 the investigator and the supervisor.

368 (5) (a) Upon commencing an investigation under this part,  
 369 the child protective investigator shall inform any subject of  
 370 the investigation of the following:

371 1. The names of the investigators and identifying  
 372 credentials from the department.

373 2. The purpose of the investigation.

374 3. The right to obtain his or her own attorney and ways  
 375 that the information provided by the subject may be used.

376 4. The possible outcomes and services of the department's  
 377 response ~~shall be explained to the parent or legal custodian.~~

378 5. The right of the parent or legal custodian to be  
 379 engaged ~~involved~~ to the fullest extent possible in determining  
 380 the nature of the allegation and the nature of any identified  
 381 problem and the remedy.

382 6. The duty of the parent or legal custodian to report any  
 383 change in the residence or location of the child to the  
 384 investigator and that the duty to report continues until the  
 385 investigation is closed.

386 (b) The investigator shall ~~department's training program~~  
 387 ~~shall ensure that protective investigators know how to fully~~  
 388 inform parents or legal custodians of their rights and options,  
 389 including opportunities for audio or video recording of  
 390 investigators' interviews with parents or legal custodians or  
 391 children.

392 (6) Upon commencing an investigation under this part, if a

393 report was received from a reporter under s. 39.201(1)(b), the  
 394 protective investigator must provide his or her contact  
 395 information to the reporter within 24 hours after being assigned  
 396 to the investigation. The investigator must also advise the  
 397 reporter that he or she may provide a written summary of the  
 398 report made to the central abuse hotline to the investigator  
 399 which shall become a part of the electronic child welfare case  
 400 ~~master~~ file.

401 (7) An assessment of safety risk and the perceived needs  
 402 for the child and family shall be conducted in a manner that is  
 403 sensitive to the social, economic, and cultural environment of  
 404 the family. This assessment must include a face-to-face  
 405 interview with the child, other siblings, parents, and other  
 406 adults in the household and an onsite assessment of the child's  
 407 residence.

408 (8) Protective investigations shall be performed by the  
 409 department or its agent.

410 ~~(9) The person responsible for the investigation shall~~  
 411 ~~make a preliminary determination as to whether the report is~~  
 412 ~~complete, consulting with the attorney for the department when~~  
 413 ~~necessary. In any case in which the person responsible for the~~  
 414 ~~investigation finds that the report is incomplete, he or she~~  
 415 ~~shall return it without delay to the person or agency~~  
 416 ~~originating the report or having knowledge of the facts, or to~~  
 417 ~~the appropriate law enforcement agency having investigative~~  
 418 ~~jurisdiction, and request additional information in order to~~  
 419 ~~complete the report; however, the confidentiality of any report~~  
 420 ~~filed in accordance with this chapter shall not be violated.~~

421 ~~(a) If it is determined that the report is complete, but~~  
 422 ~~the interests of the child and the public will be best served by~~  
 423 ~~providing the child care or other treatment voluntarily accepted~~  
 424 ~~by the child and the parents or legal custodians, the protective~~  
 425 ~~investigator may refer the parent or legal custodian and child~~  
 426 ~~for such care or other treatment.~~

427 ~~(b) If it is determined that the child is in need of the~~  
 428 ~~protection and supervision of the court, the department shall~~  
 429 ~~file a petition for dependency. A petition for dependency shall~~  
 430 ~~be filed in all cases classified by the department as high-risk.~~  
 431 ~~Factors that the department may consider in determining whether~~  
 432 ~~a case is high risk include, but are not limited to, the young~~  
 433 ~~age of the parents or legal custodians; the use of illegal~~  
 434 ~~drugs; the arrest of the parents or legal custodians on charges~~  
 435 ~~of manufacturing, processing, disposing of, or storing, either~~  
 436 ~~temporarily or permanently, any substances in violation of~~  
 437 ~~chapter 893; or domestic violence.~~

438 ~~(c) If a petition for dependency is not being filed by the~~  
 439 ~~department, the person or agency originating the report shall be~~  
 440 ~~advised of the right to file a petition pursuant to this part.~~

441 (9)(10)(a) For each report received from the central abuse  
 442 hotline and accepted for investigation that meets one or more of  
 443 the following criteria, the department or the sheriff providing  
 444 child protective investigative services under s. 39.3065, shall  
 445 perform the following an onsite child protective investigation  
 446 activities to determine child safety:

- 447 1. Conduct a review of all relevant, available information  
 448 specific to the child and family and alleged maltreatment;

449 family child welfare history; local, state, and federal criminal  
 450 records checks; and requests for law enforcement assistance  
 451 provided by the abuse hotline. Based on a review of available  
 452 information, including the allegations in the current report, a  
 453 determination shall be made as to whether immediate consultation  
 454 should occur with law enforcement, the child protection team, a  
 455 domestic violence shelter or advocate, or a substance abuse or  
 456 mental health professional. Such consultations should include  
 457 discussion as to whether a joint response is necessary and  
 458 feasible. A determination shall be made as to whether the person  
 459 making the report should be contacted before the face-to-face  
 460 interviews with the child and family members ~~A report for which~~  
 461 ~~there is obvious compelling evidence that no maltreatment~~  
 462 ~~occurred and there are no prior reports containing some~~  
 463 ~~indicators or verified findings of abuse or neglect with respect~~  
 464 ~~to any subject of the report or other individuals in the home. A~~  
 465 ~~prior report in which an adult in the home was a victim of abuse~~  
 466 ~~or neglect before becoming an adult does not exclude a report~~  
 467 ~~otherwise meeting the criteria of this subparagraph from the~~  
 468 ~~onsite child protective investigation provided for in this~~  
 469 ~~subparagraph. The process for an onsite child protective~~  
 470 ~~investigation stipulated in this subsection may not be conducted~~  
 471 ~~if an allegation meeting the criteria of this subparagraph~~  
 472 ~~involves physical abuse, sexual abuse, domestic violence,~~  
 473 ~~substance abuse or substance exposure, medical neglect, a child~~  
 474 ~~younger than 3 years of age, or a child who is disabled or lacks~~  
 475 ~~communication skills.~~

476 2. Conduct ~~A report concerning an incident of abuse which~~

477 ~~is alleged to have occurred 2 or more years prior to the date of~~  
 478 ~~the report and there are no other indicators of risk to any~~  
 479 ~~child in the home.~~

480 ~~(b) The onsite child protective investigation to be~~  
 481 ~~performed shall include a face-to-face interviews interview with~~  
 482 ~~the child; other siblings, if any; and the parents, legal~~  
 483 ~~custodians, or caregivers.; and other adults in the household~~  
 484 ~~and an onsite assessment of the child's residence in order to:~~

485 3.1. Assess the child's residence, including a  
 486 determination of ~~Determine~~ the composition of the family and ~~or~~  
 487 household, including the name, address, date of birth, social  
 488 security number, sex, and race of each child named in the  
 489 report; any siblings or other children in the same household or  
 490 in the care of the same adults; the parents, legal custodians,  
 491 or caregivers; and any other adults in the same household.

492 4.2. Determine whether there is any indication that any  
 493 child in the family or household has been abused, abandoned, or  
 494 neglected; the nature and extent of present or prior injuries,  
 495 abuse, or neglect, and any evidence thereof; and a determination  
 496 as to the person or persons apparently responsible for the  
 497 abuse, abandonment, or neglect, including the name, address,  
 498 date of birth, social security number, sex, and race of each  
 499 such person.

500 5.3. Complete assessment of immediate child safety for  
 501 Determine the immediate and long-term risk to each child based  
 502 on available records, interviews, and observations with all  
 503 persons named in paragraph (10) (a) and appropriate collateral  
 504 contacts, which may include other professionals ~~by conducting~~

505 ~~state and federal records checks, including, when feasible, the~~  
 506 ~~records of the Department of Corrections, on the parents, legal~~  
 507 ~~custodians, or caregivers, and any other persons in the same~~  
 508 ~~household. This information shall be used solely for purposes~~  
 509 ~~supporting the detection, apprehension, prosecution, pretrial~~  
 510 ~~release, posttrial release, or rehabilitation of criminal~~  
 511 ~~offenders or persons accused of the crimes of child abuse,~~  
 512 ~~abandonment, or neglect and shall not be further disseminated or~~  
 513 ~~used for any other purpose. The department's child protection~~  
 514 ~~investigators are hereby designated a criminal justice agency~~  
 515 ~~for the purpose of accessing criminal justice information to be~~  
 516 ~~used for enforcing this state's laws concerning the crimes of~~  
 517 ~~child abuse, abandonment, and neglect. This information shall be~~  
 518 ~~used solely for purposes supporting the detection, apprehension,~~  
 519 ~~prosecution, pretrial release, posttrial release, or~~  
 520 ~~rehabilitation of criminal offenders or persons accused of the~~  
 521 ~~crimes of child abuse, abandonment, or neglect and may not be~~  
 522 ~~further disseminated or used for any other purpose.~~

523 6.4. Document the present and impending dangers ~~Determine~~  
 524 ~~the immediate and long-term risk to each child based on the~~  
 525 ~~identification of inadequate protective capacity through~~  
 526 ~~utilization of a standardized safety risk assessment instrument~~  
 527 ~~instruments.~~

528 (b) Upon completion of the immediate safety assessment,  
 529 the department shall determine the additional activities  
 530 necessary to assess impending dangers, if any, and close the  
 531 investigation.

532 ~~5. Based on the information obtained from available~~



533 ~~sources, complete the risk assessment instrument within 48 hours~~  
 534 ~~after the initial contact and, if needed, develop a case plan.~~

535 (c)6. For each report received from the central abuse  
 536 hotline, the department or the sheriff providing child  
 537 protective investigative services under s. 39.3065, shall  
 538 determine the protective, treatment, and ameliorative services  
 539 necessary to safeguard and ensure the child's safety and well-  
 540 being and development, and cause the delivery of those services  
 541 through the early intervention of the department or its agent.  
 542 As applicable, The training provided to staff members who  
 543 conduct child protective investigators investigations must  
 544 inform parents and caregivers include instruction on how and  
 545 when to use the injunction process under s. 39.504 or s. 741.30  
 546 to remove a perpetrator of domestic violence from the home as an  
 547 intervention to protect the child.

548 1. If the department or the sheriff providing child  
 549 protective investigative services determines that the interests  
 550 of the child and the public will be best served by providing the  
 551 child care or other treatment voluntarily accepted by the child  
 552 and the parents or legal custodians, the parent or legal  
 553 custodian and child may be referred for such care, case  
 554 management, or other community resources.

555 2. If the department or the sheriff providing child  
 556 protective investigative services determines that the child is  
 557 in need of protection and supervision, the department may file a  
 558 petition for dependency.

559 3. If a petition for dependency is not being filed by the  
 560 department, the person or agency originating the report shall be

561 advised of the right to file a petition pursuant to this part.

562 ~~(c) The determination that a report requires an~~  
 563 ~~investigation as provided in this subsection and does not~~  
 564 ~~require an enhanced onsite child protective investigation~~  
 565 ~~pursuant to subsection (11) must be approved in writing by the~~  
 566 ~~supervisor with documentation specifying why additional~~  
 567 ~~investigative activities are not necessary.~~

568 ~~(d) A report that meets the criteria specified in this~~  
 569 ~~subsection is not precluded from further investigative~~  
 570 ~~activities. At any time it is determined that additional~~  
 571 ~~investigative activities are necessary for the safety of the~~  
 572 ~~child, such activities shall be conducted.~~

573 (10)-(11)(a) The department's training program for staff  
 574 responsible for responding to reports accepted by the central  
 575 abuse hotline must also ensure that child protective responders:

576 1. Know how to fully inform parents or legal custodians of  
 577 their rights and options, including opportunities for audio or  
 578 video recording of child protective responder interviews with  
 579 parents or legal custodians or children.

580 2. Know how and when to use the injunction process under  
 581 s. 39.504 or s. 741.30 to remove a perpetrator of domestic  
 582 violence from the home as an intervention to protect the child.

583 (b) To enhance the skills of individual staff members and  
 584 to improve the region's and district's overall child protection  
 585 system, the department's training program at the regional and  
 586 district levels must include results of qualitative reviews of  
 587 child protective investigation cases handled within the region  
 588 or district in order to identify weaknesses as well as examples

589 of effective interventions which occurred at each point in the  
 590 case. ~~For each report that meets one or more of the following~~  
 591 ~~criteria, the department shall perform an enhanced onsite child~~  
 592 ~~protective investigation:~~

593 1. ~~Any allegation that involves physical abuse, sexual~~  
 594 ~~abuse, domestic violence, substance abuse or substance exposure,~~  
 595 ~~medical neglect, a child younger than 3 years of age, or a child~~  
 596 ~~who is disabled or lacks communication skills.~~

597 2. ~~Any report that involves an individual who has been the~~  
 598 ~~subject of a prior report containing some indicators or verified~~  
 599 ~~findings of abuse, neglect, or abandonment.~~

600 3. ~~Any report that does not contain compelling evidence~~  
 601 ~~that the maltreatment did not occur.~~

602 4. ~~Any report that does not meet the criteria for an~~  
 603 ~~onsite child protective investigation as set forth in subsection~~  
 604 ~~(10).~~

605 ~~(b) The enhanced onsite child protective investigation~~  
 606 ~~shall include, but is not limited to:~~

607 1. ~~A face-to-face interview with the child, other~~  
 608 ~~siblings, parents or legal custodians or caregivers, and other~~  
 609 ~~adults in the household;~~

610 2. ~~Collateral contacts;~~

611 3. ~~Contact with the reporter as required by rule;~~

612 4. ~~An onsite assessment of the child's residence in~~  
 613 ~~accordance with paragraph (10)(b); and~~

614 5. ~~An updated assessment.~~

615 (c) For all reports received, detailed documentation is  
 616 required for the investigative activities.

HB 803

2012

617 (11)~~(12)~~ The department shall incorporate into its quality  
 618 assurance program the monitoring of ~~the determination of~~ reports  
 619 that receive a ~~an onsite~~ child protective investigation to  
 620 determine the quality and timeliness of safety assessments,  
 621 engagements with families, teamwork with other experts and  
 622 professionals, and appropriate investigative activities that are  
 623 uniquely tailored to the safety factors associated with each  
 624 child and family ~~and those that receive an enhanced onsite child~~  
 625 ~~protective investigation.~~

626 (12)~~(13)~~ If the department or its agent is denied  
 627 reasonable access to a child by the parents, legal custodians,  
 628 or caregivers and the department deems that the best interests  
 629 of the child so require, it shall seek an appropriate court  
 630 order or other legal authority before ~~prior to~~ examining and  
 631 interviewing the child.

632 (13)~~(14)~~ Onsite visits and face-to-face interviews with  
 633 the child or family shall be unannounced unless it is determined  
 634 by the department or its agent or contract provider that such  
 635 unannounced visit would threaten the safety of the child.

636 (14)~~(15)~~(a) If the department or its agent determines that  
 637 a child requires immediate or long-term protection through:

- 638 1. Medical or other health care; or
- 639 2. Homemaker care, day care, protective supervision, or
- 640 other services to stabilize the home environment, including
- 641 intensive family preservation services through the Intensive
- 642 Crisis Counseling Program,

643  
 644 such services shall first be offered for voluntary acceptance

645 unless there are high-risk factors that may impact the ability  
 646 of the parents or legal custodians to exercise judgment. Such  
 647 factors may include the parents' or legal custodians' young age  
 648 or history of substance abuse or domestic violence.

649 (b) The parents or legal custodians shall be informed of  
 650 the right to refuse services, as well as the responsibility of  
 651 the department to protect the child regardless of the acceptance  
 652 or refusal of services. If the services are refused, a  
 653 collateral contact required under subparagraph (10)(b)2.

654 ~~(11)(b)2.~~ shall include a relative, if the protective  
 655 investigator has knowledge of and the ability to contact a  
 656 relative. If the services are refused and the department deems  
 657 that the child's need for protection so requires, the department  
 658 shall take the child into protective custody or petition the  
 659 court as provided in this chapter. At any time after the  
 660 commencement of a protective investigation, a relative may  
 661 submit in writing to the protective investigator or case manager  
 662 a request to receive notification of all proceedings and  
 663 hearings in accordance with s. 39.502. The request shall include  
 664 the relative's name, address, and phone number and the  
 665 relative's relationship to the child. The protective  
 666 investigator or case manager shall forward such request to the  
 667 attorney for the department. The failure to provide notice to  
 668 either a relative who requests it pursuant to this subsection or  
 669 to a relative who is providing out-of-home care for a child may  
 670 ~~shall~~ not result in any previous action of the court at any  
 671 stage or proceeding in dependency or termination of parental  
 672 rights under any part of this chapter being set aside, reversed,

HB 803

2012

673 modified, or in any way changed absent a finding by the court  
674 that a change is required in the child's best interests.

675 (c) The department, in consultation with the judiciary,  
676 shall adopt by rule criteria that are factors requiring that the  
677 department take the child into custody, petition the court as  
678 provided in this chapter, or, if the child is not taken into  
679 custody or a petition is not filed with the court, conduct an  
680 administrative review. If after an administrative review the  
681 department determines not to take the child into custody or  
682 petition the court, the department shall document the reason for  
683 its decision in writing and include it in the investigative  
684 file. For all cases that were accepted by the local law  
685 enforcement agency for criminal investigation pursuant to  
686 subsection (2), the department must include in the file written  
687 documentation that the administrative review included input from  
688 law enforcement. In addition, for all cases that must be  
689 referred to child protection teams pursuant to s. 39.303(2) and  
690 (3), the file must include written documentation that the  
691 administrative review included the results of the team's  
692 evaluation. Factors that must be included in the development of  
693 the rule include noncompliance with the case plan developed by  
694 the department, or its agent, and the family under this chapter  
695 and prior abuse reports with findings that involve the child or  
696 caregiver.

697 (15)~~(16)~~ When a child is taken into custody pursuant to  
698 this section, the authorized agent of the department shall  
699 request that the child's parent, caregiver, or legal custodian  
700 disclose the names, relationships, and addresses of all parents

701 and prospective parents and all next of kin, so far as are  
 702 known.

703 (16)~~(17)~~ The department shall complete its protective  
 704 investigation within 60 days after receiving the initial report,  
 705 unless:

706 (a) There is also an active, concurrent criminal  
 707 investigation that is continuing beyond the 60-day period and  
 708 the closure of the protective investigation may compromise  
 709 successful criminal prosecution of the child abuse or neglect  
 710 case, in which case the closure date shall coincide with the  
 711 closure date of the criminal investigation and any resulting  
 712 legal action.

713 (b) In child death cases, the final report of the medical  
 714 examiner is necessary for the department to close its  
 715 investigation and the report has not been received within the  
 716 60-day period, in which case the report closure date shall be  
 717 extended to accommodate the report.

718 (c) A child who is necessary to an investigation has been  
 719 declared missing by the department, a law enforcement agency, or  
 720 a court, in which case the 60-day period shall be extended until  
 721 the child has been located or until sufficient information  
 722 exists to close the investigation despite the unknown location  
 723 of the child.

724 (17)~~(18)~~ Immediately upon learning during the course of an  
 725 investigation that:

726 (a) The immediate safety or well-being of a child is  
 727 endangered;

728 (b) The family is likely to flee;

HB 803

2012

729 (c) A child died as a result of abuse, abandonment, or  
 730 neglect;

731 (d) A child is a victim of aggravated child abuse as  
 732 defined in s. 827.03; or

733 (e) A child is a victim of sexual battery or of sexual  
 734 abuse,

735  
 736 the department shall orally notify the jurisdictionally  
 737 responsible state attorney, and county sheriff's office or local  
 738 police department, and, within 3 working days, transmit a full  
 739 written report to those agencies. The law enforcement agency  
 740 shall review the report and determine whether a criminal  
 741 investigation needs to be conducted and shall assume lead  
 742 responsibility for all criminal fact-finding activities. A  
 743 criminal investigation shall be coordinated, whenever possible,  
 744 with the child protective investigation of the department. Any  
 745 interested person who has information regarding an offense  
 746 described in this subsection may forward a statement to the  
 747 state attorney as to whether prosecution is warranted and  
 748 appropriate.

749 (18)~~(19)~~ In a child protective investigation or a criminal  
 750 investigation, when the initial interview with the child is  
 751 conducted at school, the department or the law enforcement  
 752 agency may allow, notwithstanding ~~the provisions of s.~~  
 753 39.0132(4), a school staff member who is known by the child to  
 754 be present during the initial interview if:

755 (a) The department or law enforcement agency believes that  
 756 the school staff member could enhance the success of the



757 interview by his or her presence; and

758 (b) The child requests or consents to the presence of the  
759 school staff member at the interview.

760  
761 School staff may be present only when authorized by this  
762 subsection. Information received during the interview or from  
763 any other source regarding the alleged abuse or neglect of the  
764 child is ~~shall be~~ confidential and exempt from the provisions of  
765 s. 119.07(1), except as otherwise provided by court order. A  
766 separate record of the investigation of the abuse, abandonment,  
767 or neglect may ~~shall~~ not be maintained by the school or school  
768 staff member. Violation of this subsection is ~~constitutes~~ a  
769 misdemeanor of the second degree, punishable as provided in s.  
770 775.082 or s. 775.083.

771 (19) ~~(20)~~ When a law enforcement agency conducts a criminal  
772 investigation into allegations of child abuse, neglect, or  
773 abandonment, photographs documenting the abuse or neglect shall  
774 ~~will~~ be taken when appropriate.

775 (20) ~~(21)~~ Within 15 days after the case is reported to him  
776 or her pursuant to this chapter, the state attorney shall report  
777 his or her findings to the department and shall include in such  
778 report a determination of whether or not prosecution is  
779 justified and appropriate in view of the circumstances of the  
780 specific case.

781 ~~(22) In order to enhance the skills of individual staff~~  
782 ~~and to improve the district's overall child protection system,~~  
783 ~~the department's training program at the district level must~~  
784 ~~include periodic reviews of cases handled within the district in~~

785 ~~order to identify weaknesses as well as examples of effective~~  
 786 ~~interventions that occurred at each point in the case.~~

787 (21)~~(23)~~ When an investigation is closed and a person is  
 788 not identified as a caregiver responsible for the abuse,  
 789 neglect, or abandonment alleged in the report, the fact that the  
 790 person is named in some capacity in the report may not be used  
 791 in any way to adversely affect the interests of that person.  
 792 This prohibition applies to any use of the information in  
 793 employment screening, licensing, child placement, adoption, or  
 794 any other decisions by a private adoption agency or a state  
 795 agency or its contracted providers, except that a previous  
 796 report may be used to determine whether a child is safe and what  
 797 the known risk is to the child at any stage of a child  
 798 protection proceeding.

799 (22)~~(24)~~ If, after having been notified of the requirement  
 800 to report a change in residence or location of the child to the  
 801 protective investigator, a parent or legal custodian causes the  
 802 child to move, or allows the child to be moved, to a different  
 803 residence or location, or if the child leaves the residence on  
 804 his or her own accord and the parent or legal custodian does not  
 805 notify the protective investigator of the move within 2 business  
 806 days, the child may be considered to be a missing child for the  
 807 purposes of filing a report with a law enforcement agency under  
 808 s. 937.021.

809 Section 7. Subsection (1) of section 39.302, Florida  
 810 Statutes, is amended to read:

811 39.302 Protective investigations of institutional child  
 812 abuse, abandonment, or neglect.—

813 (1) The department shall conduct a child protective  
 814 investigation of each report of institutional child abuse,  
 815 abandonment, or neglect. Upon receipt of a report that alleges  
 816 that an employee or agent of the department, or any other entity  
 817 or person covered by s. 39.01(33) or (47), acting in an official  
 818 capacity, has committed an act of child abuse, abandonment, or  
 819 neglect, the department shall initiate a child protective  
 820 investigation within the timeframe established under s.  
 821 39.201(5) and orally notify the appropriate state attorney, law  
 822 enforcement agency, and licensing agency, which shall  
 823 immediately conduct a joint investigation, unless independent  
 824 investigations are more feasible. When conducting investigations  
 825 onsite or having face-to-face interviews with the child,  
 826 investigation visits shall be unannounced unless it is  
 827 determined by the department or its agent that unannounced  
 828 visits threaten the safety of the child. If a facility is exempt  
 829 from licensing, the department shall inform the owner or  
 830 operator of the facility of the report. Each agency conducting a  
 831 joint investigation is entitled to full access to the  
 832 information gathered by the department in the course of the  
 833 investigation. A protective investigation must include an  
 834 interview with the child's parent or legal guardian ~~an onsite~~  
 835 ~~visit of the child's place of residence~~. The department shall  
 836 make a full written report to the state attorney within 3  
 837 working days after making the oral report. A criminal  
 838 investigation shall be coordinated, whenever possible, with the  
 839 child protective investigation of the department. Any interested  
 840 person who has information regarding the offenses described in

HB 803

2012

841 | this subsection may forward a statement to the state attorney as  
 842 | to whether prosecution is warranted and appropriate. Within 15  
 843 | days after the completion of the investigation, the state  
 844 | attorney shall report the findings to the department and shall  
 845 | include in the report a determination of whether or not  
 846 | prosecution is justified and appropriate in view of the  
 847 | circumstances of the specific case.

848 |         Section 8. Subsection (2) of section 39.307, Florida  
 849 | Statutes, is amended to read:

850 |         39.307 Reports of child-on-child sexual abuse.—

851 |         (2) The department, contracted sheriff's office providing  
 852 | protective investigation services, or contracted case management  
 853 | personnel responsible for providing services ~~District staff~~, at  
 854 | a minimum, shall adhere to the following procedures:

855 |             (a) The purpose of the response to a report alleging  
 856 | juvenile sexual abuse behavior shall be explained to the  
 857 | caregiver.

858 |             1. The purpose of the response shall be explained in a  
 859 | manner consistent with legislative purpose and intent provided  
 860 | in this chapter.

861 |             2. The name and office telephone number of the person  
 862 | responding shall be provided to the caregiver of the alleged  
 863 | juvenile sexual offender or child who has exhibited  
 864 | inappropriate sexual behavior and the victim's caregiver.

865 |             3. The possible consequences of the department's response,  
 866 | including outcomes and services, shall be explained to the  
 867 | caregiver of the alleged juvenile sexual offender or child who  
 868 | has exhibited inappropriate sexual behavior and the victim's

HB 803

2012

869 caregiver.

870 (b) The caregiver of the alleged juvenile sexual offender  
 871 or child who has exhibited inappropriate sexual behavior and the  
 872 victim's caregiver shall be involved to the fullest extent  
 873 possible in determining the nature of the sexual behavior  
 874 concerns ~~allegation~~ and the nature of any problem or risk to  
 875 other children.

876 (c) The assessment of risk and the perceived treatment  
 877 needs of the alleged juvenile sexual offender or child who has  
 878 exhibited inappropriate sexual behavior, the victim, and  
 879 respective caregivers shall be conducted by the district staff,  
 880 the child protection team of the Department of Health, and other  
 881 providers under contract with the department to provide services  
 882 to the caregiver of the alleged offender, the victim, and the  
 883 victim's caregiver.

884 (d) The assessment shall be conducted in a manner that is  
 885 sensitive to the social, economic, and cultural environment of  
 886 the family.

887 (e) If necessary, the child protection team of the  
 888 Department of Health shall conduct a physical examination of the  
 889 victim, which is sufficient to meet forensic requirements.

890 (f) Based on the information obtained from the alleged  
 891 juvenile sexual offender or child who has exhibited  
 892 inappropriate sexual behavior, his or her caregiver, the victim,  
 893 and the victim's caregiver, an assessment of service and  
 894 treatment needs ~~report~~ must be completed ~~within 7 days~~ and, if  
 895 needed, a case plan developed within 30 days.

896 (g) The department shall classify the outcome of the

897 report as follows:

898 1. Report closed. Services were not offered because the  
899 department determined that there was no basis for intervention.

900 2. Services accepted by alleged juvenile sexual offender.  
901 Services were offered to the alleged juvenile sexual offender or  
902 child who has exhibited inappropriate sexual behavior and  
903 accepted by the caregiver.

904 3. Report closed. Services were offered to the alleged  
905 juvenile sexual offender or child who has exhibited  
906 inappropriate sexual behavior, but were rejected by the  
907 caregiver.

908 4. Notification to law enforcement. The risk to the  
909 victim's safety and well-being cannot be reduced by the  
910 provision of services or the caregiver rejected services, and  
911 notification of the alleged delinquent act or violation of law  
912 to the appropriate law enforcement agency was initiated.

913 5. Services accepted by victim. Services were offered to  
914 the victim and accepted by the caregiver.

915 6. Report closed. Services were offered to the victim but  
916 were rejected by the caregiver.

917 Section 9. Section 39.504, Florida Statutes, is amended to  
918 read:

919 39.504 Injunction pending disposition of petition;  
920 penalty.—

921 (1) At any time after a protective investigation has been  
922 initiated pursuant to part III of this chapter, the court, upon  
923 the request of the department, a law enforcement officer, the  
924 state attorney, or other responsible person, or upon its own

HB 803

2012

925 motion, may, if there is reasonable cause, issue an injunction  
926 to prevent any act of child abuse. Reasonable cause for the  
927 issuance of an injunction exists if there is evidence of child  
928 abuse or if there is a reasonable likelihood of such abuse  
929 occurring based upon a recent overt act or failure to act.

930       (2) The petitioner seeking the injunction shall file a  
931 verified petition, or a petition along with an affidavit,  
932 setting forth the specific actions by the alleged offender from  
933 which the child must be protected and all remedies sought. Upon  
934 filing the petition, the court shall set a hearing to be held at  
935 the earliest possible time. Pending the hearing, the court may  
936 issue a temporary ex parte injunction, with verified pleadings  
937 or affidavits as evidence. The temporary ex parte injunction  
938 pending a hearing is effective for up to 15 days and the hearing  
939 must be held within that period unless continued for good cause  
940 shown, which may include obtaining service of process, in which  
941 case the temporary ex parte injunction shall be extended for the  
942 continuance period. The hearing may be held sooner if the  
943 alleged offender has received reasonable notice ~~Notice shall be~~  
944 ~~provided to the parties as set forth in the Florida Rules of~~  
945 ~~Juvenile Procedure, unless the child is reported to be in~~  
946 ~~imminent danger, in which case the court may issue an injunction~~  
947 ~~immediately. A judge may issue an emergency injunction pursuant~~  
948 ~~to this section without notice if the court is closed for the~~  
949 ~~transaction of judicial business. If an immediate injunction is~~  
950 ~~issued, the court must hold a hearing on the next day of~~  
951 ~~judicial business to dissolve the injunction or to continue or~~  
952 ~~modify it in accordance with this section.~~

953 (3) Before the hearing, the alleged offender must be  
 954 personally served with a copy of the petition, all other  
 955 pleadings related to the petition, a notice of hearing, and, if  
 956 one has been entered, the temporary injunction. Following the  
 957 hearing, the court may enter a final injunction. The court may  
 958 grant a continuance of the hearing at any time for good cause  
 959 shown by any party. If a temporary injunction has been entered,  
 960 it shall be continued during the continuance.

961 (4)~~(3)~~ If an injunction is issued under this section, the  
 962 primary purpose of the injunction must be to protect and promote  
 963 the best interests of the child, taking the preservation of the  
 964 child's immediate family into consideration.

965 (a) The injunction applies ~~shall apply~~ to the alleged or  
 966 actual offender in a case of child abuse or acts of domestic  
 967 violence. The conditions of the injunction shall be determined  
 968 by the court, which ~~conditions~~ may include ordering the alleged  
 969 or actual offender to:

- 970 1. Refrain from further abuse or acts of domestic
- 971 violence.
- 972 2. Participate in a specialized treatment program.
- 973 3. Limit contact or communication with the child victim,
- 974 other children in the home, or any other child.
- 975 4. Refrain from contacting the child at home, school,
- 976 work, or wherever the child may be found.
- 977 5. Have limited or supervised visitation with the child.
- 978 ~~6. Pay temporary support for the child or other family~~
- 979 ~~members; the costs of medical, psychiatric, and psychological~~
- 980 ~~treatment for the child incurred as a result of the offenses;~~



981 ~~and similar costs for other family members.~~

982 ~~6.7.~~ Vacate the home in which the child resides.

983 (b) Upon proper pleading, the court may award the  
 984 following relief in a temporary ex parte or final injunction ~~if~~  
 985 ~~the intent of the injunction is to protect the child from~~  
 986 ~~domestic violence, the conditions may also include:~~

987 1. ~~Awarding the~~ Exclusive use and possession of the  
 988 dwelling to the caregiver or exclusion of ~~excluding~~ the alleged  
 989 or actual offender from the residence of the caregiver.

990 2. ~~Awarding temporary custody of the child to the~~  
 991 ~~caregiver.~~

992 2.3. ~~Establishing~~ Temporary support for the child or other  
 993 family members.

994 3. The costs of medical, psychiatric, and psychological  
 995 treatment for the child incurred due to the abuse, and similar  
 996 costs for other family members.

997

998 This paragraph does not preclude an ~~the~~ adult victim of domestic  
 999 violence from seeking protection for himself or herself under s.  
 1000 741.30.

1001 (c) The terms of the final injunction shall remain in  
 1002 effect until modified or dissolved by the court. The petitioner,  
 1003 respondent, or caregiver may move at any time to modify or  
 1004 dissolve the injunction. Notice of hearing on the motion to  
 1005 modify or dissolve the injunction must be provided to all  
 1006 parties, including the department. The injunction is valid and  
 1007 enforceable in all counties in the state.

1008 ~~(5)-(4)~~ Service of process on the respondent shall be

HB 803

2012

1009 carried out pursuant to s. 741.30. The department shall deliver  
 1010 a copy of any injunction issued pursuant to this section to the  
 1011 protected party or to a parent, caregiver, or individual acting  
 1012 in the place of a parent who is not the respondent. Law  
 1013 enforcement officers may exercise their arrest powers as  
 1014 provided in s. 901.15(6) to enforce the terms of the injunction.

1015 (6)~~(5)~~ Any person who fails to comply with an injunction  
 1016 issued pursuant to this section commits a misdemeanor of the  
 1017 first degree, punishable as provided in s. 775.082 or s.  
 1018 775.083.

1019 (7) The person against whom an injunction is entered under  
 1020 this section does not automatically become a party to a  
 1021 subsequent dependency action concerning the same child unless he  
 1022 or she was a party to the action in which the injunction was  
 1023 entered.

1024 Section 10. Paragraph (r) of subsection (2) of section  
 1025 39.521, Florida Statutes, is amended to read:

1026 39.521 Disposition hearings; powers of disposition.—

1027 (2) The predisposition study must provide the court with  
 1028 the following documented information:

1029 (r) If the child has been removed from the home and will  
 1030 be remaining with a relative, parent, or other adult approved by  
 1031 the court, a home study report concerning the proposed placement  
 1032 shall be included in the predisposition report. Before ~~Prior to~~  
 1033 recommending to the court any out-of-home placement for a child  
 1034 other than placement in a licensed shelter or foster home, the  
 1035 department shall conduct a study of the home of the proposed  
 1036 legal custodians, which must include, at a minimum:

- 1037 1. An interview with the proposed legal custodians to  
 1038 assess their ongoing commitment and ability to care for the  
 1039 child.
- 1040 2. Records checks through the State Automated Child  
 1041 Welfare Information System (SACWIS) ~~Florida Abuse Hotline~~  
 1042 ~~Information System (FAHIS)~~, and local and statewide criminal and  
 1043 juvenile records checks through the Department of Law  
 1044 Enforcement, on all household members 12 years of age or older.  
 1045 In addition, the fingerprints of any household members who are  
 1046 18 years of age or older may be submitted to the Department of  
 1047 Law Enforcement for processing and forwarding to the Federal  
 1048 Bureau of Investigation for state and national criminal history  
 1049 information. The department has the discretion to request State  
 1050 Automated Child Welfare Information System (SACWIS) and local,  
 1051 statewide, and national criminal history checks and  
 1052 fingerprinting of any other visitor to the home who is made  
 1053 known to the department and any other persons made known to the  
 1054 ~~department who are frequent visitors in the home.~~ Out-of-state  
 1055 criminal records checks must be initiated for any individual  
 1056 ~~designated above~~ who has resided in a state other than Florida  
 1057 if provided that state's laws allow the release of these  
 1058 records. The out-of-state criminal records must be filed with  
 1059 the court within 5 days after receipt by the department or its  
 1060 agent.
- 1061 3. An assessment of the physical environment of the home.
- 1062 4. A determination of the financial security of the  
 1063 proposed legal custodians.
- 1064 5. A determination of suitable child care arrangements if

1065 the proposed legal custodians are employed outside of the home.

1066 6. Documentation of counseling and information provided to  
 1067 the proposed legal custodians regarding the dependency process  
 1068 and possible outcomes.

1069 7. Documentation that information regarding support  
 1070 services available in the community has been provided to the  
 1071 proposed legal custodians.

1072

1073 The department may ~~shall~~ not place the child or continue the  
 1074 placement of the child in a home under shelter or  
 1075 postdisposition placement if the results of the home study are  
 1076 unfavorable, unless the court finds that this placement is in  
 1077 the child's best interest.

1078

1079 Any other relevant and material evidence, including other  
 1080 written or oral reports, may be received by the court in its  
 1081 effort to determine the action to be taken with regard to the  
 1082 child and may be relied upon to the extent of its probative  
 1083 value, even though not competent in an adjudicatory hearing.  
 1084 Except as otherwise specifically provided, nothing in this  
 1085 section prohibits the publication of proceedings in a hearing.

1086 Section 11. Subsection (2) and paragraph (b) of subsection  
 1087 (4) of section 39.6011, Florida Statutes, are amended to read:

1088 39.6011 Case plan development.—

1089 (2) The case plan must be written simply and clearly in  
 1090 English and, if English is not the principal language of the  
 1091 child's parent, to the extent possible in the parent's principal  
 1092 language. Each case plan must contain:

1093 (a) A description of the identified problem being  
 1094 addressed, including the parent's behavior or acts resulting in  
 1095 risk to the child and the reason for the intervention by the  
 1096 department.

1097 (b) The permanency goal.

1098 (c) If concurrent planning is being used, a description of  
 1099 the permanency goal of reunification with the parent or legal  
 1100 custodian in addition to a description of one of the remaining  
 1101 permanency goals described in s. 39.01.

1102 1. If a child has not been removed from a parent, but is  
 1103 found to be dependent, even if adjudication of dependency is  
 1104 withheld, the court may leave the child in the current placement  
 1105 with maintaining and strengthening the placement as a permanency  
 1106 option.

1107 2. If a child has been removed from a parent and is placed  
 1108 with a parent from whom the child was not removed, the court may  
 1109 leave the child in the placement with the parent from whom the  
 1110 child was not removed with maintaining and strengthening the  
 1111 placement as a permanency option.

1112 3. If a child has been removed from a parent and is  
 1113 subsequently reunified with that parent, the court may leave the  
 1114 child with that parent with maintaining and strengthening the  
 1115 placement as a permanency option.

1116 (d) The date the compliance period expires. The case plan  
 1117 must be limited to as short a period as possible for  
 1118 accomplishing its provisions. The plan's compliance period  
 1119 expires no later than 12 months after the date the child was  
 1120 initially removed from the home, the child was adjudicated

1121 dependent, or the date the case plan was accepted by the court,  
 1122 whichever occurs first ~~sooner~~.

1123 (e) A written notice to the parent that failure of the  
 1124 parent to substantially comply with the case plan may result in  
 1125 the termination of parental rights, and that a material breach  
 1126 of the case plan may result in the filing of a petition for  
 1127 termination of parental rights sooner than the compliance period  
 1128 set forth in the case plan.

1129 (4) The case plan must describe:

1130 (b) The responsibility of the case manager to forward a  
 1131 relative's request to receive notification of all proceedings  
 1132 and hearings submitted pursuant to s. 39.301(14)(b)  
 1133 ~~39.301(15)(b)~~ to the attorney for the department;

1134 Section 12. Subsection (1) of section 39.621, Florida  
 1135 Statutes, is amended to read:

1136 39.621 Permanency determination by the court.—

1137 (1) Time is of the essence for permanency of children in  
 1138 the dependency system. A permanency hearing must be held no  
 1139 later than 12 months after the date the child was removed from  
 1140 the home or within ~~no later than~~ 30 days after a court  
 1141 determines that reasonable efforts to return a child to either  
 1142 parent are not required, whichever occurs first. The purpose of  
 1143 the permanency hearing is to determine when the child will  
 1144 achieve the permanency goal or whether modifying the current  
 1145 goal is in the best interest of the child. A permanency hearing  
 1146 must be held at least every 12 months for any child who  
 1147 continues to be supervised by ~~receive supervision from~~ the  
 1148 department or awaits adoption.

HB 803

2012

1149 Section 13. Paragraph (b) of subsection (3), subsection  
 1150 (6), and paragraph (e) of subsection (10) of section 39.701,  
 1151 Florida Statutes, are amended to read:

1152 39.701 Judicial review.—

1153 (3)

1154 (b) If the citizen review panel recommends extending the  
 1155 goal of reunification for any case plan beyond 12 months from  
 1156 the date the child was removed from the home, ~~or~~ the case plan  
 1157 was adopted, or the child was adjudicated dependent, whichever  
 1158 date came first, the court must schedule a judicial review  
 1159 hearing to be conducted by the court within 30 days after  
 1160 receiving the recommendation from the citizen review panel.

1161 (6) The attorney for the department shall notify a  
 1162 relative who submits a request for notification of all  
 1163 proceedings and hearings pursuant to s. 39.301(14)(b)  
 1164 ~~39.301(15)(b)~~. The notice shall include the date, time, and  
 1165 location of the next judicial review hearing.

1166 (10)

1167 (e) Within ~~No later than~~ 6 months after the date that the  
 1168 child was placed in shelter care, the court shall conduct a  
 1169 judicial review hearing to review the child's permanency goal as  
 1170 identified in the case plan. At the hearing the court shall make  
 1171 findings regarding the likelihood of the child's reunification  
 1172 with the parent or legal custodian within 12 months after the  
 1173 removal of the child from the home. ~~If, at this hearing,~~ the  
 1174 court makes a written finding that it is not likely that the  
 1175 child will be reunified with the parent or legal custodian  
 1176 within 12 months after the child was removed from the home, the

HB 803

2012

1177 department must file with the court, and serve on all parties, a  
 1178 motion to amend the case plan under s. 39.6013 and declare that  
 1179 it will use concurrent planning for the case plan. The  
 1180 department must file the motion within ~~no later than~~ 10 business  
 1181 days after receiving the written finding of the court. The  
 1182 department must attach the proposed amended case plan to the  
 1183 motion. If concurrent planning is already being used, the case  
 1184 plan must document the efforts the department is taking to  
 1185 complete the concurrent goal.

1186 Section 14. Paragraph (a) of subsection (1) of section  
 1187 39.8055, Florida Statutes, is amended to read:

1188 39.8055 Requirement to file a petition to terminate  
 1189 parental rights; exceptions.—

1190 (1) The department shall file a petition to terminate  
 1191 parental rights within 60 days after any of the following if:

1192 (a) ~~The~~ At the time of the 12-month judicial review  
 1193 ~~hearing,~~ a child is not returned to the physical custody of the  
 1194 parents 12 months after the child was sheltered or adjudicated  
 1195 dependent, whichever occurs first;

1196 Section 15. Paragraphs (e) and (k) of subsection (1) and  
 1197 subsection (2) of section 39.806, Florida Statutes, are amended  
 1198 to read:

1199 39.806 Grounds for termination of parental rights.—

1200 (1) Grounds for the termination of parental rights may be  
 1201 established under any of the following circumstances:

1202 (e) When a child has been adjudicated dependent, a case  
 1203 plan has been filed with the court, and:

1204 1. The child continues to be abused, neglected, or



1205 abandoned by the parent or parents. The failure of the parent or  
 1206 parents to substantially comply with the case plan for a period  
 1207 of 12 ~~9~~ months after an adjudication of the child as a dependent  
 1208 child or the child's placement into shelter care, whichever  
 1209 occurs first, constitutes evidence of continuing abuse, neglect,  
 1210 or abandonment unless the failure to substantially comply with  
 1211 the case plan was due to the parent's lack of financial  
 1212 resources or to the failure of the department to make reasonable  
 1213 efforts to reunify the parent and child. The 12-month ~~9-month~~  
 1214 period begins to run only after the child's placement into  
 1215 shelter care or the entry of a disposition order placing the  
 1216 custody of the child with the department or a person other than  
 1217 the parent and the court's approval of a case plan having the  
 1218 goal of reunification with the parent, whichever occurs first;  
 1219 or

1220 2. The parent or parents have materially breached the case  
 1221 plan. Time is of the essence for permanency of children in the  
 1222 dependency system. In order to prove the parent or parents have  
 1223 materially breached the case plan, the court must find by clear  
 1224 and convincing evidence that the parent or parents are unlikely  
 1225 or unable to substantially comply with the case plan before time  
 1226 to comply with the case plan expires.

1227 (k) A test administered at birth that indicated that the  
 1228 child's blood, urine, or meconium contained any amount of  
 1229 alcohol or a controlled substance or metabolites of such  
 1230 substances, the presence of which was not the result of medical  
 1231 treatment administered to the mother or the newborn infant, and  
 1232 the biological mother of the child is the biological mother of

HB 803

2012

1233 at least one other child who was adjudicated dependent after a  
 1234 finding of harm to the child's health or welfare due to exposure  
 1235 to a controlled substance or alcohol as defined in s.  
 1236 39.01~~(32)(g)~~, after which the biological mother had the  
 1237 opportunity to participate in substance abuse treatment.

1238 (2) Reasonable efforts to preserve and reunify families  
 1239 are not required if a court of competent jurisdiction has  
 1240 determined that any of the events described in paragraphs  
 1241 (1)(b)-(d) or (f)-(l) ~~(1)(e)-(l)~~ have occurred.

1242 Section 16. Subsections (1) and (19) of section 39.502,  
 1243 Florida Statutes, are amended to read:

1244 39.502 Notice, process, and service.—

1245 (1) Unless parental rights have been terminated, all  
 1246 parents must be notified of all proceedings or hearings  
 1247 involving the child. Notice in cases involving shelter hearings  
 1248 and hearings resulting from medical emergencies must be that  
 1249 most likely to result in actual notice to the parents. In all  
 1250 other dependency proceedings, notice must be provided in  
 1251 accordance with subsections (4)-(9), except when a relative  
 1252 requests notification pursuant to s. 39.301(14)(b)  
 1253 ~~39.301(15)(b)~~, in which case notice shall be provided pursuant  
 1254 to subsection (19).

1255 (19) In all proceedings and hearings under this chapter,  
 1256 the attorney for the department shall notify, orally or in  
 1257 writing, a relative requesting notification pursuant to s.  
 1258 39.301(14)(b) ~~39.301(15)(b)~~ of the date, time, and location of  
 1259 such proceedings and hearings, and notify the relative that he  
 1260 or she has the right to attend all subsequent proceedings and

HB 803

2012

1261 | hearings, to submit reports to the court, and to speak to the  
 1262 | court regarding the child, if the relative so desires. The court  
 1263 | has the discretion to release the attorney for the department  
 1264 | from notifying a relative who requested notification pursuant to  
 1265 | s. 39.301(14)(b) ~~39.301(15)(b)~~ if the relative's involvement is  
 1266 | determined to be impeding the dependency process or detrimental  
 1267 | to the child's well-being.

1268 |         Section 17. Section 39.823, Florida Statutes, is amended  
 1269 | to read:

1270 |         39.823 Guardian advocates for drug dependent newborns.—The  
 1271 | Legislature finds that increasing numbers of drug dependent  
 1272 | children are born in this state. Because of the parents'  
 1273 | continued dependence upon drugs, the parents may temporarily  
 1274 | leave their child with a relative or other adult or may have  
 1275 | agreed to voluntary family services under s. 39.301(14)  
 1276 | ~~39.301(15)~~. The relative or other adult may be left with a child  
 1277 | who is likely to require medical treatment but for whom they are  
 1278 | unable to obtain medical treatment. The purpose of this section  
 1279 | is to provide an expeditious method for such relatives or other  
 1280 | responsible adults to obtain a court order which allows them to  
 1281 | provide consent for medical treatment and otherwise advocate for  
 1282 | the needs of the child and to provide court review of such  
 1283 | authorization.

1284 |         Section 18. Paragraph (a) of subsection (1) of section  
 1285 | 39.828, Florida Statutes, is amended to read:

1286 |         39.828 Grounds for appointment of a guardian advocate.—

1287 |         (1) The court shall appoint the person named in the  
 1288 | petition as a guardian advocate with all the powers and duties

HB 803

2012

1289 specified in s. 39.829 for an initial term of 1 year upon a  
1290 finding that:

1291 (a) The child named in the petition is or was a drug  
1292 dependent newborn as described in s. 39.01~~(32)~~~~(g)~~;

1293 Section 19. This act shall take effect July 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 803 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

---

1 Committee/Subcommittee hearing bill: Health & Human Services  
2 Access Subcommittee  
3 Representative Diaz offered the following:

4  
5 **Amendment**

6 Remove line 503 and insert:  
7 persons named in paragraph (9)(a)2 and appropriate collateral  
8

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 803 (2012)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

---

1 Committee/Subcommittee hearing bill: Health & Human Services  
2 Access Subcommittee  
3 Representative Diaz offered the following:

4  
5 **Amendment**

6 Remove line 653 and insert:  
7 collateral contact ~~required under subparagraph (10)(b)2.~~  
8

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 803 (2012)

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

---

1 Committee/Subcommittee hearing bill: Health & Human Services  
2 Access Subcommittee  
3 Representative Diaz offered the following:

4  
5 **Amendment**

6 Remove lines 1021-1023 and insert:  
7 subsequent dependency action concerning the same child.  
8





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 625 Disposition of Human Remains

SPONSOR(S): Roberson and others

TIED BILLS: IDEN./SIM. BILLS: SB 956

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Mathieson	Schoolfield
2) Community & Military Affairs Subcommittee			
3) Appropriations Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

The disposition of human remains in Florida is regulated pursuant to Part II, of ch. 406, F.S. This part of Florida Statute provides authority to the Anatomical Board of the State of Florida (Board), to collect and distribute human remains for medical education and research.

House Bill 625 provides the following:

- A newly created definition section, s. 406.49, F.S., for Part II, of ch. 406, F.S.;
- The Board shall be notified of unclaimed human remains;
- For a funeral director licensed under ch. 497, F.S., to become a legally authorized person, to authorize arterial embalming, and transfer unclaimed remains to the Board, without liability;
- Clarification regarding the transfer of eligible veterans, or spouses or dependents of veterans of the uniformed services of the United States, or National Guard, to national cemeteries.
- Authority for boards of county commissioners to develop policies for the final disposition of unclaimed remains and indigent remains;
- That the Board shall be notified at least 72 hours before, and approve a conveyance of human remains into, or out of the state by designated entities;
- Authority for the Board to establish criteria for information required to be submitted in requests to convey human remains;
- The removal of the sunset provision related to notification of the Board by entities accredited by the American Association of Museums;
- That non-anatomical donation organizations be accredited by the American Association of Tissue Banks (AATB) to convey human remains within, into or out of the state;
- That the Board can be a donee for the purposes of anatomical gifts under ch. 765, F.S.; and
- Repeal of s. 406.54, F.S. related to bodies claimed after delivery to the anatomical board

The bill provides an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

###### Regulation of the conveyance of anatomical remains

Part II, of chapter 406, F.S., regulates the disposition of dead human bodies in the state of Florida. This chapter provides for the transfer of such bodies to the Anatomical Board (Board),<sup>1</sup> and then from the Board to Florida medical and dental schools, teaching hospitals, medical institutions and health related teaching programs that require the use of anatomical material for study.<sup>2</sup> The Board is authorized to collect fees to defray expenses, can receive additional public or private moneys for expenses, and can reimburse any person who delivers anatomical remains to them.<sup>3</sup> In addition to this, the Board is permitted to contract and is to be annually audited by the Department of Financial Services (DFS).<sup>4</sup>

The Board is located at the University of Florida College of Medicine Health Science Center.<sup>5</sup> The Board is comprised of representatives from the medical schools in the state.<sup>6</sup> The Board's purpose is to provide cadavers and parts thereof, to teaching and research programs in Florida. The Board must hold a body for at least 48 hours once it has been received, before it can be used for medical science.<sup>7</sup>

Section 406.56, F.S., provides the Board with the authority to accept a body that has been donated to it through a will, to be given to a Florida medical or dental school. Such an anatomical gift is provided for in Part V, of chapter 765, F.S. This chapter of law outlines the specific process for donation, and requires that someone who wishes to donate their body for transplant or anatomical study memorialize their intent; by signing an organ donor card, registering with the online donor database or completing an advance directive or other document.<sup>8</sup> This is to protect donor intent and consent to use of their body.

The bartering, selling and trading of human remains is prohibited in the state of Florida, punishable by a misdemeanor of the first degree.<sup>9</sup> In addition to this, the transmission or conveyance of such anatomical remains outside the state is also a first degree misdemeanor.<sup>10</sup> However, there is a statutory exception for recognized Florida medical or dental schools which allows them to transfer or convey human remains outside the state for research or other specific purposes.

Human remains may be conveyed into and out of the state, for medical education or research purposes, by a person, institution, or organization that has received prior approval from the Board.<sup>11</sup> There is an exception for an entity that is accredited by the American Association of Museums (AAM) to convey, in specific circumstances to convey plastinated anatomical remains into and out of the state for exhibition purposes.<sup>12</sup> This exception sunsets on January 1, 2012.<sup>13</sup>

---

<sup>1</sup> S. 406.50, F.S.

<sup>2</sup> The Board, is also given the discretionary authority to provide cadavers to recognized associations of licensed embalmers or funeral directors, or the examining boards of medical and dental schools. S. 406.57, F.S.

<sup>3</sup> S. 406.58, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> S. 406.50, F.S. The anatomical board was created by the Legislature at the University of Florida in 1996, by ch. 96-251, L.O.F. Prior to 1996, the Division of Universities of the Department of Education was responsible for these functions.

<sup>6</sup> [www.med.ufl.edu/anatbd/](http://www.med.ufl.edu/anatbd/) site last visited December 12, 2011.

<sup>7</sup> S. 406.52, F.S.

<sup>8</sup> S. 765.514, F.S.

<sup>9</sup> S. 406.61(1), F.S.,

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> S. 406.61(2), F.S.

<sup>13</sup> S. 406.61(3), F.S.

## Nontransplant Anatomical Donation Organizations

An organization that stores human remains for the purposes of research, rather than transplant is known in the industry as a nontransplant anatomical donation organization. In medical research and education, the donation of human remains is critical to the advancement of new techniques, and nontransplant anatomical donation organizations are a key component of this market.<sup>14</sup>

## The American Association of Tissue Banks

The AATB is an organization that promulgates industry standards and accredits tissue banks in both the U.S. and Canada.<sup>15</sup> Membership is voluntary, and the initial accreditation fee is \$3,000, with an annual fee charged to the tissue bank that is determined by volume and ranges from \$3,250 - \$75,000.<sup>16</sup> AATB requires onsite inspections every three years.<sup>17</sup> Currently, the AATB is developing an accreditation standard for non-transplant anatomical donation organizations, this is expected to be ready in January 2012.<sup>18</sup>

## **Effect of Proposed Changes**

### Section One – Definitions

HB 625 creates s. 406.49, F.S., which will operate as the definition section for part II, of ch. 406, F.S. The bill provides a definition of unclaimed remains. The bill transfers the definition of the “Anatomical Board” and “indigent person” from existing sections of ch. 406, F.S., and provides that “cremated remains”, “final disposition”, “human remains”, “remains” and “legally authorized person” have the same meaning as s. 497.005, F.S.<sup>19</sup> Conforming changes are made throughout ch. 406, F.S., to change “disposition” to “final disposition.”

### Section Two – Unclaimed Remains Disposition

This section of the bill amends s. 406.50, F.S., directing any person or entity that has possession, charge, or control of unclaimed human remains that will be buried or cremated at the public expense, is to notify the Board, unless:

- The remains are decomposed or mutilated by wounds;
- An autopsy is performed on the remains;
- The remains contain a contagious disease (which is existing law);
- A legally authorized person objects to the use of the remains for medical education or research; or
- The deceased person was a veteran, or the spouse or dependent child of a veteran of the uniformed services of the United States or National Guard, and eligible for burial in a national cemetery.

The bill has removed the notification exception for death by crushing. This is because crushed remains likely have limited utility in an educational setting.

The bill clarifies existing law requiring a determination of a veteran's eligibility for burial in a national cemetery, pursuant to 38 C.F.R. s. 38.620.

---

<sup>14</sup> See e.g., [www.nih.gov/news/health/oct2010/nhgri-07.htm](http://www.nih.gov/news/health/oct2010/nhgri-07.htm), site last accessed December 20, 2011. (Here a federal grant has been awarded to understand how genetic variation interacts with disease); [www.iiam.org/researcherArticles.php](http://www.iiam.org/researcherArticles.php), site last accessed December 20, 2011 (This is the published research page for the International Institute for the Advancement of Medicine, using donated tissue for research).

<sup>15</sup> Founded in 1976, the AATB has produced best practice standards for the operation of tissue banks since 1984. The association also provides an educational network for member organizations to encourage the dissemination of new practice. [www.aatb.org/About-AATB](http://www.aatb.org/About-AATB) site last visited December 12, 2011.

<sup>16</sup> AATB currently accredits 119 tissue banks in the U.S. and Canada. Email from AATB, on file with House Health and Human Services Access Subcommittee, 12/9/11. There are currently 12 organizations in Florida that are accredited by the AATB. [www.aatb.org/index.asp?bid=15](http://www.aatb.org/index.asp?bid=15) site last visited December 12, 2011.

<sup>17</sup> Email from AATB, on file with House Health and Human Services Access Subcommittee, December 29, 2011.

<sup>18</sup> *Id.*

<sup>19</sup> S. 497.005, F.S., operates as the definition section for the Funeral, Cemetery and Consumer Services chapter of the Florida Statutes.

The bill provides for a funeral director licensed under ch. 497, F.S., to assume responsibility of a legally authorized person for unclaimed remains, when no family exists. After 24 hours from the time of death, the funeral director may authorize arterial embalming to transfer the unclaimed remains to the Board. The bill releases a funeral director from liability for damages, when acting in accordance with this subsection.

The bill provides that if the identity of the unclaimed remains cannot be ascertained, the person or entity in control of them may not:

- Cremate them;
- Donate them as an anatomical gift;
- Be buried at sea; or
- Removed from the state.

If the Board does not accept unclaimed remains, the county in which the remains are discovered or where the death occurred, is authorized to dispose of the entire remains. The authority is given for disposition of the "entire" remains. It is unclear from the bill what happens if the unclaimed remains are not in their entirety, or within what timeframe they must be in their entirety to be buried or cremated.

The bill also provides authority to county boards of commissioners to, by ordinance or resolution, develop policies and procedures for the final disposition of unclaimed remains.

The bill repeals existing law related to competing claims for the same unclaimed remains by legally authorized persons. Precedence for competing claims to direct disposition of remains is provided for in s. 497.005, F.S.

#### Section Three – Disposition of Unclaimed Deceased Veterans

This section of the bill provides conforming changes to include the term final disposition, and updates a reference to the federal regulation for burial eligibility in a national cemetery.

#### Section Four - Retention of Human Remains Before Use; Claim after Delivery to Anatomical Board; Procedures for Unclaimed Remains or Remains of an Indigent Person

The bill substantially rewords s. 406.52, F.S., which relates to the retention of human remains, and a process for reclaiming the remains from the Board. The following changes to current law are made:

- At any point prior to the transfer to medical education or research, a legally authorized person may reclaim the remains from the Board, after payment of the Board's expenses incurred for transporting, embalming and storing the remains.
- The Board is authorized to reject indigent remains for any reason.
- The bill authorizes county boards of commissioners to, by ordinance or resolution, bury or cremate such remains in their entirety.
- The bill relieves funeral directors licensed under ch. 497, F.S., from liability for burying or cremating these remains, at the written direction of the county boards of commissioners.

The bill repeals previously enacted portions of s. 406.52, F.S., including deeming county commissioners to be legally authorized persons for the purpose of retention of human remains, and that if contact is made with a relative of the deceased person, the relative's preference for final disposition is to be taken into account.

#### Section Five - Unclaimed Remains of Indigent Person; Exemption from Notice to the Anatomical Board

Section 406.53, F.S., is substantially reworded by the bill. The following changes to current law are made:

- Notification of the Board at the death of an indigent by counties is changed by removing the following exceptions:
  - Death caused by crushing injuries;
  - Remains with contagious diseases;

- Claims for final disposition at the expense of a friend or representative of a charitable organization or religious entity that the indigent person was a member of; or a governmental entity that provided residential care and will provide for final disposition at its expense.
- The bill adds new exception to notification of the Board which is for bodies mutilated by wounds and for notifications already made and certified by funeral directors.
- The bill also removes current law in s. 406.53, F.S., which directs the Department of Health (DOH) to collect burial fees for remains identified as their clients.<sup>20</sup>

#### Section Six - Contracts for Delivery of Human Remains after Death Prohibited

The bill amends s. 406.55, F.S., changing the word “body” to “human remains” and provides rewording of existing statute.

#### Section Seven - Acceptance of Human Remains under Will

Section 406.56, F.S., is amended to change “medical science” to “medical education and research” and to reword existing statute.

#### Section Eight - Distribution of Human Remains

The bill amends s. 406.57, F.S., allowing accredited colleges of mortuary science, rather than recognized associations of licensed embalmers or funeral directors, to be loaned remains for education or research purposes. This would allow the schools to directly access remains for such purposes.

#### Section Nine - Fees; Authority to Accept Additional Funds; Annual Audit

The bill eliminates associations and leaves institutions as the source of fees to be collected by the Board. The bill also narrows the Board’s ability to reimburse people for the delivery of remains, to that of funeral directors licensed under ch. 497, F.S.

#### Section Ten - Institutions Receiving Human Remains

This section contains rewording of existing statute and removes associations from the list of entities allowed to receive human remains.

#### Section Eleven - Disposition of Human Remains after Use

This section amends s. 406.60, F.S., which limits the disposal of human remains by either the board, or a cinerator facility licensed under ch. 497, F.S., when such remains are deemed no longer of value to medical or dental education or research.

#### Section Twelve - Selling, Buying, Bartering, or Conveying Human Remains Outside or within the State Prohibited; Exceptions; Penalty

The bill expands the prohibition on selling buying or conveying human remains outside the state to include bartering and all transactions within the state.

The bill limits the conveyance of human remains in or out of the state for medical research purposes to nontransplant anatomical donation organizations that are accredited by the American Association of Tissue Banks or accredited medical or dental schools. The current law is struck which limits conveyance to persons, institutions or organization. The bill also expands medical research to include dental. The bill requires these organizations to give 72 hours notice to the Board prior to conveying human remains.

The bill directs the Board to create criteria for the information to be submitted to it by the organization seeking approval to convey human remains. The standard is to protect the health and safety of the public. This may be an unlawful delegation of authority to the Board.<sup>21</sup>

<sup>20</sup> DOH retains the capacity to assess fees for services, subject to s. 402.33, F.S.

<sup>21</sup> In the delegation of authority to another branch of government, the Legislature must provide sufficient guidance in statute. Otherwise, this may be a violation of the separation of powers clause in the Florida Constitution, Art II, s. 3. *see also Askew v. Cross Keys Waterways*, 372 So.2d 913, (Fla. 1978).

The Board is further directed to require documentation from legally authorized persons who make an anatomical gift pursuant to s. 765.512, F.S. If the body is to be segmented or disarticulated, the documentation is to specifically include legally authorized consent, and describe which body parts are to be segmented or disarticulated.

The bill also removes the sunset provision for the exemption from notification to the Board for entities accredited by the American Association of Museums.

Section 13 - Bodies may be Claimed after Delivery to the Anatomical Board

The bill repeals s. 406.54, F.S., which allowed human remains to be claimed from the Board by members of fraternal or religious entities, of which the person was a member.

Section 14 - Donees; Purposes for which Anatomical Gifts may be made

The Board is added to s. 765.513, F.S., as an entity that can become a donee for the purposes of anatomical gifts of whole bodies for medical or dental education or research.

**B. SECTION DIRECTORY:**

- Section 1:** Creates s. 406.49, F.S., relating to definitions.
- Section 2:** Amends s. 406.50, F.S., relating to unclaimed remains; disposition, procedure.
- Section 3:** Amends s. 406.51, F.S., relating to final disposition of unclaimed deceased veterans; contract requirements.
- Section 4:** Amends s. 406.52, F.S., relating to retention of human remains before use; claim after delivery to anatomical board; procedures for unclaimed remains or remains of an indigent person.
- Section 5:** Amends s. 406.53, F.S., relating to unclaimed remains of indigent person; exemption from notice to the anatomical board.
- Section 6:** Amends s. 406.55, F.S., relating to contracts for delivery of human remains after death prohibited.
- Section 7:** Amends s. 406.56, F.S., relating to acceptance of human remains under will.
- Section 8:** Amends s. 406.57, F.S., relating to distribution of human remains.
- Section 9:** Amends s. 406.58, F.S., relating to fees; authority to accept additional funds; annual audit.
- Section 10:** Amends s. 406.59, F.S., relating to institutions receiving human remains.
- Section 11:** Amends s. 406.60, F.S., relating to disposition of human remains after use.
- Section 12:** Amends s. 406.61, F.S., relating to selling, buying, bartering, or conveying human remains outside or within the state prohibited; exceptions; penalty.
- Section 13:** Repeals s. 406.54, F.S., relating to bodies may be claimed after delivery to the anatomical board.
- Section 14:** Amends s. 765.513, F.S., relating to donees; purposes for which anatomical gifts may be made.
- Section 15:** Provides an effective date.

**II. 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:

The bill has a direct impact on the private sector. Nontransplant anatomical donation organizations will be required to be accredited by the American Association of Tissue Banks to convey human remains outside and into the state. This will cost each facility required to be accredited. The estimated cost of accreditation is \$3,000 initially, and then between \$3,250 and \$75,000 annually.<sup>22</sup>

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or take action requiring expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The delegation of authority to the Board to create criteria, with which to determine the suitability of a proposed conveyance by a nontransplant anatomical donation organization or recognized medical or dental school, may be subject to judicial review.<sup>23</sup>

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 342 – 345 direct the Board to establish criteria which must be met by private organization seeking approval for a conveyance of human remains. These criteria should be listed in statute instead of leaving them to the Board for creation. Otherwise, this may constitute an unlawful delegation by the Legislature as currently drafted.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

---

<sup>22</sup> Email from AATB, on file with House Health and Human Services Access Subcommittee, December 29, 2011.

<sup>23</sup> *see Askew*, 372 So.2d at 918-919.

1 A bill to be entitled  
 2 An act relating to disposition of human remains;  
 3 creating s. 406.49, F.S.; providing definitions;  
 4 amending s. 406.50, F.S.; revising procedures for the  
 5 reporting and disposition of unclaimed remains;  
 6 prohibiting certain uses or dispositions of the  
 7 remains of deceased persons whose identities are not  
 8 known; amending s. 406.51, F.S.; requiring that local  
 9 governmental contracts for the final disposition of  
 10 unclaimed remains comply with certain federal  
 11 regulations; conforming provisions to changes in  
 12 terminology; conforming a cross-reference; amending s.  
 13 406.52, F.S.; revising procedures for the anatomical  
 14 board's retention of human remains before their use;  
 15 providing for claims by, and the release of human  
 16 remains to, legally authorized persons after payment  
 17 of certain expenses; authorizing county ordinances or  
 18 resolutions for the final disposition of the unclaimed  
 19 remains of indigent persons; limiting the liability of  
 20 certain licensed persons for cremating or burying  
 21 human remains under certain circumstances; amending s.  
 22 406.53, F.S.; revising exceptions from requirements  
 23 for notice to the anatomical board of the death of  
 24 indigent persons; deleting a requirement that the  
 25 Department of Health assess fees for the burial of  
 26 certain bodies; amending ss. 406.55, 406.56, 406.57,  
 27 406.58, and 406.59, F.S.; conforming provisions to  
 28 changes made by the act; amending s. 406.60, F.S.;



29 authorizing certain facilities to dispose of human  
 30 remains by cremation; amending s. 406.61, F.S.;  
 31 revising provisions prohibiting the selling, buying,  
 32 or bartering of human remains or the transmitting or  
 33 conveying of such remains outside the state to include  
 34 application to transmissions and conveyances within  
 35 the state; providing penalties; allowing certain  
 36 accredited schools and organizations to convey human  
 37 remains in or out of state for medical or research  
 38 purposes; requiring the anatomical board to establish  
 39 criteria to approve the conveyance of human remains;  
 40 requiring documentation authorizing the use of an  
 41 anatomical gift for medical or dental education or  
 42 research purposes; deleting provisions relating to  
 43 procedures for the conveyance of plastinated human  
 44 remains into or out of the state pursuant to their  
 45 scheduled expiration; conforming terminology;  
 46 repealing s. 406.54, F.S., relating to claims of  
 47 bodies after delivery to the anatomical board;  
 48 amending s. 765.513, F.S.; revising the list of donees  
 49 who may accept anatomical gifts and the purposes for  
 50 which such a gift may be used; providing an effective  
 51 date.

52  
 53 Be It Enacted by the Legislature of the State of Florida:

54  
 55 Section 1. Section 406.49, Florida Statutes, is created to  
 56 read:

57 | 406.49 Definitions.—As used in this part, the term:  
 58 | (1) "Anatomical board" means the anatomical board of the  
 59 | state headquartered at the University of Florida Health Science  
 60 | Center.

61 | (2) "Cremated remains" has the same meaning as in s.  
 62 | 497.005.

63 | (3) "Final disposition" has the same meaning as in s.  
 64 | 497.005.

65 | (4) "Human remains" or "remains" has the same meaning as  
 66 | in s. 497.005.

67 | (5) "Indigent person" means a person whose family income  
 68 | does not exceed 100 percent of the current federal poverty  
 69 | guidelines prescribed for the family's household size by the  
 70 | United States Department of Health and Human Services.

71 | (6) "Legally authorized person" has the same meaning as in  
 72 | s. 497.005.

73 | (7) "Unclaimed remains" means human remains that are not  
 74 | claimed by a legally authorized person, other than a medical  
 75 | examiner or the board of county commissioners, for final  
 76 | disposition at the person's expense.

77 | Section 2. Section 406.50, Florida Statutes, is amended to  
 78 | read:

79 | 406.50 Unclaimed ~~dead bodies or human~~ remains;  
 80 | disposition, procedure.—

81 | (1) A person or entity that comes ~~All public officers,~~  
 82 | ~~agents, or employees of every county, city, village, town, or~~  
 83 | ~~municipality and every person in charge of any prison, morgue,~~  
 84 | ~~hospital, funeral parlor, or mortuary and all other persons~~

85 ~~coming~~ into possession, charge, or control of unclaimed ~~any dead~~  
 86 ~~human body or remains~~ that ~~which are unclaimed or which are~~  
 87 required to be buried or cremated at public expense shall ~~are~~  
 88 ~~hereby required to notify,~~ immediately notify, the anatomical  
 89 board, unless:

90 (a) The unclaimed remains are decomposed or mutilated by  
 91 wounds;

92 (b) An autopsy is performed on the remains;

93 (c) The remains contain ~~whenever any such body, bodies, or~~  
 94 ~~remains come into its possession, charge, or control.~~  
 95 ~~Notification of the anatomical board is not required if the~~  
 96 ~~death was caused by crushing injury, the deceased had a~~  
 97 ~~contagious disease;~~

98 (d) A legally authorized person, ~~an autopsy was required~~  
 99 ~~to determine cause of death, the body was in a state of severe~~  
 100 ~~decomposition, or a family member objects to use of the~~ remains  
 101 ~~body for medical education~~ or and research; or

102 (e) The deceased person was a veteran of the United States  
 103 Armed Forces, United States Reserve Forces, or National Guard  
 104 and is eligible for burial in a national cemetery or was the  
 105 spouse or dependent child of a veteran eligible for burial in a  
 106 national cemetery.

107 (2)-(1) Before the final disposition of unclaimed remains,  
 108 ~~the person or entity in charge or control of the~~ ~~dead body or~~  
 109 ~~human~~ remains shall make a reasonable effort to ~~determine:~~

110 (a) Determine the identity of the deceased person and  
 111 ~~shall further make a reasonable effort to~~ contact any relatives  
 112 of the ~~such~~ deceased person.

113 (b) Determine whether ~~or not~~ the deceased person is  
 114 eligible under 38 C.F.R. s. 38.620 for ~~entitled to~~ burial in a  
 115 national cemetery as a veteran of the armed forces and, if  
 116 eligible ~~so~~, to cause the deceased person's remains or cremated  
 117 remains to be delivered to a national cemetery ~~shall make~~  
 118 ~~arrangements for such burial services in accordance with the~~  
 119 ~~provisions of 38 C.F.R.~~

120

121 For purposes of this subsection, "a reasonable effort" includes  
 122 contacting the National Cemetery Scheduling Office, the county  
 123 veterans service office, or the regional office of the United  
 124 States Department of Veterans Affairs.

125 ~~(3)-(2)~~ Unclaimed remains ~~Such dead human bodies as~~  
 126 ~~described in this chapter~~ shall be delivered to the anatomical  
 127 board as soon as possible after death. When no family exists or  
 128 is available, a funeral director licensed under chapter 497 may  
 129 assume the responsibility of a legally authorized person and  
 130 may, after 24 hours have elapsed from the time of death,  
 131 authorize arterial embalming for the purposes of storage and  
 132 delivery of unclaimed remains to the anatomical board. A funeral  
 133 director licensed under chapter 497 is not liable for damages  
 134 under this subsection.

135 (4) The remains of a deceased person whose identity is not  
 136 known may not be cremated, donated as an anatomical gift, buried  
 137 at sea, or removed from the state.

138 (5) If the anatomical board does not accept the unclaimed  
 139 remains, the county commission, or its designated county  
 140 department, of the county in which the remains are found or the

141 death occurred may authorize and arrange for the burial or  
 142 cremation of the entire remains. A board of county commissioners  
 143 may, in accordance with applicable laws and rules, prescribe  
 144 policies and procedures for final disposition of unclaimed  
 145 remains by resolution or ordinance.

146 ~~(6)(3)~~ This part does not ~~Nothing herein shall~~ affect the  
 147 right of a medical examiner to hold human ~~such dead body or~~  
 148 remains for the purpose of investigating the cause of death or  
 149 ~~nor shall this chapter affect~~ the right of any court of  
 150 competent jurisdiction to enter an order affecting the  
 151 disposition of such ~~body or~~ remains.

152 ~~(4)~~ ~~In the event more than one legally authorized person~~  
 153 ~~claims a body for interment, the requests shall be prioritized~~  
 154 ~~in accordance with s. 732.103.~~

155  
 156 ~~For purposes of this chapter, the term "anatomical board" means~~  
 157 ~~the anatomical board of this state located at the University of~~  
 158 ~~Florida Health Science Center, and the term "unclaimed" means a~~  
 159 ~~dead body or human remains that is not claimed by a legally~~  
 160 ~~authorized person, as defined in s. 497.005, for interment at~~  
 161 ~~that person's expense.~~

162 Section 3. Section 406.51, Florida Statutes, is amended to  
 163 read:

164 406.51 Final disposition of unclaimed deceased veterans;  
 165 contract requirements.—Any contract by a local governmental  
 166 entity for the final disposition ~~disposal~~ of unclaimed ~~human~~  
 167 remains must provide for compliance with s. 406.50(2)(1) and

168 require that the procedures in 38 C.F.R. s. 38.620, relating to  
 169 disposition of unclaimed deceased veterans, are ~~be~~ followed.

170 Section 4. Section 406.52, Florida Statutes, is amended to  
 171 read:

172 (Substantial rewording of section. See  
 173 s. 406.52, F.S., for present text.)

174 406.52 Retention of human remains before use; claim after  
 175 delivery to anatomical board; procedures for unclaimed remains  
 176 of indigent persons.—

177 (1) The anatomical board shall keep in storage all human  
 178 remains that it receives for at least 48 hours before allowing  
 179 their use for medical education or research. The anatomical  
 180 board may, for any reason, refuse to accept unclaimed remains or  
 181 the remains of an indigent person.

182 (2) At any time before their use for medical education or  
 183 research, human remains delivered to the anatomical board may be  
 184 claimed by a legally authorized person. The anatomical board  
 185 shall release the remains to the legally authorized person after  
 186 payment of the anatomical board's expenses incurred for  
 187 transporting, embalming, and storing the remains.

188 (3) (a) A board of county commissioners may, in accordance  
 189 with applicable laws and rules, prescribe policies and  
 190 procedures for the burial or cremation of the entire unclaimed  
 191 remains of an indigent person whose remains are found, or whose  
 192 death occurred in the county, by resolution or ordinance.

193 (b) A person licensed under chapter 497 is not liable for  
 194 any damages resulting from cremating or burying such human  
 195 remains at the written direction of the board of county

196 commissioners or its designee.

197 Section 5. Section 406.53, Florida Statutes, is amended to  
198 read:

199 (Substantial rewording of section. See  
200 s. 406.53, F.S., for present text.)

201 406.53 Unclaimed remains of indigent person; exemption  
202 from notice to the anatomical board.—A county commission or  
203 designated county department that receives a report of the  
204 unclaimed remains of an indigent person, notwithstanding s.  
205 406.50(1), is not required to notify the anatomical board of the  
206 remains if:

207 (1) The indigent person's remains are decomposed or  
208 mutilated by wounds or if an autopsy is performed on the  
209 remains;

210 (2) A legally authorized person or a relative by blood or  
211 marriage claims the remains for final disposition at his or her  
212 expense or, if such relative or legally authorized person is  
213 also an indigent person, in a manner consistent with the  
214 policies and procedures of the board of county commissioners of  
215 the county in which the remains are found or the death occurred;

216 (3) The deceased person was a veteran of the United States  
217 Armed Forces, United States Reserve Forces, or National Guard  
218 and is eligible for burial in a national cemetery or was the  
219 spouse or dependent child of a veteran eligible for burial in a  
220 national cemetery; or

221 (4) A funeral director licensed under chapter 497  
222 certifies that the anatomical board has been notified and either  
223 accepted or declined the remains.

224 Section 6. Section 406.55, Florida Statutes, is amended to  
 225 read:

226 406.55 Contracts for delivery of human remains ~~body~~ after  
 227 death prohibited.—The anatomical board may not enter ~~is~~  
 228 ~~specifically prohibited from entering~~ into any contract, oral or  
 229 written, that provides for ~~whereby~~ any sum of money to ~~shall~~ be  
 230 paid to any living person in exchange for ~~which~~ the delivery of  
 231 that person's remains ~~body of said person shall be delivered~~ to  
 232 the anatomical board when the ~~such living~~ person dies.

233 Section 7. Section 406.56, Florida Statutes, is amended to  
 234 read:

235 406.56 Acceptance of human remains ~~bodies~~ under will.—If  
 236 any person ~~being~~ of sound mind executes ~~shall execute~~ a will  
 237 leaving his or her remains ~~body~~ to the anatomical board for ~~the~~  
 238 ~~advancement of~~ medical education or research ~~science~~ and the  
 239 ~~such~~ person dies within the geographical limits of the state,  
 240 the anatomical board may ~~is hereby empowered to~~ accept and  
 241 receive the person's remains ~~such body~~.

242 Section 8. Section 406.57, Florida Statutes, is amended to  
 243 read:

244 406.57 Distribution of human remains ~~dead bodies~~.—The  
 245 anatomical board or its duly authorized agent shall take and  
 246 receive human remains ~~the bodies~~ delivered to it as provided in  
 247 ~~under the provisions of~~ this chapter and shall:

- 248 (1) Distribute the remains ~~them~~ equitably ~~to and~~ among the  
 249 medical and dental schools, teaching hospitals, medical  
 250 institutions, and health-related teaching programs that require  
 251 cadaveric material for study; or



252       (2) Loan the remains ~~same may be loaned for examination or~~  
 253 ~~study purposes~~ to accredited colleges of mortuary science  
 254 ~~recognized associations of licensed embalmers or funeral~~  
 255 ~~directors,~~ or medical or dental examining boards for educational  
 256 or research purposes at the discretion of the anatomical board.

257       Section 9. Section 406.58, Florida Statutes, is amended to  
 258 read:

259       406.58 Fees; authority to accept additional funds; annual  
 260 audit.—

261       (1) The anatomical board may:

262       (a) Adopt ~~is empowered to prescribe~~ a schedule of fees to  
 263 be collected from the institutions ~~institution or association~~ to  
 264 which the human remains ~~bodies, as described in this chapter,~~  
 265 are distributed or loaned to defray the costs of obtaining and  
 266 preparing the remains ~~such bodies.~~

267       (b) ~~(2) The anatomical board is hereby empowered to Receive~~  
 268 money from public or private sources, in addition to the fees  
 269 collected from the institutions ~~institution or association~~ to  
 270 which human remains ~~the bodies~~ are distributed, to be used to  
 271 defray the costs of embalming, handling, shipping, storing,  
 272 cremating, and otherwise storage, cremation, and other costs  
 273 ~~relating to the obtaining and using the remains. use of such~~  
 274 ~~bodies as described in this chapter; the anatomical board is~~  
 275 ~~empowered to~~

276       (c) Pay the reasonable expenses, as determined by the  
 277 anatomical board, incurred by a funeral establishment licensed  
 278 under chapter 497 transporting unclaimed human remains ~~any~~  
 279 ~~person delivering the bodies as described in this chapter to the~~

280 anatomical board. ~~and is further empowered to~~

281 (d) Enter into contracts and perform such other acts as  
 282 ~~are necessary for~~ ~~to~~ the proper performance of its duties. +

283 (2) The Department of Financial Services shall keep and  
 284 annually audit a complete record of all fees and other financial  
 285 transactions of the said anatomical board and shall annually  
 286 submit ~~be kept and audited annually by the Department of~~  
 287 ~~Financial Services, and a report of the such audit shall be made~~  
 288 annually to the University of Florida.

289 Section 10. Section 406.59, Florida Statutes, is amended  
 290 to read:

291 406.59 Institutions receiving human remains bodies. ~~A No~~  
 292 university, school, college, teaching hospital, or institution  
 293 ~~may not, or association shall be allowed or permitted to receive~~  
 294 any human remains from the anatomical board such body or bodies  
 295 ~~as described in this chapter~~ until its facilities are ~~have been~~  
 296 inspected and approved by the anatomical board. Human remains  
 297 ~~All such bodies~~ received by such university, school, college,  
 298 teaching hospital, or institution may not, or association shall  
 299 be used for any no other purpose other than ~~the promotion of~~  
 300 medical education or research science.

301 Section 11. Section 406.60, Florida Statutes, is amended  
 302 to read:

303 406.60 Disposition of human remains bodies after use. ~~At~~  
 304 ~~any time~~ When human remains any body or bodies or part or parts  
 305 ~~of any body or bodies, as described in this chapter, shall have~~  
 306 been used for, and are not deemed of any no further value to,  
 307 medical or dental education or research science, then the

308 anatomical board or a cinerator facility licensed under chapter  
 309 497 ~~person or persons having charge of said body or parts of~~  
 310 ~~said body~~ may dispose of the remains or any part thereof by  
 311 cremation.

312 Section 12. Section 406.61, Florida Statutes, is amended  
 313 to read:

314 406.61 Selling, buying, bartering, or conveying human  
 315 remains ~~bodies~~ outside or within state prohibited; exceptions;r  
 316 penalty.—

317 (1) Any person who sells, ~~or~~ buys, or barters human  
 318 remains or any part thereof, ~~body or parts of bodies as~~  
 319 ~~described in this chapter~~ or any person except a recognized  
 320 Florida medical or dental school who transmits or conveys or  
 321 causes to be transmitted or conveyed such remains ~~body~~ or part  
 322 thereof ~~parts of bodies~~ to any place outside or within this  
 323 state, commits a misdemeanor of the first degree, punishable as  
 324 provided in s. ss. 775.082 or s. and 775.083. However, this  
 325 chapter does not prohibit the anatomical board from transporting  
 326 human remains ~~specimens~~ outside or within the state for  
 327 educational or scientific purposes or prohibit the transport of  
 328 human remains, any part of such remains ~~bodies, parts of bodies,~~  
 329 or tissue specimens for purposes ~~in furtherance~~ of lawful  
 330 examination, investigation, or autopsy conducted pursuant to s.  
 331 406.11.

332 (2) Any nontransplant anatomical donation organization  
 333 accredited by the American Association of Tissue Banks or an  
 334 accredited medical or dental college or university may convey  
 335 human remains ~~person, institution, or organization that conveys~~

336 ~~bodies~~ or any part thereof within, ~~parts of bodies~~ into, or out  
 337 of the state for medical or dental education or research  
 338 purposes. The organization must ~~shall~~ notify the anatomical  
 339 board at least 72 hours before the organization intends to  
 340 convey ~~of~~ such remains ~~intent~~ and must receive approval from the  
 341 anatomical board before conveyance. The anatomical board shall:

342 (a) Establish criteria for the information required to be  
 343 submitted by the organization to ensure the health and safety of  
 344 the public and grant requests for approval. Failure to provide  
 345 such information shall be grounds for denial of the request.

346 (b) Require documentation from a legally authorized person  
 347 who may make an anatomical gift pursuant to s. 765.512  
 348 authorizing its use in medical or dental education or research.  
 349 If the remains or any part thereof is to be segmented or  
 350 disarticulated, such documentation must include the legally  
 351 authorized person's specific consent and must describe any part  
 352 of the remains that is to be segmented or disarticulated.

353 (3)-(2) Any entity accredited by the American Association  
 354 of Museums may convey plastinated human remains ~~bodies~~ or any  
 355 part thereof within, ~~parts of bodies~~ into, or out of the state  
 356 for exhibition and public educational purposes without the  
 357 consent of the anatomical board if the accredited entity:

358 (a) Notifies the anatomical board of the conveyance and  
 359 the duration and location of the exhibition at least 30 days  
 360 before the intended conveyance.

361 (b) Submits to the anatomical board a description of the  
 362 remains ~~bodies~~ or any part thereof ~~parts of bodies~~ and the name  
 363 and address of the company providing the remains ~~bodies~~ or any

364 part thereof ~~parts of bodies.~~

365 (c) Submits to the anatomical board documentation that the  
 366 remains or each part thereof ~~body~~ was donated by the decedent or  
 367 his or her next of kin for purposes of plastination and public  
 368 exhibition, or, in lieu of such documentation, an affidavit  
 369 stating that the remains or each part thereof ~~body~~ was donated  
 370 directly by the decedent or his or her next of kin for such  
 371 purposes to the company providing the remains ~~body~~ and that such  
 372 company has a donation form on file for the remains ~~body~~.

373 ~~(3) Notwithstanding paragraph (2)(c) and in lieu of the~~  
 374 ~~documentation or affidavit required under paragraph (2)(c), for~~  
 375 ~~a plastinated body that, before July 1, 2009, was exhibited in~~  
 376 ~~this state by any entity accredited by the American Association~~  
 377 ~~of Museums, such an accredited entity may submit an affidavit to~~  
 378 ~~the board stating that the body was legally acquired and that~~  
 379 ~~the company providing the body has acquisition documentation on~~  
 380 ~~file for the body. This subsection expires January 1, 2012.~~

381 Section 13. Section 406.54, Florida Statutes, is repealed.

382 Section 14. Subsection (1) of section 765.513, Florida  
 383 Statutes, is amended to read:

384 765.513 Donees; purposes for which anatomical gifts may be  
 385 made.—

386 (1) The following persons or entities may become donees of  
 387 anatomical gifts of bodies or parts of them for the purposes  
 388 stated:

389 (a) Any procurement organization or accredited medical or  
 390 dental school, college, or university for education, research,  
 391 therapy, or transplantation.

HB 625

2012

392           (b) Any individual specified by name for therapy or  
393 transplantation needed by him or her.

394           (c) The anatomical board as defined in s. 406.49(1) for  
395 donation of the whole body for medical or dental education or  
396 research.

397           Section 15. This act shall take effect July 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 625 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

---

1 Committee/Subcommittee hearing bill: Health & Human Services  
2 Access Subcommittee  
3 Representative Roberson, K. offered the following:

4  
5 **Amendment**

6 Remove line 179 and insert:  
7 their use for medical education or research. Human remains may  
8 be embalmed when received. The anatomical  
9

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Health & Human Services  
 2 Access Subcommittee  
 3 Representative Roberson, K. offered the following:

**Amendment (with title amendment)**

6 Remove lines 338-345 and insert:

7 purposes. The organization or accredited medical or dental  
 8 college or university must ~~shall~~ notify the anatomical board at  
 9 least three business days before the entity intends to convey ~~of~~  
 10 such ~~remains intent~~ and must receive approval from the  
 11 anatomical board before conveyance. If the third business day  
 12 falls on a weekend or legal holiday, the next business day shall  
 13 be deemed to be the third. The anatomical board shall:

14 (a) Require the following information to be submitted by  
 15 the organization prior to approval:

16 1. The name, physical location and date of the course,  
 17 conference or seminar, or facility receiving the remains or  
 18 specimen(s), including the physical address and telephone number  
 19 of the facility receiving the remains or specimen(s);



Amendment No. 2

20 3. A description and intended use of the remains or  
21 specimen(s);

22 4. The name, physical address and telephone number of  
23 organization or facility supplying specimen(s) handling the  
24 transfer of the remains or specimen(s);

25 5. Documentation pursuant to s.406.61(2)(b). An exception  
26 may be made for specimen(s) being shipped into the state of  
27 Florida, an affidavit may be submitted by an accredited non-  
28 transplant anatomical organization as provided in this section,  
29 stating that the organization has donation and consent forms on  
30 file for each remains from which a specimen has been provided  
31 specifically authorizing segmentation or disarticulation of the  
32 remains. The affidavit must also state that no specimen(s) being  
33 shipped into the state of Florida has been received from a  
34 second party;

35 6. An outline of the security measures in place for  
36 maintaining control of and safeguarding the remains or  
37 specimen(s) at the facility or, before, during, and after the  
38 course, conference or seminar; and

39 7. The disposal procedures of the remains or specimen(s),  
40 after the course, conference or seminar is concluded or the  
41 facility receiving the remains or specimen(s) has completed  
42 their use, including the name, address and telephone number of  
43 the entity responsible for performing cremation.

44  
45 The anatomical board shall grant or deny requests for approval  
46 within three business days of receipt of the required  
47 information. Failure to provide such information shall be

791247 - h625-line338.docx

Published On: 1/10/2012 4:59:11 PM

Amendment No. 2

48 grounds for denial of the request. If the request is not  
49 approved or denied within three business days, it shall be  
50 deemed approved. If the third business day falls on a weekend or  
51 legal holiday, the next business day shall be deemed to be the  
52 third. If the anatomical board denies a request, it shall  
53 provide a written statement of the reasons for denial.

54  
55  
56  
57  
58  
59  
60  
61  
62

-----

**T I T L E   A M E N D M E N T**

Remove lines 38-39 and insert:  
purposes; establishing criteria for the anatomical board to  
approve the conveyance of human remains;