

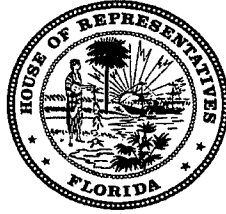


Health & Human Services Access Subcommittee

**Wednesday, March 9, 2011
8:30 - 10:30 AM
12 HOB**

**Dean Cannon
Speaker**

**Gayle Harrell
Chair**



The Florida House of Representatives

Health & Human Services Access Subcommittee

Agenda
March 9, 2011
8:30 -10:30 AM
12 HOB



- I. Call to Order/Roll Call**
- II. HB 137 Prostate Cancer Awareness Program by Renuart**
- III. HB 139 Child Care Facilities by Ahern**
- IV. HB 353 Drug Screening of Potential and Existing Beneficiaries of Temporary Cash Assistance by Smith**
- V. HB 4041 Department of Children and Family Services Employees by Diaz**
- VI. HB 4101 Repeal of Health Insurance Provisions by Nelson**
- VII. Adjournment**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 137 Prostate Cancer Awareness Program

SPONSOR(S): Renuart

TIED BILLS: IDEN./SIM. BILLS: SB 414

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

SUMMARY ANALYSIS

Currently, the Prostate Cancer Awareness Program is housed within the Department of Health and has not been funded since Fiscal Year 2002-2003. The bill expands the purpose of the Prostate Cancer Awareness Program and transfers all duties and responsibilities for implementing the Prostate Cancer Awareness Program (Program) from the Department of Health and the Florida Public Health Institute, Inc. to the University of Florida, Prostate Disease Center (Center) to:

- Promote prostate cancer awareness;
- Communicate the advantages of early detection;
- Report recent progress in prostate cancer research and the availability of clinical trials;
- Minimize health disparities through outreach and education;
- Communicate best practices principles to physicians involved in the care of prostate cancer patients; and
- Establish a communication platform for patients and their advocates.

The bill modifies the Prostate Cancer Advisory Committee to the UFPDC Prostate Cancer Taskforce (Taskforce) and substantially expands the duties of the Taskforce. The Center is directed to lead the Taskforce in developing and implementing strategies to improve outreach and education to reduce the number of patients who develop prostate cancer. The bill amends the membership, appointment terms, duties, and deletes per diem and travel reimbursement provisions for the Taskforce.

The bill has an indeterminate fiscal impact to the state and no fiscal impact to local governments. (See Fiscal Comments.)

The bill provides for an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Prostate Cancer

Prostate cancer is cancer that starts in the prostate gland. The prostate is a gland in the male reproductive system located just below the bladder (the organ that collects and empties urine) and in front of the rectum (the lower part of the intestine)¹

Prostate cancer is now the second leading cause of cancer death in men, exceeded only by lung cancer.² Prostate cancer is uncommonly seen in men younger than 50 years; the incidence rises rapidly with each decade thereafter.³ There were 99,745 Floridians diagnosed with cancer in 2005. Prostate cancer accounted for 13 percent of that total.⁴

Number of New Cancer Cases, Florida, 2005

| | All Cancers | Prostate | Breast |
|----------------|-------------|----------|--------|
| Florida | 99,745 | 13,253 | 12,428 |
| Female | 46,575 | -0- | 12,428 |
| Male | 53,095 | 13,253 | -0- |
| Black | 8,734 | 1,701 | 1,077 |
| White | 88,333 | 11,125 | 11,034 |

Source: Florida Cancer Data System

Not everyone experiences symptoms of prostate cancer.⁵ Many times, signs of prostate cancer are first detected by a doctor during a routine check-up. Conversely, the signs of prostate cancer are not limited specifically to a diagnosis of cancer, instead, may identify a non-cancerous prostate problem.⁶ Symptoms include:⁷

- A need to urinate frequently, especially at night
- Difficulty starting urination or holding back urine
- Weak or interrupted flow of urine
- Painful or burning urination
- Difficulty in having an erection
- Painful ejaculation
- Blood in urine or semen

¹ National Institute of Health, National Cancer Institute, *General Information About Prostate Cancer*, available at: <http://www.cancer.gov/cancertopics/pdq/treatment/prostate/Patient> (last viewed February 11, 2011)

² National Institute of Health, National Cancer Institute, *Prostate Cancer Screening*, available at: <http://www.cancer.gov/cancertopics/pdq/screening/prostate/HealthProfessional/page2> (last viewed February 11, 2011).

³ *Id.*

⁴ Florida Department of Health, Bureau of Epidemiology, Florida Cancer Data System. *Florida Annual Cancer Report: 2005 Incidence and Mortality*, available at: http://www.doh.state.fl.us/disease_ctrl/epi/cancer/Annual.html (last viewed February 11, 2011).

⁵ Prostate Cancer Foundation, *Understanding Prostate Cancer: Prostate Cancer Symptoms*, http://www.pcf.org/site/c.leJRIROrEpH/b.5802031/k.6CE8/Prostate_Cancer_Symptoms.htm (last viewed February 11, 2011).

⁶ *Id.*

⁷ *Id.*

- Frequent pain or stiffness in the lower back, hips, or upper thighs (only when the cancer has spread)

Recommendations for Screening

When to start screening for prostate cancer varies depending upon risk. Age 40 is generally considered a reasonable time to start screening for those at highest risk (genetic predispositions or strong family histories of prostate cancer at a young age). Some recommend an initial prostate-specific antigen (PSA)⁸ blood test and digital rectal exam⁹ at age 40, and others recommend starting at age 50. Practitioners who recommend against regular screening rationalize that because most prostate cancers grow very slowly, the side effects of treatment would likely outweigh any benefit that might be derived from detecting the cancer at a stage when it is unlikely to cause problems.¹⁰ When to stop screening is also controversial among practitioners. Some practitioners propose 75 as a reasonable cut-off age. While others, suggest that screening and treatment is an individual decision based on life expectancy and overall current health.¹¹

Recent studies of screening in large U.S. and European populations have suggested that the benefits of screening may not occur for 10 or more years after screening, given the long natural history of prostate cancer. These studies also suggest that many men will need to be screened (over 1,000) and treated (nearly 50) to save one life from prostate cancer.¹²

Effects of the Bill

Prostate Cancer Awareness Program

In 2004, the Legislature created the Prostate Cancer Awareness Program (Program) within the Department of Health (DOH).¹³ The Program is charged with implementing the recommendations of the January 2000 Florida Prostate Cancer Task Force and to provide for statewide outreach and health education activities to ensure men are aware of and appropriately seek medical counseling for prostate cancer as an early detection health care measure.¹⁴ According to s. 381.911(2), F.S., the DOH and the Florida Public Health Institute, Inc. (Institute) are tasked with implementing the Program by:

- Conducting activities directly or enter into a contract with a qualified nonprofit community education entity; and
- Seeking any available gifts, grants, or funds from the state, the Federal Government, philanthropic foundations, and industry or business groups.

The bill removes references to the DOH and Institute and transfers all duties and responsibilities related to the implementation of the Program to the University of Florida, Prostate Disease Center¹⁵ (Center). The bill expands the scope of the Program to:

- Promote prostate cancer awareness;
- Communicate the advantages of early detection;

⁸ Elevated levels of PSA in blood serum are associated with benign prostatic hyperplasia and prostate cancer.

⁹ A procedure, in which, the physician inserts a gloved finger into the rectum to examine the rectum and the prostate gland for signs of cancer.

¹⁰ Prostate Cancer Foundation, Understanding Prostate Cancer: Early Detection & Screening, http://www.pcf.org/site/c.leJRIROrEpH/b.5802037/k.6B8C/Early_Detection_Screening.htm (last viewed February 11, 2011).

¹¹ *Id.*

¹² *Id.*

¹³ 2004-2, L.O.F.

¹⁴ s. 381.911(1), F.S.

¹⁵ The Dean of University of Florida, College of Medicine, approved the creation of the UF Prostate Cancer Disease Center on February 2, 2009. The Center is housed under the Department of Urology. The Center's mission strictly follows the University's strategic plan to become a national leader in translational research and teaching institute that ultimately means better overall patient care. The Center focuses on interdisciplinary research and educational efforts that facilitate the development of new and better diagnostic tools and treatment methods for prostate diseases, including prostate cancer, benign prostate hyperplasia, inflammatory prostate disorders, and other urogenital diseases.

- Report recent progress in prostate cancer research and the availability of clinical trials;
- Minimize health disparities through outreach and education;
- Communicate best practices principles to physicians involved in the care of prostate cancer patients; and
- Establish a communication platform for patients and their advocates.

The bill provides that the Center may work with other agencies, organizations, and institutions to create a systematic approach to community education and awareness.

Prostate Advisory Committee v. Taskforce

The Prostate Cancer Advisory Committee (Committee) is created under s. 381.911(3), F.S., to advise and assist the DOH and the Institute in implementing the Program. The State Surgeon General is responsible for appointing the following advisory committee members:

- Three persons from prostate cancer survivor groups or cancer-related advocacy groups;
- Three persons who are scientists or clinicians from public universities or research organizations; and
- Three persons who are engaged in the practice of a cancer-related medical specialty from health organizations committed to cancer research and control.

Committee members serve without compensation, but are entitled to reimbursement for per diem and travel expenses.

The bill changes the Committee to the UFPDC Prostate Cancer Taskforce (Taskforce). The Center is directed to lead the Taskforce in developing and implementing strategies to improve outreach and education to reduce the number of patients who develop prostate cancer. The Executive Director of the Center, in consultation with the DOH's Comprehensive Cancer Control Program¹⁶, the Florida Cancer Control Program¹⁷, and the State Surgeon General are to create a geographically and institutionally diverse Taskforce, such that the composition includes:

- Two persons from prostate cancer survivor groups or cancer-related advocacy groups;
- A licensed allopathic physician;
- A licensed osteopathic physician;
- A scientist;
- The Executive Director of the UFPDC or a designee; and
- Three persons who are engaged in the practice of a cancer-related medical specialty from health organizations committed to cancer research and control.

The bill states that members of the Taskforce are volunteers and deletes language that allows members to receive reimbursement for per diem and travel expenses. The bill creates 4-year staggered terms for appointed Taskforce members and requires them meet annually, at the call of the Executive Director of the Center, or by a majority vote of the members. The bill stipulates that five members constitute a quorum and an affirmative vote of the majority is required for final actions.

The bill specifies that the Taskforce is required to:

- Present prostate-cancer-related policy recommendations to the DOH and other appropriate governmental entities;

¹⁶ The Department of Health, Bureau of Chronic Disease Prevention and Health Promotion, Comprehensive Cancer Control Program, was created through a cooperative agreement with the Centers for Disease Control and Prevention (CDC). The program focuses on prevention activities that address risk behaviors, which impede health, such as tobacco use, poor nutrition, lack of physical activity, and UV exposure. Primarily, the program focuses its efforts on colorectal, lung, ovarian, prostate and skin cancers. *See:* <http://www.doh.state.fl.us/family/cancer/ccc/index.html> (last viewed March 1, 2011).

¹⁷ The Cancer Control and Research Act pursuant to s. 1004.435, F.S., creates within the H. Lee Moffitt Cancer Center and Research Institute, Inc., the Florida Cancer Control and Research Advisory Council. The council shall consist of 34 members, which are tasked with approving the Florida Cancer Plan. The Plan must include guidelines on the care and treatment of persons suffering from cancer and recommend the establishment of standard requirements for the organization, equipment, and conduct of cancer units or departments in hospitals and clinics in this state.

- Verify the accuracy of prostate cancer information disseminated to the public;
- Develop effective communication channels among all private and public entities in the state involved in prostate cancer education, research, treatment, and patient advocacy;
- Plan, develop, and implement activities designed to heighten awareness and educate residents regarding the importance of prostate cancer awareness;
- Disseminate information about recent progress in prostate cancer research and the availability of clinical trials;
- Minimize health disparities through outreach and education;
- Communicate best-practices principles to physicians involved in the care of patients with prostate cancer;
- Work with other institutions and organizations to develop and maintain a prostate cancer registry;
- Establish a tissue bank;
- Solicit grants and funding to conduct an annual prostate cancer symposium; and
- Submit an annual report to the Governor, Legislature, and State Surgeon General by January 15, 2012, and each year thereafter, to recommending legislative changes that:
 - Decrease the incidence of prostate cancer,
 - Decrease disparities among persons diagnosed with prostate cancer, and
 - Promote increased community education and awareness of prostate cancer.

The bill removes outdated language that references a January 2000 Florida Prostate Cancer Taskforce.

Statewide Cancer Registry

Section 385.202, F.S., requires each hospital or other licensed facility to report to the DOH information that indicates diagnosis, stage of disease, medical history, laboratory data, tissue diagnosis, and radiation, surgical, or other methods of diagnosis or treatment for each cancer diagnosed or treated by that facility to include Prostate Cancer.¹⁸ The DOH, or a medical organization pursuant to a contract with the DOH, is required to maintain and make available for research such information in a statewide cancer registry. The DOH operates the Florida Cancer Data System and information on prostate cancer incidence and mortality may be found in the Florida Annual Cancer Report.¹⁹

The bill requires the Taskforce to work with other institutions and organizations to develop and maintain a prostate cancer registry. This is duplicative of the data collected by the Florida Cancer Data System.

B. SECTION DIRECTORY:

Section 1. Amends s. 381.911, F.S., relating to the Prostate Cancer Awareness Program.
 Section 2. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

¹⁸ ch. 78-171, L.O.F.

¹⁹ Florida Department of Health, Bureau of Epidemiology, Florida Cancer Data System, available at: http://www.doh.state.fl.us/disease_ctrl/epi/cancer/Annual.html (last viewed February 11, 2011).

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

Currently, s. 381.911(1), F.S., provides that to the extent that funds are specifically made available for this purpose, the Program is created in the DOH. In Fiscal Year 2002-2003, the General Appropriations Act (GAA) provided \$200,000 non-recurring General Revenue for a prostate cancer awareness program.²⁰ The GAA, via proviso language, provided the Governor the authority to appoint a Florida Prostate Cancer Awareness Task Force to advise the DOH on the use of the funds. The funds may be used all or in part to seek pledges for matching funds from philanthropic foundations, industry, corporations, not for profit entities, or private individuals. Additionally, based on the pledges received the state may elect in future years to enact a program for matching funds. According to DOH, the Program has not received any additional state or grant funding since the initial appropriation.²¹

Due to the statutory language, "to the extent that funds are specifically made available for this purpose...", the Center may have difficulty implementing the program if the Legislature does not make a specific appropriation to support the Program. The Center has stated that they currently have funds available to support all the costs associated with implementing the bill. According to the Center, the Department of Urology has a total of \$587,456 unrestricted grant funds, \$ 1.9M unrestricted philanthropic funds, and are anticipating an additional \$1M in pledged funds, which are available to support the Center's activities.²²

The fiscal impact to the Center to implement the bill is indeterminate at this time. There will be cost to the Center to convene a taskforce, develop and maintain a prostate cancer registry, establish a tissue bank, and staff time to implement all the outreach and education initiatives outlined in the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The provisions of the bill do not require rule-making authority to implement.

²⁰ Specific Appropriation 527 found in ch. 2002-394 s. 3, L.O.F.

²¹ Per email correspondence with DOH staff on file with the Health & Human Services Access Subcommittee staff (February 18, 2011).

²² Per email correspondence with Thomas Crawford, MBA, FACHE, Chief Operating Officer, Prostate Disease Center, on file with the Health & Human Services Access Subcommittee staff (February 11, 2011).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to the Prostate Cancer Awareness Program;
 3 amending s. 381.911, F.S.; revising the structure and
 4 objectives of the Prostate Cancer Awareness Program;
 5 authorizing the University of Florida Prostate Disease
 6 Center, in collaboration with other organizations and
 7 institutions, to establish a prostate cancer task force to
 8 replace the advisory committee; providing for membership
 9 and duties of the task force; requiring an annual report
 10 to the Governor, Legislature, and State Surgeon General;
 11 providing an effective date.

12
 13 WHEREAS, the Legislature recognizes that prostate cancer is
 14 a major public health problem and that promoting awareness of
 15 this disease is in the public interest of this state, and

16 WHEREAS, according to the Department of Health's Florida
 17 Cancer Plan 2003-2006, prostate cancer was the most commonly
 18 diagnosed cancer in Florida, accounting for one in every four
 19 cancer diagnoses, and

20 WHEREAS, the costs for screening, staging, and treating
 21 prostate cancer patients in both dollars and morbidity continue
 22 to rise and threaten the foundation of this state's health
 23 system, and

24 WHEREAS, because African-American men are 2.8 times more
 25 likely to succumb to prostate cancer than their Caucasian
 26 counterparts, a call for action is mandatory, and

27 WHEREAS, there are currently no organized, active, or
 28 effective strategies to improve community education and

HB 137

2011

29 awareness regarding the rising incidence of and the racial and
 30 ethnic disparities related to prostate cancer, and

31 WHEREAS, the Legislature finds that it in the public
 32 interest for state agencies and institutions to work with the
 33 University of Florida Prostate Disease Center to establish the
 34 prostate cancer task force to more effectively serve the needs
 35 of the people of Florida, NOW, THEREFORE,

36

37 Be Enacted by the Legislature of the State of Florida:

38

39 Section 1. Section 381.911, Florida Statutes, is amended
 40 to read:

41 381.911 Prostate Cancer Awareness Program.—

42 (1) To the extent that funds are specifically made
 43 available for this purpose, the Prostate Cancer Awareness
 44 Program is established within the Department of Health. The
 45 purpose of this program is ~~to implement the recommendations of~~
 46 ~~January 2000 of the Florida Prostate Cancer Task Force to~~
 47 provide for statewide outreach, promote prostate cancer
 48 awareness, communicate the advantages of early detection, report
 49 recent progress in prostate cancer research and the availability
 50 of clinical trials, minimize health disparities through outreach
 51 and education, communicate best practices principles to
 52 physicians involved in the care of prostate cancer patients, and
 53 establish a communication platform for patients and their
 54 advocates ~~and health education activities to ensure that men are~~
 55 ~~aware of and appropriately seek medical counseling for prostate~~
 56 ~~cancer as an early-detection health care measure.~~

57 (2) For purposes of implementing the program, the
 58 University of Florida Prostate Disease Center may work with
 59 other agencies, organizations, and institutions to create a
 60 systematic approach to community education and increase public
 61 awareness regarding prostate cancer by ~~Department of Health and~~
 62 ~~the Florida Public Health Institute, Inc., may:~~

63 (a) Conducting ~~Conduct~~ activities directly or entering
 64 ~~enter~~ into a contract with a qualified nonprofit community
 65 education entities ~~entity~~.

66 (b) Seeking ~~Seek~~ any available gifts, grants, or funds
 67 from the state, the Federal Government, philanthropic
 68 foundations, and industry or business groups.

69 (3) The University of Florida Prostate Disease Center
 70 (UFPDC) shall establish the UFPDC Prostate Cancer Task Force and
 71 lead the task force in developing and implementing strategies to
 72 improve outreach and education and thereby reduce the number of
 73 patients who develop prostate cancer. ~~A prostate cancer advisory~~
 74 ~~committee is created to advise and assist the Department of~~
 75 ~~Health and the Florida Public Health Institute, Inc., in~~
 76 ~~implementing the program.~~

77 (a) The Executive Director of the University of Florida
 78 Prostate Disease Center shall appoint, in consultation with the
 79 Department of Health's Comprehensive Cancer Control Program, the
 80 Florida Cancer Control Program, and the State Surgeon General, a
 81 geographically and institutionally diverse task force, which
 82 ~~shall appoint the advisory committee members, who shall consist~~
 83 of:

- 84 1. Two ~~Three~~ persons from prostate cancer survivor groups

85 or cancer-related advocacy groups.

86 2. Four ~~Three~~ persons, one of whom is a physician licensed
 87 under chapter 458, one of whom is a physician licensed under
 88 chapter 459, one of whom is a scientist, and one of whom is the
 89 Executive Director of the University of Florida Prostate Disease
 90 Center or a designee ~~who are scientists or clinicians from~~
 91 ~~public universities or research organizations.~~

92 3. Three persons who are engaged in the practice of a
 93 cancer-related medical specialty from health organizations
 94 committed to cancer research and control.

95 (b) Members shall serve as volunteers without compensation
 96 ~~but are entitled to reimbursement, pursuant to s. 112.061, for~~
 97 ~~per diem and travel expenses incurred in the performance of~~
 98 ~~their official duties.~~

99 (c) Each member of the task force shall be appointed to a
 100 4-year term; however, for the purpose of providing staggered
 101 terms, of the initial appointments, four members shall be
 102 appointed to 2-year terms and four members shall be appointed to
 103 4-year terms. The remaining seat shall be filled by the
 104 Executive Director of the University of Florida Prostate Disease
 105 Center or a designee.

106 (d) The task force shall meet annually and at other times
 107 at the call of the Executive Director of the University of
 108 Florida Prostate Disease Center or by a majority vote of the
 109 members of the task force.

110 (e) Five of the members of the task force constitute a
 111 quorum, and an affirmative vote of a majority of the members
 112 present is required for final action.

- 113 (f) The task force shall:
- 114 1. Present prostate-cancer-related policy recommendations
- 115 to the Department of Health and other appropriate governmental
- 116 entities.
- 117 2. Verify the accuracy of prostate cancer information
- 118 disseminated to the public.
- 119 3. Develop effective communication channels among all
- 120 private and public entities in the state involved in prostate
- 121 cancer education, research, treatment, and patient advocacy.
- 122 4. Plan, develop, and implement activities designed to
- 123 heighten awareness and educate residents of the state,
- 124 especially those in underserved areas, regarding the importance
- 125 of prostate cancer awareness.
- 126 5. Disseminate information about recent progress in
- 127 prostate cancer research and the availability of clinical
- 128 trials.
- 129 6. Minimize health disparities through outreach and
- 130 education.
- 131 7. Communicate best practices principles to physicians
- 132 involved in the care of patients with prostate cancer.
- 133 8. Establish a communication platform for patients and
- 134 their advocates.
- 135 9. Work with other institutions and organizations to
- 136 develop and maintain a prostate cancer registry that is an
- 137 automated, electronic, and centralized database of persons in
- 138 the state who are diagnosed with and treated for prostate
- 139 cancer.
- 140 10. Establish a tissue bank to enable research that could

141 result in new therapies and potential cures for persons
 142 diagnosed with prostate cancer.

143 11. Solicit grants or philanthropic funding to conduct an
 144 annual prostate cancer symposium that brings physicians,
 145 researchers, community leaders, prostate cancer survivors, and
 146 prostate cancer advocates together to highlight recent advances
 147 in prostate cancer research, clinical trials, and best practices
 148 used for the prevention of the prostate cancer and to promote
 149 strategies for successful rural and urban outreach, community
 150 education, and increased awareness.

151 12. Submit and present an annual report to the Governor,
 152 the President of the Senate, the Speaker of the House of
 153 Representatives, and the State Surgeon General by January 15,
 154 2012, and by January 15 of each following year, which contains
 155 recommendations for legislative changes necessary to decrease
 156 the incidence of prostate cancer, decrease racial and ethnic
 157 disparities among persons diagnosed with prostate cancer, and
 158 promote increased community education and awareness regarding
 159 this disease.

160 ~~(4) The program shall coordinate its efforts with those of~~
 161 ~~the Florida Public Health Institute, Inc.~~

162 Section 2. This act shall take effect July 1, 2011.

Amendment No. 1

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Health & Human Services Access
2 Subcommittee

3 Representative(s) Renuart offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:
7 Section 1. Section 381.911, Florida Statutes, is amended to
8 read:

9 381.911 Prostate Cancer Awareness Program.—

10 ~~(1) To the extent that funds are specifically made~~
11 ~~available for this purpose, the Prostate Cancer Awareness~~
12 ~~Program is established within the Department of Health. The~~
13 ~~purpose of this program is to implement the recommendations of~~
14 ~~January 2000 of the Florida Prostate Cancer Task Force to~~
15 provide for statewide outreach, promote prostate cancer
16 awareness, communicate the advantages of early detection, report
17 recent progress in prostate cancer research and the availability
18 of clinical trials, minimize health disparities through outreach

Amendment No. 1

19 and education, communicate best practices principles to
20 physicians involved in the care of prostate cancer patients, and
21 establish a communication platform for patients and their
22 advocates and health education activities to ensure that men are
23 aware of and appropriately seek medical counseling for prostate
24 cancer as an early-detection health care measure.

25 (2) For purposes of implementing the program, the
26 University of Florida Prostate Disease Center shall work with
27 other agencies, organizations, and institutions to create a
28 systematic approach to community education and increase public
29 awareness regarding prostate cancer by Department of Health and
30 the Florida Public Health Institute, Inc., may:

31 (a) Conducting Conduct activities directly or entering
32 enter into a contract with a qualified nonprofit community
33 education entities entity.

34 (b) Seeking Seek any available gifts, grants, or funds
35 from the state, the Federal Government, philanthropic
36 foundations, and industry or business groups.

37 (3) The University of Florida Prostate Disease Center
38 (UFPDC) shall establish the UFPDC Prostate Cancer Advisory
39 Council and lead the advisory council in developing and
40 implementing strategies to improve outreach and education and
41 thereby reduce the number of patients who develop prostate
42 cancer. A prostate cancer advisory committee is created to
43 advise and assist the Department of Health and the Florida
44 Public Health Institute, Inc., in implementing the program.

45 (a) The executive director of the University of Florida
46 Prostate Disease Center shall appoint, in consultation with the

Amendment No. 1

47 Department of Health's Comprehensive Cancer Control Program and
48 the State Surgeon General, a geographically and institutionally
49 diverse advisory council, which shall appoint the advisory
50 committee members, who shall consist of:

51 1. Two ~~Three~~ persons from prostate cancer survivor groups
52 or cancer-related advocacy groups.

53 2. Four ~~Three~~ persons, one of whom is a physician licensed
54 under chapter 458, one of whom is a physician licensed under
55 chapter 459, one of whom is a scientist, and one of whom is the
56 executive director of the University of Florida Prostate Disease
57 Center or a designee who are scientists or clinicians from
58 public universities or research organizations.

59 3. Three persons who are engaged in the practice of a
60 cancer-related medical specialty from health organizations
61 committed to cancer research and control.

62 (b) Members shall serve as volunteers without compensation
63 ~~but are entitled to reimbursement, pursuant to s. 112.061, for~~
64 ~~per diem and travel expenses incurred in the performance of~~
65 ~~their official duties.~~

66 (c) Each member of the advisory council shall be appointed
67 to a 4-year term; however, for the purpose of providing
68 staggered terms, of the initial appointments, four members shall
69 be appointed to 2-year terms and four members shall be appointed
70 to 4-year terms. The remaining seat shall be filled by the
71 executive director of the University of Florida Prostate Disease
72 Center or a designee.

73 (d) The advisory council shall meet annually and at other
74 times at the call of the executive director of the University of

Amendment No. 1

75 Florida Prostate Disease Center or by a majority vote of the
76 members of the advisory council.

77 (e) Five of the members of the advisory council constitute
78 a quorum, and an affirmative vote of a majority of the members
79 present is required for final action.

80 (f) The advisory council shall:

81 1. Present prostate-cancer-related policy recommendations
82 to the Department of Health and other appropriate governmental
83 entities.

84 2. Assess the accuracy of prostate cancer information
85 disseminated to the public.

86 3. Develop effective communication channels among all
87 private and public entities in the state involved in prostate
88 cancer education, research, treatment, and patient advocacy.

89 4. Plan, develop, and implement activities designed to
90 heighten awareness and educate residents of the state,
91 especially those in underserved areas, regarding the importance
92 of prostate cancer awareness.

93 5. Disseminate information about recent progress in
94 prostate cancer research and the availability of clinical
95 trials.

96 6. Minimize health disparities through outreach and
97 education.

98 7. Communicate best practices principles to physicians
99 involved in the care of patients with prostate cancer.

100 8. Establish a communication platform for patients and
101 their advocates.

Amendment No. 1

102 9. Solicit grants or philanthropic funding to conduct an
103 annual prostate cancer symposium that brings physicians,
104 researchers, community leaders, prostate cancer survivors, and
105 prostate cancer advocates together to highlight recent advances
106 in prostate cancer research, clinical trials, and best practices
107 used for the prevention of the prostate cancer and to promote
108 strategies for successful rural and urban outreach, community
109 education, and increased awareness.

110 10. Submit and present an annual report to the Governor,
111 the President of the Senate, the Speaker of the House of
112 Representatives, and the State Surgeon General by January 15,
113 2012, and by January 15 of each following year, which contains
114 recommendations for legislative changes necessary to decrease
115 the incidence of prostate cancer, decrease racial and ethnic
116 disparities among persons diagnosed with prostate cancer, and
117 promote increased community education and awareness regarding
118 this disease.

119 ~~(4) The program shall coordinate its efforts with those of~~
120 ~~the Florida Public Health Institute, Inc.~~

121 Section 2. This act shall take effect July 1, 2011.

122
123
124
125 -----
126 **T I T L E A M E N D M E N T**

127 Remove the entire title and insert:

128 A bill to be entitled

Amendment No. 1

129 An act relating to the Prostate Cancer Awareness Program;
130 amending s. 381.911, F.S.; deleting the funding
131 qualification for the Prostate Cancer Awareness Program;
132 revising the structure and objectives of the Prostate
133 Cancer Awareness Program; authorizing the University of
134 Florida Prostate Disease Center, in collaboration with
135 other organizations and institutions, to increase
136 community education and public awareness of prostate
137 cancer; requiring the University of Florida Prostate
138 Disease Center to establish an advisory council to replace
139 the existing advisory committee; providing for membership
140 and duties of the advisory council; requiring an annual
141 report to the Governor, Legislature, and State Surgeon
142 General; providing an effective date.

143

144 WHEREAS, the Legislature recognizes that prostate
145 cancer is a major public health problem and that promoting
146 awareness of this disease is in the public interest of
147 this state, and

148 WHEREAS, according to the Department of Health's
149 Florida Cancer Plan 2003-2006, prostate cancer was the
150 most commonly diagnosed cancer in Florida, accounting for
151 one in every four cancer diagnoses, and

152 WHEREAS, the costs for screening, staging, and
153 treating prostate cancer patients in both dollars and
154 morbidity continue to rise and threaten the foundation of
155 this state's health system, and

Amendment No. 1

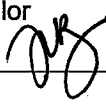

156 WHEREAS, because African-American men are 2.8 times
157 more likely to succumb to prostate cancer than their
158 Caucasian counterparts, a call for action is mandatory,
159 and

160 WHEREAS, there are currently no organized, active, or
161 effective strategies to improve community education and
162 awareness regarding the rising incidence of and the racial
163 and ethnic disparities related to prostate cancer, and

164 WHEREAS, the Legislature finds that it is in the
165 public's interest for state agencies and institutions to
166 work with the University of Florida Prostate Disease
167 Center to establish the prostate cancer task force to more
168 effectively serve the needs of the people of Florida, NOW,
169 THEREFORE,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 139 Child Care Facilities
SPONSOR(S): Ahern
TIED BILLS: IDEN./SIM. BILLS: SB 364

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

SUMMARY ANALYSIS

The bill amends Ch. 402, F.S., to create a definition for household children and requires that certain household children be included in the capacity calculation of licensed family day care homes and large family child care homes.

Specifically, the bill defines household children to mean children who are related by blood, marriage, or legal adoption to, or who are the legal wards of, the family day care home operator, the large family child care home operator, or an adult household member who permanently or temporarily resides in the home. The definition also leaves supervision of the operator's household children to the discretion of the operator unless those children receive subsidized child care to be in the home. The bill provides that household children under the age of 13 be included in the overall capacity of the licensed home when on the premises of a family day care home, large family child care home or on a field trip with children enrolled in child care.

The bill also requires persons advertising or publishing an advertisement for a child care facility, family day care home, or large family child care home to include in the advertisement the state or local agency license number or registration number of such facility or home. The bill provides for the right to take legal action against an unlicensed or unregistered individual who falsely advertises their facility. Finally, the bill provides that the court shall award the prevailing party reasonable attorney's fees and costs incurred in connection with any claim filed.

Provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background

Licensing

The Department of Children and Family Services (DCF) licenses child care facilities based on licensing standards established in statute and rule.¹ However, current law permits any county with local licensing standards that meet or exceed the state minimum standards to either designate a local licensing agency to license child care facilities or contract with DCF to administer the state minimum standards in the county.² Currently, DCF is responsible for administering child care licensing and training in 61 of Florida's 67 counties. The remaining six counties (Brevard, Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota) have licensing standards that exceed the state's minimum licensing standards for family day care homes.³ These counties license family day care homes as a function of county government.

Family Day Care Homes

A family day care home is, "an occupied residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit."⁴ Care can be provided for one of the following groups of children, including children under the age of 13 who are related to the caregiver:

- A maximum of four children from birth to 12 months;
- A maximum of three children from birth to 12 months, and other children over the age of 12 months, up to a total of six children;
- A maximum of six preschool children if all are older than 12 months;
- A maximum of 10 children if no more than five are preschool age and, of those five, no more than two are under 12 months.⁵

Current law requires family day care homes have either a license or registration. The home must have a license if it is presently being licensed under an existing county ordinance, participating in the subsidized child care program, or if the county passes a resolution requiring licensure.⁶ If not subject to license, then the family day care home shall register annually with DCF and receive a registration number.⁷

¹ s. 402.305(1), F.S.

² s. 402.306(1), F.S.

³ Staff Analysis HB 411(2010), Florida House of Representatives

⁴ s. 402.302(8), F.S.

⁵ *Id*

⁶ s. 402.313(1), F.S.

⁷ s. 402.313(1)(a), F.S.

Large Family Child Care Home

A large family child care home is an occupied residence in which child care is provided for children from at least two unrelated families for a payment, fee, or grant for any of the children receiving care, whether or not operated for profit; and which has at least two full-time child care personnel.⁸ Before seeking licensure, large family child care homes must first have operated for a minimum of 2 consecutive years, with an operator who has had a child development associate credential or its equivalent for 1 year.⁹ Care can be provided to one of the following groups, which includes those children under 13 years of age who are related to the caregiver:

- A maximum of 8 children from birth to 24 months;
- A maximum of 12 children, with no more than 4 children under 24 months.¹⁰

Large family day care homes are required to be licensed and are subject to minimum standards established by rule.¹¹ DCF is permitted to provide technical assistance to counties and family day care home providers to enable the counties and providers to achieve compliance with minimum standards for large family child care homes.¹²

Supervision

DCF has promulgated administrative rules related to supervision of children and staffing requirements.¹³ These rules apply to all children in the home including children related to the operator. Specifically, operators are responsible for the supervision of children at all times, including when the children are napping or sleeping.¹⁴ When children are napping or sleeping in bedrooms, the rules require that the room's doors must remain open.¹⁵ All children, during the daytime, must have adult supervision consisting of watching and directing their activities, both indoors and outdoors.¹⁶ If a child is sick and placed in isolation, he or she must remain within sight and hearing of the operator.¹⁷ Additionally, children being diapered or when changing clothes must be attended to at all times.¹⁸

Advertisement

Any advertisement for a child care facility must include within such advertisement the state or local agency license number of the facility.¹⁹ Failure to do so is a misdemeanor of the first degree.²⁰ This advertisement requirement does not address whether registered family day care homes have to list their DCF-issued registration number in an advertisement. Therefore under current law, registered family day care homes are not required to list their registration number in advertisements.

Financial Assistance for Childcare through School Readiness Program

The School Readiness program administered by the Agency for Workforce Innovation (AWI) provides at risk or low income families with financial assistance for child care through a variety of services.²¹ This program is sometimes referred to as subsidized child care.

⁸ s. 402.302(9), F.S.

⁹ s. 402.302(9), F.S., 65C-20.013(1)(a), F.A.C.

¹⁰ s. 402.302(9), F.S.

¹¹ ss. 402.3131(1),(7), F.S.

¹² s. 402.3131(1)(b), F.S.

¹³ 65C-20.009, F.A.C

¹⁴ 65C-20.009(5)(a), F.A.C

¹⁵ *Id*

¹⁶ *Id*

¹⁷ 65C-20.009(5)(b), F.A.C.

¹⁸ 65C-20.009(5)(c), F.A.C.

¹⁹ s. 402.318, F.S.

²⁰ *Id*

²¹ Chapter 411.0101, F.S.

Effect of Proposed Changes

This bill creates the definition, "household children," to mean children who are related by blood, marriage, or legal adoption to, or who are the legal wards of, the family day care home operator, large family child care home operator, or an adult household member who permanently or temporarily resides in the home. The effect of this definition will increase the number of children considered to be part of the child care home. Current law only includes children under 13 years of age who are related to the caregiver. This definition counts children who may be related to the care-giving operator as well as to an adult household resident who is not the caregiver, such as a temporary or permanent resident.

The definition also conditions supervision of the operator's household children to the discretion of the operator unless those children receive subsidized care to be in the home. In effect, the law will require DCF inspectors to distinguish between an operator's household children, and other children in the home when applying rules for supervision related to the child care program.²²

This bill also amends the definitions for both "family day care home" and "large family child care home" to clarify that "household children" are included in the calculations to determine the maximum number of children that can receive care. While current law includes children under 13 years of age that are related to the caregiver in determining the amount of children that can be cared for, the use of "household children" will provide more clarification and direction as to what is considered for calculation purposes. The meaning of the term is expanded to include children related by blood, marriage, or legal adoption to, or who are the legal wards of, the operator or a permanent or temporary adult household member. Thus, children who are related to any adult household guest over the age of 13, such as an adult household guest on vacation with his or her children would also be included in the calculation. Additionally, the bill provides that the household children be included in the overall capacity of the licensed home when they are on the premises or on a field trip with children enrolled in licensed care. The effect of this change will ensure that the capacity is adjusted if household children are not either on the premises or participating in a fieldtrip.

The bill amends advertising requirements in s. 402.318, F.S., to include family day care homes and large family child care homes. It also requires registered family day care homes or large family child care homes to include their registration numbers in advertisements. Violation of these advertising requirements is a misdemeanor of the first degree.

The bill also provides that an individual or local licensing agency has cause of action against an unlicensed or unregistered individual who violates advertising requirements, and provides that the court shall award the prevailing party reasonable attorney fees.

B. SECTION DIRECTORY:

Section 1: Amends s. 402.302, F.S., relating to definitions.

Section 2: Amends s. 402.318, F.S., relating to advertisement.

Section 3: Amends s. 411.01, F.S., relating to School readiness programs; early learning coalitions

Section 4: Provides an effective date of July 1, 2011.

²² 65C-20.009(5), F.A.C.

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:

The 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:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill creates a cause of action against an unlicensed or unregistered person who violates the proposed advertising requirements; however, the bill does not prescribe the nature of the damages underlying the cause of action. Current law as amended by this bill will already provide that advertising an unlicensed or unregistered facility is a misdemeanor of the first degree.

The bill provides that a local licensing agency or individual can have a cause of action against an individual who is unlicensed or unregistered. The bill does not specify the local licensing agency. It is unclear whether this is intended to reference a local child care licensing agency or some other agency.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to child care facilities; amending s.
 3 402.302, F.S.; revising and providing definitions;
 4 providing for certain household children to be included in
 5 calculations regarding the capacity of licensed family day
 6 care homes and large family child care homes; providing
 7 conditions for supervision of household children of
 8 operators of family day care homes and large family child
 9 care homes; amending s. 402.318, F.S.; revising
 10 advertising requirements applicable to child care
 11 facilities; providing penalties; authorizing a cause of
 12 action against an unlicensed or unregistered individual if
 13 certain advertising requirements are not met; authorizing
 14 the award of attorney's fees and costs under certain
 15 conditions; amending s. 411.01, F.S.; conforming a cross-
 16 reference; providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:
 19

20 Section 1. Section 402.302, Florida Statutes, is amended
 21 to read:

22 402.302 Definitions.—As used in this chapter, the term:

23 (1) "Child care" means the care, protection, and
 24 supervision of a child, for a period of less than 24 hours a day
 25 on a regular basis, which supplements parental care, enrichment,
 26 and health supervision for the child, in accordance with his or
 27 her individual needs, and for which a payment, fee, or grant is
 28 made for care.

29 (2) "Child care facility" includes any child care center
 30 or child care arrangement which provides child care for more
 31 than five children unrelated to the operator and which receives
 32 a payment, fee, or grant for any of the children receiving care,
 33 wherever operated, and whether or not operated for profit. The
 34 following are not included:

35 (a) Public schools and nonpublic schools and their
 36 integral programs, except as provided in s. 402.3025;

37 (b) Summer camps having children in full-time residence;

38 (c) Summer day camps;

39 (d) Bible schools normally conducted during vacation
 40 periods; and

41 (e) Operators of transient establishments, as defined in
 42 chapter 509, which provide child care services solely for the
 43 guests of their establishment or resort, provided that all child
 44 care personnel of the establishment are screened according to
 45 the level 2 screening requirements of chapter 435.

46 (3) "Child care personnel" means all owners, operators,
 47 employees, and volunteers working in a child care facility. The
 48 term does not include persons who work in a child care facility
 49 after hours when children are not present or parents of children
 50 in a child care facility. For purposes of screening, the term
 51 includes any member, over the age of 12 years, of a child care
 52 facility operator's family, or person, over the age of 12 years,
 53 residing with a child care facility operator if the child care
 54 facility is located in or adjacent to the home of the operator
 55 or if the family member of, or person residing with, the child
 56 care facility operator has any direct contact with the children

57 | in the facility during its hours of operation. Members of the
 58 | operator's family or persons residing with the operator who are
 59 | between the ages of 12 years and 18 years are not required to be
 60 | fingerprinted but must be screened for delinquency records. For
 61 | purposes of screening, the term also includes persons who work
 62 | in child care programs that provide care for children 15 hours
 63 | or more each week in public or nonpublic schools, family day
 64 | care homes, or programs otherwise exempted under s. 402.316. The
 65 | term does not include public or nonpublic school personnel who
 66 | are providing care during regular school hours, or after hours
 67 | for activities related to a school's program for grades
 68 | kindergarten through 12. A volunteer who assists on an
 69 | intermittent basis for less than 10 hours per month is not
 70 | included in the term "personnel" for the purposes of screening
 71 | and training if a person who meets the screening requirement of
 72 | s. 402.305(2) is always present and has the volunteer in his or
 73 | her line of sight. Students who observe and participate in a
 74 | child care facility as a part of their required coursework are
 75 | not considered child care personnel, provided such observation
 76 | and participation are on an intermittent basis and a person who
 77 | meets the screening requirement of s. 402.305(2) is always
 78 | present and has the student in his or her line of sight.

79 | (4) "Child welfare provider" means a licensed child-caring
 80 | or child-placing agency.

81 | (5) "Department" means the Department of Children and
 82 | Family Services.

83 | (6) "Drop-in child care" means child care provided
 84 | occasionally in a child care facility in a shopping mall or

85 business establishment where a child is in care for no more than
 86 a 4-hour period and the parent remains on the premises of the
 87 shopping mall or business establishment at all times. Drop-in
 88 child care arrangements shall meet all requirements for a child
 89 care facility unless specifically exempted.

90 (7) "Evening child care" means child care provided during
 91 the evening hours and may encompass the hours of 6:00 p.m. to
 92 7:00 a.m. to accommodate parents who work evenings and late-
 93 night shifts.

94 (8) "Family day care home" means an occupied residence in
 95 which child care is regularly provided for children from at
 96 least two unrelated families and which receives a payment, fee,
 97 or grant for any of the children receiving care, whether or not
 98 operated for profit. Household children under 13 years of age,
 99 when on the premises of the family day care home or on a field
 100 trip with children enrolled in child care, shall be included in
 101 the overall capacity of the licensed home. A family day care
 102 home shall be allowed to provide care for one of the following
 103 groups of children, which shall include household ~~those~~ children
 104 under 13 years of age ~~who are related to the caregiver:~~

105 (a) A maximum of four children from birth to 12 months of
 106 age.

107 (b) A maximum of three children from birth to 12 months of
 108 age, and other children, for a maximum total of six children.

109 (c) A maximum of six preschool children if all are older
 110 than 12 months of age.

111 (d) A maximum of 10 children if no more than 5 are
 112 preschool age and, of those 5, no more than 2 are under 12

113 months of age.

114 (9) "Household children" means children who are related by
 115 blood, marriage, or legal adoption to, or who are the legal
 116 wards of, the family day care home operator, the large family
 117 child care home operator, or an adult household member who
 118 permanently or temporarily resides in the home. Supervision of
 119 the operator's household children shall be left to the
 120 discretion of the operator unless those children receive
 121 subsidized child care to be in the home.

122 (10) "Indoor recreational facility" means an indoor
 123 commercial facility which is established for the primary purpose
 124 of entertaining children in a planned fitness environment
 125 through equipment, games, and activities in conjunction with
 126 food service and which provides child care for a particular
 127 child no more than 4 hours on any one day. An indoor
 128 recreational facility must be licensed as a child care facility
 129 under s. 402.305, but is exempt from the minimum outdoor-square-
 130 footage-per-child requirement specified in that section, if the
 131 indoor recreational facility has, at a minimum, 3,000 square
 132 feet of usable indoor floor space.

133 (11)-(9) "Large family child care home" means an occupied
 134 residence in which child care is regularly provided for children
 135 from at least two unrelated families, which receives a payment,
 136 fee, or grant for any of the children receiving care, whether or
 137 not operated for profit, and which has at least two full-time
 138 child care personnel on the premises during the hours of
 139 operation. One of the two full-time child care personnel must be
 140 the owner or occupant of the residence. A large family child

HB 139

2011

141 care home must first have operated as a licensed family day care
 142 home for 2 years, with an operator who has had a child
 143 development associate credential or its equivalent for 1 year,
 144 before seeking licensure as a large family child care home.
 145 Household children under 13 years of age, when on the premises
 146 of the large family child care home or on a field trip with
 147 children enrolled in child care, shall be included in the
 148 overall capacity of the licensed home. A large family child care
 149 home shall be allowed to provide care for one of the following
 150 groups of children, which shall include household ~~these~~ children
 151 under 13 years of age ~~who are related to the caregiver:~~

152 (a) A maximum of 8 children from birth to 24 months of
 153 age.

154 (b) A maximum of 12 children, with no more than 4 children
 155 under 24 months of age.

156 (12)-(11) "Local licensing agency" means any agency or
 157 individual designated by the county to license child care
 158 facilities.

159 (13)-(12) "Operator" means any onsite person ultimately
 160 responsible for the overall operation of a child care facility,
 161 whether or not he or she is the owner or administrator of such
 162 facility.

163 (14)-(13) "Owner" means the person who is licensed to
 164 operate the child care facility.

165 (15)-(14) "Screening" means the act of assessing the
 166 background of child care personnel and volunteers and includes,
 167 but is not limited to, employment history checks, local criminal
 168 records checks through local law enforcement agencies,

169 fingerprinting for all purposes and checks in this subsection,
 170 statewide criminal records checks through the Department of Law
 171 Enforcement, and federal criminal records checks through the
 172 Federal Bureau of Investigation.

173 (16)~~(15)~~ "Secretary" means the Secretary of Children and
 174 Family Services.

175 (17)~~(16)~~ "Substantial compliance" means that level of
 176 adherence which is sufficient to safeguard the health, safety,
 177 and well-being of all children under care. Substantial
 178 compliance is greater than minimal adherence but not to the
 179 level of absolute adherence. Where a violation or variation is
 180 identified as the type which impacts, or can be reasonably
 181 expected within 90 days to impact, the health, safety, or well-
 182 being of a child, there is no substantial compliance.

183 (18)~~(17)~~ "Weekend child care" means child care provided
 184 between the hours of 6 p.m. on Friday and 6 a.m. on Monday.

185 Section 2. Section 402.318, Florida Statutes, is amended
 186 to read:

187 402.318 Advertisement.—

188 (1) A ~~No~~ person, as defined in s. 1.01(3), may not ~~shall~~
 189 advertise a child care facility, family day care home, or large
 190 family child care home without including within such
 191 advertisement the state or local agency license number or
 192 registration number of such facility or home. Violation of this
 193 subsection ~~section~~ is a misdemeanor of the first degree,
 194 punishable as provided in s. 775.082 or s. 775.083.

195 (2) An individual or local licensing agency has a cause of
 196 action against an unlicensed or unregistered individual who

197 violates subsection (1). The court shall award the prevailing
 198 party reasonable attorney's fees and costs incurred in
 199 connection with a claim filed under this section.

200 Section 3. Paragraph (c) of subsection (5) of section
 201 411.01, Florida Statutes, is amended to read:

202 411.01 School readiness programs; early learning
 203 coalitions.—

204 (5) CREATION OF EARLY LEARNING COALITIONS.—

205 (c) Program expectations.—

206 1. The school readiness program must meet the following
 207 expectations:

208 a. The program must, at a minimum, enhance the age-
 209 appropriate progress of each child in attaining the performance
 210 standards and outcome measures adopted by the Agency for
 211 Workforce Innovation.

212 b. The program must provide extended-day and extended-year
 213 services to the maximum extent possible without compromising the
 214 quality of the program to meet the needs of parents who work.

215 c. The program must provide a coordinated professional
 216 development system that supports the achievement and maintenance
 217 of core competencies by school readiness instructors in helping
 218 children attain the performance standards and outcome measures
 219 adopted by the Agency for Workforce Innovation.

220 d. There must be expanded access to community services and
 221 resources for families to help achieve economic self-
 222 sufficiency.

223 e. There must be a single point of entry and unified
 224 waiting list. As used in this sub-subparagraph, the term "single

225 point of entry" means an integrated information system that
 226 allows a parent to enroll his or her child in the school
 227 readiness program at various locations throughout a county, that
 228 may allow a parent to enroll his or her child by telephone or
 229 through an Internet website, and that uses a unified waiting
 230 list to track eligible children waiting for enrollment in the
 231 school readiness program. The Agency for Workforce Innovation
 232 shall establish through technology a single statewide
 233 information system that each coalition must use for the purposes
 234 of managing the single point of entry, tracking children's
 235 progress, coordinating services among stakeholders, determining
 236 eligibility, tracking child attendance, and streamlining
 237 administrative processes for providers and early learning
 238 coalitions.

239 f. The Agency for Workforce Innovation must consider the
 240 access of eligible children to the school readiness program, as
 241 demonstrated in part by waiting lists, before approving a
 242 proposed increase in payment rates submitted by an early
 243 learning coalition. In addition, early learning coalitions shall
 244 use school readiness funds made available due to enrollment
 245 shifts from school readiness programs to the Voluntary
 246 Prekindergarten Education Program for increasing the number of
 247 children served in school readiness programs before increasing
 248 payment rates.

249 g. The program must meet all state licensing guidelines,
 250 where applicable.

251 h. The program must ensure that minimum standards for
 252 child discipline practices are age-appropriate. Such standards

253 must provide that children not be subjected to discipline that
 254 is severe, humiliating, or frightening or discipline that is
 255 associated with food, rest, or toileting. Spanking or any other
 256 form of physical punishment is prohibited.

257 2. Each early learning coalition must implement a
 258 comprehensive program of school readiness services in accordance
 259 with the rules adopted by the agency which enhance the
 260 cognitive, social, and physical development of children to
 261 achieve the performance standards and outcome measures. At a
 262 minimum, these programs must contain the following system
 263 support service elements:

264 a. Developmentally appropriate curriculum designed to
 265 enhance the age-appropriate progress of children in attaining
 266 the performance standards adopted by the Agency for Workforce
 267 Innovation under subparagraph (4)(d)8.

268 b. A character development program to develop basic
 269 values.

270 c. An age-appropriate screening of each child's
 271 development.

272 d. An age-appropriate assessment administered to children
 273 when they enter a program and an age-appropriate assessment
 274 administered to children when they leave the program.

275 e. An appropriate staff-to-children ratio, pursuant to s.
 276 402.305(4) or s. 402.302(8) or (11)~~(7)~~ or ~~(8)~~, as applicable,
 277 and as verified pursuant to s. 402.311.

278 f. A healthy and safe environment pursuant to s.
 279 401.305(5), (6), and (7), as applicable, and as verified
 280 pursuant to s. 402.311.

281 g. A resource and referral network established under s.
 282 411.0101 to assist parents in making an informed choice and a
 283 regional Warm-Line under s. 411.01015.

284
 285 The Agency for Workforce Innovation, the Department of
 286 Education, and early learning coalitions shall coordinate with
 287 the Child Care Services Program Office of the Department of
 288 Children and Family Services to minimize duplicating interagency
 289 activities pertaining to acquiring and composing data for child
 290 care training and credentialing.

291 Section 4. This act shall take effect July 1, 2011.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 139 (2011)

Amendment No. 1

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Health & Human Services Access
2 Subcommittee
3 Representative(s) Ahern offered the following:

4
5 **Amendment**
6 Remove line 121 and insert:
7 subsidized child care through the School Readiness Program
8 pursuant to s.411.0101 to be in the home.
9

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 Ahern offered the following:

Amendment (with title amendment)

Remove lines 187-199 and insert:

7 402.318 Advertisement.—A No person, as defined in s.
 8 1.01(3), may not shall advertise a child care facility, family
 9 day care home, or large family child care home without including
 10 within such advertisement the state or local agency license
 11 number or registration number of such facility or home.
 12 Violation of this section is a misdemeanor of the first degree,
 13 punishable as provided in s. 775.082 or s. 775.083.

16 -----
 17 **T I T L E A M E N D M E N T**

18 Remove lines 11-15 and insert:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 139 (2011)

Amendment No.

19 facilities; providing penalties; amending s. 411.01, F.S.;

20 conforming a cross-

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 353 Drug Screening of Potential and Existing Beneficiaries of Temporary Cash

Assistance

SPONSOR(S): Smith

TIED BILLS: IDEN./SIM. BILLS: SB 556

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

SUMMARY ANALYSIS

The bill creates s. 414.0652, F.S. establishing that the Department of Children and Families (DCF) shall create a drug screening program for temporary cash assistance applicants as a condition of eligibility. The program must be implemented no later than July 1, 2012. The bill provides the following:

- Applicants who have been convicted of a drug felony in the previous 3 years shall be drug screened and upon receiving cash assistance the individual will be screened for an additional 3 years.
- Applicants that fail the drug screen shall be disqualified from receiving temporary cash assistance for 3 years. However, DCF may designate another individual to receive the cash assistance benefits on behalf of a minor child.
- The methods of drug screening and confirmatory testing, including policies and procedures for specimen collection, testing, storage and transportation are detailed in the bill. DCF shall solicit competitive bids for drug screening and confirmatory screening services to ensure the lowest costs. The cost of screening and confirmatory testing shall be paid by the individual applicant.
- DCF shall provide any individual who tests positive for drugs with information concerning drug abuse and treatment programs in the area in which he or she resides. The bill specifies that neither DCF nor the state is responsible for providing or paying for substance abuse treatment as part of screening under this section.
- The drug screening program shall be implemented no later than July 1, 2012
- DCF is required to submit an annual report to the Speaker of the House of Representatives, the President of the Senate and the Governor by January 1, 2013.

The bill provides an effective date of July 1, 2011.

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 2005.¹ States receive block grants to operate their individual programs and to accomplish the goals of the TANF program. Those goals include:

- Assisting needy families so that children can be cared for in their homes;
- Reducing the dependency of needy parents by promoting job preparation, work and marriage;
- Preventing out-of-wedlock pregnancies;
- Encouraging the formation and maintenance of two-parent families.²

Currently, DCF administers the TANF program in conjunction with the Agency for Workforce Innovation (AWI). Current law provides that families are eligible for cash assistance for a lifetime cumulative total of 48 months (4 years).³ DCF reports that approximately 113,346 people are receiving temporary cash assistance.⁴ The FY 2010-2011 appropriation of TANF funds to support temporary cash assistance was \$211,115,965.

The TANF program expires on September 30, 2011 and must be reauthorized by Congress to continue the program.

Food Assistance Program (Supplemental Nutrition Assistance Program-SNAP)

The Food Assistance Program is a 100 % federally funded program to help low-income people buy food they need for good health. 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.⁵ DCF reports that over 1.9 million Floridians received food assistance during fiscal year 2009-10.⁶

Pilot Project for Drug Testing TANF Applicants

¹ 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 2/15/11)

² *Id*

³ s. 414.105, F.S.

⁴ DCF Quick Facts, Access Program, January 1, 2011.

⁵ Food Assistance Program Fact Sheet, DCF <http://www.dcf.state.fl.us/programs/access/foodstamps.shtml> (last visited 3/3/11)

⁶ DCF Quick Facts, Access Program, January 1, 2011

From January 1999 to May 2001, DCF in consultation with Workforce Florida implemented a pilot project in Regions 3 and 8 to drug screen and drug test applicants for TANF.⁷ A Florida State University researcher under contract to evaluate the pilot program did not recommend continuation or statewide expansion of the project. Overall research and findings concluded that there is very little difference in employment and earnings between those who test positive versus those who test negative. Researchers concluded that the cost of the pilot program was not warranted.

Sanctions to Welfare and Food Assistance Recipients from Felony Drug Convictions.

Federal law provides that an individual convicted (under federal or state law) of any offense which is classified as a felony related to the possession, use or distribution of a controlled substance shall not be eligible for assistance under the TANF program or benefits under the food stamp program or any program carried out under the Food and Nutrition Act of 2008.⁸

The same section of Federal law provides that each state has the right to exempt individuals from having benefits withheld due to a felony drug charge.⁹ Florida has opted to exempt individuals from this provision and does not deny benefits for a felony drug conviction, unless the conviction is for drug trafficking.¹⁰

Drug Testing Welfare and Food Assistance Recipients

Federal law regarding the use of TANF funds provides that states may test welfare recipients for use of controlled substances and sanction those recipients who test positive.¹¹ However, there is no provision in federal law allowing drug testing recipients of the food assistance program. Further the Federal code provides that states cannot as a condition of eligibility impose additional application or application processing requirements, such as drug testing on recipients of the food assistance program.¹²

Protective Payees

The TANF program requires that people receiving cash assistance must satisfy work requirements established in federal law. Florida statutes provide that the Agency for Workforce Innovation develop specific activities that satisfy the work requirements.¹³

In the event that a TANF recipient is noncompliant with the work activity requirements, DCF has authority to terminate cash assistance to the family.¹⁴ In the event that assistance is terminated, DCF will establish a protective payee that will receive TANF funds on behalf of any children in the home who are under the age of 16.¹⁵ The protective payee shall be designated by DCF and may include:¹⁶

- 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.

Challenges to the U.S. Constitution

⁷ Evaluation Report, Robert E.Crew, Florida State University (on file with committee staff).

⁸ P.L. 104-193, Section 115, 42 U.S.C. 862(a)

⁹ *Id*

¹⁰ s. 414.095, F.S.

¹¹ P.L. 104-193, Section 902, 21 U.S.C. 862(b)

¹² 7 CFR Part 273.2

¹³ s. 445.024, F.S.

¹⁴ s. 414.065, F.S.

¹⁵ *Id*

¹⁶ *Id*

The courts have found in some cases that suspicion-less drug testing is constitutional and does not violate the Fourth Amendment, which protects an individual's rights against search and seizure. (*Skinner v. Railway Labor Executives' Association* in 1989).

However, there are other cases (*Marchwinski v. Howard* in 2003) where Michigan welfare recipients challenged a new law authorizing suspicion-less drug testing. The courts found that the law was an unconstitutional violation of individual's right to privacy under the Fourth Amendment. The court specifically ruled that drug testing was unconstitutional when applied universally or randomly without reasonable suspicion of drug use.

Agency for Health Care Administration – Laboratory Certifications

The Agency for Health Care Administration (AHCA) regulates facilities that perform clinical, anatomic, or cytology lab services to provide information or materials for use in diagnosis, prevention or treatment of a disease or in the identification or assessment of a medical or physical condition in accordance with Chapter 408 and 483, F.S. These are considered clinical labs. Additionally, AHCA regulates facilities for "Drug Free Workplaces" these types of labs perform chemical, biological or physical instrumental analyses to determine the presence or absence of specified drugs or their metabolites in job applicants of any agency in state government.¹⁷ AHCA does not have the authority to drug screen temporary cash assistance benefits in either of these labs.

Department of Health and Human Services Division of Workplace Programs

The United States Department of Health and Human Services (HHS), Substance Abuse and Mental Health Services Administration (SAMHSA), Division of Workplace Programs (DWP) provides oversight for the Federal Drug Free Workplace Program. DWP certifies labs that conduct forensic drug testing for federal agencies and for some federally-regulated industries.¹⁸

Effect of Proposed Changes

The bill creates s. 414.0652, F.S., establishing that DCF will create a drug screening program that requires individuals to consent to being drug screened as a condition of eligibility for temporary cash assistance. The program shall be implemented by July 1, 2012. DCF shall provide notice for the potential of drug screening to all applicants and shall require an applicant to sign an acknowledgement form that he/she has received notice of DCF's drug screen policy and that he/she can refuse to undergo the screen.

Drug Screening Process

Individuals will only be screened if they have been convicted of a drug felony within the prior 3 years, and will continue to be screened for 3 years after they begin to receive TANF funds. Currently, DCF does not drug screen any individual as a condition of eligibility for cash assistance. DCF estimates that between 170-340 people (based on current caseloads) would test positive as a result of a drug screen, and that about 1.7% of current recipients would have a prior drug felony conviction.¹⁹

The bill provides that an individual will be disqualified from receiving or continuing to receive TANF benefits if:

- They refuse to submit to a drug screen under this section.
- They test positive for drugs as a result of a confirmation test.

In the event that an individual fails a confirmation test they will be ineligible for TANF benefits for 3 years. The bill establishes that in the event the individual has minor children, the individual can designate an immediate family member or another individual approved by DCF to receive funds on

¹⁷ Chapter 408, F.S.

¹⁸ *Id*

¹⁹ Email from Jennifer Lange on TANF (on file with committee staff). Numbers and Statistics based on data from North Carolina, DCF has been in exchanges with the state as it relates to the bill and numbers of people affected.

behalf of the children. The designated individual may not have been convicted of a drug felony within the past 3 years.

DCF shall provide an individual who tests positive for drugs information concerning substance abuse treatment programs that may be available in their area. Neither DCF nor the state is responsible for providing or paying for substance abuse treatment for these individuals as part of the screening conducted in this section of law.

Applicants for cash assistance shall be responsible for the cost of both the initial drug screen and the confirmatory test (if needed). DCF shall solicit competitive bids for drug screening and confirmatory testing to ensure the lowest possible cost. DCF estimates the initial screening cost at \$10 per person and the confirmatory test at \$25 per person.²⁰

The bill removes language from s. 414.095, F.S., eliminating the requirement that benefits be denied to an individual who has a felony drug conviction for drug trafficking pursuant to s. 893.135, F.S.

Definitions

The bill provides definitions for the following:

- Confirmation Test or Confirmatory Testing
- Drug
- Drug Screening or Screen
- Initial Drug Screening or Initial Screen
- Nonprescription Medication
- Prescription Medication
- Specimen

Specimen Collection

The bill details the use of results from specimen collection, requiring:

- That the individual to be screened or tested must provide written consent to be screened or tested on a form developed by DCF.
- A specimen shall be collected with due regard to the privacy of the individual providing the specimen and in a manner to prevent substitution or contamination of the specimen.

Specimen collection must be documented and should adhere to the following procedures:

- Labeling of specimen containers to preclude erroneous identification of drug screen or confirmation results.
- A form on which the individual being tested can provide any information that he/she feels is relevant to the screen, including prescription or non-prescription medications that are currently or were recently used. The form must provide notice of the most common medications by brand name or common name and by chemical name which may alter or affect a drug screen or confirmation test.

Specimen collection, storage and transportation to the testing site must be performed in a manner that reasonably precludes contamination of the specimen as specified in DCF policies and procedures for this section. Additionally, the specimen that produces a positive screen or positive test result must be preserved for a certain period of time as established by the department's policies and procedures.

Mandated Report

The bill requires DCF to submit a report detailing statistics from the program to the Governor, President of the Senate and Speaker of the House by January 1, 2013.

²⁰ Per DCF bill analysis, 2/8/2011 (on file with committee staff).

B. SECTION DIRECTORY:

Section 1: Creates s. 414.0652, F.S., relating to drug screening

Section 2: Amends s. 414.095, F.S., related to determining eligibility for temporary cash assistance.

Section 3: Provides an effective date of July 1, 2011.

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

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have an impact on applicants who are required to undergo a drug screen or confirmation test as a condition of eligibility for temporary cash assistance funds. DCF estimates that the initial drug screen costs will be \$10.00 per person and the confirmatory test will be \$25.00 per person.²¹ However, exact costs will not be known until DCF solicits competitive bids from private laboratories.

C. FISCAL COMMENTS:

AHCA does not currently have authority to conduct the drug screening tests that are specified in the bill. If AHCA's certified labs are used then there is potential for an indeterminate fiscal if AHCA must create a licensure program in order to certify labs performing drug testing.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

²¹ DCF Bill Analysis on HB 353 (2/8/2011)

Marchwinski v. Howard in 2003, Michigan welfare recipients challenged a new law authorizing suspicion-less drug testing. The Sixth Circuit U.S. Court of Appeals upheld a lower court's ruling that the Michigan law was an unconstitutional violation of individual right to privacy under the Fourth Amendment. The court specifically ruled that drug testing was unconstitutional when applied universally or randomly without reasonable suspicion of drug use.

The current bill as drafted does not conduct universal or random drug testing. In addition, the testing is limited to individuals with prior drug related felony convictions in the past 3 years.

B. RULE-MAKING AUTHORITY:

Rule making authority is needed for DCF to implement the drug screening program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. If an individual with a prior felony drug conviction passes the initial drug screen and begins receiving TANF benefits, they will be screened for an additional 3 years (while receiving benefits). The bill does not specify how often or when the individual will be screened.
2. If an individual fails a confirmation test they are not eligible for TANF benefits for 3 years, it is unclear when those 3 years will begin.
3. The bill states that neither the department nor the state is responsible for paying for substance abuse treatment for individuals as part of the screening conducted in this section. This could create problems for DCF in determining the individuals who failed TANF drug screening and are now seeking help at a DCF licensed substance abuse treatment facility or provider. It appears that DCF would need to establish a system to cross reference those denied temporary cash assistance due to drug screening with those who are seeking substance abuse treatment.
4. If the cost of drug testing is too expensive for applicable TANF applicants, it could become a deterrent for people applying to get cash assistance.
5. The bill requires DCF to contract with providers to perform drug screening through labs that are licensed or certified by either AHCA or the US Department of Health and Human Services (HHS). AHCA has expressed that neither they nor HHS have the authority to license or regulate the type of facilities that would perform drug screening for temporary cash assistance.
6. The last sentence of the definition of "specimen", lines 87-88, states "a urine specimen shall be collected and analyzed for all initial drug screens and confirmation tests under this section." This sentence is more related to policy than the definition of specimen. This should be moved to (5) "Use of Results."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to drug screening of potential and
 3 existing beneficiaries of temporary cash assistance;
 4 creating s. 414.0652, F.S.; providing legislative intent;
 5 requiring the Department of Children and Family Services
 6 to establish a drug-screening program; requiring consent
 7 to drug screening as a condition to eligibility for or
 8 receipt of temporary cash assistance; limiting screening
 9 to certain persons; providing definitions; providing for
 10 notice; providing terms of disqualification for temporary
 11 cash assistance; requiring the department to supply
 12 information concerning substance abuse treatment;
 13 providing screening procedures; providing for the
 14 preservation of screening and confirmatory testing
 15 specimens; directing the department to submit a report to
 16 the Governor and Legislature; amending s. 414.095, F.S.;
 17 revising requirements for determination of eligibility for
 18 temporary cash assistance to conform to changes made by
 19 the act; providing an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Section 414.0652, Florida Statutes, is created
 24 to read:

25 414.0652 Drug-screening program.—
 26 (1) LEGISLATIVE INTENT.—It is the intent of the
 27 Legislature to create a drug-screening program within the
 28 Department of Children and Family Services.

29 (2) CREATION AND IMPLEMENTATION.—

30 (a) The department shall establish a drug-screening
 31 program that requires an individual, as a condition to
 32 eligibility for or receipt of temporary cash assistance, to
 33 consent to being subject to drug screening.

34 (b) The department shall:

35 1. Make a determination of eligibility under s. 414.095
 36 before an applicant is selected for drug screening.

37 2. Provide notice of the potential for drug screening to
 38 individuals applying for or receiving temporary cash assistance.

39 3. Require an applicant or participant to sign an
 40 acknowledgment that he or she has received notice of the
 41 department's drug-screening policy and that he or she has a
 42 right to refuse to undergo the drug screening.

43 (c) The department may only screen an applicant who has
 44 been convicted of a drug felony within the prior 3 years and
 45 shall continue to screen that individual for 3 years after the
 46 date upon which the individual begins receiving temporary cash
 47 assistance.

48 (d) The program must be implemented no later than July 1,
 49 2012.

50 (3) DEFINITIONS.—As used in this section, the term:

51 (a) "Confirmation test" or "confirmatory testing" means a
 52 second analytical procedure used to identify the presence of a
 53 specific drug or metabolite in a specimen. The confirmation test
 54 must be different in scientific principle from that of the
 55 initial drug-screening procedure and must be capable of
 56 providing the requisite specificity, sensitivity, and

57 quantitative accuracy. A confirmation test may only be
 58 administered if an applicant or participant tests positive for a
 59 drug during an initial drug screening.

60 (b) "Drug" means an amphetamine, a tetrahydrocannabinol,
 61 oxycodone, cocaine, phencyclidine (PCP), an opiate, a
 62 barbiturate, a benzodiazepine, a methamphetamine, a
 63 propoxyphene, a tricyclic antidepressant, or a metabolite of any
 64 of the substances listed in this paragraph.

65 (c) "Drug screening" or "screen" means any chemical,
 66 biological, or physical instrumental analysis administered by a
 67 laboratory certified by the United States Department of Health
 68 and Human Services or licensed by the Agency for Health Care
 69 Administration for the purpose of determining the presence or
 70 absence of a drug or its metabolites.

71 (d) "Initial drug screening" or "initial screen" means a
 72 sensitive, rapid, and reliable procedure to identify negative
 73 and presumptive positive specimens. All initial screens shall
 74 use an immunoassay procedure or an equivalent or shall use a
 75 more accurate scientifically accepted method approved by the
 76 United States Food and Drug Administration or the Agency for
 77 Health Care Administration, as more accurate technology becomes
 78 available in a cost-effective form.

79 (e) "Nonprescription medication" means a medication that
 80 is authorized pursuant to federal or state law for general
 81 distribution and use without a prescription for the treatment of
 82 human diseases, ailments, or injuries.

83 (f) "Prescription medication" means a drug or medication
 84 obtained pursuant to a prescription as defined in s. 893.02.

85 (g) "Specimen" means a tissue, hair, or product of the
 86 human body capable of revealing the presence of a drug or its
 87 metabolites. A urine specimen shall be collected and analyzed
 88 for all initial drug screens and confirmation tests under this
 89 section.

90 (4) DRUG SCREENING AND CONFIRMATORY TESTING.—

91 (a) An individual is disqualified from receiving or
 92 continuing to receive temporary cash assistance if the
 93 individual:

94 1. Refuses to submit to drug screening under this section.
 95 Eligibility for temporary cash assistance is restored when the
 96 individual agrees to be screened; or

97 2. Tests positive for drugs as a result of a confirmation
 98 test performed under this section.

99 (b) If the individual fails the confirmation test required
 100 under this section, the individual:

101 1. Is not eligible to receive temporary cash assistance
 102 for 3 years.

103 2. If a parent, may choose to designate another individual
 104 to receive benefits for the parent's minor child. The designated
 105 individual must be an immediate family member or, if an
 106 immediate family member is not available or the family member
 107 declines the option, another individual, approved by the
 108 department, may be designated. Approval may not be granted if
 109 the designated individual has been convicted of a drug felony
 110 within the prior 3 years.

111 (c) The department shall provide any individual who tests
 112 positive with information concerning substance abuse treatment

113 programs that may be available in the area in which he or she
 114 resides. Neither the department nor the state is responsible for
 115 providing or paying for substance abuse treatment as part of the
 116 screening conducted under this section.

117 (d) The cost of screening and confirmatory testing shall
 118 be paid by the individual being screened and tested, and the
 119 department shall solicit competitive bids for drug-screening and
 120 confirmatory testing services to ensure the lowest possible cost
 121 for administering the drug screen and confirmation test.

122 (5) USE OF RESULTS.-

123 (a) All specimen collection and screening and testing for
 124 drugs under this section must be performed in accordance with
 125 the following procedures:

126 1. The individual to be screened or tested must provide
 127 written consent to be screened or tested for drugs on a form
 128 developed by the department.

129 2. A specimen shall be collected with due regard to the
 130 privacy of the individual providing the specimen and in a manner
 131 reasonably calculated to prevent substitution or contamination
 132 of the specimen.

133 3. Specimen collection must be documented, and the
 134 documentation procedures must include:

135 a. Labeling of specimen containers so as to reasonably
 136 preclude the likelihood of erroneous identification of drug-
 137 screen or confirmation-test results.

138 b. A form on which the individual undergoing drug
 139 screening or confirmatory testing may provide any information he
 140 or she considers relevant to the screen or test, including

141 identification of currently or recently used prescription or
 142 nonprescription medication or other relevant medical
 143 information. The form must provide notice of the most common
 144 medications by brand name or common name, as applicable, as well
 145 as by chemical name, which may alter or affect a drug screen or
 146 confirmation test. The providing of information does not
 147 preclude the administration of the drug screen or test, but must
 148 be taken into account in interpreting any positive drug-screen
 149 or confirmation-test result.

150 4. Specimen collection, storage, and transportation to the
 151 screening or testing site must be performed in a manner that
 152 reasonably precludes contamination or adulteration of specimens
 153 as specified in the department's drug-screening and
 154 confirmatory-testing protocols, policies, and procedures.

155 (b) A specimen that produces a positive screen or positive
 156 test result must be preserved for a certain period of time as
 157 established by the department's drug-screening and confirmatory-
 158 testing protocols, policies, and procedures. The length of time
 159 for the preservation of specimens shall be consistent with
 160 industry standards. However, if the screened or tested
 161 individual undertakes an administrative or legal challenge to
 162 the drug-screen or confirmatory-test result, the specimen must
 163 be preserved until the case or administrative appeal is settled.

164 (6) REPORT.—The department shall submit a report to the
 165 Governor, the President of the Senate, and the Speaker of the
 166 House of Representatives by January 1, 2013, that includes:

167 (a) The number of individuals screened and tested, a list
 168 of the substances for which individuals were screened and
 169 tested, and the results of the screening and testing.

170 (b) The number of applicants denied temporary cash
 171 assistance for failing a confirmation test and the number of
 172 recipients for whom temporary cash assistance was terminated for
 173 refusing to submit to a drug screen or confirmation test or
 174 failing a confirmation test while receiving benefits.

175 (c) The number of individuals who refused to be screened.

176 (d) The number of weeks and the amount of temporary cash
 177 assistance for which individuals would have been eligible if
 178 they had not tested positive or refused to be screened.

179 (e) An estimate of the costs of the drug-screening
 180 program, including the average cost of individual drug screens
 181 and confirmation tests and the cost of administering the
 182 program.

183 Section 2. Subsection (1) of section 414.095, Florida
 184 Statutes, is amended to read:

185 414.095 Determining eligibility for temporary cash
 186 assistance.—

187 (1) ELIGIBILITY.—An applicant must meet eligibility
 188 requirements of this section before receiving services or
 189 temporary cash assistance under this chapter, except that an
 190 applicant shall be required to register for work and engage in
 191 work activities in accordance with s. 445.024, as designated by
 192 the regional workforce board, and may receive support services
 193 or child care assistance in conjunction with such requirement.
 194 The department shall make a determination of eligibility based

195 on the criteria listed in this chapter. The department shall
 196 monitor continued eligibility for temporary cash assistance
 197 through periodic reviews consistent with the food assistance
 198 eligibility process. ~~Benefits shall not be denied to an~~
 199 ~~individual solely based on a felony drug conviction, unless the~~
 200 ~~conviction is for trafficking pursuant to s. 893.135.~~ To be
 201 eligible under this section, an individual convicted of a drug
 202 felony must be satisfactorily meeting the requirements of the
 203 temporary cash assistance program and s. 414.0652, including all
 204 substance abuse treatment requirements. Within the limits
 205 specified in this chapter, the state opts out of the provision
 206 of Pub. L. No. 104-193, s. 115, that eliminates eligibility for
 207 temporary cash assistance and food assistance for any individual
 208 convicted of a controlled substance felony.

209 Section 3. This act shall take effect July 1, 2011.

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(s) Smith offered the following:

4
5 **Amendment**

6 Remove everything after the enacting clause and insert:

7 414.0652 Drug-screening program.-

8 (1) LEGISLATIVE INTENT.-It is the intent of the
9 Legislature to create a drug-screening program within the
10 Department of Children and Family Services.

11 (2) CREATION AND IMPLEMENTATION.-

12 (a) The department shall establish a drug-screening
13 program that requires an individual, as a condition to
14 eligibility for or receipt of temporary cash assistance, to
15 consent to being subject to drug screening.

16 (b) The department shall:

17 1. Make a determination of eligibility under s. 414.095
18 before an applicant or recipient is selected for drug screening.

Amendment No.

19 2. Provide notice of the potential for drug screening to
20 individuals applying for or receiving temporary cash assistance.

21 3. Require applicants and recipients to sign an
22 acknowledgment that he or she has received notice of the
23 department's drug-screening policy and that he or she has a
24 right to refuse to undergo the drug screening.

25 (c) The department may only screen an individual who has
26 been convicted of a drug felony within the prior three years.
27 The department shall continue to screen eligible drug felons at
28 least annually for three years after the date they pass the
29 initial drug screening or confirmatory test.

30 (3) DEFINITIONS.—As used in this section, the term:

31 (a) "Applicants and recipients" means parents, or eligible
32 caretaker relatives, as described in section 414.095 (4), who
33 apply for or receive temporary cash assistance.

34 (b) "Confirmation test" or "confirmatory testing" means a
35 second analytical procedure used to identify the presence of a
36 specific drug or metabolite in a specimen. The confirmation test
37 must be different in scientific principle from that of the
38 initial drug-screening procedure and must be capable of
39 providing the requisite specificity, sensitivity, and
40 quantitative accuracy. A confirmation test may only be
41 administered if an applicant or participant tests positive for a
42 drug during an initial drug screening.

43 (c) "Drug" means an amphetamine, a tetrahydrocannabinol,
44 oxycodone, cocaine, phencyclidine (PCP), an opiate, a
45 barbiturate, a benzodiazepine, a methamphetamine, a

Amendment No.

46 propoxyphene, a tricyclic antidepressant, or a metabolite of any
47 of the substances listed in this paragraph.

48 (d) "Drug screening" or "screen" means any chemical,
49 biological, or physical instrumental analysis administered by a
50 laboratory approved by the Department of Children and Family
51 Services for the purpose of determining the presence or absence
52 of a drug or its metabolites.

53 (e) "Initial drug screening" or "initial screen" means a
54 sensitive, rapid, and reliable procedure to identify negative
55 and presumptive positive specimens. All initial screens shall
56 use an immunoassay procedure or an equivalent or shall use a
57 more accurate scientifically accepted method approved by the
58 Department of Children and Family Services, as more accurate
59 technology becomes available in a cost-effective form.

60 (f) "Nonprescription medication" means a medication that
61 is authorized pursuant to federal or state law for general
62 distribution and use without a prescription for the treatment of
63 human diseases, ailments, or injuries.

64 (g) "Prescription medication" means a drug or medication
65 obtained pursuant to a prescription as defined in s. 893.02.

66 (h) "Specimen" means a tissue, hair, urine, saliva or
67 other product of the human body capable of revealing the
68 presence of a drug or its metabolites. A urine specimen shall be
69 collected and analyzed for all initial drug screens and
70 confirmation tests under this section.

71 (4) DRUG SCREENING AND CONFIRMATORY TESTING.-

Amendment No.

72 (a) An individual is disqualified from receiving or
73 continuing to receive temporary cash assistance if the
74 individual:

75 1. Refuses to submit to drug screening under this section.
76 Eligibility for temporary cash assistance is restored when the
77 individual agrees to be screened and screens negatively for
78 drugs, or passes a confirmatory test; or

79 2. Fails a drug screening and refuses or chooses not to
80 take a confirmatory test; or

81 3. Tests positive for drugs as a result of a confirmation
82 test performed under this section.

83 (b) If the individual fails or refuses the confirmation
84 test required under this section, the individual is not eligible
85 to receive temporary cash assistance for three years from the
86 date of the failed screening.

87 (c) Temporary cash assistance benefits may be continued
88 for the child or children in the family with a disqualified
89 member, if made payable to a protective payee as described in s.
90 414.065(2) However, the protective payee shall not have been
91 convicted of a drug felony within the prior three years.

92 (d) The individual may reapply at the end of the three
93 year ineligibility period and will be again subject to drug
94 screening and testing if they have been convicted of a drug
95 felony in the three year period immediately preceding the new
96 application.

97 (e) The department shall provide any individual who tests
98 positive with information concerning substance abuse treatment
99 programs that may be available in the area in which he or she

Amendment No.

100 resides. Neither the department nor the state is responsible for
101 providing or paying for substance abuse treatment as part of the
102 screening conducted under this section.

103 (f) The cost of screening and confirmatory testing shall
104 be paid by the individual being screened and tested, and the
105 department shall solicit competitive bids for drug-screening and
106 confirmatory testing services to ensure the lowest possible cost
107 for administering the drug screen and confirmation tests. The
108 approved laboratories must conduct the screening and testing in
109 accordance with standards established by the Department of
110 Children and Family Services. They must also agree to defend
111 their results and conclusions in appeal hearings, as described
112 in s. 409.285.

113 (5) USE OF RESULTS.—

114 (a) All specimen collection and screening and testing for
115 drugs under this section must be performed in accordance with
116 the following procedures:

117 1. The individual to be screened or tested must provide
118 written consent to be screened or tested for drugs on a form
119 developed by the department.

120 2. A specimen shall be collected with due regard to the
121 privacy of the individual providing the specimen and in a manner
122 reasonably calculated to prevent substitution or contamination
123 of the specimen.

124 3. Specimen collection must be documented, and the
125 documentation procedures must include:

Amendment No.

126 a. Labeling of specimen containers so as to reasonably
127 preclude the likelihood of erroneous identification of drug-
128 screen or confirmation-test results.

129 b. A form on which the individual undergoing drug
130 screening or confirmatory testing may provide any information he
131 or she considers relevant to the screen or test, including
132 identification of currently or recently used prescription or
133 nonprescription medication or other relevant medical
134 information. The form must provide notice of the most common
135 medications by brand name or common name, as applicable, as well
136 as by chemical name, which may alter or affect a drug screen or
137 confirmation test. The providing of information does not
138 preclude the administration of the drug screen or test, but must
139 be taken into account in interpreting any positive drug-screen
140 or confirmation-test result.

141 4. Specimen collection, storage, and transportation to the
142 screening or testing site must be performed in a manner that
143 reasonably precludes contamination or adulteration of specimens
144 as specified in the department's drug-screening and
145 confirmatory-testing protocols, policies, and procedures.

146 (b) A specimen that produces a positive screen or positive
147 test result must be preserved for a certain period of time as
148 established by the department's drug-screening and confirmatory-
149 testing protocols, policies, and procedures. The length of time
150 for the preservation of specimens shall be consistent with
151 industry standards. However, if the screened or tested
152 individual undertakes an administrative or legal challenge to

Amendment No.

153 the drug-screen or confirmatory-test result, the specimen must
154 be preserved until the case or administrative appeal is settled.

155 (6) REPORT.—The department shall submit a report to the
156 Governor, the President of the Senate, and the Speaker of the
157 House of Representatives by January 1, 2013, that includes:

158 (a) The number of individuals screened and tested, a list
159 of the substances for which individuals were screened and
160 tested, and the results of the screening and testing.

161 (b) The number of applicants denied temporary cash
162 assistance for failing a confirmation test and the number of
163 recipients for whom temporary cash assistance was terminated for
164 refusing to submit to a drug screen or confirmation test or
165 failing a confirmation test while receiving benefits.

166 (c) The number of individuals who refused to be screened.

167 (d) The number of months and the amount of temporary cash
168 assistance for which individuals would potentially have been
169 eligible if they had not tested positive or refused to be
170 screened.

171 (e) An estimate of the costs of the drug-screening
172 program, including the average cost of individual drug screens
173 and confirmation tests and the cost of administering the
174 program.

175 (7) The Department of Children and Family Services is
176 granted rule making authority to develop and implement the drug-
177 screening program as required by this section.

178 Section 2. Subsection (1) of section 414.095, Florida
179 Statutes, is amended to read:

Amendment No.

180 414.095 Determining eligibility for temporary cash
181 assistance.-

182 (1) ELIGIBILITY.-An applicant must meet eligibility
183 requirements of this section before receiving services or
184 temporary cash assistance under this chapter, except that an
185 applicant shall be required to register for work and engage in
186 work activities in accordance with s. 445.024, as designated by
187 the regional workforce board, and may receive support services
188 or child care assistance in conjunction with such requirement.
189 The department shall make a determination of eligibility based
190 on the criteria listed in this chapter. The department shall
191 monitor continued eligibility for temporary cash assistance
192 through periodic reviews consistent with the food assistance
193 eligibility process. Food assistance benefits~~Benefits~~ shall not
194 be denied to an individual solely based on a felony drug
195 conviction, unless the conviction is for trafficking pursuant to
196 s. 893.135. To be eligible for cash assistance under this
197 section, an individual convicted of a drug felony must be
198 satisfactorily meeting the requirements of the temporary cash
199 assistance program and s. 414.0652, including all substance
200 abuse treatment requirements. Within the limits specified in
201 this chapter, the state opts out of the provision of Pub. L. No.
202 104-193, s. 115, that eliminates eligibility for temporary cash
203 assistance and food assistance for any individual convicted of a
204 controlled substance felony.



205

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4041 Department of Children and Family Services Employees

SPONSOR(S): Diaz and others

TIED BILLS: IDEN./SIM. **BILLS:** SB 1362

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

SUMMARY ANALYSIS

The bill deletes current language in s. 402.35, F.S., that prohibits federal, state, county or municipal officers from serving as an employee of the Department of Children and Families (DCF).

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 1969, Chapter 409.015(3)(a), F.S., established the State Board of Social Services, a nine member board appointed by the Governor and confirmed by the Senate for four year terms. Language was included in statute that prohibited certain officers from being a member of the board, "No federal, state, county, or municipal officer or employee shall be eligible to serve as a member of the state board during his term as such official." The exact reason officers were not allowed to serve on the board is unknown.

Since, 1969, several changes in statutes have occurred. The Department of Health and Rehabilitative Services (HRS) was created and many boards and councils were absorbed into the new department. In 1996, HRS was split into two agencies, the Department of Children and Family Services and the Department of Health. Throughout these changes in statute and agencies, the prohibition for municipal officer or employee to serve as a member of the state board remained and eventually became a prohibition to serve as an employee of the Department of Children and Families.

Effect of Proposed Changes

The bill will eliminate statute language which prevents DCF from hiring employees that may be federal, state, county, or municipal officers. The change will also allow persons who are currently employed at DCF to seek public office or serve as a local official without leaving DCF. This change will eliminate language from the statute that appears to be obsolete.

B. SECTION DIRECTORY:

Section 1: Amends s. 402.35, F.S., relating to employees.

Section 2: Provides an effective date of July 1, 2011.

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:

The 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:

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 4041

2011

1 A bill to be entitled
 2 An act relating to Department of Children and Family
 3 Services employees; amending s. 402.35, F.S.; removing a
 4 provision prohibiting a federal, state, county, or
 5 municipal officer from serving as an employee of the
 6 department; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Section 402.35, Florida Statutes, is amended to
 11 read:

12 402.35 Employees.—All personnel of the Department of
 13 Children and Family Services shall be governed by rules and
 14 regulations adopted and promulgated by the Department of
 15 Management Services relative thereto except the director and
 16 persons paid on a fee basis. The Department of Children and
 17 Family Services may participate with other state departments and
 18 agencies in a joint merit system. ~~No federal, state, county, or~~
 19 ~~municipal officer shall be eligible to serve as an employee of~~
 20 ~~the Department of Children and Family Services.~~



21 Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4101 Repeal of Health Insurance Provisions

SPONSOR(S): Nelson

TIED BILLS: IDEN./SIM. BILLS:

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|--------|---|---|
| 1) Health & Human Services Access Subcommittee | | Poche  | Schoolfield  |
| 2) Insurance & Banking Subcommittee | | | |
| 3) Health & Human Services Committee | | | |

SUMMARY ANALYSIS

House Bill 4101 deletes s. 627.64872(6)(b), F.S., which requires the Board of Directors of the Florida Health Insurance Plan to include in its annual report to the Governor and the officers of the legislative branch information detailing the number of individuals covered by the plan, the number of individuals that may seek coverage under the plan in the next fiscal year, and the funding needed to cover the anticipated increase or decrease in plan participation over the next fiscal year.

The bill also deletes s. 627.6699(15)(l), F.S., requiring the Office of Insurance Regulation to submit an annual report to the Governor and the officers of the legislative branch summarizing the activities of the Small Employer Access Program, including premiums earned and written, losses realized, administrative expenses, and actual program enrollment.

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

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida Health Insurance Plan

In 2004, the Legislature created the Florida Health Insurance Plan (FHIP) as part of the Affordable Health Care for Floridians Act, a health care reform package.¹ FHIP was intended to replace the Florida Comprehensive Health Association (FCHA), formerly known as the State Comprehensive Health Association, as the state's high risk insurance pool. A high risk pool is a state-created, nonprofit residual market that is generally subsidized through a tax assessment on all of health insurers operating within a state, both individual and group plans, through state funds, or through a combination of funding. The concept of a high risk pool is to spread the cost of providing health services to a sicker population across a larger group of insured people, instead of relying on the relatively small individual market to cover the chronically ill. Risk pools, by design, are the safety net for the medically uninsurable individual.

The benefits provided by the FHIP are the same as the standard and basic plans for small employers.² The FHIP must also allow for the purchase of alternative coverage, such as catastrophic coverage which includes a minimum level of primary care coverage, and a high deductible plan that meets all the requirements for a health savings account.³ Eligibility for the plan is limited to individuals who have received two notices of rejection for coverage from health insurers and individuals who received coverage under FCHA at the time FHIP was created.⁴

The FHIP is run by a nine person Board of Directors and chaired by the Director of the Office of Insurance Regulation (OIR). There are four governor appointees, two Senate appointees, and two House appointees. The majority of the Board must be composed of individuals who are not representatives of insurers or health care providers. The Board is required to report annually to Governor, the President of the Senate, and the Speaker of the House of Representatives, including an independent actuarial study evaluating specified elements of the FHIP.⁵

Small Employers Access Program

In 1992, the Legislature enacted the Employee Health Care Access Act (EHCAA).⁶ The purpose of the act was to promote the availability of health insurance coverage to small employers.⁷ In 2004, as part of the Affordable Health Care for Floridians Act, the Small Employers Access Program (Program) was created within the EHCAA.⁸ The purpose of the Program was to provide additional health insurance options for small businesses consisting of up to 25 employees, including any municipality, county, school district, a hospital located in a rural community, and any nursing home employer.⁹ The benefits of plans offered under the Program are the same as the coverage required for small employers and specified in the statute.¹⁰ OIR is required to submit a report annually to the Governor, the President of

¹ Ch. 2004-297, s. 21, L.O.F.

² S. 627.6699, F.S.

³ "Residual Markets- The Florida Health Insurance Plan", *see*

http://www.myfloridacfo.com/consumers/InsuranceLibrary/Insurance/Residual_Markets/Residual_Markets_-_The_Florida_Health_Insurance_Plan.htm; *see also* s. 627.64872(16)(a), F.S.

⁴ S. 627.64872(9)(a)1. and 2., F.S.

⁵ S. 627.64872(6)(a) through (e), F.S.

⁶ Ch. 92-33, s. 117, L.O.F.

⁷ S. 627.6699(2), F.S.

⁸ Ch. 2004-297, s. 24, L.O.F.

⁹ S. 627.6699(15)(d), F.S.

¹⁰ S. 627.6699(12), F.S.

the Senate, and the Speaker of the House of Representatives summarizing the activities of the Program over the past year, including premiums earned and written, total enrollment in the Program, administrative expenses, and paid and incurred losses.¹¹

Effect of Proposed Changes

The bill deletes, as an element of the annual report of the Board of the FHIP, the reporting of the actual number of individuals covered under the FHIP at the current funding and benefit level, the projected number of individuals that may seek coverage under the FHIP in the next fiscal year, the funding needed to cover any anticipated increase or decrease in participation in the FHIP. Pursuant to statute, there can be no implementation of the FHIP until funds are appropriated by the Legislature to start the program.¹² Funds have not been appropriated, to date, and the FHIP is not in operation. Therefore, the requirement that a report be provided detailing the number of people covered by the program and anticipated gains and losses in the next fiscal year is moot.¹³

The bill also eliminates the annual reporting requirement for the Program. The Program would no longer need to submit the annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives stating the premiums earned and written over the past year, the administrative expenses incurred, the losses realized over the past year, and total Program enrollment. The Program is not operational. According to OIR, the enacting legislation for this section required a competitive bid for an insurer to serve as administrator of the program.¹⁴ A Request for Proposals was issued by OIR in 2004, but no insurer filed a reply.¹⁵ Therefore, the annual reporting requirement contained in the section is moot.¹⁶

B. SECTION DIRECTORY:

Section 1: Amends s. 627.64872, F.S., relating to Florida Health Insurance Plan

Section 2: Amends s. 627.6699, F.S., relating to Employee Health Care Access Act, Small Employers Access Program

Section 3: Provides an effective date of July 1, 2011

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

¹¹ S. 627.6699(15)(l), F.S.

¹² S. 627.64872(6)(a), F.S.

¹³ Florida Office of Insurance Regulation Bill Analysis for HB 4101 (March 3, 2011); on file with Health and Human Services Access subcommittee

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 4101

2011

1 A bill to be entitled
 2 An act relating to the repeal of health insurance
 3 provisions; amending s. 627.64872, F.S.; deleting a
 4 requirement that the annual report of The Florida Health
 5 Insurance Plan's board of directors include certain
 6 actuarial information relating to levels of coverage and
 7 funding; amending s. 627.6699, F.S.; deleting a
 8 requirement that the Office of Insurance Regulation of the
 9 Department of Financial Services annually report to the
 10 Governor and the Legislature concerning the Small
 11 Employers Access Program; providing an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Subsection (6) of section 627.64872, Florida
 16 Statutes, is amended to read:

17 627.64872 Florida Health Insurance Plan.—

18 (6) ANNUAL REPORT.—The board shall annually submit to the
 19 Governor, the President of the Senate, and the Speaker of the
 20 House of Representatives a report that includes an independent
 21 actuarial study to determine, without limitation, the following:

22 (a) The effect the creation of the plan has on the small
 23 group and individual insurance market, specifically on the
 24 premiums paid by insureds, including an estimate of the total
 25 anticipated aggregate savings for all small employers in the
 26 state.

27 ~~(b) The actual number of individuals covered at the~~
 28 ~~current funding and benefit level, the projected number of~~

HB 4101

2011

29 ~~individuals that may seek coverage in the forthcoming fiscal~~
 30 ~~year, and the projected funding needed to cover anticipated~~
 31 ~~increase or decrease in plan participation.~~

32 (b)~~(e)~~ A recommendation as to the best source of funding
 33 for the anticipated deficits of the pool.

34 (c)~~(d)~~ A summary of the activities of the plan in the
 35 preceding calendar year, including the net written and earned
 36 premiums, plan enrollment, the expense of administration, and
 37 the paid and incurred losses.

38 (d)~~(e)~~ A review of the operation of the plan as to whether
 39 the plan has met the intent of this section.

40

41 The board may not implement the Florida Health Insurance Plan
 42 until funds are appropriated for startup costs and any projected
 43 deficits; however, the board may complete the actuarial study
 44 authorized in this subsection.

45 Section 2. Paragraph (1) of subsection (15) of section
 46 627.6699, Florida Statutes, is amended to read:

47 627.6699 Employee Health Care Access Act.—

48 (15) SMALL EMPLOYERS ACCESS PROGRAM.—

49 ~~(1) Annual reporting. The office shall make an annual~~
 50 ~~report to the Governor, the President of the Senate, and the~~
 51 ~~Speaker of the House of Representatives. The report shall~~
 52 ~~summarize the activities of the program in the preceding~~
 53 ~~calendar year, including the net written and earned premiums,~~
 54 ~~program enrollment, the expense of administration, and the paid~~
 55 ~~and incurred losses. The report shall be submitted no later than~~
 56 ~~March 15 following the close of the prior calendar year.~~

HB 4101

2011

57

Section 3. This act shall take effect July 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 4101 (2011)

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(s) Nelson offered the following:
4

5 **Amendment (with title amendment)**

6 Remove lines 18-44 and insert:

7 ~~(6) ANNUAL REPORT. The board shall annually submit to the~~
8 ~~Governor, the President of the Senate, and the Speaker of the~~
9 ~~House of Representatives a report that includes an independent~~
10 ~~actuarial study to determine, without limitation, the following:~~

11 ~~(a) The effect the creation of the plan has on the small~~
12 ~~group and individual insurance market, specifically on the~~
13 ~~premiums paid by insureds, including an estimate of the total~~
14 ~~anticipated aggregate savings for all small employers in the~~
15 ~~state.~~

16 ~~(b) The actual number of individuals covered at the current~~
17 ~~funding and benefit level, the projected number of individuals~~
18 ~~that may seek coverage in the forthcoming fiscal year, and the~~

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 4101 (2011)

Amendment No.

19 ~~projected funding needed to cover anticipated increase or~~
20 ~~decrease in plan participation.~~

21 ~~(c) A recommendation as to the best source of funding for~~
22 ~~the anticipated deficits of the pool.~~

23 ~~(d) A summary of the activities of the plan in the preceding~~
24 ~~calendar year, including the net written and earned premiums,~~
25 ~~plan enrollment, the expense of administration, and the paid and~~
26 ~~incurred losses.~~

27 ~~(e) A review of the operation of the plan as to whether the~~
28 ~~plan has met the intent of this section.~~

29
30 ~~The board may not implement the Florida Health Insurance Plan~~
31 ~~until funds are appropriated for startup costs and any projected~~
32 ~~deficits; however, the board may complete the actuarial study~~
33 ~~authorized in this subsection.~~

34
35
36 -----
37 **T I T L E A M E N D M E N T**

38 Remove lines 4-7 and insert:
39 requirement that The Florida Health Insurance Plan's board of
40 directors annually report to the Governor and the Legislature
41 concerning The Florida Health Insurance Plan;