

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS

Senator Storms, Chair

Senator Hill, Vice Chair

MEETING DATE: Monday, April 4, 2011

TIME: 3:15 —5:15 p.m.

PLACE: James E. "Jim" King, Jr., Committee Room, 401 Senate Office Building

MEMBERS: Senator Storms, Chair; Senator Hill, Vice Chair; Senators Detert, Hays, and Rich

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 688 Richter (Identical H 4045, Compare H 1295, S 1458)	Assisted Living Facilities; Repeals a provision authorizing the Department of Elderly Affairs to collect information regarding the cost of providing certain services in facilities and to conduct field visits and audits. Repeals a provision authorizing a local subsidy.	
		CF 04/04/2011 HR CA	
2	SB 690 Richter (Identical H 4047, Compare CS/H 119, H 1295, S 1458, CS/S 1736)	Assisted Living Facilities; Removes an obsolete provision requiring the Department of Elderly Affairs to submit to the Legislature for review and comment a copy of proposed department rules establishing standards for resident care.	
		CF 04/04/2011 HR RC	
3	SB 692 Richter (Identical H 4049, Compare H 1295, S 1458)	Assisted Living Facilities; Removes an obsolete reporting requirement.	
		CF 04/04/2011 HR RC	
4	SB 694 Richter (Identical H 4051, Compare CS/H 119, H 1295, S 1458, CS/S 1736)	Assisted Living Facilities; Removes reporting requirements for assisted living facilities relating to liability claims.	
		CF 04/04/2011 HR BI	
5	SB 696 Richter (Identical H 4053, Compare H 1295, S 1458)	Assisted Living Facilities; Removes a requirement that the Agency for Health Care Administration disseminate annually a printed list of assisted living facilities sanctioned or fined to specified agencies and departments.	
		CF 04/04/2011 HR RC	

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Monday, April 4, 2011, 3:15 —5:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	CS/SB 794 Criminal Justice / Diaz de la Portilla (Identical H 897)	Controlled Substances; Prohibits specified offenses within 1,000 feet of the real property comprising a homeless shelter. Defines the term "homeless shelter." Provides criminal penalties. Ranks offenses on the offense severity ranking chart of the Criminal Punishment Code. CJ 03/28/2011 Fav/CS CF 04/04/2011 BC	
7	CS/SB 1346 Commerce and Tourism / Commerce and Tourism (Compare H 7163, H 7175, H 7177)	Obsolete References and Programs; Removes an obsolete reference to the Department of Commerce and the Department of Labor and Employment Security. Updates a reference to the Department of Commerce to refer instead to the Office of Tourism, Trade, and Economic Development. Repeals provisions relating to agreements of the Department of Labor and Employment Security with county tax collectors. Repeals provisions relating to assistance for displaced local exchange telecommunications company workers, etc. CM 03/16/2011 Fav/CS CF 04/04/2011 GO	
8	SB 1456 Garcia (Compare CS/H 1125, CS/H 1473, S 1922)	Public Records/Florida Health Choices Program; Creates an exemption from public records requirements for personal, identifying information of a registrant, applicant, participant, or enrollee in the Florida Health Choices Program. Provides exceptions. Authorizes an enrollee's legal guardian to obtain confirmation of certain information about the enrollee's health plan. Provides for applicability. Provides a penalty for unlawful disclosure of personal, identifying information. Provides for future legislative review and repeal of the exemption under the Open Government Sunset Review Act, etc. HR 03/22/2011 Favorable CF 04/04/2011 GO	

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Monday, April 4, 2011, 3:15 —5:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	CS/SB 1650 Military Affairs, Space, and Domestic Security / Storms (Similar H 621)	Child Custody; Provides that a parent's activation, deployment, or temporary assignment to military service and the resultant temporary disruption to the child may not be the sole factor in granting a petition for or modification of time-sharing and parental responsibility. Provides that a time-sharing and parental responsibility order in effect before a temporary change due to a parent's military service shall automatically be reinstated after a specified period after return and notice by the returning parent, etc. JU 03/22/2011 Favorable MS 03/30/2011 Fav/CS CF 04/04/2011 BC	
10	SB 1850 Evers (Similar H 1233, Compare CS/S 618)	Juvenile Justice; Includes children 9 years of age or younger at the time of referral for a delinquent act within the definition of those children who are eligible to receive comprehensive mental health services. Encourages law enforcement agencies, school districts, counties, municipalities, and the Department of Juvenile Justice to establish prearrest or postarrest diversion programs and to give first-time misdemeanor offenders and offenders who are 9 years of age or younger an opportunity to participate in the programs, etc. CJ 03/28/2011 Favorable CF 04/04/2011 BC	

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 688

INTRODUCER: Senator Richter

SUBJECT: Assisted Living Facilities

DATE: April 1, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Pre-meeting
2.	_____	_____	HR	_____
3.	_____	_____	CA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill repeals the provision of law authorizing the Department of Elder Affairs to conduct field visits and audits of assisted living facilities (ALFs) in order to collection information regarding the actual cost of providing room, board, and personal care to residents. The law providing that local governments or organizations may contribute to the cost of care of residents in local ALFs is also repealed.

This bill repeals section 429.54, Florida Statutes.

II. Present Situation:¹

An Assisted Living Facility (ALF) is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.² A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.³ Activities of daily living include: ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks. An ALF may be operated

¹ Information contained the Present Situation of this bill analysis is from an interim report by the Committee on Health Regulation of the Florida Senate. See Comm. on Health Reg., The Florida Senate, *Assisted Living Facility Licensure Review* (Interim Report 2010-118) (Oct. 2009), available at http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-118hr.pdf (last visited Feb. 24, 2011).

² Section 429.02(5), F.S.

³ Section 429.02(16), F.S.

for profit or not-for-profit, and can range from small houses resembling private homes to larger developments with hundreds of residential beds.

Assisted living facilities are currently licensed by the Agency for Health Care Administration (AHCA) pursuant to part I of ch. 429, F.S., relating to assisted care communities and part II of ch.408, F.S., relating to the general licensing provisions for health care facilities. Assisted living facilities are also subject to regulation under Rule 58A-5 of the Florida Administrative Code. These rules are adopted by the Department of Elder Affairs (DOEA) in consultation with AHCA, the Department of Children and Family Services (DCF), and the Department of Health (DOH).⁴ An ALF must also comply with Uniform Fire Safety Standards for ALFs and standards enforced by DOH concerning food hygiene; physical plant sanitation; biomedical waste; and well, pool, or septic systems.⁵

An ALF is required to provide care and services appropriate to the needs of the residents accepted for admission to the facility. Generally, the care and services include at a minimum:

- Supervising and monitoring the resident;
- Contacting appropriate persons upon a significant change in the resident or if the resident is discharged or moves out;
- Providing and coordinating activities;
- Arranging for health care; and
- Providing and adhering to the Resident Bill of Rights.

Local governments or organizations may help subsidize the cost of providing care to residents in ALFs. Implementation of a local subsidy requires authorization of DOEA and may not result in a reduction of the state supplement.⁶ In order to help ascertain the actual cost of providing room, board, and personal care to residents in ALFs, s. 429.54(1), F.S., authorizes DOEA to conduct field visits audits of facilities as necessary. If randomly selected, the owner of the facility must submit a report, audit, and other accountings of cost as requested by DOEA.

As of December 2009, there were 2,830 ALFs licensed with a standard license by AHCA, for a total of 80,539 beds.⁷ In addition to a standard license, an ALF may have specialty licenses that authorize an ALF to provide limited nursing services (LNS), limited mental health services (LMH), and extended congregate care services (ECC). An applicant or licensee must pay a fee for each license application, the amount of which is established by rule.⁸ The biennial fee for a facility is \$300 per license, plus an additional fee of \$50 per resident; however, the total fee may not exceed \$10,000.⁹ Facilities that have ECC and LNS licenses must also pay additional fees.¹⁰

⁴ Section 429.41(1), F.S.

⁵ See rules 64E-12, 64E-11, and 64E-16, F.A.C.

⁶ Section 429.54(2), F.S.

⁷ Comm. on Children, Families, and Elder Affairs, The Florida Senate, *Bill Analysis and Fiscal Impact Statement SB 1816* (Mar. 17, 2010), available at <http://archive.flsenate.gov/data/session/2010/Senate/bills/analysis/pdf/2010s1816.cf.pdf> (last visited Feb. 24, 2011).

⁸ Section 428.07(4), F.S.

⁹ *Id.*

¹⁰ *Id.*

III. Effect of Proposed Changes:

Section 429.54, F.S., relating to the collection of information and local subsidies for assisted living facilities (ALF), provides that the Department of Elder Affairs (department or DOEA) may conduct field visits and audits of ALFs in order to collection information regarding the actual cost of providing room, board, and personal care to residents. Additionally, the law provides that local governments or organizations may contribute to the cost of care of residents in local ALFs by subsidizing the rate of state-authorized payment to such facilities.

This bill repeals s. 429.54, F.S.

This effective date of the bill is July 1, 2011.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill repeals s. 429.54, F.S., which authorizes local governments or organizations to contribute to the cost of care of assisted living facility residents upon approval of the Department of Elder Affairs (DOEA). By repealing this section of law, assisted living facilities may no longer receive subsidies from local government or organizations. However, according to DOEA, they are unaware of any local governments or organizations currently subsidizing the cost of care for residents.¹¹

C. Government Sector Impact:

None.

¹¹ E-mail from Kevin Reilly, Director of Legislative Affairs, Dep't of Elder Affairs, to professional staff of the Senate Committee on Children, Families, and Elder Affairs (Feb. 23, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 690

INTRODUCER: Senator Richter

SUBJECT: Assisted Living Facilities

DATE: April 1, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Pre-meeting
2.	_____	_____	HR	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill removes the requirement that the Department of Elderly Affairs submit a copy of proposed rules to the Speaker of the House of Representatives, the President of the Senate, and appropriate committees of substance for review and comment prior to enactment.

This bill substantially amends section 429.41, Florida Statutes.

II. Present Situation:¹

An Assisted Living Facility (ALF) is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.² A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.³ Activities of daily living include: ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks. An ALF may be operated for profit or not-for-profit, and can range from small houses resembling private homes to larger developments with hundreds of residential beds.

¹ A majority of the information contained the Present Situation of this bill analysis is from an interim report by the Committee on Health Regulation of the Florida Senate. See Comm. on Health Reg., The Florida Senate, *Assisted Living Facility Licensure Review* (Interim Report 2010-118) (Oct. 2009), available at http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-118hr.pdf (last visited Feb. 24, 2011).

² Section 429.02(5), F.S.

³ Section 429.02(16), F.S.

Assisted living facilities are currently licensed by the Agency for Health Care Administration (AHCA) pursuant to part I of ch. 429, F.S., relating to assisted care communities and part II of ch.408, F.S., relating to the general licensing provisions for health care facilities. Assisted living facilities are also subject to regulation under chapter 58A-5 of the Florida Administrative Code. These rules are adopted by the Department of Elder Affairs (DOEA or department) in consultation with AHCA, the Department of Children and Family Services, and the Department of Health, and must include minimum standards in relation to:

- The requirements for maintenance of facilities which will ensure the health, safety, and comfort of residents and protection from fire hazard;
- The preparation and annual update of a comprehensive emergency management plan;
- The number, training, and qualifications of all personnel having responsibility for the care of residents;
- All sanitary conditions within the facility and the surroundings which will ensure the health and comfort of residents;
- License application and license renewal, transfer of ownership, proper management of resident funds and personal property, surety bonds, resident contracts, refund policies, financial ability to operate, and facility and staff records;
- Inspections, complain investigations, moratoriums, classification of deficiencies, levying and enforcement of penalties, and use of income from fees and fines;
- The enforcement of the resident bill of rights;
- Facilities holding a limited nursing, extended congregate care, or limited mental health license;
- The use of physical or chemical restraints; and
- The establishment of specific policies and procedures on resident elopement.⁴

Section 429.41(3), F.S., requires that DOEA submit all proposed rules to the Speaker of the House of Representatives, the President of the Senate, and appropriate committee for review and comment prior to promulgation. Additionally, DOEA is urged to draft rules that encourage the development of homelike facilities that promote dignity, individuality, strengths, and decision-making of the residents.

During the 2010 Regular Session, HB 1565 passed the Legislature, but was vetoed by Governor Crist. During the 2011 Special Session “A,” the veto was overridden and the bill became law.⁵ This law requires state agencies to determine the impact of proposed agency rules and if the rules have an adverse impact on small businesses or increase regulatory costs in the aggregate in the amount of \$200,000 in the first year of enactment, the agency must prepare a statement of estimated regulatory cost (SERC). The SERC must provide whether the rules will financially impact small businesses by \$1 million or more over the first five years of enactment. If the economic analysis concludes that the rules meet or exceed this threshold, the rules must be presented to the Speaker of the House of Representatives and the President of the Senate and cannot be enacted until ratified by the Legislature.

⁴ Section 429.41(1), F.S.

⁵ Chapter 2010-279, Laws of Fla.

The department will be required to follow the rulemaking procedure outlined in HB 1565 irrespective of the fact that s. 429.41, F.S., requires DOEA to submit proposed rules to the Speaker of the House of Representatives, the President of the Senate, and appropriate committees.

III. Effect of Proposed Changes:

This bill amends s. 429.41, F.S., to remove the requirement that the Department of Elderly Affairs (DOEA) submit a copy of proposed rules to the Speaker of the House of Representatives, the President of the Senate, and appropriate committees of substance for review and comment prior to enactment.

The bill also removes the requirement that rules promulgated by DOEA encourage the development of homelike facilities which promote the dignity, individuality, personal strengths, and decision-making ability of residents.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 692

INTRODUCER: Senator Richter

SUBJECT: Assisted Living Facilities

DATE: April 1, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Pre-meeting
2.			HR	
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill removes the statutory requirement that the Agency for Health Care Administration distribute all biennial and interim visit reports of assisted living facilities to the local ombudsman council, at least one public library, and to the district Adult Services and Mental Health Program Offices.

This bill substantially amends section 429.35, Florida Statutes.

II. Present Situation:

An Assisted Living Facility (ALF) is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.¹ A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.² Activities of daily living include: ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks. An ALF may be operated for profit or not-for-profit, and can range from small houses resembling private homes to larger developments with hundreds of residential beds.

Assisted living facilities are currently licensed by the Agency for Health Care Administration (AHCA or agency) pursuant to part I of ch. 429, F.S., relating to assisted care communities and part II of ch.408, F.S., relating to the general licensing provisions for health care facilities.

¹ Section 429.02(5), F.S.

² Section 429.02(16), F.S.

Assisted living facilities are also subject to regulation under chapter 58A-5 of the Florida Administrative Code. These rules are adopted by the Department of Elder Affairs (DOEA or department) in consultation with AHCA, the Department of Children and Family Services, and the Department of Health.³

As of February 2011, there were 2,926 ALFs licensed in the state.⁴ All licensed ALFs must have a biennial inspection⁵ and between January 2010 and February 2011, 2,366 biennial inspection visits were conducted.⁶

Section 429.35(2), F.S., requires AHCA, within 60 days after a biennial inspection and 30 days after any interim visit, to forward the results to:

- The local ombudsman council in the appropriate planning and service area;
- The public library; and
- The district Adult Services and Mental Health Program Offices.

Section 408.806(8), F.S., allows AHCA to provide electronic access to information or documents, such as inspection results. The agency provides written reports of all inspections to the provider. Compliance and noncompliance with regulations are cited in the report. Upon review by AHCA, the reports are posted on the inspections report website⁷ and a monthly email is sent to the Office of State Long-Term Care Ombudsman (office) of all inspections completed. The office distributes this information to the local ombudsman councils.⁸

III. Effect of Proposed Changes:

This bill amends s. 429.35, F.S., to remove the requirement that the Agency for Health Care Administration distribute all biennial and interim visit reports of assisted living facilities to the local ombudsman council, at least one public library, and to the district Adult Services and Mental Health Program Offices.⁹

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

³ Section 429.41(1), F.S.

⁴ Agency for Health Care Admin., *2011 Bill Analysis and Economic Impact Statement SB 692* (Feb. 28, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁵ Section 408.811(1)(b), F.S.

⁶ Agency for Health Care Admin., *supra* note 4.

⁷ See [http://apps.ahca.myflorida.com/dm_web/\(S\(n3dnev45xakyh155qllelimg\)\)/Default.aspx](http://apps.ahca.myflorida.com/dm_web/(S(n3dnev45xakyh155qllelimg))/Default.aspx) (last visited Mar. 29, 2011).

⁸ Agency for Health Care Admin., *supra* note 4.

⁹ According AHCA, the reports will continue to be available on the agency's website for retrieval and review. *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

By eliminating the requirement that the Agency for Health Care Administration (agency) forward the results of all biennial and interim visit reports to the local ombudsman council, the public library, and the district Adult Services and Mental Health Program Offices, the bill may have a positive fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 694

INTRODUCER: Senator Richter

SUBJECT: Assisted Living Facilities

DATE: April 1, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Pre-meeting
2.			HR	
3.			BI	
4.				
5.				
6.				

I. Summary:

This bill removes the statutory requirement that all assisted living facilities report monthly to the Agency for Health Care Administration any liability claim filed against it.

This bill substantially amends section 429.23, Florida Statutes.

II. Present Situation:

An Assisted Living Facility (ALF) is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.¹ A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.² Activities of daily living include: ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks. An ALF may be operated for profit or not-for-profit, and can range from small houses resembling private homes to larger developments with hundreds of residential beds.

Assisted living facilities are currently licensed by the Agency for Health Care Administration (AHCA) pursuant to part I of ch. 429, F.S., relating to assisted care communities and part II of ch.408, F.S., relating to the general licensing provisions for health care facilities. Assisted living facilities are also subject to regulation under chapter 58A-5 of the Florida Administrative Code. These rules are adopted by the Department of Elder Affairs (DOEA or department) in

¹ Section 429.02(5), F.S.

² Section 429.02(16), F.S.

consultation with AHCA, the Department of Children and Family Services, and the Department of Health.

There are currently 2,947 ALFs licensed in Florida.³ The licensure process requires that each ALF maintain liability insurance coverage at all times.⁴ Assisted living facilities are required to submit a monthly report to AHCA that includes any liability claim filed against it.⁵ The report must include the name of the resident, the dates of the incident leading to the claim, and the type of injury or violation of rights alleged to have occurred.⁶ The report is not discoverable in any civil or administrative proceeding, except in cases brought by AHCA to enforce ch. 429, F.S.⁷

In addition to the monthly report to AHCA, all ALFs are required to maintain adverse incident reports. An adverse incident is defined in statute to mean “an event over which facility personnel could exercise control rather than as a result of the resident’s condition and results in:

- Death;
- Brain or spinal damage;
- Permanent disfigurement;
- Fracture or dislocation of bones or joints;
- Any condition that required medical attention to which the resident has not given his or her consent;
- Any condition that requires the transfer of the resident from the facility to a unit providing more acute care due to the incident rather than the resident’s condition before the incident; or
- An event that is reported to law enforcement or its personnel for investigation.⁸

Liability claims can also be made for alleged violation of rights. There are 11 specific rights guaranteed to residents of ALFs, such as the right to unrestricted private communication, sharing a room with a spouse if both are residents of the facility; and the right to present grievances and recommend changes.⁹

The agency publishes a report on its website providing monthly, quarterly, and annual aggregate data of the number of liability claims intended to be filed against ALFs licensed in the state.¹⁰

The agency produces two reports: one that shows the number of intended liability claim reports by fiscal year, broken down by quarter from 2001 through 2011, and one that shows the number of intended claims filed from March 2010 to February 2011. See charts below.¹¹

³ Agency for Health Care Admin., *2011 Bill Analysis and Economic Impact Statement SB 694* (received Mar. 8, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁴ Section 429.275, F.S.

⁵ Section 429.23(5), F.S.

⁶ *Id.*

⁷ *Id.*

⁸ Section 429.23(2), F.S. Resident elopement, if the elopement places the resident at risk of harm or injury is also included in the definition of “adverse incident.”

⁹ See s. 429.28, F.S.

¹⁰ Agency for Health Care Admin., *supra* note 3.

¹¹ Agency for Health Care Admin.,

http://ahca.myflorida.com/MCHQ/Long_Term_Care/FDAU/docs/LiabilityClaims/ALF_Chart.pdf (last visited Mar. 29, 2011).

**Assisted Living Facility Notices of Intent
Number Received by Fiscal Year and Quarter**

	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11
Qtr 1	11	8	12	4	6	3	1	3	8	5
Qtr 2	32	9	9	4	6	5	5	4	3	2
Qtr 3	22	19	3	7	9	4	8	3	1	n/a
Qtr 4	15	10	5	7	9	12	8	2	4	n/a

**Assisted Living Facility Notices of Intent
March 2010 – February 2011**

	3/10	4/10	5/10	6/10	7/10	8/10	9/10	10/10	11/10	12/10	1/11	2/11
NOIs Rec'd by month	0	3	0	1	0	3	2	0	2	0	2	2

The information reported to AHCA is not used in any regulatory manner.¹²

III. Effect of Proposed Changes:

This bill amends s. 429.23, F.S., to remove the requirement that all assisted living facilities report monthly to the Agency for Health Care Administration any liability claim filed against it.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹² Agency for Health Care Admin., *supra* note 3.

B. Private Sector Impact:

This bill amends s. 429.23, F.S., to remove the requirement that all assisted living facilities (ALFs) report monthly to the Agency for Health Care Administration any liability claim filed against it. This bill may reduce reporting costs to ALFs associated with submitting the data.¹³

C. Government Sector Impact:

According to the Agency for Health Care Administration (AHCA or agency), duties associated with collecting and posting the information relating to liability claims are minimal and eliminating the requirement that ALFs report monthly to AHCA would have a neutral effect on the agency.¹⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹³ *Id.*

¹⁴ *Id.*

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 696

INTRODUCER: Senator Richter

SUBJECT: Assisted Living Facilities

DATE: April 1, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Pre-meeting
2.	_____	_____	HR	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill removes the statutory requirement that the Agency for Health Care Administration develop and disseminate an annual list of assisted living facilities sanctioned or fined for violations of state standards.

This bill substantially amends section 429.19, Florida Statutes.

II. Present Situation:

An Assisted Living Facility (ALF) is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.¹ A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.² Activities of daily living include: ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks. An ALF may be operated for profit or not-for-profit, and can range from small houses resembling private homes to larger developments with hundreds of residential beds.

Assisted living facilities are currently licensed by the Agency for Health Care Administration (AHCA or agency) pursuant to part I of ch. 429, F.S., relating to assisted care communities and part II of ch.408, F.S., relating to the general licensing provisions for health care facilities. Assisted living facilities are also subject to regulation under chapter 58A-5 of the Florida

¹ Section 429.02(5), F.S.

² Section 429.02(16), F.S.

Administrative Code. These rules are adopted by the Department of Elder Affairs (DOEA) in consultation with AHCA, the Department of Children and Family Services (DCF), and the Department of Health (DOH).³ As of February 2011, there were 2,926 ALFs licensed in the state.⁴

Florida law provides for three classifications of violations of part I of ch. 429, F.S., as well as the adopted rules. The agency shall impose administrative fines for all violations and, in addition, the agency may assess a survey fee to cover the cost of conducting initial complaint investigations that results in the finding of a violation.⁵

Section 429.19(9), F.S., requires AHCA to develop and disseminate a list annually of all facilities sanctioned or fined for violations of state standards. The list must include the number and class of violations involved, the penalties imposed, and the current status of the case. Once the list is developed, it must be sent to DOEA, DOH, DCF, the Agency for Persons with Disabilities, area agencies on aging, the Florida Statewide Advocacy Council, and the state and local ombudsman councils. The agency may charge a fee for the cost of printing and postage or the list may also be provided electronically or through AHCA's Internet site.

Based on the requirements of s. 429.19(9), F.S., AHCA currently publishes two annual reports on its website: Assisted Living Facility – Administrative Fines (Administrative Fines) and Assisted Living Facility – Sanctions (Sanctions).

The Administrative Fines report shows all ALFs with fines imposed by final order between July 2009 and June 2010.⁶ The report specifies the following:

- Provider name
- City
- County
- License number
- License status (closed or active)
- Legal case number
- Type of deficiency
- Fine amount
- Outcome of the case
- Specific survey violation and class of violation

The Sanctions report shows all facilities with sanctions imposed in final order status between July 2009 and June 2010.⁷ The report specifies the following:

³ Section 429.41(1), F.S.

⁴ Agency for Health Care Admin., *2011 Bill Analysis and Economic Impact Statement SB 692* (Feb. 28, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁵ Sections 429.19(1) and (7), F.S.

⁶ Agency for Health Care Admin., *Assisted Living Facility – Administrative Fines* (Mar. 1, 2011), available at http://ahca.myflorida.com/MCHQ/Long_Term_Care/FDAU/docs/ALF_Fines.pdf (last visited Mar. 30, 2011).

⁷ Agency for Health Care Admin., *Assisted Living Facility – Sanctions* (Mar. 1, 2011), available at http://ahca.myflorida.com/MCHQ/Long_Term_Care/FDAU/docs/ALF_Sanctions.pdf (last visited Mar. 31, 2011).

- Provider name
- Owner
- License number
- License status
- City
- County
- Legal case number
- Type of case
- Outcome of the case
- Final order date
- Emergency suspension
- Moratorium status and moratorium start date

Any action taken to correct a violation must be documented in writing and verified through follow-up visits by AHCA.⁸

III. Effect of Proposed Changes:

This bill amends s. 429.19, F.S., to remove the requirement that the Agency for Health Care Administration (AHCA or agency) develop and disseminate an annual list of assisted living facilities (ALFs) sanctioned or fined for violations of state standards. The bill also eliminates language providing that AHCA may provide the information electronically or on its website.

While the bill eliminates the requirement that AHCA publish this annual list, the agency would still have the discretion to do so if it wished. According to AHCA, the information would still be available through a public-record request.⁹

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁸ Section 429.19(5), F.S.

⁹ Agency for Health Care Admin., *2011 Bill Analysis and Economic Impact Statement SB 696* (Feb. 22, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

According to the Agency for Health Care Administration, the information currently found on its website will still be available through a public-record request.¹⁰ Accordingly, if this bill passes, a person will have to pay a fee associated with the public-record request in order to receive information relating to which assisted living facilities have been fined or sanctioned.

C. Government Sector Impact:

To the extent the Agency for Health Care Administration incurred costs associated with developing and disseminating the list annually, those expenses should be eliminated with the passage of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁰ *Id.*

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 794

INTRODUCER: Criminal Justice Committee and Senator Diaz de la Portilla

SUBJECT: Controlled Substances

DATE: April 1, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Daniell</u>	<u>Walsh</u>	<u>CF</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:	
A. COMMITTEE SUBSTITUTE.....	<input checked="" type="checkbox"/> Statement of Substantial Changes
B. AMENDMENTS.....	<input type="checkbox"/> Technical amendments were recommended
	<input type="checkbox"/> Amendments were recommended
	<input type="checkbox"/> Significant amendments were recommended

I. Summary:

This bill enhances the felony degree and penalties of certain controlled substances offenses when those offenses are committed within 1,000 feet of the real property comprising a “homeless shelter.” The bill defines a “homeless shelter” as a “supervised publicly or privately operated shelter designed to provide temporary living accommodations for persons who otherwise lack a fixed, regular, and adequate nighttime residence.”

This bill substantially amends sections 893.13 and 921.0022, Florida Statutes.

II. Present Situation:

Felony Degree and Penalty Enhancements

Chapter 893, F.S., relating to drug abuse prevention and control, is called the Florida Comprehensive Drug Abuse Prevention and Control Act (Act). The Act identifies controlled substances and places them in a “schedule” depending on the level of potential for abuse and

whether it is accepted for a medicinal purpose.¹ Section 893.13, F.S., provides penalties for certain prohibited acts relating to the controlled substances listed in the Act. This section of law also provides for enhanced felony degrees and penalties for certain offenses. Specifically, there are felony degree and penalty enhancements for selling, manufacturing, or delivering, or possessing with the intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet² of the real property comprising:

- A child care facility or a public or private elementary, middle, or secondary school;
- A state, county, or municipal park, a community center, or a publicly owned recreational facility;
- A public or private college, university, or other postsecondary educational institution;
- A physical place for worship;
- A convenience business;
- A public housing facility; or
- An assisted living facility.³

If a person violates these provisions, it is a first or second degree penalty, depending on the controlled substance. For example:

- For a controlled substance in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., F.S., the person commits a felony of the first degree;⁴
- For a controlled substance in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4), F.S., the person commits a felony of the second degree.⁵

Additionally, if a person has any other illegal controlled substance within 1,000 feet of the above locations, the person shall receive a \$500 fine and be sentenced to serve 100 hours of public service.⁶

If an offense is not committed within 1,000 feet of one of the locations above, the offense would be of a lesser felony degree and subject to a lesser penalty. For example, if a person sold a non-trafficking amount of cocaine (a Schedule (2)(a) controlled substance⁷) and this sale was not committed within 1,000 feet of a child care facility, the sale would be a second degree felony.⁸

¹ Section 893.03, F.S.

² “We construe the legislative intent to measure within a 1,000-foot radius, not by local idiosyncrasies of pedestrian or automobile travel.” *Howard v. State*, 591 So. 2d 1067, 1068 (Fla. 4th DCA 1991). Essentially, the distance is established “as the crow flies, *not* as the car drives.” *Id.*

³ See s. 893.13(1)(c), (1)(d), (1)(e), (1)(f), and (1)(h), F.S.

⁴ A felony of the first degree is punishable by up to 30 years in prison and a \$10,000 fine. Sections 775.082(3)(b) and 775.083(1), F.S.

⁵ A felony of the second degree is punishable by up to 15 years in prison and a \$10,000 fine. Sections 775.082(3)(c) and 775.083(1), F.S.

⁶ This penalty does not apply to persons who have an illegal controlled substance within 1,000 feet of the real property comprising of an assisted living facility. See s. 893.13(1)(h), F.S.

⁷ Section 893.03(2)(a)4., F.S.

⁸ Section 893.13(1)(a), F.S.

However, if the person sold the same cocaine within 1,000 feet of a child care facility, the sale would be a first degree felony.

Controlled Substances Offenses Committed Near Homeless Shelters

Section 414.0252(7), F.S., defines the term “homeless” to mean an individual who lacks a fixed, regular, and adequate nighttime residence or an individual who has a primary nighttime residence that is:

- A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters, and transitional housing for the mentally ill;
- An institution that provides a temporary residence for individuals intended to be institutionalized; or
- A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Current law does not define the term “homeless shelter.”

Current law does not provide for felony degree or penalty enhancements for offenses related to controlled substances within 1,000 feet of a homeless shelter.

III. Effect of Proposed Changes:

This bill amends s. 893.13, F.S., to provide an enhanced felony degree and penalty for the sale, manufacture, or delivery, or possession with the intent to sell, manufacture, or deliver, a controlled substance when the offense is committed within 1,000 feet of the real property comprising a homeless shelter. Any person who violates this provision with respect to:

- A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., F.S., commits a felony of the first degree.
- A controlled substance in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4), F.S., commits a felony of the second degree.⁹

The bill defines the term “homeless shelter” to mean a “supervised publicly or privately operated shelter designed to provide temporary living accommodations for persons who otherwise lack a fixed, regular, and adequate nighttime residence.”

The bill also amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to rank the new offenses created by the bill.

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

⁹ The bill does not reference an enhanced penalty for an offense involving a controlled substance not specifically referenced. Therefore, the enhanced penalty provisions would not apply to offenses involving non-referenced controlled substances.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill was heard by the Criminal Justice Impact Conference (conference), which provides the final, official estimate of the prison bed impact, if any, of legislation, on March 2, 2011. The conference estimates that the bill could have a potentially large impact on prison beds.¹⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁰ Office of Economic and Demographic Research, *Criminal Justice Impact Conference* (Mar. 2, 2011), available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm> (follow “Conference Results” hyperlink) (last visited Mar. 30, 2011).

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 28, 2011:

The committee substitute:

- Defines the term “homeless shelter.”
- Clarifies that felony degree and penalty enhancements apply to certain controlled substance offenses committed within 1,000 feet of the real property comprising a homeless shelter.
- Amends the offense severity ranking chart of the Criminal Punishment code to rank offenses for which felony degree and penalties are enhanced.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Children, Families, and Elder Affairs (Detert) recommended the following:

Senate Amendment (with title amendment)

Between lines 1356 and 1357
insert:

Section 38. Sections 39.0015, 39.305, 39.311, 39.312, 39.313, 39.314, 39.315, 39.316, 39.317, 39.318, 39.816, 39.817, 383.0115, 393.22, 393.503, 394.922, 402.3045, 402.50, 402.55, 409.1672, 409.1673, 409.1685, 409.801, 409.802, and 409.803, Florida Statutes, are repealed.

Section 39. Paragraph (a) of subsection (4) of section 20.195, Florida Statutes, is amended to read:

20.195 Department of Children and Family Services; trust



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13 funds.—The following trust funds shall be administered by the
14 Department of Children and Family Services:

15 (4) Domestic Violence Trust Fund.

16 (a) Funds to be credited to and uses of the trust fund
17 shall be administered in accordance with the provisions of s.
18 28.101, part XII ~~XIII~~ of chapter 39, and chapter 741.

19 Section 40. Subsection (1) of section 39.00145, Florida
20 Statutes, is amended to read:

21 39.00145 Records concerning children.—

22 (1) The case record of every child under the supervision of
23 or in the custody of the department, the department's authorized
24 agents, or providers contracting with the department, including
25 community-based care lead agencies and their subcontracted
26 providers, must be maintained in a complete and accurate manner.
27 The case record must contain, at a minimum, the child's case
28 plan required under part VII ~~VIII~~ of this chapter and the full
29 name and street address of all shelters, foster parents, group
30 homes, treatment facilities, or locations where the child has
31 been placed.

32 Section 41. Subsection (10) of section 39.0121, Florida
33 Statutes, is amended to read:

34 39.0121 Specific rulemaking authority.—Pursuant to the
35 requirements of s. 120.536, the department is specifically
36 authorized to adopt, amend, and repeal administrative rules
37 which implement or interpret law or policy, or describe the
38 procedure and practice requirements necessary to implement this
39 chapter, including, but not limited to, the following:

40 (10) The ~~Family Builders Program~~, the Intensive Crisis
41 Counseling Program, and any other early intervention programs



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42 and kinship care assistance programs.

43 Section 42. Paragraph (a) of subsection (15) of section
44 39.301, Florida Statutes, is amended to read:

45 39.301 Initiation of protective investigations.—

46 (15) (a) If the department or its agent determines that a
47 child requires immediate or long-term protection through:

48 1. Medical or other health care; or

49 2. Homemaker care, day care, protective supervision, or
50 other services to stabilize the home environment, including
51 intensive family preservation services through ~~the Family~~
52 ~~Builders Program~~ or the Intensive Crisis Counseling Program, ~~or~~
53 ~~both,~~

54
55 such services shall first be offered for voluntary acceptance
56 unless there are high-risk factors that may impact the ability
57 of the parents or legal custodians to exercise judgment. Such
58 factors may include the parents' or legal custodians' young age
59 or history of substance abuse or domestic violence.

60 Section 43. Section 39.3031, Florida Statutes, is amended
61 to read:

62 39.3031 Rules for implementation of s. ss. 39.303 and
63 ~~39.305~~.—The Department of Health, in consultation with the
64 Department of Children and Family Services, shall adopt rules
65 governing the child protection teams ~~and the sexual abuse~~
66 ~~treatment program~~ pursuant to s. ss. 39.303 and ~~39.305~~,
67 including definitions, organization, roles and responsibilities,
68 eligibility, services and their availability, qualifications of
69 staff, and a waiver-request process.

70 Section 44. Subsection (13) of section 49.011, Florida



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71 Statutes, is amended to read:

72 49.011 Service of process by publication; cases in which
73 allowed.—Service of process by publication may be made in any
74 court on any party identified in s. 49.021 in any action or
75 proceeding:

76 (13) For termination of parental rights pursuant to part
77 VIII ~~IX~~ of chapter 39 or chapter 63.

78 Section 45. Subsection (18) of section 381.006, Florida
79 Statutes, is amended to read:

80 381.006 Environmental health.—The department shall conduct
81 an environmental health program as part of fulfilling the
82 state's public health mission. The purpose of this program is to
83 detect and prevent disease caused by natural and manmade factors
84 in the environment. The environmental health program shall
85 include, but not be limited to:

86 (18) A food service inspection function for domestic
87 violence centers that are certified and monitored by the
88 Department of Children and Family Services under part XII ~~XIII~~
89 of chapter 39 and group care homes as described in subsection
90 (16), which shall be conducted annually and be limited to the
91 requirements in department rule applicable to community-based
92 residential facilities with five or fewer residents.

93
94 The department may adopt rules to carry out the provisions of
95 this section.

96 Section 46. Paragraph (b) of subsection (1) of section
97 381.0072, Florida Statutes, is amended to read:

98 381.0072 Food service protection.—It shall be the duty of
99 the Department of Health to adopt and enforce sanitation rules



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100 consistent with law to ensure the protection of the public from
101 food-borne illness. These rules shall provide the standards and
102 requirements for the storage, preparation, serving, or display
103 of food in food service establishments as defined in this
104 section and which are not permitted or licensed under chapter
105 500 or chapter 509.

106 (1) DEFINITIONS.—As used in this section, the term:

107 (b) "Food service establishment" means detention
108 facilities, public or private schools, migrant labor camps,
109 assisted living facilities, adult family-care homes, adult day
110 care centers, short-term residential treatment centers,
111 residential treatment facilities, homes for special services,
112 transitional living facilities, crisis stabilization units,
113 hospices, prescribed pediatric extended care centers,
114 intermediate care facilities for persons with developmental
115 disabilities, boarding schools, civic or fraternal
116 organizations, bars and lounges, vending machines that dispense
117 potentially hazardous foods at facilities expressly named in
118 this paragraph, and facilities used as temporary food events or
119 mobile food units at any facility expressly named in this
120 paragraph, where food is prepared and intended for individual
121 portion service, including the site at which individual portions
122 are provided, regardless of whether consumption is on or off the
123 premises and regardless of whether there is a charge for the
124 food. The term does not include any entity not expressly named
125 in this paragraph; nor does the term include a domestic violence
126 center certified and monitored by the Department of Children and
127 Family Services under part XII ~~XIII~~ of chapter 39 if the center
128 does not prepare and serve food to its residents and does not



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129 advertise food or drink for public consumption.

130 Section 47. Paragraph (b) of subsection (2) of section
131 390.01114, Florida Statutes, is amended to read:

132 390.01114 Parental Notice of Abortion Act.—

133 (2) DEFINITIONS.—As used in this section, the term:

134 (b) "Child abuse" means abandonment, abuse, harm, mental
135 injury, neglect, physical injury, or sexual abuse of a child as
136 those terms are defined in ss. 39.01, 827.04, and 984.03 ~~has the~~
137 ~~same meaning as s. 39.0015(3).~~

138 Section 48. Section 409.1685, Florida Statutes, is amended
139 to read:

140 409.1685 Children in foster care; annual report to
141 Legislature.—The Department of Children and Family Services
142 shall submit a written report to the Governor and the
143 Legislature concerning the status of children in foster care and
144 the judicial review mandated by part IX ~~✕~~ of chapter 39. The
145 report shall be submitted by May 1 of each year and must include
146 the following information for the prior calendar year:

147 (1) The number of 6-month and annual judicial reviews
148 completed during that period.

149 (2) The number of children in foster care returned to a
150 parent, guardian, or relative as a result of a 6-month or annual
151 judicial review hearing during that period.

152 (3) The number of termination of parental rights
153 proceedings instituted during that period, including:

154 (a) The number of termination of parental rights
155 proceedings initiated pursuant to former s. 39.703; and

156 (b) The total number of terminations of parental rights
157 ordered.



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158 (4) The number of foster care children placed for adoption.
159 Section 49. Paragraph (a) of subsection (3) of section
160 411.01013, Florida Statutes, is amended to read:

161 411.01013 Prevailing market rate schedule.-

162 (3) The prevailing market rate schedule, at a minimum,
163 must:

164 (a) Differentiate rates by type, including, but not limited
165 to, a child care provider that holds a Gold Seal Quality Care
166 designation under s. 402.281, a child care facility licensed
167 under s. 402.305, a public or nonpublic school exempt from
168 licensure under s. 402.3025, a faith-based child care facility
169 exempt from licensure under s. 402.316 that does not hold a Gold
170 Seal Quality Care designation, a large family child care home
171 licensed under s. 402.3131, or a family day care home licensed
172 or registered under s. 402.313, ~~or an after-school program that~~
173 ~~is not defined as child care under rules adopted pursuant to s.~~
174 ~~402.3045.~~

175 Section 50. Paragraph (j) of subsection (2) of section
176 753.03, Florida Statutes, is redesignated as paragraph (i), and
177 present paragraph (i) of that subsection is amended to read:

178 753.03 Standards for supervised visitation and supervised
179 exchange programs.-

180 (2) The clearinghouse shall use an advisory board to assist
181 in developing the standards. The advisory board must include:

182 ~~(i) A representative of the Commission on Marriage and~~
183 ~~Family Support Initiatives.~~

184 Section 51. Subsection (4) of section 877.22, Florida
185 Statutes, is amended to read:

186 877.22 Minors prohibited in public places and



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187 establishments during certain hours; penalty; procedure.-

188 (4) If a minor violates a curfew and is taken into custody,
189 the minor shall be transported immediately to a police station
190 or to a facility operated by a religious, charitable, or civic
191 organization that conducts a curfew program in cooperation with
192 a local law enforcement agency. After recording pertinent
193 information about the minor, the law enforcement agency shall
194 attempt to contact the parent of the minor and, if successful,
195 shall request that the parent take custody of the minor and
196 shall release the minor to the parent. If the law enforcement
197 agency is not able to contact the minor's parent within 2 hours
198 after the minor is taken into custody, or if the parent refuses
199 to take custody of the minor, the law enforcement agency may
200 transport the minor to her or his residence or proceed as
201 authorized under part IV ~~V~~ of chapter 39.

202
203 ===== T I T L E A M E N D M E N T =====

204 And the title is amended as follows:

205
206 Delete line 79

207 and insert:

208 asbestos surveyors; repealing s. 39.0015, F.S.,
209 relating to child abuse prevention training in the
210 district school system; repealing s. 39.305, F.S.,
211 relating to the development by the Department of
212 Children and Family Services of a model plan for
213 community intervention and treatment in intrafamily
214 sexual abuse cases; repealing ss. 39.311, 39.312,
215 39.313, 39.314, 39.315, 39.316, 39.317, and 39.318,



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216 F.S., relating to the Family Builders Program;
217 repealing 39.816, F.S., relating to authorization for
218 pilot and demonstration projects; repealing s. 39.817,
219 F.S., relating to a foster care privatization
220 demonstration project; repealing s. 383.0115, F.S.,
221 relating to the Commission on Marriage and Family
222 Support Initiatives; repealing s. 393.22, F.S.,
223 relating to financial commitment to community services
224 programs; repealing s. 393.503, F.S., relating to
225 respite and family care subsidy expenditures and
226 funding recommendations; repealing s. 394.922, F.S.,
227 relating to constitutional requirements regarding
228 long-term control, care, and treatment of sexually
229 violent predators; repealing s. 402.3045, F.S.,
230 relating to a requirement that the Department of
231 Children and Family Services adopt distinguishable
232 definitions of child care programs by rule; repealing
233 s. 402.50, F.S., relating to the development of
234 administrative infrastructure standards by the
235 Department of Children and Family Services; repealing
236 s. 402.55, F.S., relating to the management fellows
237 program; repealing s. 409.1672, F.S., relating to
238 performance incentives for department employees with
239 respect to the child welfare system; repealing s.
240 409.1673, F.S., relating to legislative findings
241 regarding the foster care system and the development
242 of alternate care plans; repealing s. 409.1685, F.S.,
243 relating to an annual report to the Legislature by the
244 Department of Children and Family Services with



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245 respect to children in foster care; repealing ss.
246 409.801 and 409.802, F.S., relating to the Family
247 Policy Act; repealing s. 409.803, F.S., relating to
248 pilot programs to provide shelter and foster care
249 services to dependent children; amending ss. 20.195,
250 39.00145, 39.0121, 39.301, 39.3031, 49.011, 381.006,
251 381.0072, 390.01114, 409.1685, 411.01013, 753.03, and
252 877.22, F.S.; conforming references to changes made by
253 the act; providing an effective date.



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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Children, Families, and Elder Affairs (Detert) recommended the following:

Senate Amendment (with title amendment)

Between lines 1356 and 1357

insert:

Section 38. Section 288.386, Florida Statutes, is repealed.

Section 39. Section 288.9618, Florida Statutes, is repealed.

Section 40. Section 288.982, Florida Statutes, is repealed.

Section 41. Section 409.946, Florida Statute, is repealed.

Section 42. Paragraphs (c), (d), and (e) of subsection (2) of section 288.012, Florida Statutes, are amended to read:

288.012 State of Florida foreign offices.—The Legislature



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13 finds that the expansion of international trade and tourism is
14 vital to the overall health and growth of the economy of this
15 state. This expansion is hampered by the lack of technical and
16 business assistance, financial assistance, and information
17 services for businesses in this state. The Legislature finds
18 that these businesses could be assisted by providing these
19 services at State of Florida foreign offices. The Legislature
20 further finds that the accessibility and provision of services
21 at these offices can be enhanced through cooperative agreements
22 or strategic alliances between state entities, local entities,
23 foreign entities, and private businesses.

24 (2) Each foreign office shall have in place an operational
25 plan approved by the participating boards or other governing
26 authority, a copy of which shall be provided to the Office of
27 Tourism, Trade, and Economic Development. These operating plans
28 shall be reviewed and updated each fiscal year and shall
29 include, at a minimum, the following:

30 (c) Provisions for access to information for Florida
31 businesses related to ~~through the Florida Trade Data Center.~~
32 ~~Each foreign office shall obtain and forward~~ trade leads and
33 ~~inquiries to the center on a regular basis.~~

34 (d) Identification of new and emerging market opportunities
35 for Florida businesses. ~~Each foreign office shall provide the~~
36 ~~Florida Trade Data Center with a compilation of foreign buyers~~
37 ~~and importers in industry sector priority areas on an annual~~
38 ~~basis. In return, the Florida Trade Data Center shall make~~
39 ~~available to each foreign office, and to Enterprise Florida,~~
40 ~~Inc., the Florida Commission on Tourism, the Florida Ports~~
41 ~~Council, the Department of State, the Department of Citrus, and~~



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42 ~~the Department of Agriculture and Consumer Services, trade~~
43 ~~industry, commodity, and opportunity information.~~ This
44 information shall be provided ~~to such offices and entities~~
45 either free of charge or on a fee basis with fees set only to
46 recover the costs of providing the information.

47 (e) Provision of access for Florida businesses to ~~the~~
48 ~~services of the Florida Trade Data Center,~~ international trade
49 assistance services provided by state and local entities,
50 seaport and airport information, and other services identified
51 by the Office of Tourism, Trade, and Economic Development.

52 Section 43. Paragraph (a) of subsection (3) of section
53 311.07, Florida Statutes, is amended to read:

54 311.07 Florida seaport transportation and economic
55 development funding.—

56 (3) (a) Program funds shall be used to fund approved
57 projects on a 50-50 matching basis with any of the deepwater
58 ports, as listed in s. 403.021(9) (b), which is governed by a
59 public body or any other deepwater port which is governed by a
60 public body and which complies with the water quality provisions
61 of s. 403.061, the comprehensive master plan requirements of s.
62 163.3178(2) (k), and the local financial management and reporting
63 provisions of part III of chapter 218. However, program funds
64 used to fund projects that involve the rehabilitation of
65 wharves, docks, berths, bulkheads, or similar structures shall
66 require a 25-percent match of funds. ~~Program funds also may be~~
67 ~~used by the Seaport Transportation and Economic Development~~
68 ~~Council to develop with the Florida Trade Data Center such trade~~
69 ~~data information products which will assist Florida's seaports~~
70 ~~and international trade.~~



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===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 79

and insert:

asbestos surveyors; repealing s. 288.386, F.S., relating to the Florida-Caribbean Basin Trade Initiative; repealing s. 288.9618, F.S., which relates to an economic development program for microenterprises; repealing s. 288.982, F.S., which relates to a public records requirement for certain records relating to the United States Department of Defense Base Realignment and Closure 2005 process; repealing s. 409.946, F.S., which relates to the Inner City Redevelopment Review Panel; amending ss. 288.012, and 311.07, F.S.; revising requirements for the operating plans of the state's foreign offices and the use of program funds of the Florida Seaport Transportation and Economic Development Program, to delete provisions relating to the Florida Trade Data Center; providing an effective date.



706422

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Children, Families, and Elder Affairs (Detert) recommended the following:

Senate Amendment (with title amendment)

Between lines 1356 and 1357

insert:

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

402.35 Employees.—All personnel of the Department of Children and Family Services shall be governed by rules and regulations adopted and promulgated by the Department of Management Services relative thereto except the director and persons paid on a fee basis. The Department of Children and Family Services may participate with other state departments and



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13 agencies in a joint merit system. ~~No federal, state, county, or~~
14 ~~municipal officer shall be eligible to serve as an employee of~~
15 ~~the Department of Children and Family Services.~~

16
17 ===== T I T L E A M E N D M E N T =====

18 And the title is amended as follows:

19 Delete line 79

20 and insert:

21 asbestos surveyors; amending s. 402.35, F.S.; removing
22 a provision prohibiting a federal, state, county, or
23 municipal officer from serving as an employee of the
24 department; providing an effective date.



563922

LEGISLATIVE ACTION

Senate

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House

The Committee on Children, Families, and Elder Affairs (Detert) recommended the following:

Senate Amendment to Amendment (148444)

Delete lines 66 - 70

and insert:

require a 25-percent match of funds. Program funds also may be used by the Seaport Transportation and Economic Development Council to develop ~~with the Florida Trade Data Center such~~ trade data information products which will assist Florida's seaports and international trade.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 1346

INTRODUCER: Commerce and Tourism Committee

SUBJECT: Obsolete References and Programs

DATE: March 30, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	Fav/CS
2.	Walsh	Walsh	CF	Pre-meeting
3.			GO	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1346 (the bill) is the result of a review of obsolete references in Florida Statutes to the former Departments of Labor and Employment Security, and Commerce.

There are 35 references to the former Department of Labor and Employment Security, or one of its former programs, and there are 10 references to the Florida Department of Commerce still remaining in Florida Statutes. Additionally, other statutes have been identified that relate to programs related to or within a department that were obsolete prior to department abolishment.

This bill amends the following sections of the Florida Statutes: 14.2015, 20.18, 45.031, 69.041, 112.044, 212.20, 252.85, 252.87, 252.937, 287.09431, 287.09451, 287.0947, 288.021, 288.035, 288.1168, 288.1229, 288.1169, 331.369, 377.711, 377.712, 409.2576, 414.24, 414.40, 440.385, 440.49, 450.161, 464.203, 469.002, 489.1455, 489.5335, 553.62, 597.006, 944.012, and 944.708.

This bill repeals the following sections of the Florida Statutes: 288.038, 446.60, 255.551-255.563, and 469.003(2)(b).

II. Present Situation:

Senate Interim Report 2011-107, Identification, Review, and Recommendations Relating to Obsolete Statutory References to the former Florida Departments of Labor and Employment Security, and Commerce:¹

- Reviewed the abolishment of the programs and divisions of the former departments;
- Identified current Florida Statutes that referenced these past programs, divisions, or departments;
- Reviewed the obsolete statutory references identified, researched the underlying legislative history of each reference, and worked with appropriate state agencies and other Senate committees to develop recommendations to resolve the obsolete references; and
- Recommended that the references be either retained in statute, deleted or repealed from the statute or provision, or updated to reference the appropriate agency or current practice.

Department of Labor and Employment Security

The Department of Labor and Employment Security (DLES) was created in 1978 when it was removed from the Florida Department of Commerce.² It consisted of one administrative support division, six program divisions, and administratively housed several independent entities.³

The process for the abolishment of DLES began in the 1999 Legislative Session,⁴ and subdivisions and programs of the department were transferred or repealed through several legislative bills until the department was formally abolished by the Legislature in 2002.

Senate Interim Report 2011-107 sets forth a detailed chart of the divisions and programs of the former DLES and whether they were transferred or repealed (including the chapter law numbers).

Florida Department of Commerce

The Florida Department of Commerce (FDC) was created in 1969.⁵ It consisted of three divisions and administratively housed or staffed a number of independent entities. It was “the state agency with the primary responsibility for promoting and developing the general business, trade, and tourism components of the state economy.”⁶

FDC was abolished in 1996 in a reorganization of Florida’s economic development structure.⁷ The department’s functions were either repealed or transferred to various other agencies. In

¹ Identification, Review, and Recommendations Relating to Obsolete Statutory References to the Former Florida Departments of Labor and Employment Security, and Commerce. The Florida Senate Committee on Commerce. Interim Report 2011-107 (October 2010). Available at <http://www.flsenate.gov/Committees/InterimReports/2011/2011-107cm.pdf> (last visited 2/15/2011).

² Chapter 78-201, L.O.F.

³ See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 230, dated April 19, 1999.

⁴ Chapter 99-240, L.O.F.

⁵ Section 17, ch. 69-106, L.O.F.

⁶ See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 958, dated March 18, 1996.

⁷ Chapter 96-320, L.O.F.

general, the reorganization transferred economic development functions to Enterprise Florida, Inc. (EFI); tourism development and marketing functions to the Florida Commission on Tourism, Inc.; and all other functions that were considered to be “governmental in nature and [could not] effectively be transferred to public private partnerships” to the Office of Tourism, Trade, and Economic Development (OTTED).⁸

Senate Interim Report 2011-107 sets forth a detailed chart of the divisions and programs of the former FDC and whether they were transferred or repealed (including the chapter law numbers).

III. Effect of Proposed Changes:

Senate Interim Report 2011-107 sets forth recommendations that some references are still necessary in statute, while others should be repealed or amended to reference the current agency or program.⁹ These recommendations are implemented in this bill in the following manner:

Delete the Reference

Statutes where a reference to DLES or FDC is deleted are:

- s. 14.2015(8), F.S. (Section 1);
- s. 45.031(7)(a), F.S. (Section 3);
- s. 69.041(4)(a), F.S. (Section 4);
- s. 112.044(2)(d), F.S. (Section 5);
- s. 252.87(7), F.S. (Section 8);
- s. 252.937(2), F.S. (Section 9);
- s. 287.09451(4), F.S. (Section 11);
- s. 288.035(1), F.S. (Section 14);
- s. 288.1229(7), F.S. (Section 16);
- s. 409.2576(1) and (3)(b), F.S. (Section 23);
- s. 440.49(9)(b), F.S. (Section 25);
- s. 553.62, F.S. (Section 31); and
- s. 597.006(1), F.S. (Section 32).

Repeal the Statute or Provision

Statutes where a statute or provision is repealed are:

- s. 288.031, F.S. (Section 15);
- s. 446.60, F.S. (Section 26);
- s. 255.551, F.S. (Section 35);
- s. 255.552, F.S. (Section 35);
- s. 255.553, F.S. (Section 35);
- s. 255.5535, F.S. (Section 35);
- s. 255.555, F.S. (Section 35);
- s. 255.556, F.S. (Section 35);
- s. 255.557, F.S. (Section 35);
- s. 255.5576, F.S. (Section 35);

⁸ See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 958, dated March 18, 1996.

⁹ A detailed analysis is on file with the Senate Commerce and Tourism Committee.

- s. 255.558, F.S. (Section 35);
- s. 255.559, F.S. (Section 35);
- s. 255.56, F.S. (Section 35);
- s. 255.561, F.S. (Section 35);
- s. 255.562, F.S. (Section 35);
- s. 255.563, F.S. (Section 35); and
- s. 469.003(2)(b), F.S. (Section 37).

Update to the Appropriate Agency or Current Practice

Statutes where a reference to DLES or FDC is updated to the current agency or practice are:

- s. 20.10(4)(b), F.S. (Section 2);
- s. 112.044(5), F.S. (Section 5);
- s. 252.85(1), F.S. (Section 7);
- s. 287.09431, F.S. (Section 10);
- s. 287.0947(1), F.S. (Section 12);
- s. 288.021(1), F.S. (Section 13);
- s. 288.1168, F.S. (Section 15);
- s. 288.1169, F.S. (Section 17);
- s. 331.369(2), (4), and (5), F.S. (Section 18);
- s. 377.711(5)(h), F.S. (Section 19);
- s. 377.712(3), F.S. (Section 20);
- s. 409.2576(8), F.S. (Section 21);
- s. 414.24, F.S. (Section 22);
- s. 414.40(2)(d), F.S. (Section 23);
- s. 440.385(5), F.S. (Section 24);
- s. 450.161, F.S. (Section 27);
- s. 464.203(1)(d), F.S. (Section 28);
- s. 489.1455(1)(b), F.S. (Section 29);
- s. 489.5335(1)(b), F.S. (Section 30); and
- s. 944.012(5), F.S. (Section 33).

Section 36 amends 469.002(1)(e), F.S., to conform cross-references to changes made by the bill.

Section 23 amends s. 414.40(1) and (2), F.S., to update this statute to reflect the transfer of the authority to investigate public assistance fraud from the Department of Law Enforcement to the Department of Financial Services.¹⁰

Section 34 amends s. 944.708, F.S., to remove a reference to the Agency for Workforce Innovation. Chapter 2010-117, L.O.F., amended this section to replace a reference to DLES to the agency.¹¹ However, because the Agency for Workforce Innovation does not implement any of the provisions of ss. 944.701-944.707, F.S., the rulemaking authority for the agency is unnecessary.

¹⁰ Chapter 2010-144, L.O.F.

¹¹ Section 41, ch. 2010-117, L.O.F.

Section 38 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None. The changes made by the bill are simply statutory cleanup. Based upon the research collected for Interim Report 2011-107, the agencies contacted indicated that the provisions which are repealed in the bill were either programs which had expired or provisions which were not currently implemented or necessary.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There may be other obsolete references in the Florida Statutes that could be included in the bill.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Committee Substitute by Commerce and Tourism on March 16, 2011:

The committee substitute corrects a cross reference in s. 469.002, F.S., to an obsolete provision that the bill is repealing, related to asbestos related activities. Additionally, the committee substitute merely amends s. 288.1168, F.S., to update obsolete references to

the Department of Commerce, instead of repealing ss. 288.1162 and 288.1168, F.S. The committee substitute also removes amendments made to s. 212.20, F.S., that were correcting cross-references due to the repeal of those two statutes.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Children, Families, and Elder Affairs (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (14) is added to section 408.910, Florida Statutes, to read:

408.910 Florida Health Choices Program.—

(14) EXEMPTIONS.—

(a) As used in this subsection, the term:

1. "Buyer's representative" means a participating health insurance agent as described in paragraph (4) (g).

2. "Enrollee" means an employer who is eligible to enroll



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13 in the program pursuant to paragraph (4) (a) .

14 3. "Participant" means an individual who is eligible to
15 participate in the program pursuant to paragraph (4) (b) .

16 4. "Proprietary confidential business information" means
17 information, regardless of its form or characteristics, which
18 relates to business plans, internal auditing controls, reports
19 of internal auditors, reports of external auditors of privately
20 held companies, potentially patentable material, or trade
21 secrets as defined in s. 688.002, and such information:

22 a. Is owned or controlled by a vendor requesting
23 confidentiality under this subsection;

24 b. Is intended to be and is treated by the vendor as
25 private in that the disclosure of the information would cause
26 harm to the business operations of the vendor; and

27 c. Has not been disclosed unless disclosed pursuant to a
28 statutory provision, an order of a court or administrative body,
29 or a private agreement that provides that the information may be
30 released to the public.

31 5. "Vendor" means a participating insurer or other provider
32 of services as described in paragraph (4) (d) .

33 (b)1. Personal identifying information of an enrollee or
34 participant who has applied for or participates in the Florida
35 Health Choices Program is confidential and exempt from s.
36 119.07(1) and s. 24(a), Art. I of the State Constitution.

37 2. Client and customer lists of a buyer's representative
38 which is held by the corporation is confidential and exempt from
39 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

40 3. Proprietary confidential business information of a
41 vendor which is held by the corporation is confidential and



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42 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
43 Constitution.

44 (c) The public-record exemptions in paragraph (b) apply to
45 information held by the corporation before, on, or after October
46 1, 2011.

47 (d)1. Upon request, information made confidential and
48 exempt pursuant to this subsection shall be disclosed to:

49 a. Another governmental entity in the performance of its
50 official duties and responsibilities.

51 b. Any person who has the written consent of the program's
52 applicant.

53 c. The Florida Kidcare program for the purpose of
54 administering the program authorized in ss. 409.810-409.821.

55 2. Paragraph (b) does not prohibit a participant's legal
56 guardian from obtaining confirmation of coverage, dates of
57 coverage, the name of the participant's health plan, and the
58 amount of premium being paid.

59 (e) A person who knowingly and willfully violates this
60 subsection commits a misdemeanor of the second degree,
61 punishable as provided in s. 775.082 or s. 775.083.

62 (f) This subsection is subject to the Open Government
63 Sunset Review Act in accordance with s. 119.15, and shall stand
64 repealed on October 2, 2016, unless reviewed and saved from
65 repeal through reenactment by the Legislature.

66 Section 2. (1) The Legislature finds that it is a public
67 necessity that any information identifying an enrollee or
68 participant in the Florida Health Choices Program, including
69 such information received during the application process, be
70 held confidential and exempt from public-records requirements.



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71 The harm caused by releasing such personal and sensitive
72 information outweighs any public benefit from releasing it. If
73 such information is not held confidential, the administration of
74 the program could be significantly impaired because businesses
75 and individuals would be less inclined to apply, participate, or
76 enroll in the Florida Health Choices Program. This lack of
77 participation would significantly decrease the number of the
78 program's participants or enrollees. Therefore, it is a public
79 necessity that any information identifying a participant or
80 enrollee in the Florida Health Choices Program, including such
81 information received during the application process, be held
82 confidential and exempt from public-records requirements.

83 (2) The Legislature finds that it is a public necessity
84 that proprietary confidential business information of a vendor
85 and the customer and client lists of a buyer's representative be
86 made confidential and exempt from public-records requirements.
87 The disclosure of a vendor's proprietary confidential business
88 information or a customer and client list of a buyer's
89 representative could cause injury in the marketplace by
90 providing competitors with detailed insights into confidential
91 business information, strategies, methodologies, plans, or
92 client lists which would diminish the advantage that the vendor
93 or the buyer's representative maintains over those that do not
94 possess such information. Without these exemptions, private-
95 sector vendors or buyer's representatives, whose business
96 records generally are not required to be open to the public,
97 might refrain from participating in the Florida Health Choices
98 Program and not offer affordable, quality health insurance,
99 health services, and benefits' products through the program. The



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100 harm to the vendors or the buyer's representatives in the
101 marketplace and harm to the effective administration of the
102 Florida Health Choices Program caused by the public disclosure
103 of such information far outweighs the public benefits derived
104 from the release of the information. Therefore, it is a public
105 necessity that proprietary confidential business information of
106 the vendors and customer and client lists of the buyer's
107 representatives be held confidential and exempt from public-
108 records requirements.

109 Section 3. This act shall take effect October 1, 2011.

110
111 ===== T I T L E A M E N D M E N T =====

112 And the title is amended as follows:

113 Delete everything before the enacting clause
114 and insert:

115 A bill to be entitled
116 An act relating to public records; amending s.
117 408.910, F.S.; providing definitions; providing
118 exemptions from public-records requirements for
119 personal identifying information of an enrollee or
120 participant in the Florida Health Choices Program,
121 client and customer lists of buyers' representatives
122 which are held by Florida Health Choices, Inc., and
123 proprietary confidential business information of
124 vendors which is held by Florida Health Choices, Inc.;
125 providing for disclosure of such confidential and
126 exempt information to certain persons and entities
127 upon written request; providing that the guardian of a
128 participant in the program is not prohibited from



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129 obtaining certain information; providing a criminal
130 penalty; providing for future legislative review and
131 repeal of the exemptions; providing findings of public
132 necessity; providing an effective date.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 1456

INTRODUCER: Senator Garcia

SUBJECT: Public Records/Florida Health Choices Program

DATE: April 1, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Stovall	HR	Favorable
2.	Daniell	Walsh	CF	Pre-meeting
3.	_____	_____	GO	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill creates a public-records exemption for any personal, identifying information of an applicant, enrollee, or participant in the Florida Health Choices program (FHC). The bill provides exceptions under which the information may be disclosed. The bill applies retroactively to any information identifying an applicant, enrollee, or participant of FHC. The bill provides for repeal of the public-records exemption on October 2, 2016, unless it is saved from repeal by the Open Government Sunset Review process and reenacted by the Legislature. The bill also provides a Legislative finding of public necessity for the public-records exemption.

This bill substantially amends section 408.910, Florida Statutes.

II. Present Situation:

Florida's Public Records Laws

Florida has a long history of providing public access to government records. The Legislature enacted the first public-records law in 1892.¹ In 1992, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, section 24 of the Florida Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

¹ Sections 1390, 1391, F.S. (Rev. 1892).

² FLA. CONST. art. I, s. 24.

The Public-Records Act³ specifies conditions under which public access must be provided to records of the executive branch and other agencies. Unless specifically exempted, all agency⁴ records are available for public inspection. Section 119.011(12), F.S., defines the term “public records” very broadly to include “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material ... made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” The Florida Supreme Court has interpreted the definition of public records to encompass all materials made or received by an agency in connection with official business which are “intended to perpetuate, communicate, or formulize knowledge.”⁵ Unless made exempt, all such materials are open for public inspection at the moment they become records.⁶

Only the Legislature is authorized to create exemptions to open-government requirements. Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁷

Records may be identified as either exempt from public inspection or exempt and confidential. If the Legislature makes a record exempt and confidential, the information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁸ If a record is simply made exempt from public inspection, the exemption does not prohibit the showing of such information at the discretion of the agency holding it.⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁰ provides for the systematic review of exemptions from the Public-Records Act in the fifth year after the exemption’s enactment. By June 1 of each year, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year. The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹¹ An identifiable public purpose is served if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An identifiable public purpose is served if the exemption:

³ Chapter 119, F.S.

⁴ An agency includes any state, county, or municipal officer, department, or other separate unit of government that is created or established by law, as well as any other public or private agency or person acting on behalf of any public agency. Section 119.011(2), F.S.

⁵ *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁶ *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).

⁷ FLA. CONST. art. I, s. 24(c).

⁸ *WFTV, Inc. v. School Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004).

⁹ *Id.* at 54.

¹⁰ Section 119.15, F.S.

¹¹ Section 119.15(6)(b), F.S.

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be greatly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or combination of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.¹²

The act also requires the Legislature, as part of the review process, to consider the following six questions that go to the scope, public purpose, and necessity of the exemption:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?¹³

If an exemption is expanded during reenactment (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.¹⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created,¹⁵ then a public necessity statement and a two-thirds vote for passage are not required.¹⁶

The Florida Health Choices Program

In 2008, the Legislature created the Florida Health Choices (FHC) program in s. 408.910, F.S., as a single, centralized “marketplace” for the sale and purchase of various products that enable individuals to pay for health care coverage. The Florida Health Choices Corporation (Corporation) was created to administer the program.¹⁷

¹² *Id.*

¹³ Section 119.15(6)(a), F.S.

¹⁴ FLA. CONST. art. I, s. 24(c).

¹⁵ An example of an exception to a public records exemption would be allowing another agency access to confidential or exempt records.

¹⁶ *Cf.*, *State v. Knight*, 661 So. 2d 344 (Fla. 4th DCA 1995).

¹⁷ See s. 4, ch. 2008-32, Laws of Fla.

The FHC program defines “marketplace” as follows: “Florida’s Insurance Marketplace is a web-based shopping experience that allows easy access and side-by-side comparison of health care options for individuals, families, and businesses.”¹⁸

The following types of employers are eligible to use FHC for choosing their employer-sponsored health plan:

- Employers with 1-50 employees;
- Fiscally constrained counties;
- Municipalities with populations less than 50,000; and
- School districts in fiscally constrained counties.¹⁹

The Corporation is charged with establishing procedures for employer participation, including compliance with Section 125 of the Internal Revenue Code regarding cafeteria plans and enabling the employers’ contributions and the employees’ contributions to be made using pre-tax dollars.²⁰ Employers must also designate the Corporation as the third-party administrator for the employer’s health plan, establish payroll deduction, and arrange for employer contribution payments.

The following types of individuals are eligible to purchase FHC health care products and coverage:

- Employees of employers choosing FHC as the employer-sponsored health plan;
- State government employees not eligible for state employee health benefits;
- State government retirees;
- Medicaid Reform participants who select the opt-out provision of Reform;²¹ and
- Employees of statutory rural hospitals.²²

The FHC program establishes portability of products by allowing individuals to voluntarily continue participation in the program regardless of changes in job status. The program establishes procedures for portable participation by individuals, who must make arrangement for payment (such as changing payroll deduction with a change in employer, or arranging for the contribution formerly made by an employer to be made by the individual).

The FHC model encourages diversity of price and benefit packages and allows for many types of products provided by many types of vendors, such as:

¹⁸ Florida Health Choices, *How Does the Marketplace Work?*, <http://myfloridachoice.org/faq/> (last visited Mar. 30, 2011).

¹⁹ Section 408.910(4)(a), F.S.

²⁰ Section 125 allows employers to offer employees a choice between cash salary and a variety of nontaxable (qualified) benefits. A qualified benefit is one that does not defer compensation and is excludable from an employee’s gross income under a specific provision of the IRS Code, without being subject to the principles of constructive receipt. Qualified benefits include health care, vision and dental care, group-term life insurance, disability, adoption assistance and certain other benefits.

²¹ The “Medicaid Reform” pilot program authorized under s. 409.91211, F.S., allows Medicaid recipients to “opt-out” of the state-run Medicaid program and use a Medicaid-funded subsidy to pay their share of the premium for employer-sponsored health coverage, if available.

²² Section 408.910(4)(b), F.S.

- Licensed insurers may sell health insurance policies, limited benefit policies, other risk-bearing coverage, and other products or services.
- Licensed health maintenance organizations (HMOs) may sell health coverage policies, limited benefit policies, other risk-bearing products, and other products or services.
- Licensed prepaid clinic service providers may sell prepaid service contracts and other arrangements for a specified amount and type of health services or treatments.
- Out-of-state insurers may sell health insurance policies, limited benefit policies, other risk-bearing products, and other products or services.
- Health care providers, including hospitals and other licensed health facilities, health care clinics, licensed health professionals, pharmacies, and other licensed health care providers, may sell non-risk-bearing service contracts and other arrangements for a specified amount and type of health services or treatments.
- Provider organizations including provider service networks, group practices, professional associations, and other incorporated organizations of providers, may sell non-risk-bearing service contracts and arrangements for a specified amount and type of health services or treatments.
- Corporate entities providing specific health services in accordance with applicable state laws may sell service contracts and arrangements for a specified amount and type of health services or treatments.²³

These products within the FHC program are not subject to the licensing requirements or mandated coverage or offering requirements of ch. 641 or part VI of ch. 627. However, only licensed vendors may offer risk-bearing products.

The program provides for the exclusion of vendors for deceptive or predatory practices, financial insolvency, and failure to comply with program standards set by the Corporation.²⁴ The program establishes procedures for participation by vendors, which must submit complete descriptions of the products offered, including information on the provider network, set product prices based on the basic risk-adjustment factors of age, gender, and location of the individual participant, participate in ongoing reporting as required by the Corporation, and establish grievance procedures.²⁵ In addition, vendors must agree to make all the products they offer available to all individual participants in the program.

The program provides that licensed health insurance agents may voluntarily participate as buyers' representatives to act on behalf of individual purchasers and provide information about the products and services sold.²⁶ Such agents would receive compensation from the Corporation for performing this function. The program requires such agents to receive training and disclose relationships with vendors.

As additional tools for helping consumers make informed decisions, the program is required to enable purchasing through an interactive website and make information about the products and

²³ Section 408.910(4)(d), F.S.

²⁴ *Id.*

²⁵ Section 408.910(4)(f), F.S.

²⁶ Section 408.910(4)(g), F.S.

services available on the website and through other means.²⁷ The program requires that consumers are made aware of any benefit limitations and can make informed choices.

The Corporation is charged with establishing the marketplace and performing several functions to administer it. The Corporation is required to establish procedures to determine the eligibility of employers, vendors, individuals and agents, and develop criteria for the exclusion of vendors. The Corporation must collect individual and employer contributions and pay them out to vendors. The Corporation must establish procedures for application, enrollment, risk assessment, risk adjustment, plan administration, performance monitoring, and consumer education. The Corporation has authority to establish qualifying criteria and certification procedures for vendors, including requiring performance bonds, monitoring vendor performance, and enforcing the terms of agreements with vendors.²⁸

To avoid selection bias in the distribution of consumers among available products, the Corporation must employ a variety of risk-pooling techniques. Most notably, these measures include the ability to re-allocate a portion of the premium paid for risk-bearing products through a post-enrollment risk adjustment. This adjustment process will be applied monthly based on data reported by the vendors about their enrollees.²⁹

The Corporation is charged with coordinating with the Department of Revenue to develop a plan to establish tax credits or refunds for employers that participate in the program.³⁰

Launching Florida Health Choices³¹

The FHC program has scheduled a phased-in launch of the marketplace for 2011 and 2012. Phase One, known as “Quick Start,” will support the application and enrollment of eligible employers, employees, and insurance agents in the summer of 2011. The initial web-based portal will support up to nine medical coverage plans and permit side-by-side comparison of benefits and costs.

An online calculator will display member premium costs after taking into account any employer contributions. A statewide customer contact center will open in St. Petersburg, Florida, and the ability to accept payroll deducted premiums will also be included.

The Mid-Term phase is designed to expand the portal functionality for both employers and insurance agents. Supporting up to 20 vendors, the Mid-Term portal offerings can include dental, vision, and prepaid plans.

With the Long-Term phase expected in 2012, the marketplace is expected to offer life insurance and other non-medical products to enrolled participants and employers.

²⁷ Section 408.910(8), F.S.

²⁸ See s. 408.910(11)(i), F.S.

²⁹ Section 408.910(9), F.S.

³⁰ Section 408.910(11)(i)10., F.S.

³¹ Information contained in this portion of the Present Situation of this bill analysis is from Florida Health Choices, *Florida Health Choices 2010 Annual Report*, 3 (Feb. 1, 2011), available at http://myfloridachoice.org/wp-content/uploads/2011/02/FHC-AnnualReport_v2a.pdf (last visited Mar. 30, 2011).

Information Collected and Utilized in the Florida Health Choices Program

In the administration of the program and the execution of the functions described above, the FHC program may collect and utilize various pieces of personal, identifying information about applicants, enrollees, and participants. When applying for the program, insurance agents, employers, and eligible employees will provide a variety of personal and financial information. Information could include a participating insurance agent's client list, an employer's business and accounting records, human resource records, or other proprietary business or personal identification information.³²

III. Effect of Proposed Changes:

This bill creates a public-records exemption making any personal, identifying information of an applicant, enrollee, or participant in the Florida Health Choices (FHC) program confidential and exempt from s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution.

The bill creates the following exceptions by requiring that such information be disclosed to:

- Another governmental entity in the performance of its official duties and responsibilities;
- Any person who has the written consent of the program applicant; and
- The Florida KidCare program for the purpose of administering the program.³³

The public-records exemption does not prohibit an enrollee's legal guardian from obtaining confirmation of coverage, dates of coverage, the name of the enrollee's health plan, and the amount of premium being paid.

The bill provides that the exemption applies to any personal information of an applicant, enrollee, or participant in the FHC program before, on, or after the bill's effective date, and any person who knowingly and willfully violates the exemption commits a misdemeanor of the second degree.³⁴

The public-records exemption is subject to the Open Government Sunset Review Act and will expire on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides justification for the public necessity of the exemption. Specifically, the bill states that the information identifying an applicant, enrollee, or participant in the FHC program must be confidential and exempt in order to protect sensitive personal, financial, and medical

³² E-mail from Florida Health Choices to professional staff of the Florida Senate Committee on Health Regulation, Mar. 18, 2011, 1:40 pm EDT (on file with the Senate Committee on Health Regulation).

³³ Under certain circumstances in federal law, health insurance exchanges similar to the marketplace created under the FHC program could be required to exchange information with the state Medicaid program. In Florida, the state Medicaid program also exchanges data with the Florida KidCare program. The bill provides these exceptions to the FHC program's public records exemption to allow FHC data to be exchanged with those programs as necessary.

³⁴ A misdemeanor of the second degree is punishable by up to 60 days imprisonment and a \$500 fine. See ss. 775.082 and 775.083, F.S.

information. Additionally, the bill provides that if such information was made available to the public, the administration of the program would be significantly impaired because applicants would be less inclined to apply.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill creates a new public-records exemption for all personal, identifying information of an applicant, enrollee, or participant in the Florida Health Choices (FHC) program. This bill appears to comply with the requirements of article I, section 24 of the Florida Constitution that public-records exemptions state the public necessity justifying the exemption, be no broader than necessary to accomplish the stated purpose, and be addressed in legislation separate from substantive law changes.

Additionally, because this bill is creating a new public-records exemption, it is subject to a two-thirds vote of each house of the Legislature for enactment as required by article I, section 24 of the Florida Constitution.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

D. Other Constitutional Issues:

This bill provides that the public-records exemption created applies to any information identifying an applicant, enrollee, or participant in the Florida Health Choices Program *before*, on, or after the effective date of the bill.

Retroactive operation is disfavored by courts and generally “statutes are prospective, and will not be construed to have retroactive operation unless the language employed in the enactment is so clear it will admit of no other construction.”³⁵ The Florida Supreme Court has articulated four issues to consider when determining whether a statute may be retroactively applied:

- Is the statute procedural or substantive?
- Was there an unambiguous legislative intent for retroactive application?
- Was [a person’s] right vested or inchoate?
- Is the application of [the statute] to these facts unconstitutionally retroactive?³⁶

The general rule of statutory construction is that a procedural or remedial statute may operate retroactively, but that a substantive statute may not operate retroactively without clear legislative intent. Substantive laws either create or impose a new obligation or duty, or impair or destroy existing rights, and procedural laws enforce those rights or obligations.³⁷

Additionally, the bill makes it clear that it is the Legislature’s intent to apply the law retroactively. “Where a statute expresses clear legislative intent for retroactive application, courts will apply the provision retroactively.”³⁸ A court will not follow this rationale, however, if applying a statute retroactively will impair vested rights, create new obligations, or impose new penalties.³⁹ This bill does not appear to do any of these things.

Accordingly, the retroactive nature of the bill may survive a constitutional challenge.

VI. Technical Deficiencies:

In the public necessity portion of the bill some of the language appears duplicative. For example, lines 56-61 provide that if the “information is not kept confidential, the administration of the program could be significantly impaired because the applicants, participants, and enrollees would be less inclined to participate in the program if personal medical and financial information were made available to the public.” Then on lines 61-65 the bill provides “the administration of the Florida Health Choices program would be significantly impaired because applicants would be less inclined to apply to the program due to the fact that such identifying information would be made available to the public.”

VII. Related Issues:

None.

³⁵ Norman J. Singer and J.D. Shambie Singer, *Prospective or retroactive interpretation*, 2 SUTHERLAND STATUTORY CONSTR. s. 41:4 (6th ed. 2009).

³⁶ *Weingrad v. Miles*, 2010 WL 711801, *2 (Fla. 3d DCA 2010) (internal citations omitted).

³⁷ See *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994); *In re Rules of Criminal Procedure*, 272 So. 2d 65, 65 (Fla. 1972).

³⁸ *Weingrad*, 2010 WL 711801 at *3.

³⁹ *Id.* at *4.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 1650

INTRODUCER: Military Affairs, Space, and Domestic Security Committee and Senator Storms

SUBJECT: Child Custody

DATE: April 1, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Connor	Maclure	JU	Favorable
2.	Fleming	Carter	MS	Fav/CS
3.	Daniell	Walsh	CF	Pre-meeting
4.			BC	
5.				
6.				

I. Summary:

This bill provides that a parent’s activation, deployment, or temporary assignment to military service and the resulting temporary disruption to the child may not be the sole factor in a court’s decision to grant a petition for or modification of a permanent time-sharing agreement. Under current law, a court is prohibited from modifying time-sharing during the time a parent is away for military service, except to issue a temporary modification order if it is in the best interest of the child. There is no specific provision stating that military service cannot be the sole factor in granting a petition for modification.

The bill further provides that if such a temporary order is issued, the court must automatically reinstate the time-sharing order previously in effect before the military parent’s activation, deployment, or temporary assignment to military service within 10 days after notification by that parent of his or her return from service unless resumption of the original order is no longer in the child’s best interest. The bill also provides that the nonmilitary parent has the burden of proving that the original order is no longer in the child’s best interest.

This bill substantially amends section 61.13002, Florida Statutes.

II. Present Situation:

Time-Sharing After Dissolution of Marriage

Chapter 61, F.S., is titled “Dissolution of Marriage; Support; Time-Sharing.” The purposes of the chapter are described as follows:

- To preserve the integrity of marriage and to safeguard meaningful family relationships;¹
- To promote the amicable settlement of disputes that arise between parties to a marriage;² and
- To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.³

Upon dissolution of marriage, the parties develop a parenting plan approved by the court. The parenting plan must, at a minimum, describe in adequate detail:

- How the parents will share and be responsible for the daily tasks associated with the upbringing of the child;
- The time-sharing schedule arrangements that specify the time that the minor child will spend with each parent;
- A designation of who will be responsible for any and all forms of health care, school-related matters, including the address to be used for school-boundary determination and registration, and other activities; and
- The methods and technologies that the parents will use to communicate with the child.⁴

Once the parenting plan and time-sharing schedule are approved by the court, modification requires a parent to show a substantial, material, and unanticipated change in circumstances and that the modification is in the best interests of the child.⁵

The Legislature has stated that it is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parents is dissolved.⁶ It is also articulated public policy to encourage parents to share the rights and responsibilities, and joys, of childrearing.⁷ There is no presumption in Florida for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child.⁸ Florida courts determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child.⁹ To determine the best interests of the child, the court will consider a list of factors that is enumerated in statute, but is not exhaustive. Some of the factors include: 1) capacity of each parent to have a close parent-child relationship; 2) length of time the child has lived in a stable environment; 3) moral fitness of the parents; 4) reasonable preference of the child; 5) evidence of violence, abuse, or neglect; and 6) developmental stages and needs of the child.¹⁰

¹ Section 61.001(2)(a), F.S.

² Section 61.001(2)(b), F.S.

³ Section 61.001(2)(c), F.S.

⁴ Section 61.13(2)(b), F.S.

⁵ Section 61.13(3), F.S.

⁶ Section 61.13(2)(c)1., F.S.

⁷ *Id.*

⁸ *Id.*

⁹ Section 61.13(3), F.S.

¹⁰ *See s. 61.13(3)(a)-(t), F.S.*

Time-Sharing and Military Parents

In addition to the numerous factors that Florida courts take into account in every time-sharing determination, the Legislature has recognized the need to consider the unique circumstances of parents serving in the military regarding modification of time-sharing.¹¹ When a parent is unable to comply with a time-sharing schedule because of military service, courts are precluded from modifying the judgment or order as it existed on the date the parent left for service.¹² The court may, however, enter a temporary modification order only if there is clear and convincing evidence that such modification is in the best interests of the child.¹³ Before entering a temporary order for modification, courts are required to consider and provide for as much contact between the military parent and his or her child and to permit liberal time-sharing periods during leave from military service.¹⁴ Additionally, if a parent cannot comply with time-sharing because he or she is away for military service in excess of 90 days, the parent has the option to designate a family member to exercise time-sharing with the child on the parent's behalf.¹⁵

In the event that a temporary order to modify the time-sharing agreement is issued, the court is required to reinstate the order previously in effect upon the military parent's return from service. If good cause is shown, the court will hold an expedited hearing in custody and visitation matters and allow the military parent to appear remotely if military duties preclude him or her from appearing in person.¹⁶

III. Effect of Proposed Changes:

This bill provides that a parent's activation, deployment, or temporary assignment to military service and the resulting temporary disruption to the child may not be the sole factor in a court's decision to grant a petition for or modification of permanent time-sharing and parental responsibility. This provision clearly directs courts to look at the totality of the circumstances when evaluating the inability of military parents to fully comply with previously ordered time-sharing agreements due to their service obligations. Although current law prohibits courts from modifying time-sharing during the time a parent is away for military service, except to issue a temporary modification order if it is in the best interest of the child, there is no specific provision stating that military service cannot be the sole factor in granting a petition for modification. The bill emphasizes that a court should not find that continuing a current time-sharing agreement is against a child's best interest solely on the basis that the military parent is unable to be present during service.

The bill further provides that if such a temporary order is issued, the court must automatically reinstate the time-sharing order previously in effect before the military parent's activation, deployment, or temporary assignment to military service within 10 days after notification by that parent of his or her return from service. Current law does not specify notification requirements on the part of a military parent returning from service or a set period of time within which the

¹¹ Section 61.13002, F.S.

¹² Section 61.13002(1), F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 61.13002(2), F.S.

¹⁶ Section 61.13002(5), F.S.

court must reinstate the previous time-sharing order. This provision in the bill will provide the military parent with a set time by which the court will restore the previous time-sharing agreement upon his or her notification of return from service, instead of having to wait an undetermined period of time. There is an exception if the court finds that resumption of the original order is no longer in the child's best interest.

The bill also provides that the nonmilitary parent has the burden of proving that the original order is no longer in the child's best interest. The statute in its current form does not specify who bears the burden of proof. Generally, in a legal action the burden of proof is on the party who asserts the proposition to be established. Thus, this provision is most likely intended to be a codification of current practice by specifying that the burden is on the parent who is asserting that the current time-sharing arrangement is no longer in the best interest of the child.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Parents who are away serving in the military will be more likely to maintain current time-sharing schedules with their children.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) reports that the bill's requirement that the court reinstate the time-sharing order previously in effect within 10 days after the notification of that parent of his or her return from service will increase judicial workload, although the exact impact cannot be determined. The OSCA also notes that

because the bill does not specify how the parent will notify the court, the ambiguity may result in the need for clarification by the court and require additional judicial workload.¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Military Affairs, Space, & Domestic Security Committee on March 30, 2011:

The committee substitute:

- Clarifies that the bill applies to the modification of permanent time-sharing orders; and
- Clarifies that if a temporary order is issued, the previous time-sharing order must be automatically reinstated within 10 days of notification by the military parent of his or her return.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁷ Office of the State Courts Administrator, *Senate Bill 1650 Fiscal Analysis* (Mar. 8, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 1850

INTRODUCER: Senator Evers

SUBJECT: Juvenile Justice Reform

DATE: April 1, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	Preston	Walsh	CF	Pre-meeting
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill makes changes to the juvenile justice chapter, along with conforming changes to the “Comprehensive Child and Adolescent Mental Health Services Act” in an effort to enhance services for youth in the juvenile justice system. Specifically, the bill:

- Amends the definition of “child or adolescent at risk of emotional disturbance” to include the additional risk factor of “being 9 years of age or younger at the time of referral for a delinquent act;”
- Encourages the diversion of youth nine years of age or younger who are found by a court to pose no danger to the community and are unlikely to recidivate back into supervision;
- Promotes the use of restorative justice practices to support victims of juvenile delinquency;
- Adds counties, municipalities and the Department of Juvenile Justice (DJJ) to the specified entities that are encouraged to create pre-arrest or post-arrest diversion programs for youth nine years of age or younger and youth who are first time misdemeanants;
- Allows a youth taken into custody for a misdemeanor domestic violence charge, if he or she has a violent family history or has been abused, to be placed in a Child in need of services/Family in need of services (CINS/FINS) shelter (unless the youth is subject to secure detention because of his or her prior criminal history);
- Requires a juvenile probation officer during intake to recommend referring this type of youth to an appropriate CINS/FINS shelter;
- Prohibits a youth 9 years of age or younger from being placed into secure detention unless the youth has been charged with a capital felony, a life felony, or a felony of the first degree;

- Requires the risk assessment instrument, that should be effective at predicting risk and avoiding the unnecessary use of secure detention, to be developed by the DJJ in consultation with representatives appointed by specified associations;
- Allows for the commitment of a youth who is pregnant, or a mother with an infant, to a mother-infant program;
- Clarifies that youth participating in a work program or in community service under s. 985.45, F.S., are employees of the state for purposes of workers compensation; and
- Consolidates three currently required annual reports into one comprehensive annual report which is due to the Governor and Legislature by January 15 of each year.

This bill substantially amends the following sections of the Florida Statutes: 394.492, 985.02, 985.125, 985.145, 985.24, 985.245, 985.255, 985.441, 985.45, and 985.632.

II. Present Situation:

The mission of DJJ is to increase public safety by reducing juvenile delinquency through effective prevention, intervention, and treatment services that strengthen families and turn around the lives of troubled youth.¹ In Fiscal Year 2009-10, 75,166 youth were referred to the DJJ for delinquency offenses. Referrals are the juvenile equivalent of arrests and are the first step in the delinquency process.²

The Department of Children and Families (DCF) and DJJ are working together to improve outcomes for children and youth served by both agencies. One area of focus has become the need to divert young children from the juvenile justice system, while identifying and addressing contributing factors to their delinquency.³ An analysis by DJJ shows that DCF had contact with approximately 30 percent of the youth age nine and younger who were referred to DJJ for a delinquent act.⁴ In Fiscal Year 2009-10, there were 391 youth, ages nine and younger, that were referred to DJJ.⁵

Emotional Disturbance Risk Factors

Section 394.492(4), F.S., defines a “child or adolescent at risk of emotional disturbance” as a person under 18 years of age who has an increased likelihood of becoming emotionally disturbed because of certain specified risk factors. Currently, DCF uses this definition to determine which youth to serve through the Comprehensive Child and Adolescent Mental Health Services Act.

According to DCF, children deemed to be “at risk” may only be funded by general revenue or trust funds as the Community Mental Health Block Grant rules prohibit its use for the “at-risk” population. Children’s Mental Health general revenue and trust funds are limited and are used

¹ Department of Juvenile Justice website, available at: <http://www.djj.state.fl.us/AboutDJJ/index.html> (last visited March 15, 2011).

² Florida Government Accountability Report, Department of Juvenile Justice, available at: <http://www.oppaga.state.fl.us/profiles/1073/> (last visited March 15, 2011).

³ Department of Children and Families, 2009 Staff Analysis and Economic Impact, SB 2128, on file with the Children, Families, and Elder Affairs Committee.

⁴ Department of Juvenile Justice, 2010 Legislative Session Bill Analysis SB 1072, on file with the Senate Criminal Justice Committee.

⁵ Department of Juvenile Justice, 2011 Legislative Session Bill Analysis SB 1850, on file with the Senate Criminal Justice Committee.

primarily for children and adolescents with serious emotional disturbances or emotional disturbances who are not Medicaid-eligible or who have no other available funding source.⁶

Legislative Intent

Section 985.02, F.S., sets forth the Legislature's intent for the juvenile justice system. Subsection (3) of the statute provides that it is the policy of the state with respect to juvenile justice and delinquency prevention to first protect the public from acts of delinquency. In addition, it is the policy of the state to:

Develop and implement effective programs to prevent delinquency, to divert children from the traditional juvenile justice system, to intervene at an early stage of delinquency, and to provide critically needed alternatives to institutionalization and deep-end commitment.⁷

Subsection (4) of the statute, relating to juvenile detention, specifies that the Legislature finds that secure detention is appropriate to provide punishment that discourages further delinquent behavior.

Subsection (5) of the statute, relating to serious or habitual juvenile offenders, provides the following:

The Legislature finds that fighting crime effectively requires a multipronged effort focusing on particular classes of delinquent children and the development of particular programs. This state's juvenile justice system has an inadequate number of beds for serious or habitual juvenile offenders and an inadequate number of community and residential programs for a significant number of children whose delinquent behavior is due to or connected with illicit substance abuse. In addition, a significant number of children have been adjudicated in adult criminal court and placed in this state's prisons where programs are inadequate to meet their rehabilitative needs and where space is needed for adult offenders. Recidivism rates for each of these classes of offenders exceed those tolerated by the Legislature and by the citizens of this state.⁸

Diversion

Diversion uses programs that are alternatives to the formal juvenile justice system for youth who have been charged with a minor crime. These individuals share certain high-risk factors, including a first offense at age 15 or younger, poor school performance and truancy, lack of parental supervision, substance abuse problems, or gang affiliation. Diversion programs include Community Arbitration, Juvenile Alternative Services Program (JASP), Teen Court, Civil Citation, Boy and Girl Scouts, Boys and Girls Clubs, mentoring programs, and alternative schools. These programs employ a variety of non-judicial sanctions, including:⁹

⁶ Department of Children and Families, 2011 Legislative Session Bill Analysis SB 1850, on file with the Senate Children, Families, and Elder Affairs Committee.

⁷ Section 985.02(3), F.S.

⁸ Section 985.02(5), F.S.

⁹ Department of Juvenile Justice, Probation and Community Intervention website, available at: <http://www.djj.state.fl.us/Probation/index.html> (last visited March 15, 2011).

- Restitution (payment) to the victim(s);
- Community service hours;
- Letter of apology to the victim(s);
- Curfew;
- Forfeiture of driver's license;
- Encouragement to avoid contact with co-defendants, friends, or acquaintances who are deemed to be inappropriate associations;
- Referrals to local social service agencies; and
- Substance abuse or mental health counseling.

Section 985.125, F.S., allows a law enforcement agency or a school district, in cooperation with the state attorney, to create a prearrest or postarrest diversion program.

Intake

Section 985.14, F.S., requires the DJJ to develop an intake system whereby a child brought into intake is assigned a juvenile probation officer. The purpose of the intake process is to assess the child's needs and risks and to determine the most appropriate treatment plan and setting for the child's programmatic needs and risks. The intake process is performed by DJJ through a case management system, and a child's assigned juvenile probation officer serves as the primary case manager.¹⁰

Currently, s. 985.145(1)(d), F.S., requires a child's juvenile probation officer to ensure that a risk assessment instrument which establishes the child's eligibility for detention has been completed and that the appropriate recommendation was made to the court.

Detention – Initial Assessment

Section 985.24, F.S., provides criteria used in determining if a child alleged to have committed a delinquent act qualifies for detention. Subsection (2) of the statute specifies that a child alleged to have committed a delinquent act may not be placed in detention for any of the following reasons:

- To allow a parent to avoid his or her legal responsibilities;
- To permit more convenient administrative access to the child;
- To facilitate further interrogation or investigation; or
- Due to a lack of appropriate facilities.¹¹

Detention Risk Assessment Instrument

Section 985.245, F.S., requires a detention risk assessment instrument (RAI) to be developed by DJJ in agreement with representatives of various associations, including the state attorneys, public defenders, sheriffs, police chiefs, and circuit judges. All determinations and court orders regarding detention placements must be based on a risk assessment of the youth, except in the case of a youth charged with domestic violence. According to DJJ, the current (RAI) has been used since 1992, and it is in the process of being validated.¹²

¹⁰ See ss. 985.14 and 985.145, F.S.

¹¹ Section 985.24(2), F.S.

¹² Department of Juvenile Justice, 2009 Legislative Session Bill Analysis SB 2128, on file with the committee.

Continued Detention

A youth charged with domestic violence (misdemeanor or felony) may be held in secure detention (regardless of whether he or she meets detention criteria) if the court makes specific written findings that respite care is not available and it is necessary to place the youth in secure detention to protect the victim from injury.¹³ Such youth is not eligible to be placed in a CINS/FINS shelter.¹⁴

Mother/Infant Commitment Program

Section 985.441, F.S., governs the operation of juvenile commitment facilities. Currently, the DJJ operates a 20-bed mother/infant program in Miami-Dade County; however, there is no statutory provision for programs designed for pregnant girls or mothers with infants.

Women in Need of Greater Strength (WINGS) for Life was established in 2001 as a residential commitment program for females in an educational environment. On July 1, 2006, WINGS became a residential commitment treatment program for 20 pregnant or postpartum females and their babies. The mission of the WINGS for Life program is to be committed to celebrating diversity and womanhood by working to enhance the quality of life for the young woman and her child.¹⁵

The objectives of the program are to provide a structured and supervised transition from residential placement to the community and to closely monitor the youth to ensure public safety. The goal is to return these youth back into the mainstream of their communities with the skills to lead productive lives and successfully parent their children. The WINGS for Life program currently has the capacity to serve 20 women ages 14 – 19.¹⁶

Program Review and Reporting Requirements

The DJJ is required to submit to the Governor and Legislature various reports relating to program accountability, cost effectiveness, and performance measures, including the following: the Program Accountability Measures Report, a cost-effectiveness report for residential commitment programs; the Outcome Evaluation Report, a report on program outputs and outcomes; and the Quality Assurance Report, a report evaluating the internal processes in programs to determine the level of performance and the quality of services.¹⁷ The DJJ also publishes annually the Comprehensive Accountability Report (CAR).¹⁸

¹³ Section 985.255(2), F.S.

¹⁴ Section 984.14, F.S.

¹⁵ Department of Juvenile Justice, WINGS website, available at http://www.djj.state.fl.us/Residential/Facilities/south_facilities/WINGS_FOR_LIFE.html (last visited March 15, 2011).

¹⁶ *Id.*

¹⁷ Section 985.632, F.S.

¹⁸ Department of Juvenile Justice, 2011 Legislative Session Bill Analysis SB 1850, on file with the Senate Criminal Justice Committee.

III. Effect of Proposed Changes:

Section 1

Amends the definition of “Child or adolescent at risk of emotional disturbance” in s. 394.492, F.S., to include the additional risk factor of being nine years of age or younger at the time of referral for a delinquent act. According to DJJ, this change will allow those youth who qualify to receive treatment services through DCF’s community based care network.¹⁹

Section 2

The bill amends s. 985.02, F.S., relating to legislative intent language as follows. It amends subsection (3) to specify that it is the policy of the state to:

Develop and implement effective programs to prevent delinquency, to divert children from the traditional juvenile justice system, to intervene at an early stage of delinquency, and to provide critically needed alternatives to institutionalization, deep-end commitment, and secure detention.

It replaces the language in subsection (4) specifying that secure detention “is appropriate to provide punishment that discourages further delinquent behavior” with language specifying that secure detention “is appropriate to ensure public safety and guarantee court appearance.

It deletes the legislative intent language in subsection (5) relating to serious or habitual juvenile offenders.

It also creates two new subsections. Subsection (8) provides a finding that very young children need age-appropriate services to prevent future delinquent acts. It specifically encourages the diversion of youth nine years of age or younger who are found by the court to pose no danger to the community and are unlikely to recidivate. It also requires DJJ to cooperate with DCF in providing the most appropriate mental health and substance abuse services to these youth.

The new subsection (9) creates legislative intent language on restorative justice, emphasizing the importance of focusing on repairing the damage done to the victim by the delinquent youth, making the youth realize the harm he or she caused, and restoring the victim’s loss.

Section 3

Adds counties, municipalities, and DJJ as qualified entities that may establish prearrest and postarrest diversion programs by amending s. 985.125, F.S. It also encourages the use of prearrest and postarrest diversion programs for first-time misdemeanants and youth who are nine years of age or younger.

¹⁹ *Id.*

Section 4

Amends s. 985.145, F.S., juvenile probation officer responsibilities, to require a juvenile probation officer during intake to recommend referring a youth taken into custody for a misdemeanor domestic violence charge, if he or she has a violent family history or has been abused, to an appropriate CINS/FINS shelter rather than secure detention (unless the youth is subject to secure detention based upon his or her prior criminal history).

Section 5

Amends s. 985.24, F.S., detention prohibitions, by prohibiting a youth 9 years of age or younger from being placed into secure detention unless the youth has been charged with a capital felony, a life felony, or a felony of the first degree. Furthermore, it prohibits a youth who is charged with misdemeanor domestic violence who also has a violent family history or who is a victim of abuse or neglect from being placed in secure detention, if the decision for such placement is mitigated by the youth's history of trauma. This prohibition does not apply if the youth is subject to secure detention because of his or her prior criminal history.

Section 6

Amends s. 985.245, F.S., the detention risk assessment instrument (RAI), to require that the RAI be developed by DJJ *in consultation with* representatives appointed by the statutorily enumerated associations. The requirement that the parties involved evaluate and revise the RAI is removed and replaced with language requiring the RAI to be effective at predicting risk and avoiding the unnecessary use of secure detention. The bill also requires the RAI to accurately predict a child's risk of rearrest or failure to appear. It also removes "theft of a motor vehicle or possession of a stolen motor vehicle" as a factor that the RAI can consider.

Section 7

Amends s. 985.255, F. S., detention criteria, to specify that a youth charged with "felony" domestic violence, rather than "domestic violence," will be placed in secure detention. This change effectively eliminates youth charged with misdemeanor domestic violence from being placed in secure detention (except in those cases where there is no family violence or abuse history or the youth's own criminal history record warrants such secure detention placement).

Section 8

Authorizes the court to commit a juvenile mother or expectant juvenile mother to the DJJ for placement in a mother-infant program, by amending s. 985.441, F.S. The mother-infant program must be licensed as a childcare facility under s. 402.308, F.S., and the DJJ must adopt rules to govern such programs.

Section 9

Clarifies that youth participating in a work program or community service under s. 985.45, F.S., are employees of the state for workers compensation purposes. This is accomplished by deleting "liability" and replacing it with "chapter 440."

Section 10

Amends s. 985.632, F.S., relating to program review, quality assurance, cost-effectiveness, and reporting requirements. The bill consolidates three currently required annual reports into one comprehensive annual report, the Comprehensive Accountability Report (CAR), which will be

due to the Governor and Legislature by January 15 of each year. The CAR will include the following information:

- Program Accountability Measures (PAM) – a cost-effectiveness report for residential commitment programs.
- Outcome Evaluation (OE) – a report on program outputs and outcomes.
- Quality Assurance (QA) – a report evaluating the internal processes in programs to determine the level of performance and the quality of the services being provided.

Section 11

Provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DJJ reports that this bill will not have a fiscal impact.²⁰

The DCF reports that the fiscal impact of the Department of Juvenile Justice referring additional children to DCF for children's mental health services is anticipated to be minimal, since children within the target population are served within the limits of available funds.²¹

²⁰ *Id.*

²¹ Department of Children and Families, 2011 Legislative Session Bill Analysis SB 1850, on file with the Senate Children, Families, and Elder Affairs Committee.

According to the Office of State Courts Administrator, the bill will not have a significant impact on judicial or court workload. The bill encourages the establishment and use of prearrest and postarrest diversion programs for first-time misdemeanants and children who are 9 years of age or younger. The increased use of prearrest and postarrest diversion programs for first-time misdemeanants and children who are 9 years of age or younger could potentially reduce the number of litigated cases and the number of court hearings in the juvenile justice system. The impact is indeterminate because the creation and use of such programs is encouraged and not mandated. Provisions of the bill may require some changes to the Florida Rules of Juvenile Procedure.²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that if upon findings from a needs assessment, the child is found to be in need of mental health or substance abuse treatment services, DJJ will work with DCF and the child's parent or legal guardian to identify the most appropriate services and supports and available funding sources to meet the needs of the child. These supports include Medicaid, private insurance, private pay and children's mental health funds. According to DCF, most insurance-based resources will not pay for children identified "at-risk," because they require the child to have a mental health diagnosis. This will require careful consideration of the assessment and treatment needs of these children and an understanding of funding sources by those assisting the family.²³

The provisions of the bill may result in an increase in the number of children referred from DJJ to DCF for substance abuse and mental health services. Parents or guardians who choose to pursue services for their children and seek assistance to obtain them through Children's Mental Health general revenue funds may find very limited resources.²⁴

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²² Office of the State Courts Administrator. Judicial Impact Statement, HB 1233. March 14, 2011.

²³ Department of Children and Families, 2011 Legislative Session Bill Analysis SB 1850, on file with the Senate Children, Families, and Elder Affairs Committee.

²⁴ *Id.*