

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1394

SPONSOR: Senator Cowin

SUBJECT: Random Drug Testing

DATE: March 18, 1999

REVISED: 3/23/99

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barnes</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/1 amendment</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/1 amendment</u>
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

Senate Bill 1394 requires that within the Department of Children and Family Services, persons providing care or serving as volunteers to children, persons with developmental disabilities, disabled adults, and elderly persons, for 15 hours or more a week (including those who supervise those persons and volunteers) and all employees of the central abuse hotline be tested for drugs pursuant to the procedures and requirements contained in s. 112.0455, F.S., the "Drug-Free Workplace Act."

Additionally, the department is authorized to develop a program for random drug testing for these persons. As well, the department is authorized to develop a program for random drug testing for department employees who are certified as firefighters under ch. 633, F.S., or certified as correctional or law enforcement officers under ch. 943, F.S., positions which are classified as "special risk."

This bill creates section 402.355, Florida Statutes.

II. Present Situation:

Section 112.0455, F.S., establishes the "Drug-Free Workplace Act" to further three objectives:

- 1) to promote the goal of a drug-free workplace within government through fair and reasonable drug testing methods for the protection of public employees and employers;
- 2) to encourage employers to provide employees who have drug use problems with an opportunity to participate in an employee assistance program or a substance abuse treatment and rehabilitation program; and
- 3) to provide for confidentiality of testing results.

A state agency employer, under the act, has control over the type of drug testing used to screen for drug or alcohol abuse, subject to the availability of laboratories which are authorized to analyze drug specimens and are licensed by the Agency for Health Care Administration.

The “Drug-Free Workplace Act” provides that any state agency may test certain employees and job applicants for use of drugs in accordance with procedures prescribed or authorized by the act. There is no legal duty to test employees or job applicants. Under the act, an employer may conduct drug tests under the following circumstances:

- ▶ Job applicant testing;
- ▶ Reasonable suspicion testing;
- ▶ Routine fitness for duty testing; and
- ▶ Follow up testing.

The act requires that: (1) at least 60 days must elapse between a general one-time notice to all employees that a drug-testing program is being implemented and the beginning of actual drug testing; (2) prior to testing, all employees and job applicants must be given a written policy statement including certain information; (3) a notice of drug testing must be included on job vacancy announcements for positions that mandate drug testing; (4) the employer's drug testing policy must be posted in a conspicuous location on the employer's premises; and (5) copies of the employer's drug testing policy must be made available to the general public.

Provisions are also included in the act for: specimen collection and testing, notification of test results, substance abuse treatment options, confirmation testing, employer protection, confidentiality of records, laboratory drug testing standards, adoption of rules, discipline and nondiscipline remedies, federal compliance, and laboratory licensure fees.

Section 39.001(2)(d), F.S., was amended by ch. 98-403, L.O.F., to require that all employees, volunteers, and contracted personnel who perform child protective investigations in the Department of Children and Family Services or all job applicants seeking employment by the department to perform child protective investigations, be drug tested pursuant to the procedures and requirements contained in s. 112.0455, F.S. The Department of Children and Family Services has designated all department employees who perform child protective investigations and who work at the abuse hotline as safety-sensitive positions. In April, 1999, as a result of ch. 98-403, L.O.F., the department will begin drug testing 1,350 persons including all child protective investigators and their supervisors and all staff of the abuse hotline.

Section 112.0455(5)(m), F.S., defines a “safety-sensitive position” as any position, including a supervisory or management position, in which a drug impairment would constitute an immediate and direct threat to public health or safety.

The Department of Children and Family Services requires drug testing for all job applicants for special risk positions. “Special risk” is defined in s. 112.0455(5)(n), F.S., as employees who are required as conditions of employment to be certified under ch. 633, F.S., (firefighters) or

ch. 943, F.S., (correctional or law enforcement officers). The department employs certified firefighters at Florida State Hospital in Chattahoochee, Florida. Forensic institutional officers certified under ch. 943, F.S., are hired at Florida State Hospital's Forensic Unit, North Florida Evaluation and Treatment Center in Gainesville, Florida, and South Florida Evaluation and Treatment Center in Miami, Florida.

III. Effect of Proposed Changes:

Senate Bill 1394 creates s. 402.355, F.S., requiring that all persons who are employees, volunteers, or job applicants of the Department of Children and Family Services whose duties include providing care for 15 hours or more per week, to children, the developmentally disabled, disabled adults, and elderly persons and all persons who supervise these positions be tested for drugs pursuant to the procedures and requirement of s. 112.0455, F.S., the "Drug-Free Workplace Act."

Additionally, the bill specifies that all employees of the central abuse hotline are deemed to be in safety-sensitive positions defined in s. 112.0455, F.S., and must be tested pursuant to s. 112.0455, F.S.

Furthermore, the bill authorizes, but does not require, the department to develop a program for random drug testing for employees, volunteers, or job applicants whose duties include providing care for children, the disabled, and the elderly, for 15 hours or more per week, notwithstanding the notice, reasonable suspicion, and cause provisions contained in s. 112.0455, F.S. Additionally, employees of the department who require certification under ch. 633, F.S., (firefighters) and under ch. 943, F.S., (forensic institutional security officers) may be included in the program.

The department is directed to adopt rules, policies, and procedures for implementing the provisions of SB 1394.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill restricts the class of employees who are subject to random drug testing to those whose duties include providing care to children, the developmentally disabled, disabled

adults, and elderly persons, for 15 or more hours per week. Additionally, supervisors of these employees, as well as employees of the central abuse hotline, are included. The bill declares that these personnel are in “safety-sensitive” positions as defined in s. 112.0455, F.S., that is, positions in which a drug impairment would constitute an immediate and direct threat to public health or safety. Additionally, certified firefighters and forensic institutional officers employed by the department may be subject to random drug testing under the bill. The scope of the random drug testing program is limited to persons who could threaten public health or safety if impaired by drug abuse, as opposed to all employees of the department.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Department of Children and Family Services, an estimated \$319,410 is needed to implement SB 1394 during FY 1999-2000. The department estimates that 10,140 persons would be tested for drugs (8,450 current employees, volunteers, and job applicants plus 1,690 persons to allow for a 20 percent turnover rate). A single drug test costs \$31.50. (10,140 x \$31.50 equals \$319,410.)

During FY 2000-01, it would cost the department \$92,610 to comply with SB 1394 which includes drug testing 10 percent of all employees and volunteers (9,800 x .10 equals 980) by using a valid method of random sampling and allowing for a turnover rate of 20 percent (2,940 x \$31.50 equals \$92,610).

VI. Technical Deficiencies:

The bill has two subsection fours.

The bill does not specify that persons who are certified under chs. 633 or 943, F.S., and are employed by the Department of Children and Family Services, may be randomly tested pursuant to s. 402.355, F.S.

VII. Related Issues:

The bill provides that the department may adopt rules, policies, and procedures necessary to administer the section. The definition of “rule” found in s. 120.52, F.S., includes “policies” and “procedures” so these additional terms are unnecessary. Additionally, the standard terminology recommended by the Joint Administrative Procedures Committee for delegating rulemaking

authority is: “The department has authority to adopt rules to implement and administer this section.”

Furthermore, the bill provides that the random drug testing program that may be developed by the department is to be implemented “. . . notwithstanding the notice, reasonable suspicion, and cause provisions in s. 112.0455. . .” Rulemaking authority is given for the entire section, but no additional rulemaking standards related to the random drug testing program are contained in the bill. The Committee Substitute for Senate Bill 206 by the Committee on Governmental Oversight and Productivity and Senator Laurent would permit agencies to adopt rules that implement or interpret the *specific* powers and duties granted by the enabling statute. Given that the random drug testing program is to be implemented “notwithstanding” the notice, reasonable suspicion, and cause provisions of the section, the level of specificity required under the committee substitute may be inadequate to meet this standard.

VIII. Amendments:

#1 by Children and Families:

Specifies that the Department of Children and Family Services may develop a random drug testing program for persons who require certification under chs. 633 and 943, F.S., and are employed by the Department of Children and Family Services.

#1 by Governmental Oversight and Productivity:

Makes a technical correction by renumbering one subsection (4) to subsection (5) and inserts standardized rulemaking authority.