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: CS/SB 402

SPONSOR: Banking and Insurance Committee, Senator Latvala and others

SUBJECT: Health Care

DATE: February 22, 2000 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	Favorable/CS
2.			HC	
3.			FP	
4.				
5.				

I. Summary:

Under current law, the Florida Comprehensive Health Association (FCHA) provides health insurance to individuals who, due to their health status or inability to afford coverage, are unable to obtain health insurance coverage in the private market. Throughout the early years of the program, enrollment and losses were low; however, in 1989, enrollment and losses increased substantially. Legislation was enacted to prohibit the FCHA from issuing policies to new applicants after July 1, 1991 (s. 627.6484, F.S.). Established under ss. 627.648-627.6498, F.S., the FCHA currently provides coverage for approximately 802 individuals. According to representatives with FCHA, enrollment is declining at a rate of approximately 15 percent per year.

The committee substitute would replace the Florida Comprehensive Health Association with the newly created Florida Health Endowment Association (FHEA), a nonprofit legal entity which would provide insurance coverage to individuals whose pre-existing medical conditions prevent them from obtaining standard coverage in the individual health insurance market. The FHEA would be considered a health insurer for purposes of the Insurance Code; however, the association would be exempt from the certificate of authority and financial requirements of the Insurance Code. The assets and liabilities of the FCHA would be transferred to the FHEA and the provisions relating to the FCHA would be repealed.

The Board of Directors of the FHEA would be composed of a five-member board which would include the Director of the Agency for Health Care, the Insurance Commissioner (or a designee from their respective departments), and three members appointed by the Governor, including a policyholder representative, a health insurance industry representative and a member of the public.

The Board of the FHEA would be authorized to perform the following functions:

- adopt a plan of operation; administer the Florida Health Endowment Trust Fund which is created under a companion bill (SB 404); establish eligibility requirements for individuals participating in the association; contract with preferred provider organizations and health

maintenance organizations; and, offer policies patterned after the standard health benefit plan, as defined in s. 627.6699, F..S., with various premiums and deductibles and coinsurance.

- establish premium schedules for participants at the rate of 200 percent of the standard risk rate, as developed by the Department of Insurance; contract with insurers to provide disease management services for insurers that elect to participate; and, allow existing FCHA policyholders to purchase FHEA health coverage.

The association would provide each participant with a lifetime maximum benefit of $1 million. The bill provides for a $50 million appropriation from the General Revenue Fund to the Florida Health Endowment Trust Fund and that the bill would take effect on July 1, 1999. The Trust Fund is established in the companion bill (SB 404).

This bill creates a yet unnumbered section of the Florida Statutes. This bill repeals the following sections of the Florida Statutes effective upon the opening of the FHEA: 627.648, 627.6482, 627.6484, 627.6486, 627.6487, 627.64871, 627.6488, 627.6489, 627.649, 627.6496, and 627.6498. The bill repeals the following sections of the Florida Statutes effective January 1, 2001: 627.6492 and 627.6494.

II. Present Situation:

In recent years, many states have created health insurance risk pools to address the needs of the uninsured. In Florida, the State Comprehensive Health Association (the predecessor of the FCHA) was created in 1983 to offer residents of the state, through the participation of health insurance companies, a program of health insurance. The FCHA was created as a nonprofit, legal entity subject to the supervision of a three-member board of directors, appointed by the Insurance Commissioner. The board includes the chairman, who is the Insurance Commissioner or his designee, one representative of policyholders, and one representative of insurers. Presently, an independent agent serves as a representative of the insurers, as compared to a representative of an insurer selected in the past.

FCHA Eligibility, Benefits, and Premiums

Effective July 1, 1990, the FCHA was amended to require the association to pattern their coverage after the state group health insurance program including benefits, exclusions, and other limitations, except as otherwise provided by the Act. The major medical expense coverage under FCHA includes a $500,000 lifetime limit per covered life. The association provides for an annual deductible in the amount of $1,000 or more, as approved by the Department of Insurance. The association provides for a 12-month exclusion of coverage with respect to a condition that manifested itself within 6 months of the effective date of the coverage or medical advice or treatment recommended or received within a period of 6 months before the effective date of the coverage.

As a condition for being considered eligible for enrollment in the FCHA, an individual must be rejected by two insurers for coverage substantially similar to the association's coverage and no insurer has been found through the market assistance plan that is willing to accept the application. Rejection is defined to mean an offer of coverage with a material underwriting restriction or an

offer of coverage at a rate greater than the association's rate. Therefore, the rejection may or may not be due to being medically uninsurable.

Legislative changes in 1990 required the FCHA board or administrator to verify the residency of an applicant and to prohibit the enrollment of a person who is eligible for Medicaid from receiving benefits from the FCHA unless: (1) such person has an illness or disease which requires supplies or services which are covered by the association, but not under Florida's Medicaid program, and (2) the person is not receiving benefits under Medicaid. In addition, the law was clarified to allow FCHA to terminate an enrollee immediately if a person ceases to meet the eligibility requirements.

Pursuant to s. 627.6498(4)(a), F.S., the Department of Insurance annually establishes the standard risk rate that is used for determining premiums for the FCHA. Under the provisions of s. 627.6675, F.S., the department uses reasonable actuarial techniques, and standards adopted by rule. As currently provided, the maximum rates for the FCHA are 200 percent, 225 percent, and 250 percent of this standard risk rate for low, medium, and high risk individuals, respectively.

According to the FCHA, the standard risk rate that is established by the department is compared to the rates approved by the FCHA and the FCHA actuary recommends whether adjustments are necessary. The FCHA currently has no rate filing pending with the department. In 1995, the FCHA submitted its last rate filing with the department.

Assessments

As a condition of doing business in Florida, health insurers are required to pay assessments to fund the deficits of the FCHA. Companies subject to the assessment include all health insurance companies, health maintenance organizations, fraternal benefit societies, multiple employer welfare arrangements, and prepaid health clinics. Self-funded employers and governmental entities are not subject to the assessment.

Each insurer is assessed annually by the board a portion of incurred operating losses of the association, based on the insurer's market share in Florida as measured by premium volume. The total of all assessments upon a participating insurer is capped at 1 percent of such insurer's health insurance premium earned in Florida during the calendar year preceding the year for which the assessment is levied.

Closure of the FCHA

Pursuant to law, on July 1, 1991, the FCHA ceased accepting applications due to the Legislature's concern over mounting financial losses. At that time, two actuarial firms estimated the 1992 deficit of the FCHA to be between $48 - $56 million, as compared to the maximum $27 million that could be assessed against insurers under the funding formula enacted in 1990. In 1991, legislation revised the funding formula providing for maximum assessments against the insurers of 1 percent of health insurance premiums written in Florida.

The Uninsured In Florida

In the *Summary of Plan Activities, 1997-98*, the FCHA offered the following solutions to provide coverage for the uninsured:

1. Open enrollment for the state's high-risk pool, the FCHA;
2. Guarantee issue by individual insurers and health maintenance organizations;
3. Expansion of the small group market guarantee-issue requirement;
4. Allow uninsurable individuals access to the State Employee Health Insurance Plan;
5. Allow access to Medicaid, regardless of income status; or
6. Allow alternative sources of funding for FCHA.

Reopening the FCHA: Anticipated Enrollment

High-risk pools may provide a safety net for otherwise uninsurable individuals; however, they enroll a relatively small number of individuals. In the majority of states that have risk pools (22 of 25), the General Accounting Office (GAO) noted in that less than 5 percent of the non-elderly, with individual coverage, obtain coverage through a risk pool (November 1996). GAO noted reasons for low enrollment including: limited funding, lack of public awareness, and the relative expense. As of 1999, there are 28 states which have high-risk pools.

Some uninsured individuals in Florida choose not to purchase insurance coverage; however, there is a segment of medically uninsured that may purchase insurance, if it was available. According to the FCHA, a portion of the uninsured population would be willing to pay higher premiums if they were allowed to purchase health insurance coverage. The FCHA noted that 34 percent of the current enrollees have a household income of $40,000 or more.

The FCHA report estimated the number of individuals (based on 1990 FCHA enrollment data) that would enroll, if FCHA was reopened. The report estimated that between 3,700 - 6,200 individuals might enroll.

Funding Options

The report strongly recommended that, if the FCHA was to be reopened, funding (assessment/tax) base needs to be addressed to effectively finance the high-risk pool. The report suggested the following funding options:

1. Appropriate General Revenue monies;
2. Creation of another business tax;
3. Increase sales tax;
4. Provide premium tax offset for assessment;
5. Raise risk-pool premiums;
6. Tax hospital revenues;
7. Place service charge on hospitals and surgical centers;
8. Assess health insurance policyholders;
9. Increase taxes on cigarettes, alcohol, or other products.

Cost Analysis

The average total assessment per enrollee, premium paid by enrollee, and average expense per enrollee for fiscal years 1990-98 is depicted in the following chart:

FY	Average Number of Enrollees	Total Assessments Against Insurers (millions)	Avg. Cost To Insurers (Amt. assessed per member)	Average Premium Paid by Enrollee	Average Total Expenses Per Enrollee	Average Premium as a Percentage of Average Expenses
1999	856	$4.0*	$4696*	$3473*	Not Available	Not Available
1998	991	4.9	4937	3536	8823	60.0%
1997	1182	1.9	1637	3531	5653	62.5%
1996	1458	3.2	2211	3576	6016	59.4%
1995	1891	9.8	5193	3580	8880	40.3%
1994	2775	11.8	4258	3521	7814	45.1%
1993	3702	5.8	1566	3610	5064	71.3%
1992	4528	7.1	1576	3355	5036	66.6%
1991	5639	5.6	990	3824	4911	77.9%
1990	6402	33.9	5293	2324	7766	29.9%

* Estimated

According to the *Comprehensive Health Insurance for High-Risk Individuals, A State-by-State Analysis (1997)*, issued by Communicating by Agriculture, "The key to financing a state plan is to realize that premiums collected from the enrollees probably will only cover 50 percent of the cost to operate the plan." Typically, the FCHA premium as a percentage of total expenses ranged from 29 - 77 percent during the period of 1990 -1998. For 3 out of the 9 years the average premium covered less than 50 percent of the average total expenses per enrollee.

III. Effect of Proposed Changes:

Section 1. Creates the "Florida Health Endowment Association" (FHEA) as a nonprofit legal entity. The FHEA is considered a health insurer for purposes of the Insurance Code and is exempt from the certificate of authority and financial requirements of the Insurance Code.

The section provides for the association to be governed by a five-member board of directors composed of the following: the Director of the Agency for Health Care Administration (who is the chairperson), or his or her designee; the Insurance Commissioner, or his or her designee, and 3 persons appointed by the Governor, including one representative of policyholders who is not associated with the medical profession or a hospital, one representative of the health insurance industry, and one member of the public. It provides for removal of any appointed board member without cause and specifies that members shall be appointed to staggered 3-year terms, and prohibits the plan administrator from serving as a member of the board. It allows for reimbursement of board member expenses, as provided in s.112.061, F.S., and authorizes immunity from liability for board members and employees of the association. The bill specifies that meetings of the board are subject to the open meetings and records law pursuant to s. 286.011, F.S. There are no specific exemptions for medical records of enrollees.

The board is authorized to do the following: adopt a plan of operation, subject to approval by the Agency for Health Care Administration; establish administrative and accounting procedures; administer the FHEA Trust Fund; contract with an actuary to evaluate the pool of insureds, monitor the financial condition of the Trust Fund, determine the feasibility of enrolling new members in the association; establish eligibility requirements for individuals participating in the association that ensure that the financial resources are adequate to meet the obligations of the association and are consistent with the actuarial determination and eligibility provisions of the bill; contract with preferred provider organizations and health maintenance organizations; employ a case manager to manage or coordinate the medical care of policyholders; appoint an executive director to serve as the chief administrative and operational officer to the board; contract with the State Board of Administration for the investment of funds held in the Trust Fund; and submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, no later than October 1 of each year,

The Auditor General is required to conduct an operational audit and an actuarial evaluation of the association and to submit the reports to the President of the Senate and the Speaker of the House of Representatives by January 1, 2002.

Section 2. Provides for definitions for terms relating to the structure and operation of the FHEA: “association” means the FHEA; “board” means the board of directors of the FHEA; “case management” means the management of medical care provided for an individual; “agency” means the Agency for Health Care Administration, “Medicaid” means the federal medical assistance program; “Medicare” means parts A and B of Title XVII of the Social Security Act; “plan of operation” means the articles and bylaws adopted by the board; and, “resident” means a person legally domiciled in this state.

Section 3. Creates eligibility provisions for the FHEA. A Florida resident shall be eligible for the FHEA, provided that the individual receives a notice of rejection or refusal to issue substantially similar coverage for health reasons by an insurer licensed to issue coverage in Florida. Verification of residency is required.

Restrictions for eligibility are included: persons who have or obtain substantially similar coverage; residents of public institutions or prisons; persons whose premiums are paid under any government-sponsored program; persons who have reached the lifetime maximum in covered benefits; or persons who are eligible for Medicaid, unless their illness or disease requires supplies or medication which are covered under the FHEA, but not covered under Medicaid. The circumstances under which coverage will cease are specified and provisions for the use of a case management system are delineated. Reentry into the FHEA is allowed, though currently prohibited under Florida Comprehensive Health Association. However, a person reentering would be subject to any new pre-existing condition limitations in effect at the time and previous claim payments would be applied to the lifetime maximum benefit limit.

Section 4. Specifies that the board appoint an administrator to administer coverage offered through the association who shall serve for a period of 3 years and perform all administrative and claims-paying functions. Experience requirements and duties of the administrator are delineated.

Section 5. Provides for minimum benefits, exclusions, premiums, and deductibles. The section specifies that the association shall offer an annual renewable policy, that no persons eligible for Medicare coverage will be reimbursed for any expenses paid by Medicare, and that the coverage provided to a person who is eligible for Medicare benefits may not be issued as a Medicare supplement. It provides that any person who is involuntarily terminated by a health insurer for any reason other than non-payment of premium may apply for coverage and provides a mechanism to qualify for coverage effective, as of the termination of the previous coverage.

The association would be required to offer coverage that is patterned after the standard health benefit plan, as defined in s. 627.6699, F.S., and pay an eligible person's covered expenses, subject to limits on deductible and coinsurance. The maximum lifetime benefits allowed are $1,000,000, per covered individual, and the minimum deductible is $1,000. The association shall establish a schedule of premiums and may approve other deductibles, which are subject to approval by the department.

This section specifies that the standard risk rates for coverage issued by the association must be established by the Department of Insurance, pursuant to s. 627.6675(3). The association would be required to establish the rate at 200 percent of the standard risk rate as established by the department.

The bill also specifies the cost sharing for claims paid for individuals that are placed under a case management system or a preferred provider network. Premiums paid to the association are exempt from the insurance premium tax. Coverage is excluded for pre-existing conditions for a period of 12 months following the effective date of coverage for conditions that were manifested or for which medical advice or treatment was recommended within 6 months before the effective date of coverage.

Other sources of coverage are primary and the association has a cause of action against a participant for any benefits paid to the participant which should not have been claimed. This section also provides that coverage in the FHEA is not an entitlement to health care services or health insurance.

Section 6. The FHEA is authorized to contract with insurers to provide disease management services for insurers that elect to participate. Revenues collected by the association for this purpose shall be used to pay administrative expenses of the disease management program.

Section 7. The bill repeals most of the statutes that relate to the Florida Comprehensive Health Association, effective upon the opening of the FHEA, including 627.648, 627.6482, 627.6484, 627.6486, 627.6487, 627.64871, 627.6488, 627.6489, 627.649, 627.6496, and 627.6498. However, the two statutes, ss. 627.6492 and 627.6494, F.S., that relate to insurance company assessments to fund the FCHA deficit are repealed effective January 1, 2001. Insurers would be liable for assessments made prior to this date, but it is not clear if insurers would remain liable for assessments for deficits *incurred* during the year 2000 if the assessment is *made* on or after January 1, 2001.

Section 8. The section provides that effective upon the date of the opening of the association, all individuals who have insurance coverage issued by the Florida Comprehensive Health

Association on that date shall be issued insurance coverage under the FHEA. The Florida Health Endowment Association shall assume all assets and liabilities of the Florida Comprehensive Health Association. The section also provides that the plan of operation of the FCHA shall remain in effect until the Agency for Health Care Administration has approved the FHEA's plan of operation.

Section 9. Specifies that an appropriation of $50 million will be made from the General Revenue Fund to the Florida Health Endowment Trust Fund for fiscal year 2000-2001. The Trust Fund is created under the companion bill, Senate Bill 404.

Section 10. Provides that the act will take effect July 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Since section 1 of the bill provides that meetings of the board are subject to the public records and meetings provisions of s. 286.011, F.S., there does not appear to be a specific exemption for medical records of enrollees in the Florida Health Endowment Association or the Florida Comprehensive Health Association. Such an exemption would require a separate bill.

C. Trust Funds Restrictions:

The Florida Health Endowment Trust Fund is created under a separate bill, Senate Bill 404.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Effective January 1, 2001, deficits of the FCHA would be funded through the Florida Health Endowment Association Trust Fund instead of through assessments levied against insurers. (See the Senate Staff Analysis to CS/SB 404 for additional information.)

B. Private Sector Impact:

The opening of the FHEA would allow individuals that would otherwise not be able to obtain insurance coverage due to being medically uninsurable an opportunity to obtain coverage, subject to funding limitations that would limit enrollment, as determined by the board. See the chart on page 10 for the estimated number enrollees.

Effective January 1, 2001, insurers would no longer be subject to assessments for deficits of the FCHA, due to the repeal on that date of the statutory sections that authorize such

assessments. Insurers would be liable for assessments made prior to this date, but it is not clear if insurers would remain liable for assessments for deficits *incurred* during the year 2000 if the assessment is *made* on or after January 1, 2001.

C. Government Sector Impact:

FCHA
The FCHA estimates that operational costs for the new FHEA would be similar to those of the FCHA. Additional costs to implement the bill are not yet known.

Committee staff developed the following chart projecting the estimated costs and number of enrollees that could be provided coverage for FY 2000.

Year	Number of FCHA Enrollees (Current Law)	Total Deficit	Est. Annual Income from the Florida Health Endowment Trust Fund (SBs 402 and 404)*	Est. Number of Enrollees that could be funded by the Trust Fund (SBs 402 and 404)
1998	991	$4,892,567	Not applicable	
1999	856	$4,019,913 est.	Not applicable	
2000	728 est.	$3,345,888 est.	$4.0 million est.*	870*

*The State Board of Administration (SBA) provided an estimate of the projected cash flows of the $50 million Florida Health Endowment Trust Fund. These estimates assumed a total return of 8 percent, less SBA administrative fees. These estimates are also based on the provisions of CS/SB 404 which direct that the earnings be used to fund the operations of the association, rather than applying any of the earnings to growth of the $50 million principal.

Estimate for FY 2000 was based on the average, estimated assessment per enrollee for 1999 of $4,596.

AHCA may incur additional costs to obtain assistance in approving or writing rules for FHEA.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.