

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2002

SPONSOR: Committee on Appropriations

SUBJECT: Implementing General Appropriations Act

DATE: March 22, 2001      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Wood		Favorable
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill would provide the necessary statutory authority to implement and execute the General Appropriations Act.

This bill substantially amends the following sections of the Florida Statutes: 25.402, 39.3065, 110.12315, 110.1239, 216.177, 216.181, 216.262, 252.373, 259.101, 259.105, 287.161, 318.21, 373.59, 403.709, 403.7095, 409.904, 409.905, 409.906, 409.908, 409.9116, 409.91195, 409.912, 409.9122, 409.913, 409.915, 414.045, 925.037, 938.01, and 943.25.

**II. Present Situation:**

In the past, substantive language was included in proviso or in separate sections of the General Appropriations Act to clarify how funds contained in the act were to be expended. However, decisions such as *Brown v. Firestone*, 382 So. 2d 654 (Fla.1980), and *Graham v. Firestone*, Circuit Court of the Second Judicial Circuit, #82-1703, Leon County, Florida 1982 have found such proviso language in the annual General Appropriations Act to be unconstitutional and void.

On January 5, 1995, the Supreme Court ruled in *Moreau v. Lewis* that “Because an appropriations bill must not change or amend existing law on subjects other than appropriations, it follows that a bill designed to implement the appropriations bill also must not change existing law on subjects other than appropriations.” This legislation would provide the necessary statutory authority to implement and execute the General Appropriations Act.

**III. Effect of Proposed Changes:**

Section 1. This section provides Legislative intent.

Section 2. In order to implement Specific Appropriation 171, this section permits the transfer of funds provided to community colleges and school districts for workforce development in the 2001-2002 General Appropriations Act, subject to the approval of a budget amendment submitted when a program is moved.

Section 3. In order to implement Specific Appropriation 254, this section requires the Agency for Health Care Administration to use the 1992-1993 disproportionate share formula, 1994 audited financial data, and the Medicaid per diem rate as of January 1, 1999, for those hospitals that qualify for the hospital disproportionate share program.

Section 4. In order to implement Specific Appropriation 249, this section amends s. 409.9116, F.S., to continue the current formula for rural hospital disproportionate share payments.

Section 5. In order to implement Specific Appropriations 302-466 and 503-638, this section amends s. 216.181, F.S., to authorize the Department of Children and Family Services and the Department of Health to advance money to contract providers.

Section 6. In order to implement Specific Appropriation 254, this section requires the agency for Health Care Administration to include health maintenance organization recipients in the county billing for inpatient hospital stays.

Section 7. In order to implement Specific Appropriation 254, this section amends s. 409.905, F.S., to continue language that includes an adjustment to a hospital's current inpatient per diem rate if: 1) the hospital experiences an increase in Medicaid caseload by more than 25 percent in any year, primarily resulting from the closure of a hospital in the same service area occurring after July 1, 1995; or 2) the hospital's Medicaid per diem rate is at least 25 percent below the Medicaid per patient cost for that year.

Section 8. In order to implement Specific Appropriation 302-466, this section amends s. 216.177, F.S., to not withstand the 14 day notice requirement and allow the Department of Children and Family Services to provide 3 day notice to the Executive Office of the Governor and the chairs of the legislative appropriations committees for proposed transfers (up to 10 percent of the total district budget) pursuant to s. 20.19(5)(b).

Section 9. In order to implement Specific Appropriation 254, this section amends s. 409.915(1)(a), F.S., relating to county contributions to Medicaid. It changes the period for which counties pay for inpatient hospitalization from days 13 through 45 to days 12 through 45. This section exempts counties from contributing toward the cost of new exemptions on inpatient ceilings for statutory teaching hospitals, specialty hospitals, and community hospital education program hospitals that came into effect July 1, 2000, and for special Medicaid payments that came into effect on or after July 1, 2000.

Section 10. This section provides that the changes to paragraph 409.915 (1)(a), F.S., shall expire July 1, 2002.

Section 11. In order to implement Specific Appropriation 289 and 290, this section prohibits the Agency for Health Care Administration from adjusting premiums paid to HMOs or prepaid

health plans to re-elect increases in premiums to eliminate ceilings on Medicaid reimbursement rates paid to teaching hospitals, specialty hospitals, and community health education program hospitals and for making special Medicaid payments to hospitals.

Section 12. In order to implement Specific Appropriation 241-290, this section amends s. 409.904 (1), F.S., relating to optional payments for eligible persons. It changes eligibility for people age 65 or older, or determined to be disabled, from 100 percent of poverty to 87.5 percent of poverty.

Section 13. This section provides that the changes to paragraph 409.904 (1), F.S., shall expire July 1, 2002.

Section 14. In order to implement Specific Appropriation 254, this section amends s. 409.905 (5) (a), F.S., relating to mandatory Medicaid services. Allows for prior authorization for non-emergency hospital inpatient admissions.

Section 15. This section provides that the changes to paragraph 409.905 (5) (a), F.S., shall expire July 1, 2002.

Section 16. In order to implement Specific Appropriation 281 and 283, this section amends s. 409.906 (16), F.S., relating to optional Medicaid services. It adds a new requirement to the agency related to paying for 24-hour-a-day intermediate care nursing and rehabilitation services in nursing facilities. The facilities must meet Comprehensive Assessment and Review for Long-Term Care criteria and the services must not meet the definition of "general care" as used in the Medicaid budget estimating process.

Section 17. This section provides that the changes to subsection 409.906 (16), F.S., shall expire July 1, 2002.

Section 18. In order to implement Specific Appropriation 241-290, this section amends s. 409.908, F.S., relating to reimbursement of Medicaid providers. This section deletes language that exempts counties from contributing toward the cost of special exception reimbursement for hospitals that serve a disproportionate share of low-income people and provide graduate medical education. Rate increases to nursing homes associated with changes in ownership filed on or after January 1, 2002 are prohibited.

This section prohibits the cost of exempting statutory teaching hospitals, specialty hospitals, and community hospital education program facilities from reimbursement ceilings and the cost of special Medicaid payments from being included in premiums paid to health maintenance organizations or prepaid health care plans.

This section authorizes competitive bidding to be used as the basis for reimbursement of home health care services, medical supplies and appliances, and independent laboratory services. Currently reimbursement is the lesser of the amount billed or the agency's maximum allowable amount.

This section limits Medicaid crossover payments for nursing home and hospital outpatient care to 20% of Medicare allowable fees (rather than provider charges).

This section adds competitive bidding as a basis for reimbursement of prescribed drug providers. Currently, the lesser of the amount billed, the usual and customary charge, or the Medicaid maximum allowable fee, plus a dispensing fee, is allowed.

This section authorizes the agency to competitively procure transportation services or to make other changes needed to get federal approval of waivers that would secure federal match at the service rate rather than the administrative rate.

Section 19. This section provides that the changes to section 409.908 (1)(a), (2)(b), (4), (9), (11), (13), (14), and (19), F.S., shall expire July 1, 2002.

Section 20. In order to implement Specific Appropriation 267, this section amends s. 409.91195, F.S., relating to the Medicaid pharmaceutical and therapeutics committee. This section changes the purpose of the committee from developing a voluntary preferred drug list to developing a restricted drug formulary. It requires the composition of the committee members to conform to federal law, rather than being specified in Florida Statutes. This section directs the agency, with the advice of the committee, to establish a restricted drug formulary, rather than the current voluntary Medicaid preferred prescribed drug list, and provides for committee recommendations on changes to the formulary. This section requires the agency to distribute the formulary information to all Medicaid prescribing providers.

Section 21. This section provides that the changes to section 409.91195, F.S., shall expire July 1, 2002.

Section 22. In order to implement Specific Appropriation 241-277, this section amends s. 409.912, F.S., relating to cost-effective purchasing of health care. This section conforms this section to permit competitive bidding, rather than negotiation, for services related to private duty nursing, independent laboratory, durable medical equipment and supplies, and prescribed drugs. It allows the agency to exclude providers not selected through the bidding process from the Medicaid network. It allows the agency to authorize exceptions to the restricted drug formulary as part of the Medicaid prescribed-drug spending-control program. It permits the agency to establish a restricted drug formulary that meets federal guidelines and to negotiate supplemental manufacturer rebates at no less than 10 percent of the average manufacturer price, invoiced concurrently with federal rebates, on the last date of each quarter unless the federal or supplemental rebate, or both, exceeds 25 percent and the agency determines the product competitive. This section provides that the agency may determine that specific generic products are competitive at lower rebate percentages.

Section 23. This section provides that the changes to subsection 409.912 (34) and (37), F.S., shall expire July 1, 2002.

Section 24. In order to implement Specific Appropriation 241-277, this section amends s. 409.904, F.S., relating to optional payments for eligible persons. It adds to the services not eligible for a family or a person in the group known as "medically needy", inpatient hospital

services, home health services, private duty nursing, and adult dental, visual and hearing services.

Section 25. This section provides that the changes to subsection 409.904 (2), F.S., shall expire July 1, 2002.

Section 26. In order to implement Specific Appropriation 232, this section amends s. 409.913, F.S., relating to the oversight of the integrity of the Medicaid program. It directs the agency to develop and implement a pilot program to prevent Medicaid fraud and abuse in Medicaid-participating pharmacies by using a type of automated fingerprint imaging of Medicaid beneficiaries eligible under the pilot program. It directs the agency to adopt rules and ensure compliance with state and federal disclosure requirements and to develop an implementation plan by October 1, 2001. The pilot is to begin in one or more areas of the state by April 1, 2002. The agency shall request any necessary required federal waivers.

Section 27. In order to implement Specific Appropriation 245-246, this section amends s. 409.906, F.S., related to optional Medicaid services. It authorizes the agency to implement reimbursement and use management reforms in order to comply with limitations in the General Appropriations Act related to prior authorization of treatment and service plans, prior authorization of services, enhanced use review programs, and limits on services for those that have been determined to be abusing.

Section 28. In order to implement Specific Appropriation 254, this section amends s. 409.912, F.S., related to cost-effective purchasing of health care. It authorizes the agency to contract with a children's clinic network that provides care coordination and care management for Medicaid eligible pediatric patients, primary care, authorization or specialty care, and other urgent and emergency care through clinics for Medicaid eligible children under the age of 18. This section requires the networks to provide after-hour operations to promote the use of clinics rather than hospital emergency department.

Section 29. In order to implement Specific Appropriation 254, 289, and 290, this section amends s. 409.9122, F.S., related to mandatory Medicaid managed care enrollment. It directs the agency to assign Medicaid recipients who fail to make a choice to managed care until an equal enrollment of 50 percent MediPass and 50 percent managed care is achieved. It also directs the agency to assign eligible children who fail to make a choice of MediPass or managed care to children's clinic networks until the children's clinic networks have sufficient numbers to be economically operated.

Section 30. This section provides that the changes to paragraph 409.9122 (2)(f), F.S., shall expire July 1, 2002.

Section 31. In order to implement Specific Appropriation 254, 289, and 290, this section amends 409.9122 F.S., related to mandatory Medicaid managed care enrollment. This section deletes language relating to mandatory assignment of recipients who fail to make a choice of managed care plans.

Section 32. In order to implement Specific Appropriation 241-290, this section amends s. 409.904, F.S., related to optional payments for eligible persons. This section adds payment for cancer treatment pursuant to the federal Breast and Cervical Cancer Prevention and Treatment Act of 2000 for eligible women below 200 percent of poverty and from ages 50 to 64.

Section 33. In order to implement Specific Appropriation 349, this section amends s. 39.3065, F.S., relating to sheriffs of certain counties to provide child protective investigative services. It adds Seminole County to the counties that have responsibility to provide all child protective investigations for the Department of Children and Family Services.

Section 34. This section provides that the changes to paragraph 39.3065 (3)(a), F.S., shall expire July 1, 2002.

Section 35. In order to implement Specific Appropriation 348, this section amends s. 414.045, F.S., related to the cash assistance program. Deletes language related to program reporting groupings. It adds language related to special needs children who have been adopted and whose family qualifies as a needy family under the state plan for Temporary Assistance for Needy Families (TANF) program to the definition of child only cases. This section specifies that these families have incomes below 200 percent of poverty, meets the eligibility requirements related to residence, citizenship or eligible non-citizen states and that the family provides information to meet federal reporting requirements.

Section 36. This section provides that the changes to subsection 414.045 (1), F.S., shall expire July 1, 2002.

Section 37. In order to implement Specific Appropriation 348A, this section adds legislative intent language related to community-based care initiatives. It establishes a community partnership matching grant program operated by the Department of Children and Family Services for the purpose of encouraging local participation in community-care for child welfare. This section establishes a matching grant program for children's services councils or other local government entities. Eligibility for grants is based on financial commitments of at least \$825,000 in start-up funds to the lead agency to be eligible for matching funds of up to two-for-one up to a maximum of \$2 million per council. Funds are to be used on services that meet TANF eligibility and are expected to reduce the number of children entering the child welfare system. This section waives the notice requirements for transfers of funds in s 20.19(5)(b), F.S., for the development, start-up, and ongoing operation of community-based care initiatives; however, the department must provide copies of all action to the executive Office of the Governor and Legislature within 72 hours of their occurrence. Funding is subject to appropriation of non-recurring TANF funds.

Section 38. In order to implement Specific Appropriation 302-466, this section requires the Partnership for School Readiness to ensure that state funds are expended in accordance with federal maintenance of effort (MOE) requirements related to TANF. The Partnership is required to certify to the Department of Children and Families that controls are in place and that funds are spend in accordance with federal requirements. This section requires the Agency for Workforce Innovation, pursuant to passage of HB 977 or similar legislation being enacted that transfers child care Pre-Kindergarten funds, to ensure that funds are spent for the purpose of meeting the

TANF MOE requirement and to ensure the appropriate certification and documentation of these expenditures.

Section 39. In order to implement Specific Appropriation 408 and 410, this section authorizes the Department of Children and Families to transfer funds as necessary to achieve a successful transition of staff between the department and the Department of Juvenile Justice. This section requires only a 3-day consultation period with the House and Senate Appropriations committees prior to the implementation of such transfers. This section directs the Department of Juvenile Justice to give priority to employ persons employed at G. Pierce Wood Memorial Hospital (GPW). Both departments are also directed to require the contracted Department of Juvenile Justice programs in the catchment area in the contracted sexually violent predator program to give employees from GPW priority for employment.

Section 40. In order to implement Specific Appropriation 3018, this section amends s. 318.21, F.S. to authorize the transfer of funds from the Department of Children and Families to the state court system to operate the Florida foster care citizen review panels.

Section 41. In order to implement Specific Appropriation 2967, this section amends s. 925.037, F.S., to designate the State Courts System as the agency to distribute funds to counties for the reimbursement for court-appointed conflict counsel.

Section 42. In order to implement Specific Appropriation 862-1126A, this section amends s. 25.402, F.S., pertaining to the County Article V Trust fund to: (a) change the threshold for a small county from 75,000 to 85,000 population; and (b) allow funds to be used for operating expenditures for offices of the state attorneys and public defenders.

Section 43. In order to implement Specific Appropriation 681-789, this section amends s. 216.262, F.S., to allow the Executive Office of the Governor to request positions in the Department of Corrections in excess of the number authorized in the General Appropriations Act if the prison population exceeds the official projection of the Criminal Justice Estimating Conference by two percent for two consecutive months.

Section 44. In order to implement Specific Appropriation 333-339 and 1248-1256, this section amends s. 938.01, F.S., to earmark funds from the Additional Court Cost Clearing Trust Fund to the Operating Trust Fund in the Department of Law Enforcement.

Section 45. This section provides that the changes to subsection 938.01 (1), F.S., shall expire July 1, 2002.

Section 46. In order to implement Specific Appropriation 333-339 and 1248-1256, this section authorizes the disbursement of funds from the Department of Law Enforcement Operating Trust Fund in order to match federal funds.

Section 47. This section provides that the changes to subsection 943.25 (1), F.S., shall expire July 1, 2002.

Section 48. In order to implement Specific Appropriation 333-339 and 1248-1256, this section transfers the Criminal Justice Program from the Department of Community Affairs to the Department of Law Enforcement.

Section 49. In order to implement Specific Appropriation 2367A, this section provides authority for Enterprise Florida, Inc., to administer the sister city and sister state program in order to implement the transfer of funds for the International Advocacy Program from the Department of State to the Executive Office of the Governor.

Section 50. In order to implement Specific Appropriation 2367A, this section provides authority for Enterprise Florida, Inc., to administer the Florida Association of Volunteer Agencies for Caribbean Action (FAVA/CA) program in order to implement the transfer of funds for the International Advocacy Program from the Department of State to the Executive Office of the Governor.

Section 51. In order to implement Specific Appropriation 1519, this section provides authority for the Department of Community Affairs to use the Internet or other methods to advertise notice of intent for comprehensive plan amendments.

Section 52. In order to implement Specific Appropriation 2624-2629, this section amends s. 287.161(4), F.S., to require the Department of Management Services to operate the executive aircraft pool on a full cost recovery basis, less available funds.

Section 53. In order to implement Specific Appropriation 1742, this section amends s. 259.101, F.S., to allow the use of \$100 million in unencumbered Preservation 2000 funds for land acquisition for the Everglades restoration.

Section 54. This section provides that the changes to subsection 259.101(3), F.S., shall expire July 1, 2002.

Section 55. In order to implement Specific Appropriation 1742, this section amends s. 259.105, F.S., to provide that \$25 million in Florida Forever funds be provided to the South Florida Water Management District.

Section 56. This section provides that the changes to subsection 259.105, F.S., shall expire July 1, 2002.

Section 57. In order to implement Specific Appropriation 1748, this section amends subsection 403.709 (1), F.S., to allow for the use of \$33.8 million from the Solid Waste Management Trust for water projects.

Section 58. In order to implement Specific Appropriation 1789, this section amends s. 403.7095, F.S., to require the Department of Environmental Protection to only provide solid waste and recycling grants to counties with a population of less than 100,000 at a level at least 80% of the level of funding provided in fiscal year 2000-01.

Section 59. In order to implement Specific Appropriation 1653 and 1748, this section amends s. 373.59(11), F.S., to provide that the Department of Environmental Protection release funds allocated to the water management districts for legislatively authorized land acquisition and water projects.

Section 60. In order to implement Specific Appropriation 1543A, this section directs up to \$2 million of the unencumbered balance of the Emergency Management, Preparedness, and Assistance Trust Fund to be used to improve, and increase the number of disaster shelters within the state and improve local disaster preparedness.

Section 61. In order to implement section 8 of the General Appropriations Act, this section amends s. 110.12315, F.S., to maintain state employees' prescription drug program co-payments at the current levels.

Section 62. In order to implement section 8 of the General Appropriations Act, this section amends s. 110.1239, F.S., to require the Division of State Group Insurance to determine the level of premiums necessary to fully fund the program for the fiscal year 2001-2002 and to require the Governor to include such rates in his recommended budget.

Section 63. This section provides that a section in this bill is void if all the items in the budget to which it is tied are vetoed.

Section 64. This section provides Legislative intent that if any other bill passes that contains the same language as a provision of this bill, but without the future repeal applied by this bill, the provision in the other bill will take precedence.

Section 65. This section adopts performance measures and standards contained in the document entitled "Senate Approved Agency Performance Measures and Standards" dated March 19, 2001 by reference.

Section 66. This section provides that if any provision is held invalid, this will not affect other provisions. To this end, the provisions are declared severable.

Section 67. This section provides an effective date of July 1, 2001.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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