



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |  |   |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

HB 1261 does not reduce government because it expands the responsibilities of the Commission for the Transportation Disadvantaged to include developing a statewide, uniform procurement process and contract for TD services, empowering the Commission to perform audits to detect fraud, and to develop marketing and educational campaign about the program.

#### B. EFFECT OF PROPOSED CHANGES:

##### General Background

The Transportation Disadvantaged program, created in 1979 by the Legislature pursuant to Part I of Chapter 427, F.S., coordinates a network of local and state programs providing transportation services for elderly, disabled and low-income citizens.

Over the years, the Legislature has modified the program's administrative structure, program responsibilities, and funding. A 27-member Commission for the Transportation Disadvantaged (the Commission) sets state policy and oversees its statewide implementation, and distributes a share of its budgeted funds to the local providers, based on its criteria. The Commission members represent a broad spectrum of interested parties, including social service agencies, a public transit association, various citizens' advocacy groups from rural and urban areas, transportation providers, the non-transportation business community, and the Florida Department of Transportation. Appointments to the Commission are made by the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Florida's 67 counties are divided into 50 TD service areas. While most urban counties are single-county service areas, some rural counties are organized into multi-county service areas.

The Commission's activities are funded by four revenue sources, with a budget of nearly \$35 million in FY 02-03. The Commission's budget is about 12 percent of the total funds spent statewide -- \$292 million in FY 01-02 in federal, state, local government and fare box revenues -- to provide transportation services for eligible citizens. Local governments contributed the most funds last fiscal year, nearly \$102 million. Medicaid funding from the state Agency on Health Care Administration totaled \$78 million. Riders' contributions brought in another \$28.4 million. In all, there are 13 different agencies or categories of funds for the statewide Transportation Disadvantaged (TD) program. The entities within each county that provide transportation services for eligible clients apply for non-Commission funds from state and federal agencies, and receive them directly. The Commission has no control over these funds.

##### Program structure

There are three distinct entities in the Transportation Disadvantaged program, each with distinct responsibilities.

The Commission assists communities in establishing coordinated transportation systems; manages contracts and memoranda of agreement; develops a five-year transportation disadvantaged plan; and

addresses statewide transportation issues impacting TD eligible persons. One of the Commission's key responsibilities is ensuring that state agencies purchase transportation services from within the TD coordinated system, unless a more cost-effective provider outside the coordinated system can be found by the purchasing agency. The Commission also approves the local entities that manage the delivery transportation services to eligible clients.

At the local level, the TD program is implemented through a network of planning agencies, local advisory boards, community transportation coordinators (CTC's), and transportation operators. Local planning agencies, such as a metropolitan planning organization (MPO) or regional planning council, appoint and staff each local coordinating board. A local elected official chairs each coordinating board. The size and composition of each coordinating board are established by the Commission. Local coordinating boards identify local service needs and provide information, advice and direction to the entity that coordinates – and may actually provide – the actual transportation services. These boards also are responsible for recommending the local community transportation coordinator (CTC) to the Commission.

CTC's are the entities responsible for the actual arrangement or delivery of transportation services within their local service area. Services provided by CTC's include: scheduling transportation services; processing reimbursements; contracting and monitoring of transportation operators; and delivery of transportation services. A CTC may be a government entity, a transit agency, a private not-for-profit agency or a for-profit company. A CTC may function as a sole-source provider or it may broker part or all of the trips to other transportation operators.

Typically, the Commission enters into a memorandum of agreement for services with a CTC. This agreement identifies the anticipated service population, service area, information regarding any subcontractors, and rates for services excluding purchasing agency rates such as Medicaid that are prepared by Medicaid. Medicaid is party to the agreement through membership on the Commission and the local coordinating boards, which serve in an advisory capacity.

#### Current issues

During the Legislative Budget Commission's zero-based budgeting exercise in 2001, legislative staff and Commission staff determined that the Commission was operating the program pursuant to rules and procedures for which there was no explicit statutory authorization. For example, the Commission has had an Ombudsman program, has conducted records auditing, and required performance standards in its provider contracts for many years, pursuant to its rules, but without statutory authority.

Commission staff also expressed concerns when some state agencies, particularly those that budget Medicaid dollars for TD trips for eligible clients, have decided to go outside the contracted system of CTC's or transportation operators to hire other providers. The Medicaid agencies say they have done that on occasion in order to get a more competitive price for the trips, or to provide transportation for clients with specialized needs that weren't being met by the Commission-approved providers.

#### Effect of HB 1261

The key change to Part 1 of chapter 427, F.S., proposed by sections 4 and 10 of HB 1261 eliminates the ability of the Agency for Health Care Administration (AHCA) and other agencies that contribute funds to the TD program to contract for transportation services outside of the Commission-approved CTC's and trip providers.

Instead, Section 3 of the bill directs the Commission to develop by rule a statewide, uniform, and competitive procurement process to select TD providers and establish rates, minimum performance standards, and quality assurance standards. This procurement process may not conflict with local government's purchasing policies. The purchasing agencies, local governments, and other affected parties are directed to assist the Commission in developing this rule.

Commission staff say this rule will help ensure the same level of TD service throughout the state, while potentially leveling out costs that can vary significantly from county to county. In addition, supporters say, the Commission will be better able to perform its statutory role as the statewide coordinator of the program.

A bill analysis prepared by AHCA indicates that HB1261 does not appear to conflict with any federal regulations or guidelines pertaining to Medicaid, but it has the potential to raise transportation service rates for Medicaid clients.

The rest of the bill codifies the Commission's operating practices and makes a number of technical and clarifying changes. Briefly, HB 1261:

- Deletes several obsolete definitions, and either creates or renames entities to reflect their actual role and responsibilities in the TD program. New definitions are: "purchasing agency;" "coordination contract;" "coordination contractor;" "transportation disadvantaged service plan;" and "alternate transportation provider."
- Makes technical changes to the Commission's membership to reflect agency mergers or more appropriate descriptions. For example, the Secretary of the Department of Health takes the seat of the Secretary for the defunct Department of Labor and Employment Security. Also, the Governor shall appoint a "representative of children," rather than a member of the Early Childhood Council.
- Modifies or clarifies the Commission's responsibilities to stress its coordination and monitoring role over the TD program.
- Requires minimum background screening for all TD providers.
- Directs the Commission to create an Ombudsman Program to address client complaints and concerns and a quality assurance and program evaluation section.
- Directs the Commission to promote and develop the use of alternative TD providers, including use of volunteers, faith-based groups, and other initiatives.
- Requires the purchasing agencies to request budget authority in the annual legislative budget requests for TD expenditures, so that the Commission and others know how much each agency is earmarking for transportation services.
- Directs MPO's, the local coordinating councils, the CTC's and others to work with the Commission to identify untapped funding sources for the TD program, and to better educate the public and clients about the TD program.
- Directs county school systems to include in the bus inventories they provide to CTC's how many school buses have seat belts, have air conditioning and are accessible.
- Allows state TD funds appropriated to the Commission to be used to develop educational materials about the program. Also allows the funds to be used as a match or for incentive grants to alternative and innovative providers. Allows the Commission to increase, reduce, or eliminate the match.
- Allows the Commission to review and audit records of any agency that expends funds for TD trips, and to report any irregularities to the proper authorities.

HB 1261 takes effect upon becoming a law.

#### C. SECTION DIRECTORY:

Section 1: Amends s. 427.011, F.S., to create new definitions, modify existing definitions, and delete obsolete definitions.

Section 2: Amends s. 427.012, F.S., to make mostly technical changes to the Commission for the Transportation Disadvantaged.

Section 3: Amends s. 427.013, F.S., to expand upon or clarify the Commission's responsibilities and duties. Adds to the Commission's rule development powers the requirement for minimum background screening for all transportation disadvantaged providers. Deletes duplicative budget reporting submittal.

Directs the Commission to develop a quality assurance and program evaluation office. Provides for Commission review of community transportation coordinators and operators. Provides for the Commission to establish an ombudsman program to advocate for clients. Directs Commission to develop by rule a statewide and uniform competitive procurement process to be used by each designated TD planning agency when selecting transportation coordinators and operators. Promotes use of alternative delivery services. Directs Commission to develop, monitor, and implement a substance-abuse program for community transportation coordinators, operators, and approved providers.

Section 4: Amends s. 427.0135, F.S., to rename “member departments” as “purchasing agencies.” Deletes provision that the agency or agencies that provide Medicaid funding to the TD program could use its own procedures for purchasing transportation services for Medicaid clients, or as directed by the General Appropriations Act. Directs agencies to include in the legislative budget requests line-item expenditures for TD services. Allows agencies to contract with, or transfer funds to, the Commission on an annual basis to provide TD services.

Section 5: Amends s. 427.015, F.S., to clarify the role of metropolitan planning organizations (MPO’s) in the TD program. Directs MPO’s to utilize the competitive procurement process developed pursuant to the amended s. 427.013, F.S. Directs MPO’s to work with their local community transportation coordinator and local TD coordinating board to develop educational programs about the TD program, and to assist in the identification of potential sources of revenue for the TD program.

Section 6: Amends 427.0155, F.S., related to the community transportation coordinators (CTC’s). Directs the CTC’s to execute uniform contracts for TD services that include performance standards and timely-payment requirements. Specifies that even in the case of multiyear TD contracts to providers, such contracts shall be based on competitive procurement procedures. Directs CTC’s to develop alternative TD provider systems, such as use of volunteers and faith-based organizations.

Section 7: Amends 427.0157, F.S., related to the coordinating boards. Clarifies responsibilities of the coordinating boards. Directs them to work with MPO’s, CTC’s, and others in the TD system to identify funding sources. Directs them to work with CTC’s to develop alternative TD provider systems, such as use of volunteers and faith-based organizations.

Section 8: Amends s. 427.0158, F.S. Adds to the type of school bus information school boards shall provided to the CTC’s.

Section 9: Amends s. 427.0159, F.S., related to the TD Trust Fund. Specifies that all fees statutorily designated for the program, not just those pursuant to s. 320.03(9), F.S., shall be deposited into the trust fund. Provides for use of the funds to include development of educational materials about the TD program and the need for additional funding.

Section 10: Amends . s. 427.016, F.S., related to the expenditure of public funds on transportation services for TD clients. Provides for contracting with an alternative provider for TD services, as long as the alternative provider meets the same quality and safety standards specified by the Commission. Deletes provision allowing agencies to directly contract for transportation services in cases where transportation services suited to a client’s unique needs cannot be purchased through the coordinated system. or where the agency has met the criteria for selecting its own alternate provider. Deletes provision that specifies the Medicaid agency or agencies participating in the TD program shall not be limited or precluded from establishing maximum fee schedules, individualized reimbursement polices for providers, negotiated fees, competitive bidding, or other mechanism used by the agency or agencies for effective and efficient transportation services. Adds “violence-related criminal activities” to the activities that would prohibit a potential TD provider from receiving a contract to for TD services. Changes from September 15 of each year to October 1 of each year the deadline for purchasing agencies to submit to the Commission information about funds expended for TD and number of trips purchased. Gives the Commission permission to audit and review records of any agency that expends

TD funds, so as to detect misuse or duplicate billing, and to report its findings to the appropriate authority.

Section 11: Specifies this act shall take effect upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

### D. FISCAL COMMENTS:

HB 1261 has no provisions that generate additional revenue for the TD program, nor that quantifiably save money.

The bill's supporters indicate there may be efficiencies resulting from all the agencies, CTC's, and trip providers operating under the same service procurement guidelines – to be developed pursuant to HB1261 – and contractual requirements. Additionally, the use of volunteers and other alternative providers could result in lower costs, at least on the local level, for TD services.

However, the state agencies that currently have the authority to contract with providers outside the coordinated system in order to stretch federal and state TD dollars will lose that ability under the bill. A fiscal analysis prepared for the bill by AHCA noted, "If rates for transportation services are set by the commission for the participating state agencies, there is a potential for increases in fees."

Additionally, the Commission's expanded responsibilities, such as auditing providers' records for fraud and developing an educational and fund-raising campaign, will be performed without new funding or additional staffing, according to the Commission staff.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

HB 1261 gives the Commission authority to develop by rule a statewide procurement process. Conversely, the bill also codifies numerous activities that the Commission has been performing pursuant to rule without explicit statutory authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Drafting Issues

An amendment will be offered by HB 1261's sponsor to delete lines 441-442 of the bill, which sought to create a public records' exemption for clients who complain to the Commission's Ombudsman about TD service. Such an exemption must be addressed in a separate bill, pursuant to the Florida Constitution and chapter 119, F.S. The Commission has said it is too late this session to file a bill for the exemption, but may seek it in the 2004 legislative session.

Other Comments

According to an AHCA analysis of HB 1261, the agency requests that any changes to the Medicaid process be deleted from the bill.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**