

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 Health Policy Committee

BILL: SB 130

INTRODUCER: Senator Wilson

SUBJECT: School Health Services

DATE: March 1, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	_____	Wilson	HP	Pre-meeting
2.	_____	_____	ED	_____
3.	_____	_____	JU	_____
4.	_____	_____	EA	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill adds school-based health centers to the definition of “entity” or “health care entity” for purposes of the School Health Services Act, thereby extending sovereign immunity to such centers. The bill defines “school-based health center” to mean an organization that provides an array of services as outlined in the bill.

This bill amends section 381.0056, Florida Statutes.

II. Present Situation:

School Health Services Act

Section 381.0056, F.S., establishes the School Health Services Act. The Department of Health (DOH) has responsibility, in cooperation with the Department of Education (DOE), to supervise the administration of the school services program and perform periodic program reviews. Basic school health services supplement parental responsibilities for child health and include low cost population-based preventive health services. The act provides definitions and defines “entity” or “health care entity” to mean a unit of local government or a political subdivision of Florida; a licensed hospital; a health maintenance organization; a health insurer; a community, migrant, or federally qualified health center; a nonprofit organization; a private industry or business; or a philanthropic foundation that agrees to participate in a public-private partnership with a county health department, local school district, or school in the delivery of school health services, and agrees to the terms and conditions for the delivery of such services as required under the act and as documented in the local school health services plan. The state plan for school health services must be developed by the DOH in cooperation with the DOE to include, at a minimum, a plan

for the delivery of school services; accountability and outcome indicators; strategies for assessing and blending financial resources; and the establishment of a data system.¹

Under the school health services program, entities or health care entities receive a limitation on their civil liability under the doctrine of sovereign immunity. Under s. 381.0056(10), F.S., any health care entity that provides school health services under contract with the DOH under a school health plan developed under the act, and as part of a school nurse service public-private partnership, is deemed to be a corporation acting primarily as an instrumentality of Florida solely for the purpose of limiting liability under s. 768.28(5), F.S., The limitations on tort actions in s. 768.28(5), F.S., must apply to any action against the entity with respect to the provision of school health services, if the entity is acting within the scope of and pursuant to guidelines established in the contract or by rule of the DOH. The contract must require the entity, or the partnership on behalf of the entity, to obtain general liability insurance coverage, with any additional endorsement necessary to insure the entity for liability assumed by its contract with the DOH.

School-based Health Centers

According to officials at the DOH, school-based health centers have been established in select schools to provide primary medical care. Such care is distinct from the school health services required by s. 381.0056, F.S. School-based health centers have been created with funding from federal or community grants. Although there does not appear to be an exact count of the number of school-based health centers, the DOE officials note that a majority of current school-based centers are located in Hillsborough and Miami-Dade Counties. There are approximately 80 school-based health centers statewide.²

Sovereign Immunity

Article X, s. 13, of the State Constitution, authorized the Florida Legislature in 1868 to waive sovereign immunity by stating that, "Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating." The doctrine of sovereign immunity prohibits lawsuits in state court against a state government, and its agencies and subdivisions without the government's consent. Section 768.28, F.S., provides that sovereign immunity for tort liability is waived for the state, and its agencies and subdivisions, but imposes a \$100,000 limit on the government's liability to a single person and for claims arising out of a single incident, the limit is \$200,000. Section 768.28, F.S., outlines requirements for claimants alleging an injury by the state or its agencies. Section 11.066, F.S., requires a claimant to petition the Legislature in accordance with its rules, to seek an appropriation to enforce a judgment against the state or state agency. The exclusive remedy to enforce damage awards that exceed the recovery cap is by an act of the Legislature through the claims bill process. A claim bill is a bill that compensates an individual or entity for injuries or losses occasioned by the negligence or error of a public officer or agency.

¹ See Rule 64F-6.002, Florida Administrative Code.

² Department of Education Analysis of SB 130 (2008).

Section 768.28(9), F.S., defines “officer, employee, or agent” to include, but not be limited to, any health care provider when providing services pursuant to s. 766.1115, F.S., any member of the Florida Health Services Corps, as defined in s. 381.0302, F.S., who provides uncompensated care to medically indigent persons referred by DOH, and any public defender or her or his employee or agent, including among others, an assistant public defender and an investigator.

The second form of sovereign immunity potentially available to private entities under contract with the government is set forth in s. 768.28(9), F.S. It states that agents of the state or its subdivisions are not personally liable in tort; instead, the government entity is held liable for its agent’s torts. The factors required to establish an agency relationship are: (1) acknowledgment by the principal that the agent will act for him; (2) the agent’s acceptance of the undertaking; and (3) control by the principal over the actions of the agent.³ The existence of an agency relationship is generally a question of fact to be resolved by the fact-finder based on the facts and circumstances of a particular case. In the event, however, that the evidence of agency is susceptible of only one interpretation the court may decide the issue as a matter of law.⁴

III. Effect of Proposed Changes:

The bill amends s. 381.0056, F.S., to revise the definition of “entity” or “health care entity” to include a “school-based health center,” for purposes of the School Health Services Act, thereby extending sovereign immunity to such centers. A “school-based health center” is defined in the bill, to mean an entity that, at a minimum:

- Provides at least 25 hours per week of primary care services to adolescents or other school age children in accordance with state law for the majority of the year;
- Primarily provides services onsite at the school, but may also offer linkages and referrals to primary care providers if confidentiality is maintained;
- Provides comprehensive services (see below);
- Maintains health records in a manner that is current, detailed, confidential, organized, and permits effective student care and quality review; and
- Does not deny access to health care services to students based upon insurance status or ability to pay, or discriminate with regard to race or ethnicity, religion, national origin, age, disability, gender, or sexual orientation.

Comprehensive services include but are not limited to: acute management and ongoing monitoring of chronic conditions in conjunction with a student’s regular doctor; well-child or adolescent examinations consisting of a comprehensive health history, complete physical assessment, screening procedures, and anticipatory guidance; immunizations; diagnosis and treatment of acute illnesses and injuries; basic diagnostic laboratory tests; prescriptions or dispensing of commonly used medications for identified health conditions; and individual health education and anticipatory guidance for students and parents. Comprehensive services may additionally include age-appropriate reproductive health services, including health education, pelvic examinations, diagnosis and treatment of sexually transmitted diseases, testing and

³ *Goldschmidt v. Holman*, 571 So.2d 422 (Fla. 1990).

⁴ *Campbell v. Osmond*, 917 F. Supp. 1574, 1583 (M.D. Fla. 1996). See also *Stoll v. Noel*, 694 So.2d 701 (Fla. 1997).

counseling for HIV or AIDS, and prescribing, dispensing, or referring for birth control, including condoms. Comprehensive services may also include basic mental health services.

The effective date of the bill is upon the bill becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Students receiving services from a school-based health center may benefit from greater access to primary care and other health services.

C. Government Sector Impact:

The DOH indicates that the potential impact of the bill cannot be determined. If school based health centers are included as contracting entities for school health services, then a waiver of sovereign immunity may attach to the school services provided by the centers and additional costs may accrue for site monitoring and quality assurance by the county health departments and the school health services program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Officials at the DOH have outlined several issues relating to the bill's addition of school-based health centers to the definition of "entity" or "health care entity" under the School Health Services Act:

- The School Health Services Act does not provide funding or authorization for primary medical care services. School-based health centers provide primary medical care which represents a significantly higher cost per student and is generally available to students only in the school where the health center is located.
- School-based health centers are independent entities that are established by federal and state grants and their oversight does not fall under a single entity. Therefore, no mechanism exists to track the current status of school-based health centers.
- The school health services program provides cost-effective population based preventive health services that reach all students. The services described in the definition of school-based health centers, although essentially primary care, duplicate many of the prevention based services that are already provided, such as monitoring chronic conditions, referrals for injuries or emergencies, nursing assessments and referrals, and medication administration.
- Specific guidelines should be created for school-based health centers providing primary care services as a new component of the school health services plan.
- The added definition for school-based health centers includes very specific services and changes the intent of s. 381.0056, F.S. Under the bill, a mandated health promotion and prevention program is expanded to include primary health care services.
- The Department of Education notes the following ... the comprehensive services provided by a school-based health center would require acceptance and approval by the parents, schools, and communities to be included in the local school health services plan. Some services included in this bill may not be acceptable to all parents and local communities, such as reproductive health and mental health services.

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.