

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1409 Placement of Children
SPONSOR(S): Health Care Services Policy Committee; Sands
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 2240

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----|---|-----------------|------------|----------------|
| 1) | Health Care Services Policy Committee | 6 Y, 0 N, As CS | Preston | Schoolfield |
| 2) | Health & Family Services Policy Council | 24 Y, 0 N | Lowell | Gormley |
| 3) | Human Services Appropriations Committee | (ref. removed) | | |
| 4) | Full Appropriations Council on General Government & Health Care | 20 Y, 0 N | Massengale | Leznoff |
| 5) | | | | |

SUMMARY ANALYSIS

The bill adopts the Interstate Compact for the Placement of Children (ICPC). This compact was developed by the Council of State Governments (CSG) to enable member states to uniformly address the interstate placement of children. The compact applies to four types of situations in which children may be sent to other states:

- Placement preliminary to an adoption;
- Placements into foster care, including foster homes, group homes, residential treatment facilities, and institutions;
- Placements with parents and relatives when a parent or relative is not making the placement; and
- Placements of adjudicated delinquents in institutions in other states.

The bill contains the provisions of the proposed compact which will enable states to successfully address the deficiencies documented in the current compact system, including enforcement, administration, finances, communications, data collection and exchange, and training. These improvements will remove many of the existing barriers to the timely placement of children across state lines.

The compact takes effect when it is adopted by 35 states. As of March 6, 2009, seven states have enacted the compact and it has been introduced in two states, including Florida.

The bill does not appear to have a fiscal impact on local governments; the fiscal impact to state government is insignificant and may be absorbed within existing resources.

The bill takes effect upon becoming a law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Interstate Compacts

Interstate compacts have historically been enacted for a variety of reasons, though they were seldom used until the 20th Century, with most of the earliest compacts being used to settle boundary disputes. Interstate compacts are formal agreements among and between states that contain characteristics of both statutory law and contractual agreements. They are enacted by state legislatures and are a strong, lasting, and adaptive vehicle to ensure cooperation among states. Compacts enable states to act jointly and collectively and offer states the opportunity to develop dynamic, self-regulatory systems over which the party states can maintain control through a coordinated legislative and administrative process.

Like any contract, the language of a compact needs to be identical in intent and context, if not identical in exact verbiage between the states. Generally speaking, interstate compacts:

- Establish a formal, legal relationship among states to address common problems or promote a common agenda.
- Create independent, multistate governmental authorities (e.g., commissions) that can address issues more effectively than a state agency acting independently, or when no state has the authority to act unilaterally.
- Establish uniform guidelines, standards, or procedures for agencies in the compact's member states.
- Create economies of scale to reduce administrative and other costs.
- Respond to national priorities in consultation or in partnership with the federal government.
- Retain state sovereignty in matters traditionally reserved for the states.
- Settle interstate disputes.¹

Compacts are a statute in each state that is party to it and they are considered contracts because of the manner in which they are enacted. As a contract, an interstate compact is binding on member states in the same manner as any other contract entered into by an individual or corporation. Although

¹ The Council of State Governments. National Center for Interstate Compacts. Available at: <http://www.csg.org/programs/ncic/documents/ICPC-Boiler-PlateLegislativeTestimony.pdf> (Last visited March 14, 2009).

passed by state legislatures in essentially the same form, compacts are not “uniform laws.” Once they have been enacted, compacts cannot be unilaterally amended.

History of the Interstate Compact on the Placement of Children

The need for a compact to regulate the interstate movement of children was recognized in the 1950s. A group of East Coast social service administrators began to informally to study the problems of children moved out of state for foster care or adoptive placement. Among the problems they identified was the failure of importation and exportation statutes enacted by individual states to provide protection for children. It became apparent that a state’s jurisdiction ends at its borders and that a state can only compel an out-of-state agency or individual to discharge its obligations toward a child through a compact. The administrators were also concerned that a state to which a child was sent did not have to provide supportive services even though it might agree to do so on a courtesy basis. In response to these and other problems, the Interstate Compact on the Placement of Children (ICPC) was drafted, and in 1960 New York was the first state to enact it.²

The ICPC ensures protection and services to children who are placed across state lines for foster care or adoption. The compact has been enacted by all 50 states, the District of Columbia, and the U.S. Virgin Islands. It establishes orderly procedures for the interstate placement of children and fixes responsibility for those involved in placing the child. The compact is typically administered through each state by its Health and Human/Family Services Agency and is managed on the national level by the American Public Human Services Association (APHSA).

The compact applies to four types of situations in which children may be sent to other states:

- Placement preliminary to an adoption;
- Placements into foster care, including foster homes, group homes, residential treatment facilities, and institutions;
- Placements with parents and relatives when a parent or relative is not making the placement; and
- Placements of adjudicated delinquents in institutions in other states.

The ICPC, as currently written and used, is no longer an effective instrument for use by the states in the movement of children to out-of-state foster/adoptive placements. Language within the compact is outdated, governing structures established by the compact are antiquated and basic management and administration issues of the compact are either obsolete or omitted completely from the existing language. Initially adopted in 1960, the compact is in need of an overhaul to repair its outdated construction and enhance its national utility, visibility and effectiveness. Specifically, the current compact:

- Contains inconsistent statutory language and subsequent state-by-state rule/regulation adoptions have created a patchwork of conflicting state practices and standards that are not consistent with the intent of the original compact;
- Lacks meaningful enforcement and dispute resolution mechanisms to enforce the provisions and rules of the compact and to resolve disputes concerning the transfer of children between states under the compact;
- Lacks clear standards, accountability, and authority for existing rulemaking procedures;
- Lacks mechanisms to promote the timely and accurate exchange of data among member states;
- Lacks proper coordination with like agreements, namely the Interstate Compact for Juveniles and the Interstate Compact for Adoption and Medical Assistance; and
- Lacks visibility in and among states.

The proposed, redrafted ICPC was released for state consideration in March 2006. Once 35 states have adopted the new compact, and after a transitional period during which both compacts will operate,

² The provisions of the current ICPC are found in s. 409.401, F.S.

any state that is not a party to the new compact will have "no meaningful way to place children in new compact states"³

Effect of Proposed Changes

The bill contains the provisions of the proposed compact, which will enable states to successfully address the deficiencies documented in the current compact system, including enforcement, administration, finances, communications, data collection and exchange, and training. These improvements will remove many of the barriers to the timely placement of children across state lines. More specifically, the revised compact:

- Narrows applicability of the compact and specifies the circumstances under which the compact does apply;
- Requires the development of timeframes for approval processes under the new rules and rulemaking system;
- Creates a new third-party administrative body to oversee and govern the activities of the revised compact, known as the Interstate Commission. The new Commission will be composed of representatives from the compacting states;
- Provides for a formal, recognized, and flexible rule-making authority seated with the new Interstate Commission;
- Provides for significant compliance, enforcement, and accountability measures;
- Clarifies the responsibilities of states, whether sending or receiving children;
- Allows states the ability to contract for home studies in another state;
- Establishes the requirement to develop a national data collection and sharing system so that states may rapidly and accurately exchange relevant transfer data;
- Establishes a financing structure to support the activities of the compact including development of the national data system, training for compact administrators and the promotion of best practices among compact officials; and
- Provides for the proper coordination with other interstate compacts.

B. SECTION DIRECTORY:

Section 1. Creates s. 409.408, F.S., relating to the execution of the Interstate Compact for the Placement of Children.

Section 2. Creates s. 409.409, F.S., relating to the continuing authority of the current compact.

Section 3. Creates s. 409.410, F.S., relating to rulemaking authority.

Section 4. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

³ American Public Human Services Association. Association of Administrators of the Interstate Compact for the Placement of Children. Available at <http://www.aphsa.org/Policy/ICPCREWRITE/Resource%20Materials/HISTORY%20OF%20THE%20ICPC.pdf> (last visited March 14, 2009).

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Actual costs related to the compact per state will not be known until the compact is enacted by at least 35 states and the Interstate Commission (IC), by vote of member states, has adopted an equitable assessment structure. In addition, the member states will need to determine where the staff of the Interstate Commission will be housed. Until these decisions can be made, however, an interim budget projection to help states better prepare for their financial obligations and to allow them to begin planning for enhanced compact support has been developed. This fiscal information represents an informed, good faith estimate of projected operating costs and a fair allocation plan based on cost data from the Council of State Governments (CSG), which is supporting the implementation of a number of similar compacts.

It is estimated that the work to organize and operate the IC the first year will cost approximately \$500,000. Approximately, twenty-five percent of the total estimated budget is dedicated to costs of bringing the member states together to develop the foundational rules, by-laws, and other organizational tools for the operation of the IC. Each member state will share in the allocation of these costs.

The operating budget for the Interstate Commission would be allocated among the member states through an annual state assessment. Such an assessment would cover the costs of internal operations and activities of the IC and its staff, as budgeted by the commission. The IC may consider other factors for allocation of dues such as population of each state or the volume of interstate movement of children between states. If dues were allocated equally among states, assuming participation by a minimum of 35 and a maximum of 54 jurisdictions, the additional cost per state for funding the IC is between \$9,000 and \$14,000.

The existing ICPC already has a fee associated with its operation that is assessed and currently paid by the State of Florida. Florida paid the American Public Human Services Association \$13,185.00 for dues in 2009 and this would include administration of the ICPC.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The new compact contains a provision related to records:

The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests⁴

This provision may conflict with s. 24, Art. I of the State Constitution and chapter 119, Florida Statutes, relating to access to public records.

B. RULE-MAKING AUTHORITY:

The compact created by the bill authorizes the Interstate Commission to adopt rules to achieve the purposes of the compact. The compact specifies that these rules have the force and effect of administrative rules, and further provides that a compacting state's failure to follow the rules may result in the provision of remedial training or technical assistance, notice of a means of effecting a cure, or legal action.

The compact states that the "rulemaking shall substantially conform to the principles of the 'Model State Administrative Procedures Act,' 1981 Act, Uniform Laws Annotated, Vol. 15, p. 1 (2000), or such other administrative procedures act as the Interstate Commission deems appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the United States Supreme Court." All rules and amendments are to become binding as of the date specified.

By enacting into law some interstate compacts, the state could effectively bind itself to rules not yet promulgated by the Interstate Commission. The Florida Supreme Court has held that while it is within the province of the Legislature to adopt federal statutes enacted by Congress and rules promulgated by federal administrative bodies that are in existence at the time the Legislature acts, it is an unconstitutional delegation of legislative power for the Legislature to prospectively adopt federal statutes not yet enacted by Congress and rules not yet promulgated by federal administrative bodies.⁵

However it would appear that the terms of the new compact do not bind states if provisions are in conflict with any constitutional provision of that state. The new compact states:

In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.⁶

The bill also contains specific language exempting Florida from rules adopted by the Interstate Commission unless they are also adopted by the State of Florida through the rulemaking process.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides an effective date of upon becoming law. It will not become effective until upon becoming law or upon the enactment of the compact into law by 34 other states, whichever date occurs later.

Lines 596-599 of the bill might still be problematic considering the provisions of s. 24, Art. I of the State Constitution and chapter 119, Florida Statutes, relating to access to public records.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 18th, 2009 the Health Care Services Policy Committee adopted a strike all amendment that removed the provisions relating to open meetings. The analysis reflects the bill as amended.

⁴ See lines 596-599 of the bill.

⁵ *Freimuth v. State*, 272 So.2d 473, 476 (Fla.1972).

⁶ See lines 929-933 of the bill.