

**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.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SB 308

INTRODUCER: Senator Brandes

SUBJECT: Public Assistance Fraud

DATE: March 19, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<b>Pre-meeting</b>

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**I. Summary:**

SB 308 gives new authority to the Department of Financial Services (DFS) to investigate and prosecute public assistance fraud. The DFS combats fraud in the major public assistance programs, such as Medicaid, Supplemental Nutritional Assistance Program, and Temporary Assistance for Needy Families.

This bill grants fraud investigators the authority to administer oaths and affirmations. These are needed during investigations. Without this authority, investigators must become a Notary Public, which increases the costs of the program.

This bill also gives public assistance fraud investigators the power to issue subpoenas. Currently investigators cannot issue subpoenas for business and education records needed for investigations. Investigators must ask the local state attorneys to issue the subpoena on their behalf. This change could improve the timeliness and efficiency of the DFS efforts to combat fraud.

**II. Present Situation:**

The state and federal government require organized efforts by states to combat public assistance fraud by program recipients and service providers. In 2011, the Legislature moved the Division of Public Assistance Fraud (division) from the Department of Law Enforcement to the DFS. The division works to prevent, detect, and prosecute public assistance fraud. Other agencies combat public assistance fraud as well, such as the Agency for Health Care Administration that investigates fraud by Medicaid providers. The division investigates recipients, businesses and service providers for fraudulent activity in the major economic assistance programs. These

programs are dually funded by the state and federal governments. The division investigates fraud in the following programs:

- Temporary Assistance for Needy Families (TANF);
- Supplemental Nutritional Assistance Program (SNAP);
- Trafficking in SNAP benefits;
- Medicaid recipient fraud;
- Subsidized day care;
- School Readiness Program;
- Voluntary Pre-K Program;
- Emergency Financial Assistance for Housing;
- Low Income Energy Assistance;
- Disaster Assistance/Emergency SNAP benefits; and
- Cooperative Disability Investigations (Social Security Disability, SNAP, and Medicaid Eligibility).<sup>1</sup>

The division is staffed with 63 non-sworn law enforcement positions assigned to nine field offices.<sup>2</sup> Investigators must review records establishing a person's eligibility, obtain and analyze other personal and business records, take sworn testimony from witnesses and suspects, and determine if there is evidence of fraud. Public assistance fraud investigators do not have authority to administer oaths and affirmations. In order to do so, an investigator must be a Notary Public,<sup>3</sup> which costs the division approximately \$120 per investigator, and must be renewed every 4 years.<sup>4</sup>

Investigators in the division do not have statutory authority to issue subpoenas for business and education records that are frequently necessary for public assistance fraud investigations.<sup>5</sup> In order to obtain such records, the public assistance fraud investigators must request state attorneys to issue the subpoenas on their behalf.<sup>6</sup> This process is often time-consuming, particularly for the state attorneys and clerks of court.<sup>7</sup> Further, because not all investigations are criminal, the local state attorney cannot issue a subpoena for some public assistance fraud investigations.<sup>8</sup> This can lead to unsuccessful investigations and fraud cases.

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<sup>1</sup> Division of Public Assistance Fraud website, available at <http://www.myfloridacfo.com/division/PAF/#.UtRFS6NOncs> (last visited on March 13, 2014).

<sup>2</sup> *Id.*

<sup>3</sup> Department of Financial Services, *Fiscal Analysis* (Jan.13, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>4</sup> *Id.* The division averages 10 renewals per year at a cost to the division of approximately \$1,200 per year.

<sup>5</sup> Section 414.411, F.S.

<sup>6</sup> Department of Financial Services, *Fiscal Analysis* (Jan.13, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

The DFS has other investigative programs under its jurisdiction with such authority. Other units within the DFS with the authority to issue subpoenas include:

- The enforcement of employer workers' compensation coverage requirements (s. 440.107(3)(f), F.S.);
- Investigations under the Insurance Code (s. 624.321(1)(b), F.S.);
- State Fire Marshal investigations under ch. 633, F.S. (s. 633.112, F.S.); and
- Disposition of unclaimed property investigations (s. 717.1301, F.S.).

### **III. Effect of Proposed Changes:**

The bill amends s. 414.411, F.S., relating to public assistance fraud to allow the DFS to do the following when conducting public assistance fraud investigations:

- Administer oaths and affirmations; and
- Issue and serve subpoenas for the attendance of witnesses or the production of business records, books, papers, correspondence, memoranda, and other records.

The bill allows the subpoenas to be served by representatives designated by the DFS. If a person fails to obey the subpoena, the court may issue an order requiring compliance with the subpoena. Failure to obey the court order may be punished by the court as civil or criminal contempt. The person refusing the subpoena will be liable for costs incurred by the DFS and reasonable attorney fees.

The bill provides for an effective date of July 1, 2014.

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

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

None.

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

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The aim of the bill is to improve the investigation and prosecution of public assistance fraud. To the extent that these changes reduce public assistance fraud, Florida and the federal government would see a reduction in the cost of these shared programs.

The bill will also reduce the cost to DFS to administer this program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 414.411 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.