

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS

Senator Storms, Chair

Senator Hill, Vice Chair

MEETING DATE: Monday, March 14, 2011

TIME: 1:00 —3:00 p.m.

PLACE: James E. "Jim" King, Jr., Committee Room, 401 Senate Office Building

MEMBERS: Senator Storms, Chair; Senator Hill, Vice Chair; Senators Detert, Hays, and Rich

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 138 Bennett (Identical H 17) (If Received)	Military Veterans Convicted of Criminal Offenses; Provides that persons convicted of criminal offenses who allege that the offenses resulted from posttraumatic stress disorder, substance abuse, or psychological problems stemming from service in a combat theater in the United States military may have a hearing on that issue before sentencing. Provides that defendants found to have committed offenses due to such causes and who are otherwise eligible for probation or community control may be placed in treatment programs for an equal period of time in certain circumstances, etc.	CJ 02/22/2011 Temporarily Postponed CJ 03/09/2011 Fav/CS CF 03/14/2011 If received BC
2	SB 516 Garcia (Identical H 83)	Autism; Creates the Autism Spectrum Disorder Study Committee to study autism spectrum disorder in families in which English is the second language. Provides for membership, meetings, and duties. Prohibits committee members from receiving compensation for their services. Authorizes certain funding for publications, subject to approval of the State Surgeon General. Requires a report to the Governor and Legislature. Provides for expiration of the committee.	CF 03/14/2011 GO BC
3	SB 586 Wise (Identical H 491)	Alzheimer's Disease; Directs the Department of Elderly Affairs to develop and implement a public education program relating to screening for Alzheimer's disease. Provides that implementation of the memory-impairment screening grant program is contingent upon an appropriation of state funds or the availability of private resources. Specifies the types of facilities where an employee or direct caregiver providing care for persons with Alzheimer's disease may begin employment without repeating certain training requirements, etc.	CF 03/14/2011 BC

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Children, Families, and Elder Affairs

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 912 Bennett (Identical H 639, Compare S 1804)	Affordable Housing; Requires the inspector general to prepare an annual report. Provides a housing finance authority with an additional purpose for which it may exercise its power to borrow. Revises provisions relating to the elements of local comprehensive plans to authorize the inclusion of an element for affordable housing for certain seniors. Revises the allocation of certain proceeds distributed from the excise tax on documents that are paid into the State Treasury to the credit of the State Housing Trust Fund, etc.	CA 03/07/2011 Favorable CF 03/14/2011 BC
5	SM 954 Flores (Identical HM 557) (If Received)	Parental Rights Amendment; Urges the Congress of the United States to propose to the states for ratification an amendment to the United States Constitution relating to parental rights.	JU 03/09/2011 Not Considered JU 03/14/2011 CF 03/14/2011 If received GO
6	SB 1140 Sachs (Identical H 1131)	Child Care Facilities; Requires vehicles used by child care facilities and large family child care homes to be equipped with an alarm system that prompts the driver to inspect the vehicle for children before exiting the vehicle. Requires the Department of Children and Family Services to adopt rules and maintain a list of approved alarm systems.	CF 03/14/2011 TR BC
7	SB 1192 Rich (Identical H 579)	Public Records/Regional Autism Centers; Provides an exemption from public records requirements for all records that relate to a client of a regional autism center, the client's family, or a teacher or other professional who receives the services of a center or participates in center activities. Provides for release of specified confidential and exempt information by a center under certain circumstances. Provides for review and repeal of the exemption. Provides a statement of public necessity.	CF 03/14/2011 HR GO

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Children, Families, and Elder Affairs

Monday, March 14, 2011, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1366 Storms (Similar H 959)	Child Welfare/Mental Health/Substance Abuse; Requires the Department of Children and Family Services, the Department of Health, the Agency for Persons with Disabilities, the Agency for Health Care Administration, community-based care lead agencies, managing entities, and their contracted monitoring agents to adopt certain revised policies for the administrative monitoring of providers of child welfare services, mental health services, and substance abuse services. Conforms provisions to changes made by the act. CF 03/14/2011 HR BC	
9	SB 1412 Storms	Department of Children and Family Services; Changes the name of the Department of Children and Family Services to the Department of Children and Families. Authorizes the department to establish circuits and regions headed by circuit administrators and regional directors. Provides for operating units known as circuits and regions based on judicial circuits. Deletes provisions relating to the program directors for mental health and substance abuse, the service districts, child protection workers, the membership of community alliances, and the prototype region, etc. CF 03/14/2011 GO BC	
10	Presentation by Mark Swain, Sunrise ARC		

problems. It also specifies a preference for Department of Veterans Affairs programs for which the defendant is eligible.

This bill creates section 921.00242 of the Florida Statutes, and amends sections 948.08 and 948.16 of the Florida Statutes.

II. Present Situation:

The Department of Corrections does not have statistics of how many of the 152,000 offenders on community supervision are military veterans. However, it reports that 6,864 state prison inmates (approximately 6.7% of the total prison population) identified themselves as a military veteran as of December 20, 2010. This claim of veteran status was verified for 1,273 of these inmates by submission of a Certificate of Release or Discharge from Active Duty (Department of Defense Form 214). The types of offenses for which these veterans are incarcerated are reflected in the following table:¹

Primary Offense	Claimed Veteran Status	%	Verified Veteran Status	%
Murder/Manslaughter	1,079	15.7%	353	27.7%
Sexual/Lewd Behavior	1,773	25.8%	501	39.4%
Robbery	593	8.6%	97	7.6%
Aggravated Battery/ Assault, Kidnapping, Other Violent Crimes	747	10.9%	84	6.6%
Burglary	677	9.9%	98	7.7%
Property Theft/Fraud/Damage	579	8.4%	36	2.8%
Drugs	860	12.5%	62	4.9%
Weapons	165	2.4%	17	1.3%
Other	391	5.7%	25	2.0%
Total	6,864		1,273	

The table indicates that a majority of veteran inmates in Florida are incarcerated for violent crimes and a lesser number for property and drug offenses. This is in contrast to the findings of the American Bar Association's Commission on Homelessness and Poverty (ABA), which cited national statistics that 70 percent of incarcerated veterans are in jail for non-violent offenses.² However, the ABA statistic apparently relates to veterans in local jails. There is no comprehensive data on the number of veterans among the approximate 59,000 persons either serving sentences or awaiting trial or hearing in county jails throughout Florida.

¹ Department of Corrections Analysis of House Bill 17 – Military Veterans Convicted of Criminal Offenses, December 21, 2010, p. 1.

² ABA Commission on Homelessness and Poverty, Resolution 105A, February 10, 2010 at http://www.americanbar.org/content/dam/aba/migrated/homeless/PublicDocuments/ABA_Policy_on_Vets_Treatment_Courts_FINAL.authcheckdam.pdf, last viewed on February 17, 2011. The ABA report indicates that the statistics come from a 2002 report by the Department of Justice Bureau of Justice Statistics, but staff could not locate the underlying report.

Judge T. Patt Maney, for whom the bill is named, regularly deals with veterans in his Okaloosa County courtroom. Judge Maney has observed that the offenses that are most frequently committed by veterans are trespass, possession of an open container, obstructing traffic, possession of marijuana, loitering, worthless checks, disorderly conduct, domestic violence, resisting an officer, and petit theft.³ A detailed report of veterans' involvement in the criminal judicial system in Travis County, Texas, reflects that the majority of misdemeanor charges against veterans were for non-violent offenses, while the majority of felony charges were for violent offenses.⁴

In 2008, the Florida Department of Veterans' Affairs and the Florida Office of Drug Control issued a paper examining the issue of mental health and substance abuse needs of returning veterans and their families.⁵ The study noted that combat medical advances are enabling veterans of Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF) to survive wounds that would have been fatal in previous conflicts, and thus some are returning with "more complex physical and emotional disorders, such as Traumatic Brain Injuries and Post-Traumatic Stress Disorder, substance abuse and depression."⁶ The study also estimated that approximately 29,000 returning veterans residing in Florida may suffer from PTSD or some form of major depression.⁷

A Rand Center report in 2008 indicated that preliminary studies showed that 5 to 15 percent of OIF and OEF service members are returning with PTSD, 2 to 10 percent with depression, and an unknown number with TBI.⁸ A person with any of these disorders also has a greater likelihood of experiencing other psychiatric diagnoses than do other persons.⁹

A report by the Center for Mental Health Services National GAINS Center of the federal Substance Abuse and Mental Health Services Administration (SAMHSA) noted that many veterans coming into contact with the criminal justice system may have unmet treatment needs.¹⁰ Veterans courts have been established across the country as some judges have begun to recognize a correlation between the commission of offenses by veterans and substance abuse issues, mental health issues, and cognitive functioning problems. These judges concluded that in many cases, the veterans' inability to deal with these conditions on their own contributed to their encounters with the legal system.

³ Email from Okaloosa County Judge Pat Maney to legislative staff dated February 11, 2011.

⁴ *Report of Veterans Arrested and Booked Into the Travis County Jail, July 2009*, <http://www.nadcp.org/sites/default/files/nadcp/Texas%20Veterans%20Justice%20Research.pdf>, last viewed on February 17, 2011.

⁵ Florida Department of Veterans' Affairs and Florida Office of Drug Control Green Paper, *Returning Veterans and Their Families with Substance Abuse and Mental Health Needs: Florida's Action Plan*, January 2009, page 5.

⁶ *Ibid*, p. 5.

⁷ *Ibid*, p. 5.

⁸ Rand Center for Military Health Policy Research, Benjamin R. Karney, Rajeev Ramchand, Karen Chan Osilla, Leah B. Caldarone, and Rachel M. Burns, *Invisible Wounds, Predicting the Immediate and Long-Term Consequences of Mental Health Problems in Veterans of Operation Enduring Freedom and Operation Iraqi Freedom*, April 2008, page xxi.

⁹ *Ibid*, p. 127.

¹⁰ GAINS Center, *Responding to the Needs of Justice-Involved Combat Veterans with Service-Related Trauma and Mental Health Conditions*, August 2008, page 6, at www.gainscenter.samhsa.gov/pdfs/veterans/CVTJS_Report.pdf last viewed on 17 February 2011. The observation was based upon information provided by the VA.

Veterans' courts have the goal of identifying veterans who would benefit from a treatment program instead of incarceration or other sanctions. They are typically patterned after successful specialty courts such as drug courts and mental health courts. Since 2008, legislation authorizing the establishment of veterans' courts has been adopted or at least considered in California, Colorado, Texas, Nevada, Illinois, Connecticut, New Mexico, New York, Minnesota, and Oklahoma.¹¹ The National Association of Drug Court Professionals website indicates that there are veterans' courts in 47 cities or counties nationwide.¹²

One advantage that veterans' courts have over drug and mental health courts is that the majority of veterans who have committed criminal offenses are eligible for treatment services provided and funded by the United States Department of Veterans Affairs (VA). The previously-cited ABA study indicates that 82 percent of veterans in jail nationwide are eligible for services from the VA based on the character of their discharge.¹³

Florida has experience with both drug courts and mental health courts. In fact, it is believed that the Miami-Dade County Drug Court, founded in 1989, was the first drug court in the United States.¹⁴ Section 397.334, F.S., authorizes the establishment of drug courts that divert eligible persons to county-funded treatment programs in lieu of adjudication. Thirty-one counties have an adult pretrial drug court and twenty-six counties have an adult post-adjudication drug court. When juvenile drug courts and family dependency drug courts are included, forty-four counties have some type of drug court program.¹⁵

Funding for drug courts can come from a variety of sources including court fees, local funding, private or governmental grants, private payment by participants, or charitable donations.¹⁶

The Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program in s. 394.658, F.S., calls for award of a 1-year planning grant and a 3-year implementation or expansion grant to identify and treat individuals who have mental illness, substance abuse disorder, or co-occurring mental health and substance abuse disorders who are in or at risk of entering the criminal or juvenile justice systems.

Veterans Courts in Florida

There are several veterans' court and veterans' jail diversion initiatives around the state. Okaloosa County has begun referring veterans' cases to a court docket with special knowledge of veterans and veterans' issues. This has been possible through the cooperation of the local State Attorney's Office, the court, and local treatment professionals. To determine eligibility,

¹¹ Interim Report 2011-131, Veterans' Courts, Florida Senate Committee on Military Affairs and Domestic Security, October 2011, p. 1. In addition, much of the information in this portion of the analysis is derived from the Interim Report.

¹² National Association of Drug Court Professionals website at <http://www.nadcp.org/JusticeForVets>, last viewed on February 17, 2011.

¹³ ABA Commission on Homelessness and Poverty, Resolution 105A, at February 10, 2011, p. 4.

¹⁴ The history of the founding of the Miami-Dade Drug Court, and of Florida drug courts in general, can be found in the Supreme Court Task Force on Treatment-Based Drug Courts Supreme Court Task Force's "Report on Florida Drug Courts (July 2004)", http://www.flcourts.org/gen_public/family/drug_court/bin/taskforcereport.pdf, last viewed on March 10, 2011.

¹⁵ "Drug Courts in Florida", http://www.flcourts.org/gen_public/family/drug_court/map.shtml, last viewed on March 10, 2011.

¹⁶ "Drug Court Funding Opportunities", http://www.flcourts.org/gen_public/family/drug_court/bin/Funding.pdf, last viewed on March 10, 2011.

offenders are asked at initial booking if they have ever served in the military and what type of discharge they received. Veterans are further asked if they will sign a release in order to share information with the VA. Further screening is conducted through the Pre-Trial Services Office, and the program uses drug court case managers to monitor participants. Access to VA treatment facilities is being sought for eligible veterans in the program.

As noted previously, the bulk of Okaloosa County veterans' cases involve substance abuse, related domestic violence, and some theft related cases including worthless check charges that may be related to lost cognitive ability to do math. Successful completion of the program is defined as completion of a treatment program and avoiding additional legal problems.

Palm Beach County has established a veterans' court that began operating in December 2010. A feature of the program is assignment of a VA social worker supervisor to act as the court's VA liaison. This VA employee has oversight of screening and case management services for eligible veterans. In addition to receiving any needed mental health and substance abuse treatment, participating veterans also have access to VA programs that address homelessness and unemployment. This is compatible with the VA's national Veteran's Justice Outreach Initiative that will assign staff and trained volunteer resources to facilitate veterans' court programs.¹⁷

In October 2009, the Department of Children and Families Mental Health Program Office was awarded over \$1.8 million from SAMHSA over the next five years to provide services and support for Florida's returning veterans who served in Iraq and Afghanistan and who suffer with Post-Traumatic Stress Disorder and other behavioral health disorders. The department describes the grant and the project as follows:

The project will redesign the state's response to the needs of veterans and their family members by helping returning veterans learn to cope with the trauma of war and the adjustments of coming home and avoiding unnecessary involvement with the criminal justice system. Florida's project is based on a foundation of evidence-based screening, assessment, treatment and recovery practices. The grant will enable the Department to implement two veteran's jail diversion pilot projects for 240 veterans over the next five years. This grant will expand the Department's existing jail diversion programs by identifying veterans who have an initial contact with the criminal justice system, helping them enroll in Veteran's Administration benefits for those who are eligible, providing trauma-related treatment services, linking them with support services in their community, and providing specialized peer support services. Additionally, this grant enables the Department to include family members as recipients of services. One unique aspect of this grant is Florida's creation and implementation of a new state-level Veteran Peer Support Specialist credential, possible through the Department's ongoing partnership with the Florida Certification Board. Certification of trained veterans will professionalize what we know works - trained veterans who've been there helping other returning veterans adjust to their home and community. In the first year, the grant from the federal Substance Abuse and Mental Health Services

¹⁷ The Veteran's Justice Outreach Initiative website is <http://www.va.gov/HOMELESS/VJO.asp> , last viewed on February 17, 2011.

Administration (SAMHSA) will provide DCF with \$268,849. Hillsborough County is one of two sites that will launch Florida's Jail Diversion and Trauma Recovery Program. The location of the other pilot project has not yet been determined.¹⁸

III. Effect of Proposed Changes:

Pre-sentencing Hearing for Veterans

Section 2 of the bill requires a sentencing court to hold a special pre-sentencing hearing for a convicted veteran when: (1) the veteran is facing incarceration in county jail or state prison; and (2) the veteran alleges that he or she committed the offense because of PTSD, TBI, substance use disorder, or psychological problems stemming from service with the United States military in a combat theater. If these prerequisites are met, the court must hold a hearing to: (1) determine whether the veteran was a member of the United States military who served in combat; and (2) assess whether the veteran suffers from PTSD, TBI, substance use disorder, or psychological problems as a result of that service. The court is not required to determine whether the condition contributed to commission of the offense.

If the court verifies the claim, it can place the veteran on probation or community control if he or she is eligible for community supervision. As a condition of community supervision, the court can order the veteran to participate in a local, state, federal, or private non-profit treatment program. In order for the court to exercise this option, the veteran must agree to participate and the court must determine that an appropriate treatment program is available. Whenever possible, the court must place the veteran in a treatment program that has had success in treating veterans who suffer from PTSD, TBI, substance use disorder, or psychological problems relating to their military service. Preference must also be given to programs of the United States Department of Veterans Affairs (VA) or Florida Department of Veterans Affairs (FDVA) for which the veteran is eligible.

A veteran who is ordered into a residential treatment program as a result of the hearing would earn sentence credits for the time he or she actually serves in the treatment program. These credits would be applied to reduce any remaining sentence in the event that the veteran is committed to jail or prison as a result of violating the terms of community supervision. This is an exception to existing law that an offender cannot receive credit against prison sentence for any time served in a treatment or rehabilitation program prior to a violation of community supervision. *See State v. Cregan*, 908 So.2d 387 (Fla. 2005).

Current law allows a court to require an offender to participate in treatment as a special condition of probation or community control. However, the bill expands upon this by: (1) focusing attention on the offender's veteran status by requiring the court to hold a hearing to consider the offender's veteran status and condition; (2) providing for sentencing credit for time that the offender who is a veteran spends in an inpatient treatment program; and (3) emphasizing the need to place the offender who is a veteran into a treatment program that has a history of dealing with veterans' issues, with a preference for VA and FDVA programs.

¹⁸ Florida Department of Children and Families' description of the Veterans Jail Diversion Grant at <http://www.dcf.state.fl.us/programs/samh/mentalhealth/consumerfamilyaffairs/currinitiatives.shtml>, last viewed on February 17, 2011.

Pretrial Veterans' Treatment Intervention Program

The bill also creates felony and misdemeanor pre-trial diversion programs for veterans who are current or former United States military servicemembers suffering from PTSD, TBI, substance use disorder, or psychological problems stemming from service in a theater of combat. The bill would make these veterans eligible for placement in an appropriate treatment program that is approved by the chief judge of the circuit instead of being processed through the criminal justice system.

Section 3 of the bill amends s. 948.08, F.S., to create the felony pretrial veterans treatment intervention program. It would apply to any veteran with one of the conditions who is charged with a felony that is not a disqualifying offense. The bill references s. 948.06 (8)(c), F.S., to incorporate the offenses used to determine whether an offender is to be treated as a "violent felony offender of special concern" as disqualifying offenses. The disqualifying offenses are:

- Kidnapping or attempted kidnapping under s. 787.01, F.S., false imprisonment of a child under the age of 13 under s. 787.02(3), F.S., or luring or enticing a child under s. 787.025(2)(b) or (c), F.S.
- Murder or attempted murder under s. 782.04, F.S., attempted felony murder under s. 782.051, F.S., or manslaughter under s. 782.07, F.S.
- Aggravated battery or attempted aggravated battery under s. 784.045, F.S.
- Sexual battery or attempted sexual battery under s. 794.011(2), (3), (4), or (8)(b) or (c), F.S.
- Lewd or lascivious battery or attempted lewd or lascivious battery under s. 800.04(4), F.S., lewd or lascivious molestation under s. 800.04(5)(b) or (c)2., F.S., lewd or lascivious conduct under s. 800.04(6)(b), F.S., lewd or lascivious exhibition under s. 800.04(7)(b), F.S., or lewd or lascivious exhibition on computer under s. 847.0135(5)(b), F.S.
- Robbery or attempted robbery under s. 812.13, F.S., carjacking or attempted carjacking under s. 812.133, F.S., or home invasion robbery or attempted home invasion robbery under s. 812.135, F.S.
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person or attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person under s. 825.1025, F.S.
- Sexual performance by a child or attempted sexual performance by a child under s. 827.071, F.S.
- Computer pornography under s. 847.0135(2) or (3), F.S., transmission of child pornography under s. 847.0137, F.S., or selling or buying of minors under s. 847.0145, F.S.
- Poisoning food or water under s. 859.01, F.S.
- Abuse of a dead human body under s. 872.06, F.S.
- Burglary or attempted burglary that is a first-degree or second-degree felony, or any attempted burglary offense, under s. 810.02(2) or (3), F.S.
- Arson or attempted arson under s. 806.01(1), F.S.
- Aggravated assault under s. 784.021, F.S.
- Aggravated stalking under s. 784.048(3), (4), (5), or (7), F.S.
- Aircraft piracy under s. 860.16, F.S.
- Unlawful throwing, placing, or discharging of a destructive device or bomb under s. 790.161(2), (3), or (4), F.S.

- Treason under s. 876.32, F.S.
- Any offense in another jurisdiction that would meet the definitions of these offenses if committed in Florida.

If a veteran with one of the conditions is not charged with a disqualifying offense, he or she would be eligible to be admitted voluntarily into a felony pretrial veterans treatment intervention program if one has been approved by the chief judge of the circuit. Admission may be upon the court's own motion or the motion of either party. However, there are three circumstances under which a veteran could be denied admission into a program:

- The court may deny admission if the veteran rejected an offer of admission to a pretrial veterans treatment intervention program on the record at any time prior to trial.
- The court may deny admission if the veteran previously entered a court-ordered veterans treatment program.
- The state attorney may request a preadmission hearing if it appears that the veteran was involved in selling controlled substances in the case. The court must deny admission to the program if the state attorney demonstrates by a preponderance of the evidence that the veteran was involved in selling controlled substances.

Section 4 of the bill amends s. 948.16, F.S., to create the misdemeanor pretrial veterans treatment intervention program. Any veteran with one of the conditions who is charged with a misdemeanor would be eligible to be admitted voluntarily into a misdemeanor pretrial veterans treatment intervention program if one has been approved by the chief judge of the circuit. However, the court can deny admission if the defendant had previously entered a court-ordered veterans treatment program.

The bill requires that a veterans treatment intervention team develop an individualized coordinated strategy for any veteran who is to be admitted to either a felony or misdemeanor pretrial veterans treatment intervention program. This coordinated strategy must be provided to the veteran in writing before he or she agrees to enter the program. The strategy is to be modeled after the ten therapeutic jurisprudence principles and key components for treatment-based drug court programs that are found in s. 397.334(4), F.S. These principles and components are:

- Drug court programs integrate alcohol and other drug treatment services with justice system case processing.
- Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
- Eligible participants are identified early and promptly placed in the drug court program.
- Drug court programs provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
- Abstinence is monitored by frequent testing for alcohol and other drugs.
- A coordinated strategy governs drug court program responses to participants' compliance.
- Ongoing judicial interaction with each drug court program participant is essential.
- Monitoring and evaluation measure the achievement of program goals and gauge program effectiveness.

- Continuing interdisciplinary education promotes effective drug court program planning, implementation, and operations.
- Forging partnerships among drug court programs, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.

The coordinated strategy can include a system of sanctions for non-compliance. The sanctions can include placement in a residential or jail-based treatment program or incarceration for up to the length of time that is allowed for contempt of court.

At the end of the intervention program, the court must consider recommendations for disposition made by the state attorney and the program administrator (for felony diversion programs) or the treatment program (for misdemeanor diversion programs). After considering these recommendations, the court must dismiss the charges if it finds that the veteran successfully completed the intervention program. If the court finds that the veteran did not successfully complete the program, it can either order the veteran to continue in education and treatment or order that the charges revert to normal channels for prosecution.

Any veteran whose charges are dismissed after successful completion of the pretrial veterans treatment intervention program, if otherwise eligible, may have his or her arrest record and a plea of nolo contendere to the dismissed charges expunged under s. 943.0585, F.S.

The felony and misdemeanor treatment-based drug court program statutes on which the pretrial veterans treatment intervention program are modeled include requirements for the county or appropriate government entity to enter into a contract with any public or private entity that provides felony or pretrial diversion services. However, the bill does not include this requirement for felony pretrial veterans treatment intervention programs and provides an exception for VA and FDVA programs in the statute that creates misdemeanor pretrial veterans treatment intervention programs. It is anticipated that much of the needed treatment will be provided by the VA as a benefit that is available to the veteran as a result of his or her military service.

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:

This bill would have an impact on the private sector to the extent that participants are diverted from incarceration into private treatment programs.

C. Government Sector Impact:

The Criminal Justice Impact Conference assessed that the bill would have no impact on the state prison population. However, the assessment was made before the bill was amended to create the pretrial veterans treatment intervention programs. It is not known whether the assessment would be affected by the addition of these programs. If the amended bill diverts some defendants from incarceration to community-based treatment programs, it is anticipated that much of the programming could be provided by the VA as part of the veteran's benefits.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS by Criminal Justice on March 9, 2011:

- Expands the type of problem that qualifies a veteran for a pre-sentencing hearing by adding “traumatic brain injury” and replacing “substance abuse” with “substance use disorder.” “Substance abuse” refers only to use of illegal drugs, while “substance use disorder” refers to abuse of alcohol, illegal drugs, and prescription drugs.
- Clarifies that a veteran who has had adjudication withheld is eligible to have a pre-sentencing hearing and to be placed in a treatment program.
- Amends s. 948.08, F.S., to create a felony pretrial veterans treatment intervention program.
- Amends s. 948.16, F.S., to create a misdemeanor pretrial veterans treatment intervention program.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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 Children, Families, and Elder Affairs Committee

BILL: SB 516

INTRODUCER: Senator Garcia

SUBJECT: Autism

DATE: March 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Pre-meeting
2.			GO	
3.			BC	
4.				
5.				
6.				

I. Summary:

SB 516 creates the Autism Spectrum Disorder Study Committee (committee) to examine the effects of autism spectrum disorder (ASD) on families in which English is the second language. The committee, composed of nine members, is to advise the Agency for Persons with Disabilities (APD) on matters relating to the occurrence of ASD in those families. The committee must prepare and present its report by September 1, 2012, when the committee expires.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

What is Autism?

Autism is a term used to describe a group of complex developmental disabilities that many researchers believe are the result of a neurological disorder that affects the functioning of the brain. More people are being diagnosed with ASD than ever before, and the Centers for Disease Control and Prevention (CDC) considers it a public health crisis.¹

Individuals with autism often have problems communicating with others through spoken language and nonverbal communication. The early signs of autism usually appear in the form of developmental delays before a child turns 3 years old.²

¹ See, e.g., Prevalence of Autism Spectrum Disorders --- Autism and Developmental Disabilities Monitoring Network, United States, 2006. Available at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5810a1.htm> (last visited on March 11, 2011).

² Centers for Disease Control and Prevention website, available at <http://www.cdc.gov/ncbddd/autism/signs.html> (last visited on March 10, 2011).

Section 393.063(3), F.S., defines autism to mean: “. . . a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.”

The various forms of autism are referred to as the autism spectrum disorders (ASD), meaning that autism can be manifested in a wide variety of combinations, from mild to severe. Thus, many different behaviors can indicate that a person should be diagnosed as autistic. According to the National Institute of Mental Health (NIMH),³ the pervasive developmental disorders, or ASDs, range from a severe form, called autistic disorder, to a milder form, Asperger’s syndrome.⁴ If a child has symptoms of either of these disorders, but does not meet the specific criteria for either, the diagnosis is called pervasive developmental disorder not otherwise specified (PDD NOS). Other rare, severe disorders that are included in the autism spectrum are Rett syndrome⁵ and childhood disintegrative disorder.⁶ The NIMH states that all children with an ASD demonstrate deficits in:

- *Social Interaction* – Most children with an ASD have difficulty learning to engage in everyday human interaction. Children with an ASD are also slower in understanding subtle social cues (nonverbal communication) and thus struggle to interpret what others are thinking and feeling. This causes them to often find social interaction confusing and frustrating. It is also common for people with an ASD to have difficulty controlling their emotions. Examples include episodes of disruptive behavior such as crying or verbal outbursts at inappropriate times or physical aggression. Autistics often can lose self control when exposed to a strange or overwhelming environment or when angry or frustrated.

³ Department of Health and Human Services, National Institute of Mental Health. Autism Spectrum Disorders: Pervasive Developmental Disorders. Printed 2004 Reprinted 2008. Available at:

<http://www.nimh.nih.gov/health/publications/autism/nimhautismspectrum.pdf> (last visited on March 10, 2011).

⁴ The NIMH states that children with Asperger’s syndrome are similar to high-functioning children with autism in that their language and intelligence remain intact. Like autistic children, persons with Asperger’s syndrome have repetitive behaviors, severe social problems, and clumsy movements. The symptoms of Asperger’s syndrome usually appear later in childhood than those of autism.

⁵ The NIMH provides the following explanation of Rett syndrome: Rett syndrome is relatively rare, affecting almost exclusively females, one out of 10,000 to 15,000. After a period of normal development, sometime between 6 and 18 months, autism-like symptoms begin to appear. The little girl’s mental and social development regresses—she no longer responds to her parents and pulls away from any social contact. If she has been talking, she stops; she cannot control her feet; she wrings her hands. Some of the problems associated with Rett syndrome can be treated. Physical, occupational, and speech therapy can help with problems of coordination, movement, and speech.

⁶ The NIMH provides the following explanation of childhood disintegrative disorder: Very few children who have an ASD diagnosis meet the criteria for childhood disintegrative disorder (CDD). An estimate based on four surveys of ASD found fewer than two children per 100,000 with an ASD could be classified as having CDD. This suggests that CDD is a very rare form of ASD. It has a strong male preponderance. Symptoms may appear by age 2, but the average age of onset is between 3 and 4 years. Until this time, the child has age-appropriate skills in communication and social relationships. The long period of normal development before regression helps differentiate CDD from Rett syndrome. The loss of such skills as vocabulary is more dramatic in CDD than they are in classical autism. The diagnosis requires extensive and pronounced losses involving motor, language, and social skills. CDD is also accompanied by loss of bowel and bladder control and oftentimes seizures and a very low IQ.

- *Verbal and nonverbal communication* – Autistics have difficulty developing standard communication skills. Some children with an ASD remain mute, while others do not develop language until ages 5 to 9. Others use language in unusual ways or utilize sign language or pictures to communicate. The body language of autistics can be difficult to understand because it is not always consistent with the words they are saying. As they grow older, persons with an ASD often become more aware of their difficulties in communication, which can lead to anxiety or depression.
- *Repetitive behaviors or interests* – Children with an ASD often perform odd repetitive motions that set them apart from their peers. For example, some children and adults repeatedly flap their arms or walk on their toes while others freeze in position. Children with an ASD exhibit the need for consistency in their environment. Changes in daily routines—such as mealtimes, dressing, bathing, going to school at a certain time and by the same route—can cause autistics to become extremely disturbed. As children, they might spend hours lining up their toys in a certain way and if the toys are moved become upset. Additionally, autistics often form intense, obsessive preoccupations with certain objects or topics on which they focus much of their energy.

Another common difficulty is that children with an ASD often have unusual responses to sensory experiences, such as certain sounds or the way objects look.

Sections 627.6686(2)(b) and 641.31098(2)(b), F.S., define the term “autism spectrum disorder” as any of the following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM):⁷

- Autistic disorder.
- Asperger’s syndrome.
- Pervasive developmental disorder not otherwise specified.

Diagnosis of Autism Spectrum Disorders

There is no medical test for ASDs. Instead, doctors look at behavioral symptoms to make a diagnosis. These symptoms may show up within the first few months of life or may appear at any time before the age of 3.⁸

According to the Centers for Disease Control and Prevention (CDC), research shows that the diagnosis of autism at age 2 can be reliable, valid, and stable. However, many children do not receive final diagnosis until they are much older.⁹ This delay in diagnosis may result in lost opportunities for specialized early intervention.

⁷ The DSM, published by the American Psychiatric Association, is the primary system used to classify and diagnose mental disorders. The 4th edition of the DSM was released in 1994. On February 10, 2010, the American Psychiatric Association released its draft criteria for the fifth edition of the DSM on its website. The draft DSM-5 includes collapsing all autism related diagnoses into one single category, “autism spectrum disorder,” that would incorporate autistic disorder, Asperger’s syndrome, childhood disintegrative disorder, and pervasive developmental disorder not otherwise specified. The final DSM-5 is scheduled for release in May 2013.

⁸ Centers for Disease Control and Prevention website. Available at: <http://www.cdc.gov/ncbddd/autism/screening.html> (last visited on March 10, 2011).

⁹ *Id.*

The diagnosis of an ASD is a two-stage process. The first stage involves developmental screening during “well child” check-ups. These screening tests are used solely for identifying children with developmental disabilities. Additional screening may be needed if a child’s symptoms warrant it,¹⁰ or if he or she is at high risk for an ASD.¹¹

The second stage of diagnosis is a comprehensive evaluation. If the initial screening tests indicate the possibility of an ASD, then further comprehensive testing is performed. Comprehensive testing is done by health care practitioners from multiple disciplines (psychologists, psychiatrists, neurologists, speech therapists, and other professions with experience in diagnosing children with an ASD) who evaluate the child in depth and determine if there is a developmental disorder, and if so, render a diagnosis. This may include:¹²

- Clinical observations;
- Parent interviews;
- Developmental histories;
- Psychological testing;
- Speech and language assessments;
- The possibility of the use of one or more autism diagnostic scales; and
- The possibility of physical, neurological, and genetic testing.

Treatment Approaches

Much of the scientific and clinical evidence indicates that early treatment of autism during preschool years (ages 3 to 5) often yields very positive results in mitigating the effects of ASDs. According to the National Institute of Neurological Disorders and Stroke (NINDS), therapies for autism are designed to remedy specific symptoms.¹³ Educational and behavioral interventions are highly-structured and usually aimed at the development of skills such as language and social skills. Medication may be prescribed to reduce self-injurious behavior or other behavioral symptoms of autism. Early intervention is important for children because children learn most rapidly when they are very young. If begun early enough, such intervention has a chance of favorably influencing brain development.

In a 2001 report, the Commission on Behavioral and Social Sciences and Education recommended that treatment “services begin as soon as a child is suspected of having an autistic spectrum disorder. Those services should include a minimum of 25 hours a week, 12 months a year, in which the child is engaged in systematically planned, and developmentally appropriate educational activity toward identified objectives.”¹⁴

Florida’s Centers for Autism and Related Disabilities (CARD) are established in s. 1004.55, F.S., to provide nonresidential resource and training services for persons of all ages who have autism;

¹⁰ *Id.*

¹¹ The CDC considers a child with a sibling or parent with an ASD to be at high risk.

¹² Centers for Disease Control and Prevention website. Available at: <http://www.cdc.gov/ncbddd/autism/screening.html> (last visited on March 10, 2011).

¹³ National Institutes of Health, National Institute of Neurological Disorders and Stroke, Autism Information Page. Available at: http://www.ninds.nih.gov/disorders/autism/autism.htm#Is_there_any_treatment (last visited on March 10, 2011).

¹⁴ Commission on Behavioral and Social Sciences and Education, *Educating Children with Autism* 6, 2001. Available at: http://www.nap.edu/openbook.php?record_id=10017&page=66 (last visited on March 10, 2011).

a pervasive developmental disorder that is not otherwise specified; who have an autistic-like disability; who have a dual sensory impairment; or who have a sensory impairment with other handicapping conditions. There are seven CARD centers throughout the state,¹⁵ serving clients in their geographic areas.

Each of the centers is involved in academic research, and each provides information and resources to families in order to enable them to assist their loved ones dealing with ASD. In particular, early application of speech-language therapy, occupational therapy, and physical therapy are encouraged for individuals with autism:

- **Speech-Language Therapy:** People with autism usually have delays in communication. Speech therapists look for a system of communication that will work for an individual with autism and may consider alternatives to the spoken word such as signing, typing, or a picture board with words.
- **Occupational Therapy:** Commonly, this therapy focuses on improving fine motor skills, such as brushing teeth, feeding, and writing, or sensory motor skills that include balance, awareness of body position, and touch.
- **Physical Therapy:** This therapy specializes in developing strength, coordination, and movement.

ASD in the Hispanic Community

In 2008, the Hispanic population in Florida exceeded 3.8 million, and 86 percent of Hispanics lived in a household where a language other than English was spoken.¹⁶ The incidence of ASD does not differ across racial or ethnic groups.¹⁷ Dr. Bobbie Vaughn with USF's CARD Center notes:¹⁸

The rise in autism spectrum disorders and concomitant rise in the Latino population as the fastest growing minority along with linguistic differences potentially creates the widening of an already established disparity. ... The parents of many of these children also have limited English proficiency. ... This presents another challenge for children who might also have communication and social problems related to ASD.

These adult language barriers alone might prevent an immigrant Latino parent from taking their child to a clinic. In addition to language, is documented that racial bias, patient preferences, and poor communication (i.e., relaying of

¹⁵ Pursuant to s. 1004.55(1), F.S., the following centers are established: The College of Medicine at Florida State University; the College of Medicine at the University of Florida; the University of Florida Health Science Center at Jacksonville; the Louis de la Parte Florida Mental Health Institute at the University of South Florida; the Mailman Center for Child Development and the Department of Psychology at the University of Miami; the College of Health and Public Affairs at the University of Central Florida; and the Department of Exceptional Student Education at Florida Atlantic University.

¹⁶ *Demographic Profile of Hispanics in Florida, 2008*. Pew Hispanic Center. Available at: <http://pewhispanic.org/states/?stateid=FL> (last visited on March 11, 2011)

¹⁷ See fn. 1.

¹⁸ Project Conectar: Building Capacity in a Community Learn the Signs Act Early. Bobbie J. Vaughn, Ph.D., Associate Professor, University of South Florida, Principal Investigator. (On file with the Committee.) This ongoing research project is investigating the use of natural helpers, or promotoras, in Little Havana, Miami, to overcome the cultural and linguistic disparities that prevent families from seeking early help for their children and preventing early and accurate diagnosis of ASD and other developmental disabilities.

information) present health care access barriers for Latino and other minority families.

These cultural and linguistic issues can lead to late or inaccurate diagnoses, which can be devastating in a disorder like ASD, where early intervention is critical. Further, there exists a general lack of Spanish-speaking health care professionals trained to diagnose individuals with ASD,¹⁹ exacerbating the problems faced by these families.

III. Effect of Proposed Changes:

SB 516 creates the Autism Spectrum Disorder Study Committee to examine the effects of autism spectrum disorder on families in which English is the second language.

The committee is to advise the Agency for Persons with Disabilities (APD) on legislative, programmatic and administrative matters relating to the occurrence of ASD in those families.

Nine members will be appointed to the committee: three by the Governor, three by the President of the Senate, and three by the Speaker of the House of Representatives. The membership must include:

- At least one licensed physician;
- At least one behavior analyst specializing in treatment of ASD through speech, occupational or physical therapy or through applied behavior analysis; or a licensed psychologist or psychotherapist;
- The State Surgeon General or an employee of the Department of Health whom he or she designates;
- At least one parent of a child with ASD; and
- At least one educator certified in special education.

Initial appointments must be made by July 1, 2011, and subsequent vacancies are to be filled by the original appointing authority for the duration of the term.

The committee must appoint a chair and must meet at least six times, bimonthly, beginning in August 2011. The last meeting may be no later than August 30, 2012.

The members will receive no compensation for their service, and no state funds may be expended in support of the committee, except that the Surgeon General may publish the recommendations and public announcements.

The final report must be completed by September 1, 2012, and presented to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The committee expires on September 1, 2012.

The Act is effective upon becoming law.

¹⁹ Conversation with Mary Kay Bunton-Pierce, USF CARD Center, March 10, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The State Surgeon General or an employee of the Department of Health may be required to attend committee meetings, and the Surgeon General has the discretion to spend department funds on the publication of committee recommendations and public meetings. These activities may create a minimal fiscal impact on the agency.

VI. Technical Deficiencies:

The bill does not specify administrative support for the committee, other than publication of its recommendations and public meetings at the discretion of the state Surgeon General.

VII. Related Issues:

None.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



916846

LEGISLATIVE ACTION

Senate	.	House
	.	
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The Committee on Children, Families, and Elder Affairs (Detert) recommended the following:

Senate Amendment

Delete lines 30 - 44
and insert:
chapter 458, Florida Statutes, or chapter 459, Florida Statutes.

(b) At least one member must be a psychologist licensed under chapter 490, Florida Statutes.

(c) At least one member must be a behavior analyst certified under s. 393.17, Florida Statutes, who specializes in the treatment of autism spectrum disorder through speech therapy, occupational therapy, physical therapy, or applied behavior analysis, or a provider licensed under chapter 491,



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13 Florida Statutes.

14 (d) At least one member must be the State Surgeon General
15 or an employee of the Department of Health appointed by the
16 State Surgeon General.

17 (e) At least one member must be the parent of a child with
18 autism spectrum disorder.

19 (f) At least one member must be an educator certified in
20 special education.

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 Children, Families, and Elder Affairs Committee

BILL: SB 586

INTRODUCER: Senator Wise

SUBJECT: Alzheimer's Disease

DATE: March 11, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

This bill requires the Department of Elder Affairs (DOEA or “the department”) to establish a program to educate the public with respect to screening for memory impairment. The department is required to submit an annual report concerning these activities.

The bill authorizes the DOEA to award grants in support of programs which provide both information about memory screening and memory screening services. The bill establishes criteria for selecting grant recipients and requires that the department give preference to entities meeting certain requirements. Each grantee must submit an evaluation of its activities to the DOEA.

The bill makes technical changes for Alzheimer’s disease and other related disorders training requirements for nursing home, hospice and assisted living facility staff.

The bill amends the following sections of the Florida Statutes: s. 400.1755, s. 400.6045, and 429.178. This bill also creates s. 430.5025, Florida Statutes.

The DOEA is able to develop the required public education program within existing resources. The grant program authorized in the bill is contingent upon an appropriation. The Senate Budget does not provide funding for this purpose.

II. Present Situation:

Alzheimer's Disease

Alzheimer's disease is the most common cause of dementia, or loss of mental function, among people age 65 and older.¹ Individuals who suffer from Alzheimer's disease or related disorders like vascular dementia experience the gradual loss of memory and the ability to learn, reason, make judgments, and communicate. Alzheimer's disease is not reversible, and neither its cause nor its cure are known. The disease can progress at widely varying rates, but ultimately most patients require total care.

More than half of all Alzheimer's patients continue to live at home, and 80 to 90 percent of them rely on family and friends for care.² The enormous responsibility and challenges of caring for an Alzheimer's patient can cause emotional, psychological, and physical problems for these caregivers. The average caregiver with a full-time job will miss three weeks of work a year to provide assistance to his or her loved one, and one-fifth will quit their jobs to provide full-time care.³

Estimates suggest that one in eight people over the age of 65 have Alzheimer's disease.⁴ In Florida alone, more than 435,000 individuals currently suffer from Alzheimer's disease.⁵ By 2010, Florida's 65 and older population is projected to increase by 20 percent over the year 2000. Florida's population age 85 and older is expected to increase by 64.1 percent.⁶ Because age is the single largest risk factor for Alzheimer's disease, these population changes are likely to significantly increase the number of people affected by Alzheimer's disease and other age-related dementias.

Alzheimer's disease is now the seventh leading cause of death in the nation and the fifth leading cause of death for those over age 65. While death rates for many major diseases, including heart disease, breast cancer, and prostate cancer, declined between the years 2000 through 2004, Alzheimer's disease deaths increased 33 percent during that period. In 2005, Florida was the state with the third highest number of deaths due to the disease.⁷

¹ Alzheimer's Foundation of America, <http://www.alzfdn.org/AboutAlzheimers/definition.html> (last accessed March 11, 2011).

² The American Geriatrics Society Foundation for Health in Aging, http://www.healthinaging.org/public_education/pef/alzheimers_caregiver.php (last accessed March 11, 2011).

³ *Id.*

⁴ Alzheimer's Association, 2009 Alzheimer's Disease Facts and Figures, http://www.alz.org/national/documents/report_alzfactsfigures2009.pdf (last accessed March 11, 2011).

⁵ Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute, <http://health.usf.edu/byrd/FAQ.htm> (last accessed March 11, 2011).

⁶ The Florida Legislature Office of Economic & Demographic Research, Florida Demographic Summary, available at <http://edr.state.fl.us/Content/population-demographics/reports/econographicnews-2010v1a.pdf> (last accessed March 11, 2011).

⁷ Alzheimer's Association, 2009 Alzheimer's Disease Facts and Figures http://www.alz.org/national/documents/report_alzfactsfigures2009.pdf (last accessed March 11, 2011).

Memory Screening and Early Diagnosis

Currently, the only way to definitively diagnose Alzheimer's disease is to examine brain tissue. In most cases, this does not occur until an autopsy is performed after death. However, at specialized centers doctors can diagnose Alzheimer's accurately up to 90 percent of the time through a variety of tests and screening measures.⁸

Although a cure for Alzheimer's is not yet available, some medical treatments have been shown to help prevent symptoms from worsening for a limited amount of time. Some medicines may also be used to help control behavioral symptoms of Alzheimer's disease, such as sleeplessness, anxiety, depression, agitation, or wandering.⁹ This is particularly true for people in early or middle stages of the disease. Thus, early detection of degenerative disorders like Alzheimer's disease enhances the possibility of effective treatment. Early diagnosis can also enable patients to participate in decisions regarding their care.

Memory screenings consist of a series of questions and/or tasks designed to test memory and other intellectual functions. They are not used to diagnose any particular illness, but can be very helpful in indicating whether an individual would benefit from further testing to identify Alzheimer's disease, related dementias, or other possible causes of symptoms which mimic Alzheimer's disease.¹⁰ These screenings are typically provided by professionals such as social workers, pharmacists, nurses, and doctors. If a memory screening indicates that an individual may benefit from further testing, a doctor can identify "probable" Alzheimer's disease using the following tools:¹¹

- Questions about a person's general health and medical history;
- Tests to measure memory, problem solving, attention, counting, and language;
- Medical tests, such as tests of blood, urine, or spinal fluid; and
- Brain scans.

The Alzheimer's Disease Initiative

In 1985, the Florida Legislature created the Alzheimer's Disease Initiative (ADI) to provide services and training addressing the needs of people suffering from Alzheimer's disease and related disorders and their caregivers.¹² Pursuant to s. 430.501(2), F.S., an Alzheimer's Disease Initiative Advisory Committee composed of ten unsalaried members appointed by the governor advises the department "...regarding legislative, programmatic, and administrative matters that relate to Alzheimer's disease victims and their caretakers."

⁸ Alzheimer's Association, http://www.alz.org/alzheimers_disease_steps_to_diagnosis.asp (last accessed March 11, 2011).

⁹ Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute, <http://health.usf.edu/byrd/FAQ.htm> (last accessed March 11, 2011).

¹⁰ Alzheimer's Foundation of America, <http://www.alzfdn.org/BrainHealth/memoriescreenings.html> (last accessed March 11, 2011).

¹¹ Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute, <http://health.usf.edu/byrd/FAQ.htm> (last accessed March 11, 2011).

¹² Florida Department of Elder Affairs, <http://elderaffairs.state.fl.us/english/alz.php> (last accessed March 11, 2011).

As part of the ADI, there are 15 memory disorder clinics¹³ in Florida, 13 of which are state funded and designated in s. 430.502(1), F.S. The DOEA's contract with each memory disorder clinic addresses service, training, and research components. The services and training provided, which vary depending on available resources in the area, include:¹⁴

- Conducting diagnostic workshops;
- Providing and accepting referrals;
- Identifying and making recommendations for treatment of other conditions;
- Documenting the rate of progression of the disease;
- Evaluating the needs of patients, caregivers, and families;
- Identifying and disseminating information on available community resources for assistance with Alzheimer's disease;
- Provision of training to respite and model day care centers;
- Development of training programs for caregivers, caregiver organizations, and direct service staff; and
- The development and distribution of training modules to care providers and the DOEA.

The clinics are statutorily mandated to conduct research in accordance with the following direction:¹⁵

It is the intent of the Legislature that research conducted by a memory disorder clinic and supported by state funds...be applied research, be service-related, and be selected in conjunction with the department. Such research may address, but is not limited to, diagnostic technique, therapeutic interventions, and supportive services for persons suffering from Alzheimer's disease and related memory disorders and their caregivers.

A memory disorder clinic must submit a report to the department on any completed research.

The other core components of the ADI program include specialized model day care programs, respite services, a research database, and a brain bank for research purposes. The department is authorized to contract for the provision of model day care programs in conjunction with the memory disorder clinics, the purpose of which is to provide services to individuals suffering from Alzheimer's disease or related disorders and training to health care and social service personnel.¹⁶ The department is likewise authorized to contract for the provision of respite care,

¹³ Memory disorder clinics are currently established at the following locations: Florida Atlantic University, Boca Raton; Morton Plant, Clearwater; North Broward Medical Center, Deerfield Beach; Lee Memory Health System, Fort Myers; University of Florida, Gainesville; Mayo Clinic, Jacksonville; East Central Florida, Melbourne; University of Miami; The Wien Center, Miami Beach; Orlando Regional; West Florida Hospital, Pensacola; Sarasota Memorial Hospital; Tallahassee Memorial Healthcare Neuroscience Center; University of South Florida, Tampa; Tenet at St. Mary's Medical Center, West Palm Beach. Memory Disorder Clinic at Sarasota Memorial Hospital, <http://sarasotageriatrics.com/links/links.html> (last accessed March 11, 2011).

¹⁴ Florida Department of Elder Affairs, <http://elderaffairs.state.fl.us/english/pubs/pubs/sops2009/Files/05-%20Section%20D.pdf#page=14> (last accessed March 11, 2011).

¹⁵ s. 430.502(2), F.S.

¹⁶ s. 430.502(4), F.S.

which is to be used as a resource for research and statistical data.¹⁷ Pursuant to Rule 58D-1.004, F.A.C., the ADI program also includes a brain bank and a registry for collecting and studying post mortem normal control brains and brains from individuals clinically diagnosed with Alzheimer's disease in order to conduct research on the cause, treatment, and cure for Alzheimer's disease. The primary brain bank is at the Mt. Sinai Medical Center in Miami Beach. Coordinators at four regional brain bank sites throughout the state assist with the effort.¹⁸

III. Effect of Proposed Changes:

The bill requires the DOEA to develop and implement a public education program relating to screening for memory impairment and the importance of early diagnosis and treatment of Alzheimer's disease and related disorders.

The bill authorizes the DOEA to award grants to qualifying entities to support the development, expansion, or operation of programs that provide screenings for memory impairment or information and education on memory screening. It also specifies the process by which a potential grantee must submit its application.

The bill defines the term "qualifying entity", and provides that when awarding grants, the department give preference to applicants that:

- Demonstrate experience in both promoting public awareness of the importance of memory screening and in providing memory screening services;
- Establish arrangements with health care professionals and other organizations to provide memory screenings in a manner convenient to people in the communities they serve; and
- Provide matching funds.

The bill provides that the DOEA may set aside no more than 15 percent of the funds appropriated for the fiscal year to provide technical assistance to grantees.

The bill requires that a grantee submit an evaluation to the department that describes the grantee's activities and the impact of those activities. It also directs the department to submit an annual report to the President of the Senate and the Speaker of the House of Representatives on the activities of the public education program and the grant program.

The bill makes technical changes for Alzheimer's disease and other related disorders training requirements for nursing home, hospice, and assisted living facility staff. The bill provides that the direct caregiver must comply with other applicable continuing training requirements in addition to the other requirements for completing staff training at a licensed hospice.

The bill has an effective date of July 1, 2011.

¹⁷ s. 430.502(5), F.S.

¹⁸ DOEA, Brain Bank website: available at <http://elderaffairs.state.fl.us/english/BrainBank/index.php> (last accessed March 11, 2011).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The department reports the bill will provide public and nonprofit private entities that provide services and care to individuals who have Alzheimer's disease or related disorders and their families/caregivers the opportunity to apply for state grants to support the development, expansion, or operation of programs that provide screenings for memory impairment and information and education on the importance of memory screening.¹⁹

C. Government Sector Impact:

The department reports that it currently contracts with 13 Memory Disorder Clinics that provide services to individuals with memory problems, their families, and caregivers. The department has stated it can fulfill the operational intent of this bill within existing resources. Therefore, the DOEA will be able to develop the required public education program without the appropriation of additional funds.

The grant program authorized in the bill is contingent upon an appropriation. The Senate Budget does not provide funding for this purpose.

¹⁹ Department of Elder Affairs 2010 Legislative Bill Analysis, Senate Bill 580 (analyzing a bill identical to SB 586, on file with the committee).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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 Children, Families, and Elder Affairs Committee

BILL: SB 912

INTRODUCER: Senator Bennett

SUBJECT: Affordable Housing

DATE: February 22, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Favorable
2.	Preston	Walsh	CF	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill removes the statutory limitation on documentary stamp tax revenues that go into the State and Local Government Housing Trust Funds and restricts the use of affordable housing funds for new construction activities for a certain period. The bill also provides targeted assistance for persons with special needs.

The bill allows the Florida Housing and Finance Corporation (FHFC) to receive federal funds for which no corresponding program has been created in statute and empowers local housing authorities to invest surplus funds. The bill provides preference for general contractors who demonstrate the highest rate of Florida job creation in the development and construction of affordable housing and deletes current preference language. The bill also authorizes an inspector general position within the FHFC and deletes the requirement that the inspector general of DCA serve that function on behalf of the FHFC.

This bill substantially amends the following sections of the Florida Statutes: 20.055, 159.608, 163.3177, 163.31771, 201.15, 212.08, 215.5586, 420.0003, 420.0004, 420.0006, 420.503, 420.504, 420.506, 420.507, and 420.5087.

This bill retroactively repeals s. 8, of chapter 2009-121, Laws of Florida.

II. Present Situation:

Agency Inspectors General

Section 20.055, F.S., requires each state agency¹ created in the organizational structure of state government to have an inspector general office contained within the agency. The office is created to provide a focal point of accountability efforts within the agency. Under current law, the Florida Housing Finance Corporation is not deemed to be a “state agency” for the purposes of the inspector general section. Instead, the inspector general of the Department of Community Affairs performs the inspector general function for the Florida Housing Finance Corporation.

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC)² is a state entity primarily responsible for encouraging the construction and reconstruction of new and rehabilitated affordable housing in Florida.³ It was created in 1997, when the Legislature enacted chapter 97-167, Laws of Florida, to streamline implementation of affordable housing programs by reconstituting the agency as a corporation. The FHFC is a public corporation housed within the Department of Community Affairs (DCA), but is a separate budget entity not subject to the control, supervision, or direction of the DCA. Instead, it is governed by a nine member board of directors comprised of the Secretary of DCA, who serves as an ex officio voting member, and eight members appointed by the Governor, subject to confirmation by the Senate.

The corporation operates several housing programs financed with state and federal dollars, including:

- The State Apartment Incentive Loan Program (SAIL), which annually provides low-interest loans on a competitive basis to affordable housing developers;⁴
- The Florida Homeowner Assistance Program (HAP), which includes the First Time Homebuyer Program, the Down Payment Assistance Program, the Homeownership Pool Program, and the Mortgage Credit Certificate program;
- The Florida Affordable Housing Guarantee Program, which encourages lenders to finance affordable housing by issuing guarantees on financing of affordable housing developments financed with mortgage revenue bonds;
- The State Housing Initiatives Partnership Program (SHIP), which provides funds to cities and counties as an incentive to create local housing partnerships and to preserve and expand production of affordable housing; and

¹ For purposes of this section, the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation, the Office of Financial Regulation, the Public Service Commission, the Board of Governors of the State University System, and the state courts system are considered “state agencies,” in addition to the departments created in Ch. 20, F.S.

² Formerly the Florida Housing Finance Agency.

³ Housing is determined to be affordable when a family is spending no more than 30 percent of its total income on housing. See Florida Housing Finance Corporation Handbook, *Overview of Florida Housing Finance Corporation’s Mission and Programs*, at 3 (Sept. 2009) (on file with the Senate Committee on Community Affairs).

⁴ Under current law, low interest mortgage loans provided under the SAIL Program are only available for qualifying farm workers, commercial fishing workers, the elderly, and the homeless. See s. 420.507(22), F.S.

- The Community Workforce Housing Innovation Pilot Program (CWHIP), which awards funds on a competitive basis to promote the creation of public-private partnerships to develop, finance, and build workforce housing.

The FHFC receives funding for its affordable housing programs from documentary stamp tax revenues which are distributed to the State Housing Trust Fund and the Local Government Housing Trust Fund.⁵ Pursuant to s. 420.507, F.S., the FHFC is also authorized to receive federal funding in connection with the corporation's programs directly from the Federal Government.⁶

Documentary Stamp Tax

The documentary stamp tax imposes an excise tax on deeds or other documents that convey an interest in Florida real property. The Department of Revenue classifies the documentary stamp taxes as two taxes imposed on different bases at different tax rates.⁷ The first tax rate is 70 cents on each \$100 of consideration for deeds, instruments, or writings whereby lands, tenements, or other real property or interest that are granted, assigned, transferred, conveyed or vested in a purchaser.⁸ The second tax rate is 35 cents per each \$100 of consideration for certificates of indebtedness, promissory notes, wage assignments and retail charge account agreements.⁹

Section 201.15, F.S., provides for the distribution of documentary stamp taxes, which are primarily used to fund various land and water conservation, preservation, and maintenance trust funds and certain transportation trust funds (described in further detail below).¹⁰ In 1992, the William E. Sadowski Act created a dedicated source of revenue from documentary stamp tax revenues for affordable housing. This was generated from:

- Additional revenues from a 10-cent increase in the documentary stamp tax rate imposed on real estate transfers; and
- A re-allocation of ten cents of the existing documentary stamp tax revenues from general revenue to the affordable housing trust funds beginning in FY 1995-96.¹¹

According to the FHFC, "30 percent of these revenues flow into the State Housing Trust Fund and 70 percent flow into the Local Government Housing Trust Fund."¹² In 2005, the Legislature capped the rate of growth for distribution of documentary stamp tax revenues into these trust funds to \$243 million per year.¹³ In the 2010-2011 FY, the Legislature appropriated \$37.5 million to the FHFC.¹⁴

⁵ Sections 201.15(9) and (10), F.S.

⁶ See ss. 420.507(33) and 159.608, F.S.

⁷ Florida Revenue Estimating Conference, *2010 Florida Tax Handbook*, at 67-73 (2010) (on file with the Senate Committee on Community Affairs).

⁸ *Id.* See also s. 201.02(1), F.S.

⁹ *Id.*

¹⁰ Section 201.15(1), F.S.

¹¹ Florida Housing Finance Corporation Handbook, *Overview of Florida Housing Finance Corporation's Mission and Programs*, at 4 (Sept. 2009) (on file with the Senate Committee on Community Affairs).

¹² *Id.*, see also ss. 201.15(9) and (10), F.S.

¹³ Senate Bill 1110 (2005).

¹⁴ Chapter 2010-152, s. 5 Laws of Fla. (HB 5001, General Appropriations Act and Implementing Bill for 2010-2011 Fiscal Year) (on file with the Senate Committee on Community Affairs).

Distribution of Documentary Stamp Taxes (s. 8, of ch. 2009-131, Laws of Florida)

Section 201.15, F.S., sets forth the distribution of the documentary stamp taxes. The first proceeds of the tax revenues are distributed to the General Revenue Fund as service charges under s. 215.20, F.S., or retained by the Department of Revenue as the cost of collection and enforcement of the taxes. The remaining revenues are distributed as follows:

- 63.31% to pay debt service on Preservation 2000 bonds, Florida Forever bonds, Everglades Restoration bonds. Any amount not needed for these payments is deposited into the General Revenue Fund.
- The lesser of 7.56% or \$84.9 million to the Land Acquisition Trust Fund;
- The lesser of 1.94% or \$26 million to the Land Acquisition Trust Fund for coastal lands;
- The lesser of 4.2% or \$60.5 million to the Water Management Lands Trust Fund;
- 3.52% to the Conservation and Recreation Lands Trust Fund;
- The lesser of 2.28% or \$34.1 million to the Invasive Plant Control Trust Fund;
- The lesser of 0.5% or \$9.3 million to the State Game Trust Fund;
- 0.5% divide equally between the Water Quality Assurance Trust Fund and the General Inspections Trust Fund;
- The lesser of 7.53% or \$107 million to the State Housing Trust Fund, half of which shall be credited to the Local Government Housing Trust Fund;
- The lesser of 8.66% or \$136 million, of which 12.5% shall be credited to the State Housing Trust Fund and 87.5% shall be credited to the Local Government Housing Trust Fund;
- The remainder to the General Revenue Fund.¹⁵

In 2009, the Legislature amended s. 201.15, F.S., to provide that all documentary stamp taxes collected by the state may be used to pay the debt service on bonds authorized before January 1, 2010. Provided in s. 8, of ch. 2009-131, of the Laws of Florida, the 2009 amendment further provided that:

(16) If amounts necessary to pay debt service or any other amounts payable with respect to Preservation 2000 bonds, Florida Forever bonds, or Everglades Restoration bonds authorized before January 1, 2010, exceed the amounts distributable pursuant to subsection (1), all moneys distributable pursuant to this section are available for such obligations and transferred in the amounts necessary to pay such obligations when due. However, amounts distributable pursuant to subsection (2), subsection (3), subsection (4), subsection (5), paragraph (9)(a), or paragraph (10)(a) are not available to pay such obligations to the extent that such moneys are necessary to pay debt service on bonds secured by revenues pursuant to those provisions.¹⁶

¹⁵ Fla. S. Comm. on Judiciary, CS/CS/CS/SB 2430 and SB 1960 (2009) Staff Analysis 7-8 (on file with the Senate Committee on Community Affairs). *See also* s. 201.15(1)-(17), F.S.

¹⁶ Chapter 2009-131, s. 8, Laws of Fla., *See also* s. 201.15(16), F.S.

State Housing Strategy Act

The State Housing Strategy Act, located in Part I, of ch. 420, F.S., was created by the Legislature in 1992 to guarantee adequate affordable housing for Florida residents.¹⁷ Pursuant to s. 420.0003, F.S., the Department of Community Affairs and the FHFC annually coordinate with the Shimberg Center for Affordable Housing at the University of Florida¹⁸ to develop and maintain statewide data on affordable housing needs for specific populations.¹⁹ These studies are then used to review and evaluate existing affordable housing accommodations to ensure that they are consistent with current need assessments and to recommend any improvements or plan modifications.²⁰

The Florida Housing Data Clearinghouse (FHDC) within the Shimberg Center provides specialized affordable housing data for special needs populations which include farm workers, individuals with disabilities, homeless people, and extremely low income households.²¹ Under current law, ss. 420.0003 (3) and (4), F.S., do not specifically require affordable housing studies for persons with disabilities, youth aging out of foster care, disabled veterans and survivors of domestic violence; nor are multifamily rental housing funds required to be administered to address the needs of extremely low income households. According to the Affordable Housing Commission report conducted in 2004, 637,394 households were classified as extremely low income households: 226,661 of which were multi-family rental housing units, and 181,145 having at least one person with a disability.²²

Local Government Investment Policies

Section 218.415, F.S., provides the statutory guidelines for local government investment policies for excess public funds,²³ requiring that such policies be structured to provide objectives for the safety of capital, liquidity of funds, and investment returns.²⁴ These investment policies must also specify performance measures that are commensurate with the nature and size of all the public funds in its custody.²⁵ Sections 218.415 (16) and (17), F.S., contain lists of authorized

¹⁷ Section 420.0003, F.S.

¹⁸ The Shimberg Center was established at the University of Florida in 1988 to “facilitate safe, decent and affordable housing throughout the state of Florida” and was named after Jim Shimberg Sr., a Tampa homebuilder dedicated to affordable housing. The Center’s Florida Housing Data Clearinghouse provides public information on Florida housing needs, programs and demographics. For more information visit: <http://www.shimberg.ufl.edu/aboutUs2.html> (last visited on March 11, 2010).

¹⁹ Section 420.0003(4)(c), F.S.

²⁰ *Id.*

²¹ Florida Housing Data Clearing House (FHDC) Shimberg Center for Affordable Housing, *Databases for Farm workers and Special Needs Populations*, available online at http://flhousingdata.shimberg.ufl.edu/SpecNeed_introduction.html (last visited on March 12, 2010).

²² Affordable Housing Study Commission, *Final Report 2004* (page 12-13, Table 2) available online at <http://www.floridahousing.org/NR/ronlyres/B43F4998-A49B-4171-B564-4F257C1D1887/0/2004FINALREPORT.pdf> (last visited on March 12, 2010).

²³ In lieu of a written investment policy, local governments also have the option to meet alternative investment guidelines provided under s. 218.415(17), F.S., see s. 218.415(1), F.S.

²⁴ Section 218.415(2), F.S. (Note that this section also states that “[s]uch policies shall be structured to place the highest priority on the safety of principal and the liquidity of funds.”).

²⁵ Section 218.415(3), F.S.

trust funds and accounts that local government units can invest and reinvest surplus public funds into by resolution.²⁶

The Florida Security for Public Deposits Act, located in ch. 280, F.S., establishes certain criteria that banks and financial institutions must meet to be considered a “qualified public depository” that is eligible to receive local government investments.²⁷ Section 280.03(3), F.S., provides exemptions to this restriction for certain kinds of investments, including “public deposits which are fully secured under federal regulations.”²⁸

Some local housing finance authorities have opined that state restrictions pertaining to qualified public depositories do not apply to investments that are fully insured by the Federal Deposit Insurance Corporation (FDIC); however, other parties have interpreted the exemptions in s. 280.03(3)(e), F.S., not to include FDIC insured accounts.

Local Government Comprehensive Plans

The Local Government Comprehensive Planning and Land Development Regulation Act,²⁹ in Part II, of ch. 163, F.S., requires all counties and municipalities to adopt Local Government Comprehensive Plans that prescribe the future “economic, social, physical, environmental, and fiscal development of the area.”³⁰ These comprehensive plans must include nine mandatory “elements” that address:

- Capital improvements,
- Future land use,
- Traffic circulation,
- Sanitary sewer, solid waste, drainage, potable water, and natural groundwater recharge,
- Conservation,
- Recreation and open space,
- Housing,
- Coastal management, and
- Intergovernmental coordination.³¹

The legislative policy behind comprehensive planning is to control the flow of development to ensure that public services and facilities continue to be adequate and sufficient.³² According to planning officials within the Florida Department of Community Affairs, the five main areas of statewide interest are: school coordination, urban sprawl, urban infill and redevelopment, water supply planning, and rural land stewardship.³³

²⁶ See ss. 218.415(16)(a)-(i), F.S., see also ss. 218.415(17)(a)-(d), F.S.

²⁷ Section 280.02(26), F.S.

²⁸ Section 280.03(3)(e), F.S.

²⁹ Also known as “The Growth Management Act”

³⁰ Section 163.3177, F.S.

³¹ *Id.*

³² Roth, Cari L. *Transportation Concurrency in Dense Urban Land Use Areas after Passage of the Community Renewal Act of 2009*, 83 Fla. B.J. 29, 29 (October 2009).

³³ Florida Department of Community Affairs, *Florida Planning Officials Basic Training: The Comprehensive Plan* (power point presentation, slide 14) available online at <http://www.dca.state.fl.us/FDCP/DCP/compplanning/Files/PlanningOfficialsTraining.pdf> (last visited on March 12, 2010).

III. Effect of Proposed Changes:

Section 1 amends s. 20.055, F.S., to include the FHFC to be a “state agency” for purposes of the agency’s inspector general and amends the definition for “agency head” to include the board of directors of the Florida Housing Finance Corporation. This section also requires the inspector general of the Florida Housing Finance Corporation to prepare an annual summary report of their activities in the preceding fiscal year no later than 90 days after the end of each fiscal year.

Section 2 amends s. 159.608, F.S., to authorize local housing finance authorities to invest and reinvest surplus funds in interest-bearing time deposits or savings accounts that are fully insured by the Federal Deposit Insurance Corporation (FDIC), regardless of whether the bank or financial institution is a qualified public depository pursuant to s. 280.02, F.S.

Section 3 amends s. 163.3177(6)(f), F.S., to require local government comprehensive plans to include information on senior affordable housing, and to direct local governments to dispose real property conveyed to them for affordable housing pursuant to s. 125.379 or s. 166.0451, F.S.

Section 4 removes the statutory cap on documentary stamp tax revenue that is distributed into the State and Local Housing Trust Funds. This is accomplished by amending ss. 201.15(9) and (10), F.S., so that “seven and fifty-three hundredths” (7.53 %), of net documentary stamp tax collections are split 50% to the State Housing Trust Fund and 50% to the Local Government Trust Fund, and “eight and sixty-six hundredths” (8.66%) of the net collections are split 12.5% to the State Housing Trust Fund and 87.5% to the Local Government Housing Trust Fund.

Section 5 repeals section 8, of chapter 2009-131, Laws of Florida, retroactive to June 30, 2009.

Section 6 amends s. 420.0003, F.S., of the State Housing Strategy Act to require annual affordable housing evaluations to specifically address persons with special needs.

Section 7 provides definitions under ss. 420.0004(7) and (13), F.S., for “disabling condition” and “person with special needs.”

Section 8 amends s. 420.0006, F.S., to remove an obsolete cross-reference and to delete the requirement that the inspector general of DCA perform the inspector general function for the FHFC, to make it consistent with the changes in section 1 of the bill.

Section 9 amends s. 420.504, F.S., to provide that the FHFC board of directors shall be composed of the Secretary of Community Affairs as an ex officio and voting member “or a senior-level agency employee designated by the secretary” and eight members specified by the Governor subject to the confirmation of the Senate based on the current statutory criteria.

Section 10 amends s. 420.506, F.S., to authorize the executive director of the FHFC to appoint or remove an inspector general with the advice and consent of the corporation’s board of directors. This section also provides certain responsibilities of the corporation’s inspector general and allows the FHFC to establish additional qualifications deemed necessary to meet the unique needs of the FHFC.

Section 11 amends s. 420.507, F.S., to extend the availability of low interest mortgage loans under the SAIL Program to include projects that set aside units for persons with special needs. This section also grants the FHFC the authority to receive federal funding for which no corresponding program has been created in statute and to establish selection criteria for such funds by request for proposals or other competitive solicitation.

This section deletes current preference language pertaining to “domicile” and “substantial experience” as they relate to developers and general contractors in competitive affordable housing programs and replaces it with “a preference for developers and general contractors who demonstrate the highest rate of Florida job creation in the development and construction of affordable housing.”

Section 12 amends s. 420.5087, F.S., to include persons with special needs as a qualified tenant group for specified purposes of the SAIL Program, limiting the reservation of funds for this group to no more than 10 percent of the funds available at that time. This section also conforms the preference language for developers and general contractors who demonstrate job creation in affordable housing development and construction to be consistent with the changes made in Section 11 of the bill.

Sections 13-16 amend current statutes to conform to cross-references provided in the bill.

Section 17 prohibits the use of affordable housing dollars for financing or assisting new construction until July 1, 2012. These affordable housing dollars include funds from the State Housing Trust Fund or the Local Government Housing Trust Fund that are appropriated for the State Apartment Incentives Loan (SAIL) Program, Florida Homeownership Assistance Program (FHAP), Community Workforce Housing Innovation Pilot (CWHIP) Program, and the State Housing Initiatives Partnership (SHIP) Program.

The bill expressly states that nothing in this section shall restrict the use of funds to assist with the purchase of newly constructed homes that were completed prior to December 31, 2010, or the acquisition and rehabilitation of apartments that received their initial certificate of occupancy prior to December 31, 1996.

Section 18 provides that the bill will take effect July 1, 2011.

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:

The one year restriction on affordable housing funds for the finance or assistance of new construction could temporarily affect entities that build, construct, or finance affordable housing units within the state.

C. Government Sector Impact:

The Revenue Estimating Conference has not determined the fiscal impact of this bill; however, in reviewing similar legislation filed during the 2009-2010 Legislative Session (SB 262/HB 665), the Revenue Estimating Conference determined that the removal of the statutory limitation on documentary stamp tax revenue distributions into the State Housing Trust Fund and the Local Government Housing Trust Fund would have no fiscal impact on state funds in fiscal year 2010-11. However, based on a four-year outlook, the Conference estimated a negative \$7.1 million impact on recurring general revenue receipts and a positive recurring impact in the same amount on the state housing trust funds.³⁴

This bill authorizes the FHFC to administer programs receiving federal funding for which no corresponding program has been previously created by statute and establishes selection criteria for such funds by request for proposals or other competitive solicitation.

The bill also empowers local housing authorities to invest and reinvest surplus funds into interest-bearing time deposits or savings accounts that are fully insured by the Federal Deposit Insurance Corporation (FDIC), regardless of whether the bank or financial institution is a qualified public depository pursuant to s. 280.02, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

³⁴ Revenue Estimating Conference, *Fiscal Impact for CS/SB 262, Removal of the Housing Trust Fund Distribution Cap* (March 22, 2010).

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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 Children, Families, and Elder Affairs Committee

BILL: SB 1140

INTRODUCER: Senator Sachs

SUBJECT: Child Care Facilities

DATE: March 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Pre-meeting
2.	_____	_____	TR	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates the “Haile Brockington Act” and provides that on or after January 1, 2012, vehicles used by child care facilities and large family child care homes to transport children must be equipped with an alarm system approved by the Department of Children and Families (DCF or department) that prompts the driver to inspect the vehicle for children before exiting. The bill provides that DCF shall adopt rules to administer the new provision of law and shall maintain a list of alarm manufacturers and alarm systems that are approved to be installed in such vehicles.

This bill substantially amends section 402.305, Florida Statutes.

II. Present Situation:

Licensing Standards for Child Care Facilities

The Department of Children and Families (DCF or department) establishes licensing standards that each licensed child care facility in the state must meet.¹ A child care facility is defined in Florida law as “any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit.”² The department currently regulates 7,909 child care arrangements, including child care facilities, large family child care homes, family day care homes, and registered homes.³ In addition, as of

¹ See s. 402.305, F.S.

² Section 402.302(2), F.S.

³ Florida Dep’t of Children and Families, *DCF Quick Facts*, 7 (Jan. 31, 2011), available at <http://www.dcf.state.fl.us/newsroom/docs/quickfacts.pdf> (last visited Mar. 11, 2011).

January 2010, six counties in the state which conduct their own licensure of homes currently license 4,292 child care arrangements.⁴

The statutory licensing standards for child care facilities are extensive and include standards for transportation and vehicles; however, current standards for licensed child care providers do not address alarm systems in vehicles. Rule 65C-22.001(6) of the Florida Administrative Code provides requirements for licensed child care facilities to follow in relation to vehicles that are owned, operated, or regularly used by the child care facility, as well as vehicles that provide transportation through a contract or agreement with an outside entity. Specifically:

- The driver of any such vehicle must have a valid driver's license and must have an annual physical exam granting the driver medical approval to drive;
- All child care facilities must comply with insurance requirements;
- All vehicles must be inspected annually;
- The maximum number of individuals transported may not exceed the manufacturer's designated seating capacity or the number of factory installed seat belts;
- Each child must be wearing a factory installed seat belt when riding in the vehicle;
- When transporting children, the staff-to-child ratios must be maintained;
- Each vehicle must have the contact information of each child being transported;
- Providers must maintain a driver's log for all children being transported. This log includes the child's name, date, time of departure, time of arrival, signature of driver, and signature of second staff member to verify the driver's log and that all children have left the vehicle;
- Upon arrival at the destination, the driver of the vehicle must mark each child off the log as the child departs the vehicle; conduct a physical inspection and visual sweep of the vehicle; and sign, date, and record the driver's log immediately to verify all children were accounted for and that the sweep was conducted;
- Upon arrival at the destination, a second staff member must also conduct a physical inspection and visual sweep of the vehicle and sign, date, and record the driver's log to verify all children were accounted for and that the driver's log is complete.

There are similar requirements for family day care homes and large family child care homes.⁵

Children and Vehicles

In August 2010, 2 1/2 year old Haile Brockington died after being left in her car seat for nearly six hours in the back of a van employed by a Palm Beach County child care facility. According to the National Weather Service in Miami, the weather that day reached a high of 91 degrees.⁶

⁴ Health Care Servs. Policy Comm., Florida House of Representatives, *Staff Analysis on HB 487, 2* (Jan. 26, 2010), available at <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0487.HCS.doc&DocumentType=Analysis&BillNumber=0487&Session=2010> (last visited Mar. 11, 2011).

⁵ See Rules 65C-20.10(8) and 65C-20.13(8), F.A.C.

⁶ Julius Whigham II and Eliot Kleinberg, *Girl, 2 1/2, found dead in van at Delray Beach day care center*, THE PALM BEACH POST, Aug. 5, 2010 (updated Aug. 12, 2010), available at <http://www.palmbeachpost.com/news/girl-1-1-2-found-dead-in-van-843774.html> (last visited Mar. 11, 2011).

The child care facility was licensed by DCF and had no violations against it at the time of the incident.⁷

“Death by hyperthermia” (or overheating of the body) has become much more prevalent since Federal law required that children ride in the backseat due to the danger of front passenger seat airbags.⁸ Between 1998 and 2010, there have been approximately 495 child hyperthermia deaths, with 49 during the year 2010.⁹ Thirty-one percent of hyperthermia deaths involve children under the age of one.¹⁰ According to a Miami newspaper, roughly one-sixth of hyperthermia cases occur in Florida.¹¹ Approximately 60 children have died in Florida from being left in a vehicle and more than 150 have been injured.¹² Prosecutions and penalties vary widely and in total, charges were filed in 58 percent of Florida cases.¹³

III. Effect of Proposed Changes:

This bill creates the “Haile Brockington Act” and provides that on or after January 1, 2012, vehicles used by child care facilities and large family child care homes to transport children must be equipped with an alarm system approved by the Department of Children and Families (DCF or department) that prompts the driver to inspect the vehicle for children before exiting. The bill provides that DCF shall adopt rules to administer the new provision of law and shall maintain a list of alarm manufacturers and alarm systems that are approved to be installed in such vehicles.

The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁷ *Id.*

⁸ See Kids and Cars.org, *Fact Sheet*, <http://www.kidsandcars.org/userfiles/dangers/heat-stroke/heat-stroke-fact-sheet.pdf> (last visited Mar. 11, 2011); see also Gene Weingarten, *Fatal Distraction: Forgetting a Child in the Backseat of a Car is a Horrifying Mistake. Is it a Crime?*, THE WASHINGTON POST, Mar. 8, 2009, at W08, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/02/27/AR2009022701549.html> (last visited Mar. 11, 2011).

⁹ Kids and Cars.org, *supra* note 8.

¹⁰ *Id.*

¹¹ Michael J. Mooney, *Babies left in hot cars: Accident or crime?*, MIAMI NEW TIMES, Oct. 14, 2010, available at <http://www.miaminewtimes.com/2010-10-14/news/babies-left-in-hot-cars-accident-or-crime/#> (last visited Mar. 11, 2011).

¹² *Id.*

¹³ *Id.*

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill requires owners and operators of child care facilities and large family day care homes to purchase and install an alarm system in all vehicles used by the facility or home to transport children that alerts the driver to inspect the vehicle for children before exiting the vehicle. According to the Department of Children and Families (DCF or department), the estimated cost for owners and operators of child care facilities statewide is approximately \$942,836 for the first year and \$135,720 each additional fiscal year thereafter.¹⁴ See breakdown of cost below.

Unit Price of Device	\$289.95
Installation Cost	\$85.00
Shipping Cost	\$11.60
Manufacturer’s Annual Required Re-certification Cost*	\$65.00
Total Cost for One Facility	\$451.55
Total Cost for 2,088 Facilities	\$942.836.40

*Recurring cost

C. Government Sector Impact:

The department will be responsible for writing rules to regulate this new requirement, as well as creating and maintaining manufacturer and alarm system approval protocols and compliance enforcement methodology.¹⁵

VI. Technical Deficiencies:

The bill provides on line 26 that vehicles must be equipped with the alarm system “on or after January 1, 2012.” The way the bill is currently written, it appears that there is no actual deadline for installing the alarm systems in a vehicle used by a child care facility or large family child care home to transport children. If the intent of the bill is to provide a January 1, 2012, deadline for installing the alarm systems, the Legislature may wish to amend the bill so that it reads “on or before January 1, 2012.”

¹⁴ Dep’t of Children and Families, *Staff Analysis and Economic Impact SB 1140* (Feb. 16, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹⁵ *Id.*

VII. Related Issues:

According to the Department of Children and Families (DCF or department), the implementation date of January 1, 2012, may not provide the department with enough time to research the types of alarm systems available, to craft rules and compliance enforcement methodology, and to prepare licensing staff to enforce and provide technical assistance. Additionally, all requirements are contingent upon the development of DCF's approval process through public hearings and final adoption of the rule pursuant to s. 120.536, F.S.; dissemination of the requirement to providers; the availability of the device statewide; and the availability of certified system installation professionals.¹⁶

The department recommends only requiring that DCF maintain a list of available products, without providing approval for the actual product.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁶ *Id.*



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LEGISLATIVE ACTION

Senate

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House

The Committee on Children, Families, and Elder Affairs (Rich)
recommended the following:

Senate Amendment

Delete line 26

and insert:

(b)1. On or before January 1, 2012, such vehicles must be

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 Children, Families, and Elder Affairs Committee

BILL: SB 1192

INTRODUCER: Senator Rich

SUBJECT: Public Records/Regional Autism Centers

DATE: March 11, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Pre-meeting
2.	_____	_____	HR	_____
3.	_____	_____	GO	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates a public-records exemption for all records that relate to a client of a regional autism center, the client’s family, or a teacher or other professional who receives the services of a center or participates in center activities. The bill provides certain circumstances under which the records may be released by the regional autism center and the bill states a public necessity for the exemption. It also provides for repeal of the public-records exemption on October 2, 2016, unless it is saved from repeal by the Open Government Sunset Review process and reenacted by the Legislature.

This bill substantially amends section 1004.55, Florida Statutes.

II. Present Situation:

Florida Public-Records Law

Florida has a long history of providing public access to government records. The Legislature enacted the first public-records law in 1892.¹ In 1992, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, section 24 of the Florida Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

¹ Sections 1390, 1391, F.S. (Rev. 1892).

² FLA. CONST. art. I, s. 24.

The Public-Records Act³ specifies conditions under which public access must be provided to records of the executive branch and other agencies. Unless specifically exempted, all agency⁴ records are available for public inspection. Section 119.011(12), F.S., defines the term “public records” very broadly to include “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material ... made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” The Florida Supreme Court has interpreted the definition of public records to encompass all materials made or received by an agency in connection with official business which are “intended to perpetuate, communicate, or formulize knowledge.”⁵ Unless made exempt, all such materials are open for public inspection at the moment they become records.⁶

Only the Legislature is authorized to create exemptions to open-government requirements. Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁷

Records may be identified as either exempt from public inspection or exempt and confidential. If the Legislature makes a record exempt and confidential, the information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁸ If a record is simply made exempt from public inspection, the exemption does not prohibit the showing of such information at the discretion of the agency holding it.⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁰ provides for the systematic review of exemptions from the Public-Records Act in the fifth year after the exemption’s enactment. By June 1 of each year, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year. The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹¹ An identifiable public purpose is served if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An identifiable public purpose is served if the exemption:

³ Chapter 119, F.S.

⁴ An agency includes any state, county, or municipal officer, department, or other separate unit of government that is created or established by law, as well as any other public or private agency or person acting on behalf of any public agency. Section 119.011(2), F.S.

⁵ *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁶ *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).

⁷ FLA. CONST. art. I, s. 24(c).

⁸ *WFTV, Inc. v. School Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004).

⁹ *Id.* at 54.

¹⁰ Section 119.15, F.S.

¹¹ Section 119.15(6)(b), F.S.

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be greatly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or combination of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.¹²

The act also requires the Legislature, as part of the review process, to consider the following six questions that go to the scope, public purpose, and necessity of the exemption:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?¹³

Regional Autism Centers

Section 1004.55, F.S., designates seven regional autism centers throughout the state to provide nonresidential resource and training services for persons of all ages and all levels of intellectual functioning who have:

- Autism;
- A pervasive developmental disorder that is not otherwise specified;
- An autistic-like disability;
- A dual sensory impairment; or
- A sensory impairment with other handicapping conditions.

Each center must be operationally and fiscally independent, provide services within its geographical region of the state, and coordinate services within and between state and local agencies provided by those agencies or school districts. The seven centers are located at:

- The College of Medicine at Florida State University;

¹² *Id.*

¹³ Section 119.15(6)(a), F.S.

- The College of Medicine at the University of Florida;
- The University of Florida Health Science Center;
- The Louis de la Parte Florida Mental Health Institute at the University of South Florida;
- The Mailman Center for Child Development and the Department of Psychology at the University of Miami;
- The College of Health and Public Affairs at the University of Central Florida; and
- The Department of Exceptional Student Education at Florida Atlantic University.¹⁴

Each of these centers must provide:

- Expertise in autism, autistic-like behaviors, and sensory impairments;
- Individual and direct family assistance;
- Technical assistance and consultation services;
- Professional training programs;
- Public education programs;
- Coordination and dissemination of local and regional information regarding available resources; and
- Support to state agencies in the development of training for early child care providers and educators with respect to developmental disabilities.¹⁵

III. Effect of Proposed Changes:

This bill creates a public-records exemption making all records that relate to a client of a regional autism center, the client's family, or a teacher or other professional who receives the services of a center or participates in center activities confidential and exempt. The bill provides that the regional autism center may release the confidential and exempt information or records as follows:

- To physicians, attorneys, and governmental entities having a need for the record to aid a client;
- In response to a subpoena or otherwise authorized by court order;
- To a qualified researcher, the State Board of Education, or the Florida Board of Governors when the director of the center deems it necessary for the treatment of the client, maintenance of adequate records, compilation of treatment data, or evaluation of programs, as long as all personally identifiable information is first removed;
- For statistical and research purposes by the director of the center, provided that any personally identifiable information is removed.

The exemption is subject to the provisions of the Open Government Sunset Review Act and will expire on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

¹⁴ Section 1004.55(1), F.S.

¹⁵ Section 1004.55(4), F.S.

The bill also provides justification for the public necessity of the exemption. Specifically, the bill states that matters of personal health are traditionally private and confidential concerns and that an individual has an expectation of and right to privacy in all matters regarding his or her personal health. Furthermore, the bill provides that it is a public necessity to protect the records of clients of a regional autism center, the client's family, or a teacher or other professional who receives the services of a center because release of such records could be defamatory to the client or could cause unwarranted damage to the name or reputation of that client or the client's family. By protecting these records it ensures an environment in which the discussion of the condition of autism or related disorders can be conducted in a free and open manner, which in turn will enable individuals with autism and their families to receive appropriate diagnostic and treatment information.

The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill creates a public records exemption for all records that relate to a client of a regional autism center, the client's family, or a teacher or other professional who receives the services of a center or participates in center activities. This bill appears to comply with the requirements of article I, section 24 of the Florida Constitution that public-records exemptions state the public necessity justifying the exemption, be no broader than necessary to accomplish the stated purpose, and be addressed in legislation separate from substantive law changes.

Additionally, because this bill is creating a new public-records exemption, it is subject to a two-thirds vote of each house of the Legislature for enactment as required by article I, section 24 of the Florida Constitution.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The seven regional autism centers in the state are located in conjunction with state universities, which, because universities are public entities, makes the records of clients

accessible and subject to Florida's public-record law. According to the Board of Governors, the research centers do not fall under the protection of the Health Insurance Portability and Accountability Act (HIPAA) or the Family Educational Rights and Privacy Act (FERPA), so the passage of this bill will protect the identity and personal information of clients, clients' families, and teachers or other professionals receiving the services of the center.¹⁶

C. Government Sector Impact:

According to the Board of Governors, "[t]here will be additional Autism Center staff effort involved in removing personal identification information from requests for data by outside customers in the absence of permission to release such information. However, the amount of time required should be minimal and should not create a material employee workload issue."¹⁷

VI. Technical Deficiencies:

On line 40 of the bill, it provides that a "qualified researcher" may have access to portions of the confidential and exempt information covered by the bill. The bill does not define this term and it is unclear who will be considered a "qualified researcher."

Additionally, the bill provides that the public-records exemption is necessary because the release of the records could be defamatory to the client or could cause unwarranted damage to the name or reputation of that client or the client's family (lines 71-73). Although the public-records exemption is for all records that relate to a client of a regional autism center, the client's family, *or a teacher or other professional* who receives the services of a center or participates in center activities, the public necessity portion of the bill does not mention that the release of the records could cause damage to the name or reputation of the teacher or other professional.

VII. Related Issues:

None.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁶ Bd. of Governors, *2011 Legislative Bill Analysis, HB 579* (Feb. 10, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs) (HB 579 is identical to this bill).

¹⁷ *Id.*

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 Children, Families, and Elder Affairs Committee

BILL: SB 1366

INTRODUCER: Senator Storms

SUBJECT: Child Welfare/Mental Health/Substance Abuse

DATE: March 11, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Pre-meeting
2.			HR	
3.			BC	
4.				
5.				
6.				

I. Summary:

Senate Bill 1366 includes managing entities and their contracted monitoring agents among the contracting entities who must limit administrative, licensure, and programmatic monitoring to once every three years if the provider of child welfare, mental health or substance abuse services is accredited by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), the Commission on Accreditation of Rehabilitation Facilities (CARF), or the Council on Accreditation (COA).

The bill extends limitations on administrative, licensure and programmatic monitoring to JCAHO-, CARF-, or COA-accredited mental health providers and substance abuse providers.

This bill substantially amends, the following section of the Florida Statutes: 402.7306.

II. Present Situation:

Contract Monitoring

State agency procurement contracts typically include oversight mechanisms for contract management and program monitoring. Contract monitors ensure that contractually required services are delivered in accordance with the terms of the contract, approve corrective action plans for non-compliant providers, and withhold payment when services are not delivered or do not meet quality standards.

In November 2008, Children's Home Society of Florida (CHS) surveyed 162 programs, in an effort to “assess the quantity of external contract monitoring of CHS programs and identify any

potential areas of duplication across monitoring by state and designated lead agencies.” According to the responses, between October 1, 2007 and September 30, 2008,

- The 104 responding programs were monitored 154 times by state agencies, and 1,369 documents were requested in advance of site monitoring visits. Of the document requests, 488 were requested by other state agencies or other departments within a state agency. Professional program staff spent an average of 19 hours to prepare for each site visit, for a total of 3,777 hours.
- During site visits, reviewers evaluated the same policies and procedures reviewed by other state agencies during the year 130 times, and professional program staff spent an average of 60 hours on each site visit.

To address these concerns, in 2010, the Legislature passed HB 5305,¹ which required that health and human services contracting agencies² limit administrative monitoring to once every three years, if the contracted provider of child welfare services is accredited by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), the Commission on Accreditation of Rehabilitation Facilities (CARF), or the Council on Accreditation (COA).

In addition the bill authorized private-sector development and implementation of an Internet-based secure and consolidated data warehouse for maintaining corporate, fiscal and administrative records related to child welfare provider contracts, and required state agencies that contract with child welfare providers to access records from this database.

Entities not covered by the newly-enacted law — that is, entities other than child welfare providers — have expressed similar concerns about excessive monitoring and auditing by human services agencies. Meridian Behavioral Healthcare advises³ that in a 12-month period ending February 2011, they were the subject of 17 audits, 14 of which were by state agencies. Other than contract-specific data, all audited items are reviewed by CARF prior to Meridian’s accreditation.⁴

Mental Health and Substance Abuse

Section 394.66(16) expresses the Legislature’s intent that “the state agencies licensing and monitoring contracted [substance abuse and mental health service] providers perform in the most cost-efficient and effective manner with limited duplication and disruption to organizations providing services.”

Mental health services are those therapeutic interventions and activities that help to eliminate, reduce, or manage symptoms or distress for persons who have severe emotional distress or a mental illness and to effectively manage the disability that often accompanies a mental illness so that the person can recover from the mental illness, become appropriately self-sufficient for his or her age, and live in a stable family or in the community. The term also includes those

¹ Chapter 2010-158 Laws of Florida.

² Department of Children and Families, Department of Health, Agency for Persons with Disabilities, Agency for Health Care Administration, and community based care lead agencies.

³ Audit Data. Meridian Behavioral Healthcare. On file with the Committee.

⁴ *Id.*

preventive interventions and activities that reduce the risk for or delay the onset of mental disorders, including treatment, rehabilitative, support, and case management services.⁵

Substance abuse services are those designed to prevent or remediate the consequences of substance abuse, improve an individual's quality of life and self-sufficiency, and support long-term recovery. They include prevention, assessment, intervention, rehabilitation, and other ancillary services.⁶

To be eligible to receive substance abuse or mental health services from DCF, the client must be a member of one of the legislatively-determined priority populations:⁷

For adult mental health services —

- Adults who have severe and persistent mental illness, including older adults in crisis or at risk of being placed in a more restrictive environment because of their mental illness; persons deemed incompetent to proceed or not guilty by reason of insanity, and other persons involved in the criminal justice system; and persons with co-occurring mental illness and substance abuse disorders.
- Persons who are experiencing an acute mental or emotional crisis.

For children's mental health services —

- Children who are at risk of emotional disturbance.
- Children who have an emotional disturbance.
- Children who have a serious emotional disturbance.
- Children diagnosed as having a co-occurring substance abuse and emotional disturbance or serious emotional disturbance.

For substance abuse treatment services —

- Adults who have substance abuse disorders and a history of intravenous drug use.
- Persons diagnosed as having co-occurring substance abuse and mental health disorders.
- Parents who put children at risk due to a substance abuse disorder.
- Persons who have a substance abuse disorder and have been ordered by the court to receive treatment.
- Children at risk for initiating drug use.
- Children under state supervision.
- Children who have a substance abuse disorder but who are not under the supervision of a court or in the custody of a state agency.
- Persons identified as being part of a priority population as a condition for receiving services funded through the Center for Mental Health Services and Substance Abuse Prevention and Treatment Block Grants.

In establishing behavioral health managing entities, the Legislature intended that:

⁵ Section 394.67(15), F.S.

⁶ Section 394.67(24), F.S.

⁷ Section 394.674(1), F.S.

A management structure that places the responsibility for publicly financed behavioral health treatment and prevention services⁸ within a single private, nonprofit entity at the local level will promote improved access to care, promote service continuity, and provide for more efficient and effective delivery of substance abuse and mental health services. [In addition] streamlining administrative processes will create cost efficiencies and provide flexibility to better match available services to consumers' identified needs.⁹

A managing entity is under contract with DCF to manage the day-to-day operational delivery of behavioral health services through an organized system of care.¹⁰ Their goal is to effectively coordinate, integrate, and manage the delivery of effective behavioral health services to persons who are experiencing a crisis, who have a disabling disorder and require extended services in order to recover, or who need brief treatment or longer-term supportive interventions to avoid a crisis or disability. In addition, the system enhances the continuity of care for all children, adolescents, and adults who enter the publicly funded behavioral health service system.¹¹

Licensure

Child placing agencies and residential child caring agencies are licensed by the Department of Children and Family Services.¹² Those entities may be monitored only once per year, and that monitoring may not duplicate the administrative monitoring conducted by their accreditation agency.¹³

Section 394.741, F.S., requires DCF and AHCA to accept accreditation as a substitute for facility onsite licensure review and administrative and programmatic requirements for mental health and behavioral health services.

Section 397.411, F.S., requires DCF to “accept, in lieu of its own inspections for licensure, the survey or inspection of an accrediting organization, if the provider is accredited according to the provisions of s. 394.741, and the department receives the report of the accrediting organization.”

Substance abuse and mental health facilities are subject to licensure by the Agency for Health Care Administration.¹⁴ Section. 408.811(2), F.S., provides that

Inspections conducted in conjunction with certification, comparable licensure requirements, or a recognized or approved accreditation organization may be accepted in lieu of a complete licensure inspection. However, a licensure inspection may also be conducted to review any licensure requirements that are not also requirements for certification. (emphasis supplied)

⁸ Behavioral health services are mental health services and substance abuse prevention and treatment services provided using state and federal funds. Section 394.9082(2)(a), F.S.

⁹ Section 394.9082(1), F.S.

¹⁰ Section 394.9082(2)(d), F.S.

¹¹ Section 394.9082(5), F.S.

¹² Section 409.175, F.S.

¹³ Section 402.7305(4), F.S.

¹⁴ Section 408.801, F.S., *et seq.*

III. Effect of Proposed Changes:

SB 1366 includes managing entities and their contracted monitoring agents among the contracting entities who must limit administrative, licensure, and programmatic monitoring to once every three years if the provider of child welfare, mental health or substance abuse services is accredited by JCAHO, CARF, or COA.

SB 1366 extends limitations on administrative, licensure and programmatic monitoring to JCAHO-, CARF-, or COA-accredited mental health providers and substance abuse providers.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The

C. Government Sector Impact:

Indeterminate at this time. See "Related Issues."

VI. Technical Deficiencies:

None.

VII. Related Issues:

As to licensees of the Agency for Health Care Administration, it would appear that, for substance abuse or mental health service providers, the provisions of SB 1366 would not allow AHCA to

conduct licensure inspections for those licensure requirements not covered under the certification, except once every three years.

The Department of Children and Families notes the following:¹⁵

The bill prohibits agencies from monitoring for any requirements that are addressed by accreditation standards, regardless of how long it has been since the accreditation was awarded, which can be three to five years depending on the accrediting entity.

The bill references only “accreditation” without requiring that the accreditation be for the contracted services being purchased by DCF. As a result, it is possible that a provider could be accredited for a service not included within the contracted services, but still fall within the monitoring limitations of this bill. Clarifying that any limitations in programmatic monitoring be applicable only in cases where the service(s) being monitored are those for which the provider is accredited would resolve this issue.

This bill does not appear to be consistent with ss. 409.175(6)(f), F.S., that requires annual fire safety inspections. Licensing issues that must be routinely inspected in child caring agencies in order to ensure compliance and child safety include: medication dispensing, documentation and securing; safety and cleanliness of the facility and premises; fire prevention/fire inspections which are required annually in ss. 409.175(6)(f), F.S.; health standards/health inspection [ss. 409.175 (e), F.S.]; and transportation provisions.

The bill cross references s. 394.674, F.S., which refers to the eligibility requirements for individuals receiving DCF funded services. A more accurate cross reference would be to contractual requirements (s. 394.74, F.S.) rather than individual/client requirements.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁵ Department of Children and Families Staff Analysis and Economic Impact SB 1366, march 4, 2011. On file with the Committee.



432890

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
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The Committee on Children, Families, and Elder Affairs (Storms) recommended the following:

Senate Amendment (with directory amendment)

Delete line 13
and insert:
Accreditation of Children and Family Services. If the services being monitored are not the services for which the provider is accredited, the limitations of this paragraph do not apply. If the

=====
D I R E C T O R Y C L A U S E A M E N D M E N T
=====

And the directory clause is amended as follows:

Delete lines 22 - 23



432890

13 and insert:
14 providers.—The Department of

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 Children, Families, and Elder Affairs Committee

BILL: SB 1412

INTRODUCER: Senator Storms

SUBJECT: Department of Children and Family Services

DATE: March 11, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Walsh	CF	Pre-meeting
2.	_____	_____	GO	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This legislation reenacts and authorizes the Department of Children and Family Services (DCF or the department) to reorganize. The bill changes the name of the agency to “Department of Children and Families” and aligns the statutory organizational requirements for the department with its current organization. The establishment of community alliances or partnerships is made permissive and their membership is changed. The Secretary is authorized to establish statewide advisory groups.

This bill substantially amends ss. 20.04, 20.19, 20.43, 39.01, 394.78, and 420.622, and repeals s. 402.35, the of the Florida Statutes.

II. Present Situation:

Statutory Organizational Requirements

The department is created and organizationally structured pursuant to s. 20.19, F.S., with the express mission “to work in partnership with local communities to ensure the safety, well-being, and self-sufficiency of the people served.” Although the department name established in statute is the Department of Children and Family Services, the department is authorized to use the name Department of Children and Families.¹

The department is headed by a Secretary appointed by the Governor, subject to confirmation by the Senate. The Secretary is directed by current law to appoint the following specified positions:

¹ Chapter 2007-174 (1)(c), L.O.F.

- Deputy Secretary who shall act in the absence of the Secretary;
- Assistant Secretary for Substance Abuse and Mental Health;
- Program Director for Mental Health and Program Director for Substance Abuse;
- Program directors to whom the Secretary may delegate responsibilities for the management, policy, program, and fiscal functions of the department; and
- District administrators for each of the service districts delineated in s. 20.19(5), F.S.

Section 20.19(7), F.S., provides for one prototype regional operational structure for the counties in the third, twelfth and thirteenth judicial circuits (Sun Coast Region). The service districts and prototype region are statutorily responsible for all service delivery operations in their respective areas, with the exception of substance abuse and mental health services.²

Section 20.04(4), F.S., provides that within the department “there are organizational units called ‘program offices,’ headed by program directors.” Section 20.19(4)(b), F.S., establishes the following program offices for the department:

- Adult Services;
- Child Care Services;
- Domestic Violence;
- Economic Self-Sufficiency Services;
- Family Safety;
- Mental Health;
- Refugee Services; and
- Substance Abuse.

The Secretary is authorized to consolidate, restructure, or rearrange program and support offices in consultation with the Executive Office of the Governor, provided that any such changes are capable of meeting the functions, activities, and outcomes delineated in law. The Secretary is likewise authorized to appoint additional managers and administrators at his or her discretion. However, DCF is one of three executive agencies for which any additional offices may only be established by statutory enactment.³

Section 20.19(6), F.S., directs the department to establish a community alliance of stakeholders, community leaders, client representatives and funders of human services in each county to provide a focal point for community participation and governance of community-based services. According to the department, community alliances never developed in some areas, although they are thriving in others.⁴

² Pursuant to section 20.19(2)(c)1., F.S., the Program Director for Substance Abuse and the Program Director for Mental Health have direct line authority over all district substance abuse and mental health staff. Mental health institutions report to the Program Director for Mental Health.

³ Section 20.04(7)(b), F.S. The Departments of Transportation and Corrections are also subject to this restriction.

⁴ DCF, *Staff Analysis and Economic Impact, Senate Bill Number 1412* (March 3, 2011).

Departmental Organization Work Group

In 2007, the department established a Departmental Organization Work Group to examine the organizational structure of the department. The work group recommended a series of organizational modifications designed to enhance the department's organizational structure so that the department would be more efficient, responsive and innovative in providing services. The Workgroup made multiple recommendations, including:⁵

Regionalization of Services

- Adopt a regional structure for field operations.
- Implement a circuit-based model for the provision of community services and ensure a Departmental leadership presence in each of Florida's 20 judicial circuits.

Organizational Structure

- Adopt a standardized template for the provision of community and administrative services and support at the regional and community level.

Assistant Secretary for Operations

- Modify the table of organization for the Office of the Assistant Secretary for Operations to reflect the changes in field services delivery.

Assistant Secretary for Programs

- Realign the table of organization for the Office of the Assistant Secretary for Programs to parallel the three elements of the Department's formal Mission Statement.
- Expand the role of the existing Office of Provider Relations.
- Reassign Headquarters Substance Abuse and Mental Health (SAMH) staff and treatment facilities to the Office of the Assistant Secretary for Programs and SAMH field personnel to the appropriate regional reporting structure.⁶
- Establish an ombudsman position.

Office of Strategic Planning and Innovation

- Create and staff an Office of Strategic Planning and Innovation.

⁵ *Organizational Review of the Department of Children and Families, Final Report of the Organizational Review Work Group (DRAFT) i-iv (April 2, 2007).*

⁶ In reviewing the organization of Substance Abuse and Mental Health, the Work Group concluded that "the creation of the position of Assistant Secretary for Substance Abuse and Mental Health (SAMH) with a separate chain of command for SAMH personnel in the field, albeit necessary at one time to assure proper attention to the issue, has created a silo which impedes both communication and effective management of Departmental field resources."

Quality Management

- Designate the Office of Strategic Planning and Innovation as the entity responsible for setting quality and training standards, identifying appropriate resources to support Headquarters and field activities, and maintaining centralized databases on techniques and training standards.
- Transfer the Contract Oversight Unit to the Assistant Secretary for Programs to assure integration of efforts and to maximize communication.
- Distribute quality functions within regions, rather than reporting to Central Office.
- Move responsibility for strategic planning at the regional level to performance and planning teams.
- Adopt a regional model for Quality Assurance and Quality Improvement.

Current Organizational Structure of DCF

In 2007, the Legislature authorized the department to reorganize its administrative structure.⁷ Pursuant to this authority, and consistent with the recommendations of the Workgroup, the department now plans, administers, and delivers most of its services to target groups through offices in six regions and 20 circuits aligned to match the state's 20 judicial circuits.⁸

According to the department, prior to reorganization, local district administrators had authority over:

- Child welfare;
- Economic self-sufficiency; and
- Adult services.

After reorganization, the circuit administrators (formerly district administrators) also have direct authority over:

- Substance abuse and mental health services;
- Homelessness;
- Domestic violence; and
- Refugee programs.⁹

According to the department, the transition of decision-making to the circuit level allows the circuit administrators more opportunities to focus resources as needed in the community:

In its reorganization, the Department has pushed decision-making to the lowest appropriate level. Circuit Administrators have more authority over

⁷ Chapter 2007-174, L.O.F.

⁸ DCF, *Reorganization of the Department of Children and Families, Report to the Legislature* 4; Appendix 1 (January 1, 2008), available at <http://www.dcf.state.fl.us/publications/docs/ReorgReport013108.pdf>. (last visited March 10, 2011). Circuits were made consistent with the geographic boundaries of judicial circuits, because of the department's ongoing and regular interaction with the State's court system.

⁹ *Id.* at 2.

the entire array of Department services than in previous years... This allows Circuit Administrators the ability to focus resources as needed for direct services in their communities.¹⁰

To assure consistency and efficiency of operations throughout the state, the department has also adopted a standardized template for the provision of administrative services and support at the regional and circuit level.¹¹

In order to integrate Substance Abuse and Mental Health (SAMH) into the department's overall approach to the delivery of services, and to further align substance abuse and mental health services with the specific needs of the community, the department has:

- Appointed an Assistant Secretary for SAMH;
- Aligned the SAMH programs with the department's overall approach to circuit-based service delivery;
- Revised the organizational structure of the SAMH programs, so that SAMH activities in each circuit are being led by a SAMH Program Supervisor who reports to the circuit administrator;
- Taken action to more closely align SAMH programs statewide, by combining the SAMH Contract and Data Units in the central office; and
- Continued oversight for the State Mental Health Treatment Facilities, which report to the Assistance Secretary for SAMH with assistance from the Mental Health Chief of Facilities and the Director of Mental Health.¹²

The 2007 Legislature also permitted the department to establish (1) community partnerships at the request of local communities in order to improve the delivery of community-based services; and (2) state level advisory groups to ensure and enhance communication among stakeholders, community leaders, and clients.¹³ Pursuant to this authorization, the department has established the following groups "to garner community guidance and expertise:"

- Task Force on Fostering Success; and
- Select Advisory Panel for Adult Protective Services.¹⁴

III. Effect of Proposed Changes:

The bill re-enacts the Department of Children and Family Services and places in statute the reorganization plans already accomplished by DCF in response to direction given in Chapter 2007-174, L.O.F. The bill amends s. 20.04, F.S., and substantially rewords s. 20.19, F.S., as follows:

¹⁰ *Id.*

¹¹ 13 *Id.* at 4; Appendices 2, 3. Although the department reports that it has adopted a "standardized template" for regional and circuit management, there are two templates for circuit management. It is not clear why two different models are described and how it is determined which one is utilized in each circuit.

¹² *Id.* at 4-5.

¹³ Chapter 2007-174, L.O.F.

¹⁴ Department of Children and Families, Special Initiatives, available at <http://www.dcf.state.fl.us/initiatives> (last visited March 10, 2011).

Department Reorganization

- Renames the "Department of Children and Family Services" to "Department of Children and Families;"
- Deletes provisions relating to the mission and plan for the department;
- Deletes the requirement for the Secretary to appoint Program Directors for Mental Health and Substance Abuse, and deletes their statutory responsibilities, including but not limited to line authority over district staff;
- Deletes the directive for the Assistant Secretary for Mental Health and Substance Abuse to have direct authority over Mental Health Institutions;
- Provides for the appointment of Assistant Secretary positions as necessary and requires the appointment of the Assistant Secretary for Substance Abuse and Mental Health;
- Provides that DCF is authorized to establish certain program offices and adds Homelessness as a program office, each headed by a program director;
- Amends the current law changing service districts to operating units and provides that DCF will administer programs through operating units which must conform to the geographic boundaries of judicial circuits prescribed in s. 26.021, F.S., and provides for the combining of judicial circuits among operating units;
- Provides for the establishment of an unspecified number of regions to oversee one or more circuits;
- Provides that the Secretary may appoint a circuit administrator for each circuit and may appoint a region director for each region;
- Deletes the prototype region structure in current law, s. 20.19(7), F.S.;
- Deletes the requirement each fiscal year to develop projections of the number of child abuse cases and include in the department's legislative budget request a specific appropriation for an adequate number of child protective investigators and caseworkers;

Community Alliances or Partnerships

- Allows DCF to establish community alliances/partnerships, in consultation with local communities;
- Provides for the duties of community alliances/partnerships;
- Deletes the specification of initial membership of a community alliance in s. 20.19(6)(d), F.S., and replaces it with a more general description of the organizations who should be included in the alliance and requires membership to reflect the diversity of the community;
- Deletes the prohibition against certain members of the alliance receiving contractual payment for services from the department or a community-based care lead agency;
- Retains current law, s. 20.19(6)(g)-(k), F.S., providing for alliances and partnership members to be reimbursed for certain expenses, subject to ethics provisions, and financial disclosures, provides that meetings are open to the public and public records provisions in statute, and requires that actions taken by alliance meetings must be consistent with DCF policies and state and federal laws;
- Retains current law, s. 20.19(8), F.S., requiring consultation with counties on mandated programs; and

- Deletes obsolete language in s. 20.19(9) F.S., which exempts from competitive bids health services involving examination, diagnosis, or treatment.

The bill also amends ss. 20.43, F.S., relating to the Department of Health, s. 39.01, F.S., relating to definitions, and s. 394.78, F.S., relating to operation and administration, to conform cross-references. The bill repeals s. 402.35, F.S., relating to the application of the Department of Management Services on DCF employees because it is obsolete, and amends s. 420.622, relating to the State Office on Homelessness, to delete the requirement for the Governor to appoint an executive director of the office.

The bill provides for legislation during the 2012 regular legislative session to conform the Florida Statutes to changes made by the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In 2000, the Legislature enacted a provision in an effort to keep caseloads for child protective investigators and case workers at levels recommended as best practice by the Child Welfare League of America.¹⁵ The law requires:

- Each fiscal year the secretary shall, in consultation with the relevant employee representatives, develop projections of the number of child abuse and neglect cases and shall include in the department's legislative budget request a specific appropriation for funds and positions for the next fiscal year in order to provide an adequate number of full-time equivalent:
 - Child protection investigation workers so that caseloads do not exceed the Child Welfare League Standards by more than two cases; and
 - Child protection case workers so that caseloads do not exceed the Child Welfare League Standards by more than two cases.^{16,17}

The bill deletes this requirement from current law, which may adversely affect the caseloads of child protective investigators and case managers.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁵ Chapter 2000-139, L.O.F.

¹⁶ See s. 20.19(5)(c), F.S.

¹⁷ The caseload recommendations from the Child Welfare League of America's Standards of Excellence for Services for Abused or Neglected Children and Their Families are:
Initial assessment/investigation: 12 active families a month per worker;
Ongoing services: 17 active families per worker and no more than 1 new case for every 6 open cases; and
Combined assessment/investigation and ongoing services: 10 active ongoing families and 4 active investigations per worker
Supervision: 5 social workers per supervisor. Available at:
<http://www.childwelfare.gov/management/workforce/compendium/cwla.cfm>. (Last visited March 10, 2011).



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LEGISLATIVE ACTION

Senate

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House

The Committee on Children, Families, and Elder Affairs (Storms) recommended the following:

Senate Amendment (with title amendment)

Between lines 152 and 153
insert:

(6) Each fiscal year the secretary shall, in consultation with the relevant employee representatives, develop projections of the number of child abuse and neglect cases and shall include in the department's legislative budget request a specific appropriation for funds and positions for the next fiscal year in order to provide an adequate number of full-time equivalent:

(a) Child protection investigation workers so that caseloads do not exceed the Child Welfare League Standards by



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13 more than two cases; and
14 (b) Child protection case workers so that caseloads do not
15 exceed the Child Welfare League Standards by more than two
16 cases.

17
18
19 ===== T I T L E A M E N D M E N T =====

20 And the title is amended as follows:

21 Delete line 13
22 and insert:
23 districts, the membership of

Creating Efficiencies

**In Service Delivery for Persons
with Intellectual and Other
Developmental Disabilities.**

Presented by Mark A. Swain, Associate CEO



Current Systems Inefficiencies

- Areas do not have adequate service capacity to meet the needs of people.**
- Areas are not held accountable to provide appropriate service capacity.**
- Areas are reluctant to provide selected services.**
- Providers are reluctant to provide selected services.**
- Institutions “hold-on” to high cost plans decreasing service capacity.**
- There is a financial disincentive to transition some people to lower cost plans.**
- Crisis management is relied upon to serve some people (IB/BF/Psychiatric).**
- Provider Certification redundancy between Areas. (e.g., Res Hab, ADT, Trans, etc.)**
- Oversight is not standardized or uniform (Excessive vs. Minimal)**
- Lack of Public and Private sector partnership on creating efficiencies.**

An Example of the lack of Service Capacity and the effect on an Individual's cost plan

A single case-study scenario

A person is assessed and a realistic budget is constructed including BF residential services.

- There is no local availability of Behavior Focus Homes for the person.
- As a result, the person has a serious incident and is Baker-Acted.
- The person is re-assessed as IB and is placed out of Area at doubled cost plan.
- Costs overruns are compounded if placed at a non-transitional institution.
- The person can lose contact with family and become completely dependent upon the state. If law Enforcement is involved person can be placed at MRDP.

Human Costs of Inefficiencies

- ❑ People lose capacity to self-direct their lives.
- ❑ People lose natural supports.
- ❑ Supports the **myth** “that some people cannot be supported in the community.”
- ❑ Supports the **myth** that institutions are still needed.
- ❑ People do not fail because they lack the capacity to live in the community – they fail because appropriate services are not available.

Strategic Capacity Planning

- ❑ Targeted service capacity is a must for managed efficiency.
- ❑ Service capacity must meet the needs of the people.
- ❑ When needed services are unavailable costs increase.
- ❑ The budget does not address appropriate service capacity.
- ❑ Appropriate service capacity can be developed through cooperative projects of APD and Providers.

Eliminate Administrative Redundancies

- ❑ Create a Central Certification Process for Providers.
- ❑ Currently, established Providers trying to provide services to people in another APD Area start the “Provider Certification” process from the beginning.
- ❑ Provider Certification redundancy is inefficient and costly.
- ❑ Utilize Secure Electronic Repositories for Administrative Reviews.

Increase Service Capacity thru Transitional Services

- ❑ Transitioning people with IB saves money.
- ❑ IB cost plans were designed to be reduced aggregately over time because Behavior Therapies should have positive effects of a determined percentage.
- ❑ Transitioning people from institutions saves money.
- ❑ Transitioning saves money and creates additional capacity to serve people.

Implement Strategic Performance Measures

- ❑ APD Areas = Proper Service Capacity & Transition
- ❑ Providers = Transitional Capacity on IB Cost Plans and Institutional transition.

We need to develop --

- ❑ Transitional Performance Metrics – Measuring Areas and Providers ability to transition people and create service capacity.

Down-Size Expensive Institutions

- ❑ 120 Million Appropriated - Serving about 800 people @ approximately \$411 per day. (or \$17.13 an hour)
- ❑ Institutional Placement Costs approximately \$150,000 per year.
- ❑ Transitioning People from State Institutions to Community Based Services saves money.
- ❑ \$411 per day GR to \$177 per day of GR / A single 6 bed IB group home saves \$513,000 GR per year when transitioned from an institution.
- ❑ The privatization of institutions is not the answer.

Down-Size Expensive Institutions

What is Gained?

- ❑ **Community Waiver Draws Down 57% Fed \$ or \$85,500 per person based upon the \$150,000 cost plan.**
 - ❑ 800 x \$85,500 = \$68,400,000
 - ❑ Many people in institutions do not require a \$150,000 cost plan in the first place.
 - ❑ \$150,000 represents a top Tier HCBS Waiver cost plan.
 - ❑ Many people could be served between \$45,000 and \$60,000 in the community.
 - ❑ Including the 57% Fed drawdown 3-4 people could be served for the cost of a single Institution Placement.
 - ❑ Additionally, Institutions are inherently non-transitional which costs the state in lost transitional opportunities.
 - ❑ These excessive costs are incurred every year.

Create Incentives to Transition IB People to Lower Cost Plans

- Providers demonstrating strong transitional performance need to be rewarded (referrals)
- Clients would benefit from information on transitional performance when making a “choice” on a provider.
- Client “choice” is another reason to develop transitional metrics. It’s client friendly AND budget friendly.
- Would you like to know how long people tend to stay with an IB provider before making your “choice” ? (6 yrs vs. 2 yrs)

Cut Funding to Non-Transitional Institutions

- ❑ Cut spending to institutions who have poor transitional performance.

Why???

- ❑ Non-transitional institutions, agencies, and Areas are inefficient.

Replicate Transitional Programs

- ❑ Replicate programs that reduce high cost plans and build service capacity through strong transitional performance.
- ❑ Study transition to establish valid and optimal transition rates and link this information to performance standards to provider and Area performance.

Transition People from State Institutions to Community Based Services

- ❑ Create a strategic plan to reduce institution populations and take advantage of the cost savings.
- ❑ Privatizing institutions is “privatizing an inefficiency”. This would create the same problem, but privatized. Transition?

Crisis Stabilization Capacity

- ❑ Stabilization units for people with developmental disabilities need to be developed to provide short-term crisis stabilization with the goal of returning people to their homes and keeping them at their current cost plan level.
- ❑ Currently people with developmental disabilities experiencing crises are often Baker Acted losing continuity and specificity of care.
- ❑ These situations can lead to people being displaced at increased cost because appropriate stabilization services were not available.

Actively Create and Implement Efficiency Strategies

- ❑ APD and Providers should collaborate and generate pragmatic strategies designed to gain efficiencies based upon “real world” examples, paying particular attention to efficiencies that generate increased capacity to serve people.
- ❑ Currently, Department Heads go through a 15% budget-cut exercise each year that is presented to Appropriations Committees – this exercise should be based-upon the pragmatics of “real world” strategies developed by experts participating in the business.

The Non-Answer of Managed Care

- The answers to efficiencies are already contained within the expertise of the current system.
- The contingencies just need to be rearranged to produce them, and implement them.
- By applying principles of smart business practices people can receive greater services, and capacity can be built.