

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1319 CS

Certification of Swimming Instructors

**SPONSOR(S):** Goldstein

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2426

---

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Health Care Regulation Committee</u>	<u>9 Y, 0 N, w/CS</u>	<u>Halperin</u>	<u>Mitchell</u>
2) <u>Business Regulation Committee</u>	<u>17 Y, 0 N</u>	<u>Watson</u>	<u>Liepshutz</u>
3) <u>Health Care Appropriations Committee</u>	<u></u>	<u>Ekholm</u>	<u>Massengale</u>
4) <u>Health &amp; Families Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

---

### SUMMARY ANALYSIS

This bill requires additional certification of swimming instructors at swimming pools who hold themselves out as specializing in training people with developmental disabilities. It requires the certification to be obtained from the Dan Marino Foundation, based in Weston, Florida. The bill further requires the Dan Marino Foundation to develop certification requirements and training curriculum for review by the Department of Health.

The bill provides the Department of Health with the authority to enforce compliance.

The bill allocates \$535,000 from the General Revenue Fund to the department for the purpose of implementing the act, to be distributed as follows:

- \$185,000 in recurring revenue to the Dan Marino Foundation, Inc., to implement and operate the certification program.
- \$350,000 in nonrecurring revenue to the Dan Marino Foundation, Inc., to develop curriculum for training and certification requirements, in addition to assisting with facilities to accommodate the developmentally disabled.

The effective date of the bill is July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government**—The bill adds new certification requirements to the practice of swimming instruction in Florida.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Section 514.071, F.S. requires that any person working as a swimming instructor or lifeguard at a public swimming pool must be certified by the American Red Cross, the Y.M.C.A., or another nationally recognized aquatic training program.<sup>1</sup> Swimming instructors are to be certified in swimming instruction, first aid, and cardiopulmonary resuscitation. Rule 64E-9.008, F.A.C., further requires that swimming instructors be certified in child and infant cardiopulmonary resuscitation through the American Red Cross, or the American Heart Association or the National Safety Council. In terms of enforcement, the Department of Health may currently sue to enjoin the operation of any public swimming pool that uses any swimming instructor or lifeguard in violation of this section, in addition to any other remedies available to the department.

##### *Current Swimming Instruction Provided to Developmentally Disabled Children*

Broward County has a unique program for serving developmentally disabled individuals, and currently provides instruction to between 4,000 and 5,000 special needs children each year in their regular swim instruction program.

##### *Developmental Disabilities in Florida*

Section 393.063(10), F.S., defines a developmental disability as a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely. Developmental disabilities begin anytime during development up to 22 years of age and usually last throughout a person's lifetime.<sup>2</sup> As of 2003, there were 7,151 children with autism in Florida. This represents a 690 percent cumulative growth rate of autism from 1992 to 2003, or an average annual growth rate of 19 percent. The increase in autism prevalence is systemic across the United States with rates having grown from 1 in 10,000 births in the 1980s to 1 in 166 births today.<sup>3</sup>

Proponents of the bill claim that many developmentally disabled children are not being taught to swim properly because instructors lack expertise in training special needs students. While teachers in

---

<sup>1</sup> Pursuant to Rule 64E-9.008, "nationally recognized aquatic training programs" adopt as reference the standards found in the 2000 edition of the American Red Cross Lifeguarding Instructors Manual, the 1995 edition of the American Red Cross Water Safety Guide for Training Instructors, the On the Guard II, The YMCA Lifeguard Manual, Fourth Edition, (YMCA) The Youth and Adult Aquatic Program Manual (1999), and (YMCA) The Parent/Child and Preschool Aquatic Program Manual (1999).

<sup>2</sup> U.S. Centers for Disease Control. <http://www.cdc.gov/ncbddd/dd/default.htm>.

<sup>3</sup> Public Schools Autism Prevalence Report Series, 1992-2003, [www.fightingautism.org](http://www.fightingautism.org). Data Note: The Individuals with Disabilities Education Act (IDEA) requires each state's Department of Education and the U.S. Department of Education to record specific childhood disabilities, including autism, for each school year. This means that in order for a child to be recorded in the autism disability category the student must require special academic support for the disability; and means that some children with autism who attend private school or other facilities are not included in these counts. Data sources include [www.ideadata.org](http://www.ideadata.org) and [www.cdc.gov/nchs/](http://www.cdc.gov/nchs/).

classrooms must receive additional certification to instruct special needs children, swimming instructors are not required to have additional training.

### *Florida Geography*

Florida has 11,761 square miles covered by water, making it the third wettest state behind Alaska and Michigan.<sup>4</sup> Florida also has the second longest coastline of 1,350 miles, and the second longest shoreline of 8,426 miles.<sup>5</sup> Approximately 80 percent of residents live by the coast, and no resident is more than 75 miles from water.<sup>6</sup>

### *Drowning Statistics*

Drowning is the second leading cause of injury death of infants and children younger than 15 years of age in the United States, and children under the age of five have the highest drowning rates. For every child who drowns, four children are hospitalized for near-drowning. Of the estimated 5,000 children who are hospitalized annually for near-drowning, 15 percent die in the hospital and one-third suffer significant neurological damage. In Florida, drowning is the leading cause of death to children age 14 and younger<sup>7</sup>, and the state has the highest number of drowning accidents in the nation.<sup>8</sup> Children younger than one year of age are most likely to drown in bathtubs and buckets, while children between the ages of 1 and 4 most frequently drown in residential swimming pools. Children usually enter pools through unprotected gates and are only out of eyesight for moments before immersing in the water. Children and adolescents between the ages of 5 and 19 most often drown in lakes, ponds, rivers and pools. The annual cost of care per year for an impaired survivor of a near-drowning is approximately \$100,000.<sup>9</sup>

### *Factors That Increase the Risk of Drowning*

Some underlying medical conditions are known to increase the risk of drowning. Persons with developmental disabilities are at higher risk of pedestrian accidents in general, including falls, fires, and drowning.<sup>10</sup> Children with epilepsy are estimated to be 4 to 14 times more at risk of submersion,<sup>11</sup> and two recent studies suggest that children with autism may also be at increased risk.<sup>12</sup> However, both studies are based on a small number of drowning deaths and more research is necessary to evaluate the relation between autism and drowning. For some parents of children with autism, fears about the child's wellbeing sometimes lead them entirely to avoid swimming lessons.<sup>13</sup> Minority and underprivileged children are also at increased risk of drowning. According to 2002 statistics, 40 percent

---

<sup>4</sup> [http://www.netstate.com/states/geography/fl\\_geography.htm](http://www.netstate.com/states/geography/fl_geography.htm).

<sup>5</sup> <http://www.50states.com/florida.htm>.

<sup>6</sup> Florida Department of Environmental Protection. <http://www.floridadep.org/law/grants/cmp/>.

<sup>7</sup> Orange County, CA, Fire Authority. [http://www.poolalarms.com/pool\\_drowning\\_statistics.htm](http://www.poolalarms.com/pool_drowning_statistics.htm).

<sup>8</sup> [http://www.poolalarms.com/statistics\\_florida\\_swimming\\_pool\\_accidents.htm](http://www.poolalarms.com/statistics_florida_swimming_pool_accidents.htm).

<sup>9</sup> Statistics on Drowning. <http://hsc.usf.edu/CLASS/JulieJ/Statistics.htm>.

<sup>10</sup> Strauss, D., Shavelle, R., Anderson, T. and Baumeister, A. "External Causes of Death among Persons with Developmental Disability." *American Journal of Epidemiology*. 1998, Vol. 147, No. 9: 855-862.

<http://aje.oxfordjournals.org/cgi/content/abstract/147/9/855>

<sup>11</sup> Smith GS, Brenner RA. The changing risks of drowning for adolescents in the US and effective control strategies. *Adolescent Medicine*. 1995; 6 :153 –170. See also footnotes 39-41 in Brenner, R.A. "Prevention of Drowning in Infants, Children, and Adolescents. *Pediatrics*. Vol. 112 No. 2 August 2003, pp. 440-445. Available at <http://aappolicy.aappublications.org/cgi/content/full/pediatrics;112/2/440>.

<sup>12</sup> Sibert JR, Lyons RA, Smith BA, et al. Preventing deaths by drowning in children in the United Kingdom: have we made progress in 10 years? Population based incidence study. *British Journal of Medicine* .2002; 324 :1070–1071; and Shavelle RM, Strauss DJ, Pickett J. Causes of death in autism. *Journal of Autism and Developmental Disorders*. 2001; 31 :569 –576.

<sup>13</sup> Life Science Services Contract with NASA. <http://fitness.ksc.nasa.gov/articles/autism.php>.

of children who die from drowning are minority children. This is based on factors of race, class, privilege and poverty that limit a child's access to aquatic facilities and swimming lessons.<sup>14</sup>

### Effect of Proposed Changes

This bill creates s. 514.072, F.S., requiring additional certification of individuals working at pools who hold themselves out as specializing in training people with developmental disabilities, as defined in s. 393.063(10), F.S.

The bill provides that the "special needs" swimming instructor certification requirements will be developed by the Dan Marino Foundation, Inc., and instructors must meet these additional certification requirements to teach individuals with developmental disabilities. The bill requires the Dan Marino Foundation, Inc., to submit the certification requirements to the Department of Health for review and incorporation into rule by January 1, 2007.

Swimming instructors at public pools are currently certified under s. 514.071, F.S., before July 1, 2007, must meet the additional requirements by January 1, 2008. Individuals certified under s. 514.071, F.S., on or after July 1, 2007, must meet the additional requirements within 6 months after receiving the original certification.

In addition to attaining the special certification outlined in this bill, instructors at private pools holding themselves out as specialists in training students with developmental disabilities would be required to get the same certification as regular swimming instructors at public schools.

In addition to other remedies available to the Department of Health, the bill provides the department the right to sue to prohibit or restrain by injunction the operation of any public swimming pool that uses any swimming instructor in violation of certification requirements.

The effective date of the bill is July 1, 2006.

### *New Certification Requirements*

The certification program required in the bill is being drafted by a workgroup organized by the Broward County Swim Central in conjunction with the Dan Marino Foundation. The new proposed certification requirements are not currently available for review. According to the Department of Health analysis on this bill, there are currently nationally recognized courses that are required for swimming instructors and lifeguards. It is not known how the certification requirements in the bill will integrate with the national requirements for certification. The department suggests that an alternative way of designing additional certification requirements is to submit the idea to the Red Cross, YMCA or other national swimming instruction program for incorporation into existing swimming courses for certification.

### *About the Dan Marino Foundation*

The Dan Marino Foundation, Inc., is based in Weston, Florida, and was founded in 1992 as a non-profit organization supporting medical, emotional or behavioral programs that provide integrated intervention services for children with special needs. The foundation has distributed and pledged over \$7 million dollars to provide research, programs, and services that have benefited more than 100,000 children.<sup>15</sup>

---

<sup>14</sup> Anderson, Kelli. "Just Add Water: A Complete Guide to Aquatic Centers." *Recreation Management*. [http://www.recmanagement.com/feature\\_print.php?fid=200602fe01](http://www.recmanagement.com/feature_print.php?fid=200602fe01).

<sup>15</sup> Dan Marino Foundation, Inc. [www.danmarinofoundation.org](http://www.danmarinofoundation.org).

C. SECTION DIRECTORY:

**Section 1.** Creates s. 514.072, F.S., requiring additional certification for swimming instructors who teach people who have developmental disabilities.

**Section 2.** Provides an appropriation of \$535,000.

**Section 3.** Provides an effective date of July 1, 2006.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill appropriates \$535,000 from General Revenue to the Department of Health for the purpose of implementing the act, to be distributed as follows:

- \$185,000 in recurring revenue to the Dan Marino Foundation, Inc., to implement and operate the certification program.
- \$350,000 in nonrecurring revenue to the Dan Marino Foundation, Inc., to develop curriculum for training and certification requirements, in addition to assisting with facilities to accommodate the developmentally disabled.

According to Department of Health analysis, staff time spent at public pools will need to be increased during the routine inspections, which will result in additional costs. Increased violations could also result in a significant increase in the workload of department legal staff. The amount of these costs are both indeterminate at this time. The department is responsible for 34,000 public pools statewide.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

2. Revenues:

None.

3. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

According to Department of Health analysis, each city or county that operates a public pool and offers swimming instruction to developmentally disabled persons will incur a cost for each staff member certified under the requirements of bill. Travel costs may be also be incurred for instructors to go to Broward County to receive training and certification.<sup>16</sup>

<sup>16</sup> Berrios, J. "Swimming teachers could get extra duties." *Miami Herald*. March 20, 2006.  
[http://www.miami.com/mld/miamiherald/news/local/states/florida/counties/broward\\_county/13994776.htm](http://www.miami.com/mld/miamiherald/news/local/states/florida/counties/broward_county/13994776.htm).

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Although the bill requires counties and municipalities to spend funds or take an action requiring the expenditure of funds, the impact is less than \$1.8 million and is insignificant. The bill is therefore exempt from the provisions of Article VII, Section 18(b), Florida Constitution.

This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None required.

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

The department suggests that the certification proposed in the bill be done initially in Broward County to ensure its effectiveness prior to implementation statewide.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 28, 2006, the Health Care Regulation Committee adopted a strike-all amendment to the bill and reported the bill favorably with a committee substitute. The amendment provided the following changes:

- Allocates entire appropriation of \$535,000 to the Dan Marino Foundation, Inc., for the 2006-2007 fiscal year for purpose of implementing this act; rather than having funding go toward different entities.
- Requires the Dan Marino Foundation to develop certification requirements and training curriculum for swimming instructors of people who have developmental disabilities; and requires them to submit the certification requirements to the Department of Health for review and incorporation into rule by January 1, 2007.
- Changes the date by which swimming instructors must comply with new certification requirements, to account for the extra time in which curriculum and requirements are developed and put into Administrative Rule.

As amended, the bill requires that a person certified under s. 514.071 before July 1, 2006, must meet the additional certification requirements of this section by January 1, 2008. A person certified under s. 514.071 on or after July 1, 2007, must meet the additional certification requirements of this section within 6 months after receiving certification under 514.071.

On April 5, 2006 the Business Regulation Committee adopted an amendment to the bill and reported it favorably with the committee substitute. The amendment made the following changes:

- Changed the certification requirement to apply only to swimming instructors who hold themselves out to specialize in training those with developmental disabilities.

- Applied the requirement to swim instructors regardless of whether they work at a public or private pool.

This analysis reflects the bill as amended.