

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Children and Families Committee

BILL: PCS/SB 1694

INTRODUCER: Senator Campbell

SUBJECT: Children and Family Services Department

DATE: March 22, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanford	Whiddon	CF	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	HA	_____
4.	_____	_____	WM	_____
5.	_____	_____	RC	_____
6.	_____	_____	_____	_____

I. Summary:

This bill establishes a 3-year pilot for the community-based care lead agencies serving Miami-Dade, Monroe, and Broward Counties. The bill authorizes the transfer of the current responsibilities of the Department of Children and Families (DCF) for oversight of the lead agencies to an independent entity. It provides for funding through a block grant. It expands the responsibilities and services provided by the lead agencies to include Child Welfare Legal Services (CWLS).

The bill also directs DCF and the lead agencies to develop an implementation plan with the Agency for Health Care Administration (AHCA) to implement a local Medicaid mental health reform model that allows for the integration of services in the current systems of care.

This bill creates an unnumbered section of Florida law.

II. Present Situation:

The Department of Children and Family Services (DCF or the department) is the executive agency responsible for the provision of, among other things, child protection in the State of Florida. The Child Protection Program provides five major services: the Florida Abuse Hotline, protective investigations, in-home services, out-of-home services, and adoptions.¹ For Fiscal Year 2005-06, the Legislature appropriated \$864 million for the department's child protection program, of which 51 percent was from federal funds and 49 percent from state funds (primarily general revenue). The department issued contracts with community-based care (CBC) lead

¹ *Program Evaluation and Justification Review of the Department of Children and Families' Child Protection Program*, Office of Program Policy Analysis and Government Accountability (OPPAGA) Report No. 01-14 (March 2001), 2.

agencies that totaled \$625.4 million, retaining the remainder of the appropriation for program-related functions such as child protective investigations and child welfare legal services. Lead agencies served approximately 44,000 children as of June 30, 2005.² The lead agencies, usually through subcontractors, provide direct care services, including case management, foster care placement, and substance abuse and mental health services. The department retains responsibility for operation of the child abuse hotline, for CWLS (although it has contracted for CWLS services in five counties³) and for protective investigations (although it has contracted for protective investigations with sheriff's offices in five counties⁴). The department also by law retains custody of children in foster care. It is DCF that is held responsible to federal auditors for compliance with federal requirements for funding of child welfare programs.

Community-Based Care

In 1996, the Legislature mandated that the department establish pilot programs to "privatize" child protection services through contracts with community-based agencies.⁵ Through a series of statutory and appropriations provisions, the transition to community-based care, provided by lead agencies,⁶ is now complete.⁷ As of April 2005, the department had entered into 22 services contracts with 20 lead agencies that provide child protective services in the state's 67 counties. As reported by the Office of Program Policy Analysis and Government Accountability (OPPAGA), the lead agencies in turn generally subcontract with a wide range of providers for direct care services including case management, foster care placement, and substance abuse and mental health services. As of December 2005, lead agencies had 500 subcontracts, including 64 subcontracts with case management organizations.⁸

The contracts between DCF and the lead agencies are individually negotiated to establish the expected services, performance standards, and payment methodology for each CBC lead agency. The contracts contain performance standards established by the Legislature as well as those required for federal funding. All the contracts, with the exception of the contract with Our Kids, provide for cost reimbursement payments. The Our Kids contract is a fixed price contract, but it still requires accounting for expenditures in order to draw down federal funds. The Our Kids contract has a provision similar to that in the bill which allows for an increase in funding if the population of children served exceeds three percent of the children served on June 15, 2005. This provision is not contained in other contracts. Section 409.1671(4)(a), F.S., requires that the department submit an annual report regarding quality performance, outcome measure attainment, and cost efficiency to the Legislature and the Governor no later than January 31 of each year for each project in operation during the preceding fiscal year. These reports are currently prepared by the Florida Mental Health Institute of the University of South Florida.

² *Additional Improvements are Needed as DCF Redesigns its Lead Agency Oversight Systems*, OPPAGA Report No. 06-05 (January 2006), 3.

³ With the State Attorney in Pasco and Pinellas Counties, and with the Office of the Attorney General in Broward, Hillsborough, and Manatee Counties.

⁴ Broward, Manatee, Pasco, Pinellas, and Seminole.

⁵ Chapter 96-402, Laws of Florida.

⁶ Lead agencies are private, community-based agencies or county governments responsible for planning, administering, and delivering client services, ensuring that services are delivered in accordance with state and federal laws, and coordinating with other local public or private agencies that offer services to clients.

⁷ *Additional Improvements are Needed as DCF Redesigns its Lead Agency Oversight Systems*, OPPAGA Report No. 06-05 (January 2005).

⁸ OPPAGA Report No. 06-05, 1.

Our Kids, the community-based care lead agency in Miami-Dade and Monroe counties, is the newest of the lead agencies, with its services contract effective July 1, 2005. Its appropriation for FY 2005-06 amounted to \$71,673,117. The appropriation for ChildNet, the community-based care lead agency for Broward County, was for \$64,280,001. According to DCF, the state average funding per child for Fiscal Year 2005-06 was \$11,050. The average annual funding for Our Kids was \$13,132/child and that for ChildNet was \$16,293/child. ChildNet is the second-highest funded CBC in the state in terms of its per-child allocation, following Community-based Care of Seminole County at \$17,250.

As part of the evolution toward community-based care, OPPAGA has conducted a series of evaluations of the lead agencies and of the department's ability to monitor quality assurance in the lead agencies. In January 2006, OPPAGA recommended that, in order to resolve critical weaknesses in the department's oversight of CBC lead agencies and the subcontractors that provide direct child protective services, the department needs to:

- Establish a strong training program for its contract monitoring staff;
- Successfully implement the long-delayed HomeSafenet information system and a lead agency viability monitoring system;
- Develop additional ways to ensure that lead agencies comply with contract provisions;
- Develop a certification process to ensure that lead agencies are willing and have the capability to assume additional quality assurance responsibilities; and
- Provide additional written guidance and training to department zone and lead agency quality assurance staff to assist with the planned transfer of additional quality assurance responsibilities to lead agencies.⁹

In this same report, OPPAGA, recognizing that the state retains custody of the children in foster care and remains responsible for the care they are provided, asserted that "it is critical that the department have an effective system to monitor the community-based providers that are serving these children."¹⁰ It found that the department lacks sufficient processes and systems to effectively oversee the community-based care system and further found that the monitoring of subcontractors by lead agencies was insufficient.¹¹

On the other hand, preliminary results from the on-going evaluation of the community-based care initiative by the University of South Florida "offer the first indication that CBC has impacted child-level outcomes in a positive direction."¹² This evaluation contained no information regarding Our Kids, since its implementation was so new. Previous studies by the same evaluator have concluded that most CBC lead agencies struggle in the first year or more after implementation. The complexity of the responsibilities assigned to CBC lead agencies, both programmatically and fiscally, are such that each of them has struggled at least initially, and a few have not survived. Since Florida is the only state to have attempted the implementation of outsourcing of its child welfare services to the extent that it has, there is no role model or guidance practice to guide implementation.

⁹ OPPAGA Report No. 06-05, 1.

¹⁰ OPPAGA Report No. 06-05, 3.

¹¹ OPPAGA Report No. 06-05, 7.

¹² *Report to the Legislature: Evaluation of the Department of Children and Families Community-Based Care Initiative Fiscal Year 2004-2005 (Draft)*, University of South Florida (January 2006), 58.

Section 409.1671(7), F.S. contains provisions for a risk pool for CBC lead agencies. The purposes for which this risk pool shall be used are set forth as, at a minimum:

- Significant changes in the number or composition of clients eligible to receive services.
- Significant changes in the services that are eligible for reimbursement.
- Scheduled or unanticipated, but necessary, advances to providers or other cash-flow issues.
- Proposals to participate in optional Medicaid services or other federal grant opportunities.
- Appropriate incentive structures.
- Continuity of care in the event of failure, discontinuance of service, or financial misconduct by a lead agency.
- Payment for time-limited technical assistance and consultation to lead agencies in the event of serious performance or management problems.
- Payment for meeting all traditional and nontraditional insurance needs of eligible members.
- Significant changes in the mix of available funds.

The FY 2005-06 allocation for the risk pool was \$7.5 million. To date, no funds have been disbursed from the risk pool.

Child Welfare Legal Services (CWLS)

Currently, 344 lawyers represent DCF in child protection cases. Two hundred fifty three of these lawyers are employees of the department, providing services in 62 of the state's 67 counties. In three locations (Broward County, Hillsborough, and Manatee Counties), the CWLS function is performed by the Office of the Attorney General under contract to DCF. In Pinellas and Pasco counties, this function is performed by the State Attorney's office, again under contract to DCF. In no instance are child welfare legal services provided by lawyers who are not governmental employees, either directly employed by DCF, employed by an agency under contract with DCF, or themselves directly contracting with DCF.

The Florida Supreme Court in 1989 required that DCF be represented by lawyers at every stage of dependency hearings conducted under Chapter 39, F.S.¹³ Following that decision and until 1997, all child welfare legal services were provided by lawyers who were employees or contractors to HRS/DCF. The 1996-97 General Appropriations Act established three pilot projects with the Office of the Attorney General in the 17th Judicial Circuit¹⁴ and with the state attorneys for the 8th and 16th Judicial Circuits.¹⁵

In fiscal year 2003-04, the Legislature appropriated \$38.6 million for CWLS. The funding for these services is a combination of state and federal funds, with 50 percent General Revenue and 50 percent federal funds.

¹³ *The Florida Bar Re: Advisory Opinion HRS Nonlawyer Counselor*, 547 So.2d 909 (Fla. 1989). The Department of Health and Rehabilitative Services (HRS) was the predecessor agency to DCF. All or nearly all legal services affecting children alleged to be abused, neglected, or abandoned are conducted under Chapter 39, F.S.

¹⁴ Broward County.

¹⁵ The pilots for the 8th and 16th Judicial Circuits are no longer in operation. The department resumed providing the legal services when the state attorneys for each of these circuits decided not to continue providing this representation.

During the 2002-03 fiscal year, CWLS attorneys were involved in legal proceedings for more than 42,000 active dependency cases. The average caseload per attorney was 122 cases.

In January 2004, OPPAGA examined four options for providing CWLS.¹⁶ These four options were:

- Contracting with other government entities;
- Contracting with for-profit law firms;
- Contracting with non-profit entities; and
- Retaining the service within DCF.

This report concluded as follows:

- Transferring the CWLS function to other government entities is not feasible;
- Contracting with a not-for-profit entity to perform the CWLS function is not feasible;
- Contracting with private, for-profit law firms is feasible, but there are unknowns; and
- Making improvements to the current CWLS model is also an option.

This report specifically addressed community-based care lead agencies and the CWLS function, exploring several alternatives for structuring legal services through the lead agencies but concluded that “none were feasible and that Florida Bar Rules of Professional Conduct for attorneys preclude this option.”¹⁷ As expressed in the report, “if the CWLS function was performed by lead agencies staff, these attorneys would represent the interest of the lead agency, which is paying them, and not the state.”¹⁸ Referring to the Florida Bar Rules of Professional Conduct,¹⁹ OPPAGA concluded that the problem of divided loyalty (to the state or to the lead agency) would still exist if lead agencies contracted with private attorneys.

In every other state, including states that have outsourced most of their child welfare services, according to OPPAGA, a government entity is responsible for providing CWLS.

Legal experts consulted by OPPAGA asserted that CWLS should remain a government function because of the state’s obligation to protect children. “It is the state’s responsibility to protect children that are represented in dependency hearings and, as such, the state is the client of CWLS attorneys. Because of the attorney-client relationship, the state must maintain direct authority for its legal services.”²⁰

¹⁶ *Child Welfare Legal Services Should be Provided by DCF or Private Law Firms*, OPPAGA Report No. 04-05 (January 2004).

¹⁷ *Id* at 4.

¹⁸ *Ibid*.

¹⁹ Rule 4-1.13, *Organization at Client*; Rule 4-18, *Conflict of Interest*; Rule 4-5.4, *Professional Independence of a Lawyer*, Florida Bar Rules of Professional Conduct.

²⁰ OPPAGA, Report 04-05, 5.

Outsourcing and Privatization of Governmental Functions, Generally

Since the emergence of publicly-funded child welfare agencies in the 1880s, state and local governments have paid private, voluntary agencies to provide services.²¹ In recent years there has been increasing interest in several states in outsourcing programs and services.

Consequently, there is a growing literature about such initiatives. While this research is preliminary,

(w)hat is clear across a preliminary review of published reports is that there is broad interest in outsourcing; that there is great variation in the scope of current initiatives (in terms of geographical reach, target population, the number of clients served, and structural design); there is variation in financing mechanisms but with a common thread that attempts to link improved performance to reimbursement amounts or payment schedules; there are different approaches to defining and monitoring results, with most initiatives focused on outcomes related to state and federal mandates; and, there are mixed findings as to actual success related to effectiveness (the ability to improve outcomes) and efficiency (costs).²²

During the past few years, as the pace of the outsourcing²³ of functions previously performed by governmental entities has increased in Florida, the number of audits and reports finding issues and problems in outsourcing procurements and contracts has concurrently increased. During the past two fiscal years, the Florida Auditor General has released numerous operational audit reports identifying deficiencies in agency procurements, outsourcing initiatives, and contract administration and management.²⁴ Specifically, these reports documented a critical need for greater legislative oversight and improved executive agency performance in the areas of: (1) outsourcing initiative justification and planning; (2) fairness and competition in state procurement; (3) compliance with procurement law; (4) contract drafting; (5) vendor performance monitoring; and (6) risk management. The Office of Program Policy Analysis and Government Accountability released 78 reports from 1996 to 2003 addressing privatization of

²¹ *Report to the Legislature: Evaluation of the Department of Children and Families Community-Based Care Initiative Fiscal Year 2004-2005 (Draft)*, University of South Florida (January 2006), referring to Rosenthal, 2000, 2.

²² USF, *ibid*, 4, quoting from McCullough, 2003.

²³ Neither “outsource” nor “privatize” is currently defined for general applicability in Florida Statute. Section 409.1671, F.S., defines “outsource” to mean to contract with competent, community-based agencies, for the purposes of the section.

²⁴ Among those Auditor General operational audit reports are the following: *Real Estate Strategic Planning and Management Contract*, Department of Management Service, Report No. 2005-015, July 2004; *MyFlorida Alliance*, State Technology Office, Report No. 2005-008, July 2004; Department of Veterans’ Affairs, Report No. 2005-023, August 2004; *Selected Administrative Functions*, Department of Management Services, Report No. 2005-035, September 2004; *Pharmaceutical Contracts*, Department of Corrections, Report No. 2005-037, September 2004; *Deferred Compensation Program*, Department of Financial Services, Report No. 2005-038, September 2004; *Pharmaceuticals at County Health Departments*, Department of Health, Report No. 2005-039, October 2004; *Contracts and Other-Personal-Services Employment*, Department of Revenue, Report No. 2005-041, October 2004; *Outsourcing of Canteen Operations*, Department of Corrections, Report No. 2005-044, October 2004; *People First*, Department of Management Services, Report No. 2005-047, October 2004; *MyFloridaMarketPlace*, Department of Management Services, Report No. 2005-116, October 2004; *Asset Management and Monitoring*, Department of Transportation, Report No. 2005-129, February 2005; *Procurement Process for Commodities and Contractual Services and Other Administrative Matters*, Agency for Workforce Innovation, Report No. 2006-027, September 2005; *Contract Management*, Department of Agriculture and Consumer Services, Report No. 2006-029, September 2005; *Contract Administration*, State Board of Administration, Report No. 2006-045, October 2005; *Pharmaceutical Contracts and Follow-Up on Audit Report No. 2005-037*, Department of Corrections, Report No. 2006-080, January 2006.

programs and services.²⁵ Recent reports by both OPPAGA²⁶ and agency inspectors general²⁷ have mirrored the concerns raised in Auditor General reports.

Concise data on outsourcing initiatives undertaken by state agencies is somewhat difficult to come by, though the former Center for Efficient Government released information as of June 2004, stating that there were 138 outsourced projects between January, 1999, and June, 2004. Of those, four projects alone account for at least \$2.25 *billion*.²⁸

Bierce & Kenerson, P.C., an international law firm providing legal advisory and transactional support to clients in business, technology, and finance, has published on its web site a white paper addressing issues of outsourcing and privatization.²⁹ According to this source,

Both outsourcings and privatizations function similarly to the extent they result in the transfer of personnel and management of assets from the agency to the vendor. In any contract with a vendor, the government normally receives the benefit of contractual performance commitments that the government does not currently receive from its own employees. But outsourcings and privatizations differ on issues of ownership and legal control of infrastructure assets and contractual allocation of ultimate liability....

In the domestic American outsourcing experience, the “transformation” from governmental operation is less complete (than in international settings). **Core supervisory functions must be retained to chart strategic vision, define the ... plan with the vendor’s support and audit the vendor’s compliance with the contract’s performance services. The government does not “spin off” the services, but rather transfers certain responsibilities for the services to a vendor while retaining important management prerogatives.** (emphasis supplied).

The Comptroller General of the United States in 2001 convened a panel of experts to study the federal process for making sourcing decisions. The panel developed a series of sourcing principles which it recommended for all decisions involving the potential transfer of

²⁵ OPPAGA Report No. 04-02.

²⁶ See *Progress Report: DJJ Prevention Makes Progress; More Analysis and Contract Monitoring Needed*, Department of Juvenile Justice, Report No. 04-47, July 2004; and *Progress Report: Inmate Health Care Consolidation Progressing; Privatization Requires Agency Vigilance*, Department of Corrections, Report No. 04-61, August 2004; *Workspace Management Initiative Can Benefit State, But DMS Not Taking Adequate Steps to Ensure Goals Are Met*, Department of Management Services, Report No.06-06, January 2006.

²⁷ See *Department Contract Management*, Department of Management Services, Office of Inspector General, Report No. 2004-01, April 19, 2004, (finding that the Department of Management Services: has no methods to track, monitor or report on contracts; has insufficient policies and procedures to guide staff through the procurement and management of service contracts; and has failed in some cases to comply with purchasing statutes and to maintain documentation that justify purchasing actions); State of Florida, Chief Inspector General’s Office, Case No. 200403230002, July 14, 2004, (finding that Department of Children and Families’ staff had committed procurement improprieties).

²⁸ Department of Children and Families’ Community-Based Care privatization of foster care valued at \$1.4 billion; Department of Corrections’ comprehensive health care services to inmates in Region IV valued at \$300 million; Department of Management Services’ human resources outsourcing initiative valued at \$300 million; Department of Corrections’ food service operations outsourcing valued at \$275 million.

²⁹ Bierce & Kenerson, P.C., *Differences Between Outsourcing and Privatization of Information Services in America*, <http://www.biercekenerson.com/oldsite/Articles/Privatization.htm> (accessed 3/23/2006).

governmental activities to private entities.³⁰ According to the principles, a federal sourcing policy should:

- Support agency missions, goals and objectives;
- Be consistent with human capital practices designed to attract, motivate, retain, and reward a high-performing federal workforce;
- Recognize that inherently governmental and certain other functions should be performed by federal workers;
- Create incentives and processes to foster high-performing, efficient, and effective organizations throughout the federal government;
- Be based on a clear, transparent, and consistently applied process;
- Avoid arbitrary full-time equivalent (FTE) or other arbitrary numerical goals;
- Establish a process that, for activities that may be performed by either the public or the private sector, would permit public and private sources to participate in competitions for work currently performed in-house, work currently contracted to the private sector, and new work, consistent with these guiding principles;
- Ensure that, when competitions are held, they are conducted as fairly, effectively, and efficiently as possible
- Ensure that competitions involve a process that considers both quality and cost factors; and
- Provide for accountability in connection with all sourcing decisions.

Medicaid

In 2004, the Legislature amended s. 409.912, F.S., to permit community based care lead agencies to also provide behavioral health services. Children in the child welfare system have been shown to have higher instances of behavioral and mental health problems than both the general Medicaid population and the population at large. They also often come from families with multiple, severe, and complex systems issues. These factors require that mental health services to these children and their families be provided in a timely, integrated system of care with effective and specialized providers. The need for a timely, efficient, effective, and integrated system of care for the Medicaid-eligible child welfare population is additionally supported by the Adoptions and Safe Family Act (ASFA) of 1997. This federal mandate requires that states implement child welfare policies and procedures that ensure timely permanency for children involved in the child welfare system. Children and families involved in the child welfare system, however, have multiple issues that often require multiple service providers. Services that are not well integrated negatively impact the progress that families make in the child welfare system.

In 1996 Medicaid piloted a capitated “carveout” of mental health services in two areas of the state, beginning a transition from a fee for service system to managed care approach to behavioral health services. This approach expanded steadily and by 2001, the Legislature required collaboration and joint development of policy, budgets, procurement documents, contracts, and monitoring plans between the Agency for Health Care Administration (AHCA) and the Department of Children and Family Services (DCF).³¹

³⁰ Commercial Activities Panel, *Improving the Sourcing Decisions of the Government Final Report* (April 2002).

³¹ s. 401.912(4)(b)2., F.S.

In 2003, the Legislature required that Medicaid seek federal approval to contract with a “single entity” in each AHCA area to provide comprehensive behavioral health services. In effect, this provision created sub-state “carveouts” of all Medicaid behavioral health services.³² The effect of the legislation is that by July 1, 2006, almost all Medicaid behavioral health will be capitated to HMOs for their members and to prepaid mental health plans for Medipass recipients. In 2004, s. 409.912(4)(b)8., F.S., was created and stated that “beginning July 1, 2005, children who have open child welfare cases in the HomeSafeNet system shall receive their behavioral health care services through a specialty prepaid plan operated by community-based care lead agencies either through a single agency or formal agreements among several agencies.”

The Child Welfare Prepaid Plan Request for Proposals was released by AHCA on December 16, 2005. The solicitation timeline was extended to allow time for resolution of issues raised relating to the impact of Medicaid reform on the implementation of the prepaid plan. The agency anticipates posting Questions and Answers and any required addenda on May 1, 2006; and proposals are due on June 1, 2006.

Federal Law

The Social Security Act provides explicit requirements that a state must meet in order to receive funds from Title IV-E. For example, section 471(a) [42 U.S.C 671(a)] of the Act provides, among other requirements, that:

- (a) In order for a State to be eligible for payments under this part (i.e. Title IV-E), it shall have a plan approved by the Secretary which—
- (2) provides that the State agency responsible for administering the program authorized by subpart 1 of part B of this title shall administer, or supervise the administration of, the program authorized by this part;
 - (3) provides that the plan shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;...
 - (7) provides that the State agency will monitor and conduct periodic evaluations of activities carried out under this part;

The question of independent programmatic oversight could also be relevant to the issue of whether the children are under the placement (physical custody) and care of the State agency. In order to be eligible for Title IV-E, children must be under the placement and care of the State agency, even though physical care may be provided by a child placing agency such as Our Kids or ChildNet and other lead agencies (Sec. 472(a)(2) of the Social Security Act [42 U.S.C. 672(a)(2)].

In addition, there are interlocking requirements among various federal provisions. For example, in order to be eligible for a Temporary Assistance for Needy Families (TANF) block grant the TANF State Plan must include a certification by the chief executive officer of the State that, during the fiscal year, the State will operate a foster care and adoption assistance program under the State plan approved under part E (Section 402(a)(3) of the Social Security Act [42 U.S.C. 602(a)(3)]).

³² Chapter 2003-279, Laws of Florida

In addition to the Social Security Act provisions, OMB Circular A-133, Subpart 400, Post Award Requirements, includes provisions that require agencies such as DCF that pass federal funds to other entities such as lead agencies to conduct monitoring.

"The ultimate responsibility for ensuring that there is an appropriate plan of care, case review, and activities to improve the home of the child or identify and work toward a permanency plan for the child remains with the State agency identified in the State plan as having responsibility for the placement and care of the child. Thus, the State agency must actively supervise the various activities performed by the contractor or other agency. This supervision includes case plan assessment and case review functions and adherence to the requirements of the Act, Federal rules, regulations and policy interpretations in operation of the foster care maintenance program. The State is ultimately responsible for proper operation of the foster care program." [ACYF-CB-PIQ-82-07, Social Security Act sections 471 and 472]

III. Effect of Proposed Changes:

Section 1 establishes a 3-year pilot program for the community-based care lead agencies serving Miami-Dade, Monroe, and Broward counties. The pilot allows for the transfer of the department's current responsibilities of lead agency oversight to an independent entity and for funding through a block grant. The pilot expands the responsibilities and services provided by these lead agencies to include Child Welfare Legal Services (CWLS).

Section 2 requires that the Department of Children and Family Services (DCF) enter into 3-year contracts with the community-based care (CBC) lead agencies serving Miami-Dade, Monroe, and Broward counties. The contracts must be fixed-price contracts funded in 36 equal installments, with the first two installments paid in advance. The source of the funding for the contracts will be general revenue through a block grant and federal Title IV-E funding. The amount of federal funding is to be equal to that earned by each of the pilot lead agencies for the 2005-06 fiscal year. The State of Florida will be held harmless for any shortfall caused by the agencies' inability to earn the allocated federal funding, and each lead agency's contract shall be increased by any federal over-earnings. Funding in excess of the contracted amounts will only be available to the lead agencies in case of one or more of the following circumstances:

- Additional specific legislative appropriations for services provided under s. 409.1671, F.S.;
- An increase in the population of children served which exceeds three percent of the population of children served on June 15, 2005, by either lead agency; or
- Unforeseen catastrophic events as determined by the Governor and funded by the Legislature.

The lead agencies are required to submit annually Certified Audited Financial Statements to the Governor, DCF, and the appropriations committees of the House of Representatives and Senate. All other required fiscal reporting will be determined by independent fiscal monitors selected by the parties (defined as the lead agencies and DCF). The parties are directed to engage an independent arbitrator for dispute resolution, including any disputes related to the form and substance of the contract to execute the pilot, with an award of fees and costs to the prevailing

party. The arbitrator's role shall be limited to selecting which of the parties' positions is more reasonable.

Section 3 provides that contract management, fiscal oversight, and programmatic oversight shall be conducted by independent, non-governmental, third party entities and shall be conducted in a manner jointly agreed to by the lead agencies and DCF. The department is required to fund these activities. The pilot may not be implemented until DCF and the lead agencies have agreed to the selection of the entities and the manner in which they will carry out their responsibilities. The programmatic performance of the lead agencies will be measured and monitored by outcome measures contained in their contracts with DCF which are in effect on the effective date of this Act. The independent entities shall submit their reports directly to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 4 provides that DCF will transition the CWLS program in Broward, Miami-Dade, and Monroe counties to the lead agencies effective July 1, 2006. It provides for outsourcing the program in Miami-Dade/Monroe on July 1, 2006, to DCF and for retaining the Office of the Attorney General in Broward, each for a period of no longer than 180 days, to allow for the development of transition plans to deliver this service. It allows for continuing to outsource the services to the Office of the Attorney General in Broward County upon completion of the lead agency's transition plan, if mutually agreed upon by the lead agency and the Office of the Attorney General.

Section 5 requires DCF and the lead agencies implementing the pilot to develop an implementation plan with the Agency for Health Care Administration to implement a local reform model for Medicaid mental health reform that allows for the integration of services in the current systems of care.

Section 6 establishes an appropriation of \$104 million to Miami-Dade and Monroe counties for the first year's operation of the pilot and to Broward county for \$74.3 million. (The FY 2005-06 appropriation Our Kids was \$71,673,117 and that for ChildNet was \$64,280,001). It provides that the provisions of this section shall be implemented to the extent of available appropriations contained in the General Appropriations Act for such purpose.

Section 7 provides that this act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The appropriations to the lead agencies in the pilot are significantly higher than their current appropriation. The provision of these additional funds will likely result in better services to children in the pilot areas.

C. Government Sector Impact:

To the extent that federal funds are jeopardized by the provisions of the bill, the Department of Children and Families has outlined the following potential losses of funding:

Title IV-E (DCF)		\$194,754,633
Title IV-B, subpart I (DCF)		\$ 11,189,079
TANF total ³³		\$630,552,904
DCF	\$276,556,864	
AWI ³⁴	\$340,824,452	
EOG ³⁵	\$ 500,000	
DOH ³⁶	\$ 8,871,588	
MA ³⁷	\$ 3,800,000	
Grand Total Federal Funds potentially affected:		\$836,496,611

VI. Technical Deficiencies:

None.

VII. Related Issues:

From their inception, the CBC lead agencies have struggled with complex and conflicting demands, many set by the Legislature. The expectation that the agencies would be truly local, involving their communities in new and creative ways, has always been in tension with the requirements for accountability and consistency with federal and state standards for the provision of child welfare services. Since Florida is in the forefront of implementing this unique way of protecting its children, the CBCs (and the department) have been without role models or national standards for guidance. Striking the proper balance between a statewide child welfare

³³ Agencies other than DCF included due to interlocking nature of federal funding grants, *see* Federal Funding subsection of Present Situation section.

³⁴ Agency for Workforce Innovation

³⁵ Executive Office of the Governor

³⁶ Department of Health

³⁷ Department of Military Affairs

responsibility and local ownership of the problem is a continuing challenge, manifested most recently in the provisions of this bill.

According to the Department of Children and Families (DCF), the provisions of the bill which provide that contract management, fiscal oversight, programmatic oversight and statutorily-required evaluations are conducted by independent, non-governmental third parties are inconsistent with the federal requirements for administration on the program by the single state agency (which is the Department of Children and Families).

If it is determined that the federal Title IV-E requirements are inconsistent with the goals of this proposal, the option to fund this pilot out of state general revenue may be explored. If so, it should be kept in mind that federal law requires that for a State to receive ANY title IV-E funds, the State Plan must provide that the plan, "...shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them." (Section 471(a)(3) of the Social Security Act, (42 U.S.C. 671(a)(3))).

Lawyers employed by the CBC lead agencies will not be able to provide representation and consultation to the State during Child Protective Investigations, because the CBC lead agencies are not involved in protective investigations. The CBC lawyers also would not have access to National Crime Information Center records, which are required in making decisions concerning the filing of shelter and dependency petitions and placements.

According to DCF, the bill will create an ethical conflict for CWLS that will violate the Florida Bar rules regulating attorney practice.

The bill is unclear in several respects, including at least:

- Whether the appropriation to the CBC lead agencies contained in the bill includes funding of the CWLS function.
- Whether the source of the additional dollars which may be provided to the lead agencies under specified conditions will be the current risk pool.
- Where the responsibility for training will lie after the implementation of the bill.
- The relationship between Our Kids and ChildNet and the currently existing statewide automated child welfare information system.
- The responsibility or liability exposure of DCF or the state for any untoward incidents involving children under the care of Our Kids and ChildNet.
- The implications of the language in Chapter 39 which places foster children in the custody of DCF.
- Any implications to federal funding of the "true privatization" vision of this proposal.

VIII. Summary of Amendments:

None.

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