

By Senator Dean

3-00792-10

20102744

1 A bill to be entitled
2 An act relating to tobacco use prevention; amending s.
3 381.84, F.S., relating to the Comprehensive Statewide
4 Tobacco Education and Use Prevention Program; revising
5 program components; requiring program components to
6 include efforts to educate youth and their parents
7 about tobacco use; requiring a youth-directed focus in
8 each program component; requiring that the State
9 Surgeon General, or his or her designee, serve on the
10 Tobacco Education and Use Prevention Advisory Council;
11 requiring the advisory council to adhere to state
12 ethics laws; providing that meetings of the council
13 are subject to public-records and public-meetings
14 requirements; revising the duties of the council;
15 authorizing the Department of Health to contract with
16 the appropriate entity to administer the peer review
17 system and grant management; providing requirements
18 for the peer review system; deleting a provision that
19 prohibits a member of the council from participating
20 in a discussion or decision with respect to a research
21 proposal by a firm, entity, or agency that employs or
22 has entered into a contract with the member or that is
23 governed by a board on which the member serves;
24 providing that grants awarded are funds intended to
25 benefit the state and are not purchases of commodities
26 or services; providing that the grant award process is
27 not subject to protest; providing that the
28 department's distribution of grant awards is not
29 subject to ch. 120, F.S.; authorizing the department

3-00792-10

20102744

30 to make advances for program startup or contracted
31 services to other governmental entities and not-for-
32 profit corporations; providing a limitation on the
33 amount of the advances; authorizing an agreement for
34 advances to contain a clause that permits the
35 contractor or recipient to temporarily invest the
36 proceeds under certain conditions; deleting an expired
37 provision relating to the department's rulemaking
38 authority; providing an effective date.

39
40 Be It Enacted by the Legislature of the State of Florida:

41
42 Section 1. Section 381.84, Florida Statutes, is amended to
43 read:

44 381.84 Comprehensive Statewide Tobacco Education and Use
45 Prevention Program.—

46 (1) DEFINITIONS.—As used in this section and for purposes
47 of the provisions of s. 27, Art. X of the State Constitution,
48 the term:

49 (a) "AHEC network" means an area health education center
50 network established under s. 381.0402.

51 (b) "CDC" means the United States Centers for Disease
52 Control and Prevention.

53 (c) "Council" means the Tobacco Education and Use
54 Prevention Advisory Council.

55 (d) "Department" means the Department of Health.

56 (e) "Tobacco" means, without limitation, tobacco itself and
57 tobacco products that include tobacco and are intended or
58 expected for human use or consumption, including, but not

3-00792-10

20102744

59 limited to, cigarettes, cigars, pipe tobacco, and smokeless
60 tobacco.

61 (f) "Youth" means minors and young adults.

62 (2) PURPOSE, FINDINGS, AND INTENT.—~~It is~~ The purpose of
63 this section is to implement s. 27, Art. X of the State
64 Constitution. The Legislature finds that s. 27, Art. X of the
65 State Constitution requires the funding of a statewide tobacco
66 education and use prevention program that focuses on tobacco use
67 by youth. The Legislature further finds that the primary goals
68 of the program are to reduce the prevalence of tobacco use among
69 youth, adults, and pregnant women; reduce per capita tobacco
70 consumption; and reduce exposure to environmental tobacco smoke.
71 Further, it is the intent of the Legislature to base increases
72 in funding for individual components of the program on the
73 results of assessments and evaluations. Recognizing that some
74 components will need to grow faster than inflation, it is the
75 intent of the Legislature to fund portions of the program on a
76 nonrecurring basis in the early years so that those components
77 that are most effective can be supported as the program matures.

78 (3) PROGRAM COMPONENTS AND REQUIREMENTS.—The department
79 shall conduct a comprehensive, statewide tobacco education and
80 use prevention program consistent with the recommendations for
81 effective program components contained in the 1999 Best
82 Practices for Comprehensive Tobacco Control Programs of the CDC,
83 as amended ~~by the CDC~~. The program shall include the following
84 components, each of which shall focus on educating people,
85 particularly youth and their parents, about the health hazards
86 of tobacco and discouraging the use of tobacco:

87 (a) State and community interventions.—These interventions

3-00792-10

20102744

88 include, but not be limited to, a statewide tobacco control
89 program that combines and coordinates community-based
90 interventions that focus on preventing initiation of tobacco use
91 among youth and young adults; promoting quitting among adults,
92 youth, and pregnant women; eliminating exposure to secondhand
93 smoke; identifying and eliminating tobacco-related disparities
94 among population groups; and promoting a range of collaborations
95 to prevent and alleviate the effects of chronic diseases.

96 ~~Counter-marketing and advertising; cyberspace resource center.~~

97 ~~The counter-marketing and advertising campaign shall include, at~~
98 ~~a minimum, Internet, print, radio, and television advertising~~
99 ~~and shall be funded with a minimum of one-third of the total~~
100 ~~annual appropriation required by s. 27, Art. X of the State~~
101 ~~Constitution. A cyberspace resource center for copyrighted~~
102 ~~materials and information concerning tobacco education and use~~
103 ~~prevention, including cessation, shall be maintained by the~~
104 ~~program. Such resource center must be accessible to the public,~~
105 ~~including parents, teachers, and students, at each level of~~
106 ~~public and private schools, universities, and colleges in the~~
107 ~~state and shall provide links to other relevant resources. The~~
108 ~~Internet address for the resource center must be incorporated in~~
109 ~~all advertising. The information maintained in the resource~~
110 ~~center shall be used by the other components of the program.~~

111 (b) Health communication interventions.—Effective media and
112 health communication intervention efforts include, but are not
113 limited to, audience research to define themes and execute
114 messages for influential, high impact, and specifically targeted
115 campaigns; market research to identify the target market and the
116 behavioral theory motivating change; counter-marketing

3-00792-10

20102744

117 surveillance; community tie-ins to support and reinforce the
118 statewide campaign; technologies such as viral marketing, social
119 networks, personal web pages, and web logs; traditional media;
120 process and outcome evaluation of the communication efforts; and
121 promotion of available services, including the state telephone
122 cessation QuitLine. ~~Cessation programs, counseling, and~~
123 treatment. This program component shall include two
124 subcomponents:

125 ~~1. A statewide toll-free cessation service, which may~~
126 ~~include counseling, referrals to other local resources and~~
127 ~~support services, and treatment to the extent funds are~~
128 ~~available for treatment services; and~~

129 ~~2. A local community-based program to disseminate~~
130 ~~information about smoking cessation, how smoking cessation~~
131 ~~relates to prenatal care and obesity prevention, and other~~
132 ~~chronic tobacco-related diseases.~~

133 (c) Cessation interventions. Cessation interventions
134 include, but are not limited to, sustaining, expanding, and
135 promoting the service through population-based counseling and
136 treatment programs; encouraging public and private insurance
137 coverage for counseling and medication treatments approved by
138 the federal Food and Drug Administration for tobacco-use
139 cessation; eliminating cost and other barriers to treatment for
140 underserved populations; and making health care system changes.
141 Youth interventions to prevent tobacco-use initiation and
142 encourage cessation among young people are needed in order to
143 reshape the environment so that it supports tobacco-free norms.
144 Because most people who start smoking are younger than 18 years
145 of age, intervention during adolescence is critical. Community

3-00792-10

20102744

146 programs and school-based policies and interventions should be a
147 part of a comprehensive effort that is implemented in
148 coordination with community and school environments and in
149 conjunction with increasing the unit price of tobacco products,
150 sustaining anti-tobacco media campaigns, making environments
151 tobacco free, and engaging in other efforts to create tobacco-
152 free social norms. ~~Surveillance and evaluation.~~ The program
153 shall conduct ongoing epidemiological surveillance and shall
154 contract for annual independent evaluations of the effectiveness
155 of the various components of the program in meeting the goals as
156 set forth in subsection (2).

157 (d) Surveillance and evaluation.—The surveillance and
158 evaluation of all program components shall monitor and document
159 short-term, intermediate, and long-term intervention outcomes to
160 inform program and policy direction and ensure accountability.
161 The surveillance and evaluation must be conducted objectively
162 through scientifically sound methodology. ~~Youth school~~
163 ~~programs.~~ School and after-school programs shall use current
164 evidence-based curricula and programs that involve youth to
165 educate youth about the health hazards of tobacco, help youth
166 develop skills to refuse tobacco, and demonstrate to youth how
167 to stop using tobacco.

168 (e) Administration and management.—Administration and
169 management activities include, but are not limited to, strategic
170 planning to guide program efforts and resources in order to
171 accomplish goals; recruiting and developing qualified and
172 diverse technical, program, and administrative staff; awarding
173 and monitoring program contracts and grants to coordinate
174 implementation across program areas; developing and maintaining

3-00792-10

20102744

175 a fiscal-management system to track allocations and the
176 expenditure of funds; increasing capacity at the community level
177 through ongoing training and technical assistance; creating
178 effective communications internally among chronic-disease-
179 prevention programs and local coalitions and partners; and
180 educating members of the public and decisionmakers on the health
181 effects of tobacco and evidence-based, effective program and
182 policy interventions. ~~Community programs and chronic disease~~
183 ~~prevention.~~ ~~The department shall promote and support local~~
184 ~~community-based partnerships that emphasize programs involving~~
185 ~~youth, including programs for the prevention, detection, and~~
186 ~~early intervention of smoking-related chronic diseases.~~

187 (f) *Training.*—The program shall include the training of
188 health care practitioners, smoking-cessation counselors, and
189 teachers by health professional students and other tobacco-use
190 prevention specialists who are trained in health education and
191 preventing tobacco use ~~and health education~~. Smoking-cessation
192 counselors shall be trained by specialists who are certified in
193 tobacco-use cessation.

194 (g) ~~Administration, statewide programs, and County health~~
195 ~~departments.~~—Each county health department is eligible to
196 receive a portion of the annual appropriation, on a per capita
197 basis, for coordinating tobacco education and use prevention
198 programs within that county. Appropriated funds may be used to
199 improve the infrastructure of the county health department to
200 implement the comprehensive, statewide tobacco education and use
201 prevention program. Each county health department shall
202 prominently display in all treatment rooms and waiting rooms,
203 counter-marketing and advertisement materials in the form of

3-00792-10

20102744

204 wall posters, brochures, television advertising if televisions
205 are used in the lobby or waiting room, and screensavers and
206 Internet advertising if computer kiosks are available for use or
207 viewing by people at the county health department.

208 (h) *Enforcement and awareness of related laws.*—In
209 coordination with the Department of Business and Professional
210 Regulation, the program shall monitor the enforcement of laws,
211 rules, and policies prohibiting the sale or other provision of
212 tobacco to minors, as well as the continued enforcement of the
213 Clean Indoor Air Act prescribed in chapter 386. The
214 advertisements produced in accordance with paragraph (b) ~~(a)~~ may
215 also include information designed to make the public aware of
216 these related laws and rules. The departments may enter into
217 interagency agreements to carry out this program component.

218 (i) *AHEC smoking-cessation initiative.*—For the 2009-2010
219 fiscal year, the AHEC network shall expand the AHEC smoking-
220 cessation initiative to each county within the state and perform
221 other activities as determined by the department.

222 (4) *ADVISORY COUNCIL; MEMBERS, APPOINTMENTS, AND MEETINGS.*—
223 The Tobacco Education and Use Prevention Advisory Council is
224 created within the department.

225 (a) The council shall consist of 23 members, including:

226 1. The State Surgeon General, or his or her designee, who
227 must be a deputy secretary or the director of the Division of
228 Health Access and Tobacco, who shall serve as the chairperson.

229 2. One county health department director, appointed by the
230 State Surgeon General.

231 3. Two members appointed by the Commissioner of Education,
232 of whom one must be a school district superintendent.

3-00792-10

20102744

233 4. The chief executive officer of the Florida Division of
234 the American Cancer Society, or his or her designee.

235 5. The chief executive officer of the Greater Southeast
236 Affiliate of the American Heart Association, or his or her
237 designee.

238 6. The chief executive officer of the American Lung
239 Association of Florida, or his or her designee.

240 7. The dean of the University of Miami School of Medicine,
241 or his or her designee.

242 8. The dean of the University of Florida College of
243 Medicine, or his or her designee.

244 9. The dean of the University of South Florida College of
245 Medicine, or his or her designee.

246 10. The dean of the Florida State University College of
247 Medicine, or his or her designee.

248 11. The dean of Nova Southeastern College of Osteopathic
249 Medicine, or his or her designee.

250 12. The dean of the Lake Erie College of Osteopathic
251 Medicine in Bradenton, Florida, or his or her designee.

252 13. The chief executive officer of the Campaign for Tobacco
253 Free Kids, or his or her designee.

254 14. The chief executive officer of the Legacy Foundation,
255 or his or her designee.

256 15. Four members appointed by the Governor, of whom two
257 must have expertise in the field of tobacco-use prevention and
258 education or smoking cessation and one individual who shall be
259 between the ages of 16 and 21 at the time of his or her
260 appointment.

261 16. Two members appointed by the President of the Senate,

3-00792-10

20102744

262 of whom one must have expertise in the field of tobacco-use
263 prevention and education or smoking cessation.

264 17. Two members appointed by the Speaker of the House of
265 Representatives, of whom one must have expertise in the field of
266 tobacco-use prevention and education or smoking cessation.

267 (b) The appointments shall be for 3-year terms and shall
268 reflect the diversity of the state's population. A vacancy shall
269 be filled by appointment by the original appointing authority
270 for the unexpired portion of the term.

271 (c) An appointed member may not serve more than two
272 consecutive terms.

273 (d) The council shall meet at least quarterly and upon the
274 call of the chairperson. Meetings may be held via teleconference
275 or other electronic means.

276 (e) Members of the council shall serve without
277 compensation, but are entitled to reimbursement for per diem and
278 travel expenses pursuant to s. 112.061. Members who are state
279 officers or employees or who are appointed by state officers or
280 employees shall be reimbursed for per diem and travel expenses
281 pursuant to s. 112.061 from the state agency through which they
282 serve.

283 (f) The council shall adhere to all state ethics laws.
284 Meetings of the council are subject to chapter 119, s. 286.011,
285 and s. 24, Art. I of the State Constitution. ~~The department~~
286 ~~shall provide council members with information and other~~
287 ~~assistance as is reasonably necessary to assist the council in~~
288 ~~carrying out its responsibilities.~~

289 (5) COUNCIL DUTIES AND RESPONSIBILITIES.—The council shall
290 advise the State Surgeon General as to the direction and scope

3-00792-10

20102744

291 of the Comprehensive Statewide Tobacco Education and Use
292 Prevention Program. The responsibilities of the council may
293 include, but are not limited to:

294 (a) Providing advice on program priorities and emphases.

295 (b) Providing advice on the overall program budget.

296 (c) Providing advice on copyrighted material, trademark,
297 and future transactions as they pertain to the tobacco education
298 and use prevention program.

299 (d) Reviewing ~~broadcast~~ material, including advertisements,
300 prepared for broadcast on the Internet, portable media players,
301 radio, and television, as requested by the department ~~as it~~
302 ~~relates to the advertising component of the tobacco education~~
303 ~~and use prevention program.~~

304 (e) Participating in periodic program evaluation, as
305 requested by the department.

306 (f) Assisting in the development of guidelines to ensure
307 fairness, neutrality, and adherence to the principles of merit
308 and quality in the conduct of the program.

309 (g) Assisting the department in developing ~~the development~~
310 ~~of administrative~~ procedures relating to solicitation, review,
311 and award of contracts and grants in order to ensure an
312 impartial, high-quality peer review system.

313 (h) Assisting the department in developing panels to review
314 and evaluate potential fund recipients ~~the development and~~
315 ~~supervision of peer review panels.~~

316 (i) Assisting the department in reviewing reports of ~~peer~~
317 review panels and making recommendations for funding allocations
318 ~~contracts and grants.~~

319 ~~(j) Reviewing the activities and evaluating the performance~~

3-00792-10

20102744

320 ~~of the AHEC network to avoid duplicative efforts using state~~
321 ~~funds.~~

322 (j) ~~(k)~~ Recommending specific measurable outcomes ~~meaningful~~
323 ~~outcome measures~~ through a regular review of evidence-based and
324 effective tobacco-use prevention and education strategies and
325 programs of other states and the Federal Government.

326 (k) ~~(l)~~ Recommending policies to encourage a coordinated
327 response to tobacco use in this state, focusing specifically on
328 creating partnerships within and between the public and private
329 sectors.

330 (6) CONTRACT REQUIREMENTS.—Contracts or grants for the
331 program components or subcomponents described in paragraphs
332 (3) (a)-(d) and (f) ~~(3) (a)-(f)~~ shall be awarded by the department
333 ~~State Surgeon General~~, after consultation with the council, on
334 the basis of merit, as determined by an open, competitive, peer-
335 reviewed process that ensures objectivity, consistency, and high
336 quality. The department shall award such grants or contracts no
337 later than October 1 for each fiscal year. A recipient of a
338 contract or grant for the program component described in
339 paragraph (3) (d) ~~(3) (e)~~ is not eligible for a contract or grant
340 award for any other program component described in subsection
341 (3) in the same contract term ~~state fiscal year~~. ~~A school or~~
342 ~~college of medicine that is represented on the council is not~~
343 ~~eligible to receive a contract or grant under this section. For~~
344 ~~the 2009-2010 fiscal year only~~, The department shall award a
345 contract or grant in the amount of \$11 ~~\$10~~ million to the AHEC
346 network for the purpose of developing the components described
347 in paragraph (3) (i). The department shall use the process
348 outlined in chapter 287 if it competitively procures vendors.

3-00792-10

20102744

349 The department shall use the process outline in this section if
350 it competitively selects grantees. ~~The AHEC network may apply~~
351 ~~for a competitive contract or grant after the 2009-2010 fiscal~~
352 ~~year.~~

353 (a) In order to ensure that all proposals for funding are
354 appropriate and are evaluated fairly on the basis of merit, the
355 department State Surgeon General, in consultation with the
356 council, shall use ~~appoint~~ a peer review system involving panels
357 ~~panel~~ of independent, qualified experts in the field of tobacco
358 control to review the content of each proposal and establish its
359 priority score. The priority scores shall be forwarded to the
360 council and must be considered in determining which proposals
361 will be recommended for funding.

362 (b) As it deems appropriate, the department may contract
363 through the processes outlined in chapter 287 with an
364 appropriate entity to administer the peer review system and
365 grant management. The peer review system shall be operated so
366 that it ensures that only the most highly qualified experts in
367 the field of tobacco control review grant proposals. To ensure
368 fairness and impartiality, the system must be designed to
369 protect the anonymity of proposers during the review process and
370 to protect at all times the identity of members of peer review
371 panels.

372 (c) ~~(b)~~ The council and ~~the~~ peer review panels ~~panel~~ shall
373 ~~establish and~~ follow rigorous guidelines for ethical conduct and
374 adhere to a strict policy with regard to conflicts of interest.
375 Council members are subject to the applicable provisions of
376 chapter 112. A member of the council or panel may not
377 ~~participate in any discussion or decision with respect to a~~

3-00792-10

20102744

378 ~~research proposal by any firm, entity, or agency with which the~~
379 ~~member is associated as a member of the governing body or as an~~
380 ~~employee or with which the member has entered into a contractual~~
381 ~~arrangement. Meetings of the council and the peer review panels~~
382 ~~are subject to chapter 119, s. 286.011, and s. 24, Art. I of the~~
383 ~~State Constitution.~~

384 (d) Grants awarded under this section are funds intended to
385 benefit the people of this state and are not purchases of
386 commodities or services as contemplated by chapter 287.
387 Accordingly, the grant award process is not subject to protest
388 under s. 120.57(3).

389 (e) Distribution of grant awards in a timely and efficient
390 manner is essential to the success of the program.
391 Administrative litigation would interfere with the department's
392 obligation to act in a timely and efficient manner. Accordingly,
393 the department's distribution of grant awards is not subject to
394 chapter 120.

395 (f)~~(e)~~ In each contract or grant agreement, the department
396 shall limit the use of food and promotional items to no more
397 than 2.5 percent of the total amount of the contract or grant
398 and limit overhead or indirect costs to no more than 7.5 percent
399 of the total amount of the contract or grant. The department, in
400 consultation with the Department of Financial Services, shall
401 publish guidelines for appropriate food and promotional items.

402 (g)~~(d)~~ In each advertising contract, the department shall
403 limit the total of production fees, buyer commissions, and
404 related costs to no more than 10 percent of the total contract
405 amount.

406 (h)~~(e)~~ Notwithstanding the competitive process for

3-00792-10

20102744

407 contracts prescribed in this subsection, each county health
408 department is eligible for core funding, on a per capita basis,
409 to implement tobacco education and use prevention activities
410 within that county.

411 (7) ANNUAL REPORT REQUIRED.—By January 31 of each year, the
412 department shall provide to the Governor, the President of the
413 Senate, and the Speaker of the House of Representatives a report
414 that evaluates the program's effectiveness in reducing and
415 preventing tobacco use and that recommends improvements to
416 enhance the program's effectiveness. The report must contain, at
417 a minimum, an annual survey of youth attitudes and behavior
418 toward tobacco, as well as a description of the progress in
419 reducing the prevalence of tobacco use among youth, adults, and
420 pregnant women; reducing per capita tobacco consumption; and
421 reducing exposure to environmental tobacco smoke.

422 (8) LIMITATION ON ADMINISTRATIVE EXPENSES.—From the total
423 funds appropriated for the Comprehensive Statewide Tobacco
424 Education and Use Prevention Program in the General
425 Appropriations Act, an amount of up to 5 percent may be used by
426 the department for administrative expenses.

427 (9) ADVANCES RULEMAKING AUTHORIZED.—For any contract or
428 grant awarded pursuant to this chapter, the department may make
429 advances for program startup or for contracted services, in
430 total or periodically, to other governmental entities and not-
431 for-profit corporations. The amount that may be advanced may not
432 exceed the expected cash needs of the contractor or recipient
433 within the initial 3 months. Any agreement that provides for
434 advances may contain a clause that permits the contractor or
435 recipient to temporarily invest the proceeds if any interest

3-00792-10

20102744__

436 income is returned to the agency or applied against the agency's
437 obligation to pay the contract or grant amount. ~~By January 1,~~
438 ~~2008, the department shall adopt rules pursuant to ss.~~
439 ~~120.536(1) and 120.54 to administer this section.~~

440 Section 2. This act shall take effect July 1, 2010.