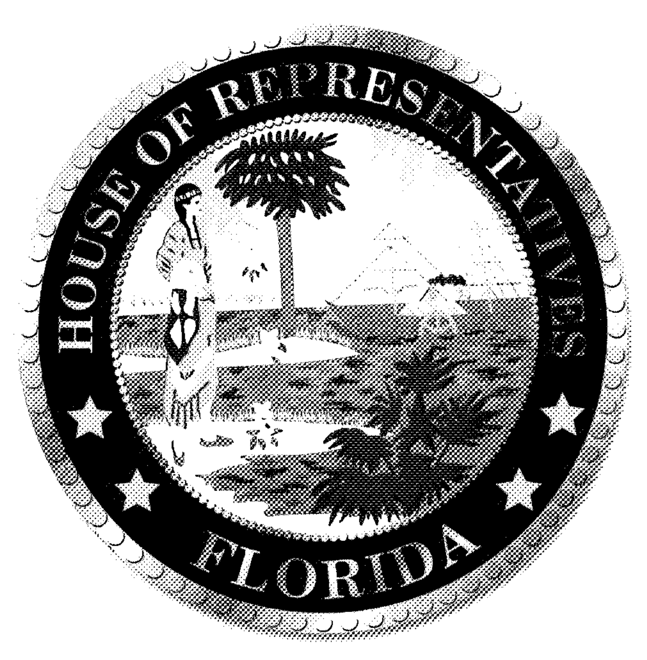

RULES & CALENDAR COUNCIL

COMMITTEE MEETING
Thursday, April 15, 2010
8:00 A.M. – 10:15 A.M.
404 HOB

MEETING PACKET

Larry Cretul
Speaker

Bill Galvano
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Rules & Calendar Council

Start Date and Time:	Thursday, April 15, 2010 08:00 am
End Date and Time:	Thursday, April 15, 2010 10:15 am
Location:	404 HOB
Duration:	2.25 hrs

Consideration of the following bill(s):

CS/HB 885 Insurance by General Government Policy Council, Tobia
CS/HB 1525 Nonbinding Statewide Advisory Referendum by Economic Development & Community Affairs Policy Council, Weatherford
HM 1349 Community-Based Services for Individuals with Developmental Disabilities by Skidmore
HM 1609 Terrorist Trials in Civilian Courtrooms by Fresen

Consideration of the following proposed council bill(s):

PCB RCC 10-05 -- Compulsory health coverage

Set Special Order Calendar(s)

NOTICE FINALIZED on 04/13/2010 16:20 by Williams.Tanesha

CS/HB 885

1 A bill to be entitled
2 An act relating to insurance; amending s. 626.9541, F.S.;
3 prohibiting construction to prevent a Medicare supplement
4 insurer from granting a premium credit to insureds under
5 certain circumstances; creating s. 627.4605, F.S.;
6 specifying nonapplication of a required notice to a
7 current insurer of a policy replacement under certain
8 circumstances; amending s. 627.464, F.S.; providing a
9 limitation on the resale of certain annuities to third
10 parties; amending s. 627.552, F.S.; prohibiting the
11 creating or permitting of certain classes of employees for
12 group health insurance policy purposes; preserving an
13 employer's authority to require certain plan participation
14 as a condition of employment; amending s. 627.5575, F.S.;
15 revising the limitation on the amount of insurance for
16 spouses of dependent children of employees of members
17 under a group life insurance policy; creating s. 627.6011,
18 F.S.; excluding certain mandatory health benefits from
19 coverage in certain insurance policies or other
20 supplemental or limited benefit policies; providing a
21 definition; amending s. 627.6741, F.S.; specifying absence
22 of a prohibition against certain Medicare supplement
23 policy insurers from entering into agreements through a
24 network with certain facilities; specifying absence of a
25 requirement to file certain contracts with the Office of
26 Insurance Regulation; amending s. 627.6745, F.S.;
27 requiring certain insurers to factor certain deductibles
28 and premium credits into loss-ratio calculation and policy

29 premiums; amending s. 627.9403, F.S.; revising application
30 of provisions to certain policies of insurance; providing
31 a definition; amending s. 634.282, F.S.; revising
32 provisions relating to refunds of excess premiums or
33 charges; providing a declaration of state public policy
34 protecting persons from government intrusion relating to
35 securing health insurance coverage without penalty;
36 prohibiting state residents from being required to obtain
37 or maintain a policy of individual health insurance
38 coverage; specifying absence of liability for penalty or
39 fine for failing to obtain or maintain health insurance
40 coverage; authorizing the Attorney General to initiate and
41 pursue litigation in federal or state court or
42 administrative forum on behalf of certain persons under
43 certain circumstances; providing an effective date.
44
45 Be It Enacted by the Legislature of the State of Florida:
46
47 Section 1. Subsection (3) is added to section 626.9541,
48 Florida Statutes, to read:
49 626.9541 Unfair methods of competition and unfair or
50 deceptive acts or practices defined.—
51 (3) INPATIENT FACILITY NETWORK.—This section may not be
52 construed to prohibit a Medicare supplement insurer from
53 granting a premium credit to insureds for using an in-network
54 inpatient facility.
55 Section 2. Section 627.4605, Florida Statutes, is created
56 to read:

57 627.4605 Replacement notice.—A notice to a current insurer
58 of a replacement of a current life insurance policy is not
59 required in a transaction involving:
60 (1) An application to the current insurer that issued the
61 current policy or contract when a contractual change or
62 conversion privilege is being exercised;
63 (2) A current policy or contract is being replaced by the
64 same insurer pursuant to a program filed with and approved by
65 the office; or
66 (3) A term conversion privilege is being exercised among
67 corporate affiliates.
68 Section 3. Subsection (3) is added to section 627.464,
69 Florida Statutes, to read:
70 627.464 Annuity contracts, pure endowment contracts;
71 standard provisions.—
72 (3) An annuity purchased, dedicated, or otherwise allocated
73 as part of a settlement to satisfy the requirements of 42 U.S.C. s.
74 1395y(b)(2) may not be sold to, or commuted by or for, a third
75 party unconnected to the settlement.
76 Section 4. Paragraph (a) of subsection (1) of section
77 627.552, Florida Statutes, is amended to read:
78 627.552 Employee groups.—Subject to all of the
79 requirements of this section, the lives of a group of individual
80 employees of an employer may be insured, for the benefit of
81 persons other than the employer, under a policy issued to the
82 employer or to the trustees of a fund established by an
83 employer, which employer or board of trustees is deemed to be
84 the policyholder.

85 (1)(a) The employees eligible for insurance under the
86 policy shall be all of the employees of the employer, or all of
87 any class or classes of employees determined by conditions
88 pertaining to their employment; however, a class of employees
89 may not be created or permitted that consists solely of
90 employees covered under the employer's group health plan. This
91 section does not prohibit an employer from requiring
92 participation in its group health plan as a condition of
93 employment.
94
95 This section does not affect the provisions of ss. 112.08-
96 112.14.
97 Section 5. Subsection (3) of section 627.5575, Florida
98 Statutes, is amended to read:
99 627.5575 Group life insurance for dependents.—Except for a
100 policy issued under s. 627.553, a group life insurance policy
101 may be extended to insure the employees or members against loss
102 due to the deaths of their spouses and dependent children or any
103 class or classes thereof, subject to the following:
104 (3) The amounts of insurance for any covered spouse or
105 dependent child under the policy may not exceed ~~50 percent of~~
106 the amount of insurance for which the employee or member is
107 insured.
108 Section 6. Section 627.6011, Florida Statutes, is created
109 to read:
110 627.6011 Mandated coverages exclusion.-Mandatory health
111 benefits that must be covered by an insurer or health maintenance
112 organization in any group or individual medical plans regulated by

113 this chapter are not required to be covered in specified-accident,
114 specified-disease, hospital indemnity, limited benefit, disability
115 income, Medicare supplement, or long-term care insurance policies,
116 or other supplemental or limited benefit policies as described in
117 s. 627.6561(5)(b)-(d). For purposes of this section, the term
118 "mandatory health benefits" means those benefits set forth in ss.
119 627.6401-627.64193, s. 627.65626, ss. 627.65735-627.6579, ss.
120 627.6612-627.6619, and ss. 627.668-627.66911, and any cross-
121 references to such sections, or any other mandatory treatment or
122 health coverages or benefits enacted after January 1, 2010.
123 Section 7. Subsection (6) is added to section 627.6741,
124 Florida Statutes, to read:
125 627.6741 Issuance, cancellation, nonrenewal, and
126 replacement.—
127 (6) An insurer offering a Medicare supplement policy under
128 this part is not prohibited from entering into an agreement
129 through a network with inpatient facilities that agree to waive
130 the Medicare Part A deductible in whole or in part. An insurer
131 is not required to file a copy of the network agreement with,
132 and such network agreements are not subject to approval of, the
133 office.
134 Section 8. Subsection (8) is added to section 627.6745,
135 Florida Statutes, to read:
136 627.6745 Loss ratio standards; public rate hearings.—
137 (8) For an insurer that enters into a network agreement
138 pursuant to s. 627.6741(6), the waiver of the Medicare Part A
139 deductible and premium credit shall be factored into the
140 insurer's loss-ratio calculation and policy premium.

141 Section 9. Section 627.9403, Florida Statutes, is amended
142 to read:
143 627.9403 Scope.—The provisions of this part shall apply to
144 long-term care insurance policies delivered or issued for
145 delivery in this state, and to policies delivered or issued for
146 delivery outside this state to the extent provided in s.
147 627.9406, by an insurer, a fraternal benefit society as defined
148 in s. 632.601, a health maintenance organization as defined in
149 s. 641.19, a prepaid health clinic as defined in s. 641.402, or
150 a multiple-employer welfare arrangement as defined in s.
151 624.437. A policy which is advertised, marketed, or offered as a
152 long-term care policy and as a Medicare supplement policy shall
153 meet the requirements of this part and the requirements of ss.
154 627.671-627.675 and, to the extent of a conflict, be subject to
155 the requirement that is more favorable to the policyholder or
156 certificateholder. Except as provided with respect to the
157 definition of the term "guaranteed renewable" in this section,
158 the provisions of this part shall not apply to a continuing care
159 contract issued pursuant to chapter 651 and shall not apply to
160 guaranteed renewable policies issued prior to October 1, 1988.
161 With respect to all policies of insurance covered under this part
162 whenever issued, the term "guaranteed renewable" means the insured
163 has the right to continue the policy in force by the timely payment
164 of premiums and the insurer has no unilateral right to make any
165 change in any provision of the policy while the insurance is in force
166 and cannot decline to renew the policy, except that rates may be
167 revised by the insurer on a class basis. The continuation or renewal
168 of a guaranteed renewable policy of insurance by the timely payment

169 of required premiums does not constitute making or issuing a new
170 policy of insurance for any purpose, including, but not limited to,
171 for purposes of incorporating into the policy changes in the rules
172 or provisions of law governing insurance policies. Any limited
173 benefit policy that limits coverage to care in a nursing home or
174 to one or more lower levels of care required or authorized to be
175 provided by this part or by commission rule is a type of long-
176 term care insurance policy that must meet all requirements of
177 this part that apply to long-term care insurance policies,
178 except ss. 627.9407(3)(c), (9), (10)(f), and (12) and
179 627.94073(2).
180 Section 10. Paragraph (b) of subsection (13) of section
181 634.282, Florida Statutes, is amended to read:
182 634.282 Unfair methods of competition and unfair or
183 deceptive acts or practices defined.—The following methods,
184 acts, or practices are defined as unfair methods of competition
185 and unfair or deceptive acts or practices:
186 (13) ILLEGAL DEALINGS IN PREMIUMS; EXCESS OR REDUCED
187 CHARGES FOR MOTOR VEHICLE SERVICE AGREEMENTS.—
188 (b) Knowingly collecting as a premium or charge for a
189 motor vehicle service agreement any sum in excess of or less
190 than the premium or charge applicable to such motor vehicle
191 service agreement, in accordance with the applicable
192 classifications and rates as filed with the office, and as
193 specified in the motor vehicle service agreement. However, a
194 violation of this paragraph does not occur if excess premiums or
195 charges are refunded to the service agreement holder within 45 days
196 after receipt of the agreement by the service agreement company or if

197 the licensed sales representative's commission is reduced by the
198 amount of any premium undercharge.
199
200 No provision of this section shall be deemed to prohibit a
201 service agreement company or a licensed insurer from giving to
202 service agreement holders, prospective service agreement
203 holders, and others for the purpose of advertising, any article
204 of merchandise having a value of not more than $25.
205 Section 11. (1) It is hereby declared that the public
206 policy of this state, consistent with our constitutionally
207 recognized and inalienable rights of liberty, is that every
208 person within this state is and shall be free from governmental
209 intrusion in choosing or declining to choose any mode of
210 securing health insurance coverage without penalty or threat of
211 penalty.
212 (2) A resident of this state, regardless of whether he or
213 she has or is eligible for health insurance coverage under any
214 policy or program provided by or through his or her employer, or
215 a plan sponsored by the state or the Federal Government, may not
216 be required to obtain or maintain a policy of individual health
217 insurance coverage. A person in this state is not liable for any
218 penalty or fine for failing to obtain or maintain health
219 insurance coverage.
220 (3) The Attorney General may initiate and shall have
221 standing to pursue litigation in any federal or state court or
222 any administrative forum on behalf of one or more persons within
223 the state whose constitutional rights may be subject to
224 infringement by an act of Congress, or the implementation of a

225 federal legislative program, that relates to or has any impact
226 upon the rights or interests of persons as described in this
227 section.
228 Section 12. This act shall take effect upon becoming a
229 law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 885 Insurance
SPONSOR(S): General Government Policy Council, Tobia
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	11 Y, 0 N	Reilly	Cooper
2)	Policy Council	15 Y, 0 N	Liepshutz	Ciccone
3)	General Government Policy Council	12 Y, 3 N, As CS	Reilly	Hamby
4)	Rules & Calendar Council		Hassell	Birtman
5)				

SUMMARY ANALYSIS

The bill makes changes to various aspects of insurance.

In summary, the bill:

- Specifies circumstances under which an insurer is not required to send notice of replacement of a life insurance policy to the current insurer.
- Allows coverage of spouses and dependent children under a group life insurance policy up to the amount for which the employee is insured under the policy.
- Bars the sale or transfer of annuities, which were purchased as part of a settlement to satisfy Medicare secondary payer requirements, to third parties that are not connected with the settlement.
- Excludes specified supplemental or limited benefit insurance policies from providing coverage of certain mandatory health benefits.
- Specifies that continuation or renewal of a guaranteed renewable long-term care policy through timely payment of premiums does not constitute the issuance of a new policy for any purpose, including for purposes of incorporating into the policy changes in regulations or legislation governing insurance policies.
- Codifies that an insurer may revise long-term care insurance rates on a class basis.
- Provides that, for motor vehicle service agreements (a type of warranty agreement), there is no violation of knowingly over or undercharging, if the motor vehicle service agreement company refunds the excess premium within 45 days, or if the licensed sales representative's commission is reduced by the amount of any premium undercharge.
- For purposes of group life insurance, prohibits creation of a class of employees consisting solely of employees covered under the employer's group health plan.
- Provides that granting premium credits to insureds under Medicare supplement policies does not constitute an unfair method of competition or unfair or deceptive act or practice.
- Permits insurers that offer Medicare supplement policies to enter into agreements with in-patient facility networks that agree to waive the Medicare Part A deductible in whole or in part.
- Provides that a person is not liable for any penalty for failure to obtain health insurance coverage.
- Authorizes the Attorney General to pursue litigation on behalf of any person penalized for failure to obtain or maintain health insurance coverage.

The fiscal impact associated with provisions allowing the Attorney General to pursue litigation is indeterminate at this time.

The bill takes effect upon becoming law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Replacement of Life Insurance

An insurer that sells a life insurance policy that will replace an existing policy owned by a person must send notice of the replacement policy to the current insurer, among other responsibilities.[1] The notice is intended to give the current insurer the opportunity to contact the policyholder to discuss the current policy before it is canceled.[2]

House Bill 885 creates s. 627.4605, F.S. The section provides that an insurer is not required to send notice of replacement life insurance to the current insurer when the replacement policy is issued by the same insurer or an affiliate of the insurer of the policy that is to be replaced. Specifically, notice of replacement life insurance does not need to be sent to the current insurer for transactions involving:

- An application to the current insurer that issued the current policy when a contractual change or conversion privilege is being exercised.
- A current policy is being replaced by the same insurer pursuant to a program approved by the Office of Insurance Regulation.
- A term conversion privilege is being exercised among corporate affiliates.

This section is consistent with model standards adopted by the National Association of Insurance Commissioners (NAIC).[3]

Dependent Coverage under Group Life Insurance Policies

Thirty-five states have statutory provisions relating to coverage of spouses and dependent children under group life insurance policies.[4] Twenty of these states do not specify a coverage limitation;[5] 12 allow coverage

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[1] Rule 69O-151.007, F.A.C., implementing ss. 624.307(1), 626.9521, 626.9541, 626.9641, 626.99, F.S. The insurer is also required to provide certain information to the prospective purchaser of the replacement policy.

[2] Correspondence between representatives of the life insurance industry (Paul Sanford) and staff of the Insurance, Business & Financial Affairs (IBFA) Policy Committee. On file with the IBFA Policy Committee.

[3] National Association of Insurance Commissioners, "Life Insurance and Annuities Replacement Regulation" (July 2006). Available from the NAIC website: http://www.naic.org.

[4] *See* American Council of Life Insurers, "Law Survey: Dependent Caps on Group Life Insurance" (July 2009). A copy of the survey is on file with the IBFA Policy Committee.

up to the amount for which the employee is insured under the group policy;[6] and three states, including Florida under s. 627.5575(3), F.S., [7] allow coverage of up to 50% of the amount for which the employee is insured under the group life insurance policy. The NAIC model, which was adopted in the 1980s, limits coverage for spouses and dependent children under group life insurance policies to 50% of the amount for which the employee is insured.[8]

The bill removes the 50% cap, and allows spouses and dependent children to be insured under a group life insurance policy up to the amount for which the employee is insured.

Medicare

Medicare Supplement Policies

Medicare is health insurance for people 65 years of age and older and for those under age 65 with a disability or End Stage Renal Disease. Under federal law,[9] Medicare beneficiaries age 65 and older, who are also enrolled in Medicare Part B,[10] have a guaranteed right to purchase a Medicare supplemental policy (Medigap insurance) during an open enrollment period.[11] Medigap insurance helps pay some of the health costs not covered by Medicare, including copayments, coinsurance, and deductibles.

The Department of Health and Human Services (HHS) defines the parameters and provides guidelines for standardized Medigap policies. HHS has opined that a network arrangement wherein the facility agrees to waive all or a portion of the Medicare Part A in-patient deductible does not violate standardization provisions.[12] In addition, HHS has opined that, if products containing such provisions are permitted to be marketed and sold in a state, the waiver of the Part A premium deductible and the premium credit must be factored into the loss ratio calculation and into the policy premium.[13]

The bill allows insurers that offer Medigap insurance policies to enter into agreements with in-patient facility networks that agree to waive the Medicare Part A deductible in whole or in part. The insurer is not required to file a copy of the network agreement with the OIR. Such network agreements are not subject to OIR approval. The bill also provides that premium credits granted to insureds under Medigap insurance policies for using in-network in-patient facilities do not constitute an unfair method of competition or unfair or deceptive trade practice. The waiver of the Medicare Part A deductible and premium credit are required to be factored into the insurer's loss-ratio calculation and policy premium.

Secondary Payer Rule

42 U.S.C. 1395y(b)(2) sets forth Medicare secondary payer (MSP) requirements.[14] Annuities may be purchased as part of a settlement to satisfy MSP requirements. The bill bars the sale or transfer of such annuities to third parties that are not connected with the settlement.

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[5] Arkansas, Delaware, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Missouri, Montana, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, and Utah.

[6] Arizona, California, Hawaii, Illinois, Maryland, New Jersey, Texas, Vermont, Virginia, Washington, and West Virginia. New York permits the spouse to be insured for up to 100% of the amount for which the employee is insured under the group life policy, but limits coverage for a dependent child to a maximum of $25,000.

[7] Kansas and Nebraska also provide a 50% limitation.

[8] Correspondence between representatives of the life insurance industry (Paul Sanford) and IBFA Policy Committee staff. On file with the IBFA Policy Committee.

[9] 42 U.S.C. 1395ss.

[10] Medicare Part B helps cover doctors' expenses and outpatient care.

[11] Medicare beneficiaries may be able to purchase Medigap insurance after the open enrollment period has ended. However, insurance companies can use medical underwriting criteria in determining whether to issue a policy.

[12] HHS letter of December, 3, 2009 to the Florida Office of Insurance Regulation. A copy of the letter is on file with the IBFA Policy Committee.

[13] *Id.*

[14] The term Medicare secondary payer refers to situations in which Medicare is not responsible for paying first.

Health Insurance

Mandates and Mandated Offerings

A health insurance mandate is a legal requirement that an insurance company or health plan cover services by particular health care providers, specific benefits, or specific patient groups. Mandated offerings, on the other hand, do not mandate that certain benefits be provided. Rather, a mandated offering law can require that insurers offer an option for coverage for a particular benefit or specific patient groups, which may require a higher premium and which the insured is free to accept or reject. Health insurance mandates are covered under chs. 627 and 641, F.S.

The bill provides that specific-accident, specific-disease, hospital indemnity, limited benefit, disability income, Medicare supplement, long-term care policies, or other supplemental or limited benefit policies described in s. 627.6561 (b)-(d) are not required to provide coverage for mandates identified in the bill. The excluded mandates include benefits such as insurance rebates for healthy lifestyles, maternity care, diabetes treatment services, payment of acupuncture benefits to certified acupuncturists, and coverage for osteoporosis screening, diagnosis, treatment, and management.[15]

Long-term Care Insurance Policies

Long-term care insurance policy means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage on an expense-incurred, indemnity, prepaid, or other basis for one or more necessary or medically necessary maintenance or personal care services provided in a setting other than an acute care unit of a hospital.[16] A long-term care insurance policy may not be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder.[17] The bill specifies that continuation or nonrenewal of a guaranteed renewable long-term care policy through timely payment of premiums does not constitute the issuance of a new policy for any purpose, including for purposes of incorporating into the policy changes in regulations or legislation governing insurance policies.[18] It also codifies that an insurer may revise long-term care insurance rates on a class basis.

Health Insurance Reform

The bill states that it is Florida's public policy that all persons within the state be free from governmental intrusion in choosing or declining to choose any mode of securing health insurance coverage without penalty or threat of penalty, and that this policy is consistent with constitutional rights of liberty. It further provides that persons who do not obtain or maintain health insurance coverage are not liable for any penalty or fine. The bill authorizes the Attorney General, for any impingement by the Federal Government upon a person's right to chose whether or not to obtain and maintain health insurance coverage, to pursue litigation in court or in any administrative forum.

Motor Vehicle Service Agreements

Chapter 634, F.S., governs the regulation of warranty associations, which include motor vehicle service agreement companies. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. They indemnify a vehicle owner (or holder of the agreement) against loss

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[15] A comprehensive listing of excluded mandates is set forth in the bill.

[16] *See* s. 627.9404(1), F.S.

[17] *See* s. 627.9407(3)(a), F.S.

[18] These provisions are in response to a decision of the Third District Court of Appeal in *Bell Care Nurses Registry v. Continental Casualty Company,* 25 So.3d 13 (Fla. 3d DCA 2009). In *Bell,* the court held that renewal of the insurance contract through timely premium payment constituted making of a new contract. Therefore, the resulting new contract incorporated into the policy changes made in statutes regulating insurance contracts.

caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended.[19] While a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the OIR.

Certain acts of motor vehicle service agreement companies are considered unfair methods of competition and unfair or deceptive acts or practices, including provisions relating to illegal dealings in premiums. The bill provides that, for motor vehicle service agreements, there is no violation of knowingly over or undercharging, if the motor vehicle service agreement company refunds the excess premium within 45 days, or if the licensed sales representative's commission is reduced by the amount of any premium undercharge.

Group Life Insurance

Section 627.552, F.S., governs employee groups for purposes of group life insurance policies. The bill prohibits employers from creating a class of employees eligible for such insurance that consists solely of employees covered under the employer's group health plan.

B. SECTION DIRECTORY:

Section 1. Amends s. 626.9541, F.S., relating to inpatient facility networks.
Section 2. Creates s. 627.4605, F.S., relating to notice replacement life insurance.
Section 3. Amends s. 627.464, F.S., relating to annuity contracts.
Section 4. Amends s. 627.552, F.S., relating to group life insurance policies.
Section 5. Amends s. 627.5575, F.S., relating to group life insurance for dependents.
Section 6. Creates s. 627.6011, F.S., relating to mandated coverages exclusion.
Section 7. Amends s. 627.6741, F.S., relating to issuance, cancellation, nonrenewal, and replacement of insurance policies.
Section 8. Amends s. 627.6745, F.S., relating to loss ratio standards.
Section 9. Amends s. 627.9403, F.S., relating to long-term care insurance policies.
Section 10. Amends s. 634.282, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices.
Section 11. Sets forth the state's public policy regarding an individual's right to obtain and maintain health care coverage, and authorizes the Attorney General to pursue litigation for impingement of this right.
Section 12. Provides for the bill to become effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   See notes in "Fiscal Comments" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

[19] *See* s. 634.011(8), F.S.

None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The fiscal impact associated with provisions allowing the Attorney General to pursue litigation is indeterminate at this time.

D. FISCAL COMMENTS:

The fiscal impact associated with provisions allowing the Attorney General to pursue litigation is indeterminate at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On April 9, 2010, the General Government Policy Council adopted four amendments, which made the following changes:

- Changes the title of the bill to an act relating to insurance.
- Bars the sale or transfer of annuities, which were purchased as part of a settlement to satisfy Medicare secondary payer requirements, to third parties that are not connected with the settlement.
- Excludes specified supplemental or limited benefit insurance policies from providing coverage of certain mandatory health benefits.
- Specifies that continuation or renewal of a guaranteed renewable long-term care policy through timely payment of premiums does not constitute the issuance of a new policy for any purpose,

including for purposes of incorporating into the policy changes in regulations or legislation governing insurance policies.

- Codifies that an insurer may revise long-term care insurance rates on a class basis.
- Provides that, for motor vehicle service agreements (a type of warranty agreement), there is no violation of knowingly over or undercharging, if the motor vehicle service agreement company refunds the excess premium within 45 days, or if the licensed sales representative's commission is reduced by the amount of any premium undercharge.
- For purposes of group life insurance, prohibits creation of a class of employees consisting solely of employees covered under the employer's group health plan.
- Provides that granting premium credits to insureds under Medicare supplement policies does not constitute an unfair method of competition or unfair or deceptive act or practice.
- Permits insurers that offer Medicare supplement policies to enter into agreements with in-patient facility networks that agree to waive the Medicare Part A deductible in whole or in part.
- Provides that a person is not liable for any penalty for failure to obtain health insurance coverage
- Authorizes the Attorney General to pursue litigation on behalf of any persons that are penalized for failure to obtain or maintain health insurance coverage.

Amendment No. 01

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)

ADOPTED AS AMENDED ___ (Y/N)

ADOPTED W/O OBJECTION ___ (Y/N)

FAILED TO ADOPT ___ (Y/N)

WITHDRAWN ___ (Y/N)

OTHER ______

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1 Council/Committee hearing bill: Rules & Calendar Council
2 Representative Tobia offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Section 627.4605, Florida Statutes, is created
7 to read:
8 627.4605 Replacement notice.-A notice to a current insurer
9 of a replacement of a current life insurance policy is not
10 required in a transaction involving:
11 (1) An application to the current insurer that issued the
12 current policy or contract when a contractual change or
13 conversion privilege is being exercised;
14 (2) A current policy or contract is being replaced by the
15 same insurer pursuant to a program filed with and approved by
16 the office; or
17 (3) A term conversion privilege is being exercised among
18 corporate affiliates.

19 Section 2. Paragraph (a) of subsection (1) of section
20 627.552, Florida Statutes, is amended to read:
21 627.552 Employee groups.—Subject to all of the
22 requirements of this section, the lives of a group of individual
23 employees of an employer may be insured, for the benefit of
24 persons other than the employer, under a policy issued to the
25 employer or to the trustees of a fund established by an
26 employer, which employer or board of trustees is deemed to be
27 the policyholder.
28 (1)(a) The employees eligible for insurance under the
29 policy shall be all of the employees of the employer, or all of
30 any class or classes of employees determined by conditions
31 pertaining to their employment; however, a class of employees
32 may not be created or permitted that consists solely of
33 employees covered under the employer's group health plan. This
34 section does not prohibit an employer from requiring
35 participation in its group health plan as a condition of
36 employment.
37
38 This section does not affect the provisions of ss. 112.08-
39 112.14.
40 Section 3. Subsection (3) of section 627.5575, Florida
41 Statutes, is amended to read:
42 627.5575 Group life insurance for dependents.—Except for a
43 policy issued under s. 627.553, a group life insurance policy
44 may be extended to insure the employees or members against loss
45 due to the deaths of their spouses and dependent children or any
46 class or classes thereof, subject to the following:

47 (3) The amounts of insurance for any covered spouse or
48 dependent child under the policy may not exceed ~~50 percent of~~
49 the amount of insurance for which the employee or member is
50 insured.
51 Section 4. This act shall take effect upon becoming a law.
52
53
54 ---
55 **T I T L E A M E N D M E N T**
56 Remove the entire title and insert:
57 A bill to be entitled
58 An act relating to life insurance; creating s. 627.4605,
59 F.S.; specifying nonapplication of a required notice to a
60 current insurer of a policy replacement under certain
61 circumstances; amending s. 627.552, F.S.; prohibiting the
62 creating or permitting of certain classes of employees
63 for group health insurance policy purposes; preserving an
64 employer's authority to require certain plan
65 participation as a condition of employment; amending s.
66 627.5575, F.S.; revising the limitation on the amount of
67 insurance for spouses of dependent children of employees
68 of members under a group life insurance policy; providing
69 an effective date.

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Rules & Calendar Council
2 Representative(s) Tobia offered the following:
3
4 **Amendment to Amendment (01) by Representative Tobia (with**
5 **title amendment)**
6 Between lines 18 and 19, insert:
7 Section 2. Subsection (2) of section 627.464, Florida
8 Statutes, is renumbered as subsection (3), and a new subsection
9 (2) is added to that section to read:
10 (2) No annuity purchased, dedicated, or otherwise
11 allocated, as part of a settlement to satisfy the requirements
12 of 42 U.S.C. 1395y(b)(2) shall be sold to, or commuted by or
13 for, a third party unconnected to the settlement.
14
15
16 ---
17 **T I T L E A M E N D M E N T**
18 Remove line 61 and insert:

19 circumstances; amending s. 627.464, F.S.; providing a limitation
20 on the resale of certain annuities to third parties; amending s.
21 627.552, F.S.; prohibiting the

CS/HB 1525

1 A bill to be entitled
2 An act relating to a nonbinding statewide advisory
3 referendum; requiring that a question regarding a balanced
4 federal budget be printed on the ballot and submitted to
5 the voters in the 2010 general election; providing an
6 effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Nonbinding statewide advisory referendum.—At
11 the 2010 general election, the following question shall be
12 printed on the ballot and submitted to the voters:
13
14 BALANCING THE FEDERAL BUDGET
15 A NONBINDING REFERENDUM CALLING FOR AN AMENDMENT
16 TO THE UNITED STATES CONSTITUTION
17
18 In order to stop the uncontrolled growth of our
19 national debt and prevent excessive borrowing by the
20 Federal Government, which threatens jobs, robs America
21 and our children of their opportunity for success, and
22 threatens our national security, should the United
23 States Constitution be amended to require a balanced
24 federal budget without raising taxes?
25
26 YES ☐ NO ☐
27
28 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1525 Nonbinding Statewide Referendum
SPONSOR(S): Economic Development & Community Affairs Policy Council, Weatherford and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 2742

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Economic Development & Community Affairs Policy Council	13 Y, 2 N, As CS	Tait	Tinker
2)	Rules & Calendar Council		Hassell	Birtman
3)				
4)				
5)				

SUMMARY ANALYSIS

Assuming current law and policies remain the same, the Congressional Budget Office estimates that the federal budget deficit will be approximately $1.3 trillion for fiscal year 2010. As a result of increasing federal deficits, the federal debt held by the public is expected to increase significantly, from an estimated $8.1 trillion today to $15 trillion by the end of 2020.

The bill provides for a nonbinding statewide advisory referendum to be placed on the 2010 general election ballot asking voters if the United States Constitution should be amended to require a balanced federal budget without raising taxes.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Methods of Proposing Amendments to U.S. Constitution
There are two means to propose amendments to the United States Constitution. The first method allows Congress, with the agreement of two-thirds of both the Senate and the House of Representatives, to propose an amendment itself. The second method requires Congress to "call a Convention for proposing Amendments" after application from legislatures in two-thirds of the states.[1] In either method, Congress is authorized to specify whether the amendment must be ratified by the legislatures of three-fourths of the states or by conventions in three-fourths of the states.[2]

History of Calls for Constitutional Convention on Balanced Federal Budget
Starting in the mid-1970s, 32 states adopted measures, of varying forms, urging Congress to convene a constitutional convention to address federal budget deficits.[3] Depending upon the manner of tallying applications, that count was two short of the 34 state applications necessary under article V of the U.S. Constitution.

Florida's 1976 Convention Application
Florida participated in the movement in 1976, when the Legislature adopted Senate Memorial 234. In that memorial, the Legislature made "application to the Congress of the United States ... to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto."[4]

The Legislature also adopted House Memorial 2801 that same year. In the House memorial, the Legislature made application to Congress for a convention to consider an amendment to the U.S.

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[1] U.S. CONST. art. V. By comparison, the Florida Constitution provides the following methods for proposing amendments to the document: by joint resolution agreed to by three-fifths of the membership of each house of the Legislature (FLA. CONST. art. XI, s. 1); by constitutional revision commission (FLA. CONST. art. XI, s. 2); by citizen initiative (FLA. CONST. art. XI, s. 3); by a constitutional convention to consider revision to the entire document called by the people of the state (FLA. CONST. art. XI, s. 4); and by a taxation and budget reform commission (FLA. CONST. art. XI, s. 6). Regardless of the method by which an amendment to the Florida Constitution is proposed, the amendment must be approved by at least 60 percent of the electors voting on the measure (FLA. CONST. art. XI, s. 5(e)).
[2] U.S. CONST. art. V.
[3] E. Donald Elliott, *Constitutional Conventions and the Deficit*, 1985 DUKE L.J. 1077, 1078 (1985).
[4] Senate Memorial 234 (Reg. Sess. 1976).

Constitution requiring a balanced federal budget. Unlike Senate Memorial 234, House Memorial 2801 prescribed the precise language of the proposed constitutional amendment. Among other provisions, the proposed amendment stated:

> [T]he Congress shall make no appropriation for any fiscal year if the resulting total of appropriations for such fiscal year would exceed the total revenues of the United States for such fiscal year. ... There shall be no increase in the national debt, and the existing debt, as it exists on the date which this amendment is ratified, shall be repaid during the one hundred-year period following the date of such ratification.

The proposed constitutional language also authorized Congress to suspend the requirement for a balanced budget in times of national emergency, as identified by a concurrent resolution of three-fourths of the membership of the U.S. Senate and the U.S. House of Representatives.

House Memorial 2801 further specified that "the purview of any convention called by the Congress pursuant to this resolution [shall] be strictly limited to the consideration" of a balanced-budget amendment. In addition, the Legislature resolved that the 1976 application for a constitutional convention "constitutes a continuing application ... until such time as two-thirds of the Legislatures of the several states have made similar application, and the convention herein applied for is convened."[5]

Florida's 1988 Request to Congress

In 1988, the Legislature adopted a measure urging congressional action related to the federal budget deficit. Adopted by both chambers, Senate Memorial 302 urged Congress to use its own power to propose an amendment to the U.S. Constitution requiring the federal budget to be in balance except under specified emergencies.

The memorial specified that it superseded "all previous memorials applying to the Congress of the United States to call a convention to propose an amendment to the Constitution of the United States to require a balanced federal budget," including the two memorials passed in 1976. The 1988 memorial further specified that the previous memorials were "revoked and withdrawn."[6]

State Balanced-Budget Requirements

Although there is not agreement on what is meant by a "balanced budget," the National Conference of State Legislatures reported in 2004 that 49 states "have at least a limited statutory or constitutional requirement of a balanced budget."[7] Florida's requirement is prescribed in article VII, section 1 of the Florida Constitution. The constitution requires that "[p]rovision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period."[8] Among other elements, the implementing statute, s. 216.221, F.S., provides that all appropriations shall be maximum appropriations, based on the collection of sufficient revenue. In addition, "[i]t is the duty of the Governor, as chief budget officer, to ensure that revenues collected will be sufficient to meet the appropriations and that no deficit occurs in any state fund."[9]

Section 215.98, F.S., provides that the "Legislature shall not authorize the issuance of additional state tax-supported debt if such authorization would cause the designated benchmark debt ratio of debt service to revenues available to pay debt service to exceed 7 percent unless" it finds that the additional debt is necessary to address a critical state emergency.[10]

Federal Budget Deficit and National Debt

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[5] House Memorial 2801 (Reg. Sess. 1976).

[6] Senate Memorial 302 (Reg. Sess. 1988).

[7] Nat'l Conference of State Legislatures, *State Balanced Budget Requirements: Provisions and Practice* (updated 2004), http://www.ncsl.org/IssuesResearch/BudgetTax/StateBalancedBudgetRequirementsProvisionsand/tabid/12651/Default.aspx. Last visited March 19, 2010.

[8] FLA. CONST. art VII, s. 1(d).

[9] Section 216.221(1), F.S.

[10] Section 215.98(1), F.S.

Assuming current law and policies remain the same, the Congressional Budget Office (CBO) estimates that the federal budget deficit will be approximately $1.3 trillion for fiscal year 2010.[11] This is a slight reduction of the deficit in 2009, $1.4 trillion.[12] The CBO explained that the 2009 and 2010 deficits were a result of:

> an imbalance between revenues and spending that predates the recession and turmoil in financial markets, sharply lower revenues and elevated spending associated with those economic conditions, and the costs of various federal policies implemented in response to those conditions.[13]

The office projects average deficits of approximately $600 billion per year over the 2011-2020 period.[14]

As a result of increasing federal deficits, federal debt held by the public is expected to increase significantly. Currently, the debt held by the public is estimated to be $8.1 trillion.[15] The CBO projects that the figure will increase to $15 trillion by the end of 2020.[16]

Ballot Referenda

When a public measure is submitted to the voters, the substance of the measure must be printed in clear and unambiguous language on the ballot, followed by the words "yes" and "no." In addition, Florida law requires that the ballot must be written so that a "yes" vote indicates approval of the proposal, and a "no" vote indicates rejection.[17]

Effect of Proposed Changes

This bill provides for a nonbinding statewide advisory referendum on the 2010 general election ballot, on the question of whether the U.S. Constitution should be amended to require a balanced federal budget. An advisory referendum has been described as a method for voters to make their views known without binding a legislature to act. The bill requires the following question to be printed on the ballot, followed by the word "yes" and the word "no":

> In order to stop the uncontrolled growth of our national debt and prevent excessive borrowing by the Federal Government, which threatens jobs, robs America and our children of their opportunity for success, and threatens our national security, should the United States Constitution be amended to require a balanced federal budget without raising taxes?

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Requires a nonbinding statewide advisory referendum to be placed on the 2010 general election ballot, relating to the federal budget.

Section 2: Provides an effective date of upon becoming a law.

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[11] Congressional Budget Office, Congress of the United States, *The Budget and Economic Outlook: Fiscal Years 2010 to 2020, Summary* (Jan. 2010), http://www.cbo.gov/ftpdocs/108xx/doc10871/01-26-Outlook.pdf. Last visited March 19, 2010.
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] TreasuryDirect, *The Debt to the Penny and Who Holds It*, http://www.treasurydirect.gov/NP/BPDLogin?application=np. Last visited March 19, 2010. TreasuryDirect is a financial services website through which a person may purchase and redeem securities directly from the U.S. Department of the Treasury in paperless electronic form. TreasuryDirect is a service of the U.S. Department of the Treasury Bureau of the Public Debt. See TreasuryDirect, *About TreasuryDirect*, http://www.treasurydirect.gov/about.htm. Last visited March 19, 2010.
[16] Congressional Budget Office, *supra* note 12.
[17] Section 101.161(1), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   According to the Department of State, there is no fiscal cost to the agency.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   There is an indeterminate, but likely insignificant, cost to the counties depending on whether the amendment will require printing of additional pages.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill may require local governments to spend funds by requiring a specific question on the 2010 general election ballot. However, it appears to be exempt from the State Constitution's provisions restricting local mandates because the bill applies to election law and also because the fiscal impact appears to be insignificant.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On April 7, 2010, the Economic Development & Community Affairs Policy Council adopted a strike-all amendment, which added the words "without raising taxes" to the referendum question and removed the appropriation.

The bill was reported favorably and the analysis has been updated to reflect the council substitute.

1 House Memorial
2 A memorial to the Congress of the United States, urging
3 Congress to support the opportunity to provide increased
4 access to community-based services for individuals with
5 developmental disabilities.
6
7 WHEREAS, federal and state financial assistance is provided
8 for services under the Medicaid program for individuals with
9 developmental disabilities, and
10 WHEREAS, community-based services are a valuable cost-
11 effective alternative to institutional care because such
12 services benefit both the individual receiving the services and
13 the federal and state programs that fund the services, and
14 WHEREAS, a study by the National Conference of State
15 Legislatures and other studies document that individuals with
16 developmental disabilities who receive services in their homes
17 or other community settings experience improved outcomes,
18 quality of care, and quality of life in contrast to individuals
19 with developmental disabilities who receive care in
20 institutional settings, and
21 WHEREAS, publicly funded programs that cover community-
22 based services for individuals with developmental disabilities
23 are limited, and
24 WHEREAS, federal and state programs provide limited support
25 for community-based services that serve as an alternative to
26 institutional care for individuals with developmental
27 disabilities, and

28 WHEREAS, the years after a student with a developmental
29 disability leaves the educational system are critical for
30 learning and transition, and
31 WHEREAS, the need to allow the opportunity to provide
32 increased access to community-based services at the discretion
33 of the developmentally disabled individual's family is
34 recognized, and
35 WHEREAS, access to community-based services, regardless of
36 a family's income, insurance coverage, or Medicaid eligibility,
37 is recognized as essential in improving the quality of life for
38 individuals with developmental disabilities, NOW, THEREFORE,
39
40 Be It Resolved by the Legislature of the State of Florida:
41
42 That the Congress of the United States is urged to:
43 (1) Support the "Achieving a Better Life Experience Act of
44 2009" or the "ABLE Act of 2009," as reflected in H.R. 1205 and
45 S. 493; and
46 (2) Support ABLE accounts for individuals with
47 developmental disabilities to assist them in paying certain
48 expenses, including expenses for education, housing,
49 transportation, employment support, medical care, and certain
50 life necessities.
51 BE IT FURTHER RESOLVED that copies of this memorial be
52 dispatched to the President of the United States, to the
53 President of the United States Senate, to the Speaker of the
54 United States House of Representatives, and to each member of
55 the Florida delegation to the United States Congress.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 1349 Community-Based Services for Individuals with Developmental Disabilities
SPONSOR(S): Skidmore
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health & Family Services Policy Council	12 Y, 0 N	Schoolfield	Gormley
2)	Rules & Calendar Council		Kirksey	Birtman
3)				
4)				
5)				

SUMMARY ANALYSIS

HM 1349 is a House memorial to urge Congress to support the opportunity to provide increased access to community-based services for individuals with developmental disabilities. The memorial specifically urges Congress to support the Achieving a Better Life Experience (ABLE) Act of 2009, as reflected in H.R. 1205 and S. 493. Congress is also urged to support ABLE accounts for individuals with developmental disabilities to assist them in paying certain expenses including education, housing, transportation, employment support, medical care, and certain life necessities.

The memorial is to be dispatched to the President of the United States, Speaker of the House, President of the US Senate and the Florida delegation to Congress.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Home and Community Services to Persons with Developmental Disabilities

The Agency for Persons with Disabilities (APD) is responsible for providing services to persons with developmental disabilities.[1] A developmental disability is defined in chapter 393, F.S., 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."[2] Children who are at high risk of having a developmental disability and are between the ages of 3 and 5 are also eligible for services.[3]

APD provides an array of home and community based services through contract providers under a four tier Medicaid waiver program.[4] The program includes 28 home and community based services including but not limited to therapies, adult day training, behavioral services, residential habilitation services, respite, nursing services, employment and supported living services.[5] As of January 2010, APD was serving 29,903[6] people in the Medicaid waiver program and has a waitlist of over 18,800[7] people for the program. APD administers a budget in excess of $1 billion dollars to serve persons with developmental disabilities of which $900 million is for home and community services.[8]

Achieving a Better Life Experience Act of 2009 (ABLE Act of 2009)

The ABLE Act of 2009 was introduced into both Houses of Congress on February 26, 2009. In the House of Representatives, the Act is H.R. 1205 and is sponsored by Rep. Ander Crenshaw (R-Fla) with

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[1] §20.197(3), Fla. Stat.
[2] §393.063(9), Fla. Stat.
[3] "High-risk child" is defined in §393.063(19) Fla. Stat.
[4] §393.0661, Fla. Stat.
[5] Florida Medicaid, Developmental Disabilities Waiver Services
Coverage and Limitations Handbook (2008) *available at*
https://portal.flmmis.com/FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/CL_08_070701_Waiver_DevSev_ver1%203%20(2).pdf.

[6] Tier Waiver Enrollment Summary by Year and Month, December 2009.
[7] APD Quarterly Report to the Legislature on Agency Services, February 2010.
[8] Ch.2009-81, Laws of Florida.

32 cosponsors.[9] In the Senate, the Act is S. 493 and is sponsored by Sen. Robert P. Casey Jr. (D-Pa) with 5 cosponsors.[10] The bill will have to pass both houses of Congress and be signed by the President to become law.

The ABLE Act of 2009 amends the Internal Revenue Code to establish tax-exempt ABLE accounts for individuals with a disability to pay certain expenses of such individuals, including expenses for education, housing, transportation, employment support, medical care, and certain life necessities.[11]

The Act includes several key elements which:

- define "individual with a disability" as an individual who is eligible to receive certain supplemental security income benefits under the Social Security Act;
- allow individual taxpayers a tax deduction, up to $2,000 per year, for contributions to an ABLE account.
- require ABLE accounts to be disregarded in determining eligibility for Medicaid benefits and for purposes of determining eligibility for other means-tested federal programs.
- provide that funds remaining in the accounts at the time of an individual's death would be used to pay back the state Medicaid program up to the value of services provided;
- require the Secretary of the Treasury to study and report to Congress on the use of ABLE accounts and the effect of the tax deduction for contributions to such accounts. [12]

The ABLE Act is anticipated to give individuals with disabilities and or their families access to savings accounts to use in purchasing qualified expenses. Withdrawals from the account will not be subject to tax as long as they are used for qualified expenditures.

Effect of the Memorial:

This House memorial urges Congress to support the opportunity to provide increased access to community-based services for individuals with developmental disabilities. The memorial specifically urges Congress to support the Achieving a Better Life Experience (ABLE) Act of 2009, as reflected in H.R. 1205 and S. 493. Congress is also urged to support ABLE accounts for individuals with developmental disabilities to assist them with certain expenses including education, housing, transportation, employment support, medical care, and certain life necessities.

The memorial is to be dispatched to the President of the United States, Speaker of the House, President of the US Senate and the Florida delegation to Congress.

In support of the memorial the following whereas clauses were included:

- Whereas, federal and state financial assistance is provided for services under the Medicaid program for individuals with developmental disabilities, and
- Whereas, community-based services are a valuable cost-effective alternative to institutional care because such services benefit both the individual receiving the services and the federal and state programs that fund the services, and
- Whereas, a study by the National Conference of State Legislatures and other studies document that individuals with developmental disabilities who receive services in their homes or other

[9] On February 26,2009, "Referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned." This is the current state of H.R. 1205. Thomas, http://thomas.loc.gov/cgi-bin/bdquery/z?d111:h.r.01205: (last visited April 6, 2010).

[10] 2/26/2009 Referred to Senate committee. Status: Read twice and referred to the Committee on Finance. The last major action on S. 493 was referred to the Senate Committee on Finance. The Senate committee on finance has read the bill twice. Thomas, http://thomas.loc.gov/cgi-bin/bdquery/z?d111:s493: (last visited April 6, 2010).

[11] H.R. 1205--111th Congress: ABLE Act of 2009. (2009). In *GovTrack.us (database of federal legislation).* Retrieved March 18, 2010, from http://www.govtrack.us/congress/bill.xpd?bill=h111-1205&tab=summary.

[12] H.R. 1205--111th Congress: ABLE Act of 2009. (2009). In *GovTrack.us (database of federal legislation).* Retrieved March 18, 2010, from http://www.govtrack.us/congress/bill.xpd?bill=h111-1205&tab=summary.

community settings experience improved outcomes, quality of care, and quality of life in contrast to individuals with developmental disabilities who receive care in institutional settings, and

- Whereas, publicly funded programs that cover community-based services for individuals with developmental disabilities are limited, and
- Whereas, federal and state programs provide limited support for community-based services that serve as an alternative to institutional care for individuals with developmental disabilities, and
- Whereas, the years after a student with a developmental disability leaves the educational system are critical for learning and transition, and
- Whereas, the need to allow the opportunity to provide increased access to community-based services at the discretion of the developmentally disabled individual's family is recognized, and
- Whereas, access to community-based services, regardless of a family's income, insurance coverage, or Medicaid eligibility, is recognized as essential in improving the quality of life for individuals with developmental disabilities.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Amendment No. 01

COUNCIL/COMMITTEE ACTION

ADOPTED __ (Y/N)
ADOPTED AS AMENDED __ (Y/N)
ADOPTED W/O OBJECTION __ (Y/N)
FAILED TO ADOPT __ (Y/N)
WITHDRAWN __ (Y/N)
OTHER ______

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1 Council/Committee hearing bill: Rules & Calendar Council
2 Representative(s) Skidmore offered the following:
3
4 **Amendment**
5 Remove lines 14-15 and insert:
6 WHEREAS, studies suggest that individuals with

1 House Memorial
2 A memorial to the Congress of the United States, urging
3 Congress to use its constitutional authority to prevent
4 the trial of terrorists from taking place in a civilian
5 courtroom.
6
7 WHEREAS, on November 12, 2009, United States Attorney
8 General Eric Holder announced the trial of self-described
9 mastermind of 9/11 Khalid Sheikh Mohammed and the other four
10 suspected 9/11 terrorists would be moved from a military court
11 in Guantanamo Bay, Cuba, to a civilian court in New York City
12 just blocks away from the World Trade Center attacks that cost
13 the lives of nearly 3,000 people, and
14 WHEREAS, Khalid Sheikh Mohammed, Walid Muhammad Salih,
15 Mubarek bin 'Attash, Ramzi bin al Shibh, and Mustafa Ahmed al
16 Hawsawi, known as the "Gitmo 5," all fit the statutory
17 definition of an "unprivileged enemy belligerent" by having
18 engaged in premeditated, politically motivated violence against
19 noncombatant civilian targets, and
20 WHEREAS, United States Attorney General Eric Holder has
21 also contemplated a civilian court trial in Washington, D.C.,
22 for Riduan Isamuddin, better known as "Hambali," and potentially
23 other Guantanamo Bay detainees, and
24 WHEREAS, "Hambali" is suspected of the planning and bombing
25 of a Bali nightclub which killed 202 people, and
26 WHEREAS, the "Gitmo 5" or other terrorists would likely use
27 a highly publicized civilian trial in the United States to their
28 own political advantage, to mode themselves as martyrs and

29 spread their jihadist ideology both internationally and
30 domestically, and
31 WHEREAS, some independent observers will not discount the
32 possibility that civilian trials could make New York City,
33 Washington, D.C., or any other domestic locale an even larger
34 target, and
35 WHEREAS, we are a nation that is at war against terror and
36 should treat enemy combatants in that war as such, and
37 WHEREAS, trying any terrorist in a civilian court would
38 award foreign terrorists all the constitutional rights due a
39 United States citizen defendant accused of an ordinary domestic
40 crime, NOW, THEREFORE,
41
42 Be It Resolved by the Legislature of the State of Florida:
43
44 That Congress is urged to reject any efforts by the Justice
45 Department to try terrorists in federal court in New York City
46 or any other domestic venue by exercising its constitutional
47 authority as set forth in Section 1 of Article III of the United
48 States Constitution which states: "The judicial Power of the
49 United States, shall be vested in one supreme Court, and in such
50 inferior Courts as the Congress may from time to time ordain and
51 establish."
52 BE IT FURTHER RESOLVED that copies of this memorial be
53 dispatched to the President of the United States, to the
54 President of the United States Senate, to the Speaker of the
55 United States House of Representatives, and to each member of
56 the Florida delegation to the United States Congress.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 1609 Terrorist Trials in Civilian Courtrooms
SPONSOR(S): Fresen
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Policy Council	8 Y, 4 N	Liepshutz	Ciccone
2)	Rules & Calendar Council		Kirksey	Birtman
3)				
4)				
5)				

SUMMARY ANALYSIS

House Memorial 1609 urges the U.S. Congress to use its constitutional authority to prevent the trial of terrorists from taking place in a civilian courtroom.

The memorial provides for copies of it to be submitted to the President of the United States, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and each member of the state's congressional delegation.

The memorial does not have a fiscal impact on state or local government.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

House Memorial 1609 expresses the Legislature's desire for the U.S. Congress to use its constitutional authority as specified in Section 1 of Article III of the United States Constitution, and to reject any efforts by the U.S. Justice Department to try terrorists in federal court in New York City or any other domestic venue.

The memorial expresses opposition to the use of the federal criminal courts to try "unlawful enemy combatants" detainees and implicitly supports instead the use of military tribunals or military commissions to try them.

The memorial provides for copies of it to be submitted to the president of the United States, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and each member of the state's congressional delegation.

Both houses of the Florida Legislature must pass a memorial; however a memorial is not subject to gubernatorial approval or veto and upon its passage is sent directly to the specified congressional officials.[1]

Recent Actions by the 111th Congress, 2d Session[2]

Congressional legislation that directly addresses the subject of this memorial was recently introduced in the U.S. Senate and House. Senate bill 3081 (introduced 3/4/2010) by Senator McCain and its companion, House Bill 4892 (introduced 3/19/2010) by Rep. McKeon, prohibit the use of funds appropriated or otherwise made available to the Department of Justice (DOJ) to prosecute an alien "unprivileged enemy belligerent" in Article III federal courts. For purposes of the bill, an "unprivileged enemy belligerent" is defined as someone who:

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[1] The Florida House, *Guidelines for Bill Drafting*, (2009) page 20.

[2] Research to obtain the information relating to actions of the 111th Congress was obtained using the Library of Congress, THOMAS available at http://thomas.loc.gov/home/abt_thom.html. THOMAS was launched in 1995, at the inception of the 104th Congress, which directed the Library of Congress to make federal legislative information freely available to the public. Information on Congressional legislation also obtained using NetScan, available to subscribers at http://www.netscan.com/

- Has engaged in hostilities against the United States or its coalition partners;
- Has purposely and materially supported hostilities against the United States or its coalition partner; or
- Was a part of al Qaeda at the time of capture.

As of April 6, 2010, both bills remain in their respective committees of reference. Senate bill 3081 was referred to the Committee on the Judiciary and House Bill 4892 to three House committees – Intelligence, Armed Services, and Judiciary.

Similar legislation was introduced earlier this year in the U.S. Senate and House by Senator Lindsay Graham and Rep. Wolf, respectively. On February 2, 2010, both Senate bill 2977 and House Bill 4456 were introduced, prohibiting DOJ funds from being used for prosecuting individuals involved in the September 11, 2001, terrorist attacks. Both bills currently remain in their initial committees of reference. Prior to the introduction of these two measures, on November 5, 2009, an amendment to House Bill 2847 (Senate Amendment. 2669) by Senator Graham that would have prohibited the use of funds for the prosecution in Article III courts of individuals involved in the 9/11 terrorist attacks was tabled by the Senate when a *motion to table* was agreed to by a 54 to 45 vote, with one senator not voting.

Another bill that addresses the subject of this memorial was introduced January 19, 2010 by Rep. Buchanan. House Bill 4463, the Military Tribunals for Terrorists Act of 2010, would mandate military commissions as the only venue to try foreign nationals who:

- Engage or have engaged in conduct constituting an offense relating to a terrorist attack against persons or property in the U.S. or against any U.S. Government property outside the U.S. and
- Are subject to trial by a military commission under the law.

As of April 6, 2010, the bill remains in its first committee of reference, Judiciary, where it was referred to the subcommittee on the Constitution, Civil rights, and Civil Liberties on March 1, 2010.

According to the Congressional Research Service, "[in] the first session of the 111th Congress, several appropriations and authorizations measures were enacted which effectively barred funds from being used to transfer any detainee into the United States for release or purposes *other* than prosecution, and restrict funds from being used to transfer detainees into the country to face prosecution prior to the submission of certain reports to Congress." [3] [Emphasis supplied]

As a policy-making body, Congress considers policy research conducted by the Congressional Research Service (CRS), a legislative branch agency within the Library of Congress, tasked with providing non-partisan, objective, and authoritative information and analysis exclusively for members of Congress.[4] The following excerpts are from reports that were prepared by CRS and relate to federal law developments concerning the detention of unlawful enemy combatants and some of the policy issues that may arise from trying them in Article III, federal courts.

Enemy Combatant Detainees

> Following the terrorist attacks of 9/11, Congress passed the Authorization to Use Military Force (AUMF), which granted the President the authority "to use all necessary and appropriate force against those ... [who] planned, authorized, committed, or aided the terrorist attacks" against the United States. As part of the subsequent "war on terror," many persons captured during military

[3] Congressional Research Service Research (CRS) Report RL33180, February 3, 2010, "Enemy Combatant Detainees: *Habeas Corpus* Challenges in Federal Court, " p. 39 (citing the following in footnote 227: Supplemental Appropriations Act, 2009 (P.L. 111-32), Department of Homeland Security Appropriations Act, 2010 (P.L. 111-83), National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-84), the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010 (P.L. 111-88), the Consolidated Appropriations Act, 2010 (P.L. 111-117), and the Department of Defense Appropriations Act, 2010 (P.L. 111-118)

[4] See, http://www.loc.gov/crsinfo/whatscrs.html for a description of the function and mission of the Congressional Research Service.

operations in Afghanistan and elsewhere were transferred to the U.S. Naval Station at Guantanamo Bay, Cuba for detention and possible prosecution before military tribunals. Although nearly 800 persons have been transferred to Guantanamo since early 2002, the substantial majority of Guantanamo detainees have ultimately been transferred to a third country for continued detention or release. . . .

. . . .

The decision by the Bush Administration to detain suspected belligerents at Guantanamo was based upon both policy and legal considerations. From a policy standpoint, the U.S. facility at Guantanamo offered a safe and secure location away from the battlefield where captured persons could be interrogated and potentially tried by military tribunals for any war crimes they may have committed. From a legal standpoint, the Bush Administration sought to avoid the possibility that suspected enemy combatants could pursue legal challenges regarding their detention or other wartime actions taken by the Executive. The Bush Administration initially believed that Guantanamo was largely beyond the jurisdiction of the federal courts, and noncitizens held there would not have access to the same substantive and procedural protections that would be required if they were detained in the United States.

The legal support for this policy was significantly eroded by a series of Supreme Court rulings permitting Guantanamo detainees to seek judicial review of the circumstances of their detention.[5]

After the U.S. Supreme Court held that U.S. courts have jurisdiction pursuant to 28 U.S.C. § 2241 [*habeas corpus*] to hear legal challenges on behalf of persons detained at the U.S. Naval Station in Guantanamo Bay, Cuba, in connection with the war against terrorism (*Rasul v. Bush*), the Pentagon established administrative hearings, called "Combatant Status Review Tribunals" (CSRTs), to allow the detainees to contest their status as enemy combatants, and informed them of their right to pursue relief in federal court by seeking a writ of *habeas corpus*. Lawyers subsequently filed dozens of petitions on behalf of the detainees in the District Court for the District of Columbia, where district court judges reached inconsistent conclusions as to whether the detainees have any enforceable rights to challenge their treatment and detention.

Congress subsequently passed the Detainee Treatment Act of 2005 (DTA) to divest the courts of jurisdiction to hear some detainees' challenges by eliminating the federal courts' statutory jurisdiction over *habeas* claims (as well as other causes of action) by aliens detained at Guantanamo. The DTA provided for limited appeals of CSRT determinations or final decisions of military commissions. After the Supreme Court rejected the view that the DTA left it without jurisdiction to review a *habeas* challenge to the validity of military commissions in the case of *Hamdan v. Rumsfeld*, the 109th Congress enacted the Military Commissions Act of 2006 (MCA) (P.L. 109-366) to authorize the President to convene military commissions and to amend the DTA to further reduce detainees' access to federal courts, including in cases already pending.

In June 2008, the Supreme Court held in the case of *Boumediene v. Bush* that aliens designated as enemy combatants and detained at Guantanamo Bay have the constitutional privilege of *habeas corpus*. The Court also found that MCA § 7, which limited judicial review of executive determinations of the petitioners' enemy combatant status to that available under the DTA, did not provide an adequate *habeas* substitute and therefore acted as an unconstitutional suspension of the writ of *habeas*. The immediate impact of the *Boumediene* decision is that detainees at Guantanamo may petition a federal district court for *habeas* review of the legality and possibly the circumstances of their detention, perhaps including challenges to the jurisdiction of military commissions. President Barack Obama's Executive Order calling for a temporary halt in military commission proceedings and the closure of the Guantanamo detention facility is likely to have implications for legal challenges raised by detainees. Later this year,

[5] Congressional Research Service (CRS) Report R40139, January 22, 2009: "Closing the Guantanamo Detention Center: Legal Issues," pp. 1, 2. The report is available on the U.S. Dept. of State Website at http://fpc.state.gov/c34397.htm

[2010] the Supreme Court is expected to consider arguments in the case of *Kiyemba v. Obama* as to whether federal *habeas* courts have the authority to order the release into the United States of Guantanamo detainees found to be unlawfully held.

In March 2009, the Obama Administration announced a new definitional standard for the government's authority to detain terrorist suspects, which does not use the phrase "enemy combatant" to refer to persons who may be properly detained. The new standard is similar in scope to the "enemy combatant" standard used by the Bush Administration to detain terrorist suspects. The standard would permit the detention of members of the Taliban, Al Qaeda, and associated forces, along with persons who provide "substantial support" to such groups, regardless of whether such persons were captured away from the battlefield in Afghanistan. Courts that have considered the Executive's authority to detain under the AUMF and law of war have reached differing conclusions as to the scope of this detention authority. In January 2010, a D.C. Circuit panel held that support for or membership in an AUMF-targeted organization may constitute a sufficient ground to justify military detention.[6] [No footnotes in original summary]

. . . .

Whether detainees who are facing prosecution by a military commission may challenge the jurisdiction of such tribunals prior to the completion of their trial remains unsettled, although the district court has so far declined to enjoin military commissions. Supreme Court precedent suggests that *habeas corpus* proceedings may be invoked to challenge the jurisdiction of a military court even where *habeas corpus* has been suspended. *Habeas* may remain available to defendants who can make a colorable claim not to be enemy belligerents within the meaning of the MCA, and therefore to have the right not to be subject to military trial at all, perhaps without necessarily having to await a verdict or exhaust the appeals process. Interlocutory challenges contesting whether the charges make out a valid violation of the law of war, for example, seem less likely to be entertained on a *habeas* petition.[7]

Detainees' Rights in a Criminal Prosecution

While many persons currently held at Guantanamo are only being detained as a preventative measure to stop them from returning to battle, the United States has brought or intends to pursue criminal charges against some detainees. Various constitutional provisions, most notably those arising from the Fifth and Sixth Amendments to the U.S. Constitution, apply to defendants throughout the process of criminal prosecutions. Prosecuting the Guantanamo detainees inside the United States would raise at least two major legal questions. First, does a detainee's status as an "enemy combatant" reduce the degree of constitutional protections to which he is entitled? Secondly, would the choice of judicial forum – i.e., civilian court, military commission, or courts-martial – affect interpretations of constitutional rights implicated in detainee prosecutions?

. . . [T]he nature and extent to which the Constitution applies to noncitizens detained at Guantanamo is a matter of continuing legal dispute. Although the Supreme Court held in *Boumediene* that the constitutional writ of *habeas* extends to detainees held at Guantanamo, it left open the nature and degree to which other constitutional protections, including those relating to substantive and procedural due process, may also apply. The *Boumediene* Court noted that the Constitution's application to noncitizens in places like Guantanamo located outside the United States turns on "objective factors and practical concerns." The Court has also repeatedly recognized that at least some constitutional protections are "unavailable to aliens outside our geographic borders." The application of constitutional principles to the prosecution of aliens located at Guantanamo remains unsettled.

[6] Congressional Research Service (CRS) report RL33180, February 3. 2010: "Enemy Combatant Detainees: *Habeas Corpus* Challenges in Federal Court," see, Summary (no pagination).

[7] *Id.*, p. 53.

On the other hand, it is clear that if Guantanamo detainees are subject to criminal prosecution in the United States, the constitutional provisions related to such proceedings would apply. However, the application of these constitutional requirements might differ depending upon the forum in which charges are brought. The Fifth Amendment's requirement that no person be held to answer for a capital or infamous crime unless on a presentment or indictment of a grand jury, and the Sixth Amendment's requirement concerning trial by jury, have been found to be inapplicable to trials by military commissions or courts-martial. The application of due process protections in military court proceedings may also differ from civilian court proceedings, in part because the Constitution "contemplates that Congress has 'plenary control over rights, duties, and responsibilities in the framework of the Military Establishment, including regulations, procedures, and remedies related to military discipline." In the past, courts have been more accepting of security measures taken against "enemy aliens" than U.S. citizens, particularly as they relate to authority to detain or restrict movement on grounds of wartime security. It is possible that the rights owed to enemy combatants in criminal prosecutions would be interpreted more narrowly by a reviewing court than those owed to defendants in other, more routine cases, particularly when the constitutional right at issue is subject to a balancing test.

There are several forums in which detainees could potentially be prosecuted for alleged criminal activity, including in federal civilian court, in general courts-martial proceedings, or before military commissions. The procedural protections afforded to the accused in each of these forums may differ, along with the types of offenses for which the accused may be prosecuted. The MCA authorized the establishment of military commissions with jurisdiction to try alien "unlawful enemy combatants" for offenses made punishable by the MCA or the law of war, and affords the accused fewer procedural protections than would be available to defendants in military courts-martial or federal civilian court proceedings. Approximately 20 detainees at Guantanamo are currently facing charges before such commissions, though critics have raised questions regarding the constitutionality of the system established by the MCA. The MCA does not restrict military commissions from exercising jurisdiction within the United States, and the Supreme Court has previously upheld the use of military commissions against enemy belligerents tried in the United States. Although they have yet to be used for this purpose, detainees could also be brought before military courts-martial, which have jurisdiction over persons subject to military tribunal jurisdiction under the law of war via the Uniform Code of Military Justice (UCMJ). Detainees brought before military-courts martial could be charged with offenses under the UCMJ and the law of war, though courts-martial rules concerning the accused's right to a speedy trial may pose an obstacle to prosecution absent modification. Detainees could also potentially be prosecuted in federal civilian court for offenses under federal criminal statutes. Provisions in the U.S. Criminal Code relating to war crimes and terrorist activity apply extraterritorially and may be applicable to some detainees, though ex post facto and statute of limitation concerns may limit their application to certain offenses.[8] [Footnotes omitted]

B. SECTION DIRECTORY:

Not Applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

[8] Congressional Research Service (CRS) Report R40139, January 22, 2009: "Closing the Guantanamo Detention Center: Legal Issues," pp. 12, 13. The report is available on the U.S. Dept. of State Website at http://fpc.state.gov/c34397.htm

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The memorial does not require counties or municipalities to take an action requiring the expenditures of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED __ (Y/N)
ADOPTED AS AMENDED __ (Y/N)
ADOPTED W/O OBJECTION __ (Y/N)
FAILED TO ADOPT __ (Y/N)
WITHDRAWN __ (Y/N)
OTHER ______

---

1 Council/Committee hearing bill: Rules & Calendar Council
2 Representative(s) Fresen offered the following:
3
4 **Amendment (with title amendment)**
5 ---
6 **T I T L E A M E N D M E N T**
7 Remove lines 7-16 and insert:
8 WHEREAS, on November 13, 2009, United States Attorney
9 General Eric Holder announced the trial of self-described
10 mastermind of 9/11 Khalid Sheikh Mohammed and the other four
11 suspected 9/11 terrorists would be moved from a military court
12 in Guantanamo Bay, Cuba, to a civilian court in New York City
13 just blocks away from the World Trade Center attacks that cost
14 the lives of nearly 3,000 people, and
15 WHEREAS, Khalid Sheikh Mohammed, Walid Muhammad Salih
16 Mubarek Bin 'Attash, Ramzi Binalshibh, Ali Abdul Aziz Ali, and
17 Mustafa Ahmed Adam al Hawsawi, known as the "Gitmo 5," all fit
18 the statutory

PCB RCC 10-05

BILL ORIGINAL YEAR

1 A bill to be entitled
2 An act relating to compulsory health insurance coverage;
3 providing a declaration of state public policy protecting
4 persons from government compulsion relating to purchasing
5 health insurance coverage; providing exceptions;
6 authorizing the Attorney General to initiate and advocate
7 such public policy in federal or state court or
8 administrative forum on behalf of certain persons under
9 certain circumstances; providing an effective date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. Consistent with the constitutional liberties of
14 Floridians, it is hereby declared the public policy of this
15 state that no person may be compelled by federal, state, or
16 local government to purchase health insurance or health
17 services, except as a condition of:
18 1. public employment,
19 2. voluntary participation in a state or local benefit,
20 3. operating a dangerous instrumentality, or
21 4. undertaking an occupation having a risk of occupational
22 injury or illness,
23 or in case of an actual emergency declared by the Governor when
24 the public health is immediately endangered. Nothing in this
25 section shall be construed to prohibit collection of debts
26 lawfully and consensually incurred for health insurance or
27 health services.

V

28 Section 2. The Attorney General is hereby specifically
29 authorized, and shall have standing, to initiate and otherwise
30 advocate such public policy in any state or federal court or
31 administrative forum on behalf of one or more persons within the
32 state whose constitutional rights may be subject to infringement
33 by an act of Congress respecting health insurance coverage, or
34 subject to the implementation of a federal legislative program
35 relating to or impacting the rights or interests of persons
36 respecting health insurance coverage.
37 Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB RCC 10-05 Compulsory Health Coverage
SPONSOR(S): Rules & Calendar Council
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Rules & Calendar Council		Thomas	Birtman
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The bill declares that it is the policy of the state that a person may not be "compelled by federal, state, or local government to purchase health insurance or health services, except as a condition of:

1. public employment,
2. voluntary participation in a state or local benefit,
3. operating a dangerous instrumentality, or
4. undertaking an occupation having a risk of occupational injury or illness,

or in case of an actual emergency declared by the Governor when the public health is immediately endangered."

The bill authorizes the Attorney General to "initiate and otherwise advocate" the policy of the state declared above in any court or administrative forum on behalf of a person in the state "whose constitutional rights may be subject to infringement by an act of Congress respecting health insurance coverage, or subject to the implementation of a federal legislative program relating to or impacting the rights or interests of persons respecting health insurance coverage."

The bill does not appear to have a significant fiscal impact on state or local government.

The bill takes effect upon becoming a law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Federal Health Care Reform

The U.S. Congress spent the last year debating an extensive overhaul of the national health care system. On March 21, 2010, the House passed the Senate version of federal health care reform (H.R. 3590) and President Barak Obama signed the bill into law on March 23, 2010. Key policy areas of reform include: mandated individual coverage; mandated employer offers of coverage; expansion of Medicaid; individual cost-sharing subsidies and tax penalties for non-compliance; employer tax penalties for non-compliance; health insurance exchanges; expanded regulation of the private insurance market; and revision of the Medicare and Medicaid programs.

The House also passed a "reconciliation" bill on March 21, 2010, and the Senate is currently considering amendments to this bill. Reconciliation legislation is composed entirely of revenue-related amendments to an authorizing bill. In this case, the reconciliation bill, H.R. 4872, is a series of revenue-related amendments to H.R. 3590.

The following table outlines the two bills:[1]

Issue	Reconciliation Bill: H.R. 4872 Health Care & Education Affordability Act of 2010	Senate Bill: H.R. 3590 Patient Protections & Affordable Care Act
Mandated individual coverage	Not defined	"minimum essential coverage" as defined in the bill
Individual penalty	The greater of $695; up to 3X$695=$2,085; or 2.5% of household income Phase-in penalty through 2016	$95-$750 per person tax

[1] Information for this table is based on versions of H.R. 4872 and H.R. 3590, dated March 19, 2010. For detailed side-by-side bill comparisons, see Kaiser Family Foundation, Focus on Health Reform, at http://www.kff.org/healthreform/sidebyside.cfm and *House-Senate Comparison of Key Provisions*, at www.politico.com/static/PPM136_100104_health_reform_conference.html (last visited April 13, 2010).

Mandated employer offering	Same as H.R. 3590	Required for companies with more than 50 employees
Employer penalty for failure to offer	If at least one-full time employee uses the federal subsidy, then $2,000 per full-time employee, excluding the first 30 employees tax	If one full-time employee uses the federal subsidy, then $750 per employee tax
Other employer penalties	For employers who offer health insurance, if at least one full-time employee uses the federal subsidy, then the lesser of $3,000 for each employee using the subsidy or $750 per full-time employee tax	For employers who offer health insurance, if at least one full-time employee uses the federal subsidy, then $750 per employee tax
Health insurance exchanges	Same as H.R. 3590	State-based American Health Benefits Exchanges
Individual subsidy: Exchange participation	Insurance premium credits for incomes at 133% - 400% of the Federal Poverty Level ($29,326 – $88,200 for a family of four) to purchase insurance through the Exchanges	Insurance premium credits for incomes at 100% – 400% of the Federal Poverty Level ($22,050 – $88,200 for a family of four) to purchase insurance through the Exchanges
Employer subsidy: Exchange participation	Same as H.R. 3590	The "free choice voucher" is available for employees at less than 400% of Federal Poverty Level ($88,200 for a family of four) whose share of the insurance premium exceeds 8% but is less than 9.8%, and who choose to enroll in an Exchange The voucher is equal to what the employer would have paid for coverage. Employers who offer the free choice voucher will not be subject to penalties for employees who participate in the Exchange
Public option	N/A	N/A
Private insurance market regulation	• Guarantee issue and renewability • Grandfather existing individual and group plans but requires grandfathered plans to extend coverage to dependents until age 27; and prohibits rescissions of coverage. Grandfathered plans must meet some new benefit standards by 2014 • Creates Health Insurance Reform Implementation Fund and allocates $1 billon in funding	• Guarantee issue and renewability • New benefits standards effective in 2014
Mandated state Medicaid expansion	Same as H.R. 3590	Up to 133% of the Federal Poverty Level ($29,326 for a family of four)
CHIP	Same as H.R. 3590	CHIP block grants funded through 2015
Financing	• Excise tax on "Cadillac" plans valued at more than $10,200 for individuals and $27,500 for families • Tax increase on HSAs • Impose taxes on certain health care sector segments $2.5 - $14.3 billion	• Excise tax on "Cadillac" plans valued at more than $8,500 for individuals and $23,000 for families • Tax increase on HSAs • Impose taxes on certain health care sector segments $2.3 - $10 billion

The reconciliation bill also includes significant amendments to the Higher Education Act of 1965[2] by changing the structure of the student loan system.

The Congressional Budget Office (CBO) released an estimate of the direct spending and revenue effects of the combined reconciliation and Senate bills on March 20, 2010.[3] CBO estimates the cost of coverage requirements in the two bills to be $938 billion over the 2010-2019 period.[4]

Prior to enactment of these bills, there was no existing requirement in federal law that individuals maintain health insurance coverage; nor did federal law require employers to provide health insurance to employees.

[2] 20 U.S.C. 1001, et al.
[3] Cost estimate for the amendment in the nature of a substitute for H.R. 4872, incorporating a proposed manager's amendment, Congressional Budget Office, see http://www.cbo.gov/doc.cfm?index=11379&type=1 (last visited April 13, 2010).
[4] *Id.*, at 22.

Florida Health Insurance
Florida law does not require state residents to have health insurance coverage. However, Florida law does require drivers to carry Personal Injury Protection (PIP),[5] which includes certain health care coverage, as a condition of registering a motor vehicle.[6] Florida law also requires most employers to carry workers' compensation insurance which includes certain health care provisions for injured workers.[7]

Congressional Authority and Constitutionality

Constitutional scholars and health care policy experts are debating the constitutionality of many of the federal health care reform provisions. The debate centers on four constitutional issues.

Commerce Clause (U.S. Const. Art. I, Sec. 8, Clause 3)

Congress has the power to regulate interstate commerce, including local matters and issues that "substantially affect" interstate commerce. Proponents of reform assert that although health care delivery is local, the sale and purchase of medical supplies and health insurance occurs across state lines, thus regulation of health care is within Commerce Clause authority. Arguing in support of an individual mandate, proponents point to insurance market de-stabilization caused by the large uninsured population as reason enough to authorize Congressional action under the Commerce Clause.[8] Opponents suggest that the decision not to purchase health care coverage is not a commercial activity and cite to *United States v. Lopez*[9] which held that Congress is prohibited from "...unfettered use of the Commerce Clause authority to police individual behavior that does not constitute interstate commerce."[10]

The Tenth Amendment and the Anti-Commandeering Doctrine (U.S. Const. Amend. 10)

The Tenth Amendment reserves to the states all power that is not expressly reserved for the federal government in the U.S. Constitution. Opponents of federal reform assert that the individual mandate violates federalism principles because the U.S. Constitution does not authorize the federal government to regulate health care. They argue, "...state governments – unlike the federal government – have greater, plenary authority and police powers under their state constitutions to mandate the purchase of health insurance."[11] Further, opponents argue that the state health insurance exchange mandate may violate the anti-commandeering doctrine which prohibits the federal government from requiring state officials to carry out onerous federal regulations.[12] Proponents for reform suggest that Tenth Amendment jurisprudence only places wide and weak boundaries around Congressional regulatory authority to act under the Commerce Clause.[13]

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[5] Section 627.736, F.S.
[6] Section 320.02(5)(a), F.S.
[7] Workers' compensation insurance provisions are found in Chapter 440, F.S.
[8] Jack Balkin, *The Constitutionality of the Individual Mandate for Health Insurance*, N. Eng. J. Med. 362:6, at 482 (February 11, 2010).
[9] 514 U.S. 549 (1995).
[10] Peter Urbanowicz and Dennis G. Smith, *Constitutional Implications of an 'Individual Mandate' in Health Care Reform*, The Federalist Society for Law and Public Policy, at 4 (July 10, 2009).
[11] *Id.*
[12] Matthew D. Adler, *State Sovereignty and the Anti-Commandeering Cases*, The Annals of the American Academy of Policy and Social Science, 574, at 158 (March 2001).
[13] Hall, *supra* note 25, at 8-9.

Supremacy Clause (U.S. Const. Art. 6, Clause 2)

Supremacy Clause jurisprudence establishes that the U.S. Constitution and federal law possess ultimate authority when in conflict with state law. The Supreme Court has held "...the Supremacy Clause gives the Federal Government 'a decided advantage in the delicate balance' the Constitution strikes between state and federal power."[14] Proponents cite to the Supremacy Clause as self-evident justification for passage of federal health reform. Opponents assert that the Supremacy Clause only protects congressional actions that are based on express authority in the Constitution and "where [the action] does not impermissibly tread upon state sovereignty."[15]

State Reaction to Federal Health Care Reform

State constitutional amendments addressing the state-federal relationship and federal health care reform are currently under consideration before 22 state legislatures, not including Florida.[16] Arizona passed the Freedom of Choice in Health Care Act last year and it will appear on the ballot for voter approval November 2010. Similar measures have failed in Georgia, Indiana, Mississippi and New Hampshire.[17]

Nine states are currently considering statutory amendments to prohibit mandated health insurance coverage.[18] In March 2010, Virginia, Utah, and Idaho enacted such a statutory change. In addition to asserting the right of citizens to choose health care services without the threat of penalty from the federal government, the Idaho law directs the state's Attorney General to sue the federal government if it enacts laws that compel the purchase health insurance.[19] Changes to state law failed in New Hampshire.[20]

In Florida, Attorney General Bill McCollum has asserted the constitutionality argument to Congress. On January 19, 2010, Attorney General McCollum sent a letter to U.S. House and Senate leadership in which he said that he would pursue legal action if the individual mandate becomes law. Attorney General McCollum then sent a letter to the president of the National Association of Attorneys General on March 16, 2010, asking other attorneys general to participate in litigation challenging the individual mandate. Attorney General McCollum argued that Congress lacks Commerce Clause authority to compel individuals to purchase health insurance: "A citizen's choice not to buy health insurance cannot rationally be construed as economic activity, or even 'activity,' to subject that inactivity to regulation under the Commerce Clause."[21]

On March 23, 2010, Attorney General McCollum, along with twelve other state Attorneys General (five others have since joined), filed a lawsuit in the U.S. District Court, Northern District of Florida, challenging the constitutionality of H.R. 3590. The complaint contends that H.R. 3590:

- Exceeds Congress' legislative powers under Article I;

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[14] *New York v. United States*, 505 US. 144, 160 (1992).
[15] Clint Bolick, *The Health Care Freedom Act: Questions and Answers*, Goldwater Institute, at 3 (February 2, 2010).
[16] National Conference of State Legislatures, *State Legislation Opposing Certain Health Reforms, 2009-2010*, see http://www.ncsl.org/IssuesResearch/Health/StateLegislationOpposingCertainHealthReforms/tabid/18906/Default.aspx?TabId=18906#AZ08 (last visited April 13, 2010).
[17] *Id.*
[18] *Id.*
[19] Chapter Law 46, Idaho Health Freedom Act, effective date June 1, 2010.
[20] National Conference of State Legislatures, *supra* note 19.
[21] Florida Attorney General Bill McCollum, Letter to Congressional Leaders, dated January 19, 2010.

- Constitutes an unlawful capitation or direct tax under Article I[22]; and
- Violates state sovereignty under the Tenth Amendment.[23]

The Attorneys General request the court to declare H.R. 3590 unconstitutional and enjoin the Secretary of the U.S. Department of Health and Human Services, the Secretary of the U.S. Treasury and the Secretary of the U.S. Department of Labor from enforcing it. No action has yet occurred on the case.

Effect of Proposed Changes

Section 1 of the bill declares that it is the policy of the state that a person may not be "compelled by federal, state, or local government to purchase health insurance or health services, except as a condition of:

1. public employment,
2. voluntary participation in a state or local benefit,
3. operating a dangerous instrumentality, or
4. undertaking an occupation having a risk of occupational injury or illness,

or in case of an actual emergency declared by the Governor when the public health is immediately endangered."

The bill provides that this declared policy is not to "be construed to prohibit collection of debts lawfully and consensually incurred for health insurance or health services."

The bill further provides that the Attorney General shall have standing and may "initiate and otherwise advocate" the policy declared in Section 1 of the bill in any court or administrative forum on behalf of a person in the state "whose constitutional rights may be subject to infringement by an act of Congress respecting health insurance coverage, or subject to the implementation of a federal legislative program relating to or impacting the rights or interests of persons respecting health insurance coverage."

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1 provides the policy of the state regarding the purchase of health insurance or health services.

Section 2 authorizes the Attorney General to pursue litigation in defense of the policy declared in Section 1 of the bill.

Section 3 provides an effective date.

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[22] U.S. CONST., art. 1, s. 9 provides that "No capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken." (The Sixteenth Amendment to the United States Constitution provides an exception to this clause of the Constitution. The Amendment states that "Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.")

[23] Complaint, McCollum v. Sebelius, No. 3:10-cv-91 (N.D. Fla., filed March 23, 2010).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
   This bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:
   This bill does not appear to have any significant fiscal impact on state expenditures. See "D. FISCAL COMMENTS" below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
   This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:
   This bill does not appear to have any significant fiscal impact on local government expenditures. See "D. FISCAL COMMENTS" below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
The bill itself should not have a direct economic impact on the private sector.

D. FISCAL COMMENTS:
Any direct immediate impact on state expenditures is related to the initiation of a law suit by the Attorney General, which has already been filed.

The long term fiscal impact of the bill is dependent on the outcome of any resulting litigation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
   This bill does not appear to require counties or municipalities to take an action requiring the expenditure to funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:
   The bill creates a policy of the state that conflicts with federal health care legislation and would implicate a "Supremacy Clause" analysis. The Supremacy Clause is a clause in the United States Constitution, Article VI, Clause 2, that establishes the Constitution, Federal Statutes, and U.S. treaties as the highest form of law in the American legal system. However, the congressional action must be based on express authority in the Constitution and "where [the action] does not impermissibly tread upon state sovereignty."[24]

[24] Clint Bolick, *The Health Care Freedom Act: Questions and Answers*, Goldwater Institute, at 3 (February 2, 2010).

B. RULE-MAKING AUTHORITY:
The bill does not appear to require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:
None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

N/A