Appropriations Committee

Wednesday, April 20, 2011
1:30 PM – 3:30 PM
212 Knott Building

Meeting Packet

Dean Cannon
Speaker

Denise Grimsley
Chair

The Florida House of Representatives
Appropriations Committee

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AGENDA
Wednesday, April 20, 2011
212 Knott Building
1:30 PM – 3:30 PM

I. Call to order/Roll Call

II. Opening Remarks by Chair Grimsley

III. Consideration of the following bills:

CS/HB 4087 Traffic Infraction Detectors by Economic Affairs Committee, Corcoran, Trujillo

CS/HB 7219 School Food Service and Nutrition Programs by Education Committee, State Affairs Committee, McKeel

CS/HB 1289 Medicaid Eligibility by Health & Human Services Quality Subcommittee, Ahern

IV. Closing Remarks and Adjournment

221 The Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 488-6204

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 4087 Traffic Infraction Detectors
SPONSOR(S): Economic Affairs Committee, Corcoran and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 672

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Affairs Committee	10 Y, 8 N, As CS	Brown	Tinker
2) Appropriations Committee		Rayman	Leznoff

SUMMARY ANALYSIS

CS/HB 4087 repeals authorization to use traffic infraction detectors, commonly known as "red light cameras", to enforce traffic safety laws, while retaining the state preemption to regulate the use of cameras for enforcing such laws.

Specifically, the bill repeals s. 316.008(8), F.S., authorizing local governments to install traffic infraction detectors, and s. 316.0083, F.S., which provides local ordinance requirements, installation, signage and notification-of-violation processes, as well as distribution requirements for fines collected by traffic infraction detector programs. The bill also repeals s. 316.0776, F.S., which provides engineering specifications for installation of traffic infraction detectors.

The bill repeals portions of other sections in Chapter 316, Florida Statutes, in order to conform to the repealed sections described above, and it repeals two statutes relating to the implementation of the traffic infraction detector bill passed in 2010.

The bill leaves intact s. 316.0076, F.S., which was enacted in 2010 and expressly preempts to the state regulation of the use of cameras for enforcing the traffic safety provisions of Chapter 316, Florida Statutes.

To the extent that the bill eliminates a potential fine, the bill has an indeterminate positive fiscal impact on motor vehicle owners and operators.

The Revenue Estimating Conference estimated the revenue impact of the repeal provisions of the bill deleting the $158 penalty when violations are issued by a HSMV, county, or municipal traffic infraction enforcement officer through the use of traffic infraction detectors. It assumes repeal of statutory authority results in loss of authority to administer local traffic infraction detector programs would result in the State's revenue reduction ranging from $86.3 million in FY 2011-2012 to $142.3 million in FY 2014-2015, and the loss in local revenue would range from $71.7 million in FY 2011-2012 to $118 million in FY 2014-2015.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Traffic Infraction Detectors generally

Traffic infraction detectors, or "red light cameras," are used to enforce traffic laws by automatically photographing vehicles whose drivers run red lights. A red light camera is connected to the traffic signal and to sensors that monitor traffic flow at the crosswalk or stop line. The system continuously monitors the traffic signal, and the camera is triggered by any vehicle entering the intersection above a pre-set minimum speed and following a specified time after the signal has turned red. A second photograph typically shows the red light violator in the intersection. In some cases video cameras are used. Cameras record the license plate number, the date and time of day, the time elapsed since the beginning of the red signal, and the vehicle speed.

Traffic Infraction Detectors in Florida

In 2010, the Florida Legislature enacted Chapter 2010-80, Laws of Florida. The law expressly preempted to the state regulation of the use of cameras for enforcing the provisions of Chapter 316, Florida Statutes.[1] The law authorized the Department of Highway Safety and Motor Vehicles (DHSMV), counties, and municipalities to authorize officials to issue notices of violations of ss. 316.074(1) and 316.075(1)(c)1., F.S., for a driver's failure to stop at a traffic signal when such violation was identified by a traffic infraction detector.[2]

Jurisdiction, Installation, and Awareness

Any traffic infraction detector installed on the highways, roads, and streets must meet requirements established by the Florida Department of Transportation (FDOT) and must be tested at regular intervals according to procedures prescribed by FDOT.[3] Municipalities may install or authorize installation of traffic infraction detectors on streets and highways in accordance with FDOT standards, and on state roads within the incorporated area when permitted by FDOT.[4] Counties may install or authorize installation of traffic infraction detectors on streets and highways in unincorporated areas of the county in accordance with FDOT standards, and on state roads in unincorporated areas of the county when permitted by FDOT.[5] DHSMV may install or authorize installation of traffic infraction detectors on any state road under the original jurisdiction of FDOT, when permitted by FDOT.[6]

If DHSMV, a county, or a municipality installs a traffic infraction detector at an intersection, the respective governmental entity must notify the public that a traffic infraction device may be in use at that intersection, including specific notification of enforcement of violations concerning

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[1] Section 316.0076, F.S.
[2] *See generally* s. 316.0083, F.S.
[3] Section 316.0776, F.S.
[4] Section 316.008(7), F.S.; s. 316.0776(1), FS
[5] *Id.*
[6] Section 321.50, F.S. As of January 2011, HSMV has not undertaken any effort to install or authorize traffic infraction detectors itself.

right turns.[7] Such signage must meet the specifications for uniform signals and devices adopted by FDOT pursuant to s. 316.0745, F.S.[8]

Notifications and Citations

If a traffic infraction detector identifies a person violating ss. 316.074(1) or 316.075(1)(c)1., F.S., the visual information is captured and reviewed by a traffic infraction enforcement officer. A notification must be issued to the registered owner of the vehicle within 30 days of the alleged infraction.[9] The notice must be accompanied by a photograph or other recorded image of the violation, and must include a statement of the vehicle owner's right to review images or video of the violation, and the time, place, and Internet location where the evidence may be reviewed.[10] Violations may not be issued if the driver is making a right-hand turn "in a careful and prudent manner."[11]

If the registered owner of the vehicle does not submit payment within 30 days of receipt of the notification described above, the traffic infraction enforcement officer must issue a traffic citation to the owner.[12] A citation must be mailed by certified mail, and must be issued no later than 60 days after the violation.[13] The citation must also include the photograph and statements described above regarding review of the photographic or video evidence.[14] The report of an officer and images provided by a traffic infraction detector are admissible in court and provide a rebuttable presumption the vehicle was used in a violation.[15]

A traffic infraction enforcement officer must provide by electronic transmission a replica of the citation data when issued under s. 316.0083, F.S., to the court having jurisdiction over the alleged offense or its traffic violations bureau within 5 days after the issuance date of the citation to the violator.[16]

Defenses

The registered owner of the motor vehicle is responsible for payment of the fine unless the owner can establish that the vehicle:

- Passed through the intersection to yield the right-of-way to an emergency vehicle or as part of a funeral procession;
- Passed through the intersection at the direction of a law enforcement officer;
- Was, at the time of the violation, in the care, custody, or control of another person;
- Passed through the intersection because the operator, under the circumstances at the time of the infraction, feared for his or her safety; or
- Received a Uniform Traffic Citation (UTC) for the alleged violation issued by a law enforcement officer.[17]

To establish any of these defenses, the owner of the vehicle must furnish an affidavit to the appropriate governmental entity that provides detailed information supporting an exemption as

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[7] Section 316.0776(2), F.S.
[8] *Id.*
[9] Section 316.0083(1)(b), F.S.
[10] *Id.*
[11] Section 316.0083(2), F.S.
[12] Section 316.0083(1)(c), F.S.
[13] *Id.*
[14] *Id.*
[15] Section 316.0083(1)(e), F.S.
[16] Section 316.650(3)(c), F.S.
[17] Section 316.0083(1)(d), F.S.

provided above, including relevant documents such as a police report (if the car had been reported stolen) or a copy of the UTC, if issued.[18] If the owner submits an affidavit that another driver was behind the wheel, the affidavit must contain the name, address, date of birth, and if known, the driver's license number, of the driver.[19] A traffic citation may be issued to this person, and the affidavit from the registered owner may be used as evidence in a further proceeding regarding that person's alleged violation of ss. 316.074(1) or 316.075(1)(c)1., F.S.[20] Submission of a false affidavit is a second degree misdemeanor.

If a vehicle is leased, the owner of the leased vehicle is not responsible for paying the citation, nor required to submit an affidavit, if the motor vehicle is registered in the name of the lessee.[21] If a person presents documentation from the appropriate governmental entity that the citation was issued in error, the clerk of court may dismiss the case and may not charge for such service.[22]

Oversight and Accountability

Beginning in 2012, each county or municipality that operates a traffic infraction detector is required to submit an annual report to DHSMV containing the following:

- the results of using the traffic infraction detector;
- the procedures for enforcement; and
- statistical data and information required by DHSMV.[23]

By December 31, 2012, and annually thereafter, DHSMV must submit a summary report to the Governor and Legislature which must contain:

- a review of the information, described above, received from the counties and municipalities;
- a description of the enhancement of the traffic safety and enforcement programs; and
- recommendations, including any necessary legislation.[24]

Fines

A fine of $158 is levied on violators who fail to stop at a traffic signal as required by ss. 316.074(1) or 316.075(1)(c)1., F.S. When the $158 fine is the result of a local government's traffic infraction detector, $75 is retained by the local government and $83 is deposited with the Department of Revenue (DOR).[25] DOR subsequently distributes the fines by depositing $70 in the General Revenue Fund, $10 in the Department of Health Administrative Trust Fund, and $3 in the Brain and Spinal Cord Injury Trust Fund.[26]

If a law enforcement officer cites a motorist for the same offense, the fine is still $158, but the revenue is distributed from the local clerk of court to DOR, where $30 is distributed to the General Revenue Fund, $65 is distributed to the Department of Health Administrative Trust

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[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] Section 318.18(15), F.S.
[23] Section 316.0083(4), F.S.
[24] *Id.*
[25] Section 318.18(15), F.S., s. 316.0083(1)(b)3., F.S.
[26] *Id.*

Fund, and $3 is distributed to the Brain and Spinal Cord Injury Trust Fund. The remaining $60 is distributed in small percentages to a number of funds pursuant to s. 318.21, F.S.[27]

Violations of ss. 316.074(1) or 316.075(1)(c)1., F.S., enforced by traffic infraction detectors may not result in points assessed against the operator's driver's license and may not be used for the purpose of setting motor vehicle insurance rates.[28]

The following chart details the state portion of collections by jurisdiction, remitted to the Department of Revenue as a result of traffic infraction detector programs in place from July 2010 through March 2011:[29]

JURISDICTION	COUNTY	Grand Total
COCOA BEACH	Brevard	$255,142
PALM BAY	Brevard	$140,270
FORT LAUDERDALE	Broward	$417,512
HALLANDALE BEACH	Broward	$60,922
PEMBROKE PINES	Broward	$98,221
HOLLYWOOD	Broward	$55,029
COLLIER COUNTY BOCC	Collier	$320,712
GREEN COVE SPRINGS	Clay	$9,047
PALM COAST	Flagler	$126,326
HILLSBOROUGH BOCC	Hillsborough	$907,903
TEMPLE TERRACE	Hillsborough	$94,122
CAMPBELLTON	Jackson	$61,503
TALLAHASSEE	Leon	$680,849
BRADENTON	Manatee	$175,836
DUNNELLON	Marion	$206,836
AVENTURA	Miami-Dade	$911,423
HOMESTEAD	Miami-Dade	$192,145
MIAMI	Miami-Dade	$335,486
MIAMI BEACH	Miami-Dade	$305,357
MIAMI GARDENS	Miami-Dade	$928,438
NORTH MIAMI	Miami-Dade	$774,888
OPA LOCKA	Miami-Dade	$223,704
WEST MIAMI	Miami-Dade	$166,830
SURFSIDE	Miami-Dade	$2,822
SWEETWATER	Miami-Dade	$137,780
APOPKA	Orange	$661,925
MAITLAND	Orange	$23,655
OCOEE	Orange	$329,842
ORANGE COUNTY BOCC	Orange	$830
ORLANDO	Orange	$1,100,568
JUNO BEACH		$47,144
PALM SPRINGS	Palm Beach	$214,638
WEST PALM BEACH	Palm Beach	$113,365
PORT RICHEY	Pasco	$410,186
KENNETH CITY	Pinellas	$151,060
HAINES CITY	Polk	$386,033
LAKELAND	Polk	$426,205
WINTER SPRINGS	Seminole	$39,342

Grand Total	**$11,493,897**
$70 General Revenue portion	**$9,695,158**
$10 Health Admin. Trust Fund	**$1,381,999**
$3 Brain & Spinal Cord Injury TF	**$415,495**

[27] Section 318.18(15), F.S.
[28] Section 322.27(3)(d)6., F.S.
[29] Data accurate as of April 18, 2011. The Department of Revenue makes its most-recent data available online at http://dor.myflorida.com/dor/taxes/red_light_camera_coll/rlcr.xls.

Litigation

Prior to the passage of Ch. 2010-80, Laws of Florida, some cities in Florida implemented camera enforcement programs of their own as local ordinances, notwithstanding concerns stated by the Attorney General's office. A 1997 Attorney General opinion concluded that nothing precludes the use of unmanned cameras to record violations of s. 316.075, F.S., but "a photographic record of a vehicle violating traffic control laws may not be used as the [sole] basis for issuing a citation for such violations."[30] A 2005 Attorney General opinion reached the same conclusion, stating that, "legislative changes are necessary before local governments may issue traffic citations and penalize drivers who fail to obey red light indications on traffic signal devices" as collected from a photographic record from unmanned cameras monitoring intersections.[31]

In at least some cases, lawsuits were successful in attacking pre-2010 traffic infraction detector ordinances on the grounds that a camera cannot "observe" a driver's commission of a traffic infraction to the extent necessary to issue a citation. Other lawsuits were unsuccessful, on the grounds that the violation was merely a violation of a municipal ordinance, not a uniform traffic citation.

A lawsuit filed in the 15th Judicial Circuit (Palm Beach) argues that as a result of ch. 2010-80 Laws of Florida, the 'burden of proof' has been unconstitutionally shifted from the state to the motorist, because the statute provides that "if the state is able to prove that a vehicle registered to the Petitioner was involved in the commission of a red light camera violation, [the owner] is presumed to be guilty."[32] The suit further asserts that "the State is not required to prove the identity of the driver of the vehicle who committed the red light camera violation."[33] In its Motion to Dismiss, the state (among other defenses) argues that the law affords adequate due process to violators by creating a "rebuttable presumption" that the owner was also the operator. The burden-shifting created by this rebuttable presumption is appropriate in "noncriminal situations... [that] contemplates reasonable notice and an opportunity to hear and be heard."[34] The court has ordered the case to the county court on procedural grounds, although a rehearing on this decision is scheduled for April 8, 2011.

Proposed Changes

The bill repeals portions of Chapter 316, F.S., created by Ch. 2010-80, Laws of Florida. The bill repeals s. 316.008(8), F.S., which authorizes local governments to install traffic infraction detectors, and s. 321.50, F.S., which authorizes DHSMV to install traffic infraction detectors. The bill repeals s. 316.0083, F.S., which details ordinance requirements, installation and notification processes, and fine distributions related to traffic infraction detectors. The bill also repeals s. 316.0776, F.S., which provides engineering specifications for installation of traffic infraction detectors.

In order to conform to these repealed sections, HB 4087 also:

- Repeals portions of ss. 316.640 and 316.650, F.S., authorizing "traffic infraction enforcement officers" to enforce s.316.0083, F.S.;

[30] Attorney General Opinion AGO 97-06.
[31] Attorney General Opinion AGO 2005-41.
[32] Action for Declaratory Judgment, *Salvatore Altimari vs. State of Florida; City of West Palm Beach,* 2010 CA 022083, (15th Cir.) A copy of this pleading is on file with the subcommittee.
[33] *Id* at 2.
[34] Defendant State of Florida's Motion to Dismiss, *Salvatore Altimari vs. State of Florida; City of West Palm Beach,* 2010 CA 022083, (15th Cir.) A copy of this pleading is on file with the subcommittee.

- Repeals a sentence from the definition of "traffic infraction detector," at s. 316.003(87), F.S., dealing with notifications of violations;
- Repeals a portion of s. 318.14, F.S., which provides distribution requirements for fines collected from traffic infraction detector programs;
- Repeals portions of s. 318.18, F.S., which provide (i) distribution requirements for fines collected from traffic infraction detector programs, (ii) an exemption process for those motor vehicle owners who have successfully appealed a violation from a traffic infraction detector, and (iii) a provision that individuals may not receive commissions or per-ticket fees from the installation of traffic infraction detector programs; and
- Repeals a sentence from s. 316.27(3)(d)6., F.S., providing that points are not placed on the license of a person receiving a violation from a traffic infraction detector.

The bill repeals two additional statutes relating to the implementation of Ch. 2010-80, Laws of Florida. It repeals s. 316.00831, F.S., which authorizes local governments to retain traffic infraction detector fines until such time as DOR creates a specific accounting process for receiving such remittances,[35] and repeals s. 316.07456, F.S., which provides a "transitional implementation" period during which traffic infraction detectors installed prior to the passage of the 2010 law are permitted to operate, and allows such non-compliant operation only until July 1, 2011.

The bill leaves intact s. 316.0076, F.S., which expressly preempts to the state regulation of the use of cameras for enforcing provisions of Chapter 316, Florida Statutes.

The bill is effective upon becoming a law.

B. SECTION DIRECTORY:

Section 1 amends s. 316.003, F.S.; revising the definition of "traffic infraction detector" to remove requirements for issuance of notifications and citations.

Section 2 repeals s. 316.008(8), F.S., relating to the installation and use of traffic infraction detectors by local governments to enforce specified provisions when a driver fails to stop at a traffic signal.

Section 3 repeals s. 316.0083, F.S., relating to the installation and use of traffic infraction detectors to enforce specified provisions when a driver fails to stop at a traffic signal.

Section 4 repeals s. 316.00831, F.S., removing provisions that authorize the Department of Highway Safety and Motor Vehicles, a county, or a municipality to retain traffic infraction detector program fines until the Department of Revenue is capable of receiving such fines.

Section 5 repeals s. 316.07456, F.S., relating to transitional implementation of traffic infraction detectors.

Section 6 amends s. 316.0776, F.S., relating to placement and installation of traffic infraction detectors.

[35] The Department of Revenue notified local governments and HSMV that it was prepared to accept remittances from traffic infraction detectors as of August 1, 2010.

Section 7 repeals s. 321.50, F.S., relating to the Department of Highway Safety and Motor Vehicles authorization to install traffic infraction detectors.

Section 8 amends s. 316.640, F.S., to remove certain traffic infraction detector enforcement provisions.

Section 9 amends 316.650, F.S., to remove certain traffic infraction detector enforcement provisions.

Section 10 amends s. 318.14, F.S., removing a reference to traffic infraction detector enforcement.

Section 11 amends s. 318.18, F.S., removing references to traffic infraction detector enforcement and procedures for disposition of citations or penalties.

Section 12 amends s. 322.27, F.S., removing references to traffic infraction detector penalties.

Section 13 Provides an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   As indicated in the body of the analysis, from July 2010 through March 2011, fines collected from violations of traffic infraction detectors have resulted in approximately $11.5 million, distributed as follows: $9.7 million to the General Revenue Fund; $1.4 million to the Department of Health Administrative Trust Fund; and $0.4 million the Brain and Spinal Cord Injury Program Trust Fund.

   The bill's repeal of fines levied by traffic infraction detectors would eliminate the amount going into these funds. Revenue from fines levied as a result of a law enforcement officer's citation, as opposed to a traffic infraction detector, would continue to be distributed to these funds.

   Please see the fiscal comments for estimating conference information relating to fiscal impacts in future years.

2. Expenditures:

   Any expenditures using the revenues noted above would have to be eliminated or funded using another source of revenue.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Current law requires $83 out of each $158 traffic infraction fine (approximately 52.5 percent) be remitted to the Department of Revenue, with local governments retaining $75 (approximately 47.5 percent). Based on this proportion, between July 2010 and March 2011, approximately $10.4 million has been retained by local governments that have installed traffic infraction detectors. The bill would eliminate the source of this revenue.

Please see the fiscal comments for estimating conference information relating to fiscal impacts in future years.

2. Expenditures:

It is likely that in each jurisdiction, some percentage of the revenue raised by detectors was used to recover initial costs of implementing the program and some percentage is used on monthly maintenance or other program costs.

For those local governments that have implemented traffic infraction detector programs as a result of the 2010 legislation, the bill would decrease the revenues currently expected by those governments, but would also reduce expenses related to ongoing enforcement and legal challenges.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill removes the possibility of private motor vehicle operators being issued a $158 fine for violating a red light camera ordinance.

D. FISCAL COMMENTS:

The Revenue Estimating Conference estimated the revenue impact of the repeal provisions of the bill deleting the $158 penalty when violations are issued by a HSMV, county, or municipal traffic infraction enforcement officer through the use of traffic infraction detectors. It assumes repeal of statutory authority results in loss of authority to administer local traffic infraction detector programs would result in the State's revenue reduction ranging from $86.3 million in FY 2011-2012 to $142.3 million in FY 2014-2015, and the loss in local revenue would range from $71.7 million in FY 2012-2013 to $118 million in FY 2014-2015.

	FY 2011-12 Cash	FY 2012-13 Cash	FY 2013-14 Cash	FY 2014-15 Cash
General Revenue	(70.1)	(81.7)	(96.0)	(115.6)
State Trust*	(16.2)	(19.2)	(22.3)	(26.7)
Total State Impact	(86.3)	(100.9)	(118.3)	(142.3)
Total Local Impact	(71.7)	(83.4)	(98.1)	(118.0)
Total Impact	(158.0)	(184.3)	(216.4)	(260.3)

*** State Trust Detail**	**FY 11-12**	**FY 12-13**	**FY 13-14**	**FY 14-15**
DOH Administrative TF	(8.7)	(10.2)	(12.0)	(14.4)
Brain & Spinal Cord Injury TF	(2.7)	(3.1)	(3.6)	(4.3)
Clerk of Court TF	(3.1)	(3.9)	(4.4)	(5.3)
State Court Revenue TF	(0.6)	(0.6)	(0.7)	(0.9)
State Attorney TF	(0.4)	(0.5)	(0.5)	(0.6)
Public Defender TF	(0.2)	(0.2)	(0.3)	(0.4)
Other	(0.6)	(0.7)	(0.8)	(0.8)
State Trust Total	(16.2)	(19.2)	(22.3)	(26.8)

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because the bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   The Department of Health has determined that ch. 64J-2.019, Fla. Admin. Code, would need to be amended by the administrative rulemaking process to remove existing references to the traffic infraction detector program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 2011, the Economic Affairs Committee reported the bill favorably with one amendment. The amendment modified the effective date of the bill from July 1, 2011 to "upon becoming a law."

A bill to be entitled

An act relating to traffic infraction detectors; amending s. 316.003, F.S.; revising the definition of "traffic infraction detector" to remove requirements for issuance of notifications and citations; repealing ss. 316.008(8), 316.0083, 316.00831, and 321.50, F.S., relating to the installation and use of traffic infraction detectors to enforce specified provisions when a driver fails to stop at a traffic signal; removing provisions that authorize the Department of Highway Safety and Motor Vehicles, a county, or a municipality to use such detectors; repealing s. 316.07456, F.S., relating to transitional implementation of such detectors; repealing s. 316.0776, F.S., relating to placement and installation of traffic infraction detectors; amending ss. 316.640, 316.650, 318.14, 318.18, and 322.27, F.S., relating to enforcement by such detectors, procedures for disposition of citations, penalties, and distribution of proceeds; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (87) of section 316.003, Florida Statutes, is amended to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context

otherwise requires:

(87) TRAFFIC INFRACTION DETECTOR.—A vehicle sensor installed to work in conjunction with a traffic control signal and a camera or cameras synchronized to automatically record two or more sequenced photographic or electronic images or streaming video of only the rear of a motor vehicle at the time the vehicle fails to stop behind the stop bar or clearly marked stop line when facing a traffic control signal steady red light. ~~Any notification under s. 316.0083(1)(b) or traffic citation issued by the use of a traffic infraction detector must include a photograph or other recorded image showing both the license tag of the offending vehicle and the traffic control device being violated.~~

Section 2. Subsection (8) of section 316.008, Florida Statutes, is repealed.

Section 3. Section 316.0083, Florida Statutes, is repealed.

Section 4. Section 316.00831, Florida Statutes, is repealed.

Section 5. Section 316.07456, Florida Statutes, is repealed.

Section 6. Section 316.0776, Florida Statutes, is repealed.

Section 7. Section 321.50, Florida Statutes, is repealed.

Section 8. Paragraph (b) of subsection (1) and paragraph (a) of subsection (5) of section 316.640, Florida Statutes, are amended to read:

316.640 Enforcement.—The enforcement of the traffic laws

of this state is vested as follows:

(1) STATE.—

(b)1. The Department of Transportation has authority to enforce on all the streets and highways of this state all laws applicable within its authority.

2.a. The Department of Transportation shall develop training and qualifications standards for toll enforcement officers whose sole authority is to enforce the payment of tolls pursuant to s. 316.1001. Nothing in this subparagraph shall be construed to permit the carrying of firearms or other weapons, nor shall a toll enforcement officer have arrest authority.

b. For the purpose of enforcing s. 316.1001, governmental entities, as defined in s. 334.03, which own or operate a toll facility may employ independent contractors or designate employees as toll enforcement officers; however, any such toll enforcement officer must successfully meet the training and qualifications standards for toll enforcement officers established by the Department of Transportation.

~~3. For the purpose of enforcing s. 316.0083, the department may designate employees as traffic infraction enforcement officers. A traffic infraction enforcement officer must successfully complete instruction in traffic enforcement procedures and court presentation through the Selective Traffic Enforcement Program as approved by the Division of Criminal Justice Standards and Training of the Department of Law Enforcement, or through a similar program, but may not necessarily otherwise meet the uniform minimum standards established by the Criminal Justice Standards and Training~~

~~Commission for law enforcement officers or auxiliary law enforcement officers under s. 943.13. This subparagraph does not authorize the carrying of firearms or other weapons by a traffic infraction enforcement officer and does not authorize a traffic infraction enforcement officer to make arrests. The department's traffic infraction enforcement officers must be physically located in the state.~~

(5)(a) Any sheriff's department or police department of a municipality may employ, as a traffic infraction enforcement officer, any individual who successfully completes instruction in traffic enforcement procedures and court presentation through the Selective Traffic Enforcement Program as approved by the Division of Criminal Justice Standards and Training of the Department of Law Enforcement, or through a similar program, but who does not necessarily otherwise meet the uniform minimum standards established by the Criminal Justice Standards and Training Commission for law enforcement officers or auxiliary law enforcement officers under s. 943.13. Any such traffic infraction enforcement officer who observes the commission of a traffic infraction or, in the case of a parking infraction, who observes an illegally parked vehicle may issue a traffic citation for the infraction when, based upon personal investigation, he or she has reasonable and probable grounds to believe that an offense has been committed which constitutes a noncriminal traffic infraction as defined in s. 318.14. ~~In addition, any such traffic infraction enforcement officer may issue a traffic citation under s. 316.0083. For purposes of enforcing s. 316.0083, any sheriff's department or police~~

~~department of a municipality may designate employees as traffic infraction enforcement officers.~~ The traffic infraction enforcement officers must be physically located in the county of the respective sheriff's or police department.

Section 9. Paragraphs (a) and (c) of subsection (3) of section 316.650, Florida Statutes, are amended to read:

316.650 Traffic citations.—

(3)(a) Except for a traffic citation issued pursuant to s. 316.1001 ~~or s. 316.0083~~, each traffic enforcement officer, upon issuing a traffic citation to an alleged violator of any provision of the motor vehicle laws of this state or of any traffic ordinance of any municipality or town, shall deposit the original traffic citation or, in the case of a traffic enforcement agency that has an automated citation issuance system, the chief administrative officer shall provide by an electronic transmission a replica of the citation data to a court having jurisdiction over the alleged offense or with its traffic violations bureau within 5 days after issuance to the violator.

~~(c) If a traffic citation is issued under s. 316.0083, the traffic infraction enforcement officer shall provide by electronic transmission a replica of the traffic citation data to the court having jurisdiction over the alleged offense or its traffic violations bureau within 5 days after the date of issuance of the traffic citation to the violator.~~

Section 10. Subsection (2) of section 318.14, Florida Statutes, is amended to read:

318.14 Noncriminal traffic infractions; exception;

procedures.—

(2) Except as provided in s. ~~ss.~~ 316.1001(2) ~~and 316.0083~~, any person cited for a violation requiring a mandatory hearing listed in s. 318.19 or any other criminal traffic violation listed in chapter 316 must sign and accept a citation indicating a promise to appear. The officer may indicate on the traffic citation the time and location of the scheduled hearing and must indicate the applicable civil penalty established in s. 318.18. For all other infractions under this section, except for infractions under s. 316.1001, the officer must certify by electronic, electronic facsimile, or written signature that the citation was delivered to the person cited. This certification is prima facie evidence that the person cited was served with the citation.

Section 11. Subsection (15) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(15)~~(a)1.~~ One hundred and fifty-eight dollars for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal ~~and when enforced by a law enforcement officer~~. Sixty dollars shall be distributed as provided in s. 318.21, $30 shall be distributed to the General Revenue Fund, $3 shall be remitted to the Department of Revenue for deposit into the Brain and Spinal Cord Injury Trust Fund, and the remaining $65 shall be remitted to the Department of Revenue for deposit into the Administrative Trust Fund of the

Department of Health.

~~2. One hundred and fifty-eight dollars for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by the department's traffic infraction enforcement officer. One hundred dollars shall be remitted to the Department of Revenue for deposit into the General Revenue Fund, $45 shall be distributed to the county for any violations occurring in any unincorporated areas of the county or to the municipality for any violations occurring in the incorporated boundaries of the municipality in which the infraction occurred, $10 shall be remitted to the Department of Revenue for deposit into the Department of Health Administrative Trust Fund for distribution as provided in s. 395.4036(1), and $3 shall be remitted to the Department of Revenue for deposit into the Brain and Spinal Cord Injury Trust Fund.~~

~~3. One hundred and fifty-eight dollars for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by a county's or municipality's traffic infraction enforcement officer. Seventy-five dollars shall be distributed to the county or municipality issuing the traffic citation, $70 shall be remitted to the Department of Revenue for deposit into the General Revenue Fund, $10 shall be remitted to the Department of Revenue for deposit into the Department of Health Administrative Trust Fund for distribution as provided in s. 395.4036(1), and $3 shall be remitted to the Department of Revenue for deposit into the Brain and Spinal Cord Injury Trust Fund.~~

~~(b)~~ Amounts deposited into the Brain and Spinal Cord

Injury Trust Fund pursuant to this subsection shall be distributed quarterly to the Miami Project to Cure Paralysis and shall be used for brain and spinal cord research.

~~(c) If a person who is cited for a violation of s. 316.074(1) or s. 316.075(1)(c)1., as enforced by a traffic infraction enforcement officer under s. 316.0083, presents documentation from the appropriate governmental entity that the traffic citation was in error, the clerk of court may dismiss the case. The clerk of court shall not charge for this service.~~

~~(d) An individual may not receive a commission or per-ticket fee from any revenue collected from violations detected through the use of a traffic infraction detector. A manufacturer or vendor may not receive a fee or remuneration based upon the number of violations detected through the use of a traffic infraction detector.~~

~~(e)~~ Funds deposited into the Department of Health Administrative Trust Fund under this subsection shall be distributed as provided in s. 395.4036(1).

Section 12. Paragraph (d) of subsection (3) of section 322.27, Florida Statutes, is amended to read:

322.27 Authority of department to suspend or revoke license.—

(3) There is established a point system for evaluation of convictions of violations of motor vehicle laws or ordinances, and violations of applicable provisions of s. 403.413(6)(b) when such violations involve the use of motor vehicles, for the determination of the continuing qualification of any person to operate a motor vehicle. The department is authorized to suspend

the license of any person upon showing of its records or other good and sufficient evidence that the licensee has been convicted of violation of motor vehicle laws or ordinances, or applicable provisions of s. 403.413(6)(b), amounting to 12 or more points as determined by the point system. The suspension shall be for a period of not more than 1 year.

(d) The point system shall have as its basic element a graduated scale of points assigning relative values to convictions of the following violations:

1. Reckless driving, willful and wanton—4 points.

2. Leaving the scene of a crash resulting in property damage of more than $50—6 points.

3. Unlawful speed resulting in a crash—6 points.

4. Passing a stopped school bus—4 points.

5. Unlawful speed:

a. Not in excess of 15 miles per hour of lawful or posted speed—3 points.

b. In excess of 15 miles per hour of lawful or posted speed—4 points.

6. A violation of a traffic control signal device as provided in s. 316.074(1) or s. 316.075(1)(c)1.—4 points. ~~However, no points shall be imposed for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by a traffic infraction enforcement officer. In addition, a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by a traffic infraction enforcement officer may not be used for purposes of~~

~~setting motor vehicle insurance rates.~~

7. All other moving violations (including parking on a highway outside the limits of a municipality)—3 points. However, no points shall be imposed for a violation of s. 316.0741 or s. 316.2065(12); and points shall be imposed for a violation of s. 316.1001 only when imposed by the court after a hearing pursuant to s. 318.14(5).

8. Any moving violation covered above, excluding unlawful speed, resulting in a crash—4 points.

9. Any conviction under s. 403.413(6)(b)—3 points.

10. Any conviction under s. 316.0775(2)—4 points.

Section 13. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7219 PCB SAC 11-01 School Food Service and Nutrition Programs
SPONSOR(S): Education Committee; State Affairs Committee; McKeel and others.
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1312

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee	18 Y, 0 N	Kaiser	Hamby
1) Education Committee	15 Y, 0 N, As CS	Ourand	Klebacha
2) Appropriations Committee		Massengale	Leznoff

SUMMARY ANALYSIS

The bill transfers the school food and nutrition programs from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (DACS). The transfer includes all powers, duties, functions, records, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the administration of the school food and nutrition programs. The bill also transfers the Food and Nutrition Services Trust Fund in the DOE to the DACS.

The National School Lunch Program (NSLP), the School Breakfast Program (SBP), the Summer Food Service Program (SFSP), the Commodity Food Distribution Program, and The Emergency Food Assistance Program (TEFAP) are all federal programs administered by the U.S. Department of Agriculture (USDA) at the national level. At the state level in Florida, the NSLP, SBP, and SFSP are administered by the DOE, while the Commodity Food Distribution Program and TEFAP are administered by the DACS.

The bill authorizes the DACS to conduct, supervise, and administer all school food and nutrition programs that are carried out using federal or state funds or funds from other sources, and to coordinate with the federal government to take advantage of any federal financial allotments and assistance that would benefit the school food and nutrition programs. The DACS may act as an agent of, or contract with, the federal government, another state agency, or any county or municipal government regarding the administration of the school food and nutrition program, including the distribution of funds provided by the federal government in support of the school food and nutrition program.

The bill requires each school district to submit an updated copy of its wellness policy and physical education policy to the DOE and the DACS when a change or revision is made. The DACS, as well as the DOE, must provide website links to information regarding the nutritional content of foods and beverages and to healthful food choices in accordance with the dietary guidelines of the USDA.

The bill requires the DOE, in consultation with the DACS, to develop and submit a waiver request to the USDA within 30 days of the bill becoming law. The bill also requires the DOE to provide notice of the USDA's response to certain officials.

For the 2010-11 fiscal year, Florida's matching funds include $8.9 million for the school lunch program; $7.6 million for the school breakfast program, and $344,433 for cafeteria inspection fees; federal reimbursement is estimated to be $804 million. In addition, there are federal indirect earnings as a result of participation in the NSLP, which are used to support department-wide management activities.

The bill provides multiple effective dates. The provision requiring the DOE to submit a waiver request and the provision providing the effective dates are effective upon becoming law. The effective date for all other provisions is January 1, 2012, and is contingent upon the USDA granting the waiver request on or before November 1, 2011.

See FISCAL COMMENTS and DRAFTING ISSUES OR OTHER COMMENTS.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The National School Lunch Program (NSLP), the School Breakfast Program (SBP), the Summer Food Service Program (SFSP), the Commodity Food Distribution Program, and The Emergency Food Assistance Program (TEFAP) are all federal programs administered by the U.S. Department of Agriculture (USDA) at the national level. At the state level in Florida, the NSLP, SBP, and SFSP are administered by the Department of Education (DOE), while the Commodity Food Distribution Program and TEFAP are administered by the Department of Agriculture and Consumer Services (DACS).

Programs Administered by the DOE

National School Lunch Program (NSLP)

The NSLP is a federally assisted meal program that provides nutritionally balanced, low-cost or free lunches to more than 31 million children each school day.[1]

School districts and independent schools that choose to take part in the NSLP receive cash subsidies and donated commodities from the USDA for each meal those schools serve. In return, those schools must serve lunches that meet federal requirements, and offer free or reduced-price lunches to eligible children. School lunches must meet the applicable recommendations of the Dietary Guidelines for Americans, which recommend that no more than 30 percent of an individual's calories come from fat, and less than 10 percent from saturated fat. Regulations also require school lunches to provide one-third of the Recommended Dietary Allowances of protein, Vitamin A, Vitamin C, iron, calcium, and calories. While the NSLP must meet federal nutrition requirements, the decision regarding the specific foods to serve and how they are prepared are made by local school food authorities.[2]

Any child at a participating school may purchase a meal through the NSLP. Children from families with incomes at or below 130 percent of the poverty level[3] are eligible for free meals. Children from families with incomes between 130 percent and 185 percent of the poverty level are eligible for reduced-price meals.[4] Children from families with incomes over 185 percent of poverty pay a full-price, though their meals are still subsidized to some extent. Local school food authorities set their own prices for full-price (paid) meals, but must operate their meal services as non-profit programs.[5]

Children whose families participate in the Supplemental Nutrition Assistance Program (SNAP),[6] Temporary Assistance for Needy Families (TANF), or the Food Distribution Program on Indian Reservations (FDPIR) are categorically eligible for free meals through the NSLP. Direct certification is designed to reduce the need for categorically eligible households to complete applications to receive meals through the NSLP. This is accomplished by automatically providing documentation showing categorical eligibility for NSLP for children coming from households receiving SNAP, TANF, or FDPIR benefits. Currently, states are only mandated to provide direct certification for SNAP beneficiaries, but are permitted to do so for TANF and FDPIR recipients.[7]

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[1] Based on information from fiscal year 2009. United States Department of Agriculture, *National School Lunch Program Fact Sheet*, *available at,* http://www.fns.usda.gov/cnd/lunch/AboutLunch/NSLPFactSheet.pdf (last visited April 6, 2011).

[2] *Id.*

[3] For the period July 1, 2010, through June 30, 2011, 130 percent of the poverty level is $28,665 for a family of four; 185 percent is $40,793. *Id.*

[4] Reduced-price meals may not cost more than 40 cents. *Id.*

[5] *Id.*

[6] Formerly referred to as the Food Stamp Program.

[7] United States Department of Agriculture, *Food and Nutrition Services, Direct Certification in the National School Lunch Program: State Implementation Progress Report to Congress*, October 2009, *available at,* http://www.fns.usda.gov/ora/menu/published/CNP/FILES/NSLPDirectCertification2009.pdf (last visited April 8, 2011).

To participate in the school lunch and breakfast programs in Florida, schools must apply through the DOE and complete the necessary requirements for participation. The requirements include:

- Completing the application process.
- Attending "Child Nutrition" training.
- Maintaining documentation and verification of children's eligibility category and counting meals by eligibility category (free, reduced price, and paid meals).
- Maintaining meal production records and inventory records that document the amount and types of food served.
- Utilizing one of the four menu planning options.
- Maintaining records of on-site accountability reviews.
- Maintaining records of all program income and expenditures.[8]

Once approved, the schools receive funding from the DOE for each lunch and breakfast meal served as long as the schools meet established state and federal regulations.[9] The DOE conducts periodic reviews of the school lunch and breakfast programs to ensure that state and federal regulations are being met. The DOE has authority for the administration and operation of the school food service programs.[10]

School Breakfast Program (SBP)

Florida law requires the SBP to be offered in all elementary public and charter schools. The SBP must be offered in schools in which 80 percent or more of the students are eligible for free or reduced-price meals. District school boards are encouraged to provide universal-free school breakfast meals to all students in each elementary, middle, and high school. The schools can choose to make the breakfast meals available at alternate areas on the school campus, such as kiosks near bus ramps.[11]

School districts set the prices for the breakfast meals annually. Unless the district school board approves lower rates, the cost of the breakfast meals may not exceed the combined federal reimbursements and state allocations.[12]

District school boards may approve or disapprove a policy, after taking public testimony, making universal-free school breakfast meals available to all students in each middle and high school in which 80 percent or more of the students are eligible for free or reduced-price meals. The breakfast meal must be available for students arriving at school on the school bus less than 15 minutes before the first bell rings, in which case the student will be allowed at least 15 minutes to eat the breakfast.[13]

School districts are responsible for disseminating information annually to students regarding the district's school breakfast program through school announcements and written notice provided to all parents.[14]

School districts may operate the SBP providing for food preparation at the school site or in central locations with distributions to designated satellite schools or any combination thereof.[15]

The Commissioner of Education must make every reasonable effort to ensure that schools designated as "severe need" schools receive the highest rate of reimbursement for which they are entitled for each breakfast meal served.[16] The DOE is responsible for allocating the monies appropriated by the

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[8] Florida Department of Education, *National School Lunch and Breakfast Program: Program Description and Requirements*, *available at,* http://www.fldoe.org/FNM/natlschoollunch/descriptions.asp (last visited April 6, 2011).

[9] The state must adhere to a matching funds requirement in the National School Lunch Act. For 2010-11, the state's matching requirement was $8.9 million, which came from the General Revenue Fund.

[10] Florida Department of Education, *National School Lunch and Breakfast Program*, *supra* note 8.

[11] Section 1006.06, F.S.

[12] Section 1006.06(5)(b), F.S.

[13] Section 1006.06(5)(c)-(d), F.S.

[14] Section 1006.06(5)(e), F.S.

[15] Section 1006.06(5)(f), F.S.

[16] Section 1006.06(5)(g), F.S. A "severe needs" school is a school that served 40 percent or more of its lunches as free and reduced in the second preceding year. 7 C.F.R. 220.9(d)(2).

Legislature each year to the school districts based upon each district's total number of free and reduced-price breakfast meals served.[17]

Children's Summer Nutrition Program (SNP)
The SNP, also known as the "Ms. Willie Ann Glenn Act," operates through the NSLP or SBP as a way of feeding children, 18 years of age or younger, from low-income areas during the summer months.[18]

Florida law directs school districts to develop a plan to sponsor a SNP with operational sites within 5 miles of at least one elementary school with 50 percent or more of the students eligible for free or reduced-price school meals and for a duration of 35 consecutive days. Secondary sites must be within 10 miles of each elementary school with 50 percent of more of the students eligible for free or reduced-price school meals.[19]

A district school board may opt out of sponsoring a SNP. To qualify for the exemption, the district must include the issue on an agenda at a regular or special district school board meeting that is publicly noticed, provide residents an opportunity to participate in the discussion, and vote on whether to be exempt from sponsoring a SNP. After deciding to become exempt, the district school board must notify the Commissioner of Education within 10 days. The district must revisit the decision to be exempt each year and notify the Commissioner of Education accordingly.[20]

If a district school board chooses to be exempt from the SNP, the board may encourage not-for-profit entities to sponsor the SNP. Neither the district school board, school district, nor the Commissioner of Education may be held responsible for any liability as a result of a not-for-profit entity failing to complete the requirements of the SNP.[21]

The superintendent of schools may cooperate with municipal and county governmental agencies and private, not-for-profit leaders in identifying an entity and location to sponsor the SNP.[22] By February 15 of each year, the DOE must provide each district school board with a list of local organizations that have filed letters of intent to participate in the SNP for a district school board to be able to determine how many sites are needed to serve the children and where to place each site.[23] Each school district with a SNP must report where the SNP will be located to the DOE by April 15 of each year.

Seamless Summer Option (SSO)
School districts participating in the NSLP or SBP are eligible to apply for the SSO to serve free meals to low-income children, 18 years of age or younger, during summer and other school vacation periods. This option reduces paperwork and administrative burdens. The reimbursement rates are the same as with the NSLP and the SBP.[24]

Special Milk Program (SMP)
The SMP provides milk to children in schools, child care institutions, and eligible camps that do not participate in other federal child nutrition meal service programs. The program reimburses schools and institutions for the milk they serve. Schools in the NSLP or the SBP may also participate in the SMP to provide milk to children in half-day pre-kindergarten and kindergarten programs where children do not have access to school meal programs.[25]
Fresh Fruit and Vegetable Program (FFVP)

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[17] Section 1006.06(5)(h), F.S.
[18] Section 1006.0606, F.S.
[19] Section 1006.0606(2), F.S.
[20] Section 1006.0606(3)(a)-(b), F.S.
[21] Section 1006.0606(3)(c), F.S.
[22] Section 1006.0606(4), F.S.
[23] Section 1006.0606(5), F.S.
[24] United States Department of Agriculture, *National School Lunch Program's Seamless Summer Option Questions and Answers 2009 Edition, available at,* http://www.fns.usda.gov/cnd/Governance/Policy-Memos/2009/SP_27-2009_os.pdf (last visited April 6, 2011).
[25] United States Department of Agriculture, *Special Milk Program Fact Sheet, available at,* http://www.fns.usda.gov/cnd/milk/AboutMilk/SMPFactSheet.pdf (last visited April 6, 2011).

The FFVP provides all children in participating schools with a variety of free fresh fruits and vegetables outside of the breakfast and lunch service. It is an effective and creative way of introducing fresh fruits and vegetables as healthy snack options.[26]

Florida Farm Fresh Schools Program (FFSP)
The FFSP was created to address the need of school children for not only nutritious food for healthy physical and intellectual development, but also to combat diseases related to poor nutrition and obesity. The FFSP requires the DOE to develop policies pertaining to school food services that encourage school districts to buy fresh and high-quality foods grown in the state, when feasible. The program encourages farmers in the state to sell their products to school districts and schools. The school districts and schools are encouraged to select foods based upon maximum nutritional content and to buy organic food products when feasible. The DOE must provide outreach, guidance, and training to the school districts, schools, and various other organizations[27] involved in school food services regarding the benefits of fresh food products grown in the state.[28]

Other
Each school district must submit an updated copy of its wellness policy and physical education policy to the DOE when a change or revision is made. The DOE must provide website links to information regarding the nutritional content of foods and beverages and to healthful food choices in accordance with the dietary guidelines of the USDA.[29]

DOE Administration of Child Nutrition Programs
The DOE employs 45 staff with an administrative budget of $6,461,745[30] to administer the school and child nutrition programs for the following sponsors:

- 248 NSLP sponsors, including 3,578 breakfast sites, 3,651 lunch sites, and 1,655 snack sites;
- 135 SNP and SSO sponsors;
- 18 SMP sponsors; and
- 133 elementary schools that are participating in the 2010-2011 FFVP.[31]

In addition, the DOE:

- Operates and maintains a web-based computer application to process $745 million of claims reimbursements, sponsor applications, administrative program reviews, and federal reports.
- Provides sponsor training and technical support in child nutrition, food safety, and administrative services for all sponsors.
- Conducts on-site monitoring and administrative reviews of program administration and meal services for all sponsors.
- Evaluates and provides nutrient analysis of breakfast and lunch menus for all sponsors.
- Provides outreach throughout the state to attract potential sponsors for the SNP and increase participation in the SBP.[32]

To provide these services, the DOE works with the Florida Atlantic University to administer two grants:

- $700,000 to deliver on-site training in a variety of areas, including producing and maintaining appropriate food service records, food preparation and safety, preparing and serving fresh fruits and vegetables, and the production of training videos; and
- $900,000 to observe and evaluate the scope of difficulties related to compliance, provide technical assistance to individual sponsors, provide technical assistance to companies that contract to deliver food products and services, assist sponsors with completing paperwork and

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[26] United States Department of Agriculture, *Fresh Fruit and Vegetable Program (FFVP)*, *available at,* http://www.fns.usda.gov/cga/FactSheets/FFVP_Quick_Facts.htm (last visited April 6, 2011); Florida Department of Education, *Fresh Fruit and Vegetable Program*, *available at,* http://www.fldoe.org/FNM/ffvp/ (last visited April 8, 2011).
[27] School food service directors, parent and teacher organizations, and students.
[28] Section 1006.06(6), F.S.
[29] Section 1003.453(1)-(2), F.S.
[30] Based on the 2010-11 fiscal year.
[31] Department of Education Analysis at 6.
[32] *Id.*

taking the steps necessary to achieve and maintain regulatory compliance related to free and reduced meals, and the maintenance and technical support of DOE's "FUNDamental" financial software, which is used to measure critical indicators of the financial effectiveness of a sponsor's child nutrition program.[33]

The DOE has formed several alliances and initiatives to help meet nutrition guideline requirements, combat childhood obesity, and promote interagency participation and coordination.[34] The DOE's Office of Healthy Schools also helps to provide nutrition education to school districts throughout the state.[35]

Programs Administered by the DACS

The Commodity Program Portion of the NSLP and the SNP
The DACS administers the Commodity Program portion of the NSLP and the SNP.[36] The Richard B. Russell National School Lunch Act requires that no less than 12 percent of the federal support received by schools pursuant to the NSLP each year must be in the form of USDA food (commodities).[37]

Each year, the DACS receives an allocation from the USDA based upon the number of meals served the previous year. As the state agency responsible for ordering the commodities for the schools, the DACS provides information to the schools on which foods the USDA intends to acquire, determines from the schools how much, if any, of each of the commodities available they would like to requisition and orders the foods. The USDA is responsible for procuring and purchasing these commodities.[38]

During school year 2010, the DACS provided more than 69 million pounds of USDA food valued at approximately $55,516,427 to about 193 participating schools (public school districts, private schools, residential child care institutions, etc.) throughout the state. An additional $4,442,500 in fresh fruits and vegetables was also provided.

In 2011, the DACS will provide more than 75 million pounds of USDA food, valued at more than $66 million, in addition to another $3,077,000 in fresh fruits and vegetables to participating Florida schools.

The DACS developed and maintains the Florida Farm to School Program website to bring schools and farmers together to assess each other's needs and determine how best to meet those needs. As a founding member of the Farm to School Alliance, the DACS participates and provides input at Alliance meetings. For the last three years, the DACS has participated in various panel presentations and exhibitions promoting the consumption of fresh produce at the Florida Small Farms and Alternative Enterprises Conference.

For years, the DACS has been an active participant in the Florida School Nutrition Association annual conference. In addition to conducting workshops on the administration of the USDA foods, the DACS, in conjunction with the Department of Defense, is an exhibitor at the conference, promoting the consumption of fresh produce, in particular Florida fresh fruits and vegetables, in schools. At the 2011 conference, the DACS' chef will be demonstrating ways to entice students to consume more Florida fruits and vegetables.

In keeping with the DACS's mission of providing healthy nutrition from the time children are young, the DACS has developed the Fresh From Florida Kids Program. The program is designed to help parents instill healthy eating habits in their children who are just beginning to eat solid food. Research suggests

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[33] *Id.*
[34] *Id.* at 6-7.
[35] *Id.* at 7.
[36] Office of Program Policy Analysis and Government Accountability (OPPAGA), *No changes are necessary to the State's Organization of School Nutrition Programs*, Report No. 09-03, January 2009, *available at,* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0903rpt.pdf (last visited April 6, 2011).
[37] 42 U.S.C. 1755(e).
[38] OPPAGA, *supra* note 36.

that taste preferences and eating habits are fully developed by the time a child is three years old, so starting early is essential.[39]

As children get older, the DACS introduces them to good nutrition through Xtreme Cuisine. Xtreme Cuisine Cooking School teaches children about nutrition and introduces them to an array of fresh, nutritious foods available in Florida. The program can be used by teachers, extension agents, health and family services professionals, and many others who work with Florida youth to teach children the nutritional attributes and other pertinent information about Florida agricultural commodities while providing basic cooking skills.[40]

Commodity Food Distribution Program
Through the Schools/Nutrition Commodity Programs, the USDA purchases foods through direct appropriations from Congress, and under surplus-removal and price-support activities. The foods are distributed to state agencies for use by school food authorities participating in the NSLP.[41] In Florida, DACS is the agency responsible for commodity distribution.[42]

The Emergency Food Assistance Program (TEFAP)
TEFAP is a federal program that helps improve the diets of low-income Americans, regardless of age, by providing them with emergency food and nutrition assistance at no cost. Under TEFAP, commodity foods are made available by the USDA to the states. The states provide the food to eligible recipient agencies that distribute it to the needy through local emergency feeding organizations such as food banks, food pantries, soup kitchens, or other feeding sights.[43]

In Florida, the recipient agencies are selected by the DACS, every four years, as a result of a competitive procurement process or bid. TEFAP commodities are provided to each of the contracted recipient agencies according to the counties they serve. Each county's share is determined using a formula that bases the allocation on each county's relative share of the state's total number of persons with incomes below the poverty line and the total number of unemployed persons. This formula, which is similar to the one used by the federal government to allocate resources to the states, is adjusted annually.[44]

Office of Program Policy and Government Accountability (OPPAGA), Report No. 09-02[45]
In January 2009, the OPPAGA reviewed the practices of school districts for ways to reduce their food service program costs. In the report, *Best Practices Could Help School Districts Reduce Their Food Service Program Costs*, the OPPAGA found:

- Districts should maximize the use of USDA commodities.
- Districts should ensure that program employees have access to policies and procedures.
- Districts should ensure that the food service staff receives appropriate training.
- Districts should promote their food service program.
- Districts should identify and reduce participation barriers.

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[39] Florida Department of Agriculture and Consumer Services, *Fresh From Florida Kids*, *available at,* http://www.freshfromfloridakids.com/ (last visited April 8, 2011).
[40] Florida Department of Agriculture and Consumer Services, *Xtreme Cuisine Cooking School*, *available at,* http://www.florida-agriculture.com/xtreme.htm (last visited April 8, 2011).
[41] United States Department of Agriculture, *Schools/CN Commodity Programs*, *available at,* http://www.fns.usda.gov/fdd/programs/schcnp/schcnp_faqs.htm (last visited April 6, 2011).
[42] Section 570.072, F.S.
[43] United States Department of Agriculture, *TEFAP Frequently Asked Questions*, *available at,* http://www.fns.usda.gov/fdd/programs/tefap/tefap_faqs.htm (last visited April 6, 2011).
[44] Florida Department of Agriculture, *The Emergency Food Assistance Program (TFAP)*, *available at,* http://www.florida-agriculture.com/foodprograms/emergency_food_program.htm (last visited April 6, 2011).
[45] Office of program Policy and Government Accountability (OPPAGA), *Best Practices Could Help School Districts Reduce Their Food Service Program Costs*, Report No. 09-02, January 2009, *available at,* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0902rpt.pdf (last visited April 6, 2011).

Office of Program Policy and Government Accountability (OPPAGA), Report No. 09-03[46]
The OPPAGA reviewed Florida's school nutrition programs in January 2009. In the report, *No Changes Are Necessary to the State's Organization of School Nutrition Programs*, the OPPAGA found:

- The current structure aligns key program activities with the core missions of state agencies.
- There is no compelling reason to change the current structure of Florida's school nutrition programs.
- Changing the structure would not produce identifiable cost savings or other substantial benefits.
- Transferring programs and functions from one agency to another would likely result in short-term disruptions in services to school districts.
- There would need to be procedures in place to protect the privacy of information that needs to be shared in order to determine eligibility for the programs and to ensure that school districts would not have to provide duplicate data to both state agencies.[47]

In the same report, the OPPAGA outlines advantages of consolidating the school nutrition and commodity programs in Florida, including:

- Potential efficiencies;
- Improved coordination;
- Increased program visibility and administrative support; and
- Programs could take advantage of the DACS's food and nutrition mission and expertise.

Waiver Request Requirements
Section 12 of the Richard B. Russell National School Lunch Act (NSLA) requires "state educational agencies" to have an agreement with the USDA, which affirms the administrative responsibilities for these programs.[48] A state may not transfer the NSLP to a non-educational state agency, such as the DACS, unless the state officially requests a waiver of the law and applicable program regulations and the USDA approves the waiver request.[49]

A waiver request submitted by a state must include specific details to be considered. The requirements for a waiver are set forth in section 12(l) of the NSLA.[50] At a minimum the request must include:

- Identification of the state agency for which the waiver is being sought, including a description of the size and scope of its program.
- A description of the specific statutory or regulatory requirements for which the waiver is being sought.
- A description of the impediments to the efficient operation and administration of the program that caused the waiver to be sought.
- A description of the actions the state has undertaken to remove any state-level barriers, either statutory or regulatory, to achieve the result sought under the waiver (if applicable).
- A description of the state's expectation as to how the waiver will improve services and the expected outcomes if the waiver is granted.
- A description of the process used by the state to provide notice and information to the public regarding the proposed waiver.[51]

In addition, the waiver must provide information and assurance that there will be no increase in the federal cost of the program.[52]

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[46] OPPAGA, *supra* note 36.
[47] For a greater discussion of the privacy issue, see the subsection entitled Confidentiality.
[48] 42 U.S.C. 1760(b).
[49] 42 U.S.C. 1760(l).
[50] *Id.*
[51] United States Department of Agriculture, *Public Law 104-193 Changes to Applications for Waivers in the Child Nutrition Programs*, December 2, 1996, *available at,* http://www.fns.usda.gov/cnd/Care/Regs-Policy/policymemo/1999-1996/1996-12-2.pdf#xml=http://65.216.150.153/texis/search/pdfhi.txt?query=waiver+request+and+school+lunch&pr=FNS&prox=page&rorder=500&rprox=500&rdfreq=500&rwfreq=500&rlead=500&rdepth=0&sufs=0&order=r&mode=&opts=&cq=&sr=&id=4d9cfc1956 (last visited April 6, 2011).
[52] 42 U.S.C. 1760(l)(1)(A)(iii).

On March 4, 2011, the USDA sent a letter to the DOE and DACS stating that the waiver requirements would have to be met for the waiver to be approved and the NSLP, SBP, SMP, and SFSP to be transferred to the DACS.

Type Two Transfer

There are two types of transfers provided by statute for the reorganization of the executive branch.[53] A type one transfer involves transferring an entire agency or department to another agency or department to become a unit of that agency or department.[54]

Type two transfers involve merging an existing agency, department, program, activity, or function into another agency or department.[55] All of the statutory powers, duties, and functions, and records, personnel, property, and unexpended balances of appropriations, allocations, or other funds are transferred as well.[56] The head of the agency or department to which the agency, department, program, activity, or function is transferred is authorized to establish units or subunits to which the agency or department is assigned, and to assign administrative authority for identifiable programs, activities, or functions.[57] Finally, the administrative rules in effect immediately before the transfer remain in effect until specifically changed.[58]

Confidentiality

To administer the school nutrition programs, the DOE and the Department of Children and Family Services (DCF) need to share sensitive information about the students to determine eligibility based on whether students receive SNAP benefits, temporary cash assistance (TCA), or Medicaid. Such information includes: name, county of residence, social security number, date of birth, race, and sex. The DOE and DCF currently have a Memorandum of Understanding (MOU), which provides that both parties agree to adhere to the state and federal laws which protect the disclosure of such information.[59]

Effect of Proposed Changes

The bill implements a type two transfer of the school food and nutrition programs from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (DACS) and refers to the act as the "Healthy Schools for Healthy Lives Act." The transfer includes all powers, duties, functions, records, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the administration of the school food and nutrition programs. The bill also transfers the Food and Nutrition Services Trust Fund[60] in the DOE to the DACS.[61]

The bill authorizes the DACS to conduct, supervise and administer all school food and nutrition programs that are carried out using federal or state funds or funds from other sources, and to cooperate with the federal government to benefit from any federal financial allotments and assistance that would benefit the school food and nutrition programs. The DACS may act as an agent of, or contract with, the federal government, another state agency, or any county or municipal government regarding the

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[53] Section 20.06, F.S.
[54] Section 20.06(1), F.S.
[55] Section 20.06(2), F.S.
[56] Section 20.06(2)(a), F.S. Except for those statutory powers, duties, and functions, and records, personnel, property, and unexpended balances of appropriations, allocations, or other funds transferred elsewhere or unless otherwise provided by law. *Id.*
[57] Section 20.06(2)(b), F.S.
[58] Section 20.06(2)(c), F.S.
[59] DOE and DCF, *Memorandum of Understanding*. The MOU is authorized by Section 9(b) of the Richard B. Russell National School Lunch Act and Section II of the SNAP Act. *Id.*; 42 U.S.C. § 1758(b); 7 U.S.C. § 2020(u).
[60] FLAIR number 48-2-2315, in DOE, is transferred to DACS, FLAIR number 42-2-2315.
[61] Federal law requires that state education agencies administer the school food and nutrition program. However, two states, Texas and New Jersey, have sought and received federal approval to administer their school food and nutrition programs through their agricultural agency. Therefore, Florida would have to apply for, and receive, a waiver before the DACS could take over the administration of the school food and nutrition program. E-mail, United States Department of Agriculture, April 7, 2011.

administration of the school food and nutrition programs, including the distribution of funds provided by the federal government in support of the school food and nutrition programs.

The bill requires each school district to submit an updated copy of its wellness policy and physical education policy to the DOE and the DACS when a change or revision is made. The DACS, as well as the DOE, shall provide website links to information regarding the nutritional content of foods and beverages and to healthful food choices in accordance with the dietary guidelines of the USDA.

The bill transfers statutory language regarding the administration of the school food and nutrition program from chapter 1006, F.S., which falls under the jurisdiction of the DOE, to chapter 570, F.S., which falls under the jurisdiction of the DACS.

The bill repeals s. 1010.77, F.S., relating to the Food and Nutrition Services Trust Fund within the DOE.

The bill requires the DOE, in consultation with the DACS, to develop and submit a request for a waiver to the USDA within 30 days of the bill becoming law. It further requires the DOE to report the USDA's response to the President of the Senate, the Speaker of the House of Representatives, and the Governor. The DOE must include a copy of the response in this notice.

The bill provides multiple effective dates. The provision requiring the DOE to submit a waiver request and the provision providing the effective dates are effective upon becoming law. The effective date for all other provisions is January 1, 2012, and is contingent upon the USDA granting the waiver request on or before November 1, 2011.

B. SECTION DIRECTORY:

Section 1: Designates the act as the "Healthy Schools for Healthy Lives Act."

Section 2: Transfers the Food and Nutrition Services Trust Fund from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (DACS).

Section 3: Transfers all powers, duties, functions, records, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the administration of the school food and nutrition program by a type two transfer from the DOE to the DACS.

Section 4: Creates s. 570.98, F.S.; directs the DACS to conduct, supervise and administer all school food and nutrition programs carried out using federal or state funds, or funds from any other source; and directs the DACS to cooperate with the federal government and its agencies and instrumentalities to receive benefit of all federal financial allotments and assistance possible to carry out the school food and nutrition program.

Section 5: Transfers and renumbers s. 1006.06, F.S., to s. 570.981, F.S.; changes jurisdiction from the DOE to the DACS; and, removes obsolete dates.

Section 6: Transfers and renumbers s. 1006.0606, F.S., to s. 570.982, F.S.; removes obsolete dates; and, changes jurisdiction from the DOE to the DACS.

Section 7: Transfers and renumbers s. 1010.77, F.S., to s. 570.983, F.S.; changes jurisdiction from the DOE to the DACS.

Section 8: Amends s. 1003.453, F.S.; removes obsolete dates; requires each school district to submit a copy of its school wellness policy to the DACS when a change or revision is made; and requires the DACS to provide website access to information regarding nutritional content of foods and beverages, as well as healthful food choices in accordance with the dietary guidelines of the U.S. Department of Agriculture.

Section 9: Repeals s. 1010.77, F.S.

Section 10: Requires the DOE, in consultation with the DACS, to develop and submit a request for a waiver to the USDA to transfer administration of the school food service and nutrition programs; requires notification relating to the outcome of the request for a waiver; and provides an effective date of becoming law for this section only.

Section 11: Provides for contingent effect based upon federal approval of a request for a waiver; provides effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments section.

2. Expenditures:

   See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Below is the projected revenue and expenditures for the school food and nutrition programs. The Fiscal Year 2011-12 increase in federal funds is based on projected enrollment growth and the number of students eligible for the programs. The $2 million reduction in the School Breakfast Program is the result of a reduction taken in the supplemental funding in the House proposed General Appropriations Act for the 2011-12 fiscal year. This does not, however, affect federal reimbursement.

In Fiscal Year 2009-10, the DOE received $631,410 in federal indirect earnings as a result of participation in the National School Lunch Program. These earnings are used to support management activities that are department-wide in nature and include activities such as purchasing, accounting, human resources, grants management, and legal services.[62] The DACS would receive any earnings that arise as a result of participation in the National School Lunch Program after the transfer.

The bill transfers the programs from Department of Education to the Department of Agriculture and Consumer Services effective January 1, 2012, leaving approximately half of Fiscal Year 2011-12 in DOE and half in DACS.

[62] The information contained in this section was prepared by the House Agriculture and Natural Resources Appropriations Subcommittee staff. E-mail, Agriculture and Natural Resources Staff, April 6, 2011.

Program	FY 2010-11	FY 2011-12
National School Lunch Program General Revenue (State Match)	$8.9 million	$8.9 million
School Breakfast Program General Revenue (State Match)	$7.6 million	$5.6 million
Cafeteria Inspection Fees General Revenue*	$344,433	$344,433
USDA Food and Nutrition Services Trust Fund	$804.3 million	$942.3 million

*Available remaining balance used to offset a small portion of participating schools' health inspection costs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Rule-making authority regarding the school food and nutrition program is granted to the Department of Agriculture and Consumer Services through the type two transfer.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On April 7, 2011, the USDA sent an e-mail to the DOE regarding the waiver process. The USDA stated that both of the waivers for Texas and New Jersey are non-permanent and contain the following disclaimer:

> *While we have granted this waiver, we have serious reservations with moving programs that substantially benefit from a close link with the educational establishment in the State to a non-education agency. The NSLP, SBP and SMP are most effective in their long-term impact on students when they are combined with a nutrition education component. The dual functions of providing meals and educating can most readily be accomplished by the TEA with its combined school management and education responsibilities. Given our belief that nutrition education is an integral component of a child's overall education and that programs such as the NSLP and SBP to be truly effective must educate, we are approving this transfer cautiously.*

Moreover, the USDA stated that the waiver-processing time depends on several factors, including:

- The completeness of the state agency's initial submission;
- The justification or rationale provided; and
- The ability of the alternate agency to administer the programs.

Finally, the USDA stated that the waiver process can also be delayed if the USDA requires additional information or adjustments to the state agency proposal that would require negotiation.[63]

[63] E-mail, United States Department of Agriculture, April 7, 2011.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 13, 2011, the Education Committee adopted two amendments and reported the bill favorably as a committee substitute. Amendment one repealed s. 1010.77, F.S., relating to the Food and Nutrition Services Trust Fund within the DOE.

Amendment two required the DOE, in consultation with the DACS, to develop and submit a waiver request to the USDA within 30 days of the bill becoming law. The amendment further required the DOE to provide written notice of the USDA's response to the President of the Senate, the Speaker of the House of Representatives, and the Governor. The DOE must include a copy of the USDA's response in this notice. Amendment two also provided multiple effective dates. The provision requiring the DOE to submit a waiver request and the provision providing the effective dates are effective upon becoming law. The effective date for all other provisions is January 1, 2012, and is contingent upon the USDA granting the waiver request on or before November 1, 2011.

A bill to be entitled

An act relating to school food service and nutrition programs; providing a short title; transferring the Food and Nutrition Services Trust Fund in the Department of Education to the Department of Agriculture and Consumer Services; transferring and reassigning functions and responsibilities, including records, personnel, property, and unexpended balances of appropriations and other resources for the administration of the school food service and nutrition programs from the Department of Education to the Department of Agriculture and Consumer Services; creating s. 570.98, F.S.; requiring the Department of Agriculture and Consumer Services to conduct, supervise, and administer all school food service and nutrition programs; requiring the department to cooperate fully with the Federal Government; authorizing the department to act as agent of, or contract with, the Federal Government, other state agencies, or any county or municipal government for the administration of the school food service and nutrition programs; renumbering and amending ss. 1006.06, 1006.0606, and 1010.77, F.S., relating to school food service programs, the children's summer nutrition program, and the Food and Nutrition Services Trust Fund, respectively; conforming provisions to changes made by the act; deleting obsolete provisions; correcting a cross-reference; amending s. 1003.453, F.S.; requiring each school district to send an updated copy of its wellness policy and physical education policy to the

Department of Education and the Department of Agriculture and Consumer Services; deleting obsolete provisions; requiring certain information to be accessible from the website of the Department of Agriculture and Consumer Services; repealing s. 1010.77, F.S., relating to the Food and Nutrition Services Trust Fund; requiring the Department of Education, in consultation with the Department of Agriculture and Consumer Services, to develop and submit a request for a waiver to the United States Department of Agriculture to transfer administration of the school food service and nutrition programs; requiring notification relating to the outcome of the request for a waiver; providing for contingent effect based upon federal approval of a request for a waiver; providing effective dates.

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

Section 1. This act may be cited as the "Healthy Schools for Healthy Lives Act."

Section 2. The Food and Nutrition Services Trust Fund, FLAIR number 48-2-2315, in the Department of Education is transferred to the Department of Agriculture and Consumer Services, FLAIR number 42-2-2315.

Section 3. All powers, duties, functions, records, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the

administration of the school food service and nutrition programs are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Department of Education to the Department of Agriculture and Consumer Services.

Section 4. Section 570.98, Florida Statutes, is created to read:

570.98 School food service and nutrition programs.—

(1) The department shall conduct, supervise, and administer all school food service and nutrition programs that are carried out using federal funds, state funds, or funds from any other source.

(2) The department shall cooperate fully with the Federal Government and its agencies and instrumentalities so that the department may receive the benefit of all federal financial allotments and assistance possible to carry out the purposes of ss. 570.98-570.983.

(3) The department may act as agent of, or contract with, the Federal Government, another state agency, or any county or municipal government for the administration of the school food service and nutrition programs, including the distribution of funds provided by the Federal Government to support the school food service and nutrition programs.

Section 5. Section 1006.06, Florida Statutes, is renumbered as section 570.981, Florida Statutes, and amended to read:

570.981 ~~1006.06~~ School food service programs.—

(1) In recognition of the demonstrated relationship between good nutrition and the capacity of students to develop

and learn, it is the policy of the state to provide standards for school food service and to require district school boards to establish and maintain an appropriate private school food service program consistent with the nutritional needs of students.

(2) The department ~~State Board of Education~~ shall adopt rules covering the administration and operation of the school food service programs.

(3) Each district school board shall consider the recommendations of the district school superintendent and adopt policies to provide for an appropriate food and nutrition program for students consistent with federal law and department ~~State Board of Education~~ rule.

(4) The state shall provide the state National School Lunch Act matching requirements. The funds provided shall be distributed in such a manner as to comply with the requirements of the National School Lunch Act.

(5)(a) Each district school board shall implement school breakfast programs that make breakfast meals available to all students in each elementary school. ~~By the beginning of the 2010-2011 school year,~~ Universal school breakfast programs shall be offered in schools in which 80 percent or more of the students are eligible for free or reduced-price meals. Each school shall, to the maximum extent practicable, make breakfast meals available to students at an alternative site location, which may include, but need not be limited to, alternative breakfast options as described in publications of the Food and Nutrition Service of the United States Department of Agriculture

for the federal School Breakfast Program.

(b) ~~Beginning with the 2009-2010 school year,~~ Each school district must annually set prices for breakfast meals at rates that, combined with federal reimbursements and state allocations, are sufficient to defray costs of school breakfast programs without requiring allocations from the district's operating funds, except if the district school board approves lower rates.

(c) Each district school board is encouraged to provide universal-free school breakfast meals to all students in each elementary, middle, and high school. ~~By the beginning of the 2010-2011 school year,~~ Each district school board shall approve or disapprove a policy, after receiving public testimony concerning the proposed policy at two or more regular meetings, which makes universal-free school breakfast meals available to all students in each elementary, middle, and high school in which 80 percent or more of the students are eligible for free or reduced-price meals.

(d) ~~Beginning with the 2009-2010 school year,~~ Each elementary, middle, and high school shall make a breakfast meal available if a student arrives at school on the school bus less than 15 minutes before the first bell rings and shall allow the student at least 15 minutes to eat the breakfast.

(e) Each school district shall annually provide to all students in each elementary, middle, and high school information prepared by the district's food service administration regarding its school breakfast programs. The information shall be communicated through school announcements and written notice

sent to all parents.

(f) A district school board may operate a breakfast program providing for food preparation at the school site or in central locations with distribution to designated satellite schools or any combination thereof.

(g) The commissioner shall make every reasonable effort to ensure that any school designated as a "severe need school" receives the highest rate of reimbursement to which it is entitled under 42 U.S.C. s. 1773 for each breakfast meal served.

(h) The department shall annually allocate among the school districts funds provided from the school breakfast supplement in the General Appropriations Act based on each district's total number of free and reduced-price breakfast meals served.

(6) The Legislature, recognizing that school children need nutritious food not only for healthy physical and intellectual development but also to combat diseases related to poor nutrition and obesity, establishes the Florida Farm Fresh Schools Program within the department ~~of Education as the lead agency for the program~~. The program shall comply with the regulations of the National School Lunch Program and require:

(a) The department ~~of Education to work with the Department of Agriculture and Consumer Services~~ to develop policies pertaining to school food services which encourage:

1. School districts to buy fresh and high-quality foods grown in this state when feasible.

2. Farmers in this state to sell their products to school districts and schools.

3. School districts and schools to demonstrate a preference for competitively priced organic food products.

(b) School districts and schools to make reasonable efforts to select foods based on a preference for those that have maximum nutritional content.

(c) The department ~~of Education, in collaboration with the Department of Agriculture and Consumer Services,~~ to provide outreach, guidance, and training to school districts, schools, school food service directors, parent and teacher organizations, and students about the benefits of fresh food products from farms in this state.

Section 6. Section 1006.0606, Florida Statutes, is renumbered as section 570.982, Florida Statutes, and amended to read:

570.982 ~~1006.0606~~ Children's summer nutrition program.—

(1) This section may be cited as the "Ms. Willie Ann Glenn Act."

(2) Each district school board shall develop a plan ~~by May 1, 2006,~~ to sponsor a summer nutrition program ~~beginning the summer of 2006~~ to operate sites in the school district as follows:

(a) Within 5 miles of at least one elementary school at which 50 percent or more of the students are eligible for free or reduced-price school meals and for the duration of 35 consecutive days; and

(b) Except as operated pursuant to paragraph (a), within 10 miles of each elementary school at which 50 percent or more of the students are eligible for free or reduced-price school

meals.

(3)(a) A district school board ~~boards~~ may be exempt from sponsoring a summer nutrition program pursuant to this section. A district school board seeking such exemption must include the issue on an agenda at a regular or special district school board meeting that is publicly noticed, provide residents an opportunity to participate in the discussion, and vote on whether to be exempt from this section. The district school board shall notify the commissioner ~~of Education~~ within 10 days after it decides to become exempt from this section.

(b) Each year the district school board shall reconsider its decision to be exempt from the provisions of this section and shall vote on whether to continue the exemption from sponsoring a summer nutrition program. The district school board shall notify the commissioner ~~of Education~~ within 10 days after each subsequent year's decision to continue the exemption.

(c) If a district school board elects to be exempt from sponsoring a summer nutrition program under this section, the district school board may encourage not-for-profit entities to sponsor the program. If a not-for-profit entity chooses to sponsor the summer nutrition program but fails to perform with regard to the program, the district school board, the school district, and the department ~~of Education~~ are not required to continue the program and shall be held harmless from any liability arising from the discontinuation of the summer nutrition program.

(4) The superintendent of schools may collaborate with municipal and county governmental agencies and private, not-for-

profit leaders in implementing the plan. Although schools have proven to be the optimal site for a summer nutrition program, any not-for-profit entity may serve as a site or sponsor. By April 15 of each year, each school district with a summer nutrition program shall report to the department the district's summer nutrition program sites in compliance with this section.

(5) The department shall provide to each district school board by February 15 of each year a list of local organizations that have filed letters of intent to participate in the summer nutrition program in order that a district school board is able to determine how many sites are needed to serve the children and where to place each site.

Section 7. Section 1010.77, Florida Statutes, is renumbered as section 570.983, Florida Statutes, and amended to read:

570.983 ~~1010.77~~ Food and Nutrition Services Trust Fund.—Chapter 99-37 ~~99-34~~, Laws of Florida, re-created the Food and Nutrition Services Trust Fund to record revenue and disbursements of Federal Food and Nutrition funds received by the department ~~of Education~~ as authorized in s. 570.981 ~~1006.06~~.

Section 8. Section 1003.453, Florida Statutes, is amended to read:

1003.453 School wellness and physical education policies; nutrition guidelines.—

(1) ~~By September 1, 2006,~~ Each school district shall submit to the Department of Education a copy of its school wellness policy as required by the Child Nutrition and WIC Reauthorization Act of 2004 and a copy of its physical education

policy required under s. 1003.455. Each school district shall annually review its school wellness policy and physical education policy and provide a procedure for public input and revisions. In addition, each school district shall send an updated copy of its wellness policy and physical education policy to the department and to the Department of Agriculture and Consumer Services when a change or revision is made.

(2) ~~By December 1, 2006,~~ The department shall post links to each school district's school wellness policy and physical education policy on its website so that the policies can be accessed and reviewed by the public. Each school district shall provide the most current versions of its school wellness policy and physical education policy on the district's website.

(3) ~~By December 1, 2006,~~ The department must provide on its website links to resources that include information regarding:

(a) Classroom instruction on the benefits of exercise and healthful eating.

(b) Classroom instruction on the health hazards of using tobacco and being exposed to tobacco smoke.

(c) The eight components of a coordinated school health program, including health education, physical education, health services, and nutrition services.

(d) The core measures for school health and wellness, such as the School Health Index.

(e) Access for each student to the nutritional content of foods and beverages and to healthful food choices in accordance with the dietary guidelines of the United States Department of

Agriculture. This information shall also be accessible from the website of the Department of Agriculture and Consumer Services.

(f) Multiple examples of school wellness policies for school districts.

(g) Examples of wellness classes that provide nutrition education for teachers and school support staff, including encouragement to provide classes that are taught by a licensed nutrition professional from the school nutrition department.

(4) School districts are encouraged to provide basic training in first aid, including cardiopulmonary resuscitation, for all students, beginning in grade 6 and every 2 years thereafter. Private and public partnerships for providing training or necessary funding are encouraged.

Section 9. Section 1010.77, Florida Statutes, is repealed.

Section 10. This section shall take effect upon this act becoming a law and, within 30 days thereafter, the Department of Education, in consultation with the Department of Agriculture and Consumer Services, shall develop and submit to the United States Department of Agriculture a request for a waiver required to transfer administration of the school food service and nutrition programs from the Department of Education to the Department of Agriculture and Consumer Services. Upon receipt of the United States Department of Agriculture's approval or denial of the request for a waiver, the Department of Education shall immediately notify the President of the Senate, the Speaker of the House of Representatives, and the Governor, in writing, of the United States Department of Agriculture's decision. The notification shall include a copy of the United States

Department of Agriculture's approval or denial of the request for a waiver.

Section 11. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect January 1, 2012, if the United States Department of Agriculture approves the request for a waiver, pursuant to section 10 of this act, on or before November 1, 2011.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Appropriations Committee

Representative McKeel offered the following:

Amendment (with title amendment)

Remove line 294

T I T L E A M E N D M E N T

Remove lines 33-34 and insert:

Services; requiring the

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1289 Medicaid Eligibility
SPONSOR(S): Health & Human Services Quality Subcommittee; Ahern and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1356

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	8 Y, 3 N, As CS	Prater	Calamas
2) Appropriations Committee		Hicks	Leznoff
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill amends s. 409.902, F.S., relating to Medicaid eligibility.

Currently, some individuals applying for long-term care Medicaid services are using various methods to shelter their assets in order to become eligible for Medicaid.

The bill requires the Department of Children and Families (DCF) to apply additional asset transfer limitations for individuals applying for Medicaid nursing facility services, institutional hospice services, and home and community-based waiver programs.

The bill provides certain restrictions on personal services contracts, which are used to transfer assets to a family member or caregiver in return for specific services.

The bill provides certain conditions that must be met for a spouse that refuses to make their financial resources available to the spouse receiving Medicaid long-term care services.

The bill requires the Agency for Health Care Administration (AHCA) to seek recovery of all Medicaid-covered expenses and pursue court-ordered medical support in instances of a spouse refusing to make their resources available to a spouse seeking Medicaid long-term care services.

The bill grants rule-making authority to DCF.

The bill has a potential significant positive fiscal impact to the state through imposing stricter regulations on eligibility requirements for Medicaid long-term care. The bill directs AHCA to seek recovery of improper Medicaid payments which can be accomplished through the use of the current contingency based contractor.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Medicaid Overview

Medicaid is the health care safety net for low-income Floridians. Medicaid is a partnership of the federal and state governments established to provide coverage for health services for eligible persons. The program is administered by AHCA and financed by federal and state funds. AHCA delegates certain functions to other state agencies, including DCF, the Agency for Persons with Disabilities (APD), and the Department of Elderly Affairs (DOEA).

The structure of each state's Medicaid program varies, but what states must pay for are largely determined by the federal government, as a condition of receiving federal funds. Federal law sets the amount, scope, and duration of services offered in the program, among other requirements. These federal requirements create an entitlement that comes with constitutional due process protections.

Florida Medicaid is the second largest single program in the state behind public education, representing 28 percent of the total FY 2010-11 budget. Medicaid general revenue expenditures represent 17 percent of the total General Revenue funds appropriated in FY 2010-11. Florida's program is the 4th largest in the nation, and the 5th largest in terms of expenditures. Current estimates indicate the program will cost $20.3 billion in FY 2011-2012. By FY 2013-2014, the estimated program cost is $23.6 billion.

Medicaid Long-Term Care

Long-term care is currently provided to elderly and disabled Medicaid recipients though nursing home placement and through home and community-based services. Home and community-based services provide care in a community setting instead of a nursing home or other institutional settings. Home and community-based services are provided through six Medicaid waiver programs and one state plan program administered by DOEA in partnership with AHCA. These waiver programs are administered through contracts with the 11 Aging Resource Centers[1] and local service providers, and provide alternative, less restrictive long-term care options for elders who qualify for skilled nursing home care.

The Medicaid eligibility income threshold for institutional care placement, home and community-based care services, and hospice services, is 300 percent of the Supplemental Security Income (SSI) federal benefit rate.[2] The current SSI federal benefit rate is $674 for an individual.[3] Therefore, individuals with incomes under $2,022 per month are eligible for Medicaid long-term care services.

Medicaid Long-Term Care Planning

A 2009 study by the National Alliance for Caregiving and AARP found that about 43.5 million Americans look after someone age 50 or older, which is a 28 percent increase from 2004.[4] Some individuals, with assistance from financial planners and attorneys, have developed methods of arranging assets in such a way that they are not countable when Medicaid eligibility is determined. Elder law attorneys across the country actively advertise services to assist elderly individuals with

[1] The 2004 Legislature created the Aging Resource Center initiative to reduce fragmentation in the elder services system. To provide easier access to elder services, the Legislature directed DOEA to establish a process to help the 11 area agencies on aging transition to Aging Resource Centers.
[2] Ch. 65A-1.713, F.A.C.
[3] Social Security Administration, *see* http://www.ssa.gov/oact/cola/SSI.html (last viewed on April 2, 2011).
[4] National Alliance for Caregiving in collaboration with AARP, Caregiving in the U.S., Executive Summary, 2009. *See* http://www.caregiving.org/pubs/data.htm (last viewed on April 5, 2011).

personal service contracts and other asset protection methods. For example, the website of a South Florida law firm prominently displays the following sentences on their website:

- "Asset Protection For People With Too Much Income or Assets to Qualify for Government Programs;" and
- "For ten years we have successfully helped families preserve their assets and qualify for Florida Nursing Home Medicaid benefits and Assisted Living public benefits."[5]

Another example is from a 2006 article published by the New York State Bar Association authored by a Florida elder law attorney. The article advises New York attorneys on how to assist their "snowbird" clients. The author states: "...you should know that the spousal refusal option is working well in Florida, although change may be coming. Many Florida spouses today are able to protect themselves from impoverishment by exercising their right of spousal refusal."[6]

Transfer of Assets

According to DCF, some individuals, prior to entering a nursing facility or enrolling in a Medicaid home and community-based service waiver program, transfer accumulated assets to a relative through a contract which provides that the relative will provide personal services to the individual for a specified period of time.[7] Current DCF policy does not preclude the transfer of funds to relatives when contracts are drawn up to prepay for future personal services.[8] According to DCF, many of the contracted services incorporated into the contracts are services that close relatives would normally provide without charge such as visitation, transportation, entertainment, and oversight of medical care.[9] If a transfer of assets was made in the form of a personal services contract, within a 36-month (3-year) look-back period, DCF must make a determination if the contracted services were for fair market value.[10] The look-back period is calculated from the date of application for Medicaid.[11] If a transfer of assets for less than fair market value is found, the state must withhold payment for nursing facility care and other long-term care services for a period of time referred to as the penalty period. The length of the penalty period is determined by dividing the value of the transferred asset by the average monthly private-pay rate for nursing facility care in the state.[12]

Spousal Impoverishment

Section 1924 of the Social Security Act provides requirements to prevent "spousal impoverishment," which can leave the spouse who is still living at home in the community with little or no income or resources.[13] When the couple applies for Medicaid, an assessment of their resources is made and a protected resource amount of $109,560[14] is set aside for the community spouse and the remainder is considered available for the individual applying for Medicaid.[15]

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[5] *See* http://www.buxtonlaw.com/flmedicaidplanning.shtml (last viewed on April 2, 2011).
[6] New York State Bar Association, Elder Law Attorney, Fall 2006, Vol. 16, No. 4. *See* www.elderlawassociates.com/.../snowbirdnews-NYSBA-fall2006.pdf (last viewed on April 4, 2011).
[7] Department of Children and Families, Staff Analysis and Economic Impact, HB 1289 (on file with the Subcommittee).
[8] *Id.*
[9] *Id.*
[10] Department of Children and Families, Policy Manual, 1640.0609.01, Identifying Potential Transfers of Assets or Income (on file with the Subcommittee).
[11] *Id.*
[12] *See* https://www.cms.gov/MedicaidEligibility/10_TransferofAssets.asp (last viewed on April 2, 2011).
[13] Department of Health and Human Services, Centers for Medicare and Medicaid Services, Spousal Impoverishment, *see* https://www.cms.gov/MedicaidEligibility/09_SpousalImpoverishment.asp (last viewed on April 4, 2011).
[14] This is an amount set by the federal government and is contained in the Social Security Act. *See* https://www.cms.gov/MedicaidEligibility/09_SpousalImpoverishment.asp (last viewed on April 3, 2011).
[15] Agency for Health Care Administration, 2011 Bill Analysis & Economic Impact Statement, HB 1289 (on file with the Subcommittee).

Additionally, section 1924 of the Social Security Act[16] provides that an individual applying for Medicaid cannot be determined ineligible for assistance based on assets of their spouse when:

- The applicant assigns to the state his or her rights to support from the community spouse[17];
- The applicant is physically or mentally unable to assign his rights but the state has the right to bring a support proceeding against the community spouse; or
- The state determines that denial of eligibility would work an undue hardship.

According to DCF, when an applicant signs a document assigning his or her rights to the state, the state has the authority to seek financial support from the community spouse for Medicaid funds spent on the spouse in the nursing facility.[18] While DCF indicates that it has authority to seek financial support from the community spouse under these circumstances, there is no mechanism to actually recover funds from the community spouse.[19]

Deficit Reduction Act

The Federal Deficit Reduction Act of 2005(DRA)[20] contains provisions aimed at discouraging the use of "Medicaid planning" techniques and to impose penalties on transactions which are intended to protect wealth while enabling access to public benefits.[21] The Congressional Budget Office (CBO) estimated that the DRA would reduce federal Medicaid spending by $11.5 billion over the first five years and $43.2 billion within ten years. The DRA made changes to:

- Medicaid transfer of asset rules;
- Medicaid annuity rules;
- spousal impoverishment rules;
- home equity rules; and
- rules pertaining to treatment of continuing care retirement community entrance fees.

Transfer of Assets

The DRA extended the "look-back period" for any transfers of assets from 36 months to 60 months, on or after February 8, 2006. In addition, the DRA changed the start date of the penalty period, which is the period during which an individual is ineligible for Medicaid payment for long-term care services because of a transfer of assets for less than fair market value.[22] The DRA changed the start date of the penalty period from the month of the transfer of assets to the date of application for Medicaid.[23]

Spousal Impoverishment

When a couple applies for Medicaid, an assessment of their resources is made and a protected resource amount of $109,560[24] is set aside for the community spouse and the remainder is considered

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[16] Social Security Act, Section 1924, Treatment of Income and Resources for Certain Institutionalized Spouses, *see* http://www.ssa.gov/OP_Home/ssact/title19/1924.htm (last viewed on April 4, 2011).
[17] A "community spouse" means the spouse that remains at home or in the community when the other spouse enters nursing facility care. *See* https://www.cms.gov/MedicaidEligibility/09_SpousalImpoverishment.asp (last viewed on April 4, 2011).
[18] Department of Children and Families, Staff Analysis and Economic Impact, HB 1289 (on file with the Subcommittee).
[19] Agency for Health Care Administration, 2011 Bill Analysis & Economic Impact Statement, HB 1289 (on file with the Subcommittee); Department of Children and Families, Staff Analysis and Economic Impact, HB 1289 (on file with the Subcommittee).
[20] P.L. 109-171 (2005).
[21] Department of Health and Human Services, Centers for Medicare and Medicaid, The Deficit Reduction Act: Important Facts for State Government Officials. *See* https://www.cms.gov/**DeficitReductionAct**/Downloads/Checklist1.pdf (last viewed on April 4, 2011).
[22] *Id.*
[23] *Id.*
[24] This is an amount set by the federal government and is contained in the Social Security Act. *See* https://www.cms.gov/MedicaidEligibility/09_SpousalImpoverishment.asp (last viewed on April 3, 2011).

available for the individual applying for Medicaid.[25] This protected amount is known as the Community Spouse Resource Allowance (CSRA). The DRA provided that an increase in the CSRA cannot be granted until the maximum available income of the institutionalized spouse is allocated to the community spouse.[26]

Medicaid Long-Term Care Costs

The average cost of long-term care varies depending on the type of care the individual receives. The statewide average annual cost of nursing home care is $76,876, while hospice care is $53,483. The average annual cost of the various home and community-based care waivers is $13,471. As of December 2010, there were 103,405 individuals receiving Medicaid long-term care services through nursing homes, hospice, and home and community-based waivers.[27]

Recovery of Medicaid-Covered Expenses

Federal regulations[28] and the Florida Third Party Liability (TPL) Act[29] allow for recovery of amounts paid for medical expenses by Medicaid for which there is another liable third party (i.e., the recipient has other insurance coverage, such as private insurance or Medicare). AHCA has a current contract with a Medicaid third party liability vendor, Affiliated Computer Services (ACS). It is the role of the ACS to identify potential third party payors and to recoup from them costs that have been paid by Medicaid.

According to DCF, New York pursues recovery of Medicaid expenses from spouses with some success in select counties. New York's public assistance programs are county-administered. The individual counties have attorneys assigned to the public welfare agency responsible for Medicaid eligibility and each county is responsible for the pursuit of spousal support and recovery of Medicaid-covered expenses.[30]

Effect of Proposed Changes

The bill requires DCF to apply additional asset transfer limitations for individuals applying for Medicaid nursing facility services, institutional hospice services, and home and community-based waiver programs. The new limitations apply to asset transfers made after July 1, 2011.

The bill applies the following new conditions to individuals who enter into personal services contracts:

- The contracted services must not duplicate services that would be available through other sources or providers, such as Medicaid, Medicare, private insurance, or another legally obligated third party;
- The contracted services must directly benefit the individual and are not services that are normally provided out of consideration for the individual;
- The cost to deliver the services must be computed in a manner that reflects the actual number of hours to be expended and the contract must clearly identify each specific service and the average number of hours required to deliver each service each month;
- The hourly rate for each contracted service must be equal to or less than the amount normally charged by a professional who traditionally provides the same or similar services;
- The cost of contracted services must be provided on a prospective basis only and does not apply to services provided before July 1, 2011; and

[25] Agency for Health Care Administration, 2011 Bill Analysis & Economic Impact Statement, HB 1289 (on file with the Subcommittee).
[26] *Id.*
[27] Email from AHCA Medicaid staff, received April 1, 2011 (on file with Subcommittee).
[28] 42 U.S.C. §1396k(a).
[29] S. 409.910, F.S.
[30] Department of Children and Families, Staff Analysis and Economic Impact, HB 1289 (on file with the Subcommittee).

- The contract must provide fair compensation to the individual during her or his lifetime as set forth in the life expectancy tables published by the Office of the Actuary of the Social Security Administration.

The bill applies the following new conditions to a community spouse who refuses to make her or his resources available to the institutional spouse:

- Requires proof that an estrangement existed between the spouses during the months before the individual submitted an application for institutional care services. If the individuals have not lived separate and apart without cohabitation and without interruption for at least 36 months, all resources of both individuals must be considered to determine eligibility.
- Requires transfer of assets between spouses that are in excess of the Community Spouse Resource Allowance must be considered. If such a transfer was made within the look-back period, it is considered a transfer of assets for less than fair market value and therefore subject to a penalty period.
- Determines that undue hardship does not exist when the individual, or person acting on his or her behalf, transfers resources to the community spouse and the community spouse refuses to make her or his resources available to the institutional spouse.
- Determines the institutional spouse to be ineligible for Medicaid if she or he, or the person acting on her or his behalf, refuses to provide information about the community spouse or cooperate in the pursuit of court-ordered medical support or the recovery of Medicaid expenses paid by the state on her or his behalf.

The bill requires AHCA to seek recovery of all Medicaid-covered expenses and to pursue court-ordered medical support from the community spouse when she or he refuses to make her or his assets available to the institutional spouse.

The bill provides DCF sufficient rule-making authority to implement the provisions of this bill.

B. SECTION DIRECTORY:

Section 1: Amends s. 409.902, F.S., authorizing DCF to apply additional asset transfer limitations for individuals applying for certain Medicaid services; requiring certain restrictions on personal services contracts; requiring DCF to take certain actions if a community spouse refuses to make certain resources available to the institutional spouse; authorizing AHCA to seek recovery of certain Medicaid expenses; and granting rule-making authority to DCF.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill could result in savings to the state by applying stricter asset transfer limitations for certain individuals applying for nursing facility services under the Medicaid program.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Nursing home and Medicaid waiver providers may experience a positive fiscal impact if a greater number of individuals are required to pay for their care with private pay, rather than Medicaid.

D. FISCAL COMMENTS:

The bill directs AHCA to seek recovery from the community spouse for monies paid by Medicaid on behalf of the eligible recipient which is to be accomplished by pursuing court-ordered medical support from the community spouse. AHCA indicates this pursuit could be accomplished through its contract with its third party liability vendor by amending the current contract. The current contract is a contingency based agreement whereby the vendor is paid based on amounts recovered. It is anticipated that a similar approach could be used for these recoveries, thereby offsetting costs associated with the recovery. AHCA further indicates that this would require significant information sharing between DCF and AHCA as well as possible investigations into financial activities to determine spousal resources. AHCA states that it is unable to determine the fiscal impact of these changes.[31]

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:

The bill provides sufficient rule-making authority to DCF to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

AHCA indicates that it does not have the information necessary to identify individuals that are Medicaid eligible due to impoverishment and that the third party liability vendor does not currently receive information regarding assignment of spousal support. Additionally, AHCA indicates that it has little information regarding community spouses in terms of assets and finances, or their current marital status. Additionally, community spouse asset information, for those that have any substantial amounts would quite likely be concealed and would require financial investigations.[32]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 6, 2011, the Health and Human Services Quality Subcommittee adopted one amendment to HB 1289.

The amendment changed the effective date from July 1, 2011 to effective upon becoming law.

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[31] Agency for Health Care Administration, 2011 Bill Analysis & Economic Impact Statement, HB 1289 (on file with the Subcommittee).

[32] Agency for Health Care Administration, 2011 Bill Analysis & Economic Impact Statement, HB 1289 (on file with the Subcommittee).

The bill was reported favorable as a Committee Substitute. The analysis reflects the Committee Substitute.

A bill to be entitled

An act relating to Medicaid eligibility; amending s. 409.902, F.S.; providing asset transfer limitations for determination of eligibility for certain nursing facility services under the Medicaid program after a specified date; requiring the Department of Children and Family Services to take certain actions if a community spouse refuses to make certain resources available to the institutional spouse; authorizing the Agency for Health Care Administration to recover certain Medicaid expenses; authorizing the Department of Children and Family Services to adopt rules; providing an effective date.

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

Section 1. Section 409.902, Florida Statutes, is amended to read:

409.902 Designated single state agency; payment requirements; program title; release of medical records; eligibility requirements.—

(1) The Agency for Health Care Administration is designated as the single state agency authorized to make payments for medical assistance and related services under Title XIX of the Social Security Act. These payments shall be made, subject to any limitations or directions provided for in the General Appropriations Act, only for services included in the program, shall be made only on behalf of eligible individuals, and shall be made only to qualified providers in accordance with

federal requirements for Title XIX of the Social Security Act and the provisions of state law. This program of medical assistance is designated the "Medicaid program." The Department of Children and Family Services is responsible for Medicaid eligibility determinations, including, but not limited to, policy, rules, and the agreement with the Social Security Administration for Medicaid eligibility determinations for Supplemental Security Income recipients, as well as the actual determination of eligibility. As a condition of Medicaid eligibility, subject to federal approval, the Agency for Health Care Administration and the Department of Children and Family Services shall ensure that each recipient of Medicaid consents to the release of her or his medical records to the Agency for Health Care Administration and the Medicaid Fraud Control Unit of the Department of Legal Affairs.

(2) In determining eligibility for nursing facility services, including institutional hospice services and home and community-based waiver programs under the Medicaid program, the Department of Children and Family Services shall apply the asset transfer limitations specified in subsection (3) for transfers made after July 1, 2011.

(3) Individuals who enter into a personal services contract with a relative shall be considered to have transferred assets without fair compensation to qualify for Medicaid unless all of the following criteria are met:

(a) The contracted services do not duplicate services available through other sources or providers, such as Medicaid,

Medicare, private insurance, or another legally obligated third party.

(b) The contracted services directly benefit the individual and are not services normally provided out of consideration for the individual.

(c) The actual cost to deliver services is computed in a manner that clearly reflects the actual number of hours to be expended and the contract clearly identifies each specific service and the average number of hours required to deliver each service each month.

(d) The hourly rate for each contracted service is equal to or less than the amount normally charged by a professional who traditionally provides the same or similar services.

(e) The cost of contracted services is provided on a prospective basis only and does not apply to services provided before July 1, 2011.

(f) The contract for services provides fair compensation to the individual during her or his lifetime as set forth in the life expectancy tables published by the Office of the Actuary of the Social Security Administration.

(4) When determining eligibility for nursing facility services, including institutional hospice services and home and community-based waiver programs under the Medicaid program, if a community spouse refuses to make her or his resources available to her or his institutional spouse, the Department of Children and Family Services shall:

(a) Require proof that estrangement existed during the months before the individual submitted an application for

institutional care services. If the individuals have not lived separate and apart without cohabitation and without interruption for at least 36 months, all resources of both individuals shall be considered to determine eligibility.

(b) Consider transfer of assets between spouses in excess of the Community Spouse Resource Allowance within the look-back period to be a transfer of assets for less than fair market value and therefore subject to a penalty period.

(c) Determine that undue hardship does not exist when the individual, or the person acting on her or his behalf, transfers resources to the community spouse and the community spouse refuses to make her or his resources available to the institutional spouse.

(d) Determine the institutional spouse to be ineligible for Medicaid if she or he, or the person acting on her or his behalf, refuses to provide information about the community spouse or cooperate in the pursuit of court-ordered medical support or the recovery of Medicaid expenses paid by the state on her or his behalf.

(5) The Agency for Health Care Administration shall seek recovery of all Medicaid-covered expenses and pursue court-ordered medical support from the community spouse when she or he refuses to make her or his assets available to the institutional spouse.

(6) The Department of Children and Family Services may adopt rules governing the administration of this section pursuant to ss. 120.536(1) and 120.54.

Section 2. This act shall take effect upon becoming a law.