



Federal Affairs Subcommittee MEETING PACKET

**Monday, January 30, 2012
12 HOB
3:00 PM – 4:30 PM**

**Dean Cannon
Speaker**

**Clay Ford
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Federal Affairs Subcommittee

Start Date and Time: Monday, January 30, 2012 03:00 pm

End Date and Time: Monday, January 30, 2012 04:30 pm

Location: 12 HOB

Duration: 1.50 hrs

Consideration of the following bill(s):

HM 1307 Sarbanes-Oxley Act by Brandes

HM 1321 Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 by Ahern


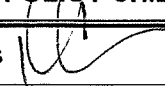
HM 1349 Statewide Implementation of Florida's Medicaid Reform Program by Grant

HM 611 Kings Bay by Smith

NOTICE FINALIZED on 01/26/2012 16:00 by Sims-Davis.Linda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 611 Kings Bay
SPONSOR(S): Smith
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Federal Affairs Subcommittee		Bennett 	Camechis 
2) State Affairs Committee			

SUMMARY ANALYSIS

This memorial urges Congress to direct the U.S. Fish and Wildlife Service (Service) to reconsider proposed rules that designate Kings Bay as a manatee refuge and, in lieu of the rule, partner with state and local governments in seeking joint long-term solutions to manatee protection.

The Florida manatee is a native species found in all parts of the State, and is currently protected by state law and the federal Marine Mammal Protection Act and Endangered Species Act.

Kings Bay is located in Citrus County, Florida, at the headwaters of the Crystal River, and is within the City of Crystal River. Kings Bay is the primary wintering site for endangered Florida manatees in northwest Florida, and manatees have increasingly used the bay during summer months. In 1980, about 100 manatees were using the network of springs in Kings Bay and the number of people viewing manatees was estimated at 30,000 to 40,000 per year. In recent years, more than 550 manatees have used Kings Bay and the number of people viewing manatees was estimated to exceed 100,000 people each winter.

The Service has established seven federal sanctuaries in Kings Bay. Human activity is prohibited within these sanctuaries during manatee season, which runs from November 15th through March 31st each year. Outside of the sanctuaries, human activity is permitted and regulated by the state under the Florida Manatee Sanctuary Act. During manatee season, watercraft may not operate within the designated sanctuaries and may only travel at "slow speed" in the rest of Kings Bay. During off-season months, including the summer months, watercraft may travel through the sanctuaries at idle speed and up 35 mph in the designated water sports area.

According to the Service, the number of manatees using Kings Bay during the year has outgrown the capacity of existing protected areas, and human use of the bay has increased beyond the impacts originally considered when the existing protections were created. As a result, in June 2011, the Service determined that additional manatee protections are necessary and published a proposed rule that:

- Establishes a federal manatee refuge throughout Kings Bay, including its tributaries and connected waters,
- Authorizes temporary expansion of seasonal manatee "no entry" sanctuaries if needed during extremely cold winters,
- Specifically identifies prohibited activities to reduce harassment and injury of manatees, and
- Limits watercraft to "slow speeds" throughout Kings Bay throughout the year.

As of January 26, 2012, the proposed rule had not taken effect, but is expected to do so in the near future.

This memorial has no fiscal impact; however, opponents of the proposed rule assert that, if the rule takes effect, it will have a significant negative fiscal impact on local governments and private businesses in the area.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes

This memorial urges Congress to direct the U.S. Fish and Wildlife Service (Service) to reconsider proposed rules that designate Kings Bay as a manatee refuge and, in lieu of the rule, partner with state and local governments in seeking joint long-term solutions to manatee protection.

Copies of the memorial will be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

Present Situation

Background

The West Indian Manatee (Florida manatee) became a federally protected endangered species in 1970.¹ From 1980 through 1998, the U.S. Fish & Wildlife Service (Service) designated seven manatee sanctuaries in Kings Bay, a 530 acre aquatic area located in the City of Crystal River, at the headwaters of the Crystal River in Citrus County.² These sanctuaries allow manatee's undisturbed access to critical warm-water resting and foraging areas, and are intended to prevent any manatee takings during manatee season (November 15 - March 31). Generally, a "taking" is the harassment, injury, or death of a manatee.³ During manatee season, all waterborne activities, such as swimming, waterskiing, and boating are prohibited within the sanctuaries.

The Service contends that the number of manatees using Kings Bay has more than doubled since 1998 (from 250 animals to 566 animals); the number of residents, visitors, and boats has significantly increased; and the amount of space in the existing sanctuaries has become insufficient to provide this number of manatees with shelter free from harassment. In addition, the number of manatees struck and killed by boats in Kings Bay has increased since 2002, when the watersports area was created.⁴

According to the Service, the primary human-related causes of death and injury to manatees rangewide include watercraft-related strikes (impacts and/or propeller strikes), entrapment and/or crushing in water control structures (gates, locks, etc.), and entanglement in fishing lines, crab pot lines, etc. A 2005 analysis concluded that watercraft-related mortality was the leading cause of death for manatees throughout Florida. A subsequent threats analysis concluded that watercraft strikes and the potential loss of warm-water habitat pose the greatest threats to the Florida manatee population.⁵

From 1974 through 2010, collisions with watercraft killed 60 manatees in Citrus County waterways, including 16 manatees in Kings Bay. Thirteen of the 16 Kings Bay watercraft-related deaths occurred within the past 10 years. In 2008, the Florida Fish and Wildlife Commission (FWC) recorded the highest number (8) of manatees ever killed by watercraft in Citrus County and three of these carcasses were recovered in Kings Bay. While watercraft-related deaths occur throughout the year in Citrus County, 7 of the 16 watercraft-related deaths that occurred in Kings Bay took place outside of manatee season when the watersports area designated by the state of Florida in 2002 is in effect (May 1 to August 30).⁶

¹ Endangered Species Conservation Act of 1969 (35 FR 8491), and as amended in 1973 (16 U.S.C. 1531 *et seq.*).

² Sanctuaries: Banana Island, Sunset Shores, Magnolia Springs, Buzzard Island, Warden Key, Tarpon Springs, and Three Sisters

³ Endangered Species Act § 3 (19); Endangered and Threatened Wildlife and Plants; Proposed Rule To Establish a Manatee Refuge in Kings Bay, Citrus County, FL, 76 FR 36493-01 ("proposal").

⁴ Proposal at FR 36497.

⁵ Proposal at FR 36495.

⁶ Proposal at FR 36497.

The maximum speed at which watercraft may travel throughout Kings Bay during manatee season is “slow.”⁷ During summer months, watercraft may travel at various speeds, as posted throughout the bay. The maximum speed limit is 35 mph in the designated water sports zone.

U.S. Fish and Wildlife Service Proposed Rules for Kings Bay

In November 2010, the Service determined that the seven existing manatee sanctuaries in Kings Bay were inadequate to protect manatees due to increasing human and manatee activity in the area.⁸ To prevent “manatee harassment associated with manatee viewing and other activities,” the Service issued an emergency rule on November 15, 2010, designating all of Kings Bay a temporary federal manatee refuge and specifying what types of human contact with manatees was prohibited.⁹ The emergency refuge overlapped the existing seasonal manatee sanctuaries and allowed establishment of additional “no-entry” areas as needed to accommodate manatee use during the winter. The emergency rule did not address speed limits for watercraft.

The Service’s emergency rule expired on March 15th, 2011, and Kings Bay is no longer a designated manatee refuge. Thus, for now, the pre-November 2010 restrictions on human contact with manatees and watercraft speeds are applicable in Kings Bay.

However, in June 2011, the Service proposed a rule that would make permanent, and expand upon, the emergency refuge rule. Based upon current and historical data that document increasing numbers of manatees, waterway users, watercraft-related manatee deaths and injuries, and reports of manatee harassment in Kings Bay, the Service concluded that the take of manatees is occurring and increasing in the area. The Service further concluded that future takes would occur without additional protection measures, but there was no basis to anticipate any alternative protection measures being enacted by other agencies in sufficient time to reduce the likelihood of take. For those reasons, the Service proposed its rules.¹⁰ In general terms, the proposed rule:¹¹

- Establishes a manatee refuge including all of Kings Bay;
- Maintains the 7 existing manatee sanctuaries, where all waterborne activities are prohibited during the manatee season;
- Limits the maximum watercraft speed to “slow” throughout Kings Bay at all times;
- Specifies 13 prohibited activities that constitute manatee takings and harassment;
- Requires manatee-safe fishing lines, float lines, and mooring lines at all times;
- Allows Temporary ‘no-entry’ areas adjacent to existing sanctuaries and additional springs during the manatee season;
- Allows Temporary ‘no-entry’ areas outside of the manatee season during unusual cold events; and,
- Provides limited exceptions for adjoining property owners and their designees to provide access to the water.

The most controversial aspect of the proposed rule is the establishment of a year-round “slow speed” zone throughout Kings Bay. Currently the speed limits during the summer months are governed by state law, which allow watercraft to travel at speeds of up to 35 mph in certain areas.¹²

According to the Service, under the proposed manatee refuge designation, refuge restrictions would improve its ability to address takings associated with watercraft and with manatee viewing activities. Restrictions would require all watercraft to operate at slow speed throughout Kings Bay, except in those

⁷ Watercraft of different sizes and configurations travel at different speeds so specific speed are not assigned for “slow” or “idle.” “Slow” speed means that a vessel must be fully off plane and completely settled into the water, “idle” speed permits watercraft proceed at a speed no greater than that which will maintain steerage and headway; Fla. Admin. Code Ann. r. 68C-22.002; 011.

⁸ See proposal, supra note 3 (the number of manatees more than doubled from an estimated 250 (1998) to 566 (2010)).

⁹ *Id.*

¹⁰ Proposal at FR 36498.

¹¹ *Id.*

¹² Fla. Admin. Code Ann. r. 68C-22.011(k). Maximum 35 mph/25 mph nighttime zone (May 1 through August 31)

areas where more restrictive measures are in place (idle speed zones, no entry areas, and sanctuaries), to reduce the number of watercraft-related deaths and injuries occurring in Kings Bay.¹³

As of January 26th, 2012, the final rule had not taken effect, but is expected to do so in the near future.¹⁴

*Florida Fish and Wildlife Conservation Commission*¹⁵

In a letter dated September 30, 2011, the FWC communicated to the Service the FWC's perspective on the proposed federal rule for Kings Bay. The FWC noted that the proposed rule includes several provisions supported by the FWC; however, the FWC expressed concern with the portion of the proposed rule addressing summer boat speeds in Kings Bay, noting that "[t]he elimination of all high speed activity in Kings Bay is controversial with a variety of opinions expressed by a diverse set of stakeholders including dive operators, nature enthusiasts, motor boaters, paddlers, water-skiers, and fishermen. It is the FWC philosophy that agencies should work closely with all stakeholders and affected portions of the public when considering and developing regulations.... Our agency strongly believes that a thorough and transparent public engagement process leads to rules that have wider public acceptance." The FWC strongly encouraged the Service to "carefully consider public input and building stakeholder consensus." The FWC did not, however, express direct support of or opposition to provisions in the proposed rule addressing summer boat speeds.

B. SECTION DIRECTORY: Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: See Fiscal Comments.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: See Fiscal Comments.

D. FISCAL COMMENTS: Although this memorial does not have a fiscal impact on local governments or the private sector, opponents of the Service's proposed rule assert that the rule itself will have a significant negative impact on local government and private sector revenues in the affected area. However, it appears that a formal economic impact study of the proposed rules has not been performed by the Service or affected parties.

¹³ Proposal at FR 36498.

¹⁴ <http://www.chronicleonline.com/content/doomsday-rule-king's-bay-subject-gov't-takeover-opponents-say>

¹⁵ Letter to Dave Hankla, Field Supervisor, U.S. Fish and Wildlife Services, from Kathy Barco, Chair, FWC (Sept. 30, 2011).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable.

2. Other: None.

B. RULE-MAKING AUTHORITY: Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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1 House Memorial

2 A memorial to the Congress of the United States,
 3 urging Congress to direct the United States Fish and
 4 Wildlife Service to reconsider the proposed rule to
 5 designate Kings Bay as a manatee refuge and in lieu of
 6 the rule partner with the state and local governments
 7 in seeking joint long-term solutions to manatee
 8 protection.

9
 10 WHEREAS, the United States Fish and Wildlife Service
 11 established the Crystal River National Wildlife Refuge in 1983
 12 to provide protection and sanctuary for the endangered West
 13 Indian manatee within portions of Kings Bay in Crystal River,
 14 and

15 WHEREAS, the rules currently in effect within the refuge
 16 have resulted in a significant increase in manatee population as
 17 evidenced by monitoring, sound science, and local data, and

18 WHEREAS, the United States Fish and Wildlife Service has
 19 proposed a rule to designate all of Kings Bay as a manatee
 20 refuge, and

21 WHEREAS, adoption of the proposed rule will have a
 22 significant adverse impact on the tourism industry, which is a
 23 critical part of the Crystal River economy, at a time when its
 24 local economy is already seriously weakened by challenges within
 25 the national economy, and

26 WHEREAS, adoption of the proposed rule will also have a
 27 significant adverse impact on the riparian rights of property
 28 owners adjacent to Kings Bay and the connecting waterways, and

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29 WHEREAS, prohibiting the use of any portion of Kings Bay
 30 for recreational boating activities, such as swimming, kayaking,
 31 and water skiing, will force such activities into the channel of
 32 Crystal River, subjecting participants to significant risks
 33 associated with sharing the channel with commercial fishing
 34 boats and other large watercraft, and

35 WHEREAS, there are viable alternatives to the proposed
 36 rule, such as increased enforcement of the rules currently in
 37 effect, which would accomplish the desired outcome of a reduced
 38 incidence rate of manatee injury or death without unduly
 39 restricting public use of Kings Bay, a water body that has
 40 historically served as the heart of the Crystal River community,
 41 and

42 WHEREAS, the City Council of the City of Crystal River and
 43 the Board of County Commissioners of Citrus County passed
 44 unanimous resolutions requesting that the United States Fish and
 45 Wildlife Service reconsider the proposed rule, and

46 WHEREAS, adoption of the proposed rule without a proper
 47 review of the impact on the City of Crystal River and the
 48 surrounding communities would be arbitrary and capricious, NOW,
 49 THEREFORE,

50
 51 Be It Resolved by the Legislature of the State of Florida:

52
 53 That the Congress of the Unites States is urged to direct
 54 the United States Fish and Wildlife Service to reconsider the
 55 proposed rule to designate Kings Bay as a manatee refuge and in

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56 | lieu of the rule partner with the state and local governments in
57 | seeking joint long-term solutions to manatee protection.

58 | BE IT FURTHER RESOLVED that copies of this memorial be
59 | dispatched to the President of the United States, to the
60 | President of the United States Senate, to the Speaker of the
61 | United States House of Representatives, and to each member of
62 | the Florida delegation to the United States Congress.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 1307 Sarbanes-Oxley Act
SPONSOR(S): Brandes
TIED BILLS: IDEN./SIM. **BILLS:** SM 1822

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Federal Affairs Subcommittee		Bennett <i>pb</i>	Camechis <i>[Signature]</i>
2) State Affairs Committee			

SUMMARY ANALYSIS

This memorial urges Congress "to repeal the Sarbanes-Oxley Act of 2002 to remove the damaging obstacles that the act has created for American public companies and replace it with reasonable non-intrusive measures to protect investors." The memorial does not specify or suggest protective measures that should replace the Act.

The Sarbanes-Oxley Act was enacted by Congress in 2002 and only applies to publicly-traded companies. The Act was Congress' response to the "illegal, unethical, or, at best, highly questionable behavior" undertaken by managers of Enron, WorldCom, and several other companies. Generally, the asserted purposes of the Act are to re-instill investor confidence in the financial market by enhancing institutional accountability and improve the reliability and accuracy of corporate disclosures. To achieve these goals, Section 404 of the Act mandates that all publicly-traded companies establish internal controls and procedures for financial reporting and to document, test, maintain, and report to the SEC the effectiveness of those controls and procedures. Additionally, companies with a market cap (or value) greater than \$75 million are required to hire a registered public accounting firm to audit the company and attest to, and report on, the company's internal controls.

It has been asserted that the Sarbanes-Oxley Act also increases directors' and officers' risk in connection with a host of possible claims or violations, either by increasing the odds they will be implicated in such claims or by increasing the resulting penalties. However, it has also been asserted that, while Sarbanes-Oxley imposes greater fines and longer prison terms for corporate wrongdoing, it does not criminalize behavior that was previously considered lawful.

Subsequent to enactment of the Sarbanes Oxley Act, concerns have been raised regarding high compliance costs for businesses and a perceived weakening in the competitiveness of U.S. capital markets.

This memorial has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes

This memorial urges Congress "to repeal the Sarbanes-Oxley Act of 2002 to remove the damaging obstacles that the act has created for American public companies and replace it with reasonable non-intrusive measures to protect investors." The memorial does not specify or suggest protective measures that should replace the Act.

Present Situation

Background

On July 30, 2002, President George W. Bush signed into law the Sarbanes-Oxley Act of 2002. (Act or SOX)¹ The Act, which legally affects only publicly-traded companies, was Congress' response to the "illegal, unethical, or, at best, highly questionable behavior, undertaken in alarmingly bold fashion, over long-periods of time-by managers of Enron, WorldCom, and several other companies."² Generally, the purpose of the Act is to re-instill investor confidence in the financial market by enhancing institutional accountability and improving the reliability and accuracy of corporate disclosures. In part, the Act:³

- Establishes a new Public Company Accounting Oversight Board, which is supervised by the Securities and Exchange Commission (SEC);
- Restricts accounting firms from performing other services for companies they audit;
- Requires new financial disclosures for public companies, and their officers and directors;
- Requires adoption of regulations regarding securities analyst conflicts of interest; and
- Strengthens criminal and civil penalties for violating securities laws and other laws.

The Act has been the subject of widespread debate and criticism since its enactment. The most controversial aspect of the Act, Section 404⁴, requires all publicly-traded companies to establish internal controls and procedures for financial reporting and to document, test, maintain, and report the effectiveness of those controls and procedures to the SEC. Additionally, companies with a market cap⁵ greater than \$75 million are required to hire a registered public accounting firm to audit the company and attest to, and report on, the company's internal controls.⁶

Cost of Compliance

Most of the costs placed on companies are associated with Section 404 and include costs related to increased accounting staff, external consulting and technology expenses, and increased audit fees. The

¹ P.L. 107-204 (July 30, 2002).

² Manuel A. Utset, *Time-Inconsistent Management & the Sarbanes-Oxley Act*, 31 Ohio N.U. L. Rev. 417 (2005).

³ U.S. Congressional Research Service, *Securities Law: Sarbanes-Oxley Act of 2002 and Selected 108th Congress Bills Concerning Corporate Accountability*", (RL31879; April 23, 2003) by Michael V. Seitzinger and Elizabeth Bazan. (CRS Report).

⁴ Section 404 of the Sarbanes-Oxley Act of 2002 (Public Law 107-204, July 30, 2002), as amended by Section 989G(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203, July 21, 2010) (15 U.S.C. 7262).

⁵ "Market cap" is short for "market capitalization." It represents the value of a company, including all of its assets, capital, revenues, etc. Basically, if the company were to be sold for a fair price, it would be close to the market cap. Of course people may have different opinions of what a company's value is, but there is a certain way to calculate the market cap. The market cap is calculated as follows: (Number of Shares Outstanding) (Market Cap of a share). This formula is easy to understand because the shares represent ownership of the company. All of the shares together represent the entire company, so we can find the value of the company by finding the total value of all of the shares. <http://www.stanford.edu/~mikefan/metrics/marketcap.html>.

⁶ Originally, all publicly traded companies with a market cap under \$75 million were also required to comply with Section 404(b); however, the high compliance cost of Section 404 led the SEC to delay compliance deadlines, and in 2010 the Act was amended. Section 989G (b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, exempted small companies (generally defined as companies with market cap under \$75 million) from the requirements of section 404(b).⁶

SEC originally estimated that the average annual cost of compliance with section 404 would be \$91,000 annually.⁷ A report by the 2006 SEC Advisory Board admitted that "actual average costs of Section 404 compliance have in fact been far in excess of what was originally anticipated . . . because the estimate of the costs for Section 404 implementation was underestimated so dramatically (millions of dollars per year, versus \$91,000), the pain and loss of value has been significantly greater for a small company."⁸ The SEC Advisory Board estimated that a company with a market value between \$75 and \$700 million would pay \$900,000 in actual compliance costs.⁹ Independent studies report annual compliance cost to be between \$1.7 and \$2.3 million.¹⁰ Non-monetary cost of compliance include monitoring and opportunity costs throughout the corporate structure, which redirect management from its primary task of generating earnings to the secondary task of overseeing accounting practices.¹¹

Capital-Market Trends

Comprehensive studies have suggested that the Act's compliance costs have negatively impacted domestic and foreign companies and encouraged them to delist from U.S. capital markets and go private (restructure to become a private company rather than publicly traded company)¹² or seek foreign market listings, usually in London or Hong Kong. A study which reviewed the required SEC filings to delist, deregister, or go private found a "significant" number of companies exiting the U.S. markets. The following percentages represent companies exiting the U.S. markets that cited Sarbanes-Oxley Act (or U.S. regulatory burdens) as a principal reason for doing so:¹³

- 18% of companies withdrawing from national exchanges, i.e. NYSE, Nasdaq (0.6% in 2003).
- 17% of companies deregistering with the SEC.
- 31.5% of foreign companies deregistering with the SEC.
- 54% of companies going private (19% in 2002).

While there is no conclusive evidence, studies by the Yale Journal on Regulation reported that "a fair reading of the empirical literature investigating U.S. capital-market competitiveness post-SOX indicates, at a minimum, that the statute has negatively impacted the stock exchanges' competitiveness due to losses of small-firm listings."¹⁴ The SEC, which oversees compliance with Sarbanes-Oxley, performed an analysis and did not find that medium sized U.S. companies (\$75-\$250 million market cap) were leaving U.S. markets for foreign markets. However, their analysis "[did] show that the U.S. markets share of world-wide IPOs raising less than \$250 million has declined over the past five years and further shows a dramatic decline in the number of smaller IPOs since 1999."¹⁵

⁷ Sections IV and V of Management's Reports on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, SEC Release No. 33-8238 (June 5, 2003).

⁸ SEC Advisory Comm. on Smaller Pub. Cos., Final Report 10 (2006). Note: This report was issued before the Dodd-Frank Act exempted small companies; however, the advisory committee notes that mid-sized companies, between \$75 and \$700 million market cap, would also face drastically increased cost from the original estimate.

⁹ *Id.*

¹⁰ The Economic Effects of SOX Section 404 Compliance: A Corporate Insider Perspective, by Cindy R. Alexander, Scott W. Bauguess, Gennaro Bernile, Yoon-Ho Alex Lee, and Jennifer Marietta-Westberg, at 18 (March 2010).

¹¹ Paul P. Arnold, *Give Smaller Companies A Choice: Solving Sarbanes-Oxley Section 404 Inefficiency*, 42 U. Mich. J.L. Reform 931, 935 (2009).

¹² 21% of companies surveyed in one study considered going private or selling the company as a result of the Act. See Foley Lardner Study, at 10. Foley Lardner LLP, *The Cost of Being Public in the Era of Sarbanes-Oxley* (May 19, 2004) (presentation at 2004 National Directors Institute) available at <http://www.foley.com>.

¹³ See Clarence D. Long IV & Samuel Wolff, "Post-SOX Trends in Delisting and Deregistration," 9 Rich. J. Global L. & Bus. 53 (2010) (percentages are averages of 2007-2008 data; deregistration filings were not adopted until 2007).

¹⁴ Roberta Romano, *Does the Sarbanes-Oxley Act Have A Future?*, 26 Yale J. on Reg. 229, 255 (2009) (Yale Journal).

¹⁵ U.S. Securities and Exchange Commission, *Study and Recommendations on Section 404(b) of the Sarbanes-Oxley Act of 2002 For Issuers With Public Float Between \$75 and \$250 Million*, at 44, April 2011.

Officer and Director Liability

It has been asserted that the Sarbanes-Oxley Act also increases directors' and officers' risk in connection with a host of possible claims or violations, either by increasing the odds they will be implicated in such claims or by increasing the resulting penalties.¹⁶

A Senior Fellow of the Cato Institute has described the law as follows:

Perhaps the most visible symbolic change is that Sarbanes-Oxley required the CEO and CFO to certify that their financial statements "fairly" represent "financial conditions and results," and face prison sentences if they are wrong. The SEC always had the power to require such a certification ceremony, and in fact did so before Sarbanes-Oxley was enacted. But Section 302(a) is more extreme. It threatens prison sentences of up to 20 years for executives who "willfully" certify incorrectly that reports have "fairly" presented "financial conditions and results," or years for doing so "knowingly." Executives can be banned from serving as an officer or director because of undefined "misconduct." They can be required to forfeit one year of back pay if earnings have to be restated due to "material noncompliance." Nobody can know in advance what "willfully" or "fairly" or "misconduct" or "material noncompliance" means, so all these potentially capricious punitive measures fail to live up to the rule of law. Certification puts the CEO in the position of a nervous auditor – a job few CEOs are qualified to do – rather than a general manager who properly delegates such specialized chores to experts.¹⁷

Another legal analysis of the Act indicates that, "It is important to recognize that, while Sarbanes-Oxley imposes greater fines and longer prison terms for corporate wrongdoing, it does not criminalize behavior that was previously considered lawful. Committing securities fraud, obstructing justice, intentionally destroying evidence, and filing false financial statements were all illegal before Sarbanes-Oxley was adopted. Similarly, Sarbanes-Oxley does not create new bases for civil lawsuits."¹⁸ The analysis further indicates that, "[d]irectors and officers have always been at risk for claims that they violated either their duty of care in taking appropriate steps to make informed business decisions, or their duty of loyalty by failing to put the interests of the company and its shareholders before their own. Sarbanes-Oxley sets forth new "required" activities for directors and officers. Failure to perform those activities may be viewed as evidence of a de facto breach of the duty of care."¹⁹

Recent Federal Legislation

During the current 112th Congress, at least eight legislative proposals have been filed seeking to alter the Sarbanes-Oxley Act of 2002, all of which remain in committee.²⁰

¹⁶ Dan A. Bailey, J. David Washburn & Quentin Collin Faust, Now It's Personal: The Real Impact of Sarbanes-Oxley on Directors and Officers, WALL ST. LAWYER, Sept. 2002. Available at http://securities.stanford.edu/news-archive/2002/20020900_Headline11_BWF.htm.

¹⁷ *Sarbanes-Oxley in Retrospect*, Alan Reynolds, Senior Fellow, The Cato Institute. Available at: <https://www.cato.org/events/sarbanes-oxley.pdf>

¹⁸ Dan A. Bailey, J. David Washburn & Quentin Collin Faust, Now It's Personal: The Real Impact of Sarbanes-Oxley on Directors and Officers, WALL ST. LAWYER, Sept. 2002. Available at http://securities.stanford.edu/news-archive/2002/20020900_Headline11_BWF.htm.

¹⁹ *Id.*

²⁰ H.R. 2941, referred to the Subcommittee on Capital Markets and Government Sponsored Enterprises; H.R. 1697, House Financial Services, subcommittee hearings held; H. R. 3213, referred to the House Committee on Financial Services; H.R. 3655, referred to the Subcommittee on Capital Markets and Government Sponsored Enterprises; S. 1600, referred to the Committee on Finance; S.1866, referred to the Committee on Finance, S. 1965, referred to the Committee on Finance.

B. SECTION DIRECTORY: Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable.
2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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House Memorial

A memorial to the Congress of the United States,
urging Congress to repeal the Sarbanes-Oxley Act of
2002.

WHEREAS, the Sarbanes-Oxley Act was enacted on July 30,
2002, in Pub. L. No. 107-204, and

WHEREAS, the stated purpose of the act is "to protect
investors by improving the accuracy and reliability of corporate
disclosures made pursuant to the securities laws . . .," and

WHEREAS, this federal legislation was passed with the best
of corrective intentions after the discovery of corporate fraud
and accounting scandals that cost investors and retirees
billions of dollars, and

WHEREAS, the Sarbanes-Oxley Act, in spite of the good
intentions that motivated its passage, has created an extremely
complex maze of federal regulations that are costly and damaging
to public companies and diminish the companies' ability to
compete against foreign financial entities that are not subject
to its regulations, and

WHEREAS, section 404 of the act, as amended in 2010 by the
Dodd-Frank Wall Street Reform and Consumer Protection Act,
requires management of a company to assess and produce a report
on the adequacy of its internal control structure, after which
the company's registered accounting firm must then attest to the
assessments made by management, and

WHEREAS, the enormous work required to gather the
information and have it verified through an outside audit is an

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29 extraordinarily time consuming and expensive undertaking, the
 30 cost of which disproportionately impacts smaller businesses, and

31 WHEREAS, one study suggests that the expense of complying
 32 with section 404 has cost companies an average of \$5.1 million
 33 in a single reporting year and a separate study concluded that
 34 the Sarbanes-Oxley Act increased compliance costs by as much as
 35 130 percent for each company, while other observers have noticed
 36 a dramatic decrease in initial public offerings on American
 37 stock exchanges in response to the demands of section 404, and

38 WHEREAS, the costs that businesses must bear to comply with
 39 the extensive provisions of the Sarbanes-Oxley Act are
 40 unnecessary and crippling, and

41 WHEREAS, financial market scholars have observed that the
 42 Sarbanes-Oxley Act has produced the unfortunate consequence of
 43 discouraging American businesses from listing with New York
 44 stock exchanges and listing instead in England where the markets
 45 and stock exchanges are less heavily regulated, and

46 WHEREAS, the Sarbanes-Oxley Act is a very costly example of
 47 Federal Government intrusion that imposes unnecessary regulatory
 48 costs on American businesses and interferes with basic free
 49 market principles, and

50 WHEREAS, instead of preventing fraud and ensuring
 51 transparency, the extensive regulations created by the Sarbanes-
 52 Oxley Act have thwarted the creation of new public companies,
 53 driven business away from domestic stock markets, and cost the
 54 industrial sector billions of dollars, NOW, THEREFORE,

55

56 Be It Resolved by the Legislature of the State of Florida:

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57

58 That the Congress of the United States is urged to repeal
 59 the Sarbanes-Oxley Act of 2002 to remove the damaging obstacles
 60 that the act has created for American public companies and
 61 replace it with reasonable non-intrusive measures to protect
 62 investors.

63 BE IT FURTHER RESOLVED that copies of this memorial be
 64 dispatched to the President of the United States, to the
 65 President of the United States Senate, to the Speaker of the
 66 United States House of Representatives, and to each member of
 67 the Florida delegation to the United States Congress.

HM 1321

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 1321 Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
SPONSOR(S): Ahern
TIED BILLS: IDEN./SIM. **BILLS:** SM 1778

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Federal Affairs Subcommittee		Bennett <i>RB</i>	Camechis <i>[Signature]</i>
2) State Affairs Committee			

SUMMARY ANALYSIS

This memorial urges Congress to repeal the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

The Dodd-Frank Act was enacted in 2010 and made widespread changes to the regulatory environment for banking and investment institutions, as well as financial markets and their participants. Changes were made to regulations regarding credit ratings, regulation of financial products, corporate governance and disclosure, consumer protection, trading restrictions, and transparency. In addition, the Act created, expanded, and reallocated regulatory authority among thirteen new federal agencies.

The Dodd-Frank Act has faced criticism since its enactment, and some federal lawmakers have proposed repealing the Act. Federal lawmakers and industry officials seeking to repeal the Act assert that the Act will cost too much to implement and maintain, and that its regulatory requirements are overly burdensome and confusing for businesses.

The memorial does not have a fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes

This memorial urges Congress to repeal the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

Present Situation

Background

Financial conditions in the United States began to deteriorate in 2007 and, by September 2008, many banks, insurers, government-sponsored enterprises, and investment banks had either failed or required hundreds of billions in federal support to continue functioning. American consumers were affected by a rapid decline in real estate value and financial assets, as well as an increase in unemployment.

In response to the crisis, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).¹ The Act, which addresses a variety of issues that arose as a result of the deteriorating financial situation, has been regarded as “the strongest financial reform [] this country has considered since the Great Depression.”² Major elements of the Dodd-Frank Act include:³

- *Framework for Financial Stability:* Creates framework intended to promote the financial stability of the US financial services system.
- *Framework for Orderly Liquidation:* Establishes framework to resolve failing nonbank financial institutions in a manner similar to the Federal Deposit Insurance Corporation.
- *Changes to the Bank Regulatory Structure:* Makes significant changes to the structure of bank regulation, and expands bank regulatory powers in a variety of areas.
- *Consumer Protection:* Establishes new federal regulations to protect consumers.
- *Derivatives Regulation:* Creates framework for the regulation of over-the-counter derivatives and supervision of swap dealers. Provides new authority to the Commodity Futures Trading Commission and Securities and Exchange Commission (SEC).
- *Capital Markets and Investor Protection:* Strengthens SEC’s regulatory oversight and creates numerous protections for investors.
- *Registration Requirements:* Requires advisers to hedge funds, private equity funds, and certain other types of private investments to, among other things, register with the SEC.
- *Insurance Oversight and Regulatory Reform:* Monitors the insurance industry.
- *Federal Reserve System Changes:* Imposes new limitations on the Federal Reserve System’s power to make emergency loans, gives the Government Accountability Office new audit authority.
- *Other Provisions:* Creates provisions that are designed to expand access to banking services and credit for low-income families, and requires numerous studies and reports.

Costs and Economic Impact of the Dodd-Frank Act

The Congressional Budget Office (CBO) estimated that over the period of 2010-2020, federal spending associated with the Act would total \$37.8 billion, which would be offset by an estimated \$41 billion in

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010); enacted July 21, 2010.

² See Press Release, U.S. Dept. of Treasury, Treasury Sec’y Timothy Geithner Remarks on Passage of the Wall Street Reform and Consumer Protection Act (July 15, 2010), Available at: www.financialstability.gov/latest/pr_07152010.html.

³ See Mayer Brown LLP, “Understanding the New Financial Reform Legislation”, Available at: http://www.google.com/#sclient=psy-ab&hl=en&site=&source=hp&q=Understanding+the+New+Financial+Reform+Legislation&pbx=1&oq=Understanding+the+New+Financial+Reform+Legislation&aq=f&aqi=&aql=&gs_sm=s&gs_upl=1950119501013027111101010194194111110&bav=on.2,or.r_gc.r_pw.,cf.osb&fp=8d6768a857bfc9db&biw=1280&bih=862.

saving and revenues, leading to a deficit reduction of \$3.2 billion dollars.⁴ The revenue would be generated primarily from new fees assessed on various financial institutions and market participants. Most of the spending would result from the creation and staffing of the following thirteen new regulatory agencies established to carry out the Act's numerous reforms: The Office of Minority and Women Inclusion; Financial Stability Oversight Council; Office of Financial Literacy; Consumer Financial Protection Bureau; Federal Insurance Office; Investor Advisory Committee; Office of Investor Advocate; Office of Credit Ratings; Credit Rating Agency Board; Office of Financial Research; Office of Housing Counseling; Office of Fair Lending and Equal Opportunity; and the Office of Financial Protection for Older Americans.⁵ The new agencies will result in roughly 2,600 new full-time federal employees.⁶ The Act abolished the Office of Thrift Supervision; its functions were merged into various other offices.

The CBO did not analyze the regulatory impact of the legislation on the private-sector, but did state that that the fees associated with the Act alone would significantly exceed the annual threshold established by law for private-sector mandates (\$141 million in 2010, adjusted annually for inflation).⁷ The CBO cites its lack of analysis on the economic impact in the private-sector due to the uncertain nature of the new regulations.⁸ Concerns remain regarding the uncertainty of the new required rules - only 86 of the 400 required rules (21.5%) have been finalized, and 159 have not yet been proposed (39.75%).⁹ Of the 200 rules which were to be completed by the end of 2011, only 51 (25.5%) were finalized; the remaining 149 rules (74.5%) remain incomplete.¹⁰

The implementation and potential impact of the new rules have prompted industry associations to raise concerns about the regulations' impact on the financial markets. To provide more clarity about the implementation of the new rules, the Financial Stability Oversight Council (FSOC) issued a proposed rule describing the manner in which FSOC intends to apply the statutory standards.¹¹

Efforts to Repeal the Dodd-Frank Act

The Dodd-Frank Act has faced criticism since its enactment, and some federal lawmakers have proposed repealing the Act.¹² Federal lawmakers and industry officials seeking to repeal the Act assert that the Act will cost too much to implement and maintain, and that its regulatory requirements are overly burdensome and confusing for businesses.¹³

In the current 112th Congress, at least three legislative proposals to repeal the Dodd-Frank Act have been introduced; as of January 12, 2012, all remain in committee.¹⁴

B. SECTION DIRECTORY: Not applicable.

⁴ Congressional Budget Office, Review of CBO's Cost Estimate for the Dodd-Frank Wall Street Reform and Consumer Protection Act. March 2011.

⁵ See, e.g., A. Nicole Clowers, Testimony before the House Committee on Financial Services Subcommittee on Oversight and Investigations (July 14, 2011), <http://www.gao.gov/new.items/d11808t.pdf>.

⁶ House Committee on Financial Services, *Fixing Provisions In Dodd-Frank That Are Hindering An Economic Recovery*, available at: <http://financialservices.house.gov/Issues/fixprovd.htm>

⁷ Congressional Budget Office, Cost Estimate of Restoring American Financial Stability Act of 2010 As passed by the Senate on May 20, 2010, at 22, June 9, 2010.

⁸ *Id.* at 3.

⁹ Dodd-Frank Progress Report. January 2012. Generated using the Davis Polk Regulatory Tracker. Available at: <http://www.advisorone.com/2012/01/03/dodd-frank-progress-report-on-laws-key-elements>

¹⁰ See *Id.*

¹¹ FSOC Issues Proposed Guidance on Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies by Ethan Mark, October 12, 2011. Available at: <http://www.treasury.gov/initiatives/fsoc/Documents/Nonbank%20Designation%20NPR%20Final%20with%20web%20disclaimer.pdf>

¹² "Dodd-Frank bill has a murky future," by Scott Wong and Ben White, November 11th, 2011. Available at: <http://www.politico.com/news/stories/1111/69314.html#ixzz1jGHbM7XO>

¹³ *Id.*; see also Federal Reserve, Comments of The American Bankers Association, May 2, 2011. Available at: http://www.federalreserve.gov/SECRS/2011/May/20110511/R-1406/R-1406_050311_69598_354199143008_1.pdf

¹⁴ S. 712: Financial Takeover Repeal Act of 2011, read twice and referred to the Committee on Finance; S. 746: Dodd-Frank Repeal Act of 2011, read twice and referred to the Committee on Banking; H.R. 87: Referred to the Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable.
2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

House Memorial

A memorial to the Congress of the United States,
 urging Congress to repeal the Dodd-Frank Wall Street
 Reform and Consumer Protection Act of 2010.

WHEREAS, Congress enacted the Dodd-Frank Wall Street Reform
 and Consumer Protection Act in 2010, and

WHEREAS, the stated purposes of the act are "To promote the
 financial stability of the United States by improving
 accountability and transparency in the financial system, to end
 'too big to fail,' to protect the American taxpayer by ending
 bailouts, to protect consumers from abusive financial services
 practices . . .," and

WHEREAS, the act's almost 2,400 pages of federal
 legislation increases the size of the Federal Government by
 creating 13 new regulatory agencies requiring 2,600 new
 positions while abolishing only one agency, and

WHEREAS, the Congressional Budget Office predicts that the
 cost for companies to implement the act over the next 5 years
 will be approximately \$2.9 billion, and other groups estimate
 that the broader economic costs of the act could approach \$1
 trillion, and

WHEREAS, the extensive regulations imposed by the Dodd-
 Frank Wall Street Reform and Consumer Protection Act will
 severely damage the ability of American companies to compete
 internationally with foreign companies or even create American
 jobs, and

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28 WHEREAS, the Dodd-Frank Wall Street Reform and Consumer
 29 Protection Act is an inadequate response to the financial
 30 devastation that began in 2008, in part because it has given
 31 unfair advantages to the Federal Home Loan Mortgage Corporation
 32 ("Freddie Mac") and the Federal National Mortgage Association
 33 ("Fannie Mae"), institutions that were substantial contributors
 34 to the financial crisis, and

35 WHEREAS, the Dodd-Frank Wall Street Reform and Consumer
 36 Protection Act was championed as creating the most significant
 37 financial regulatory reform since the Great Depression, but, in
 38 contrast, it has become a radical expansion of federal
 39 regulation, vests unprecedented power in the hands of unelected
 40 bureaucrats, increases the likelihood that there will be more
 41 taxpayer bailouts, has not strengthened the economy or brought
 42 stability to the troubled housing market, and does nothing to
 43 address the most elemental causes that created the financial
 44 crisis of 2008, NOW, THEREFORE,

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46 Be It Resolved by the Legislature of the State of Florida:


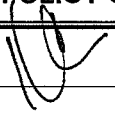
47

48 That the Congress of the United States is urged to repeal
 49 the Dodd-Frank Wall Street Reform and Consumer Protection Act of
 50 2010.

51 BE IT FURTHER RESOLVED that copies of this memorial be
 52 dispatched to the President of the United States, to the
 53 President of the United States Senate, to the Speaker of the
 54 United States House of Representatives, and to each member of
 55 the Florida delegation to the United States Congress.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 1349 Statewide Implementation of Florida's Medicaid Reform Program
SPONSOR(S): Grant
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Federal Affairs Subcommittee		Bennett 	Camechis 
2) State Affairs Committee			

SUMMARY ANALYSIS

This memorial requests the federal Centers for Medicare and Medicaid Services (CMS) approve federal waivers to allow implementation of Florida's Statewide Medicaid Managed Care program (SMMC).

Medicaid is the health care safety net for low-income Americans. In 2005, the Florida Legislature authorized the Agency for Health Care Administration (AHCA) to establish a pilot program to reform Medicaid in Florida for the purpose of improving health outcomes of Medicaid beneficiaries and achieving budget predictability. The pilot was conducted in Broward and Duval Counties. Soon thereafter, the pilot program was expanded to three more counties. In 2011, the Florida Legislature passed legislation, developed using tenets of the pilot program, to establish the SMMC. Rather than utilizing the traditional Medicaid fee-for service payment structure, the SMMC's managed care plans pay a set amount per beneficiary for all of an individual's health care needs.

Federal waivers are necessary in order to implement Florida's SMMC program because the program alters current federal Medicaid programs. Variations from federal Medicaid regulations must be approved in the form of a waiver, issued by the Secretary of Health and Human Services, by way of the CMS and the White House's Office of Management and Budget (OMB).

Provisions in Florida's 2011 legislation creating the SMMC require AHCA to apply for the federal waivers necessary to implement the program. AHCA has submitted waiver requests for CMS's review, but it is unknown whether or when the waivers will be granted.

This memorial has no fiscal impact

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes

This memorial requests the federal Centers for Medicare and Medicaid Services (CMS) approve the federal waivers allowing Florida's Medicaid reform to be implemented statewide.

Present Situation

Background

Medicaid is the health care safety net for low-income Americans, and is a partnership of the federal and state governments established to provide coverage for health services for eligible persons. The state and federal government share the costs of the Medicaid program. States are not required to participate in the federal Medicaid program but, if they do, the state plans must generally conform to federal Medicaid regulations. In return for their participation, participating state governments get partial reimbursement from the federal government. States may experiment with new types of plans; however, the plans must generally conform to federal Medicaid regulations, and any variations must be approved by the Secretary of Health and Human Services.¹

Medicaid in Florida

Florida's Medicaid program serves over 3 million people at estimated cost of over \$20 billion for FY 2011-2012.² The Agency for Health Care Administration (AHCA) oversees the complex system of eligibility groups, financing, and service models. Medicaid costs have increased significantly since its inception, due to substantial eligibility expansion as well as the broad range of services and programs funded by Medicaid. For example, over half the childbirths in Florida are paid for by the Medicaid program, and about one quarter of Florida children are covered by Medicaid.³

Pilot Program

In 2005, the Florida Legislature passed a law to begin reforming the state's Medicaid program with the intent of improving health outcomes of Medicaid beneficiaries and achieving budget predictability. In September 2006, AHCA obtained approval from the Legislature and a federal waiver from the CMS to implement a managed care pilot program in Broward and Duval counties. Soon thereafter, the pilot program was expanded to Baker, Clay, and Nassau counties.⁴

According to AHCA, the five-county pilot program "created an environment that encouraged beneficiaries to more actively participate in the management of their health care and incentivized health plans to provide care centered on the person's individual needs."⁵ On December 15, 2011, the CMS approved AHCA's request for a 3-year waiver extension for the pilot program through June 30, 2014.

¹ *Spry v. Thompson*, 487 F.3d 1272, 1273 (9th Cir. 2007).

² Estimated expenditures for Fiscal Year 2011-12 (July 2011 through June 2012); <http://www.fdhc.state.fl.us/medicaid/>

³ Florida Medicaid: Program Overview, Agency for Health Care Administration Presentation to House Health and Human Services Committee, 2011.

⁴ For more details on the pilot program, please see: Fla. H.R., HB 7107 (2011) Final Staff Analysis (June 28, 2011) (available at <http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=h7107z.HHSC.DOCX&DocumentType=Analysis&BillNumber=7107&Session=2011>) (Staff Analysis).

⁵ Agency for Health Care Administration, Florida Medicaid Reform Year 5, Annual Report July 1, 2010 – June 30, 2011, 1115 Research and Demonstration Waiver. Available at: http://ahca.myflorida.com/medicaid/medicaid_reform/annual.shtml

Statewide Medicaid Managed Care Program

On May 6, 2011, the Florida Legislature passed legislation,⁶ developed using tenets of the pilot program, to establish the Statewide Medicaid Managed Care program (SMMC). Rather than utilizing the traditional Medicaid fee-for-service payment structure, the SMMC's managed care plans pay a set amount per beneficiary for all of an individual's health care needs. The SMMC program is characterized by:⁷

- Care and services provided in a managed care model;
- Mandatory participation for most, voluntary for some, with some populations excluded;
- Competitive, negotiated selection of managed care plans that meet strict selection criteria;
- Regionalized plan selection of a limited number of plans to ensure coverage in rural areas;
- Limited plan numbers in the eleven regions to ensure stability but allow significant patient choice;
- Varying models of managed care: HMOs, PSNs, specialty plans, and medical home plans;
- Specific plan accountability measures, including network standards, achieved savings rebates, encounter data, performance measures, and fraud and abuse measures;
- Negotiated payments based on risk-adjusted rates;
- Customized benefits to allow meaningful recipient choice; and
- Opt-Out Program for recipients to use their Medicaid dollars to purchase other forms of coverage

State law directs AHCA to implement parts of the SMMC by October 1, 2013, and full implementation is required by October 1, 2014.⁸

Federal Waivers

Provisions⁹ of the Social Security Act of 1965 grant the states authority to implement experimental Medicaid programs that are "designed to improve the techniques of administering assistance."¹⁰ The Department of Health and Human Services (by way of CMS) and the White House's Office of Management and Budget (OMB)¹¹ must "waive" federal Medicaid requirements whenever a state uses federal funds in ways that alter the federal Medicaid program. Much of the approval process is complex and informal; there are few rules or guidelines in place and CMS has ultimate discretion. The application review period typically lasts between six and twenty-five months and involves extensive negotiations between the state and CMS. If approved, the state is usually granted an operational waiver for a period of five years, at the end of which the state may seek renewal in the form of a three-year waiver extension.

Federal waivers are necessary in order to implement Florida's SMMC program because the program alters current state-administered federal Medicaid programs. Provisions of the reform legislation require AHCA to apply for the federal waivers necessary to implement the program.¹² AHCA submitted timely waiver requests for CMS's review;¹³ however, it is unknown whether or when the CMS will approve the waivers.

⁶ House Bill 7107 (Ch. 2011-134, L.O.F) and HB 7109 (Ch. 2011-135, L.O.F); signed into law by Governor Rick Scott on June 2, 2011; codified as § 409.961 - § 409.985, Fla. Stat. (2011).

⁷ For comprehensive analysis of changes to Florida's Medicaid program as a result of House Bills 7107 and 7109 *see generally*: Staff Analysis, *supra* note 4 at 21; and Fla. H.R., HB 7109 (2011) Final Staff Analysis (June 28, 2011) (available at <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h7109z.HHSC.DOCX&DocumentType=Analysis&BillNumber=7109&Session=2011>).

⁸ § 409.971 and 409.978(1), Fla. Stat. (2011).

⁹ Public Welfare Amendments of 1962, Pub. L. No. 87-43, tit. I, sec. 122, tit. XI, § 1115, 76 Stat. 173, 192 (1962) (codified as amended at 42 U.S.C. § 1315 (1988))

¹⁰ S. Rep. No. 87-1589 (1962), reprinted in 1962 U.S.C.C.A.N. 1943, 1962

¹¹ OMB approval is required when the plan uses more than \$1 million and affects more than 300 Medicaid recipients. *See* Elizabeth Andersen, Administering Health Care: Lessons from the Health Care Financing Administration's Waiver Policy-Making, 10 J.L. & Pol. 215, 227-28 (1994).

¹² § 409.964 and 409.985(4), Fla. Stat. (2011).

¹³ Information on the submitted waiver request available at: http://ahca.myflorida.com/Medicaid/statewide_mc/index.shtml#tab3

Current State Legislation

A similar memorial proposed in the Florida Senate (SM 1836) urges the Secretary of Health and Human Services to approve the federal Medicaid waivers required to expand Florida's SMMC. A Senate bill (CS/SB 730) would alter parts of the SMMC with respect to Medicaid recipients who are dually eligible for Medicaid and Medicare. The bill passed the Senate Health Regulation Committee and the Senate Budget Subcommittee on Health and Human Services, and is now in the full Senate Budget Committee. A similar House bill (HB 727) has been referred to committee but has not been heard.

B. SECTION DIRECTORY: Not Applicable

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: None.
2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: The title of the memorial is incorrect and inconsistent with the body of the memorial. The sponsor is expected to offer an amendment to correct the title.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

HM 1349

2012

1 House Memorial

2 A memorial to the Congress of the United States,
 3 urging Congress to approve waivers enabling planned
 4 statewide implementation of Florida's Medicaid reform
 5 program.

6
 7 WHEREAS, the Florida Legislature believes that Medicaid
 8 reform should be both pro-patient and pro-taxpayer and Florida's
 9 Medicaid Reform pilot program has achieved both, and

10 WHEREAS, legislation passed during the 2011 legislative
 11 session implemented statewide Medicaid reform based on the
 12 successful pilot program, and

13 WHEREAS, Medicaid patients should have more control over
 14 their health future than the current system allows, and care
 15 decisions should not be made by politicians and bureaucrats, and
 16 instead should be made by Medicaid patients and doctors based on
 17 specific health care needs, and

18 WHEREAS, taxpayers should have peace of mind that their
 19 sacrifice is funding an efficient, affordable, and sustainable
 20 Medicaid safety net that keeps patients healthy and that, as the
 21 cost of maintaining traditional Medicaid coverage continues to
 22 grow, they are not threatened with tax hikes and service cuts to
 23 fund a failing program, and

24 WHEREAS, Medicaid patients in counties where the Medicaid
 25 reform pilot program was implemented are healthier and happier
 26 with their care than patients enrolled in traditional Medicaid
 27 managed care and commercial health maintenance organization
 28 plans, have better health outcomes based on a series of

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29 benchmark indicators, have more plan options, and have access to
 30 health services not covered by any other Medicaid program in the
 31 nation, and

32 WHEREAS, competition within Florida's pilot program has
 33 resulted in better and more customized benefits for patients,
 34 more benefit coverage than traditional plans, and lower costs
 35 for patients, and

36 WHEREAS, Florida taxpayers have saved up to \$118 million
 37 annually since 2006 when Florida's five-county Medicaid reform
 38 pilot program took effect, and approval of Florida's waiver
 39 requests will allow Florida taxpayers to save an estimated \$901
 40 million annually, and

41 WHEREAS, the approval of Florida's waiver requests will
 42 allow all Florida residents to enjoy the benefits of Medicaid
 43 reform that is efficient, affordable, and sustainable, NOW,
 44 THEREFORE,

45
 46 Be It Resolved by the Legislature of the State of Florida:

47
 48 That the Legislature, in the best interests of the citizens
 49 of the State of Florida, requests the Centers for Medicare and
 50 Medicaid Services to approve Florida's requested waivers
 51 allowing Florida's Medicaid reform to be implemented statewide.

52 BE IT FURTHER RESOLVED that copies of this memorial be
 53 dispatched to the President of the United States, to the
 54 President of the United States Senate, to the Speaker of the
 55 United States House of Representatives, and to each member of
 56 the Florida delegation to the United States Congress.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HM 1349 (2012)

Amendment No. 1 (Title Amendment)

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 _____

1 Committee/Subcommittee hearing bill: Federal Affairs
2 Subcommittee
3 Representative Grant offered the following:
4

Amendment (with title amendment)

6 -----

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

8 Remove lines 2-5 and insert:

9 A memorial to the Centers for Medicare and Medicaid Services
10 requesting approval of waivers enabling planned statewide
11 implementation of Florida's Medicaid reform program.
12