



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Ensure Lower Taxes** – House Bill 731 does not propose any additional taxes or fees; however the proposal redirects 90 percent of the sales tax collections obtained through the tax collection enforcement diversion program from the General Revenue Fund to the Able Trust as one source of funding for the expanded personal care attendant program.

**Promote Personal Responsibility** – House Bill 731 provides personal care attendants to disabled persons who, without such assistance, would be unable to obtain or maintain employment or who would otherwise be in need of government assistance.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### ***Personal Care Attendant Program***

The Personal Care Attendant (PCA) program was established to assist eligible persons, who are disabled because of a traumatic spinal cord injury, to return to work in their communities by providing personal care attendants. The PCA program was initially established as a pilot program in 2002 in select counties in Florida.<sup>1</sup> Under the pilot project, the law required the Department of Revenue (DOR) in coordination with the Florida Association of Centers for Independent Living (FACIL) and the Florida Prosecuting Attorneys Association, to select counties in which to operate the pilot project.<sup>2</sup> The following counties currently participate in the program: Miami-Dade, Broward, Palm Beach, Hillsborough and Duval.

Responsibility for implementation and administration of the program is with the Personal Care Attendant Program Oversight Workgroup established by the Department of Health (DOH.) The workgroup consists of: one representative from the Brain and Spinal Cord Injury Program in the DOH; one representative from the Department of Revenue (DOR); one representative from the Florida Medicaid program in the AHCA; one representative from the Florida Endowment Foundation for Vocational Rehabilitation (FEFVR); one representative from the Florida Association of Centers for Independent Living (FACIL); one representative from the Division of Vocational Rehabilitation (VR) of the Department of Education (DOE); and two members who are persons with traumatic spinal cord injuries or are family members of persons with traumatic spinal cord injuries.<sup>3</sup>

Persons eligible to participate in the program must:

- Be at least 18 years of age who are significantly disabled because of a traumatic spinal cord injury;
- Require a personal care attendant for bathing, dressing, bowel and bladder management, and transportation;
- Require a personal care attendant to obtain or maintain substantial gainful employment;
- Be able to hire and supervise a personal care attendant; and

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<sup>1</sup> Ch.2002-286, L.O.F., established the PCA program as a pilot; the program was made permanent in Ch. 2005-172, L.O.F

<sup>2</sup> Ch.2002-286 section 2, L.O.F.

<sup>3</sup> S. 413.402(6), F.S.

- Meet one of the following requirements:
  - Live in a nursing home;
  - Have recently moved out of a nursing home to participate in a Medicaid home; and community-based waiver program targeted to persons with brain or spinal cord injuries; or
  - Presently be employed, but because of a loss of a caregiver, will lose employment and potentially return to a nursing home.<sup>4</sup>

The PCA program consists of two major components:

- Recruiting, screening, selecting, and training candidates as personal care attendants; and
- Selecting eligible individuals for participation in the program and providing financial assistance to eligible participants. Program participants are provided approximately \$670 per month (\$8,000 per year) as reimbursement for the cost of his or her personal care attendant.<sup>5</sup>

Current enrollment in the program is as follows:

Date	Enrollment
January 2006	3
January 2007	22
January 2008	30

### ***Program Care Attendant Program Funding***

There are two funding sources for the PCA program: proceeds from the Tax Collection Enforcement Diversion Program, and from the Motorcycle Specialty License Tag.<sup>6</sup>

#### **Tax Collection Enforcement Diversion Program**

In conjunction with establishing the personal care attendant program, the Legislature directed the FACIL and the State Attorney's offices in the participating counties to implement a Tax Collection Enforcement Diversion program, which collects revenue from persons who have not remitted their sales taxes. Section 413.4021(1), F.S., specifies that 50 percent of those collections are to be remitted by the DOR to the Able Trust of the Florida Endowment Foundation for Vocational Rehabilitation to be used to implement the PCA program, with the other 50 percent going to the General Revenue Fund. The Able Trust, in turn, remits funds to the FACIL to administer and operate the PCA program.

There are currently five Florida State Attorney's offices operating a program in which un-remitted sales tax is collected from delinquent business owners. These collections generate approximately \$80,000 per month for the personal care attendant program. According to the DOR, in FY 2005-06 the Tax Collection Enforcement Diversion programs in the five participating counties collected, and the DOR remitted, the following to the Able Trust:

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<sup>4</sup> S. 413.402, F.S.

<sup>5</sup> Personal Care Attendant Program Procedures

<sup>6</sup> Sections 413.402, F.S. and s. 320.08068, F.S.

<b>County</b>	<b>Total Collected FY 2006-07</b>	<b>Able Trust 50 Percent</b>	<b>General Revenue 50 Percent</b>
Broward	\$ 481,402	\$ 240,701	\$ 240,701
Duval	511,841	255,921	255,921
Hillsborough	825,128	412,564	412,564
Miami-Dade	235,134	117,567	117,567
Palm Beach	245,431	122,715	122,715
Specialty Tag		55,807	
Other Contributions		50	
Interest		61,399	
<b>TOTAL</b>	<b>\$2,298,936</b>	<b>*\$1,266,727</b>	<b>\$1,149,468</b>

\*Includes County collections in italics.

### Motorcycle Specialty (Bikers Care) Tag

Since 2003, the Department of Highway Safety and Motor Vehicles has offered a specialty tag to the owner or lessee of any motorcycle who chooses to pay the additional cost. Pursuant to s. 320.08068(4), F.S., a \$20.00 annual fee is collected from the sale of each specialty license plate under this section. These fees are distributed to the Able Trust as the custodial agent of the funds.<sup>7</sup> The Able Trust may retain up to 10 percent of these funds for administrative costs and the remaining funds are distributed as follows:

- Twenty percent to the Brain and Spinal Cord Injury Program Trust Fund;
- Twenty percent to Prevent Blindness Florida;
- Twenty percent to the Blind Services Foundation of Florida;
- Twenty percent to the Foundation for Vocational Rehabilitation to support the Personal Care Attendant Program pursuant to s. 413,402, F.S.; and,
- Twenty percent to the FACIL to be used to leverage additional funding and new sources of revenue for the centers for independent living in Florida.

In FY 2006-07, the FACIL received approximately \$56,000 from the Able Trust as their share of the specialty tag proceeds.

### **Cross Disability Pilot Program**

In 2006, the Legislature appropriated \$400,000 in non-recurring general revenue to establish a pilot personal care attendant project in Orange, Osceola, Lake and Seminole counties.<sup>8</sup> In contrast to the statutory PCA program, which serves only those who suffer from traumatic spinal cord injuries, the Cross Disability pilot project is intended to serve persons who are significantly physically or mentally disabled without regard to the underlying cause of the disability. Such individuals who need the assistance of a personal care attendant to accept or maintain employment are eligible to enroll in the pilot project.

<sup>7</sup> Prior to July 1, 2006, the share allotted to the personal care attendant program was 25 percent. See ch. 2006-169, L.O.F.

<sup>8</sup> See Specific Appropriation 340, General Appropriations Act, ch. 2006-25, L.O.F. These funds were appropriated to the Department of Children and Families and are being distributed to the FACIL pursuant to grant agreements.

Operating procedures for the Cross Disability pilot project are based on the experiences of the existing PCA program. The Cross Disability pilot project provides each participant up to \$1,500 per month to pay for a personal care attendant. The maximum reimbursable amount is based on a formula that takes into account a participant's income. Among current enrollees, those maximums range from \$1,238.15 to \$1,500; however, in no case may a participant be reimbursed for more than the amount actually paid to his or her personal care attendant. The pilot project began enrollment in January 2007 and currently has 11 individuals participating.

Because the appropriation establishing the pilot project specified non-recurring general revenue, the Cross Disability pilot project is operating under the original appropriation in 2006. The Department of Children and Families was permitted to carry forward the unspent balance of the original appropriation to fund the program's operations in FY 2007-08.<sup>9</sup> Without new funding, the program will not continue after July 2008.

### ***Effect of Proposed Legislation***

House Bill 731 amends the existing Personal Care Attendant program (PCA) to expand participant eligibility to persons who have severe and chronic disabilities of all kinds, not just those with traumatic spinal cord injuries. The bill names the revised program the "James Patrick Memorial Work Incentive Personal Attendant Services Program." The bill derives from the experience of the Cross Disability Pilot program providing personal care attendants to the significantly disabled in Orange, Osceola, Lake and Seminole counties and provides that all persons who are enrolled in the existing PCA and the Cross Disability pilot project on June 30, 2008, are automatically eligible for and enrolled in the revised program.

The effect of this proposal is to combine the existing PCA program and the Cross Disability Pilot program into a single cross-disability PCA program for individuals with severe and chronic disabilities who require a personal care attendant to go to work.

The bill requires the Florida Endowment Foundation for Vocational Rehabilitation to enter into an agreement with the Florida Association of Centers for Independent Living (FACIL) to administer the new program and provides that FACIL receive 15 percent of the funds in the Florida Endowment Foundation for Vocational Rehabilitation received from the Tax Collection Enforcement Diversion Program and the Motorcycle Specialty License Tab to administer the program. The bill increases the percentage of revenue collected from the Tax Collection Enforcement Diversion program from 50 percent to 90 percent, changing the 50/50 distribution to 90/10 (program funding/general revenue.)

The bill deletes obsolete language regarding eligibility criteria and program development, and deletes provisions allowing nurse registries to recruit and screen candidates to act as fiscal intermediaries to make payments to personal care attendants. The bill establishes a new program oversight group and requires that FACIL work with this group to review and revise policies and procedures governing the combined program.

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<sup>9</sup> Section 19 in the General Appropriations Act for FY 2007-08 authorizes DCF to carry forward the unexpended balance of the FY 2006-07 appropriation of \$400,000. The actual carry-forward amount was \$202,000 in non-recurring funds.

C. SECTION DIRECTORY:

Section 1: Amends s. 413.402, F.S., requires the Florida Endowment Foundation for Vocational Rehabilitation to contract with the FACIL to administer the newly designated "James Patrick Memorial Work Incentive Personal Attendant Services Program" to provide personal care attendants to persons having severe and chronic disabilities of all kinds; provides that, effective July 1, 2008, FACIL will receive administrative funds from deposits with the Able Trust to administer the program; amends program eligibility standards; deletes requirements relating to recruitment, screening and selection of personal care attendants; requires FACIL to provide certain training to program participants; establishes an oversight group and provides membership.

Section 2. Amends s. 413.4021, F.S., increases the percentage of revenue collected to operate the program; repeals the provision that the Florida Endowment Foundation for Vocational Rehabilitation shall select the entity to administer the Personal Care Attendant program.

Section 3. Creates an undesignated section of law providing for automatic eligibility for and enrollment in the Personal Care Attendant program for certain persons.

Section 4. Provides an effective date of July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill decreases the percent of collected sales tax received from the Tax Collection Enforcement Diversion program that would be deposited in the General Revenue Fund. Currently, 50 percent is deposited in General Revenue – in Fiscal Year 2006-2007, that amount was \$1,149,468. The bill decreases that percentage to 10 percent. The Revenue Estimating Conference analysis dated February 29, 2008, estimates the fiscal impact resulting from this decrease to the General Revenue Fund to be \$1M in Fiscal Year 2008-09.

2. Expenditures:

The Department of Revenue reports that it anticipates increased State Attorney participation in the Tax Collection Enforcement Diversion Program by at least two judicial circuits because of this bill. DOR prepared diversion cases and refers these cases to the participating state Attorney. In support of the current effort, the DOR has an investigator and the equivalent of one additional staff member in each of the five judicial circuits where the Diversion Program operates. If two new Diversion Programs were added, DOR would need two Investigators (Pay Grade 18) to prepare these cases and two Revenue Specialists III's (Pay Grade 17) to make adjustments to the DOR's integrated tax system (SUNTAX.)<sup>10</sup>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Not applicable

2. Expenditures:

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<sup>10</sup> Department of Revenue Analysis, dated February 16, 2008 on file with the committee.

Not applicable

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals with disabilities will have the opportunity to hire a personal care attendant to assist him or her in order to obtain or maintain gainful employment.

D. FISCAL COMMENTS:

As noted in the staff analysis, the current PCA program provides participants approximately \$670 per month (\$8,000) per year. FACIL advises that the proposal to combine the PCA and Cross Disability pilot programs may provide participants with up to \$1,500 per month for his or her personal care attendant. The maximum reimbursable amount is based on a formula which takes into account a participant's income. Among current enrollees, those maximums range from \$1,238 to \$1,500 per month; in no case, however, may a participant be reimbursed for more than the amount actually paid to his or her personal care attendant.

House Bill 731 provides that all persons enrolled in the PCA program and the Cross Disability pilot on June 30, 2008 are automatically enrolled in the new program. Currently there are 30 PCA program participants and 11 Cross Disability pilot participants totaling 41. The estimate for available revenue to the Able Trust is \$1,266,724 for Fiscal Year 2006-2007. Program expenses in that year were \$318,936, leaving \$947,788 available for payments to program participants. Using these figures, if each participant were to receive the maximum payment of \$1,500 per month under the provisions of the bill, approximately 52 participants could be served through the program created in this bill.

There are also expenses associated with the Diversion Program, which is one source of funding for the PCA Program.

As reported by FACIL, for the first year of the PCA project, the Brain and Spinal Cord Injury program (BSCIP) provided a \$50,000 loan to the State Attorney's Office in each of the sites to establish a Tax Collection Enforcement Diversion Program office. To re-pay the loan, each program site is required to pay 25 percent of each quarter's earnings to the PCIP until they have paid back the full \$50,000. After the first year and the loan payments are made, the rest of the collections up to an amount of \$50,000 per year are given back to the state attorney offices to support the cost of the diversion program. The remaining funds are then available to pay for personal care attendants for program participants.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

Not applicable

B. RULE-MAKING AUTHORITY:

Not applicable

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

No statement submitted.

#### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 4, 2008, the Committee on Healthy Seniors adopted one amendment by the bill sponsor. The amendment:

- Revises the proposed general revenue/program distribution in the bill from 90/10 percent to current law which is 50/50 percent, thereby removing the \$1M fiscal impact and conforming the House bill to the Senate bill.

The committee reported the bill favorably with one amendment.