

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 20, 1998 Revised: _____

Subject: Drug Testing Pilot Project/WAGES

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Crosby</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/CS</u>
2.	<u>Schmeling</u>	<u>Austin</u>	<u>CM</u>	<u>Favorable</u>
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This committee substitute requires the Department of Children and Family Services (department) to implement demonstration projects in local WAGES coalitions 3 (Holmes, Washington, Jackson, Calhoun, and Liberty Counties) and 8 (Nassau, Duval, Clay, St. Johns, and Putnam Counties) for the purpose of drug screening and testing certain persons applying for public assistance or services under the WAGES Program. Applicants failing a drug test are not specifically deemed ineligible for admission in the WAGES Program and may receive services, including treatment, if funds are available.

This bill creates several new sections of the Florida Statutes.

II. Present Situation:

The federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 does not prohibit states from testing welfare recipients for use of controlled substances nor from sanctioning welfare recipients who test positive for the use of controlled substances. Federal rules associated with the implementation of PRWORA allow a state to use temporary assistance for needy family (TANF) funds for purposes of drug testing and treatment.

According to research studies by the U.S. Department of Health and Human Services, 10 to 20 percent of welfare recipients have a substance abuse problem; 5 percent of recipients are affected to the point that their day to day functions are limited. The Department of Children and Family Services, on the other hand, estimates that 15.5 percent of Florida's first time WAGES applicants are impaired due to substance abuse. They estimate that at least 50 percent of those impaired applicants would test positive.

III. Effect of Proposed Changes:

Section 1 states the legislative intent and findings for the purposes of this act.

Section 2 outlines procedures for the drug testing and screening program. The Department of Children and Family Services, in consultation with local WAGES coalitions 3 and 8, must develop and implement a demonstration project to screen all applicants applying for temporary assistance or services for the illegal use of controlled substances. Persons who the department has reasonable cause to believe, based on the screening, engage in the illegal use of controlled substances will be tested. This section does *not* specifically deem ineligible for benefits, those applicants who test positive for drugs.

This demonstration program will commence as soon as possible after January 1, 1999 and, unless reauthorized by the Legislature, will expire on June 30, 2001.

At the time of application for benefits, the department will provide notice of the local WAGES coalition's participation in the drug screening and testing program. This notice must advise that drug screening is eminent and that drug testing may possibly be conducted as a condition for receiving temporary assistance or services under ch. 414, F.S., and shall specify the assistance and services subject to this requirement. The notice must advise the applicant that prospective employers may require the applicant to submit to a pre-employment drug test. The notice must also advise the applicant that the drug screening and possible testing may be avoided if the applicant does not apply for or receive such assistance or services. The drug screening and testing program is not applicable in child-only cases.

Additionally, the department must do the following:

- Develop a procedure for conducting a drug test on applicants for WAGES.
- Provide a procedure to advise each person to be tested, before the test is conducted, that he or she may advise the agent administering the test of any prescription or over-the-counter medication he or she is taking.
- Require that each person tested sign a written acknowledgment that he or she has received and understands the notice and advice as outlined above.
- Provide a procedure to assure a person's dignity while producing and submitting a drug test sample; this procedure will be consistent with the state's need to ensure reliability of the sample.
- Specify circumstances under which a person who fails a drug test has the right to take one or more additional tests.
- Provide a procedure for the appeal of the test results by a person who fails a test as well as for advising the appellant that he or she may, but is not required to, advise appropriate staff of any prescription or over-the-counter medication he or she has been taking.
- Notify each person who fails a drug test of the local substance abuse programs which are available to that person.

This drug screening procedure is not required if an individual reapplies while receiving assistance or services. However, a person may volunteer for drug testing and treatment at any time, subject to funding availability.

Section 3 provides that, if a parent is deemed ineligible for cash assistance due to the failure of a drug test, his or her dependent child's eligibility for cash assistance will not be affected. In this case, a protective payee will be established for the child. If the parent does not cooperate in establishing an appropriate payee for the child, the department will appoint one.

Section 4 outlines criteria for treatment, subject to funding availability. The department will provide a substance abuse treatment program for persons failing a drug test if the person is otherwise eligible to receive WAGES assistance and services. Treatment is not required for participants in the WAGES Program who have failed a drug test at time of application. The department must provide for a retest at the end of the treatment period. Failure to pass the retest will result in the termination of temporary assistance or services provided under ch. 414, F.S., and of any rights to appeal relative to the termination. The department shall develop rules regarding disclosure of information on applicants who enter treatment and may develop rules for assessing the status of persons formerly treated under this act who reapply for assistance or services under WAGES.

Section 5 provides criteria for the department, in conjunction with the local WAGES coalitions involved in this demonstration project, to conduct a comprehensive evaluation of the demonstration projects. In the initial phase of such evaluation, due January 1, 2000, the department, in conjunction with the relevant local WAGES coalitions, shall report to the State WAGES Board and the Legislature on the status of implementation of the program, specifically describing problems encountered and costs expended during that first year. Following the initial implementation of the demonstration projects, a subsequent and comprehensive evaluation to the same parties is due January 1, 2001. The final report will include:

- The impact of the drug testing program on employability, job placement, job retention, and salary levels of the participants.
- Recommendations, based in part on a cost benefit analysis, regarding the feasibility of expanding this program to other local WAGES regions, including specific recommendations on how to best expand the drug testing program to the other local WAGES regions.

Section 6 provides that, in the event of a conflict between federal and state procedures, federal requirements and regulations shall control.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

In March, 1998, the Department of Children and Family Service reported 929 WAGES families in local WAGES coalition 3 and 6,835 WAGES families in local WAGES coalition 8. The department reports that each drug test will cost about \$18. In the event treatment is needed, and this reportedly will occur in 10-20 percent of the cases, the estimated cost of treatment is \$1,950 per person. It is important to bear in mind that screening and testing will not occur with those WAGES participants who reapply.

VI. Technical Deficiencies:

If the intent of the bill is to not only require drug screening and possibly drug testing as a condition for eligibility, but also make ineligible those applicants who test positive for drugs, such intent should be clearly stated in section 2 of the bill relating to the drug testing and screening program. The only reference to applicant ineligibility due to failure to pass a drug test is made in section 3, relating to children and states, "if a parent is deemed ineligible for cash assistance due to the failure of a drug test . . ."

It appears that the intention of this bill is to test for illegal drugs (page 3, lines 10 and 15). Discussions with the Department of Children and Family Services have found that the figures

provided by the department relating to drug testing and screening includes all drugs, legal and illegal, including alcohol. It is unclear, whether the bill authorizes the testing for alcohol or other legal drugs and whether individuals determined to be abusing legal substances could be referred to substance abuse training.

VII. Related Issues:

Information pertaining to an applicant involved in substance abuse testing and treatment is strictly regulated under federal law (42 C.F.R. 2). Regulations include those involved with confidentiality, disclosure, consent, minors, incompetent persons, and other issues.

VIII. Amendments:

None.