

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: March 4, 1998 Revised: _____

Subject: Privatization of Foster Care and Related Services

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

I. Summary:

Committee Substitute for Senate Bill 352 calls for the privatization of foster care and other related child welfare services statewide over a three year period beginning on January 1, 2000. An operational plan for accomplishing privatization through a competitive process would be prepared by the Department of Children and Family Services (hereafter known as the department) and submitted to the Governor and the Legislature by July 1, 1999, that would include the methodology for determining and transferring available funds, those service districts or portion of a district in which privatization cannot be accomplished within 3 years, and the efforts that should be made for remediating the obstacles which may include alternatives to total privatization such as public/private partnerships.

The bill specifies that either the state attorney or the Attorney General would provide preadjudication and postadjudication legal services beginning in FY 1999-2000.

A quality assurance program would be developed at the statewide level. For improving quality assurance, the department is allowed to transfer 0.125 percent of the total funds from categories used to pay for these contractual services. The department may contract with a national accrediting organization to perform quality assurance functions.

From January 1, 1999, through December 31, 1999, the department would privatize all foster care and related services in District 5 and would contract with the current model programs in Districts 1, 4, 13, and 8A. The bill specifies that the provider or group of providers of the District 5 program would be competitively selected.

The bill directs the department to transfer all responsibility for child protective investigations for Pinellas County and Pasco County to the sheriff of that county in which the child abuse, neglect,

or exploitation is alleged to have occurred by the end of FY 1999-2000. Persons providing these services under contract would complete the department's competency-based training. During FY 1998-1999, the department would enter into a contract for these services and would transfer, for the duration of FY 1998-1999, all departmental funding for the investigative responsibilities to be assumed by the sheriffs. During FY 1998-1999, the department would be responsible for quality assurance and for the performance of child protective investigations. The department must submit a report to the Governor and the Legislature by January 15, 1999, that identifies barriers to transferring child protective services to the sheriffs, and unless the Legislature takes action, the sheriffs of Pasco County and Pinellas County would assume the entire responsibility for these services in FY 1999-2000. An evaluation of each county responsible for child protective investigations will be completed by an independent entity that is competitively selected by the department. The evaluation report must be submitted to the Governor and the Legislature by October 1, 2001, and include recommendations about the continuation of the projects and recommendations for expanding to other counties.

This bill substantially amends section 409.1671, and creates section 415.5071, Florida Statutes.

II. Present Situation:

Statutory Provisions for Privatization of Services

Several years ago, the department began privatizing child welfare services in several Florida communities by purchasing an extensive array of services from private sector providers such as Florida Sheriff's Youth Association and the Children's Home Society. In District 1, Homeward Bound began in 1992 to serve children from birth to 18 years who were in substitute care for the first time. Since 1992, intensive crisis counseling services have been provided by the Salvation Army in District 5. Of Florida's 370 million dollar child welfare budget, 85 million dollars are spent on services provided by the private sector.

Chapter 96-402, Laws of Florida, amended s. 409.1671, F. S., to include provisions for the department to contract with competent community based agencies for the provision of foster care and related services. Legislative intent specifies that privatized child welfare services would strengthen the support and commitment of communities to the reunification of families and care of children and families and would result in efficiencies and increased accountability.

Privatized services specified in statute include programs such as family preservation, independent living, emergency shelter, residential group care, foster care, therapeutic foster care, intensive residential treatment, post-adjudication legal services, foster care supervision, post-adjudication case management, post-placement supervision, permanent foster care, family reunification, filing of a petition for the termination of parental rights, and adoption. The department was directed to establish a minimum of five model programs during FY 1996-97 in Districts 1, 4, 13, Subdistrict 8A, and in a district to be determined by the department. For comparison of privatization savings, the fifth model was to be contracted with a competent for-profit corporation.

Section 409.1671(3)(a), F.S., further specifies that each program operated under contract with a community-based agency must be evaluated, and the financing of that evaluation must be taken from cost savings associated with the privatization of services. The department is directed to submit an annual report to the Governor and the Legislature no later than January 31 of each year concerning quality performance, outcome measure attainment, and cost efficiency.

Privatization of Services

Model Programs

The following pilots projects have been established as required pursuant to chapter 96-402, Laws of Florida:

- Homeward Bound Project in District 1 serves Escambia and Santa Rosa counties, is operated by the Children's Home Society in Pensacola, and has been operational since 1992, although it is now designated as one of the pilot projects. The program serves children from birth to 18 years who are placed in substitute care for the first time and children previously in the program who are returning to care due to disruption. The project does not represent a managed care model of service delivery and no department positions have been eliminated as a result of the project.
- The Family Services Coalition in District 4 serves all dependent adolescents in Baker, Clay, Duval, Nassau, and St. Johns counties serving children 12 to 18 years in foster care and youth 18 years and older in independent living. This project has experienced delays but once fully implemented, it is expected to provide a flexible system that focuses on outcomes rather than process.
- The Sarasota County Coalition for Families and Children administers and coordinates the delivery of child welfare services for the entire Sarasota County population. These services include protective services, foster care, and adoption services. The Coalition has implemented a managed care strategy by using capitation irrespective of the number of children and families served.
- The Bridges program in District 13 operates out of the Lake County Boys Ranch to provide services in Lake and Sumter counties that are based on a case rate serving all children entering care for the first time through the department's shelter program.

Although the projects have experienced difficulties, some of which have been serious, and although only one of the projects has privatized the full continuum of services, it appears from observing the planning and early implementation of these projects that the primary differences between these model programs and the current child welfare system are the following:

- 1) increased coordination of services, 2) smaller caseloads, 3) an increased intensity of services, 4) team approach, 5) increased flexibility regarding the use of resources, 6) increased community involvement, and 7) greater emphasis on outcomes.

The department's annual report on the progress of these model programs has not been received. However, several meetings and discussions with the department and the providers have occurred during the past several months on the progress of the model programs and implementation problems that have been encountered. Observations concerning the projects include the following:

- Strong commitment and capacity on the part of community providers are essential to successful implementation of a privatization project. Tentativeness and disorganization among providers contribute to a weak privatization effort.
- Maintaining caseloads at a level that allows for higher frequency of client contact and for a higher quality of involvement of clients will prove to be one of the most challenges that a privatized child welfare function faces. Problems associated with exceeding caseload standards or system capacity has been a problem for the department for the past several years. The private sector must stress the development of creative means of assimilating the necessary resources to support quality intervention for their clients.
- The combination of the child protective investigations function and the ongoing child protection role (e.g., foster care, protective services) may act as a barrier to families and the department working together as a team toward reunification. According to reports concerning feedback from parents, the department staff often treats these parents in an adversarial manner after the investigation. These same parents report that the privatization projects gives them a "fresh start" and allows them to prove their abilities as parents and reinforces the establishment of trust with the worker.
- The department's oversight role must facilitate quality performance and must convey needed knowledge and experience to the private sector rather than be used to micro-manage the projects.
- It is unclear how rural areas of Florida could be effectively served in the privatizing of child welfare services. The establishment of private services in the under-served rural areas of Florida may be a serious problem due their unavailability in many rural areas.
- In order to evaluate system efficiencies, there needs to be a careful review of several subsequent operating periods. This will allow the projects to settle into an expenditure pattern that is not as influenced by initial start-up costs. The department has questioned the use of case rate because they believe that this may threaten Title IV-E funds. Case rate is a managed care tool that could prove useful in helping to manage costs in child welfare. Using case rate commits the department to paying the project for children who may not remain in care for 2 years which is the length of time that the case rate is based on.
- This forthcoming evaluation of the pilot projects will assess their performance but will not comprehensively address if the projects are meeting legislative intent that privatized child welfare services would strengthen the support and commitment of communities to

the reunification of families and care of children and families and would result in efficiencies and increased accountability.

Others Privatized Services

- The Manatee County Sheriff and the department have been developing a model for child protective investigations since the onset of the Family Services Response System in 1993. Original efforts were aimed at facilitating joint investigations, information sharing and joint training that ultimately resulted in the collocation of the child protective investigators with county sheriff investigators. In 1996, the department and the Manatee County Sheriff entered into an agreement to transfer the responsibility for child abuse investigations to the sheriff. The department retained the investigation of child neglect cases. Manatee Sheriff's Office hires and supplements training of child protective investigators who operate under the auspices of the Sheriff though they are not necessarily law enforcement officers. Many of the department's investigators were hired by the Sheriff's Office in the same capacity but augmented with access to law enforcement for criminal investigations.
- District 5 has three contracts with the Salvation Army for the delivery of child welfare activities that began several years ago: investigation of all child neglect allegations that began in 1995; the operation of a shelter, Sallie House, that began in 1990; and the operation of the intensive crisis counseling program that began in 1992.

III. Effect of Proposed Changes:

Privatization of Foster Care and Related Services

Committee Substitute for Senate Bill 352 defines "privatize" as contracting with competent, community-based agencies. The bill directs the department to develop a strategic plan to accomplish privatization statewide through a competitive process over a 3-year period beginning on January 1, 2000. The plan must include input from community-based providers currently under contract with the department and must include a methodology for determining and transferring all available funds including federal funds that the provider agrees to earn and general revenue funds associated with the contract. The methodology must include expected workload and the 3 previous years' experience in expenses and workload. The plan must specify those service districts or portion of a district in which privatization cannot be accomplished within the 3 years' timeframe, the reasons the timeframe cannot be met, and the efforts that should be made to remediate the obstacles which may include alternatives to total privatization such as private/public partnerships. The plan must be submitted to the Governor and the Legislature by July 1, 1999.

The bill requires that beginning January 1, 1999, and continuing at least through December 31, 1999, the department is to privatize all foster care and related services in District 5, to continue contracting with the current model programs in districts 1, 4, and 13 and in subdistrict 8A, and to expand the subdistrict 8A pilot to incorporate Manatee County. The bill specifies that the provider or group of providers of the District 5 program would be competitively selected. The bill does not

exclude for-profit organizations from contracting with the department for the delivery of child protection services although there could be a conflict of interest between the profit motive and the goal to protect children that could adversely affect decision making.

The bill requires that beginning in FY 1999-2000, the state attorney or the Attorney General must provide preadjudication and postadjudication legal services. Pilot projects currently exist in five locations in Florida where the Attorney General (two sites) and State Attorney (three sites) provide preadjudication and postadjudication legal services. Indications are that when the attorneys are no longer collocated with the district child welfare staff, communication problems develop which hamper legal activities.

A private, nonprofit agency with case management responsibilities for a child who is sheltered or found to be dependent may: 1) act as the child's guardian for registering the child in school if a parent or guardian is unavailable and his or her whereabouts cannot be reasonably ascertained, and 2) seek emergency medical attention under certain circumstances specified in the bill. The bill specifies certain activities for which the private provider may not consent.

The bill requires that foster care and related services be privatized statewide by January 1, 2003, unless it is not feasible to do so, even though the findings, conclusions, and recommendations from the evaluation of the five model programs as provided in chapter 96-402, Laws of Florida, have not been communicated to the Legislature.

The bill removes the language in s. 409.1671(1), F.S., specifying the intent that privatizing will strengthen the support and commitment of communities to the reunification of families and the care of children and their families and result in efficiencies and increased accountability. By removing this language, it is unclear as to the goals and objectives of privatizing child protection services and its relationship to the best interests of the child.

The bill specifies that the quality assurance program may be performed by a national accrediting organization and directs the department to develop a request for proposals for selecting the organization. For delivering statewide quality assurance services, the bill authorizes the department to transfer up to 0.125 percent of the total funds from categories used to pay for contractually provided services but no more than \$300,000 in any fiscal year. Under the authority of s. 216.177, F.S., additional positions may be established for quality assurance purposes.

In developing minimum thresholds for each component of quality assurance, the bill requires that the department consult with the community-based agencies that are undertaking the privatized projects and specifies that the thresholds must be consistent with standards established by the Legislature. The bill directs the department to conduct an annual evaluation of programs operated under contract with a community-based agency.

The bill specifies that community-based agencies under contract with the department to provide foster care and related services under this section are agents of the state, and the contacts with these agencies must provide for the indemnification of the state by the agent for any liabilities

incurred up to the limits set out in chapter 768, F.S. This provision raises a question about the availability of casualty or liability insurance in the private insurance market that is needed by these non-state community-based providers. According to the Department of Insurance, it is poor risk management practice for the state to be liable for loss in instances where the state cannot control the safety management practices of private contractors.

The bill specifies the provisions of chapter 440, F.S., pertaining to worker's compensation do not apply to individuals providing foster care and related services.

Even though exceptions are provided, the bill plans for statewide expansion of privatization without a thoughtful evaluation of the effects and efficiencies of those privatization projects that are currently underway and without linking privatization to successful performance outcomes. The bill does not allow local communities to initiate and develop a system within their own time frames that meets their unique service needs.

Transfer of Child Protective Investigations to Sheriffs in Pasco and Pinellas Counties

The bill requires the department to transfer, by the end of FY 1999-2000, responsibility for all child protective investigations for Pinellas and Pasco counties to the Sheriffs of those counties. All persons who provide these services must complete the training that is provided to and required of the department's protective investigators. During FY 1998-1999, the department and each sheriff's office must enter into a contract with the department. The bill directs the department to transfer to the respective sheriffs for the duration of FY 1998-1999, funding for the investigative responsibilities assumed by the sheriffs and specifying federal funds and general revenue funds for all investigative, supervisory, and clerical positions; training; all associated equipment; furnishings; and other fixed capital items. The bill includes other specific directives for the department during the initial year.

During the first year, the department must identify any barriers to transferring the entire responsibility for child protective services to the sheriffs' offices and must pursue avenues for removing barriers such as applying for federal waivers. By January 15, 1999, the department must submit a report to the Legislature that describes those remaining barriers pertaining to funding and related administrative issues. The entire responsibility for child protective investigations shall be transferred to the sheriffs' offices beginning in FY 1999-2000 unless otherwise directed by the Legislature.

The bill does not specify that child protection supervisors must comply with training requirements to promote their skills in the critical areas of clinical and leadership performance. The bill states that the sheriffs must operate in accordance with the performance standards established by the Legislature for protective investigations conducted by the Department of Children and Family Services. The bill specifies that the department is responsible for quality assurance during the first year but there are no provisions for quality assurance after FY 1998-1999.

An evaluation of each county responsible for child protective investigations will be completed by an independent entity that is competitively selected by the department. The evaluation report must be submitted to the Governor and the Legislature by October 1, 2001, and include recommendations about the continuation of the projects and recommendations for expanding to other counties. That evaluation must be considered in the Legislature's decision concerning the continuation of investigations in Pinellas and Pasco counties or expanding to other counties.

The bill requires that bookkeeping for these units be kept separate from the other part of the sheriff's budgets and specifies that county funding not be used for the operation of the child abuse investigation units and that any funds for child abuse investigations not be integrated into the sheriff's regular budgets. There is no provision in CS/SB 352 that would allow the use of county resources or county-owned items such as vehicles and enhanced training that have proven in cooperative efforts underway in Manatee County to assist the child abuse investigatory process.

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:

If any public resources are reduced during the transition process from the department to the private sector, there could be a cost to the private entities that contract with the department to deliver foster care and other related services to children who are abused or neglected and their families.

The provision in the committee substitute that authorizes the transfer of up to \$300,000 from contracted services to quality assurance would result in a reduction in funds for contract providers.

C. Government Sector Impact:

In order for the department to conduct annual evaluations of each program operated under contract with a community-based agency to deliver privatized foster care and other related services, it is estimated that \$213,900 is needed.

The department estimates that \$35,650 per site would be needed for the evaluation of each county responsible for child protective investigations. The evaluation would need to be funded in the FY 2000-2001 budget.

If the department chooses to contract with a national accrediting organization to perform quality assurance, there would be an indeterminate cost for that contract and for preparing the request for proposals.

There would be an indeterminate cost associated with community-based agencies under contract with the department to provide foster care and related services being considered agents of the state because the bill specifies that these contracts must provide for the indemnification of the state by the agent for any liabilities incurred up to the limits set out in chapter 768, F.S. According to the Department of Insurance, the department would be responsible for all financial losses that are not indemnified and those losses would be paid from the department's budget.

Many of the child protective investigative staff in District 5 employed by the department may lose their jobs requiring the department to pay for annual leave and other "pay-out" items. Those who are retained could lose their career service status with the state and the benefit package with the sheriff's office or private provider would most likely be different.

As privatization of other child protection programs is implemented throughout the state, additional department staff would have their state employment terminated.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The provision of transferring the responsibility for child protection investigations from the department to the sheriff's offices raises the question of the authority of one constitutional officer over another.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
