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.)

BILL: CS/SB 1356

SPONSOR: Education Committee, Senator Klein and others

SUBJECT: One School, One Nurse Act

DATE: April 16, 1999 REVISED: 04/20/99

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	O'Farrell	ED	Favorable/CS
2.	Munroe	Wilson	HC	Fav/3 amendments
3.			FP	
4.				
5.				

I. Summary:

The bill creates the "One School, One Nurse Act," which would incorporate several revisions into the School Health Services Act. The bill authorizes school nurse services public-private partnerships; requires background screening for persons providing school health services; extends the state's sovereign immunity to those persons rendering school health services under a local school health services plan; directs the Department of Health to determine a means through which local units of government other than county health departments could be designated as Title V (Maternal and Child Health Block Grant) agencies; provides for a work group relating to the training requirements for nurses providing school health services; provides legislative intent with regard to the funding of school nurses; and provides $75,000 in non-recurring General Revenue funds for a school health summit.

This bill substantially amends ss. 381.0056, 409.9071, and 768.28, (1998 Supplement) and creates ss. 381.0058 and 381.0059, Florida Statutes. The bill creates three undesignated sections of law.

II. Present Situation:

School Health Services-Generally

Section 381.0056, F.S., is entitled the "School Health Services Act," also known as the basic school health services program. This section authorizes the Department of Health (DOH), in cooperation with the Department of Education (DOE), to administer the school health services program, consisting of mandated services and the biennial development of a local school health services plan, based on plan elements specified in statute.

Section 381.0057, F.S., relates to funding for school health services, commonly referred to as the comprehensive school health services program. Comprehensive school health services projects are co-designed by county health departments and local school districts, with public input. The projects have three goals: promote student health; decrease student involvement in drug/alcohol

abuse, suicide/homicide, and other forms of risk-taking behaviors; and reduce the incidence of teenage pregnancy.

Section 402.3026, F.S., provides additional statutory guidance for full-service schools, under which county health department staff provide their services on school campuses as an extension of the educational environment. DOE and DOH are to jointly establish full-service schools to serve students from schools that have a student population that has a high risk of needing medical and social services, based on the results of demographic evaluations. Services may include nutritional services, medical services, aid to dependent children, parenting skills, counseling for abused children, education for the students' parents or guardians, and counseling for children at high risk for delinquent behavior and their parents. Full-service schools must integrate the services that are critical to the continuity-of-care process and provide services to these high-risk students through facilities established within the grounds of the school.

Availability of School Health Nurses

Florida has a total of nearly 3,000 schools and 2.3 million students, and has 797 nurses providing services in the schools. Nearly one third of the school health nurses are provided through private-public partnerships, mostly in Palm Beach County and other large counties with access to taxing district funds, large hospitals or industries. If these nurses were distributed evenly throughout the state, less than one in four school health rooms would be staffed with a nurse.

The nurse-to-student ratio is a common standard that is used in assessing school health services. The National Association of School Nurses recommends a staffing ratio of one Registered Nurse (RN) for every 750 students. In 1987, the Florida Department of Education recommended a quality standard for Florida of no less than one RN for every 1,500 generic students. The ratio in the basic school health services program is 1:6,059 students, while the ratio in the comprehensive school health services projects is 1:1,586 students. Florida’s nurse-to-student ratio varies greatly according to region and program. Only 7 counties/school districts achieve the recommended 1:1,500 ratio for basic school health services, while 34 counties/districts have a ratio exceeding 1:3,000.

The minimum entry standard for school health nurses hired by the Department of Health is a Bachelor’s Degree in Nursing from an accredited school of nursing. Only in cases of acute shortage can nurses with associate degrees or hospital diplomas plus extensive experience be hired. School health nurses are hired by several entities and there is no universal adherence to uniform standards for training, hiring, placement, and supervision of nurses.

School Health Services Partnerships

According to the Department of Health, private business partners were recruited during the 1997-98 school year in at least 9 of Florida’s counties from whom county health departments and school districts or individual schools received direct funding or services for enhancing school health service delivery capability. Current statutory provisions neither limit nor promote partnership development. In recent years, as school health needs have far out-paced the available public funding for school health services, some local programs have developed partnerships that supplement public school health funds or personnel to address the needs of growing student

enrollments. Some examples serve to illustrate partnership capabilities. The Palm Beach County Health Care District, working in cooperation with the Palm Beach County Health Department, Palm Beach County School District, Florida Atlantic University College of Nursing, Quantum Foundation, and various Palm Beach County hospitals, established a comprehensive school health program. The partnership resources, when coupled with the state funding for basic and comprehensive school health services, allow for at least one full-time nurse in each of the county's 129 schools. In Dade County, 16 partners, including hospitals, mental health centers, an insurance company, community health centers, and the University of Miami, and an adopt-a-school program, provide 23 RNs who provide generic school health services in 23 public and 3 private schools, out of over 300 county public schools. In Volusia County, two hospitals and a local Parent-Teacher Association (PTA) provide 5 RNs and a number of school health aides in 5 of the county's 79 schools. School districts, parent-teacher organizations, and local businesses provide lesser amounts of support in other counties. Some partnerships provide funding, while others provide service delivery personnel, such as registered nurses, or support staff such as school health aides.

School Health Funding

The Department of Education does not allocate specific funding to schools for school health services. Local school districts fund school health services at local discretion. All direct, categorical General Revenue funding for school health services is allocated through DOH. Funding amounts have remained fairly level over the past several years, with the exception of an increase in funding of $4.5 million from the Tobacco Settlement Trust Fund in the current fiscal year, while the number of public school students in the state has steadily increased. Current funding levels are: $9.9 million for basic school health services, $11.6 million for comprehensive school health services, and $11.0 million for full-service schools. This direct appropriation is supplemented by county health department trust fund revenues that are locally allocated for school health services. This "supplemental" funding amounted to $8.6 million in fiscal year 1996-97, compared to $25.7 million in categorical funding that was included in the 1996-97 General Appropriations Act.

Medicaid has in recent years become more of a funding source for school health services. Chapter 95-336, L.O.F., authorized school districts to certify school district expenditures for certain services rendered to students who are eligible for both Medicaid and the exceptional student education (ESE) program (ss. 236.0813 and 409.9071, F.S., and relevant portions of s. 409.9122 (2)(a), F.S.). Certain school district services rendered to ESE students who are Medicaid eligible qualify for federal Medicaid matching funds. School districts must certify to the Agency for Health Care Administration (AHCA) that such expenditures have been incurred and federal Medicaid matching funds are paid to the school districts. The services which qualify for matching funds include: physical, occupational, speech-language therapy services (approved in 1995); and transportation, psychological, social work, and nursing services (added in 1997). For each category of services, service must be rendered by those school district employed or contracted staff rendering health-related services who meet Medicaid credentialing requirements. Services specifically excluded from coverage include family planning, immunizations, and prenatal care. Unfortunately, implementation of this program has been somewhat slow.

A most significant expansion in Medicaid spending in the school districts has just occurred, approved during the summer of 1998 by the federal Health Care Financing Administration. School districts are now eligible for reimbursement by Medicaid for school outreach activities (including application assistance, training, care planning and coordination, assisting in accessing care, and program planning) provided by a variety of school personnel. This Administrative Claiming process, unlike the Certified School Match Program which is limited to ESE students, can fund activities for all current or potential Medicaid eligibles. As of September 1998, AHCA released its first payment of $10 million to 10 school districts for the calendar quarter January-March 1998, based on a sampling of staff time for administrative claiming purposes. For the second calendar quarter's sampling, 23 school districts will participate, and for the third, 25.

Chapter 98-191, L.O.F., expanded s. 409.9122(2)(a), F.S., to authorize county health departments to certify for federal Medicaid matching funds those state expenditures for school-based services (as specified in ss. 381.0056 and 381.0057, F.S.) rendered to a Medicaid-eligible child who receives Medicaid-covered services in a school setting, regardless of whether the child is enrolled in Medicaid managed care. The federal government approved the Medicaid state plan amendment for this initiative on September 4, 1998, with reimbursement retroactive to July 1, 1998. It is still too early to know the extent to which county health departments will participate in this funding option, given the ability of county health departments to obtain cost-based reimbursement from Medicaid.

Sovereign Immunity Issues

Sovereign immunity insulates the state and any governmental officer, employee, or agent acting on behalf of the state from a lawsuit. Article X, sec. 13, of the State Constitution permits the Legislature to waive sovereign immunity by general law. Section 768.28, F.S., provides the state's waiver of sovereign immunity. Immunity is waived for claims up to $100,000 per person, or $200,000 per incident, and does not include any act committed in bad faith, or with malicious purpose, or any act involving gross negligence. An agent of the state is generally covered by the state's sovereign immunity, and may include a person or entity, not permanently employed by the state, who contracts with the state. To be considered an agent, a certain degree of control or supervision must be exerted by the governmental entity over the activities the agent undertakes on the entity's behalf. The resolution of whether a person is an agent is a mixed question of law and fact. *See e.g., King v. Young*, 107 So.2d 751, 753 (Fla.2d DCA 1958).

Under s. 110.504(4), F.S., volunteers are covered by state liability protection in accordance with provisions of the state's waiver of sovereign immunity. Section 110.501(1), F.S., defines "volunteer" to mean any person who, of his or her own free will, provides goods or services to any state department or agency, or nonprofit organization, with no monetary or material compensation. The Access to Health Care Act, as created by ch. 92-278, L.O.F., and codified as s. 766.1115, F.S., extends sovereign immunity protection to only those health care providers that provide *uncompensated* care to Medicaid recipients or uninsured, low-income persons (defined as a person whose family income does not exceed 150 percent of the federal poverty level, as defined by the federal Office of Management and Budget). The state extends sovereign immunity protection to health care providers, designated as agents of the state, who render free services, under contract entered into with governmental contractors (DOH, county health departments,

hospitals owned and directly operated by governmental entities, or special taxing districts with health care responsibilities), to poor persons referred by the governmental contractors.

It is unclear whether nurses and other health care providers who participate in the delivery of school health services and who are not employees or contractors with the county health departments are considered agents of DOH so that the department is liable for the negligent acts of these nurses to the extent that sovereign immunity is waived. To the extent nurses participating in the school health services program are employees or contractors of an entity other than DOH, it is unclear in the event of conflicting supervision and control from an entity other than the department, how both the department and the other entity will effectively coordinate and enforce authority over and provide supervision of the professional and health-related activities of such nurses. This uncertainty leaves a question as to the waiver of sovereign immunity, and there is also uncertainty as to whether a hospital-employed nurse assigned to a school as part of his or her hospital employment could be considered a volunteer in this context, even though the employing hospital may be "volunteering" such services. These issues have not been tested in court. Clarification of this issue could potentially result in greater participation in school health partnerships by a variety of health care entities and other entities.

Title V Delegation Authority

Federal law generally requires a provider of services to bill all recipients of a service in order to be eligible to seek Medicaid reimbursement for provision of that same service to Medicaid eligibles. Essentially, under federal law, Title V (Maternal and Child Health Block Grant) agencies, such as county health departments and Children's Medical Services, rendering services to Medicaid-eligible students, are not required to bill for services rendered to the remainder of the service recipients, such as the school population. Entities other than county health departments, such as local health care taxing districts, would like a determination as to whether federal and state law permit DOH or a county health department to "delegate" its Title V authority to another unit of local government and under what circumstances such delegation would be permitted.

Background Screening Requirements for School Health Services Personnel

Under current law, the personnel involved in delivering services recognized under a school health services plan may include employees of local school boards who are subject to a federal criminal history check under s. 231.02, F.S.; employees of the Department of Health who are licensed nurses who have been subject to a statewide check as a condition of their professional licensure; volunteers who are not employees of a state agency and who are not subject to a criminal history check; and other health-related personnel who may or may not be subject to state licensure.

Chapter 435, F.S., relating to employment screening, provides for two levels of review of an individual's past. Level 1 screening requires criminal history screening through FDLE's database and screening for a history of abuse, neglect, or exploitation of elderly or disabled persons through the Department of Children and Family Services. Level 2 screening, which is more comprehensive in that it is a national search involving use of a fingerprint card, includes search of delinquency records, and requires FBI screening. Level 2 screening includes a federal criminal history check, an elderly person or disabled adult abuse registry check (if applicable), and an attestation by the person subject to the screening, under penalty of perjury, that he or she will

immediately disclose any conviction of any of the disqualifying offenses while in a position requiring this level of background screening. Level 1 screening costs $21 ($6 for abuse screening and $15 for FDLE statewide criminal background screening) and Level 2 screening costs $45 ($21 for Level 1 screening and $24 for FBI screening).

Senate Interim Project

As an interim project, the Senate Committee on Health Care assessed Florida's current efforts in the delivery of school health services: funding levels, service availability, the respective service-delivery roles of the Department of Health and the Department of Education, the increasing role of the Agency for Health Care Administration as a funding source for services already being rendered through the school setting, an indication of how Florida's efforts compare to those of other states, and an attempt to determine if there are untapped resources that could be directed to addressing unmet or insufficiently met needs.

The report from that project, Senate Interim Project Report 98-30, September 1998, offered seven recommendations for specific action, addressing: sovereign immunity for certain "volunteer" providers of school health services; reimbursement mechanisms for consultants under the Medicaid certified school match program; the need for a school health summit; the need to "reconstitute" the Florida full-service school nomenclature; the need to monitor the impact of the Florida Kidcare Program on children's health programs; the need for additional categorical funding for school health services; and Title V agency designation for purposes of Medicaid billing.

III. Effect of Proposed Changes:

The bill creates the "One School, One Nurse Act" and amends s. 381.0056, F.S., relating to the School Health Services Act, to: define the term "entity" or "health care entity". As used in the bill, an entity or health care entity can be any of the following in a public-private partnership with a county health department, school district, or school in the delivery of school health services: a local governmental unit, hospital, health maintenance organization, health insurer, community health center, migrant health center, federally qualified health center, non-profit organization, private industry, business, or philanthropic foundation. The bill requires schools to make *adequate* physical facilities available for school health services. Any person providing school health services under a local school health services plan will be considered an agent of the state for purposes of sovereign immunity.

The bill creates s. 381.0058, F.S., to provide circumstances under which matching funds for school nurse services will be made available to public-private partnerships. The Secretary of Health and the Commissioner of Education or their designees must form a committee to determine the eligibility of sites for matching funds. Criteria for eligibility include: evidence of a comprehensive inservice staff development plan; evidence of a working relationship between the county health department and the school district; a high incidence of medically underserved children, children with chronic health conditions or children with high-risk behavior problems; a commitment of funds or resources from community entities; and a plan for billing Medicaid under a certified match program.

The bill creates s. 381.0059, F.S., to require background screening for persons providing school health services. The bill requires every person who provides services under a school health services plan to complete a Level 2 screening under ch. 435, F.S. Persons who provide services under a school health services plan shall be on probationary status pending the result of the background screening. The individual being screened, or his or her employer, must pay the cost of the background screening to the Department of Health. The Department of Health must establish a schedule of fees to cover the costs of the Level 2 screening and abuse registry check. The applicant desiring to provide services under a school health service plan, or his or her employer, may be reimbursed by the Department of Health for the costs of the background screening from funds designated for this purpose. The bill provides a procedure for the Department of Health to disqualify persons from providing school health services and authorizes the department to grant exemptions to the disqualification.

The bill amends s. 409.9071, F.S., relating to the school district certified match program for Medicaid reimbursement for school-based services. The bill deletes the statement that consultant services are considered billing agent consultant services under s. 409.913(9), and deletes the restriction that payments to consultants must not be based on amounts for which they bill nor on the amount a provider receives from Medicaid.

The bill amends s. 768.28, F.S., to add a new subsection (20) to extend the state's sovereign immunity to those persons rendering school health services under a local school health services plan.

The Department of Health is directed to work with the federal Department of Health and Human Services to try to determine a means through which local units of government, other than county health departments, could be designated as Title V (Maternal and Child Health Block Grant) agencies. Any money earned from Medicaid by such a designated entity would have to be reinvested in the school nurse services public-private partnership.

The Secretary of Health is required to appoint a study group relating to the training requirements for nurses providing school health services. Two representatives must be appointed to represent each of the following: the Department of Health, the Department of Education, the Florida Nurses Association, the State University System, and the Board of Nursing. The Department of Health must report the group's findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2000.

The bill establishes the intent of the Legislative to make sufficient funds available to provide a nurse in every school in the state under this act. Funding sources cited include those for comprehensive school health services, full service schools, Medicaid match programs and tobacco settlement revenue.

The bill appropriates the sum of $75,000 in non-recurring General Revenue to the Department of Health for a school health summit as recommended by Senate Interim Project Report 98-30.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Subsections 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Any person who provides services under a school health services plan must complete Level 2 screening. Level 2 screening costs $45 ($6 for abuse screening, $15 for FDLE statewide criminal background screening and $24 for FBI screening). Individuals whose employers did not pay the cost of the Level 2 background screening would incur that cost themselves.

C. Government Sector Impact:

The bill imposes a Level 2 background screening requirement on all persons involved in the delivery of school health services under a local school health services plan. It is unclear at present how many Department of Health and school district staff and how many partnership participants and other volunteers will be impacted by this requirement. No analysis of this issue is yet available from the Department of Law Enforcement. There will be some direct costs associated with this requirement.

The bill provides a one-time General Revenue appropriation of $75,000 for a school health summit.

The Department of Health estimates first year non-recurring start-up costs of $26,628 associated with the bill. First year non-recurring costs associated with nurse staffing is estimated at $1,370,400.

The bill's stated intent of funding a school health nurse in every school has a cost that will be borne by private and public entities. Given the fact that there are roughly 3,000 schools in the state and only about 700 nurses involved in the delivery of school health services currently, the bill creates a need for approximately 2,300 nurses. Using the Department of Health's figure of $55,000 per school health nurse FTE, the amount of roughly $126,500,000 is necessary just to fully implement the nursing requirements of this bill.

The Department of Health indicates a need for three headquarters positions to staff the partnership requirements of the bill. This cost amounts to recurring costs of $132,457 for year 1 and $180,624 for year 2 of implementation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Health, Aging and Long-Term Care:
Makes a technical change to the section relating to the definitions for the purposes of school health services programs.

#2 by Health, Aging and Long-Term Care:
Provides alternative language to revise the state's extension of sovereign immunity to entities providing school health services under contract with the Department of Health to be recognized as instrumentalities of the state, and to provide their own coverage for liability claims up to the state's limits of such coverage.

#3 by Health, Aging and Long-Term Care:
Deletes a provision extending the state's sovereign immunity to those persons rendering school health services under a local school health services plan, in lieu of alternate language to revise the states extension of sovereign immunity to entities providing school health services under contract with the Department of Health.