

Bill No. CS for CS for SB 660

Amendment No. ____

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senators Brown-Waite and Diaz-Balart moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Subsection (8) of section 216.136, Florida Statutes, 1998 Supplement, is amended to read:

216.136 Consensus estimating conferences; duties and principals.--

(8) CHILD WELFARE SYSTEM ESTIMATING CONFERENCE.--

(a) Duties.--The Child Welfare System Estimating Conference shall develop such official ~~the following~~ information relating to the child welfare system of the state, including forecasts of child welfare caseloads, as the conference determines is needed for the state planning and budgeting system. Such official information may include, but is not limited to:

1. Estimates and projections of the number of initial and additional reports of child abuse, abandonment, or neglect

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1 made to the central abuse hotline maintained by the Department
2 of Children and Family Services as established in s.
3 39.201(4). Projections may take into account other factors
4 that may influence the number of future reports to the abuse
5 hotline.

6 2. Estimates and projections of the number of children
7 who are alleged to be victims of child abuse, abandonment, or
8 neglect and are in need of emergency shelter, foster care,
9 residential group care, adoptive services, or other
10 appropriate care placement in a shelter.

11
12 In addition, the conference shall develop other official
13 information relating to the child welfare system of the state
14 which the conference determines is needed for the state
15 planning and budgeting system. The Department of Children and
16 Family Services shall provide information on the child welfare
17 system requested by the Child Welfare System Estimating
18 Conference, or individual conference principals, in a timely
19 manner.

20 (b) Principals.--The Executive Office of the Governor,
21 the coordinator of the Office of Economic and Demographic
22 Research, and professional staff who have forecasting
23 expertise from the Department of Health and Rehabilitative
24 Services, the Senate, and the House of Representatives, or
25 their designees, are the principals of the Child Welfare
26 System Estimating Conference. The principal representing the
27 Executive Office of the Governor shall preside over sessions
28 of the conference.

29 Section 2. Section 409.1671, Florida Statutes, 1998
30 Supplement, is amended to read:

31 409.1671 Foster care and related services;

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1 privatization.--

2 (1)(a) It is the intent of the Legislature that the
3 Department of Children and Family Services shall privatize the
4 provision of foster care and related services statewide. It is
5 further the Legislature's intent to encourage communities and
6 other stakeholders in the well-being of children to
7 participate in assuring that children are safe and
8 well-nurtured. However, while recognizing that some local
9 governments are presently funding certain foster care and
10 related services programs and may choose to expand such
11 funding in the future, the Legislature does not intend by its
12 privatization of foster care and related services that any
13 county, municipality, or special district be required to
14 assist in funding programs that previously have been funded by
15 the state.As used in this section, the term "privatize" means
16 to contract with competent, community-based agencies. The
17 department shall submit a plan to accomplish privatization
18 statewide, through a competitive process, phased in over a
19 3-year period beginning January 1, 2000. This plan is to be
20 submitted by July 1, 1999, to the President of the Senate, the
21 Speaker of the House of Representatives, the Governor, and the
22 minority leaders of both houses. This plan must be developed
23 with local community participation, including, but not limited
24 to, input from community-based providers that are currently
25 under contract with the department to furnish community-based
26 foster care and related services, and must include a
27 methodology for determining and transferring all available
28 funds, including federal funds that the provider is eligible
29 for and agrees to earn and that portion of general revenue
30 funds which is currently associated with the services that are
31 being furnished under contract. Notwithstanding the provisions

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1 of s. 215.425, all documented federal funds earned for the
2 current fiscal year by the department and community-based
3 agencies which exceed the amount appropriated by the
4 Legislature shall be distributed to all entities that
5 contributed to the excess earnings based on a schedule and
6 methodology developed by the department and approved by the
7 Executive Office of the Governor. Distribution shall be pro
8 rata based on total earnings and shall be made only to those
9 entities that contributed to excess earnings. Excess earnings
10 of community-based agencies shall be used only in the district
11 in which they were earned. Additional state funds appropriated
12 by the Legislature for community-based agencies or made
13 available pursuant to the budgetary amendment process
14 described in s. 216.177 shall be transferred to the
15 community-based agencies. The department shall amend a
16 community-based agency's contract to permit expenditure of the
17 funds. The distribution program applies only to entities that
18 were under privatization contracts as of July 1, 1999. This
19 program is authorized for a period of 3 years beginning July
20 1, 1999, and ending June 30, 2002. The Office of Program
21 Policy Analysis and Government Accountability shall review
22 this program and report to the Legislature by December 31,
23 2001. The review shall assess the program to determine how the
24 additional resources were used, the number of additional
25 clients served, the improvements in quality of service
26 attained, the performance outcomes associated with the
27 additional resources, and the feasibility of continuing or
28 expanding this program.The methodology must provide for the
29 transfer of funds appropriated and budgeted for all services
30 and programs that have been incorporated into the project,
31 including all management, capital (including current furniture

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1 and equipment), and administrative funds to accomplish the
2 transfer of these programs. This methodology must address
3 expected workload and at least the 3 previous years'
4 experience in expenses and workload. With respect to any
5 district or portion of a district in which privatization
6 cannot be accomplished within the 3-year timeframe, the
7 department must clearly state in its plan the reasons the
8 timeframe cannot be met and the efforts that should be made to
9 remediate the obstacles, which may include alternatives to
10 total privatization, such as public-private partnerships. As
11 used in this section, the term "related services" means family
12 preservation, independent living, emergency shelter,
13 residential group care, foster care, therapeutic foster care,
14 intensive residential treatment, foster care supervision, case
15 management, postplacement supervision, permanent foster care,
16 and family reunification. Unless otherwise provided for,
17 beginning in fiscal year 1999-2000, either the state attorney
18 or the Office of the Attorney General shall provide child
19 welfare legal services, pursuant to chapter 39 and other
20 relevant provisions, in Sarasota, Pinellas, Pasco, Broward,
21 and Manatee Counties. Such legal services shall commence and
22 be effective, as soon as determined reasonably feasible by the
23 respective state attorney or the Office of the Attorney
24 General, after the privatization of associated programs and
25 child protective investigations has occurred. When a private
26 nonprofit agency has received case management
27 responsibilities, transferred from the state under this
28 section, for a child who is sheltered or found to be dependent
29 and who is assigned to the care of the privatization project,
30 the agency may act as the child's guardian for the purpose of
31 registering the child in school if a parent or guardian of the

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1 child is unavailable and his or her whereabouts cannot
2 reasonably be ascertained. The private nonprofit agency may
3 also seek emergency medical attention for such a child, but
4 only if a parent or guardian of the child is unavailable, his
5 or her whereabouts cannot reasonably be ascertained, and a
6 court order for such emergency medical services cannot be
7 obtained because of the severity of the emergency or because
8 it is after normal working hours. However, the provider may
9 not consent to sterilization, abortion, or termination of life
10 support. If a child's parents' rights have been terminated,
11 the nonprofit agency shall act as guardian of the child in all
12 circumstances.

13 (b) As used in this section, the term "eligible lead
14 community-based provider" means a single agency with which the
15 department shall contract for the provision of child
16 protective services in a community that is no smaller than a
17 county. To compete for a privatization project, such agency
18 must have:

19 1. The ability to coordinate, integrate, and manage
20 all child protective services in the designated community in
21 cooperation with child protective investigations.

22 2. The ability to ensure continuity of care from entry
23 to exit for all children referred from the protective
24 investigation and court systems.

25 3. The ability to provide directly, or contract for
26 through a local network of providers, all necessary child
27 protective services.

28 4. The willingness to accept accountability for
29 meeting the outcomes and performance standards related to
30 child protective services established by the Legislature and
31 the Federal Government.

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1 5. The capability and the willingness to serve all
2 children referred to it from the protective investigation and
3 court systems, regardless of the level of funding allocated to
4 the community by the state, provided all related funding is
5 transferred.

6 6. The willingness to ensure that each individual who
7 provides child protective services completes the training
8 required of child protective service workers by the Department
9 of Children and Family Services.

10 (c)1. The Legislature finds that the state has
11 traditionally provided foster care services to children who
12 have been the responsibility of the state. As such, foster
13 children have not had the right to recover for injuries beyond
14 the limitations specified in s. 768.28. The Legislature has
15 determined that foster care and related services need to be
16 privatized pursuant to this section and that the provision of
17 such services is of paramount importance to the state. The
18 purpose for such privatization is to increase the level of
19 safety, security, and stability of children who are or become
20 the responsibility of the state. One of the components
21 necessary to secure a safe and stable environment for such
22 children is that private providers maintain liability
23 insurance. As such, insurance needs to be available and remain
24 available to nongovernmental foster care and related services
25 providers without the resources of such providers being
26 significantly reduced by the cost of maintaining such
27 insurance.

28 2. The Legislature further finds that, by requiring
29 the following minimum levels of insurance, children in
30 privatized foster care and related services will gain
31 increased protection and rights of recovery in the event of

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1 injury than provided for in s. 768.28.

2 (d) Any eligible lead community-based provider, as
3 defined in paragraph (b), or its employees or officers, except
4 as otherwise provided in paragraph (e), must, as a part of its
5 contract, obtain a minimum of \$1 million per claim/\$3 million
6 per incident in general liability insurance coverage. In any
7 tort action brought against such an eligible lead
8 community-based provider, net economic damages shall be
9 limited to \$1 million per claim, including, but not limited
10 to, past and future medical expenses, wage loss, and loss of
11 earning capacity, offset by any collateral source payment paid
12 or payable. In any tort action brought against such an
13 eligible lead community-based provider, noneconomic damages
14 shall be limited to \$200,000 per claim. This paragraph does
15 not preclude the filing of a claims bill pursuant to s. 768.28
16 by the claimant for any amount exceeding the limits specified
17 in this paragraph. Any offset of collateral source payments
18 made as of the date of the settlement or judgment shall be in
19 accordance with s. 768.76. The lead community-based provider
20 shall not be liable in tort for the acts or omissions of its
21 subcontractors or the officers, agents, or employees of its
22 subcontractors.

23 (e) The liability of an eligible lead community-based
24 provider described in this section shall be exclusive and in
25 place of all other liability of such provider. The same
26 immunities from liability enjoyed by such providers shall
27 extend as well to each employee of the provider when such
28 employee is acting in furtherance of the provider's business.
29 Such immunities shall not be applicable to a provider or an
30 employee who acts in a culpably negligent manner or with
31 willful and wanton disregard or unprovoked physical aggression

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1 when such acts result in injury or death or such acts
2 proximately cause such injury or death; nor shall such
3 immunities be applicable to employees of the same provider
4 when each is operating in the furtherance of the provider's
5 business, but they are assigned primarily to unrelated works
6 within private or public employment. The same immunity
7 provisions enjoyed by a provider shall also apply to any sole
8 proprietor, partner, corporate officer or director,
9 supervisor, or other person who in the course and scope of his
10 or her duties acts in a managerial or policymaking capacity
11 and the conduct that caused the alleged injury arose within
12 the course and scope of those managerial or policymaking
13 duties. Culpable negligence is defined as reckless
14 indifference or grossly careless disregard of human life.

15 (f) Any subcontractor of an eligible lead
16 community-based provider, as defined in paragraph (b), which
17 is a direct provider of foster care and related services to
18 children and families, and its employees or officers, except
19 as otherwise provided in paragraph (e), must, as a part of its
20 contract, obtain a minimum of \$1 million per claim/\$3 million
21 per incident in general liability insurance coverage. In any
22 tort action brought against such subcontractor, net economic
23 damages shall be limited to \$1 million per claim, including,
24 but not limited to, past and future medical expenses, wage
25 loss, and loss of earning capacity, offset by any collateral
26 source payment paid or payable. In any tort action brought
27 against such subcontractor, noneconomic damages shall be
28 limited to \$200,000 per claim. This paragraph does not
29 preclude the filing of a claims bill pursuant to section s.
30 768.28 by the claimant for any amount exceeding the limits
31 specified in this paragraph. Any offset of collateral source

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1 payments made as of the date of the settlement or judgment
2 shall be in accordance with s. 768.76.

3 (g) The liability of a subcontractor of an eligible
4 lead community-based provider that is a direct provider of
5 foster care and related services as described in this section
6 shall be exclusive and in place of all other liability of such
7 provider. The same immunities from liability enjoyed by such
8 subcontractor provider shall extend as well to each employee
9 of the subcontractor when such employee is acting in
10 furtherance of the subcontractor's business. Such immunities
11 shall not be applicable to a subcontractor or an employee who
12 acts in a culpably negligent manner or with willful and wanton
13 disregard or unprovoked physical aggression when such acts
14 result in injury or death or such acts proximately cause such
15 injury or death; nor shall such immunities be applicable to
16 employees of the same subcontractor when each is operating in
17 the furtherance of the subcontractor's business, but they are
18 assigned primarily to unrelated works within private or public
19 employment. The same immunity provisions enjoyed by a
20 subcontractor shall also apply to any sole proprietor,
21 partner, corporate officer or director, supervisor, or other
22 person who in the course and scope of his or her duties acts
23 in a managerial or policymaking capacity and the conduct that
24 caused the alleged injury arose within the course and scope of
25 those managerial or policymaking duties. Culpable negligence
26 is defined as reckless indifference or grossly careless
27 disregard of human life.

28 (h) The Legislature is cognizant of the increasing
29 costs of goods and services each year and recognizes that
30 fixing a set amount of compensation actually has the effect of
31 a reduction in compensation each year. Accordingly, the

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1 conditional limitations on damages in this section shall be
2 increased at the rate of 5 percent each year, prorated from
3 the effective date of this paragraph to the date at which
4 damages subject to such limitations are awarded by final
5 judgment or settlement.

6 (2)(a) The department may contract for the delivery,
7 administration, or management of protective services, the
8 services specified in subsection (1) relating to foster care,
9 and other related services or programs, as appropriate. The
10 department shall retain responsibility for the quality of
11 contracted services and programs and shall ensure that
12 services are delivered in accordance with applicable federal
13 and state statutes and regulations.

14 (b) Persons employed by the department in the
15 provision of foster care and related services whose positions
16 are being privatized pursuant to this statute shall be given
17 hiring preference by the provider, if provider qualifications
18 are met.

19 (3)(a) The department shall establish a quality
20 assurance program for privatized services. The quality
21 assurance program may be performed by a national accrediting
22 organization such as the Council on Accreditation of Services
23 for Families and Children, Inc. (COA) or the Council on
24 Accreditation of Rehabilitation Facilities (CARF). The
25 department shall develop a request for proposal for such
26 oversight. This program must be developed and administered at
27 a statewide level. The Legislature intends that the department
28 be permitted to have limited flexibility to use funds for
29 improving quality assurance. To this end, effective January 1,
30 2000, the department may transfer up to 0.125 percent of the
31 total funds from categories used to pay for these

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1 contractually provided services, but the total amount of such
2 transferred funds may not exceed \$300,000 in any fiscal year.
3 When necessary, the department may establish, in accordance
4 with s. 216.177, additional positions that will be exclusively
5 devoted to these functions. Any positions required under this
6 paragraph may be established, notwithstanding ss.
7 216.262(1)(a) and 216.351. The department, in consultation
8 with the community-based agencies that are undertaking the
9 privatized projects, shall establish minimum thresholds for
10 each component of service, consistent with standards
11 established by the Legislature. Each program operated under
12 contract with a community-based agency must be evaluated
13 annually by the department. The department shall submit an
14 annual report regarding quality performance, outcome measure
15 attainment, and cost efficiency to the President of the
16 Senate, the Speaker of the House of Representatives, the
17 minority leader of each house of the Legislature, and the
18 Governor no later than January 31 of each year for each
19 project in operation during the preceding fiscal year.

20 (b) The department shall use these findings in making
21 recommendations to the Governor and the Legislature for future
22 program and funding priorities in the child welfare system.

23 (4)(a) The community-based agency must comply with
24 statutory requirements and agency rules in the provision of
25 contractual services. Each foster home, therapeutic foster
26 home, emergency shelter, or other placement facility operated
27 by the community-based agency or agencies must be licensed by
28 the Department of Children and Family Services under chapter
29 402 or this chapter. Each community-based agency must be
30 licensed as a child-caring or child-placing agency by the
31 department under this chapter. The department, in order to

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1 eliminate or reduce the number of duplicate inspections by
2 various program offices, shall coordinate inspections required
3 pursuant to licensure of agencies under this section.

4 (b) Substitute care providers who are licensed under
5 s. 409.175 and have contracted with a lead agency authorized
6 under this section shall also be authorized to provide
7 registered or licensed family day care under s. 402.313, if
8 consistent with federal law and if the home has met:

9 1. The requirements of s. 402.313; and

10 2. The requirements of s. 402.281 and has received
11 Gold Seal Quality Care designation.

12 (c) A dually licensed home under this section shall be
13 eligible to receive both the foster care board rate and the
14 subsidized child care rate for the same child only if care is
15 provided 24 hours a day. The subsidized child care rate shall
16 be no more than the approved full-time rate.

17 (5) Beginning January 1, 1999, and continuing at least
18 through June 30, 2000 ~~December 31, 1999~~, the Department of
19 Children and Family Services shall privatize all foster care
20 and related services in district 5 while continuing to
21 contract with the current model programs in districts 1, 4,
22 and 13, and in subdistrict 8A, and shall expand the
23 subdistrict 8A pilot program to incorporate Manatee County.
24 Planning for the district 5 privatization shall be done by
25 providers that are currently under contract with the
26 department for foster care and related services and shall be
27 done in consultation with the department. A lead provider of
28 the district 5 program shall be competitively selected, must
29 demonstrate the ability to provide necessary comprehensive
30 services through a local network of providers, and must meet
31 criteria established in this section. Contracts with

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1 organizations responsible for the model programs must include
2 the management and administration of all privatized services
3 specified in subsection (1). However, the department may use
4 funds for contract management only after obtaining written
5 approval from the Executive Office of the Governor. The
6 request for such approval must include, but is not limited to,
7 a statement of the proposed amount of such funds and a
8 description of the manner in which such funds will be used. If
9 the community-based organization selected for a model program
10 under this subsection is not a Medicaid provider, the
11 organization shall be issued a Medicaid provider number
12 pursuant to s. 409.907 for the provision of services currently
13 authorized under the state Medicaid plan to those children
14 encompassed in this model and in a manner not to exceed the
15 current level of state expenditure.

16 (6) Each district and subdistrict that participates in
17 the model program effort or any future privatization effort as
18 described in this section must thoroughly analyze and report
19 the complete direct and indirect costs of delivering these
20 services through the department and the full cost of
21 privatization, including the cost of monitoring and evaluating
22 the contracted services.

23 Section 3. Subsection (24) is added to section
24 409.906, Florida Statutes, 1998 Supplement, to read:

25 409.906 Optional Medicaid services.--Subject to
26 specific appropriations, the agency may make payments for
27 services which are optional to the state under Title XIX of
28 the Social Security Act and are furnished by Medicaid
29 providers to recipients who are determined to be eligible on
30 the dates on which the services were provided. Any optional
31 service that is provided shall be provided only when medically

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1 necessary and in accordance with state and federal law.
2 Nothing in this section shall be construed to prevent or limit
3 the agency from adjusting fees, reimbursement rates, lengths
4 of stay, number of visits, or number of services, or making
5 any other adjustments necessary to comply with the
6 availability of moneys and any limitations or directions
7 provided for in the General Appropriations Act or chapter 216.
8 Optional services may include:

9 (24) CHILD-WELFARE-TARGETED CASE MANAGEMENT.--The
10 Agency for Health Care Administration, in consultation with
11 the Department of Children and Family Services, may establish
12 a targeted case-management pilot project in those counties
13 identified by the Department of Children and Family Services
14 and for the community-based child welfare project in Sarasota
15 and Manatee counties, as authorized under s. 409.1671. These
16 projects shall be established for the purpose of determining
17 the impact of targeted case management on the child welfare
18 program and the earnings from the child welfare program.
19 Results of the pilot projects shall be reported to the Child
20 Welfare Estimating Conference and the Social Services
21 Estimating Conference established under s. 216.136. The number
22 of projects may not be increased until requested by the
23 Department of Children and Family Services, recommended by the
24 Child Welfare Estimating Conference and the Social Services
25 Estimating Conference, and approved by the Legislature. The
26 covered group of individuals who are eligible to receive
27 targeted case management include children who are eligible for
28 Medicaid; who are between the ages of birth through 21; and
29 who are under protective supervision or postplacement
30 supervision, under foster-care supervision, or in shelter care
31 or foster care. The number of individuals who are eligible to

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1 receive targeted case management shall be limited to the
 2 number for whom the Department of Children and Family Services
 3 has available matching funds to cover the costs. The general
 4 revenue funds required to match the funds for services
 5 provided by the community-based child welfare projects are
 6 limited to funds available for services described under s.
 7 409.1671. The Department of Children and Family Services may
 8 transfer the general revenue matching funds as billed by the
 9 Agency for Health Care Administration.

10 Section 4. If any provision of this act or the
 11 application thereof to any person or circumstance is held
 12 invalid, the invalidity does not affect other provisions or
 13 applications of the act which can be given effect without the
 14 invalid provision or application, and to this end the
 15 provisions of this act are declared severable.

16 Section 5. This act shall take effect upon becoming a
 17 law.

18
 19

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

21 And the title is amended as follows:

22 Delete everything before the enacting clause

23

24 and insert:

25 A bill to be entitled
 26 An act relating to foster care and related
 27 services; amending s. 216.136, F.S.; requiring
 28 the Child Welfare System Estimating Conference
 29 to include forecasts of child welfare caseloads
 30 within the information it generates; providing
 31 for inclusion of additional classes of children

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1 in need of care among estimates; amending s.
2 409.1671, F.S.; providing that the Legislature
3 does not intend to require local governments to
4 fund foster care and related services
5 previously funded by the state; providing for
6 distribution of documented federal funds in
7 excess of amounts appropriated by the
8 Legislature; providing uses for such funds;
9 providing for a review of the distribution
10 program and a report; designating Broward
11 County for either the state attorney or
12 Attorney General to provide child welfare legal
13 services; requiring community-based providers
14 and their subcontractors to obtain certain
15 liability insurance; prescribing limits on
16 liability; prescribing immunity of employees of
17 providers and their subcontractors; defining
18 the term "culpable negligence"; declaring
19 legislative intent with respect to inflationary
20 increases in liability amounts; providing for
21 hiring preference for state employees;
22 prescribing requirements for preschool foster
23 homes; changing the date for privatization of
24 foster care and related services in district 5;
25 amending s. 409.906, F.S.; authorizing the
26 Agency for Health Care Administration to
27 establish a targeted case-management pilot
28 project within certain counties; providing for
29 the pilot project to determine the impact of
30 targeted case-management services; providing
31 for eligibility for coverage under the pilot

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project; providing certain limitations on
funding; providing for severability; providing
an effective date.