

By the Committee on Children and Families; and Senators  
Brown-Waite and McKay

300-1660A-99

1                                   A bill to be entitled  
2           An act relating to foster care and related  
3           services; amending s. 409.1671, F.S.; providing  
4           that the department transfer to the lead agency  
5           documented federal funds earned by the agency  
6           in excess of the amount specified in the  
7           contract; providing that the earned federal  
8           funds be used for providing additional child  
9           welfare services; providing that the contract  
10          be amended to permit expenditure of federal  
11          funds; specifying that an agency that provides  
12          foster care and related services pursuant to s.  
13          409.1671, F.S., under contract with the  
14          Department of Children and Family Services is  
15          an instrumentality of the state; providing  
16          limitations on certain tort actions brought  
17          against the provider; requiring that a contract  
18          provide for indemnification of the department  
19          and the state due to negligence of the provider  
20          or a subcontractor; providing an effective  
21          date.

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23 Be It Enacted by the Legislature of the State of Florida:

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25           Section 1. Paragraph (a) of subsection (1) of section  
26   409.1671, Florida Statutes, 1998 Supplement, is amended and  
27   subsection (5) is added to that section to read:

28           409.1671 Foster care and related services;  
29   privatization.--

30           (1)(a) It is the intent of the Legislature that the  
31   Department of Children and Family Services shall privatize the

1 provision of foster care and related services statewide. As  
2 used in this section, the term "privatize" means to contract  
3 with competent, community-based agencies. The department  
4 shall submit a plan to accomplish privatization statewide,  
5 through a competitive process, phased in over a 3-year period  
6 beginning January 1, 2000. This plan is to be submitted by  
7 July 1, 1999, to the President of the Senate, the Speaker of  
8 the House of Representatives, the Governor, and the minority  
9 leaders of both houses. This plan must be developed with local  
10 community participation, including, but not limited to, input  
11 from community-based providers that are currently under  
12 contract with the department to furnish community-based foster  
13 care and related services, and must include a methodology for  
14 determining and transferring all available funds, including  
15 federal funds that the provider is eligible for and agrees to  
16 earn and that portion of general revenue funds which is  
17 currently associated with the services that are being  
18 furnished under contract. Notwithstanding the provisions of s.  
19 215.425, the department shall transfer to the lead agency in  
20 the district in which the funds were earned all documented  
21 federal funds that it receives as a result of foster care and  
22 related services furnished by a lead agency and that exceed  
23 the amount identified in the contract for services to the lead  
24 agency. The lead agency shall use any such funds for the sole  
25 purpose of providing additional child welfare services in the  
26 district in which the funds were earned. The department shall  
27 amend the lead agency's contract to permit expenditure of  
28 these funds. The methodology must provide for the transfer of  
29 funds appropriated and budgeted for all services and programs  
30 that have been incorporated into the project, including all  
31 management, capital (including current furniture and

1 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, and Manatee  
21 Counties. Such legal services shall commence and be  
22 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

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 (5) Any community-based agency that provides foster  
14 care and related services to children and families under  
15 contract with the Department of Children and Family Services  
16 pursuant to s. 409.1671 is deemed to be a corporation acting  
17 primarily as an instrumentality of the state, and the  
18 limitations on tort actions contained in s. 768.28 apply to  
19 any action brought against the community-based agency with  
20 respect to such foster care and related services if the agency  
21 is acting within the scope of and pursuant to guidelines  
22 established in the contract with or by rule of the Department  
23 of Children and Family Services. A contract with the  
24 Department of Children and Family Services covered by this  
25 section must provide for the indemnification of the department  
26 and the state by the agency for any liabilities actually  
27 incurred by the department or the state due to the intentional  
28 or negligent acts or omissions of the community-based agency,  
29 its employees, or subcontractors, up to the limits established  
30 in s. 768.28 in addition to all defense costs and reasonable  
31 attorney's fees incurred by the department or the state.

1           Section 2. This act shall take effect upon becoming a  
2 law.

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4           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
5                           COMMITTEE SUBSTITUTE FOR  
6   SB 660

7 Amends s. 409.1671, F.S., clarifying that community-based  
8 agencies under contract with the Department of Children and  
9 Family Services to provide foster care and related services  
pursuant to s. 409.1671, F.S., are deemed an instrumentality  
of the state.

10 Specifies that limitations on tort actions contained in s.  
11 768.28, F.S., apply only to those foster care and related  
12 services which the community-based agency provides under  
contract with the department.

13 Specifies that limitations on tort actions contained in s.  
14 768.28, F.S., will apply to persons or agencies that  
15 subcontract with the community-based agency to provide  
16 services required in the agency's contract with the  
17 department.

18 Specifies that the department must transfer federal funds that  
19 are earned by the community-based agency in excess of those  
20 specified in the contract to that agency in the district in  
21 which the funds were earned.

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