

By the Committees on Governmental Oversight and Productivity;
 Children and Families; and Senators Brown-Waite and McKay

302-1832-99

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 providers to
 18 procure liability insurance coverage; declaring
 19 legislative intent with respect to payment of
 20 claims; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Paragraph (a) of subsection (1) of section
 25 409.1671, Florida Statutes, 1998 Supplement, is amended and
 26 subsection (5) is added to that section to read:

27 409.1671 Foster care and related services;
 28 privatization.--

29 (1)(a) It is the intent of the Legislature that the
 30 Department of Children and Family Services shall privatize the
 31 provision of foster care and related services statewide. As

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

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

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

12 (5) Any community-based agency that provides foster
13 care and related services to children and families under
14 contract with the department pursuant to this section is
15 deemed to be a corporation acting primarily as an
16 instrumentality of the state solely for the purpose of
17 limiting liability pursuant to s. 768.28(5). The limitations
18 on tort actions contained in s. 768.28(5) shall apply to any
19 action brought against the community-based agency with respect
20 to such foster care and related services, if the provider is
21 acting within the scope of and pursuant to guidelines
22 established in the contract or by rule of the department. The
23 contract must require the provider to obtain general liability
24 insurance coverage, with any additional endorsement necessary
25 to insure the provider for liability assumed by its contract
26 with the department and any subcontracts that the provider may
27 require to carry out the services contemplated under its
28 contract with the department. The Legislature intends that
29 insurance be purchased by providers to cover all liability
30 claims, and under no circumstances shall the state or the
31 department be responsible for payment of any claims or defense

1 costs for claims brought against the provider or its
2 subcontractor for services performed under the contract with
3 the department. This subsection does not preclude
4 consideration by the Legislature for payment by the state of
5 any claims bill involving an agency contracting with the
6 department pursuant to this section.

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

9
10 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
11 COMMITTEE SUBSTITUTE FOR
12 CS/SB 660

13 The Committee Substitute rephrases the existing sovereign
14 immunity language in the previous Committee Substitute to
15 clarifiy that each service provider and subcontractor must
16 carry general liability insurance to indemnify the department.
17 The Legislature may still consider claims bills for additional
18 amounts.
19
20
21
22
23
24
25
26
27
28
29
30
31