HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 143 Motor Vehicle Insurance for Foster Children
SPONSOR(S): Detert and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 124

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Future of Florida's Families Committee		Preston	Collins
2) Insurance Committee			
3) Health Care Appropriations Committee			
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

The bill requires the Department of Children and Family Services (the department) to establish a 3-year pilot program in Sarasota, DeSoto, Manatee, Pinellas, and Pasco Counties to provide funds, to the extent that they are available, to reimburse foster parents, residential facilities, or foster children who live independently for a portion of the increase in the motor vehicle insurance premium that occurs when a foster child receives a driver's license and is added to an insurance policy. The foster child must be encouraged to pay the remaining half of the increased premium cost.

It has been reported by staff with the department that foster care youth who are not able to learn to drive or gain experience driving miss an important part of learning how to be independent, including being able to work. A primary obstacle to these youth being able to drive is related to the liability to the foster parents when the youth drive their vehicles and the attendant increase in insurance premium. Estimates of the average cost to add a youth driver in Sarasota, DeSoto, Manatee, Pinellas, and Pasco Counties range from $200 to $1,056 annually based on the level of liability coverage, the insurance company, and whether the driver is male or female.

The bill requires the department to develop procedures for operating the pilot, to explore and utilize other options for funding the premium increase, and to submit an annual report to the Governor and the Legislature, with the first report due July 1, 2006.

The bill provides for a $50,000 appropriation from the General Revenue Fund to the department for implementation of the act for fiscal year 2005-2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill requires the Department of Children and Family Services to develop procedures for implementing the pilot program, including the allocation of available funds to eligible recipients.

Safeguard individual liberty - The bill will provide financial assistance to offset a portion of the insurance premium increase that will enable some otherwise eligible foster youth to drive. This may increase the sense of independence of those youth and provide them with a greater ability to conduct their own affairs.

Promote personal responsibility - The bill requires that a foster child be encouraged to pay the remaining half of any increase in automobile insurance premium occurring as a result of he or she being added to a policy upon receiving a driver's license.

Empower families - The bill may enable some foster youth to drive, thus reducing demands on adult caregiver time and increasing the sense of responsibility and independence of the youth, both of which may serve to benefit the family unit as a whole.

B. EFFECT OF PROPOSED CHANGES:

For youth in the foster care system, there are often barriers to participating in the same everyday life experiences as other young people their age. These life experiences are important because they help prepare younger individuals for the responsibilities they will need to assume as adults. The Florida State Youth Advisory Board has long identified the barriers to driving an automobile that are experienced by the youth in Florida's foster care system as an area of concern. It has been reported by staff with the department that foster care youth who are not able to learn to drive or gain experience driving miss an important part of learning how to be independent, including being able to work. A primary obstacle to these youth being able to drive is related to the liability to the foster parents when the youth drive their vehicles and the attendant increase in insurance premium. Estimates of the average cost to add a youth driver in Sarasota, DeSoto, Manatee, Pinellas, and Pasco Counties range from $200 to $1,056 annually based on the level of liability coverage, the insurance company, and whether the driver is male or female.

A youth who is 15 years of age is authorized to obtain a learner's driver's license provided he or she meets the school attendance requirements of s. 322.091, F.S., and the application and testing requirements of s. 322.1615, F.S. Section 322.09, F.S., requires that when a youth applies for a driver's license, the application must be signed by a parent, guardian, or, when there is no parent or guardian, some other responsible adult. This same section provides that any negligence or willful misconduct of the youth operating a motor vehicle will be imputed to the adult who signed the application. That adult is jointly and severally liable with the youth for any damages caused by such negligent or willful misconduct.

In 2001, s. 322.09, F.S., was amended to provide that foster parents or authorized representatives of a residential group home who sign for a foster youth's license do not become liable for any damages or misconduct of the youth.[1] However, this provision does not relieve any individual, whether he or she signed the application or not, from vicarious liability when he or she allows the foster youth to operate a motor vehicle the individual owns.[2] Thus, the foster parent who owns the motor vehicle continues to be subject to vicarious liability for the actions of the youth while operating the foster parent's vehicle, in the

[1] Chapter 2001-83, L.O.F.
[2] Hertz Corp. v. Jackson, 617 So.2d 1051(Fla. 1993)

same way the foster parent would be vicariously liable for the actions of any other person operating that vehicle. This vicarious liability is one of the risks for which insurance coverage is purchased.

In the past, some motor vehicle insurance companies did not charge an additional premium when a youth with a learner's driver's license was an occasional driver of the parent's vehicle, until such time as the youth obtained his or her regular driver's license. In 2001, s. 627.746, F.S., was created and it prohibited a motor vehicle insurance company from charging an additional premium on a motor vehicle owned by a foster parent for coverage of a youth operating the vehicle while the youth is holding a learner's driver's license.[3] This prohibition is only applicable until the youth obtains a regular driver's license.

The bill requires the department to establish a 3-year pilot program in Sarasota, DeSoto, Manatee, Pinellas, and Pasco Counties for the purpose of reimbursing foster parents, residential facilities, or foster children who live independently, for a portion of the increased costs of motor vehicle insurance for a foster child who has a driver's license. Through the pilot program, the department will provide one-half of the amount of the increase which is incurred as a result of adding the foster child to the motor vehicle insurance policy or less than one-half if another source of funding to pay for the increase is available. The bill provides that the foster child must be encouraged to pay the other half of the increase in insurance costs.

To be eligible for payment under the pilot program, the person incurring the cost must submit to the department appropriate documentation demonstrating the increase in the cost of the insurance. The department is to develop procedures for operating the program, including determining eligibility, providing payment, ensuring that payment is limited solely to the additional costs of including the foster child in the insurance policy, and allocating available funds. The department must also utilize any other available options for funding the cost of the motor vehicle insurance increase, such as the child's master trust fund, social security income, child support payments, and any other income that might be available to the child.[4]

The bill requires the department, beginning July 1, 2006, and continuing for the duration of the program, to submit an annual report to the Governor and the Legislature on the success and outcomes of the pilot program, with a recommendation as to whether the program should be continued, terminated, or expanded.

C. SECTION DIRECTORY:

Section 1. Amends or creates an unspecified section within the Florida Statutes related to the establishment of a 3-year pilot program by the Department of Children and Family Services to pay a portion of the cost associated with motor vehicle insurance for foster children.

Section 2. Provides for a $50,000 appropriation from the General Revenue Fund to the Department of Children and Family Services to implement the act in fiscal year 2005-2006.

Section 3. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

---

[3] Chapter 2001-83, L.O.F.
[4] The department has reported that some foster children might receive social security checks or child support payments which could exceed the cost of foster care. Any excess funds are placed in a master trust fund for the child which could then be used to help fund the motor vehicle insurance costs. The balance in such a trust fund may not exceed $1000 in order for the child to maintain Medicaid eligibility.

1. Revenues:

   None.

2. Expenditures:

   The bill appropriates $50,000 from the General Revenue Fund to the Department of Children and Family Services for fiscal year 2005-2006.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides for foster parents, residential facilities, or a foster child who lives independently to be eligible to be reimbursed for a portion of the premium increase that would result from adding a foster child to an automobile insurance policy. As a result of this financial assistance, foster care youth may be able to drive, which may also enable some of them to become and remain employed.

In addition, while the increase in premium has long been problematic, foster parents have traditionally been most concerned about the issue of liability. If the foster child is added to the foster parent's policy, the foster parents may be subject to policy cancellations or increased premiums if the foster child were to be involved in an accident.

D. FISCAL COMMENTS:

The Department of Financial Services (DFS) prepared two estimates of the average cost per policy to add a youth to the coverage of a motor vehicle insurance policy. These estimates were based on coverage in Sarasota, DeSoto, Manatee, Pinellas, and Pasco Counties using the rates of the two largest companies in Florida (State Farm Mutual Automobile Insurance Company and Allstate Property and Casualty Insurance Company), as well as a number of specifically chosen risk characteristics and other assumptions.[5] The difference between the two estimates is that one is based on the minimum liability levels required by law ($10,000/$20,000 bodily injury and $10,000 property damage) and the other uses the most common liability levels ($100,000/$300,000 bodily injury and $50,000 property damage). The policies otherwise provide what is considered full coverage.[6] While rates will continue to differ with each family based on their risk characteristics and other specifics of their policies, the results of this analysis still appear to provide a reasonable foundation from which to determine the cost of the pilot program.

The chart below shows the average cost between the two insurance companies and between the costs for male and female drivers for the minimum liability levels and for the most commonly used liability levels. The number of 16 and 17 year olds in the chart are the number of youth in that age range who are in state custody in each of the counties as reported by the Department of Children and Family Services as of January 2005. These totals assume that every youth in state custody will participate in the project, which is unlikely, according to department representatives.

[5] The methodology used by DFS was based on the following: a married 40-year old male with no experience of accidents or violations in the past 3 years; driving a late model car with driver-side airbags and valued at (original cost) of $18,000 with 8,000 annual mileage, with no youthful operators, and average credit (credit scoring).

[6] $10,000 in personal injury protection, $10,000/$20,000 non-stacked uninsured motorist coverage, comprehensive with $100 deductible, collision with $250 deductible, and $1,000 medical payments coverage.

Counties	Number of Youth Ages 16 and 17	One Car Minimum Liability Level (Divided by 2, then multiplied by # of youth)[7]	One Car Most Commonly Used Liability Level (Divided by 2, then multiplied by # of youth)
Sarasota	27	$838 ÷ 2 x 27 = $11,313	$1,076 ÷ 2 x 27 = $14,526
DeSoto	19	$829 ÷ 2 x 19 = 7,875	$1,063 ÷ 2 x 19 = 10,098
Manatee	48	$856 ÷ 2 x 48 = 20,544	$1,097 ÷ 2 x 48 = 26,328
Pasco	52	$1,006 ÷ 2 x 52 = 26,156	$1,289 ÷ 2 x 52 = 33,514
Pinellas	126	$1,040 ÷ 2 x 126 = 65,520	$1,333 ÷ 2 x 126 = 83,979
Total	**272**	**$131,408**	**$168,445**

Since the number of youth who will actually participate in the program can be predicted to be less than the total in foster care, the above estimates are likely to be higher than the actual demand will be. However, depending upon the number of youth who actually participate as well as other factors, the need for funding could exceed the appropriated sum. The bill requires the Department of Children and Family Services to explore, and utilize if possible, other sources of funding for the insurance premium increase including, but not limited to, any master trust fund the child may have, social security income and child support payments. Whether these alternative funding sources would be sufficient to offset any deficit cannot be predicted.

These estimates also assume that none of the funds would be used for administrative implementation costs. In order to implement the provisions of the bill, the department reports it will require staff capacity to develop procedures, determine eligibility, develop payment and monitoring processes, and compile results of the pilot in an annual report to the Legislature. It is not clear if the funds specified in the bill are intended to fund insurance costs only or if a portion of the funding may be used for administrative costs to implement the pilot.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides that "the department shall develop procedures for operating the pilot program" and while this language is believed to be legally sufficient to provide the department with rulemaking authority,[8] the preferred language would be, "shall develop procedures **by rule**"… Since rulemaking is a lengthy process and the appropriation is small, the pilot program may become operational sooner if the bill specified procedures to be followed for operating it.

[7] The amounts are divided by 2 since the amount subsidized by the department would not exceed one-half of any premium increase.
[8] Conversation with Joint Administrative Procedures Committee and House Office of General Counsel staff.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires an annual report on the pilot program to be submitted to the Governor and the Legislature, with the first report due on July 1, 2006. Since the bill only funds the pilot for fiscal year 2005-2006, funding for the program will end June 30, 2006. Therefore, the Legislature will not have a copy of the first report in time for consideration of further funding the program for successive fiscal years during the 2006 legislative session.

The bill provides for reimbursement to foster parents, residential facilities or a foster child living independently of one-half of the amount of increase in the cost of motor vehicle insurance that occurs as a result of adding the foster child to an existing policy. If the foster child obtained an individual policy instead of being rated on an existing household policy, it does not appear that anyone would be eligible for reimbursement of any premium cost associated with such individual policy.

The bill requires the department to develop procedures for operating the pilot program, including the allocation of funds, even though foster care and related services for Sarasota, DeSoto, Manatee, Pinellas, and Pasco Counties are being provided through two contracts with YMCA Children, Youth and Family Services, Inc. The bill is silent regarding the role of the community-based care provider in the operation of the pilot program.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES