HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 13 CS Department of Elderly Affairs
SPONSOR(S): Robaina and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1330

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	6 Y, 0 N, w/CS	Brown	Williamson
2) Elder & Long-Term Care Committee			
3) Health Care Appropriations Committee			
4) State Administration Council			
5)			

SUMMARY ANALYSIS

The bill provides that if the Department of Elderly Affairs takes any intermediate measures against an area agency on aging for failing to provide certain contract services, and if the area agency on aging fails to improve service delivery after at least 90 days, the Department may terminate the relevant contract(s) and re-contract for the service or provide the service directly to the affected population. The bill requires an evaluation before terminating an area agency.

Subsequent contracts must be made competitively, in accordance with Chapter 287, F.S. The Department may temporarily provide the service, but the competitive procurement process must begin within 180 days.

The Department has said there is no fiscal impact associated with the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – The bill provides for more immediate termination and re-bidding of poorly-operating contracts for programs delivering services to the elderly.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The Department of Elderly Affairs (hereinafter the "Department") assists and protects the state's elderly citizens "to the fullest extent."[1] One of the primary duties of the Department is the delivery of federally-funded programs and services,[2] and the administration of "human services programs" for the elderly.[3] These programs and services are coordinated with area agencies on aging, groups organized at the regional level[4] which in turn directly contract for particular services.[5]

The Department is tasked to ensure that each area agency on aging (hereinafter "AAA" or "agency") "operates in a manner to ensure that the elderly of this state receive the best services possible."[6] The Department monitors the AAA's to ensure that none of the following problems arise:[7]

- An intentional or negligent act of the agency has materially affected the health, welfare, or safety of clients, or substantially and negatively affected the operation of an aging services program.
- The agency lacks financial stability sufficient to meet contractual obligations or that contractual funds have been misappropriated.
- The agency has committed multiple or repeated violations of legal and regulatory requirements or department standards.
- The agency has failed to continue the provision or expansion of services after the declaration of a state of emergency.
- The agency has exceeded its authority or otherwise failed to adhere to the terms of its contract with the department or has exceeded its authority or otherwise failed to adhere to the provisions specifically provided by statute or rule adopted by the department.
- The agency has failed to properly determine client eligibility as defined by the department or efficiently manage program budgets.
- The agency has failed to implement and maintain a department-approved client grievance resolution procedure.

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[1] Section 430.02(1), F.S.
[2] Section 430.02(2), F.S.
[3] Section 430.03(1), F.S.
[4] The State of Florida is currently divided into 11 Planning and Service Areas, according to the *2005 Annual Report Summarizing DOEA's Monitoring Activities of Area Agencies on Aging* (hereinafter the "*2005 Annual Report*").
[5] *2005 Annual Report,* p. 1
[6] Section 430.04(2), F.S.
[7] Section 430.04(2)(a) – (f), F.S.

In the event any of these problems occur, the Department may rescind an AAA's official status or take intermediate measures including:[8]

- Corrective actions,
- Unannounced special monitoring,
- Temporary assumption of operations,
- Placement on probationary status,
- Moratorium on agency action,
- Financial penalties for non-performance, or
- Other administrative action pursuant to chapter 120, F.S.

Proposed Changes

The bill modifies s. 430.04(2), F.S., to provide that administrative action pursuant to chapter 120, F.S., can be taken only after an evaluation.

The bill also provides that in the event the Department takes any "intermediate measures" against an AAA for services funded under the federal Older Americans Act, and the AAA fails to improve service delivery after at least 90 days, the Department may terminate the relevant contract(s) and re-contract for the service or provide the service directly to the affected population.

If the Department elects to re-contract for the service previously provided by the AAA, the subsequent contract must be made competitively, in accordance with Chapter 287, F.S.[9] The Department may provide the affected service directly, for a limited time, but the competitive procurement process must begin within 180 days of the termination of the AAA.

In addition to these safeguards, any contracts made by the AAA after July 1, 2006 with a service provider must contain an assignment clause allowing the Department or another designee to become the assignee of the contract, in order to ensure continuity of service.

C. SECTION DIRECTORY:

Section 1 amends s. 430.04, F.S., to require an evaluation before the Department can take action against an area agency on aging; to permit the Department to terminate contracts and provide for alternative methods of service delivery under certain circumstances; and require assignment clauses in future contracts between AAAs and service providers.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   The bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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[8] Section 430.04(2), F.S.

[9] Generally speaking, chapter 287, F.S., mandates competitive open bidding for all commodities and services purchased by agencies.

The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

The bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2006, the Governmental Operations Committee adopted a proposed committee substitute and reported the bill favorably with committee substitute. The bill completely overhauled chapter 430, F.S. The committee substitute limited the changes to:

- Provide that the Department may take intermediate measures against an AAA after an evaluation;
- Provide that the Department may terminate the contracts under certain circumstances;
- Provide that re-procurement of services must be made in accordance with chapter 287, F.S., and must begin within 180 days of termination; and
- Require assignment clauses in future contracts between AAA's and service providers.