

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 2428

INTRODUCER: Senator Haridopolos

SUBJECT: Services for the Elderly

DATE: March 23, 2008      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ray	Jameson	CF	<b>Favorable</b>
2.	_____	_____	HP	_____
3.	_____	_____	HA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Senate Bill 2428 creates the “Elderly Local Services Act” designating the Department of Elder Affairs (DOEA) as the lead agency in maximizing federal funding for programs serving the elderly. The bill specifies the eligible programs for funding, designates local political subdivisions for the purpose of collecting certified local funding, and provides guidelines for disbursement of funds.

This bill creates an un-numbered section of the Florida Statutes.

**II. Present Situation:**

**Local Funding Revenue Maximization Act**

The Local Funding Revenue Maximization Act<sup>1</sup> (the act) was created in 2003.<sup>2</sup> It is the Legislature’s intent that:

- Certified local funding be used for federal matching programs;
- State agencies take a proactive approach towards implementing the act;
- The act be revenue neutral with respect to state funds;
- Revenue maximization opportunities using certified local funds occur only after available state funds were utilized to generate matching federal funding for the state;
- Participation in revenue maximization is to be voluntary for local political divisions;

<sup>1</sup> Section 409.017, F.S.

<sup>2</sup> Chapter 2003-146, L.O.F.

- Certified local funding for federal matching programs would not replace state funds; and
- Revenue maximization would not divert existing funds from state agencies currently using local funds to maximize matching federal and state funds to the greatest extent possible.

The act enhanced the abilities of agencies<sup>3</sup> and local political subdivisions to achieve maximum federal matching of funds for as many clients and health and human service needs as possible. The act allowed local funding to be used to draw down federal matching funds to meet local, critical human services needs. It set forth the guidelines for the revenue maximization program including requiring the identified state agencies to establish mechanisms to use local funds for federal programs, defining the local matching funds that may be used, specifying the timeframes for providing federal reimbursements to the local political subdivisions, identifying the administrative costs permitted to be retained by the state agency, and reporting annually to the Legislature on the activities undertaken during the year.<sup>4</sup>

### **Area Agencies on Aging**

DOEA works closely with the eleven area agencies on aging (AAA or “agency”) in Florida. The agencies administer funds locally and contract with a variety of provider agencies to offer a wide array of services designed to address the needs of their senior constituencies.<sup>5</sup> Some of the services offered through AAAs are:<sup>6</sup>

- Congregate and Home Delivered Meals;
- Senior Center Activities and Adult Day Care;
- Case Management;
- Transportation;
- Homemaker and Personal Care;
- Legal Assistance;
- Minor Home Repair;
- Alzheimer's Respite; and
- Information and Referral.

### **III. Effect of Proposed Changes:**

The bill creates the Legislative intent for the “Elderly Local Service Act.” The bill provides that it is the Legislature’s intent that DOEA take a proactive approach in using the Local Revenue Maximization Act to fund elder needs and services throughout Florida.

The bill provides the Legislature’s intent that:

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<sup>3</sup> Section 409.017(3)(a), F.S., defines the term “agency” as any state agency or department that is involved in providing health, social, or human services, including, but not limited to, the Agency for Health Care Administration, the Agency for Workforce Innovation, the Department of Children and Family Services, the Department of Elderly Affairs, the Department of Juvenile Justice, and the State Board of Education.

<sup>4</sup> 2003 Regular Session, Summary of Legislation Passed, Compiled and Edited by the Office of the Senate Secretary, page 48.

<sup>5</sup> Florida Association of Area Agencies on Aging website, <http://www.f4a.org/structure.html> (last visited March 20, 2008).

<sup>6</sup> Florida Association of Area Agencies on Aging website, <http://www.f4a.org/services.html> (last visited March 20, 2008).

- Revenue maximization opportunities use certified local funding only after available state funds have been used to generate matching federal funding for the state as a whole;
- Certified local funding for federal matching programs not supplant or replace state funds;
- Programs initiated be revenue neutral with respect to state funds; and
- Local participation in revenue maximization be voluntary.

The bill designates DOEA as the lead agency for designing and establishing a mechanism to maximize the use of local match dollars to help fund the service to elderly at a local level, and draw federal match dollars from programs including:

- Aged and Disabled Adult Waiver,
- Adult Day Health Waiver,
- Alzheimer's Disease Waiver,
- Assisted Living for the Elderly Waiver, and
- Channel Services for the Frail Elderly program.

The bill provides that DOEA designate the local AAAs as local political subdivisions, responsible for collecting certified local funding from local private entities. The bill designates funds donated by private entities as public revenue available for matching federal funds.

The bill requires that DOEA work with the AAAs to modify any state plans to seek and implement federal waivers. The bill provides that DOEA is required to draft legislation and present it to the President of the Senate and the Speaker of the House by January 1, 2009, and annually thereafter, if modifications or waivers require Legislative approval.

The Social Security Act's Section 1902 (a) (5) requirement that states designate a single state agency for the Medicaid program is codified in 42 CFR 431.10. Section 409.902, F. S., designates the Agency for Health Care Administration (AHCA) as the single state agency authorized to make payments for medical assistance and related services under Title XIX of the Social Security Act. Under 42 CFR 431.10, AHCA should be consulted for all federal match revisions and modifications to the Medicaid state plan and waiver programs.<sup>7</sup>

The bill provides that any federal reimbursement received as the result of certification of local matching funds must, unless prohibited by federal law, be dispersed by check or wire transfer within 45 days of receipt to the AAAs providing the certified local match and be distributed to the local private entities providing the initial funds. However, the bill allows the department and the AAAs to deduct the administrative cost for implementing and monitoring the local match program prior to the transfer. The department's administrative costs may not exceed five percent of the total federal funding provided to the AAA and the AAA administrative costs may not exceed five percent of the total federal funding provided to private entities providing services to elders.

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<sup>7</sup> Agency for Health Care Administration 2008 Bill Analysis and Economic Impact Statement, SB 2428 (on file with the committee).

According to AHCA, the direction to disperse any federal matching funds to the area agency on aging for distribution to the local private entities providing the initial local matching funds, conflicts with established waiver program policy to reimburse program claims directly to the service provider.<sup>8</sup>

The bill requires DOEA to submit an annual report to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1 each year, documenting the specific activities undertaken during the previous fiscal year.

The bill provides an effective date of July 1, 2008.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Florida's Separation-of-Powers doctrine aims to avoid an excessive concentration of power. Florida courts have opted for a formal interpretation making it somewhat difficult for the Legislature to delegate decision-making authority to agencies and private organizations. The separation-of-powers doctrine prevents the Legislature from delegating its constitutional duties.<sup>9</sup> The bill authorizes DOEA to designate local AAAs as local political subdivisions.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

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<sup>8</sup> Agency for Health Care Administration 2008 Bill Analysis and Economic Impact Statement, SB 2428 (on file with the committee).

<sup>9</sup> *Board of Architecture v. Wasserman*, 377 So.2d 653 (Fla. 1979).

**C. Government Sector Impact:**

According to DOEA's fiscal analysis, the bill will have an indeterminate fiscal impact on the department.

A preliminary report by AHCA states that if the DOEA becomes the lead agency for these programs, federal participation will not be available because AHCA is the single state agency responsible for administering the Medicaid program and is the only agency with the authority to draw Medicaid matching funds.

**VI. Technical Deficiencies:**

The Social Security Act's requirement that states designate a single Medicaid Agency is codified in 42 CFR 431.10. Section 409.902. F. S., specifies AHCA as the designated single agency authorized to make payments for medical assistance and related services under Title XIX of the Social Security Act. The bill designates DOEA as the lead entity for drawing down federal matching dollars, seeking and implementing a state plan and Medicaid waivers, and distributing the matched funds directly to the AAAs is in conflict with federal law.

The bill provides that DOEA designate local AAAs as local political subdivisions. The separation-of-powers doctrine prevents the Legislature from delegating its constitutional duties. According to DOEA, AAAs are private, not-for-profit agencies with locally selected boards. Section 1.01(8), F.S., defines the term "political subdivision" to include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in the state. It is unclear whether AAAs, designated as local political subdivisions would receive tax immunity or sovereign immunity.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.