

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 Governmental Operations Committee

BILL: CS/CS/SB 2652

INTRODUCER: Governmental Operations Committee, Health Policy Committee and Senator Garcia

SUBJECT: Maternal and Child Health Programs

DATE: April 17, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Garner</u>	<u>Wilson</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>HA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This committee substitute requires the Department of Health (DOH) Special Supplemental Nutrition Program for Women, Infants and Children (WIC) to: implement an electronic benefits transfer (EBT) system; calculate the statewide average retail price by food item rather than by WIC check; request the United States Department of Agriculture, Food and Nutrition Service (USDA/FNS) to approve price level increases matching manufacturer price increases; restructure vendor authorization requirements; and change the DOH's food approval criteria.

This bill amends s. 383.011, F.S.

II. Present Situation:

Special Supplemental Nutrition Program for Women, Infants and Children

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is a federal program operated by the United States Department of Agriculture, Food and Nutrition Service (USDA/FNS, or just USDA). The WIC program provides federal grants to states for supplemental foods, health care referrals, and nutrition education for low-income pregnant,

breastfeeding, and non-breastfeeding postpartum women, and to infants and children up to age 5 who are found to be at nutritional risk.¹

The WIC program is not an entitlement; that is, the U.S. Congress does not set aside funds to allow every eligible individual to participate in the program. Instead, the WIC program is a federal grant program for which Congress authorizes a specific amount of funding each year for program operations. The USDA's Food and Nutrition Service, which administers the program at the federal level, provides these funds to WIC state agencies (state health departments or comparable agencies) to pay for the WIC program's foods, nutrition education, and administrative costs.

As of 2005, more than 8 million people got WIC program benefits each month in the U.S. In 1974, the year the WIC program was permanently authorized, 88,000 people participated. By 1980, participation was at 1.9 million; by 1985 it was 3.1 million; and by 1990 it was 4.5 million. Average monthly participation for Fiscal Year (FY) 2004 was approximately 7.9 million.

Congress appropriated \$5.204 billion for the WIC program in FY 2006. By comparison, the WIC program appropriation was \$20.6 million in 1974; \$750 million in 1980; \$1.5 billion in 1985; and \$2.1 billion in 1990. The WIC program is 100 percent federally funded.

WIC Program Availability

The WIC program is available in all 50 States, 34 Indian Tribal Organizations, American Samoa, District of Columbia, Guam, Commonwealth Islands of the Northern Marianas, Puerto Rico, and the Virgin Islands. Ninety WIC state agencies administer the program through 2,200 local agencies and 9,000 clinic sites.

WIC Program Eligibility

Persons eligible for participation in the WIC program include pregnant or postpartum women, infants, and children up to age 5. These persons must meet income guidelines, a state residency requirement, and be individually determined to be at "nutrition risk" by a health professional. Children have always been the largest category of WIC participants. Of the 7.9 million people who received WIC benefits each month in FY 2004, approximately 4 million were children, 2 million were infants, and 1.9 million were women.

To be eligible on the basis of income, applicants' income must fall at or below 185 percent of the U.S. Poverty Income Guidelines (\$39,220 for a family of four in 2008).² A person who participates or has family members who participate in certain other benefit programs, such as the Food Stamp Program, Medicaid, or Temporary Assistance for Needy Families, are deemed to automatically meet the income eligibility requirement. Two major types of nutrition risk are recognized for WIC eligibility:

¹ *WIC- Fact Sheet*. United States Department of Agriculture Food and Nutrition Service. Found at: <http://www.fns.usda.gov/wic/WIC-Fact-Sheet.pdf> (last visited on March 24, 2008).

² 2008 U.S Poverty Income Guidelines. Found at: <http://aspe.hhs.gov/poverty/08poverty.shtml> (last visited on March 24, 2008).

- Medically-based risks such as anemia, underweight, overweight, history of pregnancy complications, or poor pregnancy outcomes.
- Dietary risks, such as failure to meet the dietary guidelines or inappropriate nutrition practices.

Nutrition risk is determined by a health professional such as a physician, nutritionist, or nurse, and is based on federal guidelines. This health screening is free to program applicants.

WIC Program Benefits

Women and children enrolled in the WIC program receive food checks for a variety of foods such as milk, cheese, eggs, cereals, peanut butter or dry beans, and 100 percent fruit and vegetable juices. Women who are exclusively breastfeeding their babies receive additional cheese, juice, and dry beans, as well as carrots and canned tuna fish. Infants who are not breastfed receive the WIC contract brand of infant formula for the first year of life. Beginning at 6 months of age, infants may also receive infant cereal and fruit juice. Special formulas or nutritional supplements are also available to participants with certain medical conditions.

Nutrition education is available to all adult WIC participants and, whenever possible, to child participants and other family members. The goals of nutrition education are: to achieve a positive change in the food consumption habits related to the participant's nutrition risk; to teach the relationship between proper nutrition and good health; to promote the optimal use of WIC supplemental foods and other nutritious foods; and to provide nutrition education within the context of the ethnic and cultural preferences of the participant.

The WIC program recognizes that breastfeeding is the best method of infant feeding and nurturing. Breastfeeding promotion and support is an integral part of the WIC program. The WIC program is striving to increase the number of infants who are breastfed and the length of time an infant is breastfed. All WIC agencies have trained personnel who are able to assist mothers in making informed decisions about their infant feeding choice and in instructing them in the basics of breastfeeding. Many WIC agencies have excellent breastfeeding peer counselor support programs that provide mother-to-mother counseling. In addition, local WIC agencies may provide breastfeeding aids such as breast pumps.

The Florida Department of Health's Administration of the WIC Program

In Florida, the WIC program is administered by the DOH, Bureau of WIC and Nutrition Services. Program participants receive WIC food checks that identify the type, brand, and amount of food they may purchase. In Florida, approximately \$260 million of food is provided each year to WIC participants.

WIC Checks and Electronic Benefits Transfer

There are approximately 2,000 grocery stores in Florida that accept WIC checks, including all major chain stores. The WIC food checks identify the type, brand, and amount of food the WIC recipient may purchase, often with multiple food items listed on a single check. For example, a client receives on average 3 checks per month. One check might be for 36 ounces of cereal, 2 dozen eggs, 1 gallon of milk, and 2 cans of juice. Another check might be for 1 can of juice and 18 ounces of peanut butter. And still another check may be only used for infant formula.

The current system requires no special technology. The WIC-authorized stores accept the WIC checks just as they would a customer's personal check. The WIC client takes the items to be purchased to the store's register, the clerk "rings up" the purchase, and the client writes the total purchase amount on the check before signing it and turning it over to the clerk. The store deposits the checks in its local bank and receives credit for the amount of purchase, subject to certain limits and edits.

A clearinghouse bank (Capital City Bank in Tallahassee) processes more than 66,000 of these transactions a day, and transfers an average of \$1.5 million a day from the WIC program's account back to grocer accounts in their banks of deposit. The cost to the program of each transaction (WIC check) is \$.0615. This fee includes the check stock, check processing through the Federal Reserve System, required federal edits on each check and data provided to the DOH that is necessary for program management and federal reporting purposes.

The DOH currently calculates the average statewide redemption amount by check type, not by food item. The DOH does not currently prohibit a vendor from raising the amount that a vendor charges for a food item when the manufacturer raises its price; however, the price charged must remain competitive as determined by peer group (similar vendor) and economic region and must be in compliance with federal WIC cost containment regulations.

In contrast to the check system, the federal government is encouraging states to move to a system of electronic benefits transfer (EBT). The EBT development has been a key long-term goal of the USDA Food and Nutrition Service and of the WIC Program. The challenge is finding technological solutions that are both affordable and can meet the functional needs of a relatively complex nutrition program. Similar to a bank debit card, The EBT card technology uses a plastic card that is encrypted with account information describing the WIC benefit of the client, the amount left in client's benefit allocation, and the cost of the items purchased based on the item's Universal Purchase Code (UPC or barcode). The EBT card technology can be segmented into three categories: magnetic strip cards; integrated circuit (IC) cards; and radio frequency cards. Magnetic strip cards are the most commonly used at this point.

Five states³ are currently experimenting with some form of EBT. The implementation in these states includes the use of offline, smartcard technology and online, magnetic strip card technology. The states of New Mexico, Nevada, Texas and Wyoming are operating offline systems and Michigan is operating an online system. Wyoming is currently the only state to operate WIC EBT statewide. New Mexico and Texas are planning to expand statewide within the next couple of years. In 2005, Washington demonstrated an online system, and Kentucky intends to build on the technology developed for that project by piloting an enhanced version of the system in the near future.⁴

³ These states include: Kentucky, Michigan, New Mexico, Texas, and Wyoming. Found at: <http://www.fns.usda.gov/wic/EBT/wicebtstatus.htm> (last visited on March 24, 2008)

⁴ USDA. *Analysis of Alternatives for Implementing a Cash Value Voucher Program*, March 2007. Found at: <http://www.fns.usda.gov/wic/EBT/CVV-FINALREPORT-081307.pdf> (last visited on March 24, 2008).

In general, states must receive approval from the federal government to implement an EBT system for the WIC program. The DOH reports that the federal approval process to complete the necessary preparatory work would take, at a minimum, up to 3 years.

WIC Pricing

The WIC-authorized retail vendors sell their goods to clients based on manufacturers' and wholesalers' prices and the individual store's administrative costs. As the wholesalers' and manufacturers' costs increase, so do the prices to the WIC program. Manufacturer price increases are not always reflected immediately in retail prices due to price competition in the grocery industry and manufacturer incentives. The USDA does not approve specific brands of WIC foods or set the price for WIC foods.

The DOH currently calculates the average statewide redemption amount by check type, not by food item. The DOH does not currently prohibit a vendor from raising the amount that a vendor charges for a food item when the manufacturer raises its price. However, the price charged must remain competitive as determined by peer group (similar vendor) and economic region and must be in compliance with federal WIC cost containment regulations. If the DOH is required to approve an automatic food price increase matching a manufacturer's price increase on any WIC-eligible food, the DOH (and the state) is at risk of not being in compliance with the federal WIC cost containment regulations.

Under federal WIC cost containment requirements, the DOH must demonstrate that its authorization of above-50-percent vendors (vendors who are defined by federal regulations as having more than 50 percent of their total food stamp-eligible food sales to WIC) does not result in higher costs to the WIC program than if clients use their WIC checks at regular vendors. Thirty-nine (39) of the over 2,000 authorized WIC vendors in Florida fall into the category of above 50 percent vendors, and 37 of these 39 vendors have sales that are almost 100 percent to the WIC program.

WIC Vendor Authorization

The DOH accepts applications and determines which vendors may participate in the program. Currently the DOH does not prohibit any participating WIC vendor from selling, conveying or devising their store to anyone. If a WIC store is sold, the seller's WIC authorization is terminated and the new owner must apply for authorization. Sale of a vendor's store does not directly affect the DOH.

This DOH policy is required by Title 7 Code of Federal Regulations §246.12(h)(3)(xvii), which states, "The vendor must provide the State Agency advance written notice of any change in vendor ownership. In such instances, the state will terminate the vendor agreement." In addition, this federal regulation states, "The vendor's new application will be subject to the state WIC program's vendor selection criteria and any limiting criteria in effect at the time of the reapplication." Also, as specified by the federal regulations at Title 7 Code of Federal Regulations §246.12(h)(3)(xxi), the vendor agreement does not constitute a license or property interest that can be transferred upon the sale of a store.

If the vendor wishes to continue to be authorized beyond the period of its current agreement, the vendor must reapply. The current standard authorization period for a vendor in Florida is 2 years.

Proposals in the Legislature would require this to be changed to 1 year. There are approximately 2,000 vendors in Florida that would be required to re-apply for authorization every year instead of every 2 years if these proposals become law.

Generic Versus Brand Named Product Purchasing

There is currently no difference in the DOH's food approval standard for generic food items versus brand name products, only that all foods sold under the program must meet all of the current program requirements. Proposals before the Legislature would require the DOH to continuously monitor generic brands for ongoing nutritional compliance as the food composition could change when a different manufacturer is awarded the contract to produce the generic brand. The proposals also limit the ability of the DOH to control food costs by reducing the DOH's flexibility to adjust its WIC-approved foods when needed.

III. Effect of Proposed Changes:

Section 1. Amends s. 383.011, F.S., to require the DOH, as part of its administration of the federal WIC program, to:

- Implement an EBT system for the WIC program by July 1, 2010.
- Requires the Department of Children and Families (DCF) to assist the department in the development of the program so that it fully compatible with benefit programs of DCF and the Agency for Workforce Innovation.
- Calculate the statewide average retail price of each WIC-eligible product by item rather than by WIC check or voucher.
- Contact the Division of Food and Nutrition Service of the USDA when notified by a manufacturer of a price increase on any WIC-eligible product and request authorization from the division to allow food retailers to increase the price for the same WIC-eligible product by the same percentage.
- Prohibit the discontinuance of a WIC-eligible generic product unless the product no longer meets the nutritional guidelines of the WIC program.

Section 2. Provides that the act takes effect on July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Vendors that sell WIC products will likely receive more of the client's WIC allocation, as the client will be able to purchase single items throughout the month, rather than just those needed at the time of purchase if the client uses the multi-item check. For example, if the client has a check for 36 ounces of cereal, 2 dozen eggs, 1 gallon of milk, and 2 cans of juice, yet only purchases the milk and eggs, the remaining items may not be purchased at a later date (the check has been signed over to the vendor at the value of the purchased items only). Under an EBT or single-item check system, the client may purchase the items throughout the month, which would make it more likely that the entire WIC allocation is spent at the vendor. This, coupled with the pricing requirements in the bill, will result in an indeterminate increase in revenue for vendors in Florida.

The authorized vendors whose food sales are above-50-percent to the WIC program would be affected by this bill. Many of these vendor's sales are almost 100 percent to the WIC program. There are currently 37 such vendors. By allowing an immediate retail price increase equal to a manufacturer's price increase, it may result in redemptions by above-50-percent vendors higher than the statewide average amounts of regular vendors. In this case, the state will have to hold above-50-percent vendors to lower redemption amounts than regular vendors for however long is necessary to ensure the state's compliance with federal vendor cost-containment provisions.

Finally, all WIC vendors will be required to continue to stock WIC-eligible generic products under the bill, even if customers are not purchasing the products. The fiscal effect on the individual businesses is unknown at this time.

C. Government Sector Impact:

The fiscal impact to the DOH to plan for and implement a WIC EBT system is unknown; however, from the existing national WIC EBT projects, it is known that the DOH will incur costs for the following:

- Purchasing stand-beside point of sale devices for vendors,
- Paying the vendors to modify their internal systems to accommodate WIC EBT transactions,
- Modifying the WIC data system,

- Purchasing personal identification number (PIN) devices for over 200 WIC clinics statewide for clients to select their PIN number,
- Purchasing EBT cards and replacement cards for clients, and
- Providing ongoing EBT transaction costs.

The Kentucky State WIC Director recently stated to the DOH staff that it has a grant for a national pilot for \$4.2 million to develop an EBT system. This grant funding does not include its EBT operating costs.

The DOH currently has an initiative to implement the new web-based WIC Data System that is EBT-ready. The projected cost of implementing this system is estimated at \$7.03 million. This effort has been under way for over a year and is expected to be completed in 2010. Changing to the EBT system required in this bill will likely result in similar, if not more, costs.

Transitioning from a multi-item check to a single item check would result in increased transaction costs. The DOH pays its contract bank \$.0615 per WIC check for banking services which includes the check stock, the check processing through the Federal Reserve Banking system, the contract bank performing required federal edits on each check and providing the DOH with data required for federal reconciliation purposes. Increasing by seven the number of checks issued monthly to women and children would increase the banking costs of the program by \$1.685 million per year. (Annual costs of \$1.685 million were determined using January 2008 preliminary data showing 326,176 women and children on WIC. This caseload number was multiplied by \$.0615 per check x 7 additional checks x 12 months to equal \$1,685,025.)

The fiscal impact of paragraph (f) of the bill cannot be determined. However, if the cost of a generic product substantially increases over time, it will negatively impact WIC's food costs. It is critical that the DOH retain the flexibility to adjust its approved foods to maximize the number of clients that can be served within the existing federal grant.

VI. Technical Deficiencies:

None.

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.)

CS by Governmental Operations on April 17, 2008:

Removes provisions in the prior committee substitute on store licensure and conveyance, requires development of the electronic benefit transfer system by a date certain, and

directs cost neutrality compliance with the Code of Federal Regulations and directs the department to collect information on food redemption costs.

CS by Health Policy on March 26, 2008:

Requires the DOH to implement an electronic benefits transfer system, but takes out a specified timeframe to do it; corrects a grammatical error; and allows vendors who only sell WIC-products (instead of all vendors with more than 50 percent of sells to WIC) to sell, transfer, or convey their stores to any qualifying vendor.

B. Amendments:

None.