

HB 1023

2010

1 A bill to be entitled
2 An act relating to prevention of tobacco use; amending s.
3 381.84, F.S.; defining the term "best practices" for
4 purposes of the comprehensive, statewide tobacco education
5 and use prevention program; revising program components
6 and requirements; deleting an obsolete provision; revising
7 membership of the Tobacco Education and Use Prevention
8 Advisory Council; providing applicability of public
9 meetings and state ethics requirements to council
10 meetings; revising council duties and responsibilities;
11 providing for direction by the Department of Health;
12 providing for the department, rather than the State
13 Surgeon General, to award certain contracts and grants for
14 the program; providing for peer review panels; exempting
15 the grant award process from the requirements of ch. 287,
16 F.S., relating to procurement of personal property and
17 services, and s. 120.57(3), F.S., relating to protests
18 over contract solicitations or awards; permitting the
19 department to advance funds for program startup and
20 contracted services under certain conditions; providing an
21 effective date.

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

24
25 Section 1. Section 381.84, Florida Statutes, is amended to
26 read:

27 381.84 Comprehensive Statewide Tobacco Education and Use
28 Prevention Program.—

29 (1) DEFINITIONS.—As used in this section and for purposes
 30 of the provisions of s. 27, Art. X of the State Constitution,
 31 the term:

32 (a) "AHEC network" means an area health education center
 33 network established under s. 381.0402.

34 (b) "Best practices" means the Best Practices for
 35 Comprehensive Tobacco Control Programs as established by the
 36 CDC.

37 (c) ~~(b)~~ "CDC" means the United States Centers for Disease
 38 Control and Prevention.

39 (d) ~~(e)~~ "Council" means the Tobacco Education and Use
 40 Prevention Advisory Council.

41 (e) ~~(d)~~ "Department" means the Department of Health.

42 (f) ~~(e)~~ "Tobacco" means, without limitation, tobacco itself
 43 and tobacco products that include tobacco and are intended or
 44 expected for human use or consumption, including, but not
 45 limited to, cigarettes, cigars, pipe tobacco, and smokeless
 46 tobacco.

47 (g) ~~(f)~~ "Youth" means minors and young adults.

48 (2) PURPOSE, FINDINGS, AND INTENT.—It is the purpose of
 49 this section to implement s. 27, Art. X of the State
 50 Constitution. The Legislature finds that s. 27, Art. X of the
 51 State Constitution requires the funding of a statewide tobacco
 52 education and use prevention program that focuses on tobacco use
 53 by youth. The Legislature further finds that the primary goals
 54 of the program are to reduce the prevalence of tobacco use among
 55 youth, adults, and pregnant women; reduce per capita tobacco
 56 consumption; and reduce exposure to environmental tobacco smoke.

HB 1023

2010

57 Further, it is the intent of the Legislature to base increases
58 in funding for individual components of the program on the
59 results of assessments and evaluations. Recognizing that some
60 components will need to grow faster than inflation, it is the
61 intent of the Legislature to fund portions of the program on a
62 nonrecurring basis in the early years so that those components
63 that are most effective can be supported as the program matures.

64 (3) PROGRAM COMPONENTS AND REQUIREMENTS.—The department
65 shall conduct a comprehensive, statewide tobacco education and
66 use prevention program consistent with the recommendations for
67 effective program components contained in the 1999 Best
68 Practices for Comprehensive Tobacco Control Programs of the CDC,
69 as amended by the CDC. The program shall include the following
70 components, each of which shall focus on educating people,
71 particularly youth and their parents, about the health hazards
72 of tobacco and discouraging the use of tobacco:

73 (a) State and community interventions.—State and community
74 interventions shall include, but are not limited to,
75 establishing a statewide tobacco control program that combines
76 and coordinates community-based interventions that focus on
77 preventing the initiation of tobacco use among youth; promoting
78 quitting among youth, adults, and pregnant women; eliminating
79 exposure to secondhand smoke; identifying and eliminating
80 tobacco-related disparities among population groups; and
81 promoting a range of collaborations with public and private
82 entities to prevent and alleviate the effects of chronic
83 diseases linked to tobacco use. ~~Counter marketing and~~
84 ~~advertising; cyberspace resource center. The counter marketing~~

HB 1023

2010

85 ~~and advertising campaign shall include, at a minimum, Internet,~~
86 ~~print, radio, and television advertising and shall be funded~~
87 ~~with a minimum of one-third of the total annual appropriation~~
88 ~~required by s. 27, Art. X of the State Constitution. A~~
89 ~~cyberspace resource center for copyrighted materials and~~
90 ~~information concerning tobacco education and use prevention,~~
91 ~~including cessation, shall be maintained by the program. Such~~
92 ~~resource center must be accessible to the public, including~~
93 ~~parents, teachers, and students, at each level of public and~~
94 ~~private schools, universities, and colleges in the state and~~
95 ~~shall provide links to other relevant resources. The Internet~~
96 ~~address for the resource center must be incorporated in all~~
97 ~~advertising. The information maintained in the resource center~~
98 ~~shall be used by the other components of the program.~~

99 (b) Health communication interventions.—Media and health
100 communication intervention efforts shall include, but are not
101 limited to, audience research to define themes and execute
102 messages for influential, high-impact, and specifically targeted
103 campaigns; market research to identify the target market for
104 tobacco control programs and the behavioral theory that best
105 motivates change regarding tobacco use; counter-marketing
106 surveillance; community tie-ins to support and reinforce the
107 statewide campaign; technologies such as viral marketing, social
108 networks, personal web pages, and web logs; traditional media;
109 the evaluation of the process and outcomes of the communication
110 efforts; and the promotion of available services, including the
111 state toll-free tobacco use cessation Quit-For-Life Line.
112 ~~Cessation programs, counseling, and treatment. This program~~

HB 1023

2010

113 ~~component shall include two subcomponents:~~

114 ~~1. A statewide toll-free cessation service, which may~~
115 ~~include counseling, referrals to other local resources and~~
116 ~~support services, and treatment to the extent funds are~~
117 ~~available for treatment services; and~~

118 ~~2. A local community-based program to disseminate~~
119 ~~information about smoking cessation, how smoking cessation~~
120 ~~relates to prenatal care and obesity prevention, and other~~
121 ~~chronic tobacco-related diseases.~~

122 (c) Cessation interventions.—Cessation interventions shall
123 include, but are not limited to, sustaining, expanding, and
124 promoting the program's services through population-based
125 counseling and treatment programs; encouraging public and
126 private insurance coverage for counseling and medication
127 treatments for tobacco-use cessation approved by the federal
128 Food and Drug Administration; eliminating financial and other
129 barriers to treatment for underserved populations; and making
130 health care system changes. Cessation interventions shall be
131 designed to prevent the initiation of and encourage the
132 cessation of tobacco use among youth and to encourage a social
133 environment that supports tobacco-free norms. Community-based
134 programs and school-based policies and interventions shall be
135 components of a statewide comprehensive effort to create
136 tobacco-free social norms that includes increasing the unit
137 price of tobacco products, sustaining anti-tobacco media
138 campaigns, making environments tobacco free, and engaging in
139 other related efforts. Surveillance and evaluation.—The program
140 ~~shall conduct ongoing epidemiological surveillance and shall~~

141 ~~contract for annual independent evaluations of the effectiveness~~
 142 ~~of the various components of the program in meeting the goals as~~
 143 ~~set forth in subsection (2).~~

144 (d) Surveillance and evaluation.—The department shall
 145 conduct surveillance and evaluation of all program components
 146 and shall monitor and document short-term, intermediate, and
 147 long-term intervention outcomes to inform program and policy
 148 direction and ensure accountability. The surveillance and
 149 evaluation shall be conducted using a scientifically sound
 150 methodology. ~~Youth school programs. School and after-school~~
 151 ~~programs shall use current evidence-based curricula and programs~~
 152 ~~that involve youth to educate youth about the health hazards of~~
 153 ~~tobacco, help youth develop skills to refuse tobacco, and~~
 154 ~~demonstrate to youth how to stop using tobacco.~~

155 (e) Administration and management.—Administration and
 156 management activities shall include, but are not limited to,
 157 strategic planning to guide program efforts and resources in
 158 order to accomplish program goals; recruiting and developing
 159 qualified and diverse technical, program, and administrative
 160 staff; awarding and monitoring program contracts and grants to
 161 coordinate implementation across program areas; developing and
 162 maintaining a fiscal management system to track allocations and
 163 the expenditure of funds; increasing capacity at the community
 164 level through ongoing training and technical assistance;
 165 creating effective communications internally among chronic
 166 disease prevention and control programs and local coalitions and
 167 partners; and educating the public and decisionmakers on the
 168 effects of tobacco and evidence-based effective program and

169 policy interventions. ~~Community programs and chronic disease~~
 170 ~~prevention. The department shall promote and support local~~
 171 ~~community-based partnerships that emphasize programs involving~~
 172 ~~youth, including programs for the prevention, detection, and~~
 173 ~~early intervention of smoking-related chronic diseases.~~

174 (f) Training.—The program shall include the training of
 175 health care practitioners, smoking-cessation counselors, and
 176 teachers by health professional students and other tobacco-use
 177 prevention specialists who are trained in preventing tobacco use
 178 and health education. Smoking-cessation counselors shall be
 179 trained by specialists who are certified in tobacco-use
 180 cessation.

181 (g) County health departments Administration, statewide
 182 ~~programs, and county health departments.~~—Each county health
 183 department is eligible to receive a portion of the annual
 184 appropriation, on a per capita basis, for coordinating tobacco
 185 education and use prevention programs within that county.
 186 Appropriated funds may be used to improve the infrastructure of
 187 the county health department to implement the comprehensive,
 188 statewide tobacco education and use prevention program. Each
 189 county health department shall prominently display in all
 190 treatment rooms and waiting rooms, counter-marketing and
 191 advertisement materials in the form of wall posters, brochures,
 192 television advertising if televisions are used in the lobby or
 193 waiting room, and screensavers and Internet advertising if
 194 computer kiosks are available for use or viewing by people at
 195 the county health department.

196 (h) Enforcement and awareness of related laws.—In

197 coordination with the Department of Business and Professional
 198 Regulation, the program shall monitor the enforcement of laws,
 199 rules, and policies prohibiting the sale or other provision of
 200 tobacco to minors, as well as the continued enforcement of the
 201 Clean Indoor Air Act prescribed in chapter 386. The
 202 advertisements produced in accordance with paragraph (b) ~~(a)~~ may
 203 also include information designed to make the public aware of
 204 these related laws and rules. The departments may enter into
 205 interagency agreements to carry out this program component.

206 ~~(i) AHEC smoking cessation initiative. For the 2009-2010~~
 207 ~~fiscal year, the AHEC network shall expand the AHEC smoking-~~
 208 ~~cessation initiative to each county within the state and perform~~
 209 ~~other activities as determined by the department.~~

210 (4) ADVISORY COUNCIL; MEMBERS, APPOINTMENTS, AND
 211 MEETINGS.—The Tobacco Education and Use Prevention Advisory
 212 Council is created within the department.

213 (a) The council shall consist of 23 members, including:

214 1. The State Surgeon General, or his or her designee who
 215 is the Deputy Secretary or the Director of the Division of
 216 Health Access and Tobacco, who shall serve as the chairperson.

217 2. One county health department director, appointed by the
 218 State Surgeon General.

219 3. Two members appointed by the Commissioner of Education,
 220 of whom one must be a school district superintendent.

221 4. The chief executive officer of the Florida Division of
 222 the American Cancer Society, or his or her designee.

223 5. The chief executive officer of the Greater Southeast
 224 Affiliate of the American Heart Association, or his or her

- 225 designee.
- 226 6. The chief executive officer of the American Lung
227 Association of Florida, or his or her designee.
- 228 7. The dean of the University of Miami School of Medicine,
229 or his or her designee.
- 230 8. The dean of the University of Florida College of
231 Medicine, or his or her designee.
- 232 9. The dean of the University of South Florida College of
233 Medicine, or his or her designee.
- 234 10. The dean of the Florida State University College of
235 Medicine, or his or her designee.
- 236 11. The dean of Nova Southeastern College of Osteopathic
237 Medicine, or his or her designee.
- 238 12. The dean of the Lake Erie College of Osteopathic
239 Medicine in Bradenton, Florida, or his or her designee.
- 240 13. The chief executive officer of the Campaign for
241 Tobacco Free Kids, or his or her designee.
- 242 14. The chief executive officer of the Legacy Foundation,
243 or his or her designee.
- 244 15. Four members appointed by the Governor, of whom two
245 must have expertise in the field of tobacco-use prevention and
246 education or smoking cessation and one individual who shall be
247 between the ages of 16 and 21 at the time of his or her
248 appointment.
- 249 16. Two members appointed by the President of the Senate,
250 of whom one must have expertise in the field of tobacco-use
251 prevention and education or smoking cessation.
- 252 17. Two members appointed by the Speaker of the House of

253 Representatives, of whom one must have expertise in the field of
 254 tobacco-use prevention and education or smoking cessation.

255 (b) The appointments shall be for 3-year terms and shall
 256 reflect the diversity of the state's population. A vacancy shall
 257 be filled by appointment by the original appointing authority
 258 for the unexpired portion of the term.

259 (c) An appointed member may not serve more than two
 260 consecutive terms.

261 (d) The council shall meet at least quarterly and upon the
 262 call of the chairperson. Meetings may be held via teleconference
 263 or other electronic means.

264 (e) Members of the council shall serve without
 265 compensation, but are entitled to reimbursement for per diem and
 266 travel expenses pursuant to s. 112.061. Members who are state
 267 officers or employees or who are appointed by state officers or
 268 employees shall be reimbursed for per diem and travel expenses
 269 pursuant to s. 112.061 from the state agency through which they
 270 serve.

271 (f) The council shall adhere to all state ethics laws.
 272 Meetings of the council are subject to chapter 119, s. 286.011,
 273 and s. 24, Art. I of the State Constitution. ~~The department~~
 274 ~~shall provide council members with information and other~~
 275 ~~assistance as is reasonably necessary to assist the council in~~
 276 ~~carrying out its responsibilities.~~

277 (5) COUNCIL DUTIES AND RESPONSIBILITIES.—The council shall
 278 advise the State Surgeon General as to the direction and scope
 279 of the Comprehensive Statewide Tobacco Education and Use
 280 Prevention Program. The responsibilities of the council may

- 281 include, but are not limited to:
- 282 (a) Providing advice on program priorities and emphases.
- 283 (b) Providing advice on the overall program budget.
- 284 (c) Providing advice on copyrighted material, trademark,
285 and future transactions as they pertain to the tobacco education
286 and use prevention program.
- 287 (d) Reviewing broadcast material prepared for the
288 Internet, portable media players, radio, and television
289 advertisements, as requested by the department ~~as it relates to~~
290 ~~the advertising component of the tobacco education and use~~
291 ~~prevention program.~~
- 292 (e) Participating in periodic program evaluation, as
293 requested by the department.
- 294 (f) Assisting the department in developing ~~the development~~
295 ~~of~~ guidelines to ensure fairness, neutrality, and adherence to
296 the principles of merit and quality in the conduct of the
297 program.
- 298 (g) Assisting the department in developing ~~the development~~
299 ~~of administrative~~ procedures relating to solicitation, review,
300 and award of contracts and grants in order to ensure an
301 impartial, high-quality peer review system.
- 302 (h) Assisting the department in developing panels to
303 review and evaluate potential fund recipients ~~the development~~
304 ~~and supervision of peer review panels.~~
- 305 (i) Assisting the department in reviewing reports of peer
306 review panels and making recommendations for funding allocations
307 ~~contracts and grants.~~
- 308 ~~(j) Reviewing the activities and evaluating the~~

HB 1023

2010

309 ~~performance of the AHEC network to avoid duplicative efforts~~
310 ~~using state funds.~~

311 (j)~~(k)~~ Recommending specific measureable outcomes
312 ~~meaningful outcome measures~~ through a regular review of
313 evidence-based and promising tobacco-use prevention and
314 education strategies and programs of other states and the
315 Federal Government.

316 (k)~~(l)~~ Recommending policies to encourage a coordinated
317 response to tobacco use in this state, focusing specifically on
318 creating partnerships within and between the public and private
319 sectors.

320 (6) CONTRACT REQUIREMENTS.—Contracts or grants for the
321 program components or subcomponents described in paragraphs
322 (3) (a), (b), (c), (d), and (f) ~~(3) (a)–(f)~~ shall be awarded by
323 the department ~~State Surgeon General~~, after consultation with
324 the council, on the basis of merit, as determined by an open,
325 competitive, peer-reviewed process that ensures objectivity,
326 consistency, and high quality. The department shall award such
327 grants or contracts no later than October 1 for each fiscal
328 year. A recipient of a contract or grant for the program
329 component described in paragraph (3) (d)~~(e)~~ is not eligible for a
330 contract or grant award for any other program component
331 described in subsection (3) in the same contract term state
332 ~~fiscal year. A school or college of medicine that is represented~~
333 ~~on the council is not eligible to receive a contract or grant~~
334 ~~under this section. For the 2009–2010 fiscal year only, The~~
335 department shall award a contract or grant in the amount of \$11
336 ~~\$10~~ million to the AHEC network ~~for the purpose of developing~~

HB 1023

2010

337 ~~the components described in paragraph (3)(i). If the department~~
338 uses a competitive procedure to procure vendors, it shall use
339 the process outlined in chapter 287. If the department uses a
340 competitive procedure to select grantees, it shall use the
341 process outlined in this subsection. The AHEC network may apply
342 ~~for a competitive contract or grant after the 2009-2010 fiscal~~
343 ~~year.~~

344 (a) In order to ensure that all proposals for funding are
345 appropriate and are evaluated fairly on the basis of merit, the
346 ~~department State Surgeon General~~, in consultation with the
347 council, shall use ~~appoint~~ a peer review system involving panels
348 ~~panel~~ of independent, qualified experts in the field of tobacco
349 control to review the content of each proposal and establish its
350 priority score. The priority scores shall be forwarded to the
351 council and must be considered in determining which proposals
352 will be recommended for funding.

353 (b) The department may contract with an appropriate entity
354 to administer the peer review system for grant management
355 pursuant to chapter 287. The peer review system shall be
356 operated in such a manner to ensure that only the most qualified
357 experts in the field of tobacco control are chosen to act as
358 reviewers of grant proposals. To ensure fairness and
359 impartiality, the system shall be designed to protect the
360 anonymity of proposers during the review.

361 (c) ~~(b)~~ The council and the peer review panels ~~panel~~ shall
362 ~~establish and~~ follow rigorous guidelines for ethical conduct and
363 adhere to a strict policy with regard to conflicts of interest.
364 Council members are subject to the applicable provisions of

365 chapter 112. ~~A member of the council or panel may not~~
366 ~~participate in any discussion or decision with respect to a~~
367 ~~research proposal by any firm, entity, or agency with which the~~
368 ~~member is associated as a member of the governing body or as an~~
369 ~~employee or with which the member has entered into a contractual~~
370 ~~arrangement. Meetings of the council and the peer review panels~~
371 ~~are subject to chapter 119, s. 286.011, and s. 24, Art. I of the~~
372 ~~State Constitution.~~

373 (d) Grants awarded under this subsection are funds
374 intended to benefit the people of the state and are not
375 considered to be purchases of commodities or services for
376 purposes of chapter 287. Accordingly, the grant award process is
377 not subject to protest pursuant to s. 120.57(3).

378 (e) The department's distribution of grant awards is not
379 subject to the requirements of chapter 120.

380 (f)-(e) In each contract or grant agreement, the department
381 shall limit the use of food and promotional items to no more
382 than 2.5 percent of the total amount of the contract or grant
383 and limit overhead or indirect costs to no more than 7.5 percent
384 of the total amount of the contract or grant. The department, in
385 consultation with the Department of Financial Services, shall
386 publish guidelines for appropriate food and promotional items.

387 (g)-(d) In each advertising contract, the department shall
388 limit the total of production fees, buyer commissions, and
389 related costs to no more than 10 percent of the total contract
390 amount.

391 (h)-(e) Notwithstanding the competitive process for
392 contracts prescribed in this subsection, each county health

HB 1023

2010

393 department is eligible for core funding, on a per capita basis,
394 to implement tobacco education and use prevention activities
395 within that county.

396 (7) ANNUAL REPORT REQUIRED.—By January 31 of each year,
397 the department shall provide to the Governor, the President of
398 the Senate, and the Speaker of the House of Representatives a
399 report that evaluates the program's effectiveness in reducing
400 and preventing tobacco use and that recommends improvements to
401 enhance the program's effectiveness. The report must contain, at
402 a minimum, an annual survey of youth attitudes and behavior
403 toward tobacco, as well as a description of the progress in
404 reducing the prevalence of tobacco use among youth, adults, and
405 pregnant women; reducing per capita tobacco consumption; and
406 reducing exposure to environmental tobacco smoke.

407 (8) LIMITATION ON ADMINISTRATIVE EXPENSES.—From the total
408 funds appropriated for the Comprehensive Statewide Tobacco
409 Education and Use Prevention Program in the General
410 Appropriations Act, an amount of up to 5 percent may be used by
411 the department for administrative expenses.

412 (9) ADVANCES.—For any contracts or grants awarded under
413 this section, the department may make advances for program
414 startup or advances for contracted services, in total or
415 periodically, to other governmental entities and not-for-profit
416 corporations. The amount that may be advanced shall not exceed
417 the expected cash needs of the contractor or recipient within
418 the initial 3 months. Any agreement that provides for advances
419 may contain a clause that permits the contractor or recipient to
420 temporarily invest the proceeds, provided that any interest

HB 1023

2010

421 income shall either be returned to the agency or be applied
422 against the agency's obligation to pay the contract or grant
423 amount. ~~RULEMAKING AUTHORIZED. By January 1, 2008, the~~
424 ~~department shall adopt rules pursuant to ss. 120.536(1) and~~
425 ~~120.54 to administer this section.~~

426 Section 2. This act shall take effect July 1, 2010.