

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 Health Regulation Committee

BILL: SM 1840

INTRODUCER: Senator Garcia

SUBJECT: Health Insurance Exchanges

DATE: February 18, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Stovall	HR	Favorable
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Memorial 1840 urges the Congress of the United States to defund planning grants to states for the establishment of health insurance exchanges required by the Patient Protection and Affordable Care Act (PPACA or the Act).

This bill creates a Senate Memorial.

II. Present Situation:

Patient Protection and Affordable Care Act

The PPACA,¹ often referred to as federal health care reform, was signed into law by President Barack Obama on March 23, 2010. The Act is far-reaching and is so broad that it will be years before all of its provisions will be fully implemented and its ramifications fully understood.

Among other objectives, the Act seeks to increase the availability and affordability of health insurance. It seeks to expand access to health insurance coverage by requiring most U.S. citizens and legal residents to have health insurance and providing for the creation of state-based American Health Benefit Exchanges through which individuals can purchase qualifying coverage. Exchanges are new organizations that will be set up to create an organized, competitive market for buying health insurance. They will offer a choice of different health plans, certifying plans that participate and providing information to help consumers better

¹ Found at: <<http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/pdf/PLAW-111publ148.pdf>> (Last visited on February 18, 2012).

understand their options. They will also be the mechanism through which low and moderate-income individuals receive premium and cost-sharing subsidies to make health coverage more affordable.

States are expected to establish Exchanges – which can be a government agency or a non-profit organization – with the federal government stepping in if a state does not set them up. States can create multiple Exchanges, so long as only one serves each geographic area, and can work together to form regional Exchanges. State exchanges are required to be fully operational by January 1, 2014. The federal government is providing technical assistance to help states set up Exchanges.

Small businesses with fewer than 100 employees will be able to purchase coverage through Small Business Health Options Program (SHOP) Exchanges. These state-based exchanges are intended to allow employers to shop for qualified coverage and more easily compare prices and benefits. The Act places requirements on certain employers to provide coverage, and provides some subsidies to encourage the expansion of employer-based coverage.

Beginning in 2014, Exchanges will serve primarily individuals buying insurance on their own and small businesses with up to 100 employees. In 2017, states will have the option to allow businesses with more than 100 employees to purchase coverage through the SHOP Exchanges.

State Efforts to Establish Exchanges

By December 2011, over \$640 million had been distributed to states through federal exchange planning grants, establishment grants, and early innovator grants.² Almost every state received some amount of funding to study exchange implementation. Florida received a \$1 million grant to plan for an exchange; however, Governor Rick Scott ordered the grant returned.

As of January 2012, 13 states have established exchanges and five more have signaled their plans to establish one.³ Arkansas and Louisiana have announced plans to stop pursuing a state-based exchange. The majority of states continue to study their options for exchange implementation, making use of federal exchange planning and establishment grant funding.

By January 2013, the federal Department of Health and Human Services will evaluate states to identify those that lack sufficient progress toward establishing an exchange. In states that are not ready or choose not to run an exchange, a federally-facilitated exchange will be implemented. States may also choose to partner with the federal government and assume some exchange functions.

² The Henry J. Kaiser Family Foundation, *Focus on Health Reform, Establishing Health Insurance Exchanges: A National Overview of State Efforts*. Found at: <<http://www.kff.org/healthreform/upload/8213-FS.pdf>> (Last visited on February 18, 2012).

³ *Id.* (The states that have established an exchange are California, Colorado, Connecticut, Hawaii, Maryland, Massachusetts, Nevada, Oregon, Rhode Island, Utah, Vermont, Washington, and West Virginia. The states that plan to establish an exchange are Illinois, Indiana, Mississippi, North Dakota, and Virginia.)

States' Challenge of PPACA

Immediately after the PPACA was signed into law, 13 Attorneys General filed a lawsuit against the U.S. Department of Health and Human Services, U.S. Department of Treasury and the U.S. Department of Labor alleging the Health Care Reform law signed by the President was unconstitutional.⁴ The amended complaint currently features 26 state plaintiffs.⁵ Additionally, the National Federation of Independent Business (NFIB) joined the lawsuit as a co-plaintiff on behalf of its members nationwide.

The lawsuit, filed in the federal court's Northern District of Florida on March 23, 2010, alleges the PPACA infringes upon the constitutional rights of Floridians and residents of the other states by mandating all citizens and legal residents have qualifying health care coverage or pay a tax penalty. The lawsuit further alleges that by imposing such a mandate, the law exceeds the powers of the United States under Article I of the Constitution. Additionally, the tax penalty required under the law constitutes an unlawful direct tax in violation of Article I, sections 2 and 9 of the Constitution.⁶

The lawsuit further claims the health care reform law infringes on the sovereignty of the states and the Tenth Amendment to the Constitution by imposing onerous new operating rules that Florida must follow as well as requiring the state to spend billions of additional dollars without providing funds or resources to meet the state's cost of implementing the law. This burden comes at a time when Florida faces severe budget cuts to offset shortfalls in an already-strained budget.

On January 31, 2011, Senior United States District Judge Roger Vinson ruled that the PPACA is unconstitutional.⁷ The district court granted summary judgment to the federal government on the state plaintiffs' claim that the Act's expansion of Medicaid is unconstitutional and to the plaintiffs on their claim that the Act's individual mandate – that individuals purchase and continuously maintain health insurance from private companies – is unconstitutional. The district court concluded that the individual mandate exceeded congressional authority under Article I of the Constitution because it was not enacted pursuant to Congress's tax power and it exceeded Congress's power under the Commerce Clause and the Necessary and Proper Clause. The district court also concluded that the individual mandate provision was not severable from the rest of the Act and declared the entire Act invalid.

The federal government appealed the district court's ruling that the individual mandate is unconstitutional and its severability holding. The state plaintiffs cross-appealed the district court's ruling on their Medicaid expansion claim. On appeal, the United States Court of Appeals for the Eleventh Circuit ruled, on August 12, 2011, that the individual mandate is severable from

⁴ *Florida, et al. v. Department of Health and Human Services, et al.*

⁵ The 26 plaintiffs include: Florida, South Carolina, Nebraska, Texas, Utah, Louisiana, Alabama, Colorado, Michigan, Pennsylvania, Washington, Idaho, South Dakota, Indiana, Mississippi, Nevada, Arizona, Georgia, Alaska, North Dakota, Wisconsin, Iowa, Ohio, Kansas, Wyoming, and Maine.

⁶ Office of the Attorney General of Florida, *The States' Lawsuit Challenging the Constitutionality of the Health Care Reform Law*. Found at: <<http://www.healthcarelawsuit.us/>> (Last visited on February 18, 2012).

⁷ *State of Florida, by an through Attorney General Pam Bondi, et al. v. United States Department of Health and Human Services, et al.*, United States District Court for the Northern District of Florida Pensacola Division, Case No.: 3:10-cv-91-RV/EMT, January 31, 2011. Found at: <[http://myfloridalegal.com/webfiles.nsf/WF/JDAS-8DMNTD/\\$file/VinsonRuling1312011.pdf](http://myfloridalegal.com/webfiles.nsf/WF/JDAS-8DMNTD/$file/VinsonRuling1312011.pdf)> (Last visited on February 18, 2012).

the remainder of the Act. The court also affirmed the district court's grant of summary judgment to the federal government that the Medicaid expansion is constitutional and concluded that the individual mandate exceeds Congress's enumerated commerce power and is unconstitutional. The court concluded that the individual mandate is a civil regulatory penalty and not a tax.⁸

The parties filed petitions for the Supreme Court to review the lower court holdings.

On December 19, 2011, the U.S. Supreme Court agreed to take the case and announced the dates for the oral argument in the States' challenge to the federal health care law. The oral arguments will begin March 26, 2012, and continue through March 28, 2012. On March 26, the Court will hear one hour of oral argument on the jurisdictional issue of whether the federal Anti-Injunction Act bars challenges to the individual mandate. On March 27, the Court will hear two hours of oral argument limited to the issue of whether the individual mandate is constitutional. On March 28, the Court will hear 90 minutes of oral argument on the severability argument. Also on March 28, the Court will hear one hour of oral argument on the constitutionality of the law's substantial expansion of Medicaid.

III. Effect of Proposed Changes:

Senate Memorial 1840 urges the Congress of the United States to defund planning grants to states for the establishment of health insurance exchanges required by the PPACA.

Copies of the memorial will also be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

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 the 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.

⁸ *State of Florida, by and through Attorney General Pam Bondi, et al. v. United States Department of Health and Human Services, et al.*, United States Court of Appeals for the Eleventh Circuit, D.C. Docket No. 3:10-cv-00091-RV-EMT. Found at: <[http://myfloridalegal.com/webfiles.nsf/WF/JDAS-8KNNU8/\\$file/HCR_11thCirOpinion8.12.11.pdf](http://myfloridalegal.com/webfiles.nsf/WF/JDAS-8KNNU8/$file/HCR_11thCirOpinion8.12.11.pdf)> (Last visited on February 18, 2012).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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.)

None.

B. Amendments:

None.