HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	HB 5013	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Appropriations Committee and McKeel	117 **Y's**	0 **N's**
COMPANION BILLS:	(SB 1802)	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

HB 5013 passed the House on May 3, 2013, as SB 1802. The Patient Protection and Affordable Care Act (PPACA) imposes penalties on large employers who do not provide a defined level of health insurance coverage to substantially all of its "full-time" employees. Under PPACA, a "full-time" employee is an employee who works on average of at least 30 hours a week. Additionally, large employers are subject to penalties if the employee's share of the premium is more than 9.5% of the employee's income and the employee elects to participate in an exchange.

Currently, all categories of state and university employees, except those classified as other-personal-services (OPS) employees, may participate in the State Group Insurance Program (Program). Current data indicates that there are currently several thousand OPS employees who have been working at least 30 hours a week and would likely be considered full-time under PPACA. Consequently, the state must offer health insurance benefits to such OPS employees or be subject to a $2,000 fine for each employee covered under the plan, which could potentially exceed $321.8 million annually.

The bill allows participation in the Program by OPS employees who meet the definition of a full-time employee under the provisions of PPACA and applicable regulations, effective January 1, 2014. In addition, employee premium contributions will no longer be pro-rated for permanent employees working more than 30 hours per week. The bill requires certain information related to OPS be submitted by participating employers to ensure compliance with PPACA requirements. The state is authorized to continue the current level of contributions into health savings accounts for employees participating in the high deductible health insurance plans.

The bill conforms the laws to the proposed FY 2013-14 General Appropriations Act (GAA) as employer and employee premium contributions are set in the GAA.

The February 28, 2013 Self-Insurance Estimating Conference report indicated that the employer premiums associated with allowing full-time OPS to be eligible to participate in the Program would be approximately $29.1 million in FY 2013-14. Relevant assumptions used in the conference were substantially the same as, but not identical to, the provisions of this bill, and regulations regarding implementation of PPACA in many cases are not final. In order to best deal with the uncertainty surrounding implementation of the bill and PPACA, $13.7 million in General Revenue and $10.5 million in trust funds are provided in the GAA and placed in reserve to be available as necessary to fund the provisions of this act. Release of funds is contingent upon Legislative Budget Commission approval of a budget amendment submitted pursuant to s. 216.177, F.S., indicating the amount of additional funding needed to provide premium payments for eligible OPS employees.

The bill was approved by the Governor on May 20, 2013, ch. 2013-52, L.O.F., and will become effective on July 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act ("PPACA")[1] into law, as amended by the Health Care and Education Reconciliation Act of 2010[2]. The law contains comprehensive changes to the entire health care system in the United States. Most of the PPACA provisions take effect in 2014; however, many changes are phased in, starting from the day the bill was signed on March 23, 2010 and continuing through 2019.

Specifically, PPACA:

- Requires most U.S. citizens and legal residents to obtain health insurance coverage or pay a penalty;
- Substantially expands Medicaid;
- Establishes new requirements on employers and health plans;
- Restructures the private health insurance market;
- Creates health insurance exchanges for individuals and employers to obtain coverage;
- Sets minimum standards for health coverage offered in a health insurance exchange; and
- Provides premium tax credits and cost-sharing subsidies for eligible individuals who obtain coverage through a health insurance exchange**.**

Individual Mandate

Effective in 2014, PPACA provides that health insurance coverage will be mandatory for almost all U.S. citizens.[3] Individuals who are required to file a tax return, but do not have "minimal essential coverage", will pay a tax[4] to the U.S. government. The Internal Revenue Service is charged with enforcement.[5] "Minimal essential coverage" includes: Medicaid, Medicare, CHIP, and certain other government programs; employer-sponsored plans; and individual market plans.[6]

The annual tax for failure to have minimal essential coverage will be the greater of:

- a flat dollar amount per individual; or
- a percentage of the individual's taxable income.[7]

The tax increases over time: $95 or 1% in 2014; $325 or 2% in 2015 and $695 or 2.5% in 2016. After 2016, the tax is indexed to inflation and rounded to the next lowest multiple of $50.[8] The tax for a child is one half of the adult tax.

Employer Responsibility

Effective in 2014, PPACA requires that "large employers", defined as an employer with at least 50 full-time employees[9], must provide "minimum essential coverage" that is "affordable" to its employees or be subject to penalties.[10] To be considered "minimum essential coverage", the plan's share of the total

[1] P.L. 111-148, 124 Stat. 119 (2010)
[2] P.L. 111-152, 124 Stat. 1029 (2010)
[3] 26 U.S.C. s. 5000A
[4] 26 U.S.C. s. 5000A(b)(1) refers to the payment as a "penalty" ; however, the Supreme Court of the United States has found the payment to be a tax. *National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566 (2012).
[5] 26 U.S.C. s. 5000A(b)(1)
[6] 26 U.S.C. s. 5000A(f)(1)
[7] 26 U.S.C. s. 5000A(c)
[8] Id.
[9] 26 U.S.C. s. 4980H(c)(2)
[10] 26 U.S.C. s 4980H

allowed costs of benefits provided under the plan must be at least 60 percent of those costs.[1112] To be considered "affordable", the employee portion of the self-only premium for the employer's lowest cost coverage may not exceed 9.5 percent of the employee's household income.[13] Additionally, under PPACA, a "full-time employee" means an employee who is employed an average of at least 30 hours per week.[14]

PPACA imposes two types on penalties on employers: a coverage penalty and an affordability penalty[15]. If the employer does not offer coverage to all of its full-time employees, and one or more full-time employees receive a premium credit or cost-sharing subsidy through the exchange, the penalty is $2,000[16] per year per full-time employee, less the first 30 full-time workers.

PPACA also imposes a penalty if an employer offers minimum essential coverage, but the coverage is not considered "affordable" and one or more full-time employee receives a premium credit or cost-sharing subsidy through the exchange.[17] The penalty is $3,000 per employee who receives a premium credit or cost-sharing subsidy. The maximum amount of the penalty cannot exceed $2,000 per full-time employee, excluding the first 30 full-time employees. For example, if an employer has 300 employees and 30 receive a premium credit, the penalty would be (30 x $3,000) or $90,000, the lesser of ($2,000 x 270) or $540,000.

For both types of penalties, the Internal Revenue Service (IRS) is proposing to create "safe harbors" for employers to use to ensure they do not incur a penalty.[18] Since most employers do not know an employee's total household income, the IRS is proposing is that a premium will be considered affordable if the employee's share does not exceed 9.5% of the employee's income reported on their W-2 form.

The IRS is also proposing a safe harbor for coverage. The proposed rule provides that a large employer will be treated as offering coverage to all of its employees if the employer offers coverage to all but 5% or 5 of its employees, whichever is greater.

State Group Insurance Program

Overview

The State Group Insurance Program (program) is created by s. 110.123, F.S., and is administered by the Division of State Group Insurance (DSGI) within the Department of Management Services (DMS).

The program is an optional benefit for state employees including all state agencies, state universities, the court system, and the Legislature. The program includes health, life, dental, vision, disability, and other supplemental insurance benefits.

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[11] 26 U.S.C. s. 36B and Department of Treasury, 78 Fed. Reg. 217 (proposed on January 2, 2013) *Shared Responsibility for Employers Regarding Health Coverage* (to be codified at 26 CR Parts 1, 54 and 301).
[12] In layman's terms, the plan roughly must pay at least 60% of the medical costs of the standard population enrolled in the plan (i.e., have a 60% actuarial value). Since plans have limits on cost sharing, an insured with a major medical event likely would not have to pay 40% of the costs.
[13] 26 U.S.C. s. 36B
[14] 26 U.S.C. 4980H(c)(4)(A)
[15] 26 U.S.C. 4980H
[16] The average annual premiums in 2012 are $5,615 for single coverage and $15,745 for family coverage. The Kaiser Family Foundation, *2012 Employer Health Benefits Survey*, available at: http://ehbs.kff.org/?page=abstract&id=1 (last viewed 2/10/13).
[17] 26 U.S.C. 4980H
[18] Department of Treasury, 78 Fed. Reg. 217 (proposed on January 2, 2013) *Shared Responsibility for Employers Regarding Health Coverage* (to be codified at 26 CR Parts 1, 54 and 301).

The health insurance benefit for active employees has premium rates for single, spouse, or family coverage. The state contributes approximately 90% toward the total annual premium for active employees ($1.41 billion out of the total premium of $1.57 billion projected for FY 2012-13[19].)

The program provides several options for employees to choose as their health plans. The preferred provider organization (PPO) plan is the statewide, self-insured health plan administered by Blue Cross Blue Shield of Florida. The administrator is responsible for processing health claims, providing access to a Preferred Provider Care Network, and managing customer service, utilization review, and case management functions. The standard health maintenance organization (HMO) plan is an insurance arrangement in which the state has contracted with multiple statewide and regional HMOs.

High Deductible Health Plans (HDHP) with Health Savings Accounts (HSA)

Additionally, the program offers two high-deductible health plans (HDHP) with health savings accounts[20]. The state's Health Investor PPO Plan is a statewide, high deductible health plan with an integrated health saving account. It is also administered by Blue Cross Blue Shield of Florida. The Health Investor HMO Plan is also a high deductible health plan with an integrated health saving account. The state has contracted with multiple state and regional HMOs as providers. The state makes a $500 per year contribution to the health savings account for single coverage and a $1,000 per year contribution for family coverage. The employee may make additional annual contributions[21] up to a limit of $6,450 for single coverage and $12,500 for family coverage. Both the employer and employee contributions are not subject to federal income tax. Unused funds roll over automatically every year. A health savings account is owned by the employee and is portable.

Cafeteria Plans

A cafeteria plan is a plan that offers flexible benefits under the Internal Revenue Code Section 125. Employees choose from a "menu" of benefits. The plan can provide a number of selections, including medical, accident, disability, vision, dental and group term life insurance.

A cafeteria plan reduces both the employer's and the employee's tax burden. Contributions by the employer are not subject to the employer social security taxes. Contributions made by the employee are not subject to federal income or social security taxes.

The employer chooses the range of benefits it wishes to offer in a cafeteria plan. The plan can range from just health insurance to full flex plans, which offer a wide variety of benefits and choices and are more often offered by large employers. In some full flex plans, the employee is offered the choice between receiving additional compensation in lieu of benefits.

The state program qualifies as a cafeteria plan.[22]

Employer and Employee Contributions

The state program is considered employer-sponsored since the state contracts with providers and third party administrators and contributes a substantial amount on behalf of the employee toward the cost of the insurance premium. The employer contribution is part of a state employee's overall compensation

[19] Fiscal information provided by DSGI.
[20] Internal Revenue Code, 26 U.S.C. sec. 223
[21] The IRS annually sets the contribution limit as adjusted by inflation.
[22] Sec. 125 I.R.C. requires that a cafeteria plan allow its members to choose between two or more benefits "consisting of cash and qualified benefits." The proposed regulations define "cash" to include a "salary reduction arrangement" whereby salary is deducted pre-tax to pay the employee's share of the insurance premium. Since the state program allows a "salary reduction arrangement", the program qualifies as a cafeteria plan. 26 C.F.R. ss. 1.125-1, et seq.

package. The employee pays a set monthly premium for either a single or family plan and the state pays the remainder of the premium.

The following chart shows the monthly employer and employee contributions[23] towards employee health insurance premiums for full-time employees, effective May 1, 2013.

		Standard Plan PPO/HMO			Health Investor Health Plan PPO/HMO		
Category	**Coverage**	**Employer**	**Enrollee**	**Total**	**Employer***	**Enrollee**	**Total**
Career Service	Single	537.74	50.00	587.74	537.74	15.00	552.74
	Family	1,149.14	180.00	1,329.14	1,149.14	64.30	1,213.44
	Spouse	1,299.16	30.00	1,329.16	1,183.44	30.00	1,213.44
Select Exempt and Senior Mgt. Service	Single	579.40	8.34	587.74	544.40	8.34	552.74
	Family	1,299.14	30.00	1,329.14	1,183.44	30.00	1,213.44

*Includes employer tax-free HSA contribution - $500 per year for single coverage and $1,000 per year for family coverage.

In general, employees working less than 40 hour per week pay a prorated share of the premium contribution that the employer would otherwise pay.

Each year, the Legislature specifies the state program benefit design and the employer and employee premium contributions in the General Appropriations Act.

State of Florida Employees

The State of Florida has four classifications of employees. The following three classes participate in the State Group Insurance Program as part of their compensation package:

- **Career Service:** Florida has a civil service system for public employees not deemed to be executive or managerial. The State Constitution mandates such a system be created by the Legislature[24] and authorizes a system for the collective bargaining of wages, hours, and terms or conditions of employment by public employees with their public employer.[25] Part II of chapter 110, F.S., establishes the Career Service System.

- **Senior Management Service:** Part III of chapter 110, F.S., establishes the Senior Management Service System, which is a separate system of personnel administration for positions in the executive branch. The duties and responsibilities are primarily and essentially policymaking or managerial in nature.[26]

- **Selected Exempt Service:** Part V of chapter 110, F.S., creates the Selected Exempt Service System (SES). The SES is a separate system of personnel administration that includes those positions that are exempt from the Career Service System. Employees in the SES serve at the pleasure of the agency head.[27]

[23] Section 8(3) of chapter 2012-118, Laws of Florida.
[24] *See* art. III, s. 14 of the Fla. Const.
[25] *See* art. I, s. 6 of the Fla. Const.
[26] *See* s. 110.402, F.S.
[27] *See* s. 110.604, F.S.

Other-Personal-Services (OPS)

The Other-Personal-Services (OPS) classification was created for certain types of temporary employees. Prior to 2012, OPS employees were restricted to work no more than 1,040 hours annually without a recommendation by the agency head and approval by the Executive Office of the Governor for an extension.[28] In 2012, s. 110.131(2), F.S., was amended to eliminate the annual hourly cap and the corresponding requirement that agencies seek approval for extensions. Instead, agencies must review and document the mission-critical need for any continuing OPS position by June 30 of each year.

Unless specifically provided by law, OPS employees are not eligible for any form of paid leave, paid holidays, a paid personal day, participation in state group insurance or retirement benefits, or any other state employee benefit.[29]

State agencies and the university system[30] both employ individuals in the OPS classification. The following is the average number of OPS employees per fiscal year for state agencies:[31]

FY 2009-10	9,965
FY 2010-11	10,053
FY 2011-12	9,089

The number of OPS employees varies greatly among state agencies, with the Department of Health consistently having the highest average of OPS employees (2,290 in FY 2011-12). For FY 2012-13, the agencies were appropriated $45,898,707 in recurring General Revenue and $214,647,050 in recurring trust funds for a total of $260,545,757 in the OPS appropriation category. The agencies were also allocated $656,832 in nonrecurring trust funds. Salaries and duties for OPS employees vary greatly. OPS positions range from low-skill clerical to high-skill medical doctors and the hourly wage varies accordingly. The Legislature provides the appropriation to the agencies to hire OPS employees and the agency has discretion over the number of OPS employees hired as well as their duties and salaries.

Of import, the conference estimated that if the state does not offer health insurance that meets minimum standards to OPS employees who are considered full-time under PPACA, the state and universities could be subject to a penalty exceeding $321.8 million annually.

Effects of the Bill

The terms “full-time state employees” and “part-time state employees” are redefined to allow participation in the State Group Insurance Program by OPS employees working an average of 30 hours or more per week, or reasonably expected to work an average of 30 hours or more per week. The bill establishes the measurement period used to determine the average number of hours worked.

In addition, part-time permanent employees, who work an average of 30 or more hours per week, will no longer have to pay a pro-rated portion of the premium otherwise paid by the employer, in order to avoid potential affordability penalties.

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[28] *See* s. 110.131, F.S. (2011).
[29] S. 110.131(3), F.S.
[30] Historical information on OPS employees hired by the state universities is not available.
[31] Fiscal Year 2011-12 Annual Workforce Report, Florida Department of Management Services, available at: http://www.dms.myflorida.com/human_resource_support/human_resource_management/for_state_hr_practitioners/reports (last viewed March 3, 2013).

Employers, participating in the program are required to submit certain information relating to OPS employees to ensure compliance under PPACA and associated regulations.

The authority for the state to contribute to participants' health savings accounts is continued and the contribution is to be set in the annual general appropriations act.

Emergency rule-making authority is provided to the Department of Management Services to implement the classification of full-time employees as defined under PPACA and corresponding regulations issued prior to July 1, 2013, but restricts such rule-making authority to mitigating the state's exposure to potential liability under the penalty provisions of PPACA. Any rules adopted pursuant to this section must expire by June 30, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments. In order to most effectively deal with the uncertainty of the ultimate fiscal impact of the bill, $13.7 million in General Revenue and $10.5 million in trust funds are provided in the GAA and placed in reserve to be made available as necessary to fund the provisions of this act. Release of funds is contingent upon Legislative Budget Commission approval of a budget amendment submitted pursuant to s. 216.177, F.S., indicating the amount of additional funding needed to provide premium payments for eligible OPS employees, based upon the results of the Program's open enrollment process.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

On February 28, 2013, the Self-Insurance Estimating Conference estimated that 3,015 OPS state agency employees and 5,722 OPS university employees would be considered full-time employees under PPACA. The conference further estimated the numbers of those employees likely to accept insurance coverage, if offered, and the cost to the state. The estimates for participation and premium costs to the state if they were allowed to participate under the current plan are as follows:

	FY 2013-14 (6-months)		FY 2014-15		FY 2015-16	
	Individual	Family	Individual	Family	Individual	Family
State	1,581	608	1,581	608	1,581	608
Universities	2,722	1,153	2,722	1,153	2,722	1,153
Total	**4,303**	**1,761**	**4,303**	**1,761**	**4,303**	**1,761**

Costs	**$29.1 million**	**$54.9 million**	**$60.4 million**

Note: Relevant assumptions made in the conference to project premiums were substantially the same as those provided in the bill. While there is a great deal of uncertainty regarding the number of OPS that will be eligible and elect to participate, there will be a much clearer picture after the open enrollment period for the 2014 plan year.