

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 171 Public Assistance Fraud
SPONSOR(S): Diaz and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 308

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 2 N	Jones	Cunningham
2) Government Operations Appropriations Subcommittee	13 Y, 0 N	Keith	Topp
3) Judiciary Committee			

SUMMARY ANALYSIS

The Division of Public Assistance Fraud (DPAF), housed within the Department of Financial Services (DFS), works to prevent, detect, and prosecute public assistance fraud. The Public Assistance Fraud unit currently is staffed with 63 non-sworn law enforcement positions assigned to investigate fraud in the following programs:

- Cash Assistance/Temporary Assistance for Needy Families (TANF); Supplemental Nutritional Assistance Program (SNAP) formerly known as Food Stamps; Medicaid recipient Fraud; Trafficking in SNAP program benefits; Subsidized Day Care; School Readiness program; Voluntary Pre-K Program; Emergency Financial Assistance for Housing; Low Income Energy Assistance; Disaster Assistance/Emergency SNAP benefits; and Cooperative Disability Investigations (Social Security Disability, SNAP, and Medicaid Eligibility).

Currently, DPAF investigators do not have statutory authority to administer oaths and affirmations. In order to do so, they must be a Notary Public, which costs approximately \$120 per investigator, and must be renewed every 4 years. Additionally, DPAF investigators do not have statutory authority to issue subpoenas for business and education records that are frequently necessary for public assistance fraud investigations. In order to obtain such records, DPAF investigators must request state attorneys to issue the subpoenas on their behalf.

The bill amends s. 414.411, F.S., to allow DFS to do the following when conducting public assistance fraud investigations:

- Administer oaths and affirmations; and
- Issue and serve subpoenas for the attendance of witnesses or the production of business records, books, papers, correspondence, memoranda, and other records.

The bill allows the subpoenas to be served by representatives designated by DFS. If a person fails to obey the subpoena, the court may issue an order requiring compliance with the subpoena. Failure to obey the court order may be punished by the court as civil or criminal contempt. The person refusing the subpoena will be liable for costs incurred by DFS and reasonable attorney's fees.

DFS indicates that reducing the need and costs for Notary Public commissions will result in a \$3,600 savings over a four-year period.

The bill is effective on July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Division of Public Assistance Fraud (DPAF), housed within the Department of Financial Services (DFS), works to prevent, detect, and prosecute public assistance fraud. The Public Assistance Fraud unit currently is staffed with 63 non-sworn law enforcement positions assigned to nine field offices.¹

DPAF investigates fraud in the following programs:

- Cash Assistance/Temporary Assistance for Needy Families (TANF);
- Supplemental Nutritional Assistance Program (SNAP) formerly known as Food Stamps;
- Medicaid recipient Fraud;
- Trafficking in SNAP program benefits;
- Subsidized Day Care;
- School Readiness program;
- Voluntary Pre-K Program;
- Emergency Financial Assistance for Housing;
- Low Income Energy Assistance;
- Disaster Assistance/Emergency SNAP benefits; and
- Cooperative Disability Investigations (Social Security Disability, SNAP, and Medicaid Eligibility).²

Currently, DPAF investigators do not have statutory authority to administer oaths and affirmations. In order to do so, they must be a Notary Public,³ which costs approximately \$120 per investigator, and must be renewed every 4 years.⁴

DFS does have statutory authority to issue subpoenas for:

- The enforcement of employer workers' compensation coverage requirements (s. 440.107(3)(f), F.S.);
- Investigations under the Insurance Code (s. 624.321(1)(b), F.S.);
- State Fire Marshal investigations under ch. 633, F.S. (s. 633.112, F.S.); and
- Disposition of unclaimed property investigations (s. 717.1301, F.S.).

Currently, DPAF investigators do not have statutory authority to issue subpoenas for business and education records that are frequently necessary for public assistance fraud investigations.⁵ In order to obtain such records, DPAF investigators must request state attorneys to issue the subpoenas on their behalf.⁶ This process is often time-consuming, particularly for the state attorneys and clerks of court.⁷ Further, because not all of DPAF investigations are criminal in nature, state attorneys are limited in their ability to issue a subpoena for information necessary to complete a successful investigation.⁸

Effect of the Bill

The bill amends s. 414.411, F.S., to allow DFS to do the following when conducting public assistance fraud investigations:

¹ <http://www.myfloridacfo.com/division/PAF/#.UtRFS6NOncs> (last visited on January 13, 2014).

² *Id.*

³ DFS Bill Analysis, January 13, 2014 (on file with the Criminal Justice Subcommittee).

⁴ *Id.* DPAF averages 10 renewals per year at a cost to DPAF of approximately \$1,200 per year.

⁵ Section 414.411, F.S.

⁶ DFS Bill Analysis, January 13, 2014.

⁷ *Id.*

⁸ *Id.*

- Administer oaths and affirmations; and
- Issue and serve subpoenas for the attendance of witnesses or the production of business records, books, papers, correspondence, memoranda, and other records.

The bill allows the subpoenas to be served by representatives designated by DFS. If a person fails to obey the subpoena, the court that has jurisdiction in the geographical area where the inquiry is being carried out or in the area where the person who has refused the subpoena is found, resides, or transacts business may issue an order requiring compliance with the subpoena. Failure to obey the court order may be punished by the court as civil or criminal contempt. The person refusing the subpoena is liable for costs incurred by DFS and reasonable attorney's fees.

B. SECTION DIRECTORY:

Section 1. Amends s. 414.411, F.S., relating to public assistance fraud.

Section 2. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The DFS indicates that there will be an insignificant reduction in expenditures for Notary Public commissions that will result in a \$3,600 savings over a four-year period.⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill has an insignificant positive impact on state expenditures. Currently 45 of 63 positions within the DPAF are investigators who are also commissioned Notaries Public. With passage of this legislation, the DPAF will only retain 10 Notary Public commissions for the 45 investigators. The cost of these Notary Public commissions will be \$1,200, rather than \$4,800, providing for a cost savings of

⁹ *Id.*

\$3,600 over 4 years. In addition, the DFS indicates that there could be a potential insignificant cost associated with paying process servers to serve a subpoena in cases where department staff is unable to do so. However, the department indicates that any costs related to serving a subpoena are insignificant and can be absorbed within current resources.¹⁰

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹⁰ Email correspondence with DFS on file with the Government Operations Appropriations Subcommittee.