By Senator Dean

A bill to be entitled
An act relating to tobacco use prevention; amending s. 381.84, F.S., relating to the Comprehensive Statewide Tobacco Education and Use Prevention Program; revising program components; requiring program components to include efforts to educate youth and their parents about tobacco use; requiring a youth-directed focus in each program component; requiring that the State Surgeon General, or his or her designee, serve on the Tobacco Education and Use Prevention Advisory Council; requiring the advisory council to adhere to state ethics laws; providing that meetings of the council are subject to public-records and public-meetings requirements; revising the duties of the council; authorizing the Department of Health to contract with the appropriate entity to administer the peer review system and grant management; providing requirements for the peer review system; deleting a provision that prohibits a member of the council from participating in a discussion or decision with respect to a research proposal by a firm, entity, or agency that employs or has entered into a contract with the member or that is governed by a board on which the member serves; providing that grants awarded are funds intended to benefit the state and are not purchases of commodities or services; providing that the grant award process is not subject to protest; providing that the department’s distribution of grant awards is not subject to ch. 120, F.S.; authorizing the department
to make advances for program startup or contracted
services to other governmental entities and not-for-
profit corporations; providing a limitation on the
amount of the advances; authorizing an agreement for
advances to contain a clause that permits the
contractor or recipient to temporarily invest the
proceeds under certain conditions; deleting an expired
provision relating to the department’s rulemaking
authority; providing an effective date.

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

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

381.84 Comprehensive Statewide Tobacco Education and Use
Prevention Program.—
(1) DEFINITIONS.—As used in this section and for purposes
of the provisions of s. 27, Art. X of the State Constitution,
the term:
(a) “AHEC network” means an area health education center
network established under s. 381.0402.
(b) “CDC” means the United States Centers for Disease
Control and Prevention.
(c) “Council” means the Tobacco Education and Use
Prevention Advisory Council.
(d) “Department” means the Department of Health.
(e) “Tobacco” means, without limitation, tobacco itself and
tobacco products that include tobacco and are intended or
expected for human use or consumption, including, but not
limited to, cigarettes, cigars, pipe tobacco, and smokeless tobacco.

(f) “Youth” means minors and young adults.

(2) PURPOSE, FINDINGS, AND INTENT.—It is the purpose of this section to implement s. 27, Art. X of the State Constitution. The Legislature finds that s. 27, Art. X of the State Constitution requires the funding of a statewide tobacco education and use prevention program that focuses on tobacco use by youth. The Legislature further finds that the primary goals of the program are to reduce the prevalence of tobacco use among youth, adults, and pregnant women; reduce per capita tobacco consumption; and reduce exposure to environmental tobacco smoke. Further, it is the intent of the Legislature to base increases in funding for individual components of the program on the results of assessments and evaluations. Recognizing that some components will need to grow faster than inflation, it is the intent of the Legislature to fund portions of the program on a nonrecurring basis in the early years so that those components that are most effective can be supported as the program matures.

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

(a) State and community interventions.—These interventions
include, but not be limited to, a statewide tobacco control
program that combines and coordinates community-based
interventions that focus on preventing initiation of tobacco use
among youth and young adults; promoting quitting among adults,
youth, and pregnant women; eliminating exposure to secondhand
smoke; identifying and eliminating tobacco-related disparities
among population groups; and promoting a range of collaborations
to prevent and alleviate the effects of chronic diseases.

Counter-marketing and advertising; cyberspace resource center.—
The counter-marketing and advertising campaign shall include, at
a minimum, Internet, print, radio, and television advertising
and shall be funded with a minimum of one-third of the total
annual appropriation required by s. 27, Art. X of the State
Constitution. A cyberspace resource center for copyrighted
materials and information concerning tobacco education and use
prevention, including cessation, shall be maintained by the
program. Such resource center must be accessible to the public,
including parents, teachers, and students, at each level of
public and private schools, universities, and colleges in the
state and shall provide links to other relevant resources. The
Internet address for the resource center must be incorporated in
all advertising. The information maintained in the resource
center shall be used by the other components of the program.

(b) Health communication interventions.—Effective media and
health communication intervention efforts include, but are not
limited to, audience research to define themes and execute
messages for influential, high impact, and specifically targeted
campaigns; market research to identify the target market and the
behavioral theory motivating change; counter-marketing
surveillance; community tie-ins to support and reinforce the statewide campaign; technologies such as viral marketing, social networks, personal web pages, and web logs; traditional media; process and outcome evaluation of the communication efforts; and promotion of available services, including the state telephone cessation QuitLine. Cessation programs, counseling, and treatment. This program component shall include two subcomponents:

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

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

(c) Cessation interventions.—Cessation interventions include, but are not limited to, sustaining, expanding, and promoting the service through population-based counseling and treatment programs; encouraging public and private insurance coverage for counseling and medication treatments approved by the federal Food and Drug Administration for tobacco-use cessation; eliminating cost and other barriers to treatment for underserved populations; and making health care system changes.

Youth interventions to prevent tobacco-use initiation and encourage cessation among young people are needed in order to reshape the environment so that it supports tobacco-free norms. Because most people who start smoking are younger than 18 years of age, intervention during adolescence is critical. Community
programs and school-based policies and interventions should be a part of a comprehensive effort that is implemented in coordination with community and school environments and in conjunction with increasing the unit price of tobacco products, sustaining anti-tobacco media campaigns, making environments tobacco free, and engaging in other efforts to create tobacco-free social norms. Surveillance and evaluation. The program shall conduct ongoing epidemiological surveillance and shall contract for annual independent evaluations of the effectiveness of the various components of the program in meeting the goals as set forth in subsection (2).

(d) Surveillance and evaluation.—The surveillance and evaluation of all program components shall monitor and document short-term, intermediate, and long-term intervention outcomes to inform program and policy direction and ensure accountability. The surveillance and evaluation must be conducted objectively through scientifically sound methodology. Youth school programs. School and after-school programs shall use current evidence-based curricula and programs that involve youth to educate youth about the health hazards of tobacco, help youth develop skills to refuse tobacco, and demonstrate to youth how to stop using tobacco.

(e) Administration and management.—Administration and management activities include, but are not limited to, strategic planning to guide program efforts and resources in order to accomplish goals; recruiting and developing qualified and diverse technical, program, and administrative staff; awarding and monitoring program contracts and grants to coordinate implementation across program areas; developing and maintaining
a fiscal-management system to track allocations and the
expenditure of funds; increasing capacity at the community level
through ongoing training and technical assistance; creating
effective communications internally among chronic-disease-
prevention programs and local coalitions and partners; and
educating members of the public and decisionmakers on the health
effects of tobacco and evidence-based, effective program and
policy interventions. Community programs and chronic disease
prevention. The department shall promote and support local
community-based partnerships that emphasize programs involving
youth, including programs for the prevention, detection, and
early intervention of smoking-related chronic diseases.

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

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

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

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

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

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

1. The State Surgeon General, or his or her designee, who must be a deputy secretary or the director of the Division of Health Access and Tobacco, who shall serve as the chairperson.

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

3. Two members appointed by the Commissioner of Education, of whom one must be a school district superintendent.
4. The chief executive officer of the Florida Division of the American Cancer Society, or his or her designee.

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

6. The chief executive officer of the American Lung Association of Florida, or his or her designee.

7. The dean of the University of Miami School of Medicine, or his or her designee.

8. The dean of the University of Florida College of Medicine, or his or her designee.

9. The dean of the University of South Florida College of Medicine, or his or her designee.

10. The dean of the Florida State University College of Medicine, or his or her designee.

11. The dean of Nova Southeastern College of Osteopathic Medicine, or his or her designee.

12. The dean of the Lake Erie College of Osteopathic Medicine in Bradenton, Florida, or his or her designee.

13. The chief executive officer of the Campaign for Tobacco Free Kids, or his or her designee.

14. The chief executive officer of the Legacy Foundation, or his or her designee.

15. Four members appointed by the Governor, of whom two must have expertise in the field of tobacco-use prevention and education or smoking cessation and one individual who shall be between the ages of 16 and 21 at the time of his or her appointment.

16. Two members appointed by the President of the Senate,
of whom one must have expertise in the field of tobacco-use prevention and education or smoking cessation.

17. Two members appointed by the Speaker of the House of Representatives, of whom one must have expertise in the field of tobacco-use prevention and education or smoking cessation.

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

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

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

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

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

(5) COUNCIL DUTIES AND RESPONSIBILITIES.—The council shall advise the State Surgeon General as to the direction and scope
of the Comprehensive Statewide Tobacco Education and Use
Prevention Program. The responsibilities of the council may
include, but are not limited to:

(a) Providing advice on program priorities and emphases.
(b) Providing advice on the overall program budget.
(c) Providing advice on copyrighted material, trademark,
and future transactions as they pertain to the tobacco education
and use prevention program.
(d) Reviewing broadcast material, including advertisements,
prepared for broadcast on the Internet, portable media players,
radio, and television, as requested by the department as it
relates to the advertising component of the tobacco education
and use prevention program.
(e) Participating in periodic program evaluation, as
requested by the department.
(f) Assisting in the development of guidelines to ensure
fairness, neutrality, and adherence to the principles of merit
and quality in the conduct of the program.
(g) Assisting the department in developing the development
of administrative procedures relating to solicitation, review,
and award of contracts and grants in order to ensure an
impartial, high-quality peer review system.
(h) Assisting the department in developing panels to review
and evaluate potential fund recipients the development and
supervision of peer review panels.
(i) Assisting the department in reviewing reports of peer
review panels and making recommendations for funding allocations
contracts and grants.
(j) Reviewing the activities and evaluating the performance
of the AHEC network to avoid duplicative efforts using state funds.

(j) Recommending specific measurable outcomes meaningful outcome measures through a regular review of evidence-based and effective tobacco-use prevention and education strategies and programs of other states and the Federal Government.

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

(6) CONTRACT REQUIREMENTS.—Contracts or grants for the program components or subcomponents described in paragraphs (3)(a)-(d) and (f) (3)(a)-(f) shall be awarded by the department. The department shall award such grants or contracts no later than October 1 for each fiscal year. A recipient of a contract or grant for the program component described in paragraph (3)(d) (3)(c) is not eligible for a contract or grant award for any other program component described in subsection (3) in the same contract term state fiscal year. A school or college of medicine that is represented on the council is not eligible to receive a contract or grant under this section. For the 2009-2010 fiscal year only, The department shall award a contract or grant in the amount of $11 $10 million to the AHEC network for the purpose of developing the components described in paragraph (3)(i). The department shall use the process outlined in chapter 287 if it competitively procures vendors.
The department shall use the process outline in this section if it competitively selects grantees. The AHEC network may apply for a competitive contract or grant after the 2009-2010 fiscal year.

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

(b) As it deems appropriate, the department may contract through the processes outlined in chapter 287 with an appropriate entity to administer the peer review system and grant management. The peer review system shall be operated so that it ensures that only the most highly qualified experts in the field of tobacco control review grant proposals. To ensure fairness and impartiality, the system must be designed to protect the anonymity of proposers during the review process and to protect at all times the identity of members of peer review panels.

(c) The council and the peer review panels shall establish and follow rigorous guidelines for ethical conduct and adhere to a strict policy with regard to conflicts of interest. Council members are subject to the applicable provisions of chapter 112. A member of the council or panel may not participate in any discussion or decision with respect to a
research proposal by any firm, entity, or agency with which the 
member is associated as a member of the governing body or as an 
employee or with which the member has entered into a contractual 
arrangement. Meetings of the council and the peer review panels 
are subject to chapter 119, s. 286.011, and s. 24, Art. I of the 
State Constitution.

(d) Grants awarded under this section are funds intended to 
benefit the people of this state and are not purchases of 
commodities or services as contemplated by chapter 287. 
Accordingly, the grant award process is not subject to protest 
under s. 120.57(3).

(e) Distribution of grant awards in a timely and efficient 
manner is essential to the success of the program. 
Administrative litigation would interfere with the department’s 
obligation to act in a timely and efficient manner. Accordingly, 
the department’s distribution of grant awards is not subject to 
chapter 120.

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

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

(h) Notwithstanding the competitive process for
contracts prescribed in this subsection, each county health
department is eligible for core funding, on a per capita basis,
to implement tobacco education and use prevention activities
within that county.

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

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

(9) ADVANCES RULEMAKING AUTHORIZED.—For any contract or
grant awarded pursuant to this chapter, the department may make
advances for program startup or for contracted services, in
total or periodically, to other governmental entities and not-
for-profit corporations. The amount that may be advanced may not
exceed the expected cash needs of the contractor or recipient
within the initial 3 months. Any agreement that provides for
advances may contain a clause that permits the contractor or
recipient to temporarily invest the proceeds if any interest
income is returned to the agency or applied against the agency’s obligation to pay the contract or grant amount. By January 1, 2008, the department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this section.

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