

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 913 w/CS Public Health Care
SPONSOR(S): Homan
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2216 (i)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care	22 Y, 0 N w/CS	Garner	Collins
2) State Administration			
3) Finance & Tax			
4) Health Appropriations (Sub)			
5) Appropriations			

SUMMARY ANALYSIS

HB 913 w/CS makes technical and clarifying changes to update the public health statutes to conform to current practices. The bill:

- Amends current statutory language regarding the use of environmental health citations and fines;
- Allows the release of positive preliminary HIV rapid test results in non-clinical settings; allows the use of the U.S. Environmental Protection Agency voluntary national guidelines for wastewater systems;
- Amends environmental health professional standards; establishes permitting procedures for group care facilities;
- Establishes an employee health and wellness program;
- Allows the Department of Health (DOH) to utilize the latest HIV/AIDS reporting system developed by the Centers for Disease Control (CDC) or an equivalent system;
- Eliminates exemptions to HIV infection reporting and allows the DOH to require the reporting of HIV exposed infants;
- Authorizes the routine HIV testing of all pregnant women;
- Removes the requirement that sexually transmitted disease testing be performed using only venous blood;
- Establishes a Health Promotion and Health Education Statewide Initiative;
- Provides for the reactivation of a medical license for clinical research purposes; and
- Authorizes the Correctional Medical Authority to contract with the Department of Children and Families (DCF) to conduct surveys of medical services.

The bill has minimal fiscal effect on the department (\$2,978 to develop rules), and the fees collected from permitting group care facilities will be used to cover the costs of administering the program (\$5,539,244 in Year 1 and \$5,721,171 in Year 2).

The bill provides an effective date upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0913a.hc.doc
DATE: March 19, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain:

1. This bill expands the regulatory role of the Department of Health in several areas of public health.
3. The bill expands the department's ability to conduct and report HIV testing findings which may conflict with an individual's privacy rights.

B. EFFECT OF PROPOSED CHANGES:

HB 913 w/CS makes technical and clarifying changes to update the public health statutes to conform to current practices within the Department of Health (DOH) or to conform with nationally recommended guidelines pertaining to public health. These changes affect Environmental Health, Infectious Disease Control, Family Health Services, and Medical Quality Assurance.

ENVIRONMENTAL HEALTH

The only environmental health regulatory programs in the Department of Health (DOH) that have citation authority are the migrant labor camp, mobile home park, sanitary facilities, onsite sewage, and body piercing programs.

HB 913 w/CS provides citation authority in those programs and allows DOH to impose fines for violations of program statutes or rules, or to issue an order to owners and operators of regulated establishments to correct those violations. Regulatory programs that do not have citation authority include drinking water, public swimming pools and bathing places, food hygiene, compressed air, tanning facilities, group care facilities, biomedical waste, radon, radiation control, and sanitary nuisances. This bill expands the citation authority of the department to other areas adopted by rule.

Group Care Facilities

The Department of Health (DOH) administers the group care program statewide in each of the 67 Florida counties. DOH inspects these facilities, often as part of another agency's licensing procedure, to ensure basic sanitation and safety standards are in place. The DOH does not have fee authority for the services it provides. Funding is primarily from General Revenue (GR), Trust Funds, and local county government contributions. Twenty-four of the 67 county health departments (CHD) (36%), in cooperation with their local Board of County Commissioners, have passed local fee ordinances in an attempt to help cover program costs. This has created a variety of fees, which can vary from county to county for the same type of facility inspection.

HB 913 w/CS transfers the cost of this regulation onto the industry through the administration of a permit with a fee. For nonresidential facilities, the fee is based on a rate of \$3.50 per student, although the minimum fee is to be no less than \$110 and no more than \$300 per facility. For residential facilities, the fee is based on a rate of \$15.50 per bed, although the minimum fee is to be no less than \$110 or more than \$600 per facility, except for adult family care homes, which shall pay a flat fee of \$60. Foster

homes and homes with three or fewer beds for persons with developmental disabilities shall be exempt from the fee requirement. The annual permit and renewal fees established and adopted by rule shall not be less than \$60 or more than \$600 per group care facility.

Onsite Sewage Systems

The U.S. Environmental Protection Agency has adopted voluntary guidelines for the management of onsite disposal systems. The guidelines provide a variety of options from a statewide inventory of systems to operating permits (already in place in Florida for advanced treatment systems) to onsite sewage utility districts for the ongoing maintenance of systems. This bill would expand the department's rulemaking authority to regulation of onsite and clustered or decentralized wastewater treatment systems.

In addition, the bill would allow persons who serve on either the technical review and advisory panel, or research review and advisory board for the Department of Health to apply for research contracts funded by the new onsite sewage treatment and disposal system surcharge provided in s. 381.0066, F.S. Section 381.0065, F.S., currently prohibits this activity. The department believes that the provision discourages persons who are involved in research, such as university professors, from serving on these decision-making bodies. In fact, the department believes this is one of the reasons it has been unable to recruit a university representative for the research review and advisory panel.

Section 381.0066, F.S., requires an additional fee of \$5 to be added to each new onsite sewage treatment and disposal system permit issued during fiscal years 1996–2004. The fee is to be used for onsite sewage research, demonstration, and training projects. Most recently, the fee supported the evaluation of advanced treatment options for onsite systems in the Florida Keys. In addition, over the years, other research projects funded by the fee have included:

- Impact of Onsite Sewage Disposal Systems on Surface and Ground Water Quality;
- The Impact of Florida's Growth on the Use of Onsite Sewage Disposal Systems;
- Risk Assessment of Onsite Sewage Disposal Systems for Selected Florida Hydrologic Regions;
- Unsaturated Zone Monitoring Below Subsurface Wastewater Systems Serving Individual Homes in Florida;
- Performance Monitoring and Ground Water Quality Impacts of Onsite Sewage Disposal Systems Subdivision Developments;
- Viral Study Summary;
- Onsite Sewage Disposal System Research on the Northern Periphery of Lake Okeechobee;
- An Investigation of the Surface Water Contamination Potential from Onsite Sewage Disposal Systems in Turkey Creek Sub-basin of the Indian River Lagoon Basin; and
- The Capability of Fine Sandy Soil for Septic Tank Effluent Treatment.

The fee enables DOH to seek federal grants for research requiring matching funds. The fee is currently set to expire June 30, 2004; although HB 651, currently being considered by the Legislature, would expand this surcharge indefinitely.

Right of Entry

In many instances, when conducting onsite sewage treatment and disposal evaluations and final inspections for onsite sewage treatment and disposal systems to determine compliance with standards, the Department of Health (DOH) requires entrance onto adjoining properties. In particular, the DOH needs access to determine setbacks to wells on the adjoining property. Surveyors currently have similar authority to enter adjoining properties while conducting surveys. This bill would grant these same access rights to DOH inspectors for purposes of insuring compliance with DOH standards.

Professional Certification

Department of Health (DOH) environmental health professionals working in primary areas of environmental health (onsite sewage and food safety) are required statutorily to become certified, as are employees of the Department of Agriculture and Consumer Services (DACS). DBPR inspectors are exempted in statute. New DOH employees are required to become certified within their first six months of employment. This bill would codify these requirements in statute.

INFECTIOUS DISEASE CONTROL

HIV Test Reporting Requirements

In December 1999, the CDC issued guidelines for national HIV case surveillance. These guidelines emphasize the importance of complete HIV reporting to effectively and accurately monitor the HIV/AIDS epidemic. The guidelines also set minimum requirements that states must achieve to receive support from CDC for HIV/AIDS surveillance activities. The guidelines state that "CDC will evaluate and award proposals for federal funding of state and local surveillance programs based on their capacity to meet these performance measures." Current Florida laws on HIV infection reporting are not consistent with these CDC guidelines. Specifically, s. 381.004 (3) (d), F.S., prohibits "the release of positive preliminary HIV test results for the routine identification of HIV-infected individuals, or when HIV testing is incidental to the preliminary diagnosis or care of a patient." In addition, Florida law is not consistent with the recent U.S. Food and Drug Administration (FDA) approval of rapid HIV testing technology.

Florida law authorized physician and laboratory reporting of HIV infection in 1996 and the law was implemented by administrative rule in July 1997. Florida law exempts reports of HIV infection identified before the effective date of the administrative rules and also exempts certain university-based medical research protocols from HIV reporting. Statutes also prohibit the reporting of newborns and infants up to 18 months of age who have been exposed to HIV perinatally or through breast-feeding.

HB 913 allows the DOH to adopt rules requiring any physician or laboratory to report to the DOH children up to age 18 month of years who have been exposed to HIV. This change would make Florida's HIV reporting laws consistent with the recently published national HIV surveillance guidelines discussed above. The department believes that these changes will promote the complete and accurate reporting of HIV infection and AIDS, and maximize HIV/AIDS funding coming to the state. The department also believes these changes will also enhance efforts to effectively plan and allocate resources for prevention and care programs.

Mandatory HIV Testing of Pregnant Women

The U.S. Centers for Disease Control and Prevention (CDC) recently proposed an initiative, Advancing HIV Prevention: New Strategies for a Changing Epidemic. The initiative recommends the routine HIV testing of pregnant women as a key strategy in preventing the spread of HIV/AIDS. In addition, the Institute of Medicine (IOM) also extensively reviewed existing research and opinion on preventing mother to child transmission of HIV and recommended the routine HIV testing of pregnant women in its report to Congress in 1998. IOM reported that testing all pregnant women for the HIV virus could reduce the number of babies born with HIV. The report went on to recommend that HIV testing become part of routine prenatal care. The Department of Health (DOH) agrees with this information and believes its requested changes in HB 913 will enable Florida to utilize a proven public health approach in reducing the incidence and spread of disease

Section 384.31, F.S., mandates that health care providers obtain blood samples from pregnant women, at times specified by the DOH, and test for sexually transmissible diseases as required by the rule of the DOH. Tests required in rule include syphilis and hepatitis B. An HIV test is to be offered at the time samples for syphilis and hepatitis B are obtained.

HB 913 w/CS adds HIV as one of the sexually transmissible diseases (STD) to test for, rather than offer, and also mandates pregnant women be notified of the tests that will be conducted, and their right to refuse testing. The department's concern is that women at high risk for syphilis and hepatitis B, in addition to HIV (such as substance abusing women) may opt out of the testing during pregnancy and labor. Those who opt out could expose their infants to these communicable diseases, losing the optimal opportunity for intervention, and possibly increasing the rates of perinatal transmission.

The department state that the changes will allow for flexibility in prenatal testing procedures and require that women be informed of the tests being performed. Women would also be tested for STDs far more common than syphilis, e.g., Chlamydia and gonorrhea. Currently, many women do not know that they are routinely tested for syphilis. The requirement to inform women of the syphilis testing and all recommended STD tests to be performed will provide an opportunity to explain the benefits and allow women to participate in the decisions about the quality of health care that they will receive.

FAMILY HEALTH SERVICES

Employee Health and Wellness Program and the Health Promotion and Health Education Statewide Initiative

HB 913 w/CS authorizes all state agencies to establish employee wellness programs using existing resources. The bill would allow state employees to participate in the program for 30 minutes per day, three days per week, which may be counted as work time at the discretion of the agency administration.

The bill provides that the Department of Health (DOH) shall provide guidelines to state agency programs to assist in their development. The hope is that participating employees in all state agencies may experience increases in productivity and effectiveness through a reduction in chronic disease health risks, sick leave usage and employee turnover.

The bill also establishes the Health Promotion and Health Education Statewide Initiative. This initiative will specifically aim to prevent and reduce the impact of chronic disease (diabetes, high blood pressure) and promote healthy lifestyles. The DOH may award funding for this program to county health departments based on availability of funds. The application shall include a description of proposed activities, the coordination with the local level and other agencies, how the activities will reflect state and national health objectives, a description of the collaborative process used by the county health department, and a description of how effectiveness will be evaluated.

Correctional Medical Authority

The Department of Children and Families (DCF) is not staffed or funded to conduct reviews of health care provided at the Florida Civil Commitment Center which houses sexually violent predators. HB 913 creates s. 945.6038, F.S., to provide authority for the Correctional Medical Authority (CMA) to enter into an agreement or contract with DCF for the purpose of conducting an annual medical review of health care provided in their secure confinement and treatment facilities. The designated facility houses persons detained or committed as sexually violent predators under Chapter 394, Part V, Florida Statutes.

The bill will allow the CMA to assist DCF with the review function within existing funding allocations. The proposed legislation would allow the Correctional Medical Authority (CMA) to contract with the DCF to conduct medical surveys and assist in quality improvement for the sexually violent predator facilities operated by DCF, and other state agencies. The CMA would not be allowed to enter into such contracts if the additional functions impair its ability to monitor health care in the Department of Corrections. Improving the health status of this population would reduce future impact upon the public health system upon the eventual release of residents.

REACTIVATION OF LICENSURE

The Department of Health's Medical Quality Assurance (MQA) office has primary responsibility for the licensure of health providers in the state. MQA currently regulates 37 professions and 6 facilities. MQA is responsible for implementing the provisions of s. 458.321, F.S.

Section 458.321, F.S., provides that if a license to practice medicine has become inactive, that it may be reactivated under s. 458.319, F.S. The law requires that the provider must submit an application to the Department of Health which is evaluated to ensure that the provider's license was not inactive because of disciplinary actions against the provider. The appropriate professional board is required to assess the application and determine the number of continuing education requirements that the provider will need to take as a condition of reactivation, although the number of hours cannot be lower than 20 classroom hours for each year that the provider's license is inactive. In general, each respective board is charged with determining the specific conditions under which a provider may have his or her license reactivated.

HB 913 w/CS creates s.458.3215, F.S., specifying criteria for the reactivation of a medical license for the express purpose of conducting clinical research. The bill allows any person who left the practice of medicine for purposes of retirement to apply to have his or her license reactivated, without examination, for purposes of seeing patients solely in a clinical research setting. The bill stipulates that the provider cannot be out of practice for more the 10 years, must pay a reactivation fee set by the board (not to exceed \$300), and is subject to the same continuing education requirements as a provider applying for reactivation under s. 458.321.

C. SECTION DIRECTORY:

Section 1. Amends s. 381.0012, F.S., to authorize the Department of Health (DOH) to issue citations for violations of environmental health rules adopted under the authority of Chapter 381. This provision would apply to environmental health programs that currently do not have citation authority. The language also authorizes the department to use other means of enforcement when violations of environmental health rules or statutes occur.

Section 2. Amends s. 381.004, F.S., to provide new criteria for releasing positive HIV preliminary rapid test results to conform Florida law to federal guidelines related to HIV rapid test results.

Section 3. Amends s. 381.006, F.S., to provide fee authority to fund the existing group care facilities inspection program. The proposed fees will generate only enough revenue to support the entire program statewide, including direct and indirect costs. The bill will enable the DOH to permit compliant facilities that meet applicable minimum standards.

Section 4. Amends s. 381.0065, F.S., which regulates onsite sewage and disposal systems. This provision provides the authority for the DOH to promote adoption of new federal guidelines.

Amends s. 381.0065(3) (j), F.S., removing the prohibition of persons who serve on either the technical review and advisory panel or research review and advisory board of the Department of Health from being awarded research contracts funded by the surcharge in s. 381.0066, F.S .

Amends s. 381.0065(5) (c), F.S., allowing DOH employees entrance onto adjoining properties when conducting onsite sewage evaluations and final inspections to determine compliance with standards, in particular, setbacks to wells on the adjoining property.

Section 5. Amends s. 381.0101, F.S., to revise definitions and environmental health professional certification requirements. The bill increases a new employee's time to get initial certification from six months to one year, matching the state's probationary period. Also makes technical changes.

Section 6. Creates s. 381.104, F.S., to authorize all state agencies to establish employee wellness programs using existing resources. Provides that employees may participate in the program for 30 minutes per day, three days per week, which may be counted as work time at the discretion of the agency administration. Provides that DOH shall provide guidelines to state agency programs to assist in their development.

Section 7. Amends s. 384.25, F.S., to eliminate exemptions to HIV infection reporting and allows the reporting of newborns and infants up to 18 months of age who have been exposed to HIV. Allows the DOH to adopt rules requiring any physician or laboratory to report to the DOH children up to age 18 month of years who have been exposed to HIV.

Section 8. Amends s. 384.31, F.S., to change the perinatal testing requirements of pregnant women by making HIV testing a part of the mandated testing. Allows for a woman to refuse consent to testing.

Section 9. Creates s. 385.104, F.S., to establish the Health Promotion and Health Education Statewide Initiative. This initiative will specifically aim to prevent and reduce the impact of chronic disease and promote healthy lifestyles. The DOH may award funding for this program to county health departments based on availability of funds. The application shall include a description of proposed activities, the coordination with the local level and other agencies, how the activities will reflect state and national health objectives, a description of the collaborative process used by the county health department, and a description of how effectiveness will be evaluated.

Section 10. Creates s. 458.3215, F.S., to allow a process for retired medical practitioners to reactive their license for clinical research purposes; includes a reactivation fee.

Section 11. Technical amendment to s. 945.601, F.S., related to the Correctional Medical Authority.

Section 12. Creates s. 945.6038, F.S., to provide authority for the Correctional Medical Authority (CMA) to enter into an agreement or contract with DCF for the purpose of conducting an annual medical review of health care provided in their secure confinement and treatment facilities. The designated facility houses persons detained or committed as sexually violent predators under Chapter 394, Part V, Florida Statutes. The bill will allow the CMA to assist DCF with the review function within existing funding allocations. The proposed legislation would allow the Correctional Medical Authority (CMA) to contract with the DCF to conduct medical surveys and assist in quality improvement for the sexually violent predator facilities operated by DCF, and other state agencies. The CMA would not be allowed to enter into such contracts if the additional functions impair its ability to monitor health care in the Department of Corrections.

Section 13. Provides an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The fees collected from permitting group care facilities will be used to cover the costs of administering the program. Group care permit revenues (estimate 3% annual growth) would generate \$6,064,244 in Year 1 and \$6,246,171 in Year 2. On March 11, 2003, the Committee on Health Care adopted an amendment the exempted foster homes and homes with three or fewer beds for persons with developmental disabilities from the permitting requirement. The bill as

amended will produce less revenue because of the exemption. The Department of Health estimates that the exemptions will reduce the department's initial economic impact assessment by \$525,000 annually. Based on this estimate, the revenue generated by the permitting fee will drop to \$5,539,244 in Year 1 and \$5,721,171 in Year 2.

2. Expenditures:

There would be a small fiscal impact on the DOH for writing rules to implement s. 381.0012(6) and (7). This would include the cost of drafting, advertising, holding workshops and public hearings on the rule, and printing and distributing copies of the rule during the drafting process. The total costs are estimated to be approximately \$2,978.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The fees collected from permitting group care facilities will be used to cover the costs of administering the program and will have a direct affect on these facilities. Group care permit revenues are estimated to produce \$6,064,244 in Year 1 and \$6,246,171 in Year 2, from fees collected from these entities.

On March 11, 2003, the Committee on Health Care adopted an amendment the exempts foster homes and homes with three or fewer beds for persons with developmental disabilities from the permitting requirement. The bill will produce less revenue because of the exemption. The Department of Health estimates that the exemptions will reduce the department's initial economic impact \$525,000 annually. Based on this estimate, the cost to the private sector for the permitting fee will drop to \$5,539,244 in Year 1 and \$5,721,171 in Year 2.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill expands rulemaking authority for the Department of Health in several public health areas.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 11, 2004, the Committee on Health Care adopted an amendment by the sponsor and reported the bill favorably with a committee substitute. The amendment includes the following:

Amendment #1 – Provides exemptions from the permitting and fee requirement established by the bill for those group homes that are foster homes or have fewer than three beds.