

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 913 w/CS Public Health Care

SPONSOR(S): Homan; Zapata

TIED BILLS: none

IDEN./SIM. BILLS: CS/SB 2216 (s)

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

SUMMARY ANALYSIS

This bill with CS, regarding the Department of Health, includes the following significant changes:

- Authorizes the Department of Health to issue citations for minor violations of health laws.
- Allows the results of a positive preliminary HIV rapid test to be released to the infected individual.
- Adopts the U.S. Environmental Protection Agency voluntary national guidelines for wastewater systems.
- Establishes a licensing and permitting program for health inspections of group care facilities, which program is funded by new licensing fees.
- Authorizes state agencies to establish employee health and wellness programs.
- Requires healthcare workers to report HIV exposed infants to the Department of Health.
- Requires the routine HIV testing of all pregnant women.
- Establishes a Health Promotion and Health Education Statewide Initiative.

There are constitutional, technical, and other concerns regarding this bill. See "Comments" herein.

This bill does not appear to have a fiscal impact on local governments. The new regulatory fees for group homes will generate revenue of approximately \$5,500,000 annually commencing in FY 2004-2005. The Department of Health estimates only minimal expenses related to this bill, although there are concerns regarding this estimate. See Fiscal Comments.

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

STORAGE NAME: h0913b.sa.doc

DATE: April 13, 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 checked="" type="checkbox"/> | N/A <input 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 checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |

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

Section 3 of this bill with CS expands the regulatory role of the Department of Health in several areas of public health, and creates fees for services that are currently performed without charge.

Sections 2, 6, 7 and 8 of this bill with CS expand the department’s ability to conduct and report HIV testing findings, which may conflict with an individual’s privacy and family rights.

B. EFFECT OF PROPOSED CHANGES:

Background

The Mission of the Department of Health is to “promote and protect the health and safety of all people in Florida through the delivery of quality public health services and the promotion of health care standards.”¹ The Department has numerous health promotion programs, and is involved in licensing of numerous health-related issues.

Effect of Bill

Citation Authority

A citation is method of enforcing laws by providing for administrative fines. Such fines are relatively small, are based on a standardized fine schedule, and are assessed by employees who issue a citation to the offender. Due process requires that offenders be given an opportunity to challenge a citation. Currently, the Department of Health (DOH) has citation authority for regulatory offenses regarding migrant labor camps, mobile home parks, sanitary facilities, onsite sewage facilities, and body piercing programs.

This bill with CS expands DOH citation authority to all regulated activities of the DOH, including 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.² Fines may not exceed \$500. Fines collected are paid into the County Health Department Trust Fund. A citation may also require attendance at an educational seminar related to the violation.

¹ From http://www.doh.state.fl.us/planning_eval/about/mission.html

² Sanitary nuisances are defined generally at s. 386.01, F.S., as any act that threatens the life of health of others. Included within that definition are the nuisances listed at s. 386.041, F.S., to include untreated or improperly treated waste or garbage, improper septic tanks, keeping of diseased animals, unclean or filthy slaughterhouses, or the keeping of a place where flies or mosquitoes feed and breed.

HIV Testing - In General

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.

This bill with CS removes the prohibition on release of preliminary tests, and provides for release of a positive rapid test. This bill with CS requires every person who makes a diagnosis of HIV or AIDS to report the diagnosis to DOH, and requires that every physician and medical laboratory report the name of any infant up to 18 months of age who has been exposed to HIV.

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.

This bill with CS creates a permitting and licensing system that includes licensing fees for the inspection program. For nonresidential facilities, the annual fee is \$3.50 per student, with a minimum of \$110 and a maximum of \$300 per facility. For residential facilities, the fee \$15.50 per bed, with a minimum of \$110 and a maximum of \$600 per facility, except that adult family care homes are assessed a flat fee of \$60. Foster homes and homes with three or fewer beds for persons with developmental disabilities are exempt from the fee requirement.

Onsite Sewage Systems

The DOH issues operating permits to advanced sewage treatment systems. The U.S. Environmental Protection Agency has adopted voluntary guidelines for the management of onsite sewage disposal systems, which recommend expanded regulation of private sewage treatment systems.

This bill expands the department's regulatory powers to include 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 onsite sewage treatment and disposal system surcharge provided in s. 381.0066, F.S. Section 381.0065(3)(j), F.S., currently prohibits this activity.³

Right of Entry

When conducting onsite sewage treatment and disposal evaluations and final inspections for onsite sewage treatment and disposal systems to determine compliance with standards, the DOH must determine whether the system is a sufficient distance from wells on neighboring properties.

This bill grants DOH inspectors the right to enter private lands for the purpose of conducting site evaluations and inspections relating to a permit issued to an onsite sewage treatment and disposal system.

Professional Certification

Department of Health (DOH) environmental health professionals working in primary areas of environmental health (onsite sewage and food safety) are required to be certified, as are employees of the Department of Agriculture and Consumer Services (DACs). DBPR food safety inspectors are not required to be certified. New DOH employees are required to become certified within their first six months of employment.

This bill exempts employees of DOH working in food safety from the certification requirement.

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

This bill with CS provides that state agencies may establish employee wellness programs using existing resources. An agency may allow its 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. DOH is directed to provide guidelines to state agency programs to assist in the development of such programs. An agency that implements a program is required to provide annual reports to DOH regarding the program.

HIV Testing - 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.

Current law requires health care professionals to suggest HIV testing to all pregnant women. This bill with CS requires all health care professionals to test their pregnant patients for HIV, unless the woman affirmatively refuses the testing.

³ 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.

Health Promotion and Health Education Statewide Initiative

This bill with CS requires DOH to implement a health promotion and health education statewide initiative, addressing diabetes, heart disease, and stroke, asthma, and cancer. The initiative is to focus on the preventable risk factors for these diseases of tobacco use, physical inactivity, and poor nutrition. DOH may award grants to local health departments for programs furthering the initiative.

Special Reactivation of Medical License for Medical Research Purposes

This bill with CS provides that a medical license that has been inactive for over 10 years due to retirement may be reactivated for the purpose of conducting clinical research. A \$300 fee is established.

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. This bill with CS authorizes 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 the secure confinement and treatment facilities.

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. Also, allows the DOH to adopt rules requiring any physician or laboratory to report to the DOH children up to age 18 months 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, a description of 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 not to exceed \$300.

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 of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department of Health estimates that fees collected from permitting group care facilities will generate \$5,539,244 in FY 2004-2005, and \$5,721,171 in FY 2005-2006.

2. Expenditures:

The Department of Health estimates that this bill would require a nonrecurring expenditure in FY 2004-2005 for rulemaking in the amount of \$2,978.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Group care facilities will pay \$5,539,244 in FY 2004-2005, and \$5,721,171 in FY 2005-2006, in licensing and inspection fees.

D. FISCAL COMMENTS:

Other provisions of this bill appear to have a fiscal impact on DOH, but no fiscal estimate was provided by DOH. For instance, HIV testing of all pregnant women in the state is likely to require a significant recurring fiscal expenditure to state government and to the private sector. The establishment of a statewide wellness initiative appears to require a significant recurring fiscal expenditure. State agencies that implement a wellness program may incur a significant expenditure.

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:

Article III, s. 6, Fla.Const., requires that "[e]very law shall embrace but one subject and matter properly connected therewith". It is unclear whether there is a sufficient nexus between the sections of this bill.

Lines 292-301 give DOH inspectors the right to enter into private real property. The Fourth Amendment to the United States Constitution generally prohibits the warrantless entry onto private lands by government employees. The purpose of the entry is simply to obtain a distance measurement from a fixed point (a wellhead), it is unclear why a non-invasive means of measuring (there are inexpensive laser pointer measurement devices) would not accomplish the agency's goal without entry onto the land of another.

B. RULE-MAKING AUTHORITY:

On lines 203-208, the bill provides that the department is to set fees by rule "in an amount necessary to cover the expenses of administering this section." This grant of rulemaking power is not limited and may not have the specificity required for a proper grant of rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1: The citation provision should perhaps require a notice to the individual that it is a crime not to sign an acceptance of the citation, and that simply signing to accept a citation is not an admission of guilt.

Section 4: This bill with CS eliminates the restriction on awarding research project grants regarding onsite sewage and treatment disposal systems to firms or entities that employ or are associated with the technical advisory panel or the research review and advisory committee. This may allow for a conflict of interest whereby a committee member could vote to award himself or herself a research grant.

Section 6: It is unclear why the provision for employee wellness programs is not placed into ch. 110, F.S., which chapter houses laws applicable to state employees in general.

Section 8: This bill with CS requires a pregnant woman who refuses an HIV test to sign a refusal form. It is unclear what happens if the woman likewise refuses to sign the form.

Section 13: This bill makes significant changes to existing law on HIV testing, yet the effective date of the bill is "upon becoming law." These provisions should perhaps be given an effective date in the future in order that health care professionals, and DOH, can plan for implementation.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 11, 2004, the Committee on Health Care adopted one amendment that exempts group homes that are foster homes or have fewer than three beds from the permitting and licensing fees. The bill was then reported favorably with a committee substitute.