

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	6 Y, 0 N w/CS	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.
- 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 and other concerns regarding this bill. See "Comments" herein.

This bill does not appear to have a fiscal impact on local governments. 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: h0913c.sa.doc

DATE: April 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 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:

This bill expands government regulation by the Department of Health, and expands government programs. Sections 3, 6 and 7 of this bill with CS expand the department’s ability to conduct and report HIV testing, 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. It is a misdemeanor to refuse to sign an acceptance of a citation. The citation form must contain a notice that signing the citation is not an admission of guilt, and that refusing to sign is a misdemeanor.

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.

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.

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.

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. The pregnant woman must sign a form refusing the HIV testing; if the woman refuses to sign the form, a healthcare professional must note the refusal on the form.

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 creates s. 110.175, F.S., to authorize all state agencies to establish employee wellness programs using existing resources.

Section 2 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.

Section 3 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 4 amends s. 381.0065, F.S., to require the DOH to adopt new regulations regarding onsite sewage and disposal systems, to remove 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, and to allow DOH employees to enter adjoining properties when conducting onsite sewage evaluations and final inspections.

Section 5 amends s. 381.0101, F.S., to revise definitions and environmental health professional certification requirements.

Section 6 amends s. 384.25, F.S., to eliminate exemptions to HIV infection reporting and require the reporting of newborns and infants up to 18 months of age who have been exposed to HIV.

Section 7 amends s. 384.31, F.S., to add HIV to the tests required of pregnant women, and to provide procedures for pregnant women to refuse testing.

Section 8 creates s. 385.104, F.S., to create the Health Promotion and Health Education Statewide Initiative.

Section 9 creates s. 458.3215, F.S., to allow a process for retired medical practitioners to reactive their license for clinical research purposes.

Section 10 amends s. 945.601, F.S., to correct cross-references related to Section 11.

Section 11 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.

Section 12 provides an effective date of upon becoming law, except for sections of the bill with CS that have another date (the sections regarding HIV testing have an effective date of July 1, 2004).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. See fiscal comments.

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. There appear to be other expenditures required by this bill, see fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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.

It is unclear what the fiscal effect of the citation authority will be. On one hand, citations can raise money, although the fines allowed are relatively small and the agency may waive the fines in favor of education and a promise of future compliance. On the other hand, citations take the place of relatively more expensive formal administrative action.

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 277-286 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:

The grants of rulemaking authority in this bill with CS appear to be limited and appear to have the specificity required for a proper grant of rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 4 (lines 255-276): 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.

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.

On April 14, 2004, the Committee on State Administration adopted 5 amendments to this bill:

Amendment 1 adds a brief notice required to be printed on citation forms.

Amendment 2 removes the section of the bill that would have required licensing fees for group homes.

Amendment 3 renumbers the section on employee wellness programs for state agencies to move the section out of a chapter on the Department of Health and into ch. 110, F.S., which chapter governs state employees.

The bill requires healthcare workers to ask a pregnant woman to consent to an HIV test, and requires her to sign a form if she refuses the test. Amendment 4 provides a procedure for when a pregnant woman who has refused an HIV test also refuses to sign the waiver form.

Amendment 5 changes the effective date regarding the provisions on HIV testing, in order to give the regulatory agency time to implement the changes.

The bill was then reported favorably with a committee substitute.