Health Quality Subcommittee

Tuesday, March 12, 2013
9:00 AM - 11:00 AM
306 HOB

Will Weatherford
Speaker

Kenneth L. "Ken" Roberson
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Health Quality Subcommittee

Start Date and Time:	Tuesday, March 12, 2013 09:00 am
End Date and Time:	Tuesday, March 12, 2013 11:00 am
Location:	306 HOB
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 241 Community Health Workers by Reed
HB 349 Treatment Programs for Impaired Professionals by Renuart
CS/HB 375 Onsite Sewage Treatment and Disposal Systems by Agriculture & Natural Resources Subcommittee, Roberson, K.
HB 625 Physician Assistants by Renuart
HB 671 Pharmacy Technicians by Hutson
HB 7005 Massage Establishments by Criminal Justice Subcommittee, Kerner

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members is 6:00 p.m., Monday, March 11, 2013.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, March 11, 2013.

NOTICE FINALIZED on 03/08/2013 16:11 by Iseminger.Bobbye

HB 241

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 241 Community Health Workers
SPONSOR(S): Reed
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		Rockowitz	O'Callaghan
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Community health workers (CHWs) assume a wide range of roles in various settings to assist individuals with health care services, generally by performing patient advocacy, education, and direct care in isolated, underserved, and low socioeconomic neighborhoods. CHWs work as paid or unpaid volunteers within the community in which they live or have strong ties.

House Bill 241 defines the activities CHWs perform in communities and requires the Department of Health (DOH) to create the Community Health Worker Task Force (Task Force). The bill provides for and outlines the requirements of the Task Force. The bill requires the Task Force to develop recommendations for inclusion of CHWs in health care or Medicaid reform, inclusion of CHWs in assisting residents with navigation and with provision of information on preventative health care, and inclusion of CHWs into health care delivery teams. The Task Force will coordinate with The Florida Community Health Worker Coalition, colleges, universities, and other organizations to determine a procedure for standardization of qualifications and skills for CHWs employed by state-supported health care programs.

The bill has an indeterminate, insignificant, negative fiscal impact on the DOH.

The bill shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Community Health Workers (CHWs) serve in local health care systems for pay or as volunteers to help alleviate health care disparities in communities. CHWs deliver health care services with cultural competency, in part through intimate knowledge of the neighborhoods they serve. A report prepared for the U.S. Department of Health and Human Services examined 53 studies between 1980 and 2008 and found evidence that CHWs improve health outcomes.[1] A workgroup under the Center for Disease Control (CDC) reviewed literature on CHWs, and reported the profession is uniquely qualified to strengthen community ties, build partnerships, and foster community action in health care. Research supports that CHWs augment health care utilization, access, and education.[2]

CHWs are recognized under a variety of names, including lay health educators, peer health promoters, community health outreach workers, and in Spanish, promotores de salud.[3] In 2010, CHWs received a Standard Occupational Classification.[4] Texas, Massachusetts, Ohio, and Minnesota have recently officially recognized the job category of CHW.[5] Recently California, New Mexico, Oregon, and Pennsylvania have filed or passed legislation to certify or recognize CHWs.[6] Due to mounting visibility, more organizations including the Institute of Medicine are calling for CHW integration into health care strategies.[7]

CHWs perform a variety of services that include but are not limited to:

- Culturally competent education regarding prevention and disease management;
- Advocating for individuals and health care needs;
- Informal counseling and social support;
- Translation and interpretation of health care encounters;
- Help with health care literacy and accuracy;
- Providing direct services, such as health care screenings;
- Contributing to coordination of care;
- Strengthening of individual and community capacity;[8]
- Providing coaching, follow ups, referrals; and
- Patient navigation, particularly for chronic conditions.[9]

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[1] RTI International-University of North Carolina Evidence-Based Practice Center, Evidence Report/Technology Assessment Number 181, *Outcomes of Community Health Worker Interventions*, June 2009, *available at* www.ahrq.gov/downloads/pub/evidence/pdf/comhealthwork/comhwork.pdf (last viewed on March 8, 2013).
[2] National Center for Chronic Disease Prevention and Health Promotion, Division of Diabetes Translation, *Community Health Workers/Promotores de Salud: Critical Connections in Communities*, May 20, 2011, *available at* http://www.cdc.gov/diabetes/projects/comm.htm (last viewed on March 8, 2013).
[3] *Id.*
[4] Bureau of Labor Statistics, *Standard Occupational Classification 21-1094 Community Health Workers*, March 11, 2010, *available at* http://www.bls.gov/soc/2010/soc211094.htm (last viewed on March 8, 2013).
[5] Balcazar H., Rosenthal L., Brownstein N., Rush C., Matos S., Lorenza H., American Journal of Public Health, *Community Health Workers Can be a Public Health Force for Change in The United States: Three Actions for a New Paradigm*, December 2011, *available at* http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3222447/#R19 (last viewed on March 8, 2013).
[6] University of Florida College of Pharmacy, Florida Community Health Worker Coalition, *Materials: Brochure*, *available at* http://www.floridachwn.cop.ufl.edu/ (last viewed on March 8, 2013).
[7] See *supra*, FN 5.
[8] American Public Health Association, *Policy Database, Support for Community Health Workers to Increase Access and Reduce Health Inequities,* 2009, *available at* http://www.apha.org/advocacy/policy/policysearch/default.htm?id=1393 (last viewed on March 8, 2013).
[9] See *supra*, FN 5.

Present Situation

In 2007, it was reported that Florida has 2,640 paid and 1,556 volunteer CHWs for a total of 4,205 CHWs, the fourth highest number in the country.[10] In October 2010, the DOH received the Policy, Environmental and System Change grant from the CDC to assist cancer coalitions.[11] The Florida Cancer Control and Research Advisory Council (CCRAB)[12] called for utilization of CHWs as a priority strategy to facilitate treatment and access to services for minorities.[13] The CDC funds and CCRAB permitted the DOH to develop the Florida Community Health Worker Taskforce initiative in 2010 that evolved into the Florida Community Health Worker Coalition.[14] The all-volunteer group promotes the profession of CHWs. The coalition is composed of five committees: Policy, Curriculum Development, Networking/Sustainability, Research, and Practice.[15]

Effect of Proposed Changes

The bill states that a "community health worker" (CHW) is a front line health care worker who is a trusted member of a community or has close insight into that community, and functions to enhance quality of health care by fostering a bridge between individuals and services in a culturally competent manner. The bill states that a CHW works in "medically underserved community" or a geographic area with a shortage of health care professionals, and a population with income below 185 percent of the federal poverty level who lack health insurance and ability to pay for it.

The bill directs the Department of Health (DOH) to establish the Community Health Worker Task Force (Task Force) within a state college or university and at the request of an elected chair, use available resources to provide administrative support and services. The DOH will collaborate with organizations such as the Florida Community Health Worker Coalition and state colleges and universities to create a process for standardization of qualifications and skills of CHWs who work in state-supported health care programs.

The bill delineates activities CHWs perform in communities to assist local residents with clinical services, education, outreach, advocacy, and data collection in a culturally competent manner. CHWs provide residents information on local resources, give social support and informal counseling, educate and deliver information on wellness and disease prevention, and help administer first aid and blood pressure screenings. CHWs advocate for oral health, mental health, and nutritional needs. CHWs facilitate communication with health care providers by fostering communication skills in residents, and ensuring appropriate coordination of care.

The bill requires the Task Force to determine mechanisms for integrating CHWs into the health care system. Recommendations will include involving CHWs in the effort to increase enrollment into Medicaid Managed Care or other statewide health care programs, deliver information on preventative health care, aid in health care navigation, and participate in health care delivery teams of community health centers and other "safety net" providers.

The bill states that the 12 Task Force members must elect a vice chair and chair, serve without compensation, meet at least quarterly, consist of a quorum of seven, and have a concurring vote by the majority of members to take action. Members will submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives by June 30, 2014.

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[10] U.S. Department of Health and Human Services, Health Resources Services Administration, Bureau of Health Professionals, *Community Health Worker National Workforce Study: March 2007*, available at bhpr.hrsa.gov/healthworkforce/reports/chwstudy2007.pdf (last viewed on March 9, 2013).
[11] Department of Health Bill Analysis of HB 241, January 22, 2013, on file with committee staff.
[12] S. 1004.435, F.S.
[13] Florida Cancer Control and Research Advisory Council, Florida Cancer Plan Council: 2012-2013, *available at* http://ccrab.org/ (last viewed on March 8, 2013).
[14] See *supra*, FN 6. *Materials: CHW Year in Review Final.*
[15] See *supra*, FN 6. *Status Update.*

The Task Force is comprised of:

- A member of the Senate appointed by the President of the Senate;
- A member of the House of Representatives appointed by the Speaker of the House of Representatives;
- A state official appointed by the Governor;
- Six culturally and regionally diverse community health workers appointed by the Surgeon General; and
- Three representatives of the Florida Community Health Worker Coalition appointed by the chair of the Florida Community Health Worker Coalition.

B. SECTION DIRECTORY:

Section 1: Creates an unnumbered section of law entitled Community Health Worker Task Force.

Section 2: Provides an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill has an indeterminate, insignificant negative fiscal impact on the DOH associated with establishing, and providing administrative support and services, to the Task Force.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local governments.

2. Expenditures:

   The bill does not appear to have any impact on local government.

3. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   The bill does not appear to have any impact on the private sector.

4. FISCAL COMMENTS:

   None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The DOH has appropriate rule-making authority to implement this provision.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to community health workers; providing
3 definitions; specifying the duties and activities of
4 community health workers; creating the Community
5 Health Worker Task Force within a state college or
6 university; requiring the Department of Health to
7 provide administrative support and services; providing
8 membership and duties of the task force; requiring the
9 members of the task force to elect a chair and vice
10 chair; providing that task force members serve without
11 compensation and are not entitled to reimbursement for
12 per diem or travel expenses; requiring that the task
13 force meet at least quarterly; specifying the number
14 of members required for a quorum; requiring the task
15 force to submit a report to the Governor and
16 Legislature by a specified date; providing an
17 effective date.
18
19 WHEREAS, Florida faces a number of challenges in providing
20 access to health care services in both urban and rural areas
21 which impair the health and well-being of state residents, and
22 WHEREAS, Florida continues to experience critical shortages
23 of providers in primary health care, oral health care, and
24 behavioral health care, particularly in rural and inner-city
25 areas, and
26 WHEREAS, there is substantial evidence that comprehensive
27 coordination of care for individuals who have chronic diseases
28 and the provision of information regarding preventive care can

29 improve individual health, create a healthier population, reduce
30 the costs of health care, and increase appropriate access to
31 health care, and
32 WHEREAS, community health workers have demonstrated success
33 in increasing access to health care in underserved communities,
34 providing culturally appropriate education regarding disease
35 prevention and management, providing translating and
36 interpreting services for health care encounters, improving
37 health outcomes through the coordination of care, increasing
38 individual health care literacy and advocacy, and organizing to
39 improve the health care of medically underserved communities
40 while reducing costs in the state's health care system, and
41 WHEREAS, the Legislature recognizes that community health
42 workers are important members of the health care delivery system
43 in this state, and the Florida Health Worker Coalition has begun
44 to explore options that would allow community health workers to
45 earn a living wage and be part of an integrated health delivery
46 team, NOW, THEREFORE,
47
48 Be It Enacted by the Legislature of the State of Florida:
49
50 Section 1. Community Health Worker Task Force.—
51 (1) As used in this section, the term:
52 (a) "Community health worker" means a front-line health
53 care worker who is a trusted member of or has an unusually close
54 understanding of the community that he or she serves and who:
55 1. Serves as a liaison, link, or intermediary between
56 health care services, social services, and the community in

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

57 order to facilitate access to health care services and improve
58 the quality of health care services and the cultural competency
59 of health care providers.
60 2. Performs the following activities in a community
61 setting:
62 a. Provides information regarding available resources.
63 b. Provides social support and informal counseling.
64 c. Advocates for individuals and their health care needs.
65 d. Provides services such as first aid and blood pressure
66 screening.
67 3. Builds individual and community capacity by increasing
68 knowledge regarding wellness, disease prevention, and self-
69 sufficiency through a range of activities, such as community
70 outreach and education and advocacy.
71 4. Collects data to help identify the health care needs in
72 a medically underserved community by:
73 a. Enhancing the communication skills of residents in
74 order to assist them in effectively communicating with health
75 care providers.
76 b. Providing culturally and linguistically appropriate
77 health or nutrition education.
78 c. Advocating for better individual and community health,
79 including oral health, mental health, and nutritional needs.
80 d. Providing referral services, followup services, and
81 coordination of care.
82 (b) "Department" means the Department of Health.
83 (c) "Medically underserved community" means a geographic
84 area that has a shortage of health care professionals and has a

85 population that includes persons who do not have public or
86 private health insurance, are unable to pay for health care, and
87 have incomes at or below 185 percent of the federal poverty
88 level.
89 (d) "Task force" means the Community Health Worker Task
90 Force established by the department under this section.
91 (2)(a) The department shall establish the Community Health
92 Worker Task Force within a state college or university. The
93 department shall provide administrative support and services to
94 the task force to the extent requested by the chair of the task
95 force and within available resources of the department.
96 (b) The task force shall consist of the following 12
97 members:
98 1. One member of the Senate appointed by the President of
99 the Senate.
100 2. One member of the House of Representatives appointed by
101 the Speaker of the House of Representatives.
102 3. One state official appointed by the Governor.
103 4. Six culturally and regionally diverse community health
104 workers appointed by the State Surgeon General.
105 5. Three representatives of the Florida Community Health
106 Worker Coalition appointed by the chair of the Florida Community
107 Health Worker Coalition.
108 (c) The task force shall develop recommendations for:
109 1. Including community health workers in the development
110 of proposals for health care or Medicaid reform in this state as
111 part of the outreach efforts for enrolling residents of this
112 state in Medicaid managed care programs or other health care

113 delivery services.
114 2. Including community health workers in providing
115 assistance to residents in navigating the health care system and
116 providing information and guidance regarding preventive health
117 care.
118 3. Providing support to community health centers and other
119 "safety net" providers through the integration of community
120 health workers as part of health care delivery teams.
121 (d) The task force shall also collaborate with the Florida
122 Community Health Worker Coalition, colleges and universities in
123 the state, and other organizations and institutions to recommend
124 a process that leads to the standardization of qualifications
125 and skills of community health workers who are employed in
126 state-supported health care programs.
127 (e) The members of the task force shall elect a chair and
128 vice chair.
129 (f) Members of the task force shall serve without
130 compensation and are not entitled to reimbursement for per diem
131 and travel expenses.
132 (g) The task force shall meet at least quarterly and may
133 meet at other times upon the call of the chair or as determined
134 by a majority of members.
135 (h) A quorum shall consist of seven members, and the
136 concurring vote of a majority of the members present is required
137 for final action.
138 (i) The task force shall submit a report by June 30, 2014,
139 to the Governor, the President of the Senate, and the Speaker of
140 the House of Representatives stating the findings, conclusions,

141 and recommendations of the task force.

142 Section 2. This act shall take effect upon becoming a law.

HB 349

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 349 Treatment Programs for Impaired Professionals
SPONSOR(S): Renuart
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		Holt	O'Callaghan
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Currently, health care practitioners and nurses, who are impaired as a result of drug or alcohol abuse or because of mental or physical conditions which could affect their ability to practice with skill and safety, are eligible for services provided by the impaired practitioner treatment program (program). By entering and successfully completing the program, a practitioner may avoid formal disciplinary action. Currently, the Department of Health (DOH) contacts with the Professionals Resource Network (PRN) and the Impairment Project for Nurses (IPN) to provide program services to impaired health care practitioners and nurses.

The bill expands the eligibility criteria for the program by permitting radiologic technologists and students to utilize treatment services offered by PRN or IPN. Currently, the DOH contract with PRN and IPN provides covered services to all legislatively-added health care professions, including radiology technologists. Current law expressly prohibits DOH from being charged for any services provided to students.

The bill also specifies that an entity providing consultant services must employ either a medical director who is a physician or a nurse or nurse practitioner as an executive director. The bill specifies that the medical director or executive director does not have to possess a license as a substance abuse provider or a mental health provider if the entity hires appropriately trained staff to provide the treatment or evaluation of an impaired individual. Moreover, the bill specifies that the entity retained as a consultant is not required to be licensed as a substance abuse provider or mental health treatment provider under chapters 394, 395, 397, or F.S., as long as they employ licensed professionals to perform or supervise specific impairment treatment or evaluation.

The bill also provides that the program consultant is the official custodian of treatment records.

The bill has an insignificant, negative fiscal impact to the Medical Quality Assurance Trust Fund within the DOH and no fiscal impact to local governments.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Medical Quality Assurance

The Department of Health (DOH) is created under the authority of s. 20.43, F.S., which outlines the composition of the agency structure to include the Division of Medical Quality Assurance (MQA). MQA is statutorily responsible for the following boards and professions established within the division:

- The Board of Acupuncture, created under chapter 457.
- The Board of Medicine, created under chapter 458.
- The Board of Osteopathic Medicine, created under chapter 459.
- The Board of Chiropractic Medicine, created under chapter 460.
- The Board of Podiatric Medicine, created under chapter 461.
- Naturopathy, as provided under chapter 462.
- The Board of Optometry, created under chapter 463.
- The Board of Nursing, created under part I of chapter 464.
- Nursing assistants, as provided under part II of chapter 464.
- The Board of Pharmacy, created under chapter 465.
- The Board of Dentistry, created under chapter 466.
- Midwifery, as provided under chapter 467.
- The Board of Speech-Language Pathology and Audiology, created under part I of chapter 468.
- The Board of Nursing Home Administrators, created under part II of chapter 468.
- The Board of Occupational Therapy, created under part III of chapter 468.
- Respiratory therapy, as provided under part V of chapter 468.
- Dietetics and nutrition practice, as provided under part X of chapter 468.
- The Board of Athletic Training, created under part XIII of chapter 468.
- The Board of Orthotists and Prosthetists, created under part XIV of chapter 468.
- Electrolysis, as provided under chapter 478.
- The Board of Massage Therapy, created under chapter 480.
- The Board of Clinical Laboratory Personnel, created under part III of chapter 483.
- Medical physicists, as provided under part IV of chapter 483.
- The Board of Opticianry, created under part I of chapter 484.
- The Board of Hearing Aid Specialists, created under part II of chapter 484.
- The Board of Physical Therapy Practice, created under chapter 486.
- The Board of Psychology, created under chapter 490.
- School psychologists, as provided under chapter 490.
- The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under chapter 491.
- Emergency medical technicians and paramedics, as provided under part III of chapter 401.

DOH regulates most health care professions.[1] Each profession is governed by an individual practice act and by ch. 456, F.S., which is considered the core licensure statute for all health care practitioners within MQA.

Section 456.001(4), F.S., defines "health care practitioner" to mean any person licensed under: ch. 457, F.S., (acupuncture); ch. 458, F.S., (medicine); ch. 459, F.S., (osteopathic medicine); ch. 460, F.S., (chiropractic medicine); ch. 461, F.S., (podiatric medicine); ch. 462, F.S., (naturopathic medicine); ch.

[1] The Department of Business and Professional Regulation regulates veterinarians pursuant to ch. 474, F.S.

463, F.S., (optometry); ch. 464, F.S., (nursing); ch. 465, F.S., (pharmacy); ch. 466, F.S., (dentistry and dental hygiene); ch. 467, F.S., (midwifery); parts I, II, III, V, X, XIII, and XIV of ch. 468, F.S., (speech-language pathology and audiology, nursing home administration, occupational therapy, respiratory therapy, dietetics and nutrition practice, athletic trainers, and orthotics, prosthetics, and pedorthics); ch. 478, F.S., (electrology or electrolysis); ch. 480, F.S., (massage therapy); parts III and IV of ch. 483, F.S., (clinical laboratory personnel or medical physics); ch. 484, F.S., (opticianry and hearing aid specialists); ch. 486, F.S., (physical therapy); ch. 490, F.S., (psychology); and ch. 491, F.S. (psychotherapy).

The definition of health care practitioner does not include emergency medical technicians (EMTs), paramedics[2] or radiology technologists.[3] However, s. 456.001, F.S., defines the term "profession" to mean any activity, occupation, profession, or vocation regulated by the DOH within MQA, and EMTs and paramedics are listed as a "profession" regulated by MQA under s. 20.43, F.S. Therefore, EMTs and paramedics are a profession governed by ch. 456, F.S. On the other hand, radiology technologists are not listed as a profession within MQA pursuant to s. 20.43, F.S., and are not governed by ch. 456, F.S.

The Impaired Practitioner Treatment Program – Department of Health

The impaired practitioner treatment program (program) was created to help rehabilitate health care practitioners regulated by the MQA, within DOH.[4] Health care practitioners (practitioners), who are impaired as a result of drug or alcohol abuse or because of mental or physical conditions which could affect their ability to practice with skill and safety, are eligible for the program.[5] For professions that do not have programs established within their individual practice act, DOH is required by rule, to designate an approved program.

Section 456.076, F.S., authorizes DOH to contract with impaired practitioner consultants for services relating to intervention, evaluation, referral, and monitoring of impaired practitioners who have voluntarily agreed to treatment through a program.[6] The cost of the actual treatment is the responsibility of the impaired person. Currently, there are two vendors under contract with DOH to support the program: the Intervention Project for Nurses (IPN)[7] and the Professionals Resource Network (PRN).[8] The PRN provides services to all eligible professions except nurses. The PRN program is affiliated with the Florida Medical Association.

By entering and successfully completing the program, a practitioner may avoid formal disciplinary action, if the only violation of the licensing statute under which the practitioner is regulated is the impairment.[9] If the practitioner is unable to complete the program, DOH has authority to issue an emergency order suspending or restricting the license of the practitioner.[10]

Currently, DOH licenses over 40 health care professions[11] and has a contract with PRN to provide services to the following professions:[12]

[2] EMT and paramedics are governed by part III of ch. 401, F.S.
[3] Radiation technologists are governed by part IV of ch. 468, F.S.
[4] Section 456.076, (1), F.S.
[5] Section 456.076 (3)(a)
[6] Rules 64B31-10.10.001 and 64B31-10.002, F.A.C.
[7] Department of Health, Bill Analysis, Economic Statement and Fiscal Note on HB 349, dated January 22, 2013.
[8] *Id.*
[9] Section 456.076(3)(a), F.S.
[10] Section 456.074, F.S.
[11] Department of Health, Medical Quality Assurance, Annual Report, July 2010-June 2011, *available at*: http://www.doh.state.fl.us/Mqa/reports.htm (last visited March 10, 2013).
[12] Department of Health Contract with PRN, signed July 01, 2010, on file with Health & Human Services Quality Subcommittee staff.

Medical Doctors	Chiropractic Physicians
Physician Assistants	Clinical Social Workers
Osteopathic Physicians	Marriage and Family Therapists
Pharmacists	Mental Health Counselors
Podiatric Physicians	Optometrists
Psychologists	Nursing Home Administrators
Dentists	Medical Physicists
Opticians	Dieticians
Occupational Therapists	Nutritionists
Physical Therapists	Respiratory Therapists
Electrologists	Midwives
Acupuncturists	Speech Language Pathologists
Audiologists	Clinical Laboratory Personnel
Massage Therapists	Athletic Trainers
Orthotists	Orthotists
Prosthetists	Hearing Aid Specialists
Radiologic Technologists	Pharmacy Technicians
Anesthesia Assistants	

Section 456.076(2), F.S., specifically states that DOH is not responsible under any circumstances for paying the costs of care provided by approved treatment providers, and DOH is not responsible for paying the costs of consultants' services provided for students. Moreover, a school that is governed by accreditation standards requiring notice and the provision of due process procedures to students, is not liable in any civil action for referring a student to the consultant or for any disciplinary action that adversely affects the status of a student when the disciplinary actions are instituted in reasonable reliance on the recommendations, reports, or conclusions provide by a consultant.

The DOH contract with PRN states that the vendor agrees to include all legislatively added professions to the list of practitioners served and recognizes any contract entered into by the vendor with a school for enrolled students in a health practitioner profession is within the scope of the vendor's duties under the contract with DOH.[13]

<u>Operation of the Program</u>

Referrals to the program must be based upon at least one of the following criteria:[14]

- An identified informant has observed specific behavior of a licensee or has knowledge of other evidence suggesting impairment of the licensee.
- The informant identifies a witness who knows the licensee and has observed the licensee's behavior and that witness corroborates the information provided.
- Admission of impairment by the licensee, which corroborates the information provided.

Once in the program, the licensee is monitored by an impairment consultant. The consultant is required to monitor the practitioner's participation and ensure compliance.[15] Consultants do not provide medical treatment, nor do they have the authority to render decisions relating to licensure of a particular practitioner. However, the consultant is required to make recommendations to DOH regarding a practitioner patient's ability to practice.[16]

[13] Department of Health Contract with PRN, signed July 01, 2010, on file with Health & Human Services Quality Subcommittee staff.
[14] 64B31-10.002, F.A.C.
[15] *Id.*
[16] Section 456.076(5)(a), F.S.

In Fiscal Year 2012-2013, there were approximately 1,088 practitioners enrolled in the PRN program.[17] In the month of January, IPN had 1,648 individuals licensed under ch. 464, F.S., the Practice of Nursing, enrolled in the program.[18]

Currently, DOH has a 3-year contract with PRN to provide consultant services for impaired practitioners for $5,415,615.00 for the contract term of July 1, 2010 to June 20, 2013. The current contract with IPN to provide consultant services to impaired nurses is for $4,670,097.00 for the contract term of July 1, 2012 to June 30, 2015. The funds to support these contracts come from the Medical Quality Assurance Trust Fund which is supported by the collection of regulatory fees.

Veterinary Medicine – Department of Business and Professional Regulation

Currently, the Board of Veterinary Medicine and the Board of Pilot Commissioners, within the Department of Business and Professional Regulation (DBPR), provide impaired practitioner treatment programs for licensees.

Section 474.221, F.S., provides that licensed veterinarians shall be governed by the treatment of impaired practitioner provisions as if they were under the jurisdiction of the MQA at DOH.

Currently, DBPR has a contract with PRN to provide consultant services for impaired veterinarians. In 2012, the DBPR contract with PRN was $48,132 annually. In Fiscal Year 2011-2012, an average of 25 licensees participated in the program.[19] The contract is in the process of being amended to reflect an annual payment of $42,121.20.[20]

Records

A DOH rule requires that consultants utilized for these programs serve as the official records custodians of the licensees they monitor.[21] An approved treatment provider must provide information regarding the impairment of a licensee and the licensee's participation in a program to a consultant on request. The information obtained by the consultant is confidential and exempt from public records requirements.[22] If a treatment provider fails to provide such information to the consultant, the treatment provider may no longer provide services under the program.[23] Recently, there was litigation in the Sixth Circuit, in which a medical doctor sued PRN for the production of the investigative file relating to the practitioner's participation in a treatment program.[24] The court held that because there was not a disciplinary proceeding by the board against the practitioner, the release of information was prohibited and the claim was dismissed with prejudice in October, 2010.[25]

Effect of Proposed Changes

The bill statutorily authorizes radiological personnel to utilize the services provided by a program under the jurisdiction of MQA. According to DOH, any person who holds a license issued by DOH is allowed to receive impairment services provided by a consultant under the current contract terms with PRN and IPN. Authorizing radiological personnel regulated under part IV of ch. 468, F.S., to participate in the program will have no effect on MQA.

The bill expands the entities that a consultant may contract with to include programs for students enrolled in a school for licensure as a health care practitioner regulated under ch. 456, F.S., or a veterinarian under ch. 474, F.S. Current law states that DOH is not responsible under any

[17] Email correspondence with MQA staff dated March 1, 2013, on file with the Health Quality Subcommittee staff.
[18] *Id.*
[19] Email correspondence with DBPR staff dated February 18, 2013, on file with the Health Quality Subcommittee staff.
[20] *Id.*
[21] Rule 64B31-10.10.004, F.A.C.
[22] Section 456.076(5)(a), F.S.
[23] *Id.*
[24] *Doe, M.D., v. Rivenbark*, case no. 10-6495-CI-21 (Fla. 6th Cir. Ct.) (2010).
[25] *Id.*

circumstances for paying the costs of care provided by approved treatment providers or consultants' services provided to students.

The bill specifies that an entity providing consultant services must employ either a medical director who is a physician or a nurse or nurse practitioner as the executive director. In addition, the bill specifies that the medical director or executive director does not have to possess a license as a substance abuse provider or a mental health provider if the entity hires appropriately trained staff to provide the treatment or evaluation of an impaired individual. Furthermore, the bill specifies that the entity retained as a consultant is not required to be licensed be as a substance abuse provider or mental health treatment provider under chapters 394, 395, or 397, F.S., as long as they employ licensed professionals to perform or supervise specific impairment treatment or evaluation.

The bill clarifies that impaired practitioner consultants shall serve as record custodians for any licensee they monitor, and any records they maintain shall not be shared with the impaired licensee or a designee unless a disciplinary proceeding is pending.

The bill requires DOH to forward all information in its possession regarding a legally sufficient complaint of impairment of an applicant for licensure to the consultant.

B. SECTION DIRECTORY:

Section 1. Amends s. 456.076, F.S., relating to treatment programs for impaired practitioners.
Section 2. Creates s. 468.315, F.S., relating to treatment program for impaired radiological personnel.
Section 3. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Approved treatment providers may experience an increase in demand for services with the additional eligibility groups who may receive services offered by a program. Based on impairment contracts for licensed practitioners, an impaired person may be required to enter into a contract with a program for up to 5-years.

While in an impairment program a participant is required to pay for all treatment services such as initial evaluations, urinalysis testing and ongoing psychotherapy. Initial evaluations can range from $300-$500 and up to $1000 if chronic pain evaluation is required. The average cost is $42 per urinalysis, the number per month varies depending upon the recovery process. The cost of four group therapy

meetings per month can range from $50-$150 per month. If the impairment is found to be physical, then the cost may be nominal. All participants are required to have a primary care physician, but no visits are required. The PRN program offers a loan forgiveness option to eligible participants.

All treatment services are paid directly to the provider or third party administrator and not through the PRN program.

D. FISCAL COMMENTS:

The costs of the impaired practitioner program are twofold: the cost incurred by the impaired practitioner (person receiving treatment services); and the cost incurred by DOH to implement the program (monitoring and enforcement). The bill increases the number of persons eligible to seek treatment offered by the program. The bill also adds radiologic technologist as an eligible group; however, they are currently included in the current contract with PRN. For this reason, it is expected that there will be no fiscal impact to DOH. However, the contract with PRN expires June 30, 2013, and the contract may be renegotiated at a higher rate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is necessary to implement the provision of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 27 of the bill, the catchline of the section should include students.

There does not appear to be any statutory provision that prohibits an impaired practitioner consultant from directly contracting with a school to perform treatment services. It is unclear what the effect is of the bill expressly stating in statute that consultants may contract with a school to provide treatment services to enrolled students.

The bill requires DOH to forward all information in its possession regarding an impaired applicant to the consultant if a legally sufficient complaint of impairment is received by DOH. It is unclear what would constitute a "legally sufficient complaint" as it pertains to an applicant rather than a licensee, who is subject to disciplinary action.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to treatment programs for impaired
3 professionals; amending s. 456.076, F.S.; exempting an
4 entity retained by the Department of Health as an
5 impaired practitioner consultant from certain
6 licensing requirements if the entity employs or
7 contracts with licensed professionals; authorizing the
8 department to refer an applicant for licensure to the
9 consultant; clarifying requirements for an impaired
10 practitioner consultant to maintain certain
11 information as confidential; authorizing the
12 department and certain other entities to have
13 administrative control over the impaired practitioner
14 consultant to the extent necessary to receive
15 disclosures; creating s. 468.315, F.S.; providing that
16 radiological personnel required to be certified under
17 pt. IV of ch. 468, F.S., may be subject to a treatment
18 program for impaired practitioners at the election of
19 an impaired practitioner consultant; providing an
20 effective date.
21
22 Be It Enacted by the Legislature of the State of Florida:
23
24 Section 1. Subsection (2) and paragraph (d) of subsection
25 (3) of section 456.076, Florida Statutes, are amended, and
26 subsection (8) is added to that section, to read:
27 456.076 Treatment programs for impaired practitioners.—
28 (2)(a) The department shall retain one or more impaired

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

29 practitioner consultants who are each licensees~~. The consultant~~
30 ~~shall be a licensee~~ under the jurisdiction of the Division of
31 Medical Quality Assurance within the department and who must be:
32 1. A practitioner or recovered practitioner licensed under
33 chapter 458, chapter 459, or part I of chapter 464;~~,~~ or
34 2. An entity employing a medical director, or employing a
35 registered nurse as an executive director, each of whom ~~who~~ must
36 be a practitioner or recovered practitioner licensed under
37 chapter 458, chapter 459, or part I of chapter 464.
38 (b) An entity that is retained as a consultant under this
39 section and employs a medical director or a registered nurse as
40 an executive director is not required to be licensed as a
41 substance abuse provider or mental health treatment provider
42 under chapter 394, chapter 395, or chapter 397 in order to
43 operate as a consultant under this section if the entity employs
44 or contracts with licensed professionals to perform or
45 appropriately supervise any specific treatment or evaluation
46 that requires individual licensing or supervision.
47 (c) The consultant shall assist the probable cause panel
48 and department in carrying out the responsibilities of this
49 section. This includes ~~shall include~~ working with department
50 investigators to determine whether a practitioner is, in fact,
51 impaired. The consultant may contract for services to be
52 provided, for appropriate compensation, if requested by a ~~the~~
53 school or program, for students enrolled in a school ~~schools~~ for
54 licensure as a health care practitioner under chapter 456 or a
55 veterinarian under chapter 474 ~~allopathic physicians or~~
56 ~~physician assistants under chapter 458, osteopathic physicians~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

57 ~~or physician assistants under chapter 459, nurses under chapter~~
58 ~~464, or pharmacists under chapter 465~~ who are alleged to be
59 impaired as a result of the misuse or abuse of alcohol or drugs,
60 or both, or due to a mental or physical condition.
61 (d) The department is not responsible under any
62 circumstances for paying the costs of care provided by approved
63 treatment providers, and the department is not responsible for
64 paying the costs of consultants' services provided for students.
65 (e) A medical school accredited by the Liaison Committee
66 on Medical Education of the Commission on Osteopathic College
67 Accreditation, or another ~~other~~ school providing for the
68 education of students enrolled in preparation for licensure as a
69 health care practitioner under chapter 456 or a veterinarian
70 under chapter 474 ~~allopathic physicians under chapter 458 or~~
71 ~~osteopathic physicians under chapter 459~~, which school is
72 governed by accreditation standards requiring notice and the
73 provision of due process procedures to students, is not liable
74 in any civil action for referring a student to the consultant
75 retained by the department or for disciplinary actions that
76 adversely affect the status of a student when the disciplinary
77 actions are instituted in reasonable reliance on the
78 recommendations, reports, or conclusions provided by such
79 consultant, if the school, in referring the student or taking
80 disciplinary action, adheres to the due process procedures
81 adopted by the applicable accreditation entities and if the
82 school committed no intentional fraud in carrying out the
83 provisions of this section.
84 (3)

85 (d) Whenever the department receives a legally sufficient
86 complaint alleging that a licensee or applicant is impaired as
87 described in paragraph (a) and no complaint against the licensee
88 or applicant other than impairment exists, the appropriate
89 board, the board's designee, or the department shall forward all
90 information in its possession regarding the impaired licensee or
91 applicant to the consultant. For the purposes of this section, a
92 suspension from hospital staff privileges due to the impairment
93 does not constitute a complaint.
94 (8) An impaired practitioner consultant is the official
95 custodian of records relating to the referral of any
96 practitioner to that consultant or any other interaction between
97 the practitioner and the consultant. The consultant may not,
98 except to the extent necessary for carrying out the consultant's
99 duties under this section, disclose to the impaired licensee or
100 his or her designee any information that is disclosed to or
101 obtained by the consultant and is confidential under paragraph
102 (5)(a). The department, and any other entity with which the
103 consultant contracts, shall have direct administrative control
104 over the consultant to the extent necessary to receive
105 disclosures from the consultant as allowed by federal law. If a
106 disciplinary proceeding is pending, an impaired licensee may
107 obtain such information from the department under s.
108 456.073(10).
109 Section 2. Section 468.315, Florida Statutes, is created
110 to read:
111 468.315 Treatment program for impaired radiological
112 personnel.—Radiological personnel subject to certification under

113 this part are governed by s. 456.076 as if the person were under
114 the jurisdiction of the Division of Medical Quality Assurance.
115 Section 3. This act shall take effect July 1, 2013.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED __ (Y/N)

ADOPTED AS AMENDED __ (Y/N)

ADOPTED W/O OBJECTION __ (Y/N)

FAILED TO ADOPT __ (Y/N)

WITHDRAWN __ (Y/N)

OTHER ______

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1 Committee/Subcommittee hearing bill: Health Quality
2 Subcommittee
3 Representative Renuart offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Section 456.076, Florida Statutes, is amended to
8 read:
9 456.076 Treatment programs for impaired ~~practitioners~~
10 health professionals and students.—
11 (1) For professions that do not have impaired practitioner
12 programs provided for in their practice acts, the department
13 shall, by rule, designate approved impaired practitioner
14 programs under this section. The department may adopt rules
15 setting forth appropriate criteria for approval of treatment
16 providers. The rules may specify the manner in which the
17 consultant, retained as set forth in subsection (2), works with
18 the department in intervention, requirements for evaluating and
19 treating a professional, requirements for continued care of
20 impaired professionals by approved treatment providers,

21 continued monitoring by the consultant of the care provided by
22 approved treatment providers regarding the professionals under
23 their care, and requirements related to the consultant's
24 expulsion of professionals from the program.
25 (2)(a) The department shall retain one or more impaired
26 practitioner consultants who are each licensees~~. The consultant~~
27 ~~shall be a licensee~~ under the jurisdiction of the Division of
28 Medical Quality Assurance within the department and who must be:
29 1. A practitioner or recovered practitioner licensed under
30 chapter 458, chapter 459, or part I of chapter 464;~~,~~ or
31 2. An entity that employs: ~~employing~~
32 a. A medical director who must be a practitioner or
33 recovered practitioner licensed under chapter 458 or~~,~~ chapter
34 459;~~,~~ or
35 b. An executive director who must be a registered nurse or
36 a recovered registered nurse licensed under part I of chapter
37 464.
38 (b) An entity retained as an impaired practitioner
39 consultant under this section which employs a medical director
40 or an executive director is not required to be licensed as a
41 substance abuse provider or mental health treatment provider
42 under chapter 394, chapter 395, or chapter 397.
43 (c)1. The consultant shall assist the probable cause panel
44 and the department in carrying out the responsibilities of this
45 section. This includes ~~shall include~~ working with department
46 investigators to determine whether a practitioner is, in fact,
47 impaired.
48 2. The consultant may contract with a school or program to
49 provide ~~for~~ services to a student ~~be provided, for appropriate~~
50 ~~compensation, if requested by the school, for students~~ enrolled

51 for the purpose of preparing ~~in schools~~ for licensure as a
52 health care practitioner under this chapter or as a veterinarian
53 under chapter 474 if the student is allegedly ~~allopathic~~
54 ~~physicians or physician assistants under chapter 458,~~
55 ~~osteopathic physicians or physician assistants under chapter~~
56 ~~459, nurses under chapter 464, or pharmacists under chapter 465~~
57 ~~who are alleged to be~~ impaired as a result of the misuse or
58 abuse of alcohol or drugs, or both, or due to a mental or
59 physical condition. The department is not responsible ~~under any~~
60 ~~circumstances~~ for paying for the ~~costs of~~ care provided by
61 approved treatment providers or a consultant~~, and the department~~
62 ~~is not responsible for paying the costs of consultants' services~~
63 ~~provided for students~~.
64 (d) A medical school accredited by the Liaison Committee on
65 Medical Education or ~~of~~ the Commission on Osteopathic College
66 Accreditation, or another ~~other~~ school providing for the
67 education of students enrolled in preparation for licensure as a
68 health care practitioner under this chapter or a veterinarian
69 under chapter 474 ~~allopathic physicians under chapter 458 or~~
70 ~~osteopathic physicians under chapter 459,~~ which is governed by
71 accreditation standards requiring notice and the provision of
72 due process procedures to students, is not liable in any civil
73 action for referring a student to the consultant retained by the
74 department or for disciplinary actions that adversely affect the
75 status of a student when the disciplinary actions are instituted
76 in reasonable reliance on the recommendations, reports, or
77 conclusions provided by such consultant, if the school, in
78 referring the student or taking disciplinary action, adheres to
79 the due process procedures adopted by the applicable
80 accreditation entities and if the school committed no

81 intentional fraud in carrying out the provisions of this
82 section.
83 (3)(a) Whenever the department receives a written or oral
84 legally sufficient complaint alleging that a licensee under the
85 jurisdiction of the Division of Medical Quality Assurance within
86 the department is impaired as a result of the misuse or abuse of
87 alcohol or drugs, or both, or due to a mental or physical
88 condition which could affect the licensee's ability to practice
89 with skill and safety, and no complaint against the licensee
90 other than impairment exists, the reporting of such information
91 shall not constitute grounds for discipline pursuant to s.
92 456.072 or the corresponding grounds for discipline within the
93 applicable practice act if the probable cause panel of the
94 appropriate board, or the department when there is no board,
95 finds:
96 1. The licensee has acknowledged the impairment problem.
97 2. The licensee has voluntarily enrolled in an appropriate,
98 approved treatment program.
99 3. The licensee has voluntarily withdrawn from practice or
100 limited the scope of practice as required by the consultant, in
101 each case, until such time as the panel, or the department when
102 there is no board, is satisfied the licensee has successfully
103 completed an approved treatment program.
104 4. The licensee has executed releases for medical records,
105 authorizing the release of all records of evaluations,
106 diagnoses, and treatment of the licensee, including records of
107 treatment for emotional or mental conditions, to the consultant.
108 The consultant shall make no copies or reports of records that
109 do not regard the issue of the licensee's impairment and his or
110 her participation in a treatment program.

111 (b) If, however, the department has not received a legally
112 sufficient complaint and the licensee agrees to withdraw from
113 practice until such time as the consultant determines the
114 licensee has satisfactorily completed an approved treatment
115 program or evaluation, the probable cause panel, or the
116 department when there is no board, shall not become involved in
117 the licensee's case.
118 (c) Inquiries related to impairment treatment programs
119 designed to provide information to the licensee and others and
120 which do not indicate that the licensee presents a danger to the
121 public shall not constitute a complaint within the meaning of s.
122 456.073 and shall be exempt from the provisions of this
123 subsection.
124 (d) Whenever the department receives a legally sufficient
125 complaint alleging that a licensee is impaired as described in
126 paragraph (a) and no complaint against the licensee other than
127 impairment exists, the department shall forward all information
128 in its possession regarding the impaired licensee to the
129 consultant. For the purposes of this section, a suspension from
130 hospital staff privileges due to the impairment does not
131 constitute a complaint.
132 (e) The probable cause panel, or the department when there
133 is no board, shall work directly with the consultant, and all
134 information concerning a practitioner obtained from the
135 consultant by the panel, or the department when there is no
136 board, shall remain confidential and exempt from the provisions
137 of s. 119.07(1), subject to the provisions of subsections ~~(5)~~
138 ~~and~~ (6) and (7).
139 (f) A finding of probable cause shall not be made as long
140 as the panel, or the department when there is no board, is

141 satisfied, based upon information it receives from the
142 consultant and the department, that the licensee is progressing
143 satisfactorily in an approved impaired practitioner program and
144 no other complaint against the licensee exists.
145 (4) In any disciplinary action for a violation other than
146 impairment in which a licensee establishes the violation for
147 which the licensee is being prosecuted was due to or connected
148 with impairment and further establishes the licensee is
149 satisfactorily progressing through or has successfully completed
150 an approved treatment program pursuant to this section, such
151 information may be considered by the board, or the department
152 when there is no board, as a mitigating factor in determining
153 the appropriate penalty. This subsection does not limit
154 mitigating factors the board may consider.
155 (5)(a) An approved treatment provider shall, upon request,
156 disclose to the consultant all information in its possession
157 regarding the issue of a licensee's impairment and participation
158 in the treatment program. All information obtained by the
159 consultant and department pursuant to this section is
160 confidential and exempt from the provisions of s. 119.07(1),
161 subject to the provisions of this subsection and subsection (6).
162 Failure to provide such information to the consultant is grounds
163 for withdrawal of approval of such program or provider.
164 (b) If in the opinion of the consultant, after consultation
165 with the treatment provider, an impaired licensee has not
166 progressed satisfactorily in a treatment program, all
167 information regarding the issue of a licensee's impairment and
168 participation in a treatment program in the consultant's
169 possession shall be disclosed to the department. Such disclosure
170 shall constitute a complaint pursuant to the general provisions

171 of s. 456.073. Whenever the consultant concludes that impairment
172 affects a licensee's practice and constitutes an immediate,
173 serious danger to the public health, safety, or welfare, that
174 conclusion shall be communicated to the State Surgeon General.
175 (6) A consultant, licensee, or approved treatment provider
176 who makes a disclosure pursuant to this section is not subject
177 to civil liability for such disclosure or its consequences. The
178 provisions of s. 766.101 apply to any officer, employee, or
179 agent of the department or the board and to any officer,
180 employee, or agent of any entity with which the department has
181 contracted pursuant to this section.
182 (7)(a) A consultant retained pursuant to subsection (2), a
183 consultant's officers and employees, and those acting at the
184 direction of the consultant for the limited purpose of an
185 emergency intervention on behalf of a licensee or student as
186 described in subsection (2) when the consultant is unable to
187 perform such intervention shall be considered agents of the
188 department for purposes of s. 768.28 while acting within the
189 scope of the consultant's duties under the contract with the
190 department if the contract complies with the requirements of
191 this section. The contract must require that:
192 1. The consultant indemnify the state for any liabilities
193 incurred up to the limits set out in chapter 768.
194 2. The consultant establish a quality assurance program to
195 monitor services delivered under the contract.
196 3. The consultant's quality assurance program, treatment,
197 and monitoring records be evaluated quarterly.
198 4. The consultant's quality assurance program be subject to
199 review and approval by the department.
200 5. The consultant operate under policies and procedures

201 approved by the department.
202 6. The consultant provide to the department for approval a
203 policy and procedure manual that comports with all statutes,
204 rules, and contract provisions approved by the department.
205 7. The department be entitled to review the records
206 relating to the consultant's performance under the contract for
207 the purpose of management audits, financial audits, or program
208 evaluation.
209 8. All performance measures and standards be subject to
210 verification and approval by the department.
211 9. The department be entitled to terminate the contract
212 with the consultant for noncompliance with the contract.
213 (b) In accordance with s. 284.385, the Department of
214 Financial Services shall defend any claim, suit, action, or
215 proceeding against the consultant, the consultant's officers or
216 employees, or those acting at the direction of the consultant
217 for the limited purpose of an emergency intervention on behalf
218 of a licensee or student as described in subsection (2) when the
219 consultant is unable to perform such intervention which is
220 brought as a result of any act or omission by any of the
221 consultant's officers and employees and those acting under the
222 direction of the consultant for the limited purpose of an
223 emergency intervention on behalf of a licensee or student as
224 described in subsection (2) when the consultant is unable to
225 perform such intervention when such act or omission arises out
226 of and in the scope of the consultant's duties under its
227 contract with the department.
228 (c) If the consultant retained pursuant to subsection (2)
229 is retained by any other state agency, and if the contract
230 between such state agency and the consultant complies with the

231 requirements of this section, the consultant, the consultant's
232 officers and employees, and those acting under the direction of
233 the consultant for the limited purpose of an emergency
234 intervention on behalf of a licensee or student as described in
235 subsection (2) when the consultant is unable to perform such
236 intervention shall be considered agents of the state for the
237 purposes of this section while acting within the scope of and
238 pursuant to guidelines established in the contract between such
239 state agency and the consultant.
240 (8) An impaired practitioner consultant is the official
241 custodian of records relating to the referral of an impaired
242 licensee or applicant to that consultant and any other
243 interaction between the licensee or applicant and the
244 consultant. The consultant may disclose to the impaired licensee
245 or applicant or his or her designee any information that is
246 disclosed to or obtained by the consultant or that is
247 confidential under paragraph (6)(a), but only to the extent that
248 it is necessary to do so to carry out the consultant's duties
249 under this section. The department, and any other entity that
250 enters into a contract with the consultant to receive the
251 services of the consultant, has direct administrative control
252 over the consultant to the extent necessary to receive
253 disclosures from the consultant as allowed by federal law. If a
254 disciplinary proceeding is pending, an impaired licensee may
255 obtain such information from the department under s. 456.073.
256 Section 2. Paragraph (e) of subsection (1) of section
257 458.331, Florida Statutes, is amended to read:
258 458.331 Grounds for disciplinary action; action by the
259 board and department.—
260 (1) The following acts constitute grounds for denial of a

261 license or disciplinary action, as specified in s. 456.072(2):
262 (e) Failing to report to the department any person who the
263 licensee knows is in violation of this chapter or of the rules
264 of the department or the board. A treatment provider approved
265 pursuant to s. 456.076 shall provide the department or
266 consultant with information in accordance with the requirements
267 of s. 456.076(3), (4), (5), ~~and~~ (6), and (8).
268 Section 3. Paragraph (e) of subsection (1) of section
269 459.015, Florida Statutes, is amended to read:
270 459.015 Grounds for disciplinary action; action by the
271 board and department.—
272 (1) The following acts constitute grounds for denial of a
273 license or disciplinary action, as specified in s. 456.072(2):
274 (e) Failing to report to the department or the department's
275 impaired professional consultant any person who the licensee or
276 certificateholder knows is in violation of this chapter or of
277 the rules of the department or the board. A treatment provider,
278 approved pursuant to s. 456.076, shall provide the department or
279 consultant with information in accordance with the requirements
280 of s. 456.076(3), (4), (5), ~~and~~ (6), and (8).
281 Section 4. Section 468.315, Florida Statutes, is created to
282 read:
283 468.315 Treatment program for impaired radiological
284 personnel.—Radiological personnel who are subject to
285 certification under this part are governed by s. 456.076 as if
286 they were under the jurisdiction of the Division of Medical
287 Quality Assurance.
288 Section 5. This act shall take effect July 1, 2013.
289
290

291 ---

292 **T I T L E A M E N D M E N T**

293 Remove everything before the enacting clause and insert:

294 A bill to be entitled

295 An act relating to treatment programs for impaired licensees and
296 applicants; amending s. 456.076, F.S.; exempting an entity
297 retained by the Department of Health as an impaired practitioner
298 consultant from certain licensure requirements; authorizing
299 impaired practitioner consultants to contract with schools or
300 programs to provide services to impaired students who are
301 enrolled for the purpose of preparing for licensure as a
302 specified health care practitioner or as a veterinarian;
303 limiting the liability of those schools or programs when they
304 refer a student to an impaired practitioner consultant;
305 providing that the impaired practitioner consultant is the
306 official custodian of records relating to the referral of the
307 licensee or applicant to the consultant and any other
308 interaction between them; clarifying the circumstances under
309 which an impaired practitioner consultant may disclose certain
310 information concerning an impaired licensee or applicant;
311 authorizing the Department of Health and others that contract
312 with an impaired practitioner consultant to have administrative
313 control over the consultant to the extent necessary to receive
314 disclosures allowed under federal law; authorizing an impaired
315 licensee to obtain confidential information from the department
316 regarding a pending disciplinary proceeding; amending ss.
317 458.331 and 459.015, F.S.; conforming cross-references; creating
318 s. 468.315, F.S.; providing that radiological personnel are

319 subject to a treatment program for impaired licensees; providing
320 an effective date.

CS/HB 375

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 375 Onsite Sewage Treatment and Disposal Systems
SPONSOR(S): Roberson
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Renner	Blalock
2) Health Quality Subcommittee		Guzzo	O'Callaghan
3) State Affairs Committee			

SUMMARY ANALYSIS

The Bureau of Onsite Sewage Programs (Bureau), within the Department of Health (DOH), develops statewide rules and provides training and standardization for county health department employees responsible for issuing permits for the installation and repair of septic systems within the state. The Bureau also licenses septic system contractors, approves continuing education courses and courses provided for septic tank contractors, funds a hands-on training center, and mediates onsite sewage treatment and disposal system contracting complaints.

Aerobic treatment units (ATUs) are similar to septic tanks, except that air is introduced and mixed with the wastewater inside the tank. ATUs require the removal and disposal of solids that accumulate in the tank. Therefore, routine maintenance is necessary for them to function properly.

Current law provides that owners of ATUs are required to maintain a maintenance service agreement with a maintenance entity permitted by DOH. That agreement must initially be for a period of at least two years and subsequent maintenance agreement renewals must be for, at a minimum, one-year periods for the life of the system. The maintenance entity must obtain a system operating permit from DOH for each ATU under service contract. The maintenance entity, which sets the fee for service contracts, must inspect each ATU at least twice each year and report quarterly to DOH the number of ATUs inspected and serviced.

Furthermore, maintenance entities are required to provide documentation that they have been trained by the ATU manufacturer, who set the maintenance requirements, and have access to required manuals and spare repairs. Maintenance entities are also required to be registered as either a state-licensed septic tank contractor or a state licensed plumber. Homeowners are exempt from the contractor registration requirement, but must be permitted as a maintenance entity by DOH and be trained and certified by the manufacturer. The annual maintenance entity permit fee is $25.

The bill provides that maintenance entity inspection reports may be submitted electronically to DOH. The bill also provides that a property owner of an owner-occupied single-family residence may be approved and permitted by DOH as a maintenance entity for his or her own ATU system upon written certification from the manufacturer's representative that they have received training on the proper installation and service of the system. In addition, the bill provides that maintenance entity service agreements must conspicuously disclose that the property owner has the right to maintain his or her own system and is exempt from contractor registration requirements for performing construction, maintenance, or repairs on such system, but is subject to all permitting requirements. Lastly, the bill provides that a licensed septic tank contractor cannot be denied access by the manufacturer to ATU system training or spare parts for maintenance entities. After the original warranty period, component parts for ATUs can be replaced with parts that meet the manufacturer's specifications but are manufactured by others.

The bill appears to have a potentially insignificant, negative fiscal impact of $5,000 on DOH as a result of having to amend their rule.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Bureau of Onsite Sewage Programs (Bureau), within the Department of Health (DOH), develops statewide rules and provides training and standardization for county health department employees responsible for issuing permits for the installation and repair of septic systems within the state.[1] The Bureau also licenses septic system contractors, approves continuing education courses and courses provided for septic tank contractors, funds a hands-on training center, and mediates onsite sewage treatment and disposal system contracting complaints.[2]

In Florida, septic systems are referred to as Onsite Sewage Treatment and Disposal Systems (OSTDS). An OSTDS can contain any one of the following components: septic tank; subsurface drainfield; aerobic treatment unit (ATU); graywater tank; laundry wastewater tank; grease interceptor; pump tank; waterless, incinerating or organic waste-composting toilet; and sanitary pit privy.[3] Septic tanks are tanks in the ground that treat sewage without the presence of oxygen. Sewage flows from a home or business through a pipe into the first chamber, where solids are removed. The liquid then flows into the second chamber where anaerobic bacteria in the sewage break down the organic matter, allowing cleaner water to flow out of the second chamber.[4] ATUs are similar to septic tanks, except that air is introduced and mixed with the wastewater inside the tank.[5] Aerobic (requiring oxygen) bacteria consume the organic matter in the sewage.[6] The effluent discharge from an aerobic system is typically released through a sub-surface distribution system or may be disinfected and discharged directly into surface water.[7]

ATUs require the removal and disposal of solids that accumulate in the tank. Therefore, routine maintenance is necessary for them to function properly. The National Sanitation Foundation[8] requires ATU manufacturers to provide an initial two-year warranty with two inspections per year. There are 11,600 ATUs in operation in Florida, with 8,770 in four counties: Brevard, Charlotte, Franklin, and Monroe.[9]

Pursuant to s. 381.0065, F.S., and Rule 64E-6.012, F.A.C., owners of ATUs are required to enter into a maintenance entity service agreement with a maintenance entity that is permitted by the DOH. That agreement must initially be for a period of at least two years and subsequent maintenance agreement

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[1] The DOH does not permit the use of OSTDS where the estimated domestic sewage flow from the establishment is over 10,000 gallons per day (gpd) or the commercial sewage flow is over 5,000 gpd; where there is a likelihood that the system will receive toxic, hazardous or industrial wastes; where a sewer system is available; or of any system or flow from the establishment is currently regulated by the DEP. The DEP issues the permits for systems that discharge more than 10,000 gpd.

[2] Description of the Bureau of Onsite Sewage from the DOH website. *See* http://www.doh.state.fl.us/environment/ostds/OSTDSdescription.htm.

[3] Department of Environmental Protection (DEP) website on septic systems. *See* http://www.dep.state.fl.us/water/wastewater/dom/septic.htm.

[4] The EPA's *Primer for Municipal Wastewater Treatment Systems*, 2004. On file with staff.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] The National Sanitation Foundation is an "independent, not-for-profit organization that provides standards development, product certification, auditing, education, and risk management for public health and the environment". *See* http://www.nsf.org/business/about_NSF/.

[9] CS/HB 375 Bill Analysis, Economic Statement and Fiscal Note, Department of Health, February 6, 2013 (on file with the Agriculture and Natural Resources Subcommittee).

renewals must be for at least one-year periods for the life of the system. The maintenance entity must obtain a system operating permit from DOH for each ATU under service contract. The maintenance entity, which sets the fee for service contracts, must inspect each ATU at least twice year and report quarterly to DOH the number of ATUs inspected and serviced.

Furthermore, maintenance entities are required to provide documentation that they have been trained by the ATU manufacturer, who sets the maintenance requirements, and have access to required manuals and spare repairs. Maintenance entities are also required to be registered as either a state-licensed septic tank contractor or a state-licensed plumber. Homeowners are exempt from the contractor registration requirement, but must be permitted as a maintenance entity by the DOH and be trained and certified by the manufacturer. The annual maintenance entity permit fee is $25.

Effect of Proposed Changes

The bill amends s. 381.0065 (4)(u), F.S., to provide that ATU inspection reports can be submitted electronically to DOH. The bill also provides that a property owner of an owner-occupied single-family residence may be approved and permitted by DOH as a maintenance entity for his or her own ATU system upon written certification from the manufacturer's representative that they have received training on the proper installation and service of the system.

In addition, the bill provides that maintenance entity service agreements must conspicuously disclose that the property owner has the right to maintain his or her own system and is exempt from contractor registration requirements for performing construction, maintenance, or repairs on the system, but is subject to all permitting requirements.

Lastly, the bill provides that a licensed septic tank contractor cannot be denied access by the manufacturer to ATU system training or spare parts for maintenance entities. After the original warranty period, component parts for ATUs can be replaced with parts that meet the manufacturer's specifications but are manufactured by others.

B. SECTION DIRECTORY:

Section 1. Amends s. 381.0065 (4)(u), F.S., authorizing electronic submission of certain reports; authorizing certain property owners to be approved and permitted as maintenance entities for ATU systems under certain conditions; prohibiting manufacturers from denying certain septic tank contractors access to ATU system training and spare parts; authorizing certain replacement parts for ATU systems.

Section 2. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Department of Health would have to amend Rule 64E-6.012, F.A.C., to comply with the changes in the bill and estimates the cost of notices and meetings will be $5,000.[10]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[10] *Id.*

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners of ATU systems that receive the maintenance and repair training may save money from being able to perform their own maintenance inspections and repairs. However, there may be a cost associated with completing the training.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Currently, there is a requirement that maintenance entities report quarterly to DOH of the number of ATUs inspected and serviced. There does not appear to be any reporting requirement for ATU owners performing their own maintenance.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 20, 2013, the Agriculture & Natural Resources Subcommittee amended and passed HB 375 as a committee substitute (CS). The CS does the following:

- Provides that inspection reports may be submitted electronically to the DOH.
- Provides that a property owner of an owner-occupied single-family residence may be approved and permitted by the DOH as a maintenance entity for his or her own system upon written certification from the manufacturer that they have received training on the proper installation and maintenance of the unit.
- Provides that maintenance entities must conspicuously disclose that a property owner of a owner-occupied single-family residence has the right to maintain his or her own system and is exempt from contractor registration requirements for performing construction, maintenance, or repairs on such a system, but is subject to all permitting requirements.
- Provides that a septic tank contractor license under Part III of chapter 489 shall not be denied the access to training and spare parts by the manufacturer for maintenance entities. Component parts for ATUs after the original warranty period may be replaced with parts that meet the manufacturer's specifications but are manufactured by others.

This analysis is drafted to the committee substitute as passed by the Agriculture & Natural Resources Subcommittee.

1 A bill to be entitled
2 An act relating to onsite sewage treatment and
3 disposal systems; amending s. 381.0065, F.S.;
4 authorizing electronic submission of certain reports;
5 authorizing certain property owners to be approved and
6 permitted as maintenance entities for aerobic
7 treatment unit systems under certain conditions;
8 providing requirements for such maintenance entity
9 service agreements; prohibiting manufacturers from
10 denying certain septic tank contractors access to
11 aerobic treatment unit system training and spare
12 parts; authorizing certain replacement parts for
13 aerobic treatment unit systems; providing an effective
14 date.
15
16 Be It Enacted by the Legislature of the State of Florida:
17
18 Section 1. Paragraph (u) of subsection (4) of section
19 381.0065, Florida Statutes, is amended to read:
20 381.0065 Onsite sewage treatment and disposal systems;
21 regulation.—
22 (4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may
23 not construct, repair, modify, abandon, or operate an onsite
24 sewage treatment and disposal system without first obtaining a
25 permit approved by the department. The department may issue
26 permits to carry out this section, but shall not make the
27 issuance of such permits contingent upon prior approval by the
28 Department of Environmental Protection, except that the issuance

29 of a permit for work seaward of the coastal construction control
30 line established under s. 161.053 shall be contingent upon
31 receipt of any required coastal construction control line permit
32 from the Department of Environmental Protection. A construction
33 permit is valid for 18 months from the issuance date and may be
34 extended by the department for one 90-day period under rules
35 adopted by the department. A repair permit is valid for 90 days
36 from the date of issuance. An operating permit must be obtained
37 prior to the use of any aerobic treatment unit or if the
38 establishment generates commercial waste. Buildings or
39 establishments that use an aerobic treatment unit or generate
40 commercial waste shall be inspected by the department at least
41 annually to assure compliance with the terms of the operating
42 permit. The operating permit for a commercial wastewater system
43 is valid for 1 year from the date of issuance and must be
44 renewed annually. The operating permit for an aerobic treatment
45 unit is valid for 2 years from the date of issuance and must be
46 renewed every 2 years. If all information pertaining to the
47 siting, location, and installation conditions or repair of an
48 onsite sewage treatment and disposal system remains the same, a
49 construction or repair permit for the onsite sewage treatment
50 and disposal system may be transferred to another person, if the
51 transferee files, within 60 days after the transfer of
52 ownership, an amended application providing all corrected
53 information and proof of ownership of the property. There is no
54 fee associated with the processing of this supplemental
55 information. A person may not contract to construct, modify,
56 alter, repair, service, abandon, or maintain any portion of an

57 onsite sewage treatment and disposal system without being
58 registered under part III of chapter 489. A property owner who
59 personally performs construction, maintenance, or repairs to a
60 system serving his or her own owner-occupied single-family
61 residence is exempt from registration requirements for
62 performing such construction, maintenance, or repairs on that
63 residence, but is subject to all permitting requirements. A
64 municipality or political subdivision of the state may not issue
65 a building or plumbing permit for any building that requires the
66 use of an onsite sewage treatment and disposal system unless the
67 owner or builder has received a construction permit for such
68 system from the department. A building or structure may not be
69 occupied and a municipality, political subdivision, or any state
70 or federal agency may not authorize occupancy until the
71 department approves the final installation of the onsite sewage
72 treatment and disposal system. A municipality or political
73 subdivision of the state may not approve any change in occupancy
74 or tenancy of a building that uses an onsite sewage treatment
75 and disposal system until the department has reviewed the use of
76 the system with the proposed change, approved the change, and
77 amended the operating permit.
78 (u)1. The owner of an aerobic treatment unit system shall
79 maintain a current maintenance service agreement with an aerobic
80 treatment unit maintenance entity permitted by the department.
81 The maintenance entity shall obtain a system operating permit
82 from the department for each aerobic treatment unit under
83 service contract. The maintenance entity shall inspect each
84 aerobic treatment unit system at least twice each year and shall

85 report quarterly to the department on the number of aerobic
86 treatment unit systems inspected and serviced. The reports may
87 be submitted electronically.
88 2. The property owner of an owner-occupied, single-family
89 residence may be approved and permitted by the department as a
90 maintenance entity for his or her own aerobic treatment unit
91 system upon written certification from the system manufacturer's
92 approved representative that the property owner has received
93 training on the proper installation and service of the system.
94 The maintenance entity service agreement must conspicuously
95 disclose that the property owner has the right to maintain his
96 or her own system and is exempt from contractor registration
97 requirements for performing construction, maintenance, or
98 repairs on the system but is subject to all permitting
99 requirements.
100 3. A septic tank contractor licensed under part III of
101 chapter 489 may not be denied access by the manufacturer to
102 aerobic treatment unit system training or spare parts for
103 maintenance entities. After the original warranty period,
104 component parts for an aerobic treatment unit system may be
105 replaced with parts that meet manufacturer's specifications but
106 are manufactured by others.
107 4. The owner of an aerobic treatment unit system shall
108 allow the department to inspect during reasonable hours each
109 aerobic treatment unit system at least annually, and such
110 inspection may include collection and analysis of system-
111 effluent samples for performance criteria established by rule of
112 the department.

113 Section 2. This act shall take effect July 1, 2013.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED __ (Y/N)

ADOPTED AS AMENDED __ (Y/N)

ADOPTED W/O OBJECTION __ (Y/N)

FAILED TO ADOPT __ (Y/N)

WITHDRAWN __ (Y/N)

OTHER ____

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1 Committee/Subcommittee hearing bill: Health Quality
2 Subcommittee
3 Representative Roberson, K. offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Paragraphs (l) and (u) of subsection (4) of
8 section 381.0065, Florida Statutes, are amended to read:
9 381.0065 Onsite sewage treatment and disposal systems;
10 regulation.—
11 (4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may
12 not construct, repair, modify, abandon, or operate an onsite
13 sewage treatment and disposal system without first obtaining a
14 permit approved by the department. The department may issue
15 permits to carry out this section, but shall not make the
16 issuance of such permits contingent upon prior approval by the
17 Department of Environmental Protection, except that the issuance
18 of a permit for work seaward of the coastal construction control
19 line established under s. 161.053 shall be contingent upon
20 receipt of any required coastal construction control line permit

21 from the Department of Environmental Protection. A construction
22 permit is valid for 18 months from the issuance date and may be
23 extended by the department for one 90-day period under rules
24 adopted by the department. A repair permit is valid for 90 days
25 from the date of issuance. An operating permit must be obtained
26 prior to the use of any aerobic treatment unit or if the
27 establishment generates commercial waste. Buildings or
28 establishments that use an aerobic treatment unit or generate
29 commercial waste shall be inspected by the department at least
30 annually to assure compliance with the terms of the operating
31 permit. The operating permit for a commercial wastewater system
32 is valid for 1 year from the date of issuance and must be
33 renewed annually. The operating permit for an aerobic treatment
34 unit is valid for 2 years from the date of issuance and must be
35 renewed every 2 years. If all information pertaining to the
36 siting, location, and installation conditions or repair of an
37 onsite sewage treatment and disposal system remains the same, a
38 construction or repair permit for the onsite sewage treatment
39 and disposal system may be transferred to another person, if the
40 transferee files, within 60 days after the transfer of
41 ownership, an amended application providing all corrected
42 information and proof of ownership of the property. There is no
43 fee associated with the processing of this supplemental
44 information. A person may not contract to construct, modify,
45 alter, repair, service, abandon, or maintain any portion of an
46 onsite sewage treatment and disposal system without being
47 registered under part III of chapter 489. A property owner who
48 personally performs construction, maintenance, or repairs to a

49 system serving his or her own owner-occupied single-family
50 residence is exempt from registration requirements for
51 performing such construction, maintenance, or repairs on that
52 residence, but is subject to all permitting requirements. A
53 municipality or political subdivision of the state may not issue
54 a building or plumbing permit for any building that requires the
55 use of an onsite sewage treatment and disposal system unless the
56 owner or builder has received a construction permit for such
57 system from the department. A building or structure may not be
58 occupied and a municipality, political subdivision, or any state
59 or federal agency may not authorize occupancy until the
60 department approves the final installation of the onsite sewage
61 treatment and disposal system. A municipality or political
62 subdivision of the state may not approve any change in occupancy
63 or tenancy of a building that uses an onsite sewage treatment
64 and disposal system until the department has reviewed the use of
65 the system with the proposed change, approved the change, and
66 amended the operating permit.
67 (1) 1. Within the Florida Keys area of critical state
68 concern, any building permit and any permit issued by the
69 Department of Environmental Protection or by a water management
70 district pursuant to part IV of chapter 373, Florida Statutes,
71 which has an expiration date of January 1, 2012, through January
72 1, 2016, is extended and renewed for a period of 3 years after
73 its previously scheduled expiration date. This extension
74 includes any local government-issued development order or
75 building permit, including certificates of levels of service.
76 This section does not prohibit conversion from the construction

77 phase to the operation phase upon completion of construction and
78 is in addition to any permit extension. Extensions granted under
79 this section; section 14 of chapter 2009-96, Laws of Florida, as
80 reauthorized by section 47 of chapter 2010-147, Laws of Florida;
81 section 46 of chapter 2010-147, Laws of Florida; section 74 of
82 chapter 2011-139, Laws of Florida; or section 79 of chapter
83 2011-139, Laws of Florida, may not exceed 7 years in total.
84 Specific development order extensions granted pursuant to s.
85 380.06(19)(c) 2., Florida Statutes, may not be further extended
86 by this section.
87 2. For the Florida Keys, the department shall adopt a
88 special rule for the construction, installation, modification,
89 operation, repair, maintenance, and performance of onsite sewage
90 treatment and disposal systems which considers the unique soil
91 conditions and water table elevations, densities, and setback
92 requirements. On lots where a setback distance of 75 feet from
93 surface waters, saltmarsh, and buttonwood association habitat
94 areas cannot be met, an injection well, approved and permitted
95 by the department, may be used for disposal of effluent from
96 onsite sewage treatment and disposal systems. The following
97 additional requirements apply to onsite sewage treatment and
98 disposal systems in Monroe County:
99 a.~~1.~~ The county, each municipality, and those special
100 districts established for the purpose of the collection,
101 transmission, treatment, or disposal of sewage shall ensure, in
102 accordance with the specific schedules adopted by the
103 Administration Commission under s. 380.0552, the completion of

104 onsite sewage treatment and disposal system upgrades to meet the
105 requirements of this paragraph.
106 b.~~2.~~ In areas not scheduled to be centrally sewered,
107 onsite ~~Onsite~~ sewage treatment and disposal systems must ~~cease~~
108 ~~discharge~~ by December 31, 2015~~, or must~~ comply with department
109 rules and provide the level of treatment which, on a permitted
110 annual average basis, produces an effluent that contains no more
111 than the following concentrations:
112 (I)~~a.~~ Biochemical Oxygen Demand (CBOD5) of 10 mg/l.
113 (II)~~b.~~ Suspended Solids of 10 mg/l.
114 (III)~~c.~~ Total Nitrogen, expressed as N, of 10 mg/l.
115 (A) A system tested and certified to provide at least a 70
116 percent reduction in N shall be deemed to be in compliance with
117 this standard.
118 (IV)~~d.~~ Total Phosphorus, expressed as P, of 1 mg/l.
119
120 In addition, onsite sewage treatment and disposal systems
121 discharging to an injection well must provide basic disinfection
122 as defined by department rule.
123 c.~~3. On or after July 1, 2010, all new, modified, and~~
124 ~~repaired onsite sewage treatment and disposal systems must~~
125 ~~provide the level of treatment described in subparagraph 2.~~
126 ~~However, in~~ In areas scheduled to be served by central sewer by
127 December 31, 2015, if the property owner has paid a connection
128 fee or assessment for connection to the central sewer system, an
129 onsite sewage treatment and disposal system may be repaired to
130 the following minimum standards:

131 (I)~~a.~~ The existing tanks must be pumped and inspected and
132 certified as being watertight and free of defects in accordance
133 with department rule; and
134 (II)~~b.~~ A sand-lined drainfield or injection well in
135 accordance with department rule must be installed.
136 d.~~4.~~ Onsite sewage treatment and disposal systems must be
137 monitored for total nitrogen and total phosphorus concentrations
138 as required by department rule.
139 e.~~5.~~ The department shall enforce proper installation,
140 operation, and maintenance of onsite sewage treatment and
141 disposal systems pursuant to this chapter, including ensuring
142 that the appropriate level of treatment described in
143 subparagraph 2. is met.
144 f.~~6.~~ The authority of a local government, including a
145 special district, to mandate connection of an onsite sewage
146 treatment and disposal system is governed by s. 4, chapter 99-
147 395, Laws of Florida. Notwithstanding any other provision of
148 law, an onsite sewage treatment and disposal system meeting the
149 standards in subparagraph 4, installed after July 1, 2010, is
150 not required to connect to sewer until December 31, 2020.
151 (u)1. The owner of an aerobic treatment unit system shall
152 maintain a current maintenance service agreement with an aerobic
153 treatment unit maintenance entity permitted by the department.
154 The maintenance entity shall obtain a system operating permit
155 from the department for each aerobic treatment unit under
156 service contract. The maintenance entity shall inspect each
157 aerobic treatment unit system at least twice each year and shall
158 report quarterly to the department on the number of aerobic

159 treatment unit systems inspected and serviced. The reports may
160 be submitted electronically.
161 2. The property owner of an owner-occupied, single-family
162 residence may be approved and permitted by the department as a
163 maintenance entity for his or her own aerobic treatment unit
164 system upon written certification from the system manufacturer's
165 approved representative that the property owner has received
166 training on the proper installation and service of the system.
167 The maintenance entity service agreement must conspicuously
168 disclose that the property owner has the right to maintain his
169 or her own system and is exempt from contractor registration
170 requirements for performing construction, maintenance, or
171 repairs on the system but is subject to all permitting
172 requirements.
173 3. A septic tank contractor licensed under part III of
174 chapter 489 may not be denied access by the manufacturer to
175 aerobic treatment unit system training or spare parts for
176 maintenance entities. After the original warranty period,
177 component parts for an aerobic treatment unit system may be
178 replaced with parts that meet manufacturer's specifications but
179 are manufactured by others. The maintenance entity shall
180 maintain documentation for a period of two years of the
181 substitute part's equivalency and shall provide such
182 documentation to the department upon request.
183 4. The owner of an aerobic treatment unit system shall
184 allow the department to inspect during reasonable hours each
185 aerobic treatment unit system at least annually, and such
186 inspection may include collection and analysis of system-

187 effluent samples for performance criteria established by rule of
188 the department.
189 Section 2. This act shall take effect July 1, 2013.
190
191
192 ---
193 **T I T L E A M E N D M E N T**
194 Remove everything before the enacting clause and
195 insert:
196 An act relating to onsite sewage treatment and disposal systems;
197 amending s. 381.0065, F.S.; providing an extension of building
198 permits for property owners in an area scheduled to be served by
199 a central sewage system; clarifying that certain onsite sewage
200 treatment and disposal system requirements in Monroe County
201 apply to areas not scheduled to be sewered; requiring onsite
202 sewage treatment and disposal systems in Monroe County to be
203 tested and certified to provide at least a 70 percent reduction
204 in nitrogen; providing a date for compliance with the onsite
205 sewage treatment and disposal system requirements; authorizing
206 electronic submission of certain reports; authorizing certain
207 property owners to be approved and permitted as maintenance
208 entities for aerobic treatment unit systems under certain
209 conditions; providing requirements for such maintenance entity
210 service agreements; prohibiting manufacturers from denying
211 certain septic tank contractors access to aerobic treatment unit
212 system training and spare parts; authorizing certain replacement
213 parts for aerobic treatment unit systems; requiring maintenance
214 entities to maintain documentation of the substitute part's

215 equivalency for a specified period of time and provide such
216 documentation to the department upon request; providing an
217 effective date.

HB 625

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 625 Physician Assistants
SPONSOR(S): Renuart and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 398

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		Holt	O'Callaghan
2) Rulemaking Oversight & Repeal Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill authorizes a physician assistant (PA) to execute all practice-related activities delegated by a supervisory physician unless expressly prohibited by the Medical Practice Act, Osteopathic Practice Act, or rule. According to Department of Health (DOH), the rules of the boards are limited in describing the prohibited activities and would need to be updated to include many more prohibited activities if the bill is adopted.

The bill deletes current law that is written as a prohibition and rewords it in the affirmative to authorize a supervisory physician to delegate to a PA the ability to order medications for a supervisory physician's patient in a hospital, ambulatory surgical center, or mobile surgical facility, unless expressly prohibited. The bill language may be interpreted to be broader than the current authority, because current law limits such delegation to ordering medication for a "hospitalized" patient, compared to the bill authorizing the PA to order medications for patients "in a facility."

The bill makes identical changes to the Medical Practice Act and the Osteopathic Practice Act. The bill deletes an obsolete date.

The bill has an insignificant, negative fiscal impact to the Medical Quality Assurance Trust Fund within the DOH.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Physician Assistants

A physician assistant (PA) is a person licensed to perform medical services in the specialty areas in which he or she has been trained enabling them to perform health care tasks delegated by a supervising physician.[1] Currently, there are a total of 5,348 in-state, active licensed PAs in Florida.[2]

PA regulations are located in the respective physician practice acts for medical doctors (MDs) and doctors of osteopathic medicine (DOs), because PAs may only practice under the supervision of a MD or DO.[3] Specifically, sections 458.347(7) and 459.022(7), F.S., govern the licensure of PAs. PAs are regulated by the Florida Council on Physician Assistants (Council) in conjunction with the Board of Medicine for PAs licensed under ch. 458, F.S., or the Board of Osteopathic Medicine for PAs licensed under ch. 459, F.S.

Physician Assistant Council

The Council was created in 1995 to recommend the licensure requirements (including educational and training requirements) for PAs, establish a formulary of drugs that PAs are prohibited to prescribe, and develop rules for the use of PAs by physicians to ensure that the continuity of supervision is maintained in each practice setting throughout the state.[4] The Council does not discipline PAs. Disciplinary action is the responsibility of either the Board of Medicine or the Board of Osteopathic Medicine (boards).

Supervising Physician

A PA practices under the delegated authority of a supervising physician. A physician supervising a PA must be qualified in the medical area(s) in which the PA is to perform health care tasks and is responsible and liable for the performance and acts and omissions of the PA.[5] A physician is not allowed to supervise more than four PAs at any one time.[6]

Supervision is defined to mean the responsible supervision and control that requires the easy availability or physical presence of the physician for consultation and direction of actions performed by a PA.[7] Easy availability is defined to include the ability to use telecommunication. The respective board is delegated the authority to establish by rule what constitutes responsible supervision.

Responsible supervision, defined by rule, is the ability of the supervising physician to responsibly exercise control and provide direction over the services or tasks performed by the PA.[8] In providing supervision, the supervising physician is required to periodically review the PA's performance.

In determining whether supervision is adequate, the following factors are to be considered:[9]

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[1] Section 458.347(1), F.S.
[2] Department of Health, 2011-2012 Medical Quality Assurance Annual Report.
[3] Chapters 458 and 459, F.S.
[4] Sections 458.347(9) and 459.02 2(9), F.S.
[5] Section 458.347(3), F.S. and Rule 64B8-30.012, F.A.C.
[6] *Id.*
[7] Section 458.347 (1)(f), F.S.
[8] Rule 64B8-30.001, F.A.C.
[9] *Id.*

- The complexity of the task;
- The risk to the patient;
- The background, training and skill of the PA;
- The adequacy of the direction in terms of its form;
- The setting in which the tasks are performed;
- The availability of the supervising physician;
- The necessity for immediate attention; and
- The number of other persons that the supervising physician must supervise.

The respective board is authorized to adopt by rule the general principles that supervising physicians must use in developing the scope of practice of a PA under "direct" and "indirect" supervision. The principles are to take into consideration the diversity of the specialty and the practice setting.

Direct supervision refers to the physical presence of the supervising physician on the premises so that the supervising physician is immediately available to the PA when needed; whereas, indirect supervision refers to the easy availability of the supervising physician, such that the supervising physician must be within reasonable physical proximity.[10]

The decision to permit the PA to perform a task or procedure under direct or indirect supervision is made by the supervising physician based on reasonable medical judgment regarding the probability of morbidity and mortality to the patient.[11] Additionally, it is the responsibility of the supervising physician to be certain that the PA is knowledgeable and skilled in performing the tasks and procedures assigned.

Delegated Tasks

Determination of the final diagnosis must be performed by the supervising physician, and may not be delegated to a PA.[12]

Per rule, the following tasks are not permitted to be performed under indirect supervision:[13]

- Routine insertion of chest tubes and removal of pacer wires or left atrial monitoring lines.
- Performance of cardiac stress testing.
- Routine insertion of central venous catheters.
- Injection of intrathecal medication without prior approval of the supervising physician.
- Interpretation of laboratory tests, X-ray studies and EKG's without the supervising physician interpretation and final review.
- Administration of general, spinal, and epidural anesthetics; this may be performed under direct supervision only by PA who graduated from a board-approved anesthesiology assistants program.

Moreover, a supervisory physician may delegate to a PA the authority:

- To prescribe or dispense any medicinal drug used in the supervisory physician's practice.[14]
- To order medicinal drugs for a hospitalized patient of the supervising physician.
- To administer a medicinal drug under the direction and supervision of the physician.[15]

However, the formulary prohibits a PA from prescribing controlled substances (Schedule I-V), general anesthetics, and radiographic contrast material.[16]

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[10] Rules 64B8-30.012 and 64B15-6.010, F.A.C.
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Sections 458.347(4)(e) and 459.022(4)(e), F.S.
[15] Rules 64B8-30.008 and 64B15-6.0038
[16] Sections 458.347(4)(f) and 459.022(4)(f), F.S.

Interpreting the Scope of Practice of a PA

Through the years there have been a few Attorney General Advisory Opinions and declaratory statements written to clarify whether a PA is authorized to perform certain health care tasks. For example, in 2008, there was an inquiry as to whether a PA could refer a patient for involuntary evaluation pursuant to the Baker Act.[17] The advisory opinion concluded that a PA may refer a patient for involuntary evaluation, provided that the PA has experience regarding the diagnosis and treatment of mental and nervous disorders and such tasks are within the supervising physician's scope of practice. More recently in 2010, the Attorney General's Office opined whether a PA may order controlled substances in a hospital setting. The opinion concluded that the boards and the council have consistently held that a supervisory physician may delegate to a PA the authority to order controlled substances for patients in hospital settings.[18] However, there appears to be confusion with the interpretation of the terms "prescribing" and "ordering," and have been misinterpreted to be synonymous. Neither term is defined within the Medical Practice Act or the Osteopathic Medical Practice Act.

An "order" is a term of art generally used in a hospital or institutional setting where an authorized practitioner orders a medication for an inpatient rather than prescribes a medication.[19]

Under the Florida Pharmacy Act, a "prescription" includes any order for drugs or medicinal supplies written or transmitted by any means of communication by a duly licensed practitioner authorized by the laws of the state to prescribe such drugs or medicinal supplies and intended to be dispensed by a pharmacist.[20] The Florida Comprehensive Drug Abuse and Prevention and Control Act, ch. 893, F.S., provides a similar definition for the term "prescription."[21]

Effect of Proposed Changes

The bill authorizes a PA to execute all practice-related activities delegated by a supervisory physician unless expressly prohibited by the Medical Practice Act, Osteopathic Practice Act, or rule. According to DOH, the rules of the boards are limited in describing the prohibited activities and would need to be updated to include many more prohibited activities if the bill is adopted.[22]

The bill deletes current law that is written as a prohibition and rewords it in the affirmative to authorize a supervisory physician to delegate to a PA the ability to order medications for a supervisory physician's patient in a hospital, ambulatory surgical center, or mobile surgical facility, unless expressly prohibited. The bill language may be interpreted to be broader than the current authority, because current law limits delegation to the PA to order medication for a "hospitalized" patient, compared to the bill authorizing the PA to order medications for a patient "in a facility."

The bill makes identical changes to the Medical Practice Act and the Osteopathic Practice Act. The bill deletes an obsolete date.

B. SECTION DIRECTORY:

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[17] Florida Attorney General advisory Legal Opinion (AGO 2008-31) dated May 30, 2008, on file with the Health Quality Subcommittee staff.

[18] Florida Attorney General Office correspondence to Patricia Draper, Esq., dated August 25, 2010, on file with the Health Quality Subcommittee staff.

[19] See for example: 42 C.F.R. 482.23(c) relating to Conditions of Participation for Hospitals under Medicare, Standard: Preparation and administration of drugs and Rule 64B16-28.602, F.A.C., relating to the rules of the Board of Pharmacy for Institutional Class II Dispensing.

[20] Section 465.003(14), F.S.

[21] Section 893.02(22), F.S.

[22] Department of Health Bill Analysis for HB 625 dated February 7, 2013, on file with the Health Quality Subcommittee staff.

Section 1. Amends s. 458.347, F.S., relating to physician assistants.
Section 2. Amends s. 458.3475, F.S., relating to anesthesiologist assistants.
Section 3. Amends s. 458.348, F.S., relating to formal supervisory relationships, standing orders, and established protocols; notice; and standards.
Section 4. Amends s. 459.022, F.S., relating to physician assistants.
Section 5. Amends s. 459.023, F.S., relating to anesthesiologist assistants.
Section 6. Amends s. 459.025, F.S., relating to formal supervisory relationships, standing orders, and established protocols; notice; and standards.
Section 7. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DOH will incur costs for rulemaking and possibly an increase in workload associated with additional complaints and investigations due to the expanded scope of practice, which current budget authority and staffing resources are adequate to absorb.[23]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The DOH has sufficient rule-making authority to implement the provisions of the bill.

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[23] *Id.*

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to physician assistants; amending ss.
3 458.347 and 459.022, F.S.; authorizing a physician
4 assistant to execute all practice-related activities
5 delegated by a supervisory physician unless expressly
6 prohibited; deleting provisions to conform to changes
7 made by the act; amending ss. 458.3475, 458.348,
8 459.023, and 459.025, F.S.; conforming cross-
9 references; providing an effective date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. Subsection (4) of section 458.347, Florida
14 Statutes, is amended to read:
15 458.347 Physician assistants.—
16 (4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—
17 (a) A physician assistant may execute all practice-related
18 activities delegated by the supervisory physician unless
19 expressly prohibited in chapter 458 or chapter 459 or rules
20 adopted thereunder.
21 (b) ~~(a)~~ The boards shall adopt, by rule, the general
22 principles that supervising physicians must use in developing
23 the scope of practice of a physician assistant under direct
24 supervision and under indirect supervision. These principles
25 shall recognize the diversity of both specialty and practice
26 settings in which physician assistants are used.
27 (c) ~~(b)~~ This chapter does not prevent third-party payors
28 from reimbursing employers of physician assistants for covered

29 services rendered by licensed physician assistants.
30 (d) ~~(c)~~ A licensed physician assistant ~~assistants~~ may not
31 be denied clinical hospital privileges, except for cause, so
32 long as the supervising physician is a staff member in good
33 standing.
34 (e) ~~(d)~~ A supervisory physician may delegate to a licensed
35 physician assistant, pursuant to a written protocol, the
36 authority to act according to s. 154.04(1)(c). Such delegated
37 authority is limited to the supervising physician's practice in
38 connection with a county health department as defined and
39 established pursuant to chapter 154. The boards shall adopt
40 rules governing the supervision of physician assistants by
41 physicians in county health departments.
42 (f) ~~(e)~~ A supervisory physician may delegate to a fully
43 licensed physician assistant the authority to prescribe or
44 dispense any medication used in the supervisory physician's
45 practice unless such medication is listed on the formulary
46 created pursuant to paragraph (g) ~~(f)~~. A fully licensed
47 physician assistant may only prescribe or dispense such
48 medication under the following circumstances:
49 1. A physician assistant must clearly identify to the
50 patient that he or she is a physician assistant. Furthermore,
51 the physician assistant must inform the patient that the patient
52 has the right to see the physician prior to any prescription
53 being prescribed or dispensed by the physician assistant.
54 2. The supervisory physician must notify the department of
55 his or her intent to delegate, on a department-approved form,
56 before delegating such authority and notify the department of

57 any change in prescriptive privileges of the physician
58 assistant. Authority to dispense may be delegated only by a
59 supervising physician who is registered as a dispensing
60 practitioner in compliance with s. 465.0276.
61 3. The physician assistant must file with the department a
62 signed affidavit that he or she has completed a minimum of 10
63 continuing medical education hours in the specialty practice in
64 which the physician assistant has prescriptive privileges with
65 each licensure renewal application.
66 4. The department may issue a prescriber number to the
67 physician assistant granting authority for the prescribing of
68 medicinal drugs authorized within this paragraph upon completion
69 of the foregoing requirements. The physician assistant may ~~shall~~
70 not be required to independently register pursuant to s.
71 465.0276.
72 5. The prescription must be written in a form that
73 complies with chapter 499 and must contain, in addition to the
74 supervisory physician's name, address, and telephone number, the
75 physician assistant's prescriber number. Unless it is a drug or
76 drug sample dispensed by the physician assistant, the
77 prescription must be filled in a pharmacy permitted under
78 chapter 465 and must be dispensed in that pharmacy by a
79 pharmacist licensed under chapter 465. The appearance of the
80 prescriber number creates a presumption that the physician
81 assistant is authorized to prescribe the medicinal drug and the
82 prescription is valid.
83 6. The physician assistant must note the prescription or
84 dispensing of medication in the appropriate medical record.

85 ~~7. This paragraph does not prohibit a supervisory~~
86 ~~physician from delegating to a physician assistant the authority~~
87 ~~to order medication for a hospitalized patient of the~~
88 ~~supervisory physician.~~
89
90 ~~This paragraph does not apply to facilities licensed pursuant to~~
91 ~~chapter 395.~~
92 (g)~~(f)~~1. The council shall establish a formulary of
93 medicinal drugs that a fully licensed physician assistant having
94 prescribing authority under this section or s. 459.022 may not
95 prescribe. The formulary must include controlled substances as
96 defined in chapter 893, general anesthetics, and radiographic
97 contrast materials.
98 2. In establishing the formulary, the council shall
99 consult with a pharmacist licensed under chapter 465, but not
100 licensed under this chapter or chapter 459, who shall be
101 selected by the State Surgeon General.
102 3. Only the council shall add to, delete from, or modify
103 the formulary. Any person who requests an addition, deletion, or
104 modification of a medicinal drug listed on such formulary has
105 the burden of proof to show cause why such addition, deletion,
106 or modification should be made.
107 4. The boards shall adopt the formulary required by this
108 paragraph, and each addition, deletion, or modification to the
109 formulary, by rule. Notwithstanding any provision of chapter 120
110 to the contrary, the formulary rule shall be effective 60 days
111 after the date it is filed with the Secretary of State. Upon
112 adoption of the formulary, the department shall mail a copy of

113 such formulary to each fully licensed physician assistant having
114 prescribing authority under this section or s. 459.022, and to
115 each pharmacy licensed by the state. The boards shall establish,
116 by rule, a fee not to exceed $200 to fund the provisions of this
117 paragraph and paragraph (f) ~~(e)~~.
118 (h) A supervisory physician may delegate to a licensed
119 physician assistant the authority to order medications for the
120 supervisory physician's patient in a facility licensed under
121 chapter 395, notwithstanding any provisions in chapter 465 or
122 chapter 893 which may prohibit this delegation.
123 Section 2. Paragraph (b) of subsection (7) of section
124 458.3475, Florida Statutes, is amended to read:
125 458.3475 Anesthesiologist assistants.—
126 (7) ANESTHESIOLOGIST AND ANESTHESIOLOGIST ASSISTANT TO
127 ADVISE THE BOARD.—
128 (b) In addition to its other duties and responsibilities
129 as prescribed by law, the board shall:
130 1. Recommend to the department the licensure of
131 anesthesiologist assistants.
132 2. Develop all rules regulating the use of
133 anesthesiologist assistants by qualified anesthesiologists under
134 this chapter and chapter 459, except for rules relating to the
135 formulary developed under s. 458.347 ~~s. 458.347(4)(f)~~. The board
136 shall also develop rules to ensure that the continuity of
137 supervision is maintained in each practice setting. The boards
138 shall consider adopting a proposed rule at the regularly
139 scheduled meeting immediately following the submission of the
140 proposed rule. A proposed rule may not be adopted by either

141 board unless both boards have accepted and approved the
142 identical language contained in the proposed rule. The language
143 of all proposed rules must be approved by both boards pursuant
144 to each respective board's guidelines and standards regarding
145 the adoption of proposed rules.
146 3. Address concerns and problems of practicing
147 anesthesiologist assistants to improve safety in the clinical
148 practices of licensed anesthesiologist assistants.
149 Section 3. Paragraph (c) of subsection (4) of section
150 458.348, Florida Statutes, is amended to read:
151 458.348 Formal supervisory relationships, standing orders,
152 and established protocols; notice; standards.—
153 (4) SUPERVISORY RELATIONSHIPS IN MEDICAL OFFICE SETTINGS.—
154 A physician who supervises an advanced registered nurse
155 practitioner or physician assistant at a medical office other
156 than the physician's primary practice location, where the
157 advanced registered nurse practitioner or physician assistant is
158 not under the onsite supervision of a supervising physician,
159 must comply with the standards set forth in this subsection. For
160 the purpose of this subsection, a physician's "primary practice
161 location" means the address reflected on the physician's profile
162 published pursuant to s. 456.041.
163 (c) A physician who supervises an advanced registered
164 nurse practitioner or physician assistant at a medical office
165 other than the physician's primary practice location, where the
166 advanced registered nurse practitioner or physician assistant is
167 not under the onsite supervision of a supervising physician and
168 the services offered at the office are primarily dermatologic or

169 skin care services, which include aesthetic skin care services
170 other than plastic surgery, must comply with the standards
171 listed in subparagraphs 1.-4. Notwithstanding s. 458.347 ~~s.~~
172 ~~458.347(4)(e)6.~~, a physician supervising a physician assistant
173 pursuant to this paragraph may not be required to review and
174 cosign charts or medical records prepared by such physician
175 assistant.

176 1. The physician shall submit to the board the addresses
177 of all offices where he or she is supervising an advanced
178 registered nurse practitioner or a physician ~~physician's~~
179 assistant which are not the physician's primary practice
180 location.

181 2. The physician must be board certified or board eligible
182 in dermatology or plastic surgery as recognized by the board
183 pursuant to s. 458.3312.

184 3. All such offices that are not the physician's primary
185 place of practice must be within 25 miles of the physician's
186 primary place of practice or in a county that is contiguous to
187 the county of the physician's primary place of practice.
188 However, the distance between any of the offices may not exceed
189 75 miles.

190 4. The physician may supervise only one office other than
191 the physician's primary place of practice except that until July
192 1, 2011, the physician may supervise up to two medical offices
193 other than the physician's primary place of practice if the
194 addresses of the offices are submitted to the board before July
195 1, 2006. ~~Effective July 1, 2011,~~ The physician may supervise
196 only one office other than the physician's primary place of

197 practice, regardless of when the addresses of the offices were
198 submitted to the board.
199 Section 4. Subsection (4) of section 459.022, Florida
200 Statutes, is amended to read:
201 459.022 Physician assistants.—
202 (4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—
203 (a) A physician assistant may execute all practice-related
204 activities delegated by the supervisory physician unless
205 expressly prohibited in chapter 458 or chapter 459 or rules
206 adopted thereunder.
207 (b) ~~(a)~~ The boards shall adopt, by rule, the general
208 principles that supervising physicians must use in developing
209 the scope of practice of a physician assistant under direct
210 supervision and under indirect supervision. These principles
211 shall recognize the diversity of both specialty and practice
212 settings in which physician assistants are used.
213 (c) ~~(b)~~ This chapter does not prevent third-party payors
214 from reimbursing employers of physician assistants for covered
215 services rendered by licensed physician assistants.
216 (d) ~~(c)~~ Licensed physician assistants may not be denied
217 clinical hospital privileges, except for cause, so long as the
218 supervising physician is a staff member in good standing.
219 (e) ~~(d)~~ A supervisory physician may delegate to a licensed
220 physician assistant, pursuant to a written protocol, the
221 authority to act according to s. 154.04(1)(c). Such delegated
222 authority is limited to the supervising physician's practice in
223 connection with a county health department as defined and
224 established pursuant to chapter 154. The boards shall adopt

225 rules governing the supervision of physician assistants by
226 physicians in county health departments.
227 (f) ~~(e)~~ A supervisory physician may delegate to a fully
228 licensed physician assistant the authority to prescribe or
229 dispense any medication used in the supervisory physician's
230 practice unless such medication is listed on the formulary
231 created pursuant to s. 458.347. A fully licensed physician
232 assistant may only prescribe or dispense such medication under
233 the following circumstances:
234 1. A physician assistant must clearly identify to the
235 patient that she or he is a physician assistant. Furthermore,
236 the physician assistant must inform the patient that the patient
237 has the right to see the physician prior to any prescription
238 being prescribed or dispensed by the physician assistant.
239 2. The supervisory physician must notify the department of
240 her or his intent to delegate, on a department-approved form,
241 before delegating such authority and notify the department of
242 any change in prescriptive privileges of the physician
243 assistant. Authority to dispense may be delegated only by a
244 supervisory physician who is registered as a dispensing
245 practitioner in compliance with s. 465.0276.
246 3. The physician assistant must file with the department a
247 signed affidavit that she or he has completed a minimum of 10
248 continuing medical education hours in the specialty practice in
249 which the physician assistant has prescriptive privileges with
250 each licensure renewal application.
251 4. The department may issue a prescriber number to the
252 physician assistant granting authority for the prescribing of

253 medicinal drugs authorized within this paragraph upon completion
254 of the foregoing requirements. The physician assistant may ~~shall~~
255 not be required to independently register pursuant to s.
256 465.0276.
257 5. The prescription must be written in a form that
258 complies with chapter 499 and must contain, in addition to the
259 supervisory physician's name, address, and telephone number, the
260 physician assistant's prescriber number. Unless it is a drug or
261 drug sample dispensed by the physician assistant, the
262 prescription must be filled in a pharmacy permitted under
263 chapter 465, and must be dispensed in that pharmacy by a
264 pharmacist licensed under chapter 465. The appearance of the
265 prescriber number creates a presumption that the physician
266 assistant is authorized to prescribe the medicinal drug and the
267 prescription is valid.
268 6. The physician assistant must note the prescription or
269 dispensing of medication in the appropriate medical record.
270 ~~7. This paragraph does not prohibit a supervisory~~
271 ~~physician from delegating to a physician assistant the authority~~
272 ~~to order medication for a hospitalized patient of the~~
273 ~~supervisory physician.~~
274
275 ~~This paragraph does not apply to facilities licensed pursuant to~~
276 ~~chapter 395.~~
277 (g) A supervisory physician may delegate to a licensed
278 physician assistant the authority to order medications for the
279 supervisory physician's patient in a facility licensed under
280 chapter 395, notwithstanding any provisions in chapter 465 or

281 <u>chapter 893 which may prohibit this delegation.</u>
282 Section 5. Paragraph (b) of subsection (7) of section
283 459.023, Florida Statutes, is amended to read:
284 459.023 Anesthesiologist assistants.—
285 (7) ANESTHESIOLOGIST AND ANESTHESIOLOGIST ASSISTANT TO
286 ADVISE THE BOARD.—
287 (b) In addition to its other duties and responsibilities
288 as prescribed by law, the board shall:
289 1. Recommend to the department the licensure of
290 anesthesiologist assistants.
291 2. Develop all rules regulating the use of
292 anesthesiologist assistants by qualified anesthesiologists under
293 this chapter and chapter 458, except for rules relating to the
294 formulary developed under <u>s. 458.347</u> ~~s. 458.347(4)(f)~~. The board
295 shall also develop rules to ensure that the continuity of
296 supervision is maintained in each practice setting. The boards
297 shall consider adopting a proposed rule at the regularly
298 scheduled meeting immediately following the submission of the
299 proposed rule. A proposed rule may not be adopted by either
300 board unless both boards have accepted and approved the
301 identical language contained in the proposed rule. The language
302 of all proposed rules must be approved by both boards pursuant
303 to each respective board's guidelines and standards regarding
304 the adoption of proposed rules.
305 3. Address concerns and problems of practicing
306 anesthesiologist assistants to improve safety in the clinical
307 practices of licensed anesthesiologist assistants.
308 Section 6. Paragraph (c) of subsection (3) of section

309 459.025, Florida Statutes, is amended to read:
310 459.025 Formal supervisory relationships, standing orders,
311 and established protocols; notice; standards.—
312 (3) SUPERVISORY RELATIONSHIPS IN MEDICAL OFFICE SETTINGS.—
313 An osteopathic physician who supervises an advanced registered
314 nurse practitioner or physician assistant at a medical office
315 other than the osteopathic physician's primary practice
316 location, where the advanced registered nurse practitioner or
317 physician assistant is not under the onsite supervision of a
318 supervising osteopathic physician, must comply with the
319 standards set forth in this subsection. For the purpose of this
320 subsection, an osteopathic physician's "primary practice
321 location" means the address reflected on the physician's profile
322 published pursuant to s. 456.041.
323 (c) An osteopathic physician who supervises an advanced
324 registered nurse practitioner or physician assistant at a
325 medical office other than the osteopathic physician's primary
326 practice location, where the advanced registered nurse
327 practitioner or physician assistant is not under the onsite
328 supervision of a supervising osteopathic physician and the
329 services offered at the office are primarily dermatologic or
330 skin care services, which include aesthetic skin care services
331 other than plastic surgery, must comply with the standards
332 listed in subparagraphs 1.-4. Notwithstanding s. 459.022 ~~s.~~
333 ~~459.022(4)(e)6.~~, an osteopathic physician supervising a
334 physician assistant pursuant to this paragraph may not be
335 required to review and cosign charts or medical records prepared
336 by such physician assistant.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

337 1. The osteopathic physician shall submit to the Board of
338 Osteopathic Medicine the addresses of all offices where he or
339 she is supervising or has a protocol with an advanced registered
340 nurse practitioner or a <u>physician</u> ~~physician's~~ assistant which
341 are not the osteopathic physician's primary practice location.
342 2. The osteopathic physician must be board certified or
343 board eligible in dermatology or plastic surgery as recognized
344 by the Board of Osteopathic Medicine pursuant to s. 459.0152.
345 3. All such offices that are not the osteopathic
346 physician's primary place of practice must be within 25 miles of
347 the osteopathic physician's primary place of practice or in a
348 county that is contiguous to the county of the osteopathic
349 physician's primary place of practice. However, the distance
350 between any of the offices may not exceed 75 miles.
351 4. The osteopathic physician may supervise only one office
352 other than the osteopathic physician's primary place of practice
353 except that until July 1, 2011, the osteopathic physician may
354 supervise up to two medical offices other than the osteopathic
355 physician's primary place of practice if the addresses of the
356 offices are submitted to the Board of Osteopathic Medicine
357 before July 1, 2006. ~~Effective July 1, 2011,~~ The osteopathic
358 physician may supervise only one office other than the
359 osteopathic physician's primary place of practice, regardless of
360 when the addresses of the offices were submitted to the Board of
361 Osteopathic Medicine.
362 Section 7. This act shall take effect July 1, 2013.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED ____ (Y/N)

ADOPTED AS AMENDED ____ (Y/N)

ADOPTED W/O OBJECTION ____ (Y/N)

FAILED TO ADOPT ____ (Y/N)

WITHDRAWN ____ (Y/N)

OTHER

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1 Committee/Subcommittee hearing bill: Health Quality
2 Subcommittee
3 Representative Renuart offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Paragraph (e) of subsection (4) of section
8 458.347, Florida Statutes, is amended, and paragraph (g) is
9 added to that subsection, to read:
10 458.347 Physician assistants.—
11 (4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—
12 (e) A supervisory physician may delegate to a fully
13 licensed physician assistant the authority to prescribe or
14 dispense any medication used in the supervisory physician's
15 practice unless such medication is listed on the formulary
16 created pursuant to paragraph (f). A fully licensed physician
17 assistant may only prescribe or dispense such medication under
18 the following circumstances:

19 1. A physician assistant must clearly identify to the
20 patient that he or she is a physician assistant. Furthermore,
21 the physician assistant must inform the patient that the patient
22 has the right to see the physician prior to any prescription
23 being prescribed or dispensed by the physician assistant.
24 2. The supervisory physician must notify the department of
25 his or her intent to delegate, on a department-approved form,
26 before delegating such authority and notify the department of
27 any change in prescriptive privileges of the physician
28 assistant. Authority to dispense may be delegated only by a
29 supervising physician who is registered as a dispensing
30 practitioner in compliance with s. 465.0276.
31 3. The physician assistant must file with the department a
32 signed affidavit that he or she has completed a minimum of 10
33 continuing medical education hours in the specialty practice in
34 which the physician assistant has prescriptive privileges with
35 each licensure renewal application.
36 4. The department may issue a prescriber number to the
37 physician assistant granting authority for the prescribing of
38 medicinal drugs authorized within this paragraph upon completion
39 of the foregoing requirements. The physician assistant shall not
40 be required to independently register pursuant to s. 465.0276.
41 5. The prescription must be written in a form that
42 complies with chapter 499 and must contain, in addition to the
43 supervisory physician's name, address, and telephone number, the
44 physician assistant's prescriber number. Unless it is a drug or
45 drug sample dispensed by the physician assistant, the
46 prescription must be filled in a pharmacy permitted under

47 chapter 465 and must be dispensed in that pharmacy by a
48 pharmacist licensed under chapter 465. The appearance of the
49 prescriber number creates a presumption that the physician
50 assistant is authorized to prescribe the medicinal drug and the
51 prescription is valid.

52 6. The physician assistant must note the prescription or
53 dispensing of medication in the appropriate medical record.

54 ~~7. This paragraph does not prohibit a supervisory~~
55 ~~physician from delegating to a physician assistant the authority~~
56 ~~to order medication for a hospitalized patient of the~~
57 ~~supervisory physician.~~

58

59 ~~This paragraph does not apply to facilities licensed pursuant to~~
60 ~~chapter 395.~~

61 (g) A supervisory physician may delegate to a licensed
62 physician assistant the authority to order medications for the
63 supervisory physician's patient during his or her care in a
64 facility licensed under chapter 395, notwithstanding any
65 provisions in chapter 465 or chapter 893 which may prohibit this
66 delegation. For the purpose of this paragraph, an order is not
67 considered a prescription. A licensed physician assistant
68 working in a facility that is licensed under chapter 395 may
69 order any medication under the direction of the supervisory
70 physician.

71 Section 2. Paragraph (e) of subsection (4) of section
72 459.022, Florida Statutes, is amended, and paragraph (f) is
73 added to that subsection, to read:

74 459.022 Physician assistants.—

75 (4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—
76 (e) A supervisory physician may delegate to a fully
77 licensed physician assistant the authority to prescribe or
78 dispense any medication used in the supervisory physician's
79 practice unless such medication is listed on the formulary
80 created pursuant to s. 458.347. A fully licensed physician
81 assistant may only prescribe or dispense such medication under
82 the following circumstances:
83 1. A physician assistant must clearly identify to the
84 patient that she or he is a physician assistant. Furthermore,
85 the physician assistant must inform the patient that the patient
86 has the right to see the physician prior to any prescription
87 being prescribed or dispensed by the physician assistant.
88 2. The supervisory physician must notify the department of
89 her or his intent to delegate, on a department-approved form,
90 before delegating such authority and notify the department of
91 any change in prescriptive privileges of the physician
92 assistant. Authority to dispense may be delegated only by a
93 supervisory physician who is registered as a dispensing
94 practitioner in compliance with s. 465.0276.
95 3. The physician assistant must file with the department a
96 signed affidavit that she or he has completed a minimum of 10
97 continuing medical education hours in the specialty practice in
98 which the physician assistant has prescriptive privileges with
99 each licensure renewal application.
100 4. The department may issue a prescriber number to the
101 physician assistant granting authority for the prescribing of
102 medicinal drugs authorized within this paragraph upon completion

103 of the foregoing requirements. The physician assistant shall not
104 be required to independently register pursuant to s. 465.0276.
105 5. The prescription must be written in a form that
106 complies with chapter 499 and must contain, in addition to the
107 supervisory physician's name, address, and telephone number, the
108 physician assistant's prescriber number. Unless it is a drug or
109 drug sample dispensed by the physician assistant, the
110 prescription must be filled in a pharmacy permitted under
111 chapter 465, and must be dispensed in that pharmacy by a
112 pharmacist licensed under chapter 465. The appearance of the
113 prescriber number creates a presumption that the physician
114 assistant is authorized to prescribe the medicinal drug and the
115 prescription is valid.
116 6. The physician assistant must note the prescription or
117 dispensing of medication in the appropriate medical record.
118 ~~7. This paragraph does not prohibit a supervisory~~
119 ~~physician from delegating to a physician assistant the authority~~
120 ~~to order medication for a hospitalized patient of the~~
121 ~~supervisory physician.~~
122
123 ~~This paragraph does not apply to facilities licensed pursuant to~~
124 ~~chapter 395.~~
125 <u>(f) A supervisory physician may delegate to a licensed</u>
126 <u>physician assistant the authority to order medications for the</u>
127 <u>supervisory physician's patient during his or her care in a</u>
128 <u>facility licensed under chapter 395, notwithstanding any</u>
129 <u>provisions in chapter 465 or chapter 893 which may prohibit this</u>
130 <u>delegation. For the purpose of this paragraph, an order is not</u>

131 considered a prescription. A licensed physician assistant
132 working in a facility that is licensed under chapter 395 may
133 order any medication under the direction of the supervisory
134 physician.
135 Section 3. This act shall take effect July 1, 2013.
136
137 ---
138 **T I T L E A M E N D M E N T**
139 Remove everything before the enacting clause and insert:
140 A bill to be entitled
141 An act relating to physician assistants; amending ss.
142 458.347 and 459.022, F.S.; authorizing a supervisory
143 physician to delegate to a licensed physician
144 assistant the authority to order medications for the
145 supervisory physician's patient during his or her care
146 in a facility licensed under ch. 395, F.S.; deleting
147 provisions to conform to changes made by the act;
148 providing that an order is not a prescription;
149 authorizing a licensed physician assistant to order
150 medication under the direction of the supervisory
151 physician; providing an effective date.

HB 671

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 671 Pharmacy Technicians
SPONSOR(S): Hutson
TIED BILLS: **IDEN./SIM. BILLS:** SB 818

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		O'Callaghan	O'Callaghan
2) Health & Human Services Committee			

SUMMARY ANALYSIS

Currently, Florida's laws prohibit a licensed pharmacist from supervising more than one registered pharmacy technician. HB 671 increases the number of registered pharmacy technicians a licensed pharmacist may supervise to authorize the supervision of up to six registered pharmacy technicians. Additional registered pharmacy technicians may be supervised if permitted by guidelines adopted by the Department of Health's (DOH) Board of Pharmacy (Board).

To conform to the aforementioned changes, the bill deletes a provision that directs the Board to establish guidelines to determine when a licensed pharmacist may supervise more than one, but not more than three, registered pharmacy technicians.

The bill has an indeterminate, insignificant fiscal impact on the DOH.

The bill provides an effective date of July 1, 2013.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Pharmacist and Pharmacy Technician Workforce Demand
Pharmacy technicians assist, and work under the supervision of, licensed pharmacists. Their duties may include dispensing, measuring, or compounding medications; taking information needed to fill a prescription; packaging and labeling prescriptions; accepting payment for prescriptions; answering phones; or referring patients with questions to the pharmacist. Ultimately, the pharmacist reviews all prescriptions. Some reports suggest that the utilization of educated and certified pharmacy technicians allows pharmacists to focus more on direct patient care.[1]

Factors that contribute to a high demand for pharmacists and pharmacy technicians include:
- Increased use of prescription medications and the number of prescription medications available;
- Market growth and competition among retail pharmacies resulting in increased job openings and expanded store hours;
- The aging of the U.S. population; and
- An increase in time spent on non-patient care activities, such as office administration.[2]

Employment of pharmacy technicians in the U.S. has been projected by the U.S. Department of Labor, Bureau of Labor Statistics to increase by 32% between 2010 and 2020.[3]

To address pharmacist workforce shortages, the U.S. House of Representatives introduced the Pharmacy Technician Training and Registration Act or "Emily's Act," suggesting to State Boards of Pharmacy that they strive to ensure 1:2 pharmacist-to-pharmacist technician ratios in hospital settings and 1:3 ratios in other settings, including drug stores.[4]

As of 2009, Florida was among 18 states allowing a maximum 1:3 pharmacist-to-pharmacist technician ratio.[5] Seventeen states and the District of Columbia had no ratio limits; 8 states allowed a maximum 1:2 pharmacist-to-pharmacist technician ratio; 7 states allowed a 1:4 ratio; and 1 state allowed a 1:1 ratio. More recently, Indiana and Idaho have allowed a 1:6 ratio.[6] Some states require that higher ratios are contingent on certification or licensure of technicians, or other quality assurance measures.[7]

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[1] *See* "ASHP Long-Range Vision for the Pharmacy Work Force in Hospitals and Health Systems: Ensuring the Best Use of Medicines in Hospitals and Health Systems," *American Journal of Health-System Pharmacy,* 64(12):1320-1330, June 15, 2007, available at: www.ashp.org/DocLibrary/BestPractices/HRRptWorkForceVision.aspx (visited March 7, 2013); "White Paper on Pharmacy Technicians 2002: Needed changes can no longer wait," *American Journal of Health-System Pharmacy*, 60(1): 37-51, January 1, 2003, available at: www.acpe-accredit.org/pdf/whitePaper.pdf (last visited March 7, 2013); and "The Adequacy of Pharmacist Supply: 2004 to 2030," Department of Health and Human Services, Health Resources and Services Administration, Bureau of Health Professions, December 2008, available at: bhpr.hrsa.gov/healthworkforce/reports/pharmsupply20042030.pdf (last visited March 7, 2013).
[2] "The Pharmacist Workforce, A Study of the Supply and Demand for Pharmacists," Department of Health and Human Services, Health Resources and Services Administration, Bureau of Health Professions, December 2000, available at: bhpr.hrsa.gov/healthworkforce/reports/pharmaciststudy.pdf (last visited March 7, 2013).
[3] Occupational Outlook Handbook: Pharmacy Technicians, Bureau of Labor Statistics, U.S. Department of Labor, available at: http://www.bls.gov/ooh/healthcare/pharmacy-technicians.htm (last visited March 7, 2013).
[4] U.S. House of Representatives, H.R. 5491, February 26, 2008. Library of Congress Summary available at: http://www.govtrack.us/congress/bills/110/hr5491#summary/libraryofcongress (last visited March 7, 2013).
[5] National Association of Chain Drug Stores, *Standardized Pharmacy Technician Education and Training,* May 2009.
[6] Indiana changed their ratio July 2, 2012. *See* Indiana Code, 25-26-13-18. *See also*, Idaho Board of Pharmacy Rule 251, Pharmacy Technicians.
[7] *See* National Association of Boards of Pharmacy: *Kansas News: Pharmacy Technician Ratio (2006), Minnesota Board of Pharmacy (2000), Idaho State Board of Pharmacy News (2009)*, available at: http://www.nabp.net/ (last visited March 7, 2013).

According to the December 2012 Aggregate Demand Index compiled by the Pharmacy Manpower Project, Inc., Florida has a ranking of 2.86, meaning Florida does not have a shortage of pharmacists. Specifically, this ranking falls between "demand is less than the pharmacist supply available" and "demand is in balance with supply."[8]

Pharmacy Technicians in Florida
In 2008, the Florida Legislature passed CS/CS 1360, which amended s. 465.014, F.S., to require pharmacy technician applicants to complete a pharmacy technician training program to become a registered pharmacy technician. The bill also provided for the direct supervision of a registered pharmacy technician by a licensed pharmacist.[9]

Section 465.014, F.S., authorizes a licensed pharmacist to delegate to registered pharmacy technicians those duties, tasks, and functions that do not fall within the definition of the practice of the profession of pharmacy. Registered pharmacy technicians' responsibilities include:[10]

- Retrieval of prescription files;
- Data entry;
- Label preparation;
- Counting, weighing, measuring, pouring, and mixing prescription medication;
- Initiation of communication with a prescribing practitioner or medical staff regarding requests for prescription refill authorization, clarification of missing information on prescriptions, and confirmation of information such as names, medication, and strength; and
- Acceptance of authorization for prescription renewals.

The Board specifies by rule[11] certain acts that pharmacy technicians are prohibited from performing. Those acts include:

- Receiving new verbal prescriptions or any change in the medication, strength, or directions;
- Interpreting a prescription or medication order for therapeutic acceptability and appropriateness;
- Conducting a final verification of dosage and directions;
- Engaging in prospective drug review;
- Providing patient counseling;
- Monitoring prescription drug usage; and
- Overriding clinical alerts without first notifying the pharmacist.

All registered pharmacy technicians must identify themselves as registered pharmacy technicians by wearing an identification badge with a designation as a "registered pharmacy technician" and verbally identifying themselves as a registered pharmacy technician over the telephone.[12]

The licensed pharmacist is responsible for acts performed by persons under his or her supervision.[13] Licensed pharmacists may not supervise more than one registered pharmacy technician unless authorized by the Board under guidelines it has established to determine circumstances when a licensed pharmacist may supervise more than one, but not more than three, registered pharmacy technicians.[14] A prescription department manager or consultant pharmacist of record who seeks to have more than one registered pharmacy technician must submit a written request to the Board for approval and demonstrate workflow needs to justify the increased ratio.[15]

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[8] Aggregate Demand Index, Supported by Pharmacy Manpower Project Inc., available at: http://www.pharmacymanpower.com/about.jsp (last visited March 7, 2013).
[9] 2008-216, L.O.F.
[10] Rule, 64B16-27.420, F.A.C.
[11] *Id.*
[12] *Id.*
[13] Rule 64B16-27.1001(7), F.A.C.
[14] Section 465.014, F.S.
[15] Rule 64B16-27.410, F.A.C.

At the end of fiscal year 2011/2012, there were 37,379 registered pharmacy technicians and 29,311 licensed pharmacists in Florida.[16] As of February 2013, 4,358 Florida licensed pharmacies had a ratio of three pharmacy technicians to one pharmacist, and 588 pharmacies had a ratio of two pharmacy technicians to one pharmacist.[17]

Effect of Proposed Changes

Currently, Florida's laws prohibit a licensed pharmacist from supervising more than one registered pharmacy technician. HB 671 increases the number of registered pharmacy technicians a licensed pharmacist may supervise to authorize the supervision of up to six registered pharmacy technicians. Additional registered pharmacy technicians may be supervised if permitted by guidelines adopted by the Board.

The bill makes a conforming change by deleting a provision that directs the Board to establish guidelines to determine when a licensed pharmacist may supervise more than one, but not more than three, registered pharmacy technicians.

B. SECTION DIRECTORY:

Section 1: Amends s. 465.014, F.S., relating to pharmacy technicians.
Section 2: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill will have an indeterminate, insignificant impact on the DOH, associated with the cost of rulemaking.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

[16] Department of Health, Bill Analysis of HB 671, February 17, 2013, on file with committee staff.
[17] *Id.*

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

No additional rulemaking authority is necessary to implement this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to pharmacy technicians; amending s.
3 465.014, F.S.; revising the number of pharmacy
4 technicians that a pharmacist may supervise; providing
5 an effective date.
6
7 Be It Enacted by the Legislature of the State of Florida:
8
9 Section 1. Subsection (1) of section 465.014, Florida
10 Statutes, is amended to read:
11 465.014 Pharmacy technician.—
12 (1) A person other than a licensed pharmacist or pharmacy
13 intern may not engage in the practice of the profession of
14 pharmacy, except that a licensed pharmacist may delegate to
15 pharmacy technicians who are registered pursuant to this section
16 those duties, tasks, and functions that do not fall within the
17 purview of s. 465.003(13). All such delegated acts shall be
18 performed under the direct supervision of a licensed pharmacist
19 who shall be responsible for all such acts performed by persons
20 under his or her supervision. A pharmacy registered technician,
21 under the supervision of a pharmacist, may initiate or receive
22 communications with a practitioner or his or her agent, on
23 behalf of a patient, regarding refill authorization requests. A
24 licensed pharmacist may not supervise more than six ~~one~~
25 registered pharmacy technicians ~~technician~~ unless otherwise
26 permitted by the guidelines adopted by the board. ~~The board~~
27 ~~shall establish guidelines to be followed by licensees or~~
28 ~~permittees in determining the circumstances under which a~~

29 ~~licensed pharmacist may supervise more than one but not more~~
30 ~~than three pharmacy technicians.~~
31 Section 2. This act shall take effect July 1, 2013.

HB 7005

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7005 (PCB CRJS 13-01) Massage Establishments
SPONSOR(S): Criminal Justice Subcommittee, Kerner and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 500

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 0 N	Cunningham	Cunningham
1) Health Quality Subcommittee		Guzzo	O'Callaghan
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Chapter 480, F.S., entitled the "Massage Practice Act" (Act), governs the practice of massage in Florida. A significant portion of the Act is dedicated to regulating massage establishments, which are defined as "a site or premises, or portion thereof, wherein a massage therapist practices massage." While the majority of massage establishments engage in the legitimate practice of massage, some have been recognized as sites where illegal activity, such as human trafficking, occurs.

The Act currently contains numerous provisions prohibiting operators of massage establishments from committing specified acts. Both administrative and criminal penalties may be imposed upon those who do. While these provisions help in preventing illegal activity in massage establishments, recent news reports indicate that a small number of massage establishments continue to engage in illegal activity.

The bill amends the Act to create additional prohibitions that are designed to curb illegal activity in massage establishments. Specifically, the bill creates s. 480.0475, F.S., which makes it a first-degree misdemeanor for:

- A person to operate a massage establishment between the hours of 10:00 p.m. and 6:00 a.m.; or
- A person operating a massage establishment to use or permit such establishment to be used as a principle domicile unless the establishment is zoned for residential use under local ordinance.

A second or subsequent violation is a third degree felony.

The prohibition relating to operating hours does not apply to massage establishments:

- Located on the premises of a health care facility, hotel, motel, or a bed and breakfast inn; or
- In which every massage performed between the hours of 10:00 p.m. and 6:00 a.m. are performed by a massage therapist acting under the direction of a physician or physician assistant, an osteopathic physician or physician assistant, a chiropractic physician, a podiatric physician, an advanced registered nurse, or a dentist.

The bill also amends s. 823.05, F.S., to declare massage establishments that operate in violation of the above-described provisions (and s. 480.0535(2), F.S., which requires massage establishment operators to provide identification upon request of a law enforcement officer) a nuisance that may be abated or enjoined as provided in ss. 60.05 and 60.06, F.S.

Because the bill creates new offenses punishable as misdemeanors and felonies, it may have a negative jail bed impact on local governments as well as a negative prison bed impact on the Department of Corrections.

The bill is effective October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Massage Establishments

In October 2010, the Center for the Advancement of Human Rights at Florida State University provided the Florida Task Force on Human Trafficking a "Statewide Strategic Plan on Human Trafficking."[1] The Strategic Plan found that Florida is the third most popular American destination for human traffickers and that sex trafficking is the most under-reported offense.[2] The Strategic Plan noted that massage establishments have been noted as sites where trafficking occurs.[3]

Chapter 480, F.S., entitled the "Massage Practice Act" (Act), governs the practice of massage[4] in Florida. A significant portion of the Act is dedicated to regulating massage establishments, which are defined as "a site or premises, or portion thereof, wherein a massage therapist practices massage."[5]

Massage establishments may only operate if they have applied for and received a license from the Department of Health (DOH) in accordance with rules adopted by the Board of Massage Therapy (Board).[6] The Board's rules:

- Govern the operation of massage establishments and their facilities, personnel, safety and sanitary requirements, financial responsibility, and insurance coverage;
- Require DOH to inspect a proposed massage establishment upon receipt of an application for licensure to ensure that the site is to be utilized for massage; and
- Require DOH to periodically inspect licensed massage establishments at least once a year.[7]

Administrative Penalties

The Act sets forth a multitude of instances in which an operator of a massage establishment can be administratively disciplined by the Board. These include:

- Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of massage or to the ability to practice massage;
- False, deceptive, or misleading advertising;
- Aiding, assisting, procuring, or advising any unlicensed person to practice massage contrary to the provisions of the Act or to a rule of the Board;
- Making deceptive, untrue, or fraudulent representations in the practice of massage;
- Violating a lawful order of the Board previously entered in a disciplinary hearing;
- Refusing to permit the department to inspect the business premises of the licensee during regular business hours; and
- Failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition.[8]

Operators of massage establishments may also be administratively disciplined for violating *any provision* of the Act or ch. 456, F.S.,[9] or any rules adopted pursuant thereto.[10]

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[1] The plan is available and can be viewed at http://www.cahr.fsu.edu/sub_category/Florida_StrategicPlanonHumanTrafficking.html (last visited March 11, 2013).
[2] Page 3 of the Strategic Plan.
[3] Page 11 of the Strategic Plan.
[4] The term "massage" is defined as the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation. Section 480.033(3), F.S.
[5] Section 480.033(7), F.S.
[6] Section 480.043(1), F.S.
[7] *See* Rules 64B7-26.003, 64B7-26.004, and 64B7-26.005, F.A.C.
[8] Section 480.046(1), F.S.
[9] Chapter 456, F.S., regulates health professions and occupations.

Administrative disciplinary action includes:

- License denial;
- Refusal to certify, or certify with restrictions, an application for a license;
- Suspension or permanent revocation of a license;
- Restricting one's practice or license;
- Imposition of an administrative fine not to exceed $10,000 for each count or separate offense; and
- Placing the licensee on probation and subject to such conditions as the Board may specify.[11]

The Board can also revoke or suspend the license of a massage establishment in the following instances:

- Upon proof that a license has been obtained by fraud or misrepresentation; or
- Upon proof that the holder of a license is guilty of fraud or deceit or of gross negligence, incompetency, or misconduct in the operation of the licensed establishment.[12]

The Board has adopted a rule[13] outlining the administrative disciplinary guidelines to be used when it finds that an applicant or licensee has violated the Act.[14] These guidelines range from small fines for first-time minor violations to large fines, and license revocation for more serious violations.[15]

Massage Establishment Enforcement Data[16]

Measure	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
Number of Licensees	8,106	9,674	8,974	10,942	10,348
Disciplinary Actions Taken	40	44	42	52	44
Licensure Denials	3	0	0	19	9
Licensure Suspensions	2	0	3	4	3
Licensure Permanently Revoked	19	16	20	16	25
Number of Fines	41	36	45	72	24
Amount of Fines	$63,850.00	$37,850.00	$49,000.00	$47,050.00	$26,450.00
Probations Imposed	5	1	1	2	5

Criminal Penalties

The Act also imposes criminal penalties for certain violations. Section 480.047, F.S., makes it a first degree misdemeanor[17] for a person to:

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10 Section 480.046(1)(o), F.S.

11 Sections 480.046(2) and 456.072(2), F.S.

12 Section 480.046(3), F.S.

13 Rule 64B7-30.002, F.A.C.

14 The disciplinary guidelines also apply when the Board finds that an applicant or licensee as committed an act set forth in s. 480.0485, F.S. (relating to sexual misconduct); s. 480.047, F.S. (setting forth prohibited acts subject to criminal penalties); and s. 456.072, F.S. (containing general grounds for discipline for those in health professions). *See* Rule 64B7-30.002, F.A.C.

15 Disciplinary proceedings must be conducted in accordance with ch. 120, F.S. Section 480.046(4), F.S.

16 E-mail from Florida Department of Health-Division of Medical Quality Assurance Enforcement Data by Fiscal Year (Feb. 13, 2013) (on filed with Health Quality Subcommittee staff).

- Hold himself or herself out as a massage therapist or to practice massage unless duly licensed under the Act or unless otherwise specifically exempted from licensure under the Act;
- Operate any massage establishment unless it has been duly licensed;
- Permit an employed person to practice massage unless duly licensed;
- Present as his or her own the license of another;
- Allow the use of his or her license by an unlicensed person;
- Give false or forged evidence to DOH in obtaining any license;
- Falsely impersonate any other license-holder of like or different name;
- Use or attempt to use a license that has been revoked; or
- Otherwise violate any of the provisions of the Act.

A new criminal penalty was created in 2012, when the Legislature passed House Bill 7049. The bill, which contained a variety of provisions designed to enhance Florida's human trafficking laws, attempted to curb illegal activity in massage establishments by creating s. 480.0535, F.S. The statute makes it a second degree misdemeanor[18] if a person operating a massage establishment cannot:

- Immediately present, upon the request of a DOH investigator or a law enforcement officer:
  - Valid government identification while in the establishment; and
  - A copy of specified documentation for each employee and any person performing massage in the establishment.
- Ensure that each employee and any person performing massage in the massage establishment is able to immediately present, upon the request of a DOH investigator or a law enforcement officer, valid government identification while in the establishment.[19]

Despite the Act's numerous administrative and criminal penalties, recent news reports indicate that some massage establishments continue to engage in illegal activity.[20]

Effect of the Bill

The bill creates s. 480.0475, F.S., entitled "Massage establishments; prohibited practices," and provides the following legislative intent language:

> The Legislature recognizes that, although the majority of massage establishments are operated by law-abiding citizens, a small number of establishments are operated by persons who use the establishment as a place to engage in illegal activities, such as human trafficking and prostitution. It is the intent of the Legislature to protect the public and the state's massage profession and its reputation from persons operating massage establishments that engage in illegal activity. The Legislature also intends that the perpetrators of human trafficking be penalized for their illegal conduct and that the victims of trafficking be protected and assisted by the state.

The bill makes it a first degree misdemeanor for:

- A person to operate a massage establishment between the hours of 10:00 p.m. and 6:00 a.m.; or
- A person operating a massage establishment to use or permit such establishment to be used as a principle domicile unless the establishment is zoned for residential use under local ordinance.

A second or subsequent violation of the above-described provisions is a third degree felony.[21]

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[17] A first degree misdemeanor is punishable by up to one year in county jail and a $1,000 fine. Sections 775.082 and 775.083, F.S.
[18] A second degree misdemeanor is punishable by up to 60 days in county jail and a $500 fine. Sections 775.082 and 775.083, F.S.
[19] Section 480.0535(3), F.S. Subsequent violations of the statute are subject to increased penalties.
[20] *See, e.g.,* "FBI raiding 'body-rub' joints in booming South Florida massage industry" http://articles.sun-sentinel.com/2012-11-24/news/fl-fbi-massage-raids-20121124_1_massage-parlors-massage-businesses-massage-therapist (last visited on March 11, 2013), and "3 arrested at massage parlor" http://www.newsherald.com/news/crime-public-safety/3-arrested-at-massage-parlor-1.31152 (last visited on March 11, 2013).
[21] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Sections 775.082 and 775.083, F.S.

The prohibition relating to operating hours does not apply to massage establishments:

- Located on the premises of a health care facility as defined in s. 408.07, F.S.; or a hotel, motel, or a bed and breakfast inn, as those terms are defined in s. 509.242, F.S.; or
- In which every massage performed between the hours of 10:00 p.m. and 6:00 a.m. are performed by a massage therapist acting under the direction of a physician or physician assistant licensed under ch. 458, F.S.; an osteopathic physician or physician assistant licensed under ch. 459, F.S.; a chiropractic physician licensed under ch. 460, F.S.; a podiatric physician licensed under ch. 461, F.S.; an advanced registered nurse practitioner licensed under part I of ch. 464, F.S.; or a dentist licensed under ch. 466, F.S.

Because any violation of the Act is grounds for administrative disciplinary action, the two new prohibitions created by the bill now constitute grounds for such action by the Board.

Public Nuisances

Section 823.05, F.S., deems certain places public nuisances. For example, subsection (1) of the statute currently specifies that a person is guilty of maintaining a nuisance if they erect, establish, continue, maintain, own or lease any:

- Building, booth, tent or place which tends to annoy the community or injure the health of the community, or become manifestly injurious to the morals or manners of the people as described in s. 823.01, F.S.;
- House or place of prostitution, assignation, or lewdness;
- Place or building where games of chance are engaged in violation of law; or
- Place where any law of the state is violated.

The statute declares such buildings, places, tents, or booths and the furniture, fixtures, and contents a nuisance. Subsection (2) of the statute declares places used on two or more occasions by a criminal gang, criminal gang members, or criminal gang associates for the purpose of engaging in criminal gang-related activity a nuisance.

Nuisances described in s. 823.05, F.S., must be abated and enjoined pursuant to ss. 60.05 and 60.06, F.S. Section 60.05, F.S., authorizes the Attorney General, state attorney, city attorney, county attorney, and any citizen to sue in the name of the state to enjoin the nuisance, the person(s) maintaining it, and the owner or agent of the building or ground on which the nuisance exists. The court, based on evidence[22] or affidavit, may issue a temporary injunction enjoining:

- The maintaining of a nuisance;
- The operating and maintaining of the place or premises where the nuisance is maintained;
- The owner or agent of the building or ground upon which the nuisance exists; and
- The conduct, operation, or maintenance of any business or activity operated or maintained in the building or on the premises in connection with the maintenance of the nuisance.[23]

The injunction must specify the activities enjoined and must not preclude the operation of any lawful business not conducive to the maintenance of the alleged nuisance.[24] If the existence of a nuisance is shown at the final hearing, the court must issue a permanent injunction.[25]

Section 60.06, F.S., requires the court, upon proper proof, to order the abatement of nuisances mentioned in s. 823.05, F.S., and authorizes the court to enforce injunctions by contempt.

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[22] Evidence of the general reputation of the alleged nuisance and place is admissible to prove the existence of a nuisance. Section 60.05(3), F.S.

[23] Section 60.05(2), F.S.

[24] Section 60.05(2), F.S. At least 3 days' notice in writing shall be given defendant of the time and place of application for the temporary injunction.

[25] Section 60.05(4), F.S.

Effect of the Bill

The bill amends s. 823.05, F.S., to declare massage establishments that operate in violation of s. 480.0475, F.S. (the newly created operating hours and domicile prohibitions), and s. 480.0535(2), F.S. (which requires massage establishment operators to provide identification upon request of a law enforcement officer), a nuisance that may be abated or enjoined as provided in ss. 60.05 and 60.06, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 480.047, F.S., relating to penalties.

Section 2. Creates s. 480.0475, F.S., relating to massage establishments; prohibited practices.

Section 3. Amends s. 823.05, F.S., relating to places and groups engaged in criminal gang-related activity declared a nuisance; may be abated and enjoined.

Section 4. Provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of this bill. However, because second or subsequent violations of the bill are third degree felonies, it may have a negative prison bed impact on the Department of Corrections.

   The Board of Massage Therapy is likely to incur insignificant costs associated with rule-making.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill creates two new first degree misdemeanor offenses relating to massage establishments. This may have a negative jail bed impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Massage establishments will no longer be permitted to operate between the hours of 10:00 p.m. and 6:00 a.m., nor will such establishments be able to be used as a principle domicile unless zoned as such by local ordinance.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill appears exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The Board will likely amend their rules to establish disciplinary guidelines applicable to the prohibitions created by the bill. However, because the Board currently has broad authority to adopt rules to implement the provisions of the Act, it does not appear that additional rulemaking authority is needed.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 16, 2013, the Criminal Justice Subcommittee adopted two amendments and reported the PCB favorably. The first amendment clarifies that massage establishments that meet *either* of the exceptions are exempt from the operating hours prohibition. The second amendment makes second or subsequent violations of s. 480.0475, F.S., a third degree felony.

This analysis is drafted to the PCB as amended and passed by the Criminal Justice Subcommittee.

1 A bill to be entitled
2 An act relating to massage establishments; amending s.
3 480.047, F.S.; revising penalties; creating s.
4 480.0475, F.S.; providing legislative intent;
5 prohibiting the operation of a massage establishment
6 during specified times; providing exceptions;
7 prohibiting the use of a massage establishment as a
8 principal domicile unless the establishment is zoned
9 for residential use under a local ordinance; providing
10 penalties; amending s. 823.05, F.S.; declaring that a
11 massage establishment operating in violation of
12 specified statutes is a nuisance that may be abated or
13 enjoined; providing an effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Section 480.047, Florida Statutes, is amended
18 to read:
19 480.047 Penalties.—
20 (1) It is unlawful for any person to:
21 (a) Hold himself or herself out as a massage therapist or
22 to practice massage unless duly licensed under this chapter or
23 unless otherwise specifically exempted from licensure under this
24 chapter.
25 (b) Operate any massage establishment unless it has been
26 duly licensed as provided herein, except that nothing herein
27 shall be construed to prevent the teaching of massage in this
28 state at a board-approved massage school.

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

29 (c) Permit an employed person to practice massage unless
30 duly licensed as provided herein.
31 (d) Present as his or her own the license of another.
32 (e) Allow the use of his or her license by an unlicensed
33 person.
34 (f) Give false or forged evidence to the department in
35 obtaining any license provided for herein.
36 (g) Falsely impersonate any other licenseholder of like or
37 different name.
38 (h) Use or attempt to use a license that has been revoked.
39 (i) Otherwise violate any of the provisions of this act.
40 (2) Except as otherwise provided in this chapter, any
41 person violating the provisions of this section is guilty of a
42 misdemeanor of the first degree, punishable as provided in s.
43 775.082 or s. 775.083.
44 Section 2. Section 480.0475, Florida Statutes, is created
45 to read:
46 480.0475 Massage establishments; prohibited practices.—
47 (1) The Legislature recognizes that, although the majority
48 of massage establishments are operated by law-abiding citizens,
49 a small number of establishments are operated by persons who use
50 the establishment as a place to engage in illegal activities,
51 such as human trafficking and prostitution. It is the intent of
52 the Legislature to protect the public and the state's massage
53 profession and its reputation from persons operating massage
54 establishments that engage in illegal activity. The Legislature
55 also intends that the perpetrators of human trafficking be
56 penalized for their illegal conduct and that the victims of

57 trafficking be protected and assisted by the state.
58 (2) A person may not operate a massage establishment
59 between the hours of 10 p.m. and 6 a.m. This subsection does not
60 apply to a massage establishment:
61 (a) Located on the premises of a health care facility as
62 defined in s. 408.07 or of a hotel, motel, or bed and breakfast
63 inn, as those terms are defined in s. 509.242; or
64 (b) In which every massage performed between the hours of
65 10 p.m. and 6 a.m. is performed by a massage therapist acting
66 under the direction of a physician or physician assistant
67 licensed under chapter 458, an osteopathic physician or
68 physician assistant licensed under chapter 459, a chiropractic
69 physician licensed under chapter 460, a podiatric physician
70 licensed under chapter 461, an advanced registered nurse
71 practitioner licensed under part I of chapter 464, or a dentist
72 licensed under chapter 466.
73 (3) A person operating a massage establishment may not use
74 or permit the establishment to be used as a principal domicile
75 unless the establishment is zoned for residential use under a
76 local ordinance.
77 (4) Any person violating the provisions of this section
78 commits a misdemeanor of the first degree, punishable as
79 provided in s. 775.082 or s. 775.083. A second or subsequent
80 violation of this section is a felony of the third degree,
81 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
82 Section 3. Subsection (3) is added to section 823.05,
83 Florida Statutes, to read:
84 823.05 Places and groups engaged in criminal gang-related

85 activity declared a nuisance; may be abated and enjoined.—

86 (3) A massage establishment as defined in s. 480.033(7)

87 that operates in violation of s. 480.0475 or s. 480.0535(2) is

88 declared a nuisance and may be abated or enjoined as provided in

89 ss. 60.05 and 60.06.

90 Section 4. This act shall take effect October 1, 2013.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED ___ (Y/N)

ADOPTED AS AMENDED ___ (Y/N)

ADOPTED W/O OBJECTION ___ (Y/N)

FAILED TO ADOPT ___ (Y/N)

WITHDRAWN ___ (Y/N)

OTHER ___

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1 Committee/Subcommittee hearing bill: Health Quality
2 Subcommittee
3 Representative Kerner offered the following:
4
5 **Amendment (with title amendment)**
6 Remove lines 44-81 and insert:
7 Section 2. Subsection (2) of section 480.043, Florida
8 Statutes, is amended to read:
9 480.043 Massage establishments; requisites; licensure;
10 inspection.—
11 (2) The board shall adopt rules governing the operation of
12 establishments and their facilities, personnel, safety and
13 sanitary requirements, financial responsibility, insurance
14 coverage, and the license application and granting process. An
15 application shall be denied upon a finding that an applicant has
16 been arrested for and is awaiting final disposition of, or has
17 been convicted of, regardless of adjudication, any offense in s.
18 435.04(2) or a similar law of another jurisdiction.
19 Section 3. Paragraphs (e) though (o) of subsection (1) are
20 relettered as paragraphs (f) though (p), respectively, and a new

21 paragraph (e) of subsection (1) of section 480.046, Florida
22 Statutes, is added to read:
23 480.046 Grounds for disciplinary action by the board.—
24 (1) The following acts constitute grounds for denial of a
25 license or disciplinary action, as specified in s. 456.072(2):
26 (e) Advertising to induce or attempt to induce, or to
27 engage or attempt to engage, the client in sexual activity.
28 Section 4. Section 480.0475, Florida Statutes, is created
29 to read:
30 480.0475 Massage establishments; prohibited practices.—
31 (1) A person may not operate a massage establishment
32 between the hours of midnight and 5 a.m. This subsection does
33 not apply to a massage establishment:
34 (a) Located on the premises of a health care facility as
35 defined in s. 408.07; a health care clinic as defined in Part X
36 of chapter 400; a hotel, motel, or bed and breakfast inn, as
37 those terms are defined in s. 509.242; a public airport as
38 defined in s. 330.27; or a pari-mutuel facility as defined in s.
39 550.002; or
40 (b) In which every massage performed between the hours of
41 midnight and 5 a.m. is performed by a massage therapist acting
42 under the prescription of a physician or physician assistant
43 licensed under chapter 458, an osteopathic physician or
44 physician assistant licensed under chapter 459, a chiropractic
45 physician licensed under chapter 460, a podiatric physician
46 licensed under chapter 461, an advanced registered nurse
47 practitioner licensed under part I of chapter 464, or a dentist
48 licensed under chapter 466.

49 (2) A person operating a massage establishment may not use
50 or permit the establishment to be used as a principal domicile
51 unless the establishment is zoned for residential use under a
52 local ordinance.
53 (3) Any person violating the provisions of this section
54 commits a misdemeanor of the first degree, punishable as
55 provided in s. 775.082 or s. 775.083. A second or subsequent
56 violation of this section is a felony of the third degree,
57 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
58 Section 5. Section 480.052, Florida Statutes, is amended
59 to read:
60 480.052 Power of county or municipality to regulate
61 massage.—
62 (1) A county or municipality, within its jurisdiction, may
63 regulate persons and establishments licensed under this chapter.
64 Such regulation shall not exceed the powers of the state under
65 this act or be inconsistent with this act. This section shall
66 not be construed to prohibit a county or municipality from
67 enacting any regulation of persons or establishments not
68 licensed pursuant to this act.
69 (2) A county or municipality may waive the massage
70 establishment hours of operation restrictions contained in s.
71 485.0475 during special events occurring within such county or
72 municipality's jurisdiction.
73
74
75
76 ---

77 **T I T L E A M E N D M E N T**

78 Remove lines 3-10 and insert:

79 480.047, F.S.; revising penalties; amends s. 480.043, F.S.;

80 requiring an application to be denied upon specified findings;

81 amending s. 480.046, F.S., adding additional grounds for denial

82 of a license; creating s. 480.0475, F.S.; prohibiting the

83 operation of a massage establishment during specified times;

84 providing exceptions; prohibiting the use of a massage

85 establishment as a principal domicile unless the establishment

86 is zoned for residential use under a local ordinance; providing

87 penalties; amending s. 480.052, F.S., authorizing a county or

88 municipality to waive massage establishment operating hours

89 restrictions in certain instances; amending s. 823.05, F.S.;

90 declaring that a

91