



Health Quality Subcommittee

**Tuesday, October 20, 2015
9:00 AM - 11:00 AM
306 HOB**

**Steve Crisafulli
Speaker**

**Cary Pigman
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Health Quality Subcommittee

Start Date and Time: Tuesday, October 20, 2015 09:00 am
End Date and Time: Tuesday, October 20, 2015 11:00 am
Location: 306 HOB
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 81 Infectious Disease Elimination Pilot Program by Edwards
HB 107 Physical Therapy by Cummings
HB 173 Medical Faculty Certification by Magar
HB 249 Culinary Education Programs by Moskowitz
HB 4007 Medical Assistant Certification by Pigman, Campbell

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members is 6:00 p.m., Monday, October 19, 2015.

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, October 19, 2015.

NOTICE FINALIZED on 10/13/2015 2:51PM by Iseminger.Bobbye

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 81 Infectious Disease Elimination Pilot Program
SPONSOR(S): Edwards
TIED BILLS: IDEN./SIM. BILLS: SB 242

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		Siples <i>JS</i>	O'Callaghan <i>MS</i>
2) Government Operations Subcommittee			
3) Judiciary Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill amends s. 381.0038, F.S., to create the Miami-Dade Infectious Disease Elimination Act (IDEA). The IDEA authorizes the University of Miami and its affiliates to establish a needle and syringe exchange pilot program (pilot program) in Miami-Dade County. The pilot program is to offer free, clean, and unused needles and hypodermic syringes as a means to prevent the transmission of HIV/AIDS and other blood-borne diseases among intravenous drug users, their sexual partners, and offspring. The pilot program may operate at a fixed location or through a mobile health unit.

The pilot program must:

- Provide maximum security of the exchange site and equipment;
- Account for the number, disposal, and storage of needles and syringes;
- Adopt any measure to control the use and dispersal of sterile needles and syringes;
- Operate a one sterile needle and syringe unit to one used unit exchange ratio; and
- Make available educational materials; HIV and viral hepatitis counseling and testing; referral services to provide education regarding HIV, AIDS, and viral hepatitis transmission; and drug-abuse prevention and treatment counseling and referral services.

The bill provides that the possession, distribution, or exchange of needles or syringes as part of the pilot program does not violate the Florida Comprehensive Drug Abuse Prevention and Control Act under ch. 893, F.S., or any other law. However, pilot program staff and participants are not immune from prosecution for the possession or redistribution of needles or syringes in any form if acting outside of the pilot program.

The bill requires the collection of data for annual and final reporting purposes, but prohibits the collection of any personal identifying information from a participant. The pilot program expires on July 1, 2021. Six months prior to expiration, the Office of Program Policy Analysis and Government Accountability is required to submit a report to the Legislature that includes data on the pilot program and a recommendation on whether the pilot program should continue.

The bill prohibits the use of state funds to operate the pilot program and requires the use of grants and donations from private sources to fund the program. The bill includes a severability clause.

The bill may have a positive fiscal impact on state government or local governments. See FISCAL COMMENTS.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Needle and syringe exchange programs (NSEPs) provide sterile needles and syringes in exchange for used needles and syringes to reduce the transmission of human immunodeficiency virus (HIV) and other blood-borne infections associated with reuse of contaminated needles and syringes by injection-drug users (IDUs).

Federal Ban on Funding

In 2009, Congress passed the FY 2010 Consolidated Appropriations Act, which contained language that removed the ban on federal funding of NSEPs. In July 2010, the U.S. Department of Health and Human Services issued implementation guidelines for programs interested in using federal dollars for NSEPs.¹

However, on December 23, 2011, President Obama signed the FY 2012 omnibus spending bill that, among other things, reinstated the ban on the use of federal funds for NSEPs; this step reversed the 111th Congress's 2009 decision to allow federal funds to be used for NSEPs.²

Safe Sharps Disposal

Improperly discarded sharps pose a serious risk for injury and infection to sanitation workers and the community. "Sharps" is a medical term for devices with sharp points or edges that can puncture or cut skin.³

Examples of sharps include:⁴

- Needles – hollow needles used to inject drugs (medication) under the skin.
- Syringes – devices used to inject medication into or withdraw fluid from the body.
- Lancets, also called "fingerstick" devices – instruments with a short, two-edged blade used to get drops of blood for testing. Lancets are commonly used in the treatment of diabetes.
- Auto Injectors, including epinephrine and insulin pens – syringes pre-filled with fluid medication designed to be self-injected into the body.
- Infusion sets – tubing systems with a needle used to deliver drugs to the body.
- Connection needles/sets – needles that connect to a tube used to transfer fluids in and out of the body. This is generally used for patients on home hemodialysis.

On November 8, 2011, the U.S. Food and Drug Administration (FDA) launched a new website for patients and caregivers on the safe disposal of sharps that are used at home, at work, and while traveling.⁵

¹ Matt Fisher, *A History of the Ban on Federal Funding for Syringe Exchange Programs*, The Global Health Policy Center, (Feb. 6, 2012), available at <http://www.smartglobalhealth.org/blog/entry/a-history-of-the-ban-on-federal-funding-for-syringe-exchange-programs/> (last visited October 10, 2015).

² *Id.*

³ Food and Drug Administration, *Needles and Other Sharps (Safe Disposal Outside of Health Care Settings)*, available at <http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/HomeHealthandConsumer/ConsumerProducts/Sharps/ucm20025647.htm> (last visited October 10, 2015).

⁴ *Id.*

⁵ Food and Drug Administration, *FDA launches website on safe disposal of used needles and other "sharps"*, FDA News Release, Nov. 8, 2011, available at <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm278851.htm> (last visited on October 10, 2015).

According to the FDA, used needles and other sharps are dangerous to people and animals if not disposed of safely because they can injure people and spread infections that cause serious health conditions. The most common infections from such injuries are Hepatitis B (HBV), Hepatitis C (HCV), and Human Immunodeficiency Virus (HIV).⁶

Approximately 2.6% of the U.S. population⁷ have injected illicit drugs.⁸ The danger of used needles and other sharps combined with the number of injections of illicit drugs has prompted communities to try and manage the disposal of sharps within the illicit drug population. In San Francisco in 2000, approximately 2 million syringes were recovered at NSEPs, and an estimated 1.5 million syringes were collected through a pharmacy-based program that provided free-of-charge sharps containers and accepted filled containers for disposal. As a result, an estimated 3.5 million syringes were recovered from community syringe users and safely disposed of as infectious waste.⁹ Other NSEPs offer methods for safe disposal of syringes after hours. For example, in Santa Cruz, California, the Santa Cruz Needle Exchange Program, in collaboration with the Santa Cruz Parks and Recreation Department, installed 12 steel sharps containers in public restrooms throughout the county.¹⁰

National Data & Survey Results

In 2010, 8 percent (3,900) of the estimated 47,500 new HIV infections in the U.S. were attributed to injection drug use.¹¹ According to the Centers for Disease Control and Prevention (CDC), NSEPs can help prevent blood-borne pathogen transmission by increasing access to sterile syringes among IDUs and enabling safe disposal of used needles and syringes.¹² Often, programs also provide other public health services, such as HIV testing, risk-reduction education, and referrals for substance-abuse treatment.¹³

Based on findings of a survey conducted by staff from the Beth Israel Medical Center in New York City and the North American Syringe Exchange Network, there were 184 NSEPs operating in 36 states, the District of Columbia, and Puerto Rico as of March 2009,¹⁴ compared to 148 NSEPs in 2002 and 68 NSEPs in 1995.¹⁵ The survey found that the proportion of NSEP budgets coming from public sources increased from 62% during 1994-1995 to 79% in 2008.¹⁶

In 2011, the Beth Israel Medical Center conducted another survey of NSEPs in the U.S.¹⁷ The results revealed that the most frequent drug being used by participants was heroin, followed by cocaine, and

⁶ *Supra* fn. 3.

⁷ This population represents persons aged 13 years or older in 2011.

⁸ Public Library of Science; Lansky, A., Finlayson, T., Johnson, C., et. al.; *Estimating the Number of Persons Who Inject Drugs in the United States by Meta-Analysis to Calculate National Rates of HIV and Hepatitis C Virus Infections*; May 19, 2014; •DOI: 10.1371/journal.pone.0097596; available at <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0097596> (last visited on October 15, 2015).

⁹ *Id.* (citing Brad Drda et al., San Francisco Safe Needle Disposal Program, 1991—2001, 42 J. Am Pharm Assoc. S115—6 (2002), available at <http://japha.org/article.aspx?articleid=1035735>) (last visited October 11, 2015).

¹⁰ Centers for Disease Control and Prevention, *Update: Syringe Exchange Programs --- United States, 2002*, *supra* note 7.

¹¹ Centers for Disease Control and Prevention, *HIV and Injection Drug Use*, April 2015, available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB0QFjAAahUKEwj8nbvLnbnvIAhUEFR4KHUQuAPU&url=http%3A%2F%2Fwww.cdc.gov%2Fhiv%2Fpdf%2Fg-1%2Fcdc-hiv-idu-fact-sheet.pdf&usq=AFQjCNHXNVbqd729aWoMiRXcVhqtQsAJ9Q&sig2=s88dqAr_jEqG8X3gJINBVg&bvm=bv.104819420.d.dmo (last visited on October 11, 2015).

¹² Centers for Disease Control and Prevention, *Syringe Exchange Programs---United States, 2008*, November 19, 2010, 59(45);1488-1491, available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5945a4.htm/Syringe-Exchange-Programs-United-States-2008> (last visited on October 15, 2015).

¹³ *Id.* See Table 3.

¹⁴ *Supra* fn. 12.

¹⁵ Centers for Disease Control and Prevention, *Update: Syringe Exchange Programs---United States, 2002*, July 15, 2005, 54(27);673-676, available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5427a1.htm> (last visited on October 15, 2015).

¹⁶ *Supra* fn. 12.

¹⁷ North American Syringe Exchange Network, *2011 Beth Israel Survey, Results Summary*, (PowerPoint slide) available at <http://www.nasen.org/news/2012/nov/29/2011-beth-israel-survey-results-summary/> (last visited October 11, 2015).

that usually the problems NSEPs encountered had to do with the lack of resources and staff shortages.¹⁸

A separate 2014 report, examining the results of a needle exchange program in the District of Columbia shows an 81 percent decline between 2008 and 2012 in the number of HIV cases in which injection drug use was reported as transmission mode.¹⁹

A 2012 study compared improper public syringe disposal between Miami, a city without NSEPs, and San Francisco, a city with NSEPs.²⁰ Using visual inspection walk-throughs of high drug-use public areas, the study found that Miami was eight times more likely to have syringes improperly disposed of in public areas.²¹

Heroin Use in Florida

An estimated 1.2 million people in the U.S. are living with HIV/AIDs²², and it has been estimated that one-third of those cases are linked directly or indirectly to injection drug use, including the injection of heroin.²³ In 2014, the National Institute on Drug Abuse reported an epidemic of heroin use in South Florida and particularly in Miami-Dade County.²⁴ The number of heroin-related deaths in Miami-Dade County jumped to 60 in 2014 from 40 in 2013 and 32 in 2012. Statewide, Florida has experienced a steady upswing in heroin deaths, which rose to 408 in 2014 from 199 in 2013 and 108 in 2012.²⁵

Florida Comprehensive Drug Abuse Prevention and Control Act

Section 893.147, F.S., regulates the use or possession of drug paraphernalia. Currently, it is unlawful for any person to use, or to possess with intent to use, drug paraphernalia:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of ch. 893, F.S.; or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of ch. 893, F.S.

Any person who violates the above provision is guilty of a misdemeanor of the first degree.²⁶

Moreover, it is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used.²⁷

¹⁸ *Id.*

¹⁹ The District of Columbia Department of Health, *2013 Annual Epidemiology and Surveillance Report, Section 2: Newly Diagnosed HIV Cases (2014)*, available at <http://doh.dc.gov/page/2013-annual-epidemiology-and-surveillance-report> (last visited October 11, 2015).

²⁰ Hansel E. Tookes, et al., *A Comparison of Syringe Disposal Practices Among Injection Drug Users in a City with Versus a City Without Needle and Syringe Programs*, 123 *Drug & Alcohol Dependence* 255 (2012), available at <http://www.ncbi.nlm.nih.gov/pubmed/22209091> (last visited October 11, 2015).

²¹ *Id.* at 255 (finding "44 syringes/1000 census blocks in San Francisco, and 371 syringes/1000 census blocks in Miami.").

²² Centers for Disease Control and Prevention, *HIV in the United States: At a Glance*, accessible at: <http://www.cdc.gov/hiv/statistics/basics/ata glance.html> (last visited October 11, 2015).

²³ Health Resources and Services Administration, *Innovative Programs for HIV Positive Substance Users*, available at <http://www.drugabuse.gov/publications/topics-in-brief/linked-epidemics-drug-abuse-hiv-aids> (last visited October 11, 2015).

²⁴ James N. Hall, *Drug Abuse Patterns and Trends in Miami-Dade and Broward Counties, Florida—Update: January 2014*, available at <http://www.drugabuse.gov/about-nida/organization/workgroups-interest-groups-consortia/community-epidemiology-work-group-cewg/meeting-reports/highlights-summaries-january-2014/miami> (last visited October 11, 2015).

²⁵ Florida Department of Law Enforcement, Medical Examiners Commission, *Drugs Identified in Deceased Persons by Florida Medical Examiners, 2014 Annual Report*, (September 2015), available at <http://www.fdle.state.fl.us/Content/getdoc/0f1f79c0-d251-4904-97c0-2c6fd4cb3c9f/MEC-Publications-and-Forms.aspx> (last visited October 11, 2015).

²⁶ A first degree misdemeanor is punishable by a term of imprisonment not to exceed 1 year and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

²⁷ Section 893.147(2), F.S.

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of ch. 893, F.S.; or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of ch. 893, F.S.

Any person who violates the above provision is guilty of a felony of the third degree.²⁸

Federal Drug Paraphernalia Statute

Under federal law, it is unlawful for any person to sell or offer for sale drug paraphernalia, use the mails or any other facility of interstate commerce to transport drug paraphernalia or to import or export drug paraphernalia.²⁹ The penalty for such crime is imprisonment for not more than three years and a fine.³⁰ Persons authorized by state law to possess or distribute drug paraphernalia are exempt from the federal drug paraphernalia statute.³¹

EFFECT OF PROPOSED CHANGES

The bill amends s. 381.0038, F.S., to allow the University of Miami and its affiliates to establish a 5-year needle and syringe exchange pilot program in Miami-Dade County. The pilot program is to offer free, clean, and unused needles and hypodermic syringes as a means to prevent the transmission of HIV/AIDS and other blood-borne diseases among intravenous drug users and their sexual partners and offspring. The University of Miami may operate the pilot program at a fixed location or by using a mobile health unit.

The exchange program must:

- Provide maximum security of the exchange site and equipment;
- Account for the number, disposal, and storage of needles and syringes;
- Adopt any measure to control the use and dispersal of sterile needles and syringes;
- Operate a 1 sterile to 1 used needle and syringe exchange ratio; and
- Make available educational materials; HIV and viral hepatitis counseling and testing; referral services to provide education regarding HIV, AIDS, and viral hepatitis transmission; and drug-abuse prevention and treatment counseling and referral services.

The bill provides that the possession, distribution, or exchange of needles or syringes as part of the pilot program does not violate the Florida Comprehensive Drug Abuse Prevention and Control Act under ch. 893, F.S., or any other law. However, pilot program staff and participants are not immune from prosecution for the possession or redistribution of needles or syringes in any form if acting outside of the pilot program.

The bill requires the collection of data for annual and final reporting purposes, but prohibits the collection of any personal identifying information from a participant. The data collected must include:

- The number of participants served;
- The number of needles and syringes exchanged and distributed;
- The demographic profiles of the participants served;
- The number of participants entering drug counseling and treatment;
- The number of participants receiving HIV, AIDS, or viral hepatitis testing;

²⁸ 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.

²⁹ 21 U.S.C. § 863(a).

³⁰ 21 U.S.C. § 863(b).

³¹ 21 U.S.C. § 863(f)(1).

- The rates of HIV, AIDS, viral hepatitis, or other blood borne disease before the pilot program began and every subsequent year thereafter; and
- Other data deemed necessary for the pilot program.

The pilot program expires on July 1, 2021. Six months prior to expiration, the Office of Program Policy Analysis and Government Accountability is required to submit a report to the President of the Senate and the Speaker of the House that includes the data listed above on the pilot program and a recommendation on whether the pilot program should continue.

The bill prohibits the use of state funds to operate the pilot program and requires the use of grants and donations from private sources to fund the program.

The bill includes a severability clause³² and provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1. Creates an unnumbered section to name the act the “Miami-Dade Infectious Disease Elimination Act (IDEA).”

Section 2. Amends s. 381.0038, F.S., relating to education.

Section 3. Creates an unnumbered section to provide a severability clause.

Section 4. Provides an effective date of July 1, 2016.

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:

None.

D. FISCAL COMMENTS:

The pilot program required by the bill may significantly reduce state and local government expenditures for the treatment of blood borne diseases associated with intravenous drug use for individuals in Miami-

³² A “severability clause” is a provision of a contract or statute that keeps the remaining provisions in force if any portion of that contract or statute is judicially declared void or unconstitutional. Courts may hold a law constitutional in one part and unconstitutional in another. Under such circumstances, a court may sever the valid portion of the law from the remainder and continue to enforce the valid portion. See *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936); *Florida Hosp. Waterman, Inc. v. Buster*, 984 So.2d 478 (Fla. 2008); *Ray v. Mortham*, 742 So.2d 1276 (Fla. 1999); and *Wright v. State*, 351 So.2d 708 (Fla. 1977).

Dade County.³³ The reduction in expenditures for such treatments depends on the extent to which the needle and syringe exchange pilot program reduces transmission of blood-borne diseases among intravenous drug users, their sexual partners, offspring, and others who might be at risk of transmission.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

³³ The State of Florida and county governments incur costs for HIV/AIDS treatment through a variety of programs, including Medicaid, the AIDS Drug Assistance Program, and the AIDS Insurance Continuation Program. The lifetime treatment cost of an HIV infection is estimated at \$379,668 (in 2010 dollars). Centers for Disease Control and Prevention, *HIV Cost-effectiveness*, (Apr. 16, 2013) available at <http://www.cdc.gov/hiv/prevention/ongoing/costeffectiveness/> (last visited October 11, 2015). Miami-Dade County has 3,274 reported cases of individuals living with HIV/AIDS that have an IDU-associated risk. Florida Department of Health, *HIV Infection Among Those with an Injection Drug Use-Associated Risk, Florida, 2012* (PowerPoint slide) (Sept. 17, 2013), available at http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/documents/HIV-AIDS-slide%20sets/IDU_2012.pdf (last visited October 11, 2015) (noting that HIV IDU infection risk includes IDU cases, men who have sex with men (MSM)/IDU, heterosexual sex with IDU, children of IDU mom). If 10 percent of those individuals with an IDU-associated risk had avoided infection, this would represent a savings in treatment costs of approximately \$124 million.

1 A bill to be entitled
 2 An act relating to an infectious disease elimination
 3 pilot program; creating the "Miami-Dade Infectious
 4 Disease Elimination Act (IDEA)"; amending s. 381.0038,
 5 F.S.; authorizing the University of Miami and its
 6 affiliates to establish a sterile needle and syringe
 7 exchange pilot program in Miami-Dade County;
 8 establishing pilot program criteria; providing that
 9 the distribution of needles and syringes under the
 10 pilot program is not a violation of the Florida
 11 Comprehensive Drug Abuse Prevention and Control Act or
 12 any other law; providing conditions under which a
 13 pilot program staff member or participant may be
 14 prosecuted; prohibiting the collection of identifying
 15 information from program participants; providing
 16 funding for the pilot program through private grants
 17 and donations; providing for expiration of the pilot
 18 program; requiring the Office of Program Policy
 19 Analysis and Government Accountability to submit a
 20 report and recommendations regarding the pilot program
 21 to the Legislature; providing for severability;
 22 providing an effective date.

23
 24 Be It Enacted by the Legislature of the State of Florida:

25
 26 Section 1. This act may be cited as the "Miami-Dade

27 Infectious Disease Elimination Act (IDEA)."

28 Section 2. Section 381.0038, Florida Statutes, is amended
 29 to read:

30 381.0038 Education; sterile needle and syringe exchange
 31 pilot program.—The Department of Health shall establish a
 32 program to educate the public about the threat of acquired
 33 immune deficiency syndrome.

34 (1) The acquired immune deficiency syndrome education
 35 program shall:

36 (a) Be designed to reach all segments of Florida's
 37 population;

38 (b) Contain special components designed to reach non-
 39 English-speaking and other minority groups within the state;

40 (c) Impart knowledge to the public about methods of
 41 transmission of acquired immune deficiency syndrome and methods
 42 of prevention;

43 (d) Educate the public about transmission risks in social,
 44 employment, and educational situations;

45 (e) Educate health care workers and health facility
 46 employees about methods of transmission and prevention in their
 47 unique workplace environments;

48 (f) Contain special components designed to reach persons
 49 who may frequently engage in behaviors placing them at a high
 50 risk of contracting ~~for acquiring~~ acquired immune deficiency
 51 syndrome;

52 (g) Provide information and consultation to state agencies

53 to educate all state employees; ~~and~~

54 (h) Provide information and consultation to state and
 55 local agencies to educate law enforcement and correctional
 56 personnel and inmates; ~~;~~

57 (i) Provide information and consultation to local
 58 governments to educate local government employees; ~~;~~

59 (j) Make information available to private employers and
 60 encourage them to distribute this information to their
 61 employees; ~~;~~

62 (k) Contain special components which emphasize appropriate
 63 behavior and attitude change; ~~and;~~

64 (l) Contain components that include information about
 65 domestic violence and the risk factors associated with domestic
 66 violence and AIDS.

67 (2) The education program designed by the Department of
 68 Health shall use ~~utilize~~ all forms of the media and shall place
 69 emphasis on the design of educational materials that can be used
 70 by businesses, schools, and health care providers in the regular
 71 course of their business.

72 (3) The department may contract with other persons in the
 73 design, development, and distribution of the components of the
 74 education program.

75 (4) The University of Miami and its affiliates may
 76 establish a single sterile needle and syringe exchange pilot
 77 program in Miami-Dade County. The pilot program may operate at a
 78 fixed location or through a mobile health unit. The pilot

79 program shall offer the free exchange of clean, unused needles
 80 and hypodermic syringes for used needles and hypodermic syringes
 81 as a means to prevent the transmission of HIV, AIDS, viral
 82 hepatitis, or other blood-borne diseases among intravenous drug
 83 users and their sexual partners and offspring.

84 (a) The pilot program shall:

85 1. Provide for maximum security of exchange sites and
 86 equipment, including an accounting of the number of needles and
 87 syringes in use, the number of needles and syringes in storage,
 88 safe disposal of returned needles, and any other measure that
 89 may be required to control the use and dispersal of sterile
 90 needles and syringes.

91 2. Operate a one-to-one exchange, whereby the participant
 92 shall receive one sterile needle and syringe unit in exchange
 93 for each used one.

94 3. Make available educational materials; HIV and viral
 95 hepatitis counseling and testing; referral services to provide
 96 education regarding HIV, AIDS, and viral hepatitis transmission;
 97 and drug-abuse prevention and treatment counseling and referral
 98 services.

99 (b) The possession, distribution, or exchange of needles
 100 or syringes as part of the pilot program established under this
 101 subsection is not a violation of any part of chapter 893 or any
 102 other law.

103 (c) A pilot program staff member, volunteer, or
 104 participant is not immune from criminal prosecution for:

105 1. The possession of needles or syringes that are not a
 106 part of the pilot program; or

107 2. Redistribution of needles or syringes in any form, if
 108 acting outside the pilot program.

109 (d) The pilot program shall collect data for annual and
 110 final reporting purposes, which shall include information on the
 111 number of participants served, the number of needles and
 112 syringes exchanged and distributed, the demographic profiles of
 113 the participants served, the number of participants entering
 114 drug counseling and treatment, the number of participants
 115 receiving HIV, AIDS, or viral hepatitis testing, and other data
 116 deemed necessary for the pilot program. However, personal
 117 identifying information may not be collected from a participant
 118 for any purpose.

119 (e) State funds may not be used to operate the pilot
 120 program. The pilot program shall be funded through grants and
 121 donations from private resources and funds.

122 (f) The pilot program expires July 1, 2021. Six months
 123 before the pilot program expires, the Office of Program Policy
 124 Analysis and Government Accountability shall submit a report to
 125 the President of the Senate and the Speaker of the House of
 126 Representatives that includes the data collection requirements
 127 established in this subsection; the rates of HIV, AIDS, viral
 128 hepatitis, or other blood-borne diseases before the pilot
 129 program began and every subsequent year thereafter; and a
 130 recommendation on whether to continue the pilot program.

HB 81

2016

131 Section 3. If any provision of this act or its application
132 to any person or circumstance is held invalid, the invalidity
133 does not affect other provisions or applications of the act that
134 can be given effect without the invalid provision or
135 application, and to this end the provisions of this act are
136 severable.

137 Section 4. This act shall take effect July 1, 2016.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 81 (2016)

Amendment No. 1

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		

1 Committee/Subcommittee hearing bill: Health Quality
2 Subcommittee
3 Representative Edwards offered the following:

Amendment (with title amendment)

6 Remove lines 77-78 and insert:
7 program in Miami-Dade County. The pilot program shall operate at
8 fixed locations on the property of the University of Miami or
9 its affiliates. The pilot

11 -----
12 **T I T L E A M E N D M E N T**

13 Between lines 7 and 8, insert:
14 specifying locations for operation of the pilot
15 program;



Amendment No. 2

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		

1 Committee/Subcommittee hearing bill: Health Quality
2 Subcommittee
3 Representative Edwards offered the following:

4
5 **Amendment**

6 Remove line 119 and insert:
7 (e) State, county, or municipal funds may not be used to
8 operate the pilot

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 107 Physical Therapy

SPONSOR(S): Cummings

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		Siples <i>JS</i>	O'Callaghan <i>no</i>
2) Health & Human Services Committee			

SUMMARY ANALYSIS

Physical therapists are regulated under ch. 486, F.S., the Physical Therapy Practice Act (Act), and by the Board of Physical Therapy (Board) under the Department of Health's Division of Medical Quality Assurance. Physical therapy is the assessment, treatment, prevention, and rehabilitation of any disability, injury, disease, or other health condition of a human being with the use of various modalities.

The bill requires a practitioner of record to review and sign a treatment plan for a patient when treatment is required beyond 30 days for a condition not previously assessed by a practitioner of record or by a physician licensed in another state. A practitioner of record includes allopathic or osteopathic physicians, chiropractors, podiatrists, or dentists.

The bill creates title protection for a licensed physical therapist who has obtained a doctoral degree in physical therapy by only allowing a person qualified as such to use the title "D.P.T." Additionally, the bill makes it unlawful for a person to use, in connection with his or her place of business, the title acronym "D.P.T.," unless the person holds a doctoral degree in physical therapy and an active license as a physical therapist. However, the bill prohibits a physical therapist who holds a doctoral degree in physical therapy from using the title "doctor," unless the physical therapist informs the public that his or her profession is physical therapy.

The bill also deletes redundant language in statutes providing title protection for physical therapists and physical therapy assistants.

The bill has an insignificant, negative fiscal impact on the Department of Health and no fiscal impact on local governments.

The bill provides that it shall take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Physical Therapy in the United States

Physical Therapists (PTs) are licensed in all 50 states. State licensure ensures that a PT meets prescribed standards established by relevant state laws and regulatory boards.¹ States utilize the National Physical Therapy Exam (NPTE), which was developed by the Federation of State Boards of Physical Therapy (FSBPT), to determine if a person has met competency standards for the safe provision of nationally accepted physical therapy procedural interventions.²

The NPTE provides a common element in the evaluation of candidates so that standards will be comparable from jurisdiction to jurisdiction, and protects the public interest in having only those persons who have the requisite knowledge of physical therapy be licensed to practice physical therapy.³ To practice as a PT in the U.S., a person must earn a physical therapy degree from a state approved PT education program, pass the state approved licensure exam, and comply with other state specific licensure requirements. Currently, all entry-level PT education programs in the U.S. only offer the Doctor of Physical Therapy (D.P.T.) degree to all new students who enroll.⁴

Scope of Practice

Physical therapy is provided for individuals of all ages who have or may develop impairments, activity limitations, and participation restrictions related to conditions of the musculoskeletal, neuromuscular, cardiovascular, pulmonary, and/or integumentary⁵ systems. PTs are providers of rehabilitation and habilitation, performance enhancement, and prevention and risk-reduction services.⁶

There is variance among the scope of practice of PTs among the states. The American Physical Therapy Association's professional scope of practice guidelines⁷ provide detailed information about the accepted techniques and procedures performed by PTs. Some examples include:

- Examining individuals with impairment, functional limitation, and disability or other health-related conditions in order to determine a diagnosis, prognosis, and intervention. Examination may include assessment of a wide variety of anatomical and psychological functions such as:
 - Muscular performance;
 - Joint integrity and mobility;
 - Pain;
 - Self-care and activities of daily living;
 - Sensory integrity; and
 - Arousal, attention, and cognition.

¹ American Physical Therapy Association, *Licensure*, available at <http://www.apta.org/Licensure/> (last visited October 11, 2015).

² American Physical Therapy Association, *About the National Physical Therapy Examination*, available at <http://www.apta.org/Licensure/NPTE/> (last visited October 11, 2015).

³ *Supra* fn. 1.

⁴ American Physical Therapy Association, *Physical Therapy Education Overview*, available at [http://www.apta.org/For_Prospective_Students/PT_Education/Physical_Therapist_\(PT\)_Education_Overview.aspx](http://www.apta.org/For_Prospective_Students/PT_Education/Physical_Therapist_(PT)_Education_Overview.aspx) (last visited October 11, 2015).

⁵ Integumentary system is the skin organ.

⁶ American Physical Therapy Association, *Professional Scope of Physical Therapist Practice*, available at <http://www.apta.org/ScopeOfPractice/Professional/> (last visited October 11, 2015).

⁷ *Id.* Use hyperlink titled "APTA Guidelines: Scope of Practice."

- Alleviating impairment and functional limitation by designing, implementing, and modifying therapeutic interventions that include, but are not limited to:
 - Therapeutic exercise;
 - Manual therapy techniques, including mobilization or manipulation;
 - Prescription, application, and, as appropriate, fabrication of devices and equipment (assistive, adaptive, orthotic, protective, supportive, and prosthetic);⁸
 - Airway clearance techniques;⁹
 - Integumentary repair and protection techniques;¹⁰
 - Electrotherapeutic modalities;¹¹ and
 - Physical agents.¹²

Referral for Treatment

Every state, the District of Columbia, and the U.S. Virgin Islands allow for evaluation and some form of treatment without physician referral.¹³ However, many states impose restrictions on a patient's direct access to physical therapy services, or only allow for treatment without referral under limited circumstances. Twenty-two states, including Florida, allow a PT to treat a patient without a physician's referral, for a limited amount of time.¹⁴

PTs are trained to recognize signs and symptoms that are outside the scope of their practice. If a patient's condition is outside the scope of physical therapy practice, PTs are often mandated by state law to refer patients to other providers who can provide appropriate care for a patient's condition.¹⁵

⁸ PTs help patients apply and adjust devices and equipment such as crutches, wheelchairs, braces, slings, and supplemental oxygen. American Physical Therapy Association, *Minimum Required Skill of Physical Therapist Assistant Graduates*, available at: http://www.apta.org/uploadedFiles/APTAorg/About_Us/Policies/Education/MinimumRequiredSkillsPTAGrads.pdf. (last visited October 11, 2015).

⁹ Airway clearance techniques are a group of therapeutic activities intended to manage or prevent the consequences of impaired mucociliary transport or the inability to protect the airway (eg, impaired cough). Techniques may include breathing strategies for airway clearance, manual/mechanical techniques for airway clearance, positioning, and pulmonary postural drainage. American Physical Therapy Association, *Airway Clearance Techniques*, available at <http://guidetoptpractice.apta.org/content/1/SEC33.extract> (last visited on October 11, 2015).

¹⁰ Integumentary repair and protection involve the application of therapeutic methods and techniques to enhance wound perfusion and establish an optimal environment for wound healing by any of the following mechanisms: facilitation of cellular changes needed for wound healing, removal of nonviable tissue, removal of wound exudate, elimination of peripheral edema, and management of scar tissue. Methods and techniques may include debridement, dressing selection, orthotic selection, protective and supportive device recommendations and modifications, biophysical agents, and topical agents. American Physical Therapy Association, *Integumentary Repair and Protection Techniques*, available at <http://guidetoptpractice.apta.org/content/1/SEC37.extract> (last visited on October 11, 2015).

¹¹ This type of treatment uses weak electrical currents to induce muscular stimulation. Some specific forms are biofeedback and iontophoresis. National Institutes of Health, Medline Plus, *Iontophoresis*, available at <http://www.nlm.nih.gov/medlineplus/ency/article/007293.htm>, (last visited October 11, 2015).

¹² Physical agent generally means the use of hydrotherapy, light agents, heat therapy, and cryotherapy. American Physical Therapy Association, *Guidelines: Defining Physical Therapy in State Practice Acts*, available at http://www.apta.org/uploadedFiles/APTAorg/About_Us/Policies/Practice/DefiningPhysicalTherapyStatePracticeActs.pdf. (last visited October 11, 2015).

¹³ American Physical Therapy Association, *FAQ: Direct Access at the State Level*, available at <http://www.apta.org/StateIssues/DirectAccess/FAQs/> (last visited October 11, 2015).

¹⁴ Federation of State Boards of Physical Therapy, *Jurisdiction Licensure Reference Guide: Direct Access*, last updated August 2014, available at <https://www.fsbpt.org/FreeResources/RegulatoryResources/LicensureReferenceGuide.aspx>. (last visited October 11, 2015).

¹⁵ *Supra* fn. 13.

Physical Therapy Practice in Florida

Physical therapy practitioners are regulated by ch. 486, F.S., the Physical Therapy Practice Act (Act) and the Board of Physical Therapy (Board) under the Department of Health's Division of Medical Quality Assurance.¹⁶

A licensed PT or a licensed physical therapist assistant (PTA) must practice physical therapy in accordance with the provisions of the Act and the Board rules. There are 15,234 PTs and 8,452 PTAs who hold active licenses in Florida.¹⁷

Licensure

To be licensed as a PT, an applicant must be at least 18 years old; be of good moral character; pay \$180 in fees;¹⁸ pass the Laws and Rules Examination offered by the FSBPT within 5 years before the date of application for licensure;¹⁹ meet the general requirements for licensure of all health care practitioners in ch. 456, F.S.; and meet one of the following requirements:

- Have graduated from an accredited PT training program and have passed the National Physical Therapy Examination (NPTE) for PTs offered by the FSBPT within 5 years before the date of application for licensure;²⁰
- Have graduated from a PT training program in a foreign country, have had his or her credentials deemed by the Foreign Credentialing Commission on Physical Therapy or other board-approved credentialing agency to be equivalent to those of U.S.-educated PTs and have passed the NPTE for PTs within 5 years before the date of application for licensure;²¹ or
- Have passed a board-approved examination and holds an active license to practice physical therapy in another state or jurisdiction if the board determines that the standards for licensure in that state or jurisdiction are equivalent to those of Florida.²²

A PT's license is renewed every two years by submitting an application, paying an \$80 renewal fee, and submitting proof of completion of 24 hours of continuing physical therapy education. At least 1 hour of education must be on HIV/AIDS, and 2 hours must be on medical error prevention.²³

Title Protection

Section 486.081(1), F.S., authorizes a licensed PT to use the words "physical therapist" or "physiotherapist," or the letters "P.T." in connection with his or her name or place of business to denote his or her licensure. False representation of a PT license, or willful misrepresentation or false representation to obtain a PT license is unlawful. A list of titles and title acronyms in s. 486.135, F.S., may only be used by a licensed PT.²⁴

¹⁶ MQA regulates health care practitioners to ensure the health, safety and welfare of the public. There are 22 boards and 7 councils under the MQA, and the MQA licenses 8 types of facilities and 200-plus occupations in more than 40 health care professions. Department of Health, Division of Medical Quality Assurance, *MQA FY 13/14 Annual Report*, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/annual-reports.html> (last visited on October 11, 2015).

¹⁷ Email correspondence with Florida Department of Health MQA staff on October 12, 2015. The number of active licensed PTs and PTAs provided include both in-state and out-of-state licensees as of June 30, 2015.

¹⁸ Section 486.041, F.S., and Rule 64B17-2.001, F.A.C.

¹⁹ Rule 64B17-3.002, F.A.C.

²⁰ *Id.*

²¹ Rule 64B17-3.001, F.A.C.

²² Rule 64B17-3.003, F.A.C.

²³ The fees vary if a PT has an inactive license and is wishing to reactivate their license. Board of Physical Therapy, *Renewal Information*, available at <http://floridasphysicaltherapy.gov/renewals/> (last visited October 11, 2015).

²⁴ Section 486.151, F.S., provides that it is a first degree misdemeanor if a person fraudulently uses the title "physical therapist," "physical therapist assistant," or any other related title without holding a valid license. A first degree misdemeanor is punishable by a term of imprisonment not to exceed 1 year and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

Scope of Practice

Physical therapy practice is defined in s. 486.021(11), F.S., as the performance of physical therapy assessments and treatment, or prevention of any disability, injury, disease, or other health condition of human beings and rehabilitation as it relates to the use of various modalities, such as exercise, massage, ultrasound, ice, heat, water, and equipment.²⁵ A PT may use tests of neuromuscular functions as an aid to diagnose and treat various conditions.²⁶ A PT is also authorized to use electromyography, which is a diagnostic procedure used to assess the health of muscles and the nerves that control them.²⁷ A PT's professional responsibilities include:

- Interpretation of a practitioner's referral;
- Delivery of the initial physical therapy assessment of the patient;
- Identification of and documentation of precautions, special problems, contraindications;
- Development of a treatment plan for a patient including the long and short term goals;
- Implementation of or directing implementation of the treatment plan;
- Delegation of appropriate tasks;
- Direction and supervision of supportive staff in a manner appropriate for the patient's individual needs;
- Reassessment of the patient in reference to goals and, when necessary, modification of the treatment plan; and
- Collaboration with members of the health care team when appropriate.²⁸

A PT must refer a patient to, or consult with, a practitioner of record if a patient's condition is found to be outside the scope of physical therapy. Section 468.021, F.S., limits treatments that PTs may provide and what procedures may be performed for diagnosing a condition. For example, a PT may not use roentgen rays and radium for diagnostic or therapeutic purposes or electricity for surgical purposes, including wound care.²⁹ In addition, a PT may not practice chiropractic medicine, including specific spinal manipulation, and must refer a patient with the need for such to a chiropractor licensed under ch. 460, F.S.³⁰ Moreover, a PT is not authorized to implement a plan for a patient being treated in a hospital or an ambulatory surgical center licensed under ch. 395, F.S.³¹

A PT is also required to keep written medical records justifying the course of treatment for a patient.³²

Treatment Plan and Referral for Treatment

A physical therapy treatment plan establishes the goals and specific remediation techniques that a PT will use in the course of treating a patient.³³ In addition to a treatment plan developed by a PT for their own use, s. 486.021(11)(a), F.S., authorizes a PT to implement a treatment plan provided by a practitioner of record or an advanced registered nurse practitioner licensed under s. 464.012, F.S. Section 486.021(11)(a), F.S., provides that a health care practitioner who is an allopathic or osteopathic physician, chiropractor, podiatrist, or dentist, that is actively engaged in practice is eligible to serve as a practitioner of record.

Currently, a PT may implement a treatment plan for a patient without a written order from a practitioner of record if the recommended treatment plan is performed within a 21 day timeframe. If the treatment

²⁵ PTs often help patients apply and adjust equipment such as crutches, wheelchairs, and braces.

²⁶ Section 486.021 (11), F.S.

²⁷ Specific education and practical training is required before PTs may perform electromyography. Rule 64B17-6.003. F.A.C.

²⁸ Rule 64B17-6.001, F.A.C.

²⁹ Section 486.021(11)(b), F.S.

³⁰ Section 486.021(11)(c), F.S.

³¹ Section 486.021(11)(d), F.S.

³² *Supra* fn. 28.

³³ *Supra* fn. 28.

plan requires treatment beyond 21 days, the condition must be assessed by a practitioner of record who is required to review and sign the treatment plan.³⁴

A PT is not allowed to implement any treatment plan that, in the PT's judgment, is contraindicated. If the treatment plan was requested by a referring practitioner, the PT must immediately notify the referring practitioner that he or she is not going to follow the request and the reasons for such refusal.³⁵

Effect of Proposed Changes

Physical Therapy Practice in Florida

Treatment Plan and Referral for Treatment

Currently a PT must have a practitioner of record review and sign a patient's treatment plan if physical therapy treatment is required beyond 21 days for a condition not previously assessed by a practitioner of record.³⁶ The bill expands this timeframe from 21 days to 30 days. The bill also exempts a PT from this requirement when a patient has been physically examined by a physician licensed in another state and diagnosed by that physician as having a condition for which physical therapy is required.³⁷

Title Protection

All of Florida's physical therapy educational programs are three-year doctoral programs.³⁸ The bill adds the new title acronym "D.P.T.," which may be used by a PT who has obtained a doctoral degree in physical therapy in connection with his or her name or place of business. However, this bill allows the title "doctor" to only be used by a PT who holds a physical therapy doctoral degree, and only if the public is informed that his or her profession is physical therapy.

Pursuant to s. 486.151, F.S., a person who uses any name or title which would lead the public to believe that the person using the name or title is licensed to practice physical therapy, and the person is not licensed to perform such practice, commits a first degree misdemeanor. The bill amends s. 486.135, F.S., to make it unlawful for a person to use in connection with his or her place of business, the title acronym "D.P.T.," unless the person holds an active license as a PT, and cross-references s. 486.151, F.S., to make the unlawful act a first degree misdemeanor.

Current law prohibits the use of any words, letters, abbreviations, or insignia indicating or implying that a person is a physical therapist or physical therapist assistant, unless licensed as such. Therefore, the bill deletes listed title abbreviations that may not be used by unlicensed persons, because the prohibition against the use of each listed title is redundant.

The bill provides that it shall take effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1. Amends s. 486.021, F.S., relating to definitions.

Section 2. Amends s. 486.081, F.S., relating to physical therapist; issuance of license without examination to person passing examination of another authorized examining board; fee.

³⁴ Section 486.021(11)(a), F.S.

³⁵ Rule 64B17-6.001, F.A.C.

³⁶ A practitioner of record, includes allopathic (ch. 458, F.S.) or osteopathic physicians (ch. 459, F.S.), chiropractors (ch. 460, F.S.), podiatrists (ch. 461, F.S.), or dentists (ch. 466, F.S.).

³⁷ This allows physical therapy patients, who have a seasonal residence in Florida, to obtain uninterrupted physical therapy treatment if their out of state licensed physician has recommended physical therapy treatment for a certain condition.

³⁸ Florida has eleven Doctor of Physical Therapy educational programs. Florida Physical Therapy Association, *Florida PT Schools*, available at <http://fpta.site-ym.com/?page=272> (last visited October 15, 2015).

Section 3. Amends s. 486.135, F.S., relating to false representation of licensure, or willful misrepresentation or fraudulent representation to obtain license, unlawful.

Section 4. Amends s. 486.151, F.S., relating to prohibited acts; penalty.

Section 5. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DOH may incur a recurring increase in workload associated with additional practitioner complaints, which current resources are adequate to absorb.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to physical therapy; amending s.
 3 486.021, F.S.; revising the definition of the term
 4 "practice of physical therapy"; amending s. 486.081,
 5 F.S.; providing that a licensed physical therapist who
 6 holds a specified doctoral degree may use specified
 7 letters in connection with her or his name or place of
 8 business; prohibiting a physical therapist with a
 9 specified doctoral degree from using the title
 10 "doctor" without informing the public of his or her
 11 profession as a physical therapist; amending s.
 12 486.135, F.S.; revising the terms prohibited from
 13 being used by certain unlicensed persons; providing a
 14 criminal penalty; amending s. 486.151, F.S.;
 15 prohibiting an unlicensed person from using specified
 16 letters; providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Paragraph (a) of subsection (11) of section
 21 486.021, Florida Statutes, is amended to read:

22 486.021 Definitions.—In this chapter, unless the context
 23 otherwise requires, the term:

24 (11) "Practice of physical therapy" means the performance
 25 of physical therapy assessments and the treatment of any
 26 disability, injury, disease, or other health condition of human

27 | beings, or the prevention of such disability, injury, disease,
 28 | or other condition of health, and rehabilitation as related
 29 | thereto by the use of the physical, chemical, and other
 30 | properties of air; electricity; exercise; massage; the
 31 | performance of acupuncture only upon compliance with the
 32 | criteria set forth by the Board of Medicine, when no penetration
 33 | of the skin occurs; the use of radiant energy, including
 34 | ultraviolet, visible, and infrared rays; ultrasound; water; the
 35 | use of apparatus and equipment in the application of the
 36 | foregoing or related thereto; the performance of tests of
 37 | neuromuscular functions as an aid to the diagnosis or treatment
 38 | of any human condition; or the performance of electromyography
 39 | as an aid to the diagnosis of any human condition only upon
 40 | compliance with the criteria set forth by the Board of Medicine.

41 | (a) A physical therapist may implement a plan of treatment
 42 | developed by the physical therapist for a patient or provided
 43 | for a patient by a practitioner of record or by an advanced
 44 | registered nurse practitioner licensed under s. 464.012. The
 45 | physical therapist shall refer the patient to or consult with a
 46 | practitioner of record if the patient's condition is found to be
 47 | outside the scope of physical therapy. If physical therapy
 48 | treatment for a patient is required beyond 30 ~~21~~ days for a
 49 | condition not previously assessed by a practitioner of record,
 50 | the physical therapist shall have ~~obtain~~ a practitioner of
 51 | record ~~who will~~ review and sign the plan. The requirement for a
 52 | physical therapist to have a practitioner of record review and

53 sign a plan of treatment does not apply when a patient has been
 54 physically examined by a physician licensed in another state,
 55 the patient has been diagnosed by such physician as having a
 56 condition for which physical therapy is required, and the
 57 physical therapist is treating such condition. For purposes of
 58 this paragraph, a health care practitioner licensed under
 59 chapter 458, chapter 459, chapter 460, chapter 461, or chapter
 60 466 and engaged in active practice is eligible to serve as a
 61 practitioner of record.

62 Section 2. Subsection (1) of section 486.081, Florida
 63 Statutes, is amended to read:

64 486.081 Physical therapist; issuance of license without
 65 examination to person passing examination of another authorized
 66 examining board; fee.—

67 (1) The board may cause a license to be issued through the
 68 department without examination to any applicant who presents
 69 evidence satisfactory to the board of having passed the American
 70 Registry Examination prior to 1971 or an examination in physical
 71 therapy before a similar lawfully authorized examining board of
 72 another state, the District of Columbia, a territory, or a
 73 foreign country, if the standards for licensure in physical
 74 therapy in such other state, district, territory, or foreign
 75 country are determined by the board to be as high as those of
 76 this state, as established by rules adopted pursuant to this
 77 chapter. Any person who holds a license pursuant to this section
 78 may use the words "physical therapist" or "physiotherapist~~7~~" or

79 | the letters "P.T.~~7~~" in connection with her or his name or place
 80 | of business to denote her or his licensure hereunder. A person
 81 | who holds a license pursuant to this section and obtains a
 82 | doctoral degree in physical therapy may use the letters "D.P.T."
 83 | and "P.T." A physical therapist who holds a degree of Doctor of
 84 | Physical Therapy may not use the title "doctor" without also
 85 | clearly informing the public of his or her profession as a
 86 | physical therapist.

87 | Section 3. Subsection (1) of section 486.135, Florida
 88 | Statutes, is amended, subsection (2) is renumbered as subsection
 89 | (3), and a new subsection (2) is added to that section, to read:

90 | 486.135 False representation of licensure, or willful
 91 | misrepresentation or fraudulent representation to obtain
 92 | license, unlawful.—

93 | (1)(a) It is unlawful for any person who is not licensed
 94 | under this chapter as a physical therapist, or whose license has
 95 | been suspended or revoked, to use in connection with her or his
 96 | name or place of business the words "physical therapist,"
 97 | "physiotherapist," "physical therapy," "physiotherapy,"
 98 | "registered physical therapist," or "licensed physical
 99 | therapist"; ~~or~~ the letters "P.T.~~7~~" "~~Ph.T.~~," "~~R.P.T.~~," or
 100 | "~~L.P.T.~~"; or any other words, letters, abbreviations, or
 101 | insignia indicating or implying that she or he is a physical
 102 | therapist or to represent herself or himself as a physical
 103 | therapist in any other way, orally, in writing, in print, or by
 104 | sign, directly or by implication, unless physical therapy

105 services are provided or supplied by a physical therapist
 106 licensed in accordance with this chapter.

107 (b) It is unlawful for a person who is not licensed under
 108 this chapter as a physical therapist and who does not hold a
 109 doctoral degree in physical therapy to use the letters "D.P.T."
 110 in connection with his or her name or place of business.

111 (c)~~(b)~~ It is unlawful for any person who is not licensed
 112 under this chapter as a physical therapist assistant, or whose
 113 license has been suspended or revoked, to use in connection with
 114 her or his name the words "physical therapist assistant,"
 115 ~~"licensed physical therapist assistant," "registered physical~~
 116 ~~therapist assistant," or "physical therapy technician"; or the~~
 117 ~~letters "P.T.A.," "L.P.T.A.," "R.P.T.A.," or "P.T.T.";~~ or any
 118 other words, letters, abbreviations, or insignia indicating or
 119 implying that she or he is a physical therapist assistant or to
 120 represent herself or himself as a physical therapist assistant
 121 in any other way, orally, in writing, in print, or by sign,
 122 directly or by implication.

123 (2) An unlawful act under this section is a violation of
 124 s. 486.151.

125 Section 4. Paragraph (d) of subsection (1) of section
 126 486.151, Florida Statutes, is amended to read:

127 486.151 Prohibited acts; penalty.—

128 (1) It is unlawful for any person to:

129 (d) Use the name or title "Physical Therapist" or
 130 "Physical Therapist Assistant" or any other name or title which

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131 | would lead the public to believe that the person using the name
132 | or title is licensed to practice physical therapy, unless such
133 | person holds a valid license; or use the letters "D.P.T.,"
134 | unless such person holds a valid license under this chapter and
135 | a doctoral degree in physical therapy.

136 | Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 173 Medical Faculty Certification

SPONSOR(S): Magar

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		Siples <i>JP</i>	O'Callaghan <i>MO</i>
2) Education Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

A medical faculty certificate allows medical school faculty physicians to practice medicine in Florida without sitting for and successfully passing a licensure examination. A physician who receives a medical faculty certificate has all rights and responsibilities as other licensed physicians, except they may only practice in conjunction with a full-time faculty position at an accredited medical school and its affiliated clinical facilities or teaching hospitals. The initial medical faculty certificate is valid for 2 years, and may be renewed (or extended) biennially thereafter. The number of physicians holding renewed medical faculty certificates is statutorily limited by medical school.

The bill expands the current medical faculty certificate eligibility criteria by allowing a medical faculty certificate to be issued without examination to an individual who has been offered and has accepted a full-time faculty appointment to teach in a program of medicine at the Florida Atlantic University Charles E. Schmidt College of Medicine. The bill also limits the number of extended medical faculty certificateholders allowed at the Florida Atlantic University Charles E. Schmidt College of Medicine to 30 persons, which is consistent with limitations for all but one of the other institutions eligible for such certificates.

There is an insignificant, negative fiscal impact on the Department of Health and no fiscal impact on local governments.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Medical Faculty Certificates

The Board of Medicine within the Department of Health's Division of Medical Quality Assurance may issue medical faculty certificates to physicians allowing them to practice medicine in Florida without sitting for and successfully passing a national examination.¹ These physicians have the same rights and responsibilities as other licensed physicians, except they may only practice in conjunction with a full-time faculty position at an accredited medical school and its affiliated clinical facilities or teaching hospitals.

To be eligible to receive a medical faculty certificate a physician must:²

- Be a graduate of an accredited medical school or its equivalent, or a graduate of a foreign medical school listed with the World Health Organization;
- Hold a valid, current license to practice medicine in another jurisdiction;
- Complete the application form and remit a nonrefundable application fee not to exceed \$500;
- Complete an approved residency or fellowship of at least one year or equivalent training;
- Be at least 21 years of age;
- Be of good moral character;
- Not have committed any act in Florida or any other jurisdiction which would constitute the basis for disciplining a physician;
- Have completed, before medical school, the equivalent of 2 academic years of preprofessional, postsecondary education, as determined by the Board of Medicine;³ and
- Have accepted a full-time faculty appointment to teach in a program of medicine at:
 - The University of Florida;
 - The University of Miami;
 - The University of South Florida;
 - The Florida State University;
 - The Florida International University;
 - The University of Central Florida; or
 - The Mayo Medical School at the Mayo Clinic in Jacksonville, Florida.

Currently, a medical faculty certificate holder is required to pay an application fee of \$500, and \$424 for the issuance of the initial certificate.⁴ The initial certificate is valid for 2 years, or until the applicant terminates their relationship with the medical school or teaching institution. To renew (or extend) a certificate an applicant must submit an approved form, remit a renewal fee of \$360,⁵ and submit a letter from the dean of the medical school stating that the applicant is a distinguished medical scholar and an outstanding practicing physician.⁶

¹ There are 5 different types of national examinations: a State Board Examination, National Board of Medical Examiners, United States Medical Licensing Examination, Federation Licensing Examination (FLEX), and Special Purpose Examination (SPEX).

² Section 458.3145(1), F.S.

³ This education requirement is only applicable to applicants who have graduated from medical school after October 1, 1992. Section 458.3145(1)(h), F.S.

⁴ Rule 64B8-3.002, F.A.C.

⁵ However, for a medical faculty certificate renewed during calendar years 2015 and 2016, the renewal fee is \$250. Rule 64B8-3.003, F.A.C.

⁶ Section 458.3145(2), F.S.

There is no limitation on the number of initial certificates a medical school or teaching institution may receive. However, the number of medical faculty certificates that may be renewed by each medical school or teaching institution is statutorily limited.⁷ All medical schools, except the Mayo Medical School at the Mayo Clinic in Jacksonville, Florida, are limited to 30 renewed medical faculty certificates. The Mayo Medical School is limited to 10 renewed medical faculty certificates. The H. Lee Moffitt Cancer Center and Research Institute is also permitted to have up to 30 renewed faculty certificates.⁸

An annual review of each medical faculty certificate recipient is made by the dean of the certificate recipient's accredited 4-year medical school and reported to the Board of Medicine within the Department of Health on an annual basis.⁹ According to the Department of Health, as of October 12, 2015, the Board of Medicine oversees 46 active medical faculty certificates.¹⁰

Florida Atlantic University Charles E. Schmidt College of Medicine

The Florida Atlantic University Charles E. Schmidt College of Medicine was recently established in Palm Beach County and is housed in a \$20 million, 95,000-square-foot facility funded by a gift from the Schmidt Family Foundation and state matching funds. The college's inaugural class of 64 students, who were enrolled in August 2011, recently graduated in April 2015.¹¹ The college has approximately 256 currently enrolled students.¹² Tuition at the college is \$27,292 a year for resident students and \$60,710 a year for nonresident students.¹³

The college hosts several researchers who are performing research on an array of health issues, including cardiovascular disease and stroke, cancer, Parkinson's disease, Alzheimer's disease, macular degeneration, autoimmune diseases, and HIV/AIDS.¹⁴

Effect of Proposed Changes

The bill expands the current medical faculty certificate eligibility criteria by allowing a medical faculty certificate to be issued without examination to an individual who has been offered and has accepted a full-time faculty appointment to teach in a program of medicine at the Florida Atlantic University Charles E. Schmidt College of Medicine. The bill also limits the number of extended medical faculty certificateholders allowed at the Florida Atlantic University Charles E. Schmidt College of Medicine to 30 persons, which is consistent with limitations for all but one of the other institutions eligible for such certificates.

The bill provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1. Amends s. 458.3145, F.S., relating to medical faculty certificates.

Section 2. Provides an effective date of July 1, 2016.

⁷ Section 458.3145(4), F.S.

⁸ *Id.*

⁹ Section 458.3145(5), F.S.

¹⁰ E-mail correspondence with Department of Health staff (October 12-13, 2015).

¹¹ Florida Atlantic University Charles E. Schmidt College of Medicine, *Message from the Dean*, available at http://med.fau.edu/home/deans_message.php (last visited on October 12, 2015).

¹² *Id.*

¹³ The reflected tuition costs do not include any fees, including health insurance fees, which may be assessed by the college. AAMC, *Tuition and Student Fees Reports: Public Medical Schools-Tuition and Fees First Year Medical Students 2014-2015*, available at https://services.aamc.org/tsfreports/report.cfm?select_control=PUB&year_of_study=2015 (last visited on October 12, 2015).

¹⁴ Florida Atlantic University Charles E. Schmidt College of Medicine, *About Charles E. Schmidt College of Medicine*, available at <http://med.fau.edu/home/index.php> (last visited on October 12, 2015).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Division of Medical Quality Assurance within the Department of Health may see an increase in workload from processing additional medical faculty certificates and certificate renewals. However, the application fee of \$500, the initial license fee of \$424, and the renewal license fee of \$360 should support the workload increase.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to medical faculty certification;
 3 amending s. 458.3145, F.S.; revising the list of
 4 schools at which certain faculty members are eligible
 5 to receive a medical faculty certificate; providing an
 6 effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Paragraph (i) of subsection (1) and subsection
 11 (4) of section 458.3145, Florida Statutes, are amended to read:
 12 458.3145 Medical faculty certificate.—

13 (1) A medical faculty certificate may be issued without
 14 examination to an individual who:

15 (i) Has been offered and has accepted a full-time faculty
 16 appointment to teach in a program of medicine at:

- 17 1. The University of Florida;i~~T~~
- 18 2. The University of Miami;i~~T~~
- 19 3. The University of South Florida;i~~T~~
- 20 4. The Florida State University;i~~T~~
- 21 5. The Florida International University;i~~T~~
- 22 6. The University of Central Florida;i~~T~~~~or~~
- 23 7. The Mayo Medical School at the Mayo Clinic in
 24 Jacksonville, Florida; or
- 25 8. The Florida Atlantic University Charles E. Schmidt
 26 College of Medicine.

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27 (4) In any year, the maximum number of extended medical
28 faculty certificateholders as provided in subsection (2) may not
29 exceed 30 persons at each institution named in subparagraphs
30 (1)(i)1.-6. and 8. and at the facility named in s. 1004.43 and
31 may not exceed 10 persons at the institution named in
32 subparagraph (1)(i)7.

33 Section 2. This act shall take effect July 1, 2016.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 173 (2016)

Amendment No.

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

1 Committee/Subcommittee hearing bill: Health Quality
2 Subcommittee
3 Representative Magar offered the following:
4

5 **Amendment**



6 Remove lines 23-26 and insert:

7 7. ~~The Mayo Medical School at the Mayo Clinic~~ College of
8 Medicine in Jacksonville, Florida; or

9 8. The Florida Atlantic University.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 249 Culinary Education Programs
SPONSOR(S): Moskowitz
TIED BILLS: IDEN./SIM. BILLS:

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

SUMMARY ANALYSIS

The Department of Business and Professional Regulation (DBPR) regulates public food service establishments through its Division of Hotels and Restaurants. It also oversees the issuance of licenses for the sale and service of alcoholic beverages in this state through its Division of Alcoholic Beverages and Tobacco.

The bill amends the definition of "public food service establishment" to include a culinary education program that offers, prepares, serves, or sells food to the general public, making it subject to the regulation and oversight of the Division of Hotels and Restaurants. However, culinary education programs remain subject to regulation of the Department of Health, regardless of whether it offers food for public consumption.

The bill defines a culinary education program as a program that educates enrolled students in the culinary arts, including the preparation, cooking, and presentation of food, or provides education and experience in culinary arts-related businesses. A culinary education program must be inspected by any state agency for compliance with sanitation standards and must be provided by:

- A state university;
- A Florida College System institution;
- A nonprofit independent college or university that is located and chartered in this state, meets certain accreditation requirements, and is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program; or
- A nonpublic postsecondary educational institution licensed pursuant to part III of ch. 1005, F.S.

Current law requires a caterer seeking a license to sell or serve alcohol on the premises of events at which it provides prepared food to derive at least 51% of its gross receipts from the sale of food and nonalcoholic beverages. The bill authorizes the Division of Alcoholic Beverages and Tobacco to issue a special license to a culinary education program licensed as a public food service establishment for the sale and service of alcoholic beverages on the licensed premises of the culinary education program. For a licensed culinary education program that also provides catering services, the special license will allow it to sell or serve alcoholic beverages on the premises of events for which it provides prepared food, without meeting the requirement of deriving the majority of its gross receipts from the sale of food and nonalcoholic beverages.

The bill explicitly provides that the special license does not authorize the culinary education program to conduct any activities that would violate the Florida Beverage Law, including certain age restrictions, or local law. A culinary education program with a special license may not sell alcoholic beverages by the package for off-premise consumption.

The bill authorizes the DBPR to promulgate rules to administer the bill's provisions.

The bill does not appear to have a fiscal impact to the state as the licensure fee for issuance of the special license should offset the costs incurred by the DBPR.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Food Safety Programs

Three state agencies operate food safety programs in Florida: the Department of Agriculture and Consumer Services (DACS), the Department of Business and Professional Regulation (DBPR), and the Department of Health (DOH). The three agencies carry out similar regulatory activities, but have varying statutory authority, regulate separate sectors of the food service industry, and are funded at different levels because of statutory fee caps.¹ Each agency issues food establishment licenses or permits, conducts food safety inspections, and enforces regulations through fines and other disciplinary actions.²

Each agency has authority over specific types of food establishments. In general, the DACS regulates grocery stores, supermarkets, bakeries, and convenience stores that offer food service, the DBPR regulates restaurants and caterers, and the DOH regulates facilities that serve high-risk populations such as hospitals, nursing homes, residential care facilities, and schools.³ While these agencies do not perform duplicate inspections, a single establishment with multiple food operations could be licensed or have food permits from multiple departments.⁴

*Florida Food Safety Act*⁵

Under the Florida Food Safety Act, the DACS is charged with administration and enforcement of the Act in order to prevent fraud, harm, adulteration, misbranding, or false advertising in the preparation, manufacture, or sale of articles of food. It is further charged to regulate the production, manufacture, transportation, and sale of food, as well as articles entering into, and intended for use as ingredients in the preparation of, food.⁶

A person seeking to operate a food establishment or retail food store must first obtain a food permit from the DACS.⁷ Prior to the issuance of a permit, the DACS performs an inspection of the food establishment, its equipment, and the methods of operation for compliance with the Florida Food Safety Act. Section 500.03(1)(p), F.S., defines "food establishment" as a factory, food outlet, or other facility manufacturing, processing, packing, holding, or preparing food or selling food at wholesale or retail. The term does not include business or activity that is regulated under s. 413, 051, F.S., s. 500.80, F.S., ch. 509, F.S., or ch. 601, F.S.⁸

¹ Office of Program Policy Analysis and Gov't Accountability, *State Food Safety Programs Should Improve Performance and Financial Self-Sufficiency*, Report No. 08-67 (Dec. 2008), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0867rpt.pdf> (last visited Oct. 14, 2015).

² *Id.*

³ Office of Program Policy Analysis and Gov't Accountability, *State's Food Safety Programs Have Improved Performance and Financial Self-Sufficiency*, Report No. 10-44 (June 2010), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1044rpt.pdf> (last visited Oct. 14, 2015).

⁴ *Supra* note 1.

⁵ See ch. 500, F.S.

⁶ Section 500.032, F.S.

⁷ Section 500.12(1), F.S.

⁸ This exemption applies to vending stands operated by eligible blind persons, cottage food operations, lodging and food service establishments, and citrus facilities.

Department of Health Food Service Protections

The DOH has been charged with protection of the public from food borne illness.⁹ This includes developing and enforcing standards and requirements for the storage, preparation, serving, and display of food in food service establishments. Section 381.0072(2)(c), F.S., defines a “food service establishment” as a:

detention facility, public or private school, migrant labor camp, assisted living facility, facility participating in the United States Department of Agriculture Afterschool Meal Program located at a facility or site that is not inspected by another state agency for compliance with sanitation standards, adult family-care home, adult day care center, short-term residential treatment center, residential treatment facility, crisis stabilization units, hospices, prescribed pediatric extended care centers, intermediate care facilities for persons with developmental disabilities, boarding schools, civic or fraternal organizations, bars and lounges, vending machines that dispense potentially hazardous foods at facilities expressly named in this paragraph, and facilities used as temporary food events or mobile food units at any facility expressly named in paragraph, where food is prepared and intended for individual portion service, including the site at which individual portions are provided, regardless of whether there is a charge for the food.

The DOH utilizes a risk-based inspection program, which means that it more frequently inspects those facilities that pose a greater risk to the public becoming sick from consumption of their product than those that pose a lesser risk.¹⁰ The inspections are performed by the Environmental Health sections of the local County Health Departments.

Department of Business and Professional Regulation’s Oversight of Public Food Service Establishments

The Division of Hotels and Restaurants within the DBPR is the state entity charged with enforcing the provisions of part I of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety, and welfare.

The Division of Hotels and Restaurants licenses and inspects public food service establishments, defined by s. 509.013(5)(a), F.S., to mean:

any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.¹¹

There are several exclusions from the definition of public food service establishment, including:¹²

- Any place maintained and operated by a public or private school, college, or university for the use of students and faculty or temporarily to serve events such as fairs, carnivals, and athletic contests.

⁹ Section 381.0072(1), F.S.

¹⁰ Florida Department of Health, *Food Safety and Sanitation*, available at <http://www.floridahealth.gov/Environmental-Health/food-safety-and-sanitation/index.html> (last visited Oct. 14, 2015).

¹¹ Section 509.013(5)(a), F.S.

¹² Section 509.013(5)(b), F.S.

- Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization for the use of members and associates or temporarily to serve events such as fairs, carnivals, or athletic contests.
- Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.
- Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration, the Department of Children and Families, or other similar place regulated under s. 381.0072, F.S.¹³
- Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12, F.S.
- Any place of business where the food available for consumption is limited to ice, beverages, popcorn, or other prepackaged food.
- Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.
- Any vending machine that dispenses any food or beverages other than potentially hazardous foods.
- Any research and development test kitchen limited to the use of employees and not open to the general public.

Florida's Beverage Law

Alcoholic beverages are regulated by Florida's Beverage Law.¹⁴ The Division of Alcoholic Beverages and Tobacco, within the DBPR, is responsible for the regulation of the manufacture, packaging, distribution, and sale of alcoholic beverages within the state.¹⁵

The term "alcoholic beverages" is defined by s. 561.01(4)(a), F.S., to mean distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume and that the percentage of alcohol by volume is determined by comparing the volume of ethyl alcohol with all other ingredients in the beverage.

The terms "intoxicating beverage" and "intoxicating liquor" are defined by s. 561.01(5), F.S., to mean only those alcoholic beverages containing more than 4.007 percent of alcohol by volume.

Liquor and distilled spirits are regulated specifically by ch. 565, F.S. The terms "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" are defined by s. 565.01, F.S., to mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

Section 561.20, F.S., limits the number of alcoholic beverage licenses that permit the sale of liquor, along with beer and wine, that may be issued per county. The number of licenses is limited to one license per 7,500 residents within the county. This is commonly known as a quota license. Due to the limitation on the number of quota licenses that may be issued, a prospective applicant must either purchase an existing license or enter a drawing to win the right to apply for a newly authorized quota license.¹⁶ This limitation on the number of licenses per county does not apply to a:

- Bona fide hotel, motel, or motor court of a certain size and deriving a majority of its gross profits from the rental of hotel or motel rooms;
- Condominium licensed under ch. 590, F.S.;

¹³ See *supra* note 2.

¹⁴ Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law.

¹⁵ Section 561.02, F.S.

¹⁶ Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, *FAQs – Frequently Asked Questions*, available at http://www.myfloridalicense.com/dbpr/abt/documents/abt_frequently_asked_questions_000.pdf (last visited Oct. 14, 2015).

- Restaurant of a certain size and deriving at least 51% of its gross profits from the sale of food and nonalcoholic beverages; and
- Caterer, licensed by the Division of Hotels and Restaurants under ch. 509, F.S., deriving at least 51% of its gross revenue from the sale of food and nonalcoholic beverages, and selling or serving alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food.¹⁷

The annual fee for a quota license that allows for the consumption of alcoholic beverages on the premises will vary based on county population but ranges from \$624 to \$1,820.¹⁸ However, at the initial issuance of a new license, the licensee must pay a one-time fee of \$10,750.¹⁹ For the purchase and transfer of an existing license, a licensee must pay a transfer fee (not to exceed \$5,000). The cost of purchasing an existing license is determined by the market condition for quota licenses.²⁰

A qualified, licensed caterer's annual fee for a license to sell or serve alcoholic beverages on the premises of events at which the caterer is also providing prepared food is \$1,820.²¹

Culinary Education Programs

A culinary education program prepares individuals for a career in the culinary arts, which includes developing knowledge of food science, diet, and nutrition.²² Culinary education programs vary widely and can result in the award of a certificate, an Associate's Degree, or a Bachelor's Degree. Additionally, culinary education can be obtained as a concentration in another degree program, such as Hospitality Management or Business Administration, and may also be obtained as part of an established apprenticeship program.

There does not appear to be a single entity that accredits or oversees culinary education programs. Depending on the program, it may be subject to oversight by local and state education entities or may be accredited by an independent accreditation organization.²³ The Florida Department of Education reports that there are a total of 75 postsecondary culinary education programs under its purview.²⁴

Effect of Proposed Changes

Department of Health Food Service Protections

Current law provides that all food service establishments are subject to the food sanitation regulations adopted by the DOH, unless it is licensed under ch. 500, F.S., or ch. 509, F.S. The bill maintains this requirement, but also expressly provides that a public food service establishment that is a culinary education program licensed under ch. 509, F.S., is still subject to the food sanitation regulations of the DOH. The bill includes culinary education programs that prepare food intended for individual portion service, whether there is a charge or whether the program is inspected by another state agency for compliance with sanitation standards, in the definition of "food service establishments."

¹⁷ Section 561.20(2)(a), F.S. Other special licenses are permitted under s. 561.20(2), F.S.

¹⁸ Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, *Licenses and Permits for Alcoholic Beverages*, (Aug. 28, 2015), available at <http://www.myfloridalicense.com/dbpr/abt/licensing/ABTLicenses.pdf> (last visited Oct. 15, 2015).

¹⁹ *Supra* note 16.

²⁰ *Id.*

²¹ *Supra* note 18.

²² Course Advisor, *What is Culinary Education?*, available at <http://resources.courseadvisor.com/culinary-hospitality/culinary-education-cooking-schools> (last visited Oct. 15, 2015).

²³ For an example of an independent accrediting body, see American Culinary Federation, *Accreditation for Culinary Arts and Baking and Pastry Programs*, available at <http://www.acfchefs.org/ACF/Education/Accreditation/ACF/Education/Accreditation/> (last visited Oct. 15, 2015).

²⁴ E-mail correspondence with Department of Education staff (Oct. 15, 2015). There are 16 culinary schools licensed by the Commission for Independent Education, 36 Postsecondary Adult Vocational programs, and 23 programs offered by state colleges.

Culinary Education Programs

The bill defines a culinary education program as a program that educates enrolled students in the culinary arts, including the preparation, cooking, and presentation of food, or provides education and experience in culinary arts-related businesses. A culinary education program must be inspected by a state agency for compliance with sanitation standards and provided by:

- A state university;²⁵
- A Florida College System institution;²⁶
- A nonprofit independent college or university that is located and chartered in this state and accredited by the Commission on Colleges of the Southern Association of Colleges and Schools to grant baccalaureate degrees, that is under the jurisdiction of the Department of Education, and that is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program;²⁷ or
- A nonpublic postsecondary educational institution licensed pursuant to part III of ch. 1005, F.S.²⁸

Culinary education programs located in secondary schools are not included in this definition.

Public Food Establishments

The Division of Hotels and Restaurants within the DBPR inspects and regulates public food service establishments. The bill amends the definition of “public food service establishments” to include a culinary education program that offers, prepares, serves, or sells food to the general public, regardless of whether it is inspected by another agency, making such programs subject to the regulation of the DBPR.

Sale and Service of Alcoholic Beverages

The Division of Alcoholic Beverages and Tobacco, within the DBPR, regulates the sale of alcoholic beverages in this state. Current law provides that a caterer seeking to sale or serve alcoholic beverages for consumption at events it caters must be duly licensed by the Division of Alcoholic Beverages and Tobacco, and must derive at least 51% of its gross profits from the sale of food and nonalcoholic drinks. The bill exempts a licensed culinary education program providing catering services from the requirement that it must derive 51% of its gross profits from the sale of food and nonalcoholic beverages.

The bill provides that a duly licensed culinary education program is not subject to the provisions of law that limit the number of alcoholic beverage licenses that may be issued in each county. The bill provides that a culinary education program may be granted a special license that will permit the sale and consumption of alcoholic beverages on the licensed premises of the culinary education program. At the time of application for the special license, the culinary education program must specify designated areas in its facility where alcoholic beverages may be consumed. Alcoholic beverages sold for consumption on the premises must be consumed on the licensed premises only.²⁹

²⁵ Pursuant to s. 1000.21(6), F.S., “state university” refers to the 12 state universities and any branch campuses, centers, or other affiliates of the institutions.

²⁶ Pursuant to s. 1000.21(3), F.S., “Florida College System institution” refers to the 28 state colleges and any branch campuses, centers, or other affiliates of the institutions.

²⁷ The William L. Boyd, IV, Florida Resident Access Grant Program provides tuition assistance to Florida undergraduate students attending an eligible independent, non-profit college or university located in Florida. See s. 1009.89, F.S.

²⁸ Pursuant to s. 1005.02(11), F.S., a nonpublic postsecondary educational institution means any postsecondary educational institution that operates in this state or makes application to operate in this state, and is not provided, operated, or supported by the State of Florida, its political subdivisions, or the federal government.

²⁹ Pursuant to s. 561.01(11), F.S., “licensed premises” means not only the rooms where alcoholic beverages are stored or sold by the licensee, but also all other rooms in the building which are so closely connected therewith as to admit of free passage from drink parlor to

For a culinary education program that also provides catering service, the bill provides that the special license will also allow for the sale and consumption of alcoholic beverages on the premises of a catered event at which the licensee is also providing prepared food. The culinary education program must prominently display its beverage license at any catered event at which it will be selling or serving alcoholic beverages. The bill provides that the culinary education program must pay an annual fee in compliance with s. 565.02(1)(b), F.S., which sets the annual fee at \$1,820. The licensee is required to maintain records for 3 years to demonstrate compliance with state law.

If a culinary education program also has any other license under the Beverage Law, the special license, provided under the bill's provisions, does not authorize the holder to conduct activities on the premises that are governed by the other license or licenses that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this bill authorizes a licensee to conduct activities that are prohibited by the Beverage Law or local law.

The bill places certain limitations on a culinary education program possessing a special license provided under its provisions. The bill prohibits a licensed culinary education program from selling alcoholic beverages by the package for off-premise consumption. The bill also requires a licensed culinary education program to comply with age requirements for vendors as provided under the Beverage Law.³⁰

The bill authorizes the Division of Alcoholic Beverages and Tobacco within the DBPR to promulgate rules to administer the special license, including rules governing licensure, recordkeeping, and enforcement.

The bill provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1. Amends s. 381.0072, F.S., relating to food service protection.

Section 2. Amends s. 509.013, F.S., relating to definitions.

Section 3. Amends s. 561.20, F.S., relating to limitation upon the number of licenses issued.

Section 4. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The fee the DBPR will collect for the special license authorized under the bill is \$1,820 per license. The number of prospective licenses that may be issued is indeterminate at this time.

2. Expenditures:

The licensure fees collected by the DBPR should offset the cost of issuance of the license.

other rooms over which the licensee has some dominion or control and shall also include all of the area embraced within the sketch, appearing on or attached to the application for the license involved and designated as such on said sketch, in addition to that included or designed by general law.

³⁰ Sections 562.11(4) and 562.111(2), F.S., allows alcoholic beverages to be served to a student who is at least 18 years of age and the alcoholic beverage is delivered as part of the student's required curriculum at an accredited postsecondary educational institution; if the student is enrolled in the college and required to taste alcoholic beverages for instructional purposes only during class under the supervision of authorized personnel. Section 562.13, F.S., prohibits the employment of a person under the age of 18 by vendors licensed under the Beverage Law; however, this prohibition does not apply to employees under the age of 18 for certain types of establishments, such as drug stores, grocery stores, hotels, bowling alleys, etc.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

With the ability to provide catering services, some culinary education programs may be able to generate additional revenue for its programs and students.

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 bill authorizes the Division of Alcoholic Beverages and Tobacco within the DBPR to promulgate rules to administer the special license, including rules governing licensure, recordkeeping, and enforcement.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to culinary education programs;
 3 amending s. 381.0072, F.S.; providing for the
 4 applicability of Department of Health sanitation rules
 5 to a licensed culinary education program; defining the
 6 term "culinary education program"; including certain
 7 culinary education programs under the definition of
 8 "food service establishment" and providing for the
 9 applicability of food service protection requirements
 10 thereto; conforming provisions; amending s. 509.013,
 11 F.S.; revising the definition of the term "public food
 12 service establishment" to include a culinary education
 13 program; amending s. 561.20, F.S.; permitting a
 14 culinary education program with a public food service
 15 establishment license to obtain an alcoholic beverage
 16 license under certain conditions; authorizing the
 17 Division of Alcoholic Beverages and Tobacco to adopt
 18 rules to administer such licenses; providing an
 19 effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Section 381.0072, Florida Statutes, is amended
 24 to read:

25 381.0072 Food service protection.—
 26 (1) DEPARTMENT OF HEALTH; SANITATION RULES.—

27 (a) It shall be the duty of the Department of Health to
 28 adopt and enforce sanitation rules consistent with law to ensure
 29 the protection of the public from food-borne illness. These
 30 rules shall provide the standards and requirements for the
 31 storage, preparation, serving, or display of food in food
 32 service establishments as defined in this section ~~and which are~~
 33 ~~not permitted or licensed under chapter 500 or chapter 509.~~

34 (b) A food service establishment is subject to the
 35 sanitation rules adopted and enforced by the department. This
 36 section does not apply to a food service establishment permitted
 37 or licensed under chapter 500 or chapter 509 unless the food
 38 service establishment is a culinary education program licensed
 39 under chapter 509.

40 (2) ~~(1)~~ DEFINITIONS.—As used in this section, the term:

41 (a) "Culinary education program" means a program that:

42 1. Educates enrolled students in the culinary arts,
 43 including the preparation, cooking, and presentation of food, or
 44 provides education and experience in culinary arts-related
 45 businesses;

46 2. Is provided by:

47 a. A state university as defined in s. 1000.21;

48 b. A Florida College System institution as defined in s.
 49 1000.21;

50 c. A nonprofit independent college or university that is
 51 located and chartered in this state and accredited by the
 52 Commission on Colleges of the Southern Association of Colleges

53 and Schools to grant baccalaureate degrees, that is under the
 54 jurisdiction of the Department of Education, and that is
 55 eligible to participate in the William L. Boyd, IV, Florida
 56 Resident Access Grant Program; or

57 d. A nonpublic postsecondary educational institution
 58 licensed pursuant to part III of chapter 1005; and

59 3. Is inspected by any state agency or agencies for
 60 compliance with sanitation standards.

61 (b)(a) "Department" means the Department of Health or its
 62 representative county health department.

63 (c)(b) "Food service establishment" means detention
 64 facilities, public or private schools, migrant labor camps,
 65 assisted living facilities, facilities participating in the
 66 United States Department of Agriculture Afterschool Meal Program
 67 that are located at a facility or site that is not inspected by
 68 another state agency for compliance with sanitation standards,
 69 adult family-care homes, adult day care centers, short-term
 70 residential treatment centers, residential treatment facilities,
 71 homes for special services, transitional living facilities,
 72 crisis stabilization units, hospices, prescribed pediatric
 73 extended care centers, intermediate care facilities for persons
 74 with developmental disabilities, boarding schools, civic or
 75 fraternal organizations, bars and lounges, vending machines that
 76 dispense potentially hazardous foods at facilities expressly
 77 named in this paragraph, and facilities used as temporary food
 78 events or mobile food units at any facility expressly named in

79 this paragraph, where food is prepared and intended for
 80 individual portion service, including the site at which
 81 individual portions are provided, regardless of whether
 82 consumption is on or off the premises and regardless of whether
 83 there is a charge for the food. The term includes a culinary
 84 education program where food is prepared and intended for
 85 individual portion service, regardless of whether there is a
 86 charge for the food or whether the program is inspected by
 87 another state agency for compliance with sanitation standards.
 88 The term does not include any entity not expressly named in this
 89 paragraph; nor does the term include a domestic violence center
 90 certified by the Department of Children and Families and
 91 monitored by the Florida Coalition Against Domestic Violence
 92 under part XII of chapter 39 if the center does not prepare and
 93 serve food to its residents and does not advertise food or drink
 94 for public consumption.

95 ~~(d)(e)~~ "Operator" means the owner, operator, keeper,
 96 proprietor, lessee, manager, assistant manager, agent, or
 97 employee of a food service establishment.

98 ~~(3)(2)~~ DUTIES.-

99 (a) The department may advise and consult with the Agency
 100 for Health Care Administration, the Department of Business and
 101 Professional Regulation, the Department of Agriculture and
 102 Consumer Services, and the Department of Children and Families
 103 concerning procedures related to the storage, preparation,
 104 serving, or display of food at any building, structure, or

105 facility not expressly included in this section that is
 106 inspected, licensed, or regulated by those agencies.

107 (b) The department shall adopt rules, including
 108 definitions of terms which are consistent with law prescribing
 109 minimum sanitation standards and manager certification
 110 requirements as prescribed in s. 509.039, and which shall be
 111 enforced in food service establishments as defined in this
 112 section. The sanitation standards must address the construction,
 113 operation, and maintenance of the establishment; lighting,
 114 ventilation, laundry rooms, lockers, use and storage of toxic
 115 materials and cleaning compounds, and first-aid supplies; plan
 116 review; design, construction, installation, location,
 117 maintenance, sanitation, and storage of food equipment and
 118 utensils; employee training, health, hygiene, and work
 119 practices; food supplies, preparation, storage, transportation,
 120 and service, including access to the areas where food is stored
 121 or prepared; and sanitary facilities and controls, including
 122 water supply and sewage disposal; plumbing and toilet
 123 facilities; garbage and refuse collection, storage, and
 124 disposal; and vermin control. Public and private schools, if the
 125 food service is operated by school employees, bars and lounges,
 126 civic organizations, and any other facility that is not
 127 regulated under this section are exempt from the rules developed
 128 for manager certification. The department shall administer a
 129 comprehensive inspection, monitoring, and sampling program to
 130 ensure such standards are maintained. With respect to food

131 service establishments permitted or licensed under chapter 500
 132 or chapter 509, the department shall assist the Division of
 133 Hotels and Restaurants of the Department of Business and
 134 Professional Regulation and the Department of Agriculture and
 135 Consumer Services with rulemaking by providing technical
 136 information.

137 (c) The department shall carry out all provisions of this
 138 chapter and all other applicable laws and rules relating to the
 139 inspection or regulation of food service establishments as
 140 defined in this section, for the purpose of safeguarding the
 141 public's health, safety, and welfare.

142 (d) The department shall inspect each food service
 143 establishment as often as necessary to ensure compliance with
 144 applicable laws and rules. The department shall have the right
 145 of entry and access to these food service establishments at any
 146 reasonable time. In inspecting food service establishments under
 147 this section, the department shall provide each inspected
 148 establishment with the food recovery brochure developed under s.
 149 595.420.

150 (e) The department or other appropriate regulatory entity
 151 may inspect theaters ~~exempted in subsection (1)~~ to ensure
 152 compliance with applicable laws and rules pertaining to minimum
 153 sanitation standards. A fee for inspection shall be prescribed
 154 by rule, but the aggregate amount charged per year per theater
 155 establishment shall not exceed \$300, regardless of the entity
 156 providing the inspection.

157 (4)~~(3)~~ LICENSES REQUIRED.—

158 (a) Licenses; annual renewals.—Each food service
 159 establishment regulated under this section shall obtain a
 160 license from the department annually. Food service establishment
 161 licenses shall expire annually and are not transferable from one
 162 place or individual to another. However, those facilities
 163 licensed by the department's Office of Licensure and
 164 Certification, the Child Care Services Program Office, or the
 165 Agency for Persons with Disabilities are exempt from this
 166 subsection. It shall be a misdemeanor of the second degree,
 167 punishable as provided in s. 381.0061, s. 775.082, or s.
 168 775.083, for such an establishment to operate without this
 169 license. The department may refuse a license, or a renewal
 170 thereof, to any establishment that is not constructed or
 171 maintained in accordance with law and with the rules of the
 172 department. Annual application for renewal is not required.

173 (b) Application for license.—Each person who plans to open
 174 a food service establishment regulated under this section and
 175 not regulated under chapter 500 or chapter 509 shall apply for
 176 and receive a license prior to the commencement of operation.

177 (5)~~(4)~~ LICENSE; INSPECTION; FEES.—

178 (a) The department is authorized to collect fees from
 179 establishments licensed under this section and from those
 180 facilities exempted from licensure under paragraph (4) (a)
 181 ~~(3) (a)~~. It is the intent of the Legislature that the total fees
 182 assessed under this section be in an amount sufficient to meet

183 the cost of carrying out the provisions of this section.

184 (b) The fee schedule for food service establishments
 185 licensed under this section shall be prescribed by rule, but the
 186 aggregate license fee per establishment shall not exceed \$300.

187 (c) The license fees shall be prorated on a quarterly
 188 basis. Annual licenses shall be renewed as prescribed by rule.

189 (6)~~(5)~~ FINES; SUSPENSION OR REVOCATION OF LICENSES;
 190 PROCEDURE.—

191 (a) The department may impose fines against the
 192 establishment or operator regulated under this section for
 193 violations of sanitary standards, in accordance with s.
 194 381.0061. All amounts collected shall be deposited to the credit
 195 of the County Health Department Trust Fund administered by the
 196 department.

197 (b) The department may suspend or revoke the license of
 198 any food service establishment licensed under this section that
 199 has operated or is operating in violation of any of the
 200 provisions of this section or the rules adopted under this
 201 section. Such food service establishment shall remain closed
 202 when its license is suspended or revoked.

203 (c) The department may suspend or revoke the license of
 204 any food service establishment licensed under this section when
 205 such establishment has been deemed by the department to be an
 206 imminent danger to the public's health for failure to meet
 207 sanitation standards or other applicable regulatory standards.

208 (d) No license shall be suspended under this section for a

209 period of more than 12 months. At the end of such period of
 210 suspension, the establishment may apply for reinstatement or
 211 renewal of the license. A food service establishment which has
 212 had its license revoked may not apply for another license for
 213 that location prior to the date on which the revoked license
 214 would have expired.

215 (7)~~(6)~~ IMMINENT DANGERS; STOP-SALE ORDERS.—

216 (a) In the course of epidemiological investigations or for
 217 those establishments regulated by the department under this
 218 chapter, the department, to protect the public from food that is
 219 unwholesome or otherwise unfit for human consumption, may
 220 examine, sample, seize, and stop the sale or use of food to
 221 determine its condition. The department may stop the sale and
 222 supervise the proper destruction of food when the State Health
 223 Officer or his or her designee determines that such food
 224 represents a threat to the public health.

225 (b) The department may determine that a food service
 226 establishment regulated under this section is an imminent danger
 227 to the public health and require its immediate closure when such
 228 establishment fails to comply with applicable sanitary and
 229 safety standards and, because of such failure, presents an
 230 imminent threat to the public's health, safety, and welfare. The
 231 department may accept inspection results from state and local
 232 building and firesafety officials and other regulatory agencies
 233 as justification for such actions. Any facility so deemed and
 234 closed shall remain closed until allowed by the department or by

235 | judicial order to reopen.

236 | ~~(8)(7)~~ MISREPRESENTING FOOD OR FOOD PRODUCTS.—No operator
 237 | of any food service establishment regulated under this section
 238 | shall knowingly and willfully misrepresent the identity of any
 239 | food or food product to any of the patrons of such
 240 | establishment. Food used by food establishments shall be
 241 | identified, labeled, and advertised in accordance with the
 242 | provisions of chapter 500.

243 | Section 2. Paragraph (a) of subsection (5) of section
 244 | 509.013, Florida Statutes, is amended to read:

245 | 509.013 Definitions.—As used in this chapter, the term:

246 | (5) (a) "Public food service establishment" means any
 247 | building, vehicle, place, or structure, or any room or division
 248 | in a building, vehicle, place, or structure where food is
 249 | prepared, served, or sold for immediate consumption on or in the
 250 | vicinity of the premises; called for or taken out by customers;
 251 | or prepared prior to being delivered to another location for
 252 | consumption. The term includes a culinary education program, as
 253 | defined in s. 381.0072(2), which offers, prepares, serves, or
 254 | sells food to the general public, regardless of whether it is
 255 | inspected by another state agency for compliance with sanitation
 256 | standards.

257 | Section 3. Paragraph (a) of subsection (2) of section
 258 | 561.20, Florida Statutes, is amended to read:

259 | 561.20 Limitation upon number of licenses issued.—

260 | (2) (a) No such limitation of the number of licenses as

261 herein provided shall henceforth prohibit the issuance of a
 262 special license to:

263 1. Any bona fide hotel, motel, or motor court of not fewer
 264 than 80 guest rooms in any county having a population of less
 265 than 50,000 residents, and of not fewer than 100 guest rooms in
 266 any county having a population of 50,000 residents or greater;
 267 or any bona fide hotel or motel located in a historic structure,
 268 as defined in s. 561.01(21), with fewer than 100 guest rooms
 269 which derives at least 51 percent of its gross revenue from the
 270 rental of hotel or motel rooms, which is licensed as a public
 271 lodging establishment by the Division of Hotels and Restaurants;
 272 provided, however, that a bona fide hotel or motel with no fewer
 273 than 10 and no more than 25 guest rooms which is a historic
 274 structure, as defined in s. 561.01(21), in a municipality that
 275 on the effective date of this act has a population, according to
 276 the University of Florida's Bureau of Economic and Business
 277 Research Estimates of Population for 1998, of no fewer than
 278 25,000 and no more than 35,000 residents and that is within a
 279 constitutionally chartered county may be issued a special
 280 license. This special license shall allow the sale and
 281 consumption of alcoholic beverages only on the licensed premises
 282 of the hotel or motel. In addition, the hotel or motel must
 283 derive at least 60 percent of its gross revenue from the rental
 284 of hotel or motel rooms and the sale of food and nonalcoholic
 285 beverages; provided that the provisions of this subparagraph
 286 shall supersede local laws requiring a greater number of hotel

287 rooms;

288 2. Any condominium accommodation of which no fewer than
 289 100 condominium units are wholly rentable to transients and
 290 which is licensed under the provisions of chapter 509, except
 291 that the license shall be issued only to the person or
 292 corporation which operates the hotel or motel operation and not
 293 to the association of condominium owners;

294 3. Any condominium accommodation of which no fewer than 50
 295 condominium units are wholly rentable to transients, which is
 296 licensed under the provisions of chapter 509, and which is
 297 located in any county having home rule under s. 10 or s. 11,
 298 Art. VIII of the State Constitution of 1885, as amended, and
 299 incorporated by reference in s. 6(e), Art. VIII of the State
 300 Constitution, except that the license shall be issued only to
 301 the person or corporation which operates the hotel or motel
 302 operation and not to the association of condominium owners;

303 4. Any restaurant having 2,500 square feet of service area
 304 and equipped to serve 150 persons full course meals at tables at
 305 one time, and deriving at least 51 percent of its gross revenue
 306 from the sale of food and nonalcoholic beverages; however, no
 307 restaurant granted a special license on or after January 1,
 308 1958, pursuant to general or special law shall operate as a
 309 package store, nor shall intoxicating beverages be sold under
 310 such license after the hours of serving food have elapsed; or

311 5. Any caterer, deriving at least 51 percent of its gross
 312 revenue from the sale of food and nonalcoholic beverages,

313 licensed by the Division of Hotels and Restaurants under chapter
 314 509. This subparagraph does not apply to a culinary education
 315 program, as defined in s. 381.0072(2), which is licensed as a
 316 public food service establishment by the Division of Hotels and
 317 Restaurants and provides catering services. Notwithstanding any
 318 other provision of law to the contrary, a licensee under this
 319 subparagraph shall sell or serve alcoholic beverages only for
 320 consumption on the premises of a catered event at which the
 321 licensee is also providing prepared food, and shall prominently
 322 display its license at any catered event at which the caterer is
 323 selling or serving alcoholic beverages. A licensee under this
 324 subparagraph shall purchase all alcoholic beverages it sells or
 325 serves at a catered event from a vendor licensed under s.
 326 563.02(1), s. 564.02(1), or licensed under s. 565.02(1) subject
 327 to the limitation imposed in subsection (1), as appropriate. A
 328 licensee under this subparagraph may not store any alcoholic
 329 beverages to be sold or served at a catered event. Any alcoholic
 330 beverages purchased by a licensee under this subparagraph for a
 331 catered event that are not used at that event must remain with
 332 the customer; provided that if the vendor accepts unopened
 333 alcoholic beverages, the licensee may return such alcoholic
 334 beverages to the vendor for a credit or reimbursement.
 335 Regardless of the county or counties in which the licensee
 336 operates, a licensee under this subparagraph shall pay the
 337 annual state license tax set forth in s. 565.02(1)(b). A
 338 licensee under this subparagraph must maintain for a period of 3

339 | years all records required by the department by rule to
 340 | demonstrate compliance with the requirements of this
 341 | subparagraph, including licensed vendor receipts for the
 342 | purchase of alcoholic beverages and records identifying each
 343 | customer and the location and date of each catered event.
 344 | Notwithstanding any provision of law to the contrary, any vendor
 345 | licensed under s. 565.02(1) subject to the limitation imposed in
 346 | subsection (1), may, without any additional licensure under this
 347 | subparagraph, serve or sell alcoholic beverages for consumption
 348 | on the premises of a catered event at which prepared food is
 349 | provided by a caterer licensed under chapter 509. If a licensee
 350 | under this subparagraph also possesses any other license under
 351 | the Beverage Law, the license issued under this subparagraph
 352 | shall not authorize the holder to conduct activities on the
 353 | premises to which the other license or licenses apply that would
 354 | otherwise be prohibited by the terms of that license or the
 355 | Beverage Law. Nothing in this section shall permit the licensee
 356 | to conduct activities that are otherwise prohibited by the
 357 | Beverage Law or local law. The Division of Alcoholic Beverages
 358 | and Tobacco is hereby authorized to adopt rules to administer
 359 | the license created in this subparagraph, to include rules
 360 | governing licensure, recordkeeping, and enforcement. The first
 361 | \$300,000 in fees collected by the division each fiscal year
 362 | pursuant to this subparagraph shall be deposited in the
 363 | Department of Children and Families' Operations and Maintenance
 364 | Trust Fund to be used only for alcohol and drug abuse education,

365 treatment, and prevention programs. The remainder of the fees
 366 collected shall be deposited into the Hotel and Restaurant Trust
 367 Fund created pursuant to s. 509.072.

368 6. A culinary education program as defined in s.
 369 381.0072(2) which is licensed as a public food service
 370 establishment by the Division of Hotels and Restaurants.

371 a. This special license shall allow the sale and
 372 consumption of alcoholic beverages on the licensed premises of
 373 the culinary education program. The culinary education program
 374 shall specify designated areas in the facility where the
 375 alcoholic beverages may be consumed at the time of application.
 376 Alcoholic beverages sold for consumption on the premises may be
 377 consumed only in areas designated pursuant to s. 561.01(11) and
 378 may not be removed from the designated area. Such license shall
 379 be applicable only in and for designated areas used by the
 380 culinary education program.

381 b. If the culinary education program provides catering
 382 services, this special license shall also allow the sale and
 383 consumption of alcoholic beverages on the premises of a catered
 384 event at which the licensee is also providing prepared food. A
 385 culinary education program that provides catering services is
 386 not required to derive at least 51 percent of its gross revenue
 387 from the sale of food and nonalcoholic beverages.
 388 Notwithstanding any other provision of law to the contrary, a
 389 licensee that provides catering services under this sub-
 390 subparagraph shall prominently display its beverage license at

391 any catered event at which the caterer is selling or serving
 392 alcoholic beverages. Regardless of the county or counties in
 393 which the licensee operates, a licensee under this sub-
 394 subparagraph shall pay the annual state license tax set forth in
 395 s. 565.02(1)(b). A licensee under this sub-subparagraph must
 396 maintain for a period of 3 years all records required by the
 397 department by rule to demonstrate compliance with the
 398 requirements of this sub-subparagraph.

399 c. If a licensee under this subparagraph also possesses
 400 any other license under the Beverage Law, the license issued
 401 under this subparagraph does not authorize the holder to conduct
 402 activities on the premises to which the other license or
 403 licenses apply that would otherwise be prohibited by the terms
 404 of that license or the Beverage Law. Nothing in this
 405 subparagraph shall permit the licensee to conduct activities
 406 that are otherwise prohibited by the Beverage Law or local law.
 407 Any culinary education program that holds a license to sell
 408 alcoholic beverages shall comply with the age requirements set
 409 forth in ss. 562.11(4), 562.111(2), and 562.13.

410 d. The Division of Alcoholic Beverages and Tobacco may
 411 adopt rules to administer the license created in this
 412 subparagraph, to include rules governing licensure,
 413 recordkeeping, and enforcement.

414 e. A license issued pursuant to this subparagraph does not
 415 permit the licensee to sell alcoholic beverages by the package
 416 for off-premises consumption.

417
 418 However, any license heretofore issued to any such hotel, motel,
 419 motor court, or restaurant or hereafter issued to any such
 420 hotel, motel, or motor court, including a condominium
 421 accommodation, under the general law shall not be moved to a new
 422 location, such license being valid only on the premises of such
 423 hotel, motel, motor court, or restaurant. Licenses issued to
 424 hotels, motels, motor courts, or restaurants under the general
 425 law and held by such hotels, motels, motor courts, or
 426 restaurants on May 24, 1947, shall be counted in the quota
 427 limitation contained in subsection (1). Any license issued for
 428 any hotel, motel, or motor court under the provisions of this
 429 law shall be issued only to the owner of the hotel, motel, or
 430 motor court or, in the event the hotel, motel, or motor court is
 431 leased, to the lessee of the hotel, motel, or motor court; and
 432 the license shall remain in the name of the owner or lessee so
 433 long as the license is in existence. Any special license now in
 434 existence heretofore issued under the provisions of this law
 435 cannot be renewed except in the name of the owner of the hotel,
 436 motel, motor court, or restaurant or, in the event the hotel,
 437 motel, motor court, or restaurant is leased, in the name of the
 438 lessee of the hotel, motel, motor court, or restaurant in which
 439 the license is located and must remain in the name of the owner
 440 or lessee so long as the license is in existence. Any license
 441 issued under this section shall be marked "Special," and nothing
 442 herein provided shall limit, restrict, or prevent the issuance

443 | of a special license for any restaurant or motel which shall
444 | hereafter meet the requirements of the law existing immediately
445 | prior to the effective date of this act, if construction of such
446 | restaurant has commenced prior to the effective date of this act
447 | and is completed within 30 days thereafter, or if an application
448 | is on file for such special license at the time this act takes
449 | effect; and any such licenses issued under this proviso may be
450 | annually renewed as now provided by law. Nothing herein prevents
451 | an application for transfer of a license to a bona fide
452 | purchaser of any hotel, motel, motor court, or restaurant by the
453 | purchaser of such facility or the transfer of such license
454 | pursuant to law.

455 | Section 4. This act shall take effect July 1, 2016.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 249 (2016)

Amendment No.

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	_____	

1 Committee/Subcommittee hearing bill: Health Quality
2 Subcommittee

3 Representative Moskowitz offered the following:
4

5 **Amendment**

6 Remove line 37 and insert:

7 or licensed under chapter 500 or a public food service

8 establishment licensed under chapter 509 unless the public food

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4007 Medical Assistant Certification
SPONSOR(S): Pigman
TIED BILLS: IDEN./SIM. BILLS: SB 238

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		Ives <i>TI</i>	O'Callaghan <i>ML</i>
2) Health & Human Services Committee			

SUMMARY ANALYSIS

Section 458.3485(3), F.S., currently states that medical assistants may be certified by the American Association of Medical Assistants or as a Registered Medical Assistant by the American Medical Technologists. However, there is no statutory requirement that such practitioners be licensed, registered, certified, or otherwise regulated by a state agency.

The bill repeals s. 458.3485(3), F.S., pertaining to the permissive certification of medical assistants. As a result, this bill has no effect on the regulation of medical assistants.

The bill appears to have no fiscal impact on the state government or local governments.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 458.3485, F.S., defines a medical assistant as a professional, multi-skilled person dedicated to assisting in all aspects of medical practice under the direct supervision and responsibility of a physician. A medical assistant assists with patient care management, executes administrative and clinical procedures, and often performs managerial and supervisory functions. Competence in the field requires that a medical assistant adhere to ethical and legal standards of professional practice, recognize and respond to emergencies, and demonstrate professional characteristics.¹

Subsection 458.3485(2), F.S., lists the following duties that a medical assistant may perform under the direct supervision of a licensed physician:²

- Clinical procedures, including:
 - Aseptic procedures
 - Taking vital signs
 - Preparing patients for the physician's care
 - Performing venipunctures and nonintravenous injections
 - Observing and reporting patients' signs or symptoms
- Basic first aid
- Assisting with patient examinations or treatments
- Operating office medical equipment
- Collecting routine laboratory specimens as directed by the physician
- Administering medication as directed by the physician
- Performing basic laboratory procedures
- Performing office procedures including all general administrative duties required by the physician
- Performing dialysis procedures, including home dialysis

According to the United States Department of Labor, Bureau of Labor Statistics, there were 40,770 medical assistants employed in Florida in 2014.³ This figure is projected to increase to 49,866 by the year 2022.⁴

Certification of Medical Assistants

The Florida Department of Health does not license, register, certify, or otherwise regulate medical assistants.⁵ However, under s. 458.3485(3), F.S., a medical assistant may be certified by the American Association of Medical Assistants or as a Registered Medical Assistant by the American Medical Technologists.⁶

¹ Section 458.3485, F.S.

² Section 458.3485(2), F.S.

³ Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment Statistics, May 2014, Medical Assistants, on the Internet at <http://www.bls.gov/oes/current/oes319092.htm> (visited October 12, 2015).

⁴ Florida Dep't of Economic Opportunity. Florida Jobs by Occupation. *Florida Dep't of Economic Opportunity*. Retrieved from <http://www.floridajobs.org/labor-market-information/data-center/statistical-programs/employment-projections>.

⁵ Florida Dep't of Health, 2016 Agency Legislative Bill Analysis, HB 4007, September 4, 2015 (on file with committee staff).

⁶ Section 458.3485(3), F.S.

Although medical assistants are not required to be certified in Florida, employers prefer to hire certified assistants.⁷ The National Commission for Certifying Agencies, part of the Institute for Credentialing Excellence, accredits the following certification programs for medical assistants:⁸

- Certified Medical Assistant (CMA) from the American Association of Medical Assistants
- Registered Medical Assistant (RMA) from American Medical Technologists
- National Certified Medical Assistant (NCMA) from the National Center for Competency Testing
- Certified Clinical Medical Assistant (CCMA) from the National Healthcareer Association

The above certifying organizations require the applicant to pass an exam in order to receive certification as a medical assistant. In order to be eligible for the exam, applicants typically⁹ are required to have graduated from an accredited training program.¹⁰

Effect of Proposed Changes

The bill repeals s. 458.3485(3), F.S., which authorizes the American Association of Medical Assistants and the American Medical Technologists to certify medical assistants. Therefore, removing a law that permits but does not require certification of medical assistants has no effect on the regulation of medical assistants.

The bill provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1: Repeals s. 458.3485(3), F.S., relating to certification of a medical assistant by the American Association of Medical Assistants or as a Registered Medical Assistant by the American Medical Technologists.

Section 2: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

⁷ Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2014-15 Edition*, Medical Assistants, on the Internet at <http://www.bls.gov/ooh/healthcare/medical-assistants.htm> (visited October 12, 2015).

⁸ *Id.*

⁹ For example, the National Healthcareer Association provides an alternative for those with military or relevant work experience and the National Center for Competency Testing provides an alternative for those with military or full-time experience as a medical assistant practitioner.

¹⁰ The training, education, and examination requirements are provided at each certifying agency's website: American Association of Medical Assistants, <http://www.aama-ntl.org/cma-aama-exam/application-steps/eligibility>; American Medical Technologists, <http://www.americanmedtech.org/GetCertified/RMAEligibility.aspx>; National Center for Competency Testing, <https://www.ncctinc.com/Certifications/MA.aspx>; National Healthcareer Association, <http://www.nhanow.com/certifications/clinical-medical-assistant>.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 4007

2016

1 A bill to be entitled
2 An act relating to medical assistant certification;
3 repealing s. 458.3485(3), F.S., relating to
4 certification of a medical assistant by the American
5 Association of Medical Assistants or as a Registered
6 Medical Assistant by the American Medical
7 Technologists; providing an effective date.

8

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

10

11 Section 1. Subsection (3) of section 458.3485, Florida
12 Statutes, is repealed.

13

 Section 2. This act shall take effect July 1, 2016.