

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 697 Public Health Emergencies
SPONSOR(S): Health Quality Subcommittee; Gonzalez
TIED BILLS: **IDEN./SIM. BILLS:** SB 950

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	12 Y, 0 N, As CS	O'Callaghan	O'Callaghan
2) Health & Human Services Committee		O'Callaghan	Calamas

SUMMARY ANALYSIS

The State Health Officer is responsible for declaring public health emergencies and issuing public health advisories. A public health emergency exists when there is an occurrence, or threat of an occurrence, whether natural or manmade, which results or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters. The State Health Officer is authorized to take certain actions that are necessary to protect the public health after declaring a public health emergency, including ordering an individual to be examined, tested, vaccinated, treated, or quarantined for communicable diseases that have a significant risk of morbidity or mortality and present a severe danger to public health.

CS/HB 697 allows the State Health Officer to also isolate an individual who has a communicable disease that has a significant risk of morbidity or mortality and presents a severe danger to the public health. The bill defines "quarantine" and "isolation" to distinguish the two terms.

The bill also authorizes law enforcement officers to immediately enforce orders by the Department of Health (Department), which relate to the isolation or quarantine of persons, animals, and premises when controlling communicable diseases or providing protection from unsafe conditions that pose a threat to public health. The bill makes a violation of an isolation order a misdemeanor of the second degree. The bill also makes it a misdemeanor of the second degree for a person to falsely claim, willfully and with intent to defraud, that he or she has contracted a communicable disease to a health care provider or a law enforcement officer during a declared public health emergency.

The bill authorizes the Department to adopt rules to specify the conditions and procedures for imposing and lifting an order for isolation; rules related to the Department's access to persons in isolation or quarantine or the premises housing such persons; rules related to the disinfection of isolated animals, persons, or premises; and rules related to the methods of isolation.

The bill states that rules related to isolation and the Department's enforcement actions supersede all other agency rules and ordinances, and regulations enacted by political subdivisions of the state.

The bill states that the act fulfills an important state interest.

Due to the negligible frequency of required quarantines and the unforeseen required isolation orders, the bill has no immediate fiscal impact associated with using resources to enforce isolation orders during a declared public health emergency. Additionally, to the extent this bill increases the number of defendants subject to misdemeanor penalties, the bill may result in an indeterminate negative fiscal impact on county jails.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Isolation and quarantine help protect the public by preventing exposure to people who have or may have a communicable disease¹. Specifically, “isolation” separates people infected with a communicable disease from people who are not infected, while “quarantine” separates and restricts the movement of people who were exposed to a communicable disease to determine whether they have been infected.²

Federal Authority

The federal government derives its authority to isolate and quarantine individuals from the Commerce Clause³ of the U.S. Constitution. Under section 361 of the Public Health Service Act,⁴ the U.S. Secretary of Health and Human Services is authorized to take measures to prevent the entry and spread of communicable diseases from foreign countries into the United States and between states. The authority for carrying out these functions has been delegated to the Centers for Disease Control and Prevention (CDC).⁵

The CDC is authorized to detain, medically examine, and release persons who arrive into the U.S. or travel between states, and who are suspected of carrying communicable diseases.⁶ The CDC routinely monitors persons arriving at U.S. land border crossings and passengers and crew arriving at U.S. ports of entry for signs or symptoms of communicable diseases.⁷ When alerted about an ill passenger or crew member by the pilot of a plane or captain of a ship, the CDC may detain passengers and crew as necessary to investigate whether the cause of the illness on board is a communicable disease.⁸

The CDC may quarantine or isolate individuals who may have been infected with, or have been infected with, certain communicable diseases that have been declared “quarantinable diseases” by Presidential Executive Order.⁹ Currently, the following diseases have been declared quarantinable diseases:

- Cholera;
- Diphtheria;
- Infectious tuberculosis;
- Plague;
- Smallpox;
- Yellow fever;
- Viral hemorrhagic fevers (e.g. Ebola and Marburg viruses);
- Severe acute respiratory syndromes; and

¹ “Communicable disease” is an illness due to infectious agents or their toxic products, which may be transmitted from a reservoir to a susceptible host, either directly from an infected person or animal or indirectly through the agency of an intermediate plant or animal host, vector, or the inanimate environment. 42 C.F.R. § 70.1.

² Centers for Disease Control and Prevention, “Quarantine and Isolation: Fact Sheet-October 2014,” available at: <http://www.cdc.gov/quarantine/aboutlawsregulationsquarantineisolation.html> (last visited on February 25, 2015).

³ Art. I, Sect. 8, Clause 3, U.S. Const.

⁴ 42 U.S.C. § 264.

⁵ *Supra* fn. 2.

⁶ 42 C.F.R. Parts 70, 71.

⁷ There are 20 U.S. Quarantine Stations, located at ports of entry and land border crossings. A map of the location of each station is available at: <http://www.cdc.gov/ncezid/dgmg/quarantine-fact-sheet.html> (last visited on February 25, 2015).

⁸ *Supra* fn. 2.

⁹ Centers for Disease Control and Prevention, “Quarantine and Isolation: Questions and Answers on the Executive Order Adding Potentially Pandemic Influenza Viruses to the List of Quarantinable Diseases,” available at: <http://www.cdc.gov/quarantine/qa-executive-order-pandemic-list-quarantinable-diseases.html> (last visited on February 25, 2015).

- New types of flu (influenza) that could cause a pandemic.¹⁰

If the CDC issues a federal isolation or quarantine order, the U.S. Customs and Border Protection and U.S. Coast Guard officers are authorized to help enforce the federal order. State law enforcement may also assist in the enforcement of a CDC order. Breaking a federal isolation or quarantine order is punishable by fines and imprisonment.¹¹

CDC isolation and quarantine orders are rare. A large-scale isolation and quarantine order has not been enforced since the influenza (“Spanish Flu”) pandemic, which lasted from 1918 to 1919. In recent history, only a few public health events have prompted federal isolation or quarantine orders.¹²

State Authority

The 10th Amendment to the U.S. Constitution has been interpreted by the U.S. Supreme Court to give states “police power,” which allows states to quarantine and isolate individuals to protect the health, safety, and welfare of persons within their borders.¹³ To control the spread of disease within their borders, states enact laws to enforce the use of isolation and quarantine. These laws can vary from state to state and can be specific or broad. In some states, local health authorities implement state law. In most states, breaking a quarantine order is a criminal misdemeanor.¹⁴

Florida Quarantine Authority

The State Health Officer is responsible for declaring public health emergencies and issuing public health advisories.¹⁵ A public health emergency exists when there is an occurrence, or threat of an occurrence, whether natural or manmade, which results or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters.¹⁶ The State Health Officer is authorized to take certain actions that are necessary to protect the public health after declaring a public health emergency, including ordering an individual to be examined, tested, vaccinated, treated, or quarantined for communicable diseases that have a significant risk of morbidity or mortality and present a severe danger to public health.¹⁷

The State Health Officer may subject an individual to quarantine if the individual poses a danger to the public health.¹⁸ If there is no practical method to quarantine the individual, the State Health Officer may use any means necessary to vaccinate or treat the individual.¹⁹

Currently, the Department of Health (Department) has a duty and the authority to declare, enforce, modify, and abolish quarantines of persons, animals, and premises for controlling communicable diseases or providing protection from unsafe conditions that pose a threat to public health. However, there are exceptions and limitations to the Department’s duty and authority to quarantine individuals who are infected with sexually transmitted diseases²⁰ or tuberculosis²¹.

¹⁰ *Supra* fn. 2.

¹¹ A person violating quarantine laws is punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year, or both. 42 U.S.C. § 271.

¹² *Supra* fn. 2.

¹³ *Jacobson v. Mass.*, 197 U.S. 11 (1905).

¹⁴ Centers for Disease Control and Prevention, “Isolation and Quarantine: Legal Authorities for Isolation and Quarantine,” available at: <http://www.cdc.gov/quarantine/aboutLawsRegulationsQuarantineIsolation.html> (last visited on February 25, 2015).

¹⁵ Section 381.00315, F.S.

¹⁶ Section 381.00315(1)(b), F.S.

¹⁷ *Id.*

¹⁸ Individuals, who are unable or unwilling to be examined, tested, vaccinated, or treated for reasons of health, religion, or conscience, may also be subjected to quarantine. Section 381.00315(1)(b), F.S.

¹⁹ *Id.*

²⁰ Section 384.28, F.S.

²¹ Sections 392.545-.60, F.S.

A State Health Officer's order to quarantine an individual during a declared public health emergency is immediately enforceable by a law enforcement officer.²² A person who violates a quarantine order commits a misdemeanor of the second degree.^{23,24}

Individuals who assist the State Health Officer at his or her request on a volunteer basis during a public health emergency are entitled to the following benefits:

- Free temporary lodging;
- Transportation reimbursement or the utilization of state vehicles in the performance of department-related duties;
- State liability protection under s. 768.28, F.S.; and
- Workers' compensation coverage in accordance with ch. 440, F.S.²⁵

The Department is required to adopt rules to specify the conditions and procedures for imposing and releasing a quarantine order.²⁶ The rules must include provisions related to:

- The closure of premises.
- The movement of persons or animals exposed to or infected with a communicable disease.
- The tests or treatment, including vaccination, for communicable disease required prior to employment or admission to the premises or to comply with a quarantine.
- Testing or destruction of animals with or suspected of having a disease transmissible to humans.
- Access by the Department to quarantined premises.
- The disinfection of quarantined animals, persons, or premises.
- Methods of quarantine.²⁷

Rules adopted by the Department that relate to public health emergencies, including quarantine rules, supersede all rules enacted by other state departments or boards and commissions, and ordinances and regulations enacted by political subdivisions of the state.²⁸

Effect of Proposed Changes

CS/HB 697 allows the State Health Officer to isolate an individual who has a communicable disease that has a significant risk of morbidity or mortality and presents a severe danger to the public health.

The bill defines "quarantine" and "isolation" to distinguish the two terms. "Quarantine" is defined as the separation of an individual reasonably believed to have been exposed to a communicable disease, but who is not yet showing symptoms, from others who have not been exposed to the disease to prevent the possible spread of the disease. "Isolation" is defined as the separation of an individual who is reasonably believed to be infected with a communicable disease from those who are not infected with the disease to prevent the spread of the disease.

The bill also authorizes law enforcement officers to immediately enforce orders by the Department, which relate to the isolation or quarantine of persons, animals, and premises when controlling communicable diseases or providing protection from unsafe conditions that pose a threat to public health.

²² Section 381.00315(1), F.S.

²³ A second-degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days, or a fine up to \$500. Sections 775.082 and 775.083, F.S.

²⁴ Section 381.00315(6), F.S.

²⁵ See s. 381.00315(2) and ss. 110.504(2), (3), (4), (5), F.S.

²⁶ Section 381.00315(5), F.S.

²⁷ See rules 64D-3.037 and 64D-3.038, F.A.C.

²⁸ *Id.*

The bill makes a violation of an order of isolation a misdemeanor of the second degree. The bill also makes it a misdemeanor of the second degree for a person to claim, willfully and with intent to defraud, that he or she has contracted a communicable disease to obtain or attempt to obtain goods, products, merchandise, or services from a health care provider during a declared public health emergency. A person who falsely reports having a communicable disease to a law enforcement officer during a declared public health emergency also commits a misdemeanor of the second degree.

The bill authorizes the Department to adopt rules to specify the conditions and procedures for imposing and lifting an order for isolation; rules related to the Department's access to persons in isolation or quarantine or the premises housing such persons; rules related to the disinfection of isolated animals, persons, or premises; and rules related to the methods of isolation.

The bill states that rules related to isolation and the Department's enforcement actions supersede all other agency rules and ordinances, and regulations enacted by political subdivisions of the state.

The bill also states that the act fulfills an important state interest.

The bill has an effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1: Amends s. 381.0012, F.S., relating to enforcement authority.

Section 2: Amends s. 381.00315, F.S., relating to public health advisories; public health emergencies; and isolation and quarantines.

Section 3: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department indicated that there have been two public health emergencies in the past five years and there was no need to quarantine anyone for either event. Due to the negligible frequency of required quarantines and the unforeseen required isolation orders, the bill has no immediate fiscal impact associated with enforcing isolation orders and for providing benefits pursuant to s. 381.00315(2), F.S., to those persons assisting with the enforcement of an isolation order.²⁹ Additionally, the Department should be able to absorb costs associated with rulemaking.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Local governments may incur indeterminate costs associated with assisting the Department with the enforcement of isolation orders, including the transport, security, and monitoring of isolated individuals.³⁰

²⁹ Department of Health e-mail to professional staff of the Health Quality Subcommittee, on file with the committee, received February 27, 2015.

³⁰ Florida Department of Health, 2015 Agency Legislative Analysis of HB 697, February 19, 2015, on file with the Health Quality Subcommittee.

To the extent this bill increases the number of defendants subject to misdemeanor penalties, the bill may result in an indeterminate negative fiscal impact on county jails.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Health care facilities may incur indeterminate costs associated with the care, monitoring, and security of isolated individuals.³¹

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires local law enforcement agencies to use their resources to enforce isolation orders. However, quarantines of individuals exposed to a communicable disease have historically been rare.³² Because it is likely that even fewer individuals would be infected with a communicable disease and ordered to be isolated, it appears the costs to a county or municipality would be insignificant.

Additionally, the bill contains a statement of “important state interest,” which would, with two-thirds vote in each chamber of the Legislature approving the local mandate, exempt this law from the Florida Constitution’s prohibition against local mandates.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Department to adopt rules to specify the conditions and procedures for imposing and lifting an order for isolation; rules related to the Department’s access to persons in isolation or quarantine or the premises housing such persons; rules related to the disinfection of isolated animals, persons, or premises; and rules related to the methods of isolation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2015, the Health Quality Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments make the following changes to the bill:

- Changes the title from “an act relating to public health” to “an act relating to public health emergencies.”
- Adds a statement that the act fulfills an important state interest.

³¹ *Id.*

³² During the only two declared public health emergencies in the last 5 years, the State Health Officer and the Department of Health did not quarantine a single person. Department of Health e-mail to professional staff of the Health Quality Subcommittee, on file with the committee, received February 27, 2015.

- Creates a criminal penalty for a person claiming, willfully and with intent to defraud, that he or she has contracted a communicable disease to a health care provider or a law enforcement officer during a declared public health emergency.

This analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.