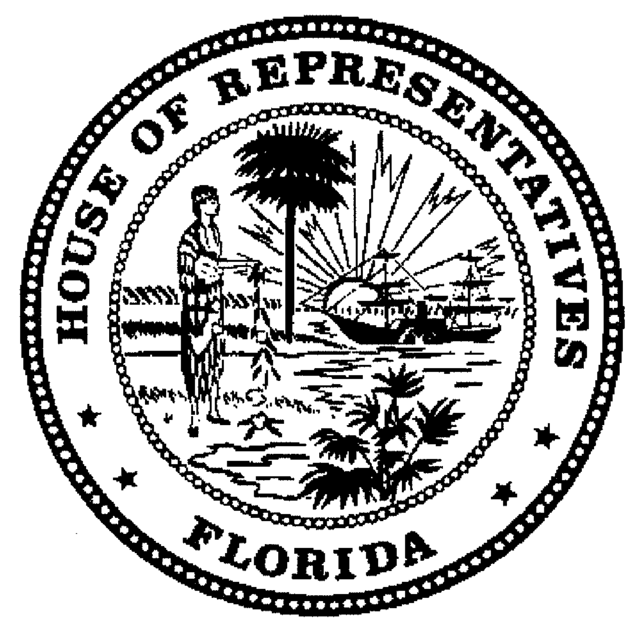

Health & Human Services Quality Subcommittee

Tuesday, March 22, 2011
8:30 AM
306 HOB

Dean Cannon
Speaker

John Wood
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Health & Human Services Quality Subcommittee

Start Date and Time: Tuesday, March 22, 2011 08:30 am

End Date and Time: Tuesday, March 22, 2011 11:30 am

Location: 306 HOB
Duration: 3.00 hrs

Consideration of the following bill(s):

HB 225 Dentistry and Dental Hygiene by Costello
HB 619 Sale or Lease of a County, District, or Municipal Hospital by Hooper
HB 1067 Death and Fetal Death Registration by Mayfield
HB 1125 Florida Health Choices Program by Corcoran
HB 1127 Abortions by Porter
HB 1193 Health Insurance by Hudson
HB 1319 Military Spouses by Harrell
HB 1397 Abortions by Burgin

Consideration of the following proposed committee bill(s):

PCB HSQS 11-02 -- Repeals Obsolete Language relating to the Agency for Health Care Administration

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Monday, March 21, 2011.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, March 21, 2011.

NOTICE FINALIZED on 03/18/2011 16:20 by Villar.Melissa

HB 1319

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1319 Military Spouses
SPONSOR(S): Harrell and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1228

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

SUMMARY ANALYSIS

Currently, the Department of Health (DOH) does not issue temporary licenses to health care practitioners who are spouses of active duty members of the Armed Forces. The bill provides the DOH the authority to issue a temporary license to a healthcare practitioner whose spouse is stationed in Florida on active duty with the Armed Forces. The temporary license is valid for six months from the date of issuance and is not renewable. The healthcare practitioner is required to:

- Submit a completed application;
- Submit a fee;
- Provide proof of marriage to an active duty member of the Armed Forces of the United States assigned to a duty station in Florida;
- Provide proof of a valid license in another state, the District of Columbia, a possession or territory of the United States, or a foreign jurisdiction; and
- Complete state and national criminal history checks.

The bill requires the DOH and provides the the applicable licensing board the authority to review the results of a state and federal criminal history check, based on level 2 screening standards, to determine if the applicant for a temporary license meets the requirements for licensure.

The fiscal impact to the Medical Quality Assurance Trust Fund within the Department of Health is likely to be insignificant, but is indeterminate at this time. There is no fiscal impact to local governments. (See Fiscal Comments.)

The bill provides for an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background
Health Care Practitioner Licensure

The Department of Health (DOH), Division of Medical Quality Assurance (MQA) regulates more than 40 health care professions and 37 types of facilities/establishments.[1] MQA evaluates the credentials of all applicants for licensure, issues licenses, analyzes and investigates complaints, inspects facilities, assists in prosecuting practice act violations, combats unlicensed activity, and provides credentials and discipline history about licensees to the public. In Fiscal Year 2009-2010, MQA issued a total of 1,002,920 licensees.[2]

Currently, the DOH does not issue temporary licenses to health care practitioners who are spouses of active duty members of the Armed Forces. All health care practitioners are required to comply with the licensing provisions specified for the health care profession and corresponding practice act[3] that they are seeking to be licensed under. The board (or DOH if there is no board), determines whether DOH should issue a license to practice in Florida.

In Fiscal Year 2009-2010, the average number of days to issue a license was 56.5 days. This is calculated from the date an application is received by the Department to the date the license is issued. However, the 56.5 days includes steps in the process that are outside of the DOH's control:[4]

- Most professions have national licensure exams. For those professions where candidates who are permitted to apply for licensure prior to passing the exam, the length of time it takes to pass the exam impacts the number of days to issue a license.
- Length of time it takes for an applicant to successfully pass a practical licensure exam. Florida currently administers some state practical licensure exams. Those exams are administered a limited number of times per year. The dental exam is administered 3 times per year; the dental hygiene exam is administered 2 times per year; the opticianry exam is administered twice per year; optometry is administered one time per year.
- Some professions are required to have taken certain educational courses, therefore those applicants are required to successfully pass college courses while the application is pending; (See s. 491.005, F.S.,).
- For professions which require a criminal background check, delays are often experienced while the applicant obtains and sends in information from law enforcement or the judicial system detailing the disposition of an arrest or conviction.
- Pre-licensure facility inspections.

Criminal Background Screening

In 1995, the Florida Legislature created standard procedures for the screening of prospective employees where the Legislature had determined it necessary to conduct criminal history background checks to protect vulnerable persons. Currently, there are two different groups of criminal background screenings: statewide (level 1), national (level II). Chapter 435, F.S., outlines the screening standards for Level 1 employment screening and Level 2 employment screening. The Florida Department of Law Enforcement (FDLE) provides criminal history checks to the employer.

[1] Florida Department of Health, Division of Medical Quality Assurance, Reports and Publications, 2009-2010 Annual Report, *available* at: http://www.doh.state.fl.us/mqa/reports.htm (last viewed March 17, 2011).
[2] *Id.*
[3] "Practice Acts" are in statute for each profession and establish the scope and standards of practice of the profession, and provide grounds for disciplinary action.
[4] Per email correspondence with DOH, Medical Quality Assurance staff, March 17, 2011, on file with Health & Human Services Quality Subcommittee staff.

The provisions of chapter 435, F.S., apply whenever a Level 1 or Level 2 screening for employment is required by law. Screenings can be done following Level 1 or Level 2 standards, depending on what direction is provided in a specific statute.

Level 1 screenings are name-based demographic screenings that must include, but are not limited to, employment history checks and statewide criminal correspondence checks through FDLE. Level 1 screenings may also include local criminal records checks through local law enforcement agencies. Anyone undergoing a Level 1 screening must not have been found guilty of any of many offenses delineated by law.[5]

A Level 2 screening consists of a fingerprint-based search of FDLE and the Federal Bureau of Investigations (FBI) databases for state and national criminal arrest records. Any person undergoing a Level 2 screening must not have been found guilty of any of the offenses for Level 1 or the many offenses delineated by law.[6]

Currently, DOH conducts different levels of background screening for health professions as required by each practice act:[7]

Regulated Provider Type/Licensee Initial Licensure	Current Level of Screening	Cost of screening and who pays the cost (See note)	Rescreening Requirements
Advanced Registered Nurse Practitioner	Statewide/National	$43.25/Licensee	Renewal - Statewide
Certified Nursing Assistant by Examination in FL > 5 years	Level II	$43.25/Licensee	None
Certified Nursing Assistant by Examination in FL < 5 years	Level II	$43.25/Licensee	None
Certified Nursing Assistant by Reciprocity	Level II	$43.25/Licensee	None
Licensed Practical Nurse by Examination	Statewide	$24/Licensee	None
Licensed Practical Nurse by Endorsement	Statewide/National	$43.25/Licensee	None
Registered Nurse by Examination	Statewide	$24/Licensee	None
Registered Nurse by Endorsement	Statewide/National	$43.25/Licensee	None
Chiropractic Physician	Statewide/National	$43.25/Licensee	Renewal - Statewide
Medical Doctor	Statewide/National	$43.25/Licensee	Renewal - Statewide
Osteopathic Physician	Statewide/National	$43.25/Licensee	Renewal - Statewide
Orthotists, Prosthetists, Pedorthists, Orthotic Fitters, Orthotic Fitter Assistants, O&P Resident	Statewide/National	$43.25/Licensee	Renewal - Statewide
Drug Wholesalers/Certified Designated Representative	Statewide/National	$43.25/Licensee	None
Pharmacy Owner	Statewide/National	$43.25/Licensee	None
Prescription Department Manager	Statewide/National	$43.25/Licensee	None
Podiatric Physician	Statewide/National	$43.25/Licensee	Renewal - Statewide

Source: Department of Health, Division of Medical Quality Assurance[8]
Note : DOH charges $4.75 administrative processing fee

Many health professions do not require a criminal background screening at the time of initial licensure or licensure renewal. Currently, the following health professions are not subject to a criminal background screening:[9]

[5] *See* ss. 393.135, 394.4593, 415.111, 782.04, 782.07, 782.071, 782.09, 784.011, 784.021, 784.03, 784.045, 787.01, 787.02, 794.011, 794.041, 798.02, 806.01, 817.563, 825.102, 825.1025, 825.103, 826.04, 827.03, 827.04, 827.05, 827.071, 916.1075 and chapters 796, 800, 812, 847, and 893, F.S.
[6] *See* ss. 787.04(2), 787.04(3), 790.115(1), 790.115(2)(b), 843.01, 843.025, 843.12, 843.13, 874.05(1), 944.35(3), 944.46, 944.47, 985.701, and 985.711, F.S.
[7] Florida Department of Health, Division of Medical Quality Assurance, Background Screening, Background Screening Matrix, *available* at: http://www.doh.state.fl.us/mqa/background.html (last viewed March 17, 2011).
[8] Florida Department of Health, Division of Medical Quality Assurance, Background Screening, Background Screening Matrix, *available* at: http://www.doh.state.fl.us/mqa/background.html (last viewed March 17, 2011).
[9] Per email correspondence with DOH, Medical Quality Assurance staff, March 17, 2011, on file with Health & Human Services Quality Subcommittee staff.

- Acupuncture
- Anesthesiologist Assistant
- Athletic Training
- Clinical Laboratory Personnel
- Clinical Nurse Specialist
- Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling
- Dentistry/Dental Laboratory
- Dietetics/Nutrition
- Electrolysis/Electrolysis Facility
- Emergency Medical Technician
- Hearing Aid Specialist
- Massage Therapy/Massage Establishment
- Medical Physicist
- Midwifery
- Naturopath
- Nursing Home Administrator
- Office Surgery Registration

According to DOH, the results of a state or national background screening are reviewed by the applicant's respective health profession board and the results are used to decide whether to grant a license. However, this screening process does not meet the definition of a Level II screening as provided in chapter 435, F.S.[10]

The Effects of the Bill

The bill provides the Department of Health (DOH) the authority to issue a temporary license to a healthcare practitioner whose spouse is stationed in Florida on active duty with the Armed Forces. The temporary license is valid for six months from the date of issuance and is not renewable. The healthcare practitioner is required to:

- Submit a completed the application;
- Submit a fee;
- Provide proof of marriage to an active duty member of the Armed Forces of the United States assigned to a duty station in Florida;
- Provide proof of a valid license in another state, the District of Columbia, a possession or territory of the United States, or a foreign jurisdiction;, and
- Complete state and national criminal history checks.

The bill requires the DOH and provides the board the authority to review the results of the state and federal criminal history checks, based on level 2 screening standards, to determine if the applicant for a temporary license meets the requirements for licensure. The bill does not provide for the variability of requirements within each health professions practice act concerning criminal background screening.

The bill requires the applicant for a temporary license to pay the cost for the fingerprint processing, and an application fee.

B. SECTION DIRECTORY:

Section 1. Amends s. 456.024, F.S., relating to members and spouses of Armed Forces in good standing with administrative boards or the department.
Section 2. Provides an effective date of July 1, 2011.

---

[10] Florida Department of Health, Division of Medical Quality Assurance, Background Screening, Criminal Background Screening & Exemption, *available* at: http://www.doh.state.fl.us/mqa/background.html (last viewed March 17, 2011).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill authorizes the DOH to set the application fee for the temporary license and the applicant is required to pay the cost for fingerprint processing. Section 216.0236, F.S., provides that the all costs of providing a regulatory service or regulating a profession or business be borne solely by those who are regulated and the program be self-sufficient.

According to the DOH, there are 14 military bases in Florida, yet the number of out of state military personnel stationed in Florida, the number out of state military personnel with spouses, and the number of spouses that are health care practitioners licensed in other states is unknown. Therefore, the fiscal impact is indeterminate at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The department does not need additional rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to military spouses; amending s. 456.024,
3 F.S.; providing for issuance of a temporary license to
4 specified health care practitioners who are spouses of
5 active duty members of the Armed Forces under certain
6 circumstances; providing for criminal history checks;
7 providing fees; providing for expiration of a temporary
8 license; providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Subsection (3) is added to section 456.024,
13 Florida Statutes, to read:
14 456.024 Members of Armed Forces in good standing with
15 administrative boards or the department; spouses.—
16 (3)(a) The department may issue a temporary professional
17 license to the spouse of an active duty member of the Armed
18 Forces of the United States who submits to the department:
19 1. A completed application;
20 2. The required application fee;
21 3. Proof that the applicant is married to a member of the
22 Armed Forces of the United States who is on active duty;
23 4. Proof that the applicant holds a valid license for the
24 profession issued by another state, the District of Columbia, a
25 possession or territory of the United States, or a foreign
26 jurisdiction; and
27 5. Proof that the applicant's spouse is assigned to a duty
28 station in this state and that the applicant is also assigned to

29 a duty station in this state pursuant to the member's official
30 active duty military orders.
31 (b) The applicant must also submit to the Department of
32 Law Enforcement a complete set of fingerprints. The Department
33 of Law Enforcement shall conduct a statewide criminal history
34 check and forward the fingerprints to the Federal Bureau of
35 Investigation for a national criminal history check.
36 (c) The department shall, and the board may, review the
37 results of the state and federal criminal history checks
38 according to the level 2 screening standards in s. 435.04 and
39 shall determine whether the applicant meets the licensure
40 requirements.
41 (d) The applicant shall pay the cost of fingerprint
42 processing. If the fingerprints are submitted through an
43 authorized agency or vendor, the agency or vendor shall collect
44 the required processing fees and remit the fees to the
45 Department of Law Enforcement.
46 (e) The department shall set an application fee, which may
47 not exceed the cost of issuing the license.
48 (f) A temporary license expires 6 months after the date of
49 issuance and is not renewable.
50 Section 2. This act shall take effect July 1, 2011.

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

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 & Human Services
2 Quality Subcommittee
3 Representative(s) Harrell offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Subsection (3) is added to section 456.024,
8 Florida Statutes, to read:
9 456.024 Members of Armed Forces in good standing with
10 administrative boards or the department; spouses.—
11 (3)(a) The board, or the department when there is no
12 board, may issue a temporary professional license to the spouse
13 of an active duty member of the Armed Forces of the United
14 States who submits to the department:
15 1. A completed application upon a form prepared and
16 furnished by the department in accordance with the board's
17 rules;
18 2. The required application fee;
19 3. Proof that the applicant is married to a member of the
20 Armed Forces of the United States who is on active duty;

21 4. Proof that the applicant holds a valid license for the
22 profession issued by another state, the District of Columbia, or
23 a possession or territory of the United States, and is not the
24 subject of any disciplinary proceeding in any jurisdiction in
25 which the applicant holds a license to practice a profession
26 regulated by this chapter;
27 5. Proof that the applicant has actively practiced the
28 profession for a period of no less than three years;
29 6. Proof that the applicant's spouse is assigned to a duty
30 station in this state pursuant to the member's official active
31 duty military orders; and
32 7. Proof that the applicant would otherwise be entitled to
33 full licensure under the appropriate practice act, and is
34 eligible to take the respective licensure examination as
35 required in Florida. The applicant shall comply with any
36 criminal background check requirements contained in the
37 applicable practice act, except as otherwise provided in this
38 section. The board, or the department if there is no board,
39 shall review the results of any criminal background check and
40 shall deny or approve the application consistent with the
41 applicable practice act. The applicant shall pay the cost of
42 fingerprint processing. If the fingerprints are submitted
43 through an authorized agency or vendor, the agency or vendor
44 shall collect the required processing fees and remit the fees to
45 the Department of Law Enforcement.
46 (b) An applicant shall be deemed ineligible for a
47 temporary license pursuant to this section if the applicant:
48 1. Has been convicted of or pled nolo contendere to,
49 regardless of adjudication, any felony or misdemeanor related to

50 the practice of a health care profession;
51 2. Has had a health care provider license revoked or
52 suspended from another state, the District of Columbia or a
53 United States Territory;
54 3. Has been reported to the National Practitioner Data
55 Bank, unless the applicant successfully appealed to have his or
56 her name removed from the data bank; or
57 4. Has previously failed a Florida administered
58 examination required to receive a license pursuant to s.
59 466.006.
60 5. The board, or department when there is no board, may
61 revoke a temporary license upon a finding that the individual
62 violated the profession's governing practice act.
63 (c) The department shall set an application fee, which may
64 not exceed the cost of issuing the license.
65 (d) A temporary license expires 6 months after the date of
66 issuance and is not renewable.
67 (e) A person issued a temporary license under this
68 subsection is subject to the requirements under subsection
69 456.013(3)(a) and (c).
70 Section 2. Present subsections (1) through (4) of section
71 458.315, Florida Statutes, are renumbered as subsections (2)
72 through (5), respectively, and a new subsection (1) is added to
73 that section, to read:
74 458.315 Temporary certificate for practice in areas of
75 critical need.—
76 (1) A certificate issued pursuant to this section may be
77 cited as the "Rear Admiral LeRoy Collins, Jr., Temporary
78 Certificate for Practice in Areas of Critical Need."

79 Section 3. Present subsections (1) through (4) of section
80 459.0076, Florida Statutes, are renumbered as subsections (2)
81 through (5), respectively, and a new subsection (1) is added to
82 that section, to read:
83 459.0076 Temporary certificate for practice in areas of
84 critical need.—
85 (1) A certificate issued pursuant to this section may be
86 cited as the "Rear Admiral LeRoy Collins, Jr., Temporary
87 Certificate for Practice in Areas of Critical Need."
88 Section 3. This act shall take effect July 1, 2011.
89
90 ---
91 **T I T L E A M E N D M E N T**
92 Remove the entire title and insert:
93 A bill to be entitled
94 An act relating to temporary certificates and licenses for
95 certain health care practitioners; amending s. 456.024, F.S.;
96 providing for issuance of a temporary license to specified
97 health care practitioners who are spouses of active duty members
98 of the Armed Forces under certain circumstances; providing for
99 criminal history checks; providing fees; providing for
100 expiration of a temporary license; requiring a person who is
101 issued a temporary license to be subject to certain general
102 licensing requirements; amending ss. 458.315 and 459.0076, F.S.;
103 naming the temporary certificates issued to physicians who
104 practice in areas of critical need after Rear Admiral LeRoy
105 Collins, Jr.; providing an effective date.

HB 1067

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1067 Death and Fetal Death Registration
SPONSOR(S): Mayfield and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1544

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

SUMMARY ANALYSIS

House Bill 1067 amends s. 382.008, F.S. relating to death and fetal death registration. The bill provides that Advanced Nurse Practitioners (ARNP's) have authority to:

- File a certificate of death or fetal death;
- Provide and complete the medical certification of death;
- Provide medical or health information regarding a fetal death.

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Death Rates in Florida

In 2009, there were 169,854 Florida resident deaths. This is a 0.4 percent decrease from 2008.[1] The number of Florida resident fetal deaths (stillbirths occurring at 20 or more weeks of gestation)[2] decreased from 1,688 in 2008 to 1,569 in 2009. The ratio of resident fetal deaths to resident live births also decreased from 7.3 per 1,000 live births to 7.1 per 1,000 live births during the same time period.[3]

Heart disease was the leading cause of death of adults in 2009, accounting for 24.3 percent of all deaths.[4] Malignant neoplasm (cancer) was the second leading cause of death in 2009, accounting for almost 24.0 percent of all deaths. Cancer was the leading cause of death for individuals aged 45-84 accounting for 45.4 percent of the total deaths in this age group.[5] In 2009, the major external causes of death (unintentional injury, suicide, and homicide) accounted for 7.5 percent of all resident deaths.[6]

In Florida, the top four leading causes of resident infant deaths in 2009 were: perinatal period conditions, congenital malformations, unintentional Injuries (accidents), and Sudden Infant Death Syndrome (SIDS). These causes accounted for 82.4 percent of all resident infant deaths.[7]

Office of Vital Statistics

The Florida Vital Statistics Act[8] authorizes the Department of Health to establish an Office of Vital Statistics, which is responsible for the uniform and efficient registration, compilation, storage, and preservation of all vital records[9] in Florida, including births and fetal deaths.[10] It also permits the Department of Health to appoint a state registrar of vital statistics for each registration district in the state.[11]

Death and Fetal Death Certificates

A dead body is defined as a human body or such parts of a human body from the condition of which it reasonably may be concluded that death recently occurred.[12] A fetal death is defined as death prior to the complete expulsion or extraction of a product of human conception from its mother if the 20th week of gestation has been reached and the death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.[13]

---

[1] Florida Department of Health, Florida Vital Statistics Standard Report, 2009 Annual Report, *available* at: http://www.flpublichealth.com/VSBOOK/VSBOOK.aspx (last viewed March 18, 2011).
[2] S.382.002(14), F.S.
[3] *See supra*, note 1.
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] Ch. 382, F.S.
[9] Vital records are certificates or reports of birth, death, fetal death, marriage, dissolution of marriage, or name change.
[10] S.382.003, F.S.
[11] S.382.003(5), F.S.
[12] S.382.002(3), F.S.
[13] S.382.002(6), F.S.

Section 382.008, F.S, sets forth the requirements for certificates of death and fetal death. A certificate for death and fetal death is required to be filed within 5 days of the death and prior to final disposition[14] with the local registrar of the district in which the death occurred so the death may be recorded. [15]

A death certificate must include the decedent's social security number, if available, and aliases or "also known as" names of a decedent in addition to the decedent's name of record.[16]

If the place of death is unknown, the death will be registered in the registration district in which the dead body or fetus is found within 5 days after such occurrence; and if the death occurs in a moving conveyance, the death will be registered in the registration district in which the dead body was first removed from the conveyance.

Current law provides that the funeral director who first assumes custody of a dead body or fetus shall file the certificate of death or fetal death. In the absence of the funeral director, the physician or other person in attendance at or after the death shall file the certificate of death or fetal death.[17]

Physicians or Medical Examiners are responsible for furnishing the medical certification of death. For fetal deaths a physician, midwife or hospital administrator shall provide medical and health information to the funeral director within 72 hours of expulsion or extraction.[18] The physician must within 72 hours after receipt of a death or fetal death, certify the cause of death and make it available to the funeral director. The medical certification is completed by the physician in charge of the decedent's care for the illness or condition which resulted in death, the physician in attendance at the time of death or fetal death or immediately before or after such death or fetal death, or the medical examiner if the provisions of s. 382.011, F.S. apply.[19]

If a funeral director needs an extension of time, the local registrar may grant the extension of time if: [20]

- An autopsy is pending;
- Toxicology, laboratory, or other diagnostic reports have not been completed; or
- The identity of the decedent is unknown and further investigation or identification is required.

If an extension is granted the funeral director is responsible for filing a temporary certificate of death or fetal death containing all available information, including the fact that the cause of death is pending and the estimated date for completion of the permanent certificate, per the physician or medical examiner.[21]

Determining Cause of Death

The underlying cause of death is determined from death certificate medical information in accordance with procedures established by the World Health Organization (WHO) and the National Center for Health Statistics (NCHS). The NCHS serves as the WHO Collaborating Center for the Family of International Classifications for North America, and in this capacity is responsible for coordination of all official disease classification activities in the United States relating to the International Classification of Diseases (ICD) and its use, interpretation, and periodic revision.[22] To keep abreast of changes in

[14] Final disposition is the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or a fetus. In the case of cremation, dispersion of ashes or cremation residue is considered to occur after final disposition; the cremation itself is considered final disposition.
[15] S.382.008(1), F.S.
[16] S.382.008(1), F.S.
[17] S.382.008(2)(a), F.S.
[18] *Id.*
[19] S.382.008(3), F.S.
[20] S.382.008(3)(a), F.S.
[21] S.382.008(4), F.S.
[22] Centers for Disease Control & Prevention, National Center for Health Statistics, Classification of Diseases, Functioning, and Disability, available at: http://www.cdc.gov/nchs/icd/icd10cm.htm (last viewed March 18, 2011).

medical knowledge, the ICD is revised approximately every 10 to 15 years.[23] The ICD-10, or 10th edition, is the 2011 update of the ICD. The ICD-10 is used to code and classify mortality data from death certificates, having replaced ICD-9 for this purpose as of January 1, 1999.[24]

Current law provides that only physicians can certify cause of death.[25] The Department of Health (DOH) publishes a Vital Records Registration Handbook, outlining physician responsibilities in death registration.[26] Physicians must:

- Attest the facts of death as they relate to date place and time of death;
- Complete the medical certification section of the death certificate, attesting to the cause of death to the best of their knowledge or belief;
- Complete, sign and make the medical certification available to the funeral director/direct disposer within 72 hours after receipt of the record.

Physicians are required to have knowledge of state statutes and the physician handbook regarding medical certifications of death and must complete an online tutorial, created by DOH, on how to complete a Florida death record.[27]

Current Florida law does not allow nurses to certify a cause of death. Currently, at least 8 other states provide nurses with the authority to pronounce death and to certify and sign a death certificate.[28]

Effect of Proposed Changes

The bill amends s. 382.008, F.S., to allow ARNP's to file a certificate of death or fetal death in the absence of a funeral director and to provide the medical certification of cause of death to the funeral director.

Additionally, the bill provides that ARNP's shall provide any medical or health information to a funeral director regarding fetal deaths within 72 hours after expulsion or extraction. The bill allows that once a receipt of death is received from the funeral director, the ARNP can complete the medical certification of cause of death if the ARNP was in charge of the decedent's care for the illness or condition that resulted in death, or if in attendance at the time of death, and the signature shall certify the cause of death.

Currently, if a certificate of death is not going to be available within the five-day registration time, and a local registrar grants an extension, an estimated date of completion is required for the permanent death certificate.[29] The bill authorizes the ARNP to provide the estimated date of completion and, if the death certificate is amended, the ARNP must sign the certificate and certify that the changes are accurate.

B. SECTION DIRECTORY:

Section 1: Amends s. 382.008, F.S., relating to death and fetal death registration.
Section 2: Provides an effective date.

---

[23] Florida Department of Health, Florida Vital Statistics Standard Report, 2009 Annual Report, *available* at: http://www.flpublichealth.com/VSBOOK/VSBOOK.aspx (last viewed March 18, 2011).
[24] Centers for Disease Control & Prevention, National Center for Health Statistics, Classification of Diseases, Functioning, and Disability, available at: http://www.cdc.gov/nchs/icd/icd10cm.htm (last viewed March 18, 2011).
[25] S.382.008, F.S.
[26] Vital Records Registration Handbook, Death Edition, December 2009, Department of Health (on file with sub-committee staff).
[27] *Id.*
[28] States include: Arkansas, Connecticut, Iowa, Kentucky, Maine, New Hampshire, Oregon, Washington,
[29] S. 382.008, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill would require ARNP's in Florida to access DOH's Bureau of Vital Statistics web-based training modules on how to complete the cause of death section of a death certificate. This is a one time non-recurring cost, and, according to DOH,[30] can be absorbed into DOH's base appropriations within the Planning and Evaluation Trust Fund.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[30] Department of Health Bill Analysis, Economic Statement and Fiscal Note, HB 1067 (2011). On file with committee staff.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to death and fetal death registration;
3 amending s. 382.008, F.S.; providing for advanced
4 registered nurse practitioners to provide certification of
5 death or fetal death; providing an effective date.
6
7 Be It Enacted by the Legislature of the State of Florida:
8
9 Section 1. Subsections (2), (3), (4), and (5) of section
10 382.008, Florida Statutes, are amended to read:
11 382.008 Death and fetal death registration.—
12 (2)(a) The funeral director who first assumes custody of a
13 dead body or fetus shall file the certificate of death or fetal
14 death. In the absence of the funeral director, the physician,
15 advanced registered nurse practitioner, or other person in
16 attendance at or after the death shall file the certificate of
17 death or fetal death. The person who files the certificate shall
18 obtain personal data from the next of kin or the best qualified
19 person or source available. The medical certification of cause
20 of death shall be furnished to the funeral director, either in
21 person or via certified mail, by the physician, advanced
22 registered nurse practitioner, or medical examiner responsible
23 for furnishing such information. For fetal deaths, the
24 physician, midwife, advanced registered nurse practitioner, or
25 hospital administrator shall provide any medical or health
26 information to the funeral director within 72 hours after
27 expulsion or extraction.
28 (b) The State Registrar may receive electronically a

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

29 certificate of death or fetal death which is required to be
30 filed with the registrar under this chapter through facsimile or
31 other electronic transfer for the purpose of filing the
32 certificate. The receipt of a certificate of death or fetal
33 death by electronic transfer constitutes delivery to the State
34 Registrar as required by law.
35 (3) Within 72 hours after receipt of a death or fetal
36 death certificate from the funeral director, the medical
37 certification of cause of death shall be completed and made
38 available to the funeral director by the physician or advanced
39 registered nurse practitioner in charge of the decedent's care
40 for the illness or condition which resulted in death, the
41 physician or advanced registered nurse practitioner in
42 attendance at the time of death or fetal death or immediately
43 before or after such death or fetal death, or the medical
44 examiner if the provisions of s. 382.011 apply. The physician,
45 advanced registered nurse practitioner, or medical examiner
46 shall certify over his or her signature the cause of death to
47 the best of his or her knowledge and belief.
48 (a) The local registrar may grant the funeral director an
49 extension of time upon a good and sufficient showing of any of
50 the following conditions:
51 1. An autopsy is pending.
52 2. Toxicology, laboratory, or other diagnostic reports
53 have not been completed.
54 3. The identity of the decedent is unknown and further
55 investigation or identification is required.
56 (b) If the physician, advanced registered nurse

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

57 practitioner, or medical examiner has indicated that he or she
58 will sign and complete the medical certification of cause of
59 death, but will not be available until after the 5-day
60 registration deadline, the local registrar may grant an
61 extension of 5 days. If a further extension is required, the
62 funeral director must provide written justification to the
63 registrar.
64 (4) If the local registrar has granted an extension of
65 time to provide the medical certification of cause of death, the
66 funeral director shall file a temporary certificate of death or
67 fetal death which shall contain all available information,
68 including the fact that the cause of death is pending. The
69 physician, advanced registered nurse practitioner, or medical
70 examiner shall provide an estimated date for completion of the
71 permanent certificate.
72 (5) A permanent certificate of death or fetal death,
73 containing the cause of death and any other information which
74 was previously unavailable, shall be registered as a replacement
75 for the temporary certificate. The permanent certificate may
76 also include corrected information if the items being corrected
77 are noted on the back of the certificate and dated and signed by
78 the funeral director, physician, advanced registered nurse
79 practitioner, or medical examiner, as appropriate.
80 Section 2. This act shall take effect July 1, 2011.

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 & Human Services
2 Quality Subcommittee
3 Representative(s) Mayfield offered the following:
4
5 **Amendment**
6 Remove everything after the enacting clause and insert:
7 Section 1. Subsections (2), (3), (4), and (5) of section
8 382.008, Florida Statutes, are amended to read:
9 382.008 Death and fetal death registration.-
10 (2)(a) The funeral director who first assumes custody of a
11 dead body or fetus shall file the certificate of death or fetal
12 death. In the absence of the funeral director, the physician,
13 physician assistant, advanced registered nurse practitioner, or
14 other person in attendance at or after the death shall file the
15 certificate of death or fetal death. The person who files the
16 certificate shall obtain personal data from the next of kin or
17 the best qualified person or source available. The medical
18 certification of cause of death shall be furnished to the
19 funeral director, either in person or via certified mail, by the

20 physician, physician assistant, advanced registered nurse
21 practitioner, or medical examiner responsible for furnishing
22 such information. For fetal deaths, the physician, physician
23 assistant, midwife, advanced registered nurse practitioner, or
24 hospital administrator shall provide any medical or health
25 information to the funeral director within 72 hours after
26 expulsion or extraction.
27 (b) The State Registrar may receive electronically a
28 certificate of death or fetal death which is required to be
29 filed with the registrar under this chapter through facsimile or
30 other electronic transfer for the purpose of filing the
31 certificate. The receipt of a certificate of death or fetal
32 death by electronic transfer constitutes delivery to the State
33 Registrar as required by law.
34 (3) Within 72 hours after receipt of a death or fetal
35 death certificate from the funeral director, the medical
36 certification of cause of death shall be completed and made
37 available to the funeral director by the physician in charge of
38 the decedent's care for the illness or condition which resulted
39 in death, the physician in attendance at the time of death or
40 fetal death or immediately before or after such death or fetal
41 death, or the medical examiner if the provisions of s. 382.011
42 apply. The physician or medical examiner shall certify over his
43 or her signature the cause of death to the best of his or her
44 knowledge and belief.
45 (a) The local registrar may grant the funeral director an
46 extension of time upon a good and sufficient showing of any of
47 the following conditions:

48 1. An autopsy is pending.
49 2. Toxicology, laboratory, or other diagnostic reports
50 have not been completed.
51 3. The identity of the decedent is unknown and further
52 investigation or identification is required.
53 (b) If the physician or medical examiner has indicated
54 that he or she will sign and complete the medical certification
55 of cause of death, but will not be available until after the 5-
56 day registration deadline, the local registrar may grant an
57 extension of 5 days. If a further extension is required, the
58 funeral director must provide written justification to the
59 registrar.
60 (c) Notwithstanding the provisions of this section, a
61 physician assistant or advanced registered nurse practitioner,
62 upon specific written or verbal authorization from the physician
63 whom they have a signed protocol or supervisory relationship,
64 may complete the medical certification of cause of death. The
65 physician must sign off in writing on this certification within
66 24 hours, and place this in the decedent's medical records.
67 (4) If the local registrar has granted an extension of
68 time to provide the medical certification of cause of death, the
69 funeral director shall file a temporary certificate of death or
70 fetal death which shall contain all available information,
71 including the fact that the cause of death is pending. The
72 physician or medical examiner shall provide an estimated date
73 for completion of the permanent certificate.
74 (5) A permanent certificate of death or fetal death,
75 containing the cause of death and any other information which

Amendment No.

76 was previously unavailable, shall be registered as a replacement
77 for the temporary certificate. The permanent certificate may
78 also include corrected information if the items being corrected
79 are noted on the back of the certificate and dated and signed by
80 the funeral director, physician, or medical examiner, as
81 appropriate.
82 Section 2. This act shall take effect July 1, 2011.
83

HB 225

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 225 Dentistry and Dental Hygiene
SPONSOR(S): Costello and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 446

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee		Holt	Calamas
2) Business & Consumer Affairs Subcommittee			
3) Health Care Appropriations Subcommittee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill expands the scope and area of practice for dental hygienists by authorizing a dental hygienist to perform certain remediable tasks without the physical presence, prior examination or prior authorization by a dentist, if the tasks are performed in a health access setting, which the bill defines as any of the following settings:

- the Department of Children and Family Services;
- the Department of Health;
- the Department of Juvenile Justice;
- Nonprofit community health centers;
- Head Start centers;
- Federally qualified health centers (FQHCs);
- FQHC look-alikes as defined by federal law;
- Clinics operated by accredited colleges of dentistry located in Florida;
- School-based prevention; and
- Accredited dental hygiene programs.

Remediable task are intraoral treatments that are reversible and do not create unalterable changes within the oral cavity or the associated structures, and do not cause an increased risk to the patient The bill authorizes dental hygienist to perform the following remediable tasks in a health access setting:

- Dental charting;
- Measuring and recording a patient's blood pressure rate, pulse rate, respiration rate, and oral temperature;
- Recording a patient's case history;
- Appling approved topical fluorides, including fluoride varnishes;
- Appling dental sealants;

Furthermore, prior to any of the tasks being performed the patient must be provided a written disclaimer. The bill requires that dental hygienist is required to maintain professional malpractice insurance, comply with federal and state patient referral laws, anti-kickback laws, and patient brokering laws.

The bill has no fiscal impact to the state or local governments.

The bill provides an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The bill expands the scope and area of practice for dental hygienists by authorizing a dental hygienist to perform certain remediable tasks without supervision if they are performed in a health access setting. The bill expands the definition of health access setting to include school-based prevention and accredited dental hygiene programs.

Background

The U.S. Surgeon General's 2000 Report, Oral Health in America: A Report of the Surgeon General (Report), concluded that "oral health is essential to the general health and well-being of all Americans and can be achieved by all Americans."[1] The Report stated that there is a "silent epidemic" of dental and oral diseases that "restricts activities in school, work and home, and often significantly diminishes the quality of life." Furthermore, new research is pointing to associations between chronic oral infections and heart and lung diseases, stroke, and low-birth-weight, premature births.[2] The burden of oral disease tends to be borne heavily by individuals with low socioeconomic status; the very young and the elderly; individuals living in isolated areas; and those individuals with special needs. Additionally, access to dental care is disproportionately distributed depending on racial, ethnic, geographic, and socioeconomic factors.[3]

Some states are investigating the development of a new mid-level dental provider modeled after nurse practitioners which are used in the medical field as physician extenders.[4] A variety of models are currently under consideration or in various stages of development by different dental organizations.[5] Many states are considering increased utilization of dental assistants in expanded functions and others are considering unsupervised practice of dental hygienists in public health programs.[6] Increasing the numbers of dental auxiliaries, expanding their duties, reducing the level of supervision, or allowing physicians to supervise dental hygienists are ways to increase the capacity of dental practices and clinics or increase access to dental care.[7]

The number of dentists per 100,000 population (the dentist to population ratio) is declining as the population grows.[8] The dentist to population ratio is an indication of the availability of dentists to a given population. In 2004, the national dentist to population ratio was 58.0. The same year, Florida had a dentist to population ratio of 49.97 with a range of 0.00 in Glades and Union Counties to 91.00 in Alachua County (which is attributed to the University of Florida's College of Dentistry's).[9]

---

[1] U.S. Department of Health and Human Services, National Institutes of Health, National Institute of Dental and Craniofacial Research, Oral Health in America: A 2000 Report of the Surgeon General, available at: http://www.surgeongeneral.gov/library/oralhealth/ (last viewed March 16, 2011).
[2] *Id.*
[3] Florida Department of Health, Health Practitioner Oral Healthcare Workforce Ad Hoc Committee Report (February 2009), available at: http://www.doh.state.fl.us/Family/dental/OralHealthcareWorkforce/index.html (last viewed March 16, 2011).
[4] *Id.*
[5] The advanced dental hygiene practitioner by the American Dental Hygiene Association; community dental health coordinator and the oral preventative assistant by the American Dental Association.
[6] The states considering expanding the functions of dental assistants are: Kentucky, Indiana, Minnesota, Missouri, Pennsylvania, Ohio, California, Massachusetts, Tennessee, Wyoming and Washington. The states considering unsupervised practice of dental hygienists are: Arizona, California, Connecticut, Iowa, Kansas, Maine, Michigan, Minnesota, Missouri, Nevada, Oklahoma, Oregon, Texas and Washington. *See* Florida Department of Health, Health Practitioner Oral Healthcare Workforce Ad Hoc Committee Report (February 2009), available at: http://www.doh.state.fl.us/Family/dental/OralHealthcareWorkforce/index.html (last viewed March 16, 2011).
[7] *Id.*
[8] *Id.*
[9] Florida Department of Health, Health Practitioner Oral Healthcare Workforce Ad Hoc Committee Report (February 2009), available at: http://www.doh.state.fl.us/Family/dental/OralHealthcareWorkforce/index.html (last viewed March 16, 2011).

As of June 30, 2010, there were 10,278 active in-state licensed dental hygienists and 9,827 active in-state licensed dentists.[10]

Health Practitioner Oral Health Care Ad Hoc Committee

In 2007, the State Surgeon General established the Florida Health Practitioner Oral Healthcare Workforce Ad Hoc Committee (Committee) to act as the advisory body for the State oral healthcare workforce initiative. In February 2009, the Committee released a report outlining numerous recommendations to strategically address Florida's dental workforce challenges.

The Committee recommended that the state investigate policy reform that would expand the scope of practice and eliminate or reduce supervisory requirements for dental hygienists practicing in health access settings in order to improve access to dental care.[11] The Committee recommended allowing dental hygienists to practice under an expanded scope of practice without the presence or prior authorization of a dentist. However, the Committee recognized that dental hygienists may need to be affiliated with a dentist in a health access setting to perform designated preventive dental services with a reduced or no supervision requirements and without the need for prior authorization to conduct an examination.[12]

The Committee noted that dental hygienists should possess a level of experience, receive appropriate training, and acquire the necessary certification. The Committee recommended that dental hygienists be allowed to perform the following tasks without supervision or prior authorization:[13]

- Dental charting;
- Prophylaxis;
- Scaling (no root planning or curettage);
- Fluoride varnishes;
- Topical fluorides; and
- Dental sealants.

Delegated Tasks

There are two types of tasks within the practice of dentistry that specify delegation parameters for dentists[14]:

- "Irremediable tasks" are those intraoral treatment tasks which, when performed, are irreversible and create unalterable changes within the oral cavity or the contiguous structures or which cause an increased risk to the patient. The administration of anesthetics other than topical anesthesia and the use of a laser or laser device of any type are considered to be "irremediable tasks".[15]

- "Remediable tasks" are those intraoral treatment tasks which are reversible and do not create unalterable changes within the oral cavity or the contiguous structures and which do not cause an increased risk to the patient.[16]

A dentist may only delegate remediable tasks to a dental assistant or a dental hygienist when the tasks pose no risk to the patient.

---

[10] The Florida Department of Health, Division of Medical Quality Assurance, Annual Report for July 1, 2009 to June 30, 2010.
[11] *Id.*
[12] Florida Department of Health, Health Practitioner Oral Healthcare Workforce Ad Hoc Committee Report (February 2009), available at: http://www.doh.state.fl.us/Family/dental/OralHealthcareWorkforce/index.html (last viewed March 16, 2011).
[13] *Id.*
[14] Dental hygienists are regulated by ss. 466.023, 466.0235, and 466.024, F.S.
[15] S. 466.003(11), F.S. and 64B5-16.001, F.A.C.
[16] S. 466.003(12), F.S.

Levels of Supervision

There are three levels of supervision within the Practice of Dentistry:

- Under "direct supervision", a dentist diagnoses the condition to be treated, a dentist authorizes the procedure to be performed, a dentist remains on the premises while the procedures are performed, and a dentist approves the work performed before dismissal of the patient.[17]

- Under "indirect supervision", a dentist examines a patient, diagnoses a condition to be treated, authorizes the procedure, and a dentist is on the premises while the procedures are performed.[18]

- Under "general supervision[19]", a dentist authorizes the procedure being carried out but is not required to be present when the authorized procedure is being performed.[20] The authorized procedure may be performed at a place other than the dentist's usual place of practice. Furthermore, general supervision requires that a dentist examine the patient, diagnose the condition to be treated, and then authorize a procedure to be performed.[21] Any authorization for remediable tasks to be performed under general supervision is valid for a maximum of 13 months; after which, no further treatment under general supervision can be performed without another clinical exam by a licensed dentist.[22]

The state regulates and licenses dental hygienists but does not regulate dental assistants. A dental assistant is a person, other than a dental hygienist, who, under the supervision and authorization of a dentist, provides dental care services directly to a patient.[23] All tasks delegable to a dental assistant are delegable to a dental hygienist under the same supervision level.[24] All levels of supervision require that a dental hygienist or dental assistant receive the appropriate formal training or on-the job training to be qualified to perform delegated tasks.[25]

Supervision Requirements for Delegable Tasks	
Dental Assistant[26]	Dental Hygienist[27]
Direct Supervision	
Not authorized.	Gingival curettage[28]
Not authorized.	Apply bleaching solution, activate light source, monitor and remove in-office bleaching materials
Placing or removing temporary restorations with non-mechanical hand instruments only	Same
Polishing dental restorations of the teeth when not for the purpose of changing the existing contour of the tooth and only with certain instruments	Same
Polishing clinical crowns when not for the purpose of changing the existing contour of the tooth and only with certain instruments	Same
Removing excess cement from dental restorations and appliances with non-mechanical hand instruments only	Same
Cementing temporary crowns and bridges with temporary cement	Same
Monitor the administration of the nitrous-oxide oxygen making adjustments only during this administration and turning it off at the completion of the dental procedure	Same

[17] S. 466.003(8), F.S.
[18] S. 466.003(9), F.S. and 64B5-16.001(5), F.A.C.
[19] The issuance of a written work authorization to a commercial dental laboratory by a dentist does not constitute general supervision.
[20] S. 466.003(10), F.S.
[21] 64B5-16.001(6), F.A.C.
[22] 64B5-16.001(7), F.A.C.
[23] s. 466.003(6), F.S.
[24] 64B5-16.001(8), F.A.C.
[25] 64B5-16.005 and 64B5-16.006, F.A.C.
[26] ss. 466.003, 466.024 and 64B5-16.005, F.A.C.
[27] ss. 466.003, 466.023, 466.024, F.S. and 64B5-16.007, F.A.C.
[28] Gingival curettage is a process where a spoon-shaped instrument is used to remove the soft tissue lining of a periodontal pocket which contains bacteria and diseased tissue.

Selecting and pre-sizing orthodontic bands including the selection of the proper size band for a tooth to be banded which does not include or involve any adapting, contouring, trimming or otherwise modifying the band material such that it would constitute fitting the band	Same
Selecting and pre-sizing archwires prescribed by the patient's dentist so long as the dentist makes all final adjustments to bend, arch form determination, and symmetry prior to final placement	Same
Selecting prescribed extra-oral appliances by pre-selection or pre-measurement which does not include final fit adjustment	Same
Preparing a tooth surface by applying conditioning agents for orthodontic appliances by conditioning or placing of sealant materials which does not include placing brackets	Same
Using appropriate implements for preliminary charting of existing restorations and missing teeth and a visual assessment of existing oral conditions	Same
Fabricating temporary crowns or bridges intra-orally which shall not include any adjustment of occlusion to the appliance or existing dentition	Same
Packing and removing retraction cord, so long as it does not contain vasoactive chemicals and is used solely for restorative dental procedures	Same
Removing and recementing properly contoured and fitting loose bands that are not permanently attached to any appliance	Same
Inserting or removing dressings from alveolar sockets in post-operative osteitis when the patient is uncomfortable due to the loss of a dressing from an alveolar socket in a diagnosed case of post-operative osteitis	Same
Making impressions for study casts which are being made for the purpose of fabricating orthodontic retainers	Same
Taking of impressions for and delivery of at-home bleaching trays	Same
Taking impressions for passive appliance, occlusal guards, space maintainers and protective mouth guards	Same
Applying topical anesthetics and anti-inflammatory agents which are not applied by aerosol or jet spray	Same
Changing of bleach pellets in the internal bleaching process of non-vital, endodontically treated teeth after the placement of a rubber dam. A dental assistant may not make initial access preparation	Same
Dental Assistant	**Dental Hygienist**
Indirect Supervision	
Not authorized.	Root planning[29]
Not authorized.	Placing subgingival resorbable chlorhexidine, doxycycline hyclate, or minocycline hydrochloride
Not authorized.	Removal of excess remaining bonding adhesive or cement following orthodontic appliance removal with certain instruments.
Not authorized.	Taking of impressions for and delivery of at-home bleaching trays
Not authorized.	Marginating restorations with finishing burs, green stones, and/or burlew wheels with slow-speed rotary instruments which are not for the purpose of changing existing contours or occlusion
Not authorized.	Taking impressions for passive appliances, occlusal guards, space maintainers and protective mouth guards
Not authorized.	Cementing temporary crowns and bridges with temporary cement
Not authorized.	Monitor the administration of the nitrous-oxide oxygen making adjustments only during this administration and turning it off at the completion of the dental procedure
Not authorized.	Montior and remove in-office bleaching materials, after placement of bleach by dentist
Making impressions for study casts which are not being made for the purpose of fabricating any intra-oral appliances, restorations or orthodontic appliances	Same
Making impressions to be used for creating opposing models or the fabrication of bleaching stents and surgical stents to be used for the purpose of providing palatal coverage as well as impressions used for fabrication of topical fluoride trays for home application	Same
Placing periodontal dressings	Same
Removing periodontal or surgical dressings	Same
Placing or removing rubber dams	Same
Placing or removing matrices	Same
Applying cavity liners, varnishes or bases	Same

[29] The procedure of scraping plaque off of teeth below the gum line or on the root of the tooth.

Applying topical fluorides which are approved by the American Dental Association or the Food and Drug Administration, including the use of fluoride varnishes	Same
Positioning and exposing dental and carpal radiographic film and sensors	Same
Applying sealants	Same
Placing or removing prescribed pre-treatment separators	Same
Securing or unsecuring an archwire by attaching or removing the fastening device	Same
Removing sutures	Same
Retraction of lips, cheeks and tongue	Same
Irrigation and evacuation of debris not to include endodontic irrigation	Same
Placement and removal of cotton rolls	Same
Taking and recording a patient's blood pressure, pulse rate, respiration rate, case history and oral temperature	Same
Removing excess cement from orthodontic appliances with non-mechanical hand instruments only	Same
Dental Assistant	**Dental Hygienist**
General Supervision	
Not authorized.	Place and expose dental and carpal radiographic film and sensors
Not authorized.	Remove calculus deposits, accretions and stains from exposed surfaces of the teeth and from the tooth surfaces within the gingival sulcus (prophylaxis)
Not authorized.	Polishing clinical crowns of the teeth which is not for the purpose of changing the existing contour of the teeth and only with the following instruments used with appropriate polishing materials - slow-speed hand pieces, bristle brushes, rubber cups, porte polishers and air-abrasive polishers
Not authorized.	Polishing restorations which is not for the purpose of changing the existing contour of the tooth and only with the following instruments used with appropriate polishing materials - burnishers, slow-speed hand pieces, rubber cups, and bristle brushes
Not authorized.	Applying of topical fluorides which are approved by the American Dental Association or the Food and Drug Administration, including the use of fluoride varnishes
Not authorized.	Removing excess cement from dental restorations and appliances with non-mechanical hand instruments or ultrasonic scalers only
Not authorized.	Placing periodontal or surgical dressings
Not authorized.	Removing periodontal or surgical dressings
Not authorized.	Removing sutures
Not authorized.	Using appropriate implements to pre-assess and chart suspected findings of the oral cavity
Not authorized.	Applying sealants
Not authorized.	Placing or removing prescribed pre-treatment separators
Not authorized.	Insert and/or perform minor adjustments to sports mouth guards and custom flouride trays
Not authorized.	Applying topical anesthetics and anti-inflammatory agents which are not applied by aerosol or jet spray
Not authorized.	Taking or recording patients' blood pressure rate, pulse rate, respiration rate, case history and oral temperature
Not authorized.	Retracting lips, cheeks and tongue
Not authorized.	Irrigating and evacuating debris not to include endodontic irrigation
Not authorized.	Placing and removing cotton rolls
Not authorized.	Placing or removing temporary restorations with non-mechanical hand instruments only
Not authorized.	Obtaining bacteriological cytological (plaque) specimens, which do not involve cutting of the tissue and which do not include taking endodontic cultures, to be examined under a microscope for educational purposes
Instructing patients in oral hygiene care and supervising oral hygiene care	Same
Provide educational programs, faculty or staff programs, and other educational services which do not involve diagnosis or treatment of dental conditions	Same
Fabricating temporary crowns or bridges in a laboratory	Same
Dental Assistant	**Dental Hygienist**
No Supervision Requirement	
Not authorized.	Provide educational programs
Not authorized.	Provide faculty or staff training programs
Not authorized.	Authorize fluoride rinse programs
Not authorized.	Apply fluoride varnishes
Not authorized.	Instruct and supervise patients in oral hygiene care
Not authorized.	Other services which do not involve diagnosis or treatment of dental conditions

Practice Settings

Section 466.003, F.S., provides that a health access setting is considered the following settings:

- the Department of Children and Family Services;
- the Department of Health;
- the Department of Juvenile Justice;
- Nonprofit community health centers;
- Head Start centers;
- Federally qualified health centers (FQHCs);
- FQHC look-alikes as defined by federal law; and
- Clinics operated by accredited colleges of dentistry located in Florida.

These entities are required to immediately report to the Board of Dentistry all violations of sexual misconduct, and incidents that are grounds for disciplinary action that impact the standard of care or are related to the actions or inactions of a dentist, dental hygienist, or dental assistant engaged in the delivery of dental care in such settings.

Generally, a dental hygienist may perform delegated tasks:[30]

- In the office of a licensed dentist;
- In the following entities under general supervision of a dentist:
  - the Department of Children and Family Services,
  - the Department of Health, and
  - the Department of Juvenile Justice .
- Under a valid 2 year prescription signed by a dentist in:
  - Licensed public and private health facilities;
  - Other public institutions of the state and federal government;
  - Public and private educational institutions;
  - The home of a non-ambulatory patient; and
  - Other places in accordance with the rules of the board.

Additionally, a dental hygienist may without supervision perform dental charting[31] of hard and soft tissues in:[32]

- Public and private educational institutions of the state and federal government,
- Nursing homes;
- Assisted living facilities;
- Community health centers;
- County health departments;
- Mobile dental or health units;
- Epidemiological surveys for public health.

The Effect of the Bill

The bill authorizes a dental hygienist to perform the following remediable tasks without supervision in any practice setting:

- Apply fluorides;
- Instruct a patient in oral hygiene care; and
- Supervise the oral hygiene care of a patient.

The bill amends the definition of a "health access setting" to include a school-based prevention program and an accredited dental hygiene program. The bill creates a new definition for "school-based

---

[30] s. 466.023(2), F.S.

[31] Dental charting is the recording of visual observations of clinical conditions of the oral cavity without the use of X rays, laboratory tests, or other diagnostic methods or equipment, except the instruments necessary to record visual restorations, missing teeth, suspicious areas, and periodontal pockets. *See* s. 466.0235(1), F.S.

[32] s. 466.0235(2), F.S.

prevention program" to mean preventative oral health services offered at a school by one of the entities included in the definition of a health access setting or by a nonprofit organization that is exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c)(3) of the Internal Revenue Code.

The bill expands the scope and area of practice for dental hygienists by authorizing a dental hygienist to perform certain remediable tasks without the physical presence, prior examination or prior authorization by a dentist (no supervision requirements) if the tasks are performed in a health access setting:

- Perform dental charting;
- Measure and record a patient's blood pressure rate, pulse rate, respiration rate, and oral temperature;
- Record a patient's case history;
- Apply approved topical fluorides, including fluoride varnishes;
- Apply dental sealants;

Additionally, a dental hygienist is allowed to remove calculus deposits, accretions, and stains from exposed surfaces of the teeth and from tooth surfaces within the gingival sulcus.[33] However, the bill places conditions on the provision of these services such that they may be performed only after a dentist or physician provides a medical clearance, and a dentist is required to conduct an examination within 13 months of a patient receives any of these treatments. Additionally, a dental hygienist may not perform any additional treatments/services until the patient receives a physical examination by a dentist.

Prior to any of the tasks being performed on a patient in a health access setting the patient must be provided a written disclaimer that states:

> "The services being offered are not a substitute for a comprehensive medical exam by a dentist. The diagnosis of caries, soft tissue disease, oral cancer, temporomandibular joint disease, and dentofacial malocclusions will be completed only by a dentist in the context of delivering a comprehensive dental exam."

Moreover, the bill states that any dental hygienist that performs any of the remedial tasks provided in a health access setting must comply with federal and state patient referral laws, anti-kickback laws, and patient brokering laws. The dental hygienist is also encouraged to establish a dental home for patients they treat and are required to maintain professional malpractice insurance coverage of at least $100k per occurrence and $300k in the aggregate either through the health access setting or individual policy. This is the same level of medical malpractice insurance required of a licensed dentist.[34]

The bill also clarifies that the operators of a health access setting may bill for reimbursement, make and maintain any records necessary to obtain reimbursement for any services provided by a dental hygienist.

B. SECTION DIRECTORY:

Section 1. Amends s. 466.003, F.S., relating to definitions.
Section 2. Amends s. 466.023, F.S., relating to dental hygienists scope and area of practice.
Section 3. Amends s. 466.0235, F.S., relating to dental charting.
Section 4. Amends s. 466.024, F.S., relating to delegation of duties and expanded functions.
Section 5. Amends s. 466.006, F.S., relating to examination of dentists.
Section 6. Amends s. 466.0067, F.S., relating to application for health access dental license.
Section 7. Amends s. 466.00672, F.S., relating to revocation of health access dental license.
Section 8. Provides an effective date of upon becoming a law.

---

[33] The gingival sulcus is the natural space found between the tooth and the gum tissue that surrounds the tooth.
[34] ch. 64B5-17.011, F.A.C.

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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The Board of Dentistry currently has sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 132-153, provides that a dental hygienist may perform certain remediable tasks in a health access setting without the physical presence, prior examination, or authorization by a dentist. However, lines 148-159 provides exceptions to these provisions requiring a medical clearance and an examination, if a dental hygienist is removing calculus deposits, accretions, and stains from the surfaces of the teeth and from surfaces within the gingival sulcus, thus creating a conflict.

Lines 184-186 references anti-kickback laws and patient referral laws. This language is duplicative of ss. 456.053 and 456.054, F.S., which applies to health professions regulated by the DOH, including dental hygienists regulated by chapter 466, F.S.

On line 187, is required to encourage the establishment of a dental home. The term "dental home" is not defined by the bill or current law.

Lines 188-191, may be unnecessary since s. 466.0075, F.S., already provides the Board of Dentistry the rule-making authority to require licensed dental hygienists to carry medical malpractice insurance. Currently, the board does not require dental hygienist to carry medical malpractice insurance by rule.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to dentistry and dental hygiene; amending
3 s. 466.003, F.S.; revising the definition of the term
4 "health access setting" and defining the term "school-
5 based prevention program" for purposes of provisions
6 regulating the practice of dentistry; amending s. 466.023,
7 F.S.; revising the scope and area of practice for dental
8 hygienists; amending s. 466.0235, F.S.; revising the
9 locations at which dental hygienists may perform dental
10 charting; amending s. 466.024, F.S.; authorizing dental
11 hygienists to perform certain duties without supervision
12 or authorization by a dentist; providing exceptions;
13 requiring that dental hygienists in a health access
14 setting provide a certain disclaimer to patients before a
15 procedure is performed; providing that a health access
16 setting may bill for certain services; requiring that
17 dental hygienists provide a referral, encourage the
18 establishment of a dental home, and maintain insurance
19 coverage in specified circumstances; amending ss. 466.006
20 and 466.0067, F.S.; conforming cross-references;
21 reenacting s. 466.00672(2), F.S., relating to the
22 revocation of health access dental licenses, to
23 incorporate the amendment made by the act to s. 466.003,
24 F.S., in a reference thereto; providing an effective date.
25
26 Be It Enacted by the Legislature of the State of Florida:
27
28 Section 1. Subsection (14) of section 466.003, Florida

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

29 Statutes, is amended, and subsection (15) is added to that
30 section, to read:
31 466.003 Definitions.—As used in this chapter:
32 (14) "Health access setting ~~settings~~" means a program or
33 an institution ~~programs and institutions~~ of the Department of
34 Children and Family Services, the Department of Health, the
35 Department of Juvenile Justice, a nonprofit community health
36 center ~~centers~~, a Head Start center ~~centers~~, a federally
37 qualified health center or look-alike ~~centers (FQHCs), FQHC~~
38 ~~look-alikes~~ as defined by federal law, a school-based prevention
39 program, a clinic ~~and clinics~~ operated by an accredited college
40 ~~colleges~~ of dentistry, or an accredited dental hygiene program
41 in this state if such community service program or institution
42 ~~programs and institutions~~ immediately reports ~~report~~ to the
43 Board of Dentistry all violations of s. 466.027, s. 466.028, or
44 other practice act or standard of care violations related to the
45 actions or inactions of a dentist, dental hygienist, or dental
46 assistant engaged in the delivery of dental care in such setting
47 ~~settings~~.
48 (15) "School-based prevention program" means preventive
49 oral health services offered at a school by one of the entities
50 defined in subsection (14) or by a nonprofit organization that
51 is exempt from federal income taxation under s. 501(a) of the
52 Internal Revenue Code, and described in s. 501(c)(3) of the
53 Internal Revenue Code.
54 Section 2. Subsections (2) and (3) of section 466.023,
55 Florida Statutes, are amended to read:
56 466.023 Dental hygienists; scope and area of practice.—

57 (2) Dental hygienists may perform their duties:
58 (a) In the office of a licensed dentist;
59 (b) In public health programs and institutions of the
60 Department of Children and Family Services, Department of
61 Health, and Department of Juvenile Justice under the general
62 supervision of a licensed dentist; ~~or~~
63 (c) In a health access setting as defined in s. 466.003;
64 or
65 (d) ~~(c)~~ Upon a patient of record of a dentist who has
66 issued a prescription for the services of a dental hygienist,
67 which prescription shall be valid for 2 years unless a shorter
68 length of time is designated by the dentist, in:
69 1. Licensed public and private health facilities;
70 2. Other public institutions of the state and federal
71 government;
72 3. Public and private educational institutions;
73 4. The home of a nonambulatory patient; and
74 5. Other places in accordance with the rules of the board.
75
76 However, the dentist issuing such prescription shall remain
77 responsible for the care of such patient. As used in this
78 subsection, "patient of record" means a patient upon whom a
79 dentist has taken a complete medical history, completed a
80 clinical examination, recorded any pathological conditions, and
81 prepared a treatment plan.
82 (3) Dental hygienists may, without supervision, provide
83 educational programs, faculty or staff training programs, and
84 authorized fluoride rinse programs; apply fluorides; instruct a

85 patient in oral hygiene care; supervise the oral hygiene care of
86 a patient;~~,~~ and perform other services that ~~which~~ do not involve
87 diagnosis or treatment of dental conditions and that ~~which~~
88 ~~services~~ are approved by rule of the board.
89 Section 3. Subsection (2) of section 466.0235, Florida
90 Statutes, is amended to read:
91 466.0235 Dental charting.—
92 (2) A dental hygienist may, without supervision and within
93 the lawful scope of his or her duties as authorized by law,
94 perform dental charting of hard and soft tissues in public and
95 private educational institutions of the state and Federal
96 Government, nursing homes, assisted living and long-term care
97 facilities, community health centers, county health departments,
98 mobile dental or health units, health access settings as defined
99 in s. 466.003, and epidemiological surveys for public health. A
100 dental hygienist may also perform dental charting on a volunteer
101 basis at health fairs.
102 Section 4. Section 466.024, Florida Statutes, is amended
103 to read:
104 466.024 Delegation of duties; expanded functions.—
105 (1) A dentist may not delegate irremediable tasks to a
106 dental hygienist or dental assistant, except as provided by law.
107 A dentist may delegate remediable tasks to a dental hygienist or
108 dental assistant when such tasks pose no risk to the patient. A
109 dentist may only delegate remediable tasks so defined by law or
110 rule of the board. The board by rule shall designate which tasks
111 are remediable and delegable, except that the following are by
112 law found to be remediable and delegable:

113 (a) Taking impressions for study casts but not for the
114 purpose of fabricating any intraoral restorations or orthodontic
115 appliance.
116 (b) Placing periodontal dressings.
117 (c) Removing periodontal or surgical dressings.
118 (d) Removing sutures.
119 (e) Placing or removing rubber dams.
120 (f) Placing or removing matrices.
121 (g) Placing or removing temporary restorations.
122 (h) Applying cavity liners, varnishes, or bases.
123 (i) Polishing amalgam restorations.
124 (j) Polishing clinical crowns of the teeth for the purpose
125 of removing stains but not changing the existing contour of the
126 tooth.
127 (k) Obtaining bacteriological cytological specimens not
128 involving cutting of the tissue.
129
130 ~~Nothing in~~ This subsection does not ~~shall be construed to~~ limit
131 delegable tasks to those specified herein.
132 (2) A dental hygienist licensed in this state may perform
133 the following remediable tasks in a health access setting as
134 defined in s. 466.003 without the physical presence, prior
135 examination, or authorization of a dentist:
136 (a) Perform dental charting as defined in s. 466.0235 and
137 as provided by rule.
138 (b) Measure and record a patient's blood pressure rate,
139 pulse rate, respiration rate, and oral temperature.
140 (c) Record a patient's case history.

141 (d) Apply topical fluorides, including fluoride varnishes,
142 which are approved by the American Dental Association or the
143 Food and Drug Administration.
144 (e) Apply dental sealants.
145 (f) Remove calculus deposits, accretions, and stains from
146 exposed surfaces of the teeth and from tooth surfaces within the
147 gingival sulcus.
148 1. A dentist licensed under this chapter or a physician
149 licensed under chapter 458 or chapter 459 must give medical
150 clearance before a dental hygienist removes calculus deposits,
151 accretions, and stains from exposed surfaces of the teeth or
152 from tooth surfaces within the gingival sulcus.
153 2. A dentist shall conduct a dental examination on a
154 patient within 13 months after a dental hygienist removes the
155 patient's calculus deposits, accretions, and stains from exposed
156 surfaces of the teeth or from tooth surfaces within the gingival
157 sulcus. Additional oral hygiene services may not be performed
158 under this paragraph without a clinical examination by a dentist
159 who is licensed under this chapter.
160
161 This subsection does not authorize a dental hygienist to perform
162 root planing or gingival curettage without supervision by a
163 dentist.
164 (3) For all remediable tasks listed in subsection (2), the
165 following disclaimer must be provided to the patient in writing
166 before any procedure is performed:
167 (a) The services being offered are not a substitute for a
168 comprehensive dental exam by a dentist.

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

169 (b) The diagnosis of caries, soft tissue disease, oral
170 cancer, temporomandibular joint disease (TMJ), and dentofacial
171 malocclusions will be completed only by a dentist in the context
172 of delivering a comprehensive dental exam.
173 (4) This section does not prevent a program operated by
174 one of the health access settings as defined in s. 466.003 or a
175 nonprofit organization that is exempt from federal income
176 taxation under s. 501(a) of the Internal Revenue Code and
177 described in s. 501(c)(3) of the Internal Revenue Code from
178 billing and obtaining reimbursement for the services described
179 in this section which are provided by a dental hygienist or from
180 making or maintaining any records pursuant to s. 456.057
181 necessary to obtain reimbursement.
182 (5) A dental hygienist who performs, without supervision,
183 the remediable tasks listed in subsection (2) shall:
184 (a) Provide a dental referral in strict compliance with
185 federal and state patient referral, anti-kickback, and patient
186 brokering laws.
187 (b) Encourage the establishment of a dental home.
188 (c) Maintain professional malpractice insurance coverage
189 that has minimum limits of $100,000 per occurrence and $300,000
190 in the aggregate through the employing health access setting or
191 individual policy.
192 (6) ~~(2)~~ Notwithstanding subsection (1) or subsection (2), a
193 dentist may delegate the tasks of gingival curettage and root
194 planing to a dental hygienist but not to a dental assistant.
195 (7) ~~(3)~~ All other remediable tasks shall be performed under
196 the direct, indirect, or general supervision of a dentist, as

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

197 determined by rule of the board, and after such formal or on-
198 the-job training by the dental hygienist or dental assistant as
199 the board by rule may require. The board by rule may establish a
200 certification process for expanded-duty dental assistants,
201 establishing such training or experience criteria or
202 examinations as it deems necessary and specifying which tasks
203 may be delegable only to such assistants. If the board does
204 establish such a certification process, the department shall
205 implement the application process for such certification and
206 administer any examinations required.
207 (8)~~(4)~~ Notwithstanding subsection (1) or subsection (2), a
208 dentist may not delegate to anyone other than another licensed
209 dentist:
210 (a) Any prescription of drugs or medications requiring the
211 written order or prescription of a licensed dentist or
212 physician.
213 (b) Any diagnosis for treatment or treatment planning.
214 (9)~~(5)~~ Notwithstanding any other provision of law, a
215 dentist is primarily responsible for all procedures delegated by
216 her or him.
217 (10)~~(6)~~ A ~~No~~ dental assistant may not ~~shall~~ perform an
218 intraoral procedure except after such formal or on-the-job
219 training as the board by rule shall prescribe.
220 Section 5. Paragraph (c) of subsection (2) of section
221 466.006, Florida Statutes, is amended to read:
222 466.006 Examination of dentists.—
223 (2) An applicant shall be entitled to take the
224 examinations required in this section to practice dentistry in

225 this state if the applicant:
226 (c)1. Has successfully completed the National Board of
227 Dental Examiners dental examination within 10 years after ~~of~~ the
228 date of application; or
229 2. Has an active health access dental license in this
230 state; and
231 a. The applicant has at least 5,000 hours within 4
232 consecutive years of clinical practice experience providing
233 direct patient care in a health access setting as defined in s.
234 466.003 ~~s. 466.003(14)~~; the applicant is a retired veteran
235 dentist of any branch of the United States Armed Services who
236 has practiced dentistry while on active duty and has at least
237 3,000 hours within 3 consecutive years of clinical practice
238 experience providing direct patient care in a health access
239 setting as defined in s. 466.003 ~~s. 466.003(14)~~; or the
240 applicant has provided a portion of his or her salaried time
241 teaching health profession students in any public education
242 setting, including, but not limited to, a community college,
243 college, or university, and has at least 3,000 hours within 3
244 consecutive years of clinical practice experience providing
245 direct patient care in a health access setting as defined in s.
246 466.003 ~~s. 466.003(14)~~;
247 b. The applicant has not been disciplined by the board,
248 except for citation offenses or minor violations;
249 c. The applicant has not filed a report pursuant to s.
250 456.049; and
251 d. The applicant has not been convicted of or pled nolo
252 contendere to, regardless of adjudication, any felony or

253 misdemeanor related to the practice of a health care profession.
254 Section 6. Section 466.0067, Florida Statutes, is amended
255 to read:
256 466.0067 Application for health access dental license.—The
257 Legislature finds that there is an important state interest in
258 attracting dentists to practice in underserved health access
259 settings in this state and further, that allowing out-of-state
260 dentists who meet certain criteria to practice in health access
261 settings without the supervision of a dentist licensed in this
262 state is substantially related to achieving this important state
263 interest. Therefore, notwithstanding the requirements of s.
264 466.006, the board shall grant a health access dental license to
265 practice dentistry in this state in health access settings as
266 defined in s. 466.003 ~~s. 466.003(14)~~ to an applicant that:
267 (1) Files an appropriate application approved by the
268 board;
269 (2) Pays an application license fee for a health access
270 dental license, laws-and-rule exam fee, and an initial licensure
271 fee. The fees specified in this subsection may not differ from
272 an applicant seeking licensure pursuant to s. 466.006;
273 (3) Has not been convicted of or pled nolo contendere to,
274 regardless of adjudication, any felony or misdemeanor related to
275 the practice of a health care profession;
276 (4) Submits proof of graduation from a dental school
277 accredited by the Commission on Dental Accreditation of the
278 American Dental Association or its successor agency;
279 (5) Submits documentation that she or he has completed, or
280 will obtain prior to licensure, continuing education equivalent

281 to this state's requirement for dentists licensed under s.
282 466.006 for the last full reporting biennium before applying for
283 a health access dental license;
284 (6) Submits proof of her or his successful completion of
285 parts I and II of the dental examination by the National Board
286 of Dental Examiners and a state or regional clinical dental
287 licensing examination that the board has determined effectively
288 measures the applicant's ability to practice safely;
289 (7) Currently holds a valid, active, dental license in
290 good standing which has not been revoked, suspended, restricted,
291 or otherwise disciplined from another of the United States, the
292 District of Columbia, or a United States territory;
293 (8) Has never had a license revoked from another of the
294 United States, the District of Columbia, or a United States
295 territory;
296 (9) Has never failed the examination specified in s.
297 466.006, unless the applicant was reexamined pursuant to s.
298 466.006 and received a license to practice dentistry in this
299 state;
300 (10) Has not been reported to the National Practitioner
301 Data Bank, unless the applicant successfully appealed to have
302 his or her name removed from the data bank;
303 (11) Submits proof that he or she has been engaged in the
304 active, clinical practice of dentistry providing direct patient
305 care for 5 years immediately preceding the date of application,
306 or in instances when the applicant has graduated from an
307 accredited dental school within the preceding 5 years, submits
308 proof of continuous clinical practice providing direct patient

309 care since graduation; and
310 (12) Has passed an examination covering the laws and rules
311 of the practice of dentistry in this state as described in s.
312 466.006(4)(a).
313 Section 7. For the purpose of incorporating the amendment
314 made by this act to section 466.003, Florida Statutes, in a
315 reference thereto, subsection (2) of section 466.00672, Florida
316 Statutes, is reenacted to read:
317 466.00672 Revocation of health access dental license.—
318 (2) Failure of an individual licensed pursuant to s.
319 466.0067 to limit the practice of dentistry to health access
320 settings as defined in s. 466.003 constitutes the unlicensed
321 practice of dentistry.
322 Section 8. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1125 Florida Health Choices Program
SPONSOR(S): Corcoran and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee		Poche	Calamas
2) Insurance & Banking Subcommittee			
3) Appropriations Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

House Bill 1125 amends the Florida Health Choices Program to expand eligibility for employers and employees, offer more products and plans for purchase, and ease requirements for participation in the insurance marketplace.

The bill appears to have no fiscal impact.

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida Health Choices Program

In 2008, the Florida Legislature created the Florida Health Choices Program (Program).[1] The Program includes a single, centralized market for the sale and purchase of health care products including, but not limited to, health insurance plans, health maintenance organization (HMO) plans, prepaid services, service contracts, and flexible spending accounts.[2] Policies sold as part of the Program are exempt from regulation under the Florida Insurance Code[3] and laws governing HMOs.[4] The following entities are authorized to be eligible vendors of these products and plans:

- Insurers authorized under ch. 624, F.S.;
- HMOs authorized under ch. 641, F.S.;
- Prepaid health clinics licensed under part II, ch. 641, F.S.;
- Health care providers, including hospitals and other licensed health facilities, health care clinics, pharmacies, and other licensed health care providers;
- Provider organizations, including services networks, group practices, and professional associations; and
- Corporate entities providing specific health services.[5]

Under s. 408.910(11), F.S., Florida Health Choices, Inc., (Corporation) is established as a not-for-profit corporation under ch. 617, F.S. The Corporation is responsible for administering the Program and may function as a third-party administrator (TPA) for employers participating in the Program.[6] In its capacity as a TPA, the Corporation is not subject to the licensing requirements for insurance administrators under Part VII, Chapter 626, F.S. The Corporation is authorized to collect premiums and other payments from employers. In addition, the Corporation is not required to maintain any level of bonding. The Corporation is responsible for certifying vendors and ensuring the validity of their offerings. Lastly, the Corporation is not subject to the provisions of the Unfair Insurance Trade Practices Act.[7]

The Corporation is governed by a 15-member board of directors (Board). Five members are appointed by the Governor (agency representative, Department of Management Services representative, the Commissioner of the Office of Insurance Regulation (OIR), and two representatives of public employees). Five members are appointed by the President of the Senate and five members are appointed by the Speaker of the House of Representatives.[8] The board members are protected from liability created by any member of the board or its employees or agents for any action taken by them in the performance of the powers and duties under this act.[9] No cause of action may rise against a board member in that circumstance.[10]

[1] S. 4, ch. 2008-32, Laws of Fla. (2008); *see also* s. 408.910, F.S.
[2] S. 408.910(5), F.S.
[3] Ch. 624, F.S.
[4] Part I, Ch. 641, F.S.; *see also* s. 408.910(10)(a), F.S.
[5] S. 408.910(4)(d), F.S
[6] S. 408.910(10)(b), F.S.
[7] Part IX, Ch. 626, F.S.
[8] S. 408.910(11)(a), F.S.
[9] S. 408.910(11)(e), F.S.
[10] *Id.*

The law specifies which entities are eligible to purchase products through, and participate in, the Program. Employees of the following employers are eligible to purchase coverage through the Program if their employers participate in the Program:

- Employers with 1 to 50 employees;
- Cities with a population less than 50,000 residents;
- Fiscally constrained counties; and
- School districts located in fiscally constrained counties.[11]

The following vendors are eligible to participate in the Program:

- Insurers licensed under ch. 624, F.S.;
- HMOs licensed under part I of ch. 641, F.S.;
- Prepaid health clinic providers licensed under part II of ch. 641, F.S.;
- Health care providers;
- Provider organizations; and
- Corporate entities providing specific services via service contracts.[12]

The following individuals are eligible to enroll in the Program:

- Individual employees of enrolled employers;
- State employees ineligible for the state group insurance plan;
- State retirees;
- Medicaid reform participants who opt out of the reform program; and
- Statutory rural hospitals.[13]

Employers are required to establish section 125 plans in order to participate in, and allow their employees to enroll in, the Program.[14] This allows both employers and employees to purchase insurance coverage through the Program using pre-tax dollars.

In 2008, the Legislature appropriated $1,000,000 in non-recurring General Revenue to the corporation to initially implement the Program.[15]

In the summer of 2011, phase one of the Program, known as Florida's Marketplace and dubbed "Quick Start", will be operational. It will offer a central web portal to access and compare multiple insurance products.[16] The web portal will also be accessible by employers, vendors and insurance agents.[17]

---

[11] S. 408.910(4)(a), F.S.
[12] S. 408.910(4)(d), F.S.
[13] S. 408.910(4)(b), F.S
[14] Section 125 of the Internal Revenue Code allows employers to offer a cafeteria plan to employees for payment of qualified benefits. A cafeteria plan is a separate written plan maintained by an employer for employees that meets the specific requirements of and regulations of section 125. It provides participants an opportunity to receive certain benefits on a pretax basis. Participants in a cafeteria plan must be permitted to choose among at least one taxable benefit (such as cash) and one qualified benefit.
A qualified benefit is a benefit that does not defer compensation and is excludable from an employee's gross income under a specific provision of the Code, without being subject to the principles of constructive receipt. Qualified benefits include:

- Accident and health benefits (but not Archer medical savings accounts or long-term care insurance);
- Adoption assistance;
- Dependent care assistance;
- Group-term life insurance coverage;
- Health savings accounts, including distributions to pay long-term care services.

The written plan must specifically describe all benefits and establish rules for eligibility and elections. A section 125 plan is the only means by which an employer can offer employees a choice between taxable and nontaxable benefits without the choice causing the benefits to become taxable. A plan offering only a choice between taxable benefits is not a section 125 plan. *See* http://www.irs.gov/govt/fslg/article/0,,id=112720,00.html. (last viewed March 19, 2011).
[15] Ch. 2008-152, Laws of Fla. (2008).
[16] *See* http://myfloridachoices.org/about/ (last viewed March 21, 2011).
[17] S. 408.910(8), F.S.

Midterm and long term phases are expected to be completed in late 2011 and late 2012, providing more features and easier access for employers, enrollees, and vendors.

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act ("PPACA")[18], as amended by the Health Care and Education Reconciliation Act of 2010[19]. One of the essential elements of the PPACA is the requirement that all U.S. citizens have health insurance. Beginning in 2014, for U.S. citizens who cannot purchase health insurance through an employer because it is not offered, health insurance exchanges will be established, from which citizens can purchase health insurance coverage that meets the minimum essential coverage provisions of PPACA.

The constitutionality of PPACA is currently being challenged in federal court[20] by Florida, 25 other states, the National Federation of Independent Business, and private citizens, and the outcome is uncertain. If Florida were required to establish an exchange pursuant to PPACA, some of the products currently authorized by law to be available in the Program would not meet the minimum benefit requirements of PPACA.

Effect of Proposed Changes

The bill defines the "Corporation's marketplace" as a single, centralized market established by the Program to facilitate the purchase of products made available in the marketplace. The bill also adds HMOs, licensed under part I of Chapter 641, to the definition of "insurer".

The bill expands the eligibility requirements for employers to participate in the Program. An employer that seeks to enter the marketplace must meet all criteria established by the Board and intend to make employees eligible for one, or more, health plan, product or service contract offered by the Program. Currently, only employers with 1 to 50 employees are eligible for participation in the Program. The limitation on the number of employees is deleted by the bill, thereby opening up participation in the Program to all employers in Florida, no matter the number of employees.

Increasing the size of employers that may participate in the marketplace may increase the attractiveness of the marketplace for insurers. Large numbers of potential insureds equates to a potentially larger market share for vendors who offer products in the marketplace. Additional insurers will create more choice for enrollees in the Program and may result in more affordable premium prices due to increased competition.

The bill changes the category of a "statutory rural hospital"[21] from an eligible individual to an eligible employer for participation in the marketplace.

The bill amends s. 408.910(4)(b)4., F.S., to allow all Medicaid recipients who opt-out of Medicaid to participate in the Corporation marketplace. Currently, only Medicaid reform participants are eligible to participate in the marketplace. This proposed change in law anticipates proposed Medicaid reform provisions that would allow a Medicaid participant to opt out of the system and use the funds that would have been used by Medicaid to pay for coverage to purchase insurance coverage in the private market. The proposed changes allow those Medicaid dollars to be used to purchase any product offered for sale in the Corporation's marketplace.

The bill makes a technical change, permitting HMOs to sell health maintenance contracts and deleting insurance policies as a product to be sold by an HMO. HMOs market health maintenance contracts rather than traditional insurance policies. The bill also includes health maintenance contracts on the list of products that may be sold in the Corporation's marketplace.

---

[18] P.L. 111-148, 124 Stat. 119 (2010)

[19] P.L. 111-152, 124 Stat. 1029 (2010)

[20] *See* U.S Dept. of Health and Human Serv., et al., v. State of Fla., et al., Case No. 11-11021-HH (11th Cir. Ct.)(on appeal from United States District Court for the Northern District of Florida, Pensacola Division, Case No. 3:10-cv-91-RV/EMT)

[21] S. 395.602(2)(e), F.S., defines a "rural hospital".

The bill streamlines the process by which new health insurance plans, services and other contracts are approved to be included in the marketplace. The bill requires all risk-bearing products permitted to be sold by insurers and HMOs in the Corporation's marketplace to be approved by OIR. The bill removes the requirement that the Board develop a methodology by which it will evaluate the actuarial soundness of the products and premiums offered by the plan. The bill also eliminates the procedure for the Board to seek guidance from OIR regarding the approval or denial of inclusion of a plan or product in the Corporation's marketplace. OIR is charged with approving all health insurance policies and other health insurance products that are sold in the state of Florida. The bill allows for the initial approval of products for sale in Florida by OIR to serve as approval for inclusion in the Corporation's marketplace. Products other than those listed in ss. 408.910(4)(d)1., F.S., and 408.910(4)(d)2., F.S., are not subject to the licensing requirement of the Florida Insurance Code.[22]

The bill simplifies the procedure by which the Board approves vendors for participation in the Corporation's marketplace. The procedure may include the elements currently listed in the statute and may include medical underwriting for premium prices based on age, gender, and location of participant.

Currently, s. 408.910(5)(b), F.S., requires that policies, plans and other contracts for services purchased through the Program ensure availability of covered services for a period of at least one full enrollment year. The bill removes the one year requirement. As a result, policies, plans and other contracts for services may be able to offer covered services for time periods greater than or less than one full enrollment year.

The bill requires the Corporation to approve all non-risk-bearing products to be sold in the Corporation's marketplace, other than those listed in s. 408.910(5)(a), F.S. Currently, OIR has the authority to approve all risk-bearing products to be sold through the marketplace.

The bill renames the "Exchange" Process to the "Marketplace" Process. The bill requires the Corporation to establish initial, open, and special enrollment periods for enrollees in the marketplace.

The bill requires the Corporation to inform individuals about other public health care programs that are available. Also, the bill requires the Corporation to operate a toll-free hotline to respond to requests for assistance from enrollees, prospective enrollees, vendors, and other participants in the Program.

The bill requires vendors to submit data annually to the Corporation so that premium payments to vendors by enrollees may be risk adjusted to ensure that risk is pooled appropriately and prevent selection bias. The bill also eliminates the plan for tax credits to be made available to employers participating in the marketplace.

Lastly, the bill requires the disclosure of personal identifying information about a Florida Kidcare Program applicant or enrollee to the Corporation by AHCA, the Department of Children and Families, the Department of Health, or the Florida Healthy Kids Corporation for administration of the Program.

B. SECTION DIRECTORY:

Section 1: Amends s. 408.910, F.S., relating to Florida Health Choices Program.
Section 2: Amends s. 409.821, F.S., relating to Florida Kidcare Program public records exemption.
Section 3: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

---

[22] S. 624.01, F.S.

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:

The bill will likely open the Corporation's marketplace to more enrollees and offer more choice in affordable health care coverage. Also, a larger number of individuals enrolled in the Program with the ability to purchase health insurance policies, plans and other contracts for services should lower insurance premiums for all enrollees in the Program.

D. FISCAL COMMENTS:

The requirement that the Corporation operate a toll-free hotline to respond to requests for assistance regarding the marketplace carries an indeterminate, and possibly significant, fiscal impact. The Corporation will need to purchase hardware and software to establish, operate, manage, and maintaining the hotline. Additional staff will also need to be hired and trained. If the Corporation chooses to outsource the operation of the hotline, that action will also carry a fiscal impact on the Corporation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Corporation must establish a procedure by which it can review products and vendors and make recommendations for approval or denial of inclusion in the Program. The procedure may require the hiring of personnel to complete all the review and to make recommendations. This will carry with it a fiscal impact similar to the impact discussed above in Fiscal Comments regarding the requirement that the Corporation operate a toll-free hotline to provide assistance to participants in the Program.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to Florida Health Choices Program;
3 amending s. 408.910, F.S.; providing and revising
4 definitions; revising eligibility requirements for
5 participation in the Florida Health Choices Program;
6 providing that statutory rural hospitals are eligible as
7 employers rather than participants under the program;
8 permitting specified eligible vendors to sell health
9 maintenance contracts; requiring certain risk-bearing
10 products offered by insurers to be approved by the Office
11 of Insurance Regulation; providing requirements for
12 product certification; providing duties of the Florida
13 Health Choices, Inc., including maintenance of a toll-free
14 telephone hotline to respond to requests for assistance;
15 providing for enrollment periods; providing for certain
16 risk pooling data used by the corporation to be reported
17 annually; amending s. 409.821, F.S.; authorizing personal
18 identifying information of a Florida Kidcare program
19 applicant to be disclosed to the Florida Health Choices,
20 Inc., to administer the program; providing an effective
21 date.
22
23 Be It Enacted by the Legislature of the State of Florida:
24
25 Section 1. Section 408.910, Florida Statutes, is amended
26 to read:
27 408.910 Florida Health Choices Program.—
28 (1) LEGISLATIVE INTENT.—The Legislature finds that a

29 significant number of the residents of this state do not have
30 adequate access to affordable, quality health care. The
31 Legislature further finds that increasing access to affordable,
32 quality health care can be best accomplished by establishing a
33 competitive market for purchasing health insurance and health
34 services. It is therefore the intent of the Legislature to
35 create the Florida Health Choices Program to:
36 (a) Expand opportunities for Floridians to purchase
37 affordable health insurance and health services.
38 (b) Preserve the benefits of employment-sponsored
39 insurance while easing the administrative burden for employers
40 who offer these benefits.
41 (c) Enable individual choice in both the manner and amount
42 of health care purchased.
43 (d) Provide for the purchase of individual, portable
44 health care coverage.
45 (e) Disseminate information to consumers on the price and
46 quality of health services.
47 (f) Sponsor a competitive market that stimulates product
48 innovation, quality improvement, and efficiency in the
49 production and delivery of health services.
50 (2) DEFINITIONS.—As used in this section, the term:
51 (a) "Corporation" means the Florida Health Choices, Inc.,
52 established under this section.
53 (b) "Corporation's marketplace" means the single,
54 centralized market established by the program that facilitates
55 the purchase of products made available in the marketplace.
56 (c) ~~(b)~~ "Health insurance agent" means an agent licensed

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

57 under part IV of chapter 626.
58 (d)~~(c)~~ "Insurer" means an entity licensed under chapter
59 624 which offers an individual health insurance policy or a
60 group health insurance policy, a preferred provider organization
61 as defined in s. 627.6471, ~~or~~ an exclusive provider organization
62 as defined in s. 627.6472, or a health maintenance organization
63 licensed under part I of chapter 641.
64 (e)~~(d)~~ "Program" means the Florida Health Choices Program
65 established by this section.
66 (3) PROGRAM PURPOSE AND COMPONENTS.—The Florida Health
67 Choices Program is created as a single, centralized market for
68 the sale and purchase of various products that enable
69 individuals to pay for health care. These products include, but
70 are not limited to, health insurance plans, health maintenance
71 organization plans, prepaid services, service contracts, and
72 flexible spending accounts. The components of the program
73 include:
74 (a) Enrollment of employers.
75 (b) Administrative services for participating employers,
76 including:
77 1. Assistance in seeking federal approval of cafeteria
78 plans.
79 2. Collection of premiums and other payments.
80 3. Management of individual benefit accounts.
81 4. Distribution of premiums to insurers and payments to
82 other eligible vendors.
83 5. Assistance for participants in complying with reporting
84 requirements.

85 (c) Services to individual participants, including:
86 1. Information about available products and participating
87 vendors.
88 2. Assistance with assessing the benefits and limits of
89 each product, including information necessary to distinguish
90 between policies offering creditable coverage and other products
91 available through the program.
92 3. Account information to assist individual participants
93 with managing available resources.
94 4. Services that promote healthy behaviors.
95 (d) Recruitment of vendors, including insurers, health
96 maintenance organizations, prepaid clinic service providers,
97 provider service networks, and other providers.
98 (e) Certification of vendors to ensure capability,
99 reliability, and validity of offerings.
100 (f) Collection of data, monitoring, assessment, and
101 reporting of vendor performance.
102 (g) Information services for individuals and employers.
103 (h) Program evaluation.
104 (4) ELIGIBILITY AND PARTICIPATION.—Participation in the
105 program is voluntary and shall be available to employers,
106 individuals, vendors, and health insurance agents as specified
107 in this subsection.
108 (a) Employers eligible to enroll in the program include:
109 1. Employers meeting criteria established by the
110 corporation and that elect to make employees of such employer
111 eligible for one or more of the health plans offered through the
112 program ~~have 1 to 50 employees~~.

113 2. Fiscally constrained counties described in s. 218.67.
114 3. Municipalities having populations of fewer than 50,000
115 residents.
116 4. School districts in fiscally constrained counties.
117 5. Statutory rural hospitals.
118 (b) Individuals eligible to participate in the program
119 include:
120 1. Individual employees of enrolled employers.
121 2. State employees not eligible for state employee health
122 benefits.
123 3. State retirees.
124 4. Medicaid ~~reform~~ participants who opt out ~~select the~~
125 ~~opt-out provision of reform~~.
126 ~~5. Statutory rural hospitals.~~
127 (c) Employers who choose to participate in the program may
128 enroll by complying with the procedures established by the
129 corporation. The procedures must include, but are not limited
130 to:
131 1. Submission of required information.
132 2. Compliance with federal tax requirements for the
133 establishment of a cafeteria plan, pursuant to s. 125 of the
134 Internal Revenue Code, including designation of the employer's
135 plan as a premium payment plan, a salary reduction plan that has
136 flexible spending arrangements, or a salary reduction plan that
137 has a premium payment and flexible spending arrangements.
138 3. Determination of the employer's contribution, if any,
139 per employee, provided that such contribution is equal for each
140 eligible employee.

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

141 4. Establishment of payroll deduction procedures, subject
142 to the agreement of each individual employee who voluntarily
143 participates in the program.
144 5. Designation of the corporation as the third-party
145 administrator for the employer's health benefit plan.
146 6. Identification of eligible employees.
147 7. Arrangement for periodic payments.
148 8. Employer notification to employees of the intent to
149 transfer from an existing employee health plan to the program at
150 least 90 days before the transition.
151 (d) Eligible vendors and the products and services that
152 the vendors are permitted to sell are as follows:
153 1. Insurers licensed under chapter 624 may sell health
154 insurance policies, limited benefit policies, other risk-bearing
155 coverage, and other products or services.
156 2. Health maintenance organizations licensed under part I
157 of chapter 641 may sell health maintenance contracts ~~insurance~~
158 ~~policies~~, limited benefit policies, other risk-bearing products,
159 and other products or services.
160 3. Prepaid health clinic service providers licensed under
161 part II of chapter 641 may sell prepaid service contracts and
162 other arrangements for a specified amount and type of health
163 services or treatments.
164 4. Health care providers, including hospitals and other
165 licensed health facilities, health care clinics, licensed health
166 professionals, pharmacies, and other licensed health care
167 providers, may sell service contracts and arrangements for a
168 specified amount and type of health services or treatments.

169 5. Provider organizations, including service networks,
170 group practices, professional associations, and other
171 incorporated organizations of providers, may sell service
172 contracts and arrangements for a specified amount and type of
173 health services or treatments.
174 6. Corporate entities providing specific health services
175 in accordance with applicable state law may sell service
176 contracts and arrangements for a specified amount and type of
177 health services or treatments.
178
179 A vendor described in subparagraphs 3.-6. may not sell products
180 that provide risk-bearing coverage unless that vendor is
181 authorized under a certificate of authority issued by the Office
182 of Insurance Regulation under the provisions of the Florida
183 Insurance Code. Otherwise eligible vendors may be excluded from
184 participating in the program for deceptive or predatory
185 practices, financial insolvency, or failure to comply with the
186 terms of the participation agreement or other standards set by
187 the corporation.
188 (e) Any risk-bearing product available under subparagraph
189 (d)1. or subparagraph (d)2. must be approved by the Office of
190 Insurance Regulation.
191 (f) (e) Eligible individuals may voluntarily continue
192 participation in the program regardless of subsequent changes in
193 job status or Medicaid eligibility. Individuals who join the
194 program may participate by complying with the procedures
195 established by the corporation. These procedures must include,
196 but are not limited to:

197 1. Submission of required information.
198 2. Authorization for payroll deduction.
199 3. Compliance with federal tax requirements.
200 4. Arrangements for payment in the event of job changes.
201 5. Selection of products and services.
202 (g) ~~(f)~~ Vendors who choose to participate in the program
203 may enroll by complying with the procedures established by the
204 corporation. These procedures may ~~must~~ include, but are not
205 limited to:
206 1. Submission of required information, including a
207 complete description of the coverage, services, provider
208 network, payment restrictions, and other requirements of each
209 product offered through the program.
210 2. Execution of an agreement to make all risk-bearing
211 products offered through the program guaranteed-issue policies,
212 subject to preexisting condition exclusions established by the
213 corporation.
214 3. Execution of an agreement that prohibits refusal to
215 sell any offered non-risk-bearing product to a participant who
216 elects to buy it.
217 4. Establishment of product prices based on age, gender,
218 and location of the individual participant, which may include
219 medical underwriting.
220 5. Arrangements for receiving payment for enrolled
221 participants.
222 6. Participation in ongoing reporting processes
223 established by the corporation.
224 7. Compliance with grievance procedures established by the

225 corporation.
226 (h) ~~(g)~~ Health insurance agents licensed under part IV of
227 chapter 626 are eligible to voluntarily participate as buyers'
228 representatives. A buyer's representative acts on behalf of an
229 individual purchasing health insurance and health services
230 through the program by providing information about products and
231 services available through the program and assisting the
232 individual with both the decision and the procedure of selecting
233 specific products. Serving as a buyer's representative does not
234 constitute a conflict of interest with continuing
235 responsibilities as a health insurance agent if the relationship
236 between each agent and any participating vendor is disclosed
237 before advising an individual participant about the products and
238 services available through the program. In order to participate,
239 a health insurance agent shall comply with the procedures
240 established by the corporation, including:
241 1. Completion of training requirements.
242 2. Execution of a participation agreement specifying the
243 terms and conditions of participation.
244 3. Disclosure of any appointments to solicit insurance or
245 procure applications for vendors participating in the program.
246 4. Arrangements to receive payment from the corporation
247 for services as a buyer's representative.
248 (5) PRODUCTS.—
249 (a) The products that may be made available for purchase
250 through the program include, but are not limited to:
251 1. Health insurance policies.
252 2. Health maintenance contracts.

253 3.~~2.~~ Limited benefit plans.
254 4.~~3.~~ Prepaid clinic services.
255 5.~~4.~~ Service contracts.
256 6.~~5.~~ Arrangements for purchase of specific amounts and
257 types of health services and treatments.
258 7.~~6.~~ Flexible spending accounts.
259 (b) Health insurance policies, health maintenance
260 contracts, limited benefit plans, prepaid service contracts, and
261 other contracts for services must ensure the availability of
262 covered services ~~and benefits to participating individuals for~~
263 ~~at least 1 full enrollment year~~.
264 (c) Products may be offered for multiyear periods provided
265 the price of the product is specified for the entire period or
266 for each separately priced segment of the policy or contract.
267 (d) The corporation shall provide a disclosure form for
268 consumers to acknowledge their understanding of the nature of,
269 and any limitations to, the benefits provided by the products
270 and services being purchased by the consumer.
271 (e) Any non-risk-bearing product other than those set
272 forth in paragraph (a) must be approved by the corporation.
273 (f) The corporation must determine that making the plan
274 available through the program is in the interest of eligible
275 individuals and eligible employers in the state.
276 (6) PRICING.—Prices for the products sold through the
277 program must be transparent to participants and established by
278 the vendors based on age, gender, and location of participants.
279 ~~The corporation shall develop a methodology for evaluating the~~
280 ~~actuarial soundness of products offered through the program. The~~

281 ~~methodology shall be reviewed by the Office of Insurance~~
282 ~~Regulation prior to use by the corporation. Before making the~~
283 ~~product available to individual participants, the corporation~~
284 ~~shall use the methodology to compare the expected health care~~
285 ~~costs for the covered services and benefits to the vendor's~~
286 ~~price for that coverage. The results shall be reported to~~
287 ~~individuals participating in the program. Once established, the~~
288 ~~price set by the vendor must remain in force for at least 1 year~~
289 ~~and may only be redetermined by the vendor at the next annual~~
290 ~~enrollment period.~~ The corporation shall annually assess a
291 surcharge for each premium or price set by a participating
292 vendor. The surcharge may not be more than 2.5 percent of the
293 price and shall be used to generate funding for administrative
294 services provided by the corporation and payments to buyers'
295 representatives.
296 (7) THE MARKETPLACE ~~EXCHANGE~~ PROCESS.—The program shall
297 provide a single, centralized market for purchase of health
298 insurance, health maintenance contracts, and other health
299 services. Purchases may be made by participating individuals
300 over the Internet or through the services of a participating
301 health insurance agent. Information about each product and
302 service available through the program shall be made available
303 through printed material and an interactive Internet website. A
304 participant needing personal assistance to select products and
305 services shall be referred to a participating agent in his or
306 her area.
307 (a) Participation in the program may begin at any time
308 during a year after the employer completes enrollment and meets

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

309 the requirements specified by the corporation pursuant to
310 paragraph (4)(c).
311 (b) Initial selection of products and services must be
312 made by an individual participant within 60 days after the date
313 the individual's employer qualified for participation. An
314 individual who fails to enroll in products and services by the
315 end of this period is limited to participation in flexible
316 spending account services until the next annual enrollment
317 period.
318 (c) Initial enrollment periods for each product selected
319 by an individual participant must last at least 12 months,
320 unless the individual participant specifically agrees to a
321 different enrollment period.
322 (d) If an individual has selected one or more products and
323 enrolled in those products for at least 12 months or any other
324 period specifically agreed to by the individual participant,
325 changes in selected products and services may only be made
326 during the annual enrollment period established by the
327 corporation.
328 (e) The limits established in paragraphs (b)-(d) apply to
329 any risk-bearing product that promises future payment or
330 coverage for a variable amount of benefits or services. The
331 limits do not apply to initiation of flexible spending plans if
332 those plans are not associated with specific high-deductible
333 insurance policies or the use of spending accounts for any
334 products offering individual participants specific amounts and
335 types of health services and treatments at a contracted price.
336 (8) CONSUMER INFORMATION.—The corporation shall:

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

337 (a) Establish a secure website to facilitate the purchase
338 of products and services by participating individuals. The
339 website must provide information about each product or service
340 available through the program.
341 (b) Inform individuals about other public health care
342 programs.
343 ~~(a) Prior to making a risk-bearing product available~~
344 ~~through the program, the corporation shall provide information~~
345 ~~regarding the product to the Office of Insurance Regulation. The~~
346 ~~office shall review the product information and provide consumer~~
347 ~~information and a recommendation on the risk-bearing product to~~
348 ~~the corporation within 30 days after receiving the product~~
349 ~~information.~~
350 ~~1. Upon receiving a recommendation that a risk-bearing~~
351 ~~product should be made available in the marketplace, the~~
352 ~~corporation may include the product on its website. If the~~
353 ~~consumer information and recommendation is not received within~~
354 ~~30 days, the corporation may make the risk-bearing product~~
355 ~~available on the website without consumer information from the~~
356 ~~office.~~
357 ~~2. Upon receiving a recommendation that a risk-bearing~~
358 ~~product should not be made available in the marketplace, the~~
359 ~~risk-bearing product may be included as an eligible product in~~
360 ~~the marketplace and on its website only if a majority of the~~
361 ~~board of directors vote to include the product.~~
362 ~~(b) If a risk-bearing product is made available on the~~
363 ~~website, the corporation shall make the consumer information and~~
364 ~~office recommendation available on the website and in print~~

365 ~~format. The corporation shall make late submitted and ongoing~~
366 ~~updates to consumer information available on the website and in~~
367 ~~print format.~~
368 (9) RISK POOLING.—The program shall utilize methods for
369 pooling the risk of individual participants and preventing
370 selection bias. These methods shall include, but are not limited
371 to, a postenrollment risk adjustment of the premium payments to
372 the vendors. The corporation shall establish a methodology for
373 assessing the risk of enrolled individual participants based on
374 data reported annually by the vendors about their enrollees.
375 Monthly distributions of payments to the vendors shall be
376 adjusted based on the assessed relative risk profile of the
377 enrollees in each risk-bearing product for the most recent
378 period for which data is available.
379 (10) EXEMPTIONS.—
380 (a) Products, other than the risk-bearing products set
381 forth in subparagraph (4)(d)1. or subparagraph (4)(d)2.,
382 ~~Policies~~ sold as part of the program are not subject to the
383 licensing requirements of the Florida Insurance Code, as defined
384 in s. 624.01 ~~chapter 641,~~ or the mandated offerings or coverages
385 established in part VI of chapter 627 and chapter 641.
386 (b) The corporation may act as an administrator as defined
387 in s. 626.88 but is not required to be certified pursuant to
388 part VII of chapter 626. However, a third party administrator
389 used by the corporation must be certified under part VII of
390 chapter 626.
391 (11) CORPORATION.—There is created the Florida Health
392 Choices, Inc., which shall be registered, incorporated,

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

393 organized, and operated in compliance with part III of chapter
394 112 and chapters 119, 286, and 617. The purpose of the
395 corporation is to administer the program created in this section
396 and to conduct such other business as may further the
397 administration of the program.
398 (a) The corporation shall be governed by a 15-member board
399 of directors consisting of:
400 1. Three ex officio, nonvoting members to include:
401 a. The Secretary of Health Care Administration or a
402 designee with expertise in health care services.
403 b. The Secretary of Management Services or a designee with
404 expertise in state employee benefits.
405 c. The commissioner of the Office of Insurance Regulation
406 or a designee with expertise in insurance regulation.
407 2. Four members appointed by and serving at the pleasure
408 of the Governor.
409 3. Four members appointed by and serving at the pleasure
410 of the President of the Senate.
411 4. Four members appointed by and serving at the pleasure
412 of the Speaker of the House of Representatives.
413 5. Board members may not include insurers, health
414 insurance agents or brokers, health care providers, health
415 maintenance organizations, prepaid service providers, or any
416 other entity, affiliate or subsidiary of eligible vendors.
417 (b) Members shall be appointed for terms of up to 3 years.
418 Any member is eligible for reappointment. A vacancy on the board
419 shall be filled for the unexpired portion of the term in the
420 same manner as the original appointment.

421 (c) The board shall select a chief executive officer for
422 the corporation who shall be responsible for the selection of
423 such other staff as may be authorized by the corporation's
424 operating budget as adopted by the board.
425 (d) Board members are entitled to receive, from funds of
426 the corporation, reimbursement for per diem and travel expenses
427 as provided by s. 112.061. No other compensation is authorized.
428 (e) There is no liability on the part of, and no cause of
429 action shall arise against, any member of the board or its
430 employees or agents for any action taken by them in the
431 performance of their powers and duties under this section.
432 (f) The board shall develop and adopt bylaws and other
433 corporate procedures as necessary for the operation of the
434 corporation and carrying out the purposes of this section. The
435 bylaws shall:
436 1. Specify procedures for selection of officers and
437 qualifications for reappointment, provided that no board member
438 shall serve more than 9 consecutive years.
439 2. Require an annual membership meeting that provides an
440 opportunity for input and interaction with individual
441 participants in the program.
442 3. Specify policies and procedures regarding conflicts of
443 interest, including the provisions of part III of chapter 112,
444 which prohibit a member from participating in any decision that
445 would inure to the benefit of the member or the organization
446 that employs the member. The policies and procedures shall also
447 require public disclosure of the interest that prevents the
448 member from participating in a decision on a particular matter.

449 (g) The corporation may exercise all powers granted to it
450 under chapter 617 necessary to carry out the purposes of this
451 section, including, but not limited to, the power to receive and
452 accept grants, loans, or advances of funds from any public or
453 private agency and to receive and accept from any source
454 contributions of money, property, labor, or any other thing of
455 value to be held, used, and applied for the purposes of this
456 section.
457 (h) The corporation may establish technical advisory
458 panels consisting of interested parties, including consumers,
459 health care providers, individuals with expertise in insurance
460 regulation, and insurers.
461 (i) The corporation shall:
462 1. Determine eligibility of employers, vendors,
463 individuals, and agents in accordance with subsection (4).
464 2. Establish procedures necessary for the operation of the
465 program, including, but not limited to, procedures for
466 application, enrollment, risk assessment, risk adjustment, plan
467 administration, performance monitoring, and consumer education.
468 3. Arrange for collection of contributions from
469 participating employers and individuals.
470 4. Arrange for payment of premiums and other appropriate
471 disbursements based on the selections of products and services
472 by the individual participants.
473 5. Establish criteria for disenrollment of participating
474 individuals based on failure to pay the individual's share of
475 any contribution required to maintain enrollment in selected
476 products.

477 6. Establish criteria for exclusion of vendors pursuant to
478 paragraph (4)(d).
479 7. Develop and implement a plan for promoting public
480 awareness of and participation in the program.
481 8. Secure staff and consultant services necessary to the
482 operation of the program.
483 9. Establish policies and procedures regarding
484 participation in the program for individuals, vendors, health
485 insurance agents, and employers.
486 10. Provide for the operation of a toll-free hotline to
487 respond to requests for assistance.
488 11. Provide for initial, open, and special enrollment
489 periods.
490 ~~10. Develop a plan, in coordination with the Department of~~
491 ~~Revenue, to establish tax credits or refunds for employers that~~
492 ~~participate in the program. The corporation shall submit the~~
493 ~~plan to the Governor, the President of the Senate, and the~~
494 ~~Speaker of the House of Representatives by January 1, 2009.~~
495 (12) REPORT.—Beginning in the 2009-2010 fiscal year,
496 submit by February 1 an annual report to the Governor, the
497 President of the Senate, and the Speaker of the House of
498 Representatives documenting the corporation's activities in
499 compliance with the duties delineated in this section.
500 (13) PROGRAM INTEGRITY.—To ensure program integrity and to
501 safeguard the financial transactions made under the auspices of
502 the program, the corporation is authorized to establish
503 qualifying criteria and certification procedures for vendors,
504 require performance bonds or other guarantees of ability to

505 complete contractual obligations, monitor the performance of
506 vendors, and enforce the agreements of the program through
507 financial penalty or disqualification from the program.
508 Section 2. Section 409.821, Florida Statutes, is amended
509 to read:
510 409.821 Florida Kidcare program public records exemption.—
511 (1) Personal identifying information of a Florida Kidcare
512 program applicant or enrollee, as defined in s. 409.811, held by
513 the Agency for Health Care Administration, the Department of
514 Children and Family Services, the Department of Health, or the
515 Florida Healthy Kids Corporation is confidential and exempt from
516 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
517 (2)(a) Upon request, such information shall be disclosed
518 to:
519 1. Another governmental entity in the performance of its
520 official duties and responsibilities;
521 2. The Department of Revenue for purposes of administering
522 the state Title IV-D program; ~~or~~
523 3. The Florida Health Choices, Inc., for the purpose of
524 administering the program authorized pursuant to s. 408.910; or
525 4.~~3.~~ Any person who has the written consent of the program
526 applicant.
527 (b) This section does not prohibit an enrollee's legal
528 guardian from obtaining confirmation of coverage, dates of
529 coverage, the name of the enrollee's health plan, and the amount
530 of premium being paid.
531 (3) This exemption applies to any information identifying
532 a Florida Kidcare program applicant or enrollee held by the

533 Agency for Health Care Administration, the Department of
534 Children and Family Services, the Department of Health, or the
535 Florida Healthy Kids Corporation before, on, or after the
536 effective date of this exemption.
537 (4) A knowing and willful violation of this section is a
538 misdemeanor of the second degree, punishable as provided in s.
539 775.082 or s. 775.083.
540 Section 3. This act shall take effect July 1, 2011.

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 & Human Services
2 Quality Subcommittee
3 Representative(s) Corcoran offered the following:
4
5 **Amendment**
6 Remove line 190 and insert:
7 Insurance Regulation. Any non-risk-bearing product must be
8 approved by the corporation.

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 & Human Services
2 Quality Subcommittee
3 Representative(s) Corcoran offered the following:
4
5 **Amendment**
6 Remove lines 271-272
7

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB HSQS 11-02 Repeals Obsolete Language relating to the Agency for Health Care Administration
SPONSOR(S): Health & Human Services Quality Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health & Human Services Quality Subcommittee		Guzzo GG	Calamas CEC

SUMMARY ANALYSIS

The PCB repeals ss. 408.18, 408.185, 402.164-167, and 408.036(3)(m)(3), F.S., which are either outdated, no longer effective, or no longer being implemented.

Section 408.18, F.S., the Health Care Antitrust Guidance Act, was created to provide instruction to the health care community to help resolve antitrust uncertainty that may deter health care business activities. This section authorizes the Office of the Attorney General (OAG) to issue antitrust no-action letters, which state the intention of the OAG not to take antitrust enforcement actions with respect to the requesting party. Since the statute was enacted in 1996, the OAG has only issued four no-action letters. Section 408.185, F.S., makes information held by the OAG submitted by a member of the health care community pursuant to a request for an antitrust no-action letter confidential and exempt from chapter 119, F.S., public records requirements.

Sections 402.164-167, F.S., relate to the Statewide Advocacy Council and the Florida local advocacy councils, which consist of citizen volunteers who monitor, investigate, and determine the presence of conditions or individuals that pose a threat to the rights, health, safety, or welfare of people who receive services from state agencies. Funding and positions for the Statewide Advocacy Council were eliminated in 2010.

Section 408.036(3)(m)(3), F.S., requires the Agency for Health Care Administration (AHCA) to provide an annual report to the Legislature listing the number of certificate of need exemption requests for open-heart services received during the calendar year. The Legislature can request this information from AHCA at any time.

The PCB does not appear to have a fiscal impact.

The PCB provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Antitrust Issues

Sections 408.18, and 408.185, F.S., relate to the Health Care Community Antitrust Guidance Act and antitrust no-action letters. These sections were created in 1996 to provide instruction to the health care community, to help resolve the problem of antitrust uncertainty that may deter health care business activities that can improve the delivery of health care.

Antitrust no-action letters state the intention of the Office of the Attorney General (OAG) not to take antitrust enforcement actions with respect to the requesting party. In order to receive an antitrust no-action letter, a member of the health care community must submit a request in writing to the OAG. In addition to the request for the antitrust no-action letter, requesting parties must provide the OAG with any additional information or documents the OAG requests for its review. Section 408.185, F.S., makes information held by the OAG submitted by a member of the health care community pursuant to a request for an antitrust no-action letter confidential and exempt from chapter 119, F.S., public records requirements. The information submitted by a member of a health care community is held by the OAG and exempt from public records for one year.

Statewide Advocacy Council

Sections 402.164-167, F.S., relate to the Florida Statewide Advocacy Council (SAC) and the Florida local advocacy councils. In 2000 the Legislature created a system that includes the SAC and local advocacy councils to serve as a consumer protection mechanism without interference by an executive agency for people receiving services from four state agencies, the Agency for Health Care Administration (AHCA), the Agency for Persons with Disabilities, the Department of Children and Families, and the Department of Elder Affairs. The types of programs and facilities monitored and investigated by the volunteer network include group homes for people with developmental disabilities, adult day training programs, inpatient and outpatient mental health and substance abuse facilities, economic self-sufficiency offices, Baker Act facilities, child care facilities, and licensed foster homes.

The SAC is under the direction of the Executive Office of the Governor and has 15 volunteer members appointed by the Governor. The SAC's primary role is to oversee and supervise the operation of 25 local advocacy councils and serve as the appellate body for complaints that the local advocacy councils have not been able to resolve. Local advocacy councils are located throughout the state and organized into 15 service areas.

Statutes authorize the Governor to assign the SAC to any executive agency for administrative support services.[1] In fiscal year 2004-05, the Governor assigned this role to AHCA. The Legislature appropriated AHCA $555,437 in fiscal year 2009-10 from general revenue, including $349,566 for salaries and benefits and $137,450 for expenses, and five full time employees for SAC.[2] However, in 2010 all funding and positions were eliminated.

Certificate of Need Exemption Request Report

Section 408.036(3)(m)(3), F.S., requires AHCA to submit an annual report to the Legislature providing information concerning the number of certificate of need (CON) exemption requests for adult open-heart services it has received during the calendar year. CONs are written statements issued by AHCA

[1] S. 402.165, F.S.

[2] "Statewide Advocacy Council Activities Overlap with Other Entities, but Duplication is Minimal", Office of Program Policy Analysis and Government Accountability, Research Memorandum. October 13, 2009.

evidencing community need for new, converted, expanded or otherwise significantly modified health care facility, health service or hospice.[3] In 2004, the Legislature created an exemption from CON review for open-heart surgery services provided by hospitals meeting certain criteria.[4] Such hospitals are required to document or certify certain information to AHCA in their applications for exemption.

Effects of the Bill

The bill repeals s. 408.18, F.S., which created the Health Care Community Antitrust Guidance Act. Since the statute was enacted in 1996, the OAG has only issued four no-action letters.

The bill repeals s. 408.185, F.S., relating to a public records exemption for certain documents submitted for OAG review in regards to a request for a no-action letter. The repeal of this section will not result in these documents becoming available to the public. Section 119.15(7), F.S., provides that records made before the date of a repeal of an exemption may not be made public unless otherwise provided by law.

The bill repeals ss. 402.164-167, F.S., relating to the Statewide Advocacy Council and local advocacy councils. The SAC is currently defunct, as funding and positions were eliminated from the council in 2010.

Finally, the bill repeals s. 408.036 (3)(m)(3), F.S., relating to adult open-heart CON exemption reports submitted by AHCA. The Legislature can request this information from AHCA at any time.

B. SECTION DIRECTORY:

Section 1: Repeals ss. 408.18, 408.185, 402.164-167, and 408.036, F.S., relating to the Health Care Community Antitrust Guidance Act; Information submitted for review of antitrust issues; Legislative intent, definitions; Florida Statewide Advocacy Council; Florida local advocacy councils; Duties of state agencies that provide client services relating to the Florida Statewide Advocacy Council and the Florida local advocacy councils; and projects subject to review.

Section 2. Provides an effective date of July 1, 2011.

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.

[3] S. 408.032(3), F.S.
[4] S. 408.036(3)(m), Ch. 2004-383, Laws of Florida.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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 health and human services; repealing s.
3 408.18, F.S., relating to the health care community
4 antitrust guidance act; repealing s. 408.185, F.S.,
5 relating to information submitted for review of antitrust
6 issues; repealing s. 402.164, F.S., relating to
7 legislative intent for the Florida Statewide Advocacy
8 Council; repealing s. 402.165, F.S., relating to the
9 Florida Statewide Advocacy Council; repealing s. 402.166,
10 F.S., relating to the Florida local advocacy councils;
11 repealing s. 402.167, F.S., relating to the duties of
12 state agencies that provide clients services relating to
13 the Florida Statewide Advocacy Council and the Florida
14 local advocacy councils; repealing s. 408.036(3)(m)(3),
15 F.S., relating to an annual report submitted to the
16 legislature by AHCA; providing an effective date.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Sections 408.18, 408.185, 402.164, 402.165,
21 402.166, 402.167, and 408.036(3)(m)(3), Florida Statutes, are
22 repealed.
23 Section 2. This act shall take effect July 1, 2011.

V

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 619 Sale or Lease of a County, District, or Municipal Hospital
SPONSOR(S): Hooper
TIED BILLS: **IDEN./SIM. BILLS:** SB 1448

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee		Mathieson	Calamas
2) Community & Military Affairs Subcommittee			
3) Justice Appropriations Subcommittee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

House Bill 619 amends s. 155.40, F.S., to require that the governing board of a county, district or municipal hospital, prior to completing a proposed sale or lease of the hospital, seek the approval of the Office of the Attorney General (OAG).

The bill establishes a process for the OAG to follow for review of a proposed sale or lease following receipt of certain information from the board, and defines certain terms. The OAG has 60 days to complete and publish a report of the proposed transaction – approving, amending or denying a sale or lease. Parties adversely affected by the OAG's decision appear to have administrative appeal rights under the Administrative Procedures Act, ch. 120, F.S.

The bill has a significant recurring fiscal impact on the OAG, which is requesting an additional 3 full time equivalents (FTEs) to implement this function.

The bill provides for an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

County, district and municipal hospitals are created by law. Each hospital is established pursuant to a special enabling act,[1] rather than a general act.[2] The special act sets out the hospital authority's power to levy taxes to support the maintenance of the hospital, the framework for the governing board and defines the ability to issue bonds. There are currently 31 hospitals with various forms of county, district or municipal ownership in Florida.[3]

The process for the sale or lease of a county, district or municipal hospital is established by s. 155.40, F.S. Currently, the authority to make this decision and to negotiate such a transaction is given to the governing board that is selling the hospital.[4] A hospital can be sold or leased to for-profit or a not-for-profit Florida corporation, and must be in the best interest of the public.[5] The board must publically advertise both the meeting at which the proposed sale or lease will be discussed,[6] and the offer to accept proposals from all interested and qualified purchasers.[7] Any lease, contract or agreement must contain the following terms:

- The articles of incorporation of the corporation are subject to approval of the board.
- A not-for-profit corporation must become qualified under s. 501(c)(3) of the U.S. Internal Revenue Code.
- Provision for orderly transition of the operation and management of the facilities.
- The facility returns to the county, district or municipality on termination of the contract, lease or agreement.
- Provide for the continued treatment of indigent patients pursuant to law. [8]

For the sale or lease to be considered a complete sale of the public agency's interest in the hospital the purchasing entity must:

- Acquire 100 per cent ownership of the hospital enterprise;
- Purchase the physical plant of the hospital facility and have complete responsibility for the operation and maintenance thereof, regardless of the underlying ownership of the real property;
- Not receive public funding, other than by contract for the payment of medical services provided to patients for which the public agency has responsibility to pay;
- Take control of decision-making or policy-making for the hospital from the public agency seller;
- Not receive substantial investment or loans from the seller;
- Not be created by the public agency seller; and
- Primarily operate for its own interests and not those of the public agency seller.[9]

[1] S. 189.429 required all special districts with more than one special act to submit to the Legislature a codification of all existing special acts by 12-31-2004.
[2] S. 155.04, F.S., allows a county, upon receipt of a petition signed by at least 5 per cent of resident freeholders, may levy an ad valorem tax or issue bonds to pay for the establishment and maintenance of a hospital. S. 155.05, F.S., gives a county the ability to found a hospital without raising bonds or an ad valorem tax, utilizing available discretionary funds. However, an ad valorem tax can be levied for the ongoing maintenance of the hospital.
[3] This number includes psychiatric hospitals. Agency for Health Care Administration email March 3, 2011, on file with staff.
[4] S. 155.40(1), F.S.
[5] S. 155.40(1), F.S.
[6] In accordance with s. 286.0105, F.S.
[7] In accordance with s. 255.0525, F.S.
[8] Specifically, the Florida Health Care Responsibility Act, ss. 154.301-154.316, F.S., and ch. 87-92, Laws of Florida. S. 155.40(2), F.S.
[9] S. 155.40(8)(a), F.S.

The OAG reviews the proposed transaction with regard to any anti-competitive issues.[10] The OAG has charitable trust authority to review transactions that would implicate trusts where the public hospital entity was the beneficiary. [11]

Effect of the Proposed Changes

The bill requires the OAG to approve any proposed sale or lease of a hospital by a county, district or municipality. The bill amends s. 155.40, F.S., detailing the process to determine that a sale or lease should be approved, approved with modifications or rejected.

The bill amends s. 155.40(4), F.S., requiring the hospital's governing board to determine that operating the hospital is no longer in the public's interest, and to ascertain whether there are any interested and qualified purchasers or lessees. The bill adds that the governing board shall receive proposals from all interested and qualified purchasers. The board must ensure that it is receiving 'fair market value' from the potential transaction. Fair market value is defined as the most probable price that the asset would bring in a competitive and open market under all conditions requisite to a fair sale or lease, with interested and qualified parties acting prudently and knowledgeably, and with a reasonable time allowed for the asset to be exposed to the open market.[12]

The governing board is then required to publish its findings and include the basis for choosing a particular proposal. The report from the board must include determinations that:

- The proposed transaction represents fair market value;
- The transaction constitutes the best use of the hospital facilities;
- There will be a reduction or elimination of the ad valorem or other tax revenues that support the hospital; and
- The hospital will continue to provide health care to all residents of the community, especially the indigent, the uninsured and the underinsured.

The bill requires that the governing board submit information to the OAG for approval, within 120 days of the anticipated closing date of the proposed transaction, that includes a description of the facilities, available valuations, an independent fairness evaluation, copies of all other proposals received and any financial or economic analyses.

Upon receipt of the request, the OAG then has 30 days to publish a notice of proposed transaction in a newspaper of general circulation within the county where the hospital is located and also the Florida Administrative Weekly. In the course of the approval process, the bill gives the OAG the ability to compel a party to appear before it to provide testimony, to give documents or to answer written interrogatories. If a person fails to comply, the OAG may appeal to an appropriate court for enforcement.

The bill allows the OAG to acquire external assistance to review any proposed transaction, and to

---

[10] The OAG is responsible for enforcing state and federal antitrust laws, and the anti-trust division works to stop violations that harm competition and adversely impact the citizens of Florida. Under ch. 542, F.S., the OAG has the authority to bring actions against individuals or entities that commit state or federal antitrust violations, including bid-rigging, price-fixing, market or contract allocation, and monopoly-related actions. *see* ch. 542, F.S.

[11] Pursuant to assert the rights of qualified beneficiaries with respect to charitable trusts, s. 736.0110(3), F.S., and with respect to the dissolution of not-for-profit corporations, ss. 617.1420, 617.1430, 617.2003, F.S. The OAG notes that the review under this authority varies considerably from transaction to transaction, and can be very labor intensive. This is especially the case in transactions that involve mergers of competitors within the same market. OAG email on file with staff. March 18, 2011.

[12] Fair market value in Florida courts is synonymous with just valuation, and has been interpreted to mean – the amount of money which a purchaser, willing, but not obligated to buy, would pay to a seller, willing but not obligated to sell. *see* Dade County v. Miami Herald Pub. Co., 285 So. 2d. 285 (Fla. 3rd DCA 1973). This definition comes from a Connecticut law that controls the sale of non-profit hospitals in that state [C.G.S.A. s. 19a-486c] and federal regulations (the appraisal of real estate in federally related transactions Federal Register vol. 55, no. 163 Aug. 22, 1990, pp34228-29)

have these costs reimbursed by the proposed purchaser or lessee.

The bill provides for written statements of opposition to be submitted to the OAG, up to 20 days from the publication of notice of the proposed sale. At the close of the 20-day period, if there are written statements of opposition, the governing board, proposed purchaser or lessee, or other person has 10 days to submit a written response to the OAG. At the conclusion of the comment period and the receipt of all information, the OAG shall publish a report within 60 days that approves the proposed transaction, with or without modification, or denies the proposed transaction.

The report must demonstrate that the OAG has determined that the transaction:

- is permitted by law,
- results in the best use of facilities,
- does not discriminate based on profit/not-for-profit status,
- discloses conflicts of interest,
- will result in an elimination or reduction of taxes and,
- was guided by fair and reasonable procedures.

The bill itself does not provide an appeal process or other manner to challenge the final decision of the OAG. However, the OAG's decision is likely to be viewed as agency action, which would generate a right to a hearing under the Florida Administrative Procedures Act (APA).[13] The bill does not alter the OAG's duty in relation to charitable trusts, and the transaction must still be reviewed for anti-competitive issues.

B. SECTION DIRECTORY:

Section 1: Amends s. 155.40, F.S., relating to sale or lease of county, district or municipal hospitals; effect of sale.

Section 2: Amends s. 395.3036, F.S., relating to confidentiality of records of meetings of corporations that lease public hospitals or other public health care facilities.

Section 3: Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill has a significant indeterminate fiscal impact on the OAG to review proposed transaction for the sale or lease of a county, municipal or district hospital.

   The OAG estimates that, for FY 2011-2012, it will require an additional 3 FTEs to carry out this function.

[13] As defined by s. 120.52(2), F.S. This would give the Department of Administrative Hearings (DOAH) the authority to review an OAG decision upon request from a party. These decisions would also be subject to judicial review.

POSITION TITLES / NUMBER OF POSITIONS:

Assistant Attorney General / 1 FTE	51,825
Financial Investigator / 1 FTE	49,617
Paralegal Specialist / 1 FTE	23,573

	Salary	Benefits 35%	Total
Assistant Attorney General / 1 FTE	51,825	18,139	69,964
Financial Investigator / 1 FTE	49,617	17,366	66,983
Paralegal Specialist / 1 FTE	23,573	8,251	31,824
			168,770
Expense and OCO Package	10,453		31,359
Contracted Services Expert Witness Financial Consultants			50,000
			250,129

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate fiscal impact on the private sector. Prospective purchasers or lessees will be required to reimburse the OAG if outside consultants are employed to review the proposed sale. The sale or lease of a hospital could be delayed by this oversight process.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require the counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

DRAFTING ISSUES OR OTHER COMMENTS:

Several terms and standards in the bill could subject both the statute and a decision by the OAG to judicial interpretation. These include: a "fairness evaluation," the "best use of hospital facilities," non-discriminatory decision making, and "fair and reasonable" board procedures.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to the sale or lease of a county,
3 district, or municipal hospital; amending s. 155.40, F.S.;
4 requiring approval from the Attorney General for the sale
5 or lease of a county, district, or municipal hospital;
6 requiring the hospital governing board to determine by
7 certain public advertisements whether there are qualified
8 purchasers or lessees before the sale or lease of such
9 hospital; defining the term "fair-market value"; requiring
10 the board to state in writing specified criteria forming
11 the basis of its acceptance of a proposal for sale or
12 lease of the hospital; requiring the board to submit a
13 request for, and receive, approval from the Attorney
14 General before entering into any contract for sale or
15 lease of a hospital; specifying information to be included
16 in such request; requiring the Attorney General to report
17 his or her findings and decision regarding the sale or
18 lease of a hospital based on specified criteria and to
19 publish notice of such decision in the Florida
20 Administrative Weekly; authorizing the Attorney General to
21 issue subpoenas or written interrogatories for certain
22 purposes and request certain assistance during the review
23 of a proposed sale or lease transaction; authorizing
24 submission of written statements of opposition to a
25 proposed transaction, and written responses thereto, to
26 the Attorney General within a certain timeframe; amending
27 s. 395.3036, F.S.; conforming a cross-reference; providing
28 an effective date.

29
30 Be It Enacted by the Legislature of the State of Florida:
31
32 Section 1. Subsections (1) and (4) of section 155.40,
33 Florida Statutes, are amended, subsections (5) through (8) are
34 renumbered as subsections (7) through (10), respectively, and
35 new subsections (5) and (6) are added to that section, to read:
36 155.40 Sale or lease of county, district, or municipal
37 hospital; effect of sale.—
38 (1) In order that citizens and residents of the state may
39 receive quality health care, any county, district, or municipal
40 hospital organized and existing under the laws of this state,
41 acting by and through its governing board, shall have the
42 authority to sell or lease such hospital to a for-profit or not-
43 for-profit Florida corporation, and enter into leases or other
44 contracts with a for-profit or not-for-profit Florida
45 corporation for the purpose of operating and managing such
46 hospital and any or all of its facilities of whatsoever kind and
47 nature. The term of any such lease, contract, or agreement and
48 the conditions, covenants, and agreements to be contained
49 therein shall be determined by the governing board of such
50 county, district, or municipal hospital. The governing board of
51 the hospital must find that the sale, lease, or contract is in
52 the best interests of the public and must state the basis of
53 such finding. The sale or lease of such hospital is subject to
54 approval by the Attorney General. If the governing board of a
55 county, district, or municipal hospital decides to lease the
56 hospital, it must give notice in accordance with paragraph

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

57 (4)(a) or paragraph (4)(b).
58 (4) If ~~In the event~~ the governing board of a county,
59 district, or municipal hospital determines that it is no longer
60 in the public interest to own or operate such hospital and
61 elects to consider a sale or lease to a third party, the
62 governing board must first determine whether there are any
63 interested and qualified purchasers or lessees by ~~elects to sell~~
64 ~~or lease the hospital, the board shall~~:
65 (a) ~~Negotiate the terms of the sale or lease with a for-~~
66 ~~profit or not-for-profit Florida corporation and~~ Publicly
67 advertising ~~advertise~~ the meeting at which the proposed sale or
68 lease will be considered by the governing board of the hospital
69 in accordance with s. 286.0105; or
70 (b) Publicly advertising ~~advertise~~ the offer to accept
71 proposals in accordance with s. 255.0525 ~~and receive proposals~~
72 ~~from all interested and qualified purchasers~~.
73
74 The governing board shall receive proposals from all interested
75 and qualified purchasers or lessees. Any sale or lease must be
76 for fair market value~~,~~ and ~~any sale or lease~~ must comply with
77 all applicable state and federal antitrust laws. For the
78 purposes of this section, the term "fair market value" means the
79 most probable price that the asset would bring in a competitive
80 and open market under all conditions requisite to a fair sale or
81 lease, with interested and qualified parties acting prudently
82 and knowledgeably, and with a reasonable time allowed for the
83 asset to be exposed in the open market.
84 (5) A determination by a governing board to accept a

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

85 proposal for sale or lease must state, in writing, the findings
86 and basis supporting its determination. The findings must
87 include, but need not be limited to, that the proposal:
88 (a) Represents fair market value.
89 (b) Constitutes the best use of the hospital facilities.
90 (c) Has a positive impact on the reduction or elimination
91 of ad valorem or other tax revenues to support the hospital.
92 (d) Ensures that quality health care will continue to be
93 provided to all residents of the affected community,
94 particularly to the indigent, the uninsured, and the
95 underinsured.
96 (6) A governing board of a county, district, or municipal
97 hospital may not enter into a sale or lease of a hospital
98 facility without receiving the approval of the Attorney General.
99 (a) The governing board must submit a request for
100 approval, in writing, to the Attorney General within 120 days
101 before the anticipated closing date of the proposed transaction.
102 The request for approval must include:
103 1. The name and address of all parties to the transaction.
104 2. The location of the hospital and all related
105 facilities.
106 3. A description of the terms of all proposed agreements.
107 4. A copy of the proposed sale or lease agreement and any
108 related agreements, including, but not limited to, leases,
109 management contracts, service contracts, and memoranda of
110 understanding.
111 5. The estimated total value associated with the proposed
112 transaction and the proposed acquisition price and other

113 considerations.
114 6. Any valuations of the hospital's assets prepared in the
115 3 years preceding the proposed transaction date.
116 7. Any financial or economic analysis and report from any
117 expert or consultant retained by the governing board.
118 8. A fairness evaluation by an independent expert in such
119 transactions.
120 9. Copies of all other proposals and bids the governing
121 board may have received or considered as required by subsection
122 (4).
123
124 After receipt of the information required under this paragraph,
125 the Attorney General may request additional information before
126 granting approval.
127 (b) Within 30 days after receipt of the request for
128 approval, the Attorney General shall publish a notice of the
129 proposed transaction in one or more newspapers of general
130 circulation in the county where the hospital is located and in
131 the Florida Administrative Weekly. Such notice must state that
132 the Attorney General has received notice of the proposed
133 transaction, the names of the parties involved, and the means by
134 which a person may submit written comments about the proposed
135 transaction to the Attorney General.
136 (c) During the course of any proceeding required under
137 this section, the Attorney General may issue in writing and
138 cause to be served by subpoena upon any person a demand that
139 such person appear before the Attorney General to give testimony
140 or produce documents as to any matters relevant to the scope of

141 the review or may issue a written interrogatory, to be answered
142 under oath, as to any matter relevant to the scope of the review
143 and prescribing a return date that allows a reasonable time to
144 respond. If a person fails to comply with this paragraph, the
145 Attorney General may apply to any appropriate court to seek
146 enforcement of the subpoena or written interrogatory.
147 (d) The Attorney General may contract with experts or
148 consultants to assist in reviewing the proposed transaction,
149 including, but not limited to, assistance in independently
150 determining the fair market value of the proposed transaction.
151 The Attorney General shall submit any bills for such contracts
152 to the proposed purchaser or lessee. The proposed purchaser or
153 lessee must pay such bills within 30 days after receipt.
154 (e) Within 20 days after publication of notice under
155 paragraph (b), any interested person may submit to the Attorney
156 General a detailed written statement of opposition to the
157 proposed transaction. Upon expiration of such 20-day period, if
158 a written statement of opposition is submitted, the governing
159 board, the proposed purchaser or lessee, or any other person has
160 an additional 10 days in which to submit a written response to
161 the Attorney General. The Attorney General may request
162 additional information.
163 (f) Within 60 days after receipt of all information
164 required by this subsection, the Attorney General shall publish
165 a report of his or her findings and the decision to approve,
166 with or without modification, or deny the proposed transaction,
167 based upon a determination of whether the proposed transaction
168 is in substantial compliance with this subsection in the Florida

169 Administrative Weekly. In making that decision, the Attorney
170 General must determine:
171 1. That the proposed transaction is permitted by Florida
172 statutory and common law.
173 2. That the proposed transaction results in the best use
174 of the hospital facilities and assets.
175 3. That the proposed transaction does not discriminate
176 among proposed purchasers or lessees by virtue of whether a
177 proposed purchaser or lessee is a for-profit or a not-for-profit
178 Florida corporation.
179 4. Whether the governing board of the hospital publicly
180 advertised the meeting at which the proposed transaction was
181 considered by the board in compliance with s. 286.0105.
182 5. Whether the governing board of the hospital publicly
183 advertised the offer to accept proposals in compliance with s.
184 255.0525.
185 6. Whether the governing board of the hospital exercised
186 due diligence in deciding to dispose of hospital assets,
187 selecting the proposed purchaser or lessee, and negotiating the
188 terms and conditions of the disposition.
189 7. Whether the procedures used by the governing board of
190 the hospital in making its decision to dispose of its assets
191 were fair and reasonable.
192 8. Whether any conflict of interest was disclosed,
193 including, but not limited to, conflicts of interest regarding
194 members of the governing board and experts retained by the
195 parties to the transaction.
196 9. Whether the seller or lessor will receive fair market

197 value for the assets.
198 10. Whether charitable assets will be placed at
199 unreasonable risk if the transaction is financed in part by the
200 seller or lessor.
201 11. Whether the terms of any management or services
202 contract negotiated in conjunction with the transaction are fair
203 and reasonable.
204 12. Whether the proposed purchaser or lessee has made an
205 enforceable commitment to provide health care to the indigent,
206 the uninsured, and the underinsured and to provide benefits to
207 the affected community to promote improved health care.
208 13. Whether the proposed transaction will result in a
209 reduction or elimination of ad valorem or other taxes used to
210 support the hospital.
211 Section 2. Section 395.3036, Florida Statutes, is amended
212 to read:
213 395.3036 Confidentiality of records and meetings of
214 corporations that lease public hospitals or other public health
215 care facilities.—The records of a private corporation that
216 leases a public hospital or other public health care facility
217 are confidential and exempt from the provisions of s. 119.07(1)
218 and s. 24(a), Art. I of the State Constitution, and the meetings
219 of the governing board of a private corporation are exempt from
220 s. 286.011 and s. 24(b), Art. I of the State Constitution when
221 the public lessor complies with the public finance
222 accountability provisions of s. 155.40(7) ~~(5)~~ with respect to the
223 transfer of any public funds to the private lessee and when the
224 private lessee meets at least three of the five following

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

225 criteria:
226 (1) The public lessor that owns the public hospital or
227 other public health care facility was not the incorporator of
228 the private corporation that leases the public hospital or other
229 health care facility.
230 (2) The public lessor and the private lessee do not
231 commingle any of their funds in any account maintained by either
232 of them, other than the payment of the rent and administrative
233 fees or the transfer of funds pursuant to subsection (2).
234 (3) Except as otherwise provided by law, the private
235 lessee is not allowed to participate, except as a member of the
236 public, in the decisionmaking process of the public lessor.
237 (4) The lease agreement does not expressly require the
238 lessee to comply with the requirements of ss. 119.07(1) and
239 286.011.
240 (5) The public lessor is not entitled to receive any
241 revenues from the lessee, except for rental or administrative
242 fees due under the lease, and the lessor is not responsible for
243 the debts or other obligations of the lessee.
244 Section 3. This act shall take effect July 1, 2011.

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 & Human Services
2 Quality Subcommittee
3 Representative(s) Hooper offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Subsections (1) and (4) of section 155.40, are
8 amended, subsections (5) through (8) are renumbered as (14)
9 through (17), respectively, and new subsections (5), (6), (7),
10 (8), (9), (10), (11), (12) and (13) are added, to read:
11 155.40 Sale or lease of county, district or municipal
12 hospital; effect of sale.
13 (1) In order that citizens and residents of the state may
14 receive quality health care, any county, district, or municipal
15 hospital organized and existing under the laws of this state,
16 acting by and through its governing board, shall have the
17 authority to sell or lease such hospital to a for-profit or not-
18 for-profit Florida corporation, and enter into leases or other
19 contracts with a for-profit or not-for-profit Florida

20 corporation for the purpose of operating and managing such
21 hospital and any or all of its facilities of whatsoever kind and
22 nature. The term of any such lease, contract, or agreement and
23 the conditions, covenants, and agreements to be contained
24 therein shall be determined by the governing board of such
25 county, district, or municipal hospital. The governing board of
26 the hospital must find that the sale, lease, or contract is in
27 the best interests of the public and must state the basis of
28 such finding. ~~If the governing board of a county, district, or~~
29 ~~municipal hospital decides to lease the hospital, it must give~~
30 ~~notice in accordance with paragraph (4)(a) or paragraph (4)(b).~~
31 Any sale or lease of such hospital is subject to approval by a
32 circuit court.
33 (4) In the event the governing board of a county,
34 district, or municipal hospital ~~elects to sell or lease the~~
35 ~~hospital,~~ determines it is no longer in the public interest to
36 own or operate such hospital and elects to consider a sale or
37 lease to a third party, the board shall first determine whether
38 there are any qualified purchasers or lessees. In the process
39 of evaluating any potential purchasers or lessees, the board
40 shall:
41 (a) ~~Negotiate the terms of the sale or lease with a for~~
42 ~~profit or not for profit Florida corporation and p~~Publicly
43 advertise the meeting or meetings at which any proposed sale or
44 lease will be considered by the governing board of the hospital
45 in accordance with s. 286.0105; or

Amendment No. 1

46 (b) Publicly advertise the offer to accept proposals in
47 accordance with s. 255.0525 and receive proposals from all
48 interested and qualified purchasers and lessees.
49
50 Any sale or lease must be for fair market value, and any sale or
51 lease must comply with all applicable state and federal
52 antitrust laws. For the purposes of this section, fair market
53 value is the price that a seller is willing to accept and a
54 buyer is willing to pay on the open market and in an arm's-
55 length transaction.
56 (5) Any governing board determination to accept a proposal
57 for sale or lease shall state, in writing, the findings and
58 basis supporting its determination.
59 (a) The findings shall include, but need not be limited
60 to, the governing board's determination that the proposal:
61 1. Represents fair market value;
62 2. Whether there will be a reduction or elimination of ad
63 valorem or other tax revenues to support the hospital;
64 3. Ensures that quality health care will continue to be
65 provided to all residents of the affected community, and in
66 particular the indigent, the uninsured, and the underinsured;
67 and
68 4. Is otherwise in compliance with the provisions of
69 subsection (9)(a).
70 (b) The findings shall be accompanied by all information
71 and documents relevant to the governing board's determination,
72 including, but not limited to:
73 1. The name and address of all parties to the transaction;

74 2. The location of the hospital and all related
75 facilities;
76 3. A description of the terms of all proposed agreements;
77 4. A copy of the proposed sale or lease agreement and any
78 related agreements including, but not limited to, leases,
79 management contracts, service contracts, and memoranda of
80 understanding;
81 5. The estimated total value associated with the proposed
82 agreement, and the proposed acquisition price and other
83 consideration;
84 6. Any valuations of the hospital's assets prepared in the
85 three years immediately preceding the proposed transaction date;
86 7. Any financial or economic analysis and report from any
87 expert or consultant retained by the governing board;
88 8. A fairness evaluation by an independent expert in such
89 transactions; and
90 9. Copies of all other proposals and bids the governing
91 board may have received or considered in compliance with the
92 procedures required in section (4)
93 (6) Not later than 120 days prior to the anticipated
94 closing date of the proposed transaction, the governing board
95 shall make publicly available all findings and documents
96 required in section (5) and shall publish a notice of the
97 proposed transaction in one or more newspapers of general
98 circulation in the county where the majority of the physical
99 assets of the hospital are located, the names of the parties
100 involved, the means by which persons may submit written comments
101 about the proposed transaction to the governing board, and the

102 means by which persons may obtain copies of the findings and
103 documents required in section (5).
104 (7) Within twenty (20) days after the date of publication
105 of public notice, any interested person may submit to the
106 governing board a detailed written statement of opposition to
107 the transaction. In those cases where a written statement of
108 opposition has been submitted, the governing board, or the
109 proposed purchaser or lessee may submit a written response to
110 the interested party within ten (10) days of the written
111 statement of opposition due date.
112 (8) No governing board of a county, district, or municipal
113 hospital shall enter into any sale or lease of hospital
114 facilities without first having received approval from a circuit
115 court.
116 (a) The governing board shall file a petition for approval
117 in a circuit court seeking approval of the proposed transaction
118 not sooner than 30 days after publication of notice of the
119 proposed transaction.
120 (b) Any such petition for approval filed by the governing
121 board shall include all findings and documents required in
122 section (5) and certification by the governing board of
123 compliance with all requirements of this statute.
124 (c) Circuit courts shall have jurisdiction to approve the
125 sale or lease of a county, district or municipal hospital. A
126 petition for approval shall be filed in the circuit in which the
127 majority of the physical assets of the hospital are located.
128 (9) Upon filing of petition for approval, the court shall
129 issue an order, requiring all interested parties, to appear at a

130 designated time and place within the circuit where the petition
131 is filed and show why the petition should not be granted.
132 (a) Before the date set for hearing, the clerk shall
133 publish a copy of the order in one or more newspapers of general
134 circulation in the county where the majority of the physical
135 assets of the hospital are located at least once each week for
136 two (2) consecutive weeks, commencing with the first
137 publication, which shall not be less than twenty (20) days
138 before the date set for hearing. By this publication all
139 interested parties are made parties defendant to the action and
140 the court has jurisdiction of them to the same extent as if
141 named as defendants in the petition and personally served with
142 process.
143 (b) Any interested party may become a party to the action
144 by moving against or pleading to the petition at or before the
145 time set for hearing. At the hearing the court shall determine
146 all questions of law and fact and make such orders as will
147 enable it to properly consider and determine the action and
148 render a final judgment with the least possible delay.
149 (10) Upon conclusion of all hearings and proceedings, the
150 court shall render a final judgment approving or denying the
151 proposed transaction.
152 (a) In reaching its final judgment, the court shall
153 determine:
154 1. That the proposed transaction is permitted by law;
155 2. That the proposed transaction does not unreasonably
156 exclude a potential purchaser or lessee on the basis of being a
157 for profit or not-for-profit Florida corporation;

Amendment No. 1

158 3. Whether the governing board of the hospital publicly
159 advertised the meeting at which the proposed transaction was
160 considered by the board in compliance with s. 286.0105;
161 4. Whether the governing board of the hospital publicly
162 advertised the offer to accept proposals in compliance with s.
163 255.0525;
164 5. Whether the governing board of the hospital exercised
165 due diligence in deciding to dispose of hospital assets,
166 selecting the transacting entity, and negotiating the terms and
167 conditions of the disposition;
168 6. Whether any conflict of interest was disclosed,
169 including, but not limited to, conflicts of interest related to
170 members of the governing board and experts retained by the
171 parties to the transaction;
172 7. Whether the seller or lessor will receive fair market
173 value for the assets;
174 8. Whether the acquiring entity has made an enforceable
175 commitment to ensures that quality health care will continue to
176 be provided to all residents of the affected community, and in
177 particular the indigent, the uninsured, and the underinsured;
178 and
179 9. Whether the proposed transaction will result in a
180 reduction or elimination of ad valorem or other taxes used to
181 support the hospital.
182 (11) Any party to the action, has the right to seek
183 judicial review in the appellate district where the petition was
184 filed.

185 (a) All proceedings shall be instituted by filing a notice
186 of appeal or petition for review in accordance with the Florida
187 Rules of Appellate Procedure, within not more than thirty (30)
188 days after the date of the final judgment,
189 (b) In such judicial review, the reviewing court shall
190 affirm the judgment of the circuit court, unless the decision is
191 arbitrary, capricious, or not in compliance with s. 155.40.
192 (12) All costs shall be paid by the governing board,
193 except when an interested party contests the action, in which
194 case the court may assign costs to the parties at its
195 discretion.
196 (13) Any sale or lease completed before March 9, 2011 is
197 not subject to the requirements of this chapter. Any lease
198 which contained, on March 9, 2011, an option to renew or extend
199 that lease upon its expiration shall not be subject to this
200 chapter upon any renewal or extension on or after March 9, 2011.
201 (14~~5~~) In the event a hospital operated by a for-profit or
202 not-for-profit Florida corporation receives annually more than
203 $100,000 in revenues from the county, district, or municipality
204 that owns the hospital, the Florida corporation must be
205 accountable to the county, district, or municipality with
206 respect to the manner in which the funds are expended by either
207 (a) Having the revenues subject to annual appropriations
208 by the county, district, or municipality; or
209 (b) Where there is a contract to provide revenues to the
210 hospital, the term of which is longer than 12 months, the
211 governing board of the county, district, or municipality must be

Amendment No. 1

212 able to modify the contract upon 12 months notice to the
213 hospital.
214 A not-for-profit corporation that is subject to this subsection
215 and that does not currently comply with the accountability
216 requirements in this subsection shall have 12 months after the
217 effective date of this act to modify any contracts with the
218 county, district, or municipality in a manner that is consistent
219 with this subsection.
220 (15~~6~~) Unless otherwise expressly stated in the lease
221 documents, the transaction involving the sale or lease of a
222 hospital shall not be construed as:
223 (a) A transfer of a governmental function from the county,
224 district, or municipality to the private purchaser or lessee;
225 (b) Constituting a financial interest of the public lessor
226 in the private lessee; or
227 (c) Making a private lessee an integral part of the public
228 lessor's decisionmaking process.
229 (16~~7~~) The lessee of a hospital, under this section or any
230 special act of the Legislature, operating under a lease shall
231 not be construed to be "acting on behalf of" the lessor as that
232 term is used in statute, unless the lease document expressly
233 provides to the contrary.
234 (17~~8~~)(a) If, whenever the sale of a public hospital by a
235 public agency to a private corporation or other private entity
236 pursuant to this section or pursuant to a special act of the
237 Legislature reflects that:

238 1. The private corporation or other private entity
239 purchaser acquires 100 percent ownership in the hospital
240 enterprise;
241 2. The private corporation or other private entity
242 purchases the physical plant of the hospital facility and has
243 complete responsibility for the operation and maintenance of the
244 facility, regardless of ownership of the underlying real
245 property;
246 3. The public agency seller retains no control over
247 decisionmaking or policymaking for the hospital;
248 4. The private corporation or other private entity
249 purchaser receives no funding from the public agency seller
250 other than by contract for services rendered to patients for
251 whom the public agency seller has the responsibility to pay for
252 hospital or medical care;
253 5. The public agency seller makes no substantial
254 investment in or loans to the private entity;
255 6. The private corporation or other private entity
256 purchaser was not created by the public entity seller; and
257 7. The private corporation or other private entity
258 purchaser operates primarily for its own financial interests and
259 not primarily for the interests of the public agency, such a
260 sale shall be considered a complete sale of the public agency's
261 interest in the hospital.
262 (b) A complete sale of a hospital as described in this
263 subsection shall not be construed as:

Amendment No. 1

264 1. A transfer of a governmental function from the county,
265 district, or municipality to the private corporation or other
266 private entity purchaser;
267 2. Constituting a financial interest of the public agency
268 in the private corporation or other private entity purchaser;
269 3. Making the private corporation or other private entity
270 purchaser an "agency" as that term is used in statutes;
271 4. Making the private corporation or other private entity
272 purchaser an integral part of the public agency's decisionmaking
273 process; or
274 5. Indicating that the private corporation or other
275 private entity purchaser is "acting on behalf of a public
276 agency" as that term is used in statute.
277 Section 2. Section 395.3036, Florida Statutes, is amended
278 to read:
279 395.3036 Confidentiality of records and meetings of
280 corporations that lease public hospitals or other public health
281 care facilities.—The records of a private corporation that
282 leases a public hospital or other public health care facility
283 are confidential and exempt from the provisions of s. 119.07(1)
284 and s. 24(a), Art. I of the State Constitution, and the meetings
285 of the governing board of a private corporation are exempt from
286 s. 286.011 and s. 24(b), Art. I of the State Constitution when
287 the public lessor complies with the public finance
288 accountability provisions of s. 155.40(14)(~~5~~) with respect to
289 the transfer of any public funds to the private lessee and when
290 the private lessee meets at least three of the five following
291 criteria:

292 (1) The public lessor that owns the public hospital or
293 other public health care facility was not the incorporator of
294 the private corporation that leases the public hospital or other
295 health care facility.
296 (2) The public lessor and the private lessee do not
297 commingle any of their funds in any account maintained by either
298 of them, other than the payment of the rent and administrative
299 fees or the transfer of funds pursuant to subsection (2).
300 (3) Except as otherwise provided by law, the private
301 lessee is not allowed to participate, except as a member of the
302 public, in the decisionmaking process of the public lessor.
303 (4) The lease agreement does not expressly require the
304 lessee to comply with the requirements of ss. 119.07(1) and
305 286.011.
306 (5) The public lessor is not entitled to receive any
307 revenues from the lessee, except for rental or administrative
308 fees due under the lease, and the lessor is not responsible for
309 the debts or other obligations of the lessee.
310 ---
311 **T I T L E A M E N D M E N T**
312 Remove the entire title and insert:
313 A bill to be entitled
314 An act relating to the sale or lease of a county, district or
315 municipal hospital; amending s. 155.40, F.S.; requiring that the
316 sale or lease of a county, district or municipal hospital
317 receive prior approval from a circuit court; requiring the
318 hospital governing board determine by public advertisements
319 whether there are qualified purchasers or lessees before the

320 sale or lease of such hospital; defining "fair market value";
321 requiring the board to state in writing specified criteria
322 forming the basis of its acceptance for a proposal for sale or
323 lease of hospital; requiring the board to file a petition for
324 approval with the circuit court, and receive approval before any
325 transaction is finalized; specifying information to be included
326 in the petition; giving circuit court jurisdiction to approve
327 sales or leases of county, district or municipal hospitals based
328 on specified criteria; providing for publication of notice;
329 authorizing submission of written statements of opposition to a
330 proposed transaction and written responses thereto, to the
331 hospital governing board within a certain time frame; providing
332 that the hospital governing board shall pay costs associated
333 with the petition for approval, unless a party contests the
334 action; providing for a party to seek judicial review; amending
335 s. 395.3036, F.S., conforming a cross-reference; providing an
336 effective date.

HB 1193

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1193 Health Insurance
SPONSOR(S): Hudson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1754

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee		Poche	Calamas
2) Judiciary Committee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

House Bill 1193 prohibits compelling a person to purchase health insurance, with several specific exceptions. The bill does not prevent the collection of debts lawfully incurred for health insurance.

The bill does not appear to have a fiscal impact.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Patient Protection and Affordable Care Act

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act (PPACA)[1], as amended by the Health Care and Education Reconciliation Act of 2010.[2] PPACA, as amended, consists of approximately 2,700 pages of text and several hundred sections of law. The law contains comprehensive reform of the entire health care system in the United States. Arguably the most essential provision of PPACA is the individual mandate requiring every person in the United States to purchase health insurance by 2014. Those who do not purchase health insurance will be fined by the U.S. government through enforcement by the Internal Revenue Service. The fine increases from $95 in 2014 to $750 in 2016, and higher in subsequent years. Exemptions for mandatory health insurance coverage will be granted for:

- American Indians;
- Cases of extreme financial hardship;
- Those objecting to the mandatory provision for religious reasons;
- Individuals without health insurance for less than three months; and
- Individuals in prison.[3]

Legal Challenges to PPACA

On the same day that PPACA was signed into law by President Obama, Florida's Attorney General Bill McCollum filed a federal lawsuit in Pensacola challenging the constitutionality of the new law. At the time suit was filed, Florida was joined by twelve states, by and through their individual attorneys general. A total of twenty six states, including Florida, are now plaintiffs in the federal action. In total, twenty three constitutional challenges to PPACA were filed in federal courts across the country. The majority of lawsuits challenge the mandate that requires individuals to purchase health insurance. Other constitutional issues raised in the federal lawsuits include the imposition of a fine for failing to purchase health insurance, whether or not the federal government has constitutional authority to institute health care reform, establishing financial disclosure rules for doctors, and changes made to Medicaid and Medicare.

The Florida lawsuit argues, in part, that the federal government is violating the Commerce Clause of the U.S. Constitution by forcing individuals to purchase health insurance or pay a penalty. On January 31, 2011, Judge Roger Vinson of the Federal District Court for the Northern District of Florida, Pensacola Division, entered an Order granting the plaintiffs' Motion for Summary Judgment and declared the individual mandate provision of PPACA unconstitutional. Judge Vinson also ruled that, because the provisions of PPACA were rendered ineffective without the individual mandate and because the law lacked a severability clause, the entire Act was struck down as unconstitutional.

Currently, the federal government has complied with certain terms established by Judge Vinson to stay his order. The terms included a provision that the federal government seek an expedited review of the order on summary judgment by the 11th Circuit Court of Appeals in Atlanta. The federal government filed an appeal and petitioned for expedited review on March 8, 2011. The 11th Circuit has scheduled the deadlines for filing briefs, beginning with the federal government's brief due on April 4, 2011. Based

---

[1] P.L. 111-148, 124 Stat. 119 (2010).
[2] P.L. 111-152, 124 Stat. 1029 (2010).
[3] Hinda Chaikind, et al., Private Health Insurance Provisions in Senate-Passed H.R. 3590, the Patient Protection and Affordable Care Act, CRS Report R40942.

on the briefing schedule, oral argument will likely be held in early June 2011. An opinion is likely to be issued in late summer or early fall 2011.

Florida Health Insurance Mandates

Florida law does not require state residents to have health insurance. However, Florida law does require drivers to carry Personal Injury Protection (PIP), which includes certain health care coverage, as a condition of receiving a state driver's license.[4] Florida also requires most employers to carry workers' compensation insurance, which includes certain health care provisions for injured workers.[5]

Effect of Proposed Changes

The bill prohibits compelling any person[6] to purchase health insurance, with several exceptions. A person may be compelled to purchase health insurance only as a condition of:

- Public employment;
- Voluntary participation in a state or local benefit;
- Operating a dangerous instrumentality[7];
- Undertaking an occupation having a risk of occupational injury or illness;
- An order of child support; or
- Activity between private persons.

Because the bill proposes to create an unnumbered section of law and the term "insurance" is not defined in the bill, it is unclear if, or which, existing definitions of "insurance" found throughout Florida Statutes explicitly apply to the terms of this bill.

The bill expressly provides that its terms do not prohibit the collection of debts lawfully incurred for health insurance.

B. SECTION DIRECTORY:

Section 1: Creates an unnumbered section of law relating to prohibition against requiring the purchase of health insurance; exceptions.
Section 2: Provides an effective date upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

---

[4] S. 627.736, F.S.
[5] S. 440.10(1)(a), F.S.
[6] S. 1.01(3), F.S., defines "person" as including individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.
[7] A "dangerous instrumentality" is defined as anything which has the inherent capacity to place people in peril, either in itself (e.g. dynamite), or by a careless use of it (e.g. boat); *see* Black's Law Dictionary, 8th Ed.; In Florida, motor vehicles are dangerous instrumentalities. *See* Southern Cotton Oil Co. v. Anderson, 86 So. 629 (Fla. 1920). Forklifts have also been declared dangerous instrumentalities. *See* Harding v. Allen-Laux, Inc., 559 So.2d 107 (Fla. 2nd DCA 1990). Golf carts are dangerous instrumentalities in Florida. *See* Meister v. Fisher, 462 So.2d 1071 (Fla. 1984). Lastly, vessels have been statutorily determined to be dangerous instrumentalities. *See* s. 327.32, F.S. (Vessels are defined in s. 327.02(39), F.S., as synonymous with boat as referenced in s. 1(b), Art. VII of the Florida Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water). These are examples of dangerous instrumentalities in Florida and do not encompass all vehicles, items, or materials that may be considered dangerous instrumentalities in common law by the courts of Florida.

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Citizens of the state of Florida cannot be forced to spend money on health insurance by state law, except in very limited circumstances that affect a very small percentage of the population.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

This bill will prohibit any state laws that require any person to purchase health insurance. It is unclear at this time how the bill will affect the Legislature's ability to implement the provisions of PPACA, should it ultimately be found constitutional and implemented. The federal preemption doctrine may be invoked in determining the impact of the bill on the Legislature's potential obligations to see that the provisions of PPACA are made effective in Florida.

The federal preemption doctrine is derived from the Supremacy Clause of the U.S. Constitution[8], which reads, in part, "...Constitution and the laws of the U.S. ... shall be the supreme law of the land...anything in the constitutions or laws of any State to the contrary notwithstanding." In other words, federal law, whether found in the Constitution or statute, will trump state law.

[8] Article VI, U.S. Constitution

Preemption may be express or implied, and is compelled whether Congress' command is explicitly stated within the language of the statute or is implicitly contained in its structure and purpose.[9] Preemption is implied when there is a conflict between a federal law and a state law.[10] There is a conflict between federal law and state law when the dictates of both laws cannot be complied with or where dual compliance with the laws may be technically possible but the state law creates an obstacle to fulfilling the federal policy and goals.[11]

Assuming that PPACA is found to be constitutional and is implemented as the law of the land, this bill will conflict with the individual mandate provision of the Act. Under the current doctrine of federal preemption, this bill may be found to be implicitly preempted by PPACA.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The term "insurance" is undefined in the bill. Because the bill proposes to create an unnumbered section of Florida law, the existing definitions of "insurance" do not explicitly apply. It is recommended that the bill be amended to define "insurance" or to align the language of the bill with an established section of law, which will allow all definitions associated with the section to apply to the language of the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

---

[9] *See* FMC Corp. v. Holliday, 498 U.S. 52, 56-57, 111 S.Ct. 403, 112 L.Ed.2d 356 (1990).
[10] *See* Talbott v. Am. Isuzu Motors, Inc., 934 So.2d 643, 645 (Fla. 2nd DCA 2006).
[11] *See id.*

1 A bill to be entitled
2 An act relating to health insurance; prohibiting a person
3 from being compelled to purchase health insurance except
4 under specified conditions; specifying that the act does
5 not prohibit the collection of certain debts; providing an
6 effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Prohibition against requiring the purchase of
11 health insurance; exceptions.—
12 (1) A person may not be compelled to purchase health
13 insurance, except as a condition of:
14 (a) Public employment;
15 (b) Voluntary participation in a state or local benefit;
16 (c) Operating a dangerous instrumentality;
17 (d) Undertaking an occupation having a risk of
18 occupational injury or illness;
19 (e) An order of child support; or
20 (f) Activity between private persons.
21 (2) This section does not prohibit the collection of debts
22 lawfully incurred for health insurance.
23 Section 2. This act shall take effect upon becoming a law.

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 & Human Services
2 Quality Subcommittee
3 Representative(s) Hudson offered the following:
4
5 **Amendment (with title amendment)**
6 Remove lines 10-11 and insert:
7 Section 1. Section 624.24, Florida Statutes, is created to
8 read:
9 Section 624.24 Prohibition against requiring the purchase
10 of health insurance; exceptions.-
11
12
13 ---
14 **T I T L E A M E N D M E N T**
15 Remove lines 2-6 and insert:
16 An act relating to health insurance; creating s. 624.24, F.S.,
17 relating to prohibiting a person from being compelled to
18 purchase health insurance except under specified conditions;

Amendment No. 1

19 specifying that the act does not prohibit the collection of
20 certain debts; providing an effective date.

HB 1127

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1127 Abortions
SPONSOR(S): Porter and others
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

This bill amends chapter 309, F.S., relating to termination of pregnancies by:

- Requiring an ultrasound for all patients, prior to an abortion procedure.
- Requiring all patients to be offered an opportunity to view their live ultrasound images and have an explanation given, with certain exceptions.
- Providing an option of the patient to decline the opportunity to view her ultrasound images.
- Requiring the patient to be provided with written materials that describe the stages of fetal development.

The bill appears to have no fiscal impact.

The effective date of the bill is July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

In 2008, there were 1.21 million abortions nationwide.[1] This same year, 22 percent of all pregnancies (excluding miscarriages) resulted in abortion.[2] According to the most recent statistics available, in 2008, there were 94,360 abortions in Florida[3], while there were 231,657 live births.[4] This amounts to approximately 2 abortions for every 5 births.

The Woman's Right to Know Act

The Woman's Right to Know Act (Act) is Florida's informed consent law related to abortion procedures and was enacted by the Legislature in 1997.[5] The Act requires that, a patient be provided with the following information in person prior to obtaining an abortion:

- The nature and risks of undergoing or not undergoing the proposed procedure that a reasonable patient would consider material to making a knowing and willful decision of whether to terminate a pregnancy;
- The probable gestational age of the fetus at the time the procedure is to be performed; and
- The medical risks to the patient and fetus of carrying the pregnancy to term.[6]

The patient must also be provided printed materials that include a description of the fetus, a list of agencies that offer alternatives to abortion, and detailed information about the availability of medical assistance benefits for prenatal care, childbirth and neonatal care. The written materials must be prepared and provided by the Department of Health (department) and the patient has the option to view the materials provided.[7]

The patient must execute a written acknowledgement that she has received all of the above information prior to obtaining the abortion. The Act provides for disciplinary action against a physician who fails to comply.[8]

The requirements above do not apply if the abortion is being obtained out of medical necessity.[9]

Shortly after the enactment of the Woman's Right to Know Act, its validity was challenged under the Florida and federal constitutions. The plaintiff physicians and clinics successfully enjoined the enforcement of the Act pending the outcome of the litigation, which injunction was upheld on appeal.[10] Thereafter, the plaintiffs were successful in obtaining a summary judgment against the state on the grounds that the Act violated the right to privacy under Art. I., s. 23 of the Florida Constitution and was

---

[1] The Guttmacher Institute, Abortion Incidence and Access to Services in the United States, 2008.
[2] *Id.*
[3] The Guttmacher Institute, Abortion Incidence and Access to Services in the United States, 2008.
[4] Florida Department of Health, Department of Vital Statistics, 2008.
[5] S. 390.0111(3), F.S.
[6] *Id.*
[7] *Id*
[8] S. 390.0111(3)(c), F.S.
[9] Two physicians certify in writing to the fact that, to a reasonable degree of medical probability, the abortion is necessary to save the life or preserve the health of the pregnant patient; or the physician certifies in writing to the medical necessity for legitimate emergency medical procedures for abortion in the third trimester, and another physician is not available for consultation.
[10] *Florida v. Presidential Women's Center*, 707 So. 2d 1145 (Fla. 4th Dist. Ct. App. 1998).

unconstitutionally vague under the federal and state constitutions. This decision was also upheld on appeal.[11] The state appealed this decision to the Florida Supreme Court.[12]

The Florida Supreme Court addressed two issues raised by the plaintiffs. With regard to whether the Act violated a woman's right to privacy, the Court determined that the information required to be provided to a patient in order to obtain informed consent was comparable to those informed consent requirements established in common law and by Florida statutory law[13] applicable to other medical procedures.[14] Accordingly, the Court determined that the Act was not an unconstitutional violation of a woman's right to privacy.[15]

Second, the Supreme Court addressed the allegation that the term "reasonable patient", and the Act's reference to information about "risks" were unconstitutionally vague. The plaintiffs argued it was unclear whether the Act requires patients to receive information about "non-medical" risks, such as social, economic or other risks.[16] The Court rejected these arguments and held that ". . . .the Act constitutes a neutral informed consent statute that is comparable to the common law and to informed consent statutes implementing the common law that exist for other types of medical procedures...."[17]

The Florida Supreme Court remanded the case back to the trial court and the trial court dismissed the case for lack of jurisdiction in August, 2010.[18] North Florida Women's Health and Counseling Services, Inc., has since appealed this ruling.[19] The parties are completing the briefs on the appeal and a decision from the court is expected in 2011.

While there is currently no legal action pending which prohibits the department from complying with the requirements of the Act, the department has indicated that it will not proceed with the requirements unless the department is given rulemaking authority from the Legislature.[20] The basis for the Department's reasoning is that the Act and its subject matter are controversial and would initiate a legal challenge.[21]

<u>Ultrasounds</u>

An ultrasound is a technique involving the formation of a two-dimensional image used for the examination and measurement of internal body structures and the detection of bodily abnormalities.[22] It uses high frequency sound waves (ultrasound) to produce dynamic images (or sonograms) of organs, tissues, or blood flow inside the body. Ultrasound is used to examine many parts of the body, such as the abdomen, breast, reproductive system, heart, and blood vessels, and is increasingly being used to detect heart disease, vascular disease, and injuries to the muscles, tendons, and ligaments.[23]

---

[11] *Florida v. Presidential Women's Center*, 884 So. 2d 526 (Fla. 4th Dist. Ct. App. 2004).
[12] *Florida v. Presidential Women's Center*, 937 So. 2d 114 (Fla. 2006).
[13] *Florida v. Presidential Women's Center*, 937 So. 2d 114 (Fla. 2006), *citing* S. 766.103, F.S., (general informed consent law for medical profession, which requires that a patient receive information that would provide a "a reasonable individual" with an understanding of the procedure he or she will undergo, medically acceptable alternatives or treatments to that procedure, and the substantial potential risks or hazards associated with such procedure, such that if provided that information); Fla. Stat. § 458.324, (informed consent for patients who may be in high risk of developing breast cancer); Fla. Stat. § 458.325, (informed consent for patients receiving electroconvulsive and psychosurgical procedures); Fla. Stat. § 945.48, (express and informed consent requirements for inmates receiving psychiatric treatment).
[14] *Id.*
[15] *Florida v. Presidential Women's Center*, 937 So. 2d 114 (Fla. 2006).
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] N. Fla Women's Health & Counseling Services, Inc. v. State of Fla., Dept. of Health, et al. Case No. 4D10-3732 (Fla. 4th DCA) *appeal pending.*
[20] Affidavit of Elizabeth Renee Alsobrook, Deputy General Counsel, Fla. Dept. of Health, Feb. 5, 2010, N. Fla Women's Health & Counseling Services, Inc. v. State of Fla., Dept. of Health, et al. Case No. 4D10-3732 (Fla. 4th DCA) *appeal pending.*
[21] *Id.*
[22] *See* http://www2.merriam-webster.com/cgi-bin/mwmednlm?book=Medical&va=ultrasound, (last viewed March 13, 2009).
[23] Society of Diagnostic Medical Sonography, Medical Ultrasound Fact Sheet (2008), *available at*: http://www.sdms.org/resources/muam/default.asp (last viewed March 13, 2009).

Ultrasounds are considered to be a safe, non-invasive means of investigating a fetus during pregnancy.[24] An ultrasound may be used to detect body measurements to determine the gestational age of the fetus.[25] If the date of a patient's last menstrual cycle is uncertain, an ultrasound can be used to arrive at a correct "dating" for the patient.[26] Moreover, an ultrasound can be used to detect an ectopic pregnancy, which is a potentially fatal condition in which the fertilized egg implants outside a patient's uterus, such as in the fallopian tubes, ovaries, or abdomen.[27] Approximately one in every 50 pregnancies results in an ectopic pregnancy, and it is the leading cause of pregnancy-related death for women in their first trimester of pregnancy.[28] According to the National Abortion Federation, "[i]n the context of medical abortion, ultrasonography can help determine gestational age, assess the outcome of the procedure, and diagnose ectopic pregnancy and other types of abnormal pregnancy."[29]

Two forms of ultrasound used in pregnancy are trans-abdominal and trans-vaginal. Each have advantages and disadvantages. Trans-abdominal ultrasound provides a panoramic view of the abdomen and pelvis, whereas trans-vaginal provides a more limited pelvic view. Trans-abdominal ultrasound is noninvasive, and trans-vaginal ultrasound requires insertion of a probe into the vagina. Both are easily combined with a pelvic exam.[30] The trans-abdominal method requires a full bladder for best viewing, which is accomplished by the patient drinking several glasses of water prior to the examination. According to the National Abortion Federation, some patients find trans-vaginal ultrasound more comfortable than trans-abdominal because trans-vaginal does not require a distended bladder.[31]

Trans-abdominal ultrasound cannot always detect pregnancies under 6 weeks' gestation, while trans-vaginal ultrasound can detect pregnancies at 4.5 to 5 weeks' gestation.[32]

In Florida, clinics providing pregnancy termination procedures in the second trimester are required to have ultrasound equipment and conduct ultrasounds on patients prior to the procedure.[33] This requirement is not contingent on the number of second trimester procedures performed by the clinic; if a clinic performs only one second trimester abortion a year, that clinic must have ultrasound equipment on site and use it for that procedure. Current law also requires that the person performing the ultrasound must be either a physician or a person working in conjunction with the physician who has documented evidence of having completed a course in the operation of ultrasound equipment as prescribed by rule.[34] The Agency for Health Care Administration (AHCA) regulates abortion clinics and has developed rules pursuant to the statute.[35]

Current law does not require a clinic to review the ultrasound results with the patient prior to the abortion, unless the patient requests to review the results.[36] Current law does not require the requested review to be done with the patient as the ultrasound is being conducted.

Although providing ultrasounds for first trimester abortions is not required by law, nearly all providers already conduct ultrasounds prior to terminating a pregnancy during the first trimester. Thirty five

---

[24] *See* "Obstetric Ultrasound, A Comprehensive Guide to Ultrasound Scans in Pregnancy", *available at*: http://www.ob-ultrasound.net/ (last viewed March 13, 2009).
[25] *Id.*
[26] *Id.*
[27] *Id. See also* S. Stoppler, M.D., W. Sheil, Jr. MD. FACP, FACR, MedicineNet.com, *available at*: http://www.medicinenet.com/ectopic_pregnancy/article.htm (last viewed March 13, 2009).
[28] *Id.*
[29] 23 National Abortion Federation, Early Options, "Ultrasound Imagery in Early Pregnancy", *available at*: http://www.prochoice.org/education/cme/online_cme/m4ultrasound.asp (last viewed March 13, 2009).
[30] *Id.*
[31] *Id. See also* "Obstetric Ultrasound, A Comprehensive Guide to Ultrasound Scans in Pregnancy", *supra*, note 18.
[32] *Id.*
[33] S.390.012(3)(d)4., F.S.
[34] *Id.*
[35] *Id.*
[36] S. 390.012(3)(d)4., F.S.

abortion clinics in Florida are licensed to provide first trimester abortions.[37] Out of these 35 licensees, only 31 actually perform first trimester abortions. Of these 31 clinics, 29 already perform an ultrasound before the procedure. One clinic indicated that they perform an ultrasound prior to an abortion "sometimes," and the remaining clinic was unable to be reached after several attempts.[38]

Abortions in the third trimester of pregnancy are prohibited in Florida, unless the abortion is necessary to save the life or preserve the health of the pregnant patient.[39] In such cases, the abortion must be performed in a hospital.[40] Failure to perform a third trimester abortion in a hospital is a second degree misdemeanor punishable pursuant to s. 775.082 or s. 775.083, F.S.[41]

State Ultrasound Laws

Many states have requirements related to the provision of ultrasounds for abortions.

- 18 states regulate the provision of ultrasound by abortion providers.
- 9 states require verbal counseling or written materials to include information on accessing ultrasound services (Georgia, Indiana, Kansas, Michigan, Missouri, Nebraska, Oklahoma, Utah, Wisconsin).
- 3 states mandate that an abortion provider perform an ultrasound on each woman seeking an abortion, and require the provider to offer the woman the opportunity to view the image (Alabama, Louisiana, Mississippi).
- 2 states require the abortion provider to perform an ultrasound on each woman obtaining an abortion after the first trimester, and to offer the woman the opportunity to view the image (Arizona, Florida).
- 10 states require that a woman be provided with the opportunity to view an ultrasound image if her provider performs the procedure as part of the preparation for an abortion (Arkansas, Georgia, Idaho, Kansas, Michigan, Nebraska, Ohio, South Carolina, West Virginia, Wisconsin).
- 4 states require that a woman be provided with the opportunity to view an ultrasound image (Missouri, North Dakota, South Dakota, Utah).

Abortion Clinic Rules

The Women's Health and Safety Act, enacted in 2005[42] required AHCA to develop and enforce rules for the health, care, and treatment of persons in abortion clinics which perform second trimester abortions, and for the safe operation of such abortion clinics.[43]

Effect of Proposed Changes

Informed Consent

The bill expands statutory informed consent requirements to require confirmation of the gestational age of the fetus by an ultrasound. This would be required for all abortion procedures, regardless of the trimester. The ultrasound must be performed by the physician who is to perform the abortion or a person that completed a course in the operation of ultrasound equipment. The person performing the

---

[37] Florida Health Finder, Abortion Clinics, the Agency for Health Care Administration.
[38] Telephone survey, March 11, 2011. Survey on file with the Health and Human Services Quality Committee.
[39] S. 390.0111(1), F.S.
[40] S. 797.03(3), F.S.
[41] S. 797.03(4), F.S.
[42] Ch. 2005-95, Laws of Florida.
[43] AHCA's ability to regulate clinics only performing first trimester abortions is very limited. See *Florida Women's Medical Clinic, Inc. v. Smith,* 478 F. Supp. 233, (S.D.Fla. 1979), appeal dismissed, 620 F.2d 297, wherein the United States District Court for the Southern District of Florida found that the rules implementing the regulation of first trimester abortions were unconstitutional as invasive of the right to privacy. The rules at question addressed surgical services, nursing services, laboratory services, and facilities, and sanitation, housekeeping and maintenance. These rules have since been repealed.

ultrasound must allow the patient to view the live ultrasound images. Additionally, the images must be reviewed and explained to the patient by a physician, registered nurse, licensed practical nurse, advanced registered nurse practitioner, or physician assistant working in conjunction with the physician, prior to the patient giving informed consent for the abortion procedure.

Patients who provide certain documentation that the reason for their abortion is a result of rape, incest, domestic violence, human trafficking, or that they have been diagnosed with a condition that would create a risk of substantial and irreversible impairment of a major bodily function are not subject to view or hear an explanation of the live ultrasound images. Acceptable documentation is a copy of a restraining order, police report, medial record, or other court order or documentation.

A patient has a right to decline to view the live ultrasound images after she has been offered an opportunity. If she declines, she must complete a form acknowledging that she has chosen to reject the opportunity to view her ultrasound images. The form must also indicate that the decision not to view the images was not based on any undue influence from any third party and that this decision was of her own free will.

The bill also adds language clarifying what information is contained in the written materials that are required to be provided prior to a patient giving informed consent for an abortion pursuant to the Woman's Right to Know Act. The bill requires that the description of the fetus must include the stages of development.

Abortion Clinic Rules

The bill amends s. 390.012, F.S., relating to AHCA clinic rulemaking to reflect the requirement to allow the patient to view the live ultrasound images and receive a contemporaneous explanation of them.

The patient has the right to decline to view the live ultrasound images after she has been offered an opportunity. She must complete a form acknowledging that she has chosen to decline the opportunity to view her ultrasound images. The form must also indicate that the decision not to view the images was not based on any influence from any third party and that this decision was of her own free will.

B. SECTION DIRECTORY:

Section 1: Amends s. 390.0111 relating to termination of pregnancies.
Section 2: Amends s. 390.012 relating to powers of agency; rules; disposal of fetal remains.
Section 3: Provides a severability clause.
Section 4: Provides and effective date of July 1, 2011.

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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The bill contains a severability clause providing that if any of the provisions of this bill are held invalid, it does not affect the validity of the other provisions of this bill.

It is possible that certain provisions in this bill may be challenged under Art. I, Section 23, of the Florida Constitution, which provides for an express right to privacy. At present, there is no caselaw in Florida construing certain requirements in the bill in light of the express right to privacy; however, federal and other states' caselaw upholding similar provisions, including *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), may be persuasive.

B. RULE-MAKING AUTHORITY:

The bill provides AHCA sufficient rulemaking authority to implement its provisions. According to the Department of Health, current law does not provide sufficient rule authority to implement the provisions of the Women's Right to Know Act.[44] Additional rule authority may be needed to ensure implementation of both the current law and the bills amendments to it.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[44] Affidavit of Elizabeth Renee Alsobrook, Deputy General Counsel, Fla. Dept. of Health, Feb. 5, 2010, N. Fla Women's Health & Counseling Services, Inc. v. State of Fla., Dept. of Health, et al. Case No. 4D10-3732 (Fla. 4th DCA) *appeal pending*.

1 A bill to be entitled
2 An act relating to abortions; amending s. 390.0111, F.S.;
3 requiring that an ultrasound be performed on a woman
4 obtaining an abortion; specifying who must perform an
5 ultrasound; requiring that the ultrasound be reviewed with
6 the patient before the woman gives informed consent for
7 the abortion procedure; specifying who must review the
8 ultrasound with the patient; requiring that the woman
9 certify in writing that she declined to review the
10 ultrasound and did so of her own free will and without
11 undue influence; providing an exemption from the
12 requirement to view the ultrasound for women who are the
13 victims of rape, incest, domestic violence, or human
14 trafficking or for women who have a serious medical
15 condition necessitating the abortion; revising
16 requirements for written materials; amending s. 390.012,
17 F.S.; requiring an ultrasound for all patients regardless
18 of when the abortion is performed; requiring that live
19 ultrasound images be reviewed and explained to the
20 patient; requiring that all other provisions in s.
21 390.0111, F.S., be complied with if the patient declines
22 to view her live ultrasound images; providing for
23 severability; providing an effective date.
24
25 Be It Enacted by the Legislature of the State of Florida:
26
27 Section 1. Subsection (3) of section 390.0111, Florida
28 Statutes, is amended to read:

29 390.0111 Termination of pregnancies.—
30 (3) CONSENTS REQUIRED.—A termination of pregnancy may not
31 be performed or induced except with the voluntary and informed
32 written consent of the pregnant woman or, in the case of a
33 mental incompetent, the voluntary and informed written consent
34 of her court-appointed guardian.
35 (a) Except in the case of a medical emergency, consent to
36 a termination of pregnancy is voluntary and informed only if:
37 1. The physician who is to perform the procedure, or the
38 referring physician, has, at a minimum, orally, in person,
39 informed the woman of:
40 a. The nature and risks of undergoing or not undergoing
41 the proposed procedure that a reasonable patient would consider
42 material to making a knowing and willful decision of whether to
43 terminate a pregnancy.
44 b. The probable gestational age of the fetus, verified by
45 an ultrasound, at the time the termination of pregnancy is to be
46 performed.
47 (I) The ultrasound must be performed by the physician who
48 is to perform the abortion or by a person having documented
49 evidence that he or she has completed a course in the operation
50 of ultrasound equipment as prescribed by rule and who is working
51 in conjunction with the physician.
52 (II) The person performing the ultrasound must allow the
53 woman to view the live ultrasound images, and a physician or a
54 registered nurse, licensed practical nurse, advanced registered
55 nurse practitioner, or physician assistant working in
56 conjunction with the physician must contemporaneously review and

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

57 explain the live ultrasound images to the woman before the woman
58 gives informed consent to having an abortion procedure
59 performed. However, this sub-sub-subparagraph does not apply if,
60 at the time the woman schedules or arrives for her appointment
61 to obtain an abortion, a copy of a restraining order, police
62 report, medical record, or other court order or documentation is
63 presented which provides evidence that the woman is obtaining
64 the abortion because the woman is a victim of rape, incest,
65 domestic violence, or human trafficking or that the woman has
66 been diagnosed as having a condition that, on the basis of a
67 physician's good faith clinical judgment, would create a serious
68 risk of substantial and irreversible impairment of a major
69 bodily function if the woman delayed terminating her pregnancy.
70 (III) The woman has a right to decline to view the
71 ultrasound images after she is informed of her right and offered
72 an opportunity to view them. If the woman declines to view the
73 ultrasound images, the woman shall complete a form acknowledging
74 that she was offered an opportunity to view her ultrasound but
75 that she rejected that opportunity. The form must also indicate
76 that the woman's decision not to view the ultrasound was not
77 based on any undue influence from any third party to discourage
78 her from viewing the images and that she declined to view the
79 images of her own free will.
80 c. The medical risks to the woman and fetus of carrying
81 the pregnancy to term.
82 2. Printed materials prepared and provided by the
83 department have been provided to the pregnant woman, if she
84 chooses to view these materials, including:

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

85 a. A description of the fetus, including a description of
86 the various stages of development.
87 b. A list of entities ~~agencies~~ that offer alternatives to
88 terminating the pregnancy.
89 c. Detailed information on the availability of medical
90 assistance benefits for prenatal care, childbirth, and neonatal
91 care.
92 3. The woman acknowledges in writing, before the
93 termination of pregnancy, that the information required to be
94 provided under this subsection has been provided.
95
96 Nothing in this paragraph is intended to prohibit a physician
97 from providing any additional information which the physician
98 deems material to the woman's informed decision to terminate her
99 pregnancy.
100 (b) If ~~In the event~~ a medical emergency exists and a
101 physician cannot comply with the requirements for informed
102 consent, a physician may terminate a pregnancy if he or she has
103 obtained at least one corroborative medical opinion attesting to
104 the medical necessity for emergency medical procedures and to
105 the fact that to a reasonable degree of medical certainty the
106 continuation of the pregnancy would threaten the life of the
107 pregnant woman. If a ~~In the event no~~ second physician is not
108 available for a corroborating opinion, the physician may proceed
109 but shall document reasons for the medical necessity in the
110 patient's medical records.
111 (c) Violation of this subsection by a physician
112 constitutes grounds for disciplinary action under s. 458.331 or

113 s. 459.015. Substantial compliance or reasonable belief that
114 complying with the requirements of informed consent would
115 threaten the life or health of the patient is a defense to any
116 action brought under this paragraph.
117 Section 2. Paragraph (d) of subsection (3) of section
118 390.012, Florida Statutes, is amended to read:
119 390.012 Powers of agency; rules; disposal of fetal
120 remains.—
121 (3) For clinics that perform or claim to perform abortions
122 after the first trimester of pregnancy, the agency shall adopt
123 rules pursuant to ss. 120.536(1) and 120.54 to implement the
124 provisions of this chapter, including the following:
125 (d) Rules relating to the medical screening and evaluation
126 of each abortion clinic patient. At a minimum, these rules shall
127 require:
128 1. A medical history including reported allergies to
129 medications, antiseptic solutions, or latex; past surgeries; and
130 an obstetric and gynecological history.
131 2. A physical examination, including a bimanual
132 examination estimating uterine size and palpation of the adnexa.
133 3. The appropriate laboratory tests, including:
134 a. ~~For an abortion in which an ultrasound examination is~~
135 ~~not performed before the abortion procedure,~~ Urine or blood
136 tests for pregnancy performed before the abortion procedure.
137 b. A test for anemia.
138 c. Rh typing, unless reliable written documentation of
139 blood type is available.
140 d. Other tests as indicated from the physical examination.

141 4. An ultrasound evaluation for all patients ~~who elect to~~
142 ~~have an abortion after the first trimester~~. The rules shall
143 require that if a person who is not a physician performs an
144 ultrasound examination, that person shall have documented
145 evidence that he or she has completed a course in the operation
146 of ultrasound equipment as prescribed in rule. The physician,
147 registered nurse, licensed practical nurse, advanced registered
148 nurse practitioner, or physician assistant shall review and
149 explain~~, at the request of the patient,~~ the live ultrasound
150 images ~~evaluation results~~, including an estimate of the probable
151 gestational age of the fetus, with the patient before the
152 abortion procedure is performed, unless the patient declines
153 pursuant to s. 390.0111. If the patient declines to view the
154 live ultrasound images, the rules shall require that s. 390.0111
155 be complied with in all other respects.
156 5. That the physician is responsible for estimating the
157 gestational age of the fetus based on the ultrasound examination
158 and obstetric standards in keeping with established standards of
159 care regarding the estimation of fetal age as defined in rule
160 and shall write the estimate in the patient's medical history.
161 The physician shall keep original prints of each ultrasound
162 examination of a patient in the patient's medical history file.
163 Section 3. If any provision of this act or the application
164 thereof to any person or circumstance is held invalid, the
165 invalidity does not affect other provisions or applications of
166 the act which can be given effect without the invalid provision
167 or application, and to this end the provisions of this act are
168 severable.

169 Section 4. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1397 Abortions
SPONSOR(S): Burgin and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1748

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

SUMMARY ANALYSIS

This bill amends chapter 309, F.S., relating to termination of pregnancies. The bill:

- Expands the category of prohibited abortions in Florida to include those when the fetus has attainted viability.
- Modifies the medical emergency exception to the prohibition on third trimester or post-viability abortions.
- Requires all abortion clinics to provide conspicuous notice on any advertisements that the clinic is prohibited from performing abortions in the third trimester or after viability and requires the Agency for Health Care Administration (AHCA) to implement a rule to enforce this provision.
- Transfers the criminal statutory prohibitions found in s. 797.03, F.S., to a newly created s. 390.0111(2), F.S., and conforms them to other changes in the bill.
- Transfers the criminal statutory prohibitions found in s. 797.02, F.S., to a newly created s. 390.0111(10)3., F.S.
- Adds new statutory requirements for all abortion clinics and physicians by requiring 3 hours annual continuing education relating to ethics, requiring a physician to own and operate an abortion clinic, and requiring any abortion performed after viability to be performed in a hospital.
- Amends s. 390.0111(10), F.S., by requiring the Department of Health to permanently revoke the license of any health care practitioner who has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, violating s. 390.0111, F.S.
- Amends current reporting requirements for facilities that perform abortions to conform to standards set by the U.S. Centers for Disease Control.
- Requires AHCA to submit an annual report, using collected information from abortion clinics or physician's offices performing abortions, to the U.S. Centers for Disease Control.
- Provides a severability clause.

The bill appears to have no fiscal impact.

The effective date of the bill is July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background

In 2008, there were 1.21 million abortions nationwide.[1] This same year, 22 percent of all pregnancies (excluding miscarriages) resulted in abortion.[2] According to the most recent statistics available, in 2008, there were 94,360 abortions in Florida[3], while there were 231,657 live births.[4] This amounts to approximately 2 abortions for every 5 births

Florida law prohibits abortions in the third trimester of pregnancy unless the abortion is performed out of medical necessity.[5] The third trimester is defined as the weeks of pregnancy after the 24th week (weeks 25-birth).[6] However, AHCA data indicates that of the 125 abortions performed in the 25th week or after in 2009, 121 of them were elective, i.e., not for a medical emergency. Although Florida defines the third trimester as any week after the 24th week of pregnancy, the American Congress of Obstetricians and Gynecologists list the third trimester as weeks 29-40; the second trimester as weeks 14-28; and the first trimester as weeks 0-13.[7] First and Second trimester abortions are currently permitted in the state of Florida without limitations.

According to data collected by the Agency for Health Care Administration (AHCA), there were 6,641 abortions performed at a gestational age of 13 weeks or greater in Florida in 2009.[8] That same year, 2,986 premature babies aged 29 weeks gestation and younger survived birth[9].

Abortion Clinic Regulations

Under current law, abortion clinics in Florida can be owned by individuals or entities. There are 68 abortion clinics currently licensed by the State of Florida.[10] Six of these 68 clinics are owned by an individual, while the others are owned by companies or corporations. Only one of the six individual clinic owners in the state is listed as a medical doctor.[11]

Abortion clinics and physicians that perform abortions are subject to various laws and regulations. Some violations of these laws and regulations may result in criminal penalties, while others may result in licensure actions or administrative fines. Additionally, some laws and regulations that apply to clinics that perform abortions for one or more patients in their second trimester of pregnancy do not apply to clinics that only provide abortions to patients in their first trimester.

---

[1] The Guttmacher Institute, Abortion Incidence and Access to Services in the United States, 2008.
[2] *Id.*
[3] The Guttmacher Institute, Abortion Incidence and Access to Services in the United States, 2008.
[4] Florida Department of Health, Department of Vital Statistics, 2008
[5] S. 390.0111 (1), F.S.
[6] S. 390.011, F.S.
[7] American Congress of Obstetricians and Gynecologists, Patient Education Pamphlet: *You and Your Baby* (last viewed on March 17, 2011).
[8] The Agency for Health Care Administration, *Reported Induced Terminations of Pregnancy by reason, Jan-Dec 2009,* on file with the committee.
[9] The Department of Health, Births by Year of Birth by Calculated Gestation 2009, on file with the committee.
[10] The Agency For Health Care Administration, Florida Health Finder Report, All Abortion Clinics as of March 17, 2011 (on file with the committee).
[11] *Id.*

All abortion clinics and physicians performing abortions are subject to the following requirements:

- An abortion can only be performed in a validly licensed hospital, abortion clinic, or in a physician's office.[12]
- An abortion clinic must be operated by a person with a valid and current license.[13]
- Any third trimester abortion procedure must only be performed in a hospital.[14]
- No abortion shall be performed in the third trimester of pregnancy, unless medically necessary.[15]
- An abortion must be performed by a physician as defined in s. 390.011, F.S.[16]
- Proper medical care must be given and used for a fetus for abortions performed during viability.[17]
- Experimentation on a fetus is prohibited.[18]
- No hospital or person can be forced to participate in an abortion procedure.[19]
- Except when there is a medical emergency, an abortion may only be performed after a patient has given voluntary and written informed consent.[20]
- Fetal remains shall be disposed of in a sanitary and appropriate manner.[21]
- Parental notice must be given 48 hours before performing an abortion on a minor,[22] unless waived by a parent or otherwise ordered by a judge.

Abortion clinics that perform abortions after the first trimester are subject to additional laws and regulations which are enforced by AHCA. AHCA can impose fines for violations. For example, pursuant to s. 390.0112, F.S., such clinics are required to have proper dressing rooms, hand-washing areas, and proper exam tables; proper clinical supplies and equipment such as sterilized instruments, medication and ultrasound equipment; meet certain personnel requirements, such as having a designated medical director who has hospital privileges, surgical staff trained in counseling, and trained volunteers; provide for medical screening such as checking medical history, certain blood tests, performing an ultrasound, and performing physical examinations; have certain protocols in place, such as the use of anesthesia, intravenous access, and monitoring vital signs; and post certain protocols for patients to see, such as the required length of stay, post abortion medical instructions, and follow up visits.

Abortion Reporting

Currently facilities that perform abortions are required to submit a monthly report that contains the number of abortions performed, the reason for the abortion, and the gestational age of the fetus.[23] AHCA is required to keep this information in a central location from which statistical data can be drawn.[24] If the abortion is performed in a location other than an abortion clinic, the physician who performed the abortion is responsible for reporting the information.[25] The reports are confidential and exempt from public records requirements.[26] Fines may be imposed for violations of the reporting requirements.[27] Currently the agency collects and maintains the data but is not required to report it.

[12] s. 797.03 (1), F.S.
[13] s. 797.03 (2), F.S.
[14] s. 797.03(3), F.S. The violation of any of these provisions results in a second degree misdemeanor.
[15] s. 390.0111(1), F.S.
[16] s. 390.0111(2), F.S.
[17] s. 390.0111(4), F.S.
[18] s. 390.0111(6), F.S.
[19] s. 390.0111(8), F.S. Any person that performs or participates in an abortion that violates any of these provisions commits a third degree felony. Any person that performs or participates in an abortion that violates any of these provisions and results in the death of a woman commits a second degree felony.
[20] s. 390.0111(3), F.S. A physician violating this provision is subject to disciplinary action.
[21] s. 390.0111(8), F.S. A person who improperly disposes of fetal remains commits a second degree misdemeanor.
[22] s. 390.01114(3), F.S. A physician who violates this provision is subject to disciplinary action.
[23] s. 390.0112 (1)
[24] *Id.*
[25] s. 390.0112(2)
[26] s. 390.0112(3)

The U.S. Centers for Disease Control (CDC) requests data each year from the 50 states, the District of Columbia, and New York City to document abortion statistics nationwide.[28] While there is no national requirement for states to report this data, almost all states do.[29] The CDC uses this data to produce an annual Abortion Surveillance Report, which contains statistical data from each reporting state. The data includes the total number of abortions, the gestational age of the fetus, as well as the age, race, ethnicity, and marital status of the woman obtaining the abortion.[30] Currently, Florida only provides the CDC with the annual number of reported abortions and is therefore absent on most of the statistical charts that the Abortion Surveillance Report provides.[31] Florida is only included on 3 of the 35 total charts contained in the Abortion Surveillance Report.[32]

For example, the following chart illustrates abortion occurrences among minors and their ages.[33] No information is presented for Florida because Florida neither collects nor reports this data.

TABLE 5. Reported abortions among adolescents, by known age and reporting area of occurrence --- selected states,* United States, 2007

State/Area	Age (yrs)												Total
	<15		15		16		17		18		19		
	No.	(%)†	No.	(%)	No.	(%)	No.	(%)	No.	(%)	No.	(%)	
Alabama	104	(5.2)	144	(7.1)	223	(11.1)	324	(16.1)	557	(27.6)	666	(33.0)	**2,018**
Alaska	8	(2.5)	9	(2.8)	40	(12.3)	78	(24.1)	103	(31.8)	86	(26.5)	**324**
Arizona	146	(7.3)	97	(4.8)	189	(9.4)	295	(14.7)	575	(28.7)	700	(35.0)	**2,002**
Arkansas	39	(4.5)	52	(6.0)	104	(12.0)	147	(16.9)	254	(29.2)	274	(31.5)	**870**
Colorado	44	(2.1)	120	(5.7)	249	(11.8)	361	(17.1)	608	(28.8)	732	(34.6)	**2,114**
Connecticut	87	(3.1)	170	(6.1)	311	(11.2)	600	(21.7)	744	(26.9)	858	(31.0)	**2,770**
Delaware§	20	(3.0)	46	(6.8)	93	(13.8)	113	(16.7)	194	(28.7)	210	(31.1)	**676**
D.C.	12	(3.2)	29	(7.7)	50	(13.2)	99	(26.1)	85	(22.4)	104	(27.4)	**379**
Georgia	230	(4.7)	310	(6.3)	570	(11.6)	789	(16.0)	1,397	(28.4)	1,626	(33.0)	**4,922**
Hawaii	29	(3.8)	62	(8.1)	110	(14.3)	153	(19.9)	195	(25.4)	218	(28.4)	**767**
Idaho	5	(1.7)	14	(4.7)	33	(11.2)	52	(17.6)	96	(32.5)	95	(32.2)	**295**
Indiana	52	(2.8)	98	(5.3)	195	(10.6)	275	(15.0)	555	(30.2)	664	(36.1)	**1,839**
Iowa	25	(2.1)	79	(6.6)	156	(13.1)	197	(16.6)	328	(27.6)	404	(34.0)	**1,189**
Kansas	55	(3.1)	121	(6.7)	205	(11.4)	287	(16.0)	504	(28.1)	622	(34.7)	**1,794**
Kentucky	51	(6.4)	62	(7.7)	100	(12.5)	130	(16.2)	221	(27.5)	239	(29.8)	**803**
Louisiana	67	(5.7)	79	(6.7)	121	(10.3)	171	(14.6)	315	(26.9)	420	(35.8)	**1,173**
Maine	10	(2.0)	26	(5.3)	57	(11.6)	96	(19.5)	135	(27.4)	169	(34.3)	**493**
Massachusetts	83	(2.0)	223	(5.4)	362	(8.7)	663	(16.0)	1,204	(29.0)	1,613	(38.9)	**4,148**
Michigan	124	(2.7)	282	(6.2)	536	(11.8)	739	(16.3)	1,301	(28.7)	1,549	(34.2)	**4,531**
Minnesota	55	(2.6)	97	(4.5)	241	(11.3)	331	(15.5)	634	(29.7)	779	(36.5)	**2,137**
Mississippi	23	(5.0)	38	(8.2)	59	(12.8)	57	(12.3)	132	(28.6)	153	(33.1)	**462**
Missouri	40	(3.2)	87	(6.9)	125	(9.9)	185	(14.7)	364	(28.9)	459	(36.4)	**1,260**

---

27 S. 390.0112(4).
28 Centers for Disease Control and Prevention, Abortion Surveillance-United States, 2007 see: http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6001a1.htm?s_cid=ss6001a1_x (last viewed March 19, 2011).
29 *Id.*
30 *Id.*
31 *Id.*
32 *Id.*
33 *Id.*

Montana	8	(1.9)	26	(6.1)	52	(12.2)	71	(16.7)	111	(26.1)	158	(37.1)	**426**
Nebraska	15	(3.7)	33	(8.2)	43	(10.7)	62	(15.4)	104	(25.8)	146	(36.2)	**403**
Nevada	47	(2.8)	84	(4.9)	186	(10.9)	326	(19.1)	489	(28.6)	575	(33.7)	**1,707**
New Jersey**	104	(2.5)	222	(5.4)	480	(11.7)	809	(19.7)	1,151	(28.1)	1,333	(32.5)	**4,099**
New Mexico	39	(3.3)	69	(5.8)	162	(13.6)	219	(18.4)	328	(27.6)	373	(31.3)	**1,190**
New York	690	(3.0)	1,388	(6.0)	2,887	(12.5)	4,612	(19.9)	6,391	(27.6)	7,203	(31.1)	**23,171**
New York City	470	(3.1)	954	(6.2)	1,959	(12.8)	3,031	(19.8)	4,196	(27.4)	4,704	(30.7)	**15,314**
New York State	220	(2.8)	434	(5.5)	928	(11.8)	1,581	(20.1)	2,195	(27.9)	2,499	(31.8)	**7,857**
North Carolina	182	(3.4)	317	(5.9)	540	(10.1)	786	(14.7)	1,574	(29.5)	1,930	(36.2)	**5,329**
North Dakota	5	(2.2)	12	(5.4)	36	(16.1)	34	(15.2)	72	(32.3)	64	(28.7)	**223**
Ohio	207	(3.7)	399	(7.1)	715	(12.8)	945	(16.9)	1,513	(27.1)	1,804	(32.3)	**5,583**
Oklahoma	37	(3.3)	63	(5.6)	141	(12.6)	186	(16.6)	294	(26.2)	400	(35.7)	**1,121**
Oregon	49	(2.4)	122	(5.9)	215	(10.5)	397	(19.3)	567	(27.6)	705	(34.3)	**2,055**
Pennsylvania	211	(3.2)	401	(6.1)	707	(10.8)	977	(14.9)	1,981	(30.2)	2,280	(34.8)	**6,557**
South Carolina	51	(3.6)	91	(6.5)	150	(10.7)	354	(25.2)	365	(26.0)	395	(28.1)	**1,406**
South Dakota	0	(0.0)	11	(8.1)	11	(8.1)	24	(17.8)	34	(25.2)	55	(40.7)	**135**
Tennessee	120	(4.1)	206	(7.0)	319	(10.8)	436	(14.8)	831	(28.2)	1,040	(35.2)	**2,952**
Texas	197	(1.9)	546	(5.2)	1,030	(9.7)	1,697	(16.1)	2,825	(26.7)	4,272	(40.4)	**10,567**
Utah	17	(2.6)	33	(5.0)	54	(8.1)	87	(13.1)	220	(33.2)	252	(38.0)	**663**
Vermont	6	(2.1)	15	(5.3)	28	(9.9)	53	(18.7)	73	(25.8)	108	(38.2)	**283**
Virginia	120	(3.0)	207	(5.2)	373	(9.3)	559	(14.0)	1,200	(30.1)	1,533	(38.4)	**3,992**
Washington	109	(2.3)	248	(5.3)	557	(11.9)	937	(20.0)	1,286	(27.5)	1,542	(33.0)	**4,679**
West Virginia	12	(3.8)	28	(8.9)	28	(8.9)	54	(17.3)	98	(31.3)	93	(29.7)	**313**
Wisconsin§	45	(3.2)	85	(6.1)	173	(12.5)	248	(17.9)	379	(27.3)	459	(33.0)	**1,389**
Wyoming	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	0	(0.0)	**0**
Total	**3,580**	**(3.1)**	**6,851**	**(5.9)**	**13,016**	**(11.3)**	**20,015**	**(17.4)**	**32,387**	**(28.1)**	**39,360**	**(34.2)**	**115,209**
Abortion rate††	**1.2**		**4.4**		**8.3**		**12.5**		**21.2**		**25.8**		**10.7**
Abortion ratio§§	**753**		**495**		**404**		**337**		**337**		**291**		**337**

* Data from 46 reporting areas; excludes six states (California, Florida, Illinois, Maryland, New Hampshire, and Rhode Island) that did not report, did not report age among adolescents by individual year, or did not meet reporting standards for age.
† Percentages for the individual component categories might not add up to 100.0 because of rounding.
§ Includes residents only.
¶ Because reporting is not mandatory, information could not be obtained for all abortions performed in the District of Columbia.
** Data from hospitals and licensed ambulatory care facilities only; because reporting is not mandatory for private physicians and women's centers, information could not be obtained for all abortions performed in New Jersey.
†† Number of abortions obtained by adolescents in a given age group per 1,000 adolescents in that same age group. Adolescents aged 13--14 years were used as the denominator for adolescents aged <15 years.
§§ Number of abortions obtained by adolescents in a given age group per 1,000 live births to adolescents in that same age group.

According to the CDC, "abortion surveillance in the United States continues to provide the data needed to examine trends in the number and characteristics of women obtaining abortions. Policymakers and program planners can use these data to guide and evaluate efforts to prevent unintended pregnancies."[34]

Caselaw Related to Abortion

The Viability Standard

[34] *Id.*

In the seminal case regarding abortion, *Roe v. Wade*, the United States Supreme Court established a rigid trimester framework for determining how, if at all, states can regulate abortion.[35] One of the primary holdings in the case was that, in the third trimester, when the fetus is considered viable, states can prohibit abortions as long as the life or health of the mother is not at risk.[36]

Recognizing that medical advancements in neonatal care can advance viability to a point somewhat earlier than that of the third trimester, in *Planned Parenthood v. Casey*[37] the United States Supreme Court rejected the trimester framework in favor of limiting the states' ability to regulate abortion pre-viability.[38]

Thus, while upholding the underlying holding in *Roe* that states can "[r]egulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother[,]"[39] the Court determined that the line for this authority should be drawn at "viability," because "[T]o be sure, as we have said, there may be some medical developments that affect the precise point of viability...but this is an imprecision with tolerable limits given that the medical community and all those who must apply its discoveries will continue to explore the matter."[40] Furthermore, the Court recognized that "In some broad sense, it might be said that a woman who fails to act before viability has consented to the State's intervention on behalf of the developing child."[41]

The Medical Emergency Exception

One question before the *Casey* Court was whether the medical emergency exception to a 24-hour waiting period for an abortion was too narrow in that there were some potentially significant health risks that would not be considered "immediate."[42] The exception in question provided that a medical emergency is:

> [t]hat condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert death or for which delay will create serious risk of substantial and irreversible impairment of a major bodily function[43]

The Court determined that the exception would not significantly threaten the life and health of a woman and imposed no undue burden on the woman's right to choose.[44]

Florida Caselaw

Article I, Section 23 of the Florida Constitution provides an express right to privacy. The Florida Supreme Court has recognized the Florida's constitutional right to privacy "is clearly implicated in a woman's decision whether or not to continue her pregnancy."[45]

In *In re T.W.* the Florida Supreme Court, determined that

> [p]rior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may

---

[35] 410 U.S. 113 (1973).
[36] *Id.* at 164-165.
[37] 505 U.S. 833 (1992).
[38] The standard developed in the Casey case was the "undue burden" standard, which provides that a state regulation cannot impose an undue burden on, meaning it cannot place a substantial obstacle in the path of, the woman's right to choose. *Id.* at 876-79.
[39] *See Roe*, 410 U.S. at 164-65.
[40] *See Casey, 505 U.S.* at 870.
[41] *Id.*
[42] *Id.* at 880.
[43] *Id.* at 879.
[44] *Id.* at 880.
[45] *See In re T.W.*, 551 So.2d 1186, 1192 (Fla. 1989)(holding that a parental consent statute was unconstitutional because it intrudes on a minor's right to privacy).

> impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests....Under our Florida Constitution, the state's interest becomes compelling upon viability....Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical procedures.[46]

The court recognized that after viability, the state can regulate abortion in the interest of the unborn child so long as the mother's health is not in jeopardy.[47]

In *Womancare of Orlando v. Agwunobi,*[48] an almost identical medical emergency exception to that in the *Casey* case was upheld when Florida's parental notification statute was challenged.[49] Florida's parental notification statute, s. 390.01114, F.S., defines medical emergency as, "a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death, or for which a delay in the termination of her pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function."

Abortion-Related Crimes

Sections 797.02 and 797.03, F.S., delineate several crimes related to abortion. Section 797.02, F.S., makes it a first degree misdemeanor to advertise, in various ways, any means of "procuring the miscarriage" of a pregnant woman, or any entity or location where such might be obtained.[50]

Section 797.03, F.S., provides that abortions must be performed only in a validly licensed hospital, abortion clinic or physician's office, except in an emergency care situation. It also provides that a person cannot establish, conduct, manage or operate an abortion clinic without a valid, current license. That section prohibits performing or assisting in an abortion in the third trimester other than in a hospital. Violations of these requirements are second degree misdemeanors.[51]

Effect of Proposed Changes

With certain limited exceptions explained below, the bill expands the category of prohibited abortions in Florida to include the stage at which the fetus attains viability, as determined by the best medical judgment of the physician. Viability is defined in current law as the stage of fetal development when the life of the unborn child may with a reasonable degree of medical probability be continued indefinitely outside the womb.[52] This change takes into account the lives of those that are capable of survival outside of the womb at a stage earlier than current statute allows for. Medical advances in neonatal care have the potential to sustain life at earlier and earlier stages of birth. It is unclear if the expansion of prohibited abortion procedures to include the age of viability will result in fewer allowable abortions since the viability standard would be based on the medical judgment of the physician.

The bill modifies the medical emergency exception to the prohibition on third trimester or post-viability abortions currently in statute. In the bill, "medical emergency" is defined as a condition that, on the

[46] *Id.* at 1193-94.
[47] *Id.* at 1194.
[48] 448 F.Supp. 2d 1293, 1301 N.D. Fla. (2005).
[49] One of the underlying issues in the case was whether the parenting notice statute was unconstitutionally vague in that it allegedly failed to give physicians adequate guidance about when the medical emergency provision applies. It was this question for which the court determined that the medical emergency definition was sufficient. The medical emergency provision applies as an exception to obtaining parental notice.
[50] A first degree misdemeanor is punishable by a fine not exceeding $1,000 or imprisonment not exceeding one year. Ss. 775.082, 775.083, F.S.
[51] A second degree misdemeanor is punishable by a fine not exceeding $500 or imprisonment not exceeding 60 days. Ss. 775.082, 775.083, F.S.
[52] S. 390.0111(4), F.S.

basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death, or for which a delay in the termination of her pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function.

Current law provides that a medical emergency exists when the termination is necessary to "save the life or preserve the health of the woman."[53] Consistent with current law, the bill requires that two physicians certify in writing to the existence of the medical emergency or, one physician certifies in writing to the existence of a medical emergency and another physician is not available for consultation.

The bill requires all abortion clinics to provide conspicuous notice on any advertisements that the clinic is prohibited from performing abortions in the third trimester or after viability. Such procedures must be done in a hospital consistent with current law on third trimester procedures.

The bill transfers the criminal statutory prohibitions found in s. 797.03, F.S., to a newly created s. 390.0111(2), F.S., and conforms them to other changes in the bill. Similarly, the bill transfers the criminal statutory prohibitions found in s. 797.02, F.S. to a newly created s. 390.0111(10)3., F.S. The bill removes the criminal nature of, and penalties for, performing an abortion in any location other than a licensed hospital, abortion clinic, or physician's office.

Consistent with the transfer of these provisions to s. 390.0111, F.S., ss. 797.02 and 7979.03, F.S., are repealed in the bill.

The bill adds the following new statutory requirements for all abortion clinics and physicians:

- Physicians who perform abortions must complete a minimum of 3 hours of continuing education relating to ethics each year.[54]
- A person may not perform or assist in performing an abortion on a person after viability, other than in a hospital. A person who violates this requirement commits a second degree misdemeanor.[55]
- Other than abortion clinics licensed before October 1, 2011, an abortion clinic must be wholly owned and operated by a physician who has received training during residency in performing a dilation-and-curettage procedure or a dilation-and-evacuation procedure. A person who violates this requirement commits a second degree misdemeanor.[56]

The bill also amends s. 390.0111(10) by requiring the Department of Health to permanently revoke the license of any health care practitioner who has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, violating s. 390.0111.

The bill amends current reporting requirements for abortion clinics and physician's offices that perform abortions by requiring abortion providers to report all of the information contained within the U.S. Standard Report of Induced Termination of Pregnancy from the Centers of Disease Control and Prevention.[57] The CDC requests the following information:

- Facility name (clinic or hospital)
- City, town or location
- County

[53] s. 390.0111(1)(a)-(b), F.S.

[54] S. 456.013, F.S., is also amended to incorporate this new requirement. The bill clarifies in s. 456.013, F.S., that the 3-hour course shall count towards the total number of continuing education hours required for the profession. The course must be approved by the applicable board, or department when there is no board, as appropriate.

[55] A second degree misdemeanor is punishable by a fine not exceeding $500 or imprisonment not exceeding 60 days. Ss. 775.082, 775.083, F.S.

[56] A second degree misdemeanor is punishable by a fine not exceeding $500 or imprisonment not exceeding 60 days. Ss. 775.082, 775.083, F.S.

[57] Centers for Disease Control, Handbook on the Reporting of Induced Termination of Pregnancy, www.cdc.gov/nchs/data/misc/hb_itop.pdf (last viewed March 18, 2011).

- Hospital or clinic's patient identification number (used for querying for missing information without identifying the patient)
- Age
- Marital status
- Date of abortion
- Residence of patient
- Ethnicity
- Race
- Education attainment
- Date of last menses
- Clinical estimate of gestation
- Previous pregnancy history
- Previous abortion history
- Type of abortion procedure
- Name of attending physician & name of person completing report[58]

The bill requires the abortion clinics to report this information following each abortion.

The bill requires AHCA to submit an annual report, using the collected information from abortion clinics or physician's offices performing abortions, to the Centers for Disease Control. AHCA must also provide this report to the Governor, President of the Senate, and Speaker of the House before each general legislative session. AHCA must also include the report on its website. The bill provides that any information required to be reported may not include any personal identifying information.

The bill requires AHCA to implement an additional rule for abortion clinics performing abortions after the first trimester to ensure that conspicuous notice is provided on any of the clinic's advertisements that the clinic is prohibited from performing abortions in the third trimester or after viability.

Finally, the bill contains a severability clause providing that if any of the provisions of this bill are held invalid, it does not affect the validity of the other provisions of this bill.

B. SECTION DIRECTORY:

Section 1: Amends s. 390.0111, F.S., relating to termination of pregnancies.
Section 2: Amends s. 390.0112, F.S., relating to termination of pregnancies; reporting.
Section 3: Amends s. 390.012, F.S., relating to powers of agency; rules; disposal of fetal remains.
Section 4: Amends s. 456.013, F.S., relating to Department; general licensing provisions.
Section 5: Repeals s. 797.02, F.S., relating to advertising drugs, etc., for abortion.
Section 6: Repeals s. 797.03, F.S., relating to prohibited acts; penalties.
Section 7: Provides a severability clause.
Section 8: Provides and effective date of October 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

---

[58] *Id.*

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:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   It is possible that certain provisions in this bill, including provisions relating to the modification of the medical emergency exception, may be challenged under Art. I, Section 23, of the Florida Constitution, which provides for an express right to privacy. While the Florida Supreme Court recognized the State's compelling interest in regulating abortion post-viability in *In re T.W.*, 551 So.2d 1186 (1989), the definition of medical emergency applied to third trimester and post-viability abortions in this bill does not appear to have been before the court in this context. Other court decisions that have construed the medical health exception to include the "mental health" of the woman may be persuasive.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill at lines 99-103 provides that abortions must be performed in validly licensed hospitals, abortion clinics, or physician's offices, except for procedures that must be performed in hospitals or in "emergency –care situations." The term "emergency-care situations" is not defined in the bill and there is no cross reference to a definition elsewhere in Florida Statutes.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to abortions; amending s. 390.0111, F.S.;
3 restricting the circumstances in which an abortion may be
4 performed in the third trimester or after viability;
5 requiring an abortion clinic to provide conspicuous notice
6 on any form or medium of advertisement that the abortion
7 clinic is prohibited from performing abortions in the
8 third trimester or after viability; requiring a physician
9 that offers to perform or performs terminations of
10 pregnancy to complete continuing education related to
11 ethics; prohibiting a termination of pregnancy from being
12 performed in a location other than a validly licensed
13 hospital, abortion clinic, or physician's office;
14 prohibiting a person from establishing, conducting,
15 managing, or operating an abortion clinic without a valid,
16 current license; prohibiting a person from performing or
17 assisting in performing an abortion on a person in the
18 third trimester or after viability, other than in a
19 hospital; requiring an abortion clinic to be owned and
20 operated by a physician who has received training during
21 residency in performing a dilation-and-curettage procedure
22 or a dilation-and-evacuation procedure; providing a
23 penalty; providing that failure to dispose of fetal
24 remains in accordance with rules of the Department of
25 Health is a misdemeanor of the first degree rather than a
26 misdemeanor of the second degree; clarifying provisions
27 providing that it is a first-degree misdemeanor to
28 unlawfully advertise how to obtain a miscarriage of a

29 woman pregnant with a child; requiring the Department of
30 Health to permanently revoke the license of any health
31 care practitioner who is convicted or found guilty of, or
32 enters a plea of guilty or nolo contendere to, regardless
33 of adjudication, certain felony criminal acts; requiring
34 the Agency for Health Care Administration to submit to the
35 Governor and Legislature an annual report of aggregate
36 statistical data relating to abortions and provide such
37 data on its website; amending s. 390.0112, F.S.; requiring
38 the director of a medical facility or physician's office
39 to submit a report to the agency following each
40 termination of pregnancy on a form developed by the agency
41 consistent with the U.S. Standard Report of Induced
42 Termination of Pregnancy from the Centers for Disease
43 Control and Prevention; requiring the agency to submit
44 reported data to the Division of Reproductive Health
45 within the Centers for Disease Control and Prevention;
46 amending s. 390.012, F.S.; requiring the agency to adopt
47 rules that prescribe standards for placing conspicuous
48 notice on any form or medium of advertisement of an
49 abortion clinic which states that the abortion clinic is
50 prohibited from performing abortions in the third
51 trimester or after viability; amending s. 456.013, F.S.;
52 requiring that each applicable board require a physician
53 who offers to perform or performs terminations of
54 pregnancy to annually complete a course relating to ethics
55 as part of the licensure and renewal process; providing
56 that the course counts toward the total number of

57 continuing education hours required for the profession;
58 requiring the applicable board to approve the course;
59 repealing s. 797.02, F.S., relating to the advertising of
60 drugs for abortions; repealing s. 797.03, F.S., relating
61 to prohibited acts related to abortions and their
62 penalties; providing for severability; providing an
63 effective date.
64
65 Be It Enacted by the Legislature of the State of Florida:
66
67 Section 1. Subsections (1), (2), (7), and (10) of section
68 390.0111, Florida Statutes, are amended, and subsection (12) is
69 added to that section, to read:
70 390.0111 Termination of pregnancies.—
71 (1) TERMINATION IN THIRD TRIMESTER; WHEN ALLOWED.—
72 (a) A ~~No~~ termination of pregnancy may not ~~shall~~ be
73 performed after the period at which, in the best medical
74 judgment of the physician, the fetus has attained viability, as
75 defined in subsection (4), or on any person ~~human being~~ in the
76 third trimester of pregnancy unless the termination of pregnancy
77 is performed in a hospital, and:
78 1.~~(a)~~ Two physicians certify in writing to the existence
79 of a medical emergency, as defined in s. 390.01114(2)(d) ~~fact~~
80 ~~that, to a reasonable degree of medical probability, the~~
81 ~~termination of pregnancy is necessary to save the life or~~
82 ~~preserve the health of the pregnant woman~~; or
83 2.~~(b)~~ The physician certifies in writing to the existence
84 of a medical emergency, as defined in s. 390.01114(2)(d) ~~medical~~

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

85 ~~necessity for legitimate emergency medical procedures for~~
86 ~~termination of pregnancy in the third trimester~~, and another
87 physician is not available for consultation.
88 (b) An abortion clinic must provide conspicuous notice on
89 any form or medium of advertisement that the abortion clinic is
90 prohibited from performing abortions in the third trimester or
91 after viability.
92 (2) PHYSICIAN, LOCATION, AND CLINIC LICENSURE AND
93 OWNERSHIP REQUIREMENTS ~~PERFORMANCE BY PHYSICIAN REQUIRED~~.—No
94 termination of pregnancy shall be performed at any time except
95 by a physician as defined in s. 390.011. A physician who offers
96 to perform or performs terminations of pregnancy in an abortion
97 clinic shall annually complete a minimum of 3 hours of
98 continuing education that must relate to ethics.
99 (a) Except for procedures that must be conducted in a
100 hospital or in emergency-care situations, a termination of
101 pregnancy may not be performed in a location other than in a
102 validly licensed hospital, abortion clinic, or physician's
103 office.
104 (b) A person may not establish, conduct, manage, or
105 operate an abortion clinic without a valid current license.
106 (c) A person may not perform or assist in performing an
107 abortion on a person in the third trimester or after viability,
108 other than in a hospital.
109 (d) Other than abortion clinics licensed before October 1,
110 2011, an abortion clinic must be wholly owned and operated by a
111 physician who has received training during residency in
112 performing a dilation-and-curettage procedure or a dilation-and-

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

113 <u>evacuation procedure.</u>
114 <u>(e) A person who willfully violates paragraph (b),</u>
115 <u>paragraph (c), or paragraph (d) commits a misdemeanor of the</u>
116 <u>second degree, punishable as provided in s. 775.082 or s.</u>
117 <u>775.083.</u>
118 (7) FETAL REMAINS.—Fetal remains shall be disposed of in a
119 sanitary and appropriate manner and in accordance with standard
120 health practices, as provided by rule of the Department of
121 Health. Failure to dispose of fetal remains in accordance with
122 department rules is a misdemeanor of the <u>first</u> ~~second~~ degree,
123 punishable as provided in s. 775.082 or s. 775.083.
124 (10) PENALTIES FOR VIOLATION.—
125 <u>(a)</u> Except as provided in subsections (3) and (7):
126 <u>1.</u>~~(a)~~ Any person who willfully performs, or actively
127 participates in, a termination of pregnancy procedure in
128 violation of the requirements of this section commits a felony
129 of the third degree, punishable as provided in s. 775.082, s.
130 775.083, or s. 775.084.
131 <u>2.</u>~~(b)~~ Any person who performs, or actively participates
132 in, a termination of pregnancy procedure in violation of the
133 provisions of this section which results in the death of the
134 woman commits a felony of the second degree, punishable as
135 provided in s. 775.082, s. 775.083, or s. 775.084.
136 <u>3. A person who knowingly advertises, prints, publishes,</u>
137 <u>distributes, or circulates, or knowingly causes to be</u>
138 <u>advertised, printed, published, distributed, or circulated, any</u>
139 <u>pamphlet, printed paper, book, newspaper notice, advertisement,</u>
140 <u>or reference containing words or language giving or conveying</u>

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

141 any notice, hint, or reference to any person, or the name of any
142 person, real or fictitious, from whom, or to any place, house,
143 shop, or office where any poison, drug, mixture, preparation,
144 medicine, or noxious thing, or any instrument or means whatever,
145 or any advice, direction, information, or knowledge may be
146 obtained for the purpose of causing or procuring the miscarriage
147 of any woman pregnant with child, commits a misdemeanor of the
148 first degree, punishable as provided in s. 775.082 or s.
149 775.083.
150 (b) The department shall permanently revoke the license of
151 any licensed health care practitioner who has been convicted or
152 found guilty of, or entered a plea of guilty or nolo contendere
153 to, regardless of adjudication, a felony criminal act provided
154 in paragraph (a).
155 (12) RESPONSIBILITIES OF THE AGENCY.—Before each general
156 legislative session, the agency shall submit to the Governor,
157 the President of the Senate, and the Speaker of the House of
158 Representatives an annual report of aggregate statistical data
159 relating to abortions, which has been reported to the Division
160 of Reproductive Health within the Centers for Disease Control
161 and Prevention, and shall provide such data on its website. Any
162 information required to be reported under this subsection must
163 not include any personal identifying information.
164 Section 2. Subsection (1) of section 390.0112, Florida
165 Statutes, is amended to read:
166 390.0112 Termination of pregnancies; reporting.—
167 (1) The director of any medical facility or physician's
168 office in which any pregnancy is terminated shall submit a

169 ~~monthly~~ report to the agency following each termination, on a
170 form developed by the agency which is consistent with the U.S.
171 Standard Report of Induced Termination of Pregnancy from the
172 Centers for Disease Control and Prevention ~~which contains the~~
173 ~~number of procedures performed, the reason for same, and the~~
174 ~~period of gestation at the time such procedures were performed~~
175 ~~to the agency~~. The agency shall be responsible for keeping such
176 reports in a central place from which statistical data and
177 analysis can be made. The agency shall submit reported data to
178 the Division of Reproductive Health within the Centers for
179 Disease Control and Prevention.
180 Section 3. Paragraph (a) of subsection (3) of section
181 390.012, Florida Statutes, is amended to read:
182 390.012 Powers of agency; rules; disposal of fetal
183 remains.—
184 (3) For clinics that perform or claim to perform abortions
185 after the first trimester of pregnancy, the agency shall adopt
186 rules pursuant to ss. 120.536(1) and 120.54 to implement the
187 provisions of this chapter, including the following:
188 (a) Rules for an abortion clinic's physical facilities. At
189 a minimum, these rules shall prescribe standards for:
190 1. Adequate private space that is specifically designated
191 for interviewing, counseling, and medical evaluations.
192 2. Dressing rooms for staff and patients.
193 3. Appropriate lavatory areas.
194 4. Areas for preprocedure hand washing.
195 5. Private procedure rooms.
196 6. Adequate lighting and ventilation for abortion

197 procedures.
198 7. Surgical or gynecological examination tables and other
199 fixed equipment.
200 8. Postprocedure recovery rooms that are equipped to meet
201 the patients' needs.
202 9. Emergency exits to accommodate a stretcher or gurney.
203 10. Areas for cleaning and sterilizing instruments.
204 11. Adequate areas for the secure storage of medical
205 records and necessary equipment and supplies.
206 12. The display in the abortion clinic, in a place that is
207 conspicuous to all patients, of the clinic's current license
208 issued by the agency.
209 13. Conspicuous notice to be provided on any form or
210 medium of advertisement of the abortion clinic, which must state
211 that the abortion clinic is prohibited from performing abortions
212 in the third trimester or after viability.
213 Section 4. Subsection (7) of section 456.013, Florida
214 Statutes, is amended to read:
215 456.013 Department; general licensing provisions.—
216 (7)(a) The boards, or the department when there is no
217 board, shall require the completion of a 2-hour course relating
218 to prevention of medical errors as part of the licensure and
219 renewal process. The 2-hour course shall count towards the total
220 number of continuing education hours required for the
221 profession. The course shall be approved by the board or
222 department, as appropriate, and shall include a study of root-
223 cause analysis, error reduction and prevention, and patient
224 safety. In addition, the course approved by the Board of

225 Medicine and the Board of Osteopathic Medicine shall include
226 information relating to the five most misdiagnosed conditions
227 during the previous biennium, as determined by the board. If the
228 course is being offered by a facility licensed pursuant to
229 chapter 395 for its employees, the board may approve up to 1
230 hour of the 2-hour course to be specifically related to error
231 reduction and prevention methods used in that facility.
232 (b) In accordance with the requirement under s. 390.0111,
233 the boards, or the department when there is no board, shall
234 require a physician who offers to perform or performs
235 terminations of pregnancy in an abortion clinic to annually
236 complete a 3-hour course related to ethics as part of the
237 licensure and renewal process. The 3-hour course shall count
238 toward the total number of continuing education hours required
239 for the profession. The applicable board, or the department when
240 there is no board, shall approve the course, as appropriate.
241 Section 5. Section 797.02, Florida Statutes, is repealed.
242 Section 6. Section 797.03, Florida Statutes, is repealed.
243 Section 7. If any provision of this act is held invalid
244 with respect to any person or circumstance, the invalidity does
245 not affect other provisions or applications of the act which can
246 be given effect without the invalid provision or application,
247 and to this end the provisions of this act are declared
248 severable.
249 Section 8. This act shall take effect October 1, 2011.

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

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	______	

Committee/Subcommittee hearing bill: Health & Human Services Quality Subcommittee

Representative(s) Burgin offered the following:

Amendment

Remove lines 78-82 and insert:

(a) Two physicians certify in writing to the fact that, to a reasonable degree of medical probability, the termination of pregnancy is necessary to prevent the death of the pregnant woman or prevent the substantial and irreversible impairment of a major bodily function~~save the life or preserve the health~~ of the pregnant woman; or

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 & Human Services
2 Quality Subcommittee
3 Representative(s) Burgin offered the following:
4
5 **Amendment**
6 Remove line 100 and insert:
7 hospital or in a medical emergency as defined in s. 390.01114, a
8 termination of