

Health & Human Services Quality Subcommittee

Tuesday, March 29, 2011

9:00 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 29, 2011 09:00 am

End Date and Time: Tuesday, March 29, 2011 11:00 am

Location: 306 HOB

Duration: 2.00 hrs

Consideration of the following bill(s):

HJR 1 Health Care Services by Plakon

HB 321 Abortion by Trujillo

HB 1043 Citrus County by Smith

HB 1085 Women's Health by Plakon

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 28, 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 28, 2011.

NOTICE FINALIZED on 03/25/2011 16:21 by Villar.Melissa

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1085 Women's Health
SPONSOR(S): Plakon and others
TIED BILLS: IDEN./SIM. BILLS: SB 1282

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

SUMMARY ANALYSIS

This bill creates the Gynecologic and Ovarian Cancer Education and Awareness Act of 2011 within the Department of Health (DOH). The bill directs the DOH to implement the program to extent that funds are appropriated to support the program or federal of state resources are made available.

The bill requires the DOH to develop and provide public service announcements (PSA's) and advertisements to promote gynecologic cancer awareness. The bill specifies that the DOH is to seek federal and state resources to develop the PSAs or may use publicly available PSAs. The bill requires the DOH to formulate and execute a distribution plan and strategy to disseminate gynecologic cancer educational materials and information to targeted populations.

The bill appoints a Women's Gynecologic Cancer Information Advisory Council and provides for reimbursement of reasonable and necessary expenses.

The bill may have a significant negative fiscal impact to the state and no fiscal impact to local governments. (See Fiscal Comments.)

The bill takes effect July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Each year in the United States, approximately 71,500 women are diagnosed with gynecologic cancer, and approximately 26,500 deaths are attributed to a gynecological cancer. Gynecologic cancer is any cancer that starts in a woman's reproductive organs. There are five main gynecologic cancers (cervical, ovarian, uterine, vaginal, and vulvar).¹

According to the Centers for Disease Control and Prevention (CDC), some symptoms of gynecologic cancer include:²

- Abnormal vaginal bleeding or discharge.
- Pelvic pain or pressure.
- Abdominal or back pain.
- Bloating.
- Changes in bathroom habits.
- Itching or burning of the vulva.
- Changes in vulva color or skin, such as a rash, sores, or warts.

According to the CDC, it is unknown what exactly causes gynecologic cancers, but it is clear that certain changes in cells can cause cancer. Cell changes can be acquired or inherited. If the changes are acquired, they are caused by environmental factors, such as smoking. Almost all cervical cancers and some vaginal and vulvar cancers are caused by human papillomavirus, also called HPV, which is an acquired virus. If cell changes are inherited, they are passed from parent to child through genes.³

Florida Ovarian and Cervical Cancer Statistics

Cancer remains the second leading cause of death for Floridians, after heart disease.⁴ In 2006 there were 1,478 new cases of ovarian cancer and 907 cases of cervical cancer reported in Florida.⁵ Nearly two-thirds of cervical cancer deaths occurred in females under the age of 65.⁶ According to the Florida Office of Vital Statistics, there were 1,256 deaths attributed to ovarian and cervical cancer. According to the Agency for Health Care Administration, the total hospital charges in 2006 for patients diagnosed with ovarian and cervical cancer were approximately \$110 million.⁷

Cancer Programs in Florida

Comprehensive Cancer Control Program

The Comprehensive Cancer Control (CCC) Program, housed under the Bureau of Chronic Disease Prevention and Health Promotion in the Department of Health (DOH), was created in 2001 through a

¹ Centers for Disease Control & Prevention, Gynecologic Cancers, Campaign Materials: Gynecologic Cancer Comprehensive Brochure, available at: <http://www.cdc.gov/cancer/knowledge/> (last viewed March 27, 2011).

² *Id.*

³ *Id.*

⁴ Florida Department of Health, Florida State Cancer Plan 2010, available at: <http://www.doh.state.fl.us/Family/cancer/ccc/plan/index.html> (last viewed March 27, 2011).

⁵ Florida Department of Health, Division of Disease Control, The Florida Cancer Registry Program, Florida Annual Cancer Report: 2006 Incidence and Mortality, available at: http://www.doh.state.fl.us/Disease_ctr/epi/cancer/Annual.html (last viewed March 27, 2011).

⁶ *Id.*

⁷ *Id.*

cooperative agreement with the CDC.⁸ The program focuses on colorectal, lung, ovarian, prostate, and skin cancers. The main objective of the cooperative agreement is to reduce the cancer burden through a collaborative effort with public and private partners throughout Florida.⁹ The CCC Program strives to accomplish this mission through on-going cooperative efforts with other cancer stakeholders throughout Florida. The CCC Program offers an ovarian cancer project called Survivors Teaching Students: Saving Women's Lives (STS). The STS program, enlists ovarian cancer survivors to conduct presentations at medical and nursing schools statewide.¹⁰

The CCC Program networks with other DOH programs in coordinating activities for overlapping risk factors including tobacco use, poor nutrition, lack of physical activity, and sun exposure. Other CCC Program activities include collaborating with the CDC on various media projects, promoting healthy lifestyles, disseminating educational materials for cancer prevention and reduction, and maintaining a program-specific website.¹¹

Breast and Cervical Cancer Early Detection Program

Established in 2001 within the DOH, the Florida Breast and Cervical Cancer Early Detection (BCCEDP) Program is a breast and cervical cancer screening program that provides reduced-cost or free mammograms, clinical breast exams, and Pap smears to low-income, under insured, or uninsured females between the ages of 50 and 64 who are at or below 200% of the Federal Poverty Level.¹² The Program is funded by the CDC. Diagnostic exams are provided as needed and case management is provided to all clients. Treatment for eligible females may be paid by Medicaid with initial facilitation by case managers. All 67 Florida counties may access the BCCEDP through the 16 lead CHD sites that implement the program: Brevard, Broward, Duval, Escambia, Gadsden, Hillsborough, Jackson, Leon, Manatee, Miami-Dade, Orange, Osceola, Pasco, Pinellas, Putnam, and Volusia. Outreach, public education, and professional education are provided at both the state and local level. There is a 24-hour hotline that provides callers with information to determine where the nearest clinic is to them.

In 2009, the Legislature created the breast cancer early detection and treatment referral program.¹³ The purpose of the program is to promote referrals for the screening, detection, and treatment of breast cancer among un-served or underserved populations; educate the public regarding breast cancer and the benefits of early detection and provide referral services for persons seeking treatment.¹⁴

Cancer Control and Research Advisory Council

The Florida Cancer Control and Research Act, section 1004.435, F.S., created the Cancer Control Research Advisory Council (C-CRAB) in 1979. The C-CRAB is housed within the H. Lee Moffitt Cancer Center and Research Institute, Inc. The Council consists of 35 members, with 33 members appointed by the Governor and one each by the House and the Senate. The members represent various organizations, agencies, universities, research institutes, legislators, and the general public. The Council formulates and makes recommendations to the State Surgeon General, the Board of Governors, and the Florida state legislators. These recommendations include, but are not limited to, approval of the state cancer plan, cancer control initiatives, and the awarding of grants and contracts, as funds are available, to establish, or conduct programs in cancer control or prevention, cancer education and training, and cancer research. Technical Advisory Groups are formed by the Council to review such areas as the state cancer plan evaluation, tobacco use prevention, cancer disparities, cancer-related data, and legislative initiatives.

⁸ Florida Department of Health, Bureau of Chronic Disease Prevention and Health Promotion, An Overview of the National and State Comprehensive Cancer Control Program, available at: <http://www.doh.state.fl.us/Family/cancer/ccc/index.html> (last viewed March 27, 2011).

⁹ *Id.*

¹⁰ Florida Department of Health Bill Analysis, Economic Statement, and Fiscal Note for HB 1085 (dated March 21, 2011).

¹¹ *Supra*, note 10.

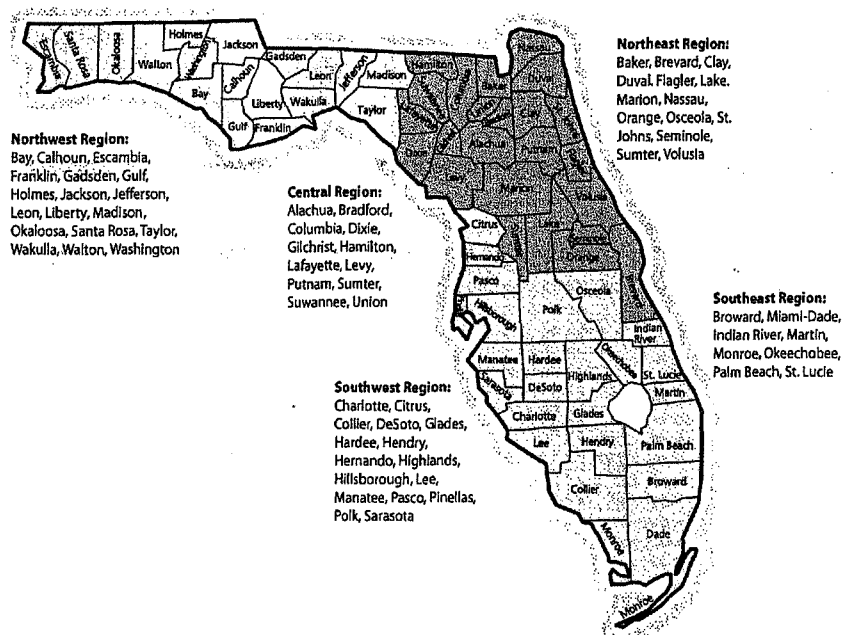
¹² Ch. 2001-52, L.O.F.

¹³ Ch. 2009-120, L.O.F.

¹⁴ S.381.932(2), F.S.

Regional Cancer Collaborative

According to the Florida Cancer Plan, due to Florida's geography and diversity, there was a need for more localized planning to create a true comprehensive cancer control plan.¹⁵ Thus, in 2000, the U.S. Congress appropriated funds to develop comprehensive regional cancer control plans in Florida. Funding was awarded to the University of Miami, Sylvester Comprehensive Cancer Center through a cooperative agreement with the CDC as part of their CCC Program. This resulted in the Florida Comprehensive Cancer Control Initiative, which established four regional cancer control collaboratives covering all 67 Florida counties (see map below).¹⁶ From 2000 to 2003, cancer control stakeholders in each of the four regions were invited to participate in a strategic planning process. From this, four regional cancer control plans were developed. In addition to regional goals, objectives, and strategies, each plan included detailed county-level cancer and demographic data, as well as a directory of cancer resources. The regional plans are integrated Florida Cancer Plan.¹⁷



Officer of Women's Health Strategy

In 2004, Florida passed legislation establishing the Officer of Women's Health Strategy within the DOH, to direct public policy to address the distinct health needs of women across the life span.¹⁸

Under s. 381.04015, F.S., it is the duty of the Officer of Women's Health Strategy to:

- Ensure that the state's policies and programs are responsive to sex and gender differences and to women's health needs across women's life spans.
- Organize an interagency Committee for Women's Health for the purpose of integrating women's health programs in current operating and service delivery structures and setting priorities for women's health.
- Assess the health status of women in the state through the collection and review of health data and trends.
- Review the state's insurance code as it relates to women's health issues.
- Work with medical school curriculum committees to develop course requirements on women's health and promote clinical practice guidelines specific to women.

¹⁵ Florida Department of Health, Florida State Cancer Plan 2010, available at: <http://www.doh.state.fl.us/Family/cancer/ccc/plan/index.html> (last viewed March 27, 2011).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Ch. 2004-350, L.O.F.

- Organize statewide Women's Health Month activities.
- Coordinate a Governor's statewide conference on women's health, co-sponsored by the agencies participating in the Committee for Women's Health and other private organizations and entities impacting women's health in the state.
- Promote research, treatment, and collaboration on women's health issues at universities and medical centers in the state.
- Promote employer incentives for wellness programs targeting women's health programs.
- Serve as the primary state resource for women's health information.
- Develop a statewide women's health plan emphasizing collaborative approaches to meeting the health needs of women.
- Promote clinical practice guidelines specific to women.
- Serve as the state's liaison with other states and federal agencies and programs to develop best practices in women's health.
- Develop a statewide, web-based clearinghouse on women's health issues and resources.
- Promote public awareness campaigns and education on the health needs of women.
- By January 15 of each year, provide the Governor, the President of the Senate, and the Speaker of the House of Representatives a report with policy recommendations for implementing the provisions of s. 381.04015, F.S.

Advisory Councils

Section 20.03(7), F.S., defines "advisory council" to mean "an advisory body created by specific statutory enactment and appointed to a function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives." Section 20.052, F.S., establishes requirements for advisory bodies created by a specific statutory enactment. An advisory body may not be created unless:

- It meets a statutorily defined purpose;
- Its powers and responsibilities conform with the definitions for governmental units in s. 20.03, F.S.;
- Its members, unless expressly provided otherwise in the State Constitution, are appointed for 4 year staggered terms; and
- Its members, unless expressly provided otherwise by specific statutory enactment, serve without additional compensation or honorarium, and are authorized to receive only per diem and reimbursement for travel expenses as provided in s. 112.061, F.S.

The Effects of the Bill

The bill creates the Gynecologic and Ovarian Cancer Education and Awareness Act of 2011 within the DOH, under the Officer of Women's Health Strategy. The bill directs the DOH to implement the program to extent that funds are appropriated to support the program or federal or state resources are made available.

The bill requires the DOH to develop and provide public service announcements (PSA's) and advertisements to promote gynecologic cancer awareness. The bill specifies that the DOH is to seek federal and state resources to develop the PSAs or may use publicly available PSAs.

The bill stipulates that a priority must be placed on providing information to consumers, patients, and health care providers regarding gynecologic cancers, to include:

- Signs and symptoms;
- Risk factors;
- Benefits of early detection through appropriate diagnostic testing; and
- Treatment options.

The DOH is required to publish gynecologic information on its website and provide if feasible, a link to the federal Centers for Disease Control and Prevention website for additional in-depth information

gynecologic health information. The bill states that the information may also be offered in audio, video, electronic or other media format.

The bill requires the DOH to formulate and execute a distribution plan and strategy to disseminate gynecologic cancer educational materials and information. The plan is suppose to recommend and encourage individual public health facilities, physicians, primary care physicians, gynecologists, private health care facilities, and hospitals to obtain, display and distribute gynecologic cancer educational materials that are made available by federal, state, and other resources to patients and consumers.

The bill appoints by October 1, 2011, a Women's Gynecologic Cancer Information Advisory Council. The council is to be chaired by the Officer of Women's Health Strategy or other appropriate officer of the DOH as determined by the Deputy Secretary for Health. The composition of the council includes:

- Health care professionals;
- Health care providers;
- Consumers;
- Patients;
- Representatives of non-profit organizations that concentrate on gynecological cancers;
- Other appropriate representative determined by the DOH.

The advisory council is required to meet at least biannually. Members are prohibited from receiving compensation for performing council duties, but are authorized to receive reimbursement of reasonable and necessary expenses.

B. SECTION DIRECTORY:

Section 1. Creates an unnumbered section, naming the act the "Gynecological and Ovarian Cancer Education and Awareness Act of 2011."

Section 2. Amends s. 381.04015, F.S. relating to Women's Health Strategy, legislative intent, and duties for the Women's Health Strategy Officer and other state agencies.

Section 3. 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:

See Fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None identified.

D. FISCAL COMMENTS:

The Department of Health estimates they would require \$545,600 General Revenue annually to implement the provisions of the bill.

This includes the cost of printing and postage for distribution of existing materials (no development costs) to approximately 2,500 health care providers serving women at highest risk for these gynecologic cancers at cost of \$4 per provider for a total of \$10,000.

The fiscal impact for the biannual Advisory Council is based on similar program's council meeting expenditures which include the cost for travel (hotel, rental car, per diem), meeting space rental, and audio-visual equipment rental for total of \$2,300 per meeting or \$4,600 annually.

The DOH estimates, unless they are able to negotiate for free airtime, that a one-time expenditure to purchase radio and television airtime for the Public Services Announcements in the following media markets: Miami / Ft. Lauderdale, Tampa/St Pete, Jacksonville, West Palm, Gainesville, Tallahassee, Pensacola, Panama City and Ft. Myers would cost \$531,000.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide the DOH authority to promulgate rules to implement any provisions contained within the bill. It appears that the DOH does not have sufficient authority in the general public health provisions in chapter 381, F.S., to adopt rules and will need specific authority from the Legislature.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill may conflict with the requirements of s. 20.03, F.S., as it relates to the creation of an advisory council. The bill does not specify an explicit purpose, powers and responsibilities, the number of members, or staggered terms, and may authorize reimbursement for expenses other than travel.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to women's health; creating the
 3 Gynecologic and Ovarian Cancer Education and Awareness Act
 4 of 2011; amending s. 381.04015, F.S.; establishing the
 5 Gynecologic and Ovarian Cancer Awareness Program in the
 6 Department of Health; requiring the Department of Health
 7 to disseminate information on gynecologic cancers to the
 8 extent that funding is available; directing the department
 9 to establish a Women's Gynecologic Cancer Information
 10 Advisory Council; providing an effective date.

11
 12 WHEREAS, one of the primary functions of the Department of
 13 Health is to reduce the number of women dying prematurely from
 14 cancer and other deadly diseases through education, research,
 15 better health care, and other means, and

16 WHEREAS, a coordinated education and awareness program
 17 developed by the department is needed to reduce the number of
 18 women in the state who die from gynecologic cancers, and

19 WHEREAS, each year in Florida more than 4,500 women are
 20 diagnosed with and 1,700 women die from gynecologic cancers, and

21 WHEREAS, ovarian cancer causes more deaths than any other
 22 gynecologic cancer and ranks fourth as a cause of cancer deaths
 23 among women in the state, and

24 WHEREAS, when ovarian cancer is found and treated in its
 25 earliest stages, the 5-year survival rate is 95 percent, and

26 WHEREAS, most women who suffer from ovarian cancer are not
 27 diagnosed until the later stages when the disease has spread and
 28 the 5-year survival rate is decreased to 46 percent, and

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29 WHEREAS, approximately half of deaths from ovarian cancer
 30 occur in women over the age of 55 and approximately one-quarter
 31 of deaths from ovarian cancer occur in women between 35 and 54
 32 years of age, and

33 WHEREAS, because early detection and treatment often mean
 34 the difference between life and death, it is important to
 35 increase awareness of the factors that put women at a higher
 36 risk for gynecologic cancers and educate women regarding the
 37 symptoms of ovarian and other forms of gynecologic cancers and
 38 the range of treatment options available to them, NOW,

39 THEREFORE,

40

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

42

43 Section 1. This act may be cited as the "Gynecologic and
 44 Ovarian Cancer Education and Awareness Act of 2011."

45 Section 2. Subsection (3) and (4) of section 381.04015,
 46 Florida Statutes, are renumbered as subsections (4) and (5),
 47 respectively, and a new subsection (3) is added to that section
 48 to read:

49 381.04015 Women's Health Strategy; legislative intent;
 50 duties of Officer of Women's Health Strategy; other state agency
 51 duties.—

52 (3) The Gynecologic and Ovarian Cancer Awareness Program
 53 is established in the Department of Health. The department
 54 shall:

55 (a) To the extent funds are appropriated for this purpose
 56 or existing federal or state resources are made available to the

57 department, place priority on providing information to
 58 consumers, patients, and health care providers regarding women's
 59 gynecologic cancers, including the signs and symptoms, risk
 60 factors, benefits of early detection through appropriate
 61 diagnostic testing, and treatment options. The department shall
 62 publish this information on its website. To the extent feasible,
 63 the department's website shall include a link directly to the
 64 Centers for Disease Control and Prevention's website for in-
 65 depth gynecologic health information. The information may also
 66 be offered in audio, video, electronic, or other media format.

67 (b) Develop and provide public service announcements and
 68 advertisements that emphasize the early warning signs and risk
 69 factors associated with gynecologic cancers, indicate how
 70 educational materials can be obtained, and encourage women to
 71 discuss the risks of gynecologic cancers with their health care
 72 providers. The department shall seek to obtain federal and state
 73 resources to develop the public service announcements or may use
 74 public service announcements developed by others, including, but
 75 not limited to, the Centers for Disease Control and Prevention,
 76 which are provided to the department for this purpose.

77 (c) Formulate and execute a distribution plan and strategy
 78 to disseminate gynecologic cancer educational materials and
 79 information. The plan shall recommend and encourage individual
 80 public health facilities to obtain gynecologic cancer
 81 educational materials made available by federal, state, and
 82 other resources and display and distribute those materials to
 83 their consumers and patients. The plan shall also recommend and
 84 encourage primary care physicians, gynecologists, private health

85 care facilities, and hospitals to adopt procedures to display
 86 and distribute gynecologic cancer educational materials to their
 87 consumers and patients, including, but not limited to, those
 88 materials made available by federal, state, and other resources.

89 (d) By October 1, 2011, appoint a Women's Gynecologic
 90 Cancer Information Advisory Council to be chaired by the Officer
 91 of Women's Health Strategy or other appropriate officer of the
 92 department as determined by the Deputy Secretary for Health. The
 93 council shall meet at least biannually. Membership on the
 94 council shall include health care professionals, health care
 95 providers, consumers, patients, and representatives of nonprofit
 96 organizations that concentrate on gynecologic cancers, and other
 97 appropriate representatives as determined by the department.
 98 Members of the council shall receive no compensation for the
 99 performance of their duties under this subsection, but shall be
 100 reimbursed for reasonable and necessary expenses incurred while
 101 engaged in the performance of those duties.

102 Section 3. This act shall take effect July 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1085 (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) Plakon offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 381.9315, Florida Statutes, is created
8 to read:

9 381.9315 Gynecological and Ovarian Cancer Awareness

10 Program.- This section may be cited as the "Kelly Smith
11 Gynecological and Ovarian Cancer Education and Awareness Act."

12 (1) The department shall encourage health care providers,
13 including, but not limited to, hospitals, birthing facilities,
14 county health departments, physicians, midwives, and nurses, to
15 disseminate and display information about gynecological cancers,
16 including the signs and symptoms, risk factors, benefits of
17 early detection through appropriate diagnostic testing, and
18 treatment options.

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19 (2) The department shall encourage women to discuss the
20 risks of gynecological cancers with their health care providers.

21 (3) The State Surgeon General shall make publicly
22 available, by posting on the Internet website of the Department
23 of Health, resources and an Internet website link to the federal
24 Centers for Disease Control and Prevention website for
25 gynecological cancer information.

26 (4) The department is encouraged to seek any available
27 grants from private or federal sources to promote gynecological
28 cancer awareness, including, but not limited to, early warning
29 signs and risk factors associated with gynecological cancers.

30 (5) The department is encouraged to collaborate with other
31 agencies, organizations, and institutions to create a systematic
32 approach to increasing public awareness regarding gynecologic
33 cancers.

34 Section 2. Paragraph (a) of subsection (4) of section
35 1004.435, Florida Statutes, is amended to read:

36 1004.435 Cancer control and research.—

37 (4) FLORIDA CANCER CONTROL AND RESEARCH ADVISORY COUNCIL;
38 CREATION; COMPOSITION.—

39 (a) There is created within the H. Lee Moffitt Cancer
40 Center and Research Institute, Inc., the Florida Cancer Control
41 and Research Advisory Council. The council shall consist of ~~34~~
42 35 members, which includes the chairperson, all of whom must be
43 residents of this state. All members, except those appointed by
44 the Speaker of the House of Representatives and the President of
45 the Senate, must be appointed by the Governor. At least one of
46 the members appointed by the Governor must be 60 years of age or

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1085 (2011)

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47 | older. One member must be a representative of the American
48 | Cancer Society; one member must be a representative of the
49 | Florida Tumor Registrars Association; one member must be a
50 | representative of the Sylvester Comprehensive Cancer Center of
51 | the University of Miami; one member must be a representative of
52 | the Department of Health; one member must be a representative of
53 | the University of Florida Shands Cancer Center; one member must
54 | be a representative of the Agency for Health Care
55 | Administration; one member must be a representative of the
56 | Florida Nurses Association; one member must be a representative
57 | of the Florida Osteopathic Medical Association; one member must
58 | be a representative of the American College of Surgeons; one
59 | member must be a representative of the School of Medicine of the
60 | University of Miami; one member must be a representative of the
61 | College of Medicine of the University of Florida; one member
62 | must be a representative of NOVA Southeastern College of
63 | Osteopathic Medicine; one member must be a representative of the
64 | College of Medicine of the University of South Florida; one
65 | member must be a representative of the College of Public Health
66 | of the University of South Florida; one member must be a
67 | representative of the Florida Society of Clinical Oncology; one
68 | member must be a representative of the Florida Obstetric and
69 | Gynecologic Society who has had training in the specialty of
70 | gynecologic oncology; one member must be from the Florida
71 | Ovarian Cancer Alliance Speaks (FOCAS) organization; one member
72 | must be a representative of the Florida Medical Association; one
73 | member must be a member of the Florida Pediatric Society; one
74 | member must be a representative of the Florida Radiological

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Bill No. HB 1085 (2011)

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75 Society; one member must be a representative of the Florida
76 Society of Pathologists; one member must be a representative of
77 the H. Lee Moffitt Cancer Center and Research Institute, Inc.;
78 three members must be representatives of the general public
79 acting as consumer advocates; one member must be a member of the
80 House of Representatives appointed by the Speaker of the House
81 of Representatives; one member must be a member of the Senate
82 appointed by the President of the Senate; one member must be a
83 representative of the Florida Dental Association; one member
84 must be a representative of the Florida Hospital Association;
85 one member must be a representative of the Association of
86 Community Cancer Centers; one member shall be a representative
87 from a statutory teaching hospital affiliated with a community-
88 based cancer center; one member must be a representative of the
89 Florida Association of Pediatric Tumor Programs, Inc.; one
90 member must be a representative of the Cancer Information
91 Service; one member must be a representative of the Florida
92 Agricultural and Mechanical University Institute of Public
93 Health; and one member must be a representative of the Florida
94 Society of Oncology Social Workers. Of the members of the
95 council appointed by the Governor, at least 10 must be
96 individuals who are minority persons as defined by s.
97 288.703(3).

98 Section 3. This act shall take effect July 1, 2011.
99

100 -----
101 **T I T L E A M E N D M E N T**

102 Remove the entire title and insert:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1085 (2011)

Amendment No. 1

103 An act relating to women's health; creating s. 381.9315,
104 F.S.; creating the Kelly Smith Gynecological and Ovarian Cancer
105 Education Awareness Act; establishing the Gynecological and
106 Ovarian Awareness Program in the Department of Health; requiring
107 the Department of Health to encourage health care providers and
108 organizations to disseminate and display information about
109 gynecological cancers; requiring the department to encourage
110 women to discuss risks of gynecologic cancers with their health
111 care providers; requiring the State Surgeon General to post on
112 the internet a link to the Centers for Disease Control and
113 Prevention's website; encouraging the Department of Health to
114 seek any available funds to promote gynecological cancer
115 awareness; encouraging the Department of Health to collaborate
116 with other entities to create a systematic approach to
117 increasing public awareness regarding gynecologic cancers;
118 providing an effective date.

119 WHEREAS, it is in the interest of the State of Florida to
120 reduce the number of women dying prematurely from cancer and
121 other deadly diseases through education, research, better health
122 care, and other means, and

123 WHEREAS, a coordinated education and awareness program
124 developed by the department is needed to reduce the number of
125 women in the state who die from gynecologic cancers, and

126 WHEREAS, each year in Florida more than 4,500 women are
127 diagnosed with and 1,700 women die from gynecologic cancers, and

128 WHEREAS, ovarian cancer causes more deaths than any other
129 gynecologic cancer and ranks fourth as a cause of cancer deaths
130 among women in the state, and

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131 WHEREAS, when ovarian cancer is found and treated in its
132 earliest stages, the 5-year survival rate is 95 percent, and

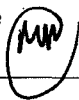

133 WHEREAS, most women who suffer from ovarian cancer are not
134 diagnosed until the later stages when the disease has spread and
135 the 5-year survival rate is decreased to 46 percent, and

136 WHEREAS, approximately half of deaths from ovarian cancer
137 occur in women over the age of 55 and approximately one-quarter
138 of deaths from ovarian cancer occur in women between 35 and 54
139 years of age, and

140 WHEREAS, because early detection and treatment often mean
141 the difference between life and death, it is important to
142 increase awareness of the factors that put women at a higher
143 risk for gynecologic cancers and educate women regarding the
144 symptoms of ovarian and other forms of gynecologic cancers and
145 the range of treatment options available to them, NOW,
146 THEREFORE,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1 Health Care Services
SPONSOR(S): Plakon and others
TIED BILLS: IDEN./SIM. BILLS: SJR 2

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

SUMMARY ANALYSIS

House Joint Resolution 1 proposes a ballot initiative to provide for the creation of Section 28 of Article I of the Florida Constitution relating to health care. Specifically, the constitutional amendment:

- Prohibits a law or rule from compelling, directly or indirectly, any person, employer, or health care provider to participate in a health care program.
- Allows a person or employer to pay directly for lawful health care services and allows a health care provider to accept direct payment for lawful health care services.
- Prohibits the imposition of fines or penalties on individuals and medical care providers who choose to participate in a direct payment system.
- Allows for the purchase or sale of health insurance in private health care systems to be free from prohibition by rule or law.
- Exempts laws or rules in effect as of March 1, 2010.

The joint resolution provides definitions for certain terms and includes a ballot summary.

This joint resolution has a negative, non-recurring fiscal impact on state government. The Department of State, Division of Elections, estimates a cost of approximately \$90,537.42 for FY 11-12. The cost is a result of placing the joint resolution on the ballot and publishing two constitutionally required notices.

The joint resolution does not contain a specific effective date. Therefore, pursuant to the Florida Constitution, if adopted by the voters at the 2012 General Election, the resolution would take effect on January 8, 2013.

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 2010². PPACA, as amended, consists of 2,562 pages of text and several hundred sections of law.³ The law contains comprehensive reform of the entire health care system in the United States. Most of the PPACA provisions take effect in 2014; however, many changes are phased in starting from the day the bill with signed on March 23, 2010 and continuing through 2019.

Effective for plan years that begin after September 23, 2010:

- All new private health insurance plans are required to cover immunizations, preventive care for infants, children and adolescents, and additional preventive care and screenings for women.
- Health insurers are prohibited from rescinding insurance coverage from members of a health insurance plan, except in case of fraud or material misrepresentation.
- Denial of coverage by health insurers for children with pre-existing conditions is prohibited.
- No lifetime limits on the amount paid out by the health insurance plan.
- No copayments or deductibles for certain preventative services.
- Coverage is required for dependents up to 26 years of age.

In 2011, health insurance companies are required to spend at least 85 percent of premium dollars on medical services in large group policy markets and 80 percent of premium dollars on medical services in small group and individual policy markets. Failure to reach the new medical loss ratio targets will result in the issuing of rebates to policyholders by insurers.

Effective in 2014:

- Health insurance coverage will be mandatory for almost all U.S. citizens. 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 is indexed for subsequent years.⁴ Exemptions for mandatory health insurance coverage will be granted for American Indians, in cases of extreme financial hardship, for those objecting to the mandatory provision for religious reasons, individuals without health insurance for less than three months, and individuals in prison.⁵
- Health insurance exchanges will be established, from which citizens can purchase health insurance coverage that meets the minimum essential coverage provisions of PPACA.
- Companies with 50 or more full time employees that do not provide health insurance coverage to its workers, resulting in at least one worker qualifying for a subsidy to purchase health

¹ P.L. 111-148, 124 Stat. 119 (2010)

² P.L. 111-152, 124 Stat. 1029 (2010)

³ Michael D. Tanner, *Bad Medicine: A Guide to the Real Costs and Consequences of the New Health Care Law: Updated and Revised for 2011*, at page 49 (FN #3), February 14, 2011; available at <http://www.cato.org/pubs/wtpapers/BadMedicineWP.pdf>.

⁴ The federal government expects to raise \$17 billion from penalties by 2019. See Letter from Douglas Elmendorf, director, Congressional Budget Office, to U.S. House of Representatives Speaker Nancy Pelosi, March 18, 2010, table 2. Roughly 4 million Americans will be hit by penalties in 2016, with the average penalty costing slightly more than \$1,000. See Congressional Budget Office and the staff of the Joint Committee on Taxation, "Payments of Penalties for Being Uninsured under PPACA", April 22, 2010.

⁵ Hinda Chaikind, et al., *Private Health Insurance Provisions in Senate-Passed H.R. 3590, the Patient Protection and Affordable Care Act*, CRS Report R40942

insurance coverage through an exchange, must pay a tax penalty of \$2,000 for every full time employee, less 30 workers.⁶

- An excise tax will be imposed on health care plans costing more than \$10,200 for individual coverage and \$27,500 for family coverage.
- No denials of coverage to anyone with a pre-existing condition.
- All plans must cover federally defined “essential benefits”.
- Plan rating factors will be set by federal law, which limits the degree of pricing differential among differently situated people.

Other provisions of PPACA include:

- Medicaid eligibility is expanded to include those individuals with incomes up to 138 percent of the federal poverty level, resulting in coverage to 32 million previously uninsured Americans by 2019.
- Medicare payment rates for certain services will be permanently reduced.
- Various additional changes will be made to the federal tax code, Medicare, Medicaid, and other social programs necessary to fully implement the new law.

Today, nearly 1 in 4 Americans is receiving Medicaid benefits.⁷ Over the next ten years, the federal government will spend \$4.4 trillion on the Medicaid program.⁸ The CBO originally estimated new state spending on Medicaid, as a result of the provisions of PPACA, at \$20 billion between 2017 and 2019. More recently, the CBO has estimated a cost to the states of \$60 billion through 2021.⁹ However, a report issued by the Senate Finance Committee conservatively estimates that PPACA will cost state taxpayers at least \$118.04 billion through 2023.¹⁰

The Florida Agency for Health Care Administration has estimated the financial impact of added Medicaid costs to the state, under the provisions of PPACA, to be \$12.944 billion from FY 2013 through FY 2023.¹¹

State Reaction to Federal Health Care Reform

After PPACA was enacted, some members of 40 state legislatures proposed legislation to limit, alter, or oppose selected state or federal actions, including single-payer provisions and mandates that would require purchase of insurance.¹² Three states placed proposed constitutional ballot questions on their November 2010- Arizona, Colorado, and Oklahoma.¹³ The ballot question was approved in Arizona and Oklahoma, but was rejected in Colorado.¹⁴ Idaho called for the creation of the 28th Amendment to the U.S. Constitution to prohibit Congress from making law requiring citizens to enroll in, participate in, or secure health care insurance or to penalize any citizen who declines to purchase or participate in

⁶ S. 4908H(a), PPACA, as amended by the Reconciliation Act, s. 1003 (2010). The Congressional Budget Office estimates that company penalties will cost businesses \$52 billion from 2014 through 2019. See Letter from Douglas Elmendorf, director, Congressional Budget Office, to U.S. House of Representatives Speaker Nancy Pelosi, March 18, 2010. At least 728 waivers have been issued to employers by the Obama administration as of February 2011, exempting the employers from the provisions of PPACA. The list is available at http://www.hhs.gov/ociio/regulations/approved_applications_for_waiver.html (last viewed March 25, 2011).

⁷ Congressional Budget Office, *Spending and Enrollment Detail for CBO's August 2010 Baseline: Medicaid*, August 2010; available at <http://www.cbo.gov/budget/factsheets/2010d/MedicaidAugust2010FactSheet.pdf>.

⁸ Office of Management and Budget, *FY 2012 Budget of the U.S. Government*, February 2011; available at <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/budget.pdf>.

⁹ *Medicaid Expansion in the New Health Law: Costs to the States*, Joint Congressional Report by Senate Finance Committee, U.S. Congress, March 1, 2011, at page 1; available at <http://energycommerce.house.gov/media/file/PDFs/030111MedicaidReport.pdf>.

¹⁰ *Id.* at pg. 2.

¹¹ *Overview of Federal Affordable Care Act*, Florida Agency for Health Care Administration, January 4, 2011; available at http://ahca.myflorida.com/Medicaid/Estimated_Projections/medicaid_projections.shtml.

¹² *State Legislation and Actions Challenging Certain Health Reforms, 2010-11*, National Conference of State Legislatures, <http://www.ncsl.org/IssuesResearch/Health/StateLegislationandActionsChallengingCertai/tabid/18906/Default.aspx?tabid=18906>, last accessed January 20, 2011.

¹³ See *id.*

¹⁴ See *id.*

any health care insurance.¹⁵ Florida also adopted a non-binding resolution referencing a federal constitutional amendment process.¹⁶

Sixteen states proposed legislation to amend state law rather than amend the state constitution. Virginia became the first state to enact such a law on March 10, 2010. The states of Georgia, Idaho, Louisiana, Missouri, Utah and Arizona have also enacted similar laws.

HJR 37

On April 22, 2010, during the 2010 Regular Session of the Florida Legislature, both the House of Representatives and the Senate passed HJR 37, which contained nearly identical language as what appears in current HJR 1, by a three-fifths vote in each chamber. HJR 37 proposed to create Section 28 of Article I of the Florida Constitution relating to health care services. Again, HJR 37 contained nearly the same language as that which appears in HJR 1, with a small exception, to be discussed further below.

Following passage of HJR 37, it was signed by the Speaker of the House of Representatives and President of the Senate and filed with the Department of State for inclusion on the statewide ballot for the 2010 General Election. The language contained in HJR 37 was designated as Amendment 9 by the Division of Elections. A group of Florida voters filed a complaint in the Second Judicial Circuit Court in Tallahassee asking the court to determine whether the ballot summary contained in Amendment 9 complied with the requirements of Florida statutes related to proposed constitutional amendments and the numerous appellate court decisions interpreting the applicable Florida statutes.¹⁷

The Second Circuit determined that the ballot summary for Amendment 9 was misleading and ordered it removed from the November 2010 ballot.¹⁸ Specifically, the court found that the following three phrases found in the ballot summary were misleading:

- "...to ensure access to health care services without waiting lists..."
- "...protect the doctor-patient relationship..."
- "...guard against mandates that don't work..."¹⁹

Each of these three phrases were determined to be examples of the kind of comments that the Florida Supreme Court has held may not be included in ballot summaries. As a result, the Second Circuit concluded that the ballot summary contained in Amendment 9 did not comply with the applicable Florida statute.²⁰

¹⁵ *See id.*

¹⁶ *See id.*

¹⁷ Fla. Dept. of State v. Mangat, 43 So.3d 642, 646 (Fla. 2010); s. 101.161(1), F.S., states, "Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word 'yes' and also by the word 'no', and shall be styled in such a manner that a 'yes' vote will indicate approval of the proposal and a 'no' vote will indicate rejection. The wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the joint resolution, constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. Except for amendments and ballot language proposed by joint resolution, the substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. In addition, for every amendment proposed by initiative, the ballot shall include, following the ballot summary, a separate financial impact statement concerning the measure prepared by the Financial Impact Estimating Conference in accordance with s. 100.371(5). The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of."

¹⁸ *See id.* at 647

¹⁹ *See id.*

²⁰ *See id.*

The Secretary of State then asked the Second Circuit to substitute the text of Amendment 9 for the ballot summary, rather than strike the entire amendment from the ballot. The court ruled that its sole function was to determine if the ballot summary, ballot title and the amendment complied with Florida statutes. The court further stated, "...it was not empowered to correct the acts of the Legislature, even if its failure to do so resulted in the amendment being struck from the ballot."²¹

The Department of State filed an appeal to the First District Court of Appeal in Tallahassee. In addition, the Department filed an unopposed suggestion of certification to the Florida Supreme Court. The First District certified that the judgment of the Second Circuit Court presented a matter of great public importance that required immediate resolution by the Florida Supreme Court, and the Court accepted the case on appeal. Following a detailed analysis of statutory law and the current case law on the constitutional requirement of amendments and ballot summaries, the Florida Supreme Court agreed that the ballot language contained in Amendment 9 was misleading and ambiguous.²² The only option available to the Court to correct the misleading and ambiguous language was to strike Amendment 9 from the November 2010 ballot.²³

HJR 1 has removed the offensive phrases from the ballot summary. The remainder of the Joint Resolution is identical to the text of HJR 37.

Massachusetts Health Insurance Mandate

In 2006, to address rising costs, the state of Massachusetts passed a health care reform initiative which requires every Massachusetts resident to have minimum health insurance coverage, whether from the private market or through public assistance.²⁴ The law requires:

- Employers with ten or more employees to offer health insurance to their employees;
- Monetary penalties to be assessed on individuals and employers for non-compliance;
- An individual to report coverage compliance on his state income tax return; and
- Subsidies for individuals and families who do not meet a certain income threshold.

The legislation directed the state to set up a health insurance exchange, the "Commonwealth Connector", from which individuals may purchase insurance. The Commonwealth Connector also regulates the private health insurance market in the state.

Studies suggest that the Massachusetts health insurance mandate has not achieved projected cost savings to the state. In effect, the health system overhaul in the state was an expansion of Medicaid, increasing state enrollment 25 percent since 2006.²⁵ Of the 410,000 newly insured individuals in Massachusetts under the new program, three in four individuals are paying nothing or very little for health insurance coverage. State funding for the Commonwealth Connector and public assistance has increased government spending on health insurance programs by 42 percent.²⁶ In addition, the state spends \$414 million on uncompensated care, which was to have been eliminated through the health care overhaul in 2006. Cost to the individual has also risen as insurance premiums increased 40 percent from 2003 to 2008.²⁷

²¹ See *id.*

²² See *id.* at 651.

²³ See *id.*

²⁴ Chapter 58 of the Acts of 2006, An Act Relating to Affordable, Quality, Accountable Health Care (April 12, 2006).

²⁵ Sally C. Pipes, *Has Massachusetts Experience Put ObamaCare on a Path to Repeal?*, Investor's Business Daily (January 12, 2011), accessed at <http://www.investors.com/NewsAndAnalysis/Article.aspx?id=559597&p=1>.

²⁶ Kevin Sack, "Massachusetts Faces Costs of Big Health Plan", New York Times, see <http://www.nytimes.com/2009/03/16/health/policy/16mass.html> March 15, 2009.

²⁷ Cathy Schoen, *Paying the Price; How Health Insurance Premiums are Eating Up Middle-class Incomes*, The Commonwealth Fund, see <http://www.commonwealthfund.org/Content/Publications/Data-Briefs/2009/Aug/Paying-the-Price-How-Health-Insurance-Premiums-Are-Eating-Up-Middle-Class-Incomes.aspx> (August 2009).

In 2008, two years after passage of reform, Massachusetts health insurance premiums for family coverage exceeded the national average by \$1,500.²⁸ Indeed, health insurance premiums prior to the health care overhaul increased at a rate 3.7 percent slower than the national average.²⁹ After the health care overhaul in Massachusetts, health insurance premiums are increasing 5.8 percent faster than the national average. When surveyed two years after implementation, Massachusetts residents still supported the mandate, but 51 percent believed their health care costs had risen as a result.³⁰ The uninsured rate in Massachusetts is 4.1 percent.³¹ Slightly more than 35 percent of the remaining uninsured residents of Massachusetts are between the ages of 18 and 25, and slightly more than 60 percent of the remaining uninsured residents are under the age of 35.³² Before the health insurance mandate was enacted in Massachusetts, residents between the ages of 18 and 25 made up roughly 30 percent of the uninsured population.³³ The state's safety-net hospitals indicate that a large percentage of patients seeking care are uninsured. From 2006 to 2008, emergency room use increased by 9 percent. However, reform measures reduced the level of payments to hospitals for charity care.^{34,35} One essential difference between the Massachusetts health reform plan and federal health care reform is that Massachusetts exercised its state police power as authority for creating its' health reform plan, which includes an individual mandate for purchasing health insurance. Police powers are reserved to the states by the U.S. Constitution.³⁶

Florida Health Insurance Mandates

Florida law does not require state residents to have health insurance coverage. 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.³⁷ Florida also requires most employers to carry workers' compensation insurance which includes certain health care provisions for injured workers.³⁸ While Florida does not require residents to have health insurance, the state does impose nearly 50 coverage mandates, including mandated offerings, on those who do have insurance.³⁹

Legal Challenges to PPACA

²⁸ *Id.*

²⁹ John C. Cogan, et al., *The Effect of Massachusetts' Health Reform on Employer-Sponsored Insurance Premiums*, Forum for Health Economics & Policy: Vol. 13: Iss. 2, Article 5 (2010); abstract accessed at <http://www.bepress.com/fhsep/13/2/5>.

³⁰ Robert J. Blendon, et al., *Massachusetts Health Reform: A Public Perspective from Debate Through Implementation*, Health Affairs, 27:6, at 559, 562 (2008).

³¹ Joanna Turner, et al., *A Preliminary Evaluation of Health Insurance Coverage in the 2008 American Community Survey*, U.S. Bureau of the Census, see www.census.gov/hhes/www/hlthins/2008ACS_healthins.pdf (September 22, 2009).

³² Sharon Long, "On the Road to Universal Coverage: Impacts of Reform in Massachusetts", Health Affairs (July/August 2008): w270-w284, ex. 6.

³³ Allison Cook and John Holahan, "Health Insurance Coverage and the Uninsured in Massachusetts: An Update Based on the 2005 Current Population Survey Data", Blue Cross Blue Shield of Massachusetts Foundation, 2006.

³⁴ See "Some Massachusetts Safety Net Hospitals Face Budget Problems Because of Health Insurance Law", Kaiser Daily Health Report (March 19, 2008).

³⁵ For detailed discussion of the Massachusetts Health Insurance Mandate, see Michael Tanner, *Massachusetts Miracle or Massachusetts Miserable: What the Failure of the 'Massachusetts Model' Tells Us about Health Care Reform*, Briefing Paper No. 112, Cato Institute, see http://www.cato.org/pub_display.php?pub_id=10268 (June 9, 2009); see also Aaron Yelowitz and Michael F. Cannon, *The Massachusetts Health Plan: Much Pain, Little Gain*, Policy Analysis No. 657, Cato Institute, see http://www.cato.org/pub_display.php?pub_id=11115 (January 20, 2010).

³⁶ Amendment X, U.S. Constitution; the specific enumerated powers granted to the federal government can be found in Article I, Section 8, U.S. Constitution.

³⁷ S. 627.736, F.S.

³⁸ Workers' compensation insurance provisions are found in Chapter 440, F.S.

³⁹ Victoria Craig Bunce and JP Wieske, *Health Insurance Mandates in the States 2010*, Council for Affordable Health Care; available at http://www.cahi.org/cahi_contents/resources/pdf/MandatesintheStates2010.pdf. For example, Florida mandates coverage for alcoholism and substance abuse, diabetic supplies, orthotics and/or prosthetics, and well child care.

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.⁴⁰ At the time suit was filed, Florida was joined by twelve states, by and through their individual attorneys general. Currently, twenty six states, the National Federation of Independent Business, and two private individuals are plaintiffs in the federal action. In addition, Virginia filed its own federal lawsuit challenging the constitutionality of PPACA.⁴¹

In total, twenty four constitutional challenges to PPACA were filed in federal courts across the country.⁴² The majority of lawsuits challenge the mandate that requires individuals to purchase health insurance.⁴³ 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.⁴⁴

The Florida lawsuit argues that the federal government violates the Commerce Clause of the U.S. Constitution by forcing individuals to purchase health insurance or pay a penalty. In addition, the lawsuit targets the expansion of eligibility for Medicaid as an infringement on states' rights. The choice given the states by the new law, according to the lawsuit, is to fully shoulder the costs of health care or forfeit federal Medicaid funding by opting out of the system. Finally, the suit contends that the expansion of Medicaid eligibility to include individuals within 138 percent of the federal poverty level "commandeers" states and their resources to complete federal tasks and achieve federal goals, all in violation of the Tenth Amendment to the Constitution.⁴⁵

On January 31, 2011, Judge Vinson of the District Court for the Northern District of Florida in Pensacola entered an Order granting the plaintiffs' Motion for Summary Judgment and declared the individual mandate provision of PPACA unconstitutional.⁴⁶ 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 void.

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 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.

Congressional Authority and Constitutionality

The federal lawsuits filed by several states challenging the constitutionality of PPACA focus on one or more of the following four constitutional issues.

Commerce Clause (U.S. Const. Art. I, Sec. 8, Clause 3)

Congress has the power to regulate interstate commerce, including local matters and things that "substantially affect" interstate commerce. Proponents of reform assert that although health care delivery is local, the sale and purchase of medical supplies and health insurance occurs across state

⁴⁰ State of Florida v. U.S. Dept. of Health and Human Services, Case No.: 3:10-cv-91-RV/EMT (N.D. Fla.)

⁴¹ State of Virginia v. Kathleen Sebelius, Case No.: 3:10-cv-188-HEH (E.D. Va.)

⁴² A list of all cases that have been filed to challenge the constitutionality of PPACA can be found at <http://healthcarereform.procon.org/view.resource.php?resourceID=004134>, last accessed on March 27, 2011; see also ACA Litigation Snapshot Overview, <http://acalitigationblog.blogspot.com>, last accessed March 25, 2011.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Kathleen S. Swendiman, *Health Care: Constitutional Rights and Legislative Powers*, CRS Report R40846, page 10, FN 66.

⁴⁶ Florida v. U.S. Dept. of HHS, ---F.Supp.2d---, 2011 WL 285683 (N.D. Fla.)

lines, thus regulation of health care is within Commerce Clause authority. Arguing in support of an individual mandate, proponents point to insurance market de-stabilization caused by the large uninsured population as reason enough to authorize Congressional action under the Commerce Clause.⁴⁷ Opponents suggest that the decision not to purchase health care coverage is not a commercial activity and cite to *United States v. Lopez*, which held that Congress is prohibited from "...unfettered use of the Commerce Clause authority to police individual behavior that does not constitute interstate commerce".⁴⁸

Tax and Spend for the General Welfare (U.S. Const. Art. I, Sec. 8, Clause 1)

The Tax and Spend Clause of the U.S. Constitution provides Congress with taxation authority and also authorizes Congress to spend funds with the limitation that spending must be in pursuit of the general welfare of the population. To be held constitutional, Congressional action pursuant to this Clause must be reasonable.⁴⁹ With respect to the penalty or fine on individuals who do not have health insurance, proponents suggest that Congress' power to tax and spend for the general welfare authorizes the crafting of tax policy which in effect encourages and discourages behavior.⁵⁰ Opponents cite U.S. Supreme Court case law that prohibits "a tax to regulate conduct that is otherwise indisputably beyond [Congress'] regulatory power".⁵¹

The Tenth Amendment and the Anti-Commandeering Doctrine (U.S. Const. Amend. 10)

The Tenth Amendment reserves to the states all power that is not expressly reserved for the federal government in the U.S. Constitution. Opponents of federal reform assert that the individual mandate violates federalism principles because the U.S. Constitution does not authorize the federal government to regulate health care. They argue, "...state governments-unlike the federal government-have greater, plenary authority and police powers under their state constitutions to mandate the purchase of health insurance."⁵² Further, opponents argue that the state health insurance exchange mandate may violate the anti-commandeering doctrine which prohibits the federal government from requiring state officials to carry out onerous federal regulations.⁵³ Proponents for reform suggest that Tenth Amendment jurisprudence only places wide and weak boundaries around Congressional regulatory authority to act under the Commerce Clause.⁵⁴

Supremacy Clause (U.S. Const. Art. 6, Clause 2)

Supremacy Clause jurisprudence firmly establishes that the U.S. Constitution and federal law possess ultimate authority when in conflict with state law. The Supreme Court held "...the Supremacy Clause gives the Federal Government 'a decided advantage in the delicate balance' the Constitution strikes between state and federal power."⁵⁵ Proponents cite to the Supremacy Clause as a self-evident justification for passage of federal health reform. Opponents assert that the Supremacy Clause only protects congressional actions that are based on express authority in the Constitution and "where [the action] does not impermissibly tread upon state sovereignty."⁵⁶

⁴⁷ Jack Balkin, *The Constitutionality of the Individual Mandate for Health Insurance*, N. Eng. J. Med. 362:6, at 482 (February 11, 2010).

⁴⁸ Peter Urbanowicz and Dennis G. Smith, *Constitutional Implications of an 'Individual Mandate' in Health Care Reform*, The Federalist Society for Law and Public Policy, at 4 (July 10, 2009).

⁴⁹ *Helvering v. Davis*, 301 U.S. 619 (1937).

⁵⁰ Mark A. Hall, *The Constitutionality of Mandates to Purchase Health Insurance*, Legal Solutions in Health Reform project, O'Neill Institute, at 7.

⁵¹ David Rivkin and Lee A. Casey, "Illegal Health Reform" Washington Post, August 22, 2009, at A15. Rivkin and Lee cite to *Bailey v. Drexel Furniture*, 259 U.S. 20 (1922), a Commerce Clause case which held that Congress has the authority to tax as a means of controlling conduct.

⁵² *Id.*

⁵³ Matthew D. Adler, *State Sovereignty and the Anti-Commandeering Cases*, The Annals of the American Academy of Policy and Social Science, 574, at 158 (March 2001).

⁵⁴ Hall, *supra* note 16, at 8-9.

⁵⁵ *New York v. United States*, 505 U.S. 144, 160 (1992).

⁵⁶ Clint Bolick, *The Health Care Freedom Act: Questions and Answers*, Goldwater Institute, at 3 (February 2, 2010).

Federal Preemption Doctrine

The federal preemption doctrine may be invoked in determining the impact of the joint resolution on the Legislature's potential obligations to ensure that the provisions of PPACA are made effective in Florida.

The federal preemption doctrine is derived from the Supremacy Clause of the U.S. Constitution⁵⁷, 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.

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.⁵⁸ Preemption is implied when there is a conflict between a federal law and a state law.⁵⁹ 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.⁶⁰

Effect of Proposed Changes

House Joint Resolution 1 proposes the creation of Section 28 of Article I of the Florida Constitution relating to health care. The resolution prohibits any person, employer or health care provider from being compelled to participate in any health care system. With respect to an individual or employer mandate, this provision would allow any person or employer to opt-out of mandated insurance coverage and would allow for flexibility in any health care provider's participation in a particular health care system.

The resolution authorizes any person or employer to pay directly for health care services and provides that persons or employers shall not incur a penalty or fine for direct payment. The resolution authorizes a health care provider to accept direct payment and provides that such health care provider will not incur a penalty or fine for accepting direct payment. This provision allows a person or employer to purchase health care services without participation in a health care system or plan.

The resolution prohibits any law or rule which prohibits private health insurance sales or purchases. The bill subjects this prohibition to reasonable and necessary rules that do not substantially limit purchase or sale options. This provision would allow the purchase or sale of private insurance to individuals regardless of a mandate requiring individuals to have health insurance coverage.

The resolution directs that its provision do not affect:

- Required performance of services by a health care provider or hospital;
- Health care services permitted by law;
- Workers' compensation care as provided by general law;
- Laws or rules in effect as of March 1, 2010; and
- Any health care system terms and conditions that do not provide punitive measures against persons, employers, or health care providers for direct payment.

The resolution provides definitions or usage for the following terms:

- "Compel" includes the imposition of penalties or fines.

⁵⁷ Article VI, U.S. Constitution

⁵⁸ See *FMC Corp. v. Holliday*, 498 U.S. 52, 56-57, 111 S.Ct. 403, 112 L.Ed.2d 356 (1990).

⁵⁹ See *Talbott v. Am. Isuzu Motors, Inc.*, 934 So.2d 643, 645 (Fla. 2nd DCA 2006).

⁶⁰ See *id.*

- “Direct payment” or “pay directly” means payment for health care services without the use of a public or third party, excluding any employers.
- “Health care system” means any public or private entity whose function or purpose is the management of, processing of, enrollment of individuals for, or payment, in full or in part, for health care services, health care data, or health care information for its participants.
- “Lawful health care services” means any health care service offered by legally authorized persons or businesses, provided that such services are permitted or not prohibited by law or regulation.
- “Penalties or fines” mean any civil or criminal penalty or fine, tax, salary, or wage withholding or surcharge, or any named fee with a similar effect established by law or rule by an agency established, created, or controlled by the government which is used to punish or discourage the exercise of rights protected under this section.

The resolution provides for a ballot summary which describes the provisions of the constitutional amendment in plain language.

The joint resolution does not contain a specific effective date. Therefore, if adopted by the voters at the 2012 General Election, the resolution would take effect on January 8, 2013.⁶¹

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Non-recurring FY 2011-2012

According to information received from the Department of State, Division of Elections, the bill will cost approximately \$90,537.42 in non-recurring General Revenue costs for the cost of publication. See Fiscal Comments for further explanation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

⁶¹ Article XI, s. 5(e), Fla. Const.

D. FISCAL COMMENTS:

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the General Election.⁶² Costs for advertising vary depending upon the length of the amendment. According to the Department of State, Division of Elections, the average cost of publishing a constitutional amendment is \$106.14 per word. The word count for HJR 1 is 853 words, including both the text of the amendment and the ballot title and summary. 853 words X \$106.14 = \$90,537.42.

III. COMMENTS

A. CONSTITUTIONAL ISSUES: —

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Article XI, Section 1 of the Florida Constitution authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths of the elected membership of each house. If agreed to by the Legislature, the amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or at a special election held for that purpose. The resolution would be submitted to the voters at the 2012 general election and must be approved by at least 60 percent of the voters voting on the measure. 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 joint resolution may be found to be implicitly preempted by PPACA.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The language of the Resolution may impact the legal arguments of the State in ongoing federal litigation. For example, the term "compel" is defined to include payment of penalties and taxes. There is tax case law that establishes a significant legal difference between a tax and a penalty, and the federal government's constitutional ability to impose both in certain cases.⁶³

⁶² Art. XI, s. 5(d), Fla. Const.

⁶³ Article I, s. 8 of the U.S. Constitution, known as the General Welfare Clause, provides Congress with independent taxation power. The power of Congress to lay and collect taxes, duties and excises requires only that it be a revenue raising measure and that the associated regulatory provisions bear a "reasonable relation" to the statute's taxing power. *See United States v. Aiken*, 974 F.2d 446, 448 (4th Cir. 1992); *see also Sozinsky v. United States*, 300 U.S. 506, 513 (1937). The U.S. Supreme Court has recognized the importance of the difference between the two terms, holding "the two words [tax versus penalty] are not interchangeable...and if an exaction [is] clearly a penalty it cannot be converted into a tax by the simple expedient of calling it such." *See United States v. La Franca*, 282 U.S. 568, 572 (1931); *see also Reorganized CF&I Fabricators of Utah, Inc.*, 518 U.S. 213, 224 (1996).

The resolution includes a “date certain” exclusion to exempt all laws and rules in effect as of March 1, 2010 from compliance with the provisions of this rule. However, the effect of this provision is unclear. While there are many rules and laws that fall under this provision and are currently in effect, it is unclear if even minor changes to the laws or rules could be made without a two-thirds vote of the Legislature, or risk violating the amendment.

Additional technical issues are addressed below:

- A “health care system” is defined as “an entity”.
- The resolution forbids “participation” in a health care system. However, the term “participation” is not defined.
- The resolution states, “Subject to reasonable and necessary rules...the purchase or sale of health insurance...may not be prohibited by law or rule.” This provision is internally inconsistent.
- The phrase “reasonable and necessary rules” is vague and undefined by the resolution.
- The phrase “substantially limit a person’s options” is vague and undefined by the resolution.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HJR 1

2011

House Joint Resolution

A joint resolution proposing the creation of Section 28 of Article I of the State Constitution, relating to health care services.

Be It Resolved by the Legislature of the State of Florida:

That the following creation of Section 28 of Article I of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE I

DECLARATION OF RIGHTS

SECTION 28. Health care services.-

(a) To preserve the freedom of all residents of the state to provide for their own health care:

(1) A law or rule may not compel, directly or indirectly, any person, employer, or health care provider to participate in any health care system.

(2) A person or an employer may pay directly for lawful health care services and may not be required to pay penalties or fines for paying directly for lawful health care services. A health care provider may accept direct payment for lawful health care services and may not be required to pay penalties or fines for accepting direct payment from a person or an employer for lawful health care services.

(b) Subject to reasonable and necessary rules that do not

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29 substantially limit a person's options, the purchase or sale of
 30 health insurance in private health care systems may not be
 31 prohibited by law or rule.

32 (c) This section does not:

33 (1) Affect which health care services a health care
 34 provider is required to perform or provide.

35 (2) Affect which health care services are permitted by
 36 law.

37 (3) Prohibit care provided pursuant to general law
 38 relating to workers' compensation.

39 (4) Affect laws or rules in effect as of March 1, 2010.

40 (5) Affect the terms or conditions of any health care
 41 system to the extent that those terms and conditions do not have
 42 the effect of punishing a person or an employer for paying
 43 directly for lawful health care services or a health care
 44 provider for accepting direct payment from a person or an
 45 employer for lawful health care services, except that this
 46 section may not be construed to prohibit any negotiated
 47 provision in any insurance contract, network agreement, or other
 48 provider agreement contractually limiting copayments,
 49 coinsurance, deductibles, or other patient charges.

50 (6) Affect any general law passed by a two-thirds vote of
 51 the membership of each house of the legislature after the
 52 effective date of this section, if the law states with
 53 specificity the public necessity that justifies an exception
 54 from this section.

55 (d) As used in this section, the term:

56 (1) "Compel" includes the imposition of penalties or

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57 fin.

58 (2) "Direct payment" or "pay directly" means payment for
 59 lawful health care services without a public or private third
 60 party, not including an employer, paying for any portion of the
 61 service.

62 (3) "Health care system" means any public or private
 63 entity whose function or purpose is the management of,
 64 processing of, enrollment of individuals for, or payment, in
 65 full or in part, for health care services, health care data, or
 66 health care information for its participants.

67 (4) "Lawful health care services" means any health-related
 68 service or treatment, to the extent that the service or
 69 treatment is permitted or not prohibited by law or regulation,
 70 which may be provided by persons or businesses otherwise
 71 permitted to offer such services.

72 (5) "Penalties or fines" means any civil or criminal
 73 penalty or fine, tax, salary or wage withholding or surcharge,
 74 or named fee with a similar effect established by law or rule by
 75 an agency established, created, or controlled by the government
 76 which is used to punish or discourage the exercise of rights
 77 protected under this section. For purposes of this section only,
 78 the term "rule by an agency" may not be construed to mean any
 79 negotiated provision in any insurance contract, network
 80 agreement, or other provider agreement contractually limiting
 81 copayments, coinsurance, deductibles, or other patient charges.

82 BE IT FURTHER RESOLVED that the following title and
 83 statement be placed on the ballot:

84 CONSTITUTIONAL AMENDMENT

ARTICLE I, SECTION 28

HEALTH CARE SERVICES.—Proposing an amendment to the State Constitution to prohibit laws or rules from compelling any person, employer, or health care provider to participate in any health care system; permit a person or an employer to purchase lawful health care services directly from a health care provider; permit a health care provider to accept direct payment from a person or an employer for lawful health care services; exempt persons, employers, and health care providers from penalties and fines for paying directly or accepting direct payment for lawful health care services; and permit the purchase or sale of health insurance in private health care systems. Specifies that the amendment does not affect which health care services a health care provider is required to perform or provide; affect which health care services are permitted by law; prohibit care provided pursuant to general law relating to workers' compensation; affect laws or rules in effect as of March 1, 2010; affect the terms or conditions of any health care system to the extent that those terms and conditions do not have the effect of punishing a person or an employer for paying directly for lawful health care services or a health care provider for accepting direct payment from a person or an employer for lawful health care services; or affect any general law passed by two-thirds vote of the membership of each house of the Legislature, passed after the effective date of the amendment, provided such law states with specificity the public necessity justifying the exceptions from the provisions of the amendment. The amendment expressly provides that it may not be

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113 | construed to prohibit negotiated provisions in insurance
114 | contracts, network agreements, or other provider agreements
115 | contractually limiting copayments, coinsurance, deductibles, or
116 | other patient charges.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HJR 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 Plakon offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the resolving clause and insert:
7 That the following creation of Section 28 of Article I of the
8 State Constitution is agreed to and shall be submitted to the
9 electors of this state for approval or rejection at the next
10 general election or at an earlier special election specifically
11 authorized by law for that purpose:

12 ARTICLE I

13 DECLARATION OF RIGHTS

14 SECTION 28. Health care freedom.-

15 (a) To preserve the freedom of all residents of the state
16 to provide for their own health care:

17 (1) A law or rule may not compel, directly or indirectly,
18 any person or employer to purchase, obtain, or otherwise provide
19 for health care coverage.

Amendment No.

20 (2) A person or an employer may pay directly for lawful
21 health care services and may not be required to pay penalties or
22 taxes for paying directly for lawful health care services. A
23 health care provider may accept direct payment for lawful health
24 care services and may not be required to pay penalties or taxes
25 for accepting direct payment from a person or an employer for
26 lawful health care services.

27 (b) The private market for health care coverage of any
28 lawful health care service may not be abolished by law or rule.

29 (c) This section does not:

30 (1) Affect which health care services a health care
31 provider is required to perform or provide.

32 (2) Affect which health care services are permitted by
33 law.

34 (3) Prohibit care provided pursuant to general law
35 relating to workers' compensation.

36 (4) Affect laws or rules in effect as of March 1, 2010.

37 (5) Affect the terms or conditions of any health care
38 system to the extent that those terms and conditions do not have
39 the effect of punishing a person or an employer for paying
40 directly for lawful health care services or a health care
41 provider for accepting direct payment from a person or an
42 employer for lawful health care services, except that this
43 section may not be construed to prohibit any negotiated
44 provision in any insurance contract, network agreement, or other
45 provider agreement contractually limiting copayments,
46 coinsurance, deductibles, or other patient charges.

Amendment No.

47 (6) Affect any general law passed by a two-thirds vote of
48 the membership of each house of the legislature after the
49 effective date of this section, if the law states with
50 specificity the public necessity that justifies an exception
51 from this section.

52 (d) As used in this section, the term:

53 (1) "Compel" includes the imposition of penalties or
54 taxes.

55 (2) "Direct payment" or "pay directly" means payment for
56 lawful health care services without a public or private third
57 party, not including an employer, paying for any portion of the
58 service.

59 (3) "Health care system" means any public or private
60 entity whose function or purpose is the management of,
61 processing of, enrollment of individuals for, or payment, in
62 full or in part, for health care services, health care data, or
63 health care information for its participants.

64 (4) "Lawful health care services" means any health-related
65 service or treatment, to the extent that the service or
66 treatment is permitted or not prohibited by law or regulation at
67 the time the service or treatment is rendered, which may be
68 provided by persons or businesses otherwise permitted to offer
69 such services.

70 (5) "Penalties or taxes" means any civil or criminal
71 penalty or fine, tax, salary or wage withholding or surcharge,
72 or named fee with a similar effect established by law or rule by
73 an agency established, created, or controlled by the government
74 which is used to punish or discourage the exercise of rights

Amendment No.

75 protected under this section. For purposes of this section only,
76 the term "rule by an agency" may not be construed to mean any
77 negotiated provision in any insurance contract, network
78 agreement, or other provider agreement contractually limiting
79 copayments, coinsurance, deductibles, or other patient charges.

80 BE IT FURTHER RESOLVED that the following title and
81 statement be placed on the ballot:

82 CONSTITUTIONAL AMENDMENT

83 ARTICLE I, SECTION 28

84 HEALTH CARE FREEDOM.—Proposing an amendment to the State
85 Constitution to prohibit laws or rules from compelling any
86 person or employer to purchase, obtain, or otherwise provide for
87 health care coverage; permit a person or an employer to purchase
88 lawful health care services directly from a health care
89 provider; permit a health care provider to accept direct payment
90 from a person or an employer for lawful health care services;
91 exempt persons, employers, and health care providers from
92 penalties and taxes for paying directly or accepting direct
93 payment for lawful health care services; and prohibit laws or
94 rules from abolishing the private market for health care
95 coverage of any lawful health care service. Specifies that the
96 amendment does not affect which health care services a health
97 care provider is required to perform or provide; affect which
98 health care services are permitted by law; prohibit care
99 provided pursuant to general law relating to workers'
100 compensation; affect laws or rules in effect as of March 1,
101 2010; affect the terms or conditions of any health care system
102 to the extent that those terms and conditions do not have the

Amendment No.

103 effect of punishing a person or an employer for paying directly
104 for lawful health care services or a health care provider for
105 accepting direct payment from a person or an employer for lawful
106 health care services; or affect any general law passed by two-
107 thirds vote of the membership of each house of the Legislature,
108 passed after the effective date of the amendment, provided such
109 law states with specificity the public necessity justifying the
110 exceptions from the provisions of the amendment. The amendment
111 expressly provides that it may not be construed to prohibit
112 negotiated provisions in insurance contracts, network
113 agreements, or other provider agreements contractually limiting
114 copayments, coinsurance, deductibles, or other patient charges.

115

116

117

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

118

119 Remove the entire title and insert:

119

120 A joint resolution proposing the creation of Section 28 of
121 Article I of the State Constitution, relating to health care
122 freedom.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1043 Citrus County
SPONSOR(S): Smith
TIED BILLS: IDEN./SIM. BILLS: SB 1740

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

SUMMARY ANALYSIS

This local bill amends the powers of the Citrus Memorial Health Foundation (Foundation) increasing the oversight powers of the Citrus County Hospital Board (Board).

The bill:

- Codifies all special acts relating the Board into a single act;
- Provides "whereas clauses";
- Revises the investment and financial reporting requirements of the Board;
- Provides for the indemnification of any agent of the Board, against any lawsuit;
- Imposes additional requirements to be applied to any lease agreements for the operation of Citrus County Memorial Hospital (in addition to the requirements of s. 155.40, F.S.);
- Provides that the additional lease obligations are to be retroactive;
- Provides for severability of the act's provisions in the case of judicial review; and
- Directs courts to construe this as a remedial act.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 155.40, F.S., authorizes a county, district or municipal hospital enter into contracts or leases for the purpose of operating and managing the hospital. The lease must be in the best interest of the public, and meet notice requirements for both the decision to lease,¹ and the offer to accept proposals.²

In the event a hospital operated by a Florida corporation receives annually more than \$100,000 in revenues from the county, district, or municipality that owns the hospital, the corporation must be accountable to the county, district, or municipality with respect to the manner in which the funds are expended. Either:

- The revenues must be subject to annual appropriations by the county, district, or municipality; or
- Where there is a contract to provide revenues to the hospital, the term of which is longer than 12 months, the governing Board of the county, district, or municipality must be able to modify the contract upon 12 months notice to the hospital.³

Section 155.40(7), F.S., provides that the lessee of a hospital, under this section or any special act of the Legislature, operating under a lease shall not be construed to be "acting on behalf of" the lessor as that term is used in statute, unless the lease document expressly provides to the contrary.

The Citrus County Hospital Board (Board) is an independent special district⁴ originally created by a special act of the Legislature in 1949 (Ch. 25728, Laws of Florida). Chapter 99-442 (as subsequently amended by Chapter 2001-308, L.O.F.), is the codification of all special acts relating to the Board.

The Board is comprised of five trustees, all of whom are appointed by the governor for a four year term. The purpose of the Board is to create and maintain public medical facilities in Citrus County. The Board is authorized to borrow money, issue notes, raise bonds, contract for services, and adopt rules and regulations for the operation of the medical facilities. The Board can levy up to a maximum of three mills per year on taxable residential or commercial real estate in Citrus County.⁵

In 1987, the Board created the Citrus County Health Foundation, Inc., (Foundation). The Foundation was created as a not-for-profit corporation, with the Board as its sole member, to carry out the purpose of the special act. The Foundation is currently doing business as the Citrus Memorial Health System, which includes:

- A 198-bed in-patient hospital;
- A 24-hour emergency room;
- Laboratory and diagnostic services;
- A walk-in clinic;
- A home health agency;
- Rehabilitation services;
- A heart center; and
- Orthopedic services.

¹ S. 286.0105, F.S.

² S. 255.0525, F.S.

³ S.155.40(6), F.S.

⁴ A special district is provided for in the Florida Constitution (Art. VIII, s. 1, Fla. Const.), and in s. 189.403(1), F.S., to be a "local unit of special purpose, as opposed to general purpose, government, within a limited boundary, created by general law, special act, local ordinance or by rule of the Governor and Cabinet." A special district can levy taxes, and is subject to the legislative provisions for open meetings, credit and bond financing. See ch. 189, F.S.

⁵ A mill is \$1 for every \$1,000 of assessed value. Ch. 99-442(6) (as amended by 2001-308), L.O.F.

The Board also entered into a 40 year contract with the Foundation for hospital services, which automatically renews every year, unless terminated. If the lease terminates, the hospital reverts to the Board. The hospital services contract ensures that the Foundation will be compensated by the Board for the uncompensated care at the hospital, pursuant to the Board's duty for indigent care. The Foundation is required to submit a budget to the Board, which is certified to the Citrus County Board of Commissioners as the millage rate required for the Foundation's operations.⁶

The Foundation leases from the Board the land, buildings, improvements, fixtures and furniture of the Citrus Memorial Health System. Currently, the composition of the Foundation's Board of directors is 13 people, with 5 guaranteed places for hospital Board members.⁷ The lease is for 33 years, running from March 1, 1990, until June 15, 2033. The lease could end sooner, subject to the terms of the lease. There is a right of renewal in 2033, for an additional 45 years for the Foundation.

In a 2006, the Foundation requested an opinion from the Attorney General (AG) in relation to the applicability of sovereign immunity to the Foundation. The AG concluded that the private not-for-profit Foundation was an instrumentality of Board, and was subject to the sovereign immunity provisions of s. 768.28, F.S.⁸ The AG came to this conclusion because of Board's transfer of authority to the Foundation in the lease agreement to operate the hospital, and the Foundation in carrying out these obligations were acting on behalf of the Board, as described in s. 155.40, F.S.⁹ The AG noted additional facts in support of this conclusion, that the Board appropriated funds to the Foundation for the provision of medical services, and retained some control of the Foundation.¹⁰

From 2006-2008, the Auditor General conducted an operational audit of both the Board and the Foundation, and issued a report in February 2010.¹¹ The Auditor General made several findings that noted concern with the governance and operation of the both entities in relation to the hospital. Specifically, the Auditor General's report found problems with the Foundation's accountability to the Board, use of funds for travel and bonuses that were not approved by the Board, contracts that were executed outside the scope of the Chief Executive Officer's (CEO) expenditure authority, and conflicts of interest that were not disclosed.

Effect of the Proposed Changes

The bill repeals, re-enacts and substantially alters chapters 99-442 and 2001-308, Laws of Florida, relating to the Citrus County Hospital Board.

There are a series of findings in the bill, addressed in 20 "whereas" clauses, which outline the purpose of this legislation. The factual accuracy of the clauses is disputed by the Foundation.¹² Several of the clauses note the history of the Board and the Foundation. In addition to this history the whereas clauses make the following statements:

- The lease agreement does not provide for reasonable public accountability;
- ACHA data suggests there have been significant financial losses from patient services across 2003-2010;
- Financial performance compared to similarly situated hospitals has been substandard;
- Ad-valorem tax has been increased to cover these losses;
- An Auditor General's report observed inconsistencies in management practices of the Foundation;

⁶ *Id.*

⁷ Florida Auditor General, Citrus County Hospital Board and Citrus County Memorial Health Foundation, Inc., (Feb. 2010)

⁸ Fla. Atty Gen. Op. 2006-36 (Aug. 2006).

⁹ *Id.*

¹⁰ Fla. Atty Gen. Op. 2006-36 (Aug. 2006).

¹¹ Florida Auditor General, Citrus County Hospital Board and Citrus County Memorial Health Foundation, Inc., 2010-093 (Feb. 2010)

¹² Memorandum for Members of the Florida Legislature, from Jan Gorrie, Esq. On file with the House Health and Human Services Quality Subcommittee, March 17, 2011

- There are concerns with the Foundation's compliance with open meeting and public records laws; and
- Because of these reasons and the failure of the Foundation to address the Board's issues, to protect the public and sovereign immunity status, the Board has had intervene.

The bill provides definitions for the "hospital board," "county," the "hospital," "indigent care," "operate," "property," and "State." The definition for indigent care includes a citation to a rule in the Florida Administrative Code, ch. 59H-1.0035(30), which could change in the future, requiring another bill.

Provision is made for the Board to comply with ch. 218, F.S., relating to political subdivisions and ch. 280, F.S., relating to security for public deposits. The bond provision for Board members is re-enacted, however, removes the requirement that the monies be deposited in an institution located in Citrus County.

The bill also adds a \$25,000 cap to checks or warrants that can be signed without the signature of two Board members, one of which must be the chair, vice-chair or secretary-treasurer.

The bill allows the Board to indemnify any person who was deemed an agent of the Board, in any lawsuit. This indemnification continues past termination of agent status, and extends to the person's heirs, executors and administrators.¹³ The agent must act within the scope of employment and in good faith. Indemnification extends to expenses (including attorney's fees), judgments, fines and amounts paid in settlements. The Board may also indemnify an agent against lost wages or earnings suffered. For a person to receive compensation, the Board must determine by a quorum of non-parties that indemnification is appropriate. If a quorum of disinterested Board members is not possible, the decision shall be made by an independent legal counsel, who may be either the Board's legal counsel or selected by the same.

The bill expressly prohibits indemnification of medical malpractice claims against individuals. The bill creates a presumption that termination of a suit, action or proceeding by judgment, order, settlement, conviction or upon plea of nolo contendere, does not amount to good faith.

The bill adds that the Board will provide for the payment of indigent care, or partner with other agencies to achieve the public purpose. The Board shall also develop and implement a county health plan.

The bill removes the Board's duty to determine the amount of money required for the construction, alteration, modification and maintenance of the hospital's facilities and then certify this to Citrus County's Board of Commissioners. The effect of this is to consolidate the taxing authority in the Board.

The bill provides that the Board may hire or terminate anyone it deems appropriate to assist the Board in the discharge of its operational, financial and statutory responsibilities. The bill also alters the Board's ability to borrow money – granting it authority to seek funds from state or federal agencies, or other entity – for the purpose of operation, construction, modification or repair of the hospital. The Board is also able to raise finance via bond issue, which can now be done without a referendum of the electorate. The bill also sets a cap on the amount of bond financing that can be raised no more than 6 times the annual hospital tax, based on an assumption of a tax rate of no more than 3 mills.

The bill provides that the Board has the ability to lease to a not-for-profit Florida corporation. In addition, the Board is given the power and authority to:

- Provide health care services through the use of health care facilities not owned by the Board, finding a public purpose to do so if necessary.

¹³ This could have the effect of excluding people who were devisees of the decedent agent. S. 732.201(20), F.S. Also, the use of "administrator / executor" is unclear. Florida's Probate Code, provides that the correct term is Personal Representative. S. 732.201(28), F.S.

- Maintain an office and staff. This includes the ability to employ administrators, physicians, accountants, financial experts, consulting engineers, architects, surveyors, and anyone else it deems necessary – regardless of any lease to a not-for-profit corporation.
- Acquire healthcare facilities, satisfy their financial obligations and mortgage them;
- Cooperate or contract with anyone in connection with this act.
- Provide reimbursement to public or private hospitals and healthcare providers.

The bill expressly prohibits the Board from reimbursing the bad debts of any health care facility or provider for patients that do not meet the Board's guidelines for reimbursement. However, the bill allows the Board to reimburse for medically needy patients, within the limitations of the Board's financial capacity.

The bill authorizes the Board to establish the following requirements of the not-for-profit corporation that leases the hospital, in addition to any lease requirements s. 155.40, F.S.:

- Members of the hospital board or not-for-profit corporate board must be residents of Citrus County;
- A separate accounting of ad valorem tax monies must be provided from the not-for-profit corporations other revenue streams, and approval from the Board be sought before expenditure;
- All articles of incorporation, corporate bylaws, all other governing documents, including all amendments or restatements of the lessee must be approved by the Board. This operates retroactively;
- The Board shall be the sole member of the not-for-profit corporation;
- The Board shall approve any merger or dissolution plans of the not-for-profit corporation;
- The Board shall be the voting majority of the not-for-profit corporation and shall rectify any corporate documents that say otherwise;
- All members of the not-for-profit corporation board shall be approved by the hospital Board. This is to operate retroactively;
- The Chief Executive Officer (CEO) of the not-for-profit corporation, and that any extensions of this term, shall be approved by the Board. The CEO is dismissible with or without cause, subject to contract, by the Board;
- All borrowing over \$100,000, leases or increases in indebtedness of greater than \$1.25 million, any capital project in excess of \$250,000, any non-budgeted expenditure of greater than \$125,000 and all policies that govern travel reimbursement and contract bid procedures must be approved by the Board;
- The budget of the not-for-profit corporation must be approved by the Board, prior to release. An independent financial audit shall be completed and paid for by the not-for-profit corporation, utilizing an auditor selected by the Board. Subject to approval of the budget, the Board will reimburse the not-for-profit corporation for indigent care, to the extent that it is required by law.
- All records of the not-for-profit corporation are public, unless exempt by law. However, the Board shall have access to all records, at any time. The Board has a duty to maintain the confidentiality of such information, where appropriate.
- The provisions of this bill shall be construed as furthering public health and welfare and open government requirements;
- Any dispute shall be subject to ch. 164, F.S., Government Disputes;¹⁴
- Failure to comply with these provisions is not to be construed as breach, but provides cause for the Board to seek judicial relief against the not-for-profit corporation;

These provisions are to operate retroactively, on all leases between the Board and the not-for-profit corporation. The bill provides that this does not affect third party contracts for which the Board has not approved. It is likely that this section of the bill will provide grounds for litigation, the outcome of which cannot be accurately predicted. This section of the bill may interpreted as a violation of Art. III,

¹⁴ The bill also provides that it can be enforced by declaratory judgment or by seeking judicial relief.

s. 11 of the Florida Constitution, in that it may impair a private contract. However, this would be subject to judicial interpretation.

The bill provides a severability clause, and that it is to be liberally construed as a remedial act.

B. SECTION DIRECTORY:

- Section 1:** Amends and recodifies 99-442, L.O.F.,(as amended by 2001-308, L.O.F.) Citrus County Hospital and Medical Nursing and Convalescent Home Act.
- Section 2:** Amends and recodifies 99-442, L.O.F.,(as amended by 2001-308, L.O.F.) Citrus County Hospital and Medical Nursing and Convalescent Home Act.
- Section 3:** Amends and recodifies 99-442, L.O.F.,(as amended by 2001-308, L.O.F.) Citrus County Hospital and Medical Nursing and Convalescent Home Act.
- Section 4:** Amends and recodifies 99-442, L.O.F.,(as amended by 2001-308, L.O.F.) Citrus County Hospital and Medical Nursing and Convalescent Home Act.
- Section 5:** Amends and recodifies 99-442, L.O.F.,(as amended by 2001-308, L.O.F.) Citrus County Hospital and Medical Nursing and Convalescent Home Act.
- Section 6:** Amends and recodifies 99-442, L.O.F.,(as amended by 2001-308, L.O.F.) Citrus County Hospital and Medical Nursing and Convalescent Home Act.
- Section 7:** Amends and recodifies 99-442, L.O.F.,(as amended by 2001-308, L.O.F.) Citrus County Hospital and Medical Nursing and Convalescent Home Act.
- Section 8:** Provides for an effective date of July 1, 2011.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

January 31, 2011.

WHERE?

The *Citrus County Chronicle*, a newspaper of general circulation published in Citrus County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

The Economic Impact Statement claims that there will be no impact on state revenue or expenditure.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 643, the word "board" should be substituted for "hoard" as it appears in the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

**HOUSE OF REPRESENTATIVES
2011 LOCAL BILL AMENDMENT FORM**

Prior to consideration of a substantive amendment to a local bill, the chair of the Legislative Delegation must certify by signing this Amendment Form that the amendment is approved by a majority of the legislative delegation. House local bill policy does not require a delegation meeting to formally approve an amendment. All substantive committee, subcommittee, and floor amendments must be accompanied by a completed original Amendment Form which has been provided to and reviewed by Community & Military Affairs Subcommittee staff prior to consideration. An Amendment Form is not required for technical amendments.

BILL NUMBER: HB 1043
SPONSOR(S): Smith, Jimmie T. (Dist 43)
RELATING TO: CITRUS COUNTY HOSPITAL BOARD / SPECIAL DISTRICT
[Indicate Area Affected (City, County or Special District) and Subject]
SPONSOR OF AMENDMENT: Representative Smith
CONTACT PERSON: Legislative Aide Chase Daniels
PHONE NO: 352 560 6020 E-MAIL: chase.daniels@myfloridahouse.gov
REVIEWED BY STAFF OF THE COMMUNITY & MILITARY AFFAIRS SUBCOMMITTEE []

Must Be Checked

I. BRIEF DESCRIPTION OF AMENDMENT:

(Attach additional page(s) if necessary)

*Deletion of part of the whereas clause beginning on Line 123.
Begin deletion on line 129 of the word although and continue deletion through line 131.
Amendment modifies whereas clause.*

II. REASON/NEED FOR AMENDMENT:

(Attach additional page(s) if necessary)

The Attorney general opinion being sought ~~is~~ ^{was} subsequently withdrawn.

III. NOTICE REQUIREMENTS

A. Is the amendment consistent with the published notice of intent to seek enactment of the local bill?

YES [] NO [] NOT APPLICABLE []

B. If the amendment is not consistent with the published notice, does the amendment require voter approval in order for the bill to become effective?

YES [] NO [] NOT APPLICABLE []

Amendment is consistent w/ the published notice.

IV. DOES THE AMENDMENT ALTER THE ECONOMIC IMPACT OF THE BILL?

YES [] NO []

NOTE: If the amendment alters the economic impact of the bill, a revised Economic Impact Statement describing the impact of the amendment must be submitted to the Community & Military Affairs Subcommittee prior to consideration of the amendment.

V. HAS THE AMENDMENT AS DESCRIBED ABOVE BEEN APPROVED BY A MAJORITY OF THE DELEGATION?

YES [] NO [] UNANIMOUSLY APPROVED []



Delegation Chair (Original Signature)

3/28/11
Date

Jimmie T Smith
Print Name of Delegation Chair

**HOUSE OF REPRESENTATIVES
2011 LOCAL BILL AMENDMENT FORM**

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REVIEWED BY STAFF OF THE COMMUNITY & MILITARY AFFAIRS SUBCOMMITTEE []

Must Be Checked

I. BRIEF DESCRIPTION OF AMENDMENT:

(Attach additional page(s) if necessary)

Page 12, line 314 starts w/ " of the nonprofit corporation's
Delete nonprofit corporation and insert + replace w/ hospital board.

II. REASON/NEED FOR AMENDMENT:

(Attach additional page(s) if necessary)

It was typo to have nonprofit corporation on line 314. It is obvious by a review of complete section that the authority contained therein was to be for the hospital board.

III. NOTICE REQUIREMENTS

A. Is the amendment consistent with the published notice of intent to seek enactment of the local bill?

YES [] NO [] NOT APPLICABLE []

B. If the amendment is not consistent with the published notice, does the amendment require voter approval in order for the bill to become effective?

YES [] NO [] NOT APPLICABLE []

IV. DOES THE AMENDMENT ALTER THE ECONOMIC IMPACT OF THE BILL?

YES [] NO []

NOTE: If the amendment alters the economic impact of the bill, a revised Economic Impact Statement describing the impact of the amendment must be submitted to the Community & Military Affairs Subcommittee prior to consideration of the amendment.

V. HAS THE AMENDMENT AS DESCRIBED ABOVE BEEN APPROVED BY A MAJORITY OF THE DELEGATION?

YES [] NO [] UNANIMOUSLY APPROVED []


Delegation Chair (Original Signature)

3/28/11
Date

Jimmie T. Smith
Print Name of Delegation Chair

**HOUSE OF REPRESENTATIVES
2011 LOCAL BILL AMENDMENT FORM**

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RELATING TO: CITRUS COUNTY HOSPITAL BOARD / SPECIAL DISTRICT
(Indicate Area Affected (City, County or Special District) and Subject)
SPONSOR OF AMENDMENT: Representative Smith
CONTACT PERSON: Legislative Aide Chase Daniels
PHONE NO: 3525606020 E-MAIL: chase.daniels@myfloridahouse.gov
REVIEWED BY STAFF OF THE COMMUNITY & MILITARY AFFAIRS SUBCOMMITTEE []

Must Be Checked

I. BRIEF DESCRIPTION OF AMENDMENT:

(Attach additional page(s) if necessary)

Section 17(14) line 680 should add, after the word Standards, "and shall take into account funds available from other sources, including other governmental funding sources."

II. REASON/NEED FOR AMENDMENT:

(Attach additional page(s) if necessary)

Section 15(3) lines 486 to 495 indicates the delegation intent, however, to clarify and insure appropriate legislative intent the same language in Section 15 is now added to Section 17.

III. NOTICE REQUIREMENTS

A. Is the amendment consistent with the published notice of intent to seek enactment of the local bill?

YES [] NO [] NOT APPLICABLE []

B. If the amendment is not consistent with the published notice, does the amendment require voter approval in order for the bill to become effective?

YES [] NO [] NOT APPLICABLE []

IV. DOES THE AMENDMENT ALTER THE ECONOMIC IMPACT OF THE BILL?

YES [] NO []

NOTE: If the amendment alters the economic impact of the bill, a revised Economic Impact Statement describing the impact of the amendment must be submitted to the Community & Military Affairs Subcommittee prior to consideration of the amendment.

V. HAS THE AMENDMENT AS DESCRIBED ABOVE BEEN APPROVED BY A MAJORITY OF THE DELEGATION?

YES [] NO [] UNANIMOUSLY APPROVED []


Delegation Chair (Original Signature)

3/28/11
Date

Jimmie T. Smith
Print Name of Delegation Chair

Proof of Publication
 from the
CITRUS COUNTY CHRONICLE
 Crystal River, Citrus County, Florida
PUBLISHED DAILY

STATE OF FLORIDA
 COUNTY OF CITRUS

Before the undersigned authority personally appeared

Mary Ann Naczi

Of the Citrus County Chronicle, a newspaper published daily at Crystal River, in Citrus County, Florida, that the attached copy of advertisement being a public notice in the matter of the

286-0129 SACRN PUBLIC NOTICE NOTICE OF INTENT TO SEEK LEGISLATION To Whom It May Concern: Notice is hereby given of intent to apply to the 2011 Florida Legislature, or the 2011 Florida Legislative Session, or 2011 Florida Legislature and any Special or E

Court, was published in said newspaper in the issues of January 29th, 2011.

Affiant further says that the Citrus County Chronicle is a Newspaper published at Crystal River in said Citrus County, Florida, and that the said newspaper has heretofore been continuously published in Citrus County, Marion County and Levy County, Florida, each week and has been entered as second class mail matter at the post office in Inverness in said Citrus County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Mary Ann Naczi

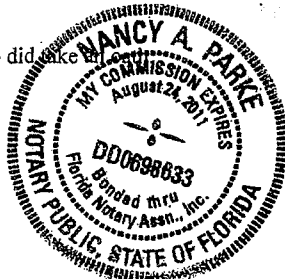
The foregoing instrument was acknowledged before me

This 31st day of January 2011

By: Mary Ann Naczi

who is personally known to me and who did take

Nancy A. Parke
 Notary Public



286-0129 SACRN
 PUBLIC NOTICE

NOTICE OF INTENT TO SEEK LEGISLATION

To Whom It May Concern: Notice is hereby given of intent to apply to the 2011 Florida Legislature, or the 2011 Florida Legislative Session, or 2011 Florida Legislature and any Special or Extended Legislative Session of the Florida Legislature for the passage of a special legislative act relating to the Citrus County Hospital Board summarized as follows:

An act relating to Citrus County; providing for codification of special laws relating to the Citrus County Hospital Board, an Independent special district in Citrus County; providing legislative intent; codifying, amending, and reenacting chapters 99-442, Laws of Florida, as amended by chapter 2001-308, Laws of Florida, the "Citrus County Hospital and Medical Nursing and Convalescent Home Act," deleting obsolete language or provisions; making technical revisions; providing definitions; providing for the membership, organization, purpose, duties, powers and authority of the hospital board; authorizing and providing for ad valorem taxation and the issuance of revenue bonds; providing for indemnification;

authorizing the hospital board to enter into a lease or contract with a not-for-profit corporation for the purpose of operating and managing the public hospital and its facilities; providing requirements for such lease or contract; declaring a need for governance authority to fulfill the hospital board's responsibilities to ensure public oversight, accountability and public benefit provided by the operation and management of the public assets by any lessee not-for-profit corporation;

providing all members of the hospital board and the board of directors of such lessee not-for-profit corporation be residents of Citrus County, providing for hospital board representation on the lessee not-for-profit corporate board of directors and hospital board approval of additional members of the lessee not-for-profit corporate board of directors; providing that the lessee not-for-profit corporation conform governance documents to certain requirements, if necessary;

providing that the lessee not-for-profit corporation shall separately account for the expenditure of all ad valorem tax moneys provided by the hospital board, maintain the ad valorem tax moneys in a separate accounting fund and approve the expenditure of all public tax funds in a public meeting;

providing the hospital board shall be the sole member of the lessee not-for-profit corporation; providing for hospital board approval of the lessee not-for-profit corporation's governing documents; articles of incorporation, bylaws and restatements or amendments thereto; any plan of merger or dissolution of the lessee not-for-profit corporation; the selection of the chief executive officer of the lessee not-for-profit corporation; and renewal of his or her employment contract with termination authority vested in the hospital board subject to the term of then existing contracts; additional loan indebtedness or leases of the not-for-profit corporation in excess of a specified amount; policies for travel reimbursements and contract bid procedures of the not-for-profit corporation; the annual operating and capital budgets of the not-for-profit corporation and capital projects and non-budgeted operative expenses of the not-for-profit corporation in excess of a specified amount;

providing for an annual independent audit of the lessee not-for-profit corporation regarding fiscal management, subject to hospital board discretion; providing that all records of the lessee not-for-profit corporation are public records unless exempted from public disclosure by law; specifying that the lessee not-for-profit corporation must provide the hospital board with all proprietary and confidential information with respect to hospital board maintenance of confidentiality; providing the hospital board shall, subject to its annual approved budget, reimburse the lessee not-for-profit corporation for the cost of non-funded, qualified medically necessary inpatient care pursuant to the Florida Health Care Responsibility Act and the Florida Inpatient Certification Standards;

providing that the provisions of this Act shall be construed as advancing public policy, health and welfare and open government; providing any dispute between the hospital board and the lessee not-for-profit corporation shall be subject to court action pursuant to Florida law and enforced by declaratory, injunctive or other appropriate court action;

providing for necessary accountability and governance of any lessee not-for-profit corporation to whom the public hospital and assets may be leased to protect the stability and long term viability of the public hospital and ensure the provision of quality health care services; to provide and ensure the Citrus County Hospital Board, as representatives of the citizens of Citrus County, the necessary and appropriate public oversight of any not-for-profit corporation to whom the public hospital and publically owned assets may be leased;

providing for the application, interpretation and implementation of the act; repealing chapters 99-442 and 2001-308, Laws of Florida, and all prior special acts relating to the Citrus County Hospital Board; providing severability; providing for construction of the act; and providing an effective date.

Copies of the actual Legislative Proposal are available at the Office of Representative Jimmie J. Smith, at 352-560-6020 or at the office of Citrus County Hospital Board c/o Grant & Samargya, LLC at 352-726-5111.

Published In Citrus County Chronicle, Jan. 29, 2011.

HOUSE OF REPRESENTATIVES
2011 ECONOMIC IMPACT STATEMENT FORM

House local bill policy requires that no local bill will be considered by a committee or a subcommittee without an Economic Impact Statement. This form must be prepared at the LOCAL LEVEL by an individual who is qualified to establish fiscal data and impacts. Please submit this completed, original form to the Community & Military Affairs Subcommittee as soon as possible after a bill is filed.

BILL #: 1043
SPONSOR(S): Representative Jimmie T. Smith
RELATING TO: Citrus County Hospital Board, Citrus County
 [Indicate Area Affected (City, County or Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	<u>FY11-12</u>	<u>FY 12-13</u>
Expenditures: Adoption of this Bill will not result in an increase or decrease in governmental expenditures. See section V for additional discussion.	No Change	No Change

II. ANTICIPATED SOURCE(S) OF FUNDING:

	<u>FY 11-12</u>	<u>FY 12-13</u>
Federal: No increase or decrease in federal funds will result from passage of this Bill.	No Change	No Change
State: No increase or decrease in state funds will result from passage of this Bill.	No Change	No Change
Local: The effects of passage of this Bill on local funding are uncertain at this time. However, passage of the Bill will result in improved governance over the operations of the system and greater accountability over the use of ad valorem (property) tax monies, as well as State and Federal monies received to provide medical services to the indigent and uninsured citizens of Citrus County.	Undeterminable	Undeterminable

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	<u>FY 11-12</u>	<u>FY 12-13</u>
Revenues: The effects of passage of this Bill on governmental revenues are uncertain at this time. However, passage of the Bill will result in improved governance over the operations of the Lessee and greater accountability resulting in a positive impact on the operations of the Lessee. However, the exact amount of the positive impact is not determinable at this time.	Undeterminable	Undeterminable

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages: The passage of this Bill will have a positive economic impact on individuals, businesses and governments in Citrus County. The improved governance will result in improved operations of the Lessee and encourage patients and doctors to transfer their business back to the Lessee's facilities.

Disadvantages: There are no negative economic impacts to passage of this Bill.

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

The estimated impact of this Bill upon competition and the open market for employment is undetermined at this time. Improvements in the operations of the Lessee's activities should spur creation of jobs not only for the Lessee but at local doctor's offices and other medical service providers.

The increase or decrease in expenditures for Citrus Memorial Health Foundation (Lessee), the non-profit corporation which leases and operates Citrus Memorial Hospital and associated operations, is uncertain.

As pointed out in the Auditor general's report dated February 10, 2010, the Lessee had operated at a deficit, excluding ad valorem tax moneys received from the Citrus County Hospital Board, for the 2005/06 through 2007/08 fiscal years. Review of Audited Financial Statements and Lessee prepared monthly and yearly financial reports reveals that the operating results were even worse for the 2008/09 and 2009/10 fiscal year.

The Bill will have positive impact on competition and the open market for employment in the County. Passage of the Bill will allow free markets to rein again and result in a long term reduction in property taxes to support the Lessee's operations

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

Data used in making these estimates and evaluations included review of the report of the Auditor General dated February 2010 as well as audited financial statements for the 2002/03 through 2008/09 fiscal years.

Further documents reviewed included monthly and yearly unaudited financial reports prepared by the Lessee's staff as well as transcripts of selected meetings of the Lessee's over the past year.

PREPARED BY:  02/18/2011
[Must be signed by Preparer] Date

TITLE: Finance Director

REPRESENTING: Citrus County Hospital Board

PHONE: (352) 726-5111

E-Mail Address: h.kilgore@cchb.us

HOUSE OF REPRESENTATIVES

2011 LOCAL BILL CERTIFICATION FORM

BILL #: 1043

SPONSOR(S): Smith

RELATING TO: Citrus County

[Indicate Area Affected (City, County, or Special District) and Subject]

NAME OF DELEGATION: Citrus County Legislative Delegation

CONTACT PERSON: Chase Daniels

PHONE NO.: (352) 816-3343 E-Mail: chase.daniels@myfloridahouse.gov

I. House local bill policy requires that three things occur before a committee or subcommittee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Community and Military Affairs Subcommittee as soon as possible after a bill is filed.

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES NO

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES NO

Date hearing held: 12/2/2010

Location: Citrus County Courthouse - 110 N Apollo Ave, Inverness, FL

(3) Was this bill formally approved by a majority of the delegation members?

YES NO

II. Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.

Has this constitutional notice requirement been met?

Notice published: YES NO DATE 1/29/2011

Where? Citrus County ^{Charle} County Citrus

Referendum in lieu of publication: YES NO

Date of Referendum _____

III. Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES [] NO NOT APPLICABLE []

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES [] NO NOT APPLICABLE []

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES [] NO []

Note: House policy requires that an Economic Impact Statement for local bills be prepared at the local level and be submitted to the Community & Military Affairs Subcommittee.



Delegation Chair (Original Signature)

2/21/11
Date

Jimmie T. Smith

Printed Name of Delegation Chair

1 A bill to be entitled
 2 An act relating to Citrus County; providing for
 3 codification of special laws relating to the Citrus County
 4 Hospital Board, an independent special district in Citrus
 5 County; providing legislative intent; codifying, amending,
 6 reenacting, and repealing chapters 99-442 and 2001-308,
 7 Laws of Florida, as the "Citrus County Hospital and
 8 Medical Nursing and Convalescent Home Act"; deleting
 9 obsolete provisions; making technical revisions; providing
 10 definitions; authorizing the board to enter into a lease
 11 or contract with a not-for-profit corporation for the
 12 purpose of operating and managing the hospital and its
 13 facilities; providing requirements for such lease or
 14 contract; declaring a need for governance authority to
 15 fulfill the hospital board's public responsibilities;
 16 providing for a board of directors; providing for
 17 membership; requiring that the not-for-profit corporation
 18 conform all governance documents to certain requirements,
 19 if necessary; authorizing ad valorem taxation; requiring
 20 that the not-for-profit corporation separately account for
 21 the expenditure of all ad valorem tax moneys provided by
 22 the hospital board; requiring that the expenditure of all
 23 public tax funds be approved in a public meeting and
 24 maintained in a separate account; providing for the
 25 hospital board's approval or rejection of the not-for-
 26 profit corporation's articles of incorporation or bylaws,
 27 selection of a new chief executive officer or renewal of
 28 his or her employment contract, the annual operating and

29 capital budgets, additional loan indebtedness or leases in
 30 excess of a specified amount, and the not-for-profit
 31 corporation's policies for travel reimbursements and
 32 contract bid procedures; providing that all records of the
 33 not-for-profit corporation are public records unless
 34 exempt; providing that any dispute between the hospital
 35 board and the not-for-profit corporation is subject to
 36 court action; providing for interpretation and
 37 implementation of the act and for court enforcement;
 38 providing application; repealing chapters 99-442 and 2001-
 39 308, Laws of Florida, relating to the Citrus County
 40 Hospital Board; providing severability; providing
 41 construction; providing an effective date.

42
 43 WHEREAS, the Citrus County Hospital Board was created by
 44 the Legislature in 1949 as a special taxing district and a
 45 public nonprofit corporation for the purpose of acquiring,
 46 building, constructing, maintaining, and operating a public
 47 hospital in Citrus County; and, in 1965, the Legislature
 48 expanded the purpose of the hospital board to include operating
 49 public hospitals, medical nursing homes, and convalescent homes
 50 in Citrus County, and

51 WHEREAS, in 1987, the hospital board caused to be
 52 incorporated a not-for-profit management corporation with the
 53 original purpose of operating exclusively for the benefit of and
 54 carrying out the purposes of the Citrus County Hospital Board
 55 and, in 1990, entered into a long-term lease agreement with the
 56 not-for-profit management corporation pursuant to section

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2011

57 | 155.40, Florida Statutes, leasing all public assets, operations,
 58 | and management of Citrus Memorial Hospital to the not-for-profit
 59 | management corporation, and

60 | WHEREAS, at the time the lessee management corporation was
 61 | incorporated, the corporate board consisted of five hospital
 62 | board directors, the hospital CEO, the Chief of the Medical
 63 | Staff, and two private at-large directors selected by the
 64 | hospital board, which provided the hospital board a five-to-four
 65 | majority position on the management corporation's board of
 66 | directors; however, currently, the corporate board consists of
 67 | five hospital board directors, seven private at-large directors
 68 | selected by the corporation, and one medical director, reducing
 69 | the hospital board to a minority position of five of 13
 70 | corporate directors, and

71 | WHEREAS, members of the hospital board constituted a
 72 | majority of the board of directors of the lessee corporation
 73 | when the hospital board incorporated the not-for-profit
 74 | corporation, but the hospital board's majority has been diluted
 75 | over time through an increase in the number of private, at-large
 76 | directors, and

77 | WHEREAS, the term of the lease agreement extends for 43
 78 | years, with an unconditional right of renewal provided to the
 79 | lessee management corporation for an additional 45 years,
 80 | providing an effective 88-year lease term, and

81 | WHEREAS, the lease provisions do not provide for reasonable
 82 | public accountability regarding operative or financial
 83 | performance standards other than requiring the not-for-profit
 84 | management corporation to maintain minimal bond covenants, and

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2011

85 | the lease fails to provide for any corporate performance
 86 | standards regarding financial or operative compliance with
 87 | industry standards or for any actionable financial or operative
 88 | performance monitoring by the hospital board, and

89 | WHEREAS, the Financial Hospital Data 2003-08 compiled by
 90 | the Agency for Health Care Administration (AHCA) reports the
 91 | lessee management corporation has incurred cumulative financial
 92 | operative losses from patient services exceeding \$50 million;
 93 | 2009 AHCA documents reflect corporate losses from patient
 94 | services approaching \$6 million; and internal financial
 95 | statements project 2010 corporate losses from patient services
 96 | in excess of \$10 million, and

97 | WHEREAS, the AHCA Financial Hospital Data 2003-08 reports
 98 | the lessee corporation consistently underperforms AHCA
 99 | statistically similar hospital group operating margin financial
 100 | benchmarks as well as consistently underperforms the AHCA not-
 101 | for-profit hospital group, and

102 | WHEREAS, consistent patient service operative losses
 103 | incurred by the lessee corporation from 2004 to 2009 have
 104 | necessitated substantial increases in the ad valorem tax burden
 105 | on the citizens of Citrus County and decreased the management
 106 | corporation's quantitative debt capacity from \$11 million in
 107 | 2004 to negative \$22 million in 2008, and

108 | WHEREAS, in February 2010, the Auditor General issued a
 109 | report of final findings that is critical of the not-for-profit
 110 | corporation's fiscal management of the leased public hospital
 111 | facilities and its accountability for public funds, noting that
 112 | the lease agreement does not prescribe any specific good

113 business practices to ensure efficient operations of the public
 114 hospital and that Florida Statutes do not authorize the public
 115 hospital board to relinquish to an independent private board
 116 unfettered control over public property, powers, taxing
 117 authority, and money, including expenditures of ad valorem taxes
 118 without public oversight or accountability, and further noting
 119 that the hospital board must exercise sufficient control over
 120 the management corporation for the management corporation to be
 121 considered an instrumentality of a governmental entity and thus
 122 entitled to sovereign immunity, and

123 WHEREAS, the Attorney General opined in 2006 and the Fifth
 124 Judicial Circuit Court in and for Citrus County has held in
 125 2008, limited to a specific case, that the not-for-profit
 126 management corporation is an instrumentality of the hospital
 127 board for purposes of section 768.28, Florida Statutes, and is,
 128 under the circumstances then presented, entitled to sovereign
 129 immunity, although in November 2010 the board asked the Attorney
 130 General to revisit its opinion on sovereign immunity in light of
 131 conduct (or lack thereof) by the lessee corporation that appears
 132 to have jeopardized a public asset, and

133 WHEREAS, the not-for-profit corporation has refused to make
 134 available to the hospital board a strategic plan, which it
 135 considered in closed meetings and later discussed in public
 136 forums in violation of Florida's open meetings and public
 137 records laws, and

138 WHEREAS, the not-for-profit corporation had filed a
 139 petition with AHCA for a declaratory statement that would
 140 authorize the corporation to continue its practice of not

141 separately accounting for its expenditure of low-income pool
 142 funds received from AHCA pursuant to federal and state laws but
 143 later withdrew its petition upon being advised that such a
 144 statement would not be issued, and

145 WHEREAS, in October 2010, the Executive Committee of the
 146 Medical Staff of the not-for-profit corporation expressed "no
 147 confidence" in the corporation's chief executive officer and
 148 president by a supermajority vote due to a lack of trust by its
 149 medical staff physicians in the management corporation's CEO,
 150 and

151 WHEREAS, the hospital board has repeatedly expressed
 152 governance, administrative, and financial performance concerns
 153 to the not-for-profit corporation with respect to its
 154 performance of public responsibilities and its management of
 155 public assets on behalf of the hospital board and the taxpayers
 156 of Citrus County, but without success, and

157 WHEREAS, the hospital board has endeavored to resolve
 158 governance, administrative, and financial concerns with the
 159 lessee on an amicable basis but has received no cooperation from
 160 the lessee, and

161 WHEREAS, to ensure the benefits of sovereign immunity
 162 status, meaningful oversight by the hospital board is
 163 necessitated in light of the not-for-profit corporation's
 164 asserted status as an instrumentality of the hospital district,
 165 and

166 WHEREAS, restoration of meaningful hospital board
 167 representation on the board of the lessee management corporation
 168 and implementation of appropriate accountability and oversight

169 by the hospital board are necessitated by the corporate
 170 deficiencies as found by the Auditor General, the lessee
 171 corporation's losses from patient services, increased debt and
 172 ad valorem tax dependency, consistent financial underperformance
 173 when compared with the AHCA statistically similar hospital group
 174 and the AHCA not-for-profit hospital group, and the need to
 175 further and ensure the asserted sovereign immunity status of the
 176 not-for-profit corporation as an instrumentality of the hospital
 177 district, and

178 WHEREAS, the ability of the hospital board to continue to
 179 act in the public interest on behalf of the taxpayers of Citrus
 180 County requires mechanisms to ensure adherence to the hospital
 181 board's public responsibilities and express authority for
 182 judicial interpretation and enforcement of this act through
 183 declaratory proceedings and other appropriate judicial remedies,
 184 and

185 WHEREAS, this act provides an appropriate and effective
 186 means of addressing the lessee's performance of its
 187 responsibilities to the public and to the taxpayers of Citrus
 188 County, NOW, THEREFORE,

189

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

191

192 Section 1. This act constitutes the codification of all
 193 special acts relating to the Citrus County Hospital Board. It is
 194 the intent of the Legislature in enacting this law to provide a
 195 single, comprehensive special act charter for the district,
 196 including all current authority granted to the district by its

197 several legislative enactments and any additional authority
 198 granted by this act.

199 Section 2. Chapters 99-442 and 2001-308, Laws of Florida,
 200 relating to the Citrus County Hospital Board, are codified,
 201 reenacted, amended, and repealed as provided in this act.

202 Section 3. The Citrus County Hospital Board is re-created,
 203 and the charter is re-created and reenacted to read:

204 Section 1. This act may be cited as the "Citrus County
 205 Hospital and Medical Nursing and Convalescent Home Act."

206 Section 2. As used in this act, the following words and
 207 terms have the following meanings:

208 (1) "Citrus County Hospital Board," "hospital board," and
 209 "board" means the Citrus County Hospital Board.

210 (2) "County" means Citrus County.

211 (3) "County hospital and medical nursing and convalescent
 212 homes" includes hospitals, medical care facilities, clinics, and
 213 other allied medical care units.

214 (4) "Indigent care" means medically necessary health care
 215 provided to Citrus County residents who are determined to be
 216 qualified pursuant to the provisions of the Florida Health Care
 217 Responsibility Act, section 154.304(9), Florida Statutes, and
 218 the Florida Health Care Indigency Eligibility Certification
 219 Standards, Florida Administrative Code, rule 59H-1.0035(30).

220 (5) "Operate" includes build, construct, maintain, repair,
 221 alter, expand, equip, lease pursuant to and consistent with the
 222 provisions of this act, finance, and operate.

223 (6) "Property" means real and personal property of every
 224 nature whatsoever.

225 (7) "State" means the State of Florida.
 226 Section 3. (1) There is hereby created the Citrus County
 227 Hospital Board, an independent special district, and by that
 228 name the board may sue and be sued, plead and be impleaded,
 229 contract and be contracted with, acquire and dispose of property
 230 or any interest therein, and have an official seal. The board is
 231 created as a public nonprofit corporation without stock and is
 232 composed of and governed by the five members herein provided
 233 for, to be known as trustees. The hospital board is hereby
 234 constituted and declared to be an agency of the county and
 235 incorporated for the purpose of operating hospitals, medical
 236 nursing homes, and convalescent homes in the county. The
 237 hospital board shall consist of five trustees appointed by the
 238 Governor, and, upon this act becoming a law, the present members
 239 will automatically become trustees and shall constitute the
 240 board. Their respective terms of office shall be the term each
 241 member is presently serving. All subsequent appointments, upon
 242 the expiration of the present terms, shall be for terms of 4
 243 years each. Upon the expiration of the term of each trustee, the
 244 successor shall be appointed by the Governor. Likewise, any
 245 vacancy occurring shall be filled by appointment by the Governor
 246 for the unexpired term. Each appointment by the Governor is
 247 subject to approval and confirmation by the Senate.
 248 (2) The trustees of the board shall elect from among its
 249 members a chair, a vice chair, and a secretary-treasurer, who
 250 shall each hold office for a period of 1 year. Each trustee
 251 shall execute a bond in the penal sum of \$5,000 with a good and
 252 sufficient surety of a surety company authorized under the laws

253 of the state to become surety, payable to the Citrus County
 254 Hospital Board, conditioned upon the faithful performance of the
 255 duties of the trustee, which bonds shall be approved by the
 256 remaining trustees of the board and shall be filed with the
 257 Board of County Commissioners of Citrus County. The premiums on
 258 such bonds shall be paid by the hospital board. Three trustees
 259 shall constitute a quorum of the hospital board for the purpose
 260 of conducting its business and exercising its powers and for all
 261 other purposes. Action may be taken by the board only upon a
 262 vote in the affirmative of three trustees thereof.

263 (3) The hospital board shall comply with the applicable
 264 requirements of chapter 280, Florida Statutes, and part IV of
 265 chapter 218, Florida Statutes.

266 (4) Any and all funds so deposited shall be withdrawn by a
 267 check or warrant signed by two trustees of the hospital board,
 268 of which one shall be the chair, vice chair, or secretary-
 269 treasurer. No check or warrant exceeding the sum of \$25,000
 270 shall be delivered to the payee without approval thereof shown
 271 in the minutes of the hospital board meeting.

272 Section 4. The trustees of the board shall receive no
 273 compensation for their services, but they shall be entitled to
 274 indemnification from the hospital board for all actions taken in
 275 good faith or on the basis of legal advice from board counsel,
 276 in the manner and the extent provided for in a subsequent
 277 section of this act.

278 Section 5. The Citrus County Hospital Board as hereby
 279 created shall be for the purpose of operating, in Citrus County,
 280 public hospitals, medical nursing homes, and convalescent homes,

281 primarily and chiefly for the benefit of the citizens and
 282 residents of Citrus County. Authority is hereby given to the
 283 board to build, erect, expand, equip, maintain, operate, alter,
 284 change, lease pursuant to and consistent with the provisions of
 285 this act, and repair public hospitals, medical nursing homes,
 286 and convalescent homes in Citrus County. The corporation is
 287 authorized, when rooms and services are available, without
 288 detriment or deprivation to the citizens and residents of Citrus
 289 County, to extend the hospitalization and medical nursing home
 290 and convalescent home services provided by such hospitals,
 291 medical nursing homes, and convalescent homes to patients from
 292 adjoining and other counties of Florida and from other states,
 293 upon the payment of the cost of such hospitalization, medical
 294 nursing home services, and convalescent home services as may be
 295 determined by the trustees of the hospital board. The board
 296 shall have the power and authority to operate an ambulance
 297 system and ambulance services and to charge all patients for all
 298 services rendered in any facility owned or operated by the
 299 hospital board, including the ambulance facility. The board may
 300 charge a patient interest on the patient's account; sell,
 301 discount, or assign such account to a bank, finance company,
 302 collection agency, or other type of collection facility; accept
 303 promissory notes or other types of debt obligations from a
 304 patient; assign or discount such accounts receivable, notes, or
 305 other obligations; require a patient to guarantee the payment of
 306 an existing account or note; require a guarantee of payment
 307 before admitting a patient; and receive and assign any
 308 assignment of all types of insurance proceeds. In addition to

309 all other powers, the board shall have the power and authority
 310 to:

311 (1) Provide for the payment of indigent care services by
 312 private health care providers in the county, or to partner with
 313 other entities such as the Department of Health, in furtherance
 314 of the nonprofit corporation's public purpose and the necessity
 315 for the preservation of the public health and welfare of the
 316 residents of the county.

317 (2) Develop and implement a county health plan.

318 Section 6. The board of county commissioners shall levy or
 319 cause to be levied each year beginning July 1, 1965, the millage
 320 certified to the board of county commissioners by the trustees
 321 of the board upon all taxable real and personal property in
 322 Citrus County, not including, however, homestead property that
 323 is exempt from general taxation by the Constitution of the State
 324 of Florida, for the purpose of erecting, building, equipping,
 325 maintaining, changing, altering, repairing, leasing, and
 326 operating the public hospital provided for in this act. Such tax
 327 shall be known as the hospital tax, and the property appraiser
 328 shall make such assessments and the tax collector shall collect
 329 such assessments when made. The money collected shall be paid
 330 monthly to the board. However, the annual tax levied under this
 331 section may not exceed 3 mills.

332 Section 7. The hospital board is hereby authorized and
 333 empowered to own and acquire property by purchase, lease, gift,
 334 grant, or transfer from the county, the state, or the Federal
 335 Government, or any subdivision or agency thereof, or from any
 336 municipality, person, partnership, or corporation and to

337 acquire, construct, maintain, operate, expand, alter, repair,
 338 change, lease, finance, and equip hospitals, medical nursing
 339 homes, convalescent homes, medical care facilities, and clinics
 340 in the county.

341 Section 8. The hospital board is authorized and empowered
 342 to enter into contracts with individuals, partnerships,
 343 corporations, municipalities, the county, the state or any
 344 subdivision or agency thereof, or the United States of America
 345 or any subdivision or agency thereof to carry out the purposes
 346 of this act.

347 Section 9. The hospital board is empowered to and shall
 348 adopt all necessary rules, regulations, and bylaws for the
 349 operation of hospitals, medical nursing homes, and convalescent
 350 homes; provide for the admission thereto and treatment of such
 351 charity patients who are citizens of the state and residents of
 352 the county for the preceding 2 years; set the fees and charges
 353 to be made for the admission and treatment therein of all
 354 patients; and establish the qualifications for members of the
 355 medical profession to be entitled to practice therein.

356 Section 10. The hospital board shall have the power to
 357 purchase any and all equipment that may be needed for the
 358 operation of hospitals, medical nursing homes, and convalescent
 359 homes and shall have the power to appoint and hire such agent or
 360 agents, technical experts, attorneys, and all other employees as
 361 are necessary for carrying out the purposes of this act,
 362 including the hiring and maintenance of staff personnel as it
 363 may deem appropriate to assist the board in the discharge of its
 364 operational, financial, and statutory responsibilities, and in

365 carrying out its fiduciary duties to the taxpayers of Citrus
 366 County, and to prescribe their salaries and duties. The board
 367 shall have the power to discharge all employees or agents when
 368 deemed necessary by the board for the carrying out of the
 369 purposes of this act.

370 Section 11. At the end of each fiscal year, the Citrus
 371 County Hospital Board shall within 30 days file with the Clerk
 372 of the Circuit Court of Citrus County a full, complete, and
 373 detailed accounting of the preceding year and at the same time
 374 shall file a certified copy of such financial report with the
 375 Board of County Commissioners of Citrus County, which report
 376 shall be recorded in the minutes of the board of county
 377 commissioners. The board of county commissioners, at its
 378 discretion and at the expense of the county, may publish and
 379 report an accounting in a newspaper of general circulation in
 380 Citrus County.

381 Section 12. In addition to all other implied and express
 382 powers contained in this act, the board shall have the express
 383 authority to negotiate loans to borrow money from any state or
 384 federal agency for the purpose or purposes of constructing,
 385 maintaining, repairing, altering, expanding, equipping, leasing,
 386 and operating county hospitals, medical nursing homes,
 387 convalescent homes, medical care facilities, clinics, and all
 388 other types of allied medical care units.

389 Section 13. (1) In addition to all other implied and
 390 express powers contained in this act, the board shall have the
 391 express authority to borrow money, with or without issuing notes
 392 therefor, for the purpose or purposes of constructing,

393 maintaining, repairing, altering, expanding, equipping, leasing,
 394 and operating county hospitals, medical nursing homes,
 395 convalescent homes, medical care facilities, clinics, and all
 396 other types of allied medical care units. The board's authority
 397 to borrow money, with or without issuing notes, shall be subject
 398 to the conditions of this act applying to the board's right to
 399 issue revenue bonds.

400 (2) The board shall have express authority to issue bonds,
 401 subject to approval at a referendum of the voters of the county,
 402 and to issue revenue bonds, without a referendum of the voters
 403 of the county, the proceeds of which shall be used for erecting,
 404 equipping, building, expanding, altering, changing, maintaining,
 405 operating, leasing, and repairing such hospitals, medical
 406 nursing homes, and convalescent homes. Such bonds, federal or
 407 state hospital loans, notes, or revenue bonds shall mature
 408 within 30 years after the year in which they are issued or made
 409 and shall be payable in such years and amounts as shall be
 410 approved by the board.

411 (3) The board shall determine the form of the loans,
 412 notes, bonds, and revenue bonds, including any interest coupons
 413 to be attached thereto, and the manner of executing them, and
 414 shall fix the denomination or denominations thereof and the
 415 place or places of payment of principal and interest, which may
 416 be at any bank or trust company within or without the state. In
 417 case a trustee whose signature or a facsimile of whose signature
 418 appears on any loan, note, bond, or revenue certificate or
 419 coupon ceases to be such trustee before the delivery thereof,
 420 such signature or facsimile shall nevertheless be valid and

421 sufficient for all purposes the same as if the trustee had
 422 remained in office until such delivery. All loan agreements,
 423 notes, bonds, and revenue bonds issued hereunder shall have and
 424 are hereby declared to have all the qualities and incidents of
 425 negotiable instruments under the negotiable instruments law of
 426 the state.

427 (4) Whenever the board passes a resolution approving the
 428 issuance of such bonds, the board shall call for an election
 429 and, subject to such election, permit the repayment of the bonds
 430 out of an annual levy not to exceed 1.5 mills per year. Such
 431 millage is included in the maximum millage of 3 mills per year.
 432 Subject to such limitations, such bonds shall be payable from
 433 the full faith and credit of the board.

434 (5) The loans, notes, and revenue bonds, together with the
 435 interest, shall be payable from gross or net receipts of the
 436 hospital board or any portion thereof.

437 (6) Such loans, notes, bonds, or revenue bonds shall not
 438 bear interest in excess of the maximum rate permitted by the
 439 laws of the state.

440 (7) The board may sell bonds, loans, notes, or revenue
 441 bonds in such manner, either at public or private sale, and for
 442 such price as it may determine to be for the best interest of
 443 the hospital board.

444 Section 14. The total amount of outstanding bonds of the
 445 hospital payable from ad valorem taxation at any one time shall
 446 not exceed an amount equal to 6 times the annual hospital tax,
 447 assuming such tax is based upon the yearly millage of 3 mills.

448 Section 15. (1) The Citrus County Hospital Board shall
 449 have the authority to enter into leases or contracts with a not-
 450 for-profit Florida corporation for the purpose of operating and
 451 managing the hospital and any or all of its facilities of any
 452 kind and nature.

453 (2) The Citrus County Hospital Board shall have the power
 454 and authority to:

455 (a) Provide health care services to residents of the
 456 county through the use of health care facilities not owned and
 457 operated by the hospital board. The provision of such care is
 458 hereby found and declared to be a public purpose and necessary
 459 for the preservation of the public health and welfare of the
 460 residents of the county.

461 (b) Maintain an office and all necessary staff at such
 462 place or places as it may designate.

463 (c) Employ administrators, physicians, attorneys,
 464 accountants, financial experts, consulting engineers,
 465 architects, surveyors, and such other employees and agents as
 466 may be necessary in its judgment and to fix their compensation,
 467 regardless of any lease to the not-for-profit corporation.

468 (d) Acquire existing health care facilities and reimburse
 469 any health care facility for the cost of such facilities in
 470 accordance with an agreement between the hospital board and the
 471 health care facility.

472 (e) Acquire existing health care facilities and refund,
 473 refinance, or satisfy outstanding obligations, mortgages, or
 474 advances issued, made, or given by such health care facility.

475 (f) Mortgage any health care facility and the site
 476 thereof.

477 (g) Cooperate or contract with other governmental agencies
 478 or private individuals or entities as may be necessary,
 479 convenient, incidental, or proper in connection with any of the
 480 powers, duties, or purposes authorized by this act.

481 (h) Provide for reimbursement to hospitals, physicians, or
 482 other health care providers or facilities, whether public or
 483 private, and pay private physicians for indigent care.

484 (i) Establish criteria for the provision of health care
 485 pursuant to this act.

486 (3) The hospital board is hereby restricted from
 487 reimbursing any health care providers or facilities, including
 488 hospitals and physicians, for their bad debts arising from those
 489 patients who are not eligible for reimbursement under hospital
 490 board guidelines. The hospital board, however, shall continue to
 491 reimburse such health care providers for the medical care of
 492 medically needy patients, to the extent of the hospital board's
 493 limited financial resources, taking into account funds available
 494 from other sources, including other governmental funding
 495 sources.

496 Section 16. (1) The hospital board shall have the power
 497 to indemnify any person who was or is a party, or is threatened
 498 to be made a party, to any threatened, pending, or completed
 499 action, suit, or proceeding, whether civil, criminal,
 500 administrative, or investigative (other than an action by, or in
 501 the right of, the hospital board) by reason of the fact that he
 502 or she is or was an agent of the hospital board, against

503 expenses (including attorney's fees), judgments, fines, and
 504 amounts paid in settlement actually and reasonably incurred by
 505 him or her in connection with such action, suit, or proceeding,
 506 including any appeal thereof, if he or she acted in good faith
 507 and in a manner he or she reasonably believed to be in, or not
 508 opposed to, the best interests of the hospital board and, with
 509 respect to any criminal action or proceeding, had no reasonable
 510 cause to believe this conduct was unlawful.

511 (2) The hospital board shall also have the power to
 512 indemnify any such person against any loss of wages or earnings
 513 suffered during his or her defense, provided that, in the
 514 opinion of the trustees of the hospital board, those losses were
 515 directly attributable to that defense.

516 (3) The termination of any action, suit, or proceeding by
 517 judgment, order, settlement, or conviction or upon a plea of
 518 nolo contendere or its equivalent shall not, of itself, create a
 519 presumption that the person did not act in good faith and in a
 520 manner which he or she reasonably believed to be in, or not
 521 opposed to, the best interests of the hospital board or, with
 522 respect to any criminal action or proceeding, had reasonable
 523 cause to believe that his or her conduct was unlawful.

524 (4) No indemnification under this section shall be made in
 525 respect of any claim, issue, or matter as to which such person
 526 shall have been adjudged to be liable for negligence or
 527 misconduct in the performance of his or her duty to the hospital
 528 board unless, and only to the extent that, the court in which
 529 such action or suit was brought determines upon application
 530 that, despite the adjudication of liability but in view of all

531 circumstances of the case, such person is fairly and reasonably
 532 entitled to indemnification for such expenses that such court
 533 shall deem proper.

534 (5) If an individual has been determined by the hospital
 535 board to be an agent entitled to compensation under these
 536 indemnity provisions and to the extent that such agent of the
 537 hospital board has been successful on the merits or otherwise in
 538 defense of any action, suit, or proceeding referred to in the
 539 subsections above or in defense of any claim, issue, or matter
 540 therein, he or she shall be indemnified against expenses
 541 (including attorney's fees) actually and reasonably incurred by
 542 him or her in connection therewith. Any such successful agent
 543 shall also be indemnified against any loss of wages or personal
 544 service earnings suffered during his or her defense, provided
 545 that, by the vote of the hospital board acting through a quorum
 546 consisting of members who are not parties to such action, suit,
 547 or proceeding, it is determined that those losses were directly
 548 attributable to the time involved in that defense. If, however,
 549 a quorum of disinterested members cannot be convened, the
 550 decision shall be made by independent legal counsel, who may be
 551 the legal counsel for the hospital board or may be selected by
 552 legal counsel for the hospital board.

553 (6) As used in this section, the term "agent of the
 554 hospital board" means a hospital board member; hospital board
 555 officer; committee member appointed by the hospital board; or
 556 hospital board employee, including persons employed by the
 557 hospital board to provide executive, physician, nursing, dental,
 558 paramedical, technical, business, management, legal, and other

559 supporting services for the hospital board, together with such
 560 other approved agents of the hospital board as well as such
 561 other legal entities or individuals as the hospital board may
 562 determine by board resolution are carrying out the health care
 563 purposes and mandates of the hospital board during the period
 564 those entities or individuals are acting within the scope of the
 565 authority and duties devolving upon them through an agreement
 566 with or direct mandate from the hospital board, excluding
 567 medical malpractice claims asserted individually against such
 568 persons, but including a person serving at the direction of the
 569 hospital board. All such agents of the hospital board, in order
 570 to be entitled to indemnification for the liability arising out
 571 of the act in question, shall have been acting within the scope
 572 of their employment on hospital board-related business.

573 (7) Unless otherwise determined by a court as provided in
 574 this section, any indemnification under this section shall be
 575 made by the hospital board only as authorized in the specific
 576 case upon a determination of a quorum of hospital board members
 577 who are not parties to such action, suit, or proceeding or, if
 578 that is not possible, by independent legal counsel, who may be
 579 the legal counsel of the hospital board, that indemnification of
 580 the agent of the hospital board is proper in the circumstances
 581 because he or she has met the applicable standard of conduct set
 582 forth in this section.

583 (8) Expenses (including attorney's fees) and lost wages or
 584 earnings incurred in defending a civil or criminal action, suit,
 585 or proceeding may be paid by the hospital board in advance of
 586 the final disposition of such action, suit, or proceeding upon a

587 preliminary determination following one of the procedures set
 588 forth in this section that the agent of the hospital board met
 589 the applicable standard of conduct set forth in the above
 590 subsections, and upon receipt of an undertaking by or on behalf
 591 of the agent of the hospital board to repay such amount unless
 592 it is ultimately determined that he or she is entitled to be
 593 indemnified by the hospital board as authorized in this section.

594 (9) Indemnification as provided in this section shall
 595 continue as to a person who has ceased to be an agent of the
 596 hospital board and shall inure to the benefit of the heirs,
 597 executors, and administrators of such a person.

598 Section 17. To ensure public oversight, accountability,
 599 and public benefit from the not-for-profit corporation to which
 600 the hospital board has leased hospital facilities, and in
 601 addition to the requirements for any such lease set forth in
 602 section 155.40, Florida Statutes:

603 (1) All members of the hospital board and the board of the
 604 not-for-profit corporation shall be residents of Citrus County.

605 (2) The not-for-profit corporation shall separately
 606 account for the expenditure of all ad valorem tax moneys
 607 provided to it by the Citrus County Hospital Board, including
 608 maintaining them in a separate accounting fund. The expenditure
 609 for all such public tax funds shall be approved in a public
 610 meeting and separately accounted for annually by the not-for-
 611 profit corporation in a report provided to the Citrus County
 612 Hospital Board.

613 (3) The articles of incorporation, all amendments or
 614 restatements of the articles of incorporation, all corporate

615 bylaws, all amendments or restatements of the corporate bylaws,
 616 and all other governing documents of the not-for-profit
 617 corporation shall be subject to the approval of the hospital
 618 board, and any such documents that have not heretofore been
 619 approved by the hospital board shall be submitted forthwith to
 620 the hospital board for approval.

621 (4) The hospital board shall be the sole member of the
 622 not-for-profit corporation.

623 (5) The hospital board shall independently approve any
 624 plan of merger or dissolution of the not-for-profit corporation
 625 pursuant to sections 617.1103 and 617.1402, Florida Statutes,
 626 and may reject any such plan in its sole discretion.

627 (6) The members of the hospital board shall be voting
 628 directors of the not-for-profit board of directors who
 629 constitute a majority of the voting directors of the not-for-
 630 profit corporation; and, to the extent that any governance
 631 documents of the not-for-profit corporation do not so presently
 632 provide, the not-for-profit corporation shall forthwith take all
 633 steps necessary to bring them into conformity with this majority
 634 membership requirement.

635 (7) All members of the not-for-profit board of directors
 636 shall be subject to approval by the hospital board, and any
 637 board members presently serving who have not heretofore been
 638 approved by the hospital board shall be submitted forthwith to
 639 the hospital board for approval.

640 (8) The chief executive officer of the not-for-profit
 641 corporation and his or her term of office and any extensions
 642 thereof shall be approved by the hospital board, and the

643 | hospital board may terminate the term of the chief executive
 644 | officer of the not-for-profit corporation with or without cause
 645 | in its sole discretion, subject to the terms of any and all
 646 | then-existing contracts.

647 | (9) The hospital board shall approve all borrowing of
 648 | money by the not-for-profit corporation in any form and for any
 649 | reason in an amount exceeding \$100,000, any additional loan
 650 | indebtedness or leases in excess of \$1.25 million per instrument
 651 | or contract, and all policies of the not-for-profit corporation
 652 | that govern travel reimbursements and contract bid procedures.

653 | (10) No annual operating and capital budget of the not-
 654 | for-profit corporation shall become effective until approved by
 655 | the hospital board.

656 | (11) Any capital project of the not-for-profit corporation
 657 | having a value in excess of \$250,000 per project, and any
 658 | nonbudgeted operative expenditure in excess of \$125,000 in the
 659 | per annum aggregate, shall be approved by the hospital board.

660 | (12) At the discretion of the hospital board, each and
 661 | every year the not-for-profit corporation shall complete an
 662 | independent audit of the fiscal management of the hospital by an
 663 | auditor chosen by the hospital board, with the audit to be paid
 664 | for by the not-for-profit corporation.

665 | (13) All records of the not-for-profit corporation shall
 666 | be public records unless exempt by law; however, the hospital
 667 | board, pursuant to its oversight and auditing functions, must be
 668 | given full and complete access to all proprietary confidential
 669 | business information upon request and without subpoena and must
 670 | maintain the confidentiality of information so received. As used

671 in this subsection, the term "proprietary confidential business
 672 information" means information, regardless of its form or
 673 characteristics, that is owned or controlled by the not-for-
 674 profit corporation or its subsidiaries, including, but not
 675 limited to, all matters encompassed in privileged attorney-
 676 client communications and strategic planning.

677 (14) Subject to the annual approved budget, the hospital
 678 board shall reimburse the not-for-profit corporation for
 679 indigent care pursuant to the Florida Health Care Responsibility
 680 Act and the Florida Indigent Certification Standards.

681 (15) The provisions in this act and the hospital board's
 682 lease with the not-for-profit corporation shall be construed and
 683 interpreted as furthering the public health and welfare and the
 684 open government requirements of s. 24, Art. I of the State
 685 Constitution and sections 119.01 and 286.011, Florida Statutes.

686 (16) Any dispute between the hospital board and the not-
 687 for-profit corporation shall be subject to any court action
 688 pursuant to sections 164.101-164.1065, Florida Statutes, and the
 689 provisions of this act may be enforced by a court of competent
 690 jurisdiction in declaratory proceedings under chapter 86,
 691 Florida Statutes, by injunction, or by any other appropriate
 692 form of judicial relief.

693 (17) Failure of the not-for-profit corporation to comply
 694 with any or all of the oversight and accountability provisions
 695 in this section shall not constitute a breach or a termination
 696 of the lease agreement between the not-for-profit corporation
 697 and the hospital board but shall provide cause for the hospital
 698 board, in its discretion, to seek judicial relief in any form

699 that is authorized by law and appropriate to rectify the
 700 noncompliant act or omission.

701 Section 4. Section 17 of the Citrus County Hospital and
 702 Medical Nursing and Convalescent Home Act applies to existing
 703 and future leases and amendments, revisions, and restatements
 704 thereto, and to existing and future agreements for hospital care
 705 and amendments, revisions, and restatements thereto. However,
 706 the Citrus County Hospital and Medical Nursing and Convalescent
 707 Home Act does not apply to the term of any existing contract
 708 entered into by the not-for-profit corporation with a third
 709 party, to any existing contract for the borrowing of money in
 710 excess of \$100,000, to any additional loan indebtedness or
 711 leases in excess of \$1.25 million for which the hospital board
 712 has not previously given its approval, or to any existing
 713 contract for a capital project in excess of \$250,000 per
 714 project, and any nonbudgeted operative expenditure in excess of
 715 \$125,000 in the per annum aggregate, for which the hospital
 716 board has not previously given its approval.

717 Section 5. Chapters 99-442 and 2001-308, Laws of Florida,
 718 are repealed.

719 Section 6. If any provision of this act or its application
 720 to any person or circumstance is held invalid or
 721 unconstitutional by a court of competent jurisdiction, the
 722 invalidity shall not affect other provisions or applications of
 723 the act which can be given effect without the invalid provision
 724 or application, and to this end the provisions of this act are
 725 severable.

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726 Section 7. This act shall be construed as a remedial act
727 and shall be liberally construed to promote the purpose for
728 which it is intended.

729 Section 8. This act shall take effect July 1, 2011.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1043 (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) Smith offered the following:

4
5 **Amendment**

6 Remove lines 129-132 and insert:
7 immunity, and
8

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1043 (2011)

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) Smith offered the following:

4
5 **Amendment**

6 Remove lines 314-316 and insert:
7 of the hospital board's public purpose and the necessity for the
8 preservation of the public health and welfare of the residents
9 of the county by the hospital board.

10

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1043 (2011)

Amendment No. 3

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) Smith offered the following:

4

5 **Amendment**

6 Remove line 680 and insert:

7 Act and the Florida Indigent Certification Standards and shall
8 take into account funds available from other sources, including
9 other governmental funding sources.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 321 Abortion
SPONSOR(S): Trujillo and others
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee		AP Prater	Calamas <i>CC</i>
2) Judiciary Committee			
3) Health Care Appropriations Subcommittee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

This bill amends chapter 390, F.S., relating to termination of pregnancies. The bill:

- Creates the "Pain-Capable Unborn Child Protection Act."
- Requires physicians to make a determination of post fertilization age of a fetus before performing an abortion.
- Prohibits abortions from being performed after the fetus has reached a postfertilization age of 20 weeks, with exceptions for medical necessity or to preserve the life of the unborn.
- Requires physicians that perform abortions to report information relating to the abortion to the Department of Health (DOH).
- Requires DOH to provide a public report containing all of the information reported from abortion providers.
- Establishes standards of legal action to be taken against any person that violates the provisions of this bill relating to the improper performance of an abortion.
- Requires DOH to adopt rules to implement the provisions of the bill.

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

Fetal Pain

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 Guttmacher Institute, which surveys abortion providers, in 2008, there were 94,360 abortions in Florida³, while there were 231,657 live births.⁴ This amounts to approximately 2 abortions for every 5 births. However, the Agency for Health Care Administration (AHCA) reported 86,754 abortions, which is 7,606 less than the number reported by the Guttmacher Institute.⁵

According to AHCA, in 2009, there were 75,397 abortions performed at a gestational age of 12 weeks or younger, 6,516 at a gestational age of 13-24 weeks, and 125 at a gestational age of 25 weeks or older.⁶

Much research has been performed in recent years regarding the issue of fetal pain. Emerging scientific advances involving prenatal surgery have led to numerous medical studies regarding the ability of a fetus to feel pain, and at what stage this occurs. Research has found that pain receptors (nociceptors) are present throughout the fetus' entire body by no later than 20 weeks,⁷ and that nerves link these receptors to the brain's thalamus and subcortical plate by no later than 20 weeks.⁸ By 8 weeks after fertilization, the fetus reacts to touch and after 20 weeks, the fetus reacts to stimuli that would be recognized as painful if applied to an adult human, for example, by recoiling.⁹ Additionally, the application of painful stimuli to a fetus is associated with significant increases in stress hormones.¹⁰

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 The Guttmacher Institute, *Abortion Incidence and Access to Services in the United States*, 2008.

⁶ Agency for Health Care Administration, *Reported Induced Terminations of Pregnancy by Reason*, 2009.

⁷ Myers LB, Bulich LA, Hess, P, Miller, NM. Fetal endoscopic surgery: indications and anaesthetic management. *Best Practice & Research Clinical Anaesthesiology* 18:2 (2004) 231-258; Derbyshire SW, Foetal pain? *Best Practice & Research Clinical Obstetrics and Gynaecology* 24:5 (2010) 647-655; Annand KJS, Hickey PR. Pain and its effects in the human neonate and fetus. *New England Journal of Medicine* 317:21 (1987) 1321-1329; Vanhalto S, van Nieuwenhuizen O. Fetal Pain? *Brain & Development*. 22 (2000) 145-150; Brusseau R. Developmental Perspectives: is the Fetus Conscious? *International Anesthesiology Clinics*. 46:3 (2008) 11-23.

⁸ Van Scheltema PNA, Bakker S, Vandenbussche FPHA, Oepkes, D. Fetal Pain. *Fetal and Maternal Medicine Review*. 19:4 (2008) 311-324; Glover V. Fetal pain: implications for research and practice. *British Journal of Obstetrics and Gynaecology*. 106 (1999) 881-886; Lee SJ, Ralston HJP, Drey EA, Partridge, JC, Rosen, MA. A Systematic Multidisciplinary Review of the Evidence. *Journal of the American Medical Association*. 294:8 (2005) 947-954; Gupta R, Kilby M, Cooper G. Fetal surgery and anaesthetic implications. *Continuing Education in Anaesthesia, Critical Care & Pain*. 8:2 (2008) 71-75.

⁹ Gupta R, Kilby M, Cooper G. Fetal surgery and anaesthetic implications. *Continuing Education in Anaesthesia, Critical Care & Pain*. 8:2 (2008) 71-75; Glover V. The fetus may feel pain from 20 weeks; The Fetal Pain Controversy. *Conscience*. 25:3 (2004) 35-37; Myers LB, Bulich LA, Hess, P, Miller, NM. Fetal endoscopic surgery: indications and anaesthetic management. *Best Practice & Research Clinical Anaesthesiology*. 18:2 (2004) 231-258; Derbyshire SW. Fetal Pain: Do We Know Enough to Do the Right Thing? *Reproductive Health Matters*. 16: 31Supp. (2008) 117-126; Giannakouloupoulos X, Sepulveda W, Kourtis P, Glover V, Fisk NM. Fetal plasma cortisol and β -endorphin response to intrauterine needling. *Lancet*. 344 (1994) 77-81; Lowery CL, Hardman MP, Manning N, Clancy B, Hall RW, Anand KJS. Neurodevelopmental Changes of Fetal Pain. *Seminars in Perinatology*. 31 (2007) 275-282; Mellor DJ, Diesch TJ, Gunn AJ, Bennet L. The importance of „awareness“ for understanding fetal pain. *Brain Research Reviews*. 49 (2005) 455-471.

¹⁰ Tran, KM. Anesthesia for fetal surgery. *Seminars in Fetal & Neonatal Medicine*. 15 (2010) 40-45; Myers LB, Bulich LA, Hess, P, Miller, NM. Fetal endoscopic surgery: indications and anaesthetic management. *Best Practice & Research Clinical Anaesthesiology*. 18:2 (2004) 231-258; Derbyshire SW. Fetal Pain: Do We Know Enough to Do the Right Thing? *Reproductive Health Matters*. 16: 31Supp. (2008) 117-126; Gupta R, Kilby M, Cooper G. Fetal surgery and anaesthetic implications. *Continuing Education in Anaesthesia, Critical Care & Pain*. 8:2 (2008) 71-75; Fisk NM, Gitau R, Teixeira MD, Giannakouloupoulos, X, Cameron, AD, Glover

Fetal anesthesia is routinely administered on fetus' undergoing surgery, and fetus' that receive the anesthesia show a decrease in stress hormones compared to those that do not.¹¹ Some medical experts assert that the fetus is incapable of experiencing pain until a point later in pregnancy than 20 weeks because the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalamus and the cortex.¹² However, recent medical research since 2007, provides strong evidence that a functioning cortex is not necessary to experience pain.¹³ Lastly, there is documented evidence to show a fetus' reaction to painful stimuli and fetal surgeons have found it necessary to sedate the fetus with anesthesia to prevent the fetus from thrashing about in reaction to invasive surgery.¹⁴

The "Pain-Capable Unborn Child Protection Act" prohibits abortion after 20 weeks postfertilization age based on the scientific evidence that a fetus is capable of feeling pain at this age. This legislation has been filed in at least 9 other states (Kansas, Oklahoma, Alabama, Georgia, Minnesota, New Mexico, Idaho, Massachusetts, and Kentucky) and was passed and signed into law in Nebraska in 2010. Ten states currently provide either written or verbal information regarding fetal pain to women seeking an abortion (Alaska, Arkansas, Georgia, Louisiana, Minnesota, Missouri, Oklahoma, South Dakota, Texas, and Utah).

Caselaw Related to Abortion

The Viability Standard

In the seminal case regarding abortion, *Roe v. Wade*, the United States Supreme Court established a rigid trimester framework dictating how, if at all, states can regulate abortion.¹⁵ One of the primary

VA. Effect of Direct Fetal Opioid Analgesia on Fetal Hormonal and Hemodynamic Stress Response to Intrauterine Needling. *Anesthesiology*. 95 (2001) 828-835.

¹¹ Van de Velde M, Van Schoubroeck DV, Lewi LE, Marcus MAE, Jani JC, Missant C, Teunkens A, Deprest J. Remifentanyl for Fetal Immobilization and Maternal Sedation During Fetoscopic Surgery: A Randomized, Double-Blind Comparison with Diazepam. *Anesthesia & Analgesia*. 101 (2005) 251-258; Myers LB, Bulich LA, Hess, P, Miller, NM. Fetal endoscopic surgery: indications and anaesthetic management. *Best Practice & Research Clinical Anaesthesiology*. 18:2 (2004) 231-258; Gupta R, Kilby M, Cooper G. Fetal surgery and anaesthetic implications. *Continuing Education in Anaesthesia, Critical Care & Pain*. 8:2 (2008) 71-75; Giannakouloupoulos X, Sepulveda W, Kourtis P, Glover V, Fisk NM. Fetal plasma cortisol and β -endorphin response to intrauterine needling. *Lancet*. 344 (1994) 77-81; Van Scheltema PNA, Bakker S, Vandenbussche FPHA, Oepkes, D. Fetal Pain. *Fetal and Maternal Medicine Review*. 19:4 (2008) 311-324; Fisk NM, Gitau R, Teixeira MD, Giannakouloupoulos, X, Cameron, AD, Glover VA. Effect of Direct Fetal Opioid Analgesia on Fetal Hormonal and Hemodynamic Stress Response to Intrauterine Needling. *Anesthesiology*. 95 (2001) 828-835; De Buck F, Deprest J, Van de Velde M. Anesthesia for fetal surgery. *Current Opinion in Anaesthesiology*. 21 (2008) 293-297; Derbyshire SW. Fetal Pain: Do We Know Enough to Do the Right Thing? *Reproductive Health Matters*. 16: 31Supp. (2008) 117-126.

¹² Lee SJ, Ralston HJP, Drey EA, Partridge JC, Rosen MA. Fetal Pain: a systematic multidisciplinary review of the evidence. *JAMA*. 2005;294(8):947-954, at 949.

¹³ Anand KJS. Fetal Pain? *Pain: Clinical Updates*. 14:2 (2006) 1-4; Fetal Awareness: Review of Research and Recommendations for Practice. Report of a Working Party. *Royal College of Obstetricians and Gynecologists*. March 2010; Lee SJ, Ralston HJP, Drey EA, Partridge, JC, Rosen, MA. A Systematic Multidisciplinary Review of the Evidence. *Journal of the American Medical Association*. 294:8 (2005) 947-954; Brusseau R, Myers L. Developing consciousness: fetal anesthesia and analgesia. *Seminars in Anesthesia, Perioperative Medicine and Pain*. 25 (2006) 189-195; Mellor DJ, Diesch TJ, Gunn AJ, Bennet L. The importance of „awareness“ for understanding fetal pain. *Brain Research Reviews*. 49 (2005) 455-471; Derbyshire SWG. Can fetuses feel pain? *British Medical Journal*. 332 (2006) 909-912; Merker B. Consciousness without a cerebral cortex: A challenge for neuroscience and medicine. *Behavioral and Brain Sciences*. 30 (2007) 63-81; Anand KJS. Consciousness, cortical function, and pain perception in nonverbal humans. *Behavioral and Brain Sciences*. 30:1 (2007) 82-83; Brusseau R. Developmental Perspectives: is the Fetus Conscious? *International Anesthesiology Clinics*. 46:3 (2008) 11-23.

¹⁴ Van de Velde M, Van Schoubroeck DV, Lewi LE, Marcus MAE, Jani JC, Missant C, Teunkens A, Deprest J. Remifentanyl for Fetal Immobilization and Maternal Sedation During Fetoscopic Surgery: A Randomized, Double-Blind Comparison with Diazepam. *Anesthesia & Analgesia*. 101 (2005) 251-258; Giannakouloupoulos X, Sepulveda W, Kourtis P, Glover V, Fisk NM. Fetal plasma cortisol and β -endorphin response to intrauterine needling. *Lancet*. 344 (1994) 77-81; Lee SJ, Ralston HJP, Drey EA, Partridge, JC, Rosen, MA. A Systematic Multidisciplinary Review of the Evidence. *Journal of the American Medical Association*. 294:8 (2005) 947-954; Van Scheltema PNA, Bakker S, Vandenbussche FPHA, Oepkes, D. Fetal Pain. *Fetal and Maternal Medicine Review*. 19:4 (2008) 311-324.

¹⁵ 410 U.S. 113 (1973).

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.¹⁶

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*¹⁷ the United States Supreme Court rejected the trimester framework in favor of limiting the states' ability to regulate abortion pre-viability.¹⁸

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[.]"¹⁹ 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."²⁰ 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."²¹

The Medical Emergency Exception

In *Doe v. Bolton*, an early United States Supreme Court decision decided around the time of *Roe*, the Supreme Court was faced with determining, among other things, whether a Georgia statute criminalizing abortions (pre- and post-viability) except when determined to be necessary based upon a physician's "best clinical judgment" was unconstitutionally void for vagueness for inadequately warning a physician under what circumstances an abortion could be performed.²²

In its reasoning, the Court agreed with the District Court decision that the exception was not unconstitutionally vague, by recognizing that:

[t]he medical judgment may be exercised in the light of all factors-physical, emotional, psychological, familial, and the woman's age-relevant to the well-being of the patient. All these factors may relate to health. This allows the attending physician the room he needs to make his best medical judgment.

This broad determination of what constituted a medical emergency was later tested in the *Casey* case, albeit in a different context. One question before the Supreme Court in *Casey* 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."²³ 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

¹⁶ *Id.* at 164-165.

¹⁷ 505 U.S. 833 (1992).

¹⁸ 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.

¹⁹ *See Roe*, 410 U.S. at 164-65.

²⁰ *See Casey*, 505 U.S. at 870.

²¹ *Id.*

²² 410 U.S. 179 (1973) Other exceptions, such as in cases of rape and when, "The fetus would very likely be born with a grave, permanent, and irremediable mental or physical defect." *Id.* at 183. *See also, U.S. v. Vuitich*, 402 U.S. 62, 71-72 (1971)(determining that a medical emergency exception to a criminal statute banning abortions would include consideration of the mental health of the pregnant woman).

²³ *Id.* at 880. The Court also considered a medical emergency exception related to informed consent requirements in pre-viability cases. Some courts have construed the Court's reasoning in *Casey* to require a mental health component to the medical emergency exception for obtaining informed consent because the Court recognized that psychological well-being is a facet of health and it is important that a woman comprehend the full consequences of her decision so as to reduce the risk that the woman will later discover that the decision was not fully informed, which could cause significant psychological consequences. *Id.* at 881-885.

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.²⁴

In evaluating the more objective standard under which the physician is to determine the existence of a medical emergency, the Court in *Casey* 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.²⁵

Since *Casey*, the scope of the medical emergency exception, particularly whether the broader requirement in *Doe* that the woman's mental health should be considered, is not entirely settled. For example, in 1997, the Sixth Circuit Court of Appeal, which is not binding on Florida, affirmed a United States District Court case wherein the trial court determined an Ohio statute restricting post-viability abortions was unconstitutional for, among other reasons, failure to include a medical emergency exception that incorporates the mental health of the mother.²⁶

The United States Supreme Court denied the petition for writ of certiorari²⁷ on March 23, 1998;²⁸ however, Justice Thomas, with whom Justices Scalia and the Chief Justice joined, wrote a strong dissenting opinion within which Justice Thomas claimed that the 6th Circuit Court of Appeal, "[w]renched this Court's prior statements out of context in finding the statute's mental health exception constitutionally infirm." Justice Thomas recognized that the 6th Circuit used dicta within the *Doe v. Bolton*²⁹ opinion to stand for the proposition a similar medical emergency exception approved in the later decided *Casey* case requires a mental health exception.

Even more recently, in *Gonzales v. Carhart*,³⁰ the United States Supreme Court upheld a federal law banning partial birth abortions which did not include a medical emergency exception. Justice Kennedy's opinion for the Court acknowledged that, "The law need not give abortion doctors unfettered choice in the course of their medical practice, nor should it elevate their status above other physicians in the medical community."³¹

The United States Supreme Court has not yet had a case regarding regulation of abortion in consideration of fetal pain; however, in *Gonzalez v. Carhart*, the Supreme Court recognized that, "The Court has given state and federal legislatures wide discretion to pass legislation in areas where there is medical and scientific uncertainty."³²

Applicable 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."³³

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 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

²⁴ *Id.* at 879.

²⁵ *Id.* at 880.

²⁶ See *Voinovich v. Women's Medical Professional Corporation*, 130 F.3d 187 (6th Cir. 1997).

²⁷ Which means that the Court declined to take up the issue on appeal.

²⁸ See *Voinovich v. Women's Medical Professional Corporation*, 523 U.S. 1036 (1998).

²⁹ 410 U.S. 179 (1973).

³⁰ 550 U.S. 124 (2007).

³¹ *Id.* at 163.

³² *Id.* (Citations Omitted).

³³ 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).

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.³⁴

The court recognized that after viability, the state can regulate abortion in the interest of the unborn so long as the mother's health is not in jeopardy.³⁵

In *Womancare of Orlando v. Agwunobi*,³⁶ an almost identical medical emergency exception to that in the *Casey* case was upheld when Florida's parental notification statute was challenged.³⁷ 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."

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. Additionally, any laws enacted for the purpose of creating a public records exemption must be in a separate bill related solely to creating the exemption.³⁸

Limits on Abortion

Florida law prohibits abortions in the third trimester³⁹ of pregnancy unless the abortion is performed as a medical necessity.⁴⁰ Current law provides that if an abortion is performed during viability,⁴¹ the person that performs the abortion must use the degree of professional, skill, care, and diligence to preserve the life and health of the fetus which such person would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted. A person who violates either of these provisions commits a third degree felony.⁴² In regards to preserving the life of the fetus when an abortion is performed during viability, the woman's life and health are considered to be an overriding

³⁴ *Id.* at 1193-94.

³⁵ *Id.* at 1194.

³⁶ 448 F.Supp. 2d 1293, 1301 N.D. Fla. (2005).

³⁷ 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.

³⁸ Section 24(c), Art. I of the State Constitution.

³⁹ In Florida, the third trimester is defined as the weeks of pregnancy after the 24th week (weeks 25-birth).³⁹ 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. First and Second trimester abortions are currently permitted in Florida without limitations except that certain informed consent and parental notice, where applicable, requirements must be met prior to an abortion being performed unless that is a medical emergency.

⁴⁰ S. 390.0111 (1), F.S.

⁴¹ Viability is defined in s. 390.0111(4), F.S. as the state of fetal development when the life of the unborn child may with a reasonable degree of medical probability be continued indefinitely outside the womb.

⁴² A third degree felony is punishable by a fine not exceeding \$5,000 or a term of imprisonment not exceeding 5 years. If the offender is determined by the court to be a habitual offender, the term of imprisonment shall not exceed 10 years. Ss. 775.082, 775.083, 775.084, F.S.

and superior consideration in making this determination.⁴³ Currently, there is no exception in Florida law to allow for an abortion to be performed in order to save the life of an fetus.

According AHCA, there were 6,641 abortions performed at a gestational age of 13 weeks or greater in Florida in 2009.⁴⁴ That same year, 2,986 premature babies aged 29 weeks gestation and younger survived birth.⁴⁵

Current law provides no express cause of action related to abortion, except for partial birth abortions.⁴⁶

Informed Consent Requirements

Current law provides that prior to the performance of any abortion, the physician who is to perform the abortion, or a referring physician, must inform the patient of:

- 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 the probable gestational age of the fetus.
- the probable gestational age of the fetus at the time the termination of pregnancy is to be performed
- the medical risks to the woman and fetus of carrying the pregnancy to term⁴⁷

The patient must acknowledge in writing that this information has been provided to her before she gives informed consent for an abortion.⁴⁸ This information is not required to be provided if the abortion is being performed because of a medical emergency.⁴⁹ The method of determining the probable gestational age as required above, is not specified in current law. Physicians who fail to inform the patient of the provisions described above are subject to disciplinary action.⁵⁰

For any abortion performed later than the first trimester, the physician who is to perform the abortion is required to estimate the gestational age based on an ultrasound.⁵¹ Failure to meet this requirement can result in a fine imposed by AHCA and other administrative penalties, as defined in s. 408.831, F.S.⁵²

Reporting Requirements

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.⁵³ AHCA is required to keep this information in a central location from which statistical data can be drawn.⁵⁴ 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.⁵⁵ The reports are confidential and exempt from public records requirements.⁵⁶ Fines may be imposed for violations of the reporting requirements.⁵⁷ Currently AHCA collects and maintains the data but is not required to report it.

Effect of Proposed Changes

⁴³ S.390.0111(4), F.S.

⁴⁴ Agency for Health Care Administration, Reported Induced Terminations of Pregnancy by reason, Jan-Dec 2009, on file with the subcommittee.

⁴⁵ Department of Health, Births by Year of Birth by Calculated Gestation 2009, on file with the subcommittee.

⁴⁶ F.S. 390.0111(11), F.S.

⁴⁷ S. 390.0111(3)(a), F.S.

⁴⁸ S. 390.0111(3)3., F.S.

⁴⁹ S. 390.0111(3)(a), F.S.

⁵⁰ A violation of this is subject to disciplinary action under s. 458.0331 or s. 459.015, F.S.

⁵¹ 390.012(3)(d)5., F.S.

⁵² S. 390.018, F.S.

⁵³ S. 390.0112 (1), F.S.

⁵⁴ *Id.*

⁵⁵ S. 390.0112(2), F.S.

⁵⁶ S. 390.0112(3), F.S.

⁵⁷ S. 390.0112(4), F.S.

The bill creates the "Pain-Capable Unborn Child Protection Act." The Act contains Legislative findings that:

- By 20 weeks after fertilization, there is substantial evidence that an unborn child has the physical structures necessary to experience pain.
- By 20 weeks after fertilization, there is substantial evidence that unborn children seek to evade certain stimuli in a manner that would be interpreted as a response to pain in an infant or an adult.
- Anesthesia is routinely administered to unborn children who are aged 20 weeks postfertilization and older who undergo prenatal surgery.
- Even before 20 weeks after fertilization, unborn children have been observed to exhibit hormonal stress responses to painful stimuli and these responses were reduced when pain medication was administered.
- The state has a compelling state interest in protecting the lives of unborn children from the state at which substantial medical evidence indicates that they are capable of feeling pain.

The bill defines the following terms:

- "Attempt to perform or induce an abortion"
- "Fertilization"
- "Medical emergency"
- "Postfertilization age"
- "Probable postfertilization age"
- "Reasonable medical judgment"
- "Unborn child"

The bill requires that a physician determine the probable postfertilization⁵⁸ age of the fetus prior to performing an abortion, or to rely on the determination of postfertilization age from another physician. The bill defines postfertilization age as the age of an unborn child as calculated from the fertilization of the human ovum.⁵⁹ In determining the age, the bill requires the physician to make inquiries of the patient and to perform medical examinations and tests that the physician would consider necessary to making an accurate determination of postfertilization age. The bill authorizes disciplinary action⁶⁰ for any physician that fails to comply with these provisions.

The bill prohibits a person from performing or attempting⁶¹ to perform an abortion if it has been determined that the probable post fertilization age of the fetus is 20 or more weeks. An exception is provided if, in reasonable medical judgment,⁶² the patient has a condition in which the abortion is necessary to prevent death, or prevent substantial and irreversible physical impairment of a major bodily function. The bill clarifies that such a condition cannot be considered if it is based on a claim or diagnosis that the patient will engage in conduct that would result in her death or the substantial and irreversible physical impairment of a major bodily function. The bill also provides an exception allowing an abortion to be performed after 20 weeks postfertilization age if it is necessary to preserve the life of an unborn child.

⁵⁸ Currently, Florida law uses gestational age as a baseline for abortion regulations and restrictions whereas this bill restricts abortion based on "postfertilization age." Postfertilization age is calculated from the fertilization of the human ovum (egg), while gestational age is calculated upon the first day of the pregnant woman's last menstrual cycle.

⁵⁹ An ovum is defined as: a mature egg that has undergone reduction, is ready for fertilization, and takes the form of a relatively large inactive gamete providing a comparatively great amount of reserve material and contributing most of the cytoplasm of the zygote. See <http://www.merriam-webster.com/medlineplus/ovum>, (last viewed March 24, 2011).

⁶⁰ A violation of this is subject to disciplinary action under s. 458.0331 or s. 459.015, F.S.

⁶¹ The bill defines "attempt to perform or induce abortion" as "an act, or an omission of a statutorily required act, that, under the circumstances as the person believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion."

⁶² Reasonable medical judgment is defined in the bill as "a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved."

If an abortion is performed at a postfertilization age of 20 weeks or more, under the exceptions listed above, the physician must perform the abortion in a manner that provides the best opportunity for the unborn child to survive, unless it would provide greater risk of the mother's death or the substantial and irreversible impairment of the mother's major bodily functions than would other available methods. This risk cannot be considered based on a claim or diagnosis that the woman will engage in conduct that would result in her death or in substantial and irreversible physical impairment of a major bodily function. Any person who intentionally or recklessly performs or attempts to perform an abortion in violation of the provisions in this paragraph commits a third degree felony.⁶³ A penalty cannot be assessed against the patient on whom the abortion was performed or attempted.

The bill provides a cause of action for any woman upon whom an abortion was performed in intentional or reckless violation of the provisions of the paragraph above, or the father of the unborn child who was aborted, against the person who performed the abortion for actual damages. Any woman upon whom an abortion was attempted in intentional or reckless violation of the paragraph above may sue for actual damages.

The woman upon whom the abortion was performed may bring a cause of action for injunctive relief against any person who has intentionally violated this section. The cause of action may also be maintained by a spouse, parent, sibling, guardian, or current or former licensed health care provider of the woman, or by the Attorney General or a county attorney with appropriate jurisdiction. The bill provides that an injunction granted under these circumstances will prevent the violator from performing or attempting to perform any more prohibited abortions in this state.

The bill provides that if judgment is rendered in favor of the plaintiff in any action described above, the court shall render a judgment for attorney's fees in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the lawsuit was frivolous and brought in bad faith, the court shall render a judgment for attorney's fees in favor of the defendant against the plaintiff. Neither damages nor attorney's fees may be assessed against a woman upon whom an abortion was performed or attempted unless the court finds that the suit was frivolous and brought in bad faith.

The bill requires the court to determine, in any civil or criminal proceeding or action brought, if the woman upon whom an abortion was performed or attempted shall be kept anonymous from the public, if she does not give her consent to such disclosure. If the court determines that the woman should remain anonymous, they must issue orders to seal the court records as well as exclude individuals from the courtroom or hearing rooms as necessary to protect her identity. The court orders must also include specific written findings as to the necessity for protecting the identity of the woman; why the order is essential to that end; how the order is narrowly tailored to protect her identity; and why no reasonable less restrictive alternative for protecting her identity exists. If a woman whom an abortion was performed or attempted does not give her consent for public disclosure of her identity, anyone other than a public official that brings a court action, shall do so under a pseudonym. The bill clarifies that the identity of the plaintiff will not conceal the identity of the plaintiff or witnesses from the defendant or attorneys for the defendant.

The bill provides reporting requirements for physicians that perform abortions. The following information must be reported to DOH on a schedule and in accordance with forms and rules adopted by DOH:

- If a determination of probable postfertilization age⁶⁴ was required to be made, the probable postfertilization age, and the method and basis of the determination.
- If a determination was not required to be made, the basis of the determination that a medical emergency existed.

⁶³ A third degree felony is punishable by a fine not exceeding \$5,000 or a term of imprisonment not exceeding 5 years. If the offender is determined by the court to be a habitual offender, the term of imprisonment shall not exceed 10 years. Ss. 775.082, 775.083, 775.084, F.S.

⁶⁴ According to this bill, probable postfertilization age of the unborn child means what, in reasonable medical judgment, will with reasonable probability be the postfertilization age of the unborn child at the time an abortion is planned to be performed.

- If the probable postfertilization age was determined to be 20 weeks or more, the basis for the determination that the pregnant woman had a condition that so complicated her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function; or the basis for determining that the abortion was necessary to preserve the life of an unborn child.
- The abortion method used and, if the abortion was after 20 weeks postfertilization age, whether the abortion method was one that, based on reasonable medical judgment, provided the best opportunity for the unborn child to survive. If such a method was not used, the basis of determination that the abortion method used would pose a greater risk of either death or substantial and irreversible physical impairment of a major bodily function of the pregnant woman than other available methods.

The bill provides that the failure of a physician to report this information 30 days passed the due date, as determined by DOH, will result in a late fee of \$500 for each additional 30-day period, or portion of a 30-day period that the report is overdue. A physician that fails to provide a report, or provides an incomplete report, 1 year after the due date, may be directed by a court of competent jurisdiction to submit a complete report within a time period stated by the court, or be subject to civil contempt.⁶⁵ A physician that fails to comply with these requirements is also subject to disciplinary action under ss. 458.331 or 459.015. Intentional or reckless falsification of any of the required reports results in a second degree misdemeanor.⁶⁶

The bill requires DOH to issue a public report providing statistics for the previous calendar year compiled from all of the information reported as required by physicians that perform abortions and described above. The report is required to be provided by June 30 of each year. The report must also contain the reports of each previous year's report, adjusted to reflect any late or corrected information. The department must ensure that the information included in the report does not lead to the identification of any woman upon whom an abortion was performed.

Finally, the bill requires DOH to adopt rules necessary to comply with the requirements set forth in the bill. DOH must adopt the rules within 90 days after the effective date of this bill. The effective date for the bill is July 1, 2011.

B. SECTION DIRECTORY:

- Section 1:** Creates an unnumbered section of law, designating the "Pain-Capable Unborn Child Protection Act."
- Section 2:** Creates an unnumbered section of law related to legislative findings.
- Section 3:** Amends s. 390.011, F.S., relating to definitions.
- Section 4:** Amends s. 390.0111, F.S., relating to termination of pregnancies.
- Section 5:** Amends s. 765.113, F.S., relating to restrictions on providing consent.
- Section 6:** Creates an unnumbered section of law, requiring rulemaking by the Department of Health.
- Section 7:** Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁶⁵ Civil contempt is the failure to do something which the party is ordered by the court to do for the benefit or advantage of another party to the proceeding before the court. *See* 16 Fla. Prac., Sentencing § 13:6 (2010-2011 ed.).

⁶⁶ 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.

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:

It is possible that this bill 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 issue of regulating abortions in consideration of fetal pain has not been before the Florida Supreme Court or the United States Supreme Court. Furthermore, other court decisions that have construed the medical health exception to include the "mental health" of the woman may be persuasive.

The bill requires the court to determine, in any civil or criminal proceeding or action brought, if the woman upon whom an abortion was performed or attempted shall be kept anonymous from the public, if she does not give her consent to such disclosure. If the court determines that the woman should remain anonymous, the court must issue orders to seal the court records as well as exclude individuals from the courtroom or hearing rooms as necessary to protect her identity. This provision may violate Article I., s. 24(c) of the Florida Constitution in that it requires court records to be precluded from public without including a public necessity statement for the exemption. Furthermore, the exemption is not included in a separate bill for that purpose.

B. RULE-MAKING AUTHORITY:

The bill requires the Department of Health to promulgate rules to implement the provisions of this bill. They are required to develop the applicable rules within 90 days of the effective date of the bill which is July 1, 2011.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides an exception for an abortion that can be performed after 20 weeks post fertilization age, if the abortion is necessary to preserve the life of the unborn child. Florida law defines "abortion" as the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus. Therefore, in the case of the exception described above, it would not be considered an abortion, as defined in Florida law.

The bill provides that a cause of action may be maintained by a "county attorney" against any person who has intentionally violated the bill's provisions relating to abortion procedures. However, in Florida, such a cause of action would be more appropriately maintained by a state attorney.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to abortion; providing a short title;
 3 providing legislative findings; amending s. 390.011, F.S.;
 4 providing definitions; amending s. 390.0111, F.S.;
 5 requiring a physician performing or inducing an abortion
 6 to first make a determination of the probable
 7 postfertilization age of the unborn child; providing an
 8 exception; providing for disciplinary action against
 9 noncompliant physicians; prohibiting an abortion if the
 10 probable postfertilization age of the woman's unborn child
 11 is 20 or more weeks; providing exceptions; providing
 12 recordkeeping and reporting requirements for physicians;
 13 providing for rulemaking; requiring an annual report by
 14 the Department of Health; providing financial penalties
 15 for late reports; providing for civil actions to require
 16 reporting; providing for disciplinary action against
 17 noncompliant physicians; providing criminal penalties for
 18 intentional or reckless falsification of a report;
 19 providing criminal penalties for any person who
 20 intentionally or recklessly performs or attempts to
 21 perform an abortion in violation of specified provisions;
 22 providing that a penalty may not be assessed against a
 23 woman involved in such an abortion or attempt; providing
 24 for civil actions by certain persons for intentional or
 25 reckless violations; providing for actions for injunctive
 26 relief by certain persons for intentional violations;
 27 providing for award of attorney's fees in certain
 28 circumstances; requiring that in every civil or criminal

29 proceeding or action brought under the court rule on
 30 whether the anonymity of any woman upon whom an abortion
 31 was performed or attempted shall be preserved from public
 32 disclosure if she does not give her consent to such
 33 disclosure; requiring specified findings if a court
 34 determines that the anonymity of the woman should be
 35 preserved from public disclosure; conforming cross-
 36 references; amending s. 765.113, F.S.; conforming a cross-
 37 reference; requiring rulemaking by the Department of
 38 Health by a specified date; providing an effective date.

39

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

41

42 Section 1. This act may be cited as the "Pain-Capable
 43 Unborn Child Protection Act."

44

Section 2. The Legislature finds that:

45

46 (1) By 20 weeks after fertilization there is substantial
 47 evidence that an unborn child has the physical structures
 48 necessary to experience pain.

49

50 (2) There is substantial evidence that, by 20 weeks after
 51 fertilization, unborn children seek to evade certain stimuli in
 52 a manner that in an infant or an adult would be interpreted as a
 53 response to pain.

54

55 (3) Anesthesia is routinely administered to unborn
 56 children who have developed 20 weeks or more past fertilization
 57 who undergo prenatal surgery.

58

59 (4) Even before 20 weeks after fertilization, unborn
 60 children have been observed to exhibit hormonal stress responses

57 | to painful stimuli. Such responses were reduced when pain
 58 | medication was administered directly to such unborn children.

59 | (5) This state has a compelling state interest in
 60 | protecting the lives of unborn children from the stage at which
 61 | substantial medical evidence indicates that they are capable of
 62 | feeling pain.

63 | Section 3. Section 390.011, Florida Statutes, is amended
 64 | to read:

65 | 390.011 Definitions.—As used in this chapter, the term:

66 | (1) "Abortion" means the termination of human pregnancy
 67 | with an intention other than to produce a live birth or to
 68 | remove a dead fetus.

69 | (2) "Abortion clinic" or "clinic" means any facility in
 70 | which abortions are performed. The term does not include:

71 | (a) A hospital; or

72 | (b) A physician's office, provided that the office is not
 73 | used primarily for the performance of abortions.

74 | (3) "Agency" means the Agency for Health Care
 75 | Administration.

76 | (4) "Attempt to perform or induce an abortion" means an
 77 | act, or an omission of a statutorily required act, that, under
 78 | the circumstances as the person believes them to be, constitutes
 79 | a substantial step in a course of conduct planned to culminate
 80 | in the performance or induction of an abortion.

81 | ~~(5)-(4)~~ "Department" means the Department of Health.

82 | (6) "Fertilization" means the fusion of a human
 83 | spermatozoon with a human ovum.

84 | ~~(7)-(5)~~ "Hospital" means a facility as defined in s.

85 395.002(12) and licensed under chapter 395 and part II of
 86 chapter 408.

87 (8) "Medical emergency" means a condition that, in
 88 reasonable medical judgment, so complicates the medical
 89 condition of the pregnant woman as to necessitate the immediate
 90 termination of her pregnancy to avert her death or for which a
 91 delay will create a serious risk of substantial and irreversible
 92 physical impairment of a major bodily function. A condition is
 93 not a medical emergency if it is based on a claim or diagnosis
 94 that the woman will engage in conduct that would result in her
 95 death or in substantial and irreversible physical impairment of
 96 a major bodily function.

97 (9)~~(6)~~ "Partial-birth abortion" means a termination of
 98 pregnancy in which the physician performing the termination of
 99 pregnancy partially vaginally delivers a living fetus before
 100 killing the fetus and completing the delivery.

101 (10)~~(7)~~ "Physician" means a physician licensed under
 102 chapter 458 or chapter 459 or a physician practicing medicine or
 103 osteopathic medicine in the employment of the United States.

104 (11) "Postfertilization age" means the age of an unborn
 105 child as calculated from the fertilization of the human ovum.

106 (12) "Probable postfertilization age of the unborn child"
 107 means what, in reasonable medical judgment, will with reasonable
 108 probability be the postfertilization age of the unborn child at
 109 the time an abortion is planned to be performed.

110 (13) "Reasonable medical judgment" means a medical
 111 judgment that would be made by a reasonably prudent physician,
 112 knowledgeable about the case and the treatment possibilities

113 with respect to the medical conditions involved.

114 (14)(8) "Third trimester" means the weeks of pregnancy
 115 after the 24th week of pregnancy.

116 (15) "Unborn child" or "fetus" means an individual
 117 organism of the species homo sapiens from fertilization until
 118 live birth.

119 Section 4. A new subsection (1) is added to section
 120 390.0111, Florida Statutes, subsections (1) through (11) of that
 121 section are renumbered as subsections (2) through (12),
 122 respectively, and present subsection (10) and paragraph (b) of
 123 present subsection (11) of that section are amended, to read:

124 390.0111 Termination of pregnancies.—

125 (1) PAIN-CAPABLE UNBORN CHILD PROTECTION.—

126 (a)1. Except in the case of a medical emergency that
 127 prevents compliance with this subsection, an abortion may not be
 128 performed or induced or be attempted to be performed or induced
 129 unless the physician performing or inducing it has first made a
 130 determination of the probable postfertilization age of the
 131 unborn child or relied upon such a determination made by another
 132 physician. In making such a determination, a physician shall
 133 make such inquiries of the pregnant woman and perform or cause
 134 to be performed such medical examinations and tests as a
 135 reasonably prudent physician, knowledgeable about the case and
 136 the medical conditions involved, would consider necessary to
 137 perform in making an accurate diagnosis with respect to
 138 postfertilization age.

139 2. Failure by any physician to conform to any requirement
 140 of this paragraph constitutes grounds for disciplinary action

141 under s. 458.331 or s. 459.015.

142 (b) A person may not perform or induce or attempt to
 143 perform or induce an abortion upon a woman when it has been
 144 determined, by the physician performing or inducing the abortion
 145 or by another physician upon whose determination that physician
 146 relies, that the probable postfertilization age of the woman's
 147 unborn child is 20 or more weeks unless, in reasonable medical
 148 judgment:

149 1. She has a condition that so complicates her medical
 150 condition as to necessitate the abortion of her pregnancy to
 151 avert her death or to avert serious risk of substantial and
 152 irreversible physical impairment of a major bodily function; or

153 2. It is necessary to preserve the life of an unborn
 154 child.

155
 156 Such a condition may not be deemed to exist if it is based on a
 157 claim or diagnosis that the woman will engage in conduct that
 158 would result in her death or in substantial and irreversible
 159 physical impairment of a major bodily function. With respect to
 160 the exceptions in subsections 1. and 2., the physician shall
 161 terminate the pregnancy in the manner that, in reasonable
 162 medical judgment, provides the best opportunity for the unborn
 163 child to survive, unless, in reasonable medical judgment,
 164 termination of the pregnancy in that manner would pose a greater
 165 risk either of the death of the pregnant woman or of the
 166 substantial and irreversible physical impairment of a major
 167 bodily function of the woman than would another available
 168 method. Such greater risk may not be deemed to exist if it is

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169 based on a claim or diagnosis that the woman will engage in
170 conduct that would result in her death or in substantial and
171 irreversible physical impairment of a major bodily function.

172 (c) Any physician who performs or induces or attempts to
173 perform or induce an abortion shall report to the department, on
174 a schedule and in accordance with forms and rules and
175 regulations adopted by the department, the following:

176 1. If a determination of probable postfertilization age
177 was made, the probable postfertilization age determined and the
178 method and basis of the determination.

179 2. If a determination of probable postfertilization age
180 was not made, the basis of the determination that a medical
181 emergency existed.

182 3. If the probable postfertilization age was determined to
183 be 20 or more weeks, the basis of the determination that the
184 pregnant woman had a condition that so complicated her medical
185 condition as to necessitate the abortion of her pregnancy to
186 avert her death or to avert serious risk of substantial and
187 irreversible physical impairment of a major bodily function, or
188 the basis of the determination that it was necessary to preserve
189 the life of an unborn child.

190 4. The method used for the abortion and, in the case of an
191 abortion performed when the probable postfertilization age was
192 determined to be 20 or more weeks, whether the method of
193 abortion used was one that, in reasonable medical judgment,
194 provided the best opportunity for the unborn child to survive
195 or, if such a method was not used, the basis of the
196 determination that termination of the pregnancy in that manner

197 would pose a greater risk either of the death of the pregnant
 198 woman or of the substantial and irreversible physical impairment
 199 of a major bodily function of the woman than would other
 200 available methods.

201 (d) By June 30 of each year, the department shall issue a
 202 public report providing statistics for the previous calendar
 203 year compiled from all of the reports covering that year
 204 submitted in accordance with paragraph (c). Each such report
 205 shall also provide the statistics for all previous calendar
 206 years during which this subsection was in effect, adjusted to
 207 reflect any additional information from late or corrected
 208 reports. The department shall take care to ensure that none of
 209 the information included in the public reports could reasonably
 210 lead to the identification of any pregnant woman upon whom an
 211 abortion was performed.

212 (e) Any physician who fails to submit a report under
 213 paragraph (c) by the end of 30 days after the due date shall be
 214 subject to a late fee of \$500 for each additional 30-day period
 215 or portion of a 30-day period the report is overdue. Any
 216 physician required to report in accordance with this subsection
 217 who has not submitted a report, or has submitted only an
 218 incomplete report, more than 1 year after the due date, may be
 219 directed by a court of competent jurisdiction to submit a
 220 complete report within a time period stated by court order or be
 221 subject to civil contempt. Failure by any physician to conform
 222 to any requirement of this subsection constitutes grounds for
 223 disciplinary action under s. 458.331 or s. 459.015. Intentional
 224 or reckless falsification of any report required under paragraph

225 (c) is a misdemeanor of the second degree, punishable as
 226 provided in s. 775.082 or s. 775.083.

227 (f) Any person who intentionally or recklessly performs or
 228 attempts to perform an abortion in violation of paragraph (b)
 229 commits a felony of the third degree, punishable as provided in
 230 s. 775.082, s. 775.083, or s. 775.084. A penalty may not be
 231 assessed against the woman upon whom the abortion was performed
 232 or attempted to be performed.

233 (g)1. Any woman upon whom an abortion was performed in
 234 violation of this subsection or the father of the unborn child
 235 who was the subject of such an abortion may maintain an action
 236 against the person who performed the abortion in an intentional
 237 or a reckless violation of this subsection for actual damages.
 238 Any woman upon whom an abortion was attempted in violation of
 239 this subsection may maintain an action against the person who
 240 attempted to perform the abortion in an intentional or a
 241 reckless violation of this subsection for actual damages.

242 2. The woman upon whom an abortion was performed or
 243 attempted in violation of this subsection has a cause of action
 244 for injunctive relief against any person who has intentionally
 245 violated this subsection. Such a cause of action may also be
 246 maintained by a spouse, parent, sibling, guardian, or current or
 247 former licensed health care provider of such a woman or by the
 248 Attorney General or a county attorney with appropriate
 249 jurisdiction. An injunction granted under this subparagraph
 250 shall prevent the violator from performing or attempting more
 251 abortions in violation of this subsection in this state.

252 3. If judgment is rendered in favor of the plaintiff in an

253 action described in this section, the court shall also render
254 judgment for reasonable attorney's fees in favor of the
255 plaintiff against the defendant.

256 4. If judgment is rendered in favor of the defendant and
257 the court finds that the plaintiff's suit was frivolous and
258 brought in bad faith, the court shall also render judgment for
259 reasonable attorney's fees in favor of the defendant against the
260 plaintiff.

261 5. Neither damages nor attorney's fees may be assessed
262 against the woman upon whom an abortion was performed or
263 attempted except as provided in subparagraph 4.

264 (h) In every civil or criminal proceeding or action
265 brought under this subsection, the court shall rule whether the
266 anonymity of any woman upon whom an abortion was performed or
267 attempted shall be preserved from public disclosure if she does
268 not give her consent to such disclosure. The court, upon motion
269 or sua sponte, shall make such a ruling and, upon determining
270 that her anonymity should be preserved, shall issue orders to
271 the parties, witnesses, and counsel and direct the sealing of
272 the record and exclusion of individuals from courtrooms or
273 hearing rooms to the extent necessary to safeguard her identity
274 from public disclosure. Each such order shall be accompanied by
275 specific written findings explaining why the anonymity of the
276 woman should be preserved from public disclosure, why the order
277 is essential to that end, how the order is narrowly tailored to
278 serve that interest, and why no reasonable less restrictive
279 alternative exists. In the absence of written consent of the
280 woman upon whom an abortion was performed or attempted, anyone,

281 other than a public official, who brings an action under
 282 paragraph (g) shall do so under a pseudonym. This paragraph does
 283 not require the concealment of the identity of the plaintiff or
 284 of witnesses from the defendant or from attorneys for the
 285 defendant.

286 (11)~~(10)~~ PENALTIES FOR VIOLATION.—Except as provided in
 287 subsections (1), (4), ~~(3)~~ and (8)~~(7)~~:

288 (a) Any person who willfully performs, or actively
 289 participates in, a termination of pregnancy procedure in
 290 violation of the requirements of this section commits a felony
 291 of the third degree, punishable as provided in s. 775.082, s.
 292 775.083, or s. 775.084.

293 (b) Any person who performs, or actively participates in,
 294 a termination of pregnancy procedure in violation of the
 295 provisions of this section which results in the death of the
 296 woman commits a felony of the second degree, punishable as
 297 provided in s. 775.082, s. 775.083, or s. 775.084.

298 (12)~~(11)~~ CIVIL ACTION PURSUANT TO PARTIAL-BIRTH ABORTION;
 299 RELIEF.—

300 (b) In a civil action under this section, appropriate
 301 relief includes:

302 1. Monetary damages for all injuries, psychological and
 303 physical, occasioned by the violation of subsection (6) ~~(5)~~.

304 2. Damages equal to three times the cost of the partial-
 305 birth abortion.

306 Section 5. Subsection (2) of section 765.113, Florida
 307 Statutes, is amended to read:

308 765.113 Restrictions on providing consent.—Unless the

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309 principal expressly delegates such authority to the surrogate in
 310 writing, or a surrogate or proxy has sought and received court
 311 approval pursuant to rule 5.900 of the Florida Probate Rules, a
 312 surrogate or proxy may not provide consent for:

313 (2) Withholding or withdrawing life-prolonging procedures
 314 from a pregnant patient prior to viability as defined in s.
 315 390.0111~~(5)-(4)~~.

316 Section 6. Notwithstanding any other provision of law,
 317 within 90 days after the effective date of this act the
 318 Department of Health shall adopt rules to assist in compliance
 319 with s. 390.0111(1)(c), (d), and (e), Florida Statutes, as
 320 created by this act.

321 Section 7. This act shall take effect July 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 321 (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 Trujillo offered the following:

Amendment

6 Remove everything after the enacting clause and insert:
7 Section 1. Subsection (3) of section 390.0111, Florida Statutes,
8 is amended to read:

9 390.0111 Termination of pregnancies.—

10 (3) CONSENTS REQUIRED.—A termination of pregnancy may not
11 be performed or induced except with the voluntary and informed
12 written consent of the pregnant woman or, in the case of a
13 mental incompetent, the voluntary and informed written consent
14 of her court-appointed guardian.

15 (a) Except in the case of a medical emergency, consent to
16 a termination of pregnancy is voluntary and informed only if:

17 1. The physician who is to perform the procedure, or the
18 referring physician, has, at a minimum, orally, in person,
19 informed the woman of:

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20 a. The nature and risks of undergoing or not undergoing
21 the proposed procedure that a reasonable patient would consider
22 material to making a knowing and willful decision of whether to
23 terminate a pregnancy.

24 b. The probable gestational age of the fetus at the time
25 the termination of pregnancy is to be performed.

26 c. If the gestational age of the fetus is determined to be
27 22 weeks or more, the ability of the fetus to feel pain. This
28 information shall include, but need not be limited to, the
29 following:

30 (I) By 22 weeks gestational age, a fetus possesses all the
31 anatomical structures, including pain receptors, spinal cord,
32 nerve tracts, thalamus, and cortex, that are necessary in order
33 to feel pain;

34 (II) A description of the actual steps in the abortion
35 procedure to be performed or induced, and at which steps the
36 abortion procedure could be painful to the fetus;

37 (III) There is evidence that by 22 weeks of gestational
38 age, fetuses seek to evade certain stimuli in a manner that in
39 an infant or adult would be interpreted as a response to pain;

40 (IV) Anesthesia is given to fetuses who are 22 weeks or
41 more gestational age who undergo prenatal surgery;

42 (V) Anesthesia is given to premature children who are 22
43 weeks or more gestational age who undergo surgery;

44 (VI) Anesthesia or analgesics are available in order to
45 minimize or alleviate the pain to the fetus.

46 (VII) The medical risks associated with the particular
47 anesthetic or analgesic.

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48 ~~d.e.~~ The medical risks to the woman and fetus of carrying
49 the pregnancy to term.

50 2. Printed materials prepared and provided by the
51 department have been provided to the pregnant woman, if she
52 chooses to view these materials, including:

53 a. A description of the fetus.

54 b. A list of agencies that offer alternatives to
55 terminating the pregnancy.

56 c. Detailed information on the availability of medical
57 assistance benefits for prenatal care, childbirth, and neonatal
58 care.

59 3. The woman acknowledges in writing, before the
60 termination of pregnancy, that the information required to be
61 provided under this subsection has been provided.

62

63 Nothing in this paragraph is intended to prohibit a physician
64 from providing any additional information which the physician
65 deems material to the woman's informed decision to terminate her
66 pregnancy.

67 (b) In the event a medical emergency exists and a
68 physician cannot comply with the requirements for informed
69 consent, a physician may terminate a pregnancy if he or she has
70 obtained at least one corroborative medical opinion attesting to
71 the medical necessity for emergency medical procedures and to
72 the fact that to a reasonable degree of medical certainty the
73 continuation of the pregnancy would threaten the life of the
74 pregnant woman. In the event no second physician is available
75 for a corroborating opinion, the physician may proceed but shall

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76 document reasons for the medical necessity in the patient's
77 medical records.

78 (c) Violation of this subsection by a physician
79 constitutes grounds for disciplinary action under s. 458.331 or
80 s. 459.015. Substantial compliance or reasonable belief that
81 complying with the requirements of informed consent would
82 threaten the life or health of the patient is a defense to any
83 action brought under this paragraph.

84 (9) FETAL ANESTHESIA.—Except in the case of a medical
85 emergency, as defined in s. 390.01114(2) (d), before an abortion
86 is performed on a fetus whose gestational age is 22 weeks or
87 more, the physician performing the abortion shall offer to
88 administer an anesthetic or analgesic to the fetus. The
89 physician shall document in the patient's medical history file
90 whether the patient has accepted or declined fetal anesthetic or
91 analgesic.

92 (10)(9) EXCEPTION.—The provisions of this section shall
93 not apply to the performance of a procedure which terminates a
94 pregnancy in order to deliver a live child.

95 (11)(10) PENALTIES FOR VIOLATION.—Except as provided in
96 subsections (3) and (7):

97 (a) Any person who willfully performs, or actively
98 participates in, a termination of pregnancy procedure in
99 violation of the requirements of this section commits a felony
100 of the third degree, punishable as provided in s. 775.082, s.
101 775.083, or s. 775.084.

102 (b) Any person who performs, or actively participates in,
103 a termination of pregnancy procedure in violation of the

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104 provisions of this section which results in the death of the
105 woman commits a felony of the second degree, punishable as
106 provided in s. 775.082, s. 775.083, or s. 775.084.

107 (12)~~(11)~~ CIVIL ACTION PURSUANT TO PARTIAL-BIRTH ABORTION;
108 RELIEF.—

109 (a) The father, if married to the mother at the time she
110 receives a partial-birth abortion, and, if the mother has not
111 attained the age of 18 years at the time she receives a partial-
112 birth abortion, the maternal grandparents of the fetus may, in a
113 civil action, obtain appropriate relief, unless the pregnancy
114 resulted from the plaintiff's criminal conduct or the plaintiff
115 consented to the abortion.

116 (b) In a civil action under this section, appropriate
117 relief includes:

118 1. Monetary damages for all injuries, psychological and
119 physical, occasioned by the violation of subsection (5).

120 2. Damages equal to three times the cost of the partial-
121 birth abortion.

122 (13) CIVIL ACTION; REMEDIES.—

123 Any woman upon whom an abortion was performed in violation
124 of subsection (9) or s.390.0111(3)(a) 1. c., or the father of a
125 fetus who was the subject of such an abortion, shall have a
126 cause of action for negligence. The action may be brought in any
127 court of competent jurisdiction. Any plaintiff who prevails in
128 any such action for any amount is entitled to recover reasonable
129 attorney's fees, costs of the action, and damages, unless the
130 court finds that the plaintiff has acted in bad faith or with
131 malicious purpose or that there was a complete absence of a

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132 justiciable issue of either law or fact. A prevailing defendant
133 is entitled to recover reasonable attorney's fees under s.
134 57.105 only if the court determines that the plaintiff's claim
135 involved a complete absence of justiciable law or fact. The
136 remedies provided in this section are in addition to other legal
137 and administrative remedies available to the woman or the
138 father. Any action brought pursuant to this subsection is not a
139 claim for medical malpractice, and chapter 766 does not apply.
140 The statute of limitations in s. 95.11(3) applies to an action
141 under this subsection.

142

143 Section 2. Subsection 3. of section 390.012, Florida Statutes,
144 is amended to read:

145 390.012 Powers of agency; rules; disposal of fetal
146 remains.—

147 (3) For clinics that perform or claim to perform abortions
148 after the first trimester of pregnancy, the agency shall adopt
149 rules pursuant to ss. 120.536(1) and 120.54 to implement the
150 provisions of this chapter, including the following:

151

152 (e) Rules relating to the abortion procedure. At a
153 minimum, these rules shall require:

154 1. That a physician, registered nurse, licensed practical
155 nurse, advanced registered nurse practitioner, or physician
156 assistant is available to all patients throughout the abortion
157 procedure.

158 2. Standards for the safe conduct of abortion procedures
159 that conform to obstetric standards in keeping with established

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160 standards of care regarding the estimation of fetal age as
161 defined in rule.

162 3. Appropriate use of general and local anesthesia,
163 analgesia, and sedation if ordered by the physician, for the
164 pregnant woman and for the fetus.

165 4. Appropriate precautions, such as the establishment of
166 intravenous access at least for patients undergoing post-first
167 trimester abortions.

168 5. Appropriate monitoring of the vital signs and other
169 defined signs and markers of the patient's status throughout the
170 abortion procedure and during the recovery period until the
171 patient's condition is deemed to be stable in the recovery room.

172

173 Section 3. This act shall take effect July 1, 2011.