



Health Quality Subcommittee

**Tuesday, February 18, 2014
9:00 AM - 11:00 AM
306 HOB**

**Will Weatherford
Speaker**

**Kenneth L. "Ken" Roberson
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Health Quality Subcommittee

Start Date and Time: Tuesday, February 18, 2014 09:00 am
End Date and Time: Tuesday, February 18, 2014 11:00 am
Location: 306 HOB
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 419 Pub. Rec./Department of Health Personnel by Renuart
HB 457 Pub. Rec./Dental Workforce Surveys by Harrell
HB 491 Infectious Disease Elimination Pilot Program by Pafford
HB 511 Cancer Control and Research by Coley
HB 591 Newborn Health Screening by Harrell

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members is 6:00 p.m., Monday, February 17, 2014.

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, February 17, 2014.

NOTICE FINALIZED on 02/11/2014 16:25 by Villar.Melissa

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 419 Pub. Rec./Department of Health Personnel
SPONSOR(S): Renuart
TIED BILLS: IDEN./SIM. **BILLS:** SB 390

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		Guzzo <i>fg</i>	O'Callaghan <i>mo</i>
2) Government Operations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill creates a public record exemption for information relating to the identification and location of current or former personnel of the Department of Health (DOH), whose duties include:

- Investigating and prosecuting complaints filed against health care practitioners;
- Inspecting practitioners or facilities licensed by DOH; or
- Determining eligibility for social security disability benefits.

In addition to providing a public record exemption for DOH personnel, the bill provides that the following information relating to the families of such personnel is exempt from public record requirements:

- Names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. In addition, the bill provides a statement of public necessity as required by the State Constitution.

The bill does not appear to have a fiscal impact.

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

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands the current public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This 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.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Public Record Exemptions

Current law provides public record exemptions for identification and location information of certain current or former public employees and their spouses and children.³ Examples of public employees covered by these exemptions include law enforcement personnel, firefighters, local government personnel who are responsible for revenue collection and enforcement or child support enforcement, justices and judges, and local and statewide prosecuting attorneys. Legislation was passed in 2012 to provide a public record exemption for personal and identifying information of current or former county tax collectors, and investigators or inspectors of the Department of Business and Professional Regulation.⁴

Although the types of exempt information vary, the following information is exempt from public record requirements for all of the above-listed public employees:

- Home addresses and telephone numbers of the public employees;
- Home addresses, telephone numbers, and places of employment of the spouses and children of public employees; and
- Names and locations of schools and day care facilities attended by the children of the public employees.

¹ Section 24(c), Art. I of the State Constitution.

² See s. 119.15, F.S.

³ See s. 119.071(4)(d), F.S.

⁴ CS/CS/HB1089; Chapter 2012-214, L.O.F.

If exempt information is held by an agency⁵ that is not the employer of the public employee, the public employee must submit a written request to that agency to maintain the public record exemption.⁶

Currently, personal information of Department of Health investigative staff and their spouses and children is not exempt from public disclosure.⁷

Department of Health – Complaints and Investigations

The Department of Health (DOH) is responsible for the regulation of health care practitioners and certain facilities pursuant to s. 20.43, F.S. DOH requires initial and periodic inspections for:⁸

- Pain Management Clinics;
- Pharmacies;
- Dental Laboratories;
- Massage Establishments;
- Electrolysis Establishments;
- Optical Establishments;
- Dispensing Practitioners; and
- Any place in which drugs and medical supplies are manufactured, packed, packaged, made, stored, sold, offered for sale, exposed for sale, or kept for sale.

Many individuals may be involved in an investigative manner throughout the investigation process. Section 456.073(1), F.S., requires DOH inspectors and investigators to investigate any complaint that is determined to be legally sufficient. After review of a complaint, if the allegations and supporting documentation show that a violation may have occurred, the complaint is considered legally sufficient for investigation. A complaint is legally sufficient if it contains ultimate facts that show there has been a violation of chapter 456, F.S., any of the practice acts relating to the professions regulated by DOH, or of any rule adopted by DOH or a regulatory board.

The Investigative Services Unit (ISU) functions as the investigative arm of DOH as it investigates complaints against health care practitioners and facilities regulated by DOH. ISU includes staff of professional investigators and senior pharmacists who conduct interviews, collect documents and evidence, prepare investigative reports for the Prosecution Services Unit (PSU), and serve subpoenas and official orders of DOH. Upon completion of collecting information and conducting interviews, the investigator writes an investigative report and the report is forwarded to DOH's attorneys for legal review.⁹

Attorneys within the PSU then review the investigative report to recommend a course of action, which may include:¹⁰

- Emergency orders against licensees who pose an immediate threat to the health, safety, and welfare of individuals;
- Expert reviews for complex cases that require professional health care experts to render an opinion;

⁵ Section 119.011(2), F.S., defines "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

⁶ Section 119.071(4)(d)3., F.S.

⁷ *But See* s. 119.071(4)(d)2.a., F.S., re: Department of Health investigators of child abuse.

⁸ Sections 456.069 and 465.017, F.S.

⁹ Florida Department of Health, Division of Medical Quality Assurance, http://www.doh.state.fl.us/mqa/enforcement/enforce_csu.html (last visited February 13, 2014).

¹⁰ *Id.*

- Closing orders if the investigation or the expert review does not support the allegations;¹¹ or
- Administrative complaints when the investigation supports the allegations.

When an administrative complaint is filed, the subject has the right to choose a hearing, consent/stipulation agreement, or voluntarily relinquish their license. In all of these instances, the case is then presented to the professional board or DOH for final agency action. If the subject appeals the final decision, the PSU attorney defends the final order before the appropriate appellate court.

According to DOH, investigators have recently had to be involved in more investigations that include criminal elements.¹² Investigators who inspect massage establishments are identifying and reporting to law enforcement possible human trafficking activities. Further, investigators have forged strong relationships with law enforcement in an effort to combat the health care concerns caused by illegal “pill mills” and controlled substance abuse in Florida. As DOH investigators are increasingly exposed to potentially dangerous criminal situations, they have become concerned about the release of personal information that may be used by criminals, or individuals under investigation by DOH, to target investigative staff and their families.

Disability Determinations

The Division of Disability Determinations (DDD), within DOH¹³, is responsible for making the determination of medical eligibility for disability benefits under the federal Social Security Administration (SSA) disability programs (Social Security Disability-Title II and Supplemental Security Income-Title XVI). It is also responsible for the continuing disability review of all SSA disability beneficiaries to determine if they continue to meet medical eligibility criteria.¹⁴

Applications for Social Security disability benefits are filed at the claimant’s local SSA field office or online. The application is forwarded to the DDD for development, assessment, and determination of medical eligibility in accordance with Social Security regulations. All relevant medical evidence is procured from the claimant’s medical sources. If the medical evidence is insufficient for a determination, the DDD will arrange for a consultative examination targeted to the claimant’s alleged disability. The claimant is also contacted for detailed information on activities of daily living, clarification of symptoms, work history, and other pertinent information. After the claim file is documented and a determination of medical eligibility is made, DDD prepares and releases notification of denial to the claimant, or the claim file is returned to the SSA for a final determination of technical (non-medical) eligibility and processing for any benefits due the claimant.¹⁵

According to DOH, in the past three years, DDD has received 100 credible and significant threats against their employees, usually stemming from the denial of disability benefits.¹⁶

Effect of Proposed Changes

The bill further expands the current public record exemption for identification and location information of public employees to include current and former DOH personnel, whose duties include:

- Investigating and prosecuting complaints filed against health care practitioners;
- Inspecting practitioners or facilities licensed by DOH; or

¹¹ Cases closed with no finding of probable cause are generally confidential and are not available through a public records request.

¹² HB 419 Agency Legislative Bill Analysis, Department of Health, at page 2, December 19, 2013 (on file with the Health Quality Subcommittee).

¹³ Section 20.43(3)(h), F.S.

¹⁴ Florida Department of Health, Disability Determinations, <http://www.floridahealth.gov/healthy-people-and-families/people-with-disabilities/disability-determinations/index.html> (last visited February 13, 2014).

¹⁵ *Id.*

¹⁶ HB 419 Agency Legislative Bill Analysis, Department of Health, at page 2, December 19, 2013 (on file with the Health Quality Subcommittee).

- Determining eligibility for social security benefits.

The bill provides that the following information is exempt¹⁷ from public record requirements if such personnel make a reasonable effort to protect the information from being accessible through other means available to the public:

- Home addresses, telephone numbers, and photographs of current or former DOH personnel whose duties include investigating or prosecuting complaints against health care practitioners, or inspecting practitioners or facilities licensed by DOH;
- Names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.¹⁸

B. SECTION DIRECTORY:

Section 1: Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2: Provides a public necessity statement.

Section 3: Provides that the bill shall be effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill could create a minimal fiscal impact on state or local agencies with staff responsible for complying with public record requests as staff could require training related to the expansion of the public record exemption. In addition, an agency could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

¹⁷ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

¹⁸ See s. 24(c), Art. I of the State Constitution.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands current public record exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands current public record exemptions; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution, requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for information relating to the identification and location of certain personnel of the Department of Health. The exemption does not appear to be in conflict with the constitutional requirement that the exemption must be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to public records; amending s.
 119.071, F.S.; providing an exemption from public
 records requirements for certain identifying
 information of specific current and former personnel
 of the Department of Health and the spouses and
 children of such personnel; providing for future
 legislative review and repeal of the exemption;
 providing a statement of public necessity; providing
 an effective date.

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

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

119.071 General exemptions from inspection or copying of
 public records.—

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term "telephone
 numbers" includes home telephone numbers, personal cellular
 telephone numbers, personal pager telephone numbers, and
 telephone numbers associated with personal communications
 devices.

2.a.(I) The home addresses, telephone numbers, social
 security numbers, dates of birth, and photographs of active or
 former sworn or civilian law enforcement personnel, including

27 | correctional and correctional probation officers, personnel of
 28 | the Department of Children and Families whose duties include the
 29 | investigation of abuse, neglect, exploitation, fraud, theft, or
 30 | other criminal activities, personnel of the Department of Health
 31 | whose duties are to support the investigation of child abuse or
 32 | neglect, and personnel of the Department of Revenue or local
 33 | governments whose responsibilities include revenue collection
 34 | and enforcement or child support enforcement; the home
 35 | addresses, telephone numbers, social security numbers,
 36 | photographs, dates of birth, and places of employment of the
 37 | spouses and children of such personnel; and the names and
 38 | locations of schools and day care facilities attended by the
 39 | children of such personnel are exempt from s. 119.07(1).

40 | (II) The names of the spouses and children of active or
 41 | former sworn or civilian law enforcement personnel and the other
 42 | specified agency personnel identified in sub-sub-subparagraph
 43 | (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the
 44 | State Constitution.

45 | (III) Sub-sub-subparagraph (II) is subject to the Open
 46 | Government Sunset Review Act in accordance with s. 119.15~~7~~ and
 47 | shall stand repealed on October 2, 2018, unless reviewed and
 48 | saved from repeal through reenactment by the Legislature.

49 | b. The home addresses, telephone numbers, dates of birth,
 50 | and photographs of firefighters certified in compliance with s.
 51 | 633.408; the home addresses, telephone numbers, photographs,
 52 | dates of birth, and places of employment of the spouses and

53 children of such firefighters; and the names and locations of
 54 schools and day care facilities attended by the children of such
 55 firefighters are exempt from s. 119.07(1).

56 c. The home addresses, dates of birth, and telephone
 57 numbers of current or former justices of the Supreme Court,
 58 district court of appeal judges, circuit court judges, and
 59 county court judges; the home addresses, telephone numbers,
 60 dates of birth, and places of employment of the spouses and
 61 children of current or former justices and judges; and the names
 62 and locations of schools and day care facilities attended by the
 63 children of current or former justices and judges are exempt
 64 from s. 119.07(1).

65 d.(I) The home addresses, telephone numbers, social
 66 security numbers, dates of birth, and photographs of current or
 67 former state attorneys, assistant state attorneys, statewide
 68 prosecutors, or assistant statewide prosecutors; the home
 69 addresses, telephone numbers, social security numbers,
 70 photographs, dates of birth, and places of employment of the
 71 spouses and children of current or former state attorneys,
 72 assistant state attorneys, statewide prosecutors, or assistant
 73 statewide prosecutors; and the names and locations of schools
 74 and day care facilities attended by the children of current or
 75 former state attorneys, assistant state attorneys, statewide
 76 prosecutors, or assistant statewide prosecutors are exempt from
 77 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

78 (II) The names of the spouses and children of current or

79 former state attorneys, assistant state attorneys, statewide
 80 prosecutors, or assistant statewide prosecutors are exempt from
 81 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

82 (III) Sub-sub-subparagraph (II) is subject to the Open
 83 Government Sunset Review Act in accordance with s. 119.15~~7~~ and
 84 shall stand repealed on October 2, 2018, unless reviewed and
 85 saved from repeal through reenactment by the Legislature.

86 e. The home addresses, dates of birth, and telephone
 87 numbers of general magistrates, special magistrates, judges of
 88 compensation claims, administrative law judges of the Division
 89 of Administrative Hearings, and child support enforcement
 90 hearing officers; the home addresses, telephone numbers, dates
 91 of birth, and places of employment of the spouses and children
 92 of general magistrates, special magistrates, judges of
 93 compensation claims, administrative law judges of the Division
 94 of Administrative Hearings, and child support enforcement
 95 hearing officers; and the names and locations of schools and day
 96 care facilities attended by the children of general magistrates,
 97 special magistrates, judges of compensation claims,
 98 administrative law judges of the Division of Administrative
 99 Hearings, and child support enforcement hearing officers are
 100 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 101 Constitution if the general magistrate, special magistrate,
 102 judge of compensation claims, administrative law judge of the
 103 Division of Administrative Hearings, or child support hearing
 104 officer provides a written statement that the general

105 | magistrate, special magistrate, judge of compensation claims,
 106 | administrative law judge of the Division of Administrative
 107 | Hearings, or child support hearing officer has made reasonable
 108 | efforts to protect such information from being accessible
 109 | through other means available to the public.

110 | f. The home addresses, telephone numbers, dates of birth,
 111 | and photographs of current or former human resource, labor
 112 | relations, or employee relations directors, assistant directors,
 113 | managers, or assistant managers of any local government agency
 114 | or water management district whose duties include hiring and
 115 | firing employees, labor contract negotiation, administration, or
 116 | other personnel-related duties; the names, home addresses,
 117 | telephone numbers, dates of birth, and places of employment of
 118 | the spouses and children of such personnel; and the names and
 119 | locations of schools and day care facilities attended by the
 120 | children of such personnel are exempt from s. 119.07(1) and s.
 121 | 24(a), Art. I of the State Constitution.

122 | g. The home addresses, telephone numbers, dates of birth,
 123 | and photographs of current or former code enforcement officers;
 124 | the names, home addresses, telephone numbers, dates of birth,
 125 | and places of employment of the spouses and children of such
 126 | personnel; and the names and locations of schools and day care
 127 | facilities attended by the children of such personnel are exempt
 128 | from s. 119.07(1) and s. 24(a), Art. I of the State
 129 | Constitution.

130 | h. The home addresses, telephone numbers, places of

131 employment, dates of birth, and photographs of current or former
 132 guardians ad litem, as defined in s. 39.820; the names, home
 133 addresses, telephone numbers, dates of birth, and places of
 134 employment of the spouses and children of such persons; and the
 135 names and locations of schools and day care facilities attended
 136 by the children of such persons are exempt from s. 119.07(1) and
 137 s. 24(a), Art. I of the State Constitution, if the guardian ad
 138 litem provides a written statement that the guardian ad litem
 139 has made reasonable efforts to protect such information from
 140 being accessible through other means available to the public.

141 i. The home addresses, telephone numbers, dates of birth,
 142 and photographs of current or former juvenile probation
 143 officers, juvenile probation supervisors, detention
 144 superintendents, assistant detention superintendents, juvenile
 145 justice detention officers I and II, juvenile justice detention
 146 officer supervisors, juvenile justice residential officers,
 147 juvenile justice residential officer supervisors I and II,
 148 juvenile justice counselors, juvenile justice counselor
 149 supervisors, human services counselor administrators, senior
 150 human services counselor administrators, rehabilitation
 151 therapists, and social services counselors of the Department of
 152 Juvenile Justice; the names, home addresses, telephone numbers,
 153 dates of birth, and places of employment of spouses and children
 154 of such personnel; and the names and locations of schools and
 155 day care facilities attended by the children of such personnel
 156 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State

157 Constitution.

158 j. The home addresses, telephone numbers, dates of birth,
 159 and photographs of current or former public defenders, assistant
 160 public defenders, criminal conflict and civil regional counsel,
 161 and assistant criminal conflict and civil regional counsel; the
 162 home addresses, telephone numbers, dates of birth, and places of
 163 employment of the spouses and children of such defenders or
 164 counsel; and the names and locations of schools and day care
 165 facilities attended by the children of such defenders or counsel
 166 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 167 Constitution.

168 k. The home addresses, telephone numbers, and photographs
 169 of current or former investigators or inspectors of the
 170 Department of Business and Professional Regulation; the names,
 171 home addresses, telephone numbers, and places of employment of
 172 the spouses and children of such current or former investigators
 173 and inspectors; and the names and locations of schools and day
 174 care facilities attended by the children of such current or
 175 former investigators and inspectors are exempt from s. 119.07(1)
 176 and s. 24(a), Art. I of the State Constitution if the
 177 investigator or inspector has made reasonable efforts to protect
 178 such information from being accessible through other means
 179 available to the public. This sub-subparagraph is subject to the
 180 Open Government Sunset Review Act in accordance with s. 119.15
 181 and shall stand repealed on October 2, 2017, unless reviewed and
 182 saved from repeal through reenactment by the Legislature.

183 1. The home addresses and telephone numbers of county tax
 184 collectors; the names, home addresses, telephone numbers, and
 185 places of employment of the spouses and children of such tax
 186 collectors; and the names and locations of schools and day care
 187 facilities attended by the children of such tax collectors are
 188 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 189 Constitution if the county tax collector has made reasonable
 190 efforts to protect such information from being accessible
 191 through other means available to the public. This sub-
 192 subparagraph is subject to the Open Government Sunset Review Act
 193 in accordance with s. 119.15 and shall stand repealed on October
 194 2, 2017, unless reviewed and saved from repeal through
 195 reenactment by the Legislature.

196 m. The home addresses, telephone numbers, and photographs
 197 of current or former personnel of the Department of Health whose
 198 duties include the investigation and prosecution of complaints
 199 filed against health care practitioners or the inspection of
 200 practitioners or facilities licensed by the Department of
 201 Health, or whose duties include a direct and active role in the
 202 adjudication or management of eligibility for social security
 203 disability benefits; the names, home addresses, telephone
 204 numbers, and places of employment of the spouses and children of
 205 such personnel; and the names and locations of schools and day
 206 care facilities attended by the children of such personnel are
 207 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 208 Constitution if the personnel have made reasonable efforts to

209 protect such information from being accessible through other
 210 means available to the public. This sub-subparagraph is subject
 211 to the Open Government Sunset Review Act in accordance with s.
 212 119.15 and shall stand repealed on October 2, 2019, unless
 213 reviewed and saved from repeal through reenactment by the
 214 Legislature.

215 3. An agency that is the custodian of the information
 216 specified in subparagraph 2. and that is not the employer of the
 217 officer, employee, justice, judge, or other person specified in
 218 subparagraph 2. shall maintain the exempt status of that
 219 information only if the officer, employee, justice, judge, other
 220 person, or employing agency of the designated employee submits a
 221 written request for maintenance of the exemption to the
 222 custodial agency.

223 4. The exemptions in this paragraph apply to information
 224 held by an agency before, on, or after the effective date of the
 225 exemption.

226 5. Except as otherwise expressly provided in this
 227 paragraph, this paragraph is subject to the Open Government
 228 Sunset Review Act in accordance with s. 119.15~~7~~ and shall stand
 229 repealed on October 2, 2017, unless reviewed and saved from
 230 repeal through reenactment by the Legislature.

231 Section 2. The Legislature finds that it is a public
 232 necessity that the home addresses, telephone numbers, and
 233 photographs of current or former personnel of the Department of
 234 Health whose duties include the investigation and prosecution of

235 complaints filed against health care practitioners or the
 236 inspection of practitioners or facilities licensed by the
 237 Department of Health, or whose duties include a direct and
 238 active role in the adjudication or management of eligibility for
 239 social security disability benefits; the names, home addresses,
 240 telephone numbers, and places of employment of the spouses and
 241 children of such personnel; and the names and locations of
 242 schools and day care facilities attended by the children of such
 243 personnel be made exempt from public records requirements if the
 244 personnel have made reasonable efforts to protect such
 245 information from being accessible through other means available
 246 to the public. The release of such identifying information might
 247 place such current or former personnel of the Department of
 248 Health and their family members in danger of physical and
 249 emotional harm from disgruntled individuals who have contentious
 250 reactions to actions carried out by personnel of the Department
 251 of Health or whose business or professional practices have come
 252 under the scrutiny of investigators and inspectors of the
 253 Department of Health. The Legislature further finds that the
 254 harm that may result from the release of such personal
 255 identifying information outweighs any public benefit derived
 256 from disclosure of the information.

257 Section 3. This act shall take effect upon becoming a law.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 419 (2014)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Health Quality
2 Subcommittee

3 Representative Renuart offered the following:
4

5 **Amendment**

6 Remove lines 196-251 and insert:

7 m. The home addresses, telephone numbers, dates of birth,
8 and photographs of current or former personnel of the Department
9 of Health whose duties include, or result in, the determination
10 or adjudication of eligibility for social security disability
11 benefits, the investigation or prosecution of complaints filed
12 against health care practitioners, or the inspection of health
13 care practitioners or health care facilities licensed by the
14 Department of Health; the names, home addresses, telephone
15 numbers, dates of birth, and places of employment of the spouses
16 and children of such personnel; and the names and locations of
17 schools and day care facilities attended by the children of such

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 419 (2014)

Amendment No.

18 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
19 the State Constitution if the personnel have made reasonable
20 efforts to protect such information from being accessible
21 through other means available to the public. This sub-
22 subparagraph is subject to the Open Government Sunset Review Act
23 in accordance with s. 119.15 and shall stand repealed on October
24 2, 2019, unless reviewed and saved from repeal through
25 reenactment by the Legislature.

26 3. An agency that is the custodian of the information
27 specified in subparagraph 2. and that is not the employer of the
28 officer, employee, justice, judge, or other person specified in
29 subparagraph 2. shall maintain the exempt status of that
30 information only if the officer, employee, justice, judge, other
31 person, or employing agency of the designated employee submits a
32 written request for maintenance of the exemption to the
33 custodial agency.

34 4. The exemptions in this paragraph apply to information
35 held by an agency before, on, or after the effective date of the
36 exemption.

37 5. Except as otherwise expressly provided in this
38 paragraph, this paragraph is subject to the Open Government
39 Sunset Review Act in accordance with s. 119.15, and shall stand
40 repealed on October 2, 2017, unless reviewed and saved from
41 repeal through reenactment by the Legislature.

42 Section 2. The Legislature finds that it is a public
43 necessity that the home addresses, telephone numbers, dates of

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 419 (2014)

Amendment No.

44 birth, and photographs of current or former personnel of the
45 Department of Health whose duties include, or result in, the
46 determination or adjudication of eligibility for social security
47 disability benefits, the investigation or prosecution of
48 complaints filed against health care practitioners, or the
49 inspection of health care practitioners or health care
50 facilities licensed by the Department of Health; that the names,
51 home addresses, telephone numbers, dates of birth, and places of
52 employment of the spouses and children of such personnel; and
53 that the names and locations of schools and day care facilities
54 attended by the children of such personnel be made exempt from
55 public records requirements. The Legislature finds that the
56 release of such identifying and location information might place
57 these current or former personnel of the Department of Health
58 and their family members in danger of physical and emotional
59 harm from disgruntled individuals who have contentious reactions
60 to actions carried out by such personnel of the Department of
61 Health, or whose business or professional practices have come

1

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 457 Pub. Rec./Dental Workforce Surveys
SPONSOR(S): Harrell
TIED BILLS: **IDEN./SIM. BILLS:** SB 520

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		Guzzo <i>EG</i>	O'Callaghan <i>MO</i>
2) Government Operations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill creates a public record exemption for personal identifying information that is contained in a record provided by a dentist or dental hygienist in response to a dental workforce survey and held by the Department of Health.

The bill provides exceptions to the public record exemption under certain circumstances. Specifically, the bill provides that personal identifying information contained in such a record:

- Must be disclosed with the express written consent of the individual, to whom the information pertains, or the individual's legally authorized representative;
- Must be disclosed by court order upon a showing of good cause; and
- May be disclosed to a research entity, provided certain requirements are met.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. In addition, the bill provides a statement of public necessity as required by the State Constitution.

The bill does not appear to have a fiscal impact.

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

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Workforce Surveys

In 2009, the Department of Health (DOH) developed a workforce survey for dentists and dental hygienists to complete on a voluntary basis in conjunction with the biennial renewal of dental licenses.³ Of the 11,272 dentists who renewed an active license by June 23, 2010, 89 percent responded to the voluntary survey.⁴

Responses to the survey are self-reported. The survey was designed to obtain information unavailable elsewhere on key workforce characteristics in order to better inform and shape public healthcare policy. Specifically, the survey consists of 25 core questions on demographics, education and training, practice characteristics and status, specialties, retention, and access to oral healthcare in Florida.⁵

Unlike dentists and dental hygienists, physicians are statutorily required to respond to physician workforce surveys as a condition of license renewal.⁶ All personal identifying information contained in records provided by physicians in response to these workforce surveys is confidential and exempt

¹ Section 24(c), Art. I of the State Constitution.

² Section 119.15, F.S.

³ Section 466.013(2), F.S., authorizes DOH to adopt rules for the biennial renewal of licenses.

⁴ Florida Department of Health, *Report on the 2009-2010 Workforce Survey of Dentists*, March 2011, at 11, http://www.doh.state.fl.us/Family/dental/OralHealthcareWorkforce/2009_2010_Workforce_Survey_Dentists_Report.pdf (last visited February 14, 2014).

⁵ *Id.*

⁶ Section 381.4018, F.S. Language requiring the submission of physician workforce surveys for license renewal can be found in s. 458.3191, F.S., for allopathic physicians, and s. 459.0081, F.S., for osteopathic physicians.

under s. 458.3193, F.S., concerning allopathic physicians, and s. 459.0083, F.S., concerning osteopathic physicians.

Effect of Proposed Changes

The bill provides that personal identifying information that is contained in a record provided by a dentist or dental hygienist licensed under ch. 466, F.S., in response to a dental workforce survey and held by DOH is confidential and exempt⁷ from public records requirements.

The bill provides exceptions to the exemption under certain circumstances. Specifically, the bill provides that personal identifying information contained in such a record:

- Must be disclosed with the express written consent of the individual, to whom the information pertains, or the individual's legally authorized representative;
- Must be disclosed by court order upon a showing of good cause; and
- May be disclosed to a research entity, if the entity seeks the record or data pursuant to a research protocol approved by DOH.

The research entity must maintain the records or data in accordance with the approved research protocol, and enter into a purchase and data-use agreement with DOH. The purchase and data-use agreement is required to:

- Prohibit the release of information by the research entity which would identify individuals;
- Limit the use of records or data to the approved research protocol; and
- Prohibit any other use of the records or data.

The bill provides that copies of records or data remain the property of DOH.

DOH is authorized to deny a research entity's request if the protocol provides for intrusive follow-back contacts, does not plan for the destruction of the confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.⁸ The public necessity statement declares the public record exemption necessary to foster candid and honest responses to the workforce survey and to ensure DOH has accurate information on dentists and dental hygienists.

B. SECTION DIRECTORY:

Section 1: Creates s. 466.051, F.S., relating to confidentiality of certain information contained in dental workforce surveys.

Section 2: Provides a public necessity statement.

Section 3: Provides an effective date of upon becoming a law.

⁷ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

⁸ Section 24(c), Art. I of the State Constitution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill likely could create a minimal fiscal impact on DOH, because staff responsible for complying with public record requests could require training related to the creation the new public record exemption. In addition, DOH could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption and it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to the personal identifying information of dentists and dental hygienists who respond to dental workforce surveys. The exemption does not appear to be in

conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Voluntary Survey

The DOH developed a workforce survey for dentists and dental hygienists to complete on a voluntary basis in conjunction with the biennial renewal of dental licenses. However, it is unclear if there is any statutory authority for the creation of such survey.

Other Comments: Retroactive Application

The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively.⁹ The bill does not contain a provision requiring retroactive application. As such, the public record exemption would only apply prospectively.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

⁹ *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 466.051, F.S.; providing an exemption from public
 4 records requirements for information contained in
 5 dental workforce surveys submitted by dentists or
 6 dental hygienists to the Department of Health;
 7 providing exceptions to the exemption; providing for
 8 future legislative review and repeal of the exemption
 9 under the Open Government Sunset Review Act; providing
 10 a statement of public necessity; providing an
 11 effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Section 466.051, Florida Statutes, is created
 16 to read:

17 466.051 Confidentiality of certain information contained
 18 in dental workforce surveys.-

19 (1) Personal identifying information that is contained in
 20 a record provided by a dentist or dental hygienist licensed
 21 under this chapter in response to a dental workforce survey and
 22 held by the Department of Health is confidential and exempt from
 23 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

24 Personal identifying information in such a record:

25 (a) Shall be disclosed with the express written consent of
 26 the individual to whom the information pertains or the

27 individual's legally authorized representative.

28 (b) Shall be disclosed by court order upon a showing of
 29 good cause.

30 (c) May be disclosed to a research entity, if the entity
 31 seeks the records or data pursuant to a research protocol
 32 approved by the Department of Health, maintains the records or
 33 data in accordance with the approved protocol, and enters into a
 34 purchase and data-use agreement with the department, the fee
 35 provisions of which are consistent with s. 119.07(4). The
 36 department may deny a request for records or data if the
 37 protocol provides for intrusive follow-back contacts, does not
 38 plan for the destruction of the confidential records after the
 39 research is concluded, is administratively burdensome, or does
 40 not have scientific merit. The agreement must prohibit the
 41 release of information by the research entity which would
 42 identify individuals, limit the use of records or data to the
 43 approved research protocol, and prohibit any other use of the
 44 records or data. Copies of records or data issued pursuant to
 45 this paragraph remain the property of the department.

46 (2) This section is subject to the Open Government Sunset
 47 Review Act in accordance with s. 119.15 and shall stand repealed
 48 on October 2, 2019, unless reviewed and saved from repeal
 49 through reenactment by the Legislature.

50 Section 2. The Legislature finds that it is a public
 51 necessity that personal identifying information that is
 52 contained in a record provided by a dentist or dental hygienist

HB 457



2014

53 licensed under chapter 466, Florida Statutes, who responds to a
54 dental workforce survey be made confidential and exempt from
55 disclosure. Candid and honest responses by licensed dentists or
56 dental hygienists to the workforce survey will ensure that
57 timely and accurate information is available to the Department
58 of Health. The Legislature finds that the failure to maintain
59 the confidentiality of such personal identifying information
60 would prevent the resolution of important state interests to
61 ensure the availability of dentists or dental hygienists in this
62 state.

63 Section 3. This act shall take effect upon becoming a law.
64

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 491 Infectious Disease Elimination Pilot Program
SPONSOR(S): Pafford
TIED BILLS: IDEN./SIM. BILLS: SB 408

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

SUMMARY ANALYSIS

The bill amends s. 381.0038, F.S., to create the Miami-Dade Infectious Disease Elimination Act (IDEA). The IDEA requires the Department of Health (DOH) to establish a needle and syringe exchange pilot program (pilot program) in Miami-Dade County. The pilot program is to offer free, clean, and unused needles and hypodermic syringes as a means to prevent the transmission of HIV/AIDS and other blood-borne diseases among intravenous drug users and their partners. The pilot program must be administered by DOH or a designee, who may operate the pilot program at a fixed location or by using a mobile health unit. The designee may be a licensed hospital, a licensed health care clinic, a substance abuse treatment program, an HIV/AIDS service organization, or another nonprofit entity.

The pilot program must:

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

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

The bill requires the collection of data for annual and final reporting purposes, but prohibits the collection of any personal identifying information from a participant. The pilot program expires 5 years after DOH designates an entity to operate the program. Six months prior to expiration, the Office of Program Policy Analysis and Government Accountability is required to submit a report to the Legislature that includes data on the pilot program and a recommendation on whether the pilot program should continue.

The bill prohibits the use of state funds to operate the pilot program and specifies the use of grants and donations from private sources to fund the program. The bill grants DOH the authority to adopt rules to implement the pilot program. The bill includes a severability clause.

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

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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

Federal Ban on Funding

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

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

Safe Sharps Disposal

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

Examples of sharps include:³

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

On November 8, 2011, the Federal Drug Administration (FDA) launched a new website⁴ for patients and caregivers on the safe disposal of sharps that are used at home, at work and while traveling.⁵

¹ A History of the Ban on Federal Funding for Syringe Exchange Programs, available at <http://www.smartglobalhealth.org/blog/entry/a-history-of-the-ban-on-federal-funding-for-syringe-exchange-programs/> (last viewed Feb. 14, 2014); NPR, Ban Lifted on Federal Funding for Needle Exchange, available at <http://www.npr.org/templates/story/story.php?storyId=121511681> (last viewed Feb. 14, 2014).

² *Id.*

³ Food and Drug Administration, Needles and Other Sharps (Safe Disposal Outside of Health Care Settings), available at <http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/HomeHealthandConsumer/ConsumerProducts/Sharps/ucm20025647.htm> (last viewed Feb. 14, 2014).

⁴ *Id.*

⁵ *Id.*

According to the FDA, used needles and other sharps are dangerous to people and pets if not disposed of safely because they can injure people and spread infections that cause serious health conditions. The most common infections from such injuries are:⁶

- Hepatitis B (HBV),
- Hepatitis C (HCV), and
- Human Immunodeficiency Virus (HIV).

Moreover, injections of illicit drugs have been estimated to represent approximately one-third of the estimated 2-3 billion injections occurring outside of health-care settings in the U.S. each year, second only to insulin injections by persons with diabetes.⁷

For these reasons, communities are trying to manage the disposal of sharps within the illicit drug population. In San Francisco in 2000, approximately 2 million syringes were recovered at NSEPs, and an estimated 1.5 million syringes were collected through a pharmacy-based program that provided free-of-charge sharps containers and accepted filled containers for disposal. As a result, an estimated 3.5 million syringes were recovered from community syringe users and safely disposed of as infectious waste.⁸ Other NSEPs offer methods for safe disposal of syringes after hours. For example, in Santa Cruz, California, the Santa Cruz Needle Exchange Program, in collaboration with the Santa Cruz Parks and Recreation Department, installed 12 steel sharps containers in public restrooms throughout the county.⁹

National Data & Survey Results

According to the Centers for Disease Control and Prevention (CDC), NSEPs can help prevent blood-borne pathogen transmission by increasing access to sterile syringes among IDUs and enabling safe disposal of used needles and syringes.¹⁰ Often, programs also provide other public health services, such as HIV testing, risk-reduction education, and referrals for substance-abuse treatment.¹¹

In 2002, staff from the Beth Israel Medical Center in New York City and the North American Syringe Exchange Network mailed surveys asking the directors of 148 NSEPs about syringes exchanged and returned, services provided, budgets, and funding. The survey found for the first time in 8 years, the number of NSEPs, the number of localities with NSEPs, and that public funding for NSEPs decreased nationwide; however, the number of syringes exchanged and total budgets across all programs continued to increase.¹²

In 2011, the Beth Israel Medical Center conducted another survey, which is the most comprehensive survey of NSEPs in the U.S. to date.¹³ The results revealed that the most frequent drug being used by

⁶ *Id.*

⁷ The Centers for Disease Control, MMWR Weekly, Update: Syringe Exchange Programs in US, 2002, available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5427a1.htm> (last viewed Feb. 14, 2014) (citing American Association of Diabetes Educators, American Diabetes Association, American Medical Association, American Pharmaceutical Association, Association of State and Territorial Health Officials, National Alliance of State and Territorial AIDS Directors. Safe community disposal of needles and other sharps. Houston, TX: Coalition for Safe Community Needle Disposal; 2002).

⁸ *Id.* (citing Drda B, Gomez J, Conroy R, Seid M, Michaels J. San Francisco Safe Needle Disposal Program, 1991--2001. J Am Pharm Assoc. 2002; 42 (Supp. 2):S115—6, available at <http://japha.org/article.aspx?articleid=1035735> (last viewed Feb. 14, 2014)).

⁹ Santa Cruz Sentinel, Dealing with Drug Needles, available at <http://www.santacruzlive.com/blogs/dmillereditor/2013/02/08/dealing-with-drug-needles/> (last viewed Feb. 14, 2014).

¹⁰ Update: Syringe Exchange Programs in US, 2002, *supra* note 8.

¹¹ *Id.*

¹² *Id.*

¹³ North American Syringe Exchange Network, 2011 Beth Israel Survey, Results Summary, available at <http://www.nasen.org/news/2012/nov/29/2011-beth-israel-survey-results-summary/> (last viewed Feb. 14, 2014).

participants was heroin followed by cocaine and usually the problems NSEPs encountered had to do with the lack of resources and staff shortages.¹⁴

A 2012 study compared improper public syringe disposal between Miami, a city without NSEPs, and San Francisco, a city with NSEPs.¹⁵ Using visual inspection walk-throughs of high drug use public areas, the study found that Miami was eight times more likely to have syringes improperly disposed of in public areas.¹⁶

Florida's Current Epidemic of Heroin Use

An estimated 1 million people in the U.S. are living with HIV/AIDs and it has been estimated that one-third of those cases are linked directly or indirectly to injection drug use, including the injection of heroin.¹⁷ Recently the National Institute on Drug Abuse reported an epidemic of heroin use in South Florida and particularly in Miami-Dade County. The number of heroin-related deaths in Miami-Dade jumped to 33 in 2012 from 15 in 2011, a 120 percent increase. Statewide, Florida has also seen an upswing in heroin deaths, which rose from 62 in 2011 to 117 in 2012, an increase of 89 percent.¹⁸

Florida Comprehensive Drug Abuse Prevention and Control Act

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

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

Any person who violates the above provision is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.¹⁹

Moreover, it is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used.²⁰

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

Any person who violates the above provision is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.²¹

¹⁴ *Id.*

¹⁵ Hansel E. Tookes et al, A Comparison of Syringe Disposal Practices Among Injection Drug Users in a City with Versus a City Without Needle and Syringe Programs, available at <http://www.ncbi.nlm.nih.gov/pubmed/22209091> (last visited Feb. 14, 2014).

¹⁶ *Id.* at 255 (finding “44 syringes/1000 census blocks in San Francisco, and 371 syringes/1000 census blocks in Miami.”).

¹⁷ National Institute on Drug Abuse, “Drug abuse is a significant risk factor for HIV/AIDS in the U.S.,” available at <http://www.drugabuse.gov/publications/topics-in-brief/linked-epidemics-drug-abuse-hiv-aids> (last visited Feb. 17, 2014).

¹⁸ Florida Department of Law Enforcement, “Drugs Identified in Deceased Persons by Florida Medical Examiners,” 2012 Report, September 2013, available at <http://www.news-press.com/assets/pdf/A4212345924.PDF> (last visited Feb. 17, 2014).

¹⁹ For a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year or a fine not to exceed \$1,000.

²⁰ Section 893.147(2), F.S.

²¹ For a felony of the third degree, by a term of imprisonment not exceeding 5 years or a fine not to exceed \$5,000.

Federal Drug Paraphernalia Statute

Persons authorized by state law to possess or distribute drug paraphernalia are exempt from the federal drug paraphernalia statute.²²

Effect of Proposed Changes

The bill amends s. 381.0038, F.S., to authorize DOH to establish a 5 year needle and syringe exchange pilot program (pilot program) in Miami-Dade County. The pilot program must be administered by DOH or a designee, who may operate the pilot program at a fixed location or by using a mobile health unit. The designee may be a licensed hospital, a licensed health care clinic, a substance abuse treatment program, an HIV/AIDS service organization, or another nonprofit entity. The pilot program is to offer free, clean, and unused needles and hypodermic syringes as a means to prevent the transmission of HIV/AIDS and other blood-borne diseases among intravenous drug users and their partners.

The exchange program must:

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

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

The bill requires the collection of data for annual and final reporting purposes, but prohibits the collection of any personal identifying information from a participant. The pilot program expires 5 years after DOH designates an entity to operate the program. Six months prior to expiration, the Office of Program Policy Analysis and Government Accountability is required to submit a report to the Legislature that includes data on the pilot program and a recommendation on whether the pilot program should continue.

The bill includes a severability clause²³ and provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1. Names the act the “Miami-Dade Infectious Disease Elimination Act (IDEA).”

Section 2. Amends s. 381.0038, F.S., relating to education; needle and syringe exchange program.

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

Section 4. Provides an effective date of July 1, 2014.

²² 21 U.S.C. § 863(f)(1).

²³ “Severability clause” is defined as a provision that keeps the remaining provisions of a contract or statute in force if any portion of that contract or statute is judicially declared void or unconstitutional. Courts may hold a law constitutional in one part and unconstitutional in another. Under such circumstances, a court may sever the valid portion of the law from the remainder and continue to enforce the valid portion. *See Carter v. Carter Coal Co.*, 298 U.S. 238 (1936); *Florida Hosp. Waterman, Inc. v. Buster*, 984 So.2d 478 (Fla. 2008); *Ray v. Mortham*, 742 So.2d 1276 (Fla. 1999); and *Wright v. State*, 351 So.2d 708 (Fla. 1977).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None identified.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Severability clause

Courts may hold a law constitutional in one part and unconstitutional in another. Under such circumstances, a court may sever the valid portion of the law from the remainder and continue to enforce the valid portion.²⁴ A court may not sever invalid portions of the law if doing so would negate the purpose of the law. Similarly, a court may not sever unconstitutional parts of a statute if the statute would be unworkable after the severance.²⁵

B. RULE-MAKING AUTHORITY:

The bill provides DOH the authority to promulgate rules to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

²⁴ *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936); *Florida Hosp. Waterman, Inc. v. Buster*, 984 So.2d 478 (Fla. 2008); *Ray v. Mortham*, 742 So.2d 1276 (Fla. 1999); and *Wright v. State*, 351 So.2d 708 (Fla. 1977).

²⁵ *State ex rel. Boyd v. Green*, 355 So.2d 789 (Fla. 1978).

On lines 106-110, the bill provides an exemption to the Florida Comprehensive Drug Abuse Prevention and Control Act (act) pursuant to ch. 893, F.S.; however, the provision is not cross-referenced within the act.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to an infectious disease elimination pilot program; creating the "Miami-Dade Infectious Disease Elimination Act (IDEA)"; amending s. 381.0038, F.S.; requiring the Department of Health to establish a sterile needle and syringe exchange pilot program in Miami-Dade County; providing for administration of the pilot program by the department or a designee; establishing pilot program criteria; providing that the distribution of needles and syringes under the pilot program is not a violation of the Florida Comprehensive Drug Abuse Prevention and Control Act or any other law; providing conditions under which a pilot program staff member or participant may be prosecuted; prohibiting the collection of participant identifying information; providing for the pilot program to be funded through private grants and donations; providing for expiration of the pilot program; requiring the Office of Program Policy Analysis and Government Accountability to submit a report and recommendations regarding the pilot program to the Legislature; providing rulemaking authority; providing for severability; providing an effective date.

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

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Section 1. This act may be cited as the "Miami-Dade Infectious Disease Elimination Act (IDEA)."

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

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

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

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

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

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

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

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

(f) Contain special components designed to reach persons who may frequently engage in behaviors placing them at a high

53 risk for acquiring acquired immune deficiency syndrome;
 54 (g) Provide information and consultation to state agencies
 55 to educate all state employees; and
 56 (h) Provide information and consultation to state and
 57 local agencies to educate law enforcement and correctional
 58 personnel and inmates.
 59 (i) Provide information and consultation to local
 60 governments to educate local government employees.
 61 (j) Make information available to private employers and
 62 encourage them to distribute this information to their
 63 employees.
 64 (k) Contain special components which emphasize appropriate
 65 behavior and attitude change.
 66 (1) Contain components that include information about
 67 domestic violence and the risk factors associated with domestic
 68 violence and AIDS.
 69 (2) The education program designed by the Department of
 70 Health shall utilize all forms of the media and shall place
 71 emphasis on the design of educational materials that can be used
 72 by businesses, schools, and health care providers in the regular
 73 course of their business.
 74 (3) The department may contract with other persons in the
 75 design, development, and distribution of the components of the
 76 education program.
 77 (4) The department shall establish a sterile needle and
 78 syringe exchange pilot program in Miami-Dade County. The pilot

79 program shall be administered by the department or the
 80 department's designee. The department may designate one of the
 81 following entities to operate the pilot program at a fixed
 82 location or through a mobile health unit: a hospital licensed
 83 under chapter 395, a health care clinic licensed under part X of
 84 chapter 400, a substance abuse treatment program, an HIV or AIDS
 85 service organization, or another nonprofit entity designated by
 86 the department. The pilot program shall offer the free exchange
 87 of clean, unused needles and hypodermic syringes for used
 88 needles and hypodermic syringes as a means to prevent the
 89 transmission of HIV, AIDS, viral hepatitis, or other blood-borne
 90 diseases among intravenous drug users and their sexual partners
 91 and offspring.

92 (a) The pilot program shall:

93 1. Provide for maximum security of exchange sites and
 94 equipment, including an accounting of the number of needles and
 95 syringes in use, the number of needles and syringes in storage,
 96 safe disposal of returned needles, and any other measure that
 97 may be required to control the use and dispersal of sterile
 98 needles and syringes.

99 2. Strive for a one-to-one exchange, whereby the
 100 participant shall receive one sterile needle and syringe unit in
 101 exchange for each used one.

102 3. Make available educational materials; HIV counseling
 103 and testing; referral services to provide education regarding
 104 HIV, AIDS, and viral hepatitis transmission; and drug-use

105 prevention and treatment.

106 (b) Notwithstanding any other provision of law, the
 107 possession, distribution, or exchange of needles or syringes as
 108 part of the pilot program established by the department or the
 109 department's designee is not a violation of any part of chapter
 110 893 or any other law.

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

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

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

117 (d) The pilot program shall collect data for annual and
 118 final reporting purposes, which shall include information on the
 119 number of participants served, the number of needles and
 120 syringes exchanged and distributed, the demographic profiles of
 121 the participants served, the number of participants entering
 122 drug counseling and treatment, the number of participants
 123 receiving HIV, AIDS, or viral hepatitis testing, and other data
 124 deemed necessary for the pilot program. However, personal
 125 identifying information may not be collected from a participant
 126 for any purpose.

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

130 (f) The pilot program shall expire 5 years after the date

131 the department designates an entity as defined in subsection (4)
 132 to operate the pilot program. Six months before the pilot
 133 program expires, the Office of Program Policy Analysis and
 134 Government Accountability shall submit a report to the President
 135 of the Senate and the Speaker of the House of Representatives
 136 that includes the data collection requirements established in
 137 this subsection; the rates of HIV, AIDS, viral hepatitis, or
 138 other blood-borne diseases before the pilot program began and
 139 every subsequent year thereafter; and a recommendation on
 140 whether to continue the pilot program.

141 (g) The department may adopt and develop rules to
 142 administer this subsection.

143 Section 3. If any provision of this act or its application
 144 to any person or circumstance is held invalid, the invalidity
 145 does not affect other provisions or applications of the act that
 146 can be given effect without the invalid provision or
 147 application, and to this end the provisions of this act are
 148 severable.

149 Section 4. This act shall take effect July 1, 2014.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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

Amendment

6 Remove everything after the enacting clause and insert:

7 Section 1. This act may be cited as the "Miami-Dade
 8 Infectious Disease Elimination Act (IDEA)."

9 Section 2. Section 381.0038, Florida Statutes, is amended
 10 to read:

11 381.0038 Education; sterile needle and syringe exchange
 12 pilot program.—The Department of Health shall establish a
 13 program to educate the public about the threat of acquired
 14 immune deficiency syndrome and a sterile needle and syringe
 15 exchange pilot program.

16 (1) The acquired immune deficiency syndrome education
 17 program shall:



Amendment No.

- 18 (a) Be designed to reach all segments of Florida's
19 population;
- 20 (b) Contain special components designed to reach non-
21 English-speaking and other minority groups within the state;
- 22 (c) Impart knowledge to the public about methods of
23 transmission of acquired immune deficiency syndrome and methods
24 of prevention;
- 25 (d) Educate the public about transmission risks in social,
26 employment, and educational situations;
- 27 (e) Educate health care workers and health facility
28 employees about methods of transmission and prevention in their
29 unique workplace environments;
- 30 (f) Contain special components designed to reach persons
31 who may frequently engage in behaviors placing them at a high
32 risk for acquiring acquired immune deficiency syndrome;
- 33 (g) Provide information and consultation to state agencies
34 to educate all state employees; ~~and~~
- 35 (h) Provide information and consultation to state and
36 local agencies to educate law enforcement and correctional
37 personnel and inmates;-
- 38 (i) Provide information and consultation to local
39 governments to educate local government employees;-
- 40 (j) Make information available to private employers and
41 encourage them to distribute this information to their
42 employees;-

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Amendment No.

43 (k) Contain special components which emphasize appropriate
44 behavior and attitude change; and-

45 (1) Contain components that include information about
46 domestic violence and the risk factors associated with domestic
47 violence and AIDS.

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

53 (3) The department may contract with other persons in the
54 design, development, and distribution of the components of the
55 education program.

56 (4) The department shall establish a sterile needle and
57 syringe exchange pilot program in Miami-Dade County. The pilot
58 program shall be administered by the department or the
59 department's designee. The department may designate one of the
60 following entities to operate the pilot program at a fixed
61 location or through a mobile health unit: a hospital licensed
62 under chapter 395, a health care clinic licensed under part X of
63 chapter 400, a substance abuse treatment program, an HIV or AIDS
64 service organization, or another nonprofit entity designated by
65 the department. The pilot program shall offer the free exchange
66 of clean, unused needles and hypodermic syringes for used
67 needles and hypodermic syringes as a means to prevent the
68 transmission of HIV, AIDS, viral hepatitis, or other blood-borne



Amendment No.

69 diseases among intravenous drug users and their sexual partners
70 and offspring.

71 (a) The pilot program shall:

72 1. Provide for maximum security of exchange sites and
73 equipment, including an accounting of the number of needles and
74 syringes in use, the number of needles and syringes in storage,
75 safe disposal of returned needles, and any other measure that
76 may be required to control the use and dispersal of sterile
77 needles and syringes.

78 2. Strive for a one-to-one exchange, whereby the
79 participant shall receive one sterile needle and syringe unit in
80 exchange for each used one.

81 3. Make available educational materials; HIV counseling
82 and testing; referral services to provide education regarding
83 HIV, AIDS, and viral hepatitis transmission; and drug-abuse
84 prevention and treatment.

85 (b) The possession, distribution, or exchange of needles
86 or syringes as part of the pilot program established by the
87 department or the department's designee is not a violation of
88 any part of chapter 893 or any other law.

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

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

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

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95 (d) The pilot program shall collect data for annual and
96 final reporting purposes, which shall include information on the
97 number of participants served, the number of needles and
98 syringes exchanged and distributed, the demographic profiles of
99 the participants served, the number of participants entering
100 drug counseling and treatment, the number of participants
101 receiving HIV, AIDS, or viral hepatitis testing, and other data
102 deemed necessary for the pilot program. However, personal
103 identifying information may not be collected from a participant
104 for any purpose.

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

108 (f) The pilot program shall expire July 1, 2019, or, if
109 operated by a designee, five years after the entity is
110 designated. Six months before the pilot program expires, the
111 Office of Program Policy Analysis and Government Accountability
112 shall submit a report to the President of the Senate and the
113 Speaker of the House of Representatives that includes the data
114 collection requirements established in this subsection; the
115 rates of HIV, AIDS, viral hepatitis, or other blood-borne
116 diseases before the pilot program began and every subsequent
117 year thereafter; and a recommendation on whether to continue the
118 pilot program.

119 (g) The department may adopt and develop rules to
120 administer this subsection.



Amendment No.

121 Section 3. If any provision of this act or its application
122 to any person or circumstance is held invalid, the invalidity
123 does not affect other provisions or applications of the act that
124 can be given effect without the invalid provision or
125 application, and to this end the provisions of this act are
126 severable.

127 Section 4. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 511 Cancer Control and Research
SPONSOR(S): Coley
TIED BILLS: IDEN./SIM. BILLS: SB 734

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee		Castagna <i>MC</i>	O'Callaghan <i>ms</i>
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill reduces the membership total of the Cancer Control and Research Advisory Council (CCRAB) from 35 members to 15 members and revises the composition of the CCRAB. The bill also modifies the appointment process by requiring the Governor, Speaker of the House of Representatives, and President of the Senate to appoint a specified number of members and requiring the chief executive officers of nine named organizations to each appoint a member to the CCRAB.

The bill requires the CCRAB to select a chairperson, whereas currently the chairperson is appointed by the Governor. The bill also allows renewal of members' terms, and reduces minority representation and the number of members required to establish a quorum to correlate with the reduction of members in the CCRAB.

This bill requires a CCRAB member's representative organization to pay for travel reimbursement and, if a member is not affiliated with an institution or organization, the travel expenses will be paid for by the H. Lee Moffitt Cancer Center and Research Institute, Inc.

The bill also removes the requirement that the CCRAB:

- Develop or purchase, make available to physicians and surgeons, and update written summaries regarding breast cancer and prostate cancer treatment alternatives when funds are appropriated for such purpose.
- Develop and implement educational programs about the early detection and treatment of breast cancer and prostate cancer.

The bill requires the CCRAB to formulate and recommend to the State Surgeon General a statewide research plan in addition to the current responsibility to recommend a plan for cancer care and treatment.

The bill deletes the Florida Cancer Control and Research Fund, and to conform to this change the bill removes the requirement that the:

- CCRAB recommend the awarding of grants and contracts to qualified nonprofit associations or governmental agencies in order to plan, establish, or conduct programs in cancer control or prevention, cancer education and training, and cancer research.
- Board of Governors or the State Surgeon General award grants or contracts after consultation with CCRAB.
- Members of the CCRAB must refrain from participating in discussions or decisions to recommend grants or contracts to a qualified nonprofit association or any state agency, or its political subdivision, if the CCRAB member has an association or contractual relationship with that entity.

This bill has a minimal fiscal impact on state government and the private sector.

This bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Cancer Control and Research Advisory Council (CCRAB)

In 1979, the Florida Cancer Control and Research Act was created pursuant to, s. 1004.435, F.S., along with the Cancer Control Research Advisory Council (CCRAB)¹ which serves to advise the Legislature, Governor, and State Surgeon General of efforts to reduce the cancer burden in Florida. The CCRAB is housed within the H. Lee Moffitt Cancer Center and Research Institute, Inc. (Moffitt). The CCRAB consists of 35 members, including appointees by: the Governor, Speaker of the House of Representatives, President of the Senate and other persons representing the following:

American Cancer Society, Florida Tumor Registrars Association, Sylvester Comprehensive Cancer Center of the University of Miami, DOH, University of Florida Shands Cancer Center, Agency for Health Care Administration, Florida Nurses Association, Florida Osteopathic Medical Association, American College of Surgeons, School of Medicine of the University of Miami, College of Medicine of the University of Florida, NOVA Southeastern College of Osteopathic Medicine, College of Medicine of the University of South Florida, College of Public Health of the University of South Florida, Florida Society of Clinical Oncology, Florida Obstetric and Gynecologic Society, Florida Ovarian Cancer Alliance Speaks, Florida Medical Association, Florida Pediatric Society, Florida Radiological Society, Florida Society of Pathologists, Moffitt, House of Representatives, Senate, Florida Dental Association, Florida Hospital Association, Association of Community Cancer Centers, statutory teaching hospitals, Florida Association of Pediatric Tumor Programs, Inc., Cancer Information Services, Florida Agricultural and Mechanical University Institute of Public Health, Florida Society of Oncology Social Workers, and three consumer advocates from the general public.

The CCRAB members must be residents of Florida, and unless appointed by the Speaker of the House of Representatives or the President of the Senate, must be appointed by the Governor. At least one of the members appointed by the Governor must be 60 years of age or older. At least 10 of the members must be individuals who are minority persons as defined by s. 288.703, F.S.² Member terms are 4 years from dates of appointment. A chairperson appointed by the Governor serves for a 2 year term. The council meets at least semiannually and sixteen members constitute a quorum. All members serve as volunteers but may be entitled to per diem and travel expenses.³

Annually the CCRAB approves the Florida Cancer Plan, which provides strategies for cancer control and research that must be consistent with the State Health Plan and integrated and coordinated with existing programs in this state. The CCRAB annually reviews the priority strategies. Recently, the Florida Cancer Plan Council proposed strategies to increase stakeholder participation in cancer prevention efforts, access to screening and treatment, and survivorship rates.⁴

¹ Although the Cancer Control and Research Board (CCRAB) was renamed as the Cancer Control and Research Advisory Council, the acronym associated with the board is still used.

² S. 288.703, F.S. defines who constitutes a minority person.

³ S.112.061, F.S., authorizes per diem and travel expenses to be paid for public officers, employees, and authorized persons.

⁴ 2012-2013 Florida Cancer Plan Priority Strategies, Cancer Control and Research Advisory Council report available at: <http://www.ccrab.org/Publications.aspx> (last accessed February 15, 2014).

Additionally, the CCRAB is required to:

- Recommend to the State Surgeon General a plan for the care and treatment of persons suffering from cancer and standard requirements for cancer units in hospitals and clinics in Florida;
- Recommend grant and contract awards for the planning, establishment, or implementation of programs in cancer control or prevention, cancer education and training, and cancer research;
- Pursuant to Legislative appropriations, provide written summaries that are easily understood by the average adult patient, and inform actual and high-risk breast cancer patients, prostate cancer patients, and men who are considering prostate cancer screening of the medically viable treatment alternatives available to them and the relative advantages, disadvantages, and risks associated with such treatment;
- Implement an educational program for the prevention of cancer and its early detection and treatment;
- Advise the Board of Governors or the State Surgeon General on methods of enforcing and implementing laws concerning cancer control, research, and education; and recommend to the Board of Governors or the State Surgeon General rulemaking needed to enable the CCRAB to perform its duties.

During the 2013 legislative session CS/CS/SB1660 was enacted, which requires seven CCRAB members to participate on a joint committee formed with six members of the Biomedical Research Advisory Council to create the criteria and process for cancer centers to be designated as Cancer Centers of Excellence under the Cancer Center of Excellence Award Program.⁵

Florida Cancer Control and Research Fund

Section 1004.435(6), F.S., establishes the Florida Cancer Control and Research Fund⁶ consisting of funds appropriated from the General Revenue Fund and any gifts, grants or funds received from other sources. The fund is used exclusively for grants to contract with qualified nonprofit associations or governmental agencies for cancer control and prevention, education and training, cancer research, and other related expenses to fund the programs authorized by the State Board of Education or the State Surgeon General.⁷

Written Summaries on Breast Cancer and Prostate Cancer Treatment

The law currently instructs the CCRAB to develop or purchase written summaries, written in layman's terms to inform actual and high risk breast cancer patients, prostate cancer patients, and men who are considering prostate cancer screening of medically viable treatment alternatives available to them.⁸ Under s. 458.324 (1)(2) F.S. and s. 459.0125 (1)(2) F.S., "medically viable" is defined to mean modes of acceptable treatment as outlined in these written summaries developed or purchased by the CCRAB.

Physicians are instructed to discuss the written summary with their patient or the legal representative of such patient by communicating the information directly to them and providing a copy of the summary to the patient or the patient's legal representative.⁹

Effect of Proposed Changes

This bill revises the membership total of the CCRAB from 35 members to 15 members and modifies the membership appointment process as follows:

⁵ Chapter 2013-50, L.O.F.

⁶ The Florida Cancer Control and Research Fund was established in law in 2002. Section 189, ch. 2002-387, L.O.F.

⁷ Section 1004.435(6), F.S.

⁸ Section 1004.435(4)(m), F.S.

⁹ Section 458.324 (1)(2) F.S.

- The Governor appoints one member who specializes in pediatric oncology research or clinical care.
- The President of the Senate appoints two members; one Senator and one individual who specializes in oncology clinical care or research.
- The Speaker of the House of Representatives appoints two members; one Representative and one individual who is a current or former cancer patient or a current or former caregiver to a cancer patient.
- The chief executive officer of each of the nine organizations below must appoint one member:
 - American Cancer Society
 - Sylvester Comprehensive Cancer Center of the University of Miami
 - University of Florida, Shands Cancer Center
 - Florida Nurses Association (specializing in field of oncology)
 - Florida Osteopathic Medical Association (specializing in field of oncology)
 - Florida Medical Association (specializing in field of oncology)
 - Moffitt Cancer Center
 - Florida Hospital Association (specializing in field of oncology)
 - Association of Community Cancer Centers

The bill authorizes the renewal of members' four year terms and authorizes the chairperson to be selected by the CCRAB, instead of being appointed by the Governor. To correspond to the reduction in membership, the bill provides that 8 members constitute a quorum instead of 16 and minority representation is satisfied with 4 members instead of 10.

The bill removes CCRAB members who represent the following organizations:¹⁰

- Florida Tumor Registrars Association
- Agency for Health Care Administration
- American College of Surgeons
- School of Medicine of the University of Miami
- College of Medicine of the University of Florida
- NOVA Southeastern College of Osteopathic Medicine
- College of Medicine of the University of South Florida
- College of Public Health of the University of South Florida
- Florida Society of Clinical Oncology
- Florida Obstetric and Gynecological Society
- Florida Ovarian Cancer Alliance Speaks organization
- Florida Pediatric Society
- Florida Radiological Society
- Florida Society of Pathologists
- Florida Dental Association
- A statutory teaching hospital affiliated with a community based cancer center
- Florida Association of the Pediatric Tumor Programs, Inc.
- Cancer Information Service
- Florida Agricultural and Mechanical University Institute of Public Health
- Florida Society of Oncology Social Workers

The CCRAB members will continue to serve without pay, but this bill also removes an allowance for per diem and requires the institution or organization that a member represents to be responsible for travel

¹⁰ H. Lee Moffitt Cancer Center provided attendance records of CCRAB meetings from 2008-2013 which demonstrated 10 out of the 20 members being removed attended 3 or less meetings out of a total of 9 meetings held during that time period. The attendance records are on file with committee staff.

reimbursement. If a member is not affiliated with an organization, the member must be reimbursed for travel expenses by Moffitt.

The bill also removes the requirement that the CCRAB:

- Develop or purchase, make available to physicians and surgeons, and update written summaries regarding breast cancer and prostate cancer treatment alternatives when funds are appropriated for such purpose.
- Develop and implement educational programs about the early detection and treatment of breast cancer and prostate cancer.

The bill also makes conforming changes, regarding the removal of the requirement for the CCRAB to provide written summaries, by deleting the requirement for physicians to provide copies of the written summaries to patients or the patients' legal guardians.

The bill requires the CCRAB to formulate and recommend to the State Surgeon General a statewide research plan in addition to the current responsibility to recommend a plan for cancer care and treatment.

The bill deletes the Florida Cancer Control and Research Fund and, to conform to this change, the bill removes the requirement that the:

- CCRAB recommend the awarding of grants and contracts to qualified nonprofit associations or governmental agencies in order to plan, establish, or conduct programs in cancer control or prevention, cancer education and training, and cancer research.
- Board of Governors or the State Surgeon General award grants or contracts after consultation with CCRAB.
- Members of the CCRAB must refrain from participating in discussions or decisions to recommend grants or contracts to a qualified nonprofit association or any state agency, or its political subdivision, if the CCRAB member has an association or contractual relationship with that entity.

B. SECTION DIRECTORY:

Section 1. Amends s. 1004.435, F.S., relating to cancer control and research.

Section 2. Amends s. 458.324, F.S., relating to breast cancer and information on treatment alternatives.

Section 3. Amends s. 459.0125., F.S., relating to breast cancer and information on treatment alternatives.

Section 4. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Travel costs for members representing state agencies, such as the member representing the Department of Health, are to be reimbursed by their representative state agencies. However, it is anticipated these reimbursements will have a minimal fiscal impact on state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Travel costs for the members representing private organizations will be reimbursed by their representative organizations. Otherwise Moffitt will reimburse a member if the member is not affiliated with an institution or organization. This will have a minimal fiscal impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to cancer control and research;
 3 amending s. 1004.435, F.S.; revising definitions;
 4 revising the membership of the Florida Cancer Control
 5 and Research Advisory Council and selection of the
 6 council chairperson; authorizing renewal of member
 7 terms; revising compensation of council members;
 8 requiring a statewide research plan; deleting council,
 9 Board of Governors, and State Surgeon General duties
 10 relating to the awarding of grants and contracts for
 11 cancer-related programs; deleting council duties
 12 relating to the development of written summaries of
 13 treatment alternatives; deleting financial aid
 14 provisions and the Florida Cancer Control and Research
 15 Fund; amending ss. 458.324, and 459.0125, F.S.;
 16 conforming provisions; providing an effective date.

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

19
 20 Section 1. Paragraphs (d) and (e) of subsection (3) and
 21 subsections (4), (5), and (6) of section 1004.435, Florida
 22 Statutes, are amended to read:

23 1004.435 Cancer control and research.—

24 (3) DEFINITIONS.—The following words and phrases when used
 25 in this section have, unless the context clearly indicates
 26 otherwise, the meanings given to them in this subsection:

27 ~~(d) "Fund" means the Florida Cancer Control and Research~~
 28 ~~Fund established by this section.~~

29 ~~(e) "Qualified nonprofit association" means any~~
 30 ~~association, incorporated or unincorporated, that has received~~
 31 ~~tax-exempt status from the Internal Revenue Service.~~

32 (4) FLORIDA CANCER CONTROL AND RESEARCH ADVISORY COUNCIL;
 33 CREATION; COMPOSITION.—

34 (a) There is created within the H. Lee Moffitt Cancer
 35 Center and Research Institute, Inc., the Florida Cancer Control
 36 and Research Advisory Council. The council shall consist of 15
 37 ~~35~~ members, which includes the chairperson, all of whom must be
 38 residents of this state. The State Surgeon General or his or her
 39 designee within the Department of Health shall be one of the 15
 40 members. ~~All~~ Members, except those appointed by the Governor,
 41 the Speaker of the House of Representatives, or ~~and~~ the
 42 President of the Senate, must be appointed by the chief
 43 executive officer of the institution or organization
 44 represented, or his or her designee Governor. ~~At least one of~~
 45 ~~the members appointed by the Governor must be 60 years of age or~~
 46 ~~older.~~ One member must be a representative of the American
 47 Cancer Society; ~~one member must be a representative of the~~
 48 ~~Florida Tumor Registrars Association;~~ one member must be a
 49 representative of the Sylvester Comprehensive Cancer Center of
 50 the University of Miami; ~~one member must be a representative of~~
 51 ~~the Department of Health;~~ one member must be a representative of
 52 the University of Florida Shands Cancer Center; ~~one member must~~

53 ~~be a representative of the Agency for Health Care~~
 54 ~~Administration;~~ one member must be a representative of the
 55 Florida Nurses Association who specializes in the field of
 56 oncology; one member must be a representative of the Florida
 57 Osteopathic Medical Association who specializes in the field of
 58 oncology; ~~one member must be a representative of the American~~
 59 ~~College of Surgeons;~~ ~~one member must be a representative of the~~
 60 ~~School of Medicine of the University of Miami;~~ ~~one member must~~
 61 ~~be a representative of the College of Medicine of the University~~
 62 ~~of Florida;~~ ~~one member must be a representative of NOVA~~
 63 ~~Southeastern College of Osteopathic Medicine;~~ ~~one member must be~~
 64 ~~a representative of the College of Medicine of the University of~~
 65 ~~South Florida;~~ ~~one member must be a representative of the~~
 66 ~~College of Public Health of the University of South Florida;~~ ~~one~~
 67 ~~member must be a representative of the Florida Society of~~
 68 ~~Clinical Oncology;~~ ~~one member must be a representative of the~~
 69 ~~Florida Obstetric and Gynecologic Society who has had training~~
 70 ~~in the specialty of gynecologic oncology;~~ ~~one member must be a~~
 71 ~~representative of the Florida Ovarian Cancer Alliance Speaks~~
 72 ~~(FOCAS) organization;~~ one member must be a representative of the
 73 Florida Medical Association who specializes in the field of
 74 oncology; ~~one member must be a member of the Florida Pediatric~~
 75 ~~Society;~~ ~~one member must be a representative of the Florida~~
 76 ~~Radiological Society;~~ ~~one member must be a representative of the~~
 77 ~~Florida Society of Pathologists;~~ one member must be a
 78 representative of the H. Lee Moffitt Cancer Center and Research

79 Institute, Inc.; one member must be a representative of the
 80 Florida Hospital Association who specializes in the field of
 81 oncology; one member must be a representative of the Association
 82 Community Cancer Centers; one member must specialize in
 83 pediatric oncology research or clinical care appointed by the
 84 Governor; one member must specialize in oncology clinical care
 85 or research appointed by the President of the Senate; one member
 86 must be a current or former cancer patient or a current or
 87 former caregiver to a cancer patient appointed by the Speaker of
 88 the House of Representatives ~~three members must be~~
 89 ~~representatives of the general public acting as consumer~~
 90 ~~advocates; one member must be a member of the House of~~
 91 ~~Representatives appointed by the Speaker of the House of~~
 92 ~~Representatives; and one member must be a member of the Senate~~
 93 ~~appointed by the President of the Senate; one member must be a~~
 94 ~~representative of the Florida Dental Association; one member~~
 95 ~~must be a representative of the Florida Hospital Association;~~
 96 ~~one member must be a representative of the Association of~~
 97 ~~Community Cancer Centers; one member shall be a representative~~
 98 ~~from a statutory teaching hospital affiliated with a community-~~
 99 ~~based cancer center; one member must be a representative of the~~
 100 ~~Florida Association of Pediatric Tumor Programs, Inc.; one~~
 101 ~~member must be a representative of the Cancer Information~~
 102 ~~Service; one member must be a representative of the Florida~~
 103 ~~Agricultural and Mechanical University Institute of Public~~
 104 ~~Health; and one member must be a representative of the Florida~~

105 ~~Society of Oncology Social Workers. Of the members of the~~
 106 ~~council appointed by the Governor,~~ At least four of the members
 107 ~~to~~ must be individuals who are minority persons as defined by s.
 108 288.703.

109 (b) The terms of the members shall be 4 years from their
 110 respective dates of appointment with the option of renewal.

111 (c) A chairperson shall be selected by the council
 112 ~~appointed by the Governor~~ for a term of 2 years. The chairperson
 113 shall appoint an executive committee of no fewer than three
 114 persons to serve at the pleasure of the chairperson. This
 115 committee will prepare material for the council but make no
 116 final decisions.

117 (d) The council shall meet no less than semiannually at
 118 the call of the chairperson or, in his or her absence or
 119 incapacity, at the call of the State Surgeon General. Eight
 120 ~~Sixteen~~ members constitute a quorum for the purpose of
 121 exercising all of the powers of the council. A vote of the
 122 majority of the members present is sufficient for all actions of
 123 the council.

124 (e) The council members shall serve without pay. Pursuant
 125 to the provisions of s. 112.061, the council members may be
 126 entitled to be reimbursed for ~~per diem and~~ travel expenses by
 127 the institution or organization the member represents. If a
 128 member is not affiliated with an institution or organization,
 129 the member shall be reimbursed for travel expenses by the H. Lee
 130 Moffitt Cancer Center and Research Institute, Inc.

131 ~~(f) No member of the council shall participate in any~~
 132 ~~discussion or decision to recommend grants or contracts to any~~
 133 ~~qualified nonprofit association or to any agency of this state~~
 134 ~~or its political subdivisions with which the member is~~
 135 ~~associated as a member of the governing body or as an employee~~
 136 ~~or with which the member has entered into a contractual~~
 137 ~~arrangement.~~

138 (f)~~(g)~~ The council may prescribe, amend, and repeal bylaws
 139 governing the manner in which the business of the council is
 140 conducted.

141 (g)~~(h)~~ The council shall advise the Board of Governors,
 142 the State Surgeon General, and the Legislature with respect to
 143 cancer control and research in this state.

144 (h)~~(i)~~ The council shall approve each year a program for
 145 cancer control and research to be known as the "Florida Cancer
 146 Plan" which shall be consistent with the State Health Plan and
 147 integrated and coordinated with existing programs in this state.

148 (i)~~(j)~~ The council shall formulate and recommend to the
 149 State Surgeon General a statewide research plan and a plan for
 150 the care and treatment of persons suffering from cancer and
 151 recommend the establishment of standard requirements for the
 152 organization, equipment, and conduct of cancer units or
 153 departments in hospitals and clinics in this state. The council
 154 may recommend to the State Surgeon General the designation of
 155 cancer units following a survey of the needs and facilities for
 156 treatment of cancer in the various localities throughout the

157 state. The State Surgeon General shall consider the plan in
 158 developing departmental priorities and funding priorities and
 159 standards under chapter 395.

160 (j)~~(k)~~ The council is responsible for including in the
 161 Florida Cancer Plan recommendations for the coordination and
 162 integration of medical, nursing, paramedical, lay, and other
 163 plans concerned with cancer control and research. Committees
 164 shall be formed by the council so that the following areas will
 165 be established as entities for actions:

166 1. Cancer plan evaluation: tumor registry, data retrieval
 167 systems, and epidemiology of cancer in the state and its
 168 relation to other areas.

169 2. Cancer prevention.

170 3. Cancer detection.

171 4. Cancer patient management: treatment, rehabilitation,
 172 terminal care, and other patient-oriented activities.

173 5. Cancer education: lay and professional.

174 6. Unproven methods of cancer therapy: quackery and
 175 unorthodox therapies.

176 7. Investigator-initiated project research.

177 ~~(l) In order to implement in whole or in part the Florida~~
 178 ~~Cancer Plan, the council shall recommend to the Board of~~
 179 ~~Governors or the State Surgeon General the awarding of grants~~
 180 ~~and contracts to qualified profit or nonprofit associations or~~
 181 ~~governmental agencies in order to plan, establish, or conduct~~
 182 ~~programs in cancer control or prevention, cancer education and~~

183 ~~training, and cancer research.~~

184 ~~(m) If funds are specifically appropriated by the~~
 185 ~~Legislature, the council shall develop or purchase standardized~~
 186 ~~written summaries, written in layperson's terms and in language~~
 187 ~~easily understood by the average adult patient, informing actual~~
 188 ~~and high risk breast cancer patients, prostate cancer patients,~~
 189 ~~and men who are considering prostate cancer screening of the~~
 190 ~~medically viable treatment alternatives available to them in the~~
 191 ~~effective management of breast cancer and prostate cancer,~~
 192 ~~describing such treatment alternatives, and explaining the~~
 193 ~~relative advantages, disadvantages, and risks associated~~
 194 ~~therewith. The breast cancer summary, upon its completion, shall~~
 195 ~~be printed in the form of a pamphlet or booklet and made~~
 196 ~~continuously available to physicians and surgeons in this state~~
 197 ~~for their use in accordance with s. 458.324 and to osteopathic~~
 198 ~~physicians in this state for their use in accordance with s.~~
 199 ~~459.0125. The council shall periodically update both summaries~~
 200 ~~to reflect current standards of medical practice in the~~
 201 ~~treatment of breast cancer and prostate cancer. The council~~
 202 ~~shall develop and implement educational programs, including~~
 203 ~~distribution of the summaries developed or purchased under this~~
 204 ~~paragraph, to inform citizen groups, associations, and voluntary~~
 205 ~~organizations about early detection and treatment of breast~~
 206 ~~cancer and prostate cancer.~~

207 ~~(k)(n)~~ The council shall have the responsibility to advise
 208 the Board of Governors and the State Surgeon General on methods

209 of enforcing and implementing laws already enacted and concerned
 210 with cancer control, research, and education.

211 (l)~~(e)~~ The council may recommend to the Board of Governors
 212 or the State Surgeon General rules not inconsistent with law as
 213 it may deem necessary for the performance of its duties and the
 214 proper administration of this section.

215 (m)~~(p)~~ The council shall formulate and put into effect a
 216 continuing educational program for the prevention of cancer and
 217 its early diagnosis and disseminate to hospitals, cancer
 218 patients, and the public information concerning the proper
 219 treatment of cancer.

220 (n)~~(q)~~ The council shall be physically located at the H.
 221 Lee Moffitt Cancer Center and Research Institute, Inc., at the
 222 University of South Florida.

223 (o)~~(r)~~ The council shall select, by majority vote, seven
 224 members of the council who must combine with six members of the
 225 Biomedical Research Advisory Council to form a joint committee
 226 to develop performance measures, a rating system, a rating
 227 standard, and an application form for the Cancer Center of
 228 Excellence Award created in s. 381.925.

229 (p)~~(s)~~ On February 15 of each year, the council shall
 230 report to the Governor and to the Legislature.

231 (5) RESPONSIBILITIES OF ~~THE BOARD OF GOVERNORS,~~ THE H. LEE
 232 MOFFITT CANCER CENTER AND RESEARCH INSTITUTE, INC., ~~AND THE~~
 233 ~~STATE SURGEON GENERAL.~~

234 ~~(a) The Board of Governors or the State Surgeon General,~~

235 ~~after consultation with the council, shall award grants and~~
 236 ~~contracts to qualified nonprofit associations and governmental~~
 237 ~~agencies in order to plan, establish, or conduct programs in~~
 238 ~~cancer control and prevention, cancer education and training,~~
 239 ~~and cancer research.~~

240 ~~(b)~~ The H. Lee Moffitt Cancer Center and Research
 241 Institute, Inc., shall provide such staff, information, and
 242 other assistance as reasonably necessary for the completion of
 243 the responsibilities of the council.

244 ~~(c)~~ The department may furnish to citizens of this state
 245 who are afflicted with cancer financial aid to the extent of the
 246 appropriation provided for that purpose in a manner which in its
 247 opinion will afford the greatest benefit to those afflicted and
 248 may make arrangements with hospitals, laboratories, or clinics
 249 to afford proper care and treatment for cancer patients in this
 250 state.

251 ~~(6) FLORIDA CANCER CONTROL AND RESEARCH FUND.—~~

252 ~~(a)~~ There is created the Florida Cancer Control and
 253 Research Fund consisting of funds appropriated therefor from the
 254 General Revenue Fund and any gifts, grants, or funds received
 255 from other sources.

256 ~~(b)~~ The fund shall be used exclusively for grants and
 257 contracts to qualified nonprofit associations or governmental
 258 agencies for the purpose of cancer control and prevention,
 259 cancer education and training, cancer research, and all expenses
 260 incurred in connection with the administration of this section

261 ~~and the programs funded through the grants and contracts~~
 262 ~~authorized by the State Board of Education or the State Surgeon~~
 263 ~~General.~~

264 Section 2. Subsections (1) and (2) of section 458.324,
 265 Florida Statutes, are amended to read:

266 458.324 Breast cancer; information on treatment
 267 alternatives.—

268 (1) DEFINITION.—As used in this section, the term
 269 "medically viable," as applied to treatment alternatives, means
 270 modes of treatment generally considered by the medical
 271 profession to be within the scope of current, acceptable
 272 standards, ~~including treatment alternatives described in the~~
 273 ~~written summary prepared by the Florida Cancer Control and~~
 274 ~~Research Advisory Council in accordance with s. 1004.435(4)(m).~~

275 (2) COMMUNICATION OF TREATMENT ALTERNATIVES.—

276 (a) Each physician treating a patient who is, or in the
 277 judgment of the physician is at high risk of being, diagnosed as
 278 having breast cancer shall inform such patient of the medically
 279 viable treatment alternatives available to such patient; shall
 280 describe such treatment alternatives; and shall explain the
 281 relative advantages, disadvantages, and risks associated with
 282 the treatment alternatives to the extent deemed necessary to
 283 allow the patient to make a prudent decision regarding such
 284 treatment options. In compliance with this subsection, +

285 ~~(a)~~ the physician may, in his or her discretion, +

286 ~~+~~ orally communicate such information directly to the

287 patient or the patient's legal representative;

288 ~~2. Provide the patient or the patient's legal~~
 289 ~~representative with a copy of the written summary prepared in~~
 290 ~~accordance with s. 1004.435(4)(m) and express a willingness to~~
 291 ~~discuss the summary with the patient or the patient's legal~~
 292 ~~representative; or~~

293 ~~3. Both communicate such information directly and provide~~
 294 ~~a copy of the written summary to the patient or the patient's~~
 295 ~~legal representative for further consideration and possible~~
 296 ~~later discussion.~~

297 (b) In providing such information, the physician shall
 298 take into consideration the emotional state of the patient, the
 299 physical state of the patient, and the patient's ability to
 300 understand the information.

301 (c) The physician may, in his or her discretion and
 302 without restriction, recommend any mode of treatment which is in
 303 his or her judgment the best treatment for the patient.

304
 305 Nothing in this subsection shall reduce other provisions of law
 306 regarding informed consent.

307 Section 3. Subsections (1) and (2) of section 459.0125,
 308 Florida Statutes, are amended to read:

309 459.0125 Breast cancer; information on treatment
 310 alternatives.—

311 (1) DEFINITION.—As used in this section, the term
 312 "medically viable," as applied to treatment alternatives, means

313 modes of treatment generally considered by the medical
 314 profession to be within the scope of current, acceptable
 315 standards, ~~including treatment alternatives described in the~~
 316 ~~written summary prepared by the Florida Cancer Control and~~
 317 ~~Research Advisory Council in accordance with s. 1004.435(4)(m).~~

318 (2) COMMUNICATION OF TREATMENT ALTERNATIVES.—

319 (a) It is the obligation of every physician treating a
 320 patient who is, or in the judgment of the physician is at high
 321 risk of being, diagnosed as having breast cancer to inform such
 322 patient of the medically viable treatment alternatives available
 323 to such patient; to describe such treatment alternatives; and to
 324 explain the relative advantages, disadvantages, and risks
 325 associated with the treatment alternatives to the extent deemed
 326 necessary to allow the patient to make a prudent decision
 327 regarding such treatment options. In compliance with this
 328 subsection, +

329 ~~(a)~~ the physician may, in her or his discretion, +

330 ~~1.~~ orally communicate such information directly to the
 331 patient or the patient's legal representative;

332 ~~2.~~ Provide the patient or the patient's legal
 333 representative with a copy of the written summary prepared in
 334 accordance with s. 1004.435(4)(m) and express her or his
 335 willingness to discuss the summary with the patient or the
 336 patient's legal representative; or

337 ~~3.~~ Both communicate such information directly and provide
 338 a copy of the written summary to the patient or the patient's

339 ~~legal representative for further consideration and possible~~
 340 ~~later discussion.~~

341 (b) In providing such information, the physician shall
 342 take into consideration the emotional state of the patient, the
 343 physical state of the patient, and the patient's ability to
 344 understand the information.

345 (c) The physician may, in her or his discretion and
 346 without restriction, recommend any mode of treatment which is in
 347 the physician's judgment the best treatment for the patient.

348

349 Nothing in this subsection shall reduce other provisions of law
 350 regarding informed consent.

351 Section 4. This act shall take effect July 1, 2014.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Health Quality
 2 Subcommittee

3 Representative Coley offered the following:

4
5 **Amendment**

6 Remove line 82 and insert:
 7 of Community Cancer Centers; one member must specialize in
 8

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 591 Newborn Health Screening
SPONSOR(S): Harrell
TIED BILLS: IDEN./SIM. BILLS: SB 722

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

SUMMARY ANALYSIS

Newborn screening is a population-based, preventive public health program that is provided in every state in the United States to identify, diagnose, and manage newborns at risk for selected disorders that, without detection and treatment, can lead to permanent developmental and physical damage or death. The Department of Health (DOH) is responsible for administering the statewide Newborn Screening Program, which conducts screenings for 37 disorders.

Section 383.14(1)(c), F.S., authorizes the State Public Health Laboratory to release, directly or through the Children's Medical Services program, the results of a newborn's hearing and metabolic tests to the newborn's primary care physician.

Section 383.145, F.S., establishes the newborn and infant hearing screening program, which requires licensed hospitals or other state-licensed birthing facilities that provide maternity and newborn care services to screen all newborns, prior to discharge, for the detection of hearing loss. A hearing impairment means a hearing loss of 30 dB HL or greater.

The bill amends s. 383.14(1)(c), F.S., to allow the State Public Health Laboratory to release the results of a newborn's hearing and metabolic tests or screenings to the newborn's health care practitioner. The bill defines health care practitioner, as a physician or physician assistant, osteopathic physician or physician assistant, advanced registered nurse practitioner, registered nurse, licensed practical nurse, midwife, speech-language pathologist or audiologist, or a dietician or nutritionist.

The bill amends s. 383.145(2)(c), F.S., to revise the definition of "hearing impairment" to mean a hearing loss of 16 dB instead of 30 dB.

Finally, the bill amends s. 383.145(3)(i), F.S., and s. 383.145(3)(k), F.S., to delete obsolete and out of date language.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Newborn Screening

Newborn screening is a population-based, preventive public health program that is provided in every state in the United States. The intent of the Florida Newborn Screening Program (NSP) is to screen, identify, diagnose, and manage newborns at risk for selected disorders that, without detection and treatment, can lead to permanent development and physical damage or death. The Department of Health (DOH) is responsible for administering the NSP, which currently screens for 37 disorders.¹

The NSP is a comprehensive system involving coordination among several entities, including the Bureau of Laboratories Newborn Screening Laboratory in Jacksonville, Children's Medical Services (CMS) Newborn Screening Follow-up Program in Tallahassee, and referral centers throughout the state. In addition, the Genetics and Newborn Screening Advisory Council serves as an advisory body to DOH.²

Newborn screening usually takes place before a newborn leaves the hospital. Most tests use a few drops of blood from pricking the baby's heel. The blood specimen is placed on a special filter paper and, in Florida, the specimen card is sent to the DOH Newborn Screening Laboratory in Jacksonville for testing. The laboratory receives about 250,000 specimens annually from babies born in Florida. The majority of the test results are reported within 24-48 hours. The CMS program, within DOH, provides follow-up services for all abnormal screening results.

Newborn Hearing Screening

Newborn hearing screening has been required in Florida since October, 2000.³ Newborn hearing screening services are provided to identify newborns at risk of hearing impairment and to ensure that follow-up audiometric screening, diagnosis, and referral to intervention is provided.⁴

Hospitals and other state-licensed birthing facilities that provide maternity and newborn care services are required to screen all newborns for hearing loss, prior to discharge. However, a parent or legal guardian may sign a waiver to refuse the hearing screening, and a copy of the waiver must be filed in the newborn's medical record.⁵ If screening is not completed before discharge due to scheduling or temporary staffing limitations, or if the newborn fails the screening, the hospital must refer the newborn for screening, which must be conducted within 30 days of discharge.

Pursuant to s. 383.14(1)(c), F.S., and notwithstanding any other law to the contrary, the State Public Health Laboratory may release, directly or through the CMS Program, the results of a newborn's hearing and metabolic tests or screening to the newborn's primary care physician.

Any child who is diagnosed as having a hearing impairment must be referred to their primary care physician for medical management, treatment, and follow-up services. Further, any child from birth to 36 months of age who is diagnosed as having a hearing impairment that requires ongoing special hearing services must be referred to the CMS Early Intervention Program (Early Steps). Early Steps is

¹ House Bill 591, Department of Health, Legislative Bill Analysis, January 14, 2014 (on file with Health Quality Subcommittee).

² Section 383.14(5), F.S.

³ Chapter 2000-177, L.O.F., CS/HB 399.

⁴ Sections 391.301-304, F.S., s. 383.14, F.S., and s. 383.145, F.S.

⁵ Section 383.145(3), F.S.

Florida's early intervention system that offers services to eligible infants and toddlers with significant delays or a condition likely to result in a developmental delay. Early intervention is provided to support families and caregivers in developing the competence and confidence to help their child learn and develop. A diagnosis must provide evidence of a hearing loss of 25 dB or greater to be eligible for services provided by the Early Steps Program.⁶

Florida law defines a hearing impairment as a hearing loss of 30 dB HL or greater.⁷

Effect of Proposed Changes

The bill amends s. 383.14(1)(c), F.S., to allow the State Public Health Laboratory to release the results of a newborn's hearing and metabolic tests or screenings to the newborns health care practitioner. For purposes of this section, the bill defines "health care practitioner", as a physician or physician assistant, osteopathic physician or physician assistant, advanced registered nurse practitioner, registered nurse, licensed practical nurse, midwife, speech-language pathologist or audiologist, or a dietician or nutritionist.

The bill amends s. 383.145(2)(c), F.S., to revise the definition of "hearing impairment" to mean a hearing loss of 16 dB instead of 30 dB. This change will align with industry standards for the definition of "hearing impairment".⁸ This change is not expected to impact eligibility for services, provided under Medicaid or Early Steps since these programs have their own eligibility criteria. Medicaid's hearing loss criteria is 40 dB or greater. To be eligible for Early Steps services a child from birth to 36 months of age must be diagnosed as having a hearing impairment that requires ongoing special hearing services. Currently, pursuant to guidelines established by the Florida Early Hearing Loss Detection and Intervention Advisory Council (Council), children with a hearing loss of less than 25 dB do not qualify for Early Steps services.⁹ Therefore, changing the definition of "hearing impairment" by lowering the hearing loss threshold from 30 dB to 16 dB, will have no effect on eligibility for Early Steps services. However, it is possible that the council could change their guidelines to align with the 16 dB threshold provision of the bill.

Finally, the bill amends s. 383.145(3)(i), F.S., and s. 383.145(3)(k), F.S., to delete obsolete and out of date language.

B. SECTION DIRECTORY:

Section 1: Amends s. 383.14, F.S., relating to screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors.

Section 2: Amends s. 383.145, F.S., relating to newborn and infant hearing screening.

Section 3: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

⁶ Florida Newborn Screening Guidelines 2012, Department of Health, Children's Medical Services, at page 51, available at <http://www.floridahealth.gov/healthy-people-and-families/childrens-health/newborn-screening/> (last visited February 17, 2014).

⁷ Section 383.14(1)(c), F.S.

⁸ The American Speech-Language-Hearing Association changed the lower range of hearing loss to 16 dB in 2011, available at <http://www.asha.org/uploadedFiles/AIS-Hearing-Loss-Types-Degree-Configuration.pdf> (last visited February 17, 2014).

⁹ House Bill 591, Department of Health, Legislative Bill Analysis, January 14, 2014 (on file with Health Quality Subcommittee).

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to newborn health screening; amending
 s. 383.14, F.S.; authorizing the State Public Health
 Laboratory to release the results of a newborn's
 hearing and metabolic tests or screenings to the
 newborn's health care practitioner; defining the term
 "health care practitioner" as it relates to such
 release; amending s. 383.145, F.S.; revising the
 definition of the term "hearing impairment"; updating
 a cross-reference; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) of section
 383.14, Florida Statutes, is amended to read:

383.14 Screening for metabolic disorders, other hereditary
 and congenital disorders, and environmental risk factors.—

(1) SCREENING REQUIREMENTS.—To help ensure access to the
 maternal and child health care system, the Department of Health
 shall promote the screening of all newborns born in Florida for
 metabolic, hereditary, and congenital disorders known to result
 in significant impairment of health or intellect, as screening
 programs accepted by current medical practice become available
 and practical in the judgment of the department. The department
 shall also promote the identification and screening of all
 newborns in this state and their families for environmental risk

27 factors such as low income, poor education, maternal and family
 28 stress, emotional instability, substance abuse, and other high-
 29 risk conditions associated with increased risk of infant
 30 mortality and morbidity to provide early intervention,
 31 remediation, and prevention services, including, but not limited
 32 to, parent support and training programs, home visitation, and
 33 case management. Identification, perinatal screening, and
 34 intervention efforts shall begin prior to and immediately
 35 following the birth of the child by the attending health care
 36 provider. Such efforts shall be conducted in hospitals,
 37 perinatal centers, county health departments, school health
 38 programs that provide prenatal care, and birthing centers, and
 39 reported to the Office of Vital Statistics.

40 (c) Release of screening results.—Notwithstanding any
 41 ~~other~~ law to the contrary, the State Public Health Laboratory
 42 may release, directly or through the Children's Medical Services
 43 program, the results of a newborn's hearing and metabolic tests
 44 or screenings ~~screening~~ to the newborn's health care
 45 practitioner. As used in this paragraph, the term "health care
 46 practitioner" means a physician or physician assistant licensed
 47 under chapter 458; an osteopathic physician or physician
 48 assistant licensed under chapter 459; an advanced registered
 49 nurse practitioner, registered nurse, or licensed practical
 50 nurse licensed under part I of chapter 464; a midwife licensed
 51 under chapter 467; a speech-language pathologist or audiologist
 52 licensed under part I of chapter 468; or a dietician or

53 nutritionist licensed under part X of chapter 468 ~~primary care~~
 54 ~~physician.~~

55 Section 2. Paragraph (c) of subsection (2) and paragraphs
 56 (i) and (k) of subsection (3) of section 383.145, Florida
 57 Statutes, are amended, to read:

58 383.145 Newborn and infant hearing screening.—

59 (2) DEFINITIONS.—

60 (c) "Hearing impairment" means a hearing loss of 16 ~~30~~ dB
 61 HL or greater in the frequency region important for speech
 62 recognition and comprehension in one or both ears, approximately
 63 500 through 4,000 hertz.

64 (3) REQUIREMENTS FOR SCREENING OF NEWBORNS; INSURANCE
 65 COVERAGE; REFERRAL FOR ONGOING SERVICES.—

66 (i) ~~By October 1, 2000,~~ Newborn hearing screening must be
 67 conducted on all newborns in hospitals in this state on birth
 68 admission. When a newborn is delivered in a facility other than
 69 a hospital, the parents must be instructed on the importance of
 70 having the hearing screening performed and must be given
 71 information to assist them in having the screening performed
 72 within 3 months after the child's birth.

73 (k) A ~~Any~~ child who is diagnosed as having a permanent
 74 hearing impairment shall be referred to the primary care
 75 physician for medical management, treatment, and followup
 76 services. Furthermore, in accordance with Part C of the
 77 Individuals with Disabilities Education Act, Pub. L. No. 108-446
 78 ~~105-17,~~ Infants and Toddlers with Disabilities ~~The Infants and~~

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79 ~~Toddlers Program, Individuals with Disabilities Education Act,~~
80 any child from birth to 36 months of age who is diagnosed as
81 having a hearing impairment that requires ongoing special
82 hearing services must be referred to the Children's Medical
83 Services Early Intervention Program serving the geographical
84 area in which the child resides.

85 Section 3. This act shall take effect July 1, 2014.