The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL:	PCS/SB 1722 (950510)
INTRODUCER:	Fiscal Policy Committee (Recommended by the Appropriations Subcommittee on Health and Human Services) and Senator Stargel
SUBJECT:	Termination of Pregnancies
DATE:	February 26, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Favorable**
2.	Brown	Pigott	AHS	**Recommend: Fav/CS**
3.	Hrdlicka	Hrdlicka	FP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1722 amends various statutes relating to the termination of pregnancies. The bill:

- Defines the terms "gestation," "first trimester," "second trimester," and "third trimester;"
- Prohibits the purchase, sale, and donation of fetal remains from an abortion and increases penalties for the improper disposal of fetal remains;
- Restricts state agencies, local governmental entities, and Medicaid managed care plans from contracting with, or expending funds for the benefit of, an organization that owns, operates, or is affiliated with one or more clinics that perform abortions, with some exceptions;
- Requires the Agency for Health Care Administration (AHCA) to collect certain data from medical facilities in which abortions are performed and to submit data to the federal Centers for Disease Control and Prevention (CDC);
- Requires the AHCA to:
  - Perform annual licensure inspections of abortion clinics;
  - Inspect at least 50 percent of abortion clinic records during a license inspection; and
  - Promptly investigate all credible allegations of unlicensed abortions being performed;
- Requires, in clinics that perform only first trimester abortions, that either:
  - The clinic must have a written patient transfer agreement with a hospital within reasonable proximity; or
  - All physicians who perform abortions in the clinic must have admitting privileges at a hospital within reasonable proximity of the clinic;

- Requires, in clinics that perform second trimester abortions, that all physicians who perform abortions in the clinic must have admitting privileges at a hospital within reasonable proximity of the clinic, unless the clinic has a written patient transfer agreement with a hospital within reasonable proximity of the clinic which includes the transfer of the patient's medical records held by both the clinic and the treating physician;
- Requires the AHCA to submit an annual report to the Legislature summarizing regulatory actions taken by the AHCA pursuant to its authority under ch. 390, F.S.; and
- Requires abortion referral and counseling agencies to register with the AHCA and pay a registration fee, with some exceptions, beginning January 1, 2017.

The bill authorizes the AHCA to collect fees for licensure of abortion clinics and registration of abortion referral and counseling agencies in an amount not to exceed the costs incurred to implement the law. The AHCA estimates the need for one-half of a full-time-position and $245,183 ($185,232 of which would be nonrecurring) in the 2016-2017 fiscal year in order to implement the bill. Revenues are deposited and expenses paid from the Health Care Trust Fund (see Section V.).

II. Present Situation:

Abortion in Florida

Under Florida law, abortion is defined as the termination of a human pregnancy with an intention other than to produce a live birth or remove a dead fetus.[1] The termination of a pregnancy must be performed by a physician[2] licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.[3]

The termination of a pregnancy may not be performed in the third trimester or if a physician determines that the fetus has achieved viability unless there is a medical necessity. Florida law defines the third trimester to mean the weeks of pregnancy after the 24th week and defines viability to mean the state of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures.[4] Specifically, an abortion may not be performed after viability or within the third trimester unless two physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition. If a second physician is not available, one physician may certify in writing to the medical necessity for legitimate emergency medical procedures for the termination of the pregnancy.[5]

Sections 390.0111(4) and 390.01112(3), F.S., provide that if a termination of pregnancy is performed during the third trimester or during viability, the physician who performs or induces the termination of pregnancy must use that degree of professional skill, care, and diligence to preserve the life and health of the fetus, which the physician would be required to exercise in

[1] Section 390.011(1), F.S.
[2] Section 390.0111(2), F.S.
[3] Section 390.011(8), F.S.
[4] Sections 390.011(11) and (12), F.S.
[5] Sections 390.0111(1) and 390.01112(1), F.S.

order to preserve the life and health of any fetus intended to be born and not aborted. However, the woman's life and health constitute an overriding and superior consideration to the concern for the life and health of the fetus when the concerns are in conflict. This termination of a pregnancy must be performed in a hospital.[6]

Case Law on Abortion

Federal Case Law

In 1973, the U.S. Supreme Court issued the landmark *Roe v. Wade* decision.[7] Using the strict scrutiny standard, the Court determined that a woman's right to terminate a pregnancy is protected by a fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.[8] Further, the Court reasoned that state regulations limiting the exercise of this right must be justified by a compelling state interest, and must be narrowly drawn.[9]

In 1992, the U.S. Supreme Court ruled on the constitutionality of a Pennsylvania statute involving a 24-hour waiting period between the provision of information to a woman and the performance of an abortion. In that decision, *Planned Parenthood of Southeastern Pennsylvania v. Casey*,[10] the Court upheld the statute and relaxed the standard of review in abortion cases involving adult women from "strict scrutiny" to "unduly burdensome." An undue burden exists and makes a statute invalid if the statute's purpose or effect is to place a substantial obstacle in the way of a woman seeking an abortion before the fetus is viable.[11] The Court held that the undue burden standard is an appropriate means of reconciling a state's interest in human life with the woman's constitutionally protected liberty to decide whether to terminate a pregnancy. The Court determined that, prior to fetal viability, a woman has the right to an abortion without being unduly burdened by government interference. Before viability, a state's interests are not strong enough to support prohibiting an abortion or the imposition of a substantial obstacle to the woman's right to elect the procedure.[12] However, once viability occurs, a state has the power to restrict abortions if the law contains exceptions for pregnancies that endanger a woman's life or health.

Florida Law on Abortion

Florida law embraces more privacy interests and expressly extends more privacy protection to its citizens than does the U.S. Constitution. Article I, s. 23 of the State Constitution provides an express right to privacy. The Florida Supreme Court has recognized that this constitutional right

[6] Section 797.03(3), F.S.
[7] 410 U.S. 113 (1973).
[8] *Id.*
[9] *Id.*
[10] 505 U.S. 833 (1992).
[11] *Id*. at 878.
[12] *Id*. at 846.

to privacy "is clearly implicated in a woman's decision whether or not to continue her pregnancy."[13] The Florida Supreme Court ruled in *In re T. W.*:[14]

> Under Florida law, prior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests… Under our Florida Constitution, the state's interest becomes compelling upon viability …. Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical measures.[15]

The Court concluded that, "following viability, the state may protect its interest in the potentiality of life by regulating abortion, provided that the mother's health is not jeopardized."[16]

Unlike the U.S. Supreme Court, however, the Florida Supreme Court reached a different standard of review for privacy laws involving abortion. The Florida Supreme Court held that, when determining the constitutionality of a statute that impinges upon a right of privacy under the Florida Constitution, the strict scrutiny standard of review applies.[17]

Abortion and Related Services Funding

Currently, neither the federal government nor the state of Florida funds abortion procedures, except in limited situations.[18] Federal funding for abortions, including Medicaid funding, has been restricted since 1977 with the passage of the "Hyde amendment."[19] The Hyde amendment restricts the federal government from spending funds or administrative expenses in connection with abortions unless the pregnancy was the result of rape or incest or if the life of the mother would be in danger if the fetus were carried to term.

However, the Hyde amendment and state law do not restrict federal or state funds from being expended for other services offered by abortion providers, such as family planning services, and Medicaid under fee-for-service arrangements may not exclude qualified health care providers because they separately provide abortion services.[20] This provision is often referred to as the

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[13] *In re T.W.*, 551 So. 2d 1186 (Fla. 1989).
[14] 551 So. 2d 1186, 1192 (Fla. 1989) (holding that a parental consent statute was unconstitutional because it intrudes on a minor's right to privacy).
[15] *Id*. at 1193-94.
[16] *Id*. at 1194.
[17] *North Florida Women's Health and Counseling Services, Inc., et al., v. State of Florida*, 866 So. 2d 612 (Fla. 2003).
[18] *See* ss. 627.64995, 627.66996, and 641.31099, F.S.
[19] For an example of Hyde amendment language passed in a Federal appropriations act, *see* Pub. L. No. 111-8, ss. 613 and 614 (March 11, 2009).
[20] U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicaid, CHIP and Survey and Certification, *CMCS Informational Bulletin: Update on Medicaid/CHIP* (June 1, 2011), available at https://www.medicaid.gov/Federal-Policy-Guidance/downloads/6-1-11-Info-Bulletin.pdf (last visited Feb. 23, 2016).

"any willing provider" provision. However, the Florida Medicaid managed care program is exempt from the any willing provider provision.[21]

Regulation of Clinics Providing Only First Trimester Abortions vs. Regulation of Clinics Providing Second Trimester Abortions

As discussed above, courts have treated regulations on abortions performed in the first trimester differently from regulations on abortions performed in the second trimester. Florida statutes reflect this difference. Section 390.012, F.S., directs the Agency for Health Care Administration (AHCA) to adopt rules related to clinics that provide abortions. The statute sets forth numerous requirements for clinics providing second trimester abortions, but only requires the AHCA rules for clinics providing first trimester abortions to be "comparable to rules that apply to all surgical procedures requiring approximately the same degree of skill and care." Currently, the AHCA has not adopted rules that are specific to first trimester clinics; however, guidelines issued for the survey of clinics establish requirements for clinics that offer only first trimester abortions and clinics that offer both first and second trimester abortions.[22, 23] In general, clinics providing only first trimester abortions must be licensed, inspected annually, and must adhere to the general restrictions on abortions, but are not required to meet specific regulations regarding clinic staffing, physical plant, equipment, medical screening, the abortion procedure, and recovery room standards.[24]

Definition of the First and Second Trimester

Currently, AHCA rule defines the "first trimester" as "the first 12 weeks of pregnancy (the first 14 completed weeks from the last normal menstrual period)" and "second trimester" as "the portion of a pregnancy following the 12th week and extending through the 24th week of gestation."[25] The timing within the definitions is important because clinics providing second trimester abortions are subject to more stringent regulations.

In late summer of 2015, the AHCA cited several clinics associated with Planned Parenthood for performing second trimester abortions without proper licensure. The clinics were licensed only to provide first trimester abortions but the AHCA found that several patient reports from the clinics indicated that abortions had been performed after 13 weeks of gestation. The AHCA

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[21] See s. 409.975, F.S., and Centers for Medicare and Medicaid Services, *Special Terms and Conditions Number 11-W-00206/4, Florida Medicaid Medical Assistance Program, Number 37 Freedom of Choice*, (amended Oct. 15, 2015) p. 22, available at https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/fl/fl-medicaid-reform-ca.pdf (last visited Feb. 23, 2016).

[22] *See* Rule ch. 59A-9, F.A.C., and AHCA, ASPEN State Regulation Set: A 4.00 Abortion Clinic (Aug. 11, 2015), available at http://ahca.myflorida.com/mchq/Current_Reg_Files/Abortion_Clinic_ST_A.pdf (last visited Feb. 23, 2016).

[23] *See also* Florida Department of Health, Rule 64B15-14.007, F.A.C., which regulates office surgery, which may be comparable to performance of a first trimester abortion. Specifically, a Level I office surgery has no requirements for patient transfer agreements or admitting privileges, whereas for a Level II office surgery, either the physician's office must have a transfer agreement with a hospital within reasonable proximity or the physician performing the surgery must have privileges at hospital within reasonable proximity.

[24] Rule 59A-9.021, F.A.C. (Investigations and License and Validation Inspections). General restrictions include: the abortion must be performed by a physician; the physician must obtain informed consent before performing the abortion; fetal remains must be disposed of in certain manner; and the physician performing the abortion must notify the parent or guardian of a minor before performing an abortion. *See* ss. 390.0111 and 390.01114, F.S.

[25] Rule 59A-9.019(14), F.A.C.

issued notices of activity without property licensure to the clinics, requiring the clinics to cease the unlicensed operation and submit a corrective plan to the AHCA within 30 days.[26]

Planned Parenthood filed suit to challenge the citations, alleging that the clinics had not violated the law and that the AHCA redefined first trimester to mean 12 weeks from the last normal menstrual cycle, rather than 12 weeks from point of gestation, making abortions performed after the 12th week second trimester abortions.[27] The case is set for hearing in June 2016.[28]

Disposal of Fetal Remains

Currently, Florida law requires that fetal remains be disposed of in a sanitary and appropriate manner and in accordance with standard health practices, as adopted by rule by the Department of Health (DOH) related to the disposal of biomedical waste.[29] An abortion clinic must obtain a biomedical waste generator permit from the DOH, unless the clinic generates less than 25 pounds of biomedical waste per month.[30]

Failure to dispose of fetal remains properly could subject the clinic to several penalties:

- Section 381.0098(7), F.S., provides that any person or public body that violates the section or applicable rules is subject to administrative action by the DOH and fines up to $2,500 for each day of violation.
- Section 390.0111(7), F.S., provides that failure to dispose of fetal remains in a sanitary and appropriate manner and in accordance with DOH rules is a *second degree* misdemeanor.[31]
- Section 390.012(7), F.S., provides that failure by an owner, operator, or employee of an abortion clinic to dispose of fetal remains and tissue consistent with the disposal of other human tissue is a *first degree* misdemeanor and the AHCA may suspend or revoke the clinic's license.[32]
- Section 873.05, F.S., prohibits a person from knowingly advertising or offering to purchase or sell, or purchasing, selling, or otherwise transferring, a *human embryo* for valuable consideration.[33] A violation of this prohibition is a second degree felony.[34]

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[26] AHCA, Press Release, *Planned Parenthood Inspections Find Deficiencies at Clinics*, (August 5, 2015), links to press release and citation reports available at http://ahca.myflorida.com/Executive/Communications/Press_Releases/archive/2015_2016.shtml (last visited Feb. 23, 2016).
[27] Sexton, Christine, *Planned Parenthood sues, says state is trying to redefine 1st trimester*, PoliticoFlorida (Aug. 17, 2015), available at http://www.capitalnewyork.com/article/florida/2015/08/8574447/planned-parenthood-sues-says-state-trying-redefine-1st-trimester (last visited on Feb. 23, 2016).
[28] *Planned Parenthood of Southwest and Central Florida, Inc., v. Agency for Healthcare Administration*, 37 2015 CA 001919 (Fla. 2nd Judicial Circuit).
[29] Section 390.0111(7), F.S. *See also* Rule 59A-9.030, F.A.C. The laws governing the disposal of biomedical waste are in s. 381.0098, F.S., and Rule ch, 64E-16, F.A.C.
[30] Rule 64E-16.011(1)(a), F.A.C.
[31] A second degree misdemeanor is punishable by a term of imprisonment up to 60 days and a fine up to $500. Sections 775.082 and 775.083, F.S.
[32] A first degree misdemeanor is punishable by a term of imprisonment up to 1 year and a fine up to $10,000. Sections 775.082 and 775.083, F.S.
[33] "Valuable consideration" does not include the reasonable costs associate with the removal, storage, and transportation of human embryos.
[34] A second degree felony is punishable by a term of imprisonment up to 15 years (or up to 30 years for certain habitual or repeat violent offenders) and a fine up to $500. Sections 775.082 and 775.083, F.S.

Abortion Referral and Counseling Agencies

Section 390.025, F.S., defines an abortion referral and counseling agency as "any person, group, or organization, whether funded publicly or privately, that provides advice or help to persons in obtaining abortions." Such an agency is required to provide a full and detailed explanation of abortion, including the effects and alternatives to abortion, to a person seeking an abortion before making a referral or aiding the person in obtaining an abortion. If the person seeking a referral is a minor, the agency must make a good-faith effort to furnish the required information to his or her parent or guardian. Additionally, the agency is prohibited from accepting fees, kickbacks, or other compensation from a physician, hospital, clinic, or other medical facility in return for referring a person for an abortion. Any violation of these provisions is a misdemeanor of the first degree.

Centers for Disease Control Abortion Surveillance

In 1969, the Centers for Disease Control and Prevention (CDC) began abortion surveillance in order to document the number and characteristics of women obtaining legal induced abortions. States voluntarily report abortion data to the CDC and the CDC's Division of Reproductive Health prepares surveillance reports as data becomes available. Information reported to the CDC includes maternal age, gestational age of the fetus in weeks at the time of the abortion, race, ethnicity, method of abortion, marital statutes, maternal residence, the number of previous live births, and the number of previous abortions. Because reporting is voluntary, some states, including Florida, do not report complete data to the CDC.[35]

Abortion Statistics in Florida

According to the Agency for Health Care Administration, there are 62 licensed clinics in Florida that perform abortions.[36] In 2015, the state reported that 71,740 abortions were performed in the following stages of fetal development:[37]

- 66,110 abortions during the first 12 weeks of gestation;
- 5,630 abortions between 13 and 24 weeks of gestation; and
- None were performed after 24 weeks of gestation.

The majority of abortions, approximately 90 percent, were elective procedures, the majority of which were performed in the first 12 weeks. The remaining 10 percent were performed due to:

- Social or economic reasons – 4,497.
- Rape – 61.
- Serious fetal genetic defect, deformity, or abnormality – 478.
- Physical health of the mother that is not life endangering – 207.

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[35] CDC, *CDCs Abortion Surveillance System FAQs*, (last updated Feb. 10, 2016) available at http://www.cdc.gov/reproductivehealth/Data_Stats/Abortion.htm, (last visited Feb. 23, 2016).

[36] AHCA, *Florida Health Finder Search: facility/provider type: Abortion Clinic*, (search conducted Feb. 23, 2016), available at http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx (last visited Feb. 23, 2016).

[37] AHCA, *Reported Induced Terminations of Pregnancy (ITOP) by Reason, by Weeks of Gestation, Calendar Year 2016*, (Feb. 5, 2016) available at http://ahca.myflorida.com/MCHQ/Central_Services/Training_Support/docs/ReasonGestation_2015.pdf (last visited Feb. 23, 2016).

- Emotion or psychological health of the mother – 211.
- Life endangering physical condition – 47.
- Incest – 1.

III. Effect of Proposed Changes:

The bill amends various sections of law related to the termination of pregnancies. In addition to the substantive changes detailed below, the bill also makes various technical and conforming changes.

Section 1 amends s. 390.011, F.S., to define the terms:
- "Gestation" to mean the development of a human embryo or fetus between fertilization and birth.
- "First trimester" to mean the period of time from fertilization through the end of the 11th week of gestation.
- "Second trimester" to mean the period of time from the beginning of the 12th week of gestation through the end of the 23rd week of gestation.
- "Third trimester" to mean the period of time from the beginning of the 24th week of gestation to birth.

Section 2 amends s. 390.0111, F.S., to clarify that the disposal of fetal remains must be in accordance with s. 381.0098, F.S. (governing the disposal of biomedical waste), and DOH rules. The bill increases the penalty for failure to properly dispose of fetal remains from a second degree misdemeanor to a first degree misdemeanor, similar to the current penalty in s. 390.012, F.S.

The bill also restricts state agencies, local governmental entities, and Medicaid managed care plans from expending funds for the benefit of, paying funds to, or initiating or renewing a contract with any organization that owns, operates, or is affiliated with one or more clinics that are licensed under ch. 390, F.S., and perform abortions. However, the restriction does not apply to:
- Clinics that only perform abortions on fetuses that are the result of rape or incest; that are necessary to preserve the life of the mother; or that are necessary to avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the mother, other than a psychological condition.
- Funds that must be expended to fulfill the terms of a contract entered into before July 1, 2016.
- Funds that must be expended as reimbursement for Medicaid services provided on a fee-for-service basis.

Section 3 amends s. 390.0112, F.S., to update the reporting requirements for abortion clinics beginning no later than January 1, 2017, to include information consistent with the United States Standard Report of Induced Termination of Pregnancy adopted by the Centers for Disease Control and Prevention (CDC). Additionally, the bill requires the AHCA to submit all such reported data to the CDC as requested by the CDC.

Section 4 of the bill amends s. 390.012, F.S., to require the AHCA to:

- Perform annual license inspections of all abortion clinics.[38]
- Review at least 50 percent of patient records generated since the clinic's last license inspection when performing a licensure inspection of an abortion clinic.
- Promptly investigate all credible allegations of abortions being performed at a clinic that is not licensed to perform such abortions.
- Beginning February 1, 2017, annually report to the Legislature on all regulatory actions taken during the prior year by the AHCA under ch. 390, F.S.

The bill requires the AHCA to adopt rules for clinics that only perform first trimester abortions that require either:

- The clinic to have a written patient transfer agreement with a hospital within reasonable proximity that includes the transfer of the patient's medical records; or
- All physicians who perform abortions in the clinic to have admitting privileges at a hospital within reasonable proximity of the clinic.

For clinics that perform abortions after the first trimester, the AHCA must adopt rules that require all physicians who perform abortions in the clinic to have admitting privileges at a hospital within reasonable proximity of the clinic, unless the clinic has a written patient transfer agreement with a hospital within reasonable proximity of the clinic which includes the transfer of the patient's medical records held by both the clinic and the treating physician.

The bill repeals the requirement that the AHCA rules prescribing minimum recovery room standards require for the abortion clinic to arrange hospitalization if any complications occur beyond the capabilities of the clinic staff.

The bill also clarifies that an owner, operator, or employee of an abortion clinic must dispose of fetal remains and tissue in accordance with s. 381.0098, F.S. (governing the disposal of biomedical waste), and DOH rules.

Section 5 amends s. 390.014, F.S., to allow the AHCA to establish in rule a license fee that may not be more than required to pay for the costs incurred by the AHCA in administering ch. 390, F.S. Current law caps the license fee at $500.

Section 6 amends s. 390.025, F.S., to require that, effective January 1, 2017, abortion referral and counseling agencies must be registered with the AHCA and pay a registration fee. The amount of the initial and renewal fees are to be established in rule in an amount not to exceed the costs incurred by the AHCA in administering this section. Registration is required biennially. Registrants are required to include the registration number issued by the AHCA in any advertising materials.

The following are exempt from the requirement to register:

- Facilities licensed under chs. 390 (abortion clinics), 395 (hospitals), 400 (nursing homes and related health care facilities), and 408 (other health facilities), F.S.;

[38] The AHCA currently performs annual inspections of abortion clinics; however, this requirement is not established in statute.

- Facilities that are exempt from the requirement to be licensed as a clinic and that refer 5 or fewer patients for abortions per month; and
- Health care practitioners who do not, in the course of their practice outside of a licensed facility, refer more than 5 patients for abortions each month.

The AHCA is authorized to assess costs for investigations related to the requirements for referrals, including the prohibition on accepting fees or kickbacks for referrals, that result in successful prosecutions.

The AHCA is authorized to adopt rules to implement these provisions.

Section 7 amends s. 873.05, F.S., to prohibit a person to advertise or offer to purchase, sell, donate, or transfer, or purchase, sell, donate, or transfer fetal remains obtained from an abortion. A violation of this prohibition is a second degree felony. However, this does not prohibit the transportation or transfer of fetal remains for disposal pursuant to s. 381.0098, F.S., and DOH rules.

Section 8 provides that, unless otherwise expressly provided, the bill is effective July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to have an impact on cities or counties and as such, does not appear to be a mandate for constitutional purposes.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

It is unclear, given Florida's stricter constitutional protections against regulations of abortions in the first trimester, whether or not the changes in the bill relating to clinics providing only first trimester abortions may be successfully challenged under Florida's constitution.

If the bill becomes law and is challenged, it is uncertain whether a court will apply the strict scrutiny or undue burden standard of review. Historically, the Florida Supreme Court has applied the strict scrutiny standard to legislation imposing abortion restrictions. In contrast, the U.S. Supreme Court adopted the undue burden standard in a challenge to a Pennsylvania law similar to this bill (See *Case Law on Abortion* above).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have a negative fiscal impact on clinics providing abortions due to the additional requirements established in the bill. Additionally, the bill may have a negative fiscal impact on organizations affiliated with clinics providing abortions if such organizations currently receive funds which would be restricted by the bill.

The bill will likely have a negative fiscal impact on abortion referral and counseling agencies due to the requirement to register with the Agency for Health Care Administration (AHCA) and pay a registration fee.

C. Government Sector Impact:

The AHCA will incur additional costs due to the increased time required for inspections at licensed abortion clinics and for the registration and oversight functions of abortion referral and counseling agencies, as well as costs associated with technology upgrades for the AHCA's system of reporting abortion information to the CDC as required under the bill. The AHCA indicates the need for one-half of a full-time-position and $245,183 ($185,232 of which would be nonrecurring) in the 2016-2017 fiscal year in order to implement the bill. This sum includes $187,964 ($181,664 of which would be nonrecurring) for technology upgrades. These costs would be paid through the Health Care Trust Fund. The AHCA is required to set fees at a level that will not exceed these costs, which authorizes the AHCA to collect fees sufficient to cover the costs. The fee revenue would be deposited into the Health Care Trust Fund.[39]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The AHCA is required to adopt certain rules by the bill, and is granted rulemaking authority related to the registration of abortion referral and counseling agencies.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 390.011, 390.0111, 390.0112, 390.012, 390.014, 390.025, 873.05.

[39] DOH, *2016 Agency Legislative Bill Analysis: SB 1722*, (Jan. 13, 2016).

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Health and Human Services on February 17, 2016:
The proposed CS revises the bill's requirements for clinics that perform abortions after the first trimester of pregnancy. The bill as originally filed required that in such clinics, all physicians who perform abortions in the clinic must have admitting privileges at a hospital within reasonable proximity to the clinic and that the clinic must have a written patient transfer agreement with a hospital within reasonable proximity to the clinic which includes the transfer of the patient's medical records held by both the clinic and the treating physician. The proposed CS instead requires that in such clinics, all physicians who perform abortions in the clinic must have admitting privileges at a hospital within reasonable proximity to the clinic, unless the clinic has such a written patient transfer agreement.

B. Amendments:

None.