

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

HEALTH REGULATION
Senator Garcia, Chair
Senator Sobel, Vice Chair

MEETING DATE: Thursday, January 12, 2012

TIME: 10:15 a.m.—12:15 p.m.

PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Garcia, Chair; Senator Sobel, Vice Chair; Senators Diaz de la Portilla, Fasano, Gaetz, Jones, and Norman

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 376 Flores (Identical H 309)	Radiological Personnel; Providing titles for persons who hold a certificate as a specialty technologist; authorizing a person holding a certificate as a specialty technologist to perform the specific duties allowed for a specialty technologist as defined by the Department of Health; requiring that the duties be consistent with the scope of practice of a national registry for the particular advanced, postprimary, or specialty area; providing for an applicant for certification as a specialty technologist to be certified only by endorsement rather than by examination; authorizing the department to issue a certificate by endorsement to practice as a specialty technologist to an applicant who meets certain criteria, etc. HR 01/12/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 0
2	SB 478 Margolis (Similar CS/H 4005)	Department of Health; Repealing provisions relating to department authorization for the development of a Hepatitis A awareness program and to the establishment of a statewide consortium known as the Public Cord Blood Tissue Bank, etc. HR 01/12/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 0
3	SB 480 Dean (Similar H 573)	Mobile Home and Recreational Vehicle Parks; Specifying laws and rules to be enforced by the Department of Health; revising applicability of recreational vehicle park requirements to mobile home parks; providing for an annual operating permit fee to be charged to operators of certain parks or camps; providing that an operator of a mobile home park, lodging park, recreational vehicle park, or recreational camp who refuses to pay the operating permit fee required by law or who fails, neglects, or refuses to obtain an operating permit for the park commits a misdemeanor of the second degree; providing requirements for the establishment of separation and setback distances, etc. HR 01/12/2012 Favorable CA BC	Favorable Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Health Regulation

Thursday, January 12, 2012, 10:15 a.m.—12:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 510 Rich (Identical H 849)	Florida Kidcare Program; Providing that children who are eligible for a state-sponsored health benefit plan and the subsidized Kidcare program may enroll in the program, etc. HR 01/12/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 0
5	SB 584 Richter (Identical H 811)	Public Records/Dental Workforce Surveys; Providing an exemption from public records requirements for information contained in dental workforce surveys submitted by dentists or dental hygienists to the Department of Health; providing exceptions to the exemption; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act, etc. HR 01/12/2012 Favorable GO	Favorable Yeas 7 Nays 0
6	SB 616 Flores (Similar H 655, Compare CS/H 657, Link S 1856)	Biomedical Research; Revising the number of years that the balance of an appropriation from the Biomedical Research Trust Fund may be carried forward following the effective date of the original appropriation; revising the terms of appointment for certain members of the Biomedical Research Advisory Council within the Department of Health (DOH); specifying the name of an affiliate chapter of the American Heart Association as it relates to the membership of the advisory council within the Florida Center for Universal Research to Eradicate Disease; requiring that the DOH, rather than the State Surgeon General, in consultation with the council, appoint a peer review panel of independent, scientifically qualified individuals to review the scientific merit of each proposal and establish its scientific priority score under the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program, etc. HR 01/12/2012 Favorable GO BC	Favorable Yeas 7 Nays 0
7	SB 830 Health Regulation (Similar H 7035)	OGSR/Physician Workforce Surveys/Department of Health; Amending provisions relating to exemptions from public records requirements provided for personal identifying information contained in physician workforce surveys submitted to the Department of Health by physicians and osteopathic physicians; saving the exemptions from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of each exemption, etc. HR 01/12/2012 Favorable GO	Favorable Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Health Regulation

Thursday, January 12, 2012, 10:15 a.m.—12:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 464 Garcia (Identical H 711, Compare H 895, S 1568)	Sale or Lease of a County, District, or Municipal Hospital; Providing that the sale or lease of a county, district, or municipal hospital is subject to approval by the registered voters or by the circuit court; requiring the hospital governing board to determine by certain public advertisements whether there are qualified purchasers or lessees before the sale or lease of such hospital; requiring the board to state in writing specified criteria forming the basis of its acceptance of a proposal for sale or lease of the hospital; requiring the board to file a petition for approval with the circuit court and receive approval before any transaction is finalized; granting the circuit court jurisdiction to approve the sale or lease of a county, district, or municipal hospital based on specified criteria; requiring the board to pay costs associated with the petition for approval unless a party contests the action, etc. HR 01/12/2012 Temporarily Postponed BC	Temporarily Postponed
9	SB 342 Storms (Similar H 123, Compare H 1345, S 76)	Use of Cigarette Tax Proceeds; Revising the payment and distribution of funds in the Cigarette Tax Collection Trust Fund; providing specified purposes for the use of funds that are appropriated out of the trust fund; providing legislative intent; authorizing moneys transferred to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute to be used to secure financing to pay costs for specified purposes at certain facilities and other properties, etc. HR 01/12/2012 Fav/1 Amendment BC	Fav/1 Amendment (205560) Yeas 7 Nays 0

Other Related Meeting Documents

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 Health Regulation Committee

BILL: CS/SB 376

INTRODUCER: Health Regulation Committee and Senator Flores

SUBJECT: Radiological Personnel

DATE: January 12, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantes	Stovall	HR	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill allows for the certification of nationally-recognized specialties of radiologic technologist which are currently not recognized in statute. The bill updates existing definitions and certification procedures to encompass emerging technologies and specialties.

This bill will have negligible fiscal impact on the government and on the private sector.

SB 376 substantially amends sections 468.301, 468.302, 468.303, 468.304, 468.306, and 468.3065 of the Florida Statutes.

II. Present Situation:

“Radiologic technologist” is defined in s. 468.301(15), F.S., to mean a person, other than a licensed practitioner, who is qualified by education, training, or experience to use radiation on human beings under the specific direction and general supervision of a licensed practitioner in

each particular case. “Licensed practitioner” means any Florida-licensed physician, podiatrist, chiropractor, or naturopath.¹

Florida regulations concerning radiologic technologists are found in part IV of ch. 468, F.S., and Rule chapter 64E-3, F.A.C. The Department of Health (DOH) Bureau of Radiation Control within the Division of Environmental Health is responsible for the certification and regulation of radiologic technologists.

Types and Duties of Radiologic Technologists Defined in Statute

A basic X-ray machine operator can perform general diagnostic radiographic and general fluoroscopic procedures, excluding nuclear medicine and radiation therapy procedures, under the direct supervision of a licensed practitioner.²

A basic X-ray machine operator-podiatric medicine can perform certain radiographic functions, excluding nuclear medicine and radiation therapy procedures, which are within the scope of practice of a podiatrist. Such an operator may only practice under the direct supervision of a licensed podiatrist.³

A general radiographer means anyone who is employed and certified in radiography, other than a basic X-ray machine operator or a basic X-ray machine operator-podiatric medicine.⁴ General radiographers may not perform nuclear medicine procedures but are permitted to perform computed tomography (CT) examinations. They can also assist certified radiation therapy technologists with certain radiation therapy procedures after undergoing appropriate training and certification.⁵

A limited computed tomography technologist may only perform diagnostic CT examinations.⁶

A radiation therapy technologist may administer certain forms of radiation therapy (X radiation, ionizing radiation from particle accelerators, and external beam teletherapy) to human beings for therapeutic or simulation purposes.⁷

A nuclear medicine technologist may conduct measurements of radioactivity and administer radiopharmaceuticals to human beings for diagnostic and therapeutic purposes. A nuclear medicine technologist may also administer X radiation from a combination nuclear medicine-CT device if that radiation is administered as an integral part of a nuclear medicine procedure and the technologist has received device-specific training. Otherwise the technologist is not permitted to operate a CT device.⁸

¹ Sections 468.3003 and 468.301(11), F.S.

² Sections 468.301(1) and 468.302(3)(a), F.S.

³ Sections 468.301(2) and 468.302(3)(c), F.S.

⁴ Section 468.301(9), F.S.

⁵ Sections 468.302(3)(d) and 468.302(3)(g), F.S., and Rule 64E-3.3001, F.A.C.

⁶ Section 468.302(3)(e), F.S.

⁷ Section 468.302(3)(f), F.S.

⁸ Section 468.302(3)(g), F.S., and Rule 64E-3.0033, F.A.C.

A radiologist assistant is an advanced-level radiologic technologist who works under the supervision of a radiologist to enhance patient care by assisting the radiologist in the medical imaging environment.^{9,10} Under supervision of a radiologist, a radiologist assistant may perform patient assessment, patient management, and selected clinical imaging procedures. Radiologist assistants are not certified to interpret any radiological image or to perform any nuclear medicine or radiation therapy procedures.^{11,12}

Certification of Radiologic Technologists

Certification requirements for radiologic technologists are:¹³

- Pay appropriate application and examination fees.
- Be at least 18 years of age at the time of application.
- Be at least a high school graduate or hold a GED.
- Have good moral character.
- Complete an educational training program in the requested category of certification. The training program must come from a hospital or postsecondary academic institution which has been recognized and accepted by the American Registry of Radiologic Technologists (ARRT) or the Nuclear Medicine Technology Certification Board and certified by the DOH.¹⁴
- Complete 4 hours of HIV/AIDS training.¹⁵
- Pass the appropriate licensing examination or meet the eligibility requirements for a certificate by endorsement.
- Submit documentation of any criminal offense of which the applicant has been found guilty, regardless of adjudication.
- Submit documentation of any final disciplinary action taken against the applicant by a licensing or regulatory body in any jurisdiction, by a national organization, or by a specialty board recognized by the DOH.

Additional certification procedures apply in certain situations:

- In lieu of completing an approved educational training program from a hospital or postsecondary academic institution, an applicant for basic X-ray machine operator certification may read *Radiography Essentials for Limited Practice, 2nd edition*, published by Elsevier Saunders, or take any substantially equivalent course which provides instruction on all of the subjects listed in the ARRT's January 2006 edition of *Content Specifications for the Examination for the Limited Scope of Practice in Radiography*.^{16,17}

⁹ Sections 468.301(17), F.S.

¹⁰ A radiologist, as defined in s. 468.301(16), F.S., is a physician specializing in radiology certified by the American Board of Radiology, the American Osteopathic Board of Radiology, the British Royal College of Radiology, or the Canadian College of Physicians and Surgeons.

¹¹ Section 468.302(3)(h), F.S.

¹² Further details on the duties of radiologist assistants can be found in Rule 64E-3.0032, F.A.C., and in the *Radiologist Assistant Role Delineation- January 2005*, published by the American Registry of Radiologic Technologists, available at http://www.acr.org/secondarymainmenucategories/quality_safety/radiologistassistant/arrtrolelineationdocumentdoc7.aspx (last visited on September 29, 2011).

¹³ Section 468.304, F.S.

¹⁴ Rules 64E-3.002(1) and 64E-3.003(1)(a), F.A.C., and s. 468.305, F.S.

¹⁵ Rule 64E-3.003(4), F.A.C.

¹⁶ Rule 64E-3.003(d), F.A.C.

- A currently certified basic X-ray machine operator applying for general radiographer certification must complete a DOH-approved educational program or a 2-year training program that takes into account the types of procedures and level of supervision usually practiced in a hospital.
- A currently certified general radiographer applying for nuclear medicine technologist certification must complete a DOH-approved educational program or a 2-year training program that takes into account the types of procedures and level of supervision usually practiced in a hospital.¹⁸
- A currently certified general radiographer who wishes to also assist with radiation therapy procedures must complete at least 560 hours of training following a DOH-prescribed curriculum at a radiation therapy school accredited by the Joint Review Committee on Education in Radiologic Technology.^{19,20}
- A radiologist assistant currently certified by the ARRT is not required to complete the educational training program or the examination and is instead issued a certificate by endorsement.²¹
- No further limited CT certificates were awarded after October 1, 1984. Certificates issued before this time are valid if they are renewed appropriately under s. 468.309, F.S.²²

Written examinations are offered semiannually and test applicants on patient positioning, technique, and radiation protection skills related to each category of certification. Examinations may be developed and administered by the DOH or by a contracting organization, including national organizations which certify radiologic technologists. The passing score is 65 percent for the basic X-ray machine operator examination and 75 percent for all other examinations.²³

The DOH may issue a certificate by endorsement to practice as a radiologic technologist to an applicant who can demonstrate that he or she holds a current license or certification to practice radiologic technology in another jurisdiction and that the requirements for such license or certification are equivalent to those required for certification in Florida.²⁴

All operators of radiation equipment are not required to be registered radiologic technologists (as part of the ARRT or another national or state organization), but all must be certified by the state before they may practice.²⁵ Radiologic technologists are not required to be certified if they are currently students under direct supervision of a licensed radiologic technologist, are employed by a United States governmental agency, or are licensed under ch. 483, F.S., to only perform

¹⁷ ARRT, *Content Specifications for the Examination for the Limited Scope of Practice in Radiography*, January 2006, available at http://www.doh.state.fl.us/mqa/rad-tech/LIM_CS_2006.pdf (last visited on September 29, 2011).

¹⁸ Rule 64E-3.002(1), F.A.C., and ss. 468.304(3)(e)2.c.-d. and 468.305, F.S.

¹⁹ Rule 64E-3.0031(1)(b), F.A.C.

²⁰ Department of Health, *Therapy Assistance by General Radiographer Training Program Curriculum*, March 2002, available at http://www.doh.state.fl.us/mqa/rad-tech/Thrpdy_Assistance_Cur.pdf (last visited on September 29, 2011).

²¹ Sections 468.304(3)(e)2.e., 468.306, and 468.3065(1), F.S.

²² Section 468.304(5), F.S.

²³ Section 468.306, F.S., and Rule 64E-3.005, F.A.C.

²⁴ Section 468.3065(1), F.S., and Rule 64E-3.006, F.A.C.

²⁵ Sections 468.302(1) and 468.305, F.S.

nuclear medicine procedures.²⁶ Temporary certificates can also be issued by the DOH in certain situations.²⁷

Renewal of Certification and Continuing Education

All radiologic technology certificates must be renewed every 2 years by submitting a renewal application and fee to the DOH.²⁸ Twelve classroom hours of continuing education per recertification period are also required.²⁹

Certificates that have been expired for more than 2 but less than 10 years may be renewed by submitting a renewal application and fee as well as a late fee. Continuing education requirements in this case are 3 classroom hours for each 6 months for which the certificate has been expired. These classroom hours are in addition to the 12 hours that are normally required to renew a certificate. A certificate which has been expired for more than 10 years cannot be renewed. The applicant must repeat the entire certification process.³⁰

Disciplinary Action

The following actions are subject to administrative fines by the DOH and probation, suspension, or revocation of certification:³¹

- Procuring or renewing a certificate via fraudulent means.
- Having a certificate suspended or revoked by a national organization, a DOH-recognized specialty board, or certification authority of another jurisdiction.
- Failing to notify the DOH within 30 days of revocation or suspension of certification by a national organization, a DOH-recognized specialty board, or certification authority of another jurisdiction.
- Being convicted, regardless of adjudication, of a crime that relates to the practice of radiologic technology or of any other crime against a person.
- Filing false reports or failing to file a report required by state or federal law. This applies only to reports filed in the capacity of the certificate holder.
- Engaging in unprofessional conduct.
- Inability to adequately practice radiologic technology due to chemical dependence or alcohol addiction.
- Failing to comply with the recommendations of the DOH's impaired practitioner program.
- Testing positive for unauthorized substances on an employment-related drug screen.
- Violating or not reporting another's violation of the rules and laws governing radiologic technologists.

²⁶ Sections 468.302(6) and (7), F.S.

²⁷ Section 468.307(2), F.S.

²⁸ Section 468.309, F.S. Special allowances are made for certificate holders or their spouses who are called to active military duty. The certificate holder remains in good standing throughout the period of active duty and has up to 6 months after discharge to become recertified following the normal renewal process.

²⁹ Rule 64E-3.008, F.A.C. Further details on the exact curricular requirements of continuing education are available in Rule 64E-3.009, F.A.C.

³⁰ Section 468.3095, F.S., and Rule 64E-3.010, F.A.C.

³¹ Section 468.3101, F.S. Further details of minimum and maximum disciplinary actions and fines associated with each violation are found in Rule 64E-3.011, F.A.C.

- Employing an uncertified individual to practice radiologic technology in this state.

The following actions are considered misdemeanors of the second degree:³²

- Practicing radiologic technology without the appropriate certification, including practicing with a certificate that has been suspended or revoked.
- Practicing radiologic technology by an unsupervised student or allowing this to occur.
- Obtaining certification via fraudulent means.
- Using any name or title to imply that a person is a certified radiologic technologist when he or she is not.
- Knowingly concealing violations of rules and laws governing radiologic technologists from law enforcement.
- Employing an uncertified individual to practice radiologic technology in this state.

Advisory Council on Radiation Protection

Section 468.314, F.S. establishes a sixteen-person advisory council within the DOH. This council provides recommendations to the DOH on such issues as minimum requirements for certification, a certificate holders' code of ethics, curricula for continuing education courses, the duties of each different type of radiologic technologist.

National Radiologic Technology Organizations and Certifications

Nationally, there are three main organizations which certify radiologic technologists: the American Registry of Radiologic Technologists (ARRT), the American Registry for Diagnostic Medical Sonography (ARDMS), and the Nuclear Medicine Technology Certification Board (NMTCB). The ARRT is the largest with approximately 300,000 members. Among other duties, these organizations create and administer exams in various radiologic technologist specialties to provide national standards of competency.³³

To be eligible to take a certification examination, an applicant must graduate from an accredited educational training program and fulfill specific clinical competencies. The specific examination prerequisites vary depending on the certification organization. Policies for recertification and continuing education are also provided by each organization.³⁴

The following certifications are available nationally for radiologic technologists:

From the ARRT:³⁵

- Primary certifications
 - Radiography
 - Radiation Therapy

³² Section 468.311, F.S.

³³ American Society of Radiologic Technologists, *Alphabet Soup: A Guide to Organizations in Radiologic Technology*, available at https://www.asrt.org/content/aboutasrt/alphabet_soup.aspx (last visited on September 30, 2011).

³⁴ For information on ARRT prerequisites, visit <https://www.arrt.org/Certification> (last visited on September 30, 2011). For information on ARDMS prerequisites, visit http://www.ardms.org/files/downloads/Prerequisite_Chart.pdf (last visited on September 30, 2011). For information on NMTCB prerequisites, visit <http://www.nmtcb.org/about/eligReq.php> (last visited on September 30, 2011).

³⁵ ARRT, *ARRT Certification*, available at <https://www.arrt.org/Certification> (last visited on September 30, 2011).

- Nuclear Medicine Technology
- Magnetic Resonance Imaging
- Sonography
- Post-primary (subspecialty) certifications
 - Computed Tomography
 - Magnetic Resonance Imaging
 - Mammography
 - Quality Management
 - Sonography
 - Breast Sonography
 - Vascular Sonography
 - Cardiac-Interventional
 - Vascular-Interventional
 - Bone Densitometry
- Advanced practice certifications
 - Radiologist Assistant

From the ARDMS:³⁶

- Primary certifications
 - Diagnostic Medical Sonographer
 - Diagnostic Cardiac Sonographer
 - Vascular Technologist
- Specialty certifications
 - Abdominal Sonography
 - Breast Sonography
 - Neurosonology
 - Obstetrics and Gynecology Sonography
 - Adult Echocardiography
 - Pediatric Echocardiography
 - Fetal Echocardiography

From the NMTCB:³⁷

- Nuclear Medicine Technologist
- Nuclear Cardiology Technologist
- Positron Emission Tomography Technologist

Other certifications are also available from several smaller national radiologic technologist organizations.

III. Effect of Proposed Changes:

This bill allows for the certification of nationally-recognized specialties of radiologic technologist which are currently not recognized in statute.

³⁶ ARDMS, *Credentials and Examinations*, http://www.ardms.org/credentials_examinations/ (last visited on September 30, 2011).

³⁷ NMTCB, *Welcome*, <http://www.nmtcb.org/root/default.php> (last visited on September 30, 2011).

Section 1 amends s. 468.301, F.S., to create the term “specialty technologist” to mean a subtype of radiologic technologist subject to specific certification requirements under s. 468.304, F.S.

Section 2 amends s. 468.302, F.S., to provide guidelines for the titles and title abbreviations that specialty technologists may use to designate the various certifications they hold in Florida. The DOH is given rulemaking authority to specify these titles and title abbreviations. This section also allows the DOH, by rule, to define the duties each type of specialty technologist may perform in the state.

Section 3 amends s. 468.303, F.S., to give the DOH rulemaking authority to recognize national organizations that certify, license, or register specialty technologists under educational and examination requirements that demonstrate technical and safety competencies for the scope of practice for that specialty.

Section 4 amends s. 468.304(3), F.S., to require that an applicant for specialty technologist certification demonstrate that he or she is currently certified by or registered with a national radiologic technology organization in that specialty.

Section 5 amends s. 468.306, F.S., to provide that applicants for specialty technologist certification may only be certified by endorsement as provided in s. 468.3065, F.S. Applicants for specialty technologist certification may not be certified through the examination procedures otherwise provided under s. 468.306, F.S.

Section 6 amends s. 456.3065, F.S. to provide for certification of specialty technologists by endorsement. This means that specialty technologists who are registered with or certified by a national radiologic technology organization in some practice specialty will have that certification recognized in Florida as long as the national organization is recognized by the DOH. The application fee for a certificate by endorsement to practice as a specialty technologist may not exceed \$100.

Section 7 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Technologists seeking DOH recognition of any national certifications would be required to pay an application fee. Recognizing additional categories of specialty certification would provide employers with greater information about the competencies of a prospective employee and would also increase the quality of care delivered during specialized radiologic technology procedures by ensuring that technologists had received appropriate training before being allowed to work with patients.

C. Government Sector Impact:

The DOH anticipates a small workload increase to process applications for recognition of additional nationally-recognized certifications, which will be offset by fees for an overall negligible fiscal impact.³⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation on January 12, 2012:

The CS eliminates the amendment of ss. 458.3003 and 468.301(4), F.S., the declaration of policy and definition of “radiation,” to revert to current statutory language. The CS changes the phrase “national registry” to “national organization” throughout the bill to maintain consistency with existing statute.

³⁸ Department of Health, *2012 Bill Analysis, Economic Statement, and Fiscal Note for SB 376*. A copy of this document is on file with the Senate Health Regulation Committee.

Section 468.303, F.S., is amended to give the DOH rulemaking authority to recognize national organizations that certify, license, or register specialty technologists under educational and examination requirements that demonstrate technical and safety competencies for the scope of practice for that specialty.

Section 468.3065, F.S., is amended to eliminate the requirement that, in order for a nationally-licensed, -registered, or -certified specialty technologist to be issued a certificate by endorsement in Florida, criteria for licensure, certification, or registration by the national organization must be deemed substantially equivalent by the DOH to those for specialty technologists established in statute or rule.

Several technical changes are also made.

B. Amendments:

None.



936488

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
01/12/2012	.	
	.	
	.	
	.	

The Committee on Health Regulation (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (18) is added to section 468.301,
Florida Statutes, to read:

468.301 Definitions.—As used in this part, the term:

(18) "Specialty technologist" means a person, other than a
licensed practitioner, who is qualified by education and
certification, as set forth in s. 468.304, to use radiation on
human beings under the specific direction and general



936488

13 supervision of a licensed practitioner.

14 Section 2. Paragraph (h) is added to subsection (2) and
15 paragraph (i) is added to subsection (3) of section 468.302,
16 Florida Statutes, to read:

17 468.302 Use of radiation; identification of certified
18 persons; limitations; exceptions.—

19 (2)

20 (h) A person holding a certificate as a specialty
21 technologist may use the title "Certified Radiologic
22 Technologist-X" or the letters "CRT-X" after his or her name,
23 where "X" represents a single- or multiple-letter designation
24 signifying the advanced, postprimary, or specialty area of
25 radiologic technology, such as "CT" for computed tomography or
26 "PET" for positron emission tomography, in which the person is
27 certified by a national organization that is recognized by the
28 department. The department shall approve these letter
29 designations by rule for each area, consistent with the
30 designation used by the national organization.

31
32 No other person is entitled to so use a title or letters
33 contained in this subsection or to hold himself or herself out
34 in any way, whether orally or in writing, expressly or by
35 implication, as being so certified.

36 (3)

37 (i) A person holding a certificate as a specialty
38 technologist may perform the specific duties allowed for a
39 specialty technologist as defined by rule of the department.
40 These duties must fall within the scope of practice for the
41 specialty as set by the national organization for that



936488

particular advanced, postprimary, or specialty area.

Section 3. Section 468.304, Florida Statutes, is amended to read:

468.304 Certification.—The department shall certify any applicant who meets the following criteria:

(1) Pays to the department a nonrefundable fee that may not exceed \$100, plus the actual per-applicant cost to the department for purchasing the examination from a national organization.

(2) Submits a completed application on a form specified by the department. An incomplete application expires 6 months after initial filing. The application must include the social security number of the applicant. Each applicant shall notify the department in writing of his or her current mailing address. Notwithstanding any other law, service by regular mail to an applicant's last reported mailing address constitutes adequate and sufficient notice of any official departmental communication to the applicant.

(3) Submits satisfactory evidence, verified by oath or affirmation, that she or he:

(a) Is at least 18 years of age at the time of application;

(b) Is a high school, vocational school, technical school, or college graduate or has successfully completed the requirements for a graduate equivalency diploma (GED) or its equivalent;

(c) Is of good moral character;

(d) Has passed an examination as specified in s. 468.306 or meets the requirements specified in s. 468.3065; and

(e)1. Has successfully completed an educational program,



936488

71 which program may be established in a hospital licensed pursuant
72 to chapter 395 or in an accredited postsecondary academic
73 institution which is subject to approval by the department as
74 maintaining a satisfactory standard; or

75 2.a. With respect to an applicant for a basic X-ray machine
76 operator's certificate, has completed a course of study approved
77 by the department with appropriate study material provided the
78 applicant by the department;

79 b. With respect to an applicant for a basic X-ray machine
80 operator-podiatric medicine certificate, has completed a course
81 of study approved by the department, if ~~provided that~~ such
82 course of study is ~~shall be~~ limited to the ~~that~~ information
83 necessary to perform radiographic procedures within the scope of
84 practice of a podiatric physician licensed pursuant to chapter
85 461;

86 c. With respect only to an applicant for a general
87 radiographer's certificate who is a basic X-ray machine operator
88 certificateholder, has completed an educational program or a 2-
89 year training program that takes into account the types of
90 procedures and level of supervision usually and customarily
91 practiced in a hospital, which educational or training program
92 complies with the rules of the department;

93 d. With respect only to an applicant for a nuclear medicine
94 technologist's certificate who is a general radiographer
95 certificateholder, has completed an educational program or a 2-
96 year training program that takes into account the types of
97 procedures and level of supervision usually and customarily
98 practiced in a hospital, which educational or training program
99 complies with the rules of the department; ~~or~~



936488

e. With respect to an applicant for a radiologist assistant's certificate, ~~who~~ demonstrates to the department that he or she holds a current certificate or registration as a radiologist assistant granted by the American Registry of Radiologic Technologists; ~~or-~~

f. With respect to an applicant for a specialty technologist's certificate, demonstrates to the department that he or she is currently certified by or registered with a national organization that is recognized by the department in an advanced, postprimary, or specialty area of radiologic technology, such as computed tomography or positron emission tomography.

(4) Submits complete documentation of any criminal offense in any jurisdiction of which the applicant has been found guilty, regardless of whether adjudication of guilt was withheld, or to which the applicant has pled guilty or nolo contendere.

(5) Submits complete documentation of any final disciplinary action taken against the applicant by a licensing or regulatory body in any jurisdiction, by a national organization, or by a specialty board that is recognized by the department. Disciplinary action includes revocation, suspension, probation, reprimand, or being otherwise acted against, including being denied certification or resigning from or nonrenewal of membership taken in lieu of or in settlement of a pending disciplinary case.

The department may not certify any applicant who has committed an offense that would constitute a violation of any of the



936488

provisions of s. 468.3101 or applicable ~~the rules adopted~~
~~thereunder~~ if the applicant had been certified by the department
at the time of the offense. An ~~No~~ application for a limited
computed tomography certificate may not ~~shall~~ be accepted. A
person ~~All persons~~ holding a valid computed tomography
certificate ~~certificates~~ as of October 1, 1984, is ~~are~~ subject
to ~~the provisions of~~ s. 468.309.

Section 4. Section 468.306, Florida Statutes, is amended to
read:

468.306 Examinations.—An applicant ~~All applicants~~ for
certification as a radiologic technologist, basic X-ray machine
operator, or basic X-ray machine operator-podiatric medicine,
except an applicant ~~those~~ certified pursuant to s. 468.3065,
shall be required to pass an examination. An applicant for
certification as a specialty technologist shall be certified
only in accordance with s. 468.3065. An application for
certification as a specialty technologist by examination may not
be accepted. In lieu of an examination for a radiologist
assistant certificate, the department shall accept a
demonstration by the applicant for such a certificate that he or
she holds a current certificate or registration as a radiologist
assistant granted by the American Registry of Radiologic
Technologists. The department may develop or use examinations
for each type of certificate. The department may require an
applicant who does not pass an examination after five attempts
to complete additional remedial education, as specified by rule
of the department, before admitting the applicant to subsequent
examinations.

(1) The department may contract with organizations that



936488

develop such test examinations. Examinations may be administered by the department or the contracting organization.

(2) Examinations shall be given for each type of certificate at least twice a year at such times and places as the department may determine to be advantageous for applicants.

(3) All examinations must ~~shall~~ be written and must include positioning, technique, and radiation protection. The department shall ~~either~~ pass or fail each applicant on the basis of his or her final grade. The examination for a basic X-ray machine operator must ~~shall~~ include basic positioning and basic techniques directly related to the skills necessary to safely operate radiographic equipment.

(4) A nonrefundable fee not to exceed \$75 plus the actual per-applicant cost for purchasing the examination from a national organization shall be charged for any subsequent examination.

Section 5. Subsection (3) is added to section 468.3065, Florida Statutes, to read:

468.3065 Certification by endorsement.—

(3) The department may issue a certificate by endorsement to practice as a specialty technologist to an applicant who, upon applying to the department and remitting a nonrefundable fee not to exceed \$100, demonstrates to the department that he or she holds a current certificate, license, or registration from a national organization that is recognized by the department to practice in an advanced, postprimary, or specialty area of radiologic technology, such as computed tomography or positron emission tomography.

Section 6. This act shall take effect July 1, 2012.



936488

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to radiological personnel; amending s.
468.301, F.S.; defining the term "specialty
technologist" as it relates to the certification of
radiological personnel; amending s. 468.302, F.S.;
providing titles for persons who hold a certificate as
a specialty technologist; authorizing a person holding
a certificate as a specialty technologist to perform
the specific duties allowed for a specialty
technologist as defined by the Department of Health;
requiring that the duties fall within the scope of
practice of the specialty as set by the national
organization for the particular advanced, postprimary,
or specialty area; amending s. 468.304, F.S.;
providing criteria for certification as a specialty
technologist; amending s. 468.306, F.S.; providing for
an applicant for certification as a specialty
technologist to be certified only by endorsement
rather than by examination; amending s. 468.3065,
F.S.; authorizing the department to issue a
certificate by endorsement to practice as a specialty
technologist to an applicant who meets certain
criteria; providing an effective date.



219596

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/12/2012	.	
	.	
	.	
	.	

The Committee on Health Regulation (Garcia) recommended the following:

Senate Substitute for Amendment (936488) (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (18) is added to section 468.301,
Florida Statutes, to read:

468.301 Definitions.—As used in this part, the term:
(18) "Specialty technologist" means a person, other than a
licensed practitioner, who is qualified by education and
certification, as set forth in s. 468.304, to use radiation on
human beings under the specific direction and general



219596

13 supervision of a licensed practitioner.

14 Section 2. Paragraph (h) is added to subsection (2) and
15 paragraph (i) is added to subsection (3) of section 468.302,
16 Florida Statutes, to read:

17 468.302 Use of radiation; identification of certified
18 persons; limitations; exceptions.—

19 (2)

20 (h) A person holding a certificate as a specialty
21 technologist may use the title "Certified Radiologic
22 Technologist-X" or the letters "CRT-X" after his or her name,
23 where "X" represents a single- or multiple-letter designation
24 signifying the advanced, postprimary, or specialty area of
25 radiologic technology, such as "CT" for computed tomography or
26 "PET" for positron emission tomography, in which the person is
27 certified by a national organization that is recognized by the
28 department. The department shall approve these letter
29 designations by rule for each area, consistent with the
30 designation used by the national organization.

31
32 No other person is entitled to so use a title or letters
33 contained in this subsection or to hold himself or herself out
34 in any way, whether orally or in writing, expressly or by
35 implication, as being so certified.

36 (3)

37 (i) A person holding a certificate as a specialty
38 technologist may perform the specific duties allowed for a
39 specialty technologist as defined by rule of the department.
40 These duties must fall within the scope of practice for the
41 specialty as set by the national organization for that



219596

particular advanced, postprimary, or specialty area.

Section 3. Section 468.303, Florida Statutes, is amended to read:

468.303 Rules.—

(1) The department may ~~is authorized to~~ make such rules, not inconsistent with law, as may be necessary to carry out the provisions of this part. The department may ~~is authorized to~~ establish by rule fees to be paid for application, examination, reexamination, certification, and renewal, and for recordmaking and recordkeeping, provided that no fee shall exceed the amounts provided in this part. Fees shall be based on department estimates of the revenue required to implement the provisions of this part. The department may, based upon estimates of revenue required to implement this part, establish separate fee schedules for application, examination, reexamination, certification, and renewal for the different categories of certification.

(2) The department may adopt rules for recognizing national organizations that certify, license, or register specialty technologists under educational and examination requirements that demonstrate technical and safety competencies for the scope of practice for that specialty.

Section 4. Section 468.304, Florida Statutes, is amended to read:

468.304 Certification.—The department shall certify any applicant who meets the following criteria:

(1) Pays to the department a nonrefundable fee that may not exceed \$100, plus the actual per-applicant cost to the department for purchasing the examination from a national



219596

organization.

(2) Submits a completed application on a form specified by the department. An incomplete application expires 6 months after initial filing. The application must include the social security number of the applicant. Each applicant shall notify the department in writing of his or her current mailing address. Notwithstanding any other law, service by regular mail to an applicant's last reported mailing address constitutes adequate and sufficient notice of any official departmental communication to the applicant.

(3) Submits satisfactory evidence, verified by oath or affirmation, that she or he:

(a) Is at least 18 years of age at the time of application;

(b) Is a high school, vocational school, technical school, or college graduate or has successfully completed the requirements for a graduate equivalency diploma (GED) or its equivalent;

(c) Is of good moral character;

(d) Has passed an examination as specified in s. 468.306 or meets the requirements specified in s. 468.3065; and

(e)1. Has successfully completed an educational program, which program may be established in a hospital licensed pursuant to chapter 395 or in an accredited postsecondary academic institution which is subject to approval by the department as maintaining a satisfactory standard; or

2.a. With respect to an applicant for a basic X-ray machine operator's certificate, has completed a course of study approved by the department with appropriate study material provided the applicant by the department;



219596

b. With respect to an applicant for a basic X-ray machine operator-podiatric medicine certificate, has completed a course of study approved by the department, ~~if provided that~~ such course of study ~~is shall be~~ limited to the ~~that~~ information necessary to perform radiographic procedures within the scope of practice of a podiatric physician licensed pursuant to chapter 461;

c. With respect only to an applicant for a general radiographer's certificate who is a basic X-ray machine operator certificateholder, has completed an educational program or a 2-year training program that takes into account the types of procedures and level of supervision usually and customarily practiced in a hospital, which educational or training program complies with the rules of the department;

d. With respect only to an applicant for a nuclear medicine technologist's certificate who is a general radiographer certificateholder, has completed an educational program or a 2-year training program that takes into account the types of procedures and level of supervision usually and customarily practiced in a hospital, which educational or training program complies with the rules of the department; ~~or~~

e. With respect to an applicant for a radiologist assistant's certificate, ~~who~~ demonstrates to the department that he or she holds a current certificate or registration as a radiologist assistant granted by the American Registry of Radiologic Technologists; ~~or~~

f. With respect to an applicant for a specialty technologist's certificate, demonstrates to the department that he or she is currently certified by or registered with a



219596

national organization that is recognized by the department in an
advanced, postprimary, or specialty area of radiologic
technology, such as computed tomography or positron emission
tomography.

(4) Submits complete documentation of any criminal offense
in any jurisdiction of which the applicant has been found
guilty, regardless of whether adjudication of guilt was
withheld, or to which the applicant has pled guilty or nolo
contendere.

(5) Submits complete documentation of any final
disciplinary action taken against the applicant by a licensing
or regulatory body in any jurisdiction, by a national
organization, or by a specialty board that is recognized by the
department. Disciplinary action includes revocation, suspension,
probation, reprimand, or being otherwise acted against,
including being denied certification or resigning from or
nonrenewal of membership taken in lieu of or in settlement of a
pending disciplinary case.

The department may not certify any applicant who has committed
an offense that would constitute a violation of any of the
provisions of s. 468.3101 or applicable ~~the rules adopted~~
~~thereunder~~ if the applicant had been certified by the department
at the time of the offense. An ~~No~~ application for a limited
computed tomography certificate may not ~~shall~~ be accepted. A
person ~~All persons~~ holding a valid computed tomography
certificate ~~certificates~~ as of October 1, 1984, is ~~are~~ subject
to ~~the provisions of~~ s. 468.309.

Section 5. Section 468.306, Florida Statutes, is amended to



219596

read:

468.306 Examinations.—An applicant ~~All applicants~~ for certification as a radiologic technologist, basic X-ray machine operator, or basic X-ray machine operator-podiatric medicine, except an applicant ~~those~~ certified pursuant to s. 468.3065, shall be required to pass an examination. An applicant for certification as a specialty technologist shall be certified only in accordance with s. 468.3065. An application for certification as a specialty technologist by examination may not be accepted. In lieu of an examination for a radiologist assistant certificate, the department shall accept a demonstration by the applicant for such a certificate that he or she holds a current certificate or registration as a radiologist assistant granted by the American Registry of Radiologic Technologists. The department may develop or use examinations for each type of certificate. The department may require an applicant who does not pass an examination after five attempts to complete additional remedial education, as specified by rule of the department, before admitting the applicant to subsequent examinations.

(1) The department may contract with organizations that develop such test examinations. Examinations may be administered by the department or the contracting organization.

(2) Examinations shall be given for each type of certificate at least twice a year at such times and places as the department may determine to be advantageous for applicants.

(3) All examinations must ~~shall~~ be written and must include positioning, technique, and radiation protection. The department shall ~~either~~ pass or fail each applicant on the basis of his or



219596

her final grade. The examination for a basic X-ray machine operator must ~~shall~~ include basic positioning and basic techniques directly related to the skills necessary to safely operate radiographic equipment.

(4) A nonrefundable fee not to exceed \$75 plus the actual per-applicant cost for purchasing the examination from a national organization shall be charged for any subsequent examination.

Section 6. Subsection (3) is added to section 468.3065, Florida Statutes, to read:

468.3065 Certification by endorsement.-

(3) The department may issue a certificate by endorsement to practice as a specialty technologist to an applicant who, upon applying to the department and remitting a nonrefundable fee not to exceed \$100, demonstrates to the department that he or she holds a current certificate, license, or registration from a national organization that is recognized by the department to practice in an advanced, postprimary, or specialty area of radiologic technology, such as computed tomography or positron emission tomography.

Section 7. This act shall take effect July 1, 2012.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to radiological personnel; amending s.
468.301, F.S.; defining the term "specialty



219596

technologist" as it relates to the certification of
radiological personnel; amending s. 468.302, F.S.;
providing titles for persons who hold a certificate as
a specialty technologist; authorizing a person holding
a certificate as a specialty technologist to perform
the specific duties allowed for a specialty
technologist as defined by the Department of Health;
requiring that the duties fall within the scope of
practice of the specialty as set by the national
organization for the particular advanced, postprimary,
or specialty area; amending s. 468.303, F.S.;
authorizing the Department of Health to adopt rules
for recognizing certain national organizations that
certify, license, or register specialty technologists;
amending s. 468.304, F.S.; providing criteria for
certification as a specialty technologist; amending s.
468.306, F.S.; providing for an applicant for
certification as a specialty technologist to be
certified only by endorsement rather than by
examination; amending s. 468.3065, F.S.; authorizing
the department to issue a certificate by endorsement
to practice as a specialty technologist to an
applicant who meets certain criteria; providing an
effective date.

By Senator Flores

38-00396A-12

2012376__

1 A bill to be entitled
 2 An act relating to radiological personnel; amending s.
 3 468.3003, F.S.; clarifying legislative policy;
 4 amending s. 468.301, F.S.; redefining the term
 5 "radiation" and defining the term "specialty
 6 technologist" as those terms relate to the
 7 certification of radiological personnel; amending s.
 8 468.302, F.S.; providing titles for persons who hold a
 9 certificate as a specialty technologist; authorizing a
 10 person holding a certificate as a specialty
 11 technologist to perform the specific duties allowed
 12 for a specialty technologist as defined by the
 13 Department of Health; requiring that the duties be
 14 consistent with the scope of practice of a national
 15 registry for the particular advanced, postprimary, or
 16 specialty area; amending s. 468.304, F.S.; providing
 17 criteria for certification as a specialty
 18 technologist; amending s. 468.306, F.S.; providing for
 19 an applicant for certification as a specialty
 20 technologist to be certified only by endorsement
 21 rather than by examination; amending s. 468.3065,
 22 F.S.; authorizing the department to issue a
 23 certificate by endorsement to practice as a specialty
 24 technologist to an applicant who meets certain
 25 criteria; providing an effective date.
 26
 27 Be It Enacted by the Legislature of the State of Florida:
 28
 29 Section 1. Section 468.3003, Florida Statutes, is amended

Page 1 of 7

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

38-00396A-12

2012376__

30 to read:
 31 468.3003 Declaration of policy.—It is declared to be the
 32 policy of the state that the health and safety of the people
 33 must be protected against the harmful effects of excessive and
 34 improper exposure to ~~ionizing~~ radiation. Such protection can in
 35 some major measure be accomplished by requiring adequate
 36 training and experience of persons who use radiation and
 37 radiation-emitting equipment in each particular case under the
 38 specific direction of licensed practitioners. It is the purpose
 39 of this part to establish standards of education, training, and
 40 experience and to require the examination and certification of
 41 users of radiation and radiation-emitting equipment.
 42 Section 2. Subsection (14) of section 468.301, Florida
 43 Statutes, is amended, and subsection (18) is added to that
 44 section, to read:
 45 468.301 Definitions.—As used in this part, the term:
 46 (14) "Radiation" means X rays and gamma rays, alpha and
 47 beta particles, high-speed electrons, neutrons, and other
 48 nuclear particles. The department may by rule add other types of
 49 radiation to this definition in order to accommodate changes in
 50 imaging or therapy technology or procedures.
 51 (18) "Specialty technologist" means a person, other than a
 52 licensed practitioner, who is qualified by education and
 53 certification, as set forth in s. 468.304, to use radiation on
 54 humans under the specific direction and general supervision of a
 55 licensed practitioner.
 56 Section 3. Paragraph (h) is added to subsection (2) and
 57 paragraph (i) is added to subsection (3) of section 468.302,
 58 Florida Statutes, to read:

Page 2 of 7

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

38-00396A-12

2012376

468.302 Use of radiation; identification of certified persons; limitations; exceptions.-

(2)

(h) A person holding a certificate as a specialty technologist may use the title "Certified Radiologic Technologist-X" or the letters "CRT-X" where "X" represents a single- or multiple-letter designation signifying the advanced, postprimary, or specialty area of radiologic technology, such as "CT" for computed tomography or "PET" for positron emission tomography, in which the person is certified by a national registry that is recognized by the department. The department shall approve these letter designations by rule for each area, consistent with the designation used by the national registry.

No other person is entitled to so use a title or letters contained in this subsection or to hold himself or herself out in any way, whether orally or in writing, expressly or by implication, as being so certified.

(3)

(i) A person holding a certificate as a specialty technologist may perform the specific duties allowed for a specialty technologist as defined by department by rule. These duties must be consistent with the scope of practice of the national registry for that particular advanced, postprimary, or specialty area.

Section 4. Subsection (3) of section 468.304, Florida Statutes, is amended to read:

468.304 Certification.-The department shall certify any applicant who meets the following criteria:

Page 3 of 7

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

38-00396A-12

2012376

(3) Submits satisfactory evidence, verified by oath or affirmation, that she or he:

(a) Is at least 18 years of age at the time of application;

(b) Is a high school, vocational school, technical school, or college graduate or has successfully completed the requirements for a graduate equivalency diploma (GED) or its equivalent;

(c) Is of good moral character;

(d) Has passed an examination as specified in s. 468.306 or meets the requirements specified in s. 468.3065; and

(e)1. Has successfully completed an educational program, which program may be established in a hospital licensed pursuant to chapter 395 or in an accredited postsecondary academic institution which is subject to approval by the department as maintaining a satisfactory standard; or

2.a. With respect to an applicant for a basic X-ray machine operator's certificate, has completed a course of study approved by the department with appropriate study material provided the applicant by the department;

b. With respect to an applicant for a basic X-ray machine operator-podiatric medicine certificate, has completed a course of study approved by the department, provided that such course of study shall be limited to that information necessary to perform radiographic procedures within the scope of practice of a podiatric physician licensed pursuant to chapter 461;

c. With respect only to an applicant for a general radiographer's certificate who is a basic X-ray machine operator certificateholder, has completed an educational program or a 2-year training program that takes into account the types of

Page 4 of 7

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

38-00396A-12 2012376

procedures and level of supervision usually and customarily practiced in a hospital, which educational or training program complies with the rules of the department;

d. With respect only to an applicant for a nuclear medicine technologist's certificate who is a general radiographer certificateholder, has completed an educational program or a 2-year training program that takes into account the types of procedures and level of supervision usually and customarily practiced in a hospital, which educational or training program complies with the rules of the department; ~~or~~

e. With respect to an applicant for a radiologist assistant's certificate who demonstrates to the department that he or she holds a current certificate or registration as a radiologist assistant granted by the American Registry of Radiologic Technologists; or-

f. With respect to an applicant for a specialty technologist's certificate, demonstrates to the department that he or she is currently certified or registered by a national registry that is recognized by the department in an advanced, postprimary, or specialty area of radiologic technology, such as computed tomography or positron emission tomography.

The department may not certify any applicant who has committed an offense that would constitute a violation of any of the provisions of s. 468.3101 or applicable the rules ~~adopted thereunder~~ if the applicant had been certified by the department at the time of the offense. An ~~No~~ application for a limited computed tomography certificate may not ~~shall~~ be accepted. A person ~~All persons~~ holding a valid computed tomography

38-00396A-12 2012376

certificate ~~certificates~~ as of October 1, 1984, is ~~are~~ subject to ~~the provisions of~~ s. 468.309.

Section 5. Section 468.306, Florida Statutes, is amended to read:

468.306 Examinations.-~~An applicant~~ All applicants for certification as a radiologic technologist, basic X-ray machine operator, or basic X-ray machine operator-podiatric medicine, except an applicant ~~these~~ certified pursuant to s. 468.3065, shall be required to pass an examination. An applicant for certification as a specialty technologist shall be certified only in accordance with s. 468.3065. An application for certification as a specialty technologist by examination may not be accepted. In lieu of an examination for a radiologist assistant certificate, the department shall accept a demonstration by the applicant for such a certificate that he or she holds a current certificate or registration as a radiologist assistant granted by the American Registry of Radiologic Technologists. The department may develop or use examinations for each type of certificate. The department may require an applicant who does not pass an examination after five attempts to complete additional remedial education, as specified by rule of the department, before admitting the applicant to subsequent examinations.

(1) The department may contract with organizations that develop such test examinations. Examinations may be administered by the department or the contracting organization.

(2) Examinations shall be given for each type of certificate at least twice a year at such times and places as the department may determine to be advantageous for applicants.

38-00396A-12

2012376__

(3) All examinations shall be written and include positioning, technique, and radiation protection. The department shall ~~either~~ pass or fail each applicant on the basis of his or her final grade. The examination for a basic X-ray machine operator ~~must~~ ~~shall~~ include basic positioning and basic techniques directly related to the skills necessary to safely operate radiographic equipment.

(4) A nonrefundable fee not to exceed \$75 plus the actual per-applicant cost for purchasing the examination from a national organization shall be charged for any subsequent examination.

Section 6. Subsection (3) is added to section 468.3065, Florida Statutes, to read:

468.3065 Certification by endorsement.—

(3) The department may issue a certificate by endorsement to practice as a specialty technologist to an applicant who, upon applying to the department and remitting a nonrefundable fee not to exceed \$100, demonstrates to the department that he or she holds a current certificate, license, or registration from a national registry that is recognized by the department to practice in an advanced, postprimary, or specialty area of radiologic technology, such as computed tomography or positron emission tomography, if the requirements for such certificate, license, or registration are deemed by the department to be substantially equivalent to those established under this part and rules adopted under this part.

Section 7. This act shall take effect July 1, 2012.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Budget
Budget - Subcommittee on Education Pre-K - 12
Appropriations
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability
Reapportionment
Rules

SENATOR ANITERE FLORES

Majority Whip
38th District

October 19, 2011

The Honorable Rene Garcia
Chair of Committee on Health Regulation
310 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Garcia:

I respectfully request that you place SB 376, regarding streamlining and modernizing certification of radiological personnel, on the next Committee on Health Regulation agenda.

I look forward to presenting this bill before your committee.

Please do not hesitate to contact me should you have any questions. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Anitere Flores".

Anitere Flores

CC: Ms. Sandra R. Stovall, Committee on Health Regulation, 530 Knott Building

A stamp consisting of a stylized graphic of a person's head and shoulders next to the word "ENTERED" in a bold, sans-serif font.

REPLY TO:

- ☐ 10691 North Kendall Drive, Suite 309, Miami, Florida 33176 (305) 270-6550
- ☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5130

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/12/12
Meeting Date

Topic Radiological Personnel

Bill Number SB 376
(if applicable)

Name Alison Dudley

Amendment Barcode _____
(if applicable)

Job Title President, AB Dudley & ASCS

Address P.O. Box 428
Street

Phone 850/556-6517

Tall Fla. 32302
City State Zip

E-mail alisondudley@dudleyand
associates.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Radiological Society

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/12/12

Meeting Date

Topic Radiological Technologists

Bill Number 376
(if applicable)

Name Michael Cantens

Amendment Barcode _____
(if applicable)

Job Title Analyst

Address 11062 Bald Cypress Way, Bin A01
Street
Tallahassee FL 32399
City State Zip

Phone _____

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Department of Health

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

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 Health Regulation Committee

BILL: CS/SB 478

INTRODUCER: Health Regulation Committee and Senator Margolis

SUBJECT: Department of Health

DATE: January 12, 2012

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. O'Callaghan	Stovall	HR	Fav/CS
2. _____	_____	BC	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This committee substitute (CS) for SB 478 repeals s. 381.00325, F.S., which requires the Department of Health (department) to develop a Hepatitis A awareness program. This program requires the department to work with private businesses and associations to develop the program and disseminate information to educate the public about, and the availability of, the Hepatitis A vaccine.

This CS repeals s. 381.00325, F.S.

II. Present Situation:

Hepatitis Awareness

The department is required under s. 381.00325, F.S., to develop a Hepatitis A awareness program and work with private businesses and associations to develop the program and disseminate information to educate the public about, and the availability of, the Hepatitis A vaccine. Under s. 381.003, F.S., the department is required to conduct a communicable disease prevention and control program as part of fulfilling its public health mission. The program is

required to include programs for the prevention and control of vaccine-preventable diseases, including Hepatitis A.

To fulfill the requirements of s. 381.00325 and s. 381.003, F.S., the department's Division of Disease Control administers a Hepatitis Prevention Program, which seeks to educate the public about Hepatitis A and Hepatitis B vaccines and recommends such vaccines.¹

The department's Hepatitis Prevention Program provides on its website a vaccine information statement from the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention which provides information about Hepatitis A and the Hepatitis A vaccine. The vaccine information statement explains that Hepatitis A is a serious liver disease caused by the Hepatitis A virus, which is found in the stool of people with hepatitis A and spread by close personal contact or by eating food or drinking water containing the virus. The symptoms of Hepatitis A include "flu-like" illness, jaundice (yellow skin or eyes and dark urine), and severe stomach pains and diarrhea in children. People with Hepatitis A often have to be hospitalized and adults with the virus are often too ill to work for up to a month. Hepatitis A can also cause death, but can be prevented with a vaccine.²

Under the department's Hepatitis Prevention Program, the department:

- Provides Hepatitis A and B vaccines each year to over 30,000 at-risk adults who are 18 years of age or older.
- Provides Hepatitis A, B and C panel tests to more than 29,000 at-risk adults each year.
- Provides referrals for treatment for infected individuals.
- Directly funds 15 county health departments for specific Hepatitis prevention programs (Miami-Dade, Collier, Monroe, Pinellas, Polk, Broward, Escambia, Lee, Seminole, Okeechobee, Palm Beach, Bay, Alachua, Duval, and Orange counties).
- Collects and analyzes surveillance data based on reported cases of viral Hepatitis.
- Distributes educational information materials.
- Oversees the Viral Hepatitis Council, which is made up of county health department and non-governmental community members who advise the Hepatitis Prevention Program and write a comprehensive plan.
- Provides technical assistance, training, and quality assurance.
- Provides webinar training to all healthcare providers and any interested groups or individuals.
- Collects and analyzes client risk assessment and other data.³

¹ Florida Department of Health, Division of Disease Control, *Hepatitis Prevention Program: Hepatitis Vaccine and Laboratory Testing*, available at: http://www.doh.state.fl.us/disease_ctrl/aids/hep/index.html (Last visited on January 6, 2012).

² U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Vaccine Information Statement, Hepatitis A Vaccine, *What You Need to Know*, available at: <http://www.cdc.gov/vaccines/pubs/vis/downloads/vis-hep-a.pdf> (Last visited on January 6, 2012). Additional information about Hepatitis A is provided on the department's website at: http://www.doh.state.fl.us/disease_ctrl/aids/hep/hep_a.htm (Last visited on January 6, 2012).

³ Department of Health, *Bill Analysis, Economic Statement and Fiscal Note: SB 478*, December 7, 2011, on file with the Health Regulation Committee.

III. Effect of Proposed Changes:

This CS repeals s. 381.00325, F.S., which requires the department to develop a Hepatitis A awareness program. This program requires the department to work with private businesses and associations to develop the program and disseminate information to educate the public about, and the availability of, the Hepatitis A vaccine.

The department reports that, even if the Hepatitis A awareness program under s. 381.00325, F.S., is repealed, the department will continue to provide education and outreach of the Hepatitis A vaccine under the authority of s. 381.003(1)(e), F.S. Therefore, the repeal of s. 381.00325, F.S., will have minimal impact on the department.⁴

The effective date of the CS is July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this CS have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this CS have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this CS have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

⁴ Department of Health, *Bill Analysis, Economic Statement and Fiscal Note: SB 478*, December 7, 2011, on file with the Health Regulation Committee.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Health Regulation on January 12, 2012:

The CS differs from the bill in that it removes the repeal of the Public Cord Blood Tissue Bank by removing the repeal of s. 381.06015, F.S.

- B. **Amendments:**

None.



524698

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/12/2012	.	
	.	
	.	
	.	

The Committee on Health Regulation (Sobel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 381.00325, Florida Statutes, is
repealed.

Section 2. This act shall take effect July 1, 2012.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:



524698

13
14
15
16
17

A bill to be entitled
An act relating to the Department of Health; repealing
s. 381.00325, F.S., relating to department
authorization for the development of a Hepatitis A
awareness program; providing an effective date.

By Senator Margolis

35-00582-12

2012478__

A bill to be entitled

An act relating to the Department of Health; repealing
s. 381.00325, F.S., relating to department
authorization for the development of a Hepatitis A
awareness program; repealing s. 381.06015, F.S.,
relating to the establishment of a statewide
consortium known as the Public Cord Blood Tissue Bank;
providing an effective date.

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

Section 1. Sections 381.00325 and 381.06015, Florida
Statutes, are repealed.

Section 2. This act shall take effect July 1, 2012.



The Florida Senate

Committee Agenda Request

To: Senator Rene Garcia, Chair
Committee on Health Regulation

Subject: Committee Agenda Request

Date: November 28, 2011

I respectfully request that **478**, relating to Department of Health, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

Senator Gwen Margolis

Senator Gwen Margolis
Florida Senate, District 35

 ENTERED

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 Health Regulation Committee

BILL: SB 480

INTRODUCER: Senator Dean

SUBJECT: Mobile Home and Recreational Vehicle Parks

DATE: January 5, 2012

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. O'Callaghan	Stovall	HR	Favorable
2. _____	_____	CA	_____
3. _____	_____	BC	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

I. Summary:

The bill establishes uniform standards within ch. 513, F.S., for which the Department of Health (department) is responsible for administering and enforcing. Local government regulations may not be inconsistent with these standards. The bill also establishes a department review and approval process for the construction of a new mobile home park, lodging park, recreational vehicle park, or recreational camp; or certain changes to an existing park or camp. The bill creates standards for separation distances between recreational vehicles and setback distances from the exterior property boundary of recreational vehicle parks.

The bill also revises the responsibilities of a recreational vehicle park operator in relation to personal property that is left on the premises and provides a criminal penalty for when a person fails to depart from a recreational vehicle park under certain conditions.

The bill substantially amends the following sections of the Florida Statutes: 513.01, 513.012, 513.014, 513.02, 513.03, 513.045, 513.05, 513.054, 513.055, 513.10, 513.112, 513.115, and 513.13.

This bill creates s. 513.1115, F.S., and repeals s. 513.111, F.S.

II. Present Situation:

The department is required under s. 381.006, F.S., to conduct an environmental health program as part of fulfilling the state's public health mission. The mission of the environmental health program is to detect and prevent disease caused by natural and manmade factors in the

environment. The environmental health program includes the oversight of mobile home parks, lodging parks, recreational vehicle parks, and recreational camps, as provided in ch. 513, F.S.¹

Chapter 513, F.S., provides that the department is the exclusive regulatory and permitting authority for sanitary standards for all mobile home parks, lodging parks, recreational vehicle parks and recreational camps.² In addition to permit and sanitation requirements, ch. 513, F.S., requires each recreational vehicle park renting by the day or week to post its rates, regulates the manner in which the rates are advertised, and requires each operator of a recreational vehicle park to maintain a guest register and a copy of ch. 513, F.S.

Chapter 513, F.S., also provides for:

- The operator of a recreational vehicle park's liability;
- The disposition of unclaimed property;
- The establishment of park rules and regulations;
- The right of a park operator to refuse accommodations or service in certain circumstances;
- Criminal penalties for persons obtaining park accommodations through fraud;
- Criminal penalties for theft of property belonging to the park;
- The eviction of transient guests; and
- Writs of distress.³

Pursuant to s. 513.05, F.S.,⁴ the department has adopted rules in Chapter 64E-15, Florida Administrative Code (F.A.C.), pertaining to: minimum area requirements, water supply, sewage disposal, sanitary facilities, plumbing, garbage and refuse disposal, insect and rodent control, recreational camp standards, permits and fees, and owner's and operator's responsibilities.⁵

The Mobile Home and Recreational Vehicle Parks Program is administered within the department by the Division of Environmental Health. The program's primary objective is to minimize the risk of injury and illness by conducting routine inspections of parks and camps. The inspections focus on proper sewage disposal, safe drinking water, safe solid waste collection and disposal, and safe and disease-free swimming pools (where provided) to minimize the risk of certain diseases and minimize infestations of harmful insects and rodents. The county health departments are responsible for receiving and investigating environmental health and sanitation complaints; they also conduct routine inspections, plan reviews, educational programs, investigations, complaints, and enforcement actions.⁶

¹ Section 381.006(14), F.S.

² Section 513.051, F.S.

³ According to s. 83.12, F.S., "a distress writ shall be issued by a judge of the court which has jurisdiction of the amount claimed. The writ shall enjoin the defendant from damaging, disposing of, secreting, or removing any property liable to distress from the rented real property after the time of service of the writ until the sheriff levies on the property, the writ is vacated, or the court otherwise orders." Section 513.151, F.S., authorizes an operator of a recreational vehicle park to levy a lien against the property of a guest if a guest vacates the premises with an outstanding account.

⁴ See s. 513.05, F.S., "The department may adopt rules pertaining to the location, construction, modification, equipment, and operation of mobile home parks, lodging parks, recreational vehicle parks, and recreational vehicle camps... as necessary to administer this chapter."

⁵ See 64E-15.002-15.008, F.A.C.

⁶ The Department of Health, Division of Environmental Health, *Mobile Home and Recreational Vehicle Park Program*, available at: <<http://www.doh.state.fl.us/environment/community/mobile/index.html>> (Last visited on January 4, 2012).

The department's enforcement actions may include citations, fines, or suspension or revocation of an operating permit.⁷ However, the department may only use a single enforcement procedure for any one violation.⁸ Certain violations of ch. 513, F.S., are also subject to criminal penalties.⁹

Currently, there are approximately 5,600 mobile home parks, lodging parks, recreational vehicle parks, and recreational camps in Florida.¹⁰ Permits for mobile home parks, lodging parks, recreational vehicle parks, and recreational camps are issued annually by the department under s. 513.02, F.S. Section 513.045, F.S., sets the permissible statutory range for permit fees at \$3.50-\$6.50 per space, and the total assessed fee at no less than \$50 or more than \$600, annually.¹¹ Permit fees are set by department rule at \$4 per space and cumulatively not less than \$100 or more than \$600 annually.¹²

Certain local governments have adopted ordinances with definitions of terms that conflict with the definition of terms under ch. 513, F.S. For example, Charlotte County¹³ has adopted an ordinance that defines a "mobile home" as a vehicle exceeding 8 feet in width and 32 feet in overall length, which contradicts the definition of the term mobile home in s. 513.01(3), F.S., which defines a mobile home as a residential structure that is 8 body feet (2.4 meters) or more in width and over 35 feet in length with the hitch. Volusia County¹⁴ defines a "recreational vehicle" as a unit built on a single chassis, not exceeding 400 square feet, designed to be self-propelled or towed by a light-duty truck, and intended only for temporary occupancy. In contrast, the definition of recreational vehicle in s. 513.01(9), F.S.,¹⁵ provides for different length and width requirements,¹⁶ the period of occupancy, and the storage and tying down of such vehicles.

III. Effect of Proposed Changes:

Section 1 amends s. 513.01, F.S., to revise the definition of "mobile home" and to define "occupancy." The definition of "mobile home" is modified to exclude a structure originally sold as a recreational vehicle. The term "occupancy" is defined to mean the length of time that a recreational vehicle is occupied by a transient guest and not the length of time that the vehicle is located on the leased recreational site. This definition also provides that certain tie-downs and removable attaching devices do not render the recreational vehicle a permanent part of the site.

⁷ Sections 513.055 and 513.065, F.S.

⁸ Section 513.065(6), F.S.

⁹ Sections 513.054 (second-degree misdemeanor for specified offenses by an operator of a camp or park), 513.10 (second-degree misdemeanor for operating without a permit), 513.111 (second-degree misdemeanor for an advertising violation), and 513.122, F.S. (third-degree felony for theft of guest property by park employee).

¹⁰ Mobile Home/RV Park Listing, Department of Health, Division of Environmental Health, *Mobile Home and Recreational Vehicle Park Program*, available at: <http://www.doh.state.fl.us/environment/community/mobile/index.html>. (Last visited on January 4, 2012).

¹¹ Section 513.045, F.S.

¹² Rule 64E-15.010, F.A.C.

¹³ Ordinances of Charlotte County, Florida, Part III: *Land Development and Growth Management*, Ch. 3-4 "Mobile Homes," S. 3-4-1, "Definitions," available at: http://library.municode.com/HTML/10526/level2/PTIILADEGRMA_CH3-4MOHO.html#PTIILADEGRMA_CH3-4MOHO_S3-4-1DE (Last visited on January 4, 2012).

¹⁴ Volusia County Code of Ordinances, Ch. 72: *Land Planning*, "Definitions," available at: <http://library.municode.com/index.aspx?clientid=11665> (Last visited on January 4, 2012).

¹⁵ Section 513.01(9), F.S., refers to the definition of "recreational vehicle-type unit" in s. 320.01, F.S.

¹⁶ See s. 316.515, F.S.

Section 2 amends s. 513.012, F.S., to specify that the department is responsible for administering and enforcing uniform laws under ch. 513, F.S. Subsection (2) is created to establish uniform standards, which must include:

- The design, location, and site sizes for sites in parks and camps;
- Sanitary standards for permitting and the operation of parks and camps;
- Permitting of parks and camps as required by ch. 513, F.S.;
- Inspection of parks and camps to enforce compliance with ch. 513, F.S.; and
- Permit requirements.

The bill also creates subsection (3) to establish that ch. 513, F.S., provides the uniform standards pertaining to:

- The liability for property of guests left on sites;
- Separation and setback distances established at the time of approval;
- Unclaimed property;
- Conduct of transient guests;
- Theft of personal property;
- Evictions of transient guests;
- Writs of distress;
- The maintenance of guest registers;
- Occupancy standards for transient rentals; and
- Placement of recreational vehicles by size and type.

Subsection (4) is created to require that local government actions, ordinances, and resolutions be consistent with the uniform standards provided under ch. 513, F.S., and by department rule. However, the bill does not limit the authority of local governments to adopt and enforce local land use, building, fire safety, and other regulations.

Section 3 amends s. 513.014, F.S., to remove a redundant provision that a mobile home park that rents spaces to recreational vehicles for long-term leases, must comply with the laws and rules relating to mobile home parks in ch. 723, F.S.

Section 4 amends s. 513.02, F.S., to require a person, who operates or maintains a mobile home park, lodging park, recreational vehicle park, or recreational camp, to have the department review and approve new construction or changes to the park or camp, which require the construction of new sanitary facilities or additional permitted sites, prior to the commencement of such activities. The department shall identify by rule the procedures and items required to be submitted for review and approval.

The bill designates the permit referred to in current law as an *operating* permit. Inconsistent references to transferring permits are eliminated because permits are not transferrable, pursuant to s. 513.02, F.S. The bill requires a purchaser, who continues to operate the park or camp, to apply for an operating permit within 30 days after the date of sale, rather than before the date of the sale.

The bill authorizes a person to submit plans related to a proposed park or camp to the department for review for an assessment of whether the plans meet the requirements of ch. 513, F.S. A person constructing a new park or camp or adding spaces or renovating an existing park or camp is required to submit plans to the department for review and approval prior to construction, renovation, or addition of spaces.

Section 5 amends s. 513.03, F.S., to require additional information that must be submitted in an application for an operating permit. The additional information must include the number of buildings and sites set aside for group camping, including barracks, cabins, cottages, and tent spaces. The department is required to issue the necessary approval or operating permit, after reviewing the application, conducting an inspection, and determining that the park or camp is not a source of danger to the health of the general public and the park or camp complies with the requirements of ch. 513, F.S.

Section 6 amends s. 513.045, F.S., to clarify language related to the fees imposed for the operating permit. Obsolete language is repealed because the department has adopted rules setting the required fee amounts.

Section 7 amends s. 513.05, F.S., to clarify the department's authority to adopt rules related to reviewing plans that consolidate or expand space or capacity of parks or camps.

Section 8 amends s. 513.054, F.S., to clarify that a person who does not obtain an *operating* permit for a mobile home park, lodging park, recreational vehicle park, or recreational camp or refuses to pay the *operating* permit fee commits a misdemeanor of the second degree.

Section 9 amends s. 513.055, F.S., to clarify that the permit referred to in this section related to the revocation or suspension of a permit applies to an *operating* permit.

Section 10 amends s. 513.10, F.S., to clarify that a person who maintains or operates a mobile home park, lodging park, recreational vehicle park, or recreational camp without first obtaining an *operating* permit or who maintains or operates a park or camp after revocation of the operating permit commits a misdemeanor of the second degree.

Section 11 repeals s. 513.111, F.S., which provides posting or publishing requirements of site rates for a recreational vehicle park that rents by the day or week, certain advertising requirements for recreational vehicle parks, and criminal penalties for those who violate the posting, publishing, or advertising requirements.

Section 12 creates s. 513.1115, F.S., to require the separation distances between recreational vehicles and the setback distances from the exterior property boundary of a recreational vehicle park to be maintained at the distances and setback distances established at the time of the initial approval of the recreational vehicle park by the department and local government. The bill specifies that the separation distance and setback distance requirements provided for in this section do not limit the regulation of the uniform fire safety standards under s. 633.022, F.S.

Section 13 amends s. 513.112, F.S., to eliminate the requirement that the guest registry of a recreational vehicle park must be made available to the department for inspection.

Section 14 amends s. 513.115, F.S., to authorize an operator of a recreational vehicle park to dispose of property unclaimed for 90 days by a guest who has vacated the premises without notice to the operator and who has an outstanding account. An owner of a park is no longer required to provide written notice to any guest or owner of property left at the park prior to disposing of the property. However, the property still must be held by the park for 90 days prior to disposal. The bill specifies that any titled property, including a boat, recreational vehicle, or other vehicle, must be disposed of in accordance with the requirements of ch. 715, F.S.

Section 15 amends s. 513.13, F.S., to provide that if an operator of a recreational vehicle park notifies a person to leave the park for a permissible reason, by either posting or personal delivery, in the presence of a law enforcement officer, and the person fails to depart from the park immediately, the person commits a misdemeanor of the second degree. Pursuant to current subsection (1) of s. 513.13, F.S., permissible reasons for removal include: possessing or dealing in controlled substances, disturbing the peace and comfort of other persons, causing harm to the physical park, or failing to pay the rental rate as agreed.

A recreational vehicle park operator is not liable for damages to personal property left on the premises by a guest who has been arrested for possessing or dealing in controlled substances, disturbing the peace and comfort of other persons, causing harm to the physical park, or failing to pay the rental rate as agreed or for the failure to leave the park after being notified to leave for a permissible reason.

Section 16 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The bill removes obsolete language pertaining to interim fees and clarifies that the existing fee structure applies to *an annual operating* permit. There are no provisions for the late payment of the annual operating permit fee.

B. Private Sector Impact:

The bill affects newly constructed parks and camps, existing parks or camps that will be expanded, and parks and camps that do not submit the required fees. The uniform standards related to design, operation, and occupancy imposed by the bill could minimize negative fiscal impacts to the industry which result from existing inconsistent local government rules.

C. Government Sector Impact:

The bill requires the department to adopt administrative rules and implement new requirements. The department states that this bill will have a fiscal impact on the department associated with rule amendments and implementing requirements. The department estimates that it will incur estimated expenditures of \$4,158, which will be absorbed by the department using existing resources.¹⁷

VI. Technical Deficiencies:

The terms “spaces” and “sites” seem to be used interchangeably. It may provide clarity and consistency to use and define one term.

VII. Related Issues:

As the department points out in their analysis of the bill,¹⁸ there appears to be an internal conflict in the bill. Lines 168-172 seem to allow a person, who purchases a recreation vehicle park or camp, to operate the park or camp up to 30 days without an operating permit. However, lines 296-302 provide penalties for operating a park or camp without a permit.

Another inconsistency appears to be in lines 168-175 of the bill. Lines 172-175 require an applicant for a permit to provide the department with a copy of a recorded deed *or lease agreement* before the department may issue an operating permit. Lines 168-172 require a purchaser of a camp or park to apply for an operating permit within a certain time from the date of sale, but the bill is silent as to the application requirements when a park or camp is leased. Additionally, the bill does not contemplate circumstances under which property rights might be inherited.

¹⁷ Department of Health, *Agency Bill Analysis, Economic Statement and Fiscal Note: SB 480*, p. 8 (December 7, 2011) (on file with the Senate Committee on Health Regulation).

¹⁸ Department of Health, *Agency Bill Analysis, Economic Statement and Fiscal Note: SB 480*, p. 12 (December 7, 2011) (on file with the Senate Committee on Health Regulation).

Lines 310 and 315 seem to indicate that local governments, in addition to the department, must provide initial approval of the recreational vehicle park. However, lines 176-183 only provide for initial approval of parks by the department.

The language in lines 63-70 is currently provided for in the definition of the term “recreational vehicle” under s. 513.01, F.S. Therefore, it appears that inclusion of this language under the definition of the term “occupancy” is redundant.

VIII. Additional Information:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

By Senator Dean

3-00453-12

2012480__

1 A bill to be entitled
 2 An act relating to mobile home and recreational
 3 vehicle parks; amending s. 513.01, F.S.; providing and
 4 revising definitions; amending s. 513.012, F.S.;
 5 specifying laws and rules to be enforced by the
 6 Department of Health; providing for the adoption of
 7 rules; amending s. 513.014, F.S.; revising
 8 applicability of recreational vehicle park
 9 requirements to mobile home parks; amending s. 513.02,
 10 F.S.; revising permit requirements; providing
 11 requirements for construction review and approval for
 12 private parks and camps; requiring the department to
 13 adopt rules; amending s. 513.03, F.S.; revising
 14 requirements for permit applications; amending s.
 15 513.045, F.S.; providing for an annual operating
 16 permit fee to be charged to operators of certain parks
 17 or camps; amending s. 513.05, F.S.; providing the
 18 department with additional rulemaking authority;
 19 amending s. 513.054, F.S.; providing that an operator
 20 of a mobile home park, lodging park, recreational
 21 vehicle park, or recreational camp who refuses to pay
 22 the operating permit fee required by law or who fails,
 23 neglects, or refuses to obtain an operating permit for
 24 the park commits a misdemeanor of the second degree;
 25 amending s. 513.055, F.S.; conforming terminology;
 26 amending s. 513.10, F.S.; providing that a person who
 27 operates a mobile home park, lodging park,
 28 recreational vehicle park, or recreational camp
 29 without an operating permit commits a misdemeanor of

Page 1 of 14

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

3-00453-12

2012480__

30 the second degree; repealing s. 513.111, F.S.,
 31 relating to the posting and advertising of certain
 32 site rates; creating s. 513.1115, F.S.; providing
 33 requirements for the establishment of separation and
 34 setback distances; amending s. 513.112, F.S.; deleting
 35 a provision requiring guest registers to be made
 36 available for inspection by the department at any
 37 time; amending s. 513.115, F.S.; revising requirements
 38 for the handling of unclaimed property; amending s.
 39 513.13, F.S.; providing a penalty for failure to
 40 depart from a park under certain circumstances;
 41 barring an operator from certain liability; providing
 42 an effective date.

43
 44 Be It Enacted by the Legislature of the State of Florida:

45
 46 Section 1. Subsection (3) of section 513.01, Florida
 47 Statutes, is amended, present subsections (5) through (11) of
 48 that section are renumbered as subsections (6) through (12),
 49 respectively, and a new subsection (5) is added to that section,
 50 to read:

51 513.01 Definitions.—As used in this chapter, the term:

52 (3) "Mobile home" means a residential structure that is
 53 transportable in one or more sections, which structure is 8 body
 54 feet (2.4 meters) or more in width, over 35 feet in length with
 55 the hitch, built on an integral chassis, ~~and~~ designed to be used
 56 as a dwelling when connected to the required utilities, and not
 57 originally sold as a recreational vehicle, and includes the
 58 plumbing, heating, air-conditioning, and electrical systems

Page 2 of 14

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

3-00453-12

2012480

59 contained in the structure.

60 (5) "Occupancy" means the length of time that a
61 recreational vehicle is occupied by a transient guest and not
62 the length of time that such vehicle is located on the leased
63 recreational vehicle site. A recreational vehicle may be stored
64 and tied down on site when not in use to accommodate the needs
65 of the guest. The attachment of a recreational vehicle to the
66 ground by way of tie-downs or other removable fasteners, and the
67 attachment of carports, porches, screen rooms, and similar
68 appurtenances by way of removable attaching devices, do not
69 render the recreational vehicle a permanent part of the
70 recreational vehicle site.

71 Section 2. Section 513.012, Florida Statutes, is amended to
72 read:

73 513.012 Public health laws; enforcement.—

74 (1) It is the intent of the Legislature that mobile home
75 parks, lodging parks, recreational vehicle parks, and
76 recreational camps be regulated under this chapter. As such, the
77 department shall administer and enforce, with respect to such
78 parks and camps, uniform laws and rules relating to sanitation,
79 control of communicable diseases, illnesses and hazards to
80 health among humans and from animals to humans, and the general
81 health of the people of the state.

82 (2) This chapter establishes uniform standards to be
83 administered and enforced by the department for the issuing of
84 permits for, and the operation of, mobile home parks, lodging
85 parks, recreational vehicle parks, and recreational camps, which
86 include:

87 (a) The design, location, and site sizes for sites in parks

3-00453-12

2012480

88 and camps;

89 (b) Sanitary standards for the issuing of permits for, and
90 the operation of, parks and camps;

91 (c) The issuing of permits for parks and camps as required
92 by this chapter;

93 (d) The inspection of parks and camps to enforce compliance
94 with this chapter; and

95 (e) Permit requirements.

96 (3) This chapter establishes uniform standards for
97 recreational vehicle parks and camps which apply to:

98 (a) The liability for property of guests left on sites;

99 (b) Separation and setback distances established at the
100 time of initial approval;

101 (c) Unclaimed property;

102 (d) Conduct of transient guests;

103 (e) Theft of personal property;

104 (f) Evictions of transient guests;

105 (g) Writs of distress;

106 (h) The maintenance of guest registers;

107 (i) Occupancy standards for transient rentals; and

108 (j) Placement of recreational vehicles by size and type.

109 (4) Local governmental actions, ordinances, and resolutions
110 must be consistent with the uniform standards established
111 pursuant to this chapter and as implemented by rules of the
112 department. This chapter does not limit the authority of a local
113 government to adopt and enforce land use, building, firesafety,
114 and other regulations.

115 (5) However, nothing in this chapter qualifies a mobile
116 home park, a lodging park, a recreational vehicle park, or a

3-00453-12 2012480

recreational camp for a liquor license issued under s.
561.20(2)(a)1. Mobile home parks, lodging parks, recreational
vehicle parks, and recreational camps regulated under this
chapter are exempt from regulation under the provisions of
chapter 509.

Section 3. Section 513.014, Florida Statutes, is amended to
read:

513.014 Applicability of recreational vehicle park
provisions to mobile home parks.—A mobile home park that has
five or more sites set aside for recreational vehicles shall,
for those sites set aside for recreational vehicles, comply with
the recreational vehicle park requirements included in this
chapter. This section does not require a mobile home park with
spaces set aside for recreational vehicles to obtain two
licenses. ~~However, a mobile home park that rents spaces to~~
~~recreational vehicles on the basis of long-term leases is~~
~~required to comply with the laws and rules relating to mobile~~
~~home parks including but not limited to chapter 723, if~~
~~applicable.~~

Section 4. Section 513.02, Florida Statutes, is amended to
read:

513.02 Permits ~~Permit~~.—

(1) A person may not establish or maintain a mobile home
park, lodging park, recreational vehicle park, or recreational
camp in this state without first obtaining an operating a permit
from the department. ~~Such permit is not transferable from one~~
~~place or person to another. Each permit must be renewed~~
~~annually.~~

(2) Before the commencement of construction of a new park

3-00453-12 2012480

or camp or before any change to an existing park or camp which
requires construction of new sanitary facilities or additional
permitted sites, a person who operates or maintains such park or
camp must contact the department to receive a review and
approval. The items required to be submitted and the process for
issuing a review and approval shall be set by department rule.

(3)(a) An operating permit is not transferable from one
place or person to another. Each permit must be renewed
annually.

(b)(2) The department may refuse to issue an operating a
permit to, or refuse to renew the operating permit of, any park
or camp that is not constructed or maintained in accordance with
law and with the rules of the department.

(c)(3) The department may suspend or revoke an operating a
permit issued to any person that operates or maintains such a
park or camp if such person fails to comply with this chapter or
the rules adopted by the department under this chapter.

(d)(4) An operating A permit for the ~~operation of~~ a park or
camp may not be renewed ~~or transferred~~ if the permittee has an
outstanding fine assessed pursuant to this chapter which is in
final-order status and judicial reviews are exhausted, ~~unless~~
~~the transferee agrees to assume the outstanding fine.~~

(e)(5) When a park or camp regulated under this chapter is
sold ~~or its ownership transferred~~, the purchaser who continues
operation of the park or camp transferee must apply to the
department for an operating a permit within 30 days after to the
~~department before~~ the date of sale transfer. The applicant must
provide the department with a copy of the recorded deed or lease
agreement before the department may issue an operating a permit

3-00453-12

2012480

to the applicant.

(4) Each person seeking department review of plans for a proposed park or camp may submit the plans to the department for an assessment of whether the plans meet the requirements of this chapter and the rules.

(5) Each person constructing a new park or camp or adding spaces to an existing park or camp must, before the construction, renovation, or addition, submit plans to the department for department review and approval.

Section 5. Section 513.03, Florida Statutes, is amended to read:

513.03 Application for and issuance of permit.—

(1) An application for an operating a permit must be made in writing to the department, on a form prescribed by the department. The application must state the location of the existing or proposed park or camp; the type of park or camp; the number of mobile homes or recreational vehicles to be accommodated; the number of recreational campsites, buildings, and sites set aside for group camping, including barracks, cabins, cottages, and tent spaces; the type of water supply; the method of sewage disposal; and any other information the department requires.

(2) If the department is satisfied, after reviewing the application of the proposed or existing park or camp and causing an inspection to be made, that the park or camp complies with this chapter and is so located, constructed, and equipped as not to be a source of danger to the health of the general public, the department shall issue the necessary approval or operating permit, in writing, on a form prescribed by the department.

3-00453-12

2012480

Section 6. Subsection (1) of section 513.045, Florida Statutes, is amended to read:

513.045 Permit fees.—

(1) (a) Each person seeking a permit to establish, operate, or maintain a mobile home park, lodging park, recreational vehicle park, or recreational camp must pay to the department a fee, the amount of which shall be set by rule of the department.

(b) Fees established pursuant to this subsection must be based on the actual costs incurred by the department in carrying out its responsibilities under this chapter.

(c) The fee for an annual operating a permit may not be set at a rate that is more than \$6.50 per space or less than \$3.50 per space. ~~Until rules setting these fees are adopted by the department, the permit fee per space is \$3.50.~~ The annual operating permit fee for a nonexempt recreational camp shall be based on an equivalency rate for which two camp occupants equal one space. The total fee assessed to an applicant for an annual operating permit may not be more than \$600 or less than \$50, except that a fee may be prorated on a quarterly basis.

(d) ~~(e)~~ A recreational camp operated by a civic, fraternal, educational, or religious organization that does not rent to the public is exempt from the fee requirements of this subsection.

Section 7. Section 513.05, Florida Statutes, is amended to read:

513.05 Rules.—The department may adopt rules pertaining to the location, construction, modification, equipment, and operation of mobile home parks, lodging parks, recreational vehicle parks, and recreational camps, except as provided in s. 633.022, as necessary to administer this chapter, pursuant to

3-00453-12

2012480

the provisions of this chapter and s. 381.006. Such rules may include definitions of terms; requirements for plan reviews of proposed and existing parks and camps; plan reviews of parks that consolidate or expand space or capacity or change space size; water supply; sewage collection and disposal; plumbing and backflow prevention; garbage and refuse storage, collection, and disposal; insect and rodent control; space requirements; heating facilities; food service; lighting; sanitary facilities; bedding; an occupancy equivalency to spaces for permits for recreational camps; sanitary facilities in recreational vehicle parks; and the owners' responsibilities at recreational vehicle parks and recreational camps.

Section 8. Section 513.054, Florida Statutes, is amended to read:

513.054 Penalties for specified offenses by operator.—

(1) Any operator of a mobile home park, lodging park, ~~or~~ recreational vehicle park, or a recreational camp who obstructs or hinders any agent of the department in the proper discharge of the agent's duties; who fails, neglects, or refuses to obtain an operating a permit for the park or camp or refuses to pay the operating permit fee required by law; or who fails or refuses to perform any duty imposed upon the operator by law or rule ~~commits is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) On each day that such park or camp is operated in violation of law or rule, there is a separate offense.

Section 9. Section 513.055, Florida Statutes, is amended to read:

513.055 Revocation or suspension of operating permit;

3-00453-12

2012480

finest; procedure.—

(1) (a) The department may suspend or revoke an operating a permit issued to any person for a mobile home park, lodging park, recreational vehicle park, or recreational camp upon the failure of that person to comply with this chapter or the rules adopted under this chapter.

(b) An operating A permit may not be suspended under this section for a period of more than 12 months. At the end of the period of suspension, the permittee may apply for reinstatement or renewal of the operating permit. A person whose operating permit is revoked may not apply for another operating permit for that location before ~~prior to~~ the date on which the revoked operating permit would otherwise have expired.

(2) (a) In lieu of such suspension or revocation of an operating a permit, the department may impose a fine against a permittee for the permittee's failure to comply with the provisions described in paragraph (1) (a) or may place such licensee on probation. The ~~No~~ fine ~~is~~ imposed may not ~~shall~~ exceed \$500 for each offense, and all amounts collected in fines shall be deposited with the Chief Financial Officer to the credit of the County Health Department Trust Fund.

(b) In determining the amount of fine to be imposed, if any, for a violation, the department shall consider the following factors:

1. The gravity of the violation and the extent to which the provisions of the applicable statutes or rules have been violated.

2. Any action taken by the operator to correct the violation.

3-00453-12

2012480

291 3. Any previous violation.

292 Section 10. Subsection (1) of section 513.10, Florida
293 Statutes, is amended to read:

294 513.10 Operating without permit; enforcement of chapter;
295 penalties.—

296 (1) Any person who maintains or operates a mobile home
297 park, lodging park, recreational vehicle park, or recreational
298 camp without first obtaining an operating a permit as required
299 by s. 513.02, or who maintains or operates such a park or camp
300 after revocation of the operating permit, commits is guilty of a
301 misdemeanor of the second degree, punishable as provided in s.
302 775.082 or s. 775.083.

303 Section 11. Section 513.111, Florida Statutes, is repealed.

304 Section 12. Section 513.1115, Florida Statutes, is created
305 to read:

306 513.1115 Placement of recreational vehicles on lots in
307 permitted parks.—

308 (1) Separation distances between recreational vehicles
309 shall be the distances established at the time of the initial
310 approval of the recreational vehicle park by the department and
311 the local government.

312 (2) Setback distances from the exterior property boundary
313 of the recreational vehicle park shall be the setback distances
314 established at the time of the initial approval by the
315 department and the local government.

316 (3) This section does not limit the regulation of the
317 uniform firesafety standards established under s. 633.022.

318 Section 13. Subsection (1) of section 513.112, Florida
319 Statutes, is amended to read:

3-00453-12

2012480

320 513.112 Maintenance of guest register and copy of laws.—

321 (1) It is the duty of each operator of a recreational
322 vehicle park that rents to transient guests to maintain at all
323 times a register, signed by or for guests who occupy rental
324 sites within the park. The register must show the dates upon
325 which the rental sites were occupied by such guests and the
326 rates charged for the guests' occupancy. This register shall be
327 maintained in chronological order ~~and shall be available for~~
328 ~~inspection by the department at any time.~~ An operator is not
329 required to retain a register that is more than 2 years old.

330 Section 14. Section 513.115, Florida Statutes, is amended
331 to read:

332 513.115 Unclaimed property.—Any property having an
333 identifiable owner which is left in a recreational vehicle park
334 by a guest, including, but not limited to, other than property
335 belonging to a guest who has vacated the premises without notice
336 to the operator and with an outstanding account, which property
337 remains unclaimed after having been held by the park for 90 days
338 ~~after written notice was provided to the guest or the owner of~~
339 ~~the property, may be disposed of by becomes the property of the~~
340 park. Any titled property, including a boat, a recreational
341 vehicle, or other vehicle, shall be disposed of in accordance
342 with the requirements of chapter 715.

343 Section 15. Subsections (2) and (4) of section 513.13,
344 Florida Statutes, are amended to read:

345 513.13 Recreational vehicle parks; eviction; grounds;
346 proceedings.—

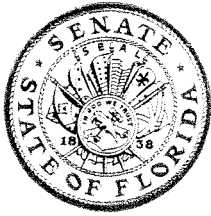
347 (2) The operator of any recreational vehicle park shall
348 notify such guest that the park no longer desires to entertain

3-00453-12 2012480
 349 the guest and shall request that such guest immediately depart
 350 from the park. Such notice shall be given in writing. If such
 351 guest has paid in advance, the park shall, at the time such
 352 notice is given, tender to the guest the unused portion of the
 353 advance payment. Any guest who remains or attempts to remain in
 354 such park after being requested to leave commits is guilty of a
 355 misdemeanor of the second degree, punishable as provided in s.
 356 775.082 or s. 775.083. If the notice is given in the presence of
 357 a law enforcement officer by posting or personal delivery and
 358 the person fails to depart from the park immediately, the person
 359 commits a misdemeanor of the second degree, punishable as
 360 provided in s. 775.082 or s. 775.083.

361 (4) If any person is illegally on the premises of any
 362 recreational vehicle park, the operator of such park may call
 363 upon any law enforcement officer of this state for assistance.
 364 It is the duty of such law enforcement officer, upon the request
 365 of such operator, to place under arrest and take into custody
 366 for violation of this section any guest who violates subsection
 367 (1) or subsection (2) in the presence of the officer. If a
 368 warrant has been issued by the proper judicial officer for the
 369 arrest of any violator of subsection (1) or subsection (2), the
 370 officer shall serve the warrant, arrest the person, and take the
 371 person into custody. Upon arrest, with or without warrant, the
 372 guest is deemed to have given up any right to occupancy or to
 373 have abandoned the guest's right to occupancy of the premises of
 374 the recreational vehicle park; and the operator of the park
 375 shall employ all reasonable and proper means to care for any
 376 personal property left on the premises by such guest and shall
 377 refund any unused portion of moneys paid by such guest for the

3-00453-12 2012480
 378 occupancy of such premises. The operator is not liable for
 379 damages to personal property left on the premises by a guest who
 380 violates subsection (1) or subsection (2) and is arrested by a
 381 law enforcement officer.

382 Section 16. This act shall take effect July 1, 2012.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Environmental Preservation and Conservation,
Chair
Criminal Justice, *Vice Chair*
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Governmental Oversight and Accountability
Reapportionment
Regulated Industries

SENATOR CHARLES S. DEAN, SR.
3rd District

November 3, 2011

The Honorable Rene Garcia
310 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Mr. Chairman:

I respectfully request you place Senate Bill 480, relating to Mobile Home and Recreational Vehicle Parks, on your Health Regulation Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

Charles S. Dean
State Senator District 3

cc: Sandra Stovall, Staff Director



REPLY TO:

- ☐ 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- ☐ Post Office Box 2558, Ocala, Florida 34478-2558 (352) 873-6513
- ☐ 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

Topic SB 480

Bill Number SB 480
(if applicable)

Name David Eastman

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2155 Delta Blvd.
Street
Tallahassee FL 32303
City State Zip

Phone 850-521-0890

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Fla. Assoc. RV Parks & Campgrounds

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

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 Health Regulation Committee

BILL: SB 510

INTRODUCER: Senators Rich and Lynn

SUBJECT: Florida Kidcare Program

DATE: January 3, 2012

REVISED: 01/09/12

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Stovall	HR	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill amends the law that establishes eligibility requirements for the Florida Kidcare program (Kidcare) to make children of state employees who meet other eligibility requirements eligible for the subsidized portion of Kidcare. Children of state employees are currently prohibited from obtaining health insurance coverage through Kidcare, even if the family would otherwise be financially eligible. The bill also removes a requirement that, for enrollment in the Children's Medical Services Network component of Kidcare, the application must include a medical or behavioral health screening.

This bill substantially amends the following sections of the Florida Statutes: 409.8132, 409.814, and 409.816.

II. Present Situation:

Florida Kidcare Program

The Kidcare program was created by the Florida Legislature in 1998 in response to the federal enactment of the State Children's Health Insurance Program in 1997, later known more simply as the Children's Health Insurance Program (CHIP). The federal authority for the CHIP is located in Title XXI of the Social Security Act.¹ Initially authorized for 10 years and then

¹ Title XXI – State Children's Health Insurance Program. Found at: <http://www.ssa.gov/OP_Home/ssact/title21/2100.htm> (Last visited on January 3, 2012).

recently re-authorized² through 2019 with federal funding through 2015, the CHIP provides subsidized health insurance coverage to uninsured children who do not qualify for Medicaid but who meet other eligibility requirements. The state statutory authority for Kidcare is found in part II of ch. 409, F.S.

Kidcare encompasses four programs: Medicaid for children, the Medikids program, the Children's Medical Services Network, and the Florida Healthy Kids program. Kidcare coverage is funded by state and federal funds through Title XIX (Medicaid) and Title XXI (CHIP) of the federal Social Security Act. Families also contribute to the cost of the coverage under the Title XXI-funded components of Kidcare based on their household size, income, and other eligibility factors. For families with incomes above the income limits for premium assistance or who do not otherwise qualify for assistance, Kidcare also offers an option under the Healthy Kids component and the Medikids component for the family to obtain coverage for their children by paying the full premium.

Eligibility for the Kidcare components that are funded by Title XXI is determined in part by age and household income as follows:³

- Medicaid for Children: Title XXI funding is available from birth until age 1 for family incomes between 185 percent and 200 percent of the Federal Poverty Level (FPL).
- Medikids: Title XXI funding is available from age 1 until age 5 for family incomes between 133 percent and 200 percent of the FPL.
- Healthy Kids: Title XXI funding is available from age 5 until age 6 for family incomes between 133 percent and 200 percent of the FPL. For age 6 until age 19, Title XXI funding is available for family incomes between 100 percent and 200 percent of the FPL.
- Children's Medical Services Network: Title XXI and Title XIX funds are available from birth until age 19 for family incomes up to 200 percent of the FPL for children with special health care needs. The Department of Health assesses whether children meet the program's clinical requirements.

Kidcare is administered jointly by the Agency for Health Care Administration, the Department of Children and Families, the Department of Health, and the Florida Healthy Kids Corporation. Each entity has specific duties and responsibilities under Kidcare as detailed in part II of ch. 409, F.S. The Department of Children and Families determines eligibility for Medicaid, and the Florida Healthy Kids Corporation processes all Kidcare applications and determines eligibility for the CHIP, which includes a Medicaid screening and referral process to the Department of Children and Families, as appropriate.

To enroll in Kidcare, families utilize a form that is both a Medicaid and CHIP application. Families may apply using the paper application or an online application. Both formats are available in English, Spanish, and Creole. Income eligibility is determined through electronic

² Children's Health Insurance Program Reauthorization Act of 2009, Public Law 111-3. Found at: <http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ003.111.pdf%20> (Last visited on January 3, 2012).

³ Florida Kidcare Eligibility. Found at: <<http://www.doh.state.fl.us/alternatesites/kidcare/images/data/FKC-eligibilityflag-accessible.pdf>> (Last visited on January 3, 2012).

data matches with available databases or, in cases where income cannot be verified electronically, through submission of current pay stubs, tax returns, or W-2 forms.

The 2011-2012 General Appropriations Act appropriated \$520,962,322 for Kidcare, including \$61,436,037 in General Revenue.⁴ The Social Services Estimating Conference convened on December 12, 2011, to adopt a caseload and expenditure forecast for Kidcare through June 2015. For the current fiscal year the program is projected to end the year with a surplus of \$39.4 million with \$12.8 million of the surplus being General Revenue.⁵ For FY 2012-2013, the projected expenditures for General Revenue are \$6.2 million below the current year appropriation.

Eligibility of Children of State Employees

Title XXI of the Social Security Act, as established in the Balanced Budget Act of 1997, excluded from the definition of “targeted low-income child” a “child who is a member of a family that is eligible for health benefits coverage under a State health benefits plan on the basis of a family member’s employment with a public agency in the State.” When Florida enacted Kidcare in 1998, a similar exclusion was included in s. 409.814, F.S. The effect of this exclusion is that children of state employees who would otherwise be eligible for Kidcare have been unable to enroll in Kidcare and receive premium assistance through Title XXI.

In 2010, Congress amended Title XXI of the Social Security Act to provide states the option to receive Federal matching funds for coverage of children of state employees through the CHIP.⁶ A state may receive Federal funding to extend CHIP eligibility to otherwise eligible children of state employees in cases where the state has maintained its contribution levels for health coverage for employees with dependent coverage, or can demonstrate that the state employees’ health benefits plan’s out-of-pocket costs pose a financial hardship for families. The Agency for Health Care Administration has indicated that Florida would meet one or both of these conditions.⁷

On April 4, 2011, the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services issued a letter providing guidance on implementation of the new state option for CHIP coverage of children of public employees.⁸ The letter addresses how states can demonstrate that they meet either the maintenance of agency contribution condition or the hardship condition. States wishing to elect this coverage option may submit a CHIP State Plan amendment at any time.

⁴ See ch. 2011-69, L.O.F., line item 151.

⁵ Social Services Estimating Conference – Kidcare Program, September 16, 2011. Found at: <<http://edr.state.fl.us/Content/conferences/kidcare/index.cfm>> (Last visited on January 3, 2012).

⁶ See s. 10203(b)(2)(D) of the Patient Protection and Affordable Care Act (Public Law 111-148) as amended by s. 205 of the Medicare and Medicaid Extenders Act of 2010 (Public Law 111-309).

⁷ See Agency for Health Care Administration 2012 Bill Analysis and Economic Impact Statement for SB 510 – on file with the Senate Health Regulation Committee.

⁸ Letter to State Health Officials from the Centers for Medicare and Medicaid Services regarding CHIP coverage of children of public employees. Found at: <<http://ccf.georgetown.edu/index/cms-filesystem-action?file=policy/2009%20schip%20reauth/sho-4-04-11.pdf>> (Last visited on January 3, 2012).

On average, 2,702 dependents of state employees apply for Title XXI Kidcare each year and 177 enroll in the full-pay coverage option. This implies that 2,525 dependents of state employees are either without health care coverage or the family elected to purchase state employee family coverage.⁹

III. Effect of Proposed Changes:

Section 1 amends s. 409.8132, F.S., relating to the Medikids program component of Kidcare, to change a cross-reference to reflect the addition, in section 2 of the bill, of the children of certain state employees as a category of children eligible for Kidcare. The effect of the cross-reference change is to include children of state employees as being eligible for the Medikids program component of Kidcare.

Section 2 amends s. 409.814, F.S., relating to eligibility for Kidcare, to remove the requirement that, for enrollment in the Children's Medical Services Network, a complete application must include the medical or behavioral health screening. The bill removes the ineligibility for Kidcare of a child who is eligible for coverage under a state health benefit plan on the basis of a family member's employment with a public agency in the state (state employee children). Instead, the bill provides eligibility for a child who is eligible for a state-sponsored health benefit plan through a family member *or guardian* employed by the state if the child meets the eligibility requirements for the subsidized portion of Kidcare.

Section 3 amends s. 409.816, F.S., relating to limitations on premiums and cost-sharing in Kidcare, to make a conforming change in a cross-reference.

Section 4 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

⁹ See Agency for Health Care Administration 2012 Bill Analysis and Economic Impact Statement for SB 510 – on file with the Senate Health Regulation Committee.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill would have a Title XXI fiscal impact based on the additional children receiving coverage; however, there is a projected overall savings to the State when the savings from not insuring these children through the state employee plan is considered.

Based on the number of state employees who have applied and were denied coverage or who are receiving full-pay coverage, it is estimated that the average monthly Title XXI caseload will increase by 225 as a result of this bill. For FFY 2012-2013, the state will pay 29.70 percent of this qualified expenditure and the federal government under Title XXI covers the remaining 70.30 percent. It is estimated that 2,702 additional children will be covered during the first 12 months. The total additional cost is estimated to be \$447,055, with \$124,504 from General Revenue.¹⁰

According to the Florida Healthy Kids Corporation, there would be minimal costs associated with the reprogramming needed to stop the current practice of checking applications to see if a child is a dependent of a state employee.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Removing the requirement for the application for enrollment in the Children's Medical Services Network to include the medical or behavioral health screening could create ambiguity about the need for screening.

Since the bill removes the exclusion of children of state employees from Title XXI Kidcare, it is not necessary to add a new subsection (4) in s. 409.814, F.S., to make these children eligible.

It is unclear whether families that are currently enrolled under the State Group Health Insurance plan will be permitted to cancel only their dependant coverage to enroll their child in Kidcare outside of an open enrollment period. Will passage of this bill be considered a qualifying event that would permit families to make a change outside of the open enrollment period? If families

¹⁰ *Id.*

drop their dependent coverage under the State Group Insurance plan, will the 60-day waiting period before coverage under Kidcare apply to them?

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



647240

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/12/2012	.	
	.	
	.	
	.	

The Committee on Health Regulation (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (b) of subsection (6) of section
409.8132, Florida Statutes, is amended to read:

409.8132 Medikids program component.—

(6) ELIGIBILITY.—

(b) The provisions of s. 409.814 apply ~~409.814(3), (4),~~
~~(5), and (6)~~ shall be applicable to the Medikids program.

Section 2. Section 409.814, Florida Statutes, is amended to
read:



647240

409.814 Eligibility.—A child who has not reached 19 years of age whose family income is equal to or below 200 percent of the federal poverty level is eligible for the Florida Kidcare program as provided in this section. ~~For enrollment in the Children's Medical Services Network, a complete application includes the medical or behavioral health screening. If, subsequently,~~ an enrolled individual is determined to be ineligible for coverage, he or she must be immediately ~~be~~ disenrolled from the respective Florida Kidcare program component.

(1) A child who is eligible for Medicaid coverage under s. 409.903 or s. 409.904 must be enrolled in Medicaid and is not eligible to receive health benefits under any other health benefits coverage authorized under the Florida Kidcare program.

(2) A child who is not eligible for Medicaid, but who is eligible for the Florida Kidcare program, may obtain health benefits coverage under any of the other components listed in s. 409.813 if such coverage is approved and available in the county in which the child resides.

(3) A Title XXI-funded child who is eligible for the Florida Kidcare program who is a child with special health care needs, as determined through a medical or behavioral screening instrument, is eligible for health benefits coverage from and shall be assigned to and may opt out of the Children's Medical Services Network.

(4) The following children are not eligible to receive Title XXI-funded premium assistance for health benefits coverage under the Florida Kidcare program, except under Medicaid if the child would have been eligible for Medicaid under s. 409.903 or



647240

s. 409.904 as of June 1, 1997:

~~(a) A child who is eligible for coverage under a state health benefit plan on the basis of a family member's employment with a public agency in the state.~~

(a)~~(b)~~ A child who is covered under a family member's group health benefit plan or under other private or employer health insurance coverage, if the cost of the child's participation is not greater than 5 percent of the family's income. If a child is otherwise eligible for a subsidy under the Florida Kidcare program and the cost of the child's participation in the family member's health insurance benefit plan is greater than 5 percent of the family's income, the child may enroll in the appropriate subsidized Kidcare program.

(b)~~(c)~~ A child who is seeking premium assistance for the Florida Kidcare program through employer-sponsored group coverage, if the child has been covered by the same employer's group coverage during the 60 days before the family submitted ~~prior to the family's submitting~~ an application for determination of eligibility under the program.

(c)~~(d)~~ A child who is an alien, but who does not meet the definition of qualified alien, in the United States.

(d)~~(e)~~ A child who is an inmate of a public institution or a patient in an institution for mental diseases.

(e)~~(f)~~ A child who is otherwise eligible for premium assistance for the Florida Kidcare program and has had his or her coverage in an employer-sponsored or private health benefit plan voluntarily canceled in the last 60 days, except those children whose coverage was voluntarily canceled for good cause, including, but not limited to, the following circumstances:



647240

71 1. The cost of participation in an employer-sponsored
72 health benefit plan is greater than 5 percent of the family's
73 income;

74 2. The parent lost a job that provided an employer-
75 sponsored health benefit plan for children;

76 3. The parent who had health benefits coverage for the
77 child is deceased;

78 4. The child has a medical condition that, without medical
79 care, would cause serious disability, loss of function, or
80 death;

81 5. The employer of the parent canceled health benefits
82 coverage for children;

83 6. The child's health benefits coverage ended because the
84 child reached the maximum lifetime coverage amount;

85 7. The child has exhausted coverage under a COBRA
86 continuation provision;

87 8. The health benefits coverage does not cover the child's
88 health care needs; or

89 9. Domestic violence led to loss of coverage.

90 (5) A child who is otherwise eligible for the Florida
91 Kidcare program and who has a preexisting condition that
92 prevents coverage under another insurance plan as described in
93 paragraph (4) (a) ~~(4) (b)~~ which would have disqualified the child
94 for the Florida Kidcare program if the child were able to enroll
95 in the plan is ~~shall be~~ eligible for Florida Kidcare coverage
96 when enrollment is possible.

97 (6) A child whose family income is above 200 percent of the
98 federal poverty level or a child who is excluded under the
99 provisions of subsection (4) may participate in the Florida



647240

Kidcare program as provided in s. 409.8132 or, if the child is ineligible for Medikids by reason of age, in the Florida Healthy Kids program, subject to the following provisions:

(a) The family is not eligible for premium assistance payments and must pay the full cost of the premium, including any administrative costs.

(b) The board of directors of the Florida Healthy Kids Corporation may offer a reduced benefit package to these children in order to limit program costs for such families.

(7) Once a child is enrolled in the Florida Kidcare program, the child is eligible for coverage ~~under the program~~ for 12 months without a redetermination or reverification of eligibility~~7~~ if the family continues to pay the applicable premium. Eligibility for program components funded through Title XXI of the Social Security Act terminates ~~shall terminate~~ when a child attains the age of 19. A child who has not attained the age of 5 and who has been determined eligible for the Medicaid program is eligible for coverage for 12 months without a redetermination or reverification of eligibility.

(8) When determining or reviewing a child's eligibility under the Florida Kidcare program, the applicant shall be provided with reasonable notice of changes in eligibility which may affect enrollment in one or more of the program components. If ~~When~~ a transition from one program component to another is authorized, there shall be cooperation between the program components and the affected family which promotes continuity of health care coverage. Any authorized transfers must be managed within the program's overall appropriated or authorized levels of funding. Each component of the program shall establish a



647240

reserve to ensure that transfers between components will be accomplished within current year appropriations. These reserves shall be reviewed by each convening of the Social Services Estimating Conference to determine the adequacy of such reserves to meet actual experience.

(9) In determining the eligibility of a child, an assets test is not required. Each applicant shall provide documentation during the application process and the redetermination process, including, but not limited to, the following:

(a) ~~Each applicant's~~ Proof of family income, which must ~~shall~~ be verified electronically to determine financial eligibility for the Florida Kidcare program. Written documentation, which may include wages and earnings statements or pay stubs, W-2 forms, or a copy of the applicant's most recent federal income tax return, is ~~shall be~~ required only if ~~the~~ electronic verification is not available or does not substantiate the applicant's income.

(b) ~~Each applicant shall provide~~ A statement from all applicable, employed family members that:

1. Their employers do not sponsor health benefit plans for employees;

2. The potential enrollee is not covered by an employer-sponsored health benefit plan; or

3. The potential enrollee is covered by an employer-sponsored health benefit plan and the cost of the employer-sponsored health benefit plan is more than 5 percent of the family's income.

(c) To enroll in the Children's Medical Services Network, a completed application, including a clinical screening.



647240

(10) Subject to paragraph (4) (a) ~~(4) (b)~~, the Florida Kidcare program shall withhold benefits from an enrollee if the program obtains evidence that the enrollee is no longer eligible, submitted incorrect or fraudulent information in order to establish eligibility, or failed to provide verification of eligibility. The applicant or enrollee shall be notified that because of such evidence program benefits will be withheld unless the applicant or enrollee contacts a designated representative of the program by a specified date, which must be within 10 working days after the date of notice, to discuss and resolve the matter. The program shall make every effort to resolve the matter within a timeframe that will not cause benefits to be withheld from an eligible enrollee.

(11) The following individuals may be subject to prosecution in accordance with s. 414.39:

(a) An applicant obtaining or attempting to obtain benefits for a potential enrollee under the Florida Kidcare program if ~~when~~ the applicant knows or should have known that the potential enrollee does not qualify for the ~~Florida Kidcare~~ program.

(b) An individual who assists an applicant in obtaining or attempting to obtain benefits for a potential enrollee under the Florida Kidcare program if ~~when~~ the individual knows or should have known that the potential enrollee does not qualify for the ~~Florida Kidcare~~ program.

Section 3. This act shall take effect July 1, 2012.

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

And the title is amended as follows:

Delete everything before the enacting clause



647240

and insert:

A bill to be entitled

An act relating to the Florida Kidcare program;
amending s. 409.8132, F.S.; revising a cross-
reference; amending s. 409.814, F.S.; deleting a
prohibition preventing children who are eligible for
coverage under a state health benefit plan from being
eligible for services provided through the subsidized
program; providing an effective date.

By Senator Rich

34-00042A-12

2012510

A bill to be entitled

An act relating to the Florida Kidcare program; amending s. 409.8132, F.S.; conforming cross-references; amending s. 409.814, F.S.; providing that children who are eligible for a state-sponsored health benefit plan and the subsidized Kidcare program may enroll in the program; conforming provisions to changes made by the act; amending s. 409.816, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Paragraph (b) of subsection (6) of section 409.8132, Florida Statutes, is amended to read:

409.8132 Medikids program component.—

(6) ELIGIBILITY.—

(b) The provisions of s. 409.814(3)-(7) apply ~~409.814(3), (4), (5), and (6)~~ shall be applicable to the Medikids program.

Section 2. Section 409.814, Florida Statutes, is amended to read:

409.814 Eligibility.—A child who has not reached 19 years of age whose family income is equal to or below 200 percent of the federal poverty level is eligible for the Florida Kidcare program as provided in this section. ~~For enrollment in the Children's Medical Services Network, a complete application includes the medical or behavioral health screening. If, subsequently, an enrolled individual is determined to be~~ ineligible for coverage, he or she must be immediately be

34-00042A-12

2012510

disenrolled from the respective Florida Kidcare program component.

(1) A child who is eligible for Medicaid coverage under s. 409.903 or s. 409.904 must be enrolled in Medicaid and is not eligible to receive health benefits under any other health benefits coverage authorized under the Florida Kidcare program.

(2) A child who is not eligible for Medicaid, but who is eligible for the Florida Kidcare program, may obtain health benefits coverage under any of the other components listed in s. 409.813 if such coverage is approved and available in the county in which the child resides.

(3) A Title XXI-funded child who is eligible for the Florida Kidcare program who is a child with special health care needs, as determined through a medical or behavioral screening instrument, is eligible for health benefits coverage from and shall be assigned to and may opt out of the Children's Medical Services Network.

(4) A child who is eligible for a state-sponsored health benefit plan through a family member or guardian employed by the state and who meets the eligibility requirements for the subsidized Florida Kidcare program may enroll in the subsidized Florida Kidcare program.

~~(5)-(4)~~ The following children are not eligible to receive Title XXI-funded premium assistance for health benefits coverage under the Florida Kidcare program, except under Medicaid if the child would have been eligible for Medicaid under s. 409.903 or s. 409.904 as of June 1, 1997:

~~(a) A child who is eligible for coverage under a state health benefit plan on the basis of a family member's employment~~

34-00042A-12

2012510__

59 ~~with a public agency in the state.~~

60 (a) (b) A child who is covered under a family member's group
61 health benefit plan or under other private or employer health
62 insurance coverage, if the cost of the child's participation is
63 not greater than 5 percent of the family's income. If a child is
64 otherwise eligible for a subsidy under the Florida Kidcare
65 program and the cost of the child's participation in the family
66 member's health insurance benefit plan is greater than 5 percent
67 of the family's income, the child may enroll in the appropriate
68 subsidized Kidcare program.

69 (b) (e) A child who is seeking premium assistance for the
70 Florida Kidcare program through employer-sponsored group
71 coverage, if the child has been covered by the same employer's
72 group coverage during the 60 days before the family submitted
73 ~~prior to the family's submitting~~ an application for
74 determination of eligibility under the program.

75 (c) (d) A child who is an alien, but who does not meet the
76 definition of qualified alien, in the United States.

77 (d) (e) A child who is an inmate of a public institution or
78 a patient in an institution for mental diseases.

79 (e) (f) A child who is otherwise eligible for premium
80 assistance for the Florida Kidcare program and has had his or
81 her coverage in an employer-sponsored or private health benefit
82 plan voluntarily canceled in the last 60 days, except those
83 children whose coverage was voluntarily canceled for good cause,
84 including, but not limited to, the following circumstances:

85 1. The cost of participation in an employer-sponsored
86 health benefit plan is greater than 5 percent of the family's
87 income;

34-00042A-12

2012510__

88 2. The parent lost a job that provided an employer-
89 sponsored health benefit plan for children;

90 3. The parent who had health benefits coverage for the
91 child is deceased;

92 4. The child has a medical condition that, without medical
93 care, would cause serious disability, loss of function, or
94 death;

95 5. The employer of the parent canceled health benefits
96 coverage for children;

97 6. The child's health benefits coverage ended because the
98 child reached the maximum lifetime coverage amount;

99 7. The child has exhausted coverage under a COBRA
100 continuation provision;

101 8. The health benefits coverage does not cover the child's
102 health care needs; or

103 9. Domestic violence led to loss of coverage.

104 (6) (5) A child who is otherwise eligible for the Florida
105 Kidcare program and who has a preexisting condition that
106 prevents coverage under another insurance plan as described in
107 paragraph (5) (a) ~~(4) (b)~~ which would have disqualified the child
108 for the Florida Kidcare program if the child were able to enroll
109 in the plan ~~is shall be~~ eligible for Florida Kidcare coverage
110 when enrollment is possible.

111 (7) (6) A child whose family income is above 200 percent of
112 the federal poverty level or a child who is excluded under the
113 provisions of subsection (5) ~~(4)~~ may participate in the Florida
114 Kidcare program as provided in s. 409.8132 or, if the child is
115 ineligible for Medikids by reason of age, in the Florida Healthy
116 Kids program, subject to the following ~~provisions~~:

34-00042A-12

2012510

(a) The family is not eligible for premium assistance payments and must pay the full cost of the premium, including any administrative costs.

(b) The board of directors of the Florida Healthy Kids Corporation may offer a reduced benefit package to these children in order to limit program costs for such families.

(8) ~~(7)~~ Once a child is enrolled in the Florida Kidcare program, the child is eligible for coverage ~~under the program~~ for 12 months without a redetermination or reverification of eligibility, if the family continues to pay the applicable premium. Eligibility for program components funded through Title XXI of the Social Security Act terminates ~~shall terminate~~ when a child attains the age of 19. A child who has not attained the age of 5 and who has been determined eligible for the Medicaid program is eligible for coverage for 12 months without a redetermination or reverification of eligibility.

(9) ~~(8)~~ When determining or reviewing a child's eligibility under the Florida Kidcare program, the applicant shall be provided with reasonable notice of changes in eligibility which may affect enrollment in one or more of the program components. ~~If when~~ a transition from one program component to another is authorized, there shall be cooperation between the program components and the affected family which promotes continuity of health care coverage. Any authorized transfers must be managed within the program's overall appropriated or authorized levels of funding. Each component of the program shall establish a reserve to ensure that transfers between components will be accomplished within current year appropriations. These reserves shall be reviewed by each convening of the Social Services

34-00042A-12

2012510

Estimating Conference to determine the adequacy of such reserves to meet actual experience.

(10) ~~(9)~~ In determining the eligibility of a child, an assets test is not required. Each applicant shall provide documentation during the application process and the redetermination process, including, but not limited to, the following:

(a) ~~Each applicant's~~ Proof of family income, which must ~~shall~~ be verified electronically to determine financial eligibility for the Florida Kidcare program. Written documentation, which may include wages and earnings statements or pay stubs, W-2 forms, or a copy of the applicant's most recent federal income tax return, is ~~shall be~~ required only if ~~the~~ electronic verification is not available or does not substantiate the applicant's income.

(b) ~~Each applicant shall provide~~ A statement from all applicable, employed family members that:

1. Their employers do not sponsor health benefit plans for employees;

2. The potential enrollee is not covered by an employer-sponsored health benefit plan; or

3. The potential enrollee is covered by an employer-sponsored health benefit plan and the cost of the employer-sponsored health benefit plan is more than 5 percent of the family's income.

(11) ~~(10)~~ Subject to paragraph (5)(a) ~~(4)(b)~~, the Florida Kidcare program shall withhold benefits from an enrollee if the program obtains evidence that the enrollee is no longer eligible, submitted incorrect or fraudulent information in order

34-00042A-12 2012510__
 175 to establish eligibility, or failed to provide verification of
 176 eligibility. The applicant or enrollee shall be notified that
 177 because of such evidence program benefits will be withheld
 178 unless the applicant or enrollee contacts a designated
 179 representative of the program by a specified date, which must be
 180 within 10 working days after the date of notice, to discuss and
 181 resolve the matter. The program shall make every effort to
 182 resolve the matter within a timeframe that will not cause
 183 benefits to be withheld from an eligible enrollee.

184 ~~(12)(11)~~ The following individuals may be subject to
 185 prosecution in accordance with s. 414.39:

186 (a) An applicant obtaining or attempting to obtain benefits
 187 for a potential enrollee under the Florida Kidcare program if
 188 ~~when~~ the applicant knows or should have known that the potential
 189 enrollee does not qualify for the ~~Florida Kidcare~~ program.

190 (b) An individual who assists an applicant in obtaining or
 191 attempting to obtain benefits for a potential enrollee under the
 192 Florida Kidcare program if ~~when~~ the individual knows or should
 193 have known that the potential enrollee does not qualify for the
 194 ~~Florida Kidcare~~ program.

195 Section 3. Subsection (3) of section 409.816, Florida
 196 Statutes, is amended to read:

197 409.816 Limitations on premiums and cost-sharing.—The
 198 following limitations on premiums and cost-sharing are
 199 established for the program.

200 (3) Enrollees in families with a family income above 150
 201 percent of the federal poverty level who are not receiving
 202 coverage under the Medicaid program or who are not eligible
 203 under s. 409.814(7) ~~409.814(6)~~ may be required to pay enrollment

34-00042A-12 2012510__
 204 fees, premiums, copayments, deductibles, coinsurance, or similar
 205 charges on a sliding scale related to income, except that the
 206 total annual aggregate cost-sharing with respect to all children
 207 in a family may not exceed 5 percent of the family's income.
 208 However, copayments, deductibles, coinsurance, or similar
 209 charges may not be imposed for preventive services, including
 210 well-baby and well-child care, age-appropriate immunizations,
 211 and routine hearing and vision screenings.

212 Section 4. This act shall take effect July 1, 2012.



The Florida Senate

Committee Agenda Request

To: Senator Rene Garcia, Chair
Committee on Health Regulation

Subject: Committee Agenda Request

Date: November 9, 2011

I respectfully request that **Senate Bill # 510**, relating to Florida KidCare Program, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

Nan Rich

Senator Nan H. Rich
Florida Senate, District 34

 ENTERED

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Jan. 12, 2012
Meeting Date

Topic Florida Kidcare

Bill Number SB 510
(if applicable)

Name Doug Martin

Amendment Barcode _____
(if applicable)

Job Title _____

Address _____
Street

Phone _____

City _____ State _____ Zip _____

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing AFSCME, FI Council 79

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/12/12
Meeting Date

Topic Kid Care

Bill Number 510
(if applicable)

Name Alisa Snow

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1030 E. LaFayette St.
Street
Tallahassee, FL 32301
City State Zip

Phone _____

E-mail alisa@
snowstrategies.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Nurses Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD



3/12/11

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Topic Kidcare

Bill Number SB 510
(if applicable)

Name Rich Templin

Amendment Barcode _____
(if applicable)

Job Title _____

Address 135 S. Monroe
Street

Phone 850-229-6926

Tallahassee FL 38301
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/12/12

Meeting Date

Topic Kid Care Legislation

Bill Number SB 510
(if applicable)

Name Michael Sheedy

Amendment Barcode _____
(if applicable)

Job Title Assoc. Dir. for Health

Address 201 W. Park Ave.
Street

Phone 850-222-3803

Tall. FL 32301
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing FL Catholic Conference

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Spoke

1/12/12

Meeting Date

Topic Florida Kidcare

Bill Number SB 510
(if applicable)

Name Karen Woodall

Amendment Barcode _____
(if applicable)

Job Title _____

Address 545 E. Call St.

Phone 850-321-9386

Street

Tallahassee

FL

32308

City

State

Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-11-12

Meeting Date

Topic Florida Kidcore

Bill Number SB 510
(if applicable)

Name Badi Jono

Amendment Barcode _____
(if applicable)

Job Title Policy Coordinator

Address 2323 Buque Blvd
Street
Miam FL 33134
City State Zip

Phone 305-586-8920

E-mail badi.jono@flnewmajority.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida New Majority

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/12/12
Meeting Date

Topic State Employee Eligibility Redcap

Bill Number 510
(if applicable)

Name John Ratliff

Amendment Barcode _____
(if applicable)

Job Title Public Policy Coordinator

Address 18441 NW 2d Ave, #502
Street
Miami Garden FL 33169
City State Zip

Phone 305 620 6555

E-mail john@seiu1991.org

Speaking: ☒ For ☐ Against ☐ Information

Representing SEIU Local 1991, Nurses, Physicians, Healthcare Professionals

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

01/12/12

Meeting Date

Topic FLORIDA KIDCARE

Bill Number SB 510

Name MARY PAT MOORE

Amendment Barcode 647240
(if applicable)

Job Title VP OF GOVERNMENT PROGRAMS

Address 200 W. COLLEGE AVENUE, SUITE 104
Street
TALLAHASSEE, FL 32301
City State Zip

Phone (850) 386-2904

E-mail marypat@fahp.net

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA ASSOCIATION OF HEALTH PLANS

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

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 Health Regulation Committee

BILL: SB 584

INTRODUCER: Senator Richter

SUBJECT: Public Records/Dental Workforce Surveys

DATE: January 3, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlanter	Stovall	HR	Favorable
2.			GO	
3.				
4.				
5.				
6.				

I. Summary:

The bill makes confidential and exempt from public records requirements all personal identifying information contained in records provided by dentists or dental hygienists in response to dental workforce surveys and held by the Department of Health (DOH). The bill specifies circumstances under which the confidential and exempt information may be released.

The bill provides for review and repeal of the exemption pursuant to the Open Government Sunset Review Act and provides a statement of the public necessity for the exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote of each house of the Legislature for passage.

This bill will take effect upon becoming a law.

This bill creates two undesignated sections of law.

II. Present Situation:

Public Records¹

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.² One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of

¹ Art I, s. 24(c), State Constitution.

² Section 1390, 1391 F.S. (Rev. 1892).

access to public records to a constitutional level.³ Article I, s. 24, of the State Constitution, provides that:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,⁴ which predates the State Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency.⁵ Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁶

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.⁷ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁸

Only the Legislature is authorized to create exemptions to open government requirements.⁹ Exemptions must be created by general law, and such law must specifically state the public

³ Art I, s. 24, State Constitution

⁴ Ch. 119, F.S.

⁵ The word "agency" is defined in s. 119.011(2), F.S., 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." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution. See *supra* fn. 3.

⁶ Section 119.011(12), F.S.

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

⁹ *Supra* fn. 1.

necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.¹⁰ A bill enacting an exemption¹¹ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹²

There is a difference between records that the Legislature has made exempt from public inspection and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹³ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹⁵ provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law.

The Act states that an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹⁶ An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the statutory criteria if it:

- 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 information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁷

The Act also requires the Legislature to consider the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?

¹⁰ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So. 2d 567, 569 (Fla. 1999).

¹¹ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹² *Supra* fn. 1.

¹³ Florida Attorney General Opinion 85-62.

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), review denied, 589 So. 2d 289 (Fla. 1991).

¹⁵ Section 119.15, F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ *Id.*

- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.¹⁸ The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(8), F.S., makes explicit that:

Notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Workforce Surveys

The DOH currently administers an optional workforce survey which dentists and dental hygienists may complete as part of their licensure renewal. For the 2009-2010 licensing cycle, the first time that this survey was offered, 89 percent of all dentists with active licenses responded.¹⁹ The survey was expanded to include dental hygienists for the 2010-2011 licensing cycle, and 87.9 percent responded.²⁰

Physicians are required to respond to physician workforce surveys as a condition of license renewal.²¹ All personal identifying information contained in records provided by physicians in response to these workforce surveys is confidential and exempt under s. 458.3193, F.S., concerning allopathic physicians, and s. 459.0083, F.S., concerning osteopathic physicians.

III. Effect of Proposed Changes:

Section 1 creates an undesignated section of law to require that personal identifying information contained in records provided by dentists or dental hygienists in response to dental workforce surveys held by the DOH be confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I

¹⁸ *Straughn v. Camp*, 293 So. 2d 689, 694 (Fla. 1974).

¹⁹ DOH, *Report on the 2009-2010 Workforce Survey of Dentists*, available at: http://doh.state.fl.us/Family/dental/OralHealthcareWorkforce/2009_2010_Workforce_Survey_Dentists_Report.pdf (Last visited on December 19, 2011).

²⁰ DOH, *2012 Bill Analysis, Economic Statement, and Fiscal Note for SB 584*. A copy is on file with the Senate Health Regulation Committee.

²¹ 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.

of the State Constitution. The bill authorizes disclosure of such information with the written consent of the individual to whom the information pertains or the individual's legally authorized representative, by court order upon a showing of good cause, or to a research entity fulfilling certain conditions.

Access to public records is a substantive right, and, therefore, a statute affecting that right is presumptively prospective in its application. There must be a clear legislative intent for a statute affecting substantive rights to apply retroactively.²² Accordingly, this bill may only make confidential and exempt personal identifying information that is received after the effective date of the act.

The bill provides that the public records exemption created in this act is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 creates an undesignated section of law providing justification of public necessity for the exemption. Candid and honest responses to the workforce survey will ensure that timely and accurate information is available to the DOH. The failure to maintain the confidentiality of the personal identifying information would prevent the resolution of important state interests to ensure the availability of dentists or dental hygienists in this state.

Section 3 provides that this public records exemption takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I, of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Subject Requirement

Section 24(c), Art. I, of the State Constitution requires the Legislature to create public records or public meetings exemptions in legislation separate from substantive law changes. This bill complies with that requirement.

²² *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001).

Public Necessity Statement

Section 24(c), Art. I, of the State Constitution requires a public necessity statement for a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it includes a public necessity statement.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill will protect personal identifying information of dentists and dental hygienists who respond to the voluntary dental workforce survey.

C. Government Sector Impact:

None.²³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²³ *Supra* fn. 20.

By Senator Richter

37-00559-12

2012584

A bill to be entitled

An act relating to public records; providing an exemption from public records requirements for information contained in dental workforce surveys submitted by dentists or dental hygienists to the Department of Health; providing exceptions to the exemption; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Confidentiality of certain information contained in dental workforce surveys.—

(1) All personal identifying information that is contained in records provided by dentists or dental hygienists licensed under chapter 466, Florida Statutes, in response to dental workforce surveys and held by the Department of Health is confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution, except such information shall be disclosed:

(a) With the express written consent of the individual to whom the information pertains or the individual's legally authorized representative.

(b) By court order upon a showing of good cause.

(c) To a research entity, if the entity seeks the records or data pursuant to a research protocol approved by the Department of Health, maintains the records or data in

37-00559-12

2012584

accordance with the approved protocol, and enters into a purchase and data-use agreement with the department, the fee provisions of which are consistent with s. 119.07(4), Florida Statutes. The department may deny a request for records or data if the protocol provides for intrusive follow-back contacts, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit. The agreement must restrict the release of information that 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. Copies of records or data issued pursuant to this paragraph remain the property of the department.

(2) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15, Florida Statutes, and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that personal identifying information concerning a dentist or dental hygienist licensed under chapter 466, Florida Statutes, who responds to a dental workforce survey be made confidential and exempt from disclosure. Candid and honest responses by licensed dentists or dental hygienists to the workforce survey will ensure that timely and accurate information is available to the Department of Health. The Legislature finds that the failure to maintain the confidentiality of such personal identifying information would prevent the resolution of important state interests to ensure the availability of dentists or dental hygienists in this state.

37-00559-12

2012584

59

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Budget
Budget - Subcommittee on Health and Human Services
Appropriations
Community Affairs
Judiciary
Rules
Rules - Subcommittee on Ethics and Elections

JOINT COMMITTEE:

Legislative Budget Commission

SENATOR GARRETT RICHTER

37th District

November 10, 2011

The Honorable Rene Garcia, Chair
Committee on Health Regulation
530 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Garcia:

Senate Bill 584, relating to Public Records for Dental Workforce Surveys has been referred to the Committee on Health Regulation. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Richter".

Garrett Richter

cc: Sandra Stovall, Staff Director

ENTERED

REPLY TO:

- ☐ 3299 East Tamiami Trail, Suite 203, Naples, Florida 34112 (239) 417-6205
- ☐ 1039 S.E. 9th Place, Room 310, Cape Coral, Florida 33990 (239) 338-2777
- ☐ 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5124

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

Waive my time in support

1/12/12

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic

Dental Workforce Survey / Public Records

Bill Number

SB 584

(if applicable)

Name

Amendment Barcode

(if applicable)

Job Title

hobbyist

Address

118 E Jefferson St

Phone

850 224-1089

Street

Tallahassee

FL

32301

E-mail

rwatson@floridadental.org

City

State

Zip

Speaking:



For



Against



Information

Representing

FDA Florida Dental Association

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

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 Health Regulation Committee

BILL: SB 616

INTRODUCER: Senator Flores

SUBJECT: Biomedical Research

DATE: January 5, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	Favorable
2.			GO	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill revises provisions related to the James and Esther King Biomedical Research Program (King Program) and the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program (Bankhead-Coley Program).

The bill:

- Carries forward for 2 additional years the balance of any appropriation from the Biomedical Research Trust Fund, which is obligated but not disbursed;
- Renames a member of the Biomedical Research Advisory Council (Council) and the advisory council of the Florida Center for Universal Research to Eradicate Disease (FL CURED);
- Staggers the terms of service for members of the Council;
- Removes the Council's responsibility for developing, supervising, and consulting in the appointment of research peer review panels;
- Clarifies conflict of interest provisions concerning certain councils and peer review panels;
- Removes provisions regarding the public's access to the meetings of certain peer review panels;
- Exempts grant programs under the purview of the Council from rulemaking authority;
- Revises the Council's annual reporting requirement;
- Revises by whom grants are awarded under the Bankhead-Coley Program; and
- Makes the consideration of certain types of applications for grants by the Department of Health (department) discretionary.

This bill amends the following sections of the Florida Statutes: 20.435, 215.5602, 381.855, and 381.922.

II. Present Situation:

The James and Esther King Biomedical Research Program

The purpose of the James and Esther King Biomedical Research Program¹ (King Program) is to provide an annual and perpetual source of funding to support research initiatives that address the health care problems of Floridians in the areas of tobacco-related cancer, cardiovascular disease, stroke, and pulmonary disease.² The long-term goals of the program are to:

- Improve the health of Floridians by researching better prevention, diagnoses, treatments, and cures for cancer, cardiovascular disease, stroke, and pulmonary disease;
- Expand the foundation of biomedical knowledge relating to the prevention, diagnosis, treatment, and cure of diseases related to tobacco use;
- Improve the quality of the state's academic health centers by bringing the advances of biomedical research into the training of physicians and other health care providers;
- Increase the state's per capita funding for research by undertaking new initiatives in public health and biomedical research that will attract additional funding from outside of Florida; and
- Stimulate economic activity in the state in areas related to biomedical research, such as the research and production of pharmaceuticals, biotechnology, and medical devices.

The King Program offers competitive grants to researchers throughout Florida. Grant applications from any university or established research institute³ in Florida will be considered for biomedical research funding. All qualified investigators in the state, regardless of institutional affiliation, have equal access and opportunity to compete for the research funding.

The State Surgeon General, after consultation with the Council, is authorized to award grants and fellowships on the basis of scientific merit⁴ within the following three categories:

- Investigator-initiated research grants;
- Institutional research grants; and

¹ The Florida Legislature created the Florida Biomedical Research Program in 1999 within the department (ch. 99-167, L.O.F.). The Florida Biomedical Research Program was renamed the James and Esther King Biomedical Research Program during Special Session B of the 2003 Legislature (ch. 2003-414, L.O.F.).

² Section 215.5602, F.S.

³ An "established research institute" is any Florida non-profit or foreign non-profit corporation covered under ch. 617, F.S., with a physical location in Florida, whose stated purpose and power is scientific, biomedical or biotechnological research or development and is legally registered with the Florida Department of State, Division of Corporations. This includes the federal government and non-profit medical and surgical hospitals, including veterans' administration hospitals. *See James & Esther King Biomedical Research Program, Call for Grant Applications: Biomedical, Biotechnological, and Social Scientific Research and Development, Fiscal Year 2009-2010*, page 7, available at: http://forms.floridabiomed.com/jek_call/King%20Call%2009-10.pdf (Last visited on January 5, 2012).

⁴ *See* the "Grant Application Review and Processing" section of Senate Interim Report 2010-219, page 7, for more information about assessing scientific merit. The report is available at: http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-219hr.pdf (Last visited on January 5, 2012).

- Predoctoral and postdoctoral research fellowships.⁵

The King Program was to expire on January 1, 2011, pursuant to s. 215.5602, F.S. However, the Legislature continued the program in 2010 by enacting HB 5311.⁶

The William G. “Bill” Bankhead, Jr., and David Coley Cancer Research Program

The 2006 Legislature created the Bankhead-Coley Program within the department.⁷ The purpose of the program is to advance progress toward cures for cancer through grants awarded for cancer research.

Applications for funding cancer research from any university or established research institute in the state will be considered under the Bankhead-Coley Program. All qualified investigators in the state, regardless of institutional affiliation, have equal access and opportunity to compete for the research funding. The State Surgeon General, after consultation with the Council, is authorized to award grants and fellowships on the basis of scientific merit⁸ within the following three categories:

- Investigator-initiated research grants;
- Institutional research grants; and
- Collaborative research grants, including those that advance the finding of cures through basic or applied research.

As with the King Program, the Bankhead-Coley Program was to expire on January 1, 2011, pursuant to s. 215.5602, F.S. However, the Legislature also continued this program in 2010 when it enacted HB 5311.⁹

Florida Center for Universal Research to Eradicate Disease

The purpose of the Florida Center for Universal Research to Eradicate Disease (FL CURED) is to coordinate, improve, expand, and monitor all biomedical research programs within Florida; facilitate funding opportunities; and foster improved technology transfer of research findings into clinical trials and widespread public use.¹⁰

The Legislature intended that the FL CURED would help Florida:

- Strive to become the nation’s leader in biomedical research;
- Commit to finding cures for the most deadly and widespread diseases;
- Coordinate efforts among the state’s public and private universities and research institutes, and the biomedical/biotechnology industry in Florida; and

⁵ Section 215.5602(5)(b), F.S.

⁶ Chapter 2010-161, L.O.F.

⁷ Section 381.922, F.S., (ch. 2006-182, L.O.F.).

⁸ *Supra* fn. 5.

⁹ Chapter 2010-161, L.O.F.

¹⁰ *See* s. 381.855, F.S.

- Expand the economy by attracting biomedical researchers and biotechnology businesses to the state.¹¹

Responsibilities of the FL CURED are to hold an annual biomedical technology summit in Florida, encourage clinical trials in Florida, facilitate research partnerships, encourage agricultural colleges and agricultural businesses in Florida to be active in the search for cures and in providing information to the public about disease prevention, encourage the discovery and production in Florida of vaccines that prevent disease, monitor the supply and demand needs of researchers relating to stem cell research and other types of human tissue research, serve as a registry for all biomedical grants, and maintain a website with links to peer-reviewed biomedical research.¹²

Within the FL CURED is a 15-member advisory council that meets at least annually.¹³

Program Funding

Initially, the King Program was funded with income from \$150 million of principal in the Lawton Chiles Endowment Fund.¹⁴ In 2004, the Legislature appropriated additional funding, through a distribution from alcoholic beverage surcharge taxes. In 2006, the Legislature substituted a \$6 million dollar annual appropriation commitment from the General Revenue Fund to fund the Biomedical Research Trust Fund within the DOH for the purposes of the King Program.¹⁵ However, in the January 2009 Special Session A, for fiscal year 2008-2009 and each fiscal year thereafter, the annual appropriation from the General Revenue Fund to the Biomedical Research Trust Fund for purposes of the King Program was reduced to \$4.5 million.¹⁶ During the regular session in 2009, the Legislature eliminated the general revenue appropriation and provided that 2.5 percent of the revenue generated from the additional cigarette surcharge enacted in 2009, not to exceed \$25 million, was to be transferred into the Biomedical Research Trust Fund for the King Program for the 2009-2010 fiscal year.¹⁷

In 2010, when the Legislature reenacted the King Program, it continued funding for the King Program with an annual appropriation of \$20 million.¹⁸ Of the funds appropriated for the King Program, up to \$250,000 per year is designated to operate the FL CURED.

The Bankhead-Coley Program was established with a commitment for an appropriation of \$9 million per year from the General Revenue Fund.¹⁹ However, in the January 2009 Special Session A, for fiscal year 2008-2009 and each fiscal year thereafter, the annual appropriation from the General Revenue Fund to the Biomedical Research Trust Fund for purposes of the

¹¹ Florida Center for Universal Research to Eradicate Disease, FL CURED, *2010 Annual Report*, p. V, Executive Summary, available at: <http://flcured.org/docs/AnnualReport2010.pdf> (Last visited on January 5, 2012).

¹² Section 381.855, F.S.

¹³ *Id.*

¹⁴ Section 215.5601, F.S. The Lawton Chiles Endowment Fund's principal originated from a portion of the state settlement received from its lawsuit with tobacco companies.

¹⁵ Chapter 2006-182, L.O.F.

¹⁶ Chapter 2009-5, L.O.F.

¹⁷ Chapter 2009-58, L.O.F.

¹⁸ *Supra* fn. 11.

¹⁹ Section 381.922(5), F.S.

Bankhead-Coley Program was reduced to \$6.75 million.²⁰ During the regular session in 2009, the Legislature eliminated the general revenue appropriation and provided that 2.5 percent of the revenue generated from the additional cigarette surcharge enacted in 2009, not to exceed \$25 million, was to be transferred into the Biomedical Research Trust Fund for the Bankhead-Coley Program.²¹

Chapter 2009-58, Laws of Florida, provided that five percent of the revenue deposited into the Health Care Trust Fund pursuant to s. 210.011(9), F.S., related to the cigarette surcharge and s. 210.276(7), F.S., related to the surcharge on tobacco products, are to be reserved for research of tobacco-related or cancer-related illnesses. The sum of the revenue reserved, however, may not exceed \$50 million in any fiscal year. The Legislature did not specify an amount to be appropriated annually, after the 2009-2010 fiscal year, for the King Program or the Bankhead-Coley Program from these reserves. However, in 2010, when the Legislature reenacted the Bankhead-Coley Program along with the King Program, it continued funding for the Bankhead-Coley Program with an annual appropriation of \$20 million.²²

Any cash balance in the Biomedical Research Trust Fund at the end of a fiscal year remains in the trust fund to be available for carrying out the purposes of the trust fund. In addition, any balance of an appropriation from the Biomedical Research Trust Fund which has not been disbursed, but which is obligated, may be used for up to 3 years from the effective date of the original appropriation.

Biomedical Research Advisory Council²³ and Peer Review Panel²⁴

The purpose of the Council is to advise the State Surgeon General as to the direction and scope of the King Program. The Council is also required to consult with the State Surgeon General concerning grant awards for cancer research through the Bankhead-Coley Program.²⁵ Currently there are 11 members on the council, authorized to serve no more than two consecutive, 3-year terms.

In order to ensure that proposals for research funding within the King Program and the Bankhead-Coley Program are appropriate and evaluated fairly on the basis of scientific merit, a peer review panel of independent, scientifically qualified individuals is appointed to review the scientific content of each proposal to establish a “scientific”²⁶ priority score.²⁷ To eliminate conflicts of interest, peer reviewers come from outside the state of Florida. Reviewers are experts in their fields from universities, government agencies, and private industry who are matched according to application topic and area of expertise. The priority scores must be considered by

²⁰ Chapter 2009-5, L.O.F.

²¹ Chapter 2009-58, L.O.F.

²² *Supra* fn. 11.

²³ Section 215.5602(3), F.S.

²⁴ Section 215.5602(6) and (7), and s. 381.922(3)(b), F.S.

²⁵ Section 381.922(3)(a), F.S. However, s. 215.5602(11), F.S., contains an inconsistency with respect to the responsibility of the Council concerning awarding grants for cancer research.

²⁶ The King Program requires a *scientific* priority score in s. 215.5602(6), F.S. The Bankhead-Coley Program requires a priority score in s. 381.922(3)(b), F.S.

²⁷ A Bridge Grant application is ranked solely by the priority score or percentile assigned to its qualifying federal proposal in an eligible federal review process.

the Council in determining which proposals will be recommended for funding to the State Surgeon General.

Meetings of the Council and the peer review panel are subject to ch. 119, F.S., relating to public records; s. 286.011, F.S., relating to public meetings; and s. 24, Art. I of the State Constitution relating to access to public meetings and records.

Program Administration and Grant Management

The Office of Public Health Research within the DOH manages both the King Program and the Bankhead-Coley Program with support from the Council and Lytmos Group, LLC (Lytmos), pursuant to contract.²⁸

The law authorizes, but does not require, the department, after consultation with the Council, to adopt rules as necessary to implement these programs.²⁹ The department has not adopted rules to implement these programs. Instead, the department publishes, on its website, the procedures for implementing these two programs.³⁰

The *GrantEase*TM online system is used by grantees to access grant information and submit progress reports, invoices, financial reports, and change requests during the life of the grant. At least once during the grant period, the grantee is subjected to on-site monitoring for both scientific and administrative purposes.

III. Effect of Proposed Changes:

Section 1 amends s. 20.435, F.S., to extend the time, from 3 years to 5 years, that any balance of any appropriation from the Biomedical Research Trust Fund, which is not disbursed but which is obligated pursuant to a contract or committed to be expended, may be carried forward after the effective date of the original appropriation.

Section 2 amends s. 215.5602, F.S., to replace the member of the Council, who is the chief executive officer of the Florida/Puerto Rico Affiliate of the American Heart Association, with the chief executive officer of the Greater Southeast Affiliate of the American Heart Association.³¹ This section also provides for staggered terms of members on the Council by requiring the first two appointments by the Governor and the first appointment by the President of the Senate and the Speaker of the House of Representatives on or after July 1, 2012, to be for a term of 2 years.

²⁸ James & Esther King Biomedical Research Program, *Annual Report 2010*, available at: <http://forms.floridabiomed.com/AnnualReports/Annual10.pdf> (Last visited on January 5, 2012).

²⁹ Section 215.5602(9), F.S.

³⁰ See <http://www.doh.state.fl.us/ExecStaff/biomed/ophrsitemap.html>, (Last visited on January 5, 2012).

³¹ The following states and territories are part of the Greater Southeast Affiliate: Alabama, Florida, Georgia, Louisiana, Mississippi, Puerto Rico, and Tennessee. American Heart Association, *Who We Are: Greater Southeast Affiliate*, available at: http://www.heart.org/HEARTORG/Affiliate/Who-We-Are-Greater-Southeast-Affiliate_UCM_303250_SubHomePage.jsp (Last visited on January 5, 2012).

In this section, the Council's authority to develop and supervise research peer review panels is removed. Furthermore, the department, rather than the Surgeon General, is no longer required to consult with the Council prior to appointing a peer review panel to review the scientific *merit* of research proposals.

This section clarifies that a member of the Council or peer review panel may not participate in any discussion or decision *of the Council or panel*, with respect to a research proposal by an entity with which the member is associated, employed, or contracted, to avoid a conflict of interest.

This section removes the provision that specifies that meetings of the peer review panel are subject to Florida's public records laws. However, by operation of ch. 119, F.S., s. 286.011, F.S., and s. 24, Art. I of the State Constitution, the peer review panel would still be subject to such public record laws.

This section also exempts grant programs under the purview of the Council from rulemaking authority under ch. 120, F.S., and removes the department's rulemaking authority to implement the section.

This section amends the Council's requirement to submit an annual progress report to the Governor, the State Surgeon General, and the Legislature to require the report to review, for each fiscal year, all programs under the Council's purview. The report is required to be submitted annually by December 15, instead of by February 1. The reporting requirement is also changed to require the Council to include in its annual report the state ranking from the National Institutes of Health, rather than a broader requirement for the total amount of biomedical research funding currently flowing into the state from any source; the progress toward the program's goals; and recommendations that further the program's mission.

Section 3 amends s. 381.855, F.S., to specify that the member of the advisory council of the FL CURED from the American Heart Association must be from the Greater Southeast Affiliate.

Section 4 amends s. 381.922, F.S., to require grants to be awarded by the department, instead of the State Surgeon General. In addition, the requirement for the Surgeon General to consult with the Council prior to awarding a grant is removed.

This section authorizes, rather than requires, the department to consider certain types of applications for funding. This section clarifies that the peer review panel is to review the scientific merit, not content, of each research proposal and establish its priority score for the Council to consider.

This section clarifies that a member of the Council or peer review panel may not participate in any discussion or decision *of the Council or panel*, with respect to a research proposal by an entity with which the member is associated, employed, or contracted, to avoid a conflict of interest.

This section removes the provision that specifies that meetings of the peer review panel are subject to Florida's public records laws. However, by operation of ch. 119, F.S., s. 286.011, F.S.,

and s. 24, Art. I of the State Constitution, it is likely that the peer review panel would still be subject to such open meetings and public records laws.

This section deletes the department's annual reporting requirement to the Governor and Legislature, which requires the department to report the progress toward the Bankhead-Coley Program's mission and make recommendations to further the program's purpose. Instead, this requirement is added to section 2 of the bill.

Section 5 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Council may realize some cost-savings because it no longer is required to develop and supervise research peer review panels.

VI. Technical Deficiencies:

Line 142 of the bill requires the department, instead of the State Surgeon General, to appoint a peer review panel and deletes the requirement that the State Surgeon General consult with the Council prior to appointing the panel. Line 239 of the bill retains the requirement that the State Surgeon General, in consultation with the Council, is to appoint a peer review panel. If it is the intent for the panel appointment procedure in line 239 to align with the panel appointment

procedure in line 142 of the bill and the revised responsibilities of the Council, then line 239 should be amended to correspond with the language in line 142 of the bill.

VII. Related Issues:

Although lines 157-159 and 254-256 delete the affirmative statement that meetings of the peer review panel are subject to Florida's public record laws, such meetings are likely to be subject to Florida's open meetings and public records laws by operation of law, notwithstanding striking this provision.

Florida's Government in the Sunshine Law (Sunshine Law), under s. 286.011, F.S., is equally applicable to elected and appointed boards and applies to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action.³²

The three basic requirements of s. 286.011, F.S., are that meetings of public boards or commissions must be open to the public, reasonable notice of such meetings must be given, and minutes of the meetings must be taken. Under s. 24, Art. I of the Florida Constitution, virtually all collegial public bodies are covered by the open meetings mandate, with the exception of the judiciary and the state Legislature.³³

Advisory bodies created pursuant to law are subject to the Sunshine Law, even though their recommendations are not binding upon the entities that create them.³⁴ If the advisory body conducts only fact-finding and has no decision-making function, then it may be exempt from the Sunshine Law.³⁵

The bill requires the department and the State Surgeon General to each appoint a peer review panel and each panel is required to prioritize research proposals to recommend the funding of such proposals. Because the panels are created by law, appointed by an agency, and do more than merely fact-finding, it is likely that the panels would be deemed subject to Florida's Sunshine Law.

As for the peer review panels' meeting materials and records, they are likely to be subject to Florida's public records law under ch. 119, F.S., because all materials made or received by an agency³⁶ in connection with official business, which are used to perpetuate, communicate, or formalize knowledge are required to be open to public inspection unless the Legislature specifically exempts them from disclosure. Omitting the peer review panel meetings from the statement that such meetings are subject to Florida's open meetings and public records laws is not likely to constitute an exemption by the Legislature. The Legislature must pass a separate bill by a two-thirds vote of each house to enact a public records or public meeting exemption, and the

³² Government-in-the-Sunshine Manual, Volume 30, 2008 Edition, p. 5.

³³ *Id.*

³⁴ *Id.* at p. 6.

³⁵ *Id.* at p. 7.

³⁶ Advisory boards or committees have been interpreted in case law and by the Attorney General's Office to be subject to the public records law. Government-in-the-Sunshine Manual, Volume 30, 2008 Edition, p. 63.

law must state with specificity the public necessity justifying the exemption, which must be no broader than necessary to accomplish the stated purpose of the law.³⁷

SB 1856 has been filed, which also removes the provision that specifies that meetings of the peer review panel are subject to Florida's public records laws, and provides a public necessity statement. However, in order for a bill to exempt a record or meeting from the public records or meetings laws it must state that the record or meeting is:

- Exempt from s. 24, Art. I of the State Constitution;
- Exempt from s. 119.07(1) or s. 286.011, F.S.; and
- Repealed at the end of 5 years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.³⁸

Therefore, SB 1856, is likely still not sufficient to make meetings or records of the peer review panel confidential and exempt from Florida's public records and meetings laws.

VIII. Additional Information:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³⁷ FLA. CONST. art. I, s. 24(c).

³⁸ Section 119.15(4)(a), F.S.

By Senator Flores

38-00293B-12

2012616__

1 A bill to be entitled
 2 An act relating to biomedical research; amending s.
 3 20.435, F.S.; revising the number of years that the
 4 balance of an appropriation from the Biomedical
 5 Research Trust Fund may be carried forward following
 6 the effective date of the original appropriation;
 7 amending s. 215.5602, F.S.; revising a reference to an
 8 affiliate chapter of the American Heart Association;
 9 revising the terms of appointment for certain members
 10 of the Biomedical Research Advisory Council within the
 11 Department of Health; revising the responsibilities of
 12 the council; requiring that the department, rather
 13 than the State Surgeon General, in consultation with
 14 the council, appoint a peer review panel of
 15 independent, scientifically qualified individuals to
 16 review the scientific merit of each proposal and
 17 establish its scientific priority score under the
 18 James and Esther King Biomedical Research Program;
 19 providing that certain types of applications may be
 20 considered for funding by the James and Esther King
 21 Biomedical Research Program; deleting a reference to
 22 meetings between peer review panels and the council;
 23 providing that grant programs under the purview of the
 24 advisory council are exempt from rulemaking authority;
 25 requiring that the council submit an annual progress
 26 report for each fiscal year on programs under its
 27 purview to certain entities by a specified date;
 28 revising the required content of the report; amending
 29 s. 381.855, F.S.; specifying the name of an affiliate

Page 1 of 10

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

38-00293B-12

2012616__

30 chapter of the American Heart Association as it
 31 relates to the membership of the advisory council
 32 within the Florida Center for Universal Research to
 33 Eradicate Disease; amending s. 381.922, F.S.;
 34 requiring that the department, rather than the State
 35 Surgeon General, in consultation with the council,
 36 appoint a peer review panel of independent,
 37 scientifically qualified individuals to review the
 38 scientific merit of each proposal and establish its
 39 scientific priority score under the William G. "Bill"
 40 Bankhead, Jr., and David Coley Cancer Research
 41 Program; providing that certain types of applications
 42 may be considered for funding in the William G. "Bill"
 43 Bankhead, Jr., and David Coley Cancer Research
 44 Program; deleting a reference to meetings between peer
 45 review panels and the council; deleting the
 46 requirement that the department submit to the Governor
 47 and the Legislature a report that indicates progress
 48 toward the program's mission and makes recommendations
 49 that further its purpose; providing an effective date.

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

52
 53 Section 1. Paragraph (c) of subsection (8) of section
 54 20.435, Florida Statutes, is amended to read:
 55 20.435 Department of Health; trust funds.—The following
 56 trust funds shall be administered by the Department of Health:
 57 (8) Biomedical Research Trust Fund.
 58 (c) Notwithstanding s. 216.301 and pursuant to s. 216.351,

Page 2 of 10

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

38-00293B-12 2012616
 59 any balance of any appropriation from the Biomedical Research
 60 Trust Fund which is not disbursed but which is obligated
 61 pursuant to contract or committed to be expended may be carried
 62 forward for up to 5 3 years following the effective date of the
 63 original appropriation.

64 Section 2. Paragraph (a) of subsection (3), subsection (4),
 65 paragraph (b) of subsection (5), and subsections (6), (7), (9),
 66 and (10) of section 215.5602, Florida Statutes, are amended to
 67 read:

68 215.5602 James and Esther King Biomedical Research
 69 Program.—

70 (3) There is created within the Department of Health the
 71 Biomedical Research Advisory Council.

72 (a) The council shall consist of 11 members, including: the
 73 chief executive officer of the Florida Division of the American
 74 Cancer Society, or a designee; the chief executive officer of
 75 the Greater Southeast Florida/Puerto Rico Affiliate of the
 76 American Heart Association, or a designee; and the chief
 77 executive officer of the American Lung Association of Florida,
 78 or a designee. The remaining 8 members of the council shall be
 79 appointed as follows:

80 1. The Governor shall appoint four members, two members
 81 with expertise in the field of biomedical research, one member
 82 from a research university in the state, and one member
 83 representing the general population of the state.

84 2. The President of the Senate shall appoint two members,
 85 one member with expertise in the field of behavioral or social
 86 research and one representative from a cancer program approved
 87 by the American College of Surgeons.

38-00293B-12 2012616
 88 3. The Speaker of the House of Representatives shall
 89 appoint two members, one member from a professional medical
 90 organization and one representative from a cancer program
 91 approved by the American College of Surgeons.

92
 93 In making these appointments, the Governor, the President of the
 94 Senate, and the Speaker of the House of Representatives shall
 95 select primarily, but not exclusively, Floridians with
 96 biomedical and lay expertise in the general areas of cancer,
 97 cardiovascular disease, stroke, and pulmonary disease. The
 98 appointments shall be for a 3-year term and shall reflect the
 99 diversity of the state's population. An appointed member may not
 100 serve more than two consecutive terms. The first two
 101 appointments by the Governor and the first appointment by the
 102 President of the Senate and the Speaker of the House of
 103 Representatives on or after July 1, 2012, shall be for a term of
 104 2 years.

105 (4) The council shall advise the State Surgeon General as
 106 to the direction and scope of the biomedical research program.
 107 The responsibilities of the council may include, but are not
 108 limited to:

109 (a) Providing advice on program priorities and emphases.

110 (b) Providing advice on the overall program budget.

111 (c) Participating in periodic program evaluation.

112 (d) Assisting in the development of guidelines to ensure
 113 fairness, neutrality, and adherence to the principles of merit
 114 and quality in the conduct of the program.

115 (e) Assisting in the development of appropriate linkages to
 116 nonacademic entities, such as voluntary organizations, health

38-00293B-12 2012616__

care delivery institutions, industry, government agencies, and public officials.

(f) Developing criteria and standards for the award of research grants.

(g) Developing administrative procedures relating to solicitation, review, and award of research grants and fellowships, to ensure an impartial, high-quality peer review system.

~~(h) Developing and supervising research peer review panels.~~

(h) ~~(i)~~ Reviewing reports of peer review panels and making recommendations for research grants and fellowships.

(i) ~~(j)~~ Developing and providing oversight regarding mechanisms for the dissemination of research results.

(5)

(b) Grants and fellowships shall be awarded by the State Surgeon General, after consultation with the council, on the basis of scientific merit, as determined by an open competitive peer review process that ensures objectivity, consistency, and high quality. The following types of applications may ~~shall~~ be considered for funding:

1. Investigator-initiated research grants.
2. Institutional research grants.
3. Predoctoral and postdoctoral research fellowships.

(6) To ensure that all proposals for research funding are appropriate and are evaluated fairly on the basis of scientific merit, the department ~~State Surgeon General~~, in consultation ~~with the council~~, shall appoint a peer review panel of independent, scientifically qualified individuals to review the scientific merit ~~content~~ of each proposal and establish its

38-00293B-12 2012616__

scientific priority score. The priority scores shall be forwarded to the council and must be considered in determining which proposals shall be recommended for funding.

(7) The council and the peer review panel shall establish and follow rigorous guidelines for ethical conduct and adhere to a strict policy with regard to conflict of interest. A member of the council or panel may not participate in any discussion or decision of the council or panel with respect to a research proposal by any firm, entity, or agency with which the member is associated as a member of the governing body or as an employee, or with which the member has entered into a contractual arrangement. Meetings of the council are ~~and the peer review panels shall be~~ subject to the ~~provisions of~~ chapter 119, s. 286.011, and s. 24, Art. I of the State Constitution.

(9) The grant programs under the purview of the council are exempt from rulemaking authority under chapter 120 ~~department, after consultation with the council, may adopt rules as necessary to implement this section.~~

(10) The council shall submit an annual progress report for each fiscal year on programs under its purview ~~on the state of biomedical research in this state~~ to the Florida Center for Universal Research to Eradicate Disease and to the Governor, the State Surgeon General, the President of the Senate, and the Speaker of the House of Representatives by December 15 ~~February~~.
4. The report must include:

- (a) A list of research projects supported by grants or fellowships awarded under the program.
- (b) A list of recipients of program grants or fellowships.
- (c) A list of publications in peer reviewed journals

38-00293B-12 2012616__

involving research supported by grants or fellowships awarded under the program.

(d) The state ranking and total amount of biomedical research funding currently flowing into the state from the National Institutes of Health.

(e) New grants for biomedical research which were funded based on research supported by grants or fellowships awarded under the program.

(f) Progress toward the program's goals, particularly in the prevention, diagnosis, treatment, and cure of diseases related to tobacco use, including cancer, cardiovascular disease, stroke, and pulmonary disease.

(g) Recommendations that further the program's mission.

Section 3. Paragraph (a) of subsection (5) of section 381.855, Florida Statutes, is amended to read:

381.855 Florida Center for Universal Research to Eradicate Disease.—

(5) There is established within the center an advisory council that shall meet at least annually.

(a) The council shall consist of one representative from a Florida not-for-profit institution engaged in basic and clinical biomedical research and education which receives more than \$10 million in annual grant funding from the National Institutes of Health, to be appointed by the State Surgeon General from a different institution each term, and one representative from and appointed by each of the following entities:

1. Enterprise Florida, Inc.
2. BioFlorida.
3. The Biomedical Research Advisory Council.

38-00293B-12 2012616__

4. The Florida Medical Foundation.

5. Pharmaceutical Research and Manufacturers of America.

6. The American Cancer Society, Florida Division, Inc.

7. The American Heart Association, Greater Southeast Affiliate.

8. The American Lung Association of Florida.

9. The American Diabetes Association, South Coastal Region.

10. The Alzheimer's Association.

11. The Epilepsy Foundation.

12. The National Parkinson Foundation.

13. The Florida Public Health Institute, Inc.

14. The Florida Research Consortium.

Section 4. Subsections (3), (4), and (5) of section 381.922, Florida Statutes, are amended to read:

381.922 William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program.—

(3) (a) Applications for funding for cancer research may be submitted by any university or established research institute in the state. All qualified investigators in the state, regardless of institutional affiliation, shall have equal access and opportunity to compete for the research funding. Collaborative proposals, including those that advance the program's goals enumerated in subsection (2), may be given preference. Grants shall be awarded by the department ~~State Surgeon General, after consultation with the Biomedical Research Advisory Council~~, on the basis of scientific merit, as determined by an open, competitive peer review process that ensures objectivity, consistency, and high quality. The following types of applications may ~~shall~~ be considered for funding:

38-00293B-12

2012616

233 1. Investigator-initiated research grants.
 234 2. Institutional research grants.
 235 3. Collaborative research grants, including those that
 236 advance the finding of cures through basic or applied research.
 237 (b) In order to ensure that all proposals for research
 238 funding are appropriate and are evaluated fairly on the basis of
 239 scientific merit, the State Surgeon General, in consultation
 240 with the council, shall appoint a peer review panel of
 241 independent, scientifically qualified individuals to review the
 242 scientific merit content of each proposal and establish its
 243 priority score. The priority scores shall be forwarded to the
 244 council and must be considered in determining which proposals
 245 shall be recommended for funding.
 246 (c) The council and the peer review panel shall establish
 247 and follow rigorous guidelines for ethical conduct and adhere to
 248 a strict policy with regard to conflicts of interest. A member
 249 of the council or panel may not participate in any discussion or
 250 decision of the council or panel with respect to a research
 251 proposal by any firm, entity, or agency with which the member is
 252 associated as a member of the governing body or as an employee
 253 or with which the member has entered into a contractual
 254 arrangement. Meetings of the council ~~and the peer review panels~~
 255 are subject to chapter 119, s. 286.011, and s. 24, Art. I of the
 256 State Constitution.
 257 ~~(4) By December 15 of each year, the Department of Health~~
 258 ~~shall submit to the Governor, the President of the Senate, and~~
 259 ~~the Speaker of the House of Representatives a report indicating~~
 260 ~~progress towards the program's mission and making~~
 261 ~~recommendations that further its purpose.~~

Page 9 of 10

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

38-00293B-12

2012616

262 ~~(4)(5)~~ The William G. "Bill" Bankhead, Jr., and David Coley
 263 Cancer Research Program is funded pursuant to s. 215.5602(12).
 264 Funds appropriated for the William G. "Bill" Bankhead, Jr., and
 265 David Coley Cancer Research Program shall be distributed
 266 pursuant to this section to provide grants to researchers
 267 seeking cures for cancer and cancer-related illnesses, with
 268 emphasis given to the goals enumerated in this section. From the
 269 total funds appropriated, an amount of up to 10 percent may be
 270 used for administrative expenses. From funds appropriated to
 271 accomplish the goals of this section, up to \$250,000 shall be
 272 available for the operating costs of the Florida Center for
 273 Universal Research to Eradicate Disease.
 274 Section 5. This act shall take effect July 1, 2012.

Page 10 of 10

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, Chair
Budget
Budget - Subcommittee on Education Pre-K - 12
Appropriations
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability
Reapportionment
Rules

SENATOR ANITERE FLORES

Majority Whip
38th District

November 3, 2011

The Honorable Rene Garcia
Chair of Committee on Health Regulation
310 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Garcia:

I respectfully request that you place SB 616, regarding the Biomedical Research Trust Fund, on the next Health Regulation Committee agenda. This proposed legislation revises the number of years that the balance of an appropriation from the Biomedical Research Trust Fund may be carried forward following the effective date of the original appropriation.

I look forward to presenting this bill before your committee.

Please do not hesitate to contact me should you have any questions. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Anitere Flores".

Anitere Flores

CC: Ms. Sandra Stovall, Staff Director, Committee on Health Regulation, 530 Knott Building

REPLY TO:

- ☐ 10691 North Kendall Drive, Suite 309, Miami, Florida 33176 (305) 270-6550
- ☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5130

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

A stamp consisting of a stylized graphic of a hand holding a pen, followed by the word "ENTERED" in a bold, sans-serif font.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/12/12

Meeting Date

Topic Biomedical Research

Bill Number 616
(if applicable)

Name Michael Cartens

Amendment Barcode _____
(if applicable)

Job Title Analyst

Address 4052 Bald Cypress Way, Bin A01
Tallahassee FL 32399
City State Zip

Phone _____

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Department of Health

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/12/12
Meeting Date

Topic BID MEDICAL RESEARCH

Bill Number 416
(if applicable)

Name PAUL HULL

Amendment Barcode _____
(if applicable)

Job Title VP, ADVOCACY + PUBLIC POLICY

Address 3709 W. JETTON AVE.
Street
TAMPA, FL 33629
City State Zip

Phone 813-382-9235

E-mail PAUL.HULL@CANCER.ORG

Speaking: ☒ For ☐ Against ☐ Information

Representing AMERICAN CANCER SOCIETY

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

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 Health Regulation Committee

BILL: SB 830

INTRODUCER: Health Regulation Committee

SUBJECT: OGSR/Physician Workforce Surveys/Department of Health

DATE: January 3, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlanges	Stovall	HR	Favorable
2.			GO	
3.				
4.				
5.				
6.				

I. Summary:

This bill saves from repeal the exemptions from the requirements of the Public Records Law for all personal identifying information contained in records provided by allopathic and osteopathic physicians in response to the Department of Health (DOH) physician workforce survey. The bill is the result of a review of the exemptions under the Open Government Sunset Review Act. The exemptions will expire on October 2, 2012, unless re-enacted by the Legislature before that date.

This bill amends the following sections of the Florida Statutes: 458.3193 and 459.0083.

II. Present Situation:

Public Records

Article I, s. 24 of the State Constitution, provides that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,¹ which pre-dates the current State Constitution, specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency² records are available for public inspection. The term “public record” is broadly defined to mean:

. . .all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.³

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge.⁴ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁵

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁶ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁷

The Open Government Sunset Review Act (the Act)⁸ provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act. The Act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. The three statutory criteria are that the exemption:

¹ Chapter 119, F.S.

² The word “agency” is defined in s. 119.011(2), F.S., 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.”

³ s. 119.011(12), F.S.

⁴ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁵ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁶ Attorney General Opinion 85-62.

⁷ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

⁸ s. 119.15, F.S.

- 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 information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.⁹

The Act also requires the Legislature to consider the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

Physician Licensure

Prior to engaging in the practice of medicine in this state, an allopathic physician must be licensed under ch. 458, F.S., The Medical Practice Act.¹⁰ Prior to engaging in the practice of osteopathic medicine in this state, an osteopathic physician must be licensed under ch. 459, F.S., The Osteopathic Medical Practice Act.¹¹ A license issued under either act must be renewed biennially.¹²

The requirement for the physician workforce survey was enacted in ch. 2007-172, L.O.F., and codified in s. 458.3191, F.S., relating to allopathic physicians and s. 459.0081, F.S., relating to osteopathic physicians. Sections 458.3191 and 459.0081, F.S., require each Florida-licensed allopathic or osteopathic physician, in conjunction with the renewal of his or her license, to furnish specified information to the DOH in a physician survey. The information required to be submitted under this statute includes:

- Licensee information
 - Frequency and geographic location of practice within the state,
 - Practice setting,
 - Percentage of time spent in direct patient care,
 - Anticipated changes to license or practice status, and
 - Areas of specialty or certification; and
- Availability and trends relating to critically needed services

⁹ s. 119.15(6)(b), F.S.

¹⁰ s. 458.327(1)(a), F.S., and s. 456.065(1), F.S.

¹¹ s. 459.013(1)(a), F.S., and s. 456.065(1), F.S.

¹² s. 458.319, F.S., and s. 459.008, F.S.

- Obstetric care and services, including incidents of deliveries,
- Radiological services, particularly performance of mammograms and breast-imaging services,
- Physician services for hospital emergency departments and trauma centers, including on-call hours, and
- Other critically needed specialty areas, as determined by the DOH.

Each physician survey must include a statement that the information provided is true and accurate to the best of the licensee's knowledge and that the submission does not contain any knowingly false information.¹³ The DOH issues a non-disciplinary citation to a licensee who fails to complete the survey within 90 days after the renewal of his or her license to practice as a physician. The citation notifies the physician that his or her medical license will not be renewed for any subsequent licensing period unless he or she completes the survey.¹⁴

Annually, the DOH is required to analyze the results of the physician workforce survey¹⁵ to determine by geographic area and specialty the number of physicians who:

- Perform deliveries of children in Florida.
- Read mammograms and perform breast-imaging-guided procedures in Florida.
- Perform emergency care on an on-call basis for a hospital emergency department.
- Plan to reduce or increase emergency on-call hours in a hospital emergency department.
- Plan to relocate outside the state.
- Practice medicine in Florida.
- Plan to reduce or modify the scope of their practices.

The DOH is required to report its findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 of each year. Additionally, the annual report must include findings, recommendations, and strategic planning activities as provided in s. 381.4018, F.S., relating to physician workforce assessment and development. The DOH may also include other information requested by the Physician Workforce Advisory Council.¹⁶

Physician Workforce Planning

The Legislature recognizes that physician workforce planning is essential to ensuring an adequate and appropriate supply of well-trained physicians to meet Florida's future health care service needs as the general population and elderly population of the state increase.¹⁷ Physician workforce planning encompasses, among other things, analyzing current workforce data collected through the physician workforce surveys, planning for the availability and capacity of quality medical schools and graduate medical education programs in this state, and incentivizing physicians to practice in needed specialties and underserved areas in a manner that addresses projected needs for physician manpower.

¹³ ss. 458.3191(2) and 459.0081(2), F.S.

¹⁴ ss. 458.3191 and 459.0081(3), F.S.

¹⁵ ss. 458.3192 and 459.0082, F.S.

¹⁶ *Id.* The Physician Workforce Advisory Council is created in s. 29, ch. 2010-161, L.O.F., to advise and assist the State Surgeon General and the DOH on matters concerning current and future physician workforce needs in this state.

¹⁷ s. 381.4018(2), F.S.

Exemption from the Public Records Law

Sections 458.3193 and 459.0083, F.S., also enacted in 2007,¹⁸ exempt all personal identifying information contained in records provided by physicians in response to the physician workforce survey required as a condition of license renewal and held by the DOH confidential and exempt from s. 119.07(1), F.S., and Article I, s. 24 of the State Constitution, with certain exceptions.

Information made confidential and exempt shall be disclosed:

- With the express written consent of the individual to whom the information pertains or the individual's legally authorized representative.
- By court order upon a showing of good cause.
- To a research entity, if the entity:
 - Seeks the records or data pursuant to a research protocol approved by the DOH,
 - Maintains the records or data in accordance with the approved protocol, and
 - Enters into a purchase and data-use agreement with the department.

The DOH may deny a request for records or data if the protocol provides for intrusive follow-back contacts, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit. The agreement between the DOH and the research entity must restrict the release of information that 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.

When enacting the exemptions from the public records law, the Legislature found that it is a public necessity that personal identifying information concerning Florida-licensed physicians who respond to the mandatory physician workforce survey be made confidential and exempt from disclosure. Further, the failure to maintain the confidentiality of such personal identifying information would frustrate and prevent the resolution of important state interests to implement and maintain effective strategies to ensure the availability of physicians in the state. Specific reasons stated in the law include:

- Candid and honest responses to the survey will ensure that timely and accurate information is available for the DOH to review and use in making important policy decisions regarding the use of resources to facilitate the needs of current or projected medically underserved areas in the state.
- Long-term planning, based on the information provided by physicians in the surveys, is essential for improving health care access for Florida residents and enabling the use of strategies for a well-trained supply of physicians.
- Accurate and honest information obtained through the surveys will assist state policy-makers in their decisions to ensure the availability of quality medical schools and graduate medical education and the development of strategies that might provide for physicians to practice in needed specialties and in underserved areas in a manner that addresses projected needs for physician manpower.

¹⁸ ch. 2007-96, L.O.F.

Senate Open Government Sunset Review Interim Project Reports

Senate professional staff of the Health Regulation Committee completed two reviews of the exemptions pertaining to responses to the physician workforce surveys. The findings are reported¹⁹ in Interim Project Report 2012-309, which reviewed s. 458.3193, F.S., and Interim Project Report 2012-310, which reviewed s. 459.0083, F.S. Both reports recommend that the Legislature re-enact the exemptions from the Public Records Law for personal identifying information contained in the physician workforce surveys.

III. Effect of Proposed Changes:

Personal identifying information from physician workforce survey data collected by the DOH in conjunction with medical license renewal will continue to be confidential and exempt from the requirements of the Public Records Law under s. 119.07(1), F.S., and Article I, s.24 of the State Constitution.

This bill amends s. 458.193 and 459.0083, F.S., to remove the scheduled repeal of these exemptions from public record.

- **Section 1** repeals the provision relating to allopathic provisions.
- **Section 2** repeals the provision relating to osteopathic physicians.
- **Section 3** provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

This bill will preserve the exemption for personal identifying information contained in physician workforce survey data collected by the DOH in conjunction with medical license renewal from the requirements of s. 119.07(1), F.S., and Article I, s.24 of the State Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

¹⁹ The reports are available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-309hr.pdf> and <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-310hr.pdf> (Last visited on December 22, 2011).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.²⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁰ Department of Health, *2012 Bill Analysis, Economic Statement, and Fiscal Note for SB 830*. A copy is on file with the Senate Health Regulation Committee.

By the Committee on Health Regulation

588-00844-12

2012830

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending ss. 458.3193 and 459.0083, F.S., relating to exemptions from public records requirements provided for personal identifying information contained in physician workforce surveys submitted to the Department of Health by physicians and osteopathic physicians; saving the exemptions from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of each exemption; providing an effective date.

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

Section 1. Section 458.3193, Florida Statutes, is amended to read:

458.3193 Confidentiality of certain information contained in physician workforce surveys.—

~~(1)~~ All personal identifying information contained in records provided by physicians licensed under this chapter or chapter 459 in response to physician workforce surveys required as a condition of license renewal and held by the Department of Health is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in this section ~~subsection~~. Information made confidential and exempt by this section ~~subsection~~ shall be disclosed:

(1)(a) With the express written consent of the individual to whom the information pertains or the individual's legally

588-00844-12

2012830

authorized representative.

(2)(b) By court order upon a showing of good cause.

(3)(c) To a research entity, if the entity seeks the records or data pursuant to a research protocol approved by the Department of Health, maintains the records or data in accordance with the approved protocol, and enters into a purchase and data-use agreement with the department, the fee provisions of which are consistent with s. 119.07(4). The department may deny a request for records or data if the protocol provides for intrusive follow-back contacts, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit. The agreement must restrict the release of information that would identify individuals, must limit the use of records or data to the approved research protocol, and must prohibit any other use of the records or data. Copies of records or data issued pursuant to this subsection ~~paragraph~~ remain the property of the department.

~~(2) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. Section 459.0083, Florida Statutes, is amended to read:

459.0083 Confidentiality of certain information contained in physician workforce surveys.—

~~(1)~~ All personal identifying information contained in records provided by physicians licensed under chapter 458 or this chapter in response to physician workforce surveys required

588-00844-12 2012830

as a condition of license renewal and held by the Department of Health is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in this section subsection. Information made confidential and exempt by this section subsection shall be disclosed:

(1)(a) With the express written consent of the individual to whom the information pertains or the individual's legally authorized representative.

(2)(b) By court order upon a showing of good cause.

(3)(c) To a research entity, if the entity seeks the records or data pursuant to a research protocol approved by the Department of Health, maintains the records or data in accordance with the approved protocol, and enters into a purchase and data-use agreement with the department, the fee provisions of which are consistent with s. 119.07(4). The department may deny a request for records or data if the protocol provides for intrusive follow-back contacts, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit. The agreement must restrict the release of information that would identify individuals, must limit the use of records or data to the approved research protocol, and must prohibit any other use of the records or data. Copies of records or data issued pursuant to this subsection paragraph remain the property of the department.

~~(2) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal~~

588-00844-12 2012830

~~through reenactment by the Legislature.~~

Section 3. This act shall take effect July 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/12/12
Meeting Date

Topic Health Reg - Physician Workforce Survey

Bill Number SB 830
(if applicable)

Name Holly Miller

Amendment Barcode _____
(if applicable)

Job Title Assistant General Counsel

Address 1430 E Piedmont Drive
Street
Tallahassee FL 32308
City State Zip

Phone 850 224 6496

E-mail hmiller@fimedical.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

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 Health Regulation Committee

BILL: SB 464

INTRODUCER: Senator Garcia

SUBJECT: Sale or Lease of a County, District, or Municipal Hospital

DATE: January 9, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill requires any sale or lease of a public hospital that is owned by a county, district, or municipality to be approved by a majority vote of the registered voters within that county, district, or municipality or by a circuit court prior to the sale or lease. The bill also provides that prior to the sale or lease, the governing board of the public hospital must publicly notice meetings earlier in the process. If the governing board decides to accept a proposal to purchase or lease the hospital, the sale or lease of the public hospital must be for a "fair market value," which is defined in the bill, or otherwise serve the public interest, and the findings and basis that support the board's decision to sell or lease the hospital must be in writing. The bill delineates additional information that must be included in the governing board's findings and requires the board to publish all findings and documents to allow time for public comment about the proposed sale or lease.

This bill amends sections 155.40 and 395.3036, Florida Statutes.

II. Present Situation:

Sale or Lease of Public Hospitals

County, district, and municipal hospitals may be created by special enabling acts, rather than by general acts under Florida law.¹ The special act may specify the hospital's ability or inability to

¹ Section 155.04, F.S., allows a county, upon receipt of a petition signed by at least 5 percent of resident freeholders, to levy an ad valorem tax or issue bonds to pay for the establishment and maintenance of a hospital. Section 155.05, F.S., gives a county the ability to establish a hospital without raising bonds or an ad valorem tax, utilizing available discretionary funds. However, an ad valorem tax can be levied for the ongoing maintenance of the hospital.

levy taxes to support the maintenance of the hospital, the framework for the governing board, and whether or not the governing board has the ability to issue bonds. There are currently 34 hospital districts in Florida under which public hospitals operate,² and the Public Health Trust of Miami-Dade County, which is not a special hospital district but is a part of county government.³

The process for the sale or lease of a public hospital is established by s. 155.40, F.S. Currently, the governing board of a public hospital has the authority to negotiate the sale or lease of the hospital. The hospital can be sold or leased to a for-profit or not-for-profit Florida corporation and such sale or lease must be in the best interest of the public. The board is required to publicly advertise the meeting at which the proposed sale or lease will be discussed in accordance with s. 286.0105, F.S., and the offer to accept proposals from all interested and qualified purchasers in accordance with s. 255.0525, F.S.

Section 155.40(2), F.S., requires any lease, contract, or agreement to:

- Provide that the articles of incorporation of the corporation are subject to approval of the board of directors or board of trustees of the hospital.
- Require that any not-for-profit corporation become qualified under s. 501(c)(3) of the U.S. Internal Revenue Code.
- Provide for the orderly transition of the operation and management of the facilities.
- Provide for the return of the facility to the county, municipality, or district upon the termination of the lease, contract, or agreement.
- Provide for the continued treatment of indigent patients pursuant to the Florida Health Care Responsibility Act⁴ and ch. 87-92, Laws of Florida.

For the sale or lease to be considered “a complete sale of the public agency’s interest in the hospital” under s. 155.40(8)(a), F.S., the purchasing private entity must:

- Acquire 100 percent ownership of the hospital enterprise.
- Purchase the physical plant of the hospital facility and have complete responsibility for the operation and maintenance of the facility, regardless of the underlying ownership of the real property.
- Not allow the public agency to retain control over decision-making or policymaking for the hospital.
- Not receive public funding, other than by contract for services rendered to patients for whom the public agency seller has the responsibility to pay for hospital or medical care.
- Not receive substantial investment or loans from the seller.
- Not be created by the public agency seller.
- Primarily operate for its own financial interests and not those of the public agency seller.

² See Agency for Health Care Administration, Florida Commission on Review of Taxpayer Funded Hospital Districts, *Hospital Tax District Survey Data*, for a list of taxpayer funded hospital districts, available at: <http://ahca.myflorida.com/mchq/FCTFH/hospitalNEW.shtml> (Last visited on January 3, 2012).

³ Commission on Review of Taxpayer Funded Hospital Districts, *Report of the Commission on Review of Taxpayer Funded Hospital Districts*, pg. 8, available at: <http://ahca.myflorida.com/mchq/FCTFH/pdf/122911Meeting/FinalReportRF2.pdf> (Last visited on January 3, 2012).

⁴ Sections 154.301-154.316, F.S.

A complete sale of the public agency's interest under s. 155.40(8)(b), F.S., shall not be construed as:

- A transfer of governmental function from the county, district, or municipality to the private corporation or entity.
- A financial interest of the public agency in the private corporation or other private entity purchaser.
- Making the private corporation or other private entity purchaser an "agency" as that term is used in statute.
- Making the private entity an integral part of the public agency's decision-making process.
- Indicating that the private entity is "acting on behalf of a public agency," as that term is used in statute.

If the corporation that operates a public hospital receives more than \$100,000 in revenues from the county, district, or municipality, it must account for the manner in which the funds are expended.⁵ The funds are to be expended by being subject to annual appropriations by the county, district, or municipality, or if there is a contract for 12 months or longer to provide revenues to the hospital, then the governing board of the county, district, or municipality must be able to modify the contract upon 12 months notice to the hospital.⁶

Recent Leases or Sales of Public Hospitals

The public hospital Bert Fish Medical Center entered into a controversial \$80 million lease agreement with Adventist Health System, which was nullified by Circuit Court Judge Richard Graham because of 21 closed-door meetings that occurred during the negotiation process and violated Florida's Sunshine Law under s. 286.011, F.S.⁷

Other leases or sales or proposed leases or sales of public hospitals have been scrutinized, especially for the effect such sales or leases would have on taxpayers. For example, Helen Ellis Hospital was merged with Adventist Health in 2010, and there have been proposals to turn public hospital systems in Miami-Dade County and Broward County into private hospitals.⁸

Florida Commission on Review of Taxpayer Funded Hospital Districts

On March 23, 2011, Governor Rick Scott issued Executive Order Number 11-63, which created the Florida Commission on Review of Taxpayer Funded Hospital Districts (Commission). The Commission was created to assess and make recommendations on the role of hospital districts, whether it is in the public's best interest to have government entities operating hospitals, and what is the most effective model for enhancing health-care access for the poor.

⁵ Section 155.40(5), F.S.

⁶ *Id.*

⁷ Linda Shrieves, *Judge rules Bert Fish must cut ties with Florida Hospital*, Orlando Sentinel, February 24, 2011, available at: http://articles.orlandosentinel.com/2011-02-24/health/os-bert-fish-decision-20110224_1_sunshine-laws-open-meetings-hospital-board (Last visited January 3, 2012).

⁸ Anne Geggis, *Bills reflect problems at Bert Fish*, Daytona Beach News-Journal, March 8, 2011, available at: <http://www.news-journalonline.com/news/local/southeast-volusia/2011/03/08/bills-reflect-problems-at-bert-fish.html> (Last visited January 3, 2012).

The Commission held 14 public meetings between May 23 and December 29, 2011, at which stakeholders, government officials, and taxpayers gave testimony and made presentations. The Commission also surveyed all Florida hospital districts. Based on the presentations, testimony, and the survey responses, the Commission made several recommendations in the Report of the Commission on Review of Taxpayer Funded Hospital Districts.⁹

The Commission's general recommendations include the following:¹⁰

- The Governor and other appointing authorities should appoint qualified individuals to district and hospital boards who do not have conflicts of interest.
- Board members should include health care stakeholders and members of the local community who have financial expertise and experience operating successful, larger enterprises.
- To ensure appropriate checks and balances, the membership of district and hospital boards should be separate and distinct.
- To ensure appropriate checks and balances the membership of hospital board members and hospital managers should be separate and distinct.
- Special hospital districts should become indigent health care districts, funding indigent health care based on local priorities and not limited to hospitals owned or operated by the districts. As a part of the transition to indigent health care districts, hospital districts that own hospitals should de-couple them from the districts.
- When considering changes to taxation rates, millage rates should be adjustable with a maximum allowable rate, but with the flexibility to lower the rate if circumstances change.
- Boards of directors of hospital districts should be subject to appropriate oversight.

Furthermore, to correspond with the directives in the Governor's executive order, the Commission made several comments and recommendations regarding quality of care, cost of care, access to care for the poor, oversight and accountability, physician employment, and changes of ownership and governance in taxpayer funded hospitals.¹¹ Those comments and recommendations, pertaining to the sale or lease of taxpayer funded hospitals, are as follows:

- Using the available outcome data, the Commission could not establish that there is a pattern of higher or lower quality in Florida hospitals based on ownership. The Governor and Legislature should support the Agency for Health Care Administration (AHCA) in its effort to continue to refine and publish data on outcomes and quality by hospital and health care facility.
- An open, competitive public procurement process or negotiation should be ensured.
- A fair and independent asset valuation process should be ensured during a sale or lease.
- Guidelines should be established to ensure an ongoing community benefit from any proceeds generated by the sale of a hospital.
- Without inhibiting the functioning of a free market, independent oversight of a sale or lease process should be maintained with review by an appropriate authority.
- The maintenance and/or expansion of community health programs should be required if there is a sale or lease, with an emphasis on primary care and emergency room diversion.

⁹ Commission on Review of Taxpayer Funded Hospital Districts, *Report of the Commission on Review of Taxpayer Funded Hospital Districts*, pg. 1, available at: <http://ahca.myflorida.com/mchq/FCTFH/pdf/122911Meeting/FinalReportRF2.pdf> (Last visited on January 3, 2012).

¹⁰ *Id.* at 3.

¹¹ *Id.* at 4-5.

III. Effect of Proposed Changes:

Section 1 amends s. 155.40, F.S., to make the following changes:

Amends subsection (1) to require any sale or lease of a public hospital (owned by a county, district, or municipality) to be approved by a majority vote of the registered voters within that county, district, or municipality or by a circuit court prior to the sale or lease.

Amends subsection (4) to require the governing board of the public hospital to determine, prior to the sale or lease of the hospital, whether there are qualified purchasers or lessees of the hospital by publicly advertising the meeting at which the proposed sale or lease will be considered by the governing board or publicly advertising the offer to accept proposals. However, the bill amends s. 155.40, F.S., to no longer require the board to negotiate the terms of the sale or lease with a for-profit or not-for-profit Florida corporation.

If the governing board decides to accept a proposal to purchase or lease the hospital, the sale or lease of the public hospital must be for “fair market value,” which is defined in the bill as “the price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arms-length transaction.”

Creates subsection (5) to require the governing board’s decision to accept a proposal to purchase or lease the hospital to be in writing and state the findings and basis that support its decision to sell or lease the hospital. The written findings must state whether the proposal:

- Represents the fair market value of the hospital or if the proposal does not represent fair market value, a detailed explanation of why the public interest is served by the acceptance of less than fair market value.
- Will result in a reduction or elimination of ad valorem or other tax revenues to support the hospital.
- Includes an enforceable commitment that existing programs and services and quality of health care will continue to be provided to all residents of the affected community, particularly the indigent, the uninsured, and the underinsured.
- Is otherwise in compliance with paragraphs (6) and (7) as created in the bill, which require the governing board of the hospital to make the proposed transaction publicly available and to publish a notice indicating the means by which a person may submit written comments about the proposed the sale or lease of the public hospital.

The findings must be accompanied by all information and documents relevant to the governing board’s determination, including, but not limited to:

- The name and addresses of all parties to the transaction.
- The location of the hospital and all related facilities.
- A description of the terms of all proposed agreements.
- A copy of the proposed sale or lease agreement and related agreements, including leases, management contracts, service contracts, and memoranda of understanding.
- The estimated total value associated with the proposed agreement, the proposed acquisition price, and other consideration.

- Any valuations of the hospital's assets prepared within three years immediately preceding the proposed transaction date.
- A financial or economic analysis and report from any financial expert or consultant retained by the governing board.
- A fairness evaluation by an independent expert in such transactions.
- Copies of all other proposals and bids the governing board may have received or considered in compliance with subsection (4).

Creates subsection (6) to require within 120 days before the anticipated closing date of the proposed transaction, the governing board to make publicly available all findings and documents required under subsection (5) and publish a notice of the proposed transaction in one or more newspapers of general circulation in the county in which the majority of the physical assets of the hospital are located. The notice must include the names of the parties involved and the means by which a person may submit written comments about the proposed transaction to the governing board and may obtain copies of the findings and documents required under subsection (5).

Creates subsection (7) to authorize any interested person to submit a written statement in opposition of the sale or lease of the hospital within 20 days after publication of the public notice. If a written statement of opposition is submitted, the governing board or proposed purchaser or lessee may submit a written response no later than 10 days after the due date for the written statement of opposition.

Creates subsection (8) to require a governing board of a county, district, or municipal hospital to obtain approval by a majority vote of the registered voters in the county, district, or municipality or, in alternative, approval by a circuit court, before selling or leasing a public hospital facility. In order for the governing board to receive approval from the circuit court to sell or lease the hospital, it must file a petition in a circuit court in which a majority of the physical assets of the hospital are located at least 30 days after publication of the notice of the proposed transaction. The petition must include all findings and documents required under subsection (5) and include certification by the governing board that it is in compliance with all the requirements under s. 155.40, F.S.

Creates subsection (9) to require the circuit court to issue an order, once the petition for approval of a sale or lease is filed, requiring all interested parties to appear at the designated time and place within the circuit where the petition is filed and show why the petition should not be granted. For purposes of this section, "interested parties" includes any party submitting a proposal for sale or lease of the county, district, or municipal hospital, as well as the governing board.

Before setting the hearing date, the clerk is required to publish a copy of the order in one or more newspapers of general circulation in the county where a majority of the physical assets of the hospital are located, at least once each week for two consecutive weeks. The first publication must be at least 20 days before the date set for the hearing. With publication, all interested parties are made defendants to the action. Any interested person may become a party to the action by moving against or pleading to the petition at or before the hearing date.

At the hearing, the court shall determine all questions of law and fact and make such orders necessary to properly consider and determine the action and render a final judgment.

Creates subsection (10) to require the court to render, after the hearing and upon consideration of all evidence presented, a final judgment approving or denying the proposed transaction. The court must order the governing board to accept or reject the proposal for the sale or lease of the county, district, or municipal hospital. In reaching its decision, the court must determine whether:

- The proposed sale or lease is permitted by law.
- The proposed sale or lease unreasonably excludes a potential purchaser or lessee on the basis of being a for-profit or not-for-profit Florida corporation.
- The governing board of the hospital publicly advertised the meeting at which the proposed transaction was considered by the board in compliance with s. 286.0105, F.S.
- The governing board of the hospital publicly advertised the offer to accept proposals in compliance with s. 255.0525, F.S.
- The governing board of the hospital exercised due diligence in deciding to dispose of hospital assets, selecting the transacting entity, and negotiating the terms and conditions of the disposition.
- Any conflict of interest was disclosed, including conflicts of interest of members of the governing board and experts retained by parties to the transaction.
- The seller or lessor will receive fair market value for the assets, or if the sale or lease represents less than fair market value, why the public interest will be served by accepting less than fair market value.
- The acquiring entity made an enforceable commitment that existing programs and services and quality health care will continue to be provided to all residents of the affected community, particularly to the indigent, the uninsured, and the underinsured.
- The proposed transaction will result in a reduction or elimination of ad valorem or other taxes used to support the hospital.

Creates subsection (11) to authorize any party to the action to appeal the circuit court's decision in the appellate district where the petition for approval was filed, by filing a notice of appeal or petition for review within 30 days after the date of the final judgment. On appeal, the reviewing court shall affirm the circuit court's judgment unless the decision is arbitrary, capricious, or not in compliance with s. 155.40, F.S.

Creates subsection (12) to require the governing board to pay all costs associated with petitioning the court for approval of the sale or lease. In instances where an interested party contests the action, the court may assign costs to the parties.

Creates subsection (13) to exclude from the requirements of s. 155.40, F.S., any sale or lease of a public hospital that is completed before March 9, 2011. Also excluded is the renewal or extension of any lease that, on March 9, 2011, contained an option to renew or extend that lease upon its expiration and is renewed or extended after March 9, 2011.

Section 2 amends s. 395.3036, F.S., to make grammatical and cross-reference corrections.

Section 3 provides that this act shall take effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

This bill will provide more disclosure of the sale or lease process of a public hospital by requiring the governing board of the hospital to make available to the public its facts and findings that support its decision to sell or lease the hospital and by requiring publication of a notice of the sale or lease by the governing board. Additionally, the bill ensures more oversight of the sale or lease process by requiring the circuit court to determine whether the public has been put on notice as to any meetings at which the proposed sale or lease is to be considered or as to any offer to accept the proposal for sale or lease prior to the circuit court's final judgment approving the sale.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

The bill grandfathers-in those sales or leases completed before March 9, 2011, and those leases that contained, on March 9, 2011, an option to renew or extend the lease upon its expiration. The bill appears to apply retroactively to all other sales or leases.

In general, courts will refuse to apply a statute retroactively if it affects substantive rights, liabilities, and duties,¹² impairs vested rights, creates new obligations, or imposes new penalties.¹³ However, statutes which do not alter contractual or vested rights, but relate only to remedies or procedure, can be applied retroactively.¹⁴

Florida courts have recognized that a statute may be retroactively applied if:

- There is clear evidence that the Legislature intended to apply the statute retroactively; and
- Retroactive application is constitutionally permissible.¹⁵

In determining whether retroactive application is constitutional, courts have generally held that due process considerations prevent the retroactive abolition of vested rights.¹⁶

¹² *Progressive Express Ins. Co. v. Menendez*, 979 So. 2d 324 (Fla. 3d DCA 2008).

¹³ *Romine v. Florida Birth Related Neurological Injury Compensation Ass'n*, 842 So. 2d 148, 153 (Fla. 5th DCA 2003).

¹⁴ *Menendez*, 979 So. 2d at 330.

¹⁵ *Metropolitan Dade County v. Chase Fed. Housing Corp.*, 737 So. 2d 494 (Fla. 1999); *Promontory Enterprises, Inc. v. Southern Engineering & Contracting, Inc.*, 864 So. 2d 479 (Fla. 5th DCA. 2004).

This is not an absolute rule, however, because the courts have identified factors that may be considered in determining whether to allow retroactivity. In one case, the Supreme Court weighed three factors in considering the validity of retroactivity:

- The strength of the public interest served by the statute;
- The extent to which the right affected is abrogated; and
- The nature of the right affected.¹⁷

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill will allow interested parties to provide written statements of opposition to a governing board's determination to accept a proposal for the sale or lease of a public hospital and will allow any interested person to become a party to the action by moving against or pleading to a governing board's petition for approval on the sale or lease of a public hospital in circuit court. The bill further allows any party to the hearing on the sale or lease of the public hospital to seek judicial review of the circuit court's final judgment in the appellate district where the petition for approval was filed. The interested parties may incur court costs associated with such actions.

C. Government Sector Impact:

This bill will require the sale or lease of a public hospital that is owned by a county, district, or municipality to be approved by a majority vote of the registered voters within that county, district, or municipality or by a circuit court in which a majority of the physical assets of a public hospital are located.

This bill will require a governing board to make publicly available and publish certain findings that support a board's decision to accept a proposal for the sale or lease of a public hospital. The bill will also require the circuit court clerk to publish a copy of the order requiring all parties to appear to the hearing on the governing board's petition to approve the sale or lease of a public hospital.

This bill directs the governing board of the public hospital to pay all costs associated herein. However, in instances where an interested party contests the action, the court may assign costs to the parties.

Therefore, there may be costs associated with the bill's publishing and notice requirements and any action filed in court.

¹⁶ *State Dept. of Transportation v. Knowles*, 402 So. 2d 1155 (Fla. 1981).

¹⁷ *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that a governing board of a county, district, or municipal hospital may not enter into a sale or lease of a hospital facility without first receiving approval by a majority vote of the registered voters in the county, district, or municipality or, in the alternative, approval from a circuit court. It is unclear whether the requirement to receive the “approval by a majority vote of the registered voters in the county, district, or municipality” is meant to require a majority vote of *all* registered voters in the county, district, or municipality or whether the intent is to require a majority vote of registered voters in the county, district or municipality that participate in the vote. Additionally, the bill does not specify the procedures for making a call for an election for purposes of obtaining the approval or rejection of a proposal for the sale or lease of a public hospital.

The bill provides a mechanism for interested parties to participate in the approval of the sale or lease of a public hospital before a circuit court. The bill requires the circuit court, where the petition for the approval of the sale or lease of the public hospital is filed, to issue an order requiring all “interested parties” to appear to show why the petition should not be granted. Lines 192-194 appear to require interested parties to take an affirmative step (moving against or pleading to the petition) to become a party to the action. The bill states that the term “interested parties” includes “any party submitting a proposal for sale or lease of the county, district, or municipal hospital, as well as the governing board.” The bill makes all interested parties defendants to the action. It is cumbersome that the petitioners, who are seeking approval of the sale or lease and who are, by definition, interested parties, are grouped in with those interested parties who may oppose the sale or lease, as defendants to the action. Also, it is cumbersome that the term “interested parties” is defined to include the petitioners for the sale or lease and yet lines 174-178 require the court to issue an order requiring the “interested parties” to show why the petition *should not* be granted.

The term “interested parties” could be clarified in the bill. For example, s. 75.06, F.S., relating to actions to validate bonds of state agencies, commissions, or departments, provides that “by [a publication of the order for the bond validation hearing] *all property owners, taxpayers, citizens, and others having or claiming any right, title, or interest in the county, municipality or district, or the taxable property therein, are made parties defendant to the action* and the court has jurisdiction of them to the same extent as if named as defendants in the complaint and personally served with process.”

The bill appears to have an internal conflict regarding the requirement that any sale or lease of a public hospital must be for fair market value. On lines 90-92, the bill requires a sale or lease of a public hospital to be for fair market value. However, lines 102-105 and lines 222-225 of the bill seem to suggest that the public interest may be served by a public hospital’s governing board’s acceptance of a proposal for the sale or lease of the hospital that is less than fair market value.

To clarify that a governing board is required to file a petition in a circuit court when it elects to petition the court instead of receiving approval of a sale or lease by a majority vote, line 163 should state, “If the governing board elects to petition the circuit court to seek approval of the proposed transaction, the petition must be filed at least 30 days after publication of the notice of the proposed transaction.” Currently, line 163 requires a petition to be filed, regardless of whether the governing board elects approval by a majority vote.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.



122510

LEGISLATIVE ACTION

Senate

.
.
.
.
.
.

House

The Committee on Health Regulation (Garcia) recommended the following:

Senate Amendment

Delete lines 67 - 91
and insert:
approval by a majority vote of the registered voters in the
county, district, or municipality who cast a vote concerning the
sale or lease of the hospital or, in the alternative, approval
by a circuit court. ~~If the governing board of a county,~~
~~district, or municipal hospital decides to lease the hospital,~~
~~it must give notice in accordance with paragraph (4)(a) or~~
~~paragraph (4)(b).~~

(4) If ~~In the event~~ the governing board of a county,



122510

13 district, or municipal hospital determines that it is no longer
14 in the public interest to own or operate such hospital and
15 elects to consider a sale or lease of the hospital to a third
16 party, the governing board must first determine whether there
17 are any qualified purchasers or lessees. In the process of
18 evaluating any potential purchasers or lessees ~~elects to sell or~~
19 ~~lease the hospital,~~ the board shall:

20 (a) ~~Negotiate the terms of the sale or lease with a for-~~
21 ~~profit or not-for-profit Florida corporation and Publicly~~
22 advertise the meeting at which the proposed sale or lease will
23 be considered by the governing board of the hospital in
24 accordance with s. 286.0105; or

25 (b) Publicly advertise the offer to accept proposals in
26 accordance with s. 255.0525 and receive proposals from all
27 interested and qualified purchasers and lessees.

28
29 Any sale or lease must be for fair market value, or may be less
30 than fair market value only if the sale or lease serves the
31 public's interest. A, and any sale or lease must comply with all
32 applicable state and federal
33



283320

LEGISLATIVE ACTION

Senate

.
.
.
.
.
.

House

The Committee on Health Regulation (Garcia) recommended the following:

Senate Amendment

Delete lines 162 - 194
and insert:
who cast a vote concerning the sale or lease of the hospital or,
in the alternative, approval from a circuit court.

(a) If the governing board seeks to obtain approval from a
circuit court, the board shall file a petition in a circuit
court seeking approval of the proposed transaction at least 30
days after publication of the notice of the proposed
transaction. The petition must be filed in the circuit in which
the majority of the physical assets of the hospital are located.



283320

13 (b) The petition for approval filed by the governing board
14 must include all findings and documents required under
15 subsection (5) and certification by the governing board of
16 compliance with all requirements of this section.

17 (c) A circuit court has jurisdiction to approve the sale or
18 lease of a county, district, or municipal hospital.

19 (9) Upon the filing of a petition for approval, the court
20 shall issue an order requiring all interested parties to appear
21 at a designated time and place within the circuit where the
22 petition is filed and show why the petition should or should not
23 be granted. For purposes of this subsection, "interested
24 parties" are any party submitting a proposal for sale or lease
25 of the county, district, or municipal hospital; the governing
26 board; and a person who moves against or pleads to the petition
27 at or before the time set for the hearing.

28 (a) Before the date set for the hearing, the clerk shall
29 publish a copy of the order in one or more newspapers of general
30 circulation in the county in which the majority of the physical
31 assets of the hospital are located at least once each week for 2
32 consecutive weeks, commencing with the first publication, which
33 must be at least 20 days before the date set for the hearing. By
34 these publications, all interested parties are made parties to
35 the action and the court has jurisdiction of them to the same
36 extent as if named in the petition as petitioners or defendants
37 and personally served with process.

38 (b) At the hearing, the court shall
39

By Senator Garcia

40-00447-12

2012464

1 A bill to be entitled
 2 An act relating to the sale or lease of a county,
 3 district, or municipal hospital; amending s. 155.40,
 4 F.S.; providing that the sale or lease of a county,
 5 district, or municipal hospital is subject to approval
 6 by the registered voters or by the circuit court;
 7 requiring the hospital governing board to determine by
 8 certain public advertisements whether there are
 9 qualified purchasers or lessees before the sale or
 10 lease of such hospital; defining the term "fair market
 11 value"; requiring the board to state in writing
 12 specified criteria forming the basis of its acceptance
 13 of a proposal for sale or lease of the hospital;
 14 providing for publication of notice; authorizing
 15 submission of written statements of opposition to a
 16 proposed transaction, and written responses thereto,
 17 within a certain timeframe; requiring the board to
 18 file a petition for approval with the circuit court
 19 and receive approval before any transaction is
 20 finalized; specifying information to be included in
 21 such petition; providing for the circuit court to
 22 issue an order requiring all interested parties to
 23 appear before the court under certain circumstances;
 24 requiring the clerk of the court to publish the copy
 25 of the order in certain newspapers at specified times;
 26 providing that certain parties are made parties to the
 27 action by the publication of the order; granting the
 28 circuit court jurisdiction to approve the sale or
 29 lease of a county, district, or municipal hospital

Page 1 of 10

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

40-00447-12

2012464

30 based on specified criteria; providing for a party to
 31 seek judicial review; requiring that the reviewing
 32 court affirm the judgment of the circuit court unless
 33 the decision is arbitrary, capricious, or not in
 34 compliance with the act; requiring the board to pay
 35 costs associated with the petition for approval unless
 36 a party contests the action; providing an exemption
 37 for certain sale or lease transactions completed
 38 before a specified date; amending s. 395.3036, F.S.;
 39 conforming cross-references; providing an effective
 40 date.
 41

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

43
 44 Section 1. Subsections (1) and (4) of section 155.40,
 45 Florida Statutes, are amended, present subsections (5) through
 46 (8) of that section are renumbered as subsections (14) through
 47 (17), respectively, and new subsections (5) through (13) are
 48 added to that section, to read:

49 155.40 Sale or lease of county, district, or municipal
 50 hospital; effect of sale.-

51 (1) In order ~~for that~~ citizens and residents of the state
 52 ~~to may~~ receive quality health care, any county, district, or
 53 municipal hospital organized and existing under the laws of this
 54 state, acting by and through its governing board, ~~may shall have~~
 55 ~~the authority to~~ sell or lease such hospital to a for-profit or
 56 not-for-profit Florida corporation, and enter into leases or
 57 other contracts with a for-profit or not-for-profit Florida
 58 corporation for the purpose of operating and managing such

Page 2 of 10

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

40-00447-12 2012464

hospital and any or all of its facilities of whatsoever kind and nature. The term of any such lease, contract, or agreement and the conditions, covenants, and agreements to be contained therein shall be determined by the governing board of such ~~county, district, or municipal~~ hospital. The governing board of the hospital must find that the sale, lease, or contract is in the best interests of the public and must state the basis of such finding. The sale or lease of such hospital is subject to approval by a majority vote of the registered voters in the county, district, or municipality or, in the alternative, approval by a circuit court. ~~If the governing board of a county, district, or municipal hospital decides to lease the hospital, it must give notice in accordance with paragraph (4) (a) or paragraph (4) (b).~~

(4) ~~If in the event~~ the governing board of a county, district, or municipal hospital determines that it is no longer in the public interest to own or operate such hospital and elects to consider a sale or lease of the hospital to a third party, the governing board must first determine whether there are any qualified purchasers or lessees. In the process of evaluating any potential purchasers or lessees elects to sell or lease the hospital, the board shall:

(a) ~~Negotiate the terms of the sale or lease with a for-profit or not-for-profit Florida corporation and Publicly~~ advertise the meeting at which the proposed sale or lease will be considered by the governing board of the hospital in accordance with s. 286.0105; or

(b) Publicly advertise the offer to accept proposals in accordance with s. 255.0525 and receive proposals from all

40-00447-12 2012464

interested and qualified purchasers and lessees.

Any sale or lease must be for fair market value, ~~and any sale or lease~~ must comply with all applicable state and federal antitrust laws. For the purposes of this section, the term "fair market value" means the price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arms-length transaction.

(5) A determination by a governing board to accept a proposal for sale or lease must state, in writing, the findings and basis for supporting the determination.

(a) The findings and basis for supporting the governing board's determination must include, but need not be limited to, a balanced consideration of the following factors:

1. The proposal represents fair market value, or if the proposal does not represent fair market value, a detailed explanation of why the public interest is served by the acceptance of less than fair market value.

2. Whether the proposal will result in a reduction or elimination of ad valorem or other tax revenues to support the hospital.

3. Whether the proposal includes an enforceable commitment that existing programs and services and quality health care will continue to be provided to all residents of the affected community, particularly to the indigent, the uninsured, and the underinsured.

4. Whether the proposal is otherwise in compliance with subsections (6) and (7).

(b) The findings must be accompanied by all information and

40-00447-12 2012464

documents relevant to the governing board's determination,
including, but not limited to:

1. The names and addresses of all parties to the transaction.
2. The location of the hospital and all related facilities.
3. A description of the terms of all proposed agreements.
4. A copy of the proposed sale or lease agreement and any related agreements, including, but not limited to, leases, management contracts, service contracts, and memoranda of understanding.
5. The estimated total value associated with the proposed agreement and the proposed acquisition price and other consideration.
6. Any valuations of the hospital's assets prepared during the 3 years immediately preceding the proposed transaction date.
7. Any financial or economic analysis and report from any expert or consultant retained by the governing board.
8. A fairness evaluation by an independent expert in such transactions.
9. Copies of all other proposals and bids the governing board may have received or considered in compliance with subsection (4).

(6) Within 120 days before the anticipated closing date of the proposed transaction, the governing board shall make publicly available all findings and documents required under subsection (5) and publish a notice of the proposed transaction in one or more newspapers of general circulation in the county in which the majority of the physical assets of the hospital are located. The notice must include the names of the parties

40-00447-12 2012464

involved and the means by which a person may submit written comments about the proposed transaction to the governing board and obtain copies of the findings and documents required under subsection (5).

(7) Within 20 days after the date of publication of the public notice, any interested person may submit to the governing board a detailed written statement of opposition to the transaction. If a written statement of opposition has been submitted, the governing board or the proposed purchaser or lessee may submit a written response to the interested party within 10 days after the written statement of opposition due date.

(8) A governing board of a county, district, or municipal hospital may not enter into a sale or lease of a hospital facility without first receiving approval by a majority vote of the registered voters in the county, district, or municipality or, in the alternative, approval from a circuit court.

(a) The governing board shall file a petition in a circuit court seeking approval of the proposed transaction at least 30 days after publication of the notice of the proposed transaction. The petition must be filed in the circuit in which the majority of the physical assets of the hospital are located.

(b) The petition for approval filed by the governing board must include all findings and documents required under subsection (5) and certification by the governing board of compliance with all requirements of this section.

(c) A circuit court has jurisdiction to approve the sale or lease of a county, district, or municipal hospital.

(9) Upon the filing of a petition for approval, the court

40-00447-12 2012464
 shall issue an order requiring all interested parties to appear
 at a designated time and place within the circuit where the
 petition is filed and show why the petition should not be
 granted. For purposes of this subsection, the term "interested
 parties" includes any party submitting a proposal for sale or
 lease of the county, district, or municipal hospital, as well as
 the governing board.

(a) Before the date set for the hearing, the clerk shall
 publish a copy of the order in one or more newspapers of general
 circulation in the county in which the majority of the physical
 assets of the hospital are located at least once each week for 2
 consecutive weeks, commencing with the first publication, which
 must be at least 20 days before the date set for the hearing. By
 these publications, all interested parties are made parties
 defendant to the action and the court has jurisdiction of them
 to the same extent as if named as defendants in the petition and
 personally served with process.

(b) Any interested person may become a party to the action
 by moving against or pleading to the petition at or before the
 time set for the hearing. At the hearing, the court shall
 determine all questions of law and fact and make such orders as
 will enable it to properly consider and determine the action and
 render a final judgment with the least possible delay.

(10) Upon conclusion of all hearings and proceedings, and
 upon consideration of all evidence presented, the court shall
 render a final judgment approving or denying the proposed
 transaction and shall order the governing board to accept or
 reject the proposal for the sale or lease of the county,
 district, or municipal hospital. In reaching its final judgment,

40-00447-12 2012464
 the court shall determine whether:
 (a) The proposed transaction is permitted by law.
 (b) The proposed transaction unreasonably excludes a
 potential purchaser or lessee on the basis of being a for-profit
 or a not-for-profit Florida corporation.
 (c) The governing board of the hospital publicly advertised
 the meeting at which the proposed transaction was considered by
 the board in compliance with s. 286.0105.
 (d) The governing board of the hospital publicly advertised
 the offer to accept proposals in compliance with s. 255.0525.
 (e) The governing board of the hospital exercised due
 diligence in deciding to dispose of hospital assets, selecting
 the proposed purchaser or lessee, and negotiating the terms and
 conditions of the disposition.
 (f) Any conflict of interest was disclosed, including, but
 not limited to, conflicts of interest relating to members of the
 governing board and experts retained by the parties to the
 transaction.
 (g) The seller or lessor will receive fair market value for
 the assets, or if the sale or lease represents less than fair
 market value, why the public interest will be served by
 accepting less than fair market value.
 (h) The acquiring entity has made an enforceable commitment
 that existing programs and services and quality health care will
 continue to be provided to all residents of the affected
 community, particularly to the indigent, the uninsured, and the
 underinsured.
 (i) The proposed transaction will result in a reduction or
 elimination of ad valorem or other taxes used to support the

40-00447-12 2012464

hospital.

(11) Any party to the action has the right to seek judicial review in the appellate district where the petition for approval was filed.

(a) All proceedings shall be instituted by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days after the date of final judgment.

(b) In such judicial review, the reviewing court shall affirm the judgment of the circuit court, unless the decision is arbitrary, capricious, or not in compliance with this section.

(12) All costs shall be paid by the governing board, unless an interested party contests the action, in which case the court may assign costs to the parties.

(13) Any sale or lease completed before March 9, 2011, is not subject to this section. Any lease that contained, on March 9, 2011, an option to renew or extend that lease upon its expiration is not subject to this section upon renewal or extension on or after March 9, 2011.

Section 2. Section 395.3036, Florida Statutes, is amended to read:

395.3036 Confidentiality of records and meetings of corporations that lease public hospitals or other public health care facilities.—The records of a private corporation that leases a public hospital or other public health care facility are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and the meetings of the governing board of a private corporation are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution if

40-00447-12 2012464

when the public lessor complies with the public finance accountability provisions of s. 155.40(14) ~~155.40(5)~~ with respect to the transfer of any public funds to the private lessee and ~~if when~~ the private lessee meets at least three of the five following criteria:

(1) The public lessor that owns the public hospital or other public health care facility was not the incorporator of the private corporation that leases the public hospital or other health care facility.

(2) The public lessor and the private lessee do not commingle any of their funds in any account maintained by either of them, other than the payment of the rent and administrative fees or the transfer of funds pursuant to subsection (5)~~(2)~~.

(3) Except as otherwise provided by law, the private lessee is not allowed to participate, except as a member of the public, in the decisionmaking process of the public lessor.

(4) The lease agreement does not expressly require the lessee to comply with ~~the requirements of~~ ss. 119.07(1) and 286.011.

(5) The public lessor is not entitled to receive any revenues from the lessee, except for rental or administrative fees due under the lease, and the lessor is not responsible for the debts or other obligations of the lessee.

Section 3. This act shall take effect July 1, 2012.

GEORGIADES.CELIA

From: STOVALL.SANDRA
Sent: Wednesday, December 07, 2011 8:58 AM
To: GEORGIADES.CELIA
Subject: FW: Bill to be Heard

PLEASE ADD TO THE REQUEST RECEIVED FIELD.

From: MARIN.DAVID.S40
Sent: Wednesday, December 07, 2011 8:58 AM
To: STOVALL.SANDRA
Subject: Bill to be Heard

Hi Sandra,

Hope all is well. For the next committee meeting, the Senator would like to have his bill placed on the agenda:
SB 464 Sale or Lease of a Hospital.

Thank you,

David

 **ENTERED**
12-7-11

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 Health Regulation Committee

BILL: SB 342

INTRODUCER: Senator Storms and others

SUBJECT: Use of Cigarette Tax Proceeds

DATE: January 9, 2012

REVISED: 01/12/12

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Stovall	HR	Fav/1 amendment
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input checked="" type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill amends statutory provisions relating to the distribution of funds from the Cigarette Tax Collection Trust Fund to the H. Lee Moffitt Cancer Center and Research Institute (Moffitt Center) and the use of those funds.

The bill moves up the date on which the current cigarette tax revenue distribution to the Moffitt Center of 1.47 percent of net collections is set to expire, from June 30, 2020, to June 30, 2013. Under the bill, effective July 1, 2013, the Moffitt Center would receive a distribution of 4.88 percent of net cigarette tax collections. This distribution would continue through June 30, 2045. Under current law and the bill, the distribution amount cannot be less than the amount would have been in state fiscal year 2001-2002 if distributed at the percentage amount specified in statute. The bill expands the allowable uses of these funds to various additional functions of the Moffitt Center.

The bill expresses the Legislature's intent to provide alternative funding sources to pay any deficit in the amount required for debt service on the Moffitt Center's existing bonds if the bonds are adversely affected by amendment to or repeal of the cigarette tax or by amendment to the existing statutory Moffitt Center cigarette tax distribution.

This bill substantially amends the following sections of the Florida Statutes: 210.20 and 210.201.

II. Present Situation:

The H. Lee Moffitt Cancer Center and Research Institute

Section 1004.43, F.S., establishes the Moffitt Center at the University of South Florida (USF). A not-for-profit corporation, acting as an instrumentality of the state, governs and operates the Moffitt Center in accordance with an agreement with the Board of Governors of the State University System,¹ which authorizes use of facilities on the USF campus. A board of directors manages the corporation, and a chief executive officer, who serves at the pleasure of the board of directors, administers the Moffitt Center.

The Moffitt Center is a statewide resource for basic and clinical research and multidisciplinary approaches to patient care. Its sole mission is to contribute to the prevention and cure of cancer. In 1999, the Moffitt Affiliate Network was established to further enhance the center's abilities to serve Florida communities by providing tertiary care, clinical trials, medical education, and community education and screening. The affiliate network consists of 14 Florida hospitals, plus one hospital in Georgia and one in Pennsylvania. The network also includes more than 400 community oncologists.²

The Moffitt Center is the only cancer research facility headquartered in Florida that is designated as a Comprehensive Cancer Center by the National Cancer Institute (NCI). The Mayo Clinic, which has a presence in Florida (Jacksonville), Arizona, and Minnesota, is also designated by the NCI as a Comprehensive Cancer Center in Minnesota. According to the NCI, "the NCI-designated Cancer Centers are a major source of discovery of the nature of cancer and of the development of more effective approaches to cancer prevention, diagnosis, and therapy. They also deliver medical advances to patients and their families, educate health-care professionals and the public, and reach out to underserved populations. They are characterized by strong organizational capabilities, institutional commitment, and trans-disciplinary, cancer-focused science; experienced scientific and administrative leadership; and state-of-the-art cancer research and patient care facilities."³

Cigarette Tax Revenues

Chapter 210, F.S., governs taxes on tobacco products. Cigarette tax collections received by the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation are deposited into the Cigarette Tax Collection Trust Fund. Section 210.20(2), F.S., provides for monthly distributions as follows:

¹ Under revisions to the statute made by ch. 2007-217, L.O.F., the original agreement between the State Board of Education and the Moffitt Center is now overseen by the Board of Governors.

² Moffitt Cancer Center, Affiliate Hospitals. Found at: <http://www.moffitt.org/Site.aspx?spid=5CE54FA5D8EE4D27A5BD6C496C99028D> (Last visited on January 3, 2012).

³ National Institutes of Health, National Cancer Institute, Office of Cancer Centers. Found at: <http://cancercenters.cancer.gov/about/index.html> (Last visited on January 3, 2012).

From total collections:

- 8.0 percent service charge to the General Revenue Fund,
- 0.9 percent to the Alcoholic Beverage and Tobacco Trust Fund,

From the remaining net collections:

- 2.9 percent to the Revenue Sharing Trust Fund for counties,
- 29.3 percent to the Public Medical Assistance Trust Fund, and
- 1.47 percent to the Moffitt Center (\$5,691,995 per year minimum, or \$474,332.96 monthly).⁴

Use of Cigarette Tax Funds by the Moffitt Center

Section 210.20(b)2., F.S., which provides for the current 1.47 percent distribution to the Moffitt Center, specifies that the funds are to be used for the purpose of constructing, furnishing, and equipping a cancer research facility at the USF adjacent to the Moffitt Center. Section 210.201, F.S., further specifies that funds distributed to the Moffitt Center under s. 210.20, F.S., must be used to secure financing to pay costs related to constructing, furnishing, and equipping the cancer research facility. Such financing may include the issuance of tax-exempt bonds by a local authority, municipality, or county.

III. Effect of Proposed Changes:

Section 1 amends s. 210.20, F.S., to terminate the existing 1.47 percent distribution June 30, 2013, and to provide that, beginning with the distributions from the July 2013 net cigarette tax collections, and continuing monthly through June 30, 2045, the Moffitt Center's cigarette tax distribution will increase from 1.47 percent of the net collections to 4.88 percent of the net collections, with a minimum of what would have been paid in state fiscal year 2001-2002 had the distribution rate of 4.88 percent been in effect at that time.

The bill expands the allowable uses of the Moffitt Center's distribution to specify that the funds must be used for lawful purposes that include:

- Constructing, furnishing, equipping, financing, operating, and maintaining cancer research and clinical and related facilities;
- Furnishing, equipping, operating, and maintaining other properties owned or leased by the Moffitt Center; and
- Paying costs incurred in connection with purchasing, financing, operating, and maintaining equipment, facilities, and properties.

The bill removes a requirement that the funds be used for a facility at the University of South Florida adjacent to the Moffitt Center.

The bill states that if the cigarette tax is amended or repealed or the paragraph relating to the Moffitt Center is modified in a manner that would adversely affect the Moffitt Center's bonds,

⁴ When the Moffitt Center's distribution was created in 1998 by ch. 98-286, L.O.F., the percentage was set at 2.59 percent, which was in effect until December 31, 2008. Other distributions were created in 2002 by ch. 2002-393, L.O.F., including an additional 1.47 percent distribution, which took effect July 1, 2004, on top of the 2.59 percent distribution. The 1.47 percent distribution expires June 30, 2020, under current law.

the Legislature intends to provide alternative funding sources in an amount sufficient to pay any deficit in the amount required for debt service on the bonds.

The change to the distribution percentage does not become effective until July 1, 2013; however, the changes made to the allowable uses of the funds take effect on the bill's effective date, regardless of the distribution percentage.

Section 2 amends s. 210.201, F.S., to remove a requirement that the Moffitt Center facility be located at the University of South Florida and to conform to the allowable uses specified by the amendment to s. 210.20, F.S., in Section 1 of the bill. The bill also authorizes the Board of Directors of the Moffitt Center to secure financing, beyond local tax-exempt bonds, through other forms of indebtedness.

Section 3 provides an effective date for the bill of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Under current law, the statutory minimum cigarette tax distribution to the Moffitt Center is \$5.6 million based on the amount of the distribution percentage if that percentage had

been in effect in state fiscal year 2001-2002. The bill increases the minimum to \$18.8 million annually, effective July 1, 2013.⁵

The 4.88 percent of net collections on its own would yield only \$13.2 million in FY 2013-2014, \$13.1 million in FY 2014-2015, and \$13.0 million in FY 2015-2016. The amount needed to bring the distribution to \$18.8 million annually results from the language requiring the distribution to at least match what it would have been had it been in place in FY 2001-2002, when the net tax collections were \$418.2 million. Since current and future collections are not expected to approach the \$418.2 million, the floor of \$18.8 million will be the distribution amount, just as under current law the FY 2001-2002 floor of \$5.6 million is in effect.⁶

Due to the low level of excise tax currently and in the forecast compared to FY 2001-2002, the result of this legislation is to put into place a distribution of \$18.8 million annually, replacing the current \$5.6 million annually. The impact is therefore \$13.2 million in additional revenue annually to the Moffitt Center, and a loss of \$13.2 million annually to the General Revenue Fund.⁷

VI. Technical Deficiencies:

On lines 72 and 73, the words “in addition to the distribution authorized in subparagraph 1.” appear to be unnecessary, since the distribution under that subparagraph has expired.

VII. Related Issues:

One Legislature cannot bind a future Legislature, therefore the language in the bill expressing legislative intent to provide alternative funding sources to the Moffitt Center, if the cigarette tax law or the statutory distribution of cigarette tax funds to the Moffitt Center is changed in a way that adversely affects Moffitt Center’s bonds, is only the expression of the intent of the 2012 Legislature.

VIII. Additional Information:

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

None.

B. Amendments:

Barcode 205560 by Health Regulation on January 12, 2012:

The amendment removes reference to a statutory subparagraph that is now obsolete.

⁵ Revenue Estimating Conference, Impact Conference Results, November 10, 2011. Found at: <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page60-61.pdf> (Last visited on January 3, 2012).

⁶ *Id.*

⁷ *Id.*

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



205560

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/13/2012	.	
	.	
	.	
	.	

The Committee on Health Regulation (Fasano) recommended the following:

Senate Amendment

Delete lines 72 - 73
and insert:
through June 30, 2045, the division shall from month to month

By Senator Storms

10-00394-12

2012342__

A bill to be entitled

An act relating to the use of cigarette tax proceeds; amending s. 210.20, F.S.; revising the payment and distribution of funds in the Cigarette Tax Collection Trust Fund; providing specified purposes for the use of funds that are appropriated out of the trust fund; providing legislative intent; amending s. 210.201, F.S.; authorizing moneys transferred to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute to be used to secure financing to pay costs for specified purposes at certain facilities and other properties; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 210.20, Florida Statutes, is amended to read:

210.20 Employees and assistants; distribution of funds.—

(2) As collections are received by the division from such cigarette taxes, it shall pay the same into a trust fund in the State Treasury designated "Cigarette Tax Collection Trust Fund" which shall be paid and distributed as follows:

(b)1. Beginning January 1, 1999, and continuing for 10 years thereafter, the division shall from month to month certify to the Chief Financial Officer the amount derived from the cigarette tax imposed by s. 210.02, less the service charges provided for in s. 215.20 and less 0.9 percent of the amount derived from the cigarette tax imposed by s. 210.02, which shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund,

Page 1 of 5

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

10-00394-12

2012342__

specifying an amount equal to 2.59 percent of the net collections, and that amount shall be paid to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute, established under s. 1004.43, by warrant drawn by the Chief Financial Officer upon the State Treasury. These funds are hereby appropriated monthly out of the Cigarette Tax Collection Trust Fund, to be used for the purpose of constructing, furnishing, and equipping a cancer research facility at the University of South Florida adjacent to the H. Lee Moffitt Cancer Center and Research Institute. In fiscal years 1999-2000 and thereafter with the exception of fiscal year 2008-2009, the appropriation to the H. Lee Moffitt Cancer Center and Research Institute authorized by this subparagraph may ~~shall~~ not be less than the amount that would have been paid to the H. Lee Moffitt Cancer Center and Research Institute for fiscal year 1998-1999 had payments been made for the entire fiscal year rather than for a 6-month period thereof.

2. Beginning July 1, 2002, and continuing through June 30, 2004, the division shall, in addition to the distribution authorized in subparagraph 1., from month to month certify to the Chief Financial Officer the amount derived from the cigarette tax imposed by s. 210.02, less the service charges provided for in s. 215.20 and less 0.9 percent of the amount derived from the cigarette tax imposed by s. 210.02, which shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund, specifying an amount equal to 0.2632 percent of the net collections, and that amount shall be paid to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute, established under s. 1004.43, by warrant drawn by the

Page 2 of 5

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

10-00394-12

2012342

59 Chief Financial Officer. Beginning July 1, 2004, and continuing
 60 through June 30, ~~2013~~ ~~2020~~, the division shall, in addition to
 61 the distribution authorized in subparagraph 1., from month to
 62 month certify to the Chief Financial Officer the amount derived
 63 from the cigarette tax imposed by s. 210.02, less the service
 64 charges provided for in s. 215.20 and less 0.9 percent of the
 65 amount derived from the cigarette tax imposed by s. 210.02,
 66 which shall be deposited into the Alcoholic Beverage and Tobacco
 67 Trust Fund, specifying an amount equal to 1.47 percent of the
 68 net collections, and that amount shall be paid to the Board of
 69 Directors of the H. Lee Moffitt Cancer Center and Research
 70 Institute, established under s. 1004.43, by warrant drawn by the
 71 Chief Financial Officer. Beginning July 1, 2013, and continuing
 72 through June 30, 2045, the division shall, in addition to the
 73 distribution authorized in subparagraph 1., from month to month
 74 certify to the Chief Financial Officer the amount derived from
 75 the cigarette tax imposed by s. 210.02, less the service charges
 76 provided for in s. 215.20 and less 0.9 percent of the amount
 77 derived from the cigarette tax imposed by s. 210.02, which shall
 78 be deposited into the Alcoholic Beverage and Tobacco Trust Fund,
 79 specifying an amount equal to 4.88 percent of the net
 80 collections, and that amount shall be paid to the Board of
 81 Directors of the H. Lee Moffitt Cancer Center and Research
 82 Institute, established under s. 1004.43, by warrant drawn by the
 83 Chief Financial Officer. These funds are appropriated monthly
 84 out of the Cigarette Tax Collection Trust Fund, to be used for
 85 lawful purposes, including the purpose of constructing,
 86 furnishing, and equipping, financing, operating, and maintaining
 87 a cancer research and clinical and related facilities;

Page 3 of 5

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

10-00394-12

2012342

88 furnishing, equipping, operating, and maintaining other
 89 properties owned or leased by facility at the University of
 90 ~~South Florida adjacent to~~ the H. Lee Moffitt Cancer Center and
 91 Research Institute; and paying costs incurred in connection with
 92 purchasing, financing, operating, and maintaining such
 93 equipment, facilities, and properties. In fiscal years 2004-2005
 94 and thereafter, the appropriation to the H. Lee Moffitt Cancer
 95 Center and Research Institute authorized by this subparagraph
 96 shall not be less than the amount that would have been paid to
 97 the H. Lee Moffitt Cancer Center and Research Institute in
 98 fiscal year 2001-2002, had this subparagraph been in effect.
 99 3. If the cigarette tax is amended or repealed or this
 100 paragraph is modified in a manner that would adversely affect
 101 bonds issued for the purposes enumerated in subparagraph 2., the
 102 Legislature intends to provide alternative funding sources in an
 103 amount sufficient to pay any deficit in the amount required for
 104 debt service on such bonds.

105 Section 2. Section 210.201, Florida Statutes, is amended to
 106 read:

107 210.201 H. Lee Moffitt Cancer Center and Research Institute
 108 facilities ~~Cancer research facility at the University of South~~
 109 ~~Florida;~~ establishment; funding.—The Board of Directors of the
 110 H. Lee Moffitt Cancer Center and Research Institute shall
 111 construct, furnish, and equip, and shall covenant to complete,
 112 the cancer research and clinical and related facilities of
 113 ~~facility at the University of South Florida adjacent to~~ the H.
 114 Lee Moffitt Cancer Center and Research Institute funded with
 115 proceeds from the Cigarette Tax Collection Trust Fund pursuant
 116 to s. 210.20. Moneys transferred to the Board of Directors of

Page 4 of 5

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

10-00394-12 2012342

117 the H. Lee Moffitt Cancer Center and Research Institute pursuant
118 to s. 210.20 ~~may shall~~ be used to secure financing to pay costs
119 related to constructing, furnishing, ~~and~~ equipping, operating,
120 and maintaining the cancer research and clinical and related
121 facilities; furnishing, equipping, operating, and maintaining
122 other leased or owned properties; and paying costs incurred in
123 connection with purchasing, financing, operating, and
124 maintaining such equipment, facilities, and properties as
125 provided in s. 210.20 facility. Such financing may include the
126 issuance of tax-exempt bonds or other forms of indebtedness by a
127 local authority, municipality, or county pursuant to parts II
128 and III of chapter 159. Such bonds shall not constitute state
129 bonds for purposes of s. 11, Art. VII of the State Constitution,
130 but shall constitute bonds of a "local agency," as defined in s.
131 159.27(4). The cigarette tax dollars pledged to facilities ~~this~~
132 ~~facility~~ pursuant to s. 210.20 may be replaced annually by the
133 Legislature from tobacco litigation settlement proceeds.

134 Section 3. This act shall take effect July 1, 2012.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Children, Families, and Elder Affairs, *Chair*
Budget - Subcommittee on Criminal and Civil Justice
Appropriations
Community Affairs
Military Affairs, Space, and Domestic Security
Reapportionment
Transportation

SENATOR RONDA STORMS

10th District

October 21, 2011

Senator Rene Garcia, Chair
Senate Committee on Health Regulation
310 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Garcia:

Senate Bill 342, relating to the *Use of Cigarette Tax Proceeds*, has been referred to your committee for its first committee of reference.

I would greatly appreciate you placing SB 342 on the Health Regulation committee's agenda at your earliest convenience. Please do not hesitate to contact me should you have any questions.

Thank you for your consideration of this request.

Sincerely,

Senator Ronda Storms
Florida State Senate
10th District

Cc: Ms. Sandra R. Stovall, Staff Director
530 Knott Building

REPLY TO:

- ☐ Lithia Oaks Business Center, 421 Lithia Pinecrest Road, Brandon, Florida 33511 (813) 651-2189 FAX: (813) 651-2188
 - ☐ 413 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5072
- Internet Address: storms.ronda.web@flsenate.gov

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-12-12

Meeting Date

Topic Cigarette Tax

Bill Number 342
(if applicable)

Name H. LEE MOFFITT

Amendment Barcode _____
(if applicable)

Job Title ATTORNEY

Address 3327 NW PERIMETER

Phone 813 760-5712

Street

PALM CITY

City

State

Zip

E-mail Lee.Moffitt@Moffitt.org

Speaking: ☒ For ☐ Against ☐ Information

Representing MOFFITT CANCER CENTER

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/12/12

Meeting Date

Topic Moffitt Cancer Center

Bill Number 3412
(if applicable)

Name Ganene Culumber

Amendment Barcode _____
(if applicable)

Job Title CFO

Address 10902 Magnolia Blvd
Street
Tampa, FL
City State Zip

Phone 813-745-1520

E-mail Ganene.Culumber@
moffitt.org

Speaking: ☒ For ☐ Against ☒ Information

Representing Moffitt Cancer Center

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/12/12
Meeting Date

Topic CIG. TAX

Bill Number 342
(if applicable)

Name JAMIE WILSON

Amendment Barcode _____
(if applicable)

Job Title VICE PRESIDENT

Address 12902 MAGNOLIA DR LTC-GR
Street
TAMPA FL 33612
City State Zip

Phone 813-745-1521

E-mail jamie.wilson@moффit.org

Speaking: ☐ For ☐ Against ☒ Information

Representing MOFFITT CANCER CENTER

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

CourtSmart Tag Report

Room: KN 412

Case:

Caption: Senate Committee on Health Regulation

Type:

Judge:

Started: 1/12/2012 10:25:28 AM

Ends: 1/12/2012 11:05:01 AM

Length: 00:39:34

10:25:34 AM Opening Remarks
10:25:42 AM Roll Call
10:26:16 AM Senator Garcia SB 464 Temporarily Postponed.
10:26:38 AM Tab 2 Senator Margolis SB 478 presented by Jeff Branch
10:27:32 AM Explains amendment
10:28:04 AM Roll call on SB 478
10:28:39 AM Tab 3 Senator Dean SB 480 presented by Michael Hart
10:29:50 AM David Eastman, Florida Association of RV Parks and Campgrounds, waives in support
10:30:01 AM Roll Call
10:30:22 AM Tab 1 SB 376 by Senator Flores
10:30:40 AM Explains substitute amendment
10:32:11 AM Alison Dudley, Florida Radiological Society, waives in support
10:32:27 AM Michael Cantens, Department of Health
10:32:32 AM Roll Call
10:32:46 AM Tab 6 SB 616 by Senator Flores
10:33:40 AM Michael Cantens, Department of Health
10:33:48 AM Paul Hull, American Cancer Society, waives in support
10:34:12 AM Senator Gaetz with comments
10:34:48 AM Roll Call
10:35:15 AM Tab 4 SB 510 by Senator Rich explains strike-all
10:38:30 AM Question by Senator Sobel re: employee children
10:39:21 AM Senator Rich to respond
10:39:22 AM Followup from Senator Sobel
10:39:32 AM Senator Rich to respond
10:40:27 AM Questions by Senator Garcia
10:40:37 AM Senator Rich to respond
10:42:27 AM Karen Woodall, Florida Center for Fiscal and Economic Policy
10:43:19 AM Rich Templin, Florida ALF-CIO, waives in support
10:43:51 AM Badili Jones, Florida New Majority, waives in support
10:43:54 AM Michael Sheedy, Florida Catholic Conference, waives in support
10:44:07 AM John Ratliff, SEIU Local 1991
10:44:08 AM Alisa Snow, Florida Nurses Association, waives in support
10:44:37 AM Mary Pat Moore, Florida Association of Health Plans, waives in support
10:44:57 AM Senator Rich to close
10:45:10 AM Roll Call
10:45:51 AM Tab 9 Senator Storms SB 342
10:48:51 AM Question by Senator Gaetz
10:48:52 AM Senator Storms to answer
10:49:28 AM Question by Senator Norman
10:50:22 AM Senator Storms to answer
10:51:20 AM Amendment by Senator Fasano
10:51:34 AM Jamie Wilson, Moffitt Cancer Center, waives in support
10:51:55 AM Janene Culumber, Moffitt Cancer Center, waives in support
10:52:18 AM H. Lee Moffitt, waives in support
10:52:27 AM Senator with comments
10:54:08 AM Senator Gaetz with comments
10:55:03 AM Senator Storms to close
10:58:08 AM Roll Call
10:58:42 AM Senator Gaetz show unanimous vote on SB 478
10:59:01 AM Senator Fasano show voting yes on SB 478, 480, 376, & 616
10:59:33 AM SB 5 SB 584 by Senator Richter presented by
10:59:59 AM Roll call

11:00:55 AM Tab 7 SB 850 by Health Regulation, Elizabeth Davlantes to present
11:02:34 AM Roll Call
11:02:41 AM Senator Diaz de la Portilla show voting yes on SB 478, 480, 376, 616, 510, & 342
11:02:57 AM Meeting Adjourned