SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 222

SPONSOR: Governmental Oversight and Productivity Committee and Senator Dyer

SUBJECT: Safety Standards for Public Health Care Employees

DATE: March 28, 2000 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Liem	Wilson	HC	Fav/4 amendments
2.	Rhea	Wilson	GO	Favorable/CS
3.				
4.				
5.				

I. Summary:

The committee substitute requires the Department of Labor and Employment Security (DLES) to adopt a blood-borne-pathogen standard for public employees which is at least as stringent as the standard adopted by the federal Occupational Safety and Health Administration. The standard must include, but is not limited to, a requirement that needleless systems be implemented and that sharps with sharps-injury protection be used in all facilities that employ public employees. The committee substitute authorizes an exception to this requirement where an evaluation committee determines that the use of such devices will jeopardize the safety of patients or employees with respect to a specific medical procedure.

The committee substitute requires the recording of incidents of exposure in a sharps injury log, consideration by the DLES of additional requirements to prevent sharps injuries or exposure incidents, and compilation and maintenance by the department of a list of existing needleless systems and sharps with engineered sharps-injury protection. This list shall be made available to public employers to assist them in complying with the requirements of the blood-borne-pathogen standard developed under this section.

The committee substitute creates an undesignated section of law.

II. Present Situation:

Needle stick/sharps injuries

Health care workers use many types of needles and other sharp devices to provide patient care. Whenever a needle or other sharp device is exposed, injuries can occur and potentially fatal pathogens can be transmitted. Precise national or state level data are not available on the annual number of needle stick injuries among health care workers; however, the Centers for Disease Control and Prevention (CDC) estimate that 600,000 to 800,000 such injuries occur nationally each year. According to the Department of Health (DOH), there is no data regarding the number

of needle stick injuries in Florida, but the annual rate of needle stick injury nationwide is estimated to be 187 per 1000 health care workers.

Data from hospitals participating in the CDC National Surveillance System for Hospital Health Care Workers (NaSH) and from hospitals included in the University of Virginia's Exposure Prevention Information Network (EPINet) research database show that approximately 38 percent of sharps injuries occur during needle use and 42 percent occur after use and before disposal. The circumstances leading to a needle stick injury depend partly on the type and design of the device used. For example, needle devices that must be taken apart or manipulated after use (e.g., prefilled cartridge syringes and phlebotomy needle/vacuum tube assemblies) have been associated with increased injury rates. Needles attached to a length of flexible tubing (e.g., winged-steel needles and needles attached to intravenous (IV) tubing) are sometimes difficult to place in sharps containers and thus present another injury hazard. Injuries involving needles attached to IV tubing may occur when a health care worker inserts or withdraws a needle from an IV port or tries to temporarily remove the needle stick hazard by inserting the needle into a drip chamber, IV port or bag, or even bedding.

In addition to risks related to device characteristics, needle stick injuries are also related to certain work practices such as recapping, transferring a body fluid between containers, and failing to properly dispose of used needles in puncture-resistant sharps containers. Past studies of needle stick injuries have shown that 10 percent to 25 percent of such injuries occurred when recapping a used needle. Recapping by hand has been discouraged for some time and is prohibited under the Occupational Safety and Health Administration (OSHA) blood-borne-pathogens standard. Five percent of needle stick injuries in NaSH hospitals are still related to this practice. Injury may also occur when a health care worker attempts to transfer blood or other body fluids from a syringe to a specimen container (such as a vacuum tube) and misses the target. Also, if used needles or other sharps are left in the work area or are discarded in a sharps container that is not puncture resistant, a needle stick injury may occur.

Data from NaSH and the EPINet research database show that only a few needle types and other sharp devices are associated with the majority of injuries Of nearly 5,000 injuries reported by hospitals participating in NaSH between June 1995 and July 1999, 62 percent were associated with hollow-bore needles, primarily hypodermic needles attached to disposable syringes (29 percent) and winged-steel (butterfly-type) needles.

Regulation of Workplace Safety

Workplace safety issues for private employers are regulated by the Occupational Safety and Health Act of 1970 (OSHA), as amended in 1990 and 1998, under the federal authority to regulate matters which affect interstate commerce. States are allowed to adopt standards only for occupational health or safety issues for which there is no standard in effect under the federal act. States which desire to assume responsibility for development and enforcement of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under the act may submit a state plan for the development of such standards and their enforcement to the Secretary of the United States Department of Labor. Twenty-three states have assumed this authority; Florida is not one of

these. OSHA excludes from federal regulation state government, or political subdivisions of a state.

Chapter 442, F.S., delegates to the Florida Department of Labor and Employment Security (DLES), Division of Safety, the authority to establish workplace safety standards for *public* sector employees. Section 442.20(2), F.S., allows the Division of Safety to adopt by rule the Federal OSHA standard for blood-borne pathogens at 29 C.F. R. Part 1910, subpart z, for public sector employees. In 1993, the Division promulgated rules which adopted the subpart as its rules.

The federal standard for addressing needle stick injuries is the blood-borne-pathogens standard promulgated by OSHA at 29 CFR 1910.1030, which has been in effect since 1992. The standard applies to all occupational exposures to blood or other potentially infectious materials. Notable elements of this standard require the following:

- A written exposure control plan designed to eliminate or minimize worker exposure to blood borne pathogens;
- Compliance with universal precautions (an infection control principle that treats all human blood and other potentially infectious materials as infectious);
- Engineering controls and work practices to eliminate or minimize worker exposure;
- Personal protective equipment (if engineering controls and work practices do not eliminate occupational exposures);
- Prohibition of bending, recapping, or removing contaminated needles and other sharps unless such an act is required by a specific procedure or has no feasible alternative;
- Prohibition of shearing or breaking contaminated needles (OSHA defines “contaminated” as the presence or the reasonably anticipated presence of blood or other potentially infectious materials on an item or surface);
- Free hepatitis B vaccinations offered to workers with occupational exposure to blood borne pathogens;
- Worker training in appropriate engineering controls and work practices; and
- Post-exposure evaluation and follow up, including post-exposure prophylaxis when appropriate.

In November 1999, OSHA revised and strengthened its internal compliance directive (guidance to be used by field inspectors) to reflect newer and safer technologies now available and to increase the employer’s responsibility to evaluate and use effective safer technologies.

The Department of Labor and Employment Security (FDLES) requires that a First Report of Injury Form (LES Form DWC-1) be completed and reported to the DLES Workers’ Compensation managed care provider. A copy of the form also is sent to the Department of

Insurance, Division of Risk Management, Workers' Compensation Claims. Records and medical treatment are managed through DLES's Managed Care Workers' Compensation Medical Case Manager. Databases and record keeping for workers' compensation injuries exist, although needle sticks and sharps injuries are not specifically coded.

Federal Legislation

The Health Care Worker Needlestick Prevention Act of 1999 (HR1899), was introduced in the U.S. House of Representatives on May 20, 1999 and in the Senate (S1140) on May 26, 1999. If passed, this legislation would require the Secretary of Labor to issue regulations to eliminate or minimize the significant risk of needle stick injuries to health care workers. The bills would amend the OSHA blood-borne-pathogens standard to require that all health care facilities use needle systems and sharps with engineered protection such as retractable needles. The bills would also require employees to create and keep a sharps injury log containing detailed information about any sharps injuries that occur. Employers would be required to adequately train direct health care workers on the use of needleless technologies and systems with engineered sharps protections. A new clearinghouse within the National Institute of Occupational Safety and Health (NIOSH) would be established to collect data on engineered safety technology that is designed to help prevent the risk of needle sticks and other sharps injuries. NIOSH would have access to the sharps injury logs to carry out these new tasks and the Institute is authorized $15 million in new funding.

The United States Department of Health and Human Services would promulgate new regulations regarding conditions of participation in Medicare for those hospitals that are not covered by OSHA so that all hospitals across the country would be covered by these new blood-borne-pathogen requirements.

III. Effect of Proposed Changes:

The committee substitute requires the Department of Labor and Employment Security (DLES) to adopt a blood-borne-pathogen standard for public employees which must be at least as stringent as the standard adopted by the federal Occupational Safety and Health Administration (OSHA). The standard must include a requirement that needleless systems be implemented, and that engineered sharps-injury protection be used in all facilities that employ public employees except where an evaluation committee, established by the public employer and consisting of a majority of health care workers who provide direct patient care, determines by means of an objective evaluation of products that the use of such devices will jeopardize the safety of patients or employees with respect to a specific medical procedure.

The committee substitute requires the recording of incidents of exposure in a sharps injury log and specifies the types of information to be recorded. The DLES is required to consider additional requirements to prevent sharps injuries or exposure incidents, such as training and educational requirements, measures to increase vaccinations, strategic placement of sharps containers as close to the work area as practical, and increased use of personal protective equipment.

The committee substitute requires compilation and maintenance by the department of a list of existing needleless systems and sharps with engineered sharps-injury protection. The list may be

developed from existing sources of information. This list shall be made available to public employers to assist them in complying with the requirements of the blood-borne-pathogen standard developed under this section.

The committee substitute defines "public employer" as any employer who employs public employees who have occupational exposure to blood or other material that potentially contains blood-borne pathogens.

The committee substitute defines "needleless systems" as devices that do not use needles for: (1) the withdrawal of body fluids after the initial venous or arterial access is established; (2) the administration of medication or fluids; or (3) any other procedure that involves the potential for an exposure incident.

The committee substitute defines a "sharp" as any object used or encountered in a health care setting which can reasonably be anticipated to penetrate the skin or any other part of the body and to result in an exposure incident, including, but not limited to needle devices, scalpels, lancets, broken glass, broken capillary tubes, exposed ends of dental wires, dental knives, drills, and burrs.

The committee substitute defines "engineered sharps-injury protection" to mean

> 1. A physical attribute built into or used with a needle device used for withdrawing body fluids, accessing a vein or artery, or administering medications or other fluids which effectively reduces the risk of an exposure incident by a mechanism such as barrier creation, blunting, encapsulation, withdrawal, retraction, destruction, or other effective mechanisms; or
> 2. A physical attribute built into or used with any other type of needle device, or into a nonneedle sharp, which effectively reduces the risk of an exposure incident.

The committee substitute does not define an "exposure incident".

The committee substitute establishes an effective date of July 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18, Florida Constitution, requires that no county or municipality shall be bound by any general law requiring such local government to spend funds or to take action requiring the expenditure of funds unless the Legislature has formally determined in the committee substitute that such law fulfills an important state interest and the committee substitute must pass by at least a 2/3 vote of the membership of each house of the Legislature. The committee substitute contains a finding of an important state interest, which states:

> The Legislature declares that the provisions of this act fulfill an important state interest due to the benefits of the prevention of communicable diseases.

B. Public Records/Open Meetings Issues:

The committee substitute requires a standard to be developed which will govern public employees. The standard includes the recording of exposure incidents which includes information about public employees. Although the committee substitute does not require the name of the employee who has been exposed to be recorded in the log, there will be sufficient information contained in the log to enable individuals to be identified. Since the employers are public entities, these records are public records subject to the provisions of Article I, s. 24, Florida Constitution. There is no public records exemption committee substitute linked to this committee substitute.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Department of Health (DOH), approximately 1,585,000 syringes/needles were used in county health department immunization clinics last year to administer childhood immunizations. In addition, DOH employees administer adult immunizations, prophylactic medications, emergency epidemic immunizations, and lab venipunctures. It is estimated that the latter accounts for the use of an additional 915,000 syringes/needles. There are no data on how many injections, immunizations, and lab venipunctures are administered through hollow-bore needles and syringes by non-DOH employees.

Based upon available data, DOH and the Department of Corrections together spent $16,454 for syringe/needle purchases through the state prime vendor (4/1/98-3/31/99). This amount does not include syringe/needle purchases made from any other sources (e.g., direct, another wholesaler, contract, etc) nor does it include other public agencies, such as Department of Children and Families, and the State University System, which purchase their syringes/needles through other means.

Hollow-bore standard 3cc syringes cost approximately $10 per 100 while the Vanish Point Syringe costs $48 per 100. Adoption of a needleless system for the 2.5 million injections given annually in DOH settings would potentially increase the cost for syringes from $250,000 to $1,200,000 per year.

The Department of Corrections estimates that the committee substitute would increase costs by over $1,000,000 annually. The department notes that this cost might be offset if the new system actually reduces worker compensation claims as a result of reduced injuries.

It may be argued that use of needleless systems could prevent needlesticks and therefore result in a reduction in costs. The California Occupational Safety and Health Standards Board estimated that California will have a net savings of $106 million each year as a result of implementing the use of safe needles in all health care facilities. Although employers will spend $185 million for the new, safer technology and for expenses associated with recordkeeping, there is an anticipated savings of $291 million in the costs for diagnosing and treating needlestick injuries.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The committee substitute requires the Department of Labor and Employment Security to adopt a workplace standard for public employees. Chapter 442, F.S., assigns the regulation of public workplace safety functions to the Department of Labor and Employment Security, Division of Safety. Both the Division of Safety, as well as ch. 442, F.S., are repealed July 1, 2000, by ch. 99-240, L.O.F. Senate Committee Substitute 2180, however, would revive ch. 442, F.S., though the committee substitute substitutes the Division of Workers' Compensation for the Division of Safety.

The committee substitute permits a public employer to circumvent the needleless system requirement if an evaluation committee determines compliance would pose a situation-specific safety problem. The committee is to be composed of a majority of health care workers who provide direct patient care although that term is defined in no greater detail.
Section 447.209, F.S., provides, in part, the following statement of employer's collective bargaining rights:

> It is the right of the public employer to determine unilaterally the purpose of each of its constituent agencies, set standards of services to be offered the public, and exercise control and discretion over its organization and operations. It is also the right of the public employer to direct its employees . . . .

VIII. Amendments:

None.