

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1264

SPONSOR: Health Aging and Long-Term Care Committee and Senator Brown-Waite

SUBJECT: Bioterrorism Threats/Department of Health

DATE: February 17, 2002      REVISED: 02/19/02      \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/1 amendment</u>
3.	_____	_____	<u>AHS</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	<u>RC</u>	_____
6.	_____	_____	_____	_____

## I. Summary:

The Committee Substitute for Senate Bill 1264 revises the rulemaking authority of the Department of Health (DOH) by authorizing it to require vaccination or quarantine under certain conditions. Definitions for “public health advisory” and “public health emergency” are created.

The State Health Officer is required to consult with the Governor and to notify the Chief of Domestic Security Initiatives before declaring a public health emergency. A declaration of a public health emergency may continue only for 60 days unless the Governor concurs in the renewal of the declaration.

The bill authorizes the State Health Officer to take specified actions to protect the public health during a declared public health emergency, including: giving shipping priorities for specified drugs; directing the compounding of bulk prescription drugs and specifying the use of such drugs; reactivating the inactive licenses of certain practitioners to provide services during the emergency; and ordering an individual to be examined, tested, vaccinated, treated, or quarantined for certain communicable diseases under specified circumstances. Benefits for volunteers acting under a public health emergency are specified.

This bill amends sections 381.0011 and 381.00315, Florida Statutes.

## II. Present Situation:

### Domestic Security/Counter-Terrorism

After the September 11, 2001 terrorist attack, federal, state and local governments began to review and revise laws relating to domestic security. During the 2001 Special Session “C,” the Florida Legislature enacted a number of laws relating to security. Chapter 2001-365, Laws of

Florida, directs the Department of Law Enforcement (FDLE) to coordinate and direct law enforcement, initial emergency, and other initial responses to acts of terrorism within or affecting this state. The FDLE must work closely with the Division of Emergency Management; other federal, state, and local law enforcement agencies; fire and rescue agencies; first-responder agencies; and others involved in preparation against and responses to such terrorism. The FDLE was required by the law to designate a Chief of Domestic Security Initiatives. The legislation established the duties and responsibilities of the chief, which include, but are not limited to:

- < Coordinating FDLE's ongoing assessment of Florida's vulnerability to, and ability to detect and respond to, acts of terrorism;
- < Conducting specified security assessments;
- < Making recommendations for minimum security standards, funding and training requirements and other security matters; and
- < Developing best practices for safety and security.

Chapter 2001-365, L.O.F., also required the FDLE to establish a regional domestic security task force in each of the department's operational regions to serve in an advisory capacity to the Chief of Domestic Security Initiatives. Goals and objectives of each task force include, but are not limited to, coordinating efforts, training, and the collection and dissemination of investigative and intelligence information relevant to countering terrorism; identifying appropriate equipment and training needs, curricula, and materials relevant to responding to acts of terrorism or incidents involving real or hoax weapons of mass destruction; and ensuring that there are appropriate investigations and responses to hate-driven acts against ethnic groups that may have been targeted as a result of acts of terrorism.

Chapter 2001-356, L.O.F., provides a definition of the term "terrorism," for purposes of the Florida Criminal Code, to mean

. . . an activity that involves a violent act or an act dangerous to human life which is a violation of the criminal laws of Florida or of the United States; or involves a violation of s. 815.06, F.S., providing criminal offenses against computer users; and is intended to intimidate, injure, or coerce a civilian population; influence the policy of a government by intimidation or coercion; or affect the conduct of a government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

### **Emergency Management**

Part I of ch. 252, F.S., is the "State Emergency Management Act." Under ch. 252, F.S., the Governor may declare, by executive order or by proclamation, a state of emergency if he or she finds an emergency has occurred or that the occurrence or the threat thereof is imminent. The state of emergency must continue until the threat or danger has been dealt with but may continue for no longer than 60 days unless renewed by the Governor. The declaration of a state of emergency may suspend regulatory statutes, orders, or rules of any state agency, if strict compliance with the statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency. The Governor must employ such measures and give such directions to the Department of Health and the Agency for Health Care Administration as may be reasonably necessary by reason of conditions arising from emergencies or threats of emergency.

## Department of Health

The Department of Health in carrying out its public health mission may identify assess and control the presence and spread of communicable diseases; monitor and regulate factors in the environment which may impair the public's health; and ensure the availability of and access to preventative and primary health care, including acute and episodic care, prenatal and postpartum care, child health, family planning, school health, chronic disease prevention, child and adult immunization, dental health, nutrition, and health education and promotion services. The department also implements a public health system that includes state laboratory and pharmacy services, the state vital statistics system, emergency medical services coordination and support, and recruitment, retention, and development of preventive and primary health care professionals and managers.

The department provides public health services through 67 county health departments in partnership with county governments, as specified in part I, of ch. 154, F.S. The department has the duty: to assess the public health status and needs of the state through statewide data collection and other appropriate means; formulate general powers affecting the public health of the state; administer and enforce laws and rules relating to sanitation, control of communicable diseases, illnesses, injuries, and hazards to health among humans and from animals to humans, and the general health of the people of the state; cooperate with and accept assistance from federal, state, and local officials for prevention and suppression of communicable and other diseases, illnesses, injuries, and hazards to human health; and declare, enforce, modify, and abolish quarantine of persons, animals, and premises as the circumstances indicate for controlling communicable diseases or providing protection from unsafe conditions that pose a threat to public health, except as provided for the control of sexually transmissible disease under s. 384.28, F.S., and ss. 392.545-392.60, F.S., for the control of tuberculosis.<sup>1</sup>

The department must adopt rules to specify the conditions and procedures for imposing and releasing a quarantine. The rules must include provisions related to: the closure of premises; the movement of persons or animals exposed to or infected with a communicable disease; the tests or prophylactic treatment for communicable disease required before employment or admission to the premises; testing or destruction of animals with or suspected of having a disease transmissible to humans; access by the department to quarantined premises; and the disinfection of quarantined animals, persons, or premises. In conjunction with its authority to quarantine, any health regulation that restricts travel or trade within the state may not be adopted or enforced in the state except by authority of the department.<sup>2</sup>

The department may: provide for a thorough investigation and study of the incidence, causes, modes of propagation and transmission, and means of prevention, control, and cure of diseases, illnesses, and hazards to human health; provide for the dissemination of information to the public to prevent, control, and cure diseases, illnesses, and hazards to human health; cooperate with and assist federal health officials in enforcing public health laws and regulations; and other duties specified in law.

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<sup>1</sup> Section 381.0011, F.S.

<sup>2</sup> Section 381.0011, F.S.

Pursuant to s. 381.0012, F.S., the department may commence and maintain all proper and necessary actions and proceedings to enforce the rules adopted under ch. 381, F.S., and may defend all proceedings involving the department's powers and duties. The department may apply for injunctions and commence and maintain all proper and necessary actions and proceedings to compel the performance of any act specifically required of any person, officer, or board by any law of this state relating to public health.<sup>3</sup> The department may request a magistrate to issue a warrant in criminal cases and the magistrate must issue a warrant directed to any sheriff, deputy, or police officer to assist in any way to carry out the purpose and intent of ch. 381, F.S.

The rules adopted by the department under ch. 381, F.S., shall, as to matters of public health, supercede all rules enacted by other state departments, boards, commissions, or ordinances and regulations enacted by municipalities, with specified exceptions.<sup>4</sup> The authority, action, and proceedings of the department in enforcing the rules under ch. 381, F.S., shall be regarded as judicial in nature and treated as prima facie just and legal.<sup>5</sup> Any person who violates ch. 381, F.S., any quarantine, or any rule; or who interferes with, hinders, or opposes any employee of the department in the discharge of his or her duties; or who maliciously disseminates any false rumor or report concerning the existence of any infectious or contagious disease is liable for a second degree misdemeanor punishable by jail up to 60 days and the imposition of a fine up to \$500.

The State Health Officer may declare public health emergencies and issue public health advisories in accordance with s. 381.00315, F.S. Before issuing any health advisory, the State Health Officer must consult with any state or local agency regarding areas of responsibility that may be affected by the advisory. After determining that the public health advisory is necessary to protect the public health and safety, and before issuing the advisory, the State Health Officer must notify each county health department within the area that is affected by the advisory of the State Health Officer's intent to issue the advisory. The State Health Officer may take any action appropriate to enforce any health advisory.

### **The Model State Emergency Health Powers Act**

After the September 11, 2001, terrorist attacks in New York City and Washington, D.C., and the subsequent release of Anthrax spores through the mail in Florida, Washington, D.C., and New Jersey, a renewed focus on the prevention, detection, management, and containment of public health emergencies has emerged. In response to these events, the Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities prepared a discussion draft "Model State Emergency Health Powers Act" for the Centers for Disease Control and Prevention (CDC). The model act was developed to assist the National Governors Association, the National Conference of State Legislatures (NCSL), the Association of State and Territorial Health Officials (ASTHO), and the National Association of County and City Health Officials (NACCHO) in their review of laws pertaining to the use of state emergency health powers.

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<sup>3</sup> Section 381.0012(3) and (4), F.S.

<sup>4</sup> Section 381.0014, F.S.

<sup>5</sup> Section 381.0015, F.S.

In reviewing the model act, state health authorities and legislative staff determined that Florida law, as described above, includes most of what is suggested in the model act. However, some provisions of ch. 381, F.S., could be strengthened to enable the state to be better prepared for possible future terrorist attacks. This bill provides those statutory enhancements.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 381.0011, F.S., to authorize the Department of Health to adopt rules requiring vaccination or quarantine.

**Section 2.** Amends s. 381.00315, F.S., relating to public health advisories, to define “public health advisory” to mean any warning or report giving information to the public about a potential public health threat. A “public health emergency” is defined to mean any occurrence, or threat, thereof, whether natural or man made, which results or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters. The State Health Officer is required to consult with the Governor and to notify the Chief of Domestic Security Initiatives before declaring a public health emergency. A declaration of a public health emergency may only continue for 60 days unless the Governor concurs in the renewal of the declaration.

The State Health Officer may take specified actions to protect the public health during a declared public health emergency which include:

- < Giving shipping priorities for specified drugs;
- < Directing the compounding of bulk prescription drugs and specifying the use of such drugs;
- < Reactivating the inactive licenses of certain practitioners to provide services during the emergency;<sup>6</sup> and
- < Ordering an individual to be examined, tested, vaccinated, treated, or quarantined for certain communicable diseases under specified circumstances.

Any order of the State Health Officer given for an individual to be examined, tested, vaccinated, treated, or quarantined for communicable diseases may be immediately enforceable by a law enforcement officer. Volunteers who assist the State Health Officer during a public health emergency are entitled to the benefits such as meals, lodging, transportation, state liability protection coverage, and worker’s compensation as provided in s. 110.504, F.S.

**Section 3.** The bill takes effect upon becoming a law.

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<sup>6</sup> Section 456.036, F.S., specifies procedures for the reactivation of a licensed health care practitioner’s license that has been on inactive status for a specified period. The section authorizes the Department of Health or each board, by rule, to impose conditions, excluding full reexamination to assess current competency, necessary to ensure that a licensee who has been on inactive status for more than two consecutive years can practice with the care and skill sufficient to protect the health, safety, and welfare of the public.

**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 Art. VII, s. 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 Art. I, s. 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 Art. III, s. 19(f) of the Florida Constitution.

**D. Other Constitutional Issues:**

The ability of the state to require vaccination in order to protect and preserve the public health is well established in law of the United States. In *Jacobson v. Commonwealth of Massachusetts*,<sup>7</sup> the United States Supreme Court upheld a regulation requiring all persons in the city of Cambridge to be vaccinated against smallpox as the city had an outbreak of the disease. A town resident refused the free vaccine and was subjected to the penalty under the regulation, which was a fine. The court stated:

The authority of the state to enact this statute is to what is commonly called the police power. . . [T]his court has . . . distinctly recognized the authority of a state to enact quarantine laws and 'health laws of every description. . . . According to settled principles, the police power of a state must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety. . . . It is equally true that the state may invest local bodies called into existence for purposes of local administration with authority in some appropriate way to safeguard the public health and the public safety.<sup>8</sup>

The court then held that, since persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the state, and that the vaccine in question had been determined by the state as necessary for the public health, that the regulation was valid and enforceable.

Nevertheless, it does not appear that this bill would require a person to be vaccinated. A person who refused vaccination, however, could be required to remain in quarantine.

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<sup>7</sup> 197 U.S. 11, 25 S.Ct. 358 (1905).

<sup>8</sup> *Ibid* at 361.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

In the event of a declared public health emergency, pharmacists in the private sector who compound bulk prescription drugs may lose business to the extent the bill authorizes the State Health Officer to direct pharmacist employed by the Department of Health to compound prescription drugs and provide such drugs to physicians and nurses of county health departments.

Manufacturers and wholesalers of prescription drugs may lose some revenue to the extent the shipment of their products is redirected by the State Health Officer during a declared public health emergency.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Governmental Oversight and Productivity:

Provides that persons who object to vaccination on religious or certain other grounds may be quarantined.