

# 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: SB 146

SPONSOR: Senator Dyer

SUBJECT: Safety Standards for Public-Sector Employers

DATE: February 4, 2002      REVISED: \_\_\_\_\_

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

**I. Summary:**

The bill requires the Department of Health to adopt, by rule, the blood-borne-pathogen standard set forth in federal law, which shall become applicable to all public-sector employers. The Department of Health must compile and maintain a list of existing needleless systems and sharps with engineered sharps injury protection that must be available to assist employers, including the Department of Health and the Department of Corrections, in complying with the applicable requirements of the blood-borne-pathogen standard. The list may be developed from existing sources of information.

This bill amends section 381.003, Florida Statutes.

**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, there are no data regarding the number of needle stick injuries in Florida, but the annual rate of needle stick injury nation-wide is estimated to be 187 per 1,000 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 for private employers is regulated by the Occupational Safety and Health Act of 1970, as amended in 1990 and 1998, under the federal authority to regulate matters that 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 that 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-five states have assumed this authority; Florida is not one of these. The Occupational Safety and Health Act excludes from federal regulation state government, or political subdivisions of a state.

Chapter 442, F.S. (2000), gave 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. (2000), allowed 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 that adopted the subpart as its

rules. In 1999, the Legislature enacted ch. 99-240, Laws of Florida, which abolished the Division of Safety within the Department of Labor and Employment Security and repealed ch. 442, F.S., the Florida Occupational Safety and Health Act, effective July 1, 2000. On September 25, 2000, the Governor issued Executive Order 2000-292, which directed departments of state government to voluntarily comply with Subparts C through T and Subpart Z of the Occupational Safety and Health Standard, 29 C.F.R. Part 1910, as revised July 1, 1993, with the exception of those OSHA Standards relating to fire fighters and fire departments inconsistent with administrative rules adopted by the Florida Department of Insurance. Each department and political subdivision of the State not specifically mentioned in the executive order was requested to review its existing policies, practices and procedures concerning workplace safety and to implement any policies, practices or procedures made necessary by the repeal of ch. 442, F.S. The Department of Health does not have statutory authority to regulate workplace safety in either the public or private sectors.

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 Acontaminated≡ 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.
- Post-exposure evaluation and follow up, including post-exposure prophylaxis when appropriate.

## **Needlestick Safety and Prevention Act**

On November 6, 2000, President Clinton signed the Needlestick Safety and Prevention Act into law (Public Law 106-430). The Act requires hospitals and health care facilities to use newer safety devices to reduce the number of needle stick injuries suffered by health care workers and patients. These safety devices automatically cover needle tips after they have been used to prevent transmission of disease. The Act requires the Secretary of the federal Department of Labor to create new standards to protect workers exposed to blood-borne pathogens and requires employers to establish an injury log to record the kind of devices and location of all needle stick accidents. The Act sets minimum standards for private sector employees and states that have their own OSHA plans may exceed the minimum federal standards.

The revised blood-borne-pathogens standard was published in the Federal Register on January 18, 2001. The Needlestick Safety and Prevention Act provided an effective date of 90 days after its publication in the Federal Register. The updated rules became effective April 18, 2001.

The revisions to OSHA's blood-borne-pathogens standard are in four main areas: (1) modification of definitions relating to engineering controls; (2) revision and updating of the Exposure Control Plan to account for innovations in procedure and technological developments that reduce the risk of exposure incidents and make clear that employers must implement the safer medical devices that are appropriate, commercially available, and effective; (3) solicitation of employee input from non-managerial employees responsible for direct patient care as part of the Exposure and Control Plan in the identification, evaluation, and selection of effective engineering and work practice controls; and (4) record keeping requirements for employers to maintain a sharps injury log to serve as a tool for identifying high risk areas and evaluating devices.

### **III. Effect of Proposed Changes:**

The bill requires the Department of Health to adopt, by rule, the blood-borne-pathogen standard set forth in federal law, which shall become applicable to all public-sector employers. The Department of Health must compile and maintain a list of existing needleless systems and sharps with engineered sharps injury protection that must be available to assist employers, including the Department of Health and the Department of Corrections, in complying with the applicable requirements of the blood-borne-pathogen standard. The list may be developed from existing sources of information, including, the United States Food and Drug Administration, the Centers for Disease Control and Prevention, the Occupational Safety and Health Administration, and the United States Department of Veterans Affairs.

The effective date of the bill is July 1, 2002.

### **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 bill requires the Department of Health to adopt a federal standard for blood-borne pathogens by rule that will govern public-sector employers. The standard includes the recording of exposure incidents that includes information about public employees. Although, neither the standard nor the bill requires the name of the employee who has been exposed to be recorded in the log, there may 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. Such records, to the extent they are characterized as patient records or medical claim records, are confidential and exempt from the public records law under existing state law.<sup>1</sup>

Federal OSHA regulations<sup>2</sup> adopted under the Needlestick Safety and Prevention Act require information in the sharps injury log to be recorded and maintained in a manner to protect the confidentiality of the injured employee. The federal regulations have an effective date of April 18, 2001. If a federal statute requires particular records to be closed and the state is clearly subject to the provisions of such statute, then pursuant to the Supremacy Clause of the United States Constitution, Art VI, U.S. Const., the state must keep the records confidential.

**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.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Department of Health has indicated that the department is already complying with the federal OSHA standards codified in Subpart Z of the Occupational Safety and Health Standard, 29 C.F.R. Part 1910, as revised July 1, 1993, under the Governor's Executive Order. The revised federal blood-borne-pathogens standard as set forth in subpart Z of 29 C.F.R. part 1910 took effect April 18, 2001. The effective date of the bill is July 1, 2002. The Department of Health and other state agencies that provide health care will incur costs to comply with the federal standard to the extent they are not already doing so

<sup>1</sup> See ss. 110.123 (9) and 112.08(7) and (8), F. S.

<sup>2</sup> Occupational Exposure to Bloodborne Pathogens; Needlestick and Other Sharps Injuries 66 Fed. Reg. 5318 (final rule April 18 2001 to be codified 29 C.F.R. pt. 1904).

under the Governor's Executive Order. The Department of Health estimates that it will incur costs to be available to assist public-sector employers to comply with the blood-borne-pathogen standard.

The Department of Health will also incur minimal costs to adopt by rule the federal blood-borne-pathogens standard governing public employers and to maintain a list of existing needleless systems and sharps with engineered sharps injury protection.

The Department of Health staff indicated that it will need to have a 0.5 full-time equivalent position to administer and manage the requirements of the federal blood-borne-pathogens standard required by the bill. To do so, the department notes that it would need to develop and implement an electronic tracking system, a training curriculum and materials, and to provide initial training about safer devices to department employees who use needles as a part of their duties. The department estimates a fiscal impact of \$73,593 for fiscal year 2002-2003 and \$53,944 for fiscal year 2003-2004.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Health Aging and Long-Term Care:

Expands the applicability of the Department of Health's requirements to adopt, by rule, the blood-borne pathogen standard set forth in federal law to all employers instead of just public-sector employers. (WITH TITLE AMENDMENT)