

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 931 Dentistry/Privatization
SPONSOR(S): Berfield and others
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2144 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Health Standards (Sub)</u>	<u>7 Y, 0 N</u>	<u>Mitchell</u>	<u>Collins</u>
2) <u>Health Care</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 931 separates control of some administrative support functions for the Board of Dentistry from the Division of Medical Quality Assurance of the Department of Health. The bill includes employment of an executive director by the Board of Dentistry to work exclusively for the board. It provides for hiring of a dental compliance officer to review all dental complaints received by the Department of Health to determine their legal sufficiency. The bill requires assignment of an investigator within each regional investigative office to report to the Board. The bill also authorizes the board to negotiate for examination and legal services. It provides for separate budget authority for the board and required reporting on effectiveness and efficiency.

Currently, the Division of Medical Quality Assurance of the Department of Health serves over 750,000 licensed health care practitioners and is responsible for enforcement activities that include a consumer complaint call center, investigation and legal services.

The Board of Dentistry is one of 28 boards and councils housed within the division. The board regulates 10,881 dentists and 9,701 dental hygienists. Administrative costs of the licensure and disciplinary functions of the board and the department are funded by licensure fees. Bi-annual renewal fees for dentists are \$300, the maximum allowed by statute. Dental hygienists pay \$140 with a statutory maximum of \$300. Current fees do not meet the administrative costs of board functions. They are expected to continue in deficit until 2008.

At its February 25, 2003, meeting the Board of Dentistry voted unanimously to reject all recommendations of the "Report on the Feasibility of Outsourcing Functions of the Board of Dentistry," presented to the Legislature in January, 2003. The board determined report recommendations did not accomplish the board's goal of privatization and autonomy from the department.

The Department of Health estimates there will be administrative cost increases from provisions of the bill, including board hiring of a full time executive director, a dental compliance officer and designated investigative staff. The department is concerned that board control of investigations, prosecutions and testing will remove needed checks and balances for practitioners and consumers.

The effective date of the bill is October 1, 2003.

On April 2, 2003, the Health Standards Subcommittee adopted a "strike-all" amendment to the bill. See: Section IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES for details.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0931a.hc.doc
DATE: April 2, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

SUMMARY OF BILL PROVISIONS:

HB 931 proposes to separate control of some of the administrative support functions for the Board of Dentistry from the Department of Health. The bill includes employment of an executive director by the Board of Dentistry to work exclusively for the board. It provides for hiring of a dental compliance officer to review all dental complaints received by the Department of Health and to determine their legal sufficiency. The bill requires assignment of an investigator within each regional investigative office to report to the Board. The bill also authorizes the board to negotiate for examination and legal services.

The bill provides for separate budget authority for the board and for reporting requirements on the effects of the provisions.

Provisions of the bill:

- Requires the Board of Dentistry to employ its executive director pursuant to state personnel rules.
- Provides for employment of board staff by the executive director.
- Declares board employees public employees.
- Requires the board to employ or retain a dental compliance officer to oversee investigation of complaints.
- Provides for assignment to the board of investigators for the Department of Health.
- Authorizes negotiation as a means of obtaining examination and legal services, including private legal services.
- Provides for separate budget authority for the board and department, and for separate budget submission requirements.
- Requires the department and board to submit independent annual reports to the Governor and Legislature through 2008 on the effectiveness and efficiency of these provisions.

The effective date of the bill is October 1, 2003.

PRESENT SITUATION:

The Board of Dentistry is one of 28 boards and councils housed under the Department of Health within the Division of Medical Quality Assurance. According to the department, the Board regulates 10,881 dentists and 9,701 dental hygienists.

The Division of Medical Quality Assurance of the Department of Health with a staff of over 200, is responsible for regulatory activities for over 750,000 licensed health care practitioners. Division staff provide administrative support for 41 regulated professions. They support the regulatory boards that review cases related to health care practitioner licensure and disciplinary actions. Staff also help conduct board meetings, 345 per year on average. The practitioner enforcement activities of the division include a consumer complaint call center, investigation, and legal services. The program investigates complaints and assesses probable cause for each case. Cases are then presented to licensing boards and councils for final action. If a board finds that an allegation is justified, it may take disciplinary action. If a practitioner contests a finding of probable cause, the case is heard by an administrative law judge. Disciplinary measures can range from a reprimand and fine to suspension or revocation of the practitioner's license. (MQA Annual Report 2001-2002.)

- The Consumer Services Unit is the central intake unit for receipt of complaints against health care professions regulated by the department. It analyzes complaints for possible violations of laws and rules to determine if they are legally sufficient for investigation. The unit received over 32,000 complaints and reports in fiscal year 2001-2002.
- The Investigative Services Unit has 11 offices located throughout the state, staffed with professional investigators and senior pharmacists, who investigate legally sufficient complaints against practitioners and monitor licensees who have been disciplined. The unit completed over 5,400 investigations in 2001-2002.
- The Prosecutorial Services Unit, located in Tallahassee, provides legal support for all health care boards and their councils, from filing of a complaint through the appeals process. The unit resolved over 7,000 complaints in 2001-2002.
- Unlicensed Activity. Prior to July 2002, AHCA handled unlicensed activity investigations. Currently, all MQA enforcement activities, including unlicensed activity investigations, are consolidated in the Department of Health.

Historical Background

Chapter 3711, Laws of Florida (L.O.F), established state regulation of the practice of dentistry for the first time in 1887. It provided for the appointment of the Board of Dental Examiners and defined its duties.

In 1979, under the Regulatory Sunset Act, ch. 76-168, L.O.F, the Legislature put 53 boards, including dentistry, up for sunset review and granted oversight of professional boards to the Department of Professional and Occupational Regulation, as part of a national trend to regulate health-related boards. The dentistry act was repealed and reenacted with substantial changes. Composition of the board was increased to nine members of whom six were dentists, one a dental hygienist and two were lay members. Twelve continuing education credits per year were required for inactive status. Reexamination of applicants who failed an examination was allowed. Additional grounds for disciplinary action included sexual misconduct and failure to meet prevailing peer performance standards. A dentist of record was required for each patient.

In 1997, the Legislature created the Department of Health and authorized the department to contract with AHCA to provide consumer complaint, investigative, and prosecutorial services for the program. An Interagency Memorandum of Understanding between the two agencies governed this division of responsibility. Under this arrangement, the Legislature appropriated funds for the program's enforcement function to AHCA.

In October 2001, the House Committee on Health Regulation issued an interim report entitled, Feasibility of Privatizing Certain Health Regulation Functions. The impetus for the report was

dissatisfaction with the health practitioner regulation processes of DOH and AHCA expressed by certain health professionals, the Florida Board of Dentistry and the Florida Dental Association. The study reviewed the operation of the Florida Engineers Management Corporation that was established by the Legislature in 1997 to oversee outsourcing of regulatory activities of the Board of Professional Engineers to determine if this type of privatization would result in a cost savings and increased efficiency in the regulation of certain health care professions. The report recommended no change in the status of the board until it achieved financial viability.

In 2002, the Legislature appropriated \$50,000 and authorized the Office of Legislative Services to contract for a study concerning the feasibility of outsourcing administrative, investigative, and prosecutorial functions of the Board of Dentistry. The Center for Professional Development of Florida State University received the contract and prepared the report that was released in January 2003. (Report on the Feasibility of Outsourcing Functions of the Florida Board of Dentistry.)

In January 2003, the Office of Program Policy Analysis and Government Accountability (OPPAGA), reported that the consolidation of health care practitioner regulatory oversight in the Medical Quality Assurance Program (MQA) of the Department of Health with transfer of functions from the Agency for Health Care Administration has been achieved in an efficient and effective manner (Report No. 03-06). The OPPAGA report found the MQA program has improved the timeliness of its complaint process and its response to serious complaints, but also need additional performance measures.

ISSUES ADDRESSED BY THE BILL:

Administrative Functions and Issues

Executive Director

Currently, the Board's Executive Director, who is employed by the department, oversees five professions. The director oversees a staff of twenty-three, five of whom are dedicated to the Board of Dentistry. According to the department, approximately 40% of the salary and benefits of the director are borne by the Board of Dentistry, but 60% of the Executive Director's time is spent on dentistry issues.

According to the outsourcing feasibility report, although the director is hired with some input from the board, the board does not feel the director represents their interests because the director is hired by the department and provides administrative support to other boards. Board members question whether the director's loyalty is to the board or to the department and have requested that statutes be changed to allow the board to choose, hire, and pay its own executive director. The board is also concerned that board staff are department employees and may not have experience in dental regulation.

Intake, Legal Sufficiency Determination, and Investigation

A centralized complaint intake system is shared by all boards. According to the feasibility report, the Board of Dentistry would like specialized intake staff assigned to them as well as their own 800 number. Dentists and board members are concerned that patients have trouble contacting the Board of Dentistry to make complaints. After hours, the Board of Dentistry office phones are answered "board office" instead of "Board of Dentistry."

The Department of Health employs investigators within each of eleven investigative offices who are assigned to investigate dental and other complaints. There are on average 500 dental cases that are legally sufficient and investigated each year under specific criteria established with input from the boards. According to the report, investigators are responsible for several health profession boards and are not necessarily experienced in dental investigations.

An Investigative Specialist within the Consumer Services Unit of the Department reviews all dental complaints and reports. The investigative specialist determines the legal sufficiency of cases, issues citations and notices of non-compliance, and conducts desk investigations. According to the

department, on average, 850 dental complaints per year are reviewed within an average of 3.4 working days.

According to the feasibility report, no dental or legal staff members are presently assigned to routinely help determine legal sufficiency for complaints that reach the board. From time to time, the board hires special dental experts to assist in determining probable cause. According to the report, a former investigator who is neither a dentist nor an attorney is presently determining whether or not a complaint is legally sufficient. Board members believe that a dental professional should see all complaints to ensure that cases are not closed before they are investigated. Board members cannot determine legal sufficiency themselves because they would then have to remove themselves from making a final decision on the case. According to the feasibility report, attorneys believe that legal determination needs the input of a professional trained in the law.

Prosecutorial Functions and Legal Counsel

Prosecutorial services for dentistry are provided by Department of Health employees. Legal counsel for the board is provided by the Office of the Attorney General through a contract with the Department of Health. According to the department, this separation of prosecution and board decision making maintains a checks and balance system that provides due process. The Board serves as the judge and jury in discipline cases and is separate from prosecution functions. According to the department, this system serves to maintain a sense of fairness in the process for the licensee and assures citizens that the Board adequately disciplines its licensees. The department has the authority to appeal the board's final orders if it believes the board is too lax in its discipline.

The feasibility report found that two prosecutors from the Department of Health have been working with the Board of Dentistry. Pursuant to s. 287.059, F.S., the board may request permission from the Attorney General to hire a Special Prosecutor.

Legal counsel to the board is provided by the Department of Legal Affairs, pursuant to s. 456.009(1), F.S. The feasibility report found this practice is followed in other states and that board members have expressed satisfaction with the work of the Senior Assistant Attorney General in this capacity. Statute provides that the department can choose the board's legal counsel from the Office of the Attorney General, the Department of Health, or from private counsel pursuant to s. 287.059, F.S.

Licensure Examination

The dental board examination is currently developed, administered, scored and defended by the Department of Health. The board establishes the passing grade for the exam, the testing location and times and examiner qualifications. Language in chapter 456, F.S., defines the standards for exam validity and reliability. Psychometricians are employed by the department to ensure statutory standards are met. According to the department, this division of responsibility between the board and department provides checks and balances to assure the exam is fair and that the board doesn't grant licenses to individuals who do not pass the exam.

Financial and Accounting Issues

The annual legislative budget request for the Division of Medical Quality Assurance is prepared by the department's Office of Budget Management. Included in the budget request is a request for approval of spending authority for the various professions. A quarterly management report is provided to all boards that reflects a separate accounting, by profession, for all expenses and revenues. Licensure fees that fund the Board of Dentistry are currently set at the maximum \$300 established in statute. Currently, the Board of Dentistry fund is in a deficit and is expected to continue in deficit through FY 2007-2008, unless there is a one-time assessment of licensees for additional funds pursuant to s. 456.025(5), F.S., or a statutory increase in license fees.

According to the feasibility report, all decisions about finances must be approved by the department. Board members do not feel they have any say in the control of how the board's money is spent. The board is concerned that dentists and dental hygienists pay for licenses and renewals, but that board members do not have authority to oversee or designate expenditure of board funds. Board members are also concerned that money their board collects is used to "buttress" the finances of other smaller boards that do not collect enough licensure fees to sustain their operations. The board is frustrated by the department's use of indirect cost accounting tools and practices, especially when the board is projected to be in deficit. The board has difficulty getting what they consider to be understandable answers with respect to where the monies are being spent.

C. SECTION DIRECTORY:

Section 1. Creates s. 466.005, F.S., privatizing functions of the Board of Dentistry.

Section 2. Establishes an effective date of October 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

Currently, the Board of Dentistry fund is in a deficit and is expected to continue in deficit through FY 2007-2008 unless there is a one-time assessment of licensees for additional funds pursuant to s. 456.025(5), F.S., or an increase in licensure fees. At its January 31, 2003 meeting, the board heard information from financial advisor and former board chair, Dr. Sol Brotman who estimated that outsourcing of some functions or privatization could result in costs being reduced 30% to 40%. Dr. Brotman recommended an assessment equal to current renewal fees of \$300 for dentists and \$135 for dental hygienists be made as soon as possible to meet the current deficit.

The Department of Health however reports that provisions of the bill will increase costs for administration of the board. Hiring of an executive director who works exclusively for the Board of Dentistry would have the effect of an increase of cost approximately 60% in salary and benefits to the board. The bill also requires eleven full time investigators, one in each field office. According to the department, this would require the addition of eight investigators with part time workloads. The current

workload associated with the dental investigations does not require a full time investigator in each field office. The current workload for dentistry investigations statewide is approximately 3 FTE's.

The bill also provides for the board's proposed budget to include an operational contingency in an amount determined by the board. According to the department, the effect of establishing an operational contingency would require an unknown amount of increased revenues that would have to be met by licensees.

The proposal further requires that total costs allocated for support services not exceed 150 percent of the ratio of dental licensees to the total licensees of all professions. According to the department, using this ratio and FY 01-02 data, no more than 6.225% or \$2.3 million could be allocated to the Board of Dentistry. However, in FY 01-02, a total of \$2.4 million was allocated to the Board of Dentistry for services rendered to the board based upon an approved methodology for allocating expenditures.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Currently, s. 466.004, F.S., provides authority to the Board of Dentistry to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provision of chapter 466 and chapter 456, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As reported by the Department of Health, the Board of Dentistry unanimously voted at its February 25, 2003 board meeting to reject all of the recommendations in the Report on the Feasibility of Outsourcing Functions of the Board of Dentistry that was presented to the Legislature in January, 2003. The Board determined that the recommendations of the report did not accomplish the board's mission of total privatization and autonomy from the Department of Health. At its March 11, 2003 board meeting, the Board of Dentistry voted to oppose the current version of this bill that is based on the recommendations of the report.

According to the department, the provisions of s. 466.005(4), F.S., created by the bill, that allow the board to obtain legal counsel and prosecutors in disciplinary cases violates provisions of s. 287.059, F.S., that requires private approval of the Office of the Attorney General. The department is also concerned that this provision eliminates the checks and balances of the current system by having the prosecutors reporting and working directly for the board.

According to the department, provisions of s. 466.005(5), F.S., created by the bill, that allow the board to contract for the examination services also eliminates the checks and balances in the current system.

The bill establishes an effective date of October 1, 2003. The department is concerned that this does not provide sufficient time to create positions, hire staff, and reconfigure the Department's financial structure.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 2, 2003, the Health Standards Subcommittee adopted a “strike-all” amendment which:

- Provides for a committee of the Board of Dentistry to interview candidates for the position of Executive Director.
- Retains the provision that the executive director is responsible for overseeing the hiring of staff to the board.
- Renames the “dental compliance officer” in the bill to the “Dental Intake Officer” to review discipline cases.
- Removes the bill’s requirement that designated investigators for dental cases be hired in each district.
- Changes the bill’s provision for the board to contract for prosecution counsel, to the board overseeing of the contract.
- Requires the department’s licensure Testing Service to report to the board when requested.
- Retains the requirement for a board budget, but removes the bill’s requirement of a separate line item for the board in the budget.
- Removes the bill provision for the board to control its entire budget, but provides for board control of certain discretionary budget items and an operational contingency fund.
- Retains the bill’s extensive performance report to Governor and Legislature, but does not require a separate report from the board and the department. Instead it provides for board comments to be included in department report.