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 2448

SPONSOR: Health, Aging, and Long-Term Care Committee and Senator Saunders

SUBJECT: Public Health

DATE: April 1, 2004 REVISED: 04/13/04

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Parham	Wilson	HC	Fav/CS
2.	Erickson	Cannon	CJ	Fav/2 amendments
3.			AHS	
4.			AP	
5.				
6.				

I. Summary:

Committee Substitute (CS) for Senate Bill 2448 makes numerous revisions to statutes, almost all of which are under the purview of the Department of Health (DOH). Most of the revisions are technical and clarifying in nature, and many conform statutes to current practices. Other revisions provide necessary authority for or help DOH to carry out its public health and regulatory mission efficiently and effectively, and to respond to changing programmatic and funding requirements. Specifically, the CS:

- Authorizes DOH to disburse funds from the Tobacco Settlement Clearing Trust Fund to the Biomedical Research Trust Fund in DOH;
- Establishes the Division of Disability Determinations within DOH;
- Includes elevated blood-lead-level investigations as a service under the environmental health program;
- Authorizes the Onsite Sewage Treatment and Disposal Systems Program to use the most current products derived from the U.S. Geological Survey;
- Continues a $5 fee on new sewage system construction permits to support onsite sewage treatment and disposal system research, demonstration, and training projects;
- Eliminates a requirement that bars and lounges have a certified food manager and clarifies that public and private school food services are exempt from having a certified food manager if operated by school employees;
- Establishes a comprehensive tobacco prevention program designed to reduce premature mortality, reduce morbidity, and increase the life expectancy of people in Florida through public health interventions at the state and local levels and provides the responsibilities of the program;
- Creates the Institutional Review Board in DOH and authorizes the board to charge fees to cover research review costs;

- Permits DOH to reduce tanning facility licensure fees and to impose late fees;
- Expands the duties of the Child Abuse Death Review Team and local review committees to review all verified child abuse and neglect deaths;
- Revises the definition of "children with special health care needs" to conform to the federal definition;
- Authorizes the Children's Medical Services (CMS) program to reimburse physicians licensed in other states who provide care to CMS clients under specified circumstances and clarifies CMS eligibility;
- Requires that any newborn found to have an abnormal screening result identified through the newborn screening program be referred to the CMS Network;
- Authorizes DOH to implement and administer Part C of the federal Individuals with Disabilities Education Act and specifies certain actions and responsibilities of DOH;
- Requires licensed facilities to release patient information to regional poison control centers for patient case management;
- Requires acute care hospitals, upon request, to report trauma registry data to DOH and clarifies reporting requirements for trauma centers, pediatric trauma referral centers, and acute care hospitals to the brain and spinal cord injury central registry;
- Establishes an injury-prevention program and specifies program activities;
- Requires an applicant for certification or recertification as an emergency medical technician or paramedic to submit to a criminal history background check;
- Clarifies the time frames for performing mandatory radon testing in public and private buildings;
- Gives DOH the authority to investigate and determine whether violations of existing radiologic technology statutes have occurred;
- Authorizes DOH to develop rules regarding inactive status and the late filing of renewal applications for septic tank contractors; and
- Creates penalties for battery and assault on persons employed by DOH.

This CS amends ss. 17.41, 20.43, 216.2625, 381.0011, 381.006, 381.0065, 381.0066, 381.0072, 381.89, 381.90, 383.14, 383.402, 391.021, 391.025, 391.029, 391.035, 391.055, 391.302, 391.303, 395.1027, 395.404, 401.211, 404.056, 409.814, 468.302, 468.304, 468.306, 468.3065, 468.307, 468.309, 468.3095, 468.3101, 489.553, 489.554, and 784.081, F.S.

This CS creates ss. 381.0409, 381.86, 391.308, 401.243, and 401.27001, F.S.

This CS transfers s. 216.341, F.S.

This bill repeals ss. 381.0098(9), 385.103(2)(f), 385.205, 385.209, 391.301(3), 391.305(2), 393.064(5), and 445.033(7), F.S.

II. Present Situation:

Disability Determinations

The Division of Disability Determinations, a 100 percent federally funded program,

adjudicates social security disability claims to make administrative medical disability determinations based on Social Security Administration rules and regulations. Florida has experienced an increasing rate of social security disability claims over the past several years that must be adjudicated by the division. The current requirements of s. 216.262(1), F.S., do not allow the division to adjust its staffing level in a timely manner to respond to the needs of the citizens of the state who apply for disability benefits.

The Disability Determinations area is one of the larger entities within DOH but is not statutorily identified as a division. The names of other divisions within DOH do not reflect the current structure and responsibilities of the divisions.

Statewide Research

Institutional Review Board
Federal regulations require that all research projects involving human subjects and materials of human origin be reviewed and approved by an Institutional Review Board (IRB) before initiation. DOH has created a 14-member committee that serves as Florida's IRB in accordance with federal regulations; however, the IRB is not statutorily established. Since the IRB is not in statute, DOH cannot promulgate rules to establish procedures or charge fees for the review of research studies submitted by academic entities, private for-profit companies (such as pharmaceutical companies), and others.

Biomedical Research
The Biomedical Research Program was established in s. 216.5602, F.S., and is funded from a set-aside share of the Lawton Chiles Endowment Fund. The proceeds generated from that set-aside share are specifically appropriated each year to the Biomedical Research Program. The Biomedical Research Trust Fund was created in s. 20.435, F.S., to receive those funds within DOH. This trust fund operates separately from the Tobacco Settlement Trust Fund within DOH, which is used for other programs paid through tobacco settlement funds.

Environmental Health

Professional Certification
County health department staff are required by federal law to be certified by the U.S. Environmental Protection Agency (EPA) to conduct lead investigations. The certification fee for most of the county health department staff currently conducting lead-based paint activities was paid under a one-time exemption from the comptroller because they were already performing the function before EPA certification took effect in March 2000; or the fees were paid with grant money from the Centers for Disease Control and Prevention (CDC). Neither of these sources is still available. Most of the currently certified staff must pay the renewal fee for licenses in 2003. Section 154.01, F.S., doesn't currently address lead investigations or the funding for this service.

Onsite Sewage Systems
Section 381.0065, F.S., regulates onsite sewage treatment and disposal systems. In the definition of "permanent non-tidal surface water body," the map that can be used is limited to a specific map produced by the U.S. Geological Survey, although some maps are over 40 years old. More current data used to update such maps is available but cannot be used by DOH due to statutory

restrictions. Subsection (4)(d) requires DOH to report to the Legislature each odd-numbered year on compliance with provisions of the statute regarding subdivision development. No violations of the provisions have been reported over the last 6 years. DOH, by rule, requires engineer design of onsite systems in certain situations. Statutory authority to require such submissions is not clearly defined.

Section 381.0066, F.S., adds an additional $5 fee to each new sewage system construction permit for fiscal years 1996-2004 for onsite sewage treatment and disposal system research. Unless reenacted, this fee expires June 30, 2004.

Section 489.553, F.S., provides for registration of septic tank contractors. The requirements for a master septic tank contractor require at least 3 years of experience but do not specify when that experience had to be acquired in relation to the date of application, or the quality of that work experience. Administrative rules have been adopted that require the three years to immediately precede the application date but those rules have been challenged for lack of sufficient statutory authority by the Joint Administrative Procedures Committee.

Section 489.554, F.S., provides for license renewal for septic tank contractors but provides rule authority only for approval of continuing education and renewal of registrations. It doesn't authorize rules to address late filing of renewal applications, inactive status of registrations, or reactivation of licenses.

Food Service Protection

Section 381.0072, F.S., describes DOH's responsibility for food service protection and requires that rules be adopted to regulate minimum sanitation standards and manager certification requirements. Currently, the statute exempts public and private schools (with no restrictions), hospitals, nursing homes, childcare facilities, and medically related residential facilities from the rules for food manager certification. Bars and lounges, which typically have minimal or no food service, are not exempt from having a certified food manager.

Tanning Salon Fees

Section 381.89, F.S., provides a license and renewal license fee range for tanning salons based on the number of tanning devices present. The minimum of the fee range, as set in statute, would generate more revenue than DOH needs to administer this program. This conflicts with another part of the statute that requires DOH to collect only those fees necessary to cover the expenses of administering this section.

Mandatory Radon Testing

Section 404.056(4), F.S., provides time frames for testing and reporting mandatory radon measurements to DOH. The language is contradictory and causes confusion for individuals attempting to comply.

Radiologic Technology

Professional Certification

Chapter 468, Part IV, F.S., provides for the certification of radiologic technologists, persons who administer radiation from machines or radioactive sources to patients for imaging or therapy. Most sections of chapter 468, part IV, use the terminology "practice of radiologic technology" to refer to the work performed by a radiologic technologist. However, some sections of statute use the phrase "apply ionizing radiation to a human being" which is only one part of the practice of radiologic technology. Other parts are equally important, such as adjusting the settings on the radiation machine so that it delivers the correct amount and type of radiation.

Current certification requirements are located in different sections of the statute and in rule. Graduation from a vocational/technical school or college cannot currently be accepted in lieu of high school graduation. This is a hurdle for some technologists who can no longer obtain proof of high school graduation, but who can prove higher education. Currently, DOH does not collect the social security number from applicants and therefore has no unique identifier for examination purposes and in conducting investigations of criminal or disciplinary history. There is no length of time specified in statute for holding incomplete applications. There is also no provision in statute that provides that communication by DOH to the address provided by the applicant is sufficient notice.

Section 468.306, F.S., provides time limits to apply for radiologic technology certification examinations. Examinations are given year round, six-days a week, with applicants scheduling themselves for examination, making the time limit language obsolete. This section also provides no limitation on the number of times an applicant may take an examination. The national registry for this profession places a limit of three on the number of attempts allowed.

The existing fee for certification by examination in s. 468.304, F.S., explicitly states that the application fee is non-refundable, while the fee for certification by endorsement in s. 468.3065, F.S., does not contain this statement. Technologists sometimes become certified in Florida by endorsement and then request a refund because they have gotten a job to practice in another state. However the costs to DOH for producing the application materials, mailing, processing the application, and printing the certificate are the same, regardless of the circumstances.

Section 468.309, F.S., relates to certificate duration, renewal, reversion to inactive status, and members of the armed forces and spouse. This section and rules adopted thereunder, currently require that a certificate must expire on the last day of the certificateholder's birth month and that the certificate be renewed biennially for a period of two years. Unless the applicant happens to apply on their birthday, it is not possible to set the expiration date for an initial certificate so that it falls on the last day of the birth month and also be in effect for 24 months. This section also does not currently contain a provision for resignation, although many technologists request this option when they no longer want to be subject to the laws governing certification. There is currently no statute concerning what effect resignation would have on disciplinary actions that are in effect or proposed at the time of resignation.

Section 468.309(1)(c), F.S., does not explicitly require that the certificateholder provide DOH with a current address. This creates difficulty in mailing official DOH communications, such as renewal forms.

Section 468.309(3), F.S., gives DOH authority to approve continuing education programs but does not specify whether that authority extends to both continuing education providers and courses. The statute also does not explicitly provide authority for DOH to revoke approval. The existing language in ss. 468.309(4) and 468.3095, F.S., work together to govern expiration, inactivation, and reactivation of a certificate. The statute currently uses the same terminology to refer to an inactive certificate that has automatically expired as it does when a technologist has paid a fee to make a certificate inactive. There is currently no expiration date for the reactivated certificate under the existing birth month expiration scheme.

Disciplinary Grounds and Actions
Section 468.3101, F.S., relates to disciplinary grounds and actions. Subsection (1) does not give DOH explicit authority to investigate and determine whether violations of existing statutes have occurred. However, current statute, in providing disciplinary standards, assumes such authority. Subsection (1)(b), F.S., does not specify that DOH can take disciplinary action against technologists who are acted against by national registries or boards, if the license granted by those organizations is voluntary instead of mandatory. The national licensure authorities for the radiologic technology profession only offer voluntary licenses. A technologist who is revoked by the national licensure organizations for impaired practice or other reasons may continue to practice in Florida under a DOH-issued certificate.

Section 468.3101(1), F.S., states that a plea of nolo contendere can be grounds for discipline. Recent court rulings indicate that the statute is unenforceable unless the term “pleading of nolo contendere” is used.

Section 468.3101(1)(g), F.S., currently provides that being unable to practice by reason of “drunkenness” is grounds for discipline. It also provides authority to discipline a certificateholder for use of drugs, but only if the use rendered the certificateholder unable to practice, which is a subjective standard that is hard to prove.

Section 468.3101(1), F.S., requires DOH to prove that a certificateholder committed a crime against a person, or a crime related to the certificateholder’s ability to practice radiologic technology, in order to have clear grounds for discipline against the certificateholder. There is no requirement to discipline certificateholders who commit crimes listed in other established statutes (s. 435.03, F.S.) that govern employee background screening.

Section 468.3101(1), F.S., also provides no clear grounds to discipline a suspected impaired radiologic technologist who is referred, or self refers, to DOH’s impaired practitioner program, but then fails to comply with the program’s recommendations for treatment, evaluation, or monitoring.

Continuing education programs are required for renewal of a radiologic technologist’s certificate and must be approved by DOH. Authority is needed in s. 468.3101, F.S., to appropriately

discipline those providers who provide fraudulent certificates or who are acted against in other jurisdictions for misconduct.

New Technology
A new type of medical device has recently been developed that combines nuclear medicine and computed tomography, which uses x-radiation. Because nuclear medicine requires a unique expertise in the use and handling of radioactive materials, it is important that these devices be operated by persons who have a nuclear medicine technologist certificate and who have obtained device-specific training on the combination device. Current language in s. 468.302(3)(g), F.S., prevents a nuclear medicine technologist from using these devices, presenting an undue burden on the provision of health care imaging services.

Florida Health Information Systems Council

The Florida Health Information Systems Council was created in 1997 and now contains obsolete references to the "Treasurer and State Insurance Commissioner" and "Board of Regents." Requirements for development and approval of a strategic plan by March 1 of each year are obsolete and inconsistent with the provisions of s. 186.022, F.S., related to the State Technology Office. The Department of Veterans' Affairs is recognized as a member of the Health and Human Services domain but is not currently a designated member of the Florida Health Information Systems Council.

Trauma Care

Part II, ch. 395, F.S., governs trauma services and trauma center operations in Florida. There are twenty state-approved trauma centers in the state. DOH regulates trauma centers and has developed minimum standards for trauma centers based on national trauma standards. The department also has statutory authority to develop an inclusive trauma system to meet the needs of all injured trauma victims, which is accomplished through the development of a state trauma system plan and coordination with local trauma agencies. There are four county and multi-county local trauma agencies approved by DOH. In areas where local or regional agencies have not been formed, DOH is responsible for developing regional trauma system plans. Section 395.4001, F.S., defines various types of trauma centers. A "Level I trauma center" is defined to mean a trauma center that:

- Has formal research and education programs for the enhancement of trauma care and is determined by the department to be in substantial compliance with Level I trauma center and pediatric trauma referral center standards;
- Serves as a resource facility to Level II trauma centers, pediatric trauma referral centers, and general hospitals through shared outreach, education, and quality improvement activities; and
- Participates in an inclusive system of trauma care, including providing leadership, system evaluation, and quality improvement activities.

A "Level II trauma center" is defined to mean a trauma center that:

- Is determined by DOH to be in substantial compliance with Level II trauma center standards;

- Serves as a resource facility to general hospitals through shared outreach, education, and quality improvement activities; and
- Participates in an inclusive system of trauma care.

A "Pediatric trauma referral center" is defined to mean a hospital that is determined by the department to be in substantial compliance with pediatric trauma referral center standards as established by rule of the department.

Part II, chapter 395, F.S., places legislative emphasis on the need for an inclusive trauma system which provides Floridians and visitors timely access to trauma care. Trauma standards and procedures are based on the "golden hour" principle, which is the optimal timeframe for the delivery of services to trauma victims. DOH has the primary responsibility for the oversight, planning, monitoring and establishment of a statewide inclusive trauma system. There are six Level I trauma centers that are also pediatric trauma centers, thirteen Level II trauma centers, of which five are also pediatric centers, and one pediatric trauma center. Nineteen trauma service areas have been designated in Florida to facilitate trauma planning. There are provisions of part II, chapter 395, F.S., that are outdated. In some cases, dates have passed and are no longer relevant. Terminology regarding verification of trauma centers is no longer consistent with DOH's approval of trauma centers.

Brain and Spinal Cord Injury Program

DOH administers the brain and spinal cord injury program that provides services to individuals who have moderate-to-severe brain or spinal cord injuries. The program gives eligible persons the opportunity to obtain necessary rehabilitative services, enabling such persons to be referred to a vocational rehabilitation program or to return to an appropriate level of functioning in their community. Under s. 381.74, F.S., DOH maintains a central registry of persons who have moderate-to-severe brain or spinal cord injuries. Every public or private health agency, public or private social agency, and attending physician must report to the department within 5 days after identification or diagnosis of any person who has a moderate-to-severe brain or spinal cord injury. The consent of such person is not required and the report must contain the name, age, residence, and type of disability of the individual, and any additional information that the department deems necessary. During fiscal year 2002-2003, the brain and spinal cord injury central registry received 3,175 referrals. Eighty-nine percent of the 3,175 referrals were received from state-designated trauma centers and designated rehabilitation facilities.

Notwithstanding s. 381.74, F.S., each trauma center and acute care hospital must submit severe disability and head-injury registry data to DOH as provided by rule. Each trauma center and acute care hospital must continue to provide initial notification of persons who have severe disabilities and head injuries to DOH within timeframes set forth in ch. 413, F.S.[1]

[1] The Division of Vocational Rehabilitation within the Department of Labor and Employment Security was established to assist persons with physical or mental impairment to gain employment and its statutory authority was at part II, ch. 413, F.S., and ch. 38J, F.A.C. The Office of Disability Determinations was also housed in the Division. This is a federally funded program which is responsible for determining medical eligibility for Social Security Disability Insurance and Supplemental Security Income Benefits. The office at that time made appropriate referrals to the Division of Vocational Rehabilitation and programs within DOH to assist the claimant in obtaining the necessary health care and to regain economic employment

Legislation was passed in 1999 to transfer the Brain and Spinal Cord Injury Program from the Department of Labor and Employment Security, Division of Vocational Rehabilitation, to DOH effective January 2002. Reference to vocational rehabilitation was not removed from s. 395.404, F.S., to reflect the transfer of the program to DOH or to clarify the reporting requirements for trauma centers and acute care hospitals to the brain and spinal cord injury central registry. Currently, the central registry reporting statute requires that individuals with severe disabilities and head injuries be reported. The current definition does not specifically include individuals with moderate-to-severe traumatic brain or spinal cord injuries.

Certification of Emergency Medical Technicians and Paramedics

Part III, chapter 401, F.S., provides for the regulation of EMTs and paramedics by DOH. Any person who wishes to be certified as an EMT or paramedic must apply to DOH under oath on forms provided by the department which must contain such information as the department requires, which may include affirmative evidence of ability to comply with applicable law and rules. An applicant for certification or recertification as an EMT or paramedic, as appropriate, must have completed the most recent EMT training course or paramedic training course of the United States Department of Transportation as approved by DOH; certify under oath that he or she is not addicted to alcohol or any controlled substance; certify under oath that he or she is free from any physical or mental defect or disease that might impair the applicant's ability to perform his or her duties; and within 1 year after course completion have passed an examination developed or required by DOH. In addition, for an EMT, the applicant must hold either a current American Heart Association cardiopulmonary resuscitation course card or its equivalent as defined by department rule. For a paramedic, the applicant must hold a certificate of successful course completion of advanced cardiac life support from the American Heart Association or its equivalent as defined by department rule.

The EMT/paramedic certification examination must be offered monthly. Individuals achieving a passing score on the certification examination may be issued a temporary certificate with their examination grade report. The Department of Health must issue an original certification within 45 days after the examination. Each EMT certificate and each paramedic certificate will expire automatically and may be renewed if the holder meets the qualifications for renewal as established by DOH.

Under s. 401.411, F.S., DOH may deny, suspend, or revoke a license, certificate, or permit or may reprimand or fine any licensee, certificateholder or other person operating under part III, chapter 401, F.S., for specified grounds. Such grounds include: the violation of any rule of DOH or any provision of part III, chapter 401, F.S; being found guilty of, or pleading nolo contendere to, regardless of adjudication in any jurisdiction, a crime that relates to practice as an EMT or paramedic, or to practice in any other occupation, when operating under part III, chapter 401, F.S.; addiction to alcohol or any controlled substance; the conviction in any court in any state or in any federal court of a felony, unless the person's civil rights have been restored; unprofessional conduct; and the failure to report to DOH any person known to be in violation of the part.

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security. The Brain and Spinal Cord Injury Program and the Office of Disability Determinations were transferred to DOH in 1999 and are now codified in ch. 381, F.S.

DOH requests EMT/paramedic applicants to disclose any criminal convictions on the certification application. The department has adopted an administrative rule that provides that an applicant for certification or recertification as an EMT or paramedic who has been convicted of a felony and has complied with the requirements of chapter 940, F.S., and provides documentation of restoration of his or her civil rights shall be certified if the applicant otherwise meets the certification or recertification requirements and no other basis for denial exists.[2]

Section 401.23, F.S., provides definitions. "Advanced life support" is defined to mean treatment of life-threatening medical emergencies through the use of specified techniques by a qualified person, pursuant to DOH rules. "Basic life support" is defined to mean treatment of medical emergencies by a qualified person through the use of specified techniques and other techniques described in the Emergency Medical Technician Basic Training Course Curriculum of the United States Department of Transportation. "Basic life support" also includes other techniques that have been approved and are performed under conditions specified by rules of DOH. The rule further provides that the department must consider an applicant for certification or recertification as an EMT or paramedic with a felony conviction whose civil rights have not been restored, upon the applicant's submission of the following documentation: copy of the judgment of the felony conviction; all probation documents, plus the name and telephone number of the probation officer; and information regarding any additional convictions.

The Continuing Education Coordinating Board for Emergency Medical Services is a national organization whose purpose is to develop and implement policies to standardize the review and approval of EMS continuing education activities.[3]

Background Screening of Health Care Facility Staff

Chapter 98-171, L.O.F., initiated background screening requirements for applicants for licensure, certification, and registration of health care facilities and health care services. As a result, effective July 1, 1998, the owners, employees, administrators, and financial officers of health care entities were required to submit to criminal history checks by law enforcement agencies and screening through the central abuse registry of the Department of Children and Family Services. The categories of facility types or service providers whose licensure applicants are subject to background screening requirements are: abortion clinics; adult day care centers; adult family-care homes; ambulatory surgical centers; assisted living facilities; birth centers; clinical laboratories; crisis stabilization units; drug-free workplace laboratories; durable medical equipment providers; health care service pools; home health agencies; homemaker, sitter, companion agencies; home medical equipment providers; homes for special services; hospices; hospitals; intermediate care facilities for the developmentally disabled; multiphasic health testing centers; nurse registries; nursing homes; organ procurement organizations, tissue banks, and eye banks; prescribed pediatric extended care centers; residential treatment facilities; transitional living facilities; and, utilization review agencies. The Agency for Health Care Administration (AHCA or agency) began implementation on October 1, 1998.

[2] See "Convicted Felons Applying for EMT or Paramedic Certification or Recertification," Rule 64 E-2.033, Florida Administrative Code.
[3] See the website for Continuing Education Coordinating Board for Emergency Medical Services at <http://www.cecbems.com/>.

The 1998 legislation gave AHCA authority to prohibit licensure, certification, or registration of unsuitable applicants. This authority has as its objective the prevention of harm to patients, residents, and recipients of health care services and products by undesirable applicants for licensure.

Upon application for licensure as one of the specified health care facilities or service providers, managing employees must submit to a level 2 background screening by AHCA. Also subject to screening are members of the board of directors, officers, and persons owning 5 percent or more of the entity, if AHCA has probable cause to believe that any such individual has been convicted of an offense contemplated by the level 2 screening criteria.

Background screening must conform to level 2 employment screening, under chapter 435, F.S., which includes screening through the FBI's databases and state criminal records checks. The screening requirements may be waived if an applicant provides proof of such screening within the previous 5 years in conjunction with any other state health care licensure, certification, or registration requirements.

An applicant entity subject to level 2 screening must submit to AHCA, along with the application for initial or renewal licensure: (1) a description and explanation of any exclusions, permanent suspensions, or terminations from the Medicare or Medicaid programs or submit proof of compliance with Medicare or Medicaid program ownership and control-interest disclosure requirements; and (2) for a member of its board of directors, its officers, or any individual owning 5 percent or more of the applicant entity, a description and explanation of any conviction of an offense that would preclude employment under the level 2 screening standards of chapter 435, F.S. An exception is provided for a director of a not-for-profit organization when the director serves solely in a voluntary capacity, does not regularly participate in the day-to-day operational decisions of the organization, receives no remuneration for services on the board of directors, has no financial interest, and has no family member with a financial interest in the organization, if the director and the organization include a statement in the licensure application affirming such a relationship.

The owner or administrator of an assisted living facility must conduct level 1 background screening, as set forth in chapter 435, F.S., on all employees hired on or after October 1, 1998, who perform personal services for residents. Level 1 screening is less stringent than level 2 screening.

The Agency for Health Care Administration is authorized to issue a provisional license to an applicant or a managing employee of the applicant who meets the standards for the state criminal records check, but for whom AHCA has not yet received results from the FBI's criminal records check or to an applicant or managing employee of the applicant who is waiting for a response from AHCA to a request for exemption from disqualification from employment, as provided for under chapter 435, F.S. The agency may grant a license or certify or register an applicant entity after it receives the FBI report, but only if such report confirms that all standards have been met or upon AHCA granting an exemption from disqualification under chapter 435, F.S.

The agency may not grant a license, certify, or register an applicant entity if the applicant, or a managing employee of the applicant, has been found guilty of, or has entered a plea of nolo

contendere or guilty to any offense that would preclude employment under the level 2 screening standards of chapter 435, F.S. However, a license may be granted to an applicant or a managing employee of the applicant if AHCA grants an exemption from disqualification. The agency may deny or revoke a license if the applicant or a managing employee of the applicant has falsely represented or omitted a material fact in the application relating to: (1) exclusion, permanent suspension, or termination from the Medicare or Medicaid programs; (2) describing or explaining a board member's, an officer's, or a 5-percent owner's conviction that would preclude employment under level 2 screening standards; or (3) has been excluded, permanently suspended, or terminated from the Medicare or Medicaid program.

Injury Prevention

Section 381.0011(12), F.S., requires DOH to cooperate with other entities in implementing a statewide injury control program. Current law does not describe any responsibilities of DOH with regard to injury prevention.

Tobacco Prevention Program

DOH has responsibility for the administration of portions of the Clean Indoor Air Act under Part II of chapter 386, F.S. In addition, DOH is responsible for the administration of a tobacco prevention program for youth through an appropriation by the 2003 Legislature of $1 million. In addition, DOH also receives $750,000 from CDC for tobacco prevention. The CDC funds are used for tobacco prevention, cessation for youth and adults, reducing disparities in tobacco use by different populations, and program evaluation.

Child Abuse Death Review

The State Child Abuse Death Review Team and local review committees currently review only those verified child abuse and neglect deaths where there has been at least one prior report to the Department of Children and Family Services (DCF) [s. 383.402(1), F.S.].

Children's Medical Services

Eligibility
The current statute lacks clarity about children who are seeking health insurance coverage through the Florida Kidcare Program when their family income exceeds 200 percent of the current federal poverty level. This lack of clarity has created the potential for litigation involving the Children's Medical Services (CMS) Program in DOH.

DOH does not receive funds to pay for children above 200 percent of the federal poverty guidelines. DOH had to intervene as amicus curie in a lawsuit between a provider for the Healthy Kids Corporation and the Corporation, in which the trial court had entered a preliminary order that potentially included children of families over 200 percent of the federal poverty level in the CMS Network, contrary to the statute and the limits of federal funding under Title XXI.

The definition of "children with special health care needs" in current statute is not consistent with the federally accepted definition of "children with special health care needs." The federal

definition recognizes the newborn screening population who is at-risk for a disability until confirmatory testing has been completed. Also, CMS currently serves children with behavioral problems through the Behavioral Health Network. Certain children with developmental problems also have behavioral problems.

Infant Screening
Current statutory language is unclear regarding CMS network referrals of newborns requiring confirmatory testing for metabolic, genetic and congenital disorders. The term "Infant Screening Program" is inconsistent with nationally accepted program terminology which is "Newborn Screening Program." Current language is unclear about the State Public Health Laboratory and CMS' authority to release newborn test and screening results to primary care physicians to expedite necessary medical care and promote continuity of care.

Language authorizing the Infant Hearing Impairment Program (IHIP) component of Developmental Evaluation and Intervention has been superseded by the Universal Newborn Hearing Screening law, or chapter 383.145, F.S.

Individuals with Disabilities Education
The federal Individuals with Disabilities Education Act, Part C Program has been an integral part of the CMS Program since 1993; however, CMS must annually request proviso language to support participation in and the administration of this program. DOH has participated in this program for 16 years. The longevity of Florida's participation has established an on-going intent and statutory authority would avoid the need to request proviso language to clarify the legislative support for this program.

Access
There are children who currently reside close to the borders of Alabama or Georgia and use primary care providers in those states because they are more accessible. Additionally, CMS has to send children out-of-state for certain specialty procedures that are not available in the state. CMS cannot currently cover out-of-state care. Medicaid does allow the use of out-of-state providers in its MediPass program.

Poison Control Centers

There is currently some reluctance from hospitals to release patient information to regional poison control centers for patient case management, as the hospitals believe the authority to release this information is not clearly stated in statute.

Battery on DOH Workers

Under current law, when a person commits battery on an employee of DOH or on one of its direct service providers, it is up to the victim to decide whether or not they want to file criminal charges. If they elect to file charges, they are instructed to go to the state attorney's office.

Staff at DOH's A.G. Holley Tuberculosis Hospital have been threatened with razor blades and other contrived weapons, hit in the face, thrown against large objects, and painfully grabbed by patients. A patient who has committed a battery remains at A.G. Holley because it is a

misdemeanor and patients cannot be arrested unless the assault is committed in the presence of law enforcement, or results in a significant injury. Leaving a violent batterer in the hospital threatens staff safety and has had a negative effect on staff morale and productivity, retention, and recruitment of new staff.

DOH disease intervention specialists go into homes and high-risk areas to perform contact investigations and take blood specimens. They have been held hostage at gunpoint, threatened with knives, chased with machetes, and physically assaulted on many occasions while fulfilling their public health responsibilities.

DOH Environmental Health employees perform inspections at work locations and in the field as part of their public health regulatory functions, citing business operators on health violations and sanitary nuisances. These DOH employees have on occasion been verbally and physically assaulted in the performance of their duties.

Prior to the separation of the Department of Health and Rehabilitative Services into DOH and DCF, employees of health programs were included under the protections of s. 784.081, F.S., providing for reclassification of the felony degree or misdemeanor degree, as applicable, of assault, aggravated assault, battery, or aggravated battery committed upon specified officials or employees. Chapter 99-8, L.O.F., as part of a clean up of statutes following the separation, changed the language in the statute from Department of Health and Rehabilitative Services to DCF, leaving out DOH. This drafting oversight resulted in the exclusion of DOH employees from the protections of the statute.

Obsolete Statutory References

There are a number of statutory references that are no longer accurate or pertinent due to changes in governmental structure, reorganization within DOH, passage of time, lack of funds to carry out a program, or changes in technology. Amendments and repeals are necessary to bring the statutes into conformity with actual practice and to help DOH carry out its functions.

III. Effect of Proposed Changes:

Section 1. Amends s. 17.41(5), F.S., to authorize DOH to disburse funds from the Tobacco Settlement Clearing Trust Fund to the Biomedical Research Trust Fund in DOH, thus correcting an oversight that occurred when the statute was enacted.

Section 2. Amends s. 20.43, F.S., to establish a Division of Disability Determinations within DOH; to change the Division of Emergency Medical Services and Community Health Resources to the Division of Emergency Medical Operations; to change the Division of Information Research Management to the Division of Information Technology; and to change the Division of Health Awareness and Tobacco to the Division of Health Access and Tobacco.

Section 3. Transfers s. 216.341, F.S., renumbering it as s. 216.2625, F.S., and amends this section, to exempt the positions in DOH funded completely by the Social Security Administration, that are funded through the U.S. Trust Fund, from the requirements of s. 216.262(1), F.S., to allow hiring flexibility based on workload.

Section 4. Amends s. 381.0011(12), F.S., to clarify DOH's authority to implement and maintain injury-prevention activities as a component of the injury control initiatives of the department.

Section 5. Amends s. 381.006, F.S., to add elevated blood-lead-level investigations as one of the environmental health services. This would authorize county health departments to expend funds for the federally mandated certification required for DOH staff engaged in lead investigations.

Section 6. Amends s. 381.0065, F.S., to allow DOH's Onsite Sewage Treatment and Disposal Systems Program to use the most current products derived from the U.S. Geological Survey. This section deletes a requirement for a report to the Legislature each odd-numbered year on violations of subdivision provisions of the statute. The section also provides authority for current rule language that enables DOH to require an engineer-designed system construction plan for onsite sewage treatment and disposal systems, under certain conditions.

Section 7. Amends s. 381.0066, F.S., to continue the $5 fee on new sewage system construction permits to support onsite sewage treatment and disposal system research, demonstration, and training projects.

Section 8. Amends s. 381.0072, F.S., to exempt "bars and lounges" from having a certified food manager and to clarify that public and private school food services are exempt from having a certified food manager only if operated by school employees. Bars and lounges regulated by the department are limited to the preparation of drinks and the service of food-types that are seldom implicated in reported food-borne illnesses (non-potentially hazardous foods).

This section also deletes language that exempted facilities licensed by DOH's Office of Licensure and Certification, the Child Care Services Program Office, or the Developmental Disabilities Program Office from the license requirements under s. 381.0072(3), F.S.

Section 9. Creates s. 381.0409, F.S., to establish a comprehensive tobacco prevention program designed to reduce premature mortality, reduce morbidity, and increase the life expectancy of people in Florida through public health interventions at the state and local levels. The comprehensive program would have the following components:

- Program elements based on "Best Practices" identified by the CDC and the scientific literature on tobacco prevention;
- Advocacy organizations of middle, high school, and college students;
- Cessation programs for youth and adults through schools, county health departments, and local providers, including a toll-free telephone quit line;
- Partnerships with local communities and schools to prevent and reduce tobacco use, including reducing disparities in tobacco use among different population groups;
- Local and statewide campaigns separately targeted to youths and adults;
- Implementation of the provisions of the Florida Clean Indoor Air Act under Part II of chapter 386, F.S., that are applicable to DOH; and
- DOH is directed to act as a clearinghouse for information on best practices and to provide technical assistance and training for state and local tobacco prevention activities.

Implementation of the program is contingent upon the department's receiving a specific appropriation for this purpose, although the bill permits DOH to accept funds from the private sector to implement the program. In addition, the proposal requires DOH to conduct surveillance and evaluations that measure program performance. Finally, DOH is authorized to contract for any of the program components.

Section 10. Creates s. 381.86, F.S., to establish the Institutional Review Board within DOH to review biomedical and behavioral research on human subjects that is funded or supported by the department. The board is established as the state's institutional review board for compliance with federal requirements and has authority to charge a fee to cover the costs of research review. The review fee is waived for degree seeking students in Florida universities. The Secretary of Health will appoint the board and its chair and board members are entitled to per diem reimbursement for travel as provided in s. 112.061, F.S. DOH is authorized to adopt rules related to submission of applications and compliance with federal requirements.

Section 11. Amends s. 381.89, F.S., to authorize DOH to establish late payment fees and reduce tanning facility licensure fees to be consistent with the DOH cost of administering the program. DOH may prorate the fees quarterly, rather than monthly.

Section 12. Amends s. 381.90, F.S., to revise an incorrect statutory reference to correct the titles of the members of the Florida Health Information Systems Council. This section changes the date for the council's strategic plan submission from March 1 to June 1, and deletes the requirement that the plan be transmitted electronically or in writing to the Governor and the Legislature.

Section 13. Amends s. 383.14, F.S., to correct an error that was made when the statute was drafted. This section incorrectly uses the term "infant" when the term "newborn" should be used pursuant to the nationally accepted definition of "newborn" and the definition of "newborn" in s. 383.145, F.S.

This section adds language that allows DOH to release newborn hearing and metabolic tests or screening results to the newborn's primary care physician, and provides rulemaking authority to DOH. The bill requires newborns to be tested for phenylketonuria prior to becoming 1 week of age, rather than 2 weeks of age. This section clarifies that newborns do not have to be born in Florida to be screened. This section increases the number of members on the Genetics and Newborn Screening Advisory Council from 12 to 15 to include a representative from the Florida Hospital Association, an audiologist, and an individual experienced in newborn screening programs.

Section 14. Amends s. 383.402, F.S., to expand the duties of the Child Abuse Death Review Team and local review committees to review all verified child abuse and neglect deaths rather than those for whom at least one report was accepted by the hotline within DCF.

Section 15. Amends s. 391.021, F.S., to revise the definition of children with special health care needs to conform to current practice.

Section 16. Amends s. 391.025, F.S., to remove language from the statutes which has been misinterpreted to extend CMS eligibility inappropriately. The removal of this language will serve to avoid litigation.

Section 17. Amends s. 391.029, F.S., regarding CMS eligibility, to clarify those individuals who are financially eligible to receive services through the program, and also to provide that the CMS program is not an entitlement program, which could serve to avoid litigation. This section also deletes obsolete language regarding serving individuals who are 21 years of age or older.

Section 18. Adds a new subsection (4) to s. 391.035, F.S., to enable the CMS program to include physicians licensed in other states in the CMS network, thus reducing travel time and increasing access to physicians for patients in counties near Alabama and Georgia. DOH is given rule authority to administer this new subsection.

Section 19. Amends s. 391.055, F.S., adding a new subsection (4) to require that any newborn found to have an abnormal screening result in the metabolic screening authorized by s. 383.14, F.S., shall be referred to the CMS network. This language ensures that these newborns will receive follow-up services that include confirmatory testing, medical management, or medical referral.

Section 20. Amends s. 391.302, F.S., removing the definitions of hearing impaired infant and high-risk, hearing-impaired infant. This section clarifies hospital intervention services to reflect an array of early intervention services a child may need rather than limiting services to therapies. Section 383.145, F.S., mandates newborn hearing screening thereby replacing the need for definitions and references to hearing impairment under this section.

Section 21. Amends s. 391.303, F.S., removing a reference to infants with a hearing impairment as a specific population to be identified in Level II or Level III intensive care units. This section also removes infants with hearing loss as a part of the developmental evaluation and intervention programs (DEI). This section specifies that infants who have a condition identified through the newborn screening program would be eligible for DEI. Reference to DEI services specific to children with hearing impairment was removed from s. 391.303, F.S., as children diagnosed as having a permanent hearing impairment are eligible for services through the Part C, Early Intervention Program.

Section 22. Creates s. 391.308, F.S., the Infants and Toddlers Early Intervention Program, authorizing DOH to implement and administer Part C of the federal Individuals with Disabilities Education Act. This section requires DOH and the Department of Education to prepare a grant proposal each year to the U.S. Department of Education for funding early intervention services for infants and toddlers with disabilities, from birth through 36 months of age and their parents. The grant proposal must include a reading initiative for infants and toddlers.

Section 23. Amends s. 395.1027, F.S., to require licensed facilities, upon request, to release patient information to regional poison control centers for patient case management.

Section 24. Amends s. 395.404, F.S., relating to the review of trauma registry data, to revise requirements for acute care hospitals to provide trauma registry data so that they must do so upon

request of DOH rather than be required to furnish the data. The section is revised to more clearly show that it is the trauma registry data obtained by DOH that is confidential and exempt from the Public Records Law. Reporting requirements for trauma centers and acute care hospitals to furnish severe disability and head injury registry data to DOH are revised and expanded to include information on any person with a moderate-to-severe brain or spinal cord injury. Each trauma center, pediatric trauma referral center, and acute care hospital must report to DOH's brain and spinal cord injury central registry, consistent with the procedures and timeframes of s. 381.74, F.S., any person who has a moderate-to-severe brain or spinal cord injury. The report must include the name, age, residence, and type of disability of the individual and any additional information that DOH finds necessary. The requirement for trauma centers and acute care hospitals to report such data to DOH's brain and spinal cord injury registry is also codified in s. 381.74, F.S.

Section 25. Amends s. 401.211, F.S., to clarify legislative recognition of a comprehensive statewide injury-prevention program that is integrated with broader community health systems in order to enhance the total delivery system of emergency medical services and reduce injuries for all persons.

Section 26. Creates s. 401.243, F.S., to establish an Injury-Prevention Program within DOH. The program is responsible for coordinating and expanding injury prevention activities statewide. DOH duties include data collection, surveillance, education, and intervention promotion. DOH is given the authority to:

- Provide expertise and guidance to communities, county health departments, and state agencies;
- Apply for, receive, and spend funds from grants, donations, or contributions, from public and private sources on program activities;
- Develop a state plan for injury prevention; and
- Adopt the rules necessary to implement grant programs.

Section 27. Creates s. 401.27001, F.S., to require emergency medical technician and paramedic applicants to submit fingerprints and other information to undergo a statewide and national criminal background check consistent with other professions regulated by DOH.

An applicant for renewed certification on or after July 1, 2004, who has not previously submitted a set of fingerprints to DOH must submit information required to perform a statewide criminal history check and a set of fingerprints for a national criminal history check as a condition of the initial renewal of his or her certificate. For subsequent certification renewals, the department must, by rule, adopt an application form that includes a sworn oath or affirmation attesting to the existence of any criminal convictions, regardless of plea or adjudication, which have occurred since the previous certification.

DOH must notify current certificateholders of the requirement to undergo a criminal history background screening sufficiently in advance of the 2004 biennial expiration for the certificateholder to provide the required information before submission of the renewal certification application. Eligibility for renewal may not be denied by the department for the first renewal application subsequent to July 1, 2004, for delays created in obtaining the criminal

history, if the applicant has submitted the required criminal background screening information or affidavit and fees with the renewal certification application. A certificate that expires December 1, 2004, may be renewed subject to withdrawal of certification pending the department's determination of whether the certificateholder will be granted an exemption from disqualification. The applicant must make a timely application for renewal and request the exemption from denial before the expiration of the certificate.

Applications for certification must be processed within 90 days after receipt of a completed application. If there has been a criminal conviction, the certification application will not be complete until the criminal history and certified copies of all court documents for the prior criminal convictions have been received by DOH. The department must submit fingerprints and information required for a statewide criminal history check to the Department of Law Enforcement, and the Department of Law Enforcement must forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check of the applicant.

If an applicant has undergone a criminal history check for employment or certification as a firefighter in Florida, the Division of State Fire Marshall of the Department of Financial Services must provide DOH with the criminal history information regarding any applicant for EMT or paramedic certification or recertification.

Any applicant for initial certification or renewal as an EMT or paramedic who has already submitted fingerprints and information to the Division of State Fire Marshall as part of the requirements for certification or employment as a firefighter within 2 years prior to application and submits an affidavit in a form prescribed by DOH attesting that he or she has been a resident of Florida for the previous 2 years does not have to submit fingerprints or duplicate information to DOH.

Similar to the Level I or Level II criminal history checks for employment or licensure under chapter 435, F.S., the bill enumerates a list of offenses which would disqualify an EMT/paramedic applicant from certification or renewed certification. DOH may grant exemptions to such disqualification based on specified criteria. Notwithstanding the grounds for certification denial outlined in s. 401.411, F.S., relating to EMTs or paramedics, an applicant must not have been found guilty of, regardless of plea or adjudication, any offense prohibited under specified provisions of Florida law or under similar statutes of another jurisdiction. The offenses enumerated are identical to those required for Level I or II criminal history checks for specified persons under chapter 435, F.S.

The following offenses allow DOH to grant an exemption to disqualification from certification or renewed certification: (1) felonies committed more than 3 years prior to the date of disqualification; (2) misdemeanors prohibited under any of the cited criminal offenses; (3) offenses that were felonies when committed but are now misdemeanors; (4) findings of delinquency; or (5) commissions of acts of domestic violence. DOH may grant an exemption to any applicant who demonstrates by clear and convincing evidence that the applicant should not be disqualified from certification or renewed certification. The applicant seeking an exemption has the burden of setting forth sufficient evidence of rehabilitation. Denial of certification or renewed certification may not be removed from, nor may an exemption be granted to, any

applicant who is found guilty of, regardless of plea or adjudication, any enumerated felony solely by reason of any pardon, executive clemency, or restoration of civil rights.

DOH is given rulemaking authority to administer this section.

Section 28. Amends s. 404.056(4), F.S., to clarify the time frames for performing mandatory radon testing in public and private buildings. The revisions allow one full year to complete and report the initial radon measurements. Follow up testing must be performed after the building has been occupied for 5 years, and the results must be reported to DOH by the first day of the 6th year of occupancy.

This section eliminates the contradictory completion and reporting times and uniformly provides one year for completion and reporting regardless of when the building received its occupancy or license.

Section 29. Amends s. 409.814, F.S., to clarify that the reference to the Kidcare program for the purposes of this section does not include the CMS network as listed in s. 409.813, F.S. This clarifies that the CMS program is not required to serve children above 200 percent of the federal poverty guidelines. The language states that such children may participate only in the Healthy Kids and Medikids programs.

Section 30. Amends s. 468.302, F.S., to clarify that the prohibition on uncertified operators applies to the "practice of radiologic technology" and not just the application of radiation. This section also specifies the restricted circumstances and additional training under which a nuclear medicine technologist can apply x-radiation from a combination nuclear medicine–computed tomography device. The proposed changes would allow the nuclear medicine technologist to operate the devices in a way that protects public safety after additional training has been received.

Section 31. Amends s. 468.304, F.S., to clarify and explicitly state all existing certification requirements to practice radiologic technology, including use of a form, examinations or endorsement, which are currently in rule or other sections of the statute, together in the same section of the statute for easier use by applicants and better enforceability.

This section requires applicants to pay DOH a nonrefundable fee that may not exceed $100 plus the actual per applicant cost to DOH for purchasing the exam from a national organization. The application must include the social security number of the applicant, which will allow for better identification for examinations, investigations of criminal or disciplinary history, and to assess the performance of Florida educational programs. The proposed language also specifies the length of time incomplete applications will be held, and clarifies that communication to the address provided by the applicant is sufficient notice.

This section allows DOH to accept proof of graduation from a vocational/technical school or college in lieu of a high school diploma and provides that an individual can be certified if they have passed the DOH exam or show proof that they have a current license, registration, or certificate to practice radiologic technology.

This section requires applicants to provide information about their criminal and professional disciplinary history, and gives DOH the authority to deny certification for applicants whose history indicates a violation of DOH discipline standards.

Section 32. Amends s. 468.306, F.S., to remove obsolete time limits for applying for certification examinations to practice radiologic technology. This section requires applicants who fail the certification examination five times to complete remedial education before taking the examination again. This change is needed in order to protect the integrity of the examination itself and the safety of the public. The change will also redirect the applicant's resources into taking the additional training and education in areas they need to pass the examination.

This section deletes language that authorized DOH to schedule an applicant for a later examination if an applicant applies less than 75 days before an examination.

Section 33. Amends s. 468.3065, F.S., to clarify that the fee remitted for certification by endorsement is non-refundable.

Section 34. Amends s. 468.307, F.S., to make technical changes to certificate issuance and expiration dates. This section specifies the duration and expiration date of the initial certificate as well as the duration and expiration date for an applicant who becomes certified in a new category while holding an active certificate in a different category.

Section 35. Amends s. 468.309, F.S., to provide that the mailing address provided by the certificateholder on their renewal is the correct address for all official DOH communications. This section clarifies that existing authority for approval of continuing education includes both providers and courses, and conforms the language to other parts of the statute revised in s. 468.3095, F.S.

This section creates s. 468.309(7), F.S., to provide for resignation of a certificate. Any disciplinary actions in effect or proposed at the time of resignation will be tolled until the technologist decides to again apply for certification in Florida. Use of a resignation form specified by DOH is required so that the technologist will be fully informed of the effects of resignation.

Section 36. Amends s. 468.3095, F.S., to clarify the difference in procedures for reactivation of expired and inactive certificates, and to establish an initial expiration date for reactivated certificates. The proposed changes work together with those proposed in s. 468.309, F.S., to correct sections of the existing statutes that use the same terminology to refer to an inactive certificate that has automatically expired as opposed to one where a technologist has paid a fee to make a certificate inactive. The proposed changes clarify that the technologist who has paid the inactive fee does not have to pay the late renewal fee when they reactivate a certificate.

Section 37. Amends s. 468.3101, F.S., relating to disciplinary grounds and actions for radiologic technology, giving DOH the authority to investigate and determine whether violations of existing statutes have occurred. This section does the following:

- Authorizes DOH to take disciplinary action against radiologic technologists who are acted against by national registries or national boards recognized by DOH, regardless of whether the license they hold through those organizations is voluntary or mandatory. The national licensure authorities for the radiologic technology profession are non-governmental organizations that only offer voluntary licenses;
- Closes loopholes that allow a technologist who was revoked by the national licensure organizations for impaired practice, or other reasons, to continue to practice in Florida under a DOH-issued certificate;
- Clarifies that "pleading" nolo contendere is grounds for discipline under existing disciplinary standards, rather than "a plea of";
- Replaces being unable to practice by reason of "drunkenness" with "use of alcohol" as grounds for disciplinary action;
- Clarifies that the prohibition on the use of uncertified operators applies to the "practice of radiologic technology" and not just the application of radiation. This change will conform the language used in this section with that used in other sections of the chapter that refer to the "practice of radiologic technology";
- Authorizes DOH to discipline a technologist who tests positive for drugs in the workplace. This would allow DOH to take action, such as requiring the technologist to be evaluated, treated, and monitored by DOH's impaired practitioner program. The added authority is more enforceable than existing authority that requires a subjective determination of inability to practice;
- Authorizes DOH to discipline technologists who fail to timely report disciplinary action taken against their radiologic technology certification in other jurisdictions;
- Provides grounds for discipline for committing a list of crimes established in other statutes governing employee background screening. Use of this list is more enforceable and less subjective than current statutes;
- Provides grounds for discipline for a suspected impaired technologist who is referred, or self refers, to DOH's impaired practitioner program, but then fails to comply with the program's recommendations for treatment, evaluation or monitoring. A letter from the director of DOH's impaired practitioner program, indicating the technologist is unable to safely practice, would be sufficient proof to begin disciplinary proceedings;
- Provides that the final disciplinary action against the technologist's license in another jurisdiction would be sufficient justification to begin disciplinary proceedings in Florida; and
- Gives DOH the authority to discipline those who improperly provide continuing education courses to radiologic technologists. The changes give DOH rule authority to develop guidelines and criteria for the discipline of continuing education providers, including revoking courses and refusing to approve courses.

Section 38. Amends s. 489.553, F.S., to require that septic tank contractors have three years of qualifying work experience immediately preceding the date of application. This clarifies the existing requirement for three years of experience.

Section 39. Amends s. 489.554, F.S., authorizing DOH to develop rules regarding inactive status and the late filing of renewal applications for septic tank contractors. This section provides the ability for a master septic tank contractor to revert to registered septic tank contractor status any time during the period of registration. This section also gives DOH the authority to deny an

application for renewal of a septic tank contractor certificate for failure to pay an administrative penalty.

Section 40. Amends s. 784.081, F.S., to provide for reclassification of the felony degree or misdemeanor degree, as applicable, of assault, aggravated assault, battery, or aggravated battery committed upon a person employed by DOH or its direct service providers. These protections will apply to Environmental Health regulatory staff, A.G. Holley nursing staff, STD investigative staff and all other DOH employees and the employees of DOH's service providers. The increased criminal penalty will authorize law enforcement to take offenders into custody following assault or battery against a DOH employee.

Section 41. Repeals s. 381.0098(9), F.S, relating to permits for biomedical waste; s. 385.103(2)(f), F.S., which requires DOH to adopt rules for the community intervention program; s. 385.205, F.S., relating to the care and assistance of persons suffering from chronic renal disease; s. 385.209, F.S., relating to the dissemination of information on cholesterol health risks; ss. 391.301(3) and 391.305(2), F.S., relating to legislative intent and rules regarding a statewide coordinated program to screen, diagnose, and manage high-risk infants identified as hearing-impaired; s. 393.064(5), F.S., relating to DCF's authority to contract for the supervision and management of the Raymond C. Philips Research and Education Unit; and s. 445.033(7), F.S., relating to the exemption of certain evaluations from the biomedical and social research provisions.

According to DOH, the statutory language being repealed is obsolete, requires unnecessary rules, or creates programs that are not needed and not funded.

Section 42. Provides that this act shall take effect July 1, 2004.

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, s. 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, s. 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. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The CS continues a $5 research fee that is added to each new system permit issued for onsite sewage treatment and disposal systems that is set to expire at the end of fiscal year 2004.

The Institutional Review Board within DOH has authority to charge a fee to cover the costs of research review; however, no amount is specified in the CS.

The CS establishes a late fee for tanning salons but also gives DOH the authority to reduce licensure fees.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Department of Health

This CS authorizes fees to help offset the costs for contracted services associated with research reviews conducted by the Institutional Review Board. These contracted services include administration, management, consulting, and technical expertise. Estimated revenue from the Institutional Review Board fees for a 12 month period is based on the following: 92 Initial Reviews at $1,500, four expedited reviews at $500, 13 resubmissions at $500, 53 annual renewal reviews at $500, and 7 modifications at $150, for a total of $174,050.

The one environmental health fee in the CS is the late fee for tanning salons. Revenue from this fee is expected to be minimal as the fee acts only as an incentive for timely applications.

Prison Bed Impact

The Criminal Justice Impact Conference estimates that the felony/misdemeanor reclassification provision of the CS is likely to have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Criminal Justice::
Restores a deleted exemption from DOH food service licensure for facilities licensed by DCF under the Child Care Program Office and Developmental Disabilities Program Office.

#2 by Criminal Justice:
Provides that the Technical Review and Advisory Panel of the Department of Health shall review and advise the Legislature on the need and structure of a disciplinary board for the onsite sewage industry, and submit a report to the Legislature by January 2, 2005. (WITH TITLE AMENDMENT)

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.