

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Part I of Chapter 464, F.S., governs the licensure and regulation of nurses in Florida. Nurses are licensed by the Department of Health (department) and are regulated by the Board of Nursing (board). Licensure requirements to practice professional nursing include completion of education requirements, demonstration of passage of a department-approved examination, a clean criminal background screening, and payment of applicable fees.¹ Renewal is biennial and contingent upon completion of certain continuing medical education requirements.

Section 464.0115, F.S., recognizes a clinical nurse specialist (CNS) as a person who has met the following criteria:

- Licensed to practice professional nursing;
- Completion of a master's degree in a clinical nursing specialty; and
- Certification in a specialty area from a nationally recognized certifying body as determined by the Board of Nursing.

A CNS is trained to be an expert clinician in a specialized area of nursing practice, such as a particular disease state or population. As an article authored by the National Association of Clinical Nurse Specialists (national association) in the journal *Clinical Nurse Specialist* notes, "the essence of the CNS practice expertise is embedded in a specialty."² The national association notes that there are approximately 54,000 CNSs in the United States, of which approximately 25% are certified or recognized by a state board.³ The national association comments that one factor in the low number of CNSs may be that "valid and reliable certification examinations are not available."⁴ Florida began certification of CNSs on July 1, 2007.⁵ According to the board, there are no certified clinical nurse specialists as of January 2008.

The board has recognized four national certifying bodies: the American Nurses Credentialing Center, the American Association of Critical-Care Nurses, the Oncology Nursing Certification Corporation, and the National Board for Certification of Hospice and Palliative Care Nurses. In addition, the board has recognized the following CNS specialties:

- Advanced Diabetes Management
- Adult Health
- Child/Adolescent Psychiatric and Mental Health
- Psychiatric and Mental Health

¹ Section 464.009, F.S., provides an alternative to licensure by examination for nurses through licensure by endorsement.

² *Regulatory Credentialing of Clinical Nurse Specialists*, 17 *Clinical Nurse Specialist* 163 (2003).

³ *Id.*

⁴ *Id.*

⁵ See CS/CS/SB 248; Chapter 2007-167, L.O.F.

- Gerontological
- Pediatric
- Public/Community Health
- Advanced Oncology CNS
- Certified Critical-Care CNS
- Hospice and Palliative Care CNS

However, this list is only a subset of the specialty training available in programs that prepare CNSs; as noted above, certification exams are not available for all CNS specialties. As an example, there is no certification exam for a CNS trained in emergency medicine.

Effect of Proposed Changes

The bill authorizes an applicant for certification as a CNS to petition the board for a waiver from the certification exam requirement found in s. 464.0115(1), F.S., if the applicant is licensed to practice nursing and has completed a master's degree in a clinical nursing specialty, but cannot complete a certification exam because no certification exam is available in his or her respective specialty.

The bill requires the petitioner to:

- Be academically prepared as a CNS in a specific specialty area;
- Hold a master's degree in nursing that includes clinical experience in the specialty area; and
- Complete 1,000 hours of supervised clinical experience in the specialty area, including a minimum of 500 hours of supervised post-graduate clinical practice.

The bill authorizes the board to grant a nonrenewable certificate that is valid for up to 12 months while the petitioner completes his or her supervised post-graduate clinical practice.

The bill authorizes the board to renew the waiver every two years, if the CNS continues to be ineligible for certification due to the unavailability of a certification course in the CNS' specialty area.

C. SECTION DIRECTORY:

Section 1: Revises requirements for certification as a clinical nurse specialist.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

This bill may implicate Article II, s.3⁶ of the Florida Constitution as an unlawful delegation of legislative authority. This section of the Florida Constitution “prohibits the delegation of legislative powers absent ascertainable minimal standards and guidelines.”⁷ Two exceptions to this non-delegation doctrine are generally recognized where “it is impracticable to lay down a definite comprehensive rule . . . (1) when the subject of the statute relates to licensing and the determination of the fitness of the applicant to be licensed, and (2) when the statute regulates businesses operated as a privilege rather than as a right which are potentially dangerous to the public.”⁸ Here, the bill gives the board broad discretion to waive the statutory certification requirement if the CNS is “academically prepared” in a specialty area where no certification exam exists. However, the authority granted to the board does not appear to turn on the issue of “personal fitness” but rather academic preparation.

B. RULE-MAKING AUTHORITY:

No additional rulemaking authority is required as a result of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

⁶ “The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”

⁷ *Department of Business Regulation, Div. of Alcoholic Beverages and Tobacco v. Jones*, 474 So.2d 359, 361 (Fla. Dist. Ct. App. 1985).

⁸ *Id.* at 362 (citing *Florida Waterworks Association v. Florida Public Service Commission*, 473 So.2d 237, 245 (Fla. Dist. Ct. App. 1985)).

The Department of Health recommends extending the effective date of the bill to October 1, 2008, in order to provide additional time to implement the waiver process.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 5, 2008, the Health Quality Committee adopted a strike-all amendment to the bill. The amendment deletes the authorization for the Board of Nursing to waive the certification requirement under certain circumstances. In place of that provision, the bill creates an alternate path to certification for an applicant that demonstrates specific clinical experience and that no certification exam exists in the specialty area in which the clinical nurse specialist was academically prepared.

The bill was reported favorably with one amendment.