

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1209 Nursing Programs
SPONSOR(S): State & Community Colleges & Workforce Policy Committee and Grimsley
TIED BILLS: IDEN./SIM. BILLS: SB 2284

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: State & Community Colleges & Workforce Policy Committee, 9 Y, 0 N, As CS, Calamas, White. Row 2: Government Accountability Act Council, Hansen, Hansen.

SUMMARY ANALYSIS

CS/HB 1209 revises s. 464.019, F.S., to legislatively prescribe the approval process for practical and professional nursing programs and to repeal existing law that vests the Florida Board of Nursing (BON) with the authority to prescribe this process by rule.

The BON is required to approve a new program application within three months if the application documents compliance with program standards set by the bill for: (a) faculty qualifications; (b) clinical training and clinical simulation requirements; (c) faculty-to-student supervision ratios; and (d) curriculum and instruction requirements.

All nursing education programs are required to submit an annual report to the BON. The report must document the program's retention rates of students tracked from program entry to graduation and provide a statement verifying continued compliance with each statutorily-specified program standard.

A program that fails to submit its annual report will be placed on probation. Likewise, a program will be placed on probation if the performance of its graduates on the NCLEX falls 10 percent or more below the national average score for that exam for two consecutive years.

The bill also requires the BON to publish the following information about Florida nursing programs on its Internet website: an approved program's application; a list of nursing programs in the state; each program's accreditation status; each program's graduate passage rate for the National Council of State Boards of Nursing Licensing Examination (NCLEX); the national average passage rate for the NCLEX; and each program's student retention rates.

The bill should have a positive fiscal impact on the Department of Health. The department will continue to receive revenue from program application fees and there should be a cost savings to the Medical Quality Assurance Trust Fund due to the elimination of BON rulemaking activities and a decrease in BON oversight and travel.

The bill takes effect July 1, 2009.

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

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HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

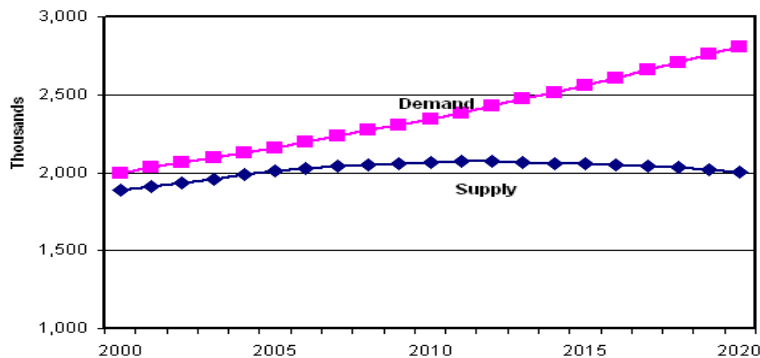
A. EFFECT OF PROPOSED CHANGES:

Current Situation

National Nursing Shortage

The National Center for Health Workforce Analysis at Health Resource and Service Administration has projected a growing shortage of RNs over the next 15 years, with a 12% shortage by 2010 and a 20% shortage by 2015.¹

National Supply and Demand Projections for FTE RNs, 2000 to 2005



Source: HRSA, Bureau of Health Professions, RN Supply and Demand Projections

The chart below shows that by 2014 it will be necessary to recruit more than 400,000 new RNs just to replace those RNs older than age 55 who are expected to retire from active nursing practice. Estimates by the U.S. Bureau of Labor Statistics in 2006 indicate that the U.S. will require 1.2 million new RNs by 2014 to meet the nursing needs of the country: 500,000 to replace those leaving practice and an additional 700,000 new RNs to meet growing demands for nursing services.²

¹U.S. Department of Health and Human Services, Bureau of Health Professions, National Center for Health Workforce Analysis, Nursing Workforce Data Analysis: Methods for Identifying Facilities and Communities with Shortages of Nurses, Technical Report. (February 2007). Available online at: http://bhpr.hrsa.gov/healthworkforce/nursingshortage/tech_report/default.htm (last viewed March 11, 2009).

²*Id.*

Active RNs in the U.S. by Gender and Age Group, 2004

Age Group	Male	Female	Percent
< 25	1,731	57,843	2.5%
25 to 29	10,955	148,721	6.7%
30 to 34	15,508	205,543	9.2%
35 to 39	19,217	237,693	10.7%
40 to 44	23,951	336,195	15.0%
45 to 49	30,986	418,634	18.8%
50 to 54	24,098	382,650	17.0%
55 to 59	13,469	257,640	11.3%
60 to 64	4,909	131,281	5.7%
65 +	1,819	73,486	3.1%
Percent	6.1%	93.9%	2,396,329

Source: HRSA, 2004 National Sample Survey of Registered Nurses

Florida Nursing Shortage

As of June 30, 2008, there were 57,682 active in-state licensed practical nurses (LPNs), 176,287 active in-state licensed registered nurses (RNs), and 11,280 active in-state licensed advanced registered nurse practitioners (ARNPs).³

According to a report prepared by the Florida Center for Nursing, there is a current shortage of RNs and LPNs in Florida, and that shortage is projected to grow significantly. In 2007, demand for RNs exceeded supply by 10,850 RNs. By 2020, that shortage is projected to increase to 52,209. Similarly, a shortage of 2,644 LPNs in 2007 is expected to grow to 7,018 by 2020.⁴

In response to this shortage, businesses have emerged offering to provide Florida healthcare employers with immigration services to bring in nurses from foreign countries. For example, D'Jobs International offers such services for a total cost of \$15,500 per nurse. The company's materials indicate the following immigration process and fee schedule: (a) file the Immigration Visa Petition -- \$2,000; (b) receive Notice of Receipt of Petition -- \$2,000; (c) receive Approval of Immigration Visa Petition -- \$2,000; (d) receive immigrant visa applicant bill -- \$2,000; (e) receive Embassy Appointment Letter -- \$1,500; and (f) nurse begins to work for employer -- \$6,000. The company's materials also indicate that it represents at least 19 Florida hospitals and other healthcare employers.⁵

There is, however, no shortage of potential nurses in Florida. In 2007, Florida produced nearly 6,000 new RN graduates and 3,400 new LPN graduates. The number of graduates increases about 1% per year.⁶ However, in academic year 2007-2008, over 12,500 qualified applicants were turned away by nursing schools in Florida because the schools were at capacity. Of the qualified applicants to RN programs, 68% were denied entry; 41% of LPN applicants were turned away.⁷

Low nursing school faculty salaries, lack of clinical sites, and lack of qualified applicants for faculty positions have been cited as factors that contribute to the nurse shortage.⁸

³ Florida Department of Health, Division of Medical Quality Assurance, Annual Report: July 1, 2007-June 30, 2008.

⁴ Florida Center for Nursing. *Forecasting Supply, Demand, and Shortage of RNs and LPNs in Florida, 2007-2020*, 5 (July 2008). Available at: <http://www.flcenterfornursing.org/workforce/researchreports.cfm> (last viewed March 11, 2009).

⁵ Document provided to Florida hospitals entitled, "D'Jobs International – Working Together Today for Tomorrow's Nurses." The company's corporate headquarters are in Clearwater, Florida and it has divisional offices in Honolulu and the Philippines.

⁶ *Id.* at 8.

⁷ Florida Center for Nursing. *2008 Nursing Education Program Annual Report and Workforce Survey*, 16 (January 2009). Available at: www.flcenterfornursing.org/files/06-07_Education_Survey_Report.pdf (last viewed March 11, 2009).

⁸ Florida Center for Nursing. *2008 Nursing Education Program Annual Report and Workforce Survey*, 2 (January 2009). Available at: www.flcenterfornursing.org/files/06-07_Education_Survey_Report.pdf (last viewed March 11, 2009).

Nurse Licensure and Regulation

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 (BON).

The BON is comprised of 13 members appointed by the Governor and confirmed by the Senate who serve four year terms. Seven of the 13 members must be nurses who reside in Florida and have been engaged in the practice of professional nursing for at least four years. Of those seven members, one must be an ARNP, one a nurse educator for an approved nursing program, and one a nurse executive. Three members of the BON must be LPNs who reside in the state and have engaged in the practice of practical nursing for at least four years. The remaining three members must be Florida residents who have never been licensed as nurses and are in no way connected to the practice of nursing, any health care facility, agency, or insurer. Additionally, one member must be 60 years of age or older.⁹

Applicants for a RN or LPN license must submit an application form to the Department, pay a fee, submit information for a criminal background check, and pass the BON's licensure exam.¹⁰ The exam used by the Department is the National Council Licensure Examination (NCLEX), developed by the National Council of State Boards of Nursing.

NCLEX Pass Rate 2008¹¹

Jurisdiction	LPNs	RNs
Florida	77.9%	84.94%
United States	76.2%	69.9%

Source: NCBN

In addition, an applicant must complete the requirements for graduation from an "approved program" or its equivalent, as determined by the BON.¹² Florida law requires any institution desiring to offer a nursing education program to submit an application to the Department and pay a program review fee. The BON reviews the application and may reject it or provide conditional approval pending final approval after the graduation of the first class.¹³

Florida Nursing Programs¹⁴

Type of Program	Number of Approved Programs
LPN Programs	78
ADN Programs	48
Pre-Licensure BSN Programs	26
RN-BSN Programs	23

Source: Florida Center for Nursing; Survey data from 2007-2008.

These BON-approved nursing programs are currently offered in Florida by: public school districts, community colleges, and state universities; private institutions licensed by the Commission for Independent Education (CIE); private institutions that are accredited by the Commission on Colleges of the Southern Association of Colleges and Schools (SACS), but are not licensed by the CIE; and Pensacola Christian College which is statutorily authorized by s. 1005.06(1)(e), F.S.¹⁵ Some of the

⁹ Section 464.004, F.S.

¹⁰ Section 464.008, F.S.

¹¹ National Council of State Boards of Nursing, *Number of Candidates Taking NCLEX Examination and Percent Passing, by Type of Candidate*, January 2009. Available at: <https://www.ncsbn.org/1237.htm> (last viewed March 11, 2009); *National Council Licensure Examination for Practical Nurses 01/01/2008 - 12/31/2008*, January 2009. www.nh.gov/nursing/education/documents/2008_Q04_G1FirstTimeMB-EdResults-RQNCLEX-PN_RollingQtr1.pdf (last viewed March 11, 2009).

¹² Section 464.008, F.S.

¹³ Section 464.019, F.S.

¹⁴ Florida Center for Nursing, *2008 Nursing Education Program Annual Report and Workforce Survey*, January 2009. Available at: http://www.flcenterfornursing.org/search_quick.cfm (last viewed March 11, 2009).

¹⁵ This section of law exempts schools from the Commission on Independent Education's licensure requirements if the institution: had been so exempted prior to 2001; is incorporated in this state; the institution's credits or degrees are accepted for credit by at least three colleges that are fully accredited by an agency recognized by the U.S. Department of Education; and the institution does not enroll any students who receive state or federal financial aid.

nursing programs offered by these institutions are programmatically accredited by specialized accrediting agencies recognized by the United States Department of Education (USDOE).¹⁶ Specialized accrediting agencies include the: Commission on Collegiate Nursing Education; National League for Nursing Accreditation Commission; Commission on Accreditation of Nurse Anesthesia Educational Programs; and American College of Nurse-Midwives Accreditation Commission.¹⁷

Section 464.019, F.S., requires the BON to adopt rules necessary to ensure that approved nursing programs graduate nurses capable of competent practice, including rules related to educational objectives, faculty qualifications, curriculum guidelines, administrative procedures, and clinical training.

The BON's rules require each education program (i.e., professional, baccalaureate, or practical nursing) and each campus offering an initial nursing education program to obtain separate, individual program approvals by the BON.¹⁸ In addition, the BON requires nursing programs to obtain BON approval before making changes to a program.¹⁹ Programs must resubmit proof of compliance with the BON's rules every three years to maintain approval.²⁰

The rules include program approval processes, submission of an organizational plan showing the placement of the nursing program within the organization and the allocation of funds within the program, and facility requirements (addressing classrooms, libraries, laboratories, equipment, office space, telephones, audio-visual aids and record-keeping).²¹ The BON has significant discretion under the rules in approving facility proposals.

The rules include faculty credential standards. For example, the BON currently requires that 50% or more of the faculty hold a baccalaureate degree in nursing plus a master's or doctoral degree in nursing or a related field. However, in August 2009, the rule will change, to require that that 60% or more of the faculty must meet that degree standard.²² Similarly, the rules include faculty-to-student ratios requirements. The BON currently allows a 1:12 faculty-to-student ratio in clinical settings, and a 1:18 ratio near the end of RN programs.²³

The BON requires programs to submit curriculum plans, course outlines and contractual agreements with the facilities and agencies used for clinical instruction, and to adopt education objectives "in keeping with currently accepted social, educational and nursing standards".²⁴ Any changes to the number of credits in each course, the sequence, number or content of courses must be approved by the BON before implementation.²⁵ Any increases in the number of students per year must be approved by the BON. Any "significant" change in the number of students per class, the number of classes, or the start date for classes requires BON approval, and the program must demonstrate that the clinical facilities and the faculty will not be adversely affected by the change.²⁶

Nursing boards in 43 other states have authority to set standards for the nursing programs in their jurisdiction. In the remaining six states, the state board of nursing has either limited or no authority to set standards for nursing programs.²⁷ In Florida, the vast majority of licensed health care professions have no board involvement in education opportunity or curricula. For other health care professions Florida relies on education program accreditation and professional licensure and examination processes to ensure quality. For example, Florida law does not require the Boards of Medicine,

Section 1005.06(1)(e), F.S. Only two institutions in Florida, Pensacola Christian College and Landmark Baptist College, are subject to this exemption. Landmark Baptist College does not offer a nursing program.

¹⁶ See *supra* note 15.

¹⁷ United States Department of Education, *Specialized Accrediting Agencies*. Available at: http://www.ed.gov/admins/finaid/accred/accreditation_pg8.html#health (last viewed March 15, 2009).

¹⁸ 64B9-2.001(1), F.A.C.

¹⁹ 64B9-2.001 - 64B9-2.015, F.A.C.

²⁰ 64B9-2.002, F.A.C.

²¹ 64B9-2.007, F.A.C.

²² 64B9-2.005, F.A.C.

²³ 64B9-2.015, F.A.C.

²⁴ 64B9-2.002, 64B9-2.002, F.A.C.

²⁵ 64B9-2.006, F.A.C.

²⁶ 64B9-2.007, F.A.C.

²⁷ Office of Program Policy Analysis & Governmental Accountability, *Florida Nurse Practice Act and Board of Nursing Rules Create No Unreasonable Barriers to Producing New Nurses*, Report No. 07-4 (January 2007). Available at: <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=07-04> (Last viewed March 12, 2009).

Osteopathic Medicine, Chiropractic Medicine, Podiatric Medicine, Dentistry, Pharmacy, Speech-Language Pathology and Audiology, or Physical Therapy Practice to approve education programs. Licensure for those professions requires graduation from schools accredited by certain types of national accrediting organizations, or approval by national professional associations.²⁸

Effect of Proposed Changes

Nursing Education Program Approval Process: The bill revises s. 464.019, F.S., to legislatively prescribe the nursing education program approval process and to repeal existing law that vests the BON with the authority to prescribe this process by rule. Under the bill, each institution wishing to conduct a new program for the education of professional or practical nurses on or after the bill's effective date of July 1, 2009, must submit a program application and fee of \$1,000 to the Department of Health. Existing programs with full or provisional approval from the BON before July 1, 2009, are subject to a "grandfathering clause" so that they continue to be authorized to provide these programs in the future.

Each institution's application for a new program is required to document that:

- At least 50 percent of the faculty and the faculty director are licensed registered nurses in Florida with no less than a bachelor's degree for a *practical* nursing program. Such faculty and director must also have a master's degree in nursing or a related field for a *professional* nursing program.
- At least 50 percent of the institution's curriculum consists of clinical training.
- No more than 25 percent of the institution's clinical training consists of clinical simulation.
- The institution has a signed agreement with each entity included in the curriculum plan as clinical training sites and community-based clinical experience sites.
- The institution has written policies for direct supervision by faculty or clinical preceptors for students in clinical training consistent with the following standards:
 - At least one program faculty member must supervise every twelve students unless the written agreement between the program and the entity providing clinical training sites allows more students, up to 18, to be supervised by one individual.
 - Indirect supervision may occur only in community-based clinical experiences and only if the supervisor is immediately available to the student by telephone.
- The institution's curriculum plan documents clinical experience and theoretical instruction in specified subjects.

Within three months after receipt of an application, the BON must approve the application or issue a notice of intent to deny, which specifies written reasons for the denial. An applicant may respond to the notice within 30 days with documentation that rebuts the BON's reasons for denial. Within 30 days thereafter, the BON must issue a notice indicating its approval or denial of the program application. An applicant may request a hearing on a denial under ch. 120, F.S., the Administrative Procedure Act (APA).

Each new program approved must submit a report to the BON by November 1 of the year following its application and annually thereafter. A currently existing BON-approved program is required to submit its report by November 1, 2009, and annually thereafter. The annual report must document the program's retention rates of students tracked from program entry to graduation and provide a statement verifying continued compliance with each of the requirements, discussed above, which must be documented in a new program application.

If a program fails to submit its annual report, it will be placed on probation. A program will also be placed on probation if the performance of its graduates on the NCLEX falls 10 percent or more below the national average score for that exam for two consecutive years. A program on probation must notify its students and applicants in writing and may be terminated by the BON under the APA if: (a) it does

²⁸ Sections 458.311(1)(f)1.a., 459.0055(1)(k), 460.406(1)(c), 461.006(1)(c), 465.007(1)(b)1., 466.066(2)(a), 468.1135, and 486.031(3)(a), F.S. However, the Board of Optometry and the Council of Licensed Midwifery must approve education programs. Sections 463.006(1)(b)2., 467.011(3), F.S.

not submit its annual report within six months following its due date; or (b) the performance of its graduates on the NCLEX does not achieve compliance within the following two consecutive years.

The bill specifies that the BON has no rulemaking authority to implement s. 464.019, F.S. It also amends s. 464.003, F.S., to add definitions for purposes of the new program approval process. The terms defined are: "clinical preceptor"; "clinical preceptor program"; "clinical simulation"; "clinical training"; "community-based clinical experiences"; "curriculum"; and "probationary status."

Data on Nursing Education Programs: The bill requires the BON to publish the following information about Florida nursing programs on its Internet website:

- The program application, including all related documentation provided by the applicant, for each approved nursing program.
- A comprehensive list of nursing programs in the state.
- The accreditation status of each program, including identification of the accrediting body.
- Each program's approval status.
- Each program's graduate passage rate for the NCLEX.
- The national average passage rate for the NCLEX.
- Each program's student retention rates tracked from program entry to graduation.

The website must allow interactive searches and comparisons of specific nursing programs and must be updated at least quarterly.

B. SECTION DIRECTORY:

Section 1: Amends s. 464.003, F.S.; defines new terms.

Section 2: Amends s. 464.019, F.S.; provides a nursing education program application and approval process; authorizes the continuance of specified existing nursing education programs; requires an annual report; requires certain information about nursing programs to be posted on the BON's website; provides for programs to be placed on probation or terminated in certain instances; provides for administrative review of application denials and terminations; and prohibits BON rulemaking.

Section 3: Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department of Health will continue to receive revenue for nursing program application fees.

2. Expenditures:

The bill should have a positive fiscal on the Department of Health. As discussed in the "Revenues" section above, the department will continue to receive application fees and should also have a reduction in expenditures. There should be a cost savings to the Medical Quality Assurance Trust Fund due to a decrease in BON rulemaking activities and in the oversight and travel currently being conducted by the BON as part of approving nursing programs. Fiscal impact data has been requested from the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Please see "Fiscal Comments."

2. Expenditures:

Please see "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Please see "Fiscal Comments."

D. FISCAL COMMENTS:

The bill may result in increasing the number of private institutions offering nursing programs in Florida. This should, in turn, increase the pool of qualified nurses available to work in Florida. Public and private healthcare employers should no longer have to recruit nurses internationally and should incur a cost savings in hiring nurses due to their greater availability locally.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides that the BON has no rulemaking authority to implement s. 464.019, F.S., relating to the approval of nursing programs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2009, the State & Community Colleges & Workforce Policy Committee adopted a strike-everything amendment and reported the bill favorably as a committee substitute (CS). The original bill and the CS differ as follows:

- The bill amended statute to eliminate: the authority of the BON to adopt rules related to nursing education programs; the requirement that nurses graduate from "approved programs" or their equivalent; and the requirement that nursing programs be approved by the BON in order to operate. Instead, the bill required nurses to graduate from an "eligible program" and relied on accreditation and standards in the education system, rather than the professional licensure system, to ensure quality. The bill defined an "eligible program" as a nursing program offered by: a school district, community college or state university; an entity licensed by the Commission for Independent Education; or an institution with a nursing program accredited by a national accrediting organization recognized by the USDOE.
- The CS also eliminates the BON's authority to adopt rules related to nursing education programs, but, unlike the bill, legislatively prescribes the following approval process for practical and professional nursing programs:
 - Each institution wishing to conduct a new nursing education program on or after the bill's effective date must submit an application to the Department of Health.
 - Existing programs with full or provisional approval from the BON before the bill's effective date are subject to a "grandfathering clause" so that they continue to be authorized.

- The BON is required to approve a new program application within three months if the application documents compliance with program standards set by the bill. If the application does not document compliance, the BON may issue a notice of denial and the applicant may request review under the APA.
- The CS also adds annual reporting requirements for nursing programs, specifies circumstances that may result in a program being placed on probation or terminated, and establishes BON website publishing requirements for nursing program information.

This analysis is drafted to the CS.