

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

**BILL:** CS/SB 1824

**INTRODUCER:** Health Regulation Committee and Senator Garcia

**SUBJECT:** Department of Health

**DATE:** February 17, 2012      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HR	<b>Fav/CS</b>
2.	_____	_____	GO	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This bill creates, repeals and amends a number of sections which affect the Department of Health (DOH or department), some of the significant changes include:

- Revising the legislative purpose of the DOH;
- Renaming and revising many of the divisions within the DOH;
- Eliminating two of the DOH trust funds
  - The Florida Drug, Device, and Cosmetic Trust Fund
  - The Nursing Student Loan Forgiveness Trust Fund;
- Revising the legislative intent behind the public health system;
- Revising the powers and duties of the DOH;
- Granting counties the authority to pass health regulations, with certain restrictions;
- Repealing the Hepatitis A Awareness Program;
- Amending sections relating to HIV and AIDS;
- Amending the DOH’s authority to accredit laboratories under the National Environmental Laboratory Accreditation Program (NELAP);
- Significantly amending portions of law relating to onsite sewage treatment and disposal;
- Fixing fee rates for tattoo establishments;

- Repealing obsolete provisions of the DOH’s pharmacy services program;
- Assigning responsibility to the DOH to publish the Florida Patient’s Bill of Rights and Responsibilities online;
- Revising the Community Hospital Education Act;
- Repealing community health pilot projects;
- Revising requirements for persons selling compressed air for recreational sport diving;
- Amending the statewide tuberculosis control program and requiring a transition plan for the closure of the A.G. Holley State Hospital;
- Transferring the Nursing Student Loan Forgiveness Program and the Nursing Scholarship Program from the DOH to the Florida Department of Education;
- Requiring Division of Medical Quality Assurance (MQA) to develop a plan to improve the efficiency of its functions;
- And significantly cleaning up the Florida Statutes related to the DOH by repealing outdated language and obsolete programs, deleting language related to legislative intent, deleting language which establishes unused rulemaking authority, and making conforming changes and amending cross-references.

This bill amends ss. 20.43, 20.435, 215.5602, 381.0016, 381.004, 381.0041, 381.0046, 381.005, 381.0051, 381.0052, 381.0053, 381.0056, 381.0057, 381.00591, 381.00593, 381.0062, 381.0065, 381.0066, 381.0068, 381.00781, 381.0098, 381.0101, 381.0203, 381.0261, 381.0303, 381.0403, 381.0405, 381.0406, 381.06015, 381.4018, 381.7352, 381.7353, 381.7356, 381.765, 381.853, 381.91, 84.25, 392.51, 392.56, 392.61, 392.62, 395.1027, 401.243, 401.245, 401.271, 400.914, 409.256, 456.032, 462.19, 464.208, 633.115, 768.28, 775.0877, 1009.66, and 1009.67, F.S.; repeals ss. 381.0013, 381.0015, 381.0017, 381.00325, 381.0037, 381.00656, 381.0301, 381.0302, 381.04015, 381.045, 381.0605, 381.102, 381.60225, 381.77, 381.795, 381.855, 381.87, 381.895, 381.90, 402.45, 458.346, and 464.0197, F.S.; and creates s. 381.00651, F.S., and three unnumbered sections of law.

## II. Present Situation:

### Department of Health

Prior to 1991, most of Florida’s health and human services programs were administered by a single state agency, the Department of Health and Rehabilitative Services (HRS). From 1991 through 1997, the Legislature subdivided the programmatic functions of HRS, now the Department of Children and Family Services, and created four new agencies to achieve more effective program management.

By 1997, the Department of Children and Family Services, and the four new agencies—the Department of Elder Affairs, AHCA, the Department of Juvenile Justice, and the Department of Health<sup>1</sup>—were responsible for administering the majority of Florida’s health and human services programs.

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<sup>1</sup> Chapter 96-403, L.O.F.

The DOH is established pursuant to section 20.43, Florida Statutes. Since being established in 1996, the DOH's mission has persistently grown and diversified. Currently, the DOH's 13 statutory mission statements comprise the following:<sup>2</sup>

- Prevent the occurrence and progression of communicable and non-communicable diseases and disabilities.
- Maintain a constant surveillance of disease occurrence and accumulate health statistics to establish disease trends and design health programs.
- Conduct special studies of the causes of diseases and formulate preventive strategies.
- Promote the maintenance and improvement of the environment as it affects public health.
- Promote the maintenance and improvement of health in the residents of the state.
- Provide leadership, in cooperation with the public and private sectors, to establish statewide and community public health delivery systems.
- Provide health care and early intervention services to infants, toddlers, children, adolescents, and high-risk perinatal patients who are at risk for disabling conditions or have chronic illnesses.
- Provide services to abused and neglected children through child protection teams and sexual abuse treatment programs.
- Develop working associations with all agencies and organizations involved and interested in health and health care delivery.
- Analyze trends in the evolution of health systems, and identify and promote the use of innovative, cost-effective health delivery systems.
- Serve as the statewide repository of all aggregate data accumulated by state agencies related to health care; analyze that data and issue periodic reports and policy statements, as appropriate; require that all aggregated data be kept in a manner that promotes easy utilization by the public, state agencies, and all other interested parties; provide technical assistance as required; and work cooperatively with the state's higher education programs to promote further study and analysis of health care systems and health care outcomes.
- Include in the department's strategic plan developed under section 186.021, Florida Statutes, an assessment of current health programs, systems, and costs; projections of future problems and opportunities; and recommended changes that are needed in the health care system to improve the public health.
- Regulate health practitioners, to the extent authorized by the Legislature, as necessary for the preservation of the health, safety, and welfare of the public.

Generally, the State Surgeon General has statutory authority to be the leading voice on wellness and disease prevention efforts through specified means; advocate on health lifestyles; develop public health policy; and build collaborative partnerships with other entities to promote health literacy.<sup>3</sup>

The DOH has 11 statutory divisions: Administration, Environmental Health, Disease Control, Family Health Services, Children's Medical Services Network, Emergency Medical Operations, Medical Quality Assurance, Children's Medical Services Prevention and Intervention, Information Technology, Health Access and Tobacco, and Disability Determinations.<sup>4</sup> The DOH

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<sup>2</sup> Section 20.43(1), F.S.

<sup>3</sup> Section 20.43(2), F.S.

<sup>4</sup> Section 20.43(3), F.S.

operates numerous programs, provides administrative support for 29 statutory health care boards and commissions, contracts with thousands of vendors, oversees 67 county health departments, and performs a variety of regulatory functions.

The DOH is authorized to use state and federal funds to protect and improve the public health by administering health education campaigns; providing health promotional items such as shirts, hats, sports items, and calendars; planning and conducting promotional campaigns to recruit health professionals to work for the DOH or participants for the DOH programs; or providing incentives to encourage health lifestyles and disease prevention behaviors.<sup>5</sup>

When the DOH was created in 1996, it received a total appropriation of \$1.4 billion, including \$384 million in general revenue funds, and had approximately 14,000 full-time equivalents (FTE) positions. “In Fiscal Year 2011-2012, the DOH received more than \$377 million in general revenue fund and is authorized to spend a total of \$2.8 billion.” Fiscal Year 2011-2012, the General Appropriations Act funded 17,107.5 FTE.<sup>6</sup>

In 2010<sup>7</sup>, the Legislature transferred the drug, device, and cosmetic (DDC) program to the Department of Business and Professional Regulation.<sup>8</sup> DDC regulates oversight of the manufacture and distribution of drugs, devices, cosmetics, either within or into Florida, pursuant to part I of chapter 499, Florida Statutes.

In 2010<sup>9</sup>, the Legislature directed the DOH to conduct a comprehensive evaluation and justification review of each division and submit a report to the Legislature by March 1, 2011. The review was to be comprehensive in scope and, at a minimum, be conducted in a manner that:

- Identified the costs of each division and programs within the division;
- Specified the purpose of each division and programs;
- Specified the public health benefit derived from each program;
- Identified the progress toward achieving the outputs and outcomes associated with each division and program;
- Explained the circumstances for the ability to achieve, not achieve, or exceed projected outputs and outcomes for each program;
- Provided alternate course of action to administer the same program in a more efficient or effective manner. The course of action must include:
  - A determination on whether the DOH could be organized in a more efficient and effective manner to include a recommendation for reductions and restructuring;

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<sup>5</sup> Section 20.43(7), F.S.

<sup>6</sup> This number includes County Health Department staff.

<sup>7</sup> Chapter 2010-161, L.O.F.

<sup>8</sup> Among many other provisions, chapter 499 provides for: criminal prohibitions against the distribution of contraband and adulterated prescription drugs; regulation of the advertising and labeling of drugs, devices, and cosmetics; establishment of permits for manufacturing and distributing drugs, devices, and cosmetics; regulation of the wholesale distribution of prescription drugs, which includes pedigree papers; regulation of the provision of drug samples; establishment of the Cancer Drug Donation Program; establishment of numerous enforcement avenues for DOH, including seizure and condemnation of drugs, devices, and cosmetics.

<sup>9</sup> Chapter 2010-161, L.O.F.

- Whether the goals, mission, or objectives of the DOH, divisions, or programs be redefined to avoid duplication, maximize the return on investment, or performed more efficiently or more effectively by another unit of government or private entity;
- A determination of whether the cost to administer exceeds the revenues collected.

Starting Fiscal Year 2010-2011, the DOH was precluded from initiating or commencing any new programs without express authorization from the Legislative Budget Commission. Also, before applying for any continuation or new federal or private grant in an amount of \$50,000 or greater, the DOH is required to provide written notification to the Governor and Legislature.<sup>10</sup> The notification must include detailed information about the purpose of the grant, the intended use of the funds, and the number of full-time permanent or temporary employees needed to administer the program funded by the grant.

On March 1, 2011, the DOH submitted the report titled, “Florida Department of Health Evaluation and Justification Review: Report on Findings & Recommendations.” The report contained recommendations in the following areas:

- Transfer programs or activities to another state government agency,
- Outsource the program or activity and maintain contractual oversight ;
- Privatize the program or activity with no contractual oversight; and
- Eliminate the program or activity.

### **EMTs and Paramedics**

Section 20.43, F.S., provides a detailed list of all the boards and professions that are established under and the responsibility of MQA. Currently, EMTs and Paramedics are not included in the list of professions governed by MQA under s. 20.43, F.S.

### **James and Esther King Biomedical Research Program, Annual Progress Report**

The Biomedical Research Advisory Council currently provides this annual report on the state of biomedical research in the state to FLCURED, the Governor, the State Surgeon General, the President of the Senate, and the Speaker of the House of Representatives by February 1. Per statute, FLCURED currently receives up to \$250,000 for operating costs from funds appropriated to accomplish the goals of this section.

### **Eminent Domain**

“Eminent domain” may be described as the fundamental power of the sovereign to take private property for a public use without the owner's consent. The power of eminent domain is absolute, except as limited by the Federal and State Constitutions, and all private property is subject to the superior power of the government to take private property by eminent domain.

The U.S. Constitution places two general constraints on the use of eminent domain: The taking must be for a “public use” and government must pay the owner “just compensation” for the taken

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<sup>10</sup> Chapter 2010-161, L.O.F.

property.<sup>11</sup> Even though the U.S. Constitution requires private property to be taken for a “public use”, the U.S. Supreme Court long ago rejected any requirement that condemned property be put into use for the general public. Instead, the Court embraced what the Court characterizes as a broader and more natural interpretation of public use as “public purpose”.

The Florida Constitution prohibits takings of private property unless the taking is for a “public purpose” and the property owner is paid “full compensation.” The Florida Supreme Court recognized long ago that the taking of private property is one of the most harsh proceedings known to the law, that “private ownership and possession of property was one of the great rights preserved in our constitution and for which our forefathers fought and died; it must be jealously preserved within the reasonable limits prescribed pursuant to ch. 73, F.S.”<sup>12</sup> Currently, the DOH does not exercise the power of eminent domain.

### **Presumptions**

Section 381.0015, F.S., provides that the rules adopted concerning public health by the DOH supersede all rules enacted by other state departments, boards or commissions, or ordinances and regulations enacted by municipalities, except that this chapter does not alter or supersede any of the provisions set forth in chapter 502, F.S. Chapter 502, F.S., regulates milk, milk products, and frozen desserts. According to the DOH, it is unknown how this section of law is used.<sup>13</sup>

### **Ordinances and regulations**

In 1955,<sup>14</sup> the Legislature enacted a provision permitting any municipality to enact, in a manner prescribed by law, health regulations and ordinances not inconsistent with state public health laws and rules adopted by the department.

### **Real Property**

Section 381.0017, F.S., provides the DOH the authority to purchase, lease, or otherwise acquire land and buildings and take a deed thereto in the name of the state, for the use and benefit of the DOH when the acquisition is necessary to the efficient accomplishment of public health. According to the DOH, this section is obsolete: the DOH does not take deeds to buildings, and all lands reside with the Department of Environmental Protection.

### **Hepatitis A Awareness Program**

Currently, the DOH has a hepatitis A (infectious hepatitis) awareness program to educate the public regarding the availability of hepatitis A vaccine and testing under the DOH’s Hepatitis Prevention Program (HPP), which provides hepatitis A, hepatitis B, and hepatitis C services.

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<sup>11</sup> U.S. Const. amend. V.

<sup>12</sup> *Peavy-Wilson Lumber Co. v. Brevard County*, 159 Fla. 311, 31 So.2d 483 (Fla. 1947).

*Baycol, Inc. v. Downtown Development Authority of City of Fort Lauderdale*, 315 So.2d 451 (Fla. 1975).

<sup>13</sup> Email correspondence with DOH staff January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.

<sup>14</sup> Chapter 29834, L.O.F.

Currently, there are two separate statutory provisions that grant the DOH similar authority. Section 381.00325, F.S., requires the DOH to develop a Hepatitis A Awareness Program. The purpose of the program is to provide education and information to the public regarding the availability of the Hepatitis A vaccine. Section 381.0011(7), F.S., requires the DOH to provide information to the public regarding the prevention, control, and cure of diseases and illnesses. Under this authority, the Division of Disease Control, within the DOH, currently maintains a Hepatitis Awareness Program web page that provides necessary information regarding vaccines and educational tools for Hepatitis A, B and C.

### **HIV and AIDS Prevention**

Currently, the DOH operates a comprehensive program for prevention and control of HIV/AIDS which includes education programs.

Currently, the statewide AIDS minority coordinator reports directly to the Bureau Chief of HIV/AIDS, within the Division of Disease Control. These coordinators facilitate statewide efforts to implement and coordinate HIV and AIDS prevention and treatment programs.

### **Primary and Preventive Health Services**

Section 381.005(2), F.S., was enacted in 1991.<sup>15</sup> It directs hospitals licensed by AHCA pursuant to ch 395, F.S., to implement a program to offer an immunization program against influenza and pneumococcal bacteria to patients over 65.<sup>16</sup> According to AHCA, they have no authority to enforce this requirement.<sup>17</sup>

### **Family Planning**

The DOH currently makes available to citizens of the state of childbearing age comprehensive medical knowledge, assistance, and services relating to the planning of families and maternal health care.

### **Dental Health and Comprehensive Nutrition Program, Rulemaking**

The DOH has not established any rules under either section of law. Eligibility for dental services and comprehensive nutrition program services is established under primary care rules in ch. 64F-10, F.A.C., and ch. 64F-16, F.A.C.

### **School Health Services Program**

Section 381.0056, F.S., authorizes the School Health Services Act. The act, in s. 381.0056(11), F.S., specifies that school health programs that are funded by health care districts or health care entity must be supplementary and consistent with the requirements of the act.

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<sup>15</sup> Chapter. 91-297, s. 18, L.O.F.

<sup>16</sup> Section 381.005(2), F.S.

<sup>17</sup> Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.

Currently, each county health department, in cooperation with its local school district, develops a school health plan, submitted every 2 years to the DOH for review and approval.

### **Environmental Health Laboratories**

Section 381.00591, F.S., states that the DOH may apply for and become a National Environmental Laboratory Accreditation Program accrediting authority. The DOH, as an accrediting entity, may adopt rules to implement standards of the National Environmental Laboratory Accreditation Program, including requirements for proficiency testing providers to include rules pertaining to fees, application procedures, standards applicable to environmental or public water supply laboratories, and compliance.

### **Public School Volunteer Health Care Practitioner Program**

The DOH has not established any rules under this subsection. County health departments currently have the ability, pursuant to ch. 110, F.S., to utilize volunteers to support the provision of county health department services, such as developmental, vision and hearing screenings, in local schools. Chapter 110, F.S., provides all the benefits of state employees, including sovereign immunity, travel reimbursement, etc., to county health department volunteers.

### **The Department of Health's Regulation of Septic Tanks**

The DOH oversees an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. One component of the program is administration of septic systems.<sup>18</sup>

An "onsite sewage treatment and disposal system" is a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solid or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works regulated under ch. 403, F.S.<sup>19</sup>

The DOH estimates there are approximately 2.67 million septic tanks in use statewide.<sup>20</sup> The DOH's Bureau of Onsite Sewage (bureau) develops statewide rules and provides training and standardization for county health department employees responsible for permitting the installation and repair of septic systems within the state. The bureau also licenses septic system contractors, approves continuing education courses and courses provided for septic system contractors, funds a hands-on training center, and mediates septic system contracting complaints.

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<sup>18</sup> See s. 381.006, F.S.

<sup>19</sup> Section 381.0065(2)(j), F.S.

<sup>20</sup> Florida Dep't of Health, Bureau of Onsite Sewage, *Home*, <http://www.myfloridaeh.com/ostds/index.html> (last visited January 29, 2012).

The bureau manages a state-funded research program, prepares research grants, and reviews and approves innovative products and septic system designs.<sup>21</sup>

In 2008, the Legislature directed the DOH to submit a report to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by no later than October 1, 2008, which identifies the range of costs to implement a mandatory statewide 5-year septic tank inspection program to be phased in over 10 years pursuant to the DOH's procedure for voluntary inspection, including use of fees to offset costs.<sup>22</sup> This resulted in the "Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program" (report).<sup>23</sup> According to the report, three Florida counties, Charlotte, Escambia and Santa Rosa, have implemented mandatory septic tank inspections at a cost of \$83.93 to \$215 per inspection.

The report stated that 99 percent of septic tanks in Florida are not under any management or maintenance requirements. Also, the report found that while these systems were designed and installed in accordance with the regulations at the time of construction and installation, many are aging and may be under-designed by today's standards. The DOH's statistics indicate that approximately 2 million septic systems are 20 years or older, which is the average lifespan of a septic system in Florida.<sup>24</sup> Because repairs of septic systems were not regulated or permitted by the DOH until March 1992, some septic systems may have been unlawfully repaired, modified or replaced. Furthermore, 1.3 million septic systems were installed prior to 1983. Pre-1983 septic systems were required to have a 6-inch separation from the bottom of the drainfield to the estimated seasonal high water table. The standard since 1983 for drainfield separation is 24 inches and is based on the 1982 Water Quality Assurance Act and on research findings compiled by the DOH that indicate for septic tank effluent, the presence of at least 24 inches of unsaturated fine sandy soil is needed to provide a relatively high degree of treatment for pathogens and most other septic system effluent constituents.<sup>25</sup> Therefore, Florida's pre-1983 septic systems and any illegally repaired, modified or installed septic systems may not provide the same level of protection expected from systems permitted and installed under current construction standards.<sup>26</sup>

### **Flow and Septic System Design Determinations**

For residences, domestic sewage flows are calculated using the number of bedrooms and the building area as criteria for consideration, including existing structures and any proposed

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<sup>21</sup> Florida Dep't of Health, Bureau of Onsite Sewage, *OSTDS Description*, <http://www.myfloridaeh.com/ostds/OSTDSdescription.html> (last visited January 29, 2012).

<sup>22</sup> See ch. 2008-152, Laws of Fla.

<sup>23</sup> Florida Dep't of Health, Bureau of Onsite Sewage, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, October 1, 2008, available at <http://www.doh.state.fl.us/environment/ostds/pdffiles/forms/MSIP.pdf> (last visited January 29, 2012).

<sup>24</sup> Florida Dep't of Health, Bureau of Onsite Sewage, *Onsite Sewage Treatment and Disposal Systems in Florida (2010)*, available at <http://www.doh.state.fl.us/Environment/ostds/statistics/newInstallations.pdf> (last visited January 29, 2012). See also Florida Dep't of Health, Bureau of Onsite Sewage, *What's New?*, available at <http://www.doh.state.fl.us/environment/ostds/New.htm> (last visited on January 29, 2012).

<sup>25</sup> Florida Dep't of Health, Bureau of Onsite Sewage, *Bureau of Onsite Sewage Programs Introduction*, available at <http://www.doh.state.fl.us/Environment/learning/hses-intro-transcript.htm> (last visited January 29, 2012).

<sup>26</sup> *Id.*

additions.<sup>27</sup> Depending on the estimated sewage flow, the septic system may or may not be approved by the DOH. For example, a current three bedroom, 1,300 square foot home is able to add building area to have a total of 2,250 square feet of building area with no change in their approved system, provided no additional bedrooms are added.<sup>28</sup>

Minimum required treatment capacities for septic systems serving any structure, building or group of buildings are based on estimated daily sewage flows as determined below.<sup>29</sup>

TABLE OF AEROBIC SYSTEMS PLANT SIZING RESIDENTIAL		
Number of Bedrooms	Building Area (ft <sup>2</sup> )	Minimum Required Treatment Capacity (gallons per day)
1 or 2	Up to 1200	400
3	1201-2250	500
4	2251-3300	600

Minimum design flows for septic systems serving any structure, building or group of buildings are based on the estimated daily sewage flow. For residences, the flows are based on the number of bedrooms and square footage of building area. For a single- or multiple-family dwelling unit, the estimated sewage flows are: for 1 bedroom with 750 square feet or less building area, 100 gallons; for two bedrooms with 751-1,200 square feet, 200 gallons; for three bedrooms with 1,201-2,250 square feet, 300 gallons; and for four bedrooms with 2,251-3,300 square feet, 400 gallons. For each additional bedroom or each additional 750 square feet of building area or fraction thereof in a dwelling unit, system sizing is to be increased by 100 gallons.<sup>30</sup>

**Current Status of Evaluation Program**

In 2010, SB 550 was signed into law, which became ch. 2010-205, Laws of Florida. This law provides for additional legislative intent on the importance of properly managing septic tanks and creates a septic system evaluation program. The DOH was to implement the evaluation program beginning January 1, 2011, with full implementation by January 1, 2016.<sup>31</sup> The evaluation program:

- Requires all septic tanks to be evaluated for functionality at least once every 5 years;
- Directs the DOH to provide proper notice to septic owners that their evaluations are due;
- Ensures proper separations from the wettest-season water table; and
- Specifies the professional qualifications necessary to carry out an evaluation.

The law also establishes a grant program under s. 381.00656, F.S., for owners of septic systems earning less than or equal to 133 percent of the federal poverty level. The grant program is to

<sup>27</sup> Rule 64E-6.001, F.A.C.

<sup>28</sup> *Id.*

<sup>29</sup> Table adapted from Rule 64E-6.012, F.A.C.

<sup>30</sup> Rule 64E-6.008, F.A.C.

<sup>31</sup> However, implementation was delayed until July 1, 2011, by the Legislature’s enactment of SB 2-A (2010). *See also* ch. 2010-283, L.O.F.

provide funding for inspections, pump-outs, repairs, or replacements. The DOH is authorized under the law to adopt rules to establish the application and award process for grants.

Finally, ch. 2010-205, Laws of Florida, amends s. 381.0066, F.S., establishing a minimum and maximum evaluation fee that the DOH may collect. No more than \$5 of each evaluation fee may be used to fund the grant program. The State Surgeon General, in consultation with the Revenue Estimating Conference, must determine a revenue neutral evaluation fee.

Several bills were introduced during the 2011 Regular Session aimed at either eliminating the inspection program or scaling it back. Although none passed, language was inserted into a budget implementing bill that prohibited the DOH from expending funds to implement the inspection program until it submitted a plan to the Legislative Budget Commission (LBC).<sup>32</sup> If approved, the DOH would then be able to expend funds to begin implementation. Currently, the DOH has not submitted a plan to the LBC for approval.

### **Springs in Florida**

Florida has more than 700 recognized springs. It also has 33 historical first magnitude springs in 19 counties that discharge more than 64 million gallons of water per day.<sup>33</sup> First magnitude springs are those that discharge 100 cubic feet of water per second or greater. Spring discharges, primarily from the Floridan Aquifer, are used to determine ground water quality and the degree of human impact on the spring's recharge area. Rainfall, surface conditions, soil type, mineralogy, the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to ground water chemistry. Springs are historically low nitrogen systems. The DEP recently submitted numeric nutrient standards to the Legislature for ratification that include a nitrate-nitrite (variants of nitrogen) limit of 0.35 milligrams per liter for springs. For comparison, the U.S. Environmental Protection Agency's drinking water standard for nitrite is 1.0 milligrams per liter; for nitrate, 10 milligrams per liter.<sup>34</sup>

### **Local Government Powers and Legislative Preemption**

The Florida Constitution grants counties or municipalities broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.<sup>35</sup> Those counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.<sup>36</sup> Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise

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<sup>32</sup> See ch. 2011-047, s. 13, Laws of Fla.

<sup>33</sup> Florida Geological Survey, Bulletin No. 66, *Springs of Florida*, available at <http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm> (last visited Dec. 19, 2011).

<sup>34</sup> U.S. Environmental Protection Agency, *National Primary Drinking Water Regulations*, available at <http://water.epa.gov/drink/contaminants/upload/mcl-2.pdf> (last visited January 29, 2012).

<sup>35</sup> FLA. CONST. art. VIII, s. 1(f).

<sup>36</sup> FLA. CONST. art. VIII, s. 1(g).

provided by law.<sup>37</sup> Section 125.01, F.S., enumerates the powers and duties of all county governments, unless preempted on a particular subject by general or special law.

Under its broad home rule powers, a municipality or a charter county may legislate concurrently with the Legislature on any subject which has not been expressly preempted to the State.<sup>38</sup> Express preemption of a municipality's power to legislate requires a specific statement; preemption cannot be made by implication or by inference.<sup>39</sup> A county or municipality cannot forbid what legislature has expressly licensed, authorized or required, nor may it authorize what legislature has expressly forbidden.<sup>40</sup> The Legislature can preempt a county's broad authority to enact ordinances and may do so either expressly or by implication.<sup>41</sup>

### **Fees for Tattoo Profession**

In 2010<sup>42</sup>, the Legislature began regulation of the tattoo artists and tattoo establishments. As part of the created regulatory scheme, fees were authorized to support the cost of regulation. In s. 381.00781(2), F.S., allowed the DOH to annually adjust the maximum fees authorized according to the rate of inflation or deflation indicated by the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, as reported by the United States Department of Labor.

### **Environmental Health Professionals**

Section 381.0101, F.S., provides for the regulation for environmental health professions to include definitions of certified and environmental health profession. The definition of "certified" is a person who has displayed competency to perform evaluations of environmental or sanitary conditions through examination. The definition of "environmental health professional" is a person who is employed or assigned the responsibility for assessing the environmental health or sanitary conditions, as defined by the department, within a building, on an individual's property, or within the community at large, and who has the knowledge, skills, and abilities to carry out these tasks. Environmental health professionals may be either field, supervisory, or administrative staff members.<sup>43</sup>

Section 381.0101(3), F.S. provides that no person shall perform environmental health or sanitary evaluations in any primary program area of environmental health without being certified by the department as competent to perform such evaluations.

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<sup>37</sup> FLA. CONST. art. VIII, s. 2(b); *see also* s. 166.021, F.S.

<sup>38</sup> *See, e.g., City of Hollywood v. Mulligan*, 934 So. 2d 1238 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

<sup>39</sup> *Id.*

<sup>40</sup> *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

<sup>41</sup> *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

<sup>42</sup> Chapter 2010-220, L.O.F.

<sup>43</sup> Section 381.0101(2)(d), F.S.

## Statewide Pharmacy

Section 381.0203, F.S., authorizes the DOH to contract on a statewide basis for the purchase of drugs, to be used by state agencies and CHDs. The DOH is directed to establish and maintain:<sup>44</sup>

- A central pharmacy to support pharmaceutical services provided by the CHDs, including pharmaceutical repackaging, dispensing, and the purchase and distribution of immunizations and other pharmaceuticals.
- Regulation of drugs, cosmetics, and household products pursuant to ch. 499.<sup>45</sup>
- Consultation to CHDs.

Moreover, this section also establishes eligibility for a contraception distribution program to be operated through the licensed pharmacies of CHDs. According to the DOH, the contraception distribution program has never been implemented because funding has never been appropriated.

Section 381.0051, F.S., creates the comprehensive family planning act that requires the DOH to provide women medically recognized methods of contraception. Under s. 154.01(2)(c), F.S., the CHDs are required to provide primary care services, which includes family planning. As noted above, the statewide pharmacy is required to support pharmaceutical services provided by the CHDs, which would include contraceptives.

## Patient's Bill of Rights

Section 381.0261, F.S., creates the Patient's Bill of Rights. Currently, AHCA is directed to print and made continuously available to health care facilities licensed under chapter 395, physicians licensed under chapter 458, osteopathic physicians licensed under chapter 459, and podiatric physicians licensed under chapter 461 a summary of the Florida Patient's Bill of Rights and Responsibilities. In adopting and making available to patients the summary of the Florida Patient's Bill of Rights and Responsibilities, health care providers and health care facilities are not limited to the format in which AHCA prints and distributes the summary.

According to AHCA, the Patient's Bill of Rights may be accessed on their website. AHCA does not print or distribute this document.<sup>46</sup>

## The Florida Health Services Corps

This section of law was enacted in 1992,<sup>47</sup> and is modeled on the National Health Services Corps,<sup>48</sup> offering loan repayment and scholarships for health professionals in return for service in public health care programs or underserved areas. This program has not been funded since 1996.<sup>49</sup>

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<sup>44</sup> Section 381.0203(2), F.S.

<sup>45</sup> Effective October 1, 2011, the regulatory authority over, ch. 499, F.S., The Florida Drug and Cosmetic Act, was transferred to the Department of Business and Professional Regulation from the DOH. *See* s. 27, ch. 2010-161, L.O.F..

<sup>46</sup> Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.

<sup>47</sup> Chapter 92-33, s. 111, L.O.F.

<sup>48</sup> *See*, <http://nhsc.hrsa.gov/> (site last visited February 2, 2012).

<sup>49</sup> Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.

## Office of Women’s Health Strategy

In 2004<sup>50</sup>, the Legislature created the Office of Women’s Health Strategy.<sup>51</sup> The strategy is administered by a Women’s Health Officer and is intended to focus on the unique health care needs of women. The Officer of Women’s Health Strategy is tasked with:<sup>52</sup>

- Ensuring state policies and programs are responsive to sex and gender differences and women’s health needs;
- Organizing an interagency Committee for Women’s Health with the DOH, the AHCA, the Department of Education, the Department of Elderly Affairs, the Department of Corrections, the Office of Insurance Regulation and the Department of Juvenile Justice in order to integrate women’s health into current state programs;
- Collecting and reviewing health data and trends to assess the health status of women;
- Reviewing the state’s insurance code as it relates to women’s health issues;
- Working with medical school curriculum committees to integrate women’s health issues into course requirements and promote clinical practice guidelines;
- Organizing statewide Women's Health Month activities;
- Coordinating a Governor's statewide conference on women's health;
- Promoting research, treatment, and collaboration on women's health issues at universities and medical centers in the state;
- Promoting employer incentives for wellness programs targeting women's health programs.
- Serving as the primary state resource for women's health information;
- Developing a statewide women's health plan emphasizing collaborative approaches to meeting the health needs of women;
- Promoting clinical practice guidelines specific to women;
- Serving as the state's liaison with other states and federal agencies and programs to develop best practices in women's health;
- Developing a statewide, web-based clearinghouse on women's health issues and resources; and
- Promoting public awareness campaigns and education on the health needs of women.

The Women’s Health Officer provides an annual report to the Governor and presiding officers of the Legislature that includes recommended policy changes for implementing the strategy.<sup>53</sup>

According to the National Conference on State Legislatures, at least 18 states have created either offices or commissions dedicated to women’s health, while three states—Florida, Illinois and Maine—have designated a women’s health officer or coordinator.<sup>54</sup>

## Hepatitis B or HIV Carriers

Section 381.045, F.S., authorizes the DOH to establish procedures to handle, counsel, and provide other services to health care professionals licensed or certified under chapter 401,

<sup>50</sup> Chapter 2004-350, LO.F.

<sup>51</sup> Section 381.04015, F.S.

<sup>52</sup> Section 381.04015(4), F.S.

<sup>53</sup> Section 381.04015(2)(p), F.S.

<sup>54</sup> “Laws and Initiatives on Women’s Health,” National Conference of State Legislatures, *available at*: <http://www.ncsl.org/default.aspx?tabid=14377> (last viewed on March 17, 2010).

chapter 467, part IV of chapter 468, and chapter 483 who are infected with hepatitis B or the human immunodeficiency virus.

### **AHCA Survey of State Hospital Facilities**

Section 381.0605, F.S., designates AHCA as the sole agency of the state to carry out the purposes and administration of the Federal Hospital and Medical Facilities Amendments (Hill-Burton Act) of 1964.<sup>55</sup> Section 381.0605, F.S., also authorizes the Governor to provide for carrying out such purposes in accordance with the standards prescribed by the Surgeon General of the United States. According to AHCA, the current certificate of need program meets this requirement, although the federal funds to support this program have long since stopped.<sup>56</sup>

### **Community Health Pilot**

This section of law was enacted in 1999<sup>57</sup> to develop community health pilot projects in rural and urban low-income areas. Specifically, this section of law created pilot projects in:

- Pinellas County, for the Greenwood Health Center in Clearwater;
- Escambia County, for the low income communities in the Palafox Redevelopment Area;
- In Hillsborough, Pasco, Pinellas and Manatee Counties, for the Urban League of Pinellas County;
- In Palm Beach County, for the low income communities within the City of Riveria;
- In the City of St. Petersburg, for the low-income communities within the Challenge 2001 Area; and
- Broward County, for the communities surrounding Miles Health Center in Ft. Lauderdale.

The department is authorized, to the extent that is possible, to assist pilot projects to enhance synergies and reduce duplication of efforts.<sup>58</sup> The pilot programs do not exist: the DOH states that they were unable to find any information on these two provisions, and the Division of Family Health Services did not implement the pilot programs.<sup>59</sup>

### **AHCA Background Screening**

Section 381.60225, F.S., was created by chapter 98-171, L.O.F., to provide the following background screening requirements for licensure by AHCA:

- AHCA must require background screening, of the managing employee, agency, or entity;
- The applicant must comply with the procedures for level 2 background screening;
- AHCA may require background screening of any individual who is an applicant if they have probable cause to believe the applicant has been convicted of a crime and/or committed any other crime prohibited under the level 2 standards for screening;

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<sup>55</sup> 42 U.S.C. 29 – Sec. 291

<sup>56</sup> Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.

<sup>57</sup> Chapter. 99-356, ss. 11-12, L.O.F.

<sup>58</sup> Section 381.103, F.S.

<sup>59</sup> Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.

- Each applicant must submit with its application to AHCA a description of any exclusions, permanent suspensions, or terminations of the applicant from the Medicare or Medicaid programs;
- Each applicant must submit with its application to AHCA a description of any conviction of an offense prohibited under the level 2 standards by a member of the boards of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant; and
- Any organization, agency, or entity that has been found guilty of any offense prohibited under the level 2 standards for screening may not be certified by AHCA.

### **Nursing Home Residents, 55 and Younger, Survey**

The Brain and Spinal Cord Injury Program administers a statewide coordinated system of care to serve persons who have sustained moderate-to-severe traumatic brain and/or spinal cord injuries.<sup>60</sup>

In 1976<sup>61</sup>, the Legislature required the DOH to conduct annual surveys of nursing homes in the state to determine the number of persons 55 years of age and under who reside in such homes due to brain or spinal cord injuries and were evaluated to determine if they would benefit from rehabilitation program.<sup>62</sup> At that time, persons who had sustained a brain or spinal cord injury were sent to nursing homes from acute care settings.

Today, individuals who are injured are referred to the Brain and Spinal Cord Injury Program Central Registry. If a person is placed in a nursing home they are provided services for 1 year to determine if they will improve and are a candidate for community reintegration and may receive services through the Nursing Home Transition Initiative and the TBI/SCI Home and Community-Based Medicaid Waiver. The DOH states there is no funding allocated to conduct the survey and recommends repealing the program.

### **Long-term Community-based Supports**

Section 381.795, F.S., authorizes the DOH to establish, contingent upon specific appropriations, a program of long-term community-based supports and services for individuals who have sustained traumatic brain or spinal cord injuries and who may be subject to inappropriate residential and institutional placement as a direct result of such injuries. Currently, eligible individuals who have sustained a brain or spinal cord injury receive services through the Home and Community-based Medicaid Waiver.

According to the DOH, no specific appropriation has ever been appropriated to implement this program. The DOH recommends repeal.<sup>63</sup>

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<sup>60</sup> Section 381.76, F.S.

<sup>61</sup> Chapter 76-201, L.O.F.

<sup>62</sup> Section 381.77, F.S.

<sup>63</sup> Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.

### **Florida Center to Eradicate Disease**

The Florida Center for Universal Research to Eradicate Disease (FLCURED) was created by the 2004 Legislature. The legislation followed a Senate Interim Report that found a need for improved coordination, information sharing and reduced duplication within Florida's medical research enterprise. To accomplish these goals, FLCURED holds an annual biomedical research summit, hosts this website and produces an annual report. FLCURED is operated within the Florida State University College of Medicine and is sponsored by the department. FLCURED has a 16 member Advisory Council that guides FLCURED's activities and recommends policies regarding biomedical research to the legislature.

### **Osteoporosis Prevention and Education Program**

This section of law was enacted in 1996,<sup>64</sup> and directs the department to establish, promote and maintain an osteoporosis education and prevention program in the state. The program has not been funded since Fiscal Year 2008-2009. The DOH recommends repeal.<sup>65</sup>

### **Standards for Compressed Air**

In 1999, section 381.895, F.S., was enacted and requires the DOH to establish by rule the maximum allowable levels for contaminants in compressed air used for recreational sport diving.<sup>66</sup> These standards must take into consideration the levels of contaminants allowed by the Grade "E" Recreational Diving Standards of the Compressed Gas Association.<sup>67</sup>

Moreover, section 381.895(3), F.S., requires any compressed air provider receiving compensation for providing compressed air for recreational sport diving to have the air tested quarterly by specified accredited laboratories.<sup>68</sup> In addition, the compressed air provider must provide the DOH a copy of the quarterly test result and the DOH is required to maintain a record of all results.<sup>69</sup> The compressed air provider must post a certificate certifying that the compressed air meets the standards for contaminate levels.<sup>70</sup> The certificate must be posted in a conspicuous location where it can readily be seen by any person purchasing air.<sup>71</sup> It is a second degree misdemeanor<sup>72</sup> if:

- A compressed air provider does not receive a valid certificate that certifies that the compressed air meets the standards for contaminate levels established by the DOH; and
- The certificate is not posted in a conspicuous location.<sup>73</sup>

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<sup>64</sup> Chapter 96-282, s. 1, L.O.F.

<sup>65</sup> Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.

<sup>66</sup> This includes any compressed air that may be provided as part of a dive package of equipment rental, or dive boat charter.

<sup>67</sup> Section 381.895(1), F.S.

<sup>68</sup> The laboratory must be accredited by either the American Industrial Hygiene Association or the American Association for Laboratory Accreditation

<sup>69</sup> Section 381.895(3),(4), F.S.

<sup>70</sup> Section 381.895(3), F.S.

<sup>71</sup> *Id.*

<sup>72</sup> A person who has been convicted of a second degree misdemeanor may be sentenced for a definite term of imprisonment not exceeding 60 days and a fine of up to \$500. *See* ss. 775.082(4) and 775.083(1), F.S.

<sup>73</sup> Section 381.895(5), F.S.

The following entities are exempt from these requirements:

- Individuals who provide compressed air for their own use;
- Any governmental entity that owns its own compressed air source, which is used for work related to the governmental entity; or
- Any foreign registered vessel that uses a compressor to compress air for its own work-related purposes.<sup>74</sup>

Since enactment, the provision has been amended once to delete the January 1, 2000, implementation date.<sup>75</sup> Florida is the only state that has a law governing the regulation of compressed air standards in recreational diving.<sup>76</sup>

Currently, the DOH maintains a database that contains 13 years of test results from approximately 250 compressed air providers located throughout the state.<sup>77</sup> According to the DOH, since 1999 none of the submitted reports<sup>78</sup> show any evidence of contamination.<sup>79</sup> Additionally, there have been no reports of injury, illness, or death associated with contaminated compressed air.<sup>80</sup>

The DOH recommended repeal of section 381.895, F.S., in its 2008 legislative package. When the provision was enacted, the DOH did not receive an appropriation to support the database, enforcement, or rule promulgation.

The dive industry considers it a self-regulating body<sup>81</sup> and has mechanisms in place to ensure customers have quality compressed air.<sup>82</sup> According to professional organizations in the field, repealing this provision in Florida will not have an impact on current business practices. Currently, dive shops are required to monitor air quality to maintain certification or membership in worldwide recreational dive associations. Consumers will still be required to have their tanks inspected by dive shops or instructors, as this is an industry-mandated requirement.<sup>83</sup>

There are three major organizations that engage in recreational diving training and certification: Professional Association of Diving Instructors (PADI), National Association of Underwater Instructors (NAUI), and Scuba Schools International (SSI).<sup>84</sup> According to NAUI, these three

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<sup>74</sup> Section 381.895(2), F.S.

<sup>75</sup> Chapter 2002-1, L.O.F.

<sup>76</sup> Westlaw search for state statutory provisions requiring compressed air standards for recreational diving.

<sup>77</sup> Per email correspondence with DOH staff on file with the Health & Human Services Access Subcommittee staff (October 21, 2011).

<sup>78</sup> As of November 3, 2011, the DOH has received approximately a total of 3,395 reports.

<sup>79</sup> Department of Health, Bill Analysis, Economic Statement and Fiscal Note of House Bill 4037 (October 10, 2011).

<sup>80</sup> *Id.*

<sup>81</sup> “PADI has worked very hard over the years to keep the scuba diving industry as free from legislation as possible.” See Professional Association of Diving Instructors, History of PADI, available at: <http://www.padi.com/scuba/about-padi/PADI-history/default.aspx> (last viewed October 21, 2011).

<sup>82</sup> Department of Health, Bill Analysis, Economic Statement and Fiscal Note of House Bill 4037 (October 10, 2011); telephone conversation with staff with the Professional Association of Diving Instructors and the National Association of Underwater Instructors (October 21, 2011).

<sup>83</sup> Per telephone conversation with staff with the Professional Association of Diving Instructors and the National Association of Underwater Instructors (October 21, 2011).

<sup>84</sup> *Id.*

organizations represent 90 percent of the recreational diving market for training certification and professional association memberships worldwide. Many recreational dive operations hold certifications and/or memberships with all three organizations. This practice tends to make them more marketable to consumers who are seeking certain types of dive certifications.<sup>85</sup>

According to the Professional Association of Diving Instructors (PADI)<sup>86</sup>, members of their organization are required to constantly maintain Compressed Gas Association, Grade “E” Recreational Diving Compressed Air Standards. If a member does not meet these standards their membership is revoked. PADI posts a list of all expelled members online.<sup>87</sup> According to PADI, many dive operations are starting to utilize constant air quality monitoring devices, which self-monitor compressed air quality and just need to be calibrated every 90 days.<sup>88</sup>

The National Association of Underwater Instructors (NAUI)<sup>89</sup>, requires certified businesses to provide medical grade compressed air, which NAUI considers a community standard. Dive operations that receive certification from NAUI are required to have their air checked and tested by an accredited nationally recognized lab every 2 years and the test results must be posted and available for consumers to view. According to NAUI, they have sales representatives that interact with dive shop owners multiple times a year. When NAUI salesmen are on site they are required to check compliance with NAUI policies. If a dive operator is not in compliance it will lose their NAUI certification. NAUI posts a list of all suspended and revoked certifications online.<sup>90</sup>

### **Health Information Systems Council**

The Florida Health Information Systems Council (Council) was created in the Department of Health by the Information Resource Management Reform Act of 1997.<sup>91</sup> The purpose of the Council is to coordinate, and provide for, the identification, collection, standardization, and sharing of health-related data among federal, state, local, and private entities.<sup>92</sup> Members of the Council include:

- The State Surgeon General;
- The Executive Director of the Department of Veterans’ Affairs;
- The Secretary of Children and Family Services;
- The Secretary of Health Care Administration;
- The Secretary of Corrections;
- The Attorney General;
- The Executive Director of the Corrections Medical Authority;

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<sup>85</sup> *Id.*

<sup>86</sup> PADI represents approximately 125 dive operations located throughout Florida.

<sup>87</sup> Professional Association of Diving Instructors, Quality Management: Consumer Alerts, *available at*: <http://www.padi.com/scuba/about-padi/quality-management/consumer-alerts/default.aspx> (last viewed October 21, 2011).

<sup>88</sup> Per email correspondence with Professional Association of Diving Instructors staff on file with Health & Human Services Access Subcommittee staff (October 21, 2011).

<sup>89</sup> NAUI represents approximately 120 dive operations located throughout Florida.

<sup>90</sup> National Association of Underwater Instructors Worldwide, Quality and Ethics: Revoked and Suspended Memberships, *available at*: [http://www.naui.org/quality\\_assurance.aspx](http://www.naui.org/quality_assurance.aspx) (last viewed October 21, 2011).

<sup>91</sup> Chapter 97-286, L.O.F.

<sup>92</sup> Section 381.90(2), F.S.

- One member representing a small CHD and one member representing a large CHD, both appointed by the Governor;
- A representative from the Florida Association of Counties;
- The Chief Financial Officer;
- A representative from the Florida Health Kids Corporation;
- A representative from a school of public health chosen by the Commissioner of Education;
- The Commissioner of Education;
- The Secretary of Elder Affairs; and
- The Secretary of Juvenile Justice.

Representatives from the federal government may also serve on the Council, but do not have voting rights.<sup>93</sup> The Council is required to meet at least quarterly, but may also meet at the call of its chair, at the request of a majority of the membership, or at the request of a department.<sup>94</sup>

According to the DOH, the Council has continued to meet as required, but takes no official action.<sup>95</sup> The last meeting of the Council at which any official action was taken occurred on October 22, 2003.<sup>96</sup> At that meeting, the Council adopted revisions to its Strategic Plan for FY 2004-05 through 2008-09.<sup>97</sup> However, none of the recommendations contained in the Plan have been implemented over the last 8 years. Lastly, the Council has not received any recent funding, nor have any appointments to the Council been made in the last 2 years.<sup>98</sup>

### **Arthritis Prevention and Education**

The department has a cooperative agreement with the Centers for Disease Control and Prevention (CDC) for a project titled Implementation of Arthritis Evidence-Based Self-Management and Physical Activity, commonly referred to as the “Arthritis Program”.

The program serves the purpose outlined in s. 385.210, including creating a statewide program to evaluate surveillance data, increase public and provider awareness about the impact of arthritis on the state, and facilitate evidence-based programs to prevent, reduce and manage the impact of arthritis on an individual. The cooperative agreement ends June 29, 2012. The program has worked with several large partners, including the Department of Elderly Affairs, Health Foundation of South Florida, the Veterans Administration, and Florida Hospital to establish self-sustaining chronic disease self management programs, at the community level, which help prevent the onset of or complications due to chronic diseases.

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<sup>93</sup> Section 381.90(3), F.S.

<sup>94</sup> Section 381.90(5), F.S.

<sup>95</sup> Telephone conference between Department of Health legislative affairs staff and Health and Human Services Quality Subcommittee staff.

<sup>96</sup> Florida Department of Health, Florida Health Information Systems Council, *Meeting Minutes, October 22, 2003*, available at <http://www.doh.state.fl.us/floridahisc/Meetings/102203mts.html> (last viewed on January 21, 2012).

<sup>97</sup> Department of Health, Florida Health Information Systems Council, *Strategic Plan-Fiscal Years 2004-05 through 2008-09*, May 15, 2003 (revised October 22, 2003), available at [http://www.doh.state.fl.us/floridahisc/Plan/FHISCSP\\_2003\\_approved\\_revision\\_10\\_22\\_2003.pdf](http://www.doh.state.fl.us/floridahisc/Plan/FHISCSP_2003_approved_revision_10_22_2003.pdf) (last viewed January 22, 2012).

<sup>98</sup> Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.

Effective July 1, 2012, this program would no longer be authorized and the DOH will not apply for CDC funding for this program in 2012. According to the DOH, these programs have been structured to be sustainable after the grant funding ends.<sup>99</sup>

### **A.G. Holley State Hospital**

According to the United States Census Bureau, there are approximately four active tuberculosis hospitals in the United States.<sup>100</sup> Florida operates one of these tuberculosis hospitals, known as the A.G. Holley State Hospital. A.G. Holley was opened in 1950 as the Southeast Tuberculosis Hospital, the second of four state tuberculosis hospitals built in Florida between 1938 and 1952.<sup>101</sup> Today, however, A.G. Holley is the only state-operated tuberculosis (TB) hospital in the state and is the last of the original American sanatoriums dedicated to treating tuberculosis patients.<sup>102</sup> A.G. Holley operates a complete X-ray department, bronchoscopy suite, dental office, optometric clinic, and pharmacy.

A.G. Holley is located in the City of Lantana on a 134 acre plot. In May 2007, the land was appraised at \$34.1 million. The hospital is four stories and encompasses 194,000 square feet. It was originally built to serve 500 patients, with living accommodations for the physicians, nurses and administrative staff. However, by 1971 the daily census at the hospital dropped to less than half of the original 500. By 1976, the beds and staff at A.G. Holley were reduced to serve a maximum of 150 patients. Currently, the hospital does not operate at full capacity and receives state funding for 50 beds, of which, sixteen are isolation (negative air pressure) rooms.

Today, the hospital receives funding for approximately 160 FTE positions for an average daily census of 37 patients, some of whom are involuntarily committed to the hospital. It costs approximately \$10 million a year to manage the hospital, and the hospital consistently runs an annual deficit. Moreover, the hospital will require significant outlay for capital improvements in the near future.

In addition to the main hospital, the campus includes a lab that is part of the state laboratory service (16,700 sq. ft.), a county health department (35,000 sq. ft.), a warehouse (26,500 sq. ft.), a boiler room (4,552 sq ft), a water treatment plant (880 sq. ft.), an additional building (26,500 sq. ft.), and ten small residential cottages.

According to a recent research memorandum issued by the Office of Program Policy Analysis and Government Accountability (OPPAGA), only one other large state, Texas, operates a state-run infectious disease hospital that treats TB patients. In other large states, such as California, Illinois, Michigan, New York, North Carolina, and Ohio, local health departments use local or regional hospitals to treat such medically complex TB patients.<sup>103</sup>

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<sup>99</sup> Florida Department of Health, Bill Analysis, Economic Statement and Fiscal Note for HB 1263, February 2, 2012.

<sup>100</sup> United States Census Bureau, Hospitals-Summary Characteristics, *available at*: <http://www.census.gov/compendia/statab/2007/tables/07s0162.xls> (last viewed March 30, 2010).

<sup>101</sup> Bureau of TB and Refugee Health, Florida Department of Health, A.G. Holley Hospital History, *available at*: <http://www.doh.state.fl.us/AGHolley/history.htm> (last viewed March 30, 210).

<sup>102</sup> *Id.*

<sup>103</sup> “Tuberculosis Hospitalization in Other States,” OPPAGA Research Memorandum (March 11, 2010).

In 2006, the department proposed developing the A.G. Holley hospital and campus into a Florida Institute for Public Health at a cost of approximately \$10 million. In 2008, the Legislature directed the DOH to procure a new TB hospital more suited to modern treatment and caseloads, and to outsource the management functions to a private vendor. The procurement was not successful. In 2009, the Legislature gave new, more specific direction to the DOH to initiate a second procurement. The DOH received one proposal, but the bidder did not meet the requirements of the procurement. In 2010<sup>104</sup>, the Legislature, directed the DOH to develop a plan that exclusively uses private and nonstate public hospitals to provide treatment to cure, hospitalization, and isolation.

### **Public Sector Physician Advisory Committee**

Section 458.346, F.S., creates a Public Sector Physician Advisory Committee which shall review and make recommendations to the Board of Medicine on all matters relating to public sector physicians that come before the board.

### **Nursing Student Loan Forgiveness Program**

The bill amends ss. 1009.66, and 1009.67, F.S., the Nursing Student Loan Forgiveness Program and Nursing scholarship program, to transfer the programs and the associated trust fund from the DOH to the Department of Education.

The Nursing Student Loan Forgiveness Program, the Nursing Scholarship Program, the Nursing Student Loan Forgiveness Trust Funds and 1 FTE will be transferred to the Department of Education effective July 1, 2012. This is a DOH recommendation and part of their 2012 legislative package.

### **Division of Medical Quality Assurance (MQA)**

The MQA regulates health care practitioners to ensure the health, safety and welfare of the public. Currently, MQA supports licensure and disciplinary activities for 43 professions and 37 types of facilities/establishments, and works with 22 boards and 6 councils.

### **Legislative Findings and Intent**

The bill deletes or amends legislative findings or intent language for the following areas:

- Section 381.0037, F.S., relating to findings and intent for the AIDS program.
- Section 381.004(1), F.S., relating to HIV testing.
- Section 381.0051(2), F.S., relating to Family planning.
- Section 381.0056(2), F.S., relating to the School health services program.
- Section 381.0057(1), F.S., relating to Funding for school health services.
- Section 381.0062(1), F.S., relating to Supervision, private and certain public water systems.
- Section 381.0098(1), F.S., relating to Biomedical waste.
- Section 381.0101(1), F.S., relating to Environmental health professionals.
- Section 381.0301(1)-(2), F.S., relating to Education and Resource Development.

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<sup>104</sup> Chapter 2010-161, L.O.F.

- Section 381.0403(2), F.S., relating to the Community Hospital Education Act.
- Section 381.4018(2), F.S., relating to Physician workforce assessment and development.
- Section 381.7352(1), F.S., relating to Legislative intent and findings for the Closing the Gap Act.
- Section 381.853(1), F.S., relating to the Florida Center for Brain Tumor Research.
- Section 381.91(1)(a), F.S., relating to the Jessie Trice Cancer Prevention Program.

The amendments to legislative intent language have no substantive policy impact on the programs.

### Unused Rulemaking Authority

The bill amends several section of law to remove unused rulemaking authority. The bill repeals the following provisions:

- Section 381.0052(5), F.S., related to dental health;
- Section 381.0053(4), F.S., related to the comprehensive nutrition program;
- Section 381.00593(8), F.S., related to the public school volunteer healthcare practitioner program;
- Section 381.765(3), F.S., related to retention of title and disposal of equipment;
- Section 401.243(4), F.S., related to the injury prevention program;
- Section 401.245(5), F.S., related to the Emergency Medical Services Advisory Council;
- Section 401.271(2), F.S., related to certification of emergency medical technicians and paramedics who are on active duty with the Armed Forces, and their spouses;
- Section 402.45(9), F.S., related to the community resource mother or father program;
- Section 462.19(2), F.S., related to renewal of licenses and inactive status for naturopaths; and
- Section 464.208(4), F.S., related to background screening information for nurse licensure.

According to the DOH, no rules have been adopted which use these specific sections of authority.<sup>105</sup> The repeal of rulemaking authority has no substantive impact on these programs.

### III. Effect of Proposed Changes:

**Section 1** amends s. 20.43, F.S., to significantly alter the purpose of the DOH, to remove several of the Surgeon General's powers and duties, to eliminate the Officer of Women's Health Strategy, to rename several divisions of the DOH, and to place emergency medical technicians and paramedics under the oversight of MQA.

**Section 2** amends s. 20.435, F.S., to eliminate two trust funds: the Drugs, Devices, and Cosmetics Trust Fund, and the Nursing Student Loan Forgiveness Trust Fund.

**Section 3** amends s. 215.5602, F.S., the James and Esther King Biomedical Research Program, to eliminate references to the Florida Center for Universal Research to Eradicate Disease (FLCURED) and language authorizing up to \$250,000 to be made available to this entity. It eliminates the requirement for the Biomedical Research Advisory Council to submit an annual

<sup>105</sup> Department of Health Memorandum, "Unused Rulemaking Authority", February 1, 2012, on file with Health & Human Services Quality Subcommittee staff.

progress report on biomedical research in the state to FLCURED. The FLCURED is repealed in this bill.

**Section 4** amends s. 381.001, F.S., pertaining to the legislative intent behind the public health system, so that the DOH is responsible for the state's public health system, which shall be designed to promote, protect and improve the health of all people in the state; provide leadership for an active partnership, working toward shared public health goals and involving federal, state, and local governments, and the private sector.

This section deletes language setting forth that the mission of the state's public health system is to foster the conditions in which people can be healthy; language setting forth legislative intent that the DOH, in carrying out the mission of public health, focuses on identifying, assessing, and controlling the presence and spread of communicable diseases and other activities; and legislative intent language regarding comprehensive planning, data collection, technical support, and health resource development.

**Section 5** amends 381.0011, F.S., by:

- Removing the specific means by which the DOH is to assess public health status and needs of the state;
- Changing the duty of DOH from "cooperate with and accept assistance from" to "coordinate with" federal, state, and local officials for the prevention and suppression of communicable and other diseases, illnesses, injuries, and hazards to human health;
- Deleting the requirement that the DOH conduct a workshop before issuing any health alert or advisory related to any food-borne illness or communicable disease in public lodging or food service establishments in order to inform persons, trade associations, and businesses of the risk to public health and to seek input of affected persons, trade associations, and businesses on the best methods of informing and protecting the public, except in an emergency, in which case the workshop must be held within 14 days after the issuance of the emergency alert or advisory.
- Deleting the powers and duties of the DOH to cooperate with and assist federal health officials in enforcing public health laws and regulations and to cooperate with other departments, local officials, and private boards and organizations for the improvement and preservation of the public health; and
- Deleting language giving the DOH authority to perform any other duties prescribed by law.

**Section 6** repeals s. 381.0013, F.S., which grants the power of eminent domain.

**Section 7** repeals s. 381.0015, F.S., which states that the DOH's actions in furtherance of public health should be presumed just and legal.

**Section 8** amends s. 381.0016, F.S., so that counties, as well as municipalities, may enact health regulations and ordinances which are not inconsistent with state public health laws and rules adopted by the DOH.

**Section 9** repeals s. 381.0017, F.S., which provides the DOH the authority to purchase, lease, or otherwise acquire land and buildings and take a deed thereto in the name of the state for the use

and benefit of the DOH when the acquisition is necessary to the efficient accomplishment of public health.

**Section 10** repeals s. 381.00325, F.S., which mandates that the DOH develop a Hepatitis A awareness program.

**Section 11** amends s. 381.0034, F.S., which is related to the requirement for instruction on HIV and AIDS, to remove an obsolete date.

**Section 12** repeals s. 381.0037, F.S., which establishes legislative findings and intent regarding HIV/AIDS education.

**Section 13** amends s. 381.004, F.S., on HIV testing, to strike language establishing legislative intent.

**Section 14** amends s. 381.0046, F.S., the statewide HIV and AIDS prevention campaign, to change the required number of AIDS regional minority coordinators from four to an unspecified number of dedicated positions and to remove the provision that the statewide AIDS minority coordinator must report directly to the Bureau Chief of HIV/AIDS within the DOH.

**Section 15** amends s. 381.005, F.S., which is related to primary preventive health services, to remove the requirement that hospitals licensed pursuant to chapter 395, F.S., under the Agency for Health Care Administration, implement a program to offer immunizations against the influenza virus and pneumococcal bacteria to all patients age 65 or older.

**Section 16** amends s. 381.0051, F.S., so that subsection (2), related to legislative intent, is deleted.

**Section 17** amends s. 381.0052, F.S., related to dental health, to delete subsection (5), which grants the DOH rulemaking authority.

**Section 18** amends s. 381.0053, F.S., related to the comprehensive nutrition program, by deleting subsection (4), which grants the DOH rulemaking authority.

**Section 19** amends s. 381.0056, related to school health services programs, by deleting subsection (2), which establishes legislative intent, and subsection (11), which requires that school health programs funded by health care districts or entities must be supplementary to and consistent with the requirements of this section and ss. 381.0057 and 381.0059, F.S.

**Section 20** amends s. 381.0057, F.S., by deleting subsection (1) pertaining to legislative intent.

**Section 21** amends s. 381.00591, F.S., related to national environmental laboratory accreditation, by granting authority to the DOH to apply for and become a NELAP accrediting body, rather than an accrediting authority. The bill also deletes the DOH's authority to adopt rules to implement NELAP standards, including requirements for proficiency testing of providers and other rules pertaining to fees, application procedures, standards that are applicable to environmental or public water supply laboratories, and compliance.

**Section 22** amends s. 381.00593, F.S., relating to the public school volunteer health care practitioner program, by removing the rulemaking authority the DOH has with the Florida Department of Education to implement the public school volunteer health care practitioner program.

**Section 23** amends s. 381.0062, F.S., regarding the supervision of private and certain public waters systems, by deleting subsection (1) which provides legislative intent.

**Section 24** amends s. 381.0065, F.S., relating to onsite sewage treatment and disposal systems. The bill repeals the state-wide septic system evaluation program, including program requirements, and the DOH's rulemaking authority to implement the program. It repeals legislative intent regarding the DOH's administration of a state-wide septic system evaluation program and an obsolete reporting requirement regarding the land application of septage.

The bill defines "bedroom" as a room that can be used for sleeping that, for site-built dwellings, has a minimum 70 square feet of conditioned space; or for manufactured homes, constructed to HUD standards having a minimum of 50 square feet of floor area. The room must be located along an exterior wall, have a closet and a door or an entrance where a door could be reasonably installed. It also must have an emergency means of escape and rescue opening to the outside. A room may not be considered a bedroom if it is used to access another room, unless the room that is accessed is a bathroom or closet. The term does not include a hallway, bathroom, kitchen, living room, family room, dining room, den, breakfast nook, pantry, laundry room, sunroom, recreation room, media/video room, or exercise room. It also fixes two cross-references. One is related to research fees collected to fund hands-on training centers for septic systems. The other relates to determining the mean annual flood line.

The bill provides that a permit issued and approved by the DOH for the installation, modification, or repair of a septic system transfers with the title to the property. A title is not encumbered when transferred by new permit requirements that differ from the original permit requirements in effect when the septic system was permitted, modified or repaired. It also prohibits a government entity from requiring a septic system inspection at the point of sale in a real estate transaction.

The bill specifies that a septic system serving a foreclosed property is not considered abandoned. It also specifies that a septic system is not considered "abandoned" if it was properly functioning when disconnected from a structure made unusable or destroyed following a disaster, and the septic system was not adversely affected by the disaster. The septic system may be reconnected to a rebuilt structure if:

- Reconnection of the septic system is to the same type of structure that existed prior to the disaster;
- The rebuilt structure has the same number of bedrooms or less than the structure that existed prior to the disaster;
- The rebuilt structure is within 110 percent of the size of the structure that existed prior to the disaster;
- The septic system is not a sanitary nuisance; and
- The septic system has not been altered without prior authorization.

The bill provides that if a rule change occurs within 5 years after approval for construction, the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the septic system, but only if fundamental site conditions have not changed between the time of construction approval and final approval.

The bill provides that a modification, replacement, or upgrade of a septic system is not required for a remodeling addition to a single-family home if a bedroom is not added.

**Section 25** creates s. 381.00651, F.S.

A county or municipality containing a first magnitude spring within its boundary must develop and adopt by ordinance a local septic system evaluation and assessment program meeting the requirements of this section within all or part of its geographic area by January 1, 2013, unless it opts out. All other counties and municipalities may opt in but otherwise are not required to take any affirmative action. Evaluation programs adopted before July 1, 2011, which do not contain a mandatory septic system inspection at the point of sale in a real estate transaction are not affected by this bill. Existing evaluation programs that require point of sale inspections are preempted by the bill regardless of when the program was adopted.

A county or municipality may opt out by majority plus one vote of the local elected body before January 1, 2013, by adopting a separate resolution. The resolution must be filed with the Secretary of State. Absent an interlocal agreement or county charter provision to the contrary, a municipality may elect to opt out of the requirements of this section notwithstanding the decision of the county in which it is located. A county or municipality may subsequently adopt an ordinance imposing a septic system evaluation and assessment program if the program meets the requirements of this section. The bill preempts counties' and municipalities' authority to adopt more stringent requirements for a septic system evaluation program than those contained in the bill.

Local ordinances must provide for the following:

- An evaluation of a septic system, including drainfield, every 5 years to assess the fundamental operational condition of the system and to identify system failures. The ordinance may not mandate an evaluation at the point of sale in a real estate transaction or a soil examination. The location of the system shall be identified;
- May not require a septic system inspection at the point of sale in a real estate transaction;
- May not require a soil examination;
- Each evaluation must be performed by:
  - A septic tank contractor or master septic tank contractor registered under part III of ch. 489, F.S.,
  - A professional engineer having wastewater treatment system experience and licensed pursuant to ch. 471, F.S.,
  - An environmental health professional certified under ch. 381, F.S., in the area of septic system evaluation, or
  - An authorized employee working under the supervision of any of the above four listed individuals. Soil samples may only be conducted by certified individuals.

Evaluation forms must be written or electronically signed by a qualified contractor.

The local ordinance may not require a repair, modification, or replacement of a septic system as a result of an evaluation unless the evaluation identifies a failure. The term “system failure” is defined as:

- A condition existing within a septic system that results in the discharge of untreated or partially treated wastewater onto the ground surface or into surface water; or
- A condition which results in a sanitary nuisance caused by the failure of building plumbing to discharge properly.

A system is not a failure if an obstruction in a sanitary line or an effluent screen or filter prevents effluent from flowing into a drainfield. The bill specifies that a drainfield not achieving the minimum separation distance from the bottom of the drainfield to the wettest season water table contained in current law is not a system failure.

The local ordinance may not require more than the least costly remedial measure to resolve the system failure. The homeowner may choose the remedial measure to fix the system. There may be instances in which a pump out is sufficient to resolve a system failure. Remedial measures to resolve a system failure must meet, to the extent possible, the requirements in effect at the time the repair is made, subject to the exceptions specified in s. 381.0065(4)(g), F.S. This allows certain older septic systems to be repaired instead of replaced if they cannot be repaired to operate to current code. An ordinance may not require an engineer-designed performance-based system as an alternative septic system to remediate a failure of a conventional septic system.

The bill specifies that the following systems are exempt from inclusion in a septic system evaluation program:

- A septic system that is required to obtain an operating permit or that is inspected by the department on an annual basis pursuant to ch. 513, F.S., related to mobile home and recreational vehicle parks;. and
- A septic system serving a residential dwelling unit on a lot with a ratio of one bedroom per acre or greater. For example, if a person has a four-bedroom house served by a septic system on a four-acre or larger lot, that septic system is exempt.

An ordinance may also exempt or grant an extension of time for a septic system serving a structure that will soon be connected to a sewer system if the connection is available, imminent and written arrangements have been made for payment of connection fees or assessments by the septic system owner.

The bill requires the owner of a septic system subject to an evaluation program to have it pumped out and evaluated at least once every 5 years. A pump out is not required if the owner can provide documentation to show a pump out has been performed or there has been a permitted new installation, repair or modification of the septic system within the previous 5 years. The documentation must show both the capacity and that the condition of the tank is structurally sound and watertight.

If a tank, in the opinion of the qualified contractor, is in danger of being damaged by leaving the tank empty after inspection, the tank must be refilled before concluding the inspection. Replacing broken or damaged lids or manholes does not require a repair permit.

In addition to a pump out, the evaluation procedures require an assessment of the apparent structural condition and watertightness of the tank and an estimation of its size. A visual inspection of a tank is required when the tank is empty to detect cracks, leaks or other defects. The baffles or tees must be checked to ensure that they are intact and secure.<sup>106</sup> The evaluation must note the presence and condition of:

- Outlet devices;
- Effluent filters;
- Compartment walls;
- Any structural defect in the tank; and
- The condition and fit of the tank lid, including manholes.

The bill also requires a drainfield evaluation and requires certain assessments to be performed when a system contains pumps, siphons or alarms. The drainfield evaluation must include a determination of the approximate size and location of the drainfield. The evaluation must contain a statement noting whether there is any visible effluent on the ground or discharging to a ditch or water body and identifying the location of any downspout or other source of water near the drainfield.

If the septic system contains pumps, siphons or alarms, the following information may be provided:

- An assessment of dosing tank integrity, including the approximate volume and the type of material used in construction;
- Whether the pump is elevated off of the bottom of the chamber and its operational status;
- Whether the septic system has a check valve and purge hole; and
- Whether there is a high-water alarm, including whether the type of alarm is audio, visual or both, the location of the alarm, its operational condition and whether the electrical connections appears satisfactory.

The bill provides that if a homeowner does not request information about the system's pumps, siphons, or alarms, the qualified contractor and its employee are not liable for any damages directly relating from a failure of the system's pumps, siphons, or alarms. The evaluation report completed by the contractor must include a statement on the front cover that provides notice of the exclusion of such liability.

The reporting procedures provided for in the bill require:

- The qualified contractor to document all the evaluation procedures used;

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<sup>106</sup> The septic tank baffle or tee is a device on the inlet or outlet of a septic tank which prevents sewage back-flow into the inlet or outlet pipe. The device may be made of concrete, steel, plastic, or other materials, but in all cases the septic tank tee or baffle forms a barrier between the septic tank and the inlet or outlet pipes to or from the septic tank. InspectAPedia, *Encyclopedia of Building & Environmental Inspection, Testing, Diagnosis, Repair*, available at <http://www.inspectapedia.com/septic/tanktees.htm> (last visited January 29, 2012).

- The qualified contractor to provide a copy of a written, signed evaluation report to the property owner and the county health department within 30 days after the evaluation;
- The name and license number of the company providing the report;
- The local county health department to retain a copy of the evaluation report for a minimum of 5 years and until a subsequent report is filed;
- The front cover of the report to identify any system failure and include a clear and conspicuous notice to the owner that the owner has a right to have any remediation performed by a contractor other than the contractor performing the evaluation;
- The report to identify tank defects, improper fit or other defects in the tank, manhole or lid, and any other missing component of the septic system;
- Noting if any sewage or effluent is present on the ground or discharging to a ditch or surface water body;
- Stating if any downspout, stormwater or other source of water is directed onto or towards the septic system;
- Identification of any maintenance need or condition that has the potential to interfere with or restrict any future repair or modification to the existing septic system; and
- Conclude with an overall assessment of the fundamental operational condition of the septic system.

The county health department will be responsible for administering the program on behalf of a county or municipality. A county or municipality may develop a reasonable fee schedule in consultation with a county health department. The fee must only be used to pay for the costs of administering the program and must be revenue neutral. The fee schedule must be included in the adopted ordinance for a septic system evaluation program. The fee shall be assessed to the septic system owner, collected by the qualified contractor and remitted to the county health department.

The county health department in a jurisdiction where a septic system evaluation program is adopted must:

- Provide a notice to a septic system owner at least 60 days before the septic system is due for an evaluation;
- In consultation with the DOH, provide for uniform disciplinary procedures and penalties for qualified contractors who do not comply with the requirements of the adopted ordinance; and
- Be the sole entity to assess penalties against a septic tank owner who fails to comply with the requirements of an adopted ordinance.

The bill requires the DOH to allow county health departments and qualified contractors to access the environmental health database to track relevant information and assimilate data from assessment and evaluation reports of the overall condition of onsite sewage treatment and disposal systems. The database must be used by qualified contractors to report service evaluations and by county health departments to notify septic system owners that their evaluations are due.

The bill requires a county or municipality that adopts a septic system evaluation and assessment program to notify the Secretary of Environmental Protection, the DOH and the requisite county health department. Once the DEP receives notice a county or municipality has adopted an evaluation program, it must, within existing resources, notify the county or municipality of the

potential availability of Clean Water Act or Clean Water State Revolving Fund funds. If a county or municipality requests, the DEP must, within existing resources, provide guidance in the application process to access the abovementioned funding sources and provide advice and technical assistance on how to establish a low-interest revolving loan program or how to model a revolving loan program after the low-interest loan program of the Clean Water State Revolving Fund. The DEP is not required to provide any money to fund such programs. The bill specifically prohibits the DOH from adopting any rule that alters the provisions contained in the bill.

The bill specifies that it does not derogate or limit county and municipal home rule authority to act outside the scope of the evaluation program created in this bill. The bill clarifies it does not repeal or affect any other law relating to the subject matter of this section. It does not prohibit a county or municipality that has adopted an evaluation program pursuant to this section from:

- Enforcing existing ordinances or adopting new ordinances if such ordinances do not repeal, suspend or alter the requirements or limitations of this section; or
- Exercising its independent and existing authority to use and meet the requirements of s. 381.00655, F.S. (relating to connection to central sewer systems).

**Section 26** repeals s. 381.00656, F.S., related to a low-income grant program to assist residents with costs associated from a septic system evaluation program and any necessary repairs or replacements.

**Section 27** amends s. 381.0066, F.S., related to septic system fees. The bill deletes the existing fees for the 5-year evaluation report. The bill also reduces the annual operating permit fee for waterless, incinerating or organic waste composting toilets from not less than \$50 to not less than \$15 and from not more than \$150 to not more than \$30.

The bill repeals an obsolete provision related to setting a revenue neutral fee schedule for a state-wide septic system inspection program.

**Section 28** amends s. 381.0068, F.S., and s. 381.0068(2), F.S., related to technical review and advisory panel, by deleting an obsolete date and redundant language.

**Section 29** amends s. 381.00781, F.S., by deleting subsection (2), removing language that gives the DOH the authority to annually adjust the maximum fees authorized for tattoo establishments according to the rate of inflation or deflation as indicated by the Consumer Price Index.

**Section 30** amends s. 381.0098, F.S., to remove legislative intent related to the biomedical waste program.

**Section 31** amends s. 381.0101, F.S., related to environmental health professionals. It deletes legislative intent in subsection (1) and changes the Division Director of Environmental Health to the Division Director of Emergency Preparedness and Community Support.

**Section 32** amends s. 381.0203, F.S., related to pharmacy services. It deletes the program that regulates drugs, cosmetics, and household products, pursuant to ch. 499, F.S., as this program was transferred to the Department of Business and Professional Regulation. It also deletes a

contraception distribution program to be implemented through the licensed pharmacies of county health departments as the program was never funded or implemented.

**Section 33** amends s. 381.0261(1), F.S., to transfer responsibility to the DOH from AHCA to publish, on its internet web site, a summary of the Florida Patients' Bill of Rights and Responsibilities.

**Section 34** repeals s. 381.0301, F.S., related to education and resource development.

**Section 35** repeals s. 381.0302, F.S., Florida Health Services Corps, a long dormant and unfunded program.

**Section 36** amends s. 381.0303(5), F.S., related to the Special Needs Shelter Interagency Committee, to delete the requirement for the committee to submit recommendations to the legislature as necessary.

**Section 37** repeals s. 381.04015, F.S., related to the designation of an Officer of Women's Health Strategy.

**Section 38** amends s. 381.0403, F.S., related to the Community Hospital Education Act.

Subsection (2)(a) has been amended to delete legislative intent language stipulating that health care services for the citizens of this state be upgraded, and that a program for continuing these services be maintained for community medical education. It amends the remaining legislative intent language to require a program be established for community medical education, increase the supply of highly trained physicians, and expand graduate medical education.

The bill also deletes subsection (2)(b), which established that the legislature acknowledges the critical need for increased numbers of primary care physicians, supports an expansion in the number of family practice residency positions, and intends that the funding for graduate education in family practice be maintained and that funding for all primary care specialties be provided at a minimum of \$10,000 per resident per year.

This section also amends subsection (3)(a), (3)(b), and (3)(c) to make technical changes deleting obsolete language, as well as removing the authority of the Community Hospital Education Council to approve new program participants.

**Section 39** amends s. 381.0405, F.S., related to the Office of Rural Health, to delete subsection (7), requiring the legislature to appropriate funds as are necessary to support the Office of Rural Health.

**Section 40** amends s. 381.0406, F.S., related to rural health networks, to remove unnecessary language.

**Section 41** repeals s. 381.045, F.S., related to hepatitis B or HIV carriers, which authorize the DOH to establish procedures to handle, counsel, and provide other services to health care professionals infected with hepatitis B or HIV.

**Section 42** amends s. 381.06015, F.S., related to Public Cord Blood Tissue Bank, to repeal subsection (7), which required AHCA and the DOH to seek private or federal funds to initiate program actions for fiscal year 2000-2001.

**Section 43** repeals s. 381.0605, F.S., relating to an AHCA survey of state hospital facilities that does not pertain to the DOH.

**Section 44** repeals s. 381.102, F.S., related to community health pilot projects, which establishes community health pilot projects in order to promote disease prevention and health promotion among low-income persons living in urban and rural communities.

**Section 45** repeals s. 381.103, F.S., related to community health pilot projects, which establishes the duties of the DOH, to the extent feasible, for the purpose of supporting community health pilot projects established in s. 381.102, F.S.

**Section 46** amends s. 381.4018, F.S., to delete legislative intent language related to Physician Workforce Assessment and Development.

**Section 47** repeals s. 381.60225, F.S., related to background screening, which does not pertain to the DOH.

**Section 48** deletes s. 381.7352(1), F.S., to remove legislative findings regarding the Office of Minority Health.

**Section 49** deletes s. 381.7353(3), F.S., which authorizes the State Surgeon General to appoint an ad hoc advisory committee to examine areas where public awareness, public education, research, and coordination regarding racial and ethnic health outcome disparities are lacking; consider access and transportation issues which contribute to health access disparities; and make recommendations for closing gaps in health outcomes and increasing the public's awareness of health outcome disparities that exist between racial and ethnic populations.

**Section 50** deletes s. 381.7356(4), F.S., relating to dissemination of grant awards that begin no later than January 1, 2001.

**Section 51** deletes s. 381.765(3), F.S., which grants the DOH the authority to adopt rules relating to records and recordkeeping for the DOH-owned property.

**Section 52** repeals s. 381.77, F.S., relating to an annual survey of nursing home residents 55 and under who would benefit from rehabilitation programs. Other procedures are used to identify residents who should be targeted for rehabilitation.

**Section 53** repeals s. 381.795, F.S., related to long-term community-based supports for individuals who have sustained traumatic brain or spinal cord injuries, and who may be subject to inappropriate residential and institutional placement as a direct result of such injuries. Other community-based services and support are available.

**Section 54** deletes s. 381.853(1), F.S., legislative findings related to Florida Center for Brain Tumor Research.

**Section 55** repeals s. 381.855, F.S., related to the Florida Center for Universal Research to Eradicate Disease (FLCURED). This repeal eliminates the center, the center's goal, purpose, responsibilities and advisory council.

**Section 56** repeals s. 381.87, F.S., related to the Osteoporosis Prevention and Education Program. This section directs the DOH to establish, promote, and maintain an osteoporosis prevention and education program to promote public awareness of the causes of osteoporosis, options for prevention, value of early detection, and possible treatments, including the benefits and risks of those treatments. According to the DOH, this program has not been funded since June 30, 2009, and no longer operates.

**Section 57** amends s. 381.895, F.S., to delete provisions requiring the DOH to regulate compressed air for recreational diving and substitutes a community-based approach requiring standards for certification, posting, and quality. Violating these standards is a misdemeanor of the first degree.

**Section 58** repeals s. 381.90, F.S., related to the Health Information Systems Council, established in 1997 to facilitate the identification, collection, standardization, sharing, and coordination of health-related data. According to the DOH, this council is not active.

**Section 59** deletes s. 381.91(1)(a), F.S., related to the Jessie Trice Cancer Prevention Program, to remove legislative intent language to reduce the rates of illness and death from lung cancer and other cancers, and improve the quality of life among low-income African-American and Hispanic populations through increased access to early effective screening and diagnosis, education, and treatment programs.

**Section 60** amends s. 381.922(5), F.S., related to the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program, eliminating funding of \$250,000 to be provided for the operating costs of FLCURED.

**Sections 61 – 64** address tuberculosis control. The bill removes the authority for the DOH to operate a TB hospital, effective January 1, 2013. The bill authorizes the DOH to contract for the operation of a treatment program for persons with active TB. The contractor must use existing licensed community hospitals and other facilities for the care and treatment to cure persons with active TB and a history of non-compliance with prescribed drug regimens.

The bill requires the DOH to develop and implement a transition plan for the closure of AG Holley. The plan must include specific steps to end voluntary admissions, transfer patient to alternate facilities, communicate with families, providers, other affected parties, and the general public, enter into necessary contracts with providers, and coordinate with the Department of Management Services regarding the disposition of equipment and supplies and closure of the facility. The plan must be submitted to the Legislature by May 31, 2012 and be fully implemented by January 1, 2013. The bill makes conforming changes to ss. 392.51, 392.61, and 392.62, F.S., to reflect the closure of AG Holley State Hospital.

**Section 61** amends s. 392.51, F.S., related to tuberculosis control, effective January 1, 2013. It deletes legislative intent language and creates language to establish a statewide system to control tuberculosis infection, and mitigate its effects. Further, it amends this section to direct that tuberculosis control services shall be provided by the coordinated efforts of the respective county health departments and contracted or other private health care providers, rather than the A.G. Holley State Hospital (AGH) and the private health care delivery system.

**Section 62** amends s. 392.61, F.S., related to community tuberculosis control programs, and eliminates the requirement for the DOH to develop, by rule, a methodology for distributing funds appropriated for TB control programs that considers the basic infrastructure available for TB control, caseload requirements, laboratory support services needed, and epidemiologic factors, effective January 1, 2013.

**Section 63** amends s. 392.62, F.S., related to hospitalization and placement programs for persons who have active TB.

Subsection (1) is amended to require the DOH contract for operation of a program for the treatment of persons who have active TB in hospitals licensed under ch. 395, F.S. Also, it requires the DOH to require the contractor to use existing, licensed community hospitals and other facilities for the care and treatment of persons who have active TB, a history of non-compliance with prescribed drug regimens, and require inpatient or other residential services.

Subsection (2), which authorized the DOH to operate a licensed hospital for the care and treatment, to cure, for persons with active TB, is deleted.

Subsection (3) is amended to delete language referencing a licensed hospital operated by the DOH, and inserts new language specifying that the program for control of TB shall provide funding for participating facilities and requiring the facilities to meet specific conditions.

Subsection (3)(c) is amended to change the requirement that TB facilities provide for a method of paying for the care of patients who cannot afford to do so, requiring the facility to provide for the care of patients in the program regardless of ability to pay.

Subsection (3)(g) is amended to delete the word “all” with regard to patients discharged from the hospital.

**Section 64** directs the DOH to develop and implement a transition plan for closure of A.G. Holley State Hospital. The plan shall include specific steps to end voluntary admissions, transfer patients to alternate facilities, communicate with families, providers, other affected parties, and the general public, enter into any necessary contracts with providers, and coordinate with the Department of Management Services regarding the disposition of equipment and supplies and the closure of the facility. The plan shall be submitted to the Governor, the Speaker of the House of Representatives and the President of the Senate by May 31, 2012. This section requires that the DOH fully implement the plan by January 1, 2013.

**Section 65** amends s. 395.1027, F.S., to correct cross references.

**Section 66** deletes s. 401.243(4), F.S., related to injury prevention and rule adoption by the DOH.

**Section 67** deletes s. 401.245(5), F.S., related to emergency medical services advisory council and rule adoption by the DOH.

**Section 68** deletes s. 401.271(2), F.S., related to certification of emergency medical technicians and paramedics who are on active duty with the Armed Forces of the United States, and rule adoption by the DOH.

**Section 69** repeals s. 402.45, F.S., related to the community resource mother or father program and rule adoption by the DOH.

**Section 70** amends 400.914, F.S., to correct cross references.

**Section 71** makes a technical amendment to s. 409.256(11)(d), F.S., related to administrative proceedings to establish paternity or paternity and child support; to change the name of the Division of Vital Statistics to the Bureau of Vital Statistics.

**Section 72** repeals s. 458.346, F.S., related to the Public Sector Physicians Advisory Committee as the committee is dormant.

**Section 73** deletes s. 462.19(2), F.S., related to naturopathic physicians, to repeal rulemaking authority for the DOH for biennial renewal of licenses.

**Section 74** repeals s. 464.0197, F.S., legislative findings related to the Florida Center for Nursing, as well as the direction that the center be given state budget support for its operations so that it has adequate resources for the tasks assigned by the legislature in s. 464.0195, F.S.

**Section 75** deletes s. 464.208(4), F.S., related to rulemaking authority for background screening as no rules have been adopted under this section of law.

**Section 76** amends s. 633.115, F.S., related to Fire and Emergency Incident Information Reporting Program, within the Division of the State Fire Marshall. Subsections (1)(b) and (2)(c) are amended to change the name of Emergency Medical Services to the Bureau of Emergency Preparedness and Response.

**Section 77** amends s. 768.28, F.S., to correct cross references.

**Sections 78-80** provide for a Type Two transfer of the Nursing Student Loan Forgiveness Program and the Nursing Scholarship Program, and the Nursing Student Loan Forgiveness Trust Fund from the DOH to the Florida Department of Education.

**Section 81** requires that the DOH's MQA develop a plan to improve the efficiency of its functions (reduce the average length of time for a qualified applicant to receive license). Specifically, the plan is required to delineate methods to: reduce the average length of time for a

qualified applicant to receive initial and renewal licensure, certification, or registration, by one-third; improve the agenda process for board meetings to increase transparency, timeliness, and usefulness for board decision-making; and improve the cost-effectiveness and efficiency of the joint functions of MQA and the regulatory boards. MQA is required to identify and analyze best practices found within MQA and other state agencies with similar functions, options for information technology improvements, options for contracting with outside entities, and any other option MQA deems useful. MQA is required to consult with and solicit recommendations from the regulatory boards in developing the plan. MQA is required to prepare and submit the plan to the Governor, Speaker of the House of Representatives, and President of the Senate by November 1, 2012.

**Sections 82-86** amend ss. 381.0041, 384.25, 392.56, 456.032, and 775.0877, F.S., to correct cross references.

**Section 87** provides an effective date.

**Other Potential Implications:**

The bill prohibits local ordinances from requiring repairs, modifications or system replacements unless a septic system is found to be failing. Septic system problems that do not rise to the level of a system failure cannot be required to be remedied under an ordinance. The septic system owner will have the option to repair or modify a septic system found to have problems. A county or municipality is preempted from requiring more stringent repair guidelines in its ordinance.

The bill prohibits counties and municipalities from acting outside the requirements and limitations of the bill to address public health and safety or provide for pollution abatement measures for water quality improvements. This prohibition may directly conflict with existing laws to address these issues. In addition, a local county or municipality may be required to take future action to comply with a future determination that an area within its jurisdiction is contributing to violations of water quality standards but may be prohibited from doing so by the provisions in this bill.

**IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

**V. Fiscal Impact Statement:**

A full fiscal analysis has not been conducted on this bill; however, these are some possible fiscal results which could occur from implementation of the provisions of this bill:

**A. Tax/Fee Issues:**

The bill reduces the fees for annual operating permits for waterless, incinerating, or organic waste composting toilets from not less than \$50 to not less than \$15, and from not more than \$150 to not more than \$30.

**B. Private Sector Impact:**

Owners of septic systems subject to the evaluation program will have to pay for septic system evaluations, including pump outs, every 5 years. The owners will also be responsible for the cost of required repairs, modifications or replacements of the septic system if it is found to be “failing.” Although owners are responsible under current law for repairing failing septic systems, they may be unaware of the failing condition or unwilling or unable to pay for repairs or replacements.

A survey of septic contractors has not been completed to determine costs for inspections; however, anecdotal evidence has demonstrated a cost between \$75 and \$200, depending on the area of the state.

Current costs for pump outs range as low as \$75 to over \$300 depending on the size of the tank and local disposal options. Evaluation costs would be set by private contractors. Septic system owners would pay for any necessary remediation, including permit fees. Repair costs will vary from minor repairs to full system replacements and will only be available on a case-by-case basis. Whether or not demand for septic system contractor service increases is dependent on how many counties or municipalities implement inspection programs. Therefore, the impact of supply and demand on pricing trends cannot be determined at this time.

Therefore, adding in all potential costs not including repairs or replacements required under current law or the local administrative fee, a septic system owner can expect to pay between \$150 and \$500 every 5 years. It should be noted that in June 2010, the DOH and the Revenue Estimating Conference settled on a \$50 fee per inspection report to cover programmatic costs of implementing a state-wide program.

The DOH estimates a cost savings to the public of \$2,500 to \$7,500 per system through preventive maintenance, thus eliminating the need for costly repairs associated with neglected, failing or improperly functioning systems.

**C. Government Sector Impact:**

The cost to counties or municipalities adopting evaluation programs is indeterminate as it depends on how large an area is covered by the evaluation program and how many septic

systems are included.<sup>107</sup> Counties or municipalities with first magnitude springs will be required to expend funds to implement the provisions of this bill unless they opt out.

The DOH may incur costs associated with reprogramming the environmental health database to support the information reported by contractors and to be used by county health departments to notify owners when system evaluations are due. The DOH is in the process of determining whether there is a fiscal impact associated with reprogramming the database.

The DEP is required to take certain actions if and when it is notified of an ordinance that implements a local septic system evaluation program but only within existing resources.

Eventual closure of the A.G. Holley State Hospital will make possible the sale of public land upon which it is sited.

Additional savings in operating, maintenance, and repair costs will occur from the closure of the A.G. Holley State Hospital.

There may be some savings as a result of repealing duplicative and unnecessary programs.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

#### **VIII. Additional Information:**

##### **A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

##### **CS by Health Regulation on February 16, 2012:**

The committee substitute is substantially different from the bill as filed. It

- Maintains the Division of Medical Quality Assurance without changing its name;
- Revises the powers and duties of the DOH;
  - Eliminates the need to conduct a workshop before issuing any health alert or advisory relating to food-borne illness or communicable disease in public lodging or food service establishments.

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<sup>107</sup> There are 19 counties with first magnitude springs: Alachua, Bay, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Madison, Marion, Suwannee, Volusia and Wakulla.

- Eliminates the duty to cooperate with federal health officials in enforcing public health laws and other departments, local officials and private entities for the improvement and preservation of public health.
- Reinstates the CMS Network Advisory Council;
- Grants counties the authority to pass health regulations, with certain restrictions;
- Amends sections relating to HIV and AIDS awareness and prevention;
- Amends the DOH's authority to accredit laboratories under the National Environmental Laboratory Accreditation Program;
- Significantly amends portions of law relating to onsite sewage treatment and disposal;
- Deletes provisions which allow fee rates for tattoo establishments to be adjusted for inflation;
- Repeals obsolete provisions of the DOH's pharmacy services program;
- Assigns responsibility to the DOH to publish the Florida Patient's Bill of Rights and Responsibilities online;
- Revises the Community Hospital Education Act;
- Repeals community health pilot projects;
- Revises requirements for persons selling compressed air for recreational sport diving;
- Requires that the Division of Medical Quality Assurance develop a plan to improve the efficiency of its functions;
- Removes unused and obsolete provisions from several sections of law pertaining to the DOH's rulemaking authority;
- Deletes obsolete language pertaining to legislative intent from several sections of law;
- Eliminates obsolete and unfunded statutory programs.

**B. Amendments:**

None.