

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 735 Needle and Syringe Exchange Program

**SPONSOR(S):** Health Quality Subcommittee; Pafford

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 808

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	12 Y, 0 N, As CS	Holt	O'Callaghan
2) Criminal Justice Subcommittee			
3) Health Care Appropriations Subcommittee			
4) Health & Human Services Committee			

### SUMMARY ANALYSIS

The bill amends s. 381.0038, F.S., to authorize the Department of Health (DOH) to establish a needle and syringe exchange pilot program (pilot program) in Miami-Dade County. The pilot program must be administered by DOH or a designee, who may operate the pilot program at a fixed location or by using a mobile health unit. The designee may be a licensed hospital, a licensed health care clinic, a substance abuse treatment program, an HIV/AIDS service organization, or another nonprofit entity. The pilot program is to offer free, clean, and unused needles and hypodermic syringes as a means to prevent the transmission of HIV/AIDS and other blood-borne diseases among intravenous drug users and their partners.

The pilot program must:

- Provide maximum security of the exchange site and equipment;
- Account for needles and syringes in use and in storage;
- Adopt any measure to control the use and dispersal of sterile needles and syringes; and
- Strive for a 1 sterile to 1 used exchange ratio.

The bill requires the collection of data for annual and final reporting purposes, but prohibits the collection of any personal identifying information from a participant. The pilot program expires on July 1, 2018, and requires the Office of Program Policy Analysis and Government Accountability to submit a report to the Legislature that includes data on the pilot program and a recommendation on whether the pilot program should continue.

The bill provides that the possession, distribution, or exchange of needles or syringes as part of a pilot program does not violate the Florida Comprehensive Drug Abuse Prevention and Control Act under ch. 893, F.S., or any other law. However, the pilot program staff or participant is not immune from prosecution for the possession or redistribution of needles or syringes in any form if acting outside of the pilot program.

Moreover, the bill includes a severability clause. The bill prohibits the use of state funds to operate the pilot program and specifies the use of grants and donations from private sources to fund the program. The bill grants DOH the authority to adopt rules to implement the pilot program.

The bill appears no fiscal impact on the state and local governments.

The bill provides an effective date of July 1, 2013.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

Needle and syringe exchange programs (NSEPs) provide sterile needles and syringes in exchange for used syringes to reduce the transmission of human immunodeficiency virus (HIV) and other bloodborne infections associated with reuse of contaminated syringes by injection-drug users (IDUs).

#### Federal Ban on Funding

In 2009, Congress passed the FY 2010 Consolidated Appropriations Act, which contained language that removed the ban on federal funding of NSEPs. In July 2010, the Department of Health and Human Services issued implementation guidelines for programs interested in using federal dollars for NSEPs.<sup>1</sup>

However, on December 23, 2011, President Obama signed the FY2012 Omnibus spending bill that, among other things, reinstated the ban on the use of federal funds for NSEPs; this step reversed the 111th Congress's decision to allow federal funds to be used for NSEPs.<sup>2</sup>

#### Safe Sharps Disposal

Improperly discarded sharps pose a serious risk for injury and infection to sanitation workers and the community. "Sharps" is a medical term for devices with sharp points or edges that can puncture or cut skin.

Examples of sharps include:

- Needles – hollow needles used to inject drugs (medication) under the skin.
- Syringes – devices used to inject medication into or withdraw fluid from the body.
- Lancets, also called "fingerstick" devices – instruments with a short, two-edged blade used to get drops of blood for testing. Lancets are commonly used in the treatment of diabetes.
- Auto Injectors, including epinephrine and insulin pens – syringes pre-filled with fluid medication designed to be self-injected into the body.
- Infusion sets – tubing systems with a needle used to deliver drugs to the body.
- Connection needles/sets – needles that connect to a tube used to transfer fluids in and out of the body. This is generally used for patients on home hemodialysis.

On November 8, 2011, the Federal Drug Administration (FDA) launched a new website<sup>3</sup> for patients and caregivers on the safe disposal of sharps that are used at home, at work and while traveling.<sup>4</sup>

According to the FDA, used needles and other sharps are dangerous to people and pets if not disposed of safely because they can injure people and spread infections that cause serious health conditions. The most common infections are:<sup>5</sup>

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<sup>1</sup> A History of The Ban on Federal Funding for Syringe Exchange Programs, available at: <http://www.smartglobalhealth.org/blog/entry/a-history-of-the-ban-on-federal-funding-for-syringe-exchange-programs/> (last viewed March 24, 2013); NPR, Ban Lifted on Federal Funding for Needle Exchange, available at: <http://www.npr.org/templates/story/story.php?storyId=121511681> (last viewed March 24, 2013).

<sup>2</sup> *Id.*

<sup>3</sup> Food and Drug Administration, Needles and Other Sharps (Safe Disposal Outside of Health Care Settings), available at: <http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/HomeHealthandConsumer/ConsumerProducts/Sharps/ucm20025647.htm> (last viewed March 24, 2013).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

- Hepatitis B (HBV),
- Hepatitis C (HCV), and
- Human Immunodeficiency Virus (HIV).

Moreover, injections of illicit drugs have been estimated to represent approximately one-third of the estimated 2-3 billion injections occurring outside of health-care settings in the United States each year, second only to insulin injections by persons with diabetes.<sup>6</sup>

For these reasons, communities are trying to manage the disposal of sharps within the illicit drug population. In San Francisco in 2000, approximately 2 million syringes were recovered at NSEPs, and an estimated 1.5 million syringes were collected through a pharmacy-based program that provided free-of-charge sharps containers and accepted filled containers for disposal. As a result, an estimated 3.5 million syringes were recovered from community syringe users and safely disposed of as infectious waste.<sup>7</sup> Other NSEPs offer methods for safe disposal of syringes after hours. For example, in Santa Cruz, California, the Santa Cruz Needle Exchange Program, in collaboration with the Santa Cruz Parks and Recreation Department, installed 12 steel sharps containers in public restrooms throughout the county.<sup>8</sup>

### National Data & Survey Results

According to the Centers for Disease Control and Prevention (CDC), NSEPs can help prevent bloodborne pathogen transmission by increasing access to sterile syringes among IDUs and enabling safe disposal of used syringes. Often, programs also provide other public health services, such as HIV testing, risk-reduction education, and referrals for substance-abuse treatment.<sup>9</sup>

In 2002, staff from the Beth Israel Medical Center in New York City and the North American Syringe Exchange Network mailed surveys asking the directors of 148 NSEPs about syringes exchanged and returned, services provided, budgets, and funding. The survey found for the first time in 8 years, the number of NSEPs, the number of localities with NSEPs, and that public funding for NSEPs decreased nationwide; however, the number of syringes exchanged and total budgets across all programs continued to increase.<sup>10</sup>

The survey identified the largest NSEPs are: Chicago Recovery Alliance (2.7 million syringes), Chicago, Illinois; San Francisco AIDS Foundation HIV Prevention Project (2.5 million), San Francisco, California; Seattle-King County Department of Public Health Needle Exchange Program, Seattle, Washington (1.0 million); Harm Reduction Institute, Indianapolis, Indiana (1.0 million); Point Defiance AIDS Project, Tacoma, Washington (0.9 million); San Diego Clean Needle Exchange Program, San Diego, California (0.9 million); Street Outreach Services, Seattle, Washington (0.8 million); Prevention Point Philadelphia, Pennsylvania (0.7 million); HIV Education and Prevention Project of Alameda, Oakland, California (0.6 million); Needle Exchange Emergency Distribution, Berkeley, California (0.5 million); and one NSEP that wanted program information kept confidential.<sup>11</sup>

Moreover, the following states receive public funding from state governments:<sup>12</sup> California, Colorado, Connecticut, Hawaii, Illinois, Massachusetts, New Mexico, New York, Oregon, Rhode Island, Vermont,

<sup>6</sup> American Association of Diabetes Educators, American Diabetes Association, American Medical Association, American Pharmaceutical Association, Association of State and Territorial Health Officials, National Alliance of State and Territorial AIDS Directors. Safe community disposal of needles and other sharps. Houston, TX: Coalition for Safe Community Needle Disposal; 2002, available at: <http://www.safeneedledisposal.org/CalltoActionItrASTHOfinal.pdf> (last viewed March 24, 2013).

<sup>7</sup> Drda B, Gomez J, Conroy R, Seid M, Michaels J. San Francisco Safe Needle Disposal Program, 1991--2001. J Am Pharm Assoc. 2002;42 (Suppl 2):S115—6, available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3036677/> (last viewed March 24, 2013).

<sup>8</sup> Santa Cruz Sentinel, Dealing with drug needles, available at: <http://www.santacruzlive.com/blogs/dmillereditor/2013/02/08/dealing-with-drug-needles/> (last viewed March 24, 2013).

<sup>9</sup> The Centers for Disease Control, MMWR Weekly, Update: Syringe Exchange Programs in US, 2002, available at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5427a1.htm> (last viewed March 24, 2013).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

and Washington. Public funding from county governments: Clark, Cowlitz, King, Skagit, Snohomish, Spokane, Tacoma, and Thurston, Washington; Alameda, Santa Clara, and Santa Cruz, California; Dane and Milwaukee, Wisconsin; Boulder, Colorado; Cook, Illinois; and Multnomah, Oregon. Public funding from city governments: Berkeley, Los Angeles, Reseda, San Francisco, and Santa Monica, California; Coupeville and Seattle, Washington; Chicago, Illinois; Milwaukee, Wisconsin; Portland, Oregon; New York, New York; and Philadelphia, Pennsylvania.

In 2011, the Beth Israel Medical Center conducted another survey, which is the most comprehensive survey of NSEPs in the U.S. to date. The survey was published in the CDC's Morbidity and Mortality Weekly Report.<sup>13</sup> The results revealed that the most frequent drug being used by participants was heroin followed by cocaine and usually the problems NSEPs encountered had to do with the lack of resources and staff shortages.<sup>14</sup>

### Florida Comprehensive Drug Abuse Prevention and Control Act

Section 893.147, F.S., regulates the use or possession of drug paraphernalia. Currently, it is unlawful for any person to use, or to possess with intent to use, drug paraphernalia:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter; or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

Any person who violates this provision is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.<sup>15</sup>

Moreover, it is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used.<sup>16</sup>

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this act; or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this act.

Any person who violates this provision is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.<sup>17</sup>

### **Effect of Proposed Changes**

The bill amends s. 381.0038, F.S., to authorize DOH to establish a 5 year needle and syringe exchange pilot program (pilot program) in Miami-Dade County. The pilot program must be administered by DOH or a designee, who may operate the pilot program at a fixed location or by using a mobile health unit. The designee may be a licensed hospital, a licensed health care clinic, a substance abuse treatment program, an HIV/AIDS service organization, or another nonprofit entity. The pilot program is to offer free, clean, and unused needles and hypodermic syringes as a means to prevent the transmission of HIV/AIDS and other blood-borne diseases among intravenous drug users and their partners.

The exchange program must:

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<sup>13</sup> North American Syringe Exchange Network, 2011 Beth Israel Survey, Results Summary, available: <http://www.nasen.org/news/2012/nov/29/2011-beth-israel-survey-results-summary/> (last viewed March 24, 2013).

<sup>14</sup> *Id.*

<sup>15</sup> For a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year or a fine not to exceed \$1,000.

<sup>16</sup> Section 893.147(2), F.S.

<sup>17</sup> For a felony of the third degree, by a term of imprisonment not exceeding 5 years or a fine not to exceed \$5,000

- Provide maximum security of the exchange site and equipment;
- Account for needles and syringes in use and in storage;
- Adopt any measure to control the use and dispersal of sterile needles and syringes; and
- Strive for a 1 sterile to 1 used exchange ratio.

Additionally, the bill requires DOH to make available: educational materials, HIV counseling and testing services, referral services targeted to education regarding HIV/AIDS and viral hepatitis transmission, and drug use prevention and treatment.

The bill provides that the possession, distribution, or exchange of needles or syringes as part of the pilot program established by DOH does not violate the Florida Comprehensive Drug Abuse Prevention and Control Act under ch. 893, F.S., or any other provision in law. However, the pilot program staff or a participant is not immune from prosecution for the redistribution of needles or syringes if acting outside of the program or if in possession of needles or syringes that are not part of the exchange program.

The bill requires the collection of data for annual and final reporting purposes, but prohibits the collection of any personal identifying information from a participant. The pilot program expires on July 1, 2018, and requires the Office of Program Policy Analysis and Government Accountability to submit a report to the Legislature that includes data on the pilot program and a recommendation on whether the pilot program should continue.

Moreover, the bill includes a severability clause.<sup>18</sup>

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 381.0038, F.S., relating to education; needle and syringe exchange program.

**Section 2.** Creates an unnumbered section to provide a severability clause.

**Section 3.** Provides that the bill takes effect July 1, 2013.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill appears to have an indeterminate negative fiscal impact on DOH to create the pilot program.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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<sup>18</sup> “Severability clause” is defined as a provision that keeps the remaining provisions of a contract or statute in force if any portion of that contract or statute is judicially declared void or unconstitutional. Courts may hold a law constitutional in one part and unconstitutional in another. Under such circumstances, a court may sever the valid portion of the law from the remainder and continue to enforce the valid portion. *See Carter v. Carter Coal Co.*, 298 U.S. 238 (1936); *Florida Hosp. Waterman, Inc. v. Buster*, 984 So.2d 478 (Fla. 2008); *Ray v. Mortham*, 742 So.2d 1276 (Fla. 1999); and *Wright v. State*, 351 So.2d 708 (Fla. 1977).

None identified.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Severability clause

Courts may hold a law constitutional in one part and unconstitutional in another. Under such circumstances, a court may sever the valid portion of the law from the remainder and continue to enforce the valid portion.<sup>19</sup> A court may not sever invalid portions of the law if doing so would negate the purpose of the law. Similarly, a court may not sever unconstitutional parts of a statute if the statute would be unworkable after the severance.<sup>20</sup>

B. RULE-MAKING AUTHORITY:

The bill provides DOH the authority to promulgate rules to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On lines 43-47, the bill provides an exemption to the Florida Comprehensive Drug Abuse Prevention and Control Act (act) pursuant to ch. 893, F.S., however, the provision is not cross-referenced within the act.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2013, the Health Quality Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Amends the statewide needle and syringe exchange program to make it a 5 year pilot program in Miami-Dade County.
- Prohibits state funds from being used to operate the program.
- Requires certain data collection, but clarifies that personal identifying information is not to be collected.
- Provides DOH rulemaking authority.

This analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.

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<sup>19</sup> *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936); *Florida Hosp. Waterman, Inc. v. Buster*, 984 So.2d 478 (Fla. 2008); *Ray v. Mortham*, 742 So.2d 1276 (Fla. 1999); and *Wright v. State*, 351 So.2d 708 (Fla. 1977).

<sup>20</sup> *State ex rel. Boyd v. Green*, 355 So.2d 789 (Fla. 1978).