Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	CS/CS/SB 380				
INTRODUCER:	Community Affairs Committee; Health Policy Committee; and Senators Bean and Brandes				
SUBJECT:	Obstetrical Services at Hospitals				
DATE:	February 4, 2014	REVISED:			

	ANALYST	STAFF DIRECTOR	REFERENCE		ACTION
1.	Looke	Stovall	HP	**Fav/CS**	
2.	White	Yeatman	CA	**Fav/CS**	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I.   Summary:

CS/CS/SB 380 requires a hospital to notify obstetrical physicians at least 120 days before closing its obstetrical department or ceasing to provide obstetrical services.

The bill repeals s. 383.336, F.S., which designates certain hospitals as "provider hospitals," requires physicians in those hospitals to follow practice parameters when performing cesarean sections paid for by the state, and requires review of those cesarean sections by internal peer review boards.

The bill also prohibits health care facilities from employing or contracting with surgical technologists or surgical first assistants unless they meet certain educational and certification requirements, with certain exceptions.

II.   Present Situation:

Obstetrical Services

Licensure Requirements for Obstetrical Services in Hospitals

As a requirement of licensure, hospitals report the emergency services they will provide on the application form to the Agency for Health Care Administration (AHCA).[1] These services, such as obstetrics, are then listed on the hospital's license,[2] and must be displayed conspicuously.[3] Hospitals must notify AHCA of any change of service that affects information on their license by submitting a revised licensure application, between 60 and 120 days in advance of the change.[4] The list of services is also used for the inventory of hospital emergency services maintained by AHCA.[5] According to the AHCA website, there are currently 139 hospitals in Florida that are licensed to offer emergency obstetrical services.[6]

Closure of an Obstetrical Department in Bartow, Florida

In June of 2007 Bartow Regional Medical Center in Polk County announced to patients and physicians that it would close its obstetrics department at the end of July of the same year.[7] Although many obstetrical physicians could continue to see patients in their offices, they would no longer be able to deliver babies at the hospital.[8] Physicians and the local community protested the short timeframe for ceasing to offer obstetrical services. According to the Florida Medical Association and several physicians who worked at the hospital, the short notice "endangered pregnant women who [were] too close to delivery for obstetricians at other hospitals to want them as patients."[9]

Cesarean Births at Provider Hospitals

A cesarean section is a surgical procedure performed when a mother is not able to safely deliver vaginally. Instead, a baby is delivered through an incision in the mother's abdomen and uterus. Florida's rate of Cesarean deliveries increased from 22.8 percent in 1996 to 40.1 percent in 2011, which was consistently greater than the national average by several percent.[10] Physicians avoid performing unnecessary cesarean sections, because cesarean births can result in babies being born with respiratory problems, and can put pregnant women at risk of medical complications, such as lacerations, infections, blood clots, and bleeding during subsequent pregnancies.[11]

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[1] AHCA, *Health Care Licensing Application: Hospitals*, at 13,
http://ahca.myflorida.com/MCHQ/Corebill/Hospital/Application_Hosptials_Recommend.pdf (last visited Jan. 23, 2014).
[2] Section 408.806(4)(b), F.S.
[3] Section 408.804, F.S.
[4] Section 408.806(2)(c), F.S.
[5] *See* s. 395.1041(2), F.S.
[6] AHCA, *Facility/Provider Locator*, http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx (report generated Jan. 23, 2014).
[7] Jennifer Starling, *Community Unites Against OB* Closure, THE POLK COUNTY DEMOCRAT, July 12, 2007, *available at* http://ufdc.ufl.edu/UF00028292/00258/1x?vo=12 (last visited Dec. 20, 2013).
[8] Robin Adams, *Bartow Hospital Plan Criticized*, THE LEDGER, July 11, 2007, *available at* http://www.theledger.com/article/20070711/NEWS/707110433?p=1&tc=pg&tc=ar (last visited Dec. 20, 2013).
[9] Id.
[10] AHCA, *Statistical Brief: Demographic Trends in Florida Cesarean Delivery, 1996-2010*, Issue No. 15 (September 2013); Florida Department of Health, *PRAMS Fact Sheet: Prevalence of Cesarean Delivery Among Florida Mothers* (2011).
[11] Id.

Presently s. 383.336, F.S., defines the term "provider hospital" [12] and creates certain requirements related to cesarean deliveries for such hospitals. Physicians in provider hospitals are required to comply with practice parameters designed to reduce the number of unnecessary cesarean sections performed within the hospital.[13] These parameters must be followed by physicians when performing cesarean sections partially or fully paid for by the state. Section 383.336, F.S., also requires provider hospitals to establish a peer review board consisting of obstetric physicians and other persons with credentials to perform cesarean sections within the hospital. The board is required to review, on a monthly basis, all cesarean sections performed within the hospital that were partially or fully funded by the state.

These provisions are not currently implemented. Department of Health (DOH) rules regarding provider hospitals were repealed, effective July 1, 2013.[14]

Surgical Technologists and Assistants[15]

Role of Surgical Technologists

Surgical technologists, also called scrubs or operating room technicians,[16] work under the supervision of surgeons to ensure that the operating room environment is safe, that equipment functions properly, and that the operative procedure is conducted under conditions that maximize patient safety. Surgical technologists are trained in aseptic technique and combine the knowledge of human anatomy, surgical procedures, and implementation tools and technologies, to facilitate a physician's performance of invasive therapeutic and diagnostic procedures.[17] Currently, no statutes or rules are in place to regulate the practice of surgical technology in Florida.

The Association of Surgical Technology (AST) is the oldest professional organization for surgical technologists and surgical assistants. The AST was established in 1969 by members of the American College of Surgeons, the American Hospital Association, and the Association of Perioperative Registered Nurses to ensure that surgical technologists and surgical assistants have the knowledge and skills to administer patient care of the highest quality. Some of the AST's duties include creating and administering national certification procedures for surgical technologists, providing continuing education for such certification, working with national accrediting committees to establish standards for training programs, and advocating the interests of surgical technologists to government entities.[18]

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[12] A provider hospital is a hospital in which 30 or more births occur annually that are paid for, partly or fully, by state funds or federal funds administered by the state. Section 383.336 (1), F.S.

[13] Section 383.336(2), F.S., provides these parameters be established by the Office of the State Surgeon General in consultation with the Board of Medicine and the Florida Obstetric and Gynecologic Society, and directs these entities to consider the feasibility of attempting a vaginal delivery, dystocia, fetal distress, and fetal malposition.

[14] Chapter 2012-31, ss. 9-10, Laws of Fla.

[15] Information contained in this portion of this bill analysis is from the analysis for CS/CS/SB 360 by the Senate Appropriations Subcommittee on Health and Human Services (Apr. 17, 2013) (last visited Feb. 4, 2014).

[16] United States Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 Edition: Surgical Technologists, available at* http://www.bls.gov/ooh/healthcare/surgical-technologists.htm (last visited Feb. 4, 2014).

[17] Association of Surgical Technology, *Job Description: Surgical Technologist, available at* http://www.ast.org/professionals/documents/2009_Surgical_Technologist_Job_Description_10.6_Final.pdf (last visited Feb. 4, 2014).

[18] AST, *About Us, available at* http://www.ast.org/aboutus/about_ast.aspx (last visited Feb. 4, 2014).

The AST has published national guidelines for the scope of practice of surgical technologists.[19] It designates three different categories of technologist, each with different functions. A scrub technologist maintains sterility and handles necessary instruments, supplies, and equipment during a surgical procedure. A circulating technologist assists the circulating nurse in obtaining additional instruments, supplies, and equipment during the procedure. A second assisting technologist maintains sterility and assists the surgeon and the surgeon's first assistant during the procedure. More detailed duties are:

Scrub Technologist
- Check supplies and equipment needed for the surgical procedure;
- Scrub, gown, and glove;
- Set up the sterile table with instruments, supplies, equipment, and medications needed for the procedure;
- Perform appropriate counts with the circulator prior to the operation and before the incision is closed;
- Gown and glove the surgeon and assistants;
- Help in draping the sterile field;
- Pass instruments to the surgeon during the procedure;
- Prepare sterile dressings;
- Clean and prepare instruments for terminal sterilization;
- Assist other members of the surgical team with terminal cleaning of the operating room; and
- Assist in preparing the operating room for the next patient.

Circulating Technologist
- Obtain appropriate sterile and unsterile items needed for the procedure;
- Open sterile supplies;
- Check the patient's chart, identify the patient, verify the surgery to be performed with consent forms, and bring the patient to the assigned operating room;
- Transfer the patient to the operating table;
- Assess the patient's comfort and safety and provide verbal and tactile reassurance;
- Assist anesthesia personnel;
- Position the patient, using appropriate equipment;
- Apply electrosurgical grounding pads, tourniquets, monitors, etc., before the procedure begins;
- Prepare the patient's skin prior to draping by the surgical team;
- Perform appropriate counts with the scrub nurse or technologist prior to the operation and before the incision is closed;
- Anticipate additional supplies needed during the procedure;
- Keep accurate records throughout the procedure;
- Properly care for specimens;
- Secure dressings after incision closure;
- Help transport the patient to the recovery room; and

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[19] AST, s*upra* note 17.

- Assist in cleaning the operating room and in preparing for the next patient.

Second Assisting Technologist
- Hold retractors or instruments as directed by the surgeon;
- Sponge or suction the operative site;
- Apply electrocautery to clamps on bleeding blood vessels;
- Cut suture material as directed by the surgeon;
- Connect drains to suction apparatus; and
- Apply dressings to the closed wound.

Education and Certification

Surgical technologists must have a high school diploma or equivalent and must complete a training program accredited by the Commission on Accreditation of Allied Health Education Programs or the Accrediting Bureau of Health Education Schools. The training program includes classroom education in anatomy, microbiology, pharmacology, ethics, medical terminology, and other topics, as well as supervised clinical experience. Surgical technologist training lasts from 9 to 24 months and culminates in a certificate, diploma, or associate's degree.

Professional certification is not required for employment as a surgical technologist, although most employers prefer to hire only certified individuals.[20] Professional certification is available through the AST as a Certified Surgical Technologist (CST).[21] Requirements for CST designation include graduation from an accredited surgical technology program (with special exceptions for military-trained technologists), payment of fees, and passage of an examination offered by the National Board of Surgical Technology and Surgical Assisting (NBSTSA).[22] The CST certification is valid for four years. To renew, an individual must either retake and pass the NBSTSA examination required for initial certification or complete 60 hours of continuing education. A renewal fee is also required.[23]

National certification may also be obtained from the National Center for Competency Testing (NCCT),[24] which awards the "Tech in Surgery-Certified (NCCT)" designation. Applicants must graduate from an NCCT-approved surgical technology program, complete required practical experience, and pass the organization's certification exam. Applicants who have not graduated from an approved surgical technology program may also qualify for certification if they have accrued some amount of practical experience, which varies depending on the situation. Passage of the examination and payment of fees is still required.[25] The NCCT certification must be

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[20] See s*upra* note 17.
[21] *Id.*
[22] NBSTSA, *CST Examinations*, http://nbstsa.org/examinations-cst.html (last visited Feb. 4, 2014).
[23] NBSTSA, *Renewal Options,* http://nbstsa.org/renewal/index.html (last visited Feb. 4, 2014).
[24] The NCCT is an independent entity which provides competency examinations and certifications for a variety of allied health professions, including medical assistants, phlebotomy technicians, patient care technicians, surgical technologists, and medical office assistants. It is not a professional organization. NCCT, *National Center for Competency Testing* (*NCCT),* http://www.ncctinc.com/General/ (last visited Feb. 4, 2014).
[25] NCCT, *Certification Information*, http://www.ncctinc.com/Certifications/ (last visited Feb. 4, 2014).

renewed annually by completing 14 hours of continuing education and paying a recertification fee.[26]

As of April 2013, there were approximately 4,800 surgical technologists employed in Florida. Of these, more than 3,400 were CSTs, and a few dozen held the Tech in Surgery-Certified (NCCT) designation.[27]

Role of Surgical First Assistants

Surgical assistants provide aid in exposure, hemostasis, closure, and other intraoperative technical functions under the direct supervision of surgeons to help carry out safe operations with optimal results for patients. In addition to intraoperative duties, surgical assistants also perform preoperative and postoperative duties to better facilitate proper patient care.[28] Surgical first assistants provide primary assistance to the primary surgeon, must be listed on the operative record as first assistants, and cannot be involved in any other role during the procedure.[29] The primary professional organizations for surgical assistants are the Association of Surgical Technology (AST) and the National Surgical Assistant Association (NSAA). The NSAA was formed by surgical assistants in 1983 and was the nation's first organization to provide standards for competency, professionalism, and scope of practice in the field.[30]

Duties within the scope of practice of a surgical assistant include positioning the patient; providing visualization of the operative site, including appropriate placement of retractors, suctioning and sponging, and manipulation of suture materials; assisting with hemostasis; participating in volume replacement or autotransfusion techniques, as appropriate; assisting with wound closure, including administration of sutures and subcutaneous injection of local anesthetics; selecting and applying wound dressings; and providing assistance in securing drainage systems to tissue.[31] Surgical assistants must be familiar with operating room procedures and able to anticipate the needs of the surgeon.[32]

Surgical First Assistants in Statute

Registered nurses licensed under ch. 464, F.S., may serve as surgical first assistants if they are certified in perioperative nursing through a year-long training program fulfilling certain conditions. Such nurses may be reimbursed by insurance companies for their first assistant services at a rate not less than 80 percent of what a physician would be paid for the same services.[33]

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[26] NCCT, *Recertification/CE*, http://www.ncctinc.com/CE/ (last visited Feb. 4, 2014).

[27] Email correspondence with the Florida State Assembly of the Association of Surgical Technologists. A copy of this correspondence is on file with the Senate Health Policy Committee.

[28] Association of Surgical Technologists, *Job Description: Surgical Assistant*, available at: http://www.ast.org/professionals/documents/2011_%20Surgical%20Assistant_Job_Description_4.5.pdf (last visited Feb. 4, 2014).

[29] American Board of Surgical Assistants, *Definitions*, http://www.absa.net/definitions.php (last visited Feb. 4, 2014).

[30] NSAA, *Welcome*, http://www.nsaa.net/index.php (last visited Feb. 4, 2014).

[31] See s*upra* note 28.

[32] NSAA, *Scope of Practice*, http://www.nsaa.net/scope_of_practice.php (last visited Feb. 4, 2014).

[33] Sections 464.027, 409.906(21), F.S.

Physician assistants may also be reimbursed by insurance companies for surgical first assistant services if they act as substitutes for physicians who would have performed the same services.[34]

National Certification of Surgical First Assistants

AST: Certified Surgical First Assistant
An applicant for the Certified Surgical First Assistant (CSFA) designation must fulfill at least one of the following:

- Be a graduate of a surgical assistant program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP);
- Hold current certification as a Certified Surgical Technologist from the AST, have participated in at least 350 cases within the last four years, and have completed at least two full years of surgical first assistant experience; or
- Hold current surgical assistant certification from the NSAA or the American Board of Surgical Assistants (ABSA), have completed 50 hours of AST-approved continuing education within the last two years, show proof of operative case experience, and have at least an associate's degree.

Eligible applicants may register to take the CSFA exam offered by the National Board of Surgical Technology and Surgical Assisting (NBSTSA).[35] The NBSTSA was previously known as the Liaison Council on Certification for the Surgical Technologist (LCCST). After passage of the exam and payment of $290 in fees, an applicant may be certified.[36]

The CSFA certification must be renewed every four years, either by retaking and passing the initial certification examination or completing 75 hours of continuing education approved by the AST. Recertification by examination costs $499.[37] Recertification by continuing education costs $6 per credit hour for AST members and $400 for non-members.[38]

More than 2,100 people held CSFA certification, as of April 2013.[39]

NSAA: Certified Surgical Assistant
Applicants for the Certified Surgical Assistant (CSA) designation must be graduates of approved surgical assistant training programs or provide documentation of 2,250 hours of assisting experience, along with several letters of reference from supervising surgeons. Applicants must also pass a multiple-choice examination offered by the NSAA which covers subjects such as anatomy, medical terminology, technical surgical skills, sterile technique, and anesthesia, and pay $400 in fees. Discounts apply for recent graduates and military personnel, and certification by endorsement is available to nurses, physician assistants, and other practitioners under certain conditions.

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[34] Section 627.419(6), F.S.
[35] Edu-Search, *Surgical Technology Certification*, http://www.surgicaltechnologists.net/education/certification (last visited Feb. 4, 2014).
[36] NBSTSA, *CSFA Examination,* http://nbstsa.org/examinations-csfa.html (last visited Feb. 4, 2014).
[37] NBSTSA, *Renewal Options*, http://nbstsa.org/renewal/index.html (last visited Feb. 4, 2014).
[38] AST, *Certification*, http://www.ast.org/membership/certification.aspx (last visited Feb. 4, 2014).
[39] Telephone conversation with NBSTSA staff.

The CSAs must be recertified every two years by completing 50 hours of approved continuing education or retaking and passing the initial certification exam. Recertification fees for NSAA non-members are $700 if via continuing education and $900 if via reexamination. Fees for NSAA members are $100 if via continuing education or reexamination.[40]

More than 1,300 people held CSA certification nationally, as of April 2013.[41]

ABSA: Surgical Assistant-Certified
To be eligible for ABSA certification, an applicant must hold at least an associate's degree with a "C" grade or higher in specified college-level courses, have completed an ABSA- or CAAHEP-approved surgical assistant training program, and have passed the ABSA Surgical Assistant-Certified (SA-C) examination. The examination consists of both multiple-choice and practical components and is offered four times per year in Miami, Chicago, New Jersey, and Houston. Payment of a $710 fee is also required.

The SA-C certification must be renewed biennially by retaking and passing the initial certification exam or by completing certain professional development activities. Such activities include reading professional journals, presenting at a hospital seminar, publishing clinical research, and attending medical conferences. Each certified individual must also document participation as a surgical first assistant in either 400 surgical cases or 1,500 procedure hours and hold current certification in cardiopulmonary resuscitation (CPR), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS). Recertification via examination costs $180 while recertification via professional development costs $100.[42]

More than 1,400 people held active SA-C certification, as of April 2013.[43]

III.   **Effect of Proposed Changes:**

Section 1 of the bill repeals s. 383.336, F.S., relating to provider hospitals.

Section 2 of the bill amends s. 395.0191, F.S., to add a new subsection concerning surgical technologists and surgical assistants. The bill provides definitions for "certified surgical assistant," "certified surgical technologist," "surgeon," "surgical assistant," and "surgical technologist."

The bill states that a facility may not employ or contract with any person to perform the duties of a surgical assistant or surgical technologist unless that person is a certified surgical assistant or certified surgical technologist. These employment prohibitions do not apply to:

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[40] NSAA, *FAQs*, http://nsaa.net/faq.php (last visited Feb. 4, 2014); NSAA, *Certification*, http://www.nsaa.net/requirements.php (last visited Feb. 4, 2014).
[41] Telephone conversation with NSAA staff.
[42] ABSA, *Candidate Information Booklet and Certification Examination Review Guide 2011-2012*, *available at* http://www.absa.net/pdf/ABSA_Guide_2011-2012.pdf (last visited Feb. 4, 2014).
[43] ABSA, *History and Statistics*, http://www.absa.net/statistics.php (last visited Feb. 4, 2014).

- A person employed or contracted to perform the duties of a surgical technologist or surgical assistant at any time between January 1, 2014, and December 31, 2014;
- Any health care practitioner as defined in s. 456.001, F.S., or any student, if the duties performed fall within the scope of the practitioner's or the student's training and practice; or
- Any person enrolled in a surgical technology or surgical assisting training program accredited by CAAHEP, the Accrediting Bureau of Health Education Schools (ABHES), or another accrediting body recognized by the United States Department of Education. Such a person may practice for one year after completion of a training program before he or she is required to be certified.

Section 3 of the bill amends s. 395.1051, F.S., to require hospitals to give at least a 120 day advanced notice to each obstetrical physician with clinical privileges at that hospital if the hospital intends to close its obstetrical department or cease providing obstetrical services unless the hospital can demonstrate that it was impossible to do so within this timeframe.

Although specific penalties are not listed for violating the notification provisions, the AHCA has the authority to fine a health care facility up to $500 for a non-designated violation.[44] Such non-designated violations include violating any provision of that health care facility's authorizing statute.[45]

Section 4 of the bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

People wishing to practice as surgical technologists or surgical first assistants in Florida would be required to pay several hundred dollars in fees required to maintain national certification, unless they fall under one of the bill's exceptions.

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[44] A non-designated violation is any violation that is not designated as class I-IV. See s. 408.813(3), F.S.
[45] Section 408.813(3)(b), F.S.

B.   Private Sector Impact:

The bill may have a positive fiscal impact for obstetrical physicians who receive this notice to allow them adequate time to ensure that they obtain privileges at another hospital. Advanced notice will also allow the patient to adequately plan for delivery at another location. The bill may have a negative fiscal impact on hospitals that fail to comply due to potential administrative fines.

Surgical technologists and surgical first assistants who do not meet any of the eligibility requirements in the bill will be unable to practice these occupations at Florida health care facilities. Businesses that offer continuing education courses and examination preparatory courses to surgical technologists and surgical first assistants are likely to receive more business as a result of the bill.

C.   Government Sector Impact:

None.

VI.   Technical Deficiencies:

None.

VII.   Related Issues:

None.

VIII.   Statutes Affected:

This bill amends the following sections of the Florida Statutes: 395.1051, 395.0191.

This bill repeals section 383.336 of the Florida Statutes.

IX.   Additional Information:

A.   Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Community Affairs on February 4, 2014:
Amends the bill to prohibit health care facilities from employing or contracting with surgical technologists or surgical first assistants unless they meet certain educational and certification requirements, with certain exceptions.

Also, removes the provision that a hospital must provide notice as soon as practicable when ceasing to provide obstetrical services, if notice cannot be provided at least 120 days in advance.

CS by Health Policy on January 8, 2014:
Amends the bill to repeal s. 383.336, F.S., related to provider hospitals; to delete

language granting rulemaking authority to the DOH; and to require a hospital to provide notice as soon as practicable if it is impossible for a hospital to provide 120 days' notice.

B. Amendments:

None.