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 Committee on Fiscal Policy

BILL:	SB 1040
INTRODUCER:	Senator Braynon
SUBJECT:	Infectious Disease Elimination Pilot Program
DATE:	April 14, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harper	Stovall	HP	**Favorable**
2.	Brown	Pigott	AHS	**Recommend: Favorable**
3.	Pace	Hrdlicka	FP	**Favorable**

I. Summary:

SB 1040 creates the Miami-Dade Infectious Disease Elimination Act (IDEA), which authorizes the University of Miami and its affiliates to establish a sterile needle and syringe exchange pilot program in Miami-Dade County. The bill prohibits state funds from being used to operate the pilot program and instead requires the program to be funded through private grants and donations. The bill provides that the program is not a violation of law prohibiting possession of drug paraphernalia. The bill directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to submit a report and recommendations regarding the pilot program to the Legislature by January 1, 2020.

The bill has no fiscal impact.

II. Present Situation:

Intravenous Drug Use in Florida

The majority of Florida counties with the highest rates of persons living with HIV/AIDS (PLWHA), and with a high injection-drug-user (IDU)-associated risk, in 2013 were in the southeast or central parts of the state.[1] The Department of Health (DOH) reports that 50 to 90 percent of HIV-infected IDUs are also co-infected with Hepatitis C Virus.[2] The chart below

[1] Department of Health, *HIV Infection Among Those with an Injection Drug Use-Associated Risk, Florida, 2014* (slide 13) (revised Jan. 29, 2015), *available at* http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/_documents/hiv-aids-slide-sets/2014/idu-2014.pdf (last visited April 13, 2015).

[2] Department of Health, *HIV Disease and Hepatitis C Virus (HCV) Co-Infection – Florida, 2013* (slide 6)(Revised Sept. 3, 2014), available at http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/_documents/hiv-aids-slide-sets/2013/hepc-hiv-2013c.pdf (last visited April 13, 2015).

displays data from 2013 of the 11 Florida counties with the highest incidence of PLWHA with an IDU-associated risk.[3]

County	Total PLWHA Cases	Total IDU	Percent IDU
Miami-Dade	26,445	3,240	12%
Broward	17,214	2,132	12%
Palm Beach	7,964	1,481	19%
Orange	7,508	1,304	17%
Hillsborough	6,262	1,198	19%
Duval	5,584	999	18%
Pinellas	3,675	728	20%
Lee	1,777	310	18%
St. Lucie	1,550	309	20%
Volusia	1,408	340	24%
Brevard	1,300	273	21%
STATE TOTAL	101,977	17,368	17%

Intravenous Drug Use in Miami-Dade County

In a 2011 study, researchers from the University of Miami estimated that there are more than 10,000 IDUs in Miami and that one in five of these IDUs are HIV positive while one in three are Hepatitis C Virus positive.[4] The researchers also found that cities without needle and syringe exchange programs are 34 times more likely to have used and disposed syringes in a public locations relative to cities that do have exchange programs.

Currently, the city of Miami does not have a needle and syringe exchange program.

Needle and Syringe Exchange Programs

In the mid-1980s, the National Institute on Drug Abuse (NIDA) undertook a research program to develop, implement, and evaluate the effectiveness of intervention strategies to reduce risk behaviors and prevent the spread of HIV/AIDS, particularly among IDUs, their sexual partners, and offspring. The studies found that comprehensive strategies, in the absence of a vaccine or, cure for AIDS, are the most cost effective and reliable approaches to prevent new blood-borne infections. The strategies NIDA recommends are community-based outreach, drug abuse treatment, and sterile syringe access programs, including needle and syringe exchange programs (NSEPs). In general, these strategies are referred to as "harm reduction."[5]

[3] *Supra* note 1. Percent IDU adjusted to conform to previous data charts. County total excludes Department of Corrections cases; state total includes such cases and data from all 67 counties.
[4] Hansel E. Tookes, et al. "A comparison of syringe disposal practices among injection drug users in a city with versus a city without needle and syringe programs." Drug and Alcohol Dependence, June 2012, Vol. 123, Issue 1, pp. 255-259, *available at* http://www.ncbi.nlm.nih.gov/pubmed/22209091 (last visited April 13, 2015).
[5] National Institute of Drug Abuse, National Institutes of Health, U.S. Department of Health and Human Services, *Principles of HIV Prevention in Drug-Using Populations: A Research-Based Guide* (March 2002), *available at* http://www.nhts.net/media/Principles%20of%20HIV%20Prevention%20(17).pdf (last visited April 13, 2015).

Needle and syringe exchange programs provide free sterile needles and syringe units and collect used needles and syringes from IDUs to reduce transmission of blood-borne pathogens, including HIV, Hepatitis B virus, and Hepatitis C virus (HCV). In addition, the programs help to:

- Increase the number of drug users who enter and remain in available treatment programs;
- Disseminate HIV risk reduction information and referrals for HIV testing and counseling and drug treatment;
- Reduce injection frequency and needle-sharing behaviors;
- Reduce the number of contaminated syringes in circulation in a community; and
- Increase the availability of sterile needles, thereby reducing the risk that new infections will spread.[6]

The first sanctioned NSEP in the world began in Amsterdam, the Netherlands, in 1984. The first sanctioned program to operate in North America originated in Tacoma, Washington, in 1988. Programs have since developed throughout the United States.[7] As of June 2014, there are 194 NSEPs in 33 states, the District of Columbia, the Commonwealth of Puerto Rico, and the Indian Nations.[8]

Federal Ban on Funding Needle and Syringe Exchange Programs

In 1988, Congress enacted an initial ban on the use of federal funds for NSEPs which remained in place until 2009. In 2009, Congress passed the 2010 Consolidated Appropriations Act, which removed the ban on federal funding of NSEPs. In July 2010, the U.S. Department of Health and Human Services issued implementation guidelines for programs interested in using federal dollars for NSEPs.[9]

However, on December 23, 2011, President Barack Obama signed the 2012 omnibus spending bill that reinstated the ban on the use of federal funds for NSEPs, which reversed the 111th Congress's 2009 decision to allow federal funds to be used for NSEPs.[10] The ban on federal funding for NSEPs remains in effect.

Florida Comprehensive Drug Abuse Prevention and Control Act

In Florida, the term "drug paraphernalia" is defined as all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing,

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[6] *Id*. at 18. *See also* World Health Organization, *Effectiveness of Sterile Needle and Syringe Programming in Reducing HIV/AIDS Among Injecting Drug Users,* (2004) 28 – 29, *available at* http://www.who.int/hiv/pub/idu/pubidu/en/ (last visited April 13, 2015).

[7] Sandra D. Lane, R.N., Ph.D., M.P.H., *Needle Exchange: A Brief History, a Publication from The Kaiser Forums*, *available at* http://hpcpsdi.rutgers.edu/facilitator/SAP/downloads/articles%20and%20data/History+of+Needle+Exchange.pdf (last visited April 13, 2015).

[8] North American Syringe Exchange Network, *Syringe Services Program Coverage in the United States* (June 2014), *available at* http://www.amfar.org/uploadedFiles/_amfarorg/On_the_Hill/2014-SSP-Map-7-17-14.pdf (last visited April 13, 2015).

[9] Matt Fisher, Center for Strategic and International Studies, *A History of the Ban on Federal Funding for Syringe Exchange Programs*, (Feb. 6, 2012), *available at* http://www.smartglobalhealth.org/blog/entry/a-history-of-the-ban-on-federal-funding-for-syringe-exchange-programs/ (last visited April 13, 2015).

[10] *Id*.

processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body, a controlled substance in violation of ch. 893, F.S., or s. 877.111, F.S.[11]

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; or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

Any person who violates this provision commits a first degree misdemeanor.[12]

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:

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

Any person who violates this provision commits a third degree felony.[13]

A court, jury, or other authority, when determining in a criminal case whether an object constitutes drug paraphernalia, must consider specified facts surrounding the connection between the item and the individual arrested for possessing drug paraphernalia. A court or jury is required to consider a number of factors in determining whether an object is drug paraphernalia, such as proximity of the object in time and space to a controlled substance, the existence of residue of controlled substances on the object, and expert testimony concerning its use.[14]

Federal Law Exemption

Any person authorized by local, state, or federal law to manufacture, possess, or distribute drug paraphernalia is exempt from the federal drug paraphernalia statute.[15]

III. Effect of Proposed Changes:

Section 1 titles the bill as the "Miami-Dade Infectious Disease Elimination Act (IDEA)."

[11] Section 893.145, F.S.
[12] A first degree misdemeanor is punishable by up to 1-year imprisonment in a county jail, a fine of up to $1,000, or both. *See* ss. 775.082 and 775.083, F.S.
[13] A third degree felony is punishable by up to 5 years in state prison, a fine not to exceed $5,000, or both. *See* ss. 775.082 and 775.083, F.S.
[14] Section 893.146, F.S.
[15] 21 U.S.C. § 863(f)(1).

Section 2 amends s. 381.0038, F.S., to create a sterile needle and syringe exchange pilot program in Miami-Dade County.

The bill authorizes the University of Miami and its affiliates to establish a single sterile needle and syringe exchange pilot program in Miami-Dade County. The pilot program may operate at a fixed location or through a mobile health unit. The pilot program is designed to offer the free exchange of clean, unused needles and hypodermic syringes for used needles and hypodermic syringes as a means to prevent the transmission of HIV, AIDS, viral hepatitis, or other blood-borne diseases.

The pilot program must provide for maximum security of exchange sites and equipment, including:
- An accounting of the number of needles and syringes in use;
- The number of needles and syringes in storage;
- Safe disposal of returned needles; and
- Any other measure required to control the use and dispersal of needles and syringes.

The pilot program must operate a one-to-one exchange, whereby participants receive one sterile needle and syringe unit in exchange for each used one. The pilot program must also make available:
- Educational materials;
- HIV and viral hepatitis counseling and testing;
- Referral services to provide education regarding HIV, AIDS, and viral hepatitis transmission; and
- Drug-abuse prevention and treatment counseling and referral services.

The bill provides that the possession, distribution, or exchange of needles or syringes as part of the pilot program is not a violation of any law. However, a pilot program staff member, volunteer, or participant is not immune for criminal prosecution for:
- Possession of needles or syringes that are not a part of the pilot program; or
- Redistribution of needles or syringes in any form, if acting outside the pilot program.

The pilot program must collect data for annual and final reporting purposes, including information on:
- The number of participants served;
- The number of needles and syringes exchanged and distributed;
- The demographic profiles of the participants served;
- The number of participants entering drug counseling and treatment;
- The number of participants receiving HIV, AIDS, or viral hepatitis testing; and
- Other data deemed necessary for the pilot program.

Personal identifying information may not be collected from a participant for any purpose.

The bill prohibits state funds from being used to operate the pilot program and that the pilot program must be funded through grants and donations from private resources and funds.

The pilot program expires July 1, 2020. The bill directs the OPPAGA to submit a report to the President of the Senate and the Speaker of the House of Representatives on January 1, 2020. The report must include:

- The data collection requirements established in the bill;
- The rates of HIV, AIDS, viral hepatitis, and other blood-borne diseases before the pilot program began and every subsequent year thereafter; and
- A recommendation on whether to continue the pilot program.

The bill also revises current law to clarify that the DOH education program about the threat of AIDS must use all forms of media with emphasis on materials that can be used in the regular course of business for businesses, schools, and health care providers.

Section 3 provides a severability clause.

Section 4 provides an effective date of July 1, 2015.

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:

None.

B. Private Sector Impact:

Under SB 1040, the University of Miami will be responsible for securing funding through grants and donations from private sources.

C. Government Sector Impact:

The OPPAGA will incur additional workload demands to submit the report required under the bill.

The pilot program may reduce state and local government expenditures for the treatment of blood-borne diseases associated with intravenous drug use.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires the pilot program to collect data and provide and annual and final report but it is unclear to whom these reports are submitted. The bill also requires data collection, including "other data deemed necessary for the pilot program." The bill does not provide guidance as to standards under which data may be deemed necessary or which entity may deem data to be necessary.

The OPPAGA is required to submit a report to the Legislature on the data collection requirements. It is unclear if the OPPAGA is evaluating the data collection requirements or the data collected.

VIII. Statutes Affected:

This bill substantially amends section 381.0038 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.)

None.

B. Amendments:

None.