HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 233 Abortion Clinics
SPONSOR(S): Health Innovation Subcommittee, Trujillo
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	9 Y, 4 N, As CS	McElroy	Poche
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

CS/HB 233 amends s. 390.012(3), F.S., to require the Agency for Health Care Administration (AHCA), by September 1, 2017, to adopt rules establishing minimum standards for all abortion clinics that perform or claim to perform abortions after the first trimester which are equivalent to or more stringent than minimum standards applicable to ambulatory surgical centers. In the absence of a corresponding ambulatory surgical center standard, the bill requires that the existing abortion clinic standard remains in effect.

The bill also requires AHCA to adopt rules requiring abortion clinics that perform or claim to perform abortions after the first trimester to meet the Florida Building Code and Florida Fire Prevention Code requirements applicable to ambulatory surgical centers. This provision only applies to abortion clinics seeking new licensure or existing clinics undergoing significant renovation.

The bill appears to have a negative fiscal impact on state government and does not appear to have a fiscal impact on local government.

The bill provides an effective date of January 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Federal Case Law on Abortion

Right to Abortion

In 1973, the foundation of modern abortion jurisprudence, *Roe v. Wade*[1], was decided by the U.S. Supreme Court. Using strict scrutiny, the Court determined that a woman's right to an abortion is part of a fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. Further, the Court reasoned that state regulation limiting the exercise of this right must be justified by a compelling state interest, and must be narrowly drawn.[2] In 1992, the fundamental holding of *Roe* was upheld by the U.S. Supreme Court in *Planned Parenthood v. Casey*.[3]

The Viability Standard

In *Roe v. Wade*, the U.S. Supreme Court established a rigid trimester framework dictating when, if ever, states can regulate abortion.[4] The Court held that states could not regulate abortions during the first trimester of pregnancy. With respect to the second trimester, the Court held that states could only enact regulations aimed at protecting the mother's health, not the fetus's life. Therefore, no ban on abortions is permitted during the second trimester. The state's interest in the life of the fetus becomes sufficiently compelling only at the beginning of the third trimester, allowing it to prohibit abortions. Even then, the Court requires states to permit an abortion in circumstances necessary to preserve the health or life of the mother.[5]

The current viability standard is set forth in *Planned Parenthood v. Casey*.[6] Recognizing that medical advancements in neonatal care can advance viability to a point somewhat earlier than the third trimester, the U.S. Supreme Court rejected the trimester framework and, instead, limited the states' ability to regulate abortion pre-viability. Thus, while upholding the underlying holding in *Roe*, which authorizes states to "[r]egulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother[,]"[7] the Court determined that the line for this authority should be drawn at "viability," because "….. there may be some medical developments that affect the precise point of viability…but this is an imprecision with tolerable limits given that the medical community and all those who must apply its discoveries will continue to explore the matter."[8] Furthermore, the Court recognized that "in some broad sense, it might be said that a woman who fails to act before viability has consented to the State's intervention on behalf of the developing child."[9]

[1] *Roe v. Wade*, 410 U.S. 113 (1973).
[2] Id.
[3] *Casey*, 505 U.S. 833 (1992).
[4] *Roe*, 410 U.S. 113 (1973).
[5] Id. at 164-165.
[6] *Supra,* FN 3.
[7] *See Roe*, 410 U.S. at 164-65.
[8] *See Casey, 505 U.S.* at 870.
[9] Id.

Undue Burden

In *Planned Parenthood v. Casey*, the U.S. Supreme Court established the undue burden standard for determining whether a law places an impermissible obstacle to a woman's right to an abortion. The Court held that health regulations which impose undue burdens on the right to abortion are invalid.[10] State regulation imposes an "undue burden" on a woman's decision to have an abortion if it has the purpose or effect of placing a substantial obstacle in the path of the woman who seeks the abortion of a nonviable fetus.[11] However, not every law, which makes the right to an abortion more difficult to exercise, is an infringement of that right.[12]

Florida Law on Abortion

Abortion Rights

Florida affords greater privacy rights to its citizens than those provided under the U.S. Constitution. While the federal Constitution traditionally shields enumerated and implied individual liberties from state or federal intrusion, the federal Court has long held that the state constitutions may provide even greater protections.[13] In 1980, Florida amended its Constitution to include Article I, s. 23 which creates an express right to privacy:[14]

> Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

This amendment is an independent, freestanding constitutional provision which declares the fundamental right to privacy and provides greater privacy rights then those implied by the federal Constitution.[15]

The Florida Supreme Court has recognized Florida's constitutional right to privacy "is clearly implicated in a woman's decision whether or not to continue her pregnancy."[16] In *In re T.W.,* the Florida Supreme Court ruled that[17]:

> [P]rior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests.…Under our Florida Constitution, the state's interest becomes compelling upon viability.…Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical procedures.

[10] Id. at 878.
[11] Id. at 877.
[12] Id. at 873.
[13] *In re T.W.*, 551 So.2d 1186, 1191 (Fla. 1989).
[14] Id.
[15] Id at 1191-1192.
[16] Id at 1192.
[17] Id at 1193.

Abortion Regulation

In Florida, abortion is defined as the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.[18] An abortion must be performed by a physician[19] licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.[20]

Florida law prohibits abortions after viability, as well as during the third trimester, unless a medical exception exists. Section 390.1112(1), F.S., prohibits an abortion from being performed if a physician determines that, in reasonable medical judgment, the fetus has achieved viability. Viability is defined as the stage of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures.[21] Section 390.0111, F.S., prohibits an abortion from being performed during the third trimester.[22] Exceptions to both of these prohibitions exist if:

- Two physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition; or
- One physician certifies in writing that, in reasonable medical judgment, there is a medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman's life or avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition, and another physician is not available for consultation.[23]

A physician must obtain an informed and voluntary consent for an abortion from a woman before an abortion is performed, unless an emergency exists. Consent is considered voluntary and informed if the physician who is to perform the procedure, orally and in person and at least 24 hours before the procedure[24] , informs the woman of the nature and medical risks of an abortion, the risk of continued pregnancy, and the gestational age of the fetus.[25] The probable gestational age must be verified by an ultrasound.[26] The woman must be offered the opportunity to view the images and hear an explanation of them.[27] If the woman refuses this right, she must acknowledge the refusal in writing.[28] The woman must acknowledge, in writing and prior to the abortion, that she has been provided with all information consistent with these requirements.[29]

Anyone who violates laws applicable to an abortion during viability or in the third trimester commits a third degree felony.[30] Additionally, any health care practitioner who fails to comply with such laws is subject to disciplinary action under the applicable practice act and under s. 456.072, F.S.[31]

[18] Section 390.011(1), F.S.
[19] Section 390.0111(2), F.S.
[20] Section 390.011(8), F.S.
[21] Section 390.011(12), F.S.
[22] Section 390.011(9), F.S., defines the third trimester to mean the weeks of pregnancy after the 24th week of pregnancy.
[23] Sections 390.0111(1)(a) and (b) and 390.01112(1)(a) and (b), F.S.
[24] The 24 hour informed consent requirement is currently enjoined while litigation is pending in *Gainesville Woman Care, LLC v. State,* in the Circuit Court of the Second Judicial Circuit in and for Leon County, case number 2015 CA 001323.
[25] Section 390.0111(3)(a), F.S. This requirement applies except in the case of a medical emergency.
[26] Id.
[27] Id.
[28] Id.
[29] Id.
[30] Section 390.0111(10)(a), F.S.

The Agency for Health Care Administration (AHCA) licenses and regulates abortion clinics in the state, pursuant to ch. 390, F.S., and part II of ch. 408, F.S.[32] All abortion clinics and physicians performing abortions are subject to the following requirements:

- An abortion may only be performed in a validly licensed hospital, abortion clinic, or in a physician's office;[33]
- An abortion clinic must be operated by a person with a valid and current license;[34]
- A third trimester abortion may only be performed in a hospital;[35]
- Proper medical care must be given and used for a fetus when an abortion is performed during viability;[36]
- Experimentation on a fetus is prohibited;[37]
- Except when there is a medical emergency, an abortion may only be performed after a patient has given voluntary and written informed consent;[38]
- Consent is obtained after verification of the fetal age via ultrasound imaging;[39]
- Fetal remains are to be disposed of in a sanitary and appropriate manner;[40] and
- Parental notice must be given 48 hours before performing an abortion on a minor,[41] unless waived by a parent or otherwise ordered by a judge.

Pursuant to s. 390.012, F.S., AHCA must adopt rules for abortion clinics that perform abortions after the first trimester, which must prescribe standards for:

- Adequate private space for interviewing, counseling, and medical evaluations;
- Dressing rooms for staff and patients;
- Appropriate lavatory areas;
- Areas for pre-procedure hand-washing;
- Private procedure rooms;
- Adequate lighting and ventilation for procedures;
- Surgical or gynecological examination tables and other fixed equipment;
- Post-procedure recovery rooms that are equipped to meet the patients' needs;
- Emergency exits to accommodate a stretcher or gurney;
- Areas for cleaning and sterilizing instruments;
- Adequate areas for the secure storage of medical records and necessary equipment; and
- Conspicuous display of the clinic's license.[42]

Both the Department of Health (DOH) and AHCA have authority to take licensure action against individuals and clinics that are in violation of statutes or rules.[43]

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[31] Section 390.0111(13), F.S. The Department of Health and its professional boards regulate health care practitioners under ch. 456, F.S., and various individual practice acts. The range of disciplinary actions taken by a board includes citations, suspensions, reprimands, probations, and revocations.
[32] Section 408.802(3) provides for the applicability of the Health Care Licensing Procedures Act to abortion clinics.
[33] Section 797.03 (1), F.S.
[34] Section 797.03 (2), F.S.
[35] Section 797.03(3), F.S. The violation of any of these provisions is a second degree misdemeanor.
[36] Section 390.0111(4), F.S.
[37] Section 390.0111(6), F.S.
[38] Section 390.0111(3), F.S. A physician violating this provision is subject to disciplinary action.
[39] Section 390.0111(3)(a)1.b., F.S.
[40] Section 390.0111(8), F.S. A person who improperly disposes of fetal remains commits a second degree misdemeanor.
[41] Section 390.01114(3), F.S. A physician who violates this provision is subject to disciplinary action.
[42] Section 390.012(3)(a)1., F.S. Rules related to abortion are found in Chapter 59A-9, F.A.C.
[43] Section 390.018, F.S.

The design, construction, erection, alteration, modification, repair, and demolition of all public and private health care facilities, including abortion clinics, are governed by the Florida Building Code and the Florida Fire Prevention Code.[44] Except where specifically authorized otherwise, each local government and each statutorily authorized enforcement district are responsible for the enforcement of the regulations contained within the Building Code.[45] The Division of State Fire Marshal within the Department of Financial Services is responsible for the enforcement of the Florida Fire Prevention Code.[46] AHCA is not authorized to inspect, investigate or approve any abortion clinic construction plans or specifications to ensure clinics comply with the Florida Building Code and Florida Fire Prevention Code.

Florida Abortion Statistics

The director of any medical facility in which any pregnancy is terminated is required to submit a monthly report to AHCA which contains the number of procedures performed, the reason for same, and the period of gestation at the time such procedures were performed.[47] There is no reporting requirement for the type of abortion performed including whether the abortion was surgical or drug-induced or whether a patient needed to be admitted to a hospital.

In 2014, DOH reported that there were 220,138 live births in Florida.[48] In the same year, AHCA reported that there were 72,073 abortion procedures performed in the state. Of those performed: [49]

- 65,902 were performed in the first trimester (12 weeks and under);
- 6,171 were performed in the second trimester (13 to 24 weeks); and
- None were performed in the third trimester (25 weeks and over).

The majority of the procedures (65,210) were elective.[50] The remainder of the abortions were performed due to: [51]

- Emotional or psychological health of the mother (76);
- Physical health of the mother that was not life endangering (158);
- Life endangering physical condition (69);
- Rape (749);
- Serious fetal genetic defect, deformity, or abnormality (560); and
- Social or economic reasons (5,115).

There are currently 65 licensed abortion clinics in Florida, of which 44 are licensed to provide both first and second trimester abortions and 21 are licensed to provide only first trimester abortions.

Ambulatory Surgical Centers (ASCs)

An ASC is a facility, that is not a part of a hospital, the primary purpose of which is to provide elective surgical care, in which the patient is admitted and discharged within the same working day and is not permitted to stay overnight.[52]

In Florida, outpatient surgery is performed in two settings, hospital outpatient surgery departments (HOPDs) and ASCs. Currently, there are 429 ASCs in Florida and 204 HOPDs.[53]

[44] Section 395.0163, F.S.
[45] Section 553.80, F.S.
[46] Section 633.104, F.S.
[47] Section 390.0112(1), F.S.
[48] Correspondence from the Department of Health to the House of Representatives Health Quality Subcommittee dated February 26, 2015, on file with Health Innovation Subcommittee Staff.
[49] Reported Induced Terminations of Pregnancy (ITOP) by Reason, By Weeks of Gestation for Calendar Year 2014, AHCA, on file with the Health Innovation Subcommittee Staff.
[50] Id.
[51] Id.
[52] S. 395.002(3), F.S.
[53] AHCA Agency Bill Analysis, dated September 18, 2015, pg. 3 (on file with Health Innovation Subcommittee staff).

In 2014, there were 2,933,087 visits to ASCs and HOPDs in Florida.[54] HOPDs accounted for 46 percent and ASCs accounted for 54 percent of the total number of visits. Of the $33.8 billion in total combined charges in HOPDs and ASCs in 2014, HOPDs accounted for 77 percent of the charges, while ASCs accounted for 23 percent.[55] The average charge at the HOPDs ($19,140) was larger than the average charge at the ASCs ($5,018).[56] Two procedures, colonoscopy and gastrointestinal endoscopy, are consistently in the top 10 procedures performed by both facility types.[57] In 2014, the average charge for a colonoscopy by site was $6,694 for HOPDs and $2,391 for ASCs.[58] The average charge for gastrointestinal endoscopy by site was $9,537 for HOPDs and $2,269 for ASCs.[59] This data was not adjusted for acuity, so it may reflect higher acuity levels in hospital patients.

In 2014, the charges for visits to ASCs and HOPDs were paid mainly by commercial Insurance and Medicare. Commercial insurance paid for 40 percent of charges ($13.6 billion), while Medicare paid for 30 percent of charges ($10.1 billion).[60] The next three top payer groups (Medicare Managed Care, Medicaid, and Medicaid Managed Care) accounted for a combined 21.6 percent ($7.3 billion) of charges.[61]

ASC Licensure

ASCs are licensed and regulated by the Agency for Health Care Administration (AHCA) under the same regulatory framework as hospitals.[62] Applicants for ASC licensure must submit certain information to AHCA prior to accepting patients for care or treatment, including:

- An affidavit of compliance with fictitious name;
- Proof of registration of articles of incorporation; and
- A zoning certificate or proof of compliance with zoning requirements.[63]

Upon receipt of an initial application, AHCA is required to conduct a survey to determine compliance with all laws and rules. ASCs are required to provide certain information during the initial inspection, including:

- Governing body bylaws, rules and regulations;
- A roster of registered nurses and licensed practical nurses with current license numbers;
- A fire plan; and
- The comprehensive Emergency Management Plan.[64]

AHCA is authorized to adopt rules for hospitals and ASCs.[65] Separate standards may be provided for general and specialty hospitals, ASCs, mobile surgical facilities, and statutory rural hospitals,[66] but the rules for all hospitals and ASCs must include minimum standards for ensuring that:

- A sufficient number of qualified types of personnel and occupational disciplines are on duty and available at all times to provide necessary and adequate patient care;

[54] Agency for Health Care Administration, *Ambulatory (Outpatient) Surgery Query Results; By Facility Type and Average Charges,* available at http://www.floridahealthfinder.gov/QueryTool/QTResults.aspx?T=O (last viewed on January 19, 2016).
[55] Id.
[56] Id.
[57] Agency for Health Care Administration, *Ambulatory (Outpatient) Surgery Query Results; By Current Procedural Terminology Code and Facility Type,* available at http://www.floridahealthfinder.gov/QueryTool/QTResults.aspx?T=O (last viewed on January 19, 2016).
[58] Id.
[59] Id.
[60] Agency for Health Care Administration, *Ambulatory (Outpatient) Surgery Query Results; By Patient, Primary Payer, and Average Charges* http://www.floridahealthfinder/gov/QueryTool/QTResults.aspx (last viewed on January 19, 2016).
[61] Id.
[62] SS. 395.001-1065, F.S., and Part II, Chapter 408, F.S.
[63] Rule 59A-5.003(4), F.A.C.
[64] Rule 59A-5.003(5), F.A.C.
[65] S. 395.1055, F.S.
[66] S. 395.1055(2), F.S.

- Infection control, housekeeping, sanitary conditions, and medical record procedures are established and implemented to adequately protect patients;
- A comprehensive emergency management plan is prepared and updated annually;
- Licensed facilities are established, organized, and operated consistent with established standards and rules; and
- Licensed facility beds conform to minimum space, equipment, and furnishing standards

The minimum standards for ASCs are contained in Chapter 59A-5, F.A.C.

Staff and Personnel Rules

ASCs are required to have written policies and procedures for surgical services, anesthesia services, nursing services, pharmaceutical services, and laboratory and radiologic services.[67] In providing these services, ACSs are required to have certain professional staff available, including:

- A registered nurse to serve as operating room circulating nurse;[68]
- An Anesthesiologist or other physician, or a certified registered nurse anesthetist under the on-site medical direction of a licensed physician in the ASC during the anesthesia and post-anesthesia recovery period until all patients are alert or discharged;[69] and
- A Registered professional nurse in the recovery area during the patient's recovery period.[70]

Infection Control Rules

ASCs are required to establish an infection control program, which must include written policies and procedures reflecting the scope of the program.[71] The written policies and procedures must be reviewed at least every two years by the infection control program members.[72] The infection control program must include:

- Surveillance, prevention, and control of infection among patients and personnel;[73]
- A system for identifying, reporting, evaluating and maintaining records of infections;[74]
- Ongoing review and evaluation of aseptic, isolation and sanitation techniques employed by the ASC;[75] and
- Development and coordination of training programs in infection control for all personnel.[76]

Emergency Management Plan Rules

ASCs are required to develop and adopt a written comprehensive emergency management plan for emergency care during an internal or external disaster or emergency.[77] The ASC must review the plan and update it annually.[78]

Accreditation

[67] Rule 59A-5.0085, F.A.C.
[68] Rule 59A-5.0085(3)(c), F.A.C.
[69] Rule 59A-5.0085(2)(b), F.A.C.
[70] Rule 59A-5.0085(3)(d), F.A.C.
[71] Rule 59A-5.011(1), F.A.C.
[72] Rule 59A-5.011(2), F.A.C.
[73] Rule 59A-5.011(1)(a), F.A.C.
[74] Rule 59A-5.011(1)(b), F.A.C.
[75] Rule 59A-5.011(1)(c), F.A.C.
[76] Rule 59A-5.011(1)(d), F.A.C.
[77] Rule 59A-5.018(1), F.A.C.
[78] Id.

ASCs may seek voluntary accreditation by the Joint Commission for Health Care Organizations, the Accreditation Association for Ambulatory Health Care, and the American Osteopathic Association Healthcare Facilities Accreditation Program.[79] AHCA is required to conduct an annual licensure inspection survey for non-accredited ASCs.[80] AHCA must accept survey reports of accredited ASCs from accrediting organizations if the standards included in the survey report are determined to document that the ASC is in substantial compliance with state licensure requirements.[81] AHCA is required to conduct annual validation inspections on a minimum of 5 percent of the ASCs which were inspected by an accreditation organization.[82]

AHCA is required to conduct annual life safety inspections of all ASCs to ensure compliance with life safety codes and disaster preparedness requirements.[83] However, the life-safety inspection may be waived if an accreditation inspection was conducted on an ASC by a certified life safety inspector and the ASC was found to be in compliance with the life safety requirements.[84]

Approval for Design and Construction of Hospitals and Other Licensed Facilities

AHCA is responsible for the inspection, investigation and approval of the construction plans or specifications for hospitals and ASCs.[85] AHCA must ensure that the design, construction, erection, alteration, modification, repair, and demolition of hospitals and ASCs comply with the Florida Building Code and Florida Fire Prevention Code. This requirement is in addition to the review and enforcement of the Building Code regulations by local government and statutorily authorized enforcement districts under ch. 553, F.S. AHCA is authorized to collect from the hospital or ASC: [86]

- An initial, nonrefundable fee of $2,000 for the review of plans and construction on all projects;
- A fee, not to exceed 1 percent of the estimated construction cost or the actual cost of review, for the portion of the review which encompasses initial review through the initial revised construction document review; and
- Actual costs on all subsequent portions of the review and construction inspections.

AHCA is prohibited from adopting any rule governing the design, construction, erection, alteration or modification of a hospital or ASC. However, AHCA may provide technical assistance to the Florida Building Commission and the State Fire Marshal if those entities elect to develop and adopt rules specifically for hospitals and ASCs.[87]

Effect of Proposed Changes

CS/HB 233 amends s. 390.012(3), F.S., to require the Agency for Health Care Administration (AHCA), by September 1, 2017, to adopt rules establishing minimum standards for all abortion clinics that perform or claim to perform abortions after the first trimester which are equivalent to or more stringent than minimum standards applicable to ambulatory surgical centers. In the absence of a corresponding ambulatory surgical center standard, the bill requires that the existing abortion clinic standard remains in effect

[79] Rule 59A-5.004(3), F.A.C., and AHCA Ambulatory Surgical Center; *Accrediting Organizations for Ambulatory Surgical Centers,* available at http://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Hospital_Outpatient/ambulatory.shtml (last viewed on January 19, 2016).
[80] Rule 59A-5.004(1) and (2), F.A.C.
[81] Rule 59A-5.004(3), F.A.C.
[82] Rule 59A-5.004(5), F.A.C.
[83] Rule 59A-5.004(1), F.S., and s. 395.0161, F.S.
[84] S. 395.0161(2), F.S.
[85] Section 395.0163, F.S.
[86] Section 395.0163 (2), F.S.
[87] Section 395.1055, F.S.

According to AHCA, all sections of chapter 59A-9, Florida Administrative Code will need to be reviewed for possible changes. These changes include: [88]

- Adding definitions for example, for “governing board”, “medical staff”, “procedure room”, and “recovery bed”;
- Creating a separate process for licensure of clinics performing first trimester abortions only; and
- Removing physical plant requirements and replacing with a reference to the Florida Building Code similar to rule 59A-5.022, F.A.C. for ambulatory surgical centers.

AHCA has also identified additional requirements which abortion clinics must meet, including:[89]

- Organization of a governing board and medical staff with by-laws detailing membership of the board;
- Granting privileges, and maintaining clinic policies and procedures, including patient rights;
- Establishing a surveillance, prevention and infection control program;
- Establishing a quality assessment and improvement program;
- Establishing an internal risk management program;
- Establishing separate surgery and anesthesia departments under the direction of qualified personnel; and
- Periodic life-safety inspections.

The bill also requires AHCA to adopt rules requiring abortion clinics that perform or claim to perform abortions after the first trimester to meet the Florida Building Code and Florida Fire Prevention Code requirements applicable to ASCs. Pursuant to s. 395.0163, F.S., AHCA currently performs construction inspections and plan reviews for any new construction or significant renovation of ASCs to confirm compliance with the Florida Building Code and Florida Fire Prevention Code .

The bill provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1: Amending s. 390.012, F.S., relating to powers of agency, rules and disposal of fetal remains.
Section 2: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There are currently 42 licensed abortion clinics that are licensed to perform second trimester abortions. Potentially, these 42 clinics would be subject to the $40 life safety inspection fee currently imposed on ambulatory surgical centers once rules are in place. The total biennial inspection fee would be $1,680.

The bill requires AHCA to adopt rules requiring abortion clinics to meet the Florida Building Code and Florida Fire Prevention Code requirements applicable to ambulatory surgical centers. AHCA is authorized to collect an initial, nonrefundable fee of $2,000 for this review. However, this requirement will only apply to abortion clinics applying for initial licensure or renovation of an existing building after the effective date of the rule. The number of abortion clinics affected is unknown.

2. Expenditures:

[88] 2016 Agency Legislative Bill Analysis for HB 233, AHCA, January 13, 2016 (on file with the Health Innovation Subcommittee).
[89] Id.

AHCA will incur costs associated with the rule-making process, which can likely be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Abortion clinics performing second semester abortions will be subject to two fees which are currently only applicable to ASCs: a $40 biennial life safety inspection fee and a $2,000 nonrefundable fee for AHCA's construction plan inspection and review to confirm compliance with the Florida Building Code and Florida Fire Prevention Code. This fee only applies to abortion clinics applying for initial licensure or renovation of an existing building after the effective date of the rule. The number of abortion clinics affected is unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Texas enacted similar legislation in 2013 which required the minimum standards for abortions clinics to be equivalent to the minimum standards applicable to ASCs. The law, with limited exceptions, was upheld by the 5th Circuit Court of Appeals.[90] The case is currently under review by the United States Supreme Court.[91]

B. RULE-MAKING AUTHORITY:

AHCA currently has sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 19, 2016, the Health Innovation Subcommittee adopted a strike-all amendment to HB 233. The amendment:

- Required AHCA, by September 1, 2017, to adopt rules establishing minimum standards for all abortion clinics that perform or claim to perform abortions after the first trimester which are equivalent to or more stringent than minimum standards applicable to ambulatory surgical centers.

[90] *Whole Woman's Health v. Cole*, 790 F.3d 563 (5th Cir. 2015).
[91] *Whole Woman's Health v. Cole*, 136 S.Ct. 499 (U.S. 2015).

- Required AHCA, in the absence of a corresponding ambulatory surgical center standard, to retain the existing abortion clinic standard.
- Required AHCA to adopt rules requiring abortion clinics that perform or claim to perform abortions after the first trimester to meet the Florida Building Code and Florida Fire Prevention Code requirements applicable to ambulatory surgical centers.

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