

1989

Session Law 89-354

Florida Senate & House of Representatives

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S 128 GENERAL BILL/CS/CS/2ND ENG by Finance, Taxation and Claims; Health Care; Kirkpatrick (Compare CS/H 364, CS/H 503, CS/H 913, CS/CS/CS/2ND ENG/H 950, CS/H 952, H 1232, H 1463, H 12-B, CS/1ST ENG/S 35, 1ST ENG/S 485, CS/CS/S 1148, S 1188, CS/S 1385, S 8-B)

Health Care Facilities/Personnel: provides for registration of health care services pools by Business Reg. Dept.; amends certain provisions re Health Care Cost Containment Board; creates grant fund to increase enrollment in nursing & other health services programs at community colleges; defines "nursing home geographically underserved area"; adds geographic accessibility to review methodology for health services & health care facilities, etc. Amends F.S. Appropriation: \$209,960. Effective Date: 07/06/89 except as otherwise provided.

01/26/89 SENATE Prefiled

02/13/89 SENATE Referred to Health Care; Finance, Taxation and Claims; Appropriations

04/04/89 SENATE Introduced, referred to Health Care; Finance, Taxation and Claims; Appropriations -SJ 18; On Committee agenda -Health Care, 04/04/89, 2:00 pm, Room-A-(LL-37); Comm. Report: CS by Health Care -SJ 97

04/06/89 SENATE CS read first time -SJ 114; Now in Finance, Taxation and Claims -SJ 97

04/14/89 SENATE Extension of time granted Committee Finance, Taxation and Claims

04/28/89 SENATE Extension of time granted Committee Finance, Taxation and Claims

05/01/89 SENATE On Committee agenda-Finance, Taxation and Claims, 05/03/89, 9:00 am, Room-1C-(309)

05/03/89 SENATE Comm. Report: CS/CS by Finance, Taxation and Claims -SJ 276

05/08/89 SENATE CS read first time -SJ 276; Now in Appropriations -SJ 276

05/18/89 SENATE Extension of time granted Committee Appropriations

05/25/89 SENATE Withdrawn from Appropriations -SJ 457; Placed on Calendar

05/30/89 SENATE Placed on Special Order Calendar -SJ 560; CS passed as amended; YEAS 37 NAYS 0 -SJ 610

05/30/89 HOUSE In Messages

05/31/89 HOUSE Received, placed on Calendar -HJ 925; Read second time; Amendments adopted; Read third time; CS passed as amended; YEAS 111 NAYS 0 -HJ 928

06/01/89 SENATE In Messages

06/02/89 SENATE Was taken up -SJ 882; Concurred; CS passed as amended; YEAS 36 NAYS 0 -SJ 885

06/02/89 Ordered engrossed, then enrolled -SJ 885

06/20/89 Signed by Officers and presented to Governor

07/06/89 Became Law without Governor's Signature; Chapter No. 89-354; See also: CS/CS/CS/HB 950 (Vetoed by Governor) & SB 8-B (Ch. 89-527)

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

REVISED: _____

BILL NO. CS/CS/SB 128DATE: May 5, 1989Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Howell</u>	<u>Wilson</u>	1. <u>HC</u>	<u>FAV/CS</u>
2. <u>Barrett</u>	<u>Beqqs</u>	2. <u>FTC</u>	<u>FAV/CS</u>
3. _____	_____	3. <u>AP</u>	_____
4. _____	_____	4. _____	_____

SUBJECT:

Health Care Facilities/
Nursing Pools

BILL NO. AND SPONSOR:

CS/CS/SB 128 by Finance,
Taxation & Claims Committee,
Health Care Committee and
Senator KirkpatrickI. SUMMARY:

A. Present Situation:

A "nursing pool," or temporary staffing agency, has been generally defined as a person or business which employs licensed nurses and contracts with clients such as health care facilities or individual physicians to provide nurses for temporary or supplemental assignments. In some instances these agencies supply nurses to individual patients who require care at home.

Nursing pools provide the bulk of their services to hospitals and nursing homes. Under these arrangements a hospital or nursing home pays an hourly fee directly to the agency. The nurse is an employee of the agency and receives compensation from the agency. Hourly wages paid by a nursing pool are generally higher than those paid by individual health care facilities in the market. A number of nursing pool agencies provide insurance and other fringe benefits to their employee-nurses.

It should also be noted that some hospitals have internal "pools" comprised of nurses who desire temporary employment as the need arises, within the hospital facility. Some hospitals own an interest in an outside nursing pool agency.

Nursing pools have increased in number as a result of the current nationwide nursing shortage. One study estimates that there are approximately 200 nursing pool agencies in Florida. Hospitals in Florida reported an employment vacancy rate of 15.8% for nurses in 1988, compared to a rate of 10.4% during the previous year. The effect of nursing pools on the labor market is believed to be higher wages for nurses employed by the pools.

In 1988, the Florida Legislature directed the Health Care Cost Containment Board (HCCB) to conduct a special study on the impact of the present nursing shortage on the supply of nurses in Florida. Among those aspects of the shortage to be covered is the increased use of temporary nursing pool agencies by institutional providers. In the Act, the Legislature authorized the HCCB to examine "the costs and benefits of potential regulation of such nursing pool agencies in light of the shortage," chapter 88-394, section 31(1)(d), Laws of Florida. An interim report, issued March 1, 1989, by the HCCB indicates that the final report, to be completed by February 1, 1990, will address the impact of nursing pools on increased health care costs and the quality of care delivered.

Currently, nursing pools are unregulated. However, the majority of employees in a nursing pool are regulated as

registered nurses, licensed practical nurses, physical therapists, occupational therapists and certified nursing assistants.

Section 407.50(5), F.S., provides that the Health Care Cost Containment Board shall review each budget filed pursuant to subsection (3) of s. 407.50, F.S., and amendments filed pursuant to subsection (6) of s. 407.50, F.S., by health care institutions, as defined in s. 395.002(6), F.S. The board shall determine whether the rate of increase contained in the budget or amendment is just, reasonable, and not excessive.

B. Effect of Proposed Changes:

Committee Substitute for Committee Substitute for Senate Bill 128 would, if enacted, regulate nursing pools by requiring that each such agency register annually with the Department of Business Regulation. The bill defines the term "nursing pool" to mean any person, firm, corporation, partnership or association engaged for hire in the business of providing temporary employment in health care facilities for medical personnel including, but not limited to, nurses, nursing assistants, nurses' aides, and orderlies. Excluded from the definition are nursing registries, which do not employ nurses, but rather maintain referral lists. Pools established within health facilities licensed under chapter 395, Florida Statutes, are also excluded from the definition. Also excluded are home health agencies. Although some home health agencies place temporary nurses in institutions, as well as private homes, such agencies are already regulated by the Department of Health and Rehabilitative Services. Under this bill, an individual who engages in providing his or her own services on a temporary basis to a health care facility is not within the definition of a nursing pool.

The bill provides that an operator of a nursing pool must annually register with the department, on forms provided by the department. Each separate business location must be registered with the department. In addition, the department is given authority to impose a registration fee in an amount sufficient to cover the cost of administering the program.

Each registration must include the names and addresses of any person who has an ownership interest in the nursing pool. In the case of a corporate owner, copies of the articles of incorporation, by-laws, and names and addresses of all officers and directors of the corporation are required. Where the sale or transfer of an ownership interest takes place, the nursing pool shall file a new registration listing any new individual or corporate owners.

CS for CS for SB 128 would prohibit a nursing pool from requiring that an employee recruit new employees from the health care facility where the nursing pool employee is assigned into the nursing pool agency.

In addition, nursing pools would be required to carry malpractice insurance coverage for damages caused by its employees. The department is granted authority to determine adequate levels of insurance coverage for the industry.

The bill requires nursing pools to document that each temporary employee provided to a health care facility is "licensed and has met training and continuing education requirements, as established by the department," for the position in which he or she will be working. In addition, nursing pools are required to comply with all pertinent regulations of the department relating to the health and other qualifications of personnel employed in health care facilities.

Where there has been a violation of this law or department rules, the department may revoke or suspend a registration, or impose an administrative fine, not to exceed \$1,000 per violation.

The Committee Substitute for Committee Substitute for Senate Bill 128 provides that the Health Care Cost Containment Board in its regulatory schematic would recognize contributions by health care institutions to support expanded education and training programs for nurses and other health professionals conducted by community colleges, vocational schools, and universities.

The department is given authority to adopt rules to implement the provisions of the bill.

The bill, if enacted, shall take effect October 1, 1989.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Committee Substitute for Committee Substitute for Senate Bill 128, if enacted, would authorize the department to impose a registration fee in an amount sufficient to cover the cost of administering the required regulation on each nursing pool agency operating within the state. The largest consumer of nursing pool services is the acute care hospital. Although the bill requires pools to document that each temporary employee is licensed, a survey of acute care hospitals by the Florida Hospital Association notes that 82% of responding hospitals have a copy of each agency nurse's license file. In addition, nursing pools would be required to carry malpractice insurance coverage at levels established by department rule. In most cases it is the policy of the hospital not to contract with a nursing pool unless the pool has adequate malpractice insurance.

Studies by the hospital industry and the nursing profession have concluded that nursing pool agencies pay competitively higher wages than health care facilities which employ permanent full-time nurses. It remains doubtful what effect regulation of nursing pools would have on the wages of nurses throughout the health care industry. However, if regulation proves to be excessive it could result in reducing competition in the industry and result in higher costs to client facilities.

B. Government:

The Department of Business Regulation estimates that there are approximately 250 nursing pools in Florida. Therefore, a fee of \$225 would be adequate to cover the cost of regulation. DBR indicates that two additional positions would be adequate to administer the program and investigate complaints. The following table outlines estimated costs for DBR for the next three year:

	Fiscal Year <u>1989-90</u>	Fiscal Year <u>1990-91</u>	Fiscal Year <u>1991-92</u>
FTE Positions	2.0	2.0	2.0
Salaries	\$34,710	\$44,506	\$46,732
OPS	2,500	0	0
Expenses	8,596	9,770	10,063
Op. Capital Outlay	3,327	0	0
Data Processing Sv.	5,000	2,500	2,500
	<u>\$54,133</u>	<u>\$56,776</u>	<u>\$59,295</u>

III. COMMENTS:

Because of the lack of data on the nursing pool industry and its relation to the current nursing shortage, it is difficult to assess the need for regulation in this area. It is noted that the bill seeks to regulate an industry that serves as an employment agency for health care facilities which are otherwise regulated by the state, and as a provider of staff who are also regulated on some level by the state. Chapter 88-394, Laws of Florida, directs the Health Care Cost Containment Board to present a study to the Legislature by February 1, 1990 on the costs and benefits of such regulation.

As a final note, in the bill there is reference to nursing pool personnel as "employees." Since some of the personnel may operate as independent contractors, there appears to be a need to distinguish whether the standards for pool employees would apply to independent contractors as well.

IV. AMENDMENTS:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

Senate Bill 128

The regulatory agency is changed from the Department of Health and Rehabilitative Services to the Department of Business Regulation.

Home health agencies are also excluded from the definition of a "nursing pool".

Provides that the Health Care Cost Containment Board, in its regulatory schematic, would recognize contributions by healthcare institutions to support expanded education programs for health professionals conducted by community colleges, vocational schools, and universities.

Committee on Finance, Taxation and Claims


Staff Director

(FILE THREE COPIES WITH THE SECRETARY OF THE SENATE)