

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 887 Business and Professional Regulation

SPONSOR(S): Economic Affairs Committee

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

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|--------|---------|--|
| Orig. Comm.: Economic Affairs Committee | | Collins | Tinker |

SUMMARY ANALYSIS

The bill reduces regulatory requirements for professions and businesses, and streamlines regulatory functions primarily for programs under the Department of Business and Professional Regulation (DBPR).

Specifically, the bill:

- Waives initial licensure fees for recently discharged military veterans;
- Authorizes the DBPR to approve continuing education providers and courses without board review, even when there is a regulatory board;
- Authorizes the DBPR to reinstate void licenses due to illness or economic hardship of a former licensee;
- Allows the DBPR to offer continuing education for real estate instructors through distance learning;
- Requires licensees to notify the DBPR of their available e-mail addresses;
- Allows the DBPR to serve non-disciplinary notices to a licensee's e-mail address of record;
- Creates an exemption from the definition of appraisal management company for bank owned appraisal management companies, and financial institutions that own and operate an internal appraisal office, business unit, or department;
- Clarifies the definition of "Appraisal Management Company" and "Appraisal Management Services;"
- Defines the term "Subsidiary;"
- Removes the 24 month expiration of the appraiser national exam score for applicants;
- Creates a violation for appraisal management companies to require appraisers agree to an indemnification agreement;
- Authorizes the cosmetology board to license an applicant by endorsement if the applicant holds a current active cosmetology license in another state;
- Eliminates the mandatory licensure of glass and glazing contractors; and
- Re-opens and extends the period for grandfathering of "registered" contractors' licenses to state wide "certified" contractors' licenses until November 1, 2014.

The bill will have a positive impact on the department's revenues. The DBPR estimates the bill will increase revenues to the Professional Regulation Trust Fund by \$573,009 in FY 2012-13 and \$286,709 in FY 2013-14, as a result of re-opening the time period registered contractors may grandfather their registered contractors' license to a state certified contractors' license.

The bill has an effective date of October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 20.165, F.S., establishes the organizational structure of the Department of Business and Professional Regulation (DBPR) and includes the Division of Professions. The Division of Professions administers 14 professional boards and one council pursuant to s. 20.165, F.S.

Chapter 455, F.S., specifies the general powers of the DBPR. Each profession is administered either directly by the DBPR or through a separately appointed board, council, or commission. Section 455.01, F.S., defines the term "profession" to mean:

any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

Proposed Changes

The bill contains numerous modifications relating to several programs under the DBPR. The following section-by-section analysis includes the Present situation and Proposed changes for referenced sections of the bill where appropriate.

Retired Armed Services Personnel Licensure

Present situation

Currently, s. 455.02, F.S., applies to licensees who are members of the armed forces on active duty who are absent from the state and not practicing their profession in the private sector. The armed forces member/licensee is exempted from license renewal requirements for the duration of active duty while absent from the state of Florida, and for a period of six months after discharge or return to the state, but not practicing the profession. This statute applies to numerous professions regulated by the DBPR but not all professions.

Additionally, an out-of-state professional license may be used as the basis for the issuance of a temporary license for use in Florida by spouses of active duty members of the Armed Forces of the United States who have been assigned to a base/duty station in Florida.

Section 455.213, F.S., provides the general provisions for issuance of professional licensure by the DBPR. The current statute does not allow the DBPR to distinguish applicants based on their military service. Former members of the United State Armed Forces are required to meet all licensure requirements and pay all licensure fees despite their service to the United States military

Proposed changes

The bill amends s.455.213, F.S., to require the DBPR to waive the initial licensing fee, initial application fee and initial unlicensed activity fee for military veterans who have been honorably discharged from the United States Armed Forces within 24 months of applying for licensure.

Continuing Education

Present Situation

A licensee may practice a profession only if the licensee has an active status license. Section 455.2179, F.S., provides that if a board, or the department if there is no board, requires completion of continuing education as a requirement for renewal of a license, the board, or the department if there is no board, must approve providers of the continuing education. This section also specifies that the approval of continuing education providers "and courses" must be for a specified period of time.

An inactive status licensee may change to active status provided the licensee meets requirements for active status, pays applicable fees and meets continuing education requirements. Generally, if a licensee allows their license to go inactive, they must complete enough continuing education to fulfill the continuing education cycle for each licensure cycle in which they were inactive.

Proposed changes

The bill allows the DBPR, upon application, to approve continuing education providers and courses without board review, even when there is a regulatory board. The bill also specifies that if the DBPR determines that an applicant for approval as a course provider or approval of the content of courses requires additional evaluation or is denied by the DBPR then the application must be forwarded to the applicable board for final action.

The bill specifies that the DBPR is the only authority to determine the content of applications and supporting documents.

Void Licenses

Present Situation

Section 455.271, F.S., provides the process for placing a professional license in an inactive or delinquent status. Licensees are permitted to choose, at the time of licensure renewal, whether to be in an active or inactive status. A licensee who is in an inactive status may change to active status at any time if the licensee meets requirements for active status, pays licensure fees necessary to equal those imposed on an active status licensee, pays any applicable reactivation fee, and meets continuing education requirements. A delinquent status licensee must apply for active or inactive status during the licensure cycle in which a licensee becomes delinquent. Failure by a delinquent status licensee to become active or inactive before the expiration of the current licensure cycle renders the license void without any further action by an appropriate board or the DBPR if there is no board.

An individual may apply for reinstatement of a void license if the board or department, as applicable, determines that the individual has made a good faith effort to comply with this section but has failed to comply because of illness or unusual hardship.

Proposed Changes

To reinstate a void license, the bill requires an applicant to establish that they were unable to renew their license due to illness or "economic" hardship. The bill removes the requirement that licensees establish that they made a good faith effort to renew and that their hardship was unusual. The bill also grants the DBPR the authority to approve applications for reinstatement of a void license, even where there is a board for that profession.

E-mail Addresses

Present Situation

Section 455.273, F.S., requires the DBPR to mail renewal and cancelation notifications to licensees' addresses of record 90 days prior to expiration or cancelation of the license. The statute does not specifically authorize the DBPR to forward the notices by e-mail. The DBPR is also required to include

a notice stating that if a licensee remains on inactive status for more than two consecutive licensure cycles, the licensee may be required to sit for a special purpose examination or other reactivation requirements prior to reactivation of their license.

Section 455.275, F.S., requires licensees to provide the DBPR written notification of the licensee's current mailing address and place of practice. Notices and official communications to the licensees must be served by regular mail.

Proposed changes

The bill amends s. 455.273, F.S., to allow the DBPR to forward renewal and cancellation notices to a licensee's e-mail address of record. The DBPR may still to use regular mail when a licensee does not maintain an e-mail address. The bill also amends this section to remove the requirement that the DBPR place a statement on each renewal and cancellation notice that a licensee may be required to complete a special purposes examination or other reactivation requirement prior to activating a license.

The bill amends s. 455.275, F. S., to require licensees to keep the DBPR updated with their e-mail address, in additional to, their required mailing address and place of employment, and permits the DBPR to serve required notices by e-mail.

Distance Learning-Real Estate

Present Situation

The regulation of real estate brokers and salespersons is administered by the Florida Real Estate Commission (commission) and the Division of Real Estate under the DBPR. Among other responsibilities, entities and individuals seeking to offer courses of study in real estate, and individuals teaching such courses, must be licensed by the DBPR. Courses that are required to be completed in order to qualify to be initially licensed as a real estate broker or salesperson or to meet education requirements for license renewal are available by distance learning in addition to traditional classroom instruction.

Distance learning educational courses are currently available for compliance with continuing education requirements and for circumstances where attending classroom courses creates an identifiable hardship. Section 475.451, F.S., requires real estate instructors to complete seven classroom hours of continuing education per license renewal cycle.

Proposed changes

The bill allows the DBPR to offer continuing education courses to real estate instructors through distance education instruction.

Appraisal Management Companies (AMC)

Present Situation

Real estate appraisers are specialists in estimating the value of real property. Appraisals are made when property is bought, sold, assessed, taxed, condemned, insured, or mortgaged. Real estate appraisers prepare a written description of the property and make an estimate of its value. Individual real estate appraisers are currently regulated under part II of ch. 475, F.S. Section 475.6171, F.S., currently requires a national examination to be completed with the results continuing to be valid for a period of 24 months prior to application for licensure in the state of Florida.

No person may engage in appraisal management services or represent themselves as appraisal management companies or a title similar in meaning unless the person is registered with the DBPR as

an appraisal management company. An employee of an AMC is not required to obtain a separate registration. Section 475.6235, F.S., does not exempt bank owned appraisal management companies from registration.

The DBPR may deny an application for registration; investigate actions, reprimand or impose an administrative fine, revoke or suspend a registration, or place an AMC on probation for violations of this part.

Proposed changes

The bill:

- Removes the 24 month expiration of the appraiser national examination score for applicants;
- Creates an exemption from the definition of appraisal management company for financial institutions that own and operate an internal appraisal office, business unit, or department;
- Creates an exemption from the definition of appraisal management company for bank owned appraisal management companies; and
- Creates a violation for appraisal management companies to make appraisers agree to an indemnification agreement.

Cosmetology Services

Present Situation

The Board of Cosmetology within the DBPR is responsible for the regulation of cosmetology under ch. 477, F.S. No person can practice cosmetology or use the name or title of a cosmetologist unless licensed. Additionally, s. 477.025, F.S., specifies that cosmetology salons and specialty salons are required to be licensed and cosmetology services can only be performed in a licensed salon unless specifically exempted.

Section 477.0135, F.S., exempts certain persons from the provisions of ch. 477, F.S., when a licensee applies cosmetic products in connection with the sale of the products at retail, providing makeup, special effects, or cosmetology services to an actor or other person, during a production, and makeup or special effects services in a theme park or entertainment complex.

Section 477.0263(3), F.S., allows any person with a cosmetology license to perform services in a location other than a licensed salon when the services are performed in connection with the motion picture, fashion photography, theatrical industry, television industry; a photograph studio salon, a manufacturer trade show demonstration, or an educational seminar.

Proposed changes

The bill:

- Amends s. 477.019, F.S., to allow the cosmetology board to license an applicant by endorsement if the applicant holds a current active cosmetology license in another state; and
- Amends s. 477.0263, F. S., to create a new exemption to allow licensed cosmetologists to perform services at “special events” held outside of licensed salons.

Glass and Glazing Contractors

Present Situation

Currently, ch. 489, F.S., sets forth provisions related to the regulation of specific types of contractors, including the requirement that these contractors be licensed by the DBPR. Licensure may be issued by

either registration or certification. Licensure by registration is available when the applicant has taken and passed a local competency examination, which permits the licensee to practice within that specified locale.¹ Similarly, licensure by certification is available when the applicant has taken and passed a state competency examination, which permits the licensee to practice throughout the State.²

Section 489.105(3), F.S., delineates two broad categories of contractors- Division I³ and Division II.⁴ Specifically, s. 489.105(3)(q), F.S., stipulates that glass and glazing contractors are Division II contractors, subject to the provisions of ch. 489, F.S.

Currently, application and license fees for a registered contractor total \$444, consisting of an examination fee of \$135 and an initial registration fee of \$309. Business entities must obtain an additional license, costing \$50. Application and license fees for a certified contractor total \$384, consisting of an examination fee of \$135 and an initial certification fee of \$249. As with registered contractors, business entities must obtain an additional license which costs \$50.⁵

Additionally, both registered and certified contractors must renew their license annually, which costs \$209 for professionals and \$50 for business entities.⁶

Proposed Changes

The bill repeals s. 489.105(3)(q), F.S., removing glass and glazing contractors from the list of Division II contractors. As a result, it eliminates the mandatory licensure of glass and glazing contractors, as regulated by ch. 489, F.S.

Construction Industry Licensing

Present Situation

The Construction Industry Licensing Board (CILB) is the regulatory body mandated with implementing part I of ch. 489, F.S. The CILB regulates construction contractors who oversee the construction or demolition of a structure or other improvement to real estate.

As previously stated, ch. 489, F.S., requires that all individuals who practice construction contracting (and electrical contracting) in Florida must either be “certified” or “registered.” Certified contractors are authorized to engage in contracting on a statewide basis. “Registration” allows an individual to practice contracting only in the jurisdiction that issues that individual’s local license. Registration is issued by the DBPR upon proof of local licensure. Such proof consists of a license issued by the local jurisdiction, and evidence of compliance with local licensing requirements, if a local licensing requirement exists. Some local jurisdictions have rigorous standards for license issuance, such as experience and insurance requirements, and passage of an examination. Other local jurisdictions will issue a license for a nominal fee and may have little or no experience or examination requirements.

Section 489.118, F.S., provides that the CILB issue a “certification” in an appropriate construction category to a contractor who is “registered” upon receipt of a completed application, payment of an appropriate fee, and can show that he or she meets statutorily specified criteria such as possessing a registered local license, passing an approved written examination, having at least five years of

¹ DBPR website: See: <http://www.myfloridalicense.com/dbpr/pro/cilb/index.html>.

² *Id.*

³ Division I contractors include general contractors, building contractors, and residential contractors. See Fla. Stat. § 489.105(3)(a)-(c).

⁴ Division II contractors include sheet metal contractors, roofing contractors, class-A air conditioning contractors, class-B air conditioning contractors, class-C air conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, pollutant storage systems contractors, glass and glazing contractors, and specialty contractors. See Fla. Stat. § 489.105(3)(d)-(r).

⁵ 61G4-12.009, F.A.C.

⁶ *Id.*

contracting, among others. Applicants wishing to obtain a “certificate” pursuant to this statutory “grandfather” allowance were required to make application by November 1, 2005.

Proposed changes

The bill amends s. 489.118, F. S., to re-open and extend the period for grandfathering of “registered” contractors’ licenses to state wide “certified” contractors’ licenses until November 1, 2014.

B. SECTION DIRECTORY:

Section 1: amends s. 455.213, F.S., to waive initial license fees for military veterans.

Section 2: amends s. 455.2179, F.S., to allow the DBPR to administratively approve continuing education providers and courses without board review, even when there is an applicable board.

Section 3: amends s.455.271, F.S., to require applicants to establish that they were unable to renew their license due to illness or economic hardship to reinstate a void license.

Section 4: amends s. 455.273, F.S., to allow the DBPR to forward renewal and cancellation notices to a licensee’s e-mail address of record.

Section 5: amends s. 455.275, F.S., to require licensees to update their available e-mail address in additional to their required mailing address and place of employment.

Section 6: amends s. 475.451, F.S., to allow the DBPR to offer continuing education courses to real estate instructors through distance learning.

Section 7: amends s. 475.611, F.S., to clarify the definition of “Appraisal Management Company” and “Appraisal Management Services,” and creates s. 475.611(1)(d)2.y., F.S., to define the term “Subsidiary.”

Section 8: amends s. 475.6171, F.S., to remove the 24 month expiration period of the national examination score for applicants as an appraiser.

Section 9: amends s. 475.6235(1), F.S., to create an exemption from the definition of appraisal management company for bank owned appraisal management companies and financial institutions that own and operate an internal appraisal office, business unit, or department.

Section 10: amends s. 475.6245, F.S., to make it a violation for appraisal management companies to require appraisers to agree to an indemnification agreement.

Section 11: amends s. 477.019, F.S., to authorize the cosmetology board to license an applicant by endorsement if the applicant holds a current active cosmetology license in another state.

Section 12: amends s. 477.0263, F.S., to create a new exemption to allow licensed cosmetologists and specialists to perform services at special events held outside of a salon.

Section 13: repeals s. 489.105(3)(q), F.S., regarding mandatory licensure of glass and glazing contractors.

Section 14: amends s. 489.118, F.S., to re-open and extend the period for grandfathering of “registered” contractors’ licenses to statewide “certified” contractors’ licenses until November 1, 2014.

Section 15: provides an effective date of October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The DBPR estimates that the bill will increase revenues to the Professional Regulation Trust Fund by \$573,009 in FY 2012-13 and \$286,709 in FY 2013-14, as a result of re-opening the time period registered contractors may grandfather their registered contractors' license to a state certified contractors' license.

The bill may have an insignificant negative fiscal impact to the Professional Regulation Trust Fund related to the repeal of the required glass and glazing contractor's licenses. This impact is indeterminate.

In addition, the DBPR estimates that any loss of revenue related to granting initial licensing fee waivers to recently discharged military veterans would likely be insignificant.

2. Expenditures:

The DBPR estimates that re-opening the time period registered contractors may grandfather their registered contractors' license to a state certified contractors' license, may increase the workload on the department's Bureau of Central In-take (licensing/revenue section). The DBPR further indicates that the increase workload may require one additional full-time position. However, in FY 2010-11, the Bureau of Central In-take reverted over \$347,000 in budget authority. Based on current staffing levels and appropriations any workload increase associated with the bill, will be covered from within current positions and existing appropriations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will make it less burdensome for current and future licensees to obtain and maintain licensure with the Division. The bill will also make it less burdensome for former U.S. military personnel to obtain licensure with the Division.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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 the counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES