

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB HHS 18-01 Optometry  
**SPONSOR(S):** Health & Human Services Committee, Cummings  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health & Human Services Committee	18 Y, 0 N	Siples	Calamas

### SUMMARY ANALYSIS

Many students in optometric school take all or a portion of the national licensure exam for optometry prior to graduation and application for state licensure. Prior to 2017, the Board of Optometry (Board) accepted results from a national licensure examination regardless of whether the applicant took the examination before or after applying for licensure. In 2017, an administrative law judge found that the plain language of s. 463.006, F.S., prohibits the Board from accepting any scores from the national licensure examination if it was taken before an individual files an application for licensure. As a result, any applicant who has taken all or a portion of the licensure examination prior to applying for licensure must now retake the exam or those portions thereof.

PCB HHS 18-01 authorizes the Department of Health to accept proof of a passing score on a licensure examination within 3 years before or after the submission of an application for an optometrist license.

Unlike other health care professions, current law provides topics that must be tested on the licensure examination but does not give the Board express authority to approve a licensure examination. The bill expressly requires the Board to approve a licensure examination repeals the list of specific topics that a licensure examination must contain. The bill also makes conforming changes.

The bill has no fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Optometry Licensure

The practice of optometry includes the diagnosis of conditions of the human eye and its appendages; the use of objective and subjective means or methods to determine the refractive powers of the human eye or any visual, muscular neurological, or anatomic anomalies of the human eye or its appendages; and the prescribing and use of lenses, prisms, frames, mountings, contact lenses, orthoptic exercises, light frequencies, or other means to correct, remedy, or relieve any insufficiencies or abnormal conditions of the eyes and their appendages.<sup>1</sup>

The Board of Optometry (Board) regulates the practice of optometry in this state.<sup>2</sup> Any person seeking to be licensed as an optometrist must apply to DOH to take the licensure and certification examinations.<sup>3</sup> To qualify for licensure, an applicant must:<sup>4</sup>

- Be 18 years of age or older;
- Have graduated from an accredited school or college of optometry approved by rule of the Board;
- Be of good moral character;
- Have successfully completed at least 110 hours of transcript-quality coursework and clinical training in general and ocular pharmacology; and
- Have completed at least 1 year of supervised experience in differential diagnosis of eye disease or disorders as part of the optometric training or in a clinical setting as part of the optometric experience.

In addition, an applicant must pass the Florida licensure examination, which consists of:<sup>5</sup>

- Part I – the Applied Basic Science (ABS) portion of the examination developed by the National Boards of Examiners in Optometry (NBEO);
- Part II – the Patient Assessment and Management (PAM) portion of the examination developed by NBEO, which includes an embedded Treatment of Ocular Disease (TMOD) examination;
- Part III – the Clinical Skills portion of the examination developed by NBEO; and
- Part IV – A written examination on applicable Florida laws and rules governing the practice of optometry.

An applicant for licensure must pass all 4 parts of the examination.<sup>6</sup> An applicant who fails to pass any part of the licensure examination may retake the applicable part; however, the reexamination must occur within 18 months of the date of the original failure.<sup>7</sup>

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<sup>1</sup> Section 463.002(7), F.S.

<sup>2</sup> Section 463.005, F.S.

<sup>3</sup> Section 463.006, F.S.

<sup>4</sup> Id.

<sup>5</sup> Rule 64B13-4.001, F.A.C., and Department of Health, Board of Pharmacy, *Certified Optometrist Licensing Requirements*, available at <http://floridaoptometry.gov/licensing/certified-optometrist/> (last visited January 19, 2018).

<sup>6</sup> Id.

<sup>7</sup> Rule 64B13-4.002, F.A.C. The Board of Optometry may grant a 1 year extension to allow an additional retake based on medical disability.

## Administrative Challenge to Licensure Rule

Prior to 2017, an individual licensed as an optometrist in another state could apply for a Florida license without having to sit for a licensure examination if the applicant passed the NBEO examination within the 7 years preceding the application.<sup>8</sup> In 2016, two out-of-state optometrists applying for licensure in Florida petitioned the Board to waive the rule requirement to retake the NBEO examination since more than seven years had passed since they received passing scores.<sup>9</sup> One of the optometrists was licensed in Nevada and had passed the NBEO in 2007; the other was licensed in Michigan and had passed the NBEO in 1998.<sup>10</sup> The Board denied both requests, and each applicant filed a petition with the Division of Administrative Hearings (DOAH) to invalidate the rule.<sup>11</sup>

DOAH held that the look-back provision of the rule was an invalid exercise of delegated legislative authority because it enlarged the authority the Board was given under statute being implemented, s. 463.006(1), F.S. Specifically, the administrative law judge found that s. 463.006(1), F.S., requires applicants to submit the application for licensure before taking the NEO examination, and that the plain language of the section would prohibit the Board from accepting any scores from an NBEO examination taken before an individual files an application for licensure.<sup>12</sup>

Eleven out of 23 accredited schools of optometry in the United States require students to take some or all of the NBEO examination prior to graduation, including optometry schools in Florida.<sup>13</sup> As a result of the DOAH decision, graduating students applying for licensure are required to retake examinations they have previously passed while in school or college, and all out-of-state applicants must retake the examination.<sup>14</sup>

### **Effect of the Proposed Changes**

The PCB repeals a requirement that a person desiring to be licensed as an optometrist must file an application for licensure prior to taking the licensure examination. Under the bill, a person may submit proof of successfully passing the licensure examination within 3 years before or after the submission of an application. This would allow individuals, both in-state and outside of Florida, to apply for licensure if he or she obtained a passing score on the licensure examination within 3 years before or after the submission of an application.

Unlike other health care professions, current law provides topics that must be tested on the licensure examination but does not give the Board express authority to approve a licensure examination. The bill expressly requires the Board to approve a licensure examination and repeals the list of specific topics that a licensure examination must contain.

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<sup>8</sup> Rule 68B13-4.001(2), F.A.C. At that time, the relevant part of the rule read: "Given constant advances in research, developing knowledge in the area of basic and clinical science as applied to the diagnosis, correction, remedy, and relief of insufficiencies or abnormal conditions of the human eyes and their appendages, variances the scope of optometric practice among the states, and the importance of fundamental clinical skills to patient health and safety, passing scores on Part I, Part II, Part III and Part IV of the licensure examination must be obtained within the seven (7) year period immediately preceding licensure application."

<sup>9</sup> *Yontz and Johnson v. Department of Health, Board of Optometry*, Case No. 16-6663RX (Fla. DOAH Apr. 14, 2017). After the DOAH order was issued, DOH repealed this provision from r. 64B13-4.001(2), F.A.C.

<sup>10</sup> *Id.*

<sup>11</sup> *Johnson v. Florida Board of Optometry*, Case No. 15-5655 and *Yontz v. Florida Board of Optometry and the Florida Optometric Ass'n*, Case No. 16-6123. The cases were consolidated, see footnote 9.

<sup>12</sup> *Supra* note 9 at pp. 32-33.

<sup>13</sup> Department of Health, *2018 Agency Legislative Bill Analysis for Senate Bill 520*, (Oct. 12, 2017), on file with the Health and Human Services Committee. SB 520 is substantively similar to the PCB.

<sup>14</sup> *Id.*

B. SECTION DIRECTORY:

**Section 1:** Amends s. 463.006, F.S., relating to licensure and certification by examination.

**Section 2:** Provides an effective date of July 1, 2018.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Licensure applicants may avoid costs related to retaking all or portions of the licensure reexamination that were taken before the date of application.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**