

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 707 Legislative Review of Occupational Regulations

**SPONSOR(S):** Health & Human Services Committee, Renner

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1124

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Commerce Committee	22 Y, 1 N	Wright	Hamon
2) Health & Human Services Committee	12 Y, 4 N, As CS	Siples	Calamas

### SUMMARY ANALYSIS

An occupational or professional license is a form of regulation that requires individuals who want to perform certain types of work to obtain permission from the government before performing such work. These individuals must demonstrate that they have the designated knowledge, skills, and abilities to perform the work in order to obtain the license. In Florida, such licenses are granted and regulated by state agencies and entities through various occupational regulatory programs.

A sunset review is a provision within a statute or regulation requiring the statute or regulation to expire or cease to be effective on a certain date, unless the legislature takes action to renew the statute or regulation. A sunset review allows regulations to be periodically examined to determine if they are necessary or if the need to be changed, improved, or reduced.

The bill schedules the repeal of specified professions over four years, beginning July 1, 2021, and ending July 1, 2024. The bill relates to over one-hundred professions and occupations.

The bill establishes that it is the intent of the legislature to complete a systematic review of the costs and benefits of certain occupational regulatory programs prior to the date set for repeal to determine whether the program should be allowed to expire, be fully renewed, or be renewed with modifications.

The bill has no fiscal impact on local governments and an indeterminate fiscal impact on state government.

The bill will be effective upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Occupational Licensing**

An occupational or professional license is a form of regulation that requires individuals who want to perform certain types of work, such as contractors and cosmetologists, to obtain permission from the government to perform the work.<sup>1</sup> Generally, an individual obtains such permission by demonstrating that they have the designated knowledge, skills, and abilities to perform the work by meeting pre-determined criteria established by the government, such as work experience and examinations. If the individual successfully completes the pre-determined criteria, the government issues the individual a license, which allows them to perform the work.<sup>2</sup>

In the 1950s, less than five percent of U.S. workers were required to have an occupational license to do their jobs. Since then, the number of workers required to have a license has risen to more than one-quarter of U.S. workers.<sup>3</sup>

In 2015, The White House published a report on the current state of occupational licensing in the nation. The report found that when designed and implemented carefully, requiring occupational licenses offers important health and safety protections to consumers, as well as benefits to workers. However, the report also found that too often licensing requirements are inconsistent, inefficient, arbitrary, and there is evidence that the current licensing regimes in the U.S. raise the price of goods and services, restrict employment opportunities, and make it more difficult for workers to take their skills across state lines.<sup>4</sup>

#### *Occupational Licensing in Florida*

An estimated 28.7 percent of the workforce in Florida has an occupational license from the state.<sup>5</sup> Various governmental entities and agencies in Florida license and regulate such individuals practicing in a wide range of professions, including:<sup>6</sup>

- Department of Business and Professional Regulation (DBPR),
- Department of Health (DOH),
- Department of Financial Services (DFS),
- Department of Agriculture and Consumer Services (DACS),
- Florida Supreme Court (FSC),
- Department of Environmental Protection (DEP),
- Agency for Healthcare Administration (AHCA),
- Department of Children and Families (DCF),
- Department of Elder Affairs (DEA),
- Department of Highway Safety and Motor Vehicles (DHSMV), and
- Office of Financial Regulation (OFR).

#### **Sunset Reviews of Occupations and Professions**

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<sup>1</sup> The White House, *Occupational Licensing: A Framework for Policymakers*, 6 (July 2015) [https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing\\_report\\_final\\_nonembargo.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf) (last visited on Dec. 30, 2019).

<sup>2</sup> Bureau of Labor Statistics, *Frequently asked questions about data on certifications and licenses*, <https://www.bls.gov/cps/certifications-and-licenses-faqs.htm>, (last visited on Dec. 30, 2019).

<sup>3</sup> White House, *supra* note 1, at 3.

<sup>4</sup> *Id.* at 3-5.

<sup>5</sup> *Id.* at 24.

<sup>6</sup> Chs. 20, 25, F.S.

A sunset review is a clause within a statute or regulation requiring the statute or regulation to expire on a certain date unless the legislature takes action to renew the statute or regulation. A sunset review allows regulations to be periodically examined to determine if they are necessary or if the need to be changed, improved, or reduced. Sunset reviews can be useful, because even if a regulation was justified when first introduced, technological and economic advancements may have made the regulation unnecessary or overly burdensome.<sup>7</sup> Thirty-six states have some form of sunset process for existing occupational licensing laws, ranging from automatic program reviews and repeals, to sunset recommendations made from a commission to the state legislature.<sup>8</sup>

### *Sunset Reviews of Occupations and Professions in Florida*

In 1976, the Florida Legislature enacted The Regulatory Reform Act. The Act set up a sunset review process which called for a systematic, cyclical review and repeal of statutes related to the regulatory functions of the executive branch, including statutes regulating professions, occupations, businesses, and industries.<sup>9</sup> In 1978, The Sundown Act was enacted as a supplement to the sunset review law to set up a review for boards of trustees, commissions, and advisory bodies which were connected to executive agency functions.<sup>10</sup>

The law required certain committees within the Legislature to perform an in-depth review and make a recommendation for the continuation, modification, or repeal of certain occupational regulatory programs. The recommendation needed to consider the following criteria:<sup>11</sup>

- Would the absence of the regulation significantly harm or endanger the public health, safety, or welfare?
- Is there a reasonable relationship between the exercise of the police power of the state and the protection of the public health, safety, and welfare?
- Is there a less restrictive method of regulation available that would adequately protect the public?
- Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved, and, if so, to what degree?
- Is the increase in cost more harmful to the public than the harm that would result from the absence of regulation?
- Are any facets of the regulatory process designed for the purpose of benefitting, and do they have as their primary effect the benefit of, their regulated entity?

During the sunset review process, if any program was allowed to expire, the personnel positions which were responsible for carrying out the program and all unexpended balances of appropriations, allocations, or other funds for such program were to be reverted to the fund from which they were appropriated, or, if that fund was abolished, to the General Revenue Fund. Any remaining unencumbered revenue collected under a repealed occupational regulatory program were to be refunded on a pro rata basis by the Comptroller (now the Chief Financial Officer), upon request of the person or entity who paid, if such request was made within 1 year after the repeal of the program.<sup>12</sup>

The Act also provided that any cause of action pending on the date any program was repealed, or any cause of action brought thereafter, was to be prosecuted or defended in the name of the state by the

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<sup>7</sup> White, *supra* note 57 at 48-49; *Improving Occupational Licensing with Sunrise and Sunset Reviews*, National Conference of State Legislatures, (July 2018), <http://www.ncsl.org/research/labor-and-employment/improving-occupational-licensing-with-sunrise-and-sunset-reviews.aspx> (last visited Dec. 30, 2019); Council on Licensure & Regulation, *Sunrise, Sunset and State Agency Audits*, <https://www.clearhq.org/page-486181> (last visited Dec. 30, 2019); Brian Baugus & Feler Bose, *Sunset Legislation in the States: Balancing the Legislature and the Executive*, Mercatus Center, 3 (August 2015).

<sup>8</sup> *Improving Occupational Licensing with Sunrise and Sunset Reviews*, National Conference of State Legislatures, (July 2018), <http://www.ncsl.org/research/labor-and-employment/improving-occupational-licensing-with-sunrise-and-sunset-reviews.aspx> (last visited Dec. 30, 2019).

<sup>9</sup> Florida Senate Committee on Government Operations, Staff Analysis of 1991 Senate Bill 28-D, p. 2 (Dec. 11, 1991).

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

<sup>11</sup> S. 11.61(6), F.S. (1991).

<sup>12</sup> S. 11.61(7)-(8), F.S. (1991).

Department of Legal Affairs. All regulatory activities related to the repealed program were to cease after the date of repeal.<sup>13</sup>

In 1991, the Senate Government Operations Committee (SCGO) performed a review of the sunset and sundown laws. SCGO found that between 1977 and 1991, 240 program sunset reviews were completed. During that time period, an estimated 20 regulatory laws were repealed, and 50 new ones were created. Based on the mandatory nature of the in-depth review process, it was found that the costs of the sunset reviews were high in terms of legislative and executive agency staff time. The SCGO report also found that the initial reviews of regulatory programs were more useful than any second or subsequent reviews.<sup>14</sup>

In light of the SCGO findings, the sunset reviews for occupations, professions, businesses, and industries under the Regulatory Reform Act, and entities under The Sundown Act, were repealed in 1991. There has not been a comprehensive sunset review process specifically for occupational licensing schemes since.<sup>15</sup>

### **Effect of the Bill**

The bill schedules the repeal of specified occupational regulatory programs, over four years, beginning July 1, 2021, and ending July 1, 2024. The bill relates to over one-hundred professions and occupations.

The bill establishes that it is the intent of the legislature to complete a systematic review of the costs and benefits of certain occupational regulatory programs prior to the date set for repeal to determine whether the program should be allowed to expire, be fully renewed, or be renewed with modifications.

The bill provides:

“There is established a schedule for systematic review of the costs and benefits of occupational regulatory programs. The Legislature intends to review each program before the scheduled date on which each occupational regulatory program is set to expire through scheduled repeal to determine whether to allow the program to expire, renew the program without modifications, renew the program with modifications, or provide for other appropriate actions.”

The bill defines the following terms:

- "Occupational regulatory program" or "program" means any statutory regulatory provision or scheme which places a condition on practicing an occupation, including, but not limited to, programs that require a license, certification, registration, or credential.
- "Local government" means a county, municipality, special district, or political subdivision of the state.
- "Occupation" means a paid job, profession, work, line of work, trade, employment, position, post, career, field, vocation, or craft.

When an occupational regulatory program is allowed to expire or is repealed, the bill requires:

- the personnel positions which are responsible for carrying out the program to be abolished, and all unexpended balances of appropriations, allocations, or other funds for such program revert to the fund from which they were appropriated, or, if that fund is abolished, to the General Revenue Fund, within 60 days;

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<sup>13</sup> S. 11.61(9), F.S. (1991).

<sup>14</sup> SCGO, *supra* note 8, at 3.

<sup>15</sup> Ch. 91-429, Laws of Fla. Between 2006 and 2011, there was another systematic and scheduled sunset review process which included occupational regulatory programs, but that review process was applicable to every aspect of state agencies as a whole. That process was repealed in 2011. Ch. 2011-35, Laws of Fla.

- any remaining unencumbered revenue collected under a repealed occupational regulatory program to be refunded on a pro rata basis by the Chief Financial Officer, upon request of the person or entity who paid, if such request is made within 1 year after the repeal of the program;
- any cause of action pending on the date the occupational regulatory program was repealed, or any cause of action brought thereafter, to be prosecuted or defended in the name of the state by the Department of Legal Affairs, if prior to repeal such action would have been prosecuted or defended by the occupational regulatory program repealed by this act; and
- all regulatory activities related to the repealed program cease after the date of repeal, except as otherwise authorized.

The bill prohibits any local government from regulating any occupation or profession of any repealed occupational regulatory program, and preempts such regulation to the state, unless local regulation of such occupation is expressly authorized by law.

If after the effective date of the bill a law scheduled for review under the bill is amended or transferred, such action does not eliminate the scheduled repeal of such law, unless otherwise expressly provided in law.

The bill schedules the following occupational licenses for sunset on July 1, 2021:

- Court Reporters and Foreign Language Court Interpreters,
  - regulated by ss. 25.383 and 25.386, F.S., and FSC;
- Boiler Safety Inspectors,
  - regulated by ss. 554.104 and 554.114(1)(d), F.S., and DFS;
- Property Insurance Mediators and Neutral Evaluators,
  - regulated by ss. 627.7015(4) and 627.7074(1)(a), F.S., and DFS;
- Harbor Pilots,
  - regulated by ch. 310, F.S., and DBPR;
- Yacht and Ship Brokers,
  - regulated by ch. 326, F.S., and DBPR;
- Auctioneers and Auctioneer Apprentices,
  - regulated by pt. VI of ch. 468, F.S., and DBPR;
- Talent Agencies,
  - regulated by pt. VII of ch. 468, F.S., and DBPR.
- Community Association Managers,
  - regulated by pt. VIII of ch. 468, F.S., and DBPR;
- Athlete Agents,
  - regulated by pt. IX of ch. 468, F.S., and DBPR;
- Mobile Home Installers,
  - regulated by s. 320.8249, F.S., and DHSMV;
- Paramedics, Emergency Medical Technicians, and 911 Operators,
  - regulated by ss. 401.465, .27, and .271-273, F.S., and DOH;
- Dietitians, Nutritionists, and Nutrition Counselors,
  - regulated by pt. X of ch. 468, F.S., and DOH;
- Athlete Trainers,
  - regulated by pt. XIII of ch. 468, F.S., and DOH;
- Orthotists, Orthotic Fitters, Orthotic Fitter Assistants, Prosthetists, and Pedorthists,
  - regulated by pt. XIV of ch. 468, F.S., and DOH;
- Electrologists,
  - regulated by ch. 479, F.S., and DOH;
- Massage Therapists,
  - regulated by ch. 480, F.S., and DOH.

The bill schedules the following occupational licenses for sunset on July 1, 2022:

- Parenting Coordinators,

- regulated by s. 61.125, F.S., and FSC;
- Funeral Directors, Embalmers, Direct Disposers, Monument Establishment Sales Agents, and Preneed Sales Agents,
  - regulated by ch. 497, F.S., and DFS;
- Service Warranty Sales Representatives, Motor Vehicle Service Agreement Salespersons, and Home Warranty Sales Representatives,
  - regulated by ss. 634.171, .318, .320, and .420, F.S., and DFS;
- Elevator Safety Professionals,
  - regulated by s. 399.01(16), F.S., and DBPR;
- Employee Leasing Companies,
  - regulated by pt. XI of ch. 468, F.S., and DBPR;
- Pugilistic Event Timekeepers and Announcers,
  - regulated by ch. 548, F.S., and DBPR;
- Home Inspectors,
  - regulated by pt. XV of ch. 468, F.S., and ;
- Mold Service Professionals,
  - regulated by pt. XVI of ch. 468, F.S., and DBPR;
- Well Water Contractors,
  - regulated by ss. 373.302-342, F.S., and DEP;
- Associated Persons of a Securities Dealer and Associated Persons of a State Registered Investment Advisor or Federal Covered Advisor,
  - regulated by s. 517.12(1),(4), F.S., and OFR;
- Acupuncturists,
  - regulated by ch. 457, F.S., and DOH;
- Medical Doctors, Physician Assistants, Anesthesiologist Assistants, and Medical Assistants,
  - regulated by ch. 458, F.S., and DOH;
- Osteopathic Doctors, Physician Assistants, and Anesthesiologist Assistants,
  - regulated by ch. 459, F.S., and DOH;
- Audiologists and Speech-language Pathologists,
  - regulated by pt. I of ch. 468, F.S., and DOH;
- Nursing Home Administrators,
  - regulated by pt. II of ch. 468, F.S., and DOH;
- Occupational Therapists and Occupational Therapist Assistants,
  - regulated by pt. III of ch. 468, F.S., and DOH;
- Radiographers, Radiological Technologists, Radiology Assistants, and X-Ray Machine Operators,
  - regulated by pt. IV of ch. 468, F.S., and DOH;
- Respiratory Therapists and Respiratory Therapy Assistants,
  - regulated by pt. V of ch. 468, F.S., and DOH;
- Commercial Telephone Sellers,
  - regulated by ch. 501, F.S., and DACS;
- Intrastate Movers and Brokers,
  - regulated by ch. 507, F.S., and DACS.

The bills schedules the following occupational licenses for sunset on July 1, 2023:

- Mediators and Arbitrators,
  - regulated by ch. 44.106, F.S., and FSC;
- Firefighters, Fire Protection Systems Contractors, Fire Equipment Dealers, Firesafety Inspectors, and Volunteer Firefighters,
  - regulated by ch. 633, F.S., and DFS;
- Professional Bail Bond Agents and Limited Surety Bail Bond Agents,
  - regulated by ch. 648, F.S., and DFS;
- Farm Labor Contractors,
  - regulated by s. 450.30, F.S., and DBPR;
- Certified Public Accountants,
  - regulated by ch. 473, F.S., and DBPR;

- Veterinarians,
  - regulated by ch. 474, F.S., and DBPR;
- Real Estate Brokers and Salespersons,
  - regulated by pt. I of ch. 475, F.S., and DBPR;
- Barbers,
  - regulated by ch. 476, F.S., and DBPR;
- Cosmetologists and Specialists,
  - regulated by ch. 477, F.S., and DBPR;
- Chiropractic Physicians, Physician Assistants, and Registered Chiropractic Assistants,
  - regulated by ch. 460, F.S., and DOH;
- Podiatric Physicians and Certified Podiatric X-Ray Assistants,
  - regulated by ch. 461, F.S., and DOH;
- Naturopaths,
  - regulated by ch. 462, F.S., and DOH;
- Certified Optometrists and Licensed Optometric Professionals,
  - regulated by ch. 463, F.S., and DOH;
- Clinical Laboratory Personnel and Medical Physicists,
  - regulated by ss. 483.800-828 and .901, F.S., and DOH;
- Opticians and Hearing Aid Specialists,
  - regulated by s. 484.002, .007(3)-(4), .013-.015, and .018(3), F.S., and DOH;
- Physical Therapists and Physical Therapist Assistants,
  - regulated by ch. 486, F.S., and DOH;
- Motor Vehicle Repair Shops,
  - regulated by pt. IX of ch. 559, F.S., and DACS;
- Sellers of Travel,
  - regulated by pt. XI of ch. 559, F.S., and DACS;
- Charitable Solicitors,
  - regulated by s. 496.4101, F.S. and DACS.

The bill schedules the following occupational licenses for sunset on July 1, 2024:

- Property and Casualty Agents, Health and Life Insurance Agents, Title Agents, Portable Electronic Agents, Credit Insurance Agents, In-Transit and Storage Personal Property Insurance Agents, Legal Expense Sales Representatives, Managing General Agents, Motor Vehicle Rental Insurance Agents, Individual Reinsurance Brokers and Managers, Service Representatives, Travel Insurance Agents, All-lines Adjusters, Emergency Adjusters, Public Adjusters and Apprentices, Health Agents, Viatical Settlement Providers and Brokers, ACA Navigators, and Motor Vehicle Physical Damage and Mechanical Breakdown Agents,
  - regulated by ch. 626, F.S., and DFS;
- Engineers,
  - regulated by ch. 471, F.S., and DBPR;
- Professional Geologists,
  - regulated by ch. 492, F.S., and DBPR;
- Architects and Interior Designers,
  - regulated by pt. I of ch. 481, F.S., and DBPR;
- Landscape Architects,
  - regulated by pt. II of ch. 481, F.S., and DBPR;
- Construction Contractors,
  - regulated by pt. I of ch. 489, F.S., and DBPR;
- Electrical Contractors,
  - regulated by pt. II of ch. 489, F.S., and DBPR;
- Septic Tank Contractors,
  - regulated by pt. III of ch. 489, F.S., and DOH;
- Building Code Administrators, Inspectors, and Plans Examiners,
  - regulated by pt. XII of ch. 468, F.S., and DBPR;
- Registered Core Trainers,

- regulated by s. 429.52(11)-(12), F.S., and DEA;
- Health Care Risk Manager,
  - regulated by ss. 395.10971-10975, F.S., and AHCA;
- Recovery Residence Administrators,
  - regulated by s. 397.4871, F.S., and DCF;
- Child and Family Care Personnel Operators and Employees,
  - regulated by s. 402.305, F.S., and DCF;
- Registered Nurses, Advanced Registered Nurse Practitioners, and Certified Nurse Assistants,
  - regulated by ch. 464, F.S., and DOH;
- Pharmacists, Pharmacist Interns, and Pharmacist Technicians,
  - regulated by ch. 465, F.S., and DOH;
- Dentists and Dental Hygienists,
  - regulated by ch. 466, F.S., and DOH;
- Licensed Midwives,
  - regulated by ch. 467, F.S., and DOH;
- Psychologists and School Psychologists,
  - regulated by ch. 490, F.S., and DOH;
- Licensed Clinical Social Workers, Marriage and Family Therapists, Mental Health Counselors, Psychotherapists, and Certified Master Social Workers,
  - regulated by ch. 491, F.S., and DOH;
- Surveyors and Mappers,
  - regulated by ch. 472, F.S., and DACS;
- Hypnotists,
  - regulated by ch. 485, F.S., and DOH;
- Pest Control Professionals,
  - regulated by ch. 482, F.S., and DACS;
- Pesticide Application Professionals,
  - regulated by pt. I of ch. 487, F.S., and DACS;
- Body Piercing Salons, Tattoo Artists, Tattoo Establishments, and Certified Environmental Health Professionals,
  - regulated by ss. 381.0101, .0075-.00777, and .00781-00791, F.S., and DOH.

At the time of a scheduled repeal, if an occupational regulatory programs is allowed to expire or is amended, there will also need to be conforming changes made to related statutes and cross-references.

The bill is effective upon becoming law.

**B. SECTION DIRECTORY:**

- Section 1: Creates a process for a legislative sunset review for certain occupational regulatory programs.
- Section 2: Schedules certain statutes for sunset on July 1, 2021.
- Section 3: Schedules certain statutes for sunset on July 1, 2022.
- Section 4: Schedules certain statutes for sunset on July 1, 2023.
- Section 5: Schedules certain statutes for sunset on July 1, 2024.
- Section 6: Provides an effective date.

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

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

If the regulatory authority is not reenacted, affected regulatory agencies will experience a significant loss of fee revenue.



2. Expenditures:

If the regulatory authority is not reenacted, affected regulatory agencies will experience a significant reduction of workload to regulate and enforce regulatory requirements for professions and occupations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

For any occupational regulatory program that is repealed as a result of the sunset review process, the bill may have a positive impact on individuals who would have otherwise been required to pay licensing fees and comply with extensive licensing requirements. The impact on consumers is indeterminate.

D. FISCAL COMMENTS:

To the extent certain occupational regulatory programs are allowed to expire, state revenues and expenditures related to such programs will decline or be eliminated.

### 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:

None.

B. RULE-MAKING AUTHORITY:

Rule-making is not required to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 6, 2020, the Health and Human Services Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed references to a short title.

This analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.