

STORAGE NAME: s1016s1z.brc
DATE: June 29, 2000

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 00-356, Laws of Florida

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
BUSINESS REGULATION & CONSUMER AFFAIRS
FINAL ANALYSIS**

BILL #: CS/SB 1016

RELATING TO: Regulation of Professions under the Department of Business and Professional Regulation

SPONSOR(S): Senate Regulated Industries; Senator Sebesta

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) SENATE REGULATED INDUSTRIES YEAS 5 NAYS 1
 - (2)
 - (3)
-

I. SUMMARY:

This act contains various modifications and additions relating to regulation of professions under the Department of Business and Professional Regulation (DBPR). Professions included in the act are: harbor pilots, elevator inspectors, auctioneers, community association managers, employee leasing companies, funeral directors and embalmers, professional engineers, veterinarians, cosmetologists, real estate brokers, geologists, and athlete agents. Other provisions relate to the DBPR's general regulatory powers, applicable to all of the professions it regulates.

DBPR is authorized to privatize staff support functions, upon the request of a specific board, and requires them to contract by October 1, 2000, to privatize staff functions for the Board of Architecture and Interior Design (*see section 9 in sec.-by-sec. portion of analysis*).

Additionally, the act provides for:

- (1) An accelerated procedure for harbor pilot rate changes to take effect (*section 3*);
- (2) Privatization of DBPR elevator inspection services (*section 4*);
- (3) Controls against the possibility of a board filing a rule over the objections of the Joint Administrative Procedures Committee (*section 5*);
- (4) Continuing education requirements for engineers (*section 36*); and
- (5) Additional penalties for errant athlete agents (*sections 69-71*).

FISCAL IMPACT ON STATE GOVERNMENT: The act provides an appropriation of \$500,000 from the Professional Regulation Trust Fund to offset startup costs for the privatization of the Board of Architecture and Interior Design staff support services. A fee of up to \$25 is established for each clinic location for limited veterinarian service permittees (i.e., humane societies), to defray inspection costs. The privatization of elevator inspections eliminates 18 full-time positions from DBPR, amounting to an annual reduction of \$639,616 in salaries out of the Hotel and Restaurant Trust Fund, along with an annual reduction of \$36,000 in expenses.

There is no significant fiscal impact upon local government.

The effective date of the act is July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Lower Taxes

The act provides for a new fee of up to \$25 for each location of a limited services veterinarian clinic. The fee is to defray costs of required inspections.

The elevator inspection privatization provisions are expected by DBPR to reduce the elevator licensure fees by 10%. However, owners of elevators requiring inspection will have to pay an inspection fee to a private inspection service.

B. PRESENT SITUATION:

See section-by-section

C. EFFECT OF PROPOSED CHANGES:

See section-by-section

D. SECTION-BY-SECTION ANALYSIS:

Exemption from Licensure Exemptions (CS/SB 1016)

Section 1. Amends s. 458.319, F.S., providing that if any active legislator has failed to renew any license issued by the Department of Health, that license shall not be considered inactive or expired during the period the legislator serves, and for 60 days after the legislator's term expires. If any legislator has his or her license continued pursuant to this provision, and wishes to continue with an active license, he or she must, prior to 60 days after the expiration of his or her term: (1) Pay \$250 for each year he or she failed to renew; and (2) Complete 10 hours of continuing medical education credits for each of those years. This section is retroactive to January 1, 1996.

Harbor Pilots (CS/HB 2211)

Section 2. Amends s. 310.071, F.S. providing that certain criminal offenses disqualify an applicant from becoming a harbor pilot.

Present Situation

Maritime vessels throughout the world are required to use local (state) harbor pilots to enter and leave ports or navigate through restricted waterways. The reasoning behind this requirement is that intimate knowledge of local conditions is necessary to navigate safely through unfamiliar, congested, or restricted waters. In Florida, all foreign-flagged ships and foreign-traveling American-flagged ships are required, by law, to employ a state pilot (American ships traveling between American ports use federal pilots).

Harbor piloting in Florida is regulated under chapter 310, Florida Statutes. The regulation of harbor pilots is administered by the Board of Pilot Commissioners (pilot board), established under the DBPR. Rates are set by a separate board, the Pilotage Rate Review Board.

The pilot board sets the number of pilots in each port. Two levels of licensed pilots (deputy pilots and state pilots) are established by statute. Anyone wishing to become licensed as a state pilot must first be appointed as a deputy pilot in that port and complete the deputy pilot training. Currently, there are no provisions denying eligibility to harbor pilot applicants due to any criminal infraction on their record.

When the pilot board determines that a deputy pilot position is open in a particular port, that opening is publicly noticed. To get a seat at the state exam, the applicant must qualify according to several criteria, including maritime experience. Once the examination is administered, the individual who scores the highest is awarded the deputy pilot position.

The deputy pilot undergoes a training program lasting a minimum of two years. A state pilot evaluates the performance of the deputy pilot, and recommends him or her for advancement through the levels as his or her skills are proven and his or her experience grows. At the successful conclusion of the training program, the deputy pilot must pass another examination before being licensed as a state pilot.

Effect of Changes

The act ensures that any person who has a felony or first degree misdemeanor directly related to operation of a vessel, or a felony relating to drug trafficking, will be disqualified from becoming a licensed state harbor pilot.

Section 3. Amends s. 310.151, F.S., accelerating the time frame within which harbor pilotage rate changes take effect.

Present Situation

The Pilotage Rate Review Board (rate board) was created for the sole purpose of setting the rates which pilots may charge the ships they pilot. These rates are primarily calculated according to the size of the vessel and vary from port to port. The rationale for making rates port specific is that each port has hazards involving different degrees of difficulty, and also has typical transit times that can vary greatly. For instance, a pilotage job in Tampa averages around 4.5 hours, while a pilotage job in Port Everglades (Ft. Lauderdale) averages just over one hour.

A pilotage rate hearing is convened whenever a substantially affected party (usually the local harbor pilot association or the local shipping concerns) requests a rate hearing for the purpose of raising or lowering that port's pilotage rates.

Whenever the rate board orders a change in the pilotage rate, a substantially affected party may challenge the order through administrative procedures and eventually through the court system. This process can take well over a year (one challenge took over two years) before it is resolved. Upon challenge, the rate board order changing the rate is postponed (stayed), rather than allowed to become effective. The rate only takes effect upon the conclusion of administrative and court challenges.

Since most rate changes are increases, staying the increase affects pilot earnings. Because substantial sums of money are involved, shipping concerns have a compelling economic incentive to engage in an appeals process since every day that the appeal process lasts is a day they are free of the increased rate.

Effect of Changes

The section provides that any change in the pilotage rate will go into effect upon the order of the rate board (rather than being stayed by any challenge), with the difference in the old versus new pilotage rate being placed in an escrow account. Then, when the administrative and court challenges have been concluded, the monies (plus the interest) are given to the parties on the prevailing side.

The effect of this section is to remove the compelling economic incentive that presently exists for the party that loses the rate board decision to challenge that decision continually.

Harbor Pilots (Mentor program)

See Section 66 of this analysis

Elevator Inspection Privatization (CS/HB 2211)

Section 4. Amends s. 399.061, F.S., privatizing DBPR elevator inspections.

Present Situation

The DBPR reports that in analyzing the cash situation of its Hotel and Restaurant Trust Fund, it became apparent that by June 30, 2002, the fund would show a deficit of \$1.5 million if no action was taken. The DBPR explains that a number of increases in expenses have occurred over the past several years that were not funded. These increases include: (a) travel mileage reimbursement has increased from \$.20 to \$.29 per mile; and (b) increases for private sector rent. When state building rent goes up, the legislature provides additional funds, but private sector rental increases are not normally funded.

The DBPR reports that another impact on the division's trust fund is a 5% reserve being placed on all trust funds. This 5% reserve is an initiative of the Governor's office, as a precautionary measure in the event of a revenue shortfall. The reserve, which is estimated to be over \$1 million per year, has put an additional burden on the Hotel and Restaurant Trust Fund.

In analyzing the situation and looking for ways to resolve this cash deficit, the privatization of elevator inspections was proposed by the department. Almost all elevators in Florida must be licensed by the DBPR. Exceptions to the licensure requirement include elevators in television or radio towers, sewage pump station lifts, and inclined or vertical wheelchair lifts located in private residences.

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Of the elevators that are licensed, not all require inspection. Elevators that serve only two floors are not required to be inspected. Of the ones that are licensed and inspected, not all are licensed and inspected by DBPR. The DBPR is allowed to contract out licensure and inspection responsibilities to willing local jurisdictions, and has done so with Miami Beach, City of Miami, Metro Dade, and Reedy Creek. There are 51,809 licensed elevators in the state, divided as follows:

40,460 -- Are licensed and inspected by DBPR

11,349 -- Are licensed and inspected by local jurisdictions

Of the 40,460 elevators licensed by DBPR:

31,063 -- Require inspection

7,289 -- Are exempt from inspections because they only serve two floors

2,108 -- Are not inspected because they are not operational, or are under construction.

Of the ones that require inspection:

27,300 -- Have a service maintenance contract & are inspected by DBPR every two years

3,763 -- Have no service maintenance contract and are inspected by DBPR annually.

The DBPR states that privatizing inspections will save the Hotel and Restaurant Trust Fund \$675,616 and will eliminate 18 FTE's from DBPR. The DBPR further states that the owners of the 40,460 elevators licensed by DBPR will have their licensure fees reduced by 10%.

However, building owners will face additional costs. They will be required to pay for private industry inspection services, expected to be roughly the equivalent of their current licensure fees, while continuing to have to pay 90% of their existing license fee.

Effect of Changes

The section requires privatization of DBPR's elevator inspection services. Owners of elevators licensed by DBPR, and requiring inspection, may choose between two methods of private inspection:

1. Annual inspection by a Qualified Elevator Inspector; or
2. Enter into a service maintenance contract, including bi-annual inspection, with a private company.

The title Qualified Elevator Inspector refers to a certification issued by a private association, the National Association of Elevator Safety Authorities (NAESA). NAESA indicates that certification requires five years experience in mechanical or electrical trades, one year's experience in elevator inspection, and passage of an examination. NAESA said that there are currently 20 Qualified Elevator Inspectors in Florida.

The department will continue to conduct initial and construction inspections, handle enforcement actions and conduct plan reviews, in addition to addressing complaints and conducting oversight inspections (unannounced and random) which are the most time consuming and costly activities.

The elevator inspection program currently has 27 positions. Using the most recent Inspectors Activity Report, it was determined that to handle licensure activities and initial,

construction, and complaint inspections, 6 positions would be required. Additionally, an administrator, a plans reviewer, and a support person would be required, raising to nine the number needed to handle the workload. The remaining 18 positions (17 inspectors and 1 support person) could be eliminated.

Rule Promulgation/JAPC Approval (CS/HB 2211)

Section 5. Amends s. 455.211, F.S., restricting a professional board's authority to promulgate a rule over the objections of the Joint Administrative Procedures Committee (JAPC).

Present Situation

JAPC reviews all rules proposed by each executive branch agency. JAPC staff determines whether, in their view, the rule lacks proper statutory authority, or is otherwise objectionable. If the staff makes such a determination, it communicates by letter with the agency proposing the rule, asking the agency to cite the proposed rule's specific statutory authority, or otherwise clear up their concerns. These communications are considered a "proposed objection" (an actual objection may only be made by a JAPC *committee* vote).

Currently, when JAPC staff proposes an objection to a board's proposed rule, the board may:

- 1) Ignore the proposed objection and neglect to respond (in which case the rule is automatically considered withdrawn); or
- 2) Modify the rule to satisfy the concerns expressed in the proposed objections; or
- 3) Refuse to modify the rule, and proceed to file such rule with the Department of State.

If the board refuses to modify the rule, the proposed objection goes before the JAPC committee, and the JAPC committee may then formally vote an objection. The executive director of JAPC then certifies the objection to the agency head. A note of this objection is then made in the Florida Administrative Code, attached to the rule itself. However, a JAPC objection does not impede the adoption of a rule. Once filed with the Secretary of State, the rule takes effect in 20 days.

JAPC may choose to report the refusal to modify the rule to the Speaker of the House and the President of the Senate, and a act may be filed to repeal the rule. However, to date, no board has refused to modify a rule, and consequently, no such notification has been exercised by JAPC.

Effect of Changes

The section provides that if a board proposes a rule and refuses to modify the rule to comply with JAPC proposed objections, the department must approve the rule before it can be filed with the Department of State. It also allows the department to repeal an existing board rule if the board failed to modify the rule to comply with JAPC concerns.

Spanish Language Examinations (CS/HB 2211)

Section 6. Amends s. 455.217, F.S., to remove the delay and cost in receiving professional licensure examinations in Spanish.

Present Situation

Currently, an applicant requesting that DBPR provide his or her examination in a foreign language must submit his or her request six months prior to the scheduled examination and pay the cost of developing the examination in that language.

The DBPR reports that due to the large number of Spanish speaking people in Florida, it is translating all of its examinations, as well as applications, into Spanish. Therefore, it is no longer necessary to require advance notice, or collect additional payment, in order to provide a Spanish language examination.

Effect of Changes

The section exempts requests for examinations in Spanish from provisions requiring such requests to be made in writing six months prior to the examination. It also exempts those requesting Spanish language examinations from having to pay the cost of developing the examination in that language. The effect of this provision is to ensure that persons requesting examinations in Spanish will not face a delay or additional costs.

DBPR General Authority (CS/HB 2211)

Section 7. Amends s. 455.2179, F.S., to authorize the DBPR to charge a fee to providers of continuing education.

This section simply moves existing language in s. 455.219 (3), F. S., giving the boards, and the department when there is no board, authority to approve and to charge a fee of up to \$250 to providers of continuing education. The DBPR believes it more clearly puts continuing education providers on notice of the fees they must pay. This is not a new fee.

Fee Waiver (CS/HB 2211)

Section 8. Amends s. 455.219, F.S., modifying fee collection authority to allow DBPR to waive licensure fees.

Present Situation

The department collects renewal fees from licensed professionals at a regular interval, usually every two years, and deposits the renewal fees in the Professional Regulation Trust Fund account of that profession. The costs of regulating the profession are deducted from these trust fund accounts. Some of these accounts have a substantial positive balance.

Effect of Changes

This section authorizes the department to waive the payment of fees for up to two years for professions with trust fund balances large enough for the department to estimate that it can safely waive fee payment.

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DBPR Authority to Privatize Staff Support Functions (CS/HB 2211)

Section 9. Creates s. 455.32, F.S., establishing a privatization model for administrative functions of boards under DBPR.

Present Situation

Presently, the only instance of privatized staff services is for the Board of Professional Engineers. Section 471.038, F.S., created the Florida Engineers Management Corporation (FEMC) in 1997 as a private not-for-profit corporation providing staff support services for that single board.

The current DBPR administration determined that it wanted to devise a new privatization model, one that could be applied to any board, on a case-by-case basis. The profession that was most insistent and eager to be the second DBPR profession to receive privatized staff support was the architects (under the Board of Architecture and Interior Design).

Effect of Changes

The DBPR will be allowed, upon request from a specific board, to contract out staff support services for that board. The act provides that a contract providing for privatization of such services must be approved by the specific board and contains specific provisions relating to the contents of the contract.

The section also requires DBPR to contract for privatization of staff support services for the Board of Architects and Interior Design by October 1, 2000.

Auctioneers (HB 1109)

Section 10. Amends s. 468.382, F.S., to define the term "absolute auction."

Section 11. Amends s. 468.385, F.S., requiring licensees to pass a board approved test that is updated to include provisions of the Uniform Commercial Code and the laws of agency, in addition to existing requirements; and clarifies that an auction must be conducted by an active licensee or apprentice.

Section 12. Creates s. 468.3855, F.S., to specify apprenticeship training requirements to include sponsorship, active participation in sales events, and appropriate supervision, among other requirements.

Section 13. Amends s. 468.388, F.S., striking exceptions to the requirement that written agreements be executed prior to conducting an auction. Written agreements will be required for all auctions. Additional changes are specified, clarifying that an auction must be conducted by an active licensee or apprentice and modifying the requirements and responsibilities relating to the conduct of an auction.

Section 14. Amends s. 468.389, F.S., to provide that failure by an auctioneer to deliver in a reasonable time, money or property that has come into his or her control, may subject the person to discipline.

Section 15. Reenacts s. 468.385(3)(b), F.S., and s. 468.391, F.S., for purposes of incorporation of references to s. 468.389(1)(c), F.S., a subsection changed by this act.

Section 16. Amends s. 468.392(2), F.S., to allow the secretary of the DBPR to designate a person to sign vouchers for payments and disbursements from the Auctioneer Recovery Fund.

Section 17. Amends s. 468.395, F.S., deleting provisions relating to and requiring a judgment and court ordered payment from the fund; permitting application directly to the board for recovery of a loss; limiting recovery only to losses resulting from actions occurring within this state after October 1, 1991; defining a single transaction or auction, for purposes of the subsection; deleting the required notice to the board upon commencement of court action; and subrogating the fund to the rights of the claimant, to the extent of the payment, upon payment from the fund.

Section 18. Amends s. 468.397, F.S., making grammatical changes.

Present Situation

Auctioneers are licensed and regulated pursuant to part VI of chapter 468, F.S., by the Department of Business and Professional Regulation. Auctioneers are required to pass a written exam prepared and administered by the DBPR. This part provides for disciplinary actions, including the failure to account for money that has come into an auctioneer's control through an auction. The Auctioneer Recovery Fund was established to allow persons to recover losses when they otherwise could not collect a court judgement against an auctioneer.

Recently, the DBPR was asked to review its rules, and those of the boards it administers, and identify rules that lacked clear statutory authority. The DBPR identified several rules under the Board of Auctioneers as lacking clear statutory authority, under the more stringent rule-making standards adopted in chapter 120, F.S., in 1996, and further revised in 1999.

Effect of Changes

The act places in statute provisions which are currently in the Board of Auctioneers' rules. Those sections are discussed above, in sections 10-18.

Community Association Managers (CS/HB 2211)

Section 19. Amends s. 468.433, F.S., establishing a requirement for 24 hours of prelicensure education for community association managers 12 months prior to the licensure examination. The DBPR has recommended educational requirements as part of all professional licensure qualifications.

Employee Leasing Companies (CS/HB 2211)

Section 20. Amends s. 468.525, F.S., removing the prohibition against employee leasing companies having any employees perform duties other than those included in the definition of employee leasing.

Present Situation

Section 468.525(h) currently prohibits employee leasing companies or their employees from performing any activity that is not specifically listed in the definition of "employee leasing." The DBPR has indicated that it has not been presented any reasoning justifying the prohibition, and is therefore recommending removal of the prohibition.

Effect of Proposed Changes

The section removes the prohibition against employee leasing companies having any employee perform duties other than those included in the definition of employee leasing.

Section 21. Amends s. 468.526, F.S., modifying the provision which allows up to five employee leasing companies that are corporations owned by the same "parent" to form an employee leasing company group. This section deletes from that language the provision requiring each of the companies to be corporations.

Present Situation

Current law requires each company in an employee leasing group to be a corporation. The DBPR has not been presented any reasoning justifying that requirement, and has recommended its removal.

Effect of Proposed Changes

Companies that wish to form an employee leasing group will not be required to be corporations.

Section 22. Amends s. 468.531, F.S., adding "offering to practice" as an employee leasing company to the activities which require licensure as an employee licensing company and reserves several additional terms for use exclusively by licensed employee leasing companies.

Present Situation

Section 468.531, F.S., prohibits unlicensed persons from practicing as an employee leasing company, but does not bar them from *offering* to act as an employee leasing company. Typically, unlicensed activity charges are supported by the fact that a person or company is advertising as being able to offer the service. Therefore, almost all professional regulatory acts find that in prosecuting unlicensed practice, it necessary to prohibit the *offering* of the service.

Many practice acts (doctors, accountancy, architecture, interior design, etc.) prohibit unlicensed persons from using specific professional title(s) in order to protect the public from being misled. For such a prohibition to be effective it is necessary to "capture" all variations of the official title. Currently, the part XI of chapter 468, F.S., only prohibits the use of "licensed employee leasing company," "licensed employee leasing company group," and "controlling person."

Effect of Proposed Changes

The section prohibits unlicensed persons or entities from offering to practice as an employee leasing company.

The section adds several additional terms to the listing of terms reserved for licensed persons or businesses engaged in employee leasing. Unlicensed persons or businesses are thereby prohibited from representing themselves under any of these terms.

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Sections 23, 24, 25, 27, and portions of **Sections 29 and 30.** Amend s. 470.005, 470.015, 470.016, 470.018, 470.028, and 470.0301, F.S., to clearly specify that the Board of Funeral Directors and Embalmers has statutory authority to adopt rules.

Present Situation

Chapter 470, F.S., provides authority to DBPR and the Board of Funeral Directors and Embalmers to regulate, through licensure, registration and inspection, funeral directors, embalmers, direct disposers and the facilities each operates. Governor Bush directed DBPR, as well as other executive agencies, to review their rules and pertinent statutes and identify rules which are not based on clear statutory authority. The board appears to lack statutory authority in several areas of regulation which the board feels should be clarified.

Effect of Changes

The Board of Funeral Directors and Embalmers is authorized to adopt rules relating to: inspecting records of funeral, incinerator, and direct disposal establishments and those records that directly relate to the regulated activity of the licensee; renewing licenses of funeral directors and embalmers to allow continuing education credit when a licensee attends a board meeting; establishing requirements for advertising continuing education courses; reactivating an inactive license of funeral directors and embalmers to allow continuing education credit when a licensee attends a board meeting; renewing the license of direct disposers to allow continuing education credit when a licensee attends a board meeting; establishing disciplinary guidelines as they relate to liability of licensees and registrants for violations by a preneed sales agent; operating centralized embalming facilities in addition to registration of the facilities; and operating procedures for the identification of human remains after embalming.

Section 26. Creates statutory language directing the DBPR to provide recommendations to the Legislature prior to January 1, 2001, regarding whether to continue to register direct disposers under s. 470.017, F.S., after June 30, 2001.

Present Situation

Chapter 470, F.S., provides authority to DBPR and the Board of Funeral Directors and Embalmers to regulate the operations and facilities of direct disposers. This and the other professions regulated by the DBPR are guided by specific statutory duties and definitions in order to distinguish specific services which may be performed. Testimony before the Committee on Business Regulation and Consumer Affairs included statements that the services of direct disposers often extend beyond these statutory limits and reach into the jurisdiction of other professions, such as funeral directing. It is this sentiment which raised the question of whether to continue the registration and regulation of direct disposers.

Effect of Changes

The DBPR is to study and make recommendations to the 2001 Legislature regarding whether to continue to regulate direct disposers. The results of the study by DBPR can be used by the legislature in making its policy decision relative to the future existence of this part of the industry.

Section 28. Amends s. 470.021, F.S., to prohibit co-locating by a direct disposal establishment with other direct disposal or funeral establishments unless the establishment is licensed as a collocated facility on July 1, 2000.

Present Situation

Though some operations are grandfathered, currently, funeral establishments are prohibited from operating at the same location as other funeral establishments or direct disposal establishments. There is no similar prohibition against direct disposal establishments being colocated with funeral establishments or other direct disposal establishments. There is some sentiment in the industry that the performance of funeral and direct disposal services when conducted at adjacent locations can confuse the general public.

Effect of Changes

Direct disposers who are registered after the effective date of this act will be prohibited from collocating their facilities with any other direct disposal facility or funeral establishment. This places the same restrictions on direct disposers as are currently on funeral establishments.

Section 29. Amends s. 470.028, F.S., to specify that a preneed sales agent must be registered in order to represent a funeral or direct disposal establishment.

Present Situation

Chapter 470, F.S., requires preneed funeral service contracts and direct disposition contracts to be consistent with the provisions of chapter 497, F.S., the "Florida Funeral and Cemetery Services Act." This act regulates the sale and purchase of preneed services and merchandise and specifies that a person may not provide preneed services without obtaining a certificate of authority. Section 497.405, F.S., specifies that a certificate may only be issued to a person who holds a license as a funeral establishment or a direct disposal establishment. Individuals, who offer preneed contracts to the public, must register as a preneed agent for a certificate holder.

Effect of Changes

The reference to funeral director and direct disposer is stricken from the provisions of s. 470.028, F.S., relating to the requirement that a preneed agent be registered prior to acting as an agent. The effect of this change is to specify in chapter 470, F.S., that a preneed sales agent is required to be registered in order to represent an entity licensed as a funeral or direct disposal establishment, as required in chapter 497, F.S.

Section 30. Amends s. 470.0301, F.S., to limit the persons who may be in charge of a centralized embalming facility.

Present Situation

Currently, funeral, direct disposal and centralized embalming facilities are required to have a full time director, disposer or embalmer in charge of the respective facility. Funeral directors and direct disposers are prohibited from being in charge of more than one funeral or disposal facility at the same time, ss. 470.021(9) and 470.024(7), F.S. There is no similar prohibition against being a full time person in charge of more than one centralized embalming facility.

Effect of Change

A full-time funeral director in charge, a full-time direct disposer in charge, or a full-time embalmer in charge of a licensed facility is prohibited from being a full-time embalmer in

charge of a centralized embalming facility. This prohibition would curtail the practice of being responsible for and in charge of more than one facility at the same time, similar to the restrictions for funeral and disposal facilities.

Professional Engineers (CS/HB 2211)

Sections 31, 32, 34, 39, 41, and 42. Amend ss. 471.003, 471.0035, 471.011, 471.023, 471.031, and 471.037, F.S., making technical changes.

Section 33. Amends s. 471.005, F.S., making technical changes and allowing the board to grant the use of the title "Professional Engineer, Retired," to individuals who have had an engineers' license, but have relinquished that license.

Section 35. Amends s. 471.015, F.S., making a technical change to existing provisions that had erroneously implied that accreditation is given to doctorate programs. Only undergraduate programs receive accreditation.

Section 36. Amends s. 471.017, F.S., requiring the Board of Professional Engineers to require by rule 4 hours of continuing education each year, as a condition for licensure renewal.

Section 37. Amends s. 471.019, F.S., removing language relating to continuing education for engineers dealing with building code matters (see section 38).

Section 38. Creates s. 471.0195, F.S., clarifying the requirement that engineers working on structures covered under the Florida Building Code must take certain continuing education courses. Similar, though conflicting, language existing in current law was struck from s. 471.019, F.S., by the preceding section (section 37).

Professional Engineers/Design Plans at a Bid Meeting (HB 993)

Section 40. Amends s. 471.025, F.S., requiring engineers to seal all final design plans they submit at bid meetings.

Present Situation

Engineers are licensed and regulated by the Board of Professional Engineers, under the Department of Business and Professional Regulation, pursuant to ch. 471, F.S. Engineers perform consultation, planning, and design of engineering systems. Chapter 471, F. S., provides for testing, licensure, and discipline of engineers.

Engineers are required to seal plans that they submit "for public record." "Sealing" means to physically emboss the plans, thereby formally signifying that the plans are theirs, and making the engineer responsible for the work, in the sense they can be disciplined for poorly done work. Plans "for public record" refers to plans submitted to a building department for purposes of obtaining a building permit (plans that will go "on file").

However, prior to submitting plans to the building department, engineers typically submit their plans to the person issuing the contract, and prospective contractors, at what is called a "bid meeting." A fire protection system bid meeting is a meeting between the owner and the potential fire protection system contractors at which the owner hands out copies of the engineer's design document, for the purpose of obtaining bids on what it will cost to perform the work. Fire protection contractors allege, and have presented evidence in

support of their allegation, that there have been instances in which engineers have submitted poorly done fire protection system design plans as final bid documents in a bid meeting.

Current law does not require the engineer to seal such documents, because they are not considered a document for public record. Contractors are bound, however, to follow that document, or else go back to the engineer to get him or her to formally sign off on each change throughout the project.

Effect of Changes

The act requires engineers to seal the plans they present at a bid meeting. This means that if engineers submit substandard fire protection systems plans at bid meetings, they will be held accountable for those plans, and can be disciplined by the Board of Professional Engineers.

Veterinarians (CS/HB 2211)

Section 43. Amends s. 474.202, F.S., defining a veterinarian as a health care practitioner.

Present Situation

In 1997, the health care professions under the jurisdiction of DBPR were transferred to the Department of Health and the non-medical boards remained under the jurisdiction of the DBPR. As a part of this reorganization, chapter 455, F.S., relating to general provisions for the regulation by the respective departments, was divided into two parts. The definition of health care practitioner was moved to part II, relating to the medical professions, and the reference to veterinarians in the definition was removed since the regulation of veterinarians was contained in part I of the chapter.

Effect of Changes

By definition, veterinarians are identified as health care practitioners who are licensed to practice veterinary medicine. This change is designed to recognize veterinarians as health care practitioners even though their services are performed on animals rather than humans.

Section 44. Amends s. 474.203, F.S., to allow veterinarian practices to be performed on a limited basis by certain designated persons who are not licensed veterinarians.

Present Situation

Chapter 474, F.S., does not currently have a provision for a licensed veterinary specialist from another state to practice in Florida on a limited basis. Additionally, there is no exemption from licensure for faculty, interns, or residents practicing at veterinary colleges in Florida.

Effect of Changes

A licensed veterinary specialist from another state is authorized to practice in Florida on a limited basis when requested by a licensed veterinarian in this state. Veterinarian faculty, interns and residents are authorized to practice veterinary medicine at veterinary colleges in Florida, without having to have a Florida veterinary license.

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Section 45. Amends s. 474.211, F.S., providing the Board of Veterinary Medicine authority to approve, by rule, qualifications of continuing education providers.

Present Situation

The DBPR is authorized to renew veterinarian licenses on a biennial basis. Qualifications for renewal include certification by the board of the completion of up to 30 hours of continuing education courses every two years. The board is authorized to approve the criteria of these courses. The board, however, does not currently have explicit authority to approve continuing education providers.

Effect of Changes

The board is specifically authorized to prescribe by rule the criteria for becoming a continuing education provider.

Section 46. Amends s. 474.214, F.S., to increase the maximum fine authority of the board to \$5,000 for each offense.

Sections 47 and 48. Reenact sections and subdivisions of ss. 474.207 and 474.217, F.S., for technical reference purposes relating to the increased penalty.

Present Situation

Currently, chapter 455, F.S., allows a maximum administrative fine of \$5,000 for each count or separate offense. The maximum fine currently allowed as discipline by the board under chapter 474, F.S., is \$1,000.

Effect of Changes

The maximum administrative fine which may be imposed by the board is increased to \$5,000 from \$1,000.

Section 49. Amends s. 474.215, F.S., to clarify the application of various provisions relating to the operation of limited service veterinary clinics.

Present Situation

Currently, permits are issued to limited service veterinary clinics. DBPR rule 61G18-15.007, FAC, defines these entities to mean a clinic where a veterinarian performs vaccinations and/or immunizations against disease on multiple animals, and where the veterinarian may also perform preventive procedures for parasite control and operate no more often than once every 2 weeks and no more than 4 hours in any 1 day at the same location. There is no statutory authority to collect fees for these permits, although the department reports that there is a considerable amount of work involved at the board office level, in addition to the inspection responsibilities for these clinics.

The law does not currently address county health department-operated vaccination clinics when there is a rabies outbreak and a threat to the public. Consequently, such clinics must adhere to all limited service veterinary clinic rules.

Currently, when there is a violation of law or rules at a clinic, the board can only discipline the licensed veterinarian. Any non-veterinarian owner of a clinic cannot be disciplined by the board.

Effect of Changes

A fee not to exceed \$25 for each location is established for limited service veterinary clinics. Temporary rabies vaccination efforts by a county health department, undertaken due to a public health threat, are exempted from preregistration, time limits, or fee requirements that would otherwise be required. The section also requires that a non-veterinarian owner of a clinic must obtain a premises permit, requires certain reporting and other duties of the permit holder, and provides the basis for denying the applicant or disciplining the permit holder. See comments under section V. C. of this analysis.

Section 50. Amends s. 474.2165, F.S., requiring veterinarians to keep and properly maintain records, and not furnish such records to unauthorized persons.

Section 51. Creates statutory language stating that veterinarians shall be governed as if they were under the jurisdiction of the Division of Medical Quality Assurance, for the purposes of the treatment of impaired practitioners.

Present Situation

When chapter 455, F.S., was divided into two parts (medical and non-medical) in 1997, the statutes addressing medical patient records and those addressing treatment of impaired practitioners were moved to part II of the chapter, making those provisions applicable only to those boards under the Department of Health. The Board of Veterinary Medicine remained under the DBPR. Therefore, no specific statute addressing medical records or treatment of impaired practitioners applies to veterinarians.

Effect of Changes

Statutory guidelines are provided relating to keeping patient records. Additionally, veterinarians who suffer from a mental or physical condition which impairs their ability to practice and who have no other allegation against them, are allowed to participate in a treatment program for that condition to avoid disciplinary action.

**Florida Real Estate Commission Education and Research
Foundation Advisory Committee (CS/HB 2211)**

Section 52. Amends s. 475.045, F.S., to abolish the Real Estate Commission Education and Research Foundation Advisory Committee.

Present Situation

The Foundation Advisory Committee is comprised of nine members appointed by the Governor to staggered 4-year terms. Six members must hold real estate licenses and three must be representatives of the general public. The committee is authorized to establish priorities for the use of education and research funds that have been appropriated.

Effect of Changes

As part of the Governor's effort to reduce the number of boards throughout state government, the Real Estate Commission Education and Research Foundation Advisory Committee is abolished. The statutory duties of the committee are absorbed by the Real Estate Commission.

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Cosmetologists (CS/HB 2211)

Section 53. Amends s. 477.0132, F.S., to authorize the Board of Cosmetology to approve hair braiding, hair wrapping, or body wrapping training courses and to exempt the providers of the courses from licensure under chapter 246, F.S., as a non-public post-secondary institution.

Section 54. Amends s. 477.019, F.S., to specify that the cosmetology license application fee is not refundable and that the examination fee may be refunded if the applicant is found not to be eligible (except for ineligibility due to examination failure).

Present Situation

Chapter 477, F.S., regulates the practice of cosmetology which is currently defined to include the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes. Under this practice act, a person could also obtain a specialty registration for more narrow professional services, such as manicuring, pedicuring, or facials. Practitioners may also be registered to practice the occupation of hair braiding, hair wrapping, or body wrapping. Application and examination fees are established by the board not to exceed statutory maximums and certain other qualifications must be satisfied, such as for applicants for registration, who must complete approved training courses relating to their specialty or specific practice. All training providers must be licensed by the Department of Education under chapter 246, F.S.

Effect of Changes

The Board of Cosmetology is specifically authorized to be the only entity to approve courses required to be taken by an applicant for registration to practice hair braiding, hair wrapping, or body wrapping. The provider of the courses is exempted from licensure under chapter 246, F.S., as a non-public post-secondary institution and is, therefore, not required to meet the qualifications and operating standards of these institutions.

The refund policies of the board are specified by statute relating to cosmetology license application fees which are not refundable and cosmetology examination fees which may be refunded if the applicant is found not to be eligible except for ineligibility due to examination failure.

Geologists (CS/HB 2211)

Sections 55-58, 60, and 62-65. Amend ss. 492.101, 492.102, 492.104, 492.105, 492.108, 492.112, 492.113, 492.116, and 492.1165, F.S., making technical changes that insert "this chapter," in place of "ss. 492.101-492.1165."

Present Situation

Currently, "ss. 492.101-492.1165" is used for purposes of describing the parameters of chapter 492, F.S. Citing specific sections as the parameters of a chapter creates a potential problem. If additional sections, prior to s. 492.101, F.S., or after 492.1165, F.S., were to be added to the chapter, all of the "ss. 492.101-492.1165" references throughout the chapter would require modification to reflect the changes.

Effect of Changes

Replacing “ss. 492.101-492.1165” with “this chapter” allows for the possibility of adding sections outside the current parameters to the chapter without having to go back and correct the cited parameters (e.g. ss. 492.101-492.1165) each time.

Section 59. Amends s. 492.107, F.S., allowing, and prescribing procedures for, electronically transmitting “sealed” geological documents.

Present Situation

It is becoming common practice for many legal documents to be transmitted electronically. However, chapter 492, F.S., appears to require that the geologist place a physical (embossed) seal on the document, thereby disallowing electronic transmission of a geological document that must be sealed.

Effect of Changes

The section requires the Board of Professional Geologists to prescribe, by rule, an electronic form of seal. This will allow documents requiring a geologist’s seal to be transmitted electronically.

Section 61. Amends s. 492.111, F.S., requiring firms that offer geology services, and the “geologist of record” (the geologist employed by the firm), to notify the department of any change in their business relationship with one another.

Harbor Pilots Mentor Program (CS/HB 2211)

Section 66. Amends s. 310.0015, F.S., requiring pilots to establish a mentor program to better enable minority persons to become harbor pilots.

Present Situation

There are currently 96 licensed pilots and deputy pilots in the state of Florida. A person wishing to be a pilot must first work as a deputy pilot. The Board of Pilot Commissioners sets the number of pilot positions in each port. When a deputy pilot position opens up in a port, that opening is publicly noticed. Any person with sufficient maritime experience qualifications can apply. The qualified applicants sit for the examination, and the highest scorer gets the deputy pilot position. The deputy pilot works in that position in that port for at least two years before he or she can advance to a pilot position.

Criticism has been leveled in the past concerning the lack of diversity in the piloting profession; up until 1994, there were no women or black pilots or deputy pilots in Florida. In response to that criticism, the Florida State Harbor Pilot Association endorsed the enactment of a statutory provision that gives the secretary of the Department of Business and Professional Regulation the authority to appoint a minority applicant if the applicant was within the top five qualifiers (s. 310.081[2], F.S.). That provision has been in effect since 1994.

Subsequent to 1994, three women became harbor pilots. Two of these women received their deputy pilot appointment by virtue of the secretary’s authority to appoint a minority applicant who did not score highest, but was in the top five. There are still no Black deputy

pilots or harbor pilots. Currently, 12% (three women and five Hispanics) of the state pilot work force is composed of minority licensees (as defined in Florida Statute 288.703[3]).

In addition, the Florida State Pilot Association states that it has unilaterally taken steps to address the issue of the lack of minority pilots. Over the last four years, the association has funded 5 minority college scholarships with a maritime emphasis, to encourage minority entry into the profession. Also, they now provide \$5,000 annually in scholarship money to the Florida Independent College Fund directed toward minorities. The association also states that because the piloting profession requires such extensive seagoing and ship handling experience, representatives of the state profession have sent inquiries to the offices of Minority Affairs, US Merchant Marine Academy, and the six state maritime colleges to notify applicants of state pilot openings, to interest them in career paths toward piloting, to offer maundering and internships in Florida.

Effect of Changes

The section requires pilots to establish a mentor program to better enable minority persons to become harbor pilots.

Board of Architecture and Interior Design Staff Privatization Appropriation (CS/HB 2211)

Section 67. Provides a \$500,000 appropriation from the Professional Regulation Trust Fund to the department to pay for the startup costs of the privatization of the Board of Architecture and Interior Design support services, required in section 9 of this act.

Cosmetologists (CS/HB 2211)

Section 68. Amends s. 477.013, F.S., to remove the term "weight loss" from the definition of "body wrapping."

Present Situation

Chapter 477, F.S., regulates the practice of cosmetology. Under this practice act, a person could also obtain a specialty registration for more narrow professional services, such as manicuring, pedicuring, or facials. Practitioners may also be registered to practice the occupation of hair braiding, hair wrapping, or body wrapping. Body wrapping is defined with certain exceptions to mean a treatment program that uses herbal wraps for the purposes of weight loss and of cleansing and beautifying the skin of the body.

Effect of Changes

The changes to the definition clarify that body wrapping does not include the practice of losing weight and address the concerns of some who offer professional weight loss programs.

Athlete Agents (HB 1521)

Section 69. Amends s. 468.456, F.S., relating to grounds for disciplinary action by the Department of Business and Professional Regulation against athlete agents.

Section 70. Creates s. 468.45615, F.S., adding additional criminal felony offenses for athlete agents who violate the regulatory provisions.

Section 71. Amends s. 468.4562, F.S., enhancing the capacity for civil actions by colleges and universities against persons whose prohibited conduct under the athlete agent provisions cause the school to be penalized, disqualified or otherwise suspended by a national athletic association (i.e., the NCAA) or conference. It allows treble damages.

Present Situation

Athlete agents are regulated by the Department of Business and Professional Regulation under Part IX of Chapter 468, Florida Statutes. An "athlete agent" is a person who, directly or indirectly, recruits or solicits a student athlete to enter into an agent contract, or who, for any type of financial gain, procures, offers, promises, or attempts to obtain employment or promotional fees or benefits for a student athlete with a professional sports team or as a professional athlete, or with any promoter who markets or attempts to market the student athlete's athletic ability or athletic reputation.

State regulation of athlete agents was first authorized by Chapter 88-229, Laws of Florida. Prior to 1995, athlete agents were regulated in Florida under a registration scheme established in Part IX of Chapter 468, Florida Statutes. In 1995, registration of athlete agents was replaced with licensure requirements, and several changes were made to the law to strengthen the regulatory provisions.

Practicing as an athlete agent without a license or aiding or abetting a person to practice as an athlete agent without a license is a felony of the third degree. An athlete agent may not offer anything of value to induce a student athlete to enter into an agreement by which the athlete agent will represent the student athlete. A licensed athlete agent may not knowingly provide financial benefit from his or her conduct of business to another athlete agent whose license is suspended or has been permanently revoked within the previous 5 years.

Violations of the prohibited acts and other regulatory provisions are subject to administrative penalties which may include denial of licensure, a fine of up to \$5,000, a reprimand, probation, corrective action, restricted practice, and/or suspension or revocation of the license.

Existing regulation also provides for civil action by a college or university which has suffered damages as a result of prohibited activity by an athlete agent. It authorizes a college or university to seek equitable relief, such as an injunction, to prevent or minimize harm from such activity. A college or university prevailing in a civil action may recover actual damages, punitive damages, court costs, and reasonable attorney's fees.

There are currently 122 athlete agents with active licenses in the state.

Effect of Changes

The athlete agent provisions make it a second degree felony to induce a student athlete to enter into an agency agreement, to use or collaborate with others to effect an agency agreement by an illegal inducement, or to knowingly assist a person who has been convicted of or found guilty of, or who has entered a plea of nolo contendere to, regardless of adjudication, a violation of the illegal inducement law.

The provisions also provide new civil and administrative penalties, and allow colleges and universities that prevail in civil suits to recover *treble* damages, rather than *actual* damages.

Effective Date

Section 66. Provides that the act shall take effect July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

**Board of Architecture and Interior
Design Staff Privatization**

	2000-01	2001-02
Department of Business and Professional Regulation		
One-time expense:		
Professional Regulation Trust Fund	\$500,000	

**Elevator Inspection
Privatization**

Department of Business and Professional Regulation		
Professional Regulation Trust Fund		
(27 FTE)		
Expenses	(\$639,616)	
	(\$36,000)	
Total Expenses		
Professional Regulation Trust Fund	(\$675,616)	

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Harbor Pilots

The pilotage rate provisions in Section 3 of the act could have a positive effect upon private industry, in that decisions decreasing or increasing pilotage rates could take effect faster.

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However, the difference between the current rate and the new rate would have to be placed in an escrow account if the new rate was challenged.

Fee Waiver

The fee waiver authority in section 8 of the act would allow the members of certain professions to save on payment of renewal licensure fees for various periods of time, but no longer than one renewal cycle (two years). Following are the proposed waivers suggested by DBPR:

<u>PROFESSION</u>	<u>POPULATION</u>	<u>WAIVER AMOUNT</u>
Asbestos	496	\$194,600
Athlete Agents	143	62,920
Electrical Contractors	8,747	1,311,650
Employee Leasing Companies	501	640,495
Geologists	1,970	280,150
Landscape Architects	1,266	402,700
Pilots-Harbor	105	19,500
Real Estate Appraisers	5,598	979,650
Surveyors & Mappers	3,570	979,500
Veterinarians	4,958	818,070
Certified Public Accountancy	24,654	1,171,066
Auctioneers	3,798	474,750
Real Estate Commission	190,514	7,942,823
Funeral Directors & Embalmers	<u>2,826</u>	<u>181,430</u>
TOTAL WAIVERS	249,146	\$15,459,304

Veterinarians

A new fee of up to \$25 is established for limited service permittees for each location of a limited service veterinarian clinic. The amount is to be set by rule of the Board of Veterinary Medicine.

D. FISCAL COMMENTS:

DBPR Elevator Inspection Privatization (section 4)

The elevator inspection program currently has 27 FTE (full time equivalent) positions. Using the most recent Inspectors Activity Report, it was determined that to handle initial (1,775), construction (1,648) and complaint (169) inspections, 6 positions would be required (3,592 divided by 650, which is a reasonable yearly workload for one inspector, = 5.52 rounded up to 6). In addition, it would be necessary to have an administrator, one person to handle plan reviews and one support person. It was concluded by the department that the program could handle the workload required with nine positions. The remaining 18 positions (17 inspectors and 1 support person) could be eliminated. The Salaries and Benefits reduction would be \$639,616 and the Expenses reduction would be \$36,000, for a total reduction of \$675,616.

Board of Architecture and Interior Design staff privatization (section 9)

The act appropriates \$500,000 from DBPR's Professional Regulation Trust Fund to offset startup costs for the privatization of the support services to the Board of Architecture and Interior Design that is required in section 9 of this act.

The act establishes a new fee of up to \$25 to be paid by limited service permittees for each location of a limited service veterinarian clinic. The fee is to offset the DBPR expense in inspecting the clinics. No estimates were provided regarding the revenue anticipated from this fee.

The fee of up to \$250 each board (or the DBPR, when there is no board) is authorized to charge in section 7 of the act is not a new fee. Instead, it is a reiteration of an existing fee (s. 455.2179 (3), F.S.) moved to this section to ensure proper notice to continuing education providers.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This act does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This act does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This act does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

Various provisions in this proposed act require the DBPR or the various professional boards to adopt rules under a specific power or duty. The proposed language provides clear direction for implementing those powers and duties.

C. OTHER COMMENTS:

The act provides that temporary rabies vaccination efforts by a county health department, undertaken due to a public health threat, are exempted from preregistration, time limits, or fee requirements that would otherwise be required for persons providing limited veterinary medical services, see section 49 of the act. Concerns have been raised regarding the application of the remainder of the provisions relating to premises permits on county health departments when emergency rabies situations exist and operations may have to be conducted in the field. Concerned parties have agreed to further study this issue during the interim and attempt to identify solutions to any problems which may exist.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

**FINAL ANALYSIS PREPARED BY THE COMMITTEE ON BUSINESS REGULATION &
CONSUMER AFFAIRS:**

Prepared by:

Staff Director:

Gip Arthur/Alan Livingston

Rebecca R. Everhart