

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1016

SPONSOR: Regulated Industries Committee and Senator Sebesta

SUBJECT: Regulation of Professions

DATE: April 14, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

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

This bill substantially amends the following sections of the Florida Statutes: 310.071, 310.151, 399.061, 455.217, 455.2179, 455.219, 468.382, 468.385, 468.388, 468.389, 468.392, 468.395, 468.397, 468.433, 468.525, 468.526, 468.531, 470.005, 470.015, 470.016, 470.017, 470.018, 470.021, 470.028, 470.0301, 471.003, 471.0035, 471.005, 471.011, 471.015, 471.017, 471.019, 471.023, 471.025, 471.031, 471.037, 474.202, 474.203, 474.211, 474.214, 474.215, 474.2165, 475.045, 477.0132, 477.019, 492.101, 492.102, 492.104, 492.105, 492.107, 492.108, 492.111, 492.112, 492.113, 492.116, and 492.1165. The bill also creates the following sections of the Florida Statutes: 455.32, 468.3855, 471.0195, and an un-numbered section. The bill reenacts the following sections of the Florida Statutes: 468.385, 468.391, 474.207, and 474.217.

II. Present Situation:

See Effect of Proposed Changes

III. Effect of Proposed Changes:

Harbor Pilots

Section 1. Amends s. 310.071, F.S., to provide that certain crimes disqualify an applicant from becoming a harbor pilot. Present law establishes two levels of licensed pilots (deputy pilots and state pilots). 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 applicants eligibility due to any criminal infraction. The bill disqualifies from becoming a licensed state pilot any person who commits a felony or first degree misdemeanor directly related to operation of a vessel, or any felony relating to drug trafficking.

Section 2. Amends s. 310.151, F.S., providing an escrow procedure when a rate increase is under challenge. Under present law, the pilotage rate review board sets pilotage rates. 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 took more than 2 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. But more importantly, because substantial sums of money are involved, shipping concerns have a compelling economic incentive to engage in a lengthy appeals process.

The bill provides that any change in the pilotage rate will go into effect upon the order of the rate board, with the difference between the old and new pilotage rate being placed in an escrow account. Then, when the administrative and court challenges have concluded, the money, including interest, goes to the prevailing party.

Section 3. Amends s. 399.061, F.S.

Present Situation: This section requires the Division of Hotels and Restaurants to inspect elevators for which a service maintenance contract is not continuously in force at least once between July 1 of any year and June 30 of the next year. When a service maintenance contract is continuously maintained with an elevator company, the division must verify with the elevator company before the end of each fiscal year that the contract is in force and is being implemented. An elevator covered by such a service maintenance contract must be inspected by a state elevator inspector at least once every 2 fiscal years; however, if the elevator is not an escalator or a dumbwaiter and the elevator serves only two adjacent floors and is covered by a service maintenance contract, no inspection is required so long as the service contract remains in effect.

Effect of Proposed Changes: The bill provides that elevators are to be inspected by a third-party inspection service certified as a Qualified Elevator inspector or maintained pursuant to a service contract continuously in force. A statement verifying the maintenance contract must be filed with the division annually. All elevators must be inspected by a certificate-of-competency holder at least once every 2 years; however, if the elevator is not an escalator or a dumbwaiter and the elevator serves only two adjacent floors and is covered by a service maintenance contract, no inspection is required so long as the service contract remains in effect.

DBPR's General Authority

Section 4. Amends s. 455.217, F.S., creating an exception to a foreign language examination requirement.

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

The bill exempts requests for examinations to be given in Spanish from the requirements of six months written notice and payment of the cost of developing the examination. Examinations in Spanish will be generally available, making it convenient for applicants who speak Spanish to take the exam in their native language.

Section 5. Amends s. 455.2179, F.S., moving into this section existing language in s. 455.219(3), F.S., giving the boards, and the department where there is no board, authority to approve and to charge a fee of up to \$250 to providers of continuing education. The DBPR believes this placement more clearly notifies continuing education providers of the fees they must pay. This is not a new fee.

Section 6. Amends s. 455.219, F.S., modifying fee collection authority to allow DBPR to waive licensure fees and repealing subsection (3), which is moved to s. 455.2179 (3), F.S., in the preceding section of the bill.

Each board collects renewal fees from its licensed professionals at a regular interval, usually every two years.

The bill authorizes the department to waive the payment of fees, for up to two years, for professions with trust fund balances and projected fiscal stability sufficiently positive that the department concludes it can safely waive fee payment.

The bill also allows the Florida State Boxing Commission to borrow money from the Professional Regulation Trust Fund.

Section 7. Creates a new s. 455.32, F.S., the “Management Privatization Act.” The bill authorizes DBPR, upon the request of a board, commission, or council, to contract with any business entity to perform support services specified in the contract. The bill establishes minimum content requirements for the contract, including:

- The corporation must provide any administrative, investigative, examination, licensing, or prosecutorial services in accordance with the Act and the relevant practice act. The corporation may subcontract any of these services.
- The corporation must use computer technology compatible with that of the department.
- The corporation must submit an annual budget for approval by the department and board.
- The corporation must keep financial and statistical information necessary to completely disclose the financial condition and operation of the corporation.
- There must be a dispute resolution method to resolve any noncompliance.
- The corporation must provide an annual report, containing specified information.

The contract must be approved by the requesting board, commission, or council before DBPR enters into it. The department retains any current duties relating to police powers and any current duty not transferred by the contract.

The bill deems any contracting corporation to be an instrumentality of the state for the purposes of the sovereign immunity statute, s. 768.28, F.S.

The corporation is to be funded by state funds appropriated from the Professional Regulation Trust Fund. If the corporation is no longer approved to operate or the board ceases to exist, all money and property held for the benefit of the board reverts to DBPR.

Auctioneers

Section 8. Amends s. 468.382, F.S., to define “absolute auction” as an auction that requires no minimum opening bid that limits the sale other than to the highest bidder.

Section 9. Amends s. 468.385, F.S., relating to the licensing exam. Under current law, an applicant must take a written examination prepared and administered by the Department of Business and Professional Regulation. The examination must test the applicant’s general knowledge of the laws of this state relating to bulk sales, auctions, brokerage, and the practice act. *See*, s. 468.385(4), F.S. The bill amends this section to provide that license examinations be approved by the Florida Board of Auctioneers, deleting the requirement that such examinations be prepared and administered by the Department of Business and Professional Regulation. It also modifies the scope of the examination to require the applicant to demonstrate general knowledge of the laws of the state relating to provisions of the Uniform Commercial Code relevant to auctions, the laws of agency and the provisions of the practice act. The bill requires that all auctions be conducted either by an auctioneer holding an active license or by an apprentice auctioneer holding an active license and having prior consent of the sponsor.

Section 10. Creates s. 468.3855, F.S., to provide auctioneer apprenticeship training requirements. An auctioneer may not sponsor more than three apprentices at one time. A sponsoring auctioneer must have held an active, valid license for three consecutive years. The sponsor must ensure that the apprentice receives the training required by board rule. An apprentice must actively participate in auctions and must record participation credits. An apprenticeship application is valid for six months. If an applicant fails to complete the licensure process within that time, the applicant must apply as a new applicant.

Section 11. Amends s. 468.388, F.S., relating to contracting requirements. Under current law, prior to conducting an auction, an auctioneer must execute a written agreement with the owner of the property to be offered for sale, unless the auction is to be conducted at an auction house, there has been no prior negotiation between the owner and the auctioneer involving the terms or conditions pertaining to the property to be offered for sale, and the total estimated value of the property is \$500 or less. *See*, ss. 468.388(1) and 468.388(3), F.S. The bill amends this section by removing the limited exception to the existing requirement that an auctioneer must have a written agreement with the owner of all property sold prior to the auction be conducted. The bill also requires that all sales proceeds not paid out immediately after an auction concludes must be

deposited in an escrow or trust account. Records of such funds must be maintained for not less than 2 years. The bill prohibits false or deceptive advertising.

Section 12. Amends s. 468.389, F.S., which establishes act which an auctioneer is prohibited from taking. Under current law, an auctioneer can be subject to discipline for failure to account for or pay money belonging to another that has come into the auctioneer's control through an auction within a reasonable period of time not to exceed 30 days. *See*, s. 468.389(1)(c), F.S. the bill adds to the list of prohibited activities in s. 468.389, F.S., failure to account for property within a reasonable time, not to exceed 30 days, belonging to another which comes into the control of the licensee through an auction.

Section 13. Reenacts ss. 468.385 and 468.391, F.S., to incorporate the amendment to s. 468.389, F.S.

Section 14. Amends s. 468.392, F.S., to allow the Secretary to designate another person to sign vouchers authorizing payments from the Auctioneer Recovery Fund.

Section 15. Amends s. 468.395, F.S., relating to the Auctioneer Recovery Fund. Under current law, an aggrieved person must obtain a final judgment in any court recovering damages against a licensee and, upon termination of all proceedings, file an application in the court for an order directing payment out of the Auctioneer Recovery Fund of the amount of actual and direct loss in the transaction with the licensee that remains unpaid upon the judgment. The amount of loss may include court costs, but not attorney's fees nor any punitive damages awarded. The amount paid by the fund may not exceed \$50,000 per transaction or auction, and there is an aggregate lifetime limit of \$100,000 with respect to any one licensee. *See*, s. 468.395(1), F.S. The aggrieved person must provide notice to the board upon commencing an action against a licensee and must make a claim against the fund within two years after the time of the act giving rise to the claim. The claimant is further required to reasonably establish for the court that the claimant has taken all proper and reasonable action to collect the amount of the claim from the licensee responsible for the loss. *See*, s. 468.395 (2)-(4), F.S.

The bill thoroughly rewrites the existing provisions dealing with the Auctioneer Recovery Fund, s. 468.395, F.S. The existing procedure of petitioning the court after obtaining a final judgment against a licensee for an order directing payment out of the fund is deleted. Instead, a claimant would deal directly with the board by submitting an application for payment. A claimant can only submit an application for payment from the fund if the board issues a final order directing an offending licensee to pay restitution to the claimant and the board determines that the order of restitution cannot be enforced, or if the claimant obtains a final judgment against the licensee and amounts remain unpaid upon that judgment. In either case, an actual loss suffered by the claimant has to have resulted from the violation by the licensee within this state of any provision of s. 468.389, F.S., or any rule adopted by the board. The bill deletes the current notice to the board requirements at the time an action is commenced and it amends the fund limits to \$50,000 per claim or claims, instead of judgments. It also establishes that no claim against the fund would be payable based upon any act or omission that occurred outside this state or that occurred before October 1, 1991. Finally, the bill provides that the rights of the claimant against any licensee are subrogated to the fund to the extent of the amount of payment to the claimant by the fund.

Section 16. Makes a technical correction to s. 468.397, F.S.

Community Association Managers

Section 17. Amends s. 468.433, F.S., to establish a requirement for 24 hours of prelicensure education for community association managers within the 12 months prior to the licensure examination.

Employee Leasing Companies

Section 18. 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.

Section 19. Amends s. 468.526, F.S., which currently allows up to five employee leasing companies that are corporations owned by the same parent to form an employee leasing company group. The bill deletes from that provision the language requiring each of the companies to be corporations.

Section 20. 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.

Funeral Directors and Embalmers

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. The board is given rulemaking authority to set some fees for these regulatory activities. The board appears to lack statutory authority in several areas of regulation, which the board feels needs to be clarified.

Section 21. Amends s. 470.005, F.S., to authorize the board to adopt rules establishing requirements for inspection of records of direct disposal establishments, funeral establishments, and cinerator facilities that relate directly to regulated activities.

Sections 22 and 23. Amend ss. 470.015 and 470.016, F.S., to authorize the board to adopt rules establishing criteria for accepting alternative nonclassroom continuing education for renewal of funeral director and embalmer licenses or re-activation of an inactive funeral director or embalmer license.

Section 24. Amends s. 470.017, F.S., to provide that the board, not the department, is to set direct disposer registration and application fees.

Section 25. Amends s. 470.018, F.S., to authorize the board to adopt rules establishing criteria for accepting alternative nonclassroom continuing education for renewal of a direct disposer registration.

Section 26. Amends s. 470.021, F.S., to prohibit operation of a direct disposal establishment at the same location as any other direct disposal establishment or funeral establishment unless such establishments were licensed as colocated establishments on July 1, 2000.

Section 27. Amends s. 470.028, F.S., to limit the services of a preneed sales agent to representing a funeral or direct disposal establishment rather than a funeral director or direct disposer as an individual, and to specify that the board may establish by rule disciplinary guidelines as they relate to liability of licensees and registrants for violations by a preneed sales agent.

Section 28. Amends s. 470.0301, F.S., authorizing the board to adopt rules regarding the operation of centralized embalming facilities, and specifying the board adopt a rule relating to the identification of human remains after embalming. The bill requires that the full-time embalmer in charge have an active license and prohibits 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 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.

Professional Engineers

Sections 29 and 30. Amend ss. 471.003 and 471.0035, F.S., making technical changes.

Section 31. Amends s. 471.005, F.S., to define “retired professional engineer” and to authorize the board to allow individuals who have had an engineer’s license but have relinquished that license to use the title “Professional Engineer, Retired.”

Section 32. Amends s. 471.011, F.S., making technical changes.

Section 33. 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 34. Amends s. 471.017, F.S., to require that engineers complete 15 professional development, or continuing education, hours per year as provided by board rules, which must be consistent with the guidelines of the National Council of Examiners for Engineering and Surveying for multi jurisdictional licensees.

Sections 35 and 36. Split s. 471.019, F.S., into two sections, creating a new s. 471.0195, F.S., to encompass existing subsection (2) of s. 471.019, F.S.

Section 37. Amends s. 471.023, F.S., making technical changes.

Section 38. Amends s. 471.025, F.S., to require that engineers seal all bid documents that are provided to the owner or the his or her representative.

Sections 39 and 40. Amend ss. 471.031 and 471.037, F.S., making technical changes.

Veterinarians

Section 41. Amends s. 474.202, F.S., defining a veterinarian as a health care practitioner licensed to practice veterinary medicine.

Section 42. Amends s. 474.203, F.S., to allow veterinary school faculty, interns, and residents to practice veterinary medicine without a license at veterinary colleges in Florida and to allow a licensed veterinary specialist from another state to practice in Florida on a limited basis.

Section 43. Amends s. 474.211, F.S., authorizing the board of veterinary medicine to approve criteria for continuing education providers.

Section 44. Amends s. 474.214, F.S., increasing the maximum fine authority of the board from \$1,000 for each offense to \$5,000 for each offense.

Sections 45 and 46. Reenact sections and subdivisions of s. 474.207 and 474.217, F.S., to incorporate the amendment to s. 474.214, F.S.

Section 47. Amends s. 474.215, F.S., relating to veterinary premises. Currently, permits are issued to limited service veterinary clinics, which the department reports requires a considerable amount of work at the board office level, in addition to the inspection responsibilities for these clinics. There is no statutory authority to collect fees for these permits. The bill establishes a fee, which is not to exceed \$25 for each location, for limited service veterinary clinics

Currently, the statute does not address county health department-operated vaccine clinics when there is a rabies outbreak, and a threat to the public. Consequently, such clinics would have to adhere to all limited service veterinary clinic rules. The bill provides that a temporary rabies vaccination effort by a county health department, undertaken due to a public health threat, is not subject to preregistration, time limits, or fee requirements that would otherwise be required.

Currently, when there is a violation of law or rules at a veterinary medicine establishment or limited service clinic, the board can only discipline the licensed veterinarian. Any non-veterinarian owner of the clinic cannot be disciplined by the board. The bill requires that a non-veterinarian owner of a clinic obtain a premises permit, establishes certain reporting and other duties of the permit holder, and provides a basis for denying the application or disciplining the permit holder.

Section 48. Amends s. 474.2165, F.S., relating to veterinary records. The bill requires any veterinarian who makes a physical examination, administers treatment, or dispenses legend drugs to furnish to the client in a timely manner, without delays for legal review, copies of all reports and records relating to the examination or treatment, including x-rays. Furnishing the records cannot be conditioned upon payment for the services rendered.

Section 49. Creates an unnumbered section of the statutes to provide for application of the impaired practitioner statutes to veterinarians. When chapter 455, F.S., was divided into two parts in 1997, the statutes 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, and therefore, no specific statute

addressing medical records or treatment of impaired practitioners applies to veterinarians. The bill provides 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.

Florida Real Estate Commission Education and Research Foundation

Section 50. Amends s. 475.045, F.S., relating to the Florida Real Estate Commission Education and Research Foundation. The Foundation is to assist with expanding the knowledge of the public and real estate licensees in matters pertaining to Florida real estate. The Foundation is administered by the Foundation Advisory Committee. The bill dissolves the Advisory Committee and places administration of the Foundation under the Florida Real Estate Commission.

Cosmetologists

Section 51. Amends s. 477.0132, F.S., authorizing the Board of Cosmetology to approve courses required to be taken by an applicant for registration to practice hair braiding, hair wrapping, or body wrapping and exempting the provider of the courses from licensure under ch. 246, F.S., as a non-public post secondary institution.

Section 52. Amends s. 477.019, F.S., specifying that the 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.

Geologists

Sections 53, 54, 55, and 56. Amend ss. 492.101, 492.102, 492.104, 492.105, F.S., making technical changes, inserting “this chapter,” in place of “ss. 492.101-492.1165.”

Section 57. Amends s. 492.107, F.S., allowing, and prescribing procedures for, electronic transmission of geological documents requiring a seal.

Section 58. Amends s. 492.108, F.S., making technical changes, inserting “this chapter,” in place of “ss. 492.101-492.1165.”

Section 59. Amends s. 492.111, F.S. requiring firms that offer geology services, and the “geologist of record” for the firm to notify the department of any change in their business relationship with one another.

Sections 60, 61, 62, and 63. Amend ss. 492.112, 492.113, 492.116, and 492.1165, F.S., making technical changes, inserting “this chapter,” in place of “ss. 492.101-492.1165.”

Section 64. Appropriates \$500,000 from the Professional Regulation Trust Fund to the Department of Business and Professional Regulation to pay the start-up costs of any private corporation or business entity to privatize licensing and investigative functions under the new “Management Privatization Act,” s. 455.32, F.S.

Section 65. Provides that the bill takes effect July 1, 2000.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

In addition to the private sector impacts identified in the section-by-section analysis, there may be some minor impact on claimants whose claims are based upon acts or omissions by auctioneers that occurred before October 1, 1991. The remainder of the changes to the conditions of recovery from the Auctioneer Recovery Fund should expedite the process, especially removing it from the court system and placing it fully in the hands of the Board of Auctioneers. Claims for recovery from the fund could flow naturally from a disciplinary proceeding against a licensee and would not require the time and additional expense of a court proceeding after the disciplinary process concludes.

C. Government Sector Impact:

The bill appropriates \$500,000 from the Professional Regulation Trust Fund to the Department of Business and Professional Regulation to pay the start-up costs of any private corporation or business entity to privatize licensing and investigative functions under the new "Management Privatization Act," s. 455.32, F.S. Additionally, any such corporation is to be funded by state funds appropriated from the Professional Regulation Trust Fund.

The new fee waiver authority in s. 455.219, F.S., would allow the members of certain professions to save on payment of renewal licensure fees for various periods of time. Following are the proposed waivers suggested by DBPR:

PROFESSION	POPULATION	WAIVER AMOUNT
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	2,826	181,430
TOTAL WAIVERS	249,146	\$15,459,304

The Department of Business and Professional Regulation has proposed two alternatives for meeting the Spanish exam provisions of the bill. The recommended alternative is hiring two OPS translators, which would cost \$323,160 over two years. The other alternative is to have an outside vendor translate the exams, which would cost \$424,170 over two years.

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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
