

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 490

SPONSOR: Appropriations Subcommittee on Health and Human Services and Senator Fasano

SUBJECT: Dental Licensure

DATE: March 16, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable</u>
2.	<u>Peters</u>	<u>Belcher</u>	<u>AHS</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill authorizes students in the final year of attendance at an accredited dental school who have successfully completed the National Board of Dental Examiners examination within 10 years before the date of application to sit for state dental examinations. Before any dental student in his or her final year may sit for the examination, the student must have successfully completed all the coursework necessary to prepare him or her to perform the clinical and didactic procedures required to pass the examination. If the student obtains a passing score on the state dental examination, the examination score is valid for 180 days after the date the examination was completed. The student must have graduated before he or she may be certified for licensure.

This bill requires accredited dental schools in Florida to seek the approval of the Florida Board of Dentistry to offer regional licensure examinations to students in the final year of attendance at an accredited dental school for the sole purpose of facilitating the student's licensing in other jurisdictions. To obtain board approval to do so, the dental school must meet requirements specified in the bill.

This bill amends section 466.006, Florida Statutes.

This bill creates section 466.0065, Florida Statutes.

**II. Present Situation:**

Chapter 466, F.S., provides for the regulation of the practice of dentistry by the Board of Dentistry within the Department of Health. The chapter provides the following definition of dentistry.

“Dentistry” means the healing art which is concerned with the examination, diagnosis, treatment planning, and care of conditions within the human oral cavity and its adjacent tissues and structures. It includes the performance or attempted performance of any dental operation, or oral or oral-maxillofacial surgery and any procedures adjunct thereto, including physical evaluation directly related to such operation or surgery pursuant to hospital rules and regulations. It also includes dental service of any kind gratuitously or for any remuneration paid, or to be paid, directly or indirectly, to any person or agency. The term “dentistry” shall also include the following:

- (a) The taking of an impression of the human tooth, teeth, or jaws directly or indirectly and by any means or method.
- (b) Supplying artificial substitutes for the natural teeth or furnishing, supplying, constructing, reproducing, or repairing any prosthetic denture, bridge, appliance, or any other structure designed to be worn in the human mouth except on the written work order of a duly licensed dentist.
- (c) The placing of an appliance or structure in the human mouth or the adjusting or attempting to adjust the same.
- (d) Delivering the same to any person other than the dentist upon whose work order the work was performed.
- (e) Professing to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure designed to be worn in the human mouth.
- (f) Diagnosing, prescribing, or treating or professing to diagnose, prescribe, or treat disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws or oral-maxillofacial region.
- (g) Extracting or attempting to extract human teeth.
- (h) Correcting or attempting to correct malformations of teeth or of jaws.
- (i) Repairing or attempting to repair cavities in the human teeth.<sup>1</sup>

In order to perform any of the tasks outlined in the definition of dentistry, a person must be a Florida-licensed dentist or be otherwise exempt from the dental licensure requirements.<sup>2</sup> The following are exempt from dental licensure requirements in Florida: a Florida-licensed physician or surgeon who practices his or her profession, including surgical procedures involving the oral cavity; qualified anesthesiologists giving an anesthetic for a dental operation under the supervision of a licensed dentist; graduate dentists or dental surgeons practicing dentistry in the

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<sup>1</sup> See s. 466.003(3), F.S.

<sup>2</sup> See s. 466.006, F.S.

discharge of their official duties in the military; licensed dentists appearing as clinicians at meetings of board-approved dental organizations; and students and instructors in Florida schools of dentistry and dental hygiene or dental assistant educational programs while performing regularly assigned work under the curriculum of such schools.<sup>3</sup>

Any person wishing to practice dentistry must apply to the Department of Health and meet specified requirements. Dentistry licensure applicants must sit for and pass a state written and clinical dental examination as part of the requirements for licensure, in addition to the National Board of Dental Examiners (NBDE) dental examination within 10 years of the date of application.<sup>4</sup> To qualify to take the Florida dental licensure examination, an applicant must be 18 years of age or older, be a graduate of a dental school accredited by the American Dental Association, and have successfully completed the NBDE dental examination within 10 years of his or her application. Dental applicants who practice dentistry while taking the clinical portion of the state licensure examination do so pursuant to the licensure requirements without an express exemption. The Board of Dentistry may require any person applying to take the examination to practice dentistry in Florida to obtain malpractice insurance to cover patient harm during the clinical examination.<sup>5</sup>

Once a licensure application is verified as complete, it must be reviewed by the Department of Health or appropriate board to determine whether the applicant has met the licensure qualifications for the profession or occupation and the applicant must be notified within 30 days of any errors or omissions.<sup>6</sup> Every application must be approved or denied within 90 days of the department's receipt of the application or request for additional information. An incomplete application expires 1 year after initial filing.<sup>7</sup> In considering applications for licensure, the board or the Department of Health may require a personal appearance of the applicant.<sup>8</sup> The licensure applicant bears the burden of proof of showing fitness for licensure.<sup>9</sup> Once the applicant has proved that he or she meets the licensure qualifications, the Board of Dentistry must certify the applicant for licensure.<sup>10</sup> The Board of Dentistry may refuse to certify any applicant who has violated any of the provisions relating to the practice of dentistry.<sup>11</sup>

A number of regional dental testing entities exist that are composed of groups of states. The Western Regional Examining Board (WREB) includes Alaska, Arizona, Idaho, Montana, New Mexico, Oklahoma, Oregon, Texas, Utah, Washington, and Wyoming. The Central Regional

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<sup>3</sup> See s. 466.002, F.S.

<sup>4</sup> See s. 466.006, F.S.

<sup>5</sup> See s. 466.0075, F.S. The board has adopted Rule 64B5-2.014(2), Florida Administrative Code, which states "Every candidate who is scheduled to take the entire clinical (or practical) portion of the examination or who is scheduled to retake any part of the clinical (or practical) portion which involves the use of a live patient must secure liability coverage for injuries which may be sustained or may be claimed to have been sustained by a dental patient in the course of the examination and present proof of such coverage to the credentials committee before he or she will be allowed to perform any of the procedures on a live patient." Rule 64B5-17.011, F.A.C., specifies minimum professional liability coverage and other financial responsibility limits that a dentist must have prior to licensure or licensure renewal unless otherwise exempt.

<sup>6</sup> See s. 120.60(1), F.S.

<sup>7</sup> See s. 456.013(1)(a), F.S.

<sup>8</sup> See s. 456.013(3)(c), F.S.

<sup>9</sup> See *Florida Dept. of Transportation v. J.W.C. Co.*, 396 So.2d 778 (Fla. 1<sup>st</sup> DCA 1981); and *Balino v. Dept. of Health & Rehabilitative Services*, 348 So.2d 349 (Fla. 1<sup>st</sup> DCA 1977).

<sup>10</sup> See s. 466.011, F.S.

<sup>11</sup> See ss. 466.026 and 466.028.

Dental Testing Service, Inc. membership includes: Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Washington, Wisconsin, and Wyoming. The Southern Regional Testing Agency, Inc. (SRTA) membership includes: Alaska, Georgia, Kentucky, South Carolina, Tennessee, and Virginia. The North East Regional Board of Dental Examiners, Inc. (NERB) membership includes: Connecticut, District of Columbia, Illinois, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and West Virginia.

The Western Regional Examining Board dental examination is administered at Nova Southeastern University College of Dental Medicine in Florida to applicants for licensure in states located in the western United States.<sup>12</sup> The next administration of the examination is scheduled in April, 2003.

In the United States, dental schools are accredited by the Commission on Accreditation of the American Dental Association (ADA) or its successor agency. The Commission on Dental Accreditation directly evaluates only schools and programs located in the United States. Additionally, through a reciprocal agreement with the Canadian Dental Association, the Commission indirectly approves schools and programs located in Canada. For the purpose of licensure, schools located outside the United States and Canada are considered non-accredited. Two ADA-accredited dental schools are located in Florida that may administer examinations that would meet, in part the licensure for students in other states: Nova Southeastern University College of Dental Medicine and the University of Florida College of Dentistry

The unlicensed practice of a health care profession or the performance of or delivery of medical or health care services to patients without a valid, active license to practice that profession is prohibited.<sup>13</sup> The Department of Health has authority to issue a cease and desist notice to persons engaged in unlicensed activity and may impose by citation an administrative penalty no greater than \$5,000 per incident. The Department of Health may also seek the imposition of a civil penalty through circuit court on violators for unlicensed activity. The violators of unlicensed activity are also liable for criminal penalties.

### **III. Effect of Proposed Changes:**

**Section 1.** Amends s. 466.006, F.S., to authorize a dental student in the final year of attendance at an accredited dental school who has successfully completed the National Board of Dental Examiners examination within 10 years before the date of application to sit for state dental examination. Before any dental student in his or her final year may sit for the examination, the student must have successfully completed all the coursework necessary to prepare him or her to perform the clinical and diagnostic procedures required to pass the examination. If the student obtains a passing score on the state dental examination, the examination score is valid for 180 days after the date the examination was completed. The student must have graduated before he or she may be certified for licensure to practice dentistry in Florida.

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<sup>12</sup> In a letter dated April 3, 2002, the General Counsel of the Department of Health declared that none of the students who take the WREB dental examination or the examiners who administer the WREB dental examination will be subject to criminal prosecution by the Department of Health for the illegal practice of dentistry without a license.

<sup>13</sup> See s. 456.065, F.S.

**Section 2.** Creates s. 466.0065, F.S., to express legislative intent that schools of dentistry be allowed to offer regional licensure examinations to dental students who are in the final year of an approved dental school for the sole purpose of facilitating the student's licensing in other jurisdictions. Legislative intent is provided that a person who is permitted to take a regional licensure examination is not granted any authority to sit for the Florida dental examination for licensure in Florida without otherwise meeting the dental licensure requirements.

Each accredited school of dentistry in Florida may, upon written approval by the Florida Board of Dentistry, offer regional licensure examinations only to dental students who are in the final year of an approved dental school. The Florida Board of Dentistry may not approve the school's request from the school of dentistry hosting the regional examinations unless the following conditions are met:

- A member of the regional examination body's board of directors must be a member of the American Association of Dental Examiners;
- the student must have successfully completed parts I and II of the NDBE dental examination within 2 years before taking the regional examination;
- the student must have medical malpractice insurance in amounts not less than the amounts required to take the Florida licensure examinations;
- the examination must be monitored by dentists licensed in Florida who have met specified requirements for grading standardization exercises required by the regional examination body and recruitment of examination monitors is the responsibility of the regional examination body;
- adequate arrangements must be made for patients who require follow-up care as a result of the procedures performed during the clinical portion of the examination and patients must be informed in writing of their right to follow-up care in advance of any procedures performed by students;
- the board chairman or the chairman's designee must be allowed to observe testing while it is in progress;
- each student, when applying to take the regional examination, must receive a written disclosure in at least 12-point boldface type which notes that the examination does not meet the Florida dental licensure requirements and persons wishing to practice dentistry must pass the Florida licensure examinations;
- the student must be enrolled as a dental student in his or her final year at an accredited dental school that is approved by the Board of Dentistry;
- the student must have completed all necessary coursework to prepare the student to perform all clinical and diagnostic procedures required to pass the examination;
- and the student's academic record must not include any evidence suggesting that the student poses an unreasonable risk to any live patients who are required for the clinical examination.

To protect the health and safety of Florida residents, the board may request additional information and documents relating to the candidate's mental and physical health so as to fully assess the candidate's fitness to engage in exercises involving a live patient.

Students who take the regional examination, a dental school that submits a plan to administer the regional examination, or a regional examination body do not have standing to assert that a state agency has taken action for which an administrative hearing may be sought.

**Section 3.** Provides an effective date of July 1, 2004.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, s. 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

##### **C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

##### **D. Other Constitutional Issues:**

In section 1 of the bill, before any dental student in his or her final year may sit for the state examination, the student must have successfully completed all the coursework necessary to prepare him or her to perform the clinical and diagnostic procedures required to pass the examination. The Board of Dentistry must make a determination on whether a student has met these qualifications without any statutory criteria specified to make the decision.

In section 2 of the bill, the Board of Dentistry must approve a dental school's request to host regional licensure examination based on specified criteria. One of the criteria is that the student must have successfully completed all the coursework necessary to prepare him or her to perform the clinical and diagnostic procedures required to pass the examination. The Board of Dentistry must make a determination on whether a student has met these qualifications without any statutory criteria specified to make the decision.

To the extent the bill authorizes the Board of Dentistry to establish (examination) licensure standards, by rule, or agency action, it raises the question whether this provides adequate limitations and safeguards so that the Legislature's delegation to the board is not violative of Article II, Section 3 of the Florida Constitution. The bill does not appear to expressly provide a sufficient limitation on the board's authority to establish requirements on who should be allowed to sit for the state dental examination or regional dental licensure examination. The Florida Supreme Court struck down a former section of law respecting the power of the Board of Psychological Examiners to grant certificates with the title "psychologist" and to determine the qualifications of applicants as

unconstitutional in that it failed sufficiently to fix the standards to be applied and in effect delegated the application of the statute without sufficient limitations on the board's discretion.<sup>14</sup>

Section 2 of the bill authorizes the Board of Dentistry to request additional information and documents relating to the dental student examination candidate's mental and physical health so as to fully assess the candidate's fitness to engage in exercises involving a live patient. The board is not granted the authority to do so for examination applicants who are graduates of accredited dental schools. A violation of equal protection may be raised to the extent that the bill treats similarly situated individuals who are within the same class differently. It is well settled under federal and Florida law that all similarly situated persons are equal under the law and must be treated alike. See *McLaughlin v. Florida*, 379 U.S. 184, 85 S.Ct. 283, 13 L.Ed.2d 222 (1964); *Palm Harbor Special Fire Control Dist. v. Kelly*, 516 So.2d 249, 251 (Fla.1987); *Haber v. State*, 396 So.2d 707 (Fla.1981). All statutory classifications that treat one person or group differently than others must bear some reasonable relationship to a legitimate state objective and cannot be discriminatory, arbitrary, or oppressive. See *Abdala v. World Omni Leasing, Inc.*, 583 So.2d 330, 333(Fla.1991); *In re Greenberg's Estate*, 390 So.2d 40 (Fla.1980); *Graham v. Ramani*, 383 So.2d 634 (Fla.1980); *Department of Heath & Rehabilitative Services v. Heffler*, 382 So.2d 301 (Fla.1980).

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

Dental schools will incur costs to obtain approval (license) from the Board of Dentistry to offer regional licensure examinations to dental students in their final year of dental school. Examining bodies will incur costs to hire staff who have met the training requirements under the bill and who have a Florida dental license to monitor the examination, in addition to costs associated with obtaining the approval of the Florida Board of Dentistry. Under s. 120.50(9), F.S., "license" means a franchise, permit, certification, registration, charter, or similar form of authorization required by law, but does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.

Regional examination candidates will incur additional costs to meet the medical malpractice insurance requirements to cover incidents of harm to a patient during the clinical examination. If the student is sitting for a regional examination that does not require the successful passage of the NBDE dental examination, the examination

<sup>14</sup> See *Husband v. Cassel*, 130 So.2d 69 (1961) and *Askew v. Cross Key Waterways*, 372 So.2d 913 at 921, "Where the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the [Delegations of Powers] doctrine."

candidate sitting in Florida will incur additional costs to meet the Florida-imposed requirement.

Students who have not completed all of their coursework in dental school will benefit to the extent the bill authorizes the applicant to sit for the licensure examination prior to graduation.

**C. Government Sector Impact:**

The bill allows dental students to sit for the Florida dental licensure examination during the student's final year at an approved dental school. The duties of the Board of Dentistry staff will increase to review the credentials of a student in his or her final year of dental school to determine if the student qualifies to sit for the state dental examination and subsequent licensure to practice. The department currently administers the examination at only one site in December and two sites in June, annually. The department anticipates that the need to administer Florida's dental licensure examination at dual-sites will increase with the number of candidates wishing to take the examination.

The bill clarifies that a member of the regional examination body rather than the examination body itself must be a member of the American Association of Dental Examiners. The Department of Health has indicated that it would cost \$270,000 related to testing services to administer the exam 1 additional time each year. The cost of administering the examination would be offset by examination revenues as required by s. 456.017(1)(b), F.S.<sup>15</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

It is unclear whether the costs to the Department of Health and the Board of Dentistry associated with the administration of the regional dental examinations offered at approved Florida dental schools would be required to be offset by examination revenues as required by s. 456.017(1)(b), F.S.<sup>16</sup> Such regional examinations would not qualify the candidates for licensure to practice dentistry in Florida. If persons sitting for the examination or the approved dental schools offering the examination are assessed a fee for the state costs associated with the administration of the regional examination, it could be argued that such persons should be afforded an administrative remedy, rather than being required to adjudicate all claims or disputes with the Department of Health through a circuit court. The bill currently provides that students who take the regional examination or a dental school that submits a plan to administer the regional examination, or a

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<sup>15</sup> Section 456.017(1)(b), F.S., provides that the Department of Health must assess fees to cover the actual costs for any purchase, development, validation, administration, and defense of required examinations. This requirement does not apply to national examinations approved and administered.

<sup>16</sup> Section 456.017(1)(b), F.S., provides that the Department of Health must assess fees to cover the actual costs for any purchase, development, validation, administration, and defense of required examinations. This requirement does not apply to national examinations approved and administered.



regional examination body do not have standing to assert that a state agency has taken action for which an administrative hearing may be sought.

**VIII. Amendments:**

None.

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

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