

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

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BILL: CS/SB 236

INTRODUCER: Education Pre-K-12 Committee and Senator Wise

SUBJECT: Interpreters for the Deaf and Hard of Hearing

DATE: January 25, 2008

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Harkey	Matthews	ED	Fav/CS
2. _____	_____	RI	_____
3. _____	_____	GO	_____
4. _____	_____	GA	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

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|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>                   | Technical amendments were recommended   |
|                              | <input type="checkbox"/>                   | Amendments were recommended             |
|                              | <input type="checkbox"/>                   | Significant amendments were recommended |

**I. Summary:**

This bill creates a nine-member Board of Interpreters for the Deaf and Hard of Hearing within the Department of Business and Professional Regulation (DBPR) to license the interpreters for the deaf and hard of hearing. The bill requires the Governor to appoint the members from lists of individuals recommended by the Florida Registry of Interpreters for the Deaf, Inc., the Florida Association of the Deaf, Inc., and the Florida Coordinating Council for the Deaf and Hard of Hearing. The bill establishes qualifications and terms for members. The bill provides for:

- Renewal, reinstatement, suspension and revocation of the license or permit;
- Continuing education requirements;
- Biennial submission of an application for renewal and proof of continuing education;
- A schedule of fees;
- Qualifications for licensees and permit holders;
- Qualifications for provisional and special limited licenses, and registered and temporary permits;
- Suspension, revocation and inactive status of licenses or permits;
- A complaint process and the requirement for violations to be compiled by the board;

- Exemptions to the practice act;
- Penalties for illegal acts; and
- Rulemaking authority.

This bill creates ss. 468.90, 468.901, 468.902, 468.903, 468.904, 468.905, 468.906, 468.907, 468.908, 468.909, 468.910, 468.911, 468.912, 468.913, and 468.914, Florida Statutes.

## **II. Present Situation:**

### **Interpreters for the Deaf or Hard of Hearing**

Florida does not license interpreters for persons who are deaf or hard of hearing. The National Registry of Interpreters for the Deaf certifies interpreters who pass its exams and agree to comply with its code of ethics, among other requirements. The Florida affiliate is the Florida Registry of Interpreters for the Deaf, Inc.

### **The Sunrise Act**

Florida does not license or regulate interpreters for the deaf or hard of hearing. A proposal for new regulation of a profession must meet the requirements in s. 11.62, F.S., the Sunrise Act. The act prohibits:

- Subjecting a profession or occupation to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage; or
- Regulating a profession or occupation by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.

In determining whether to regulate a profession or occupation, s. 11.62, F.S., requires the Legislature to consider the following:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice, or who are practicing, a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

Section 11.62, F.S., requires the proponents of regulation to submit information, which is structured as a sunrise questionnaire to document that the regulation meets these criteria. In 2006, a sunrise questionnaire was prepared by the proponents of the legislation to assist the Legislature in determining the need for regulation and analyzing the 2006 proposed legislation that sought to establish regulation under the Department of Health.

The response provided by the proponents states:

- There is a great deal of public testimony relating to the lack of communication access for deaf and hard of hearing Florida consumers in such arenas as medical, mental health, education, and other public services. This lack of communication access not only subjects the deaf and hard of hearing Floridians to risk, but also the sites from which they are receiving services.
- Florida Registry of Interpreters for the Deaf and Florida Association of the Deaf have depended on the state and national interpreter organizations grievance systems, and the Americans with Disabilities Act (ADA) complaint process as alternatives and have still received complaints so numerous and disturbing that this proposed regulation was drafted.

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

#### **General Provisions of the Bill**

The bill creates part XVII of ch. 468, F.S., to provide for the regulation of interpreters for the deaf and hard of hearing. The bill requires the following persons to be licensed or hold a permit in accordance with the provisions of the bill:

- Any person who receives remuneration as an interpreter, represents himself or herself as an interpreter, or conveys the impression of or assumes the identity of an interpreter; or
- Any person who provides interpreting services pro bono or for remuneration in circumstances in which the services of an interpreter are required under the following federal laws: the Americans with Disabilities Act (ADA), the Individuals with Disabilities Education Improvement Act (IDEA), section 504 of the Rehabilitation Act of 1973, or the No Child Left Behind Act.

The Board of Interpreters for the Deaf and Hard of Hearing is created to administer the licensing and regulation of the interpreters. The board is appointed by requires the Governor to appoint the members from lists of individuals recommended by the Florida Registry of Interpreters for the Deaf, Inc., the Florida Association of the Deaf, Inc., and the Florida Coordinating Council for the Deaf and Hard of Hearing.

#### **Board of Interpreters for the Deaf and Hard of Hearing**

The board consists of nine members appointed by the Governor, as follows:

- Four members who meet the qualifications to be licensed interpreters, one of whom must be a practicing educational interpreter, appointed from a list of 12 individuals recommended by the Florida Registry of Interpreters for the Deaf, Inc.;

- One member who is an interpreter for the deaf or hard of hearing who is qualified to hold a permit, provisional license, or license appointed from a list of three individuals recommended by the Florida Registry of Interpreters for the Deaf, Inc.;
- Two members who are deaf or hard of hearing, one of whom must use American Sign Language as a primary mode of communication, appointed from a list of six individuals recommended by the Florida Association of the Deaf, Inc.; and
- Two private citizen members who are hearing and who do not hold a license or permit to interpret for the deaf or hard of hearing, appointed from a list of six individuals recommended by the Florida Coordinating Council on the Deaf and Hard of Hearing.

### **Regulation of Interpretation and Transliteration**

The bill establishes a licensure scheme to regulate the quality of deaf and hard of hearing interpretation and transliteration. In particular, the bill creates the following categories of qualifications for interpretation and transliteration: licensure, provisional licensure, special limited licensure, deaf interpreter permits, registered permits, and temporary permits.

#### *Licensure*

The bill requires an applicant to submit proof of a valid recognized credential, official photograph, and nonrefundable fee to the board. The bill defines a valid recognized credential for purposes of licensure as the following:

- A Registry of Interpreters for the Deaf, Inc., certification, except that oral certification shall be recognized to provide oral transliteration services only;
- A National Association of the Deaf Certification, Level IV or Level V;
- A National Interpreting Council certification;
- A Testing, Evaluation, Certification Unit Transliteration Skills certification, which shall be recognized for a transliteration license to provide only cued speech transliteration services;
- A Florida Registry of Interpreters for the Deaf Educational Interpreter Evaluation (EIE) Level III, which will be recognized for the Pre-K to grade 12 educational setting only;
- An Educational Interpreter Performance Assessment (EIPA) Level 4.3-5.0, which will be recognized for the Pre-K to grade 12 educational setting only; or
- An American Consortium of Certified Interpreters Level IV or Level V.

The bill requires biennial renewal of a license including proof of meeting the continued education requirements, as applicable. The bill provides a procedure for an application to reinstate a license if the applicant's license has been suspended or revoked. If the board denies a license or permit, the board must notify the applicant of the reasons for the denial in writing within 30 days of the board's action. The bill disqualifies any person who has been convicted of a felony, has not received a high school diploma or its equivalent, or is not 18 years of age or older from receiving a license or permit.

*Provisional License*

The bill authorizes the issuance of a provisional license if the applicant has successfully completed at least one of the following assessments:

- Florida Registry of Interpreters for the Deaf, Inc., Quality Assurance Screening, Level II or Level III;
- Florida Registry of Interpreters for the Deaf, Inc., Educational Interpreter Evaluation, Level II or Level III;
- National Association of the Deaf, Level III;
- Educational Interpreter Performance Assessment, Level IV or Level V;
- Testing, Evaluation, Certification Unit Cued American English Competency Screening, Level 4.0-4.2, except the assessment shall be recognized for a provisional license to provide only cued speech transliteration services; or
- An American Consortium of Certified Interpreters certification, Level III.

An applicant for a deaf interpreters provisional license must have received a passing score on the Certified Deaf Interpreter written examination and receive a superior or advanced plus rating on the Sign Communication Proficiency Interview or the American Sign Language Proficiency Interview assessment. The provisional license may be held for only five years from the date of issuance with one additional year as provided by the board.

*Special Limited License*

The department may grant special limited licenses to individuals who demonstrate competency in a specialized area for which there is no formal, generally recognized evaluation. These specialized areas include, but are not limited to, interpreting for the deaf-blind, multilingual interpreting, and certain nonsign modalities. The board is required to establish by rule the manner in which the competency in the specialized area may be demonstrated.

*Permit*

The bill authorizes an applicant to obtain a permit if the applicant has successfully passed one of the following assessments:

- Florida Registry of Interpreters for the Deaf, Inc., Quality Assurance Screening, Level I;
- Florida Registry of Interpreters for the Deaf, Inc., Educational Interpreter Evaluation, Level I; or
- Educational Interpreter Performance Assessment, Level 3.5-3.9.

To hold a permit, the applicant must have successfully completed 20 documented hours of interpreter training, of which at least 16 hours must be certified deaf interpreter specific, and must attain a superior or advanced plus rating on the Sign Communication Proficiency Interview or the American Sign Language Proficiency Interview assessment. Permits are only valid for two years, except that the department may approve a one-time one-year extension. Finally, deaf interpreters must submit an audiogram or audiological report with proof of hearing loss.

*Registered Permit*

The bill provides an opportunity for an interpreter who provides interpreter services prior to July 1, 2009, who does not meet the bill's requirements, but who has registered with DBPR within at least 60 days after the bill's enactment, to receive a registered permit valid for two years. The registered permit must be issued before July 1, 2009.

*Temporary Permit*

A person from another state, regardless of whether he or she holds a valid interpreter's credential from that state, may hold a temporary permit for up to six months. The applicant must submit proof of having applied to DBPR, no later than 90 days after the date of issuance of the temporary permit, for one of the following:

- Licensure;
- Provisional Licensure;
- Permit; or
- Special Limited Licensure.

A person may only hold one temporary permit.

**Suspension or Revocation of a License or Permit/Inactive Status**

The bill provides that a license or permit suspended or revoked by the department upon the recommendation of the board is subject to immediate expiration and surrender to the DBPR. The department may immediately seize a suspended or revoked license or permit. A renewed license or permit does not entitle the individual to engage in the practice of interpreting until the suspension or revocation period has ended, or has otherwise been removed by the board and the right to practice is restored by the board.

Additionally, an interpreter may place his or her license on inactive status, thereby exempting the individual from paying renewal fees until reinstatement. An interpreter may request inactive status for up to two years and may petition the board for an extension of an inactive status. Inactive licensees may not practice in the state until reinstated and are subject to discipline if they do so.

**Continuing Education**

The bill requires licensees and permit-holders to obtain continuing education. A licensed interpreter must biennially submit proof of current certification and indicate compliance with the requirements of the Registry of Interpreters for the Deaf, Inc., Certification Maintenance Program. A licensed Testing, Evaluation, and Certification Unit cued speech transliterator must submit proof of successful completion of 4.0 units of continuing education during the preceding 24 months ending March 1 of the renewal period. A provisional licensed interpreter shall biennially submit proof of completion of 4.0 units of continuing education during the preceding 24 months ending March 1 of the renewal period, which also must indicate compliance with the

Registry of Interpreters for the Deaf, Inc., in the Associate Continuing Education Training program. Finally, registered permit-holders shall annually submit proof of successful completion of 2.0 units of continuing education during the preceding 12 months ending March 1 of the year in which the application is made.

### **Fee Schedule**

The Board of Interpreters for the Deaf and Hard of Hearing is required to recommend fees which will be adopted by DBPR. The bill establishes a fee schedule as follows:

- Application fee, not to exceed \$35.
- Initial license or permit fee, not to exceed \$150.
- Biennial license renewal fee, not to exceed \$150.
- Permit extension fee, not to exceed \$50.
- License reinstatement application fee, not to exceed \$70.

### **Grievances**

The bill requires the board to compile complaints regarding dishonorable, unethical, or unprofessional conduct of an interpreter or transliterator including violating the standards of the National Association of the Deaf/Registry of Interpreters for the Deaf Code of Professional Conduct. The bill essentially implements a one-year statute of limitations for an individual to file a complaint. Complaints must be submitted to the board in writing or by videotape with a completed complaint form. The board must acknowledge receipt of a complaint in writing no later than 10 business days after receipt of the complaint. Disciplinary proceedings, if warranted, would be conducted pursuant to s. 456.073, F.S.<sup>1</sup> The board may recommend to DBPR revocation or suspension of a license or permit for certain defined criminal, unprofessional, or unethical acts.

The bill imposes a criminal penalty of a misdemeanor of the first degree for fraud, practicing without a license or permit, employing a person who is not licensed, or violations of the bill's provisions.

### **Privileged Communications**

The bill establishes an evidentiary privilege for an interpreter who interprets or transliterates a conversation between a person who can hear and a deaf person. The privilege may be waived if all parties to the conversation agree in writing. Additionally, the communication is no longer protected if the interpreter services consumer waives the privilege by bringing public charges against the licensee. The licensed interpreter may disclose a communication if the communication reveals the intended commission of a crime and is necessary to protect any persons from a clear, imminent risk of serious mental or physical harm or injury, or to forestall a serious threat to public safety. The bill provides additional exceptions regarding testimony concerning adoptions, child abuse, or child neglect, except as provided under federal law.

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<sup>1</sup> Section 456.073, F.S., prescribes the disciplinary procedures for the health professions and occupations regulated by the DBPR.

Finally, the educational interpreter may disclose pertinent information to those directly responsible for the child's educational program or to members of the Individual Education Plan Team.

State law and case law typically recognize an interpreter privilege in the broader attorney-client privilege, such that communications between a client and an interpreter in the context of a legal matter are considered privileged and not subject to disclosure. In *Gerheiser v. State*, the Fourth District Court of Appeal in Florida cited s. 90.502(1), F.S., as authority for an interpreter privilege.<sup>2</sup> This statute provides for the confidentiality of a communication if it is not intended to be disclosed to a third person other than:

- A person to whom disclosure is in furtherance of the rendition of legal services to the client; or
- A person who is reasonably necessary for the transmission of the communication.<sup>3</sup>

The court noted that the attorney-client privilege extends to the necessary intermediaries and agents through whom such communications are made, including communications through an interpreter.<sup>4</sup>

Other states have enacted laws, which expressly provide interpreter privileges, but typically only as it relates to legal matters or court proceedings. Some statutes base interpreter privilege on whether the communication interpreted is of a privileged nature, such as in Colorado, Illinois, and New Jersey law.<sup>5</sup> Texas explicitly provides for an interpreter-hearing impaired person privilege, but again, requires the communication to be considered the type that would be characterized as privileged.<sup>6</sup>

## Exemptions

The bill exempts certain interpreters and transliterators from licensure and permit requirements as enacted in the bill. Specifically, the bill exempts interpreters and transliterators who interpret or transliterate:

- During emergencies with certain exceptions;
- As a nonresident of the state but who must be registered in the state for a period of less than 30 nonconsecutive days;
- As a student or intern under certain circumstances;
- In a hospital emergency department to facilitate emergency services and care that a hospital is required to provide under s. 395.1041, F.S.; or
- Pro bono for the deaf or hard of hearing patient of a physician licensed under chs. 458 or 459, F.S.

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<sup>2</sup> 712 So.2d 1252, 1254 (Fla. 4<sup>th</sup> DCA 1998).

<sup>3</sup> Section 90.502(1)(c), F.S.

<sup>4</sup> *Gerheiser*, *supra* note 1, at 1254-1255.

<sup>5</sup> See s. 13-90-209, Co. Prac.; s. 61, 735 ILCS 5/8-910; and 1 NJ Prac. App. VI, Canon 6, respectively.

<sup>6</sup> Section 21.004, Tex. Civ. Prac. & Rem. Code. Ann.



**Rulemaking**

The bill authorizes the board to adopt rules to implement the provisions of the bill. The bill requires the board to recommend and DBPR to adopt rules regarding a code of professional conduct, performance requirements, examination and education standards, continuing education requirements, assessments, fee schedules, and procedures for accepting funds from federal and private sources.

**Effective Date**

The bill would take effect July 1, 2008. It may be difficult to obtain appointments, adopt rules and establish the board within this time frame.

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

None.

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

None.

**C. Trust Funds Restrictions:**

The bill requires the fees to be deposited into an existing trust fund, the Professional Regulation Trust Fund in the DBPR.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

The bill establishes a fee schedule for individuals who become licensed or receive a permit from the Board of Interpreters for the Deaf and Hard of Hearing. These individuals would be required to pay fees on a biennial basis to maintain a license or permit. The cost of these fees is indeterminate but capped in the bill.

**B. Private Sector Impact:**

Individuals wishing to serve as interpreters for the deaf or hard of hearing would incur the cost of application, examination, renewal, and licensure fees. The DBPR estimates that 900 current professionals would be required to obtain licensure. In 2006, in an analysis of a similar bill that would have created the licensure program in the Department of Health, that department anticipated a growth of 50 additional licensees per year.

Businesses serving clients who are deaf or hard of hearing would have to hire licensed interpreters.

**C. Government Sector Impact:**

Public schools and other public agencies serving individuals who are deaf or hard of hearing would have to hire licensed interpreters. The Department of Education reports that school districts employ 487 interpreters and have vacancies for 54 interpreters.

According to DBPR, the fees would not cover the cost of operating the licensure program. Projected expenditures related to the implementation of the legislation are expected to total at least \$804,017 in Fiscal Year 2008-09. Estimated revenues of \$166,500 would leave a deficit of \$637,517. The department expects expenditures to exceed revenues in FY 2009-10 or FY 2010-11.

Each professional board is assigned an Executive Director and at least one Government Analyst responsible for each board's administrative functions, attending board meetings, and coordinating other support functions provided by the department to the board. The Board of Interpreters for the Deaf and Hard of Hearing will require an executive director and government analyst who understand and can communicate through sign language.

The DBPR estimates that initial processing and maintenance of 900 applicants, including revenue, application processing and renewal processing, will take 3,825 staff hours, requiring the addition of two FTE Regulatory Specialist II positions.

Should the proposed board require that continuing education providers and courses be approved by the department, the initial processing of 655 continuing education provider and course applications estimated at two hours each would require 1,310 hours annually. The division will require one Operations Analyst II position to process and maintain the data associated with course providers and materials, prepare agenda materials to be presented for board review as well as consultants.

The new program would also require additional attorney and staff resources, but the DBPR does not anticipate that the services would comprise a full FTE.

The DBPR estimates that the bill also requires funds for travel, per diem and lodging for a minimum of four meetings per year for nine board members. Any fewer than four meetings would result in significant delays in approving licensure applications.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

The committee substitute differs from SB 236 in the following ways:

- The Board of Interpreters is created in the Department of Business and Professional Regulation and is subject to the provisions of ch. 455, F.S., relating to the activities of regulatory boards;
- The number of members is reduced from 10 to 9, and all members are appointed by the Governor from lists of individuals recommended by the Florida Registry of Interpreters for the Deaf, Inc., the Florida Association of the Deaf, Inc., and the Florida Coordinating Council for the Deaf and Hard of Hearing;
- Interpreters must comply with the National Association of the Deaf/Registry of Interpreters for the Deaf Code of Professional Conduct;
- The requirements for licensure apply to anyone who receives remuneration as an interpreter, represents himself or herself as an interpreter, or who provides interpreting services pro bono or for remuneration in circumstances in which the services of an interpreter are required under the following federal laws: the Americans with Disabilities Act (ADA), the Individuals with Disabilities Education Improvement Act (IDEA), section 504 of the Rehabilitation Act of 1973, or the No Child Left Behind Act;
- There is no provision for a temporary license; and
- The exemption for an interpreter who provides interpreting services at a worship service or religious ceremony is deleted, and an exemption is added for pro bono interpretation performed for the patients of a licensed physician.

**B. Amendments:**

None.