

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 713 Department of Business and Professional Regulation
SPONSOR(S): Insurance, Business & Financial Affairs Policy Committee; Workman
TIED BILLS: **IDEN./SIM. BILLS:** SB 1330

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	12 Y, 1 N, As CS	Livingston	Cooper
2)	Government Operations Appropriations Committee			
3)	General Government Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The bill contains numerous modifications relating to several regulatory activities under the Department of Business and Professional Regulation (DBPR). The bill:

- amends various provisions of the home inspection licensing program (scheduled to become effective July 1, 2010). Changes include modifying the definition of home inspection services, eliminating the business license (certificate of authorization), authorizing applicants to take the licensure examination without having to obtain DBPR approval, requiring a criminal history check for applicants, providing disciplinary action for failure to meet standards of practice adopted by the DBPR, and providing additional rulemaking authority;
- amends various provisions of the mold-related licensure program (scheduled to become effective July 1, 2010). Changes include eliminating the business license (certificate of authorization), authorizing applicants to take the licensure examination without having to obtain DBPR approval, clarifying that the two-year degree requirement must be an associate of arts degree or equivalent (with 30 semester hours in certain courses), requiring a criminal history check for applicants, providing disciplinary action for failure to meet standards of practice adopted by the DBPR, and providing additional rulemaking authority;
- creates a temporary professional license for spouses of active duty members of the Armed Forces of the United States who have been assigned to a duty station in Florida;
- transfers carbon monoxide regulation in public lodging establishments from the Division of Hotels and Restaurants to the State Fire Marshal;
- revises the qualifications of members of the Florida Real Estate Appraisal Board;
- allows the Florida State Boxing Commission to issue a notice to cease and desist;
- prohibits an examinee whose examination materials were confiscated based upon suspicion of theft or unlawful reproduction of examination materials from taking another examination until the criminal investigation determines if a violation occurred;
- expands the exemption from licensure requirements to allow veterinary interns or residents who are graduates in training to be a graduate of a school recognized by the Educational Commission for Foreign Veterinary Graduates;
- removes the requirement that cosmetology applicants must take the examination within 6 months after approval to take the examination;
- allows for publication of notices, forfeitures, etc., through electronic dissemination via the DBPR website, other public computer networks, or using other future technology; and
- requires that upon a determination by the DBPR that it erroneously issued a license, or upon the revocation of a license, the licensee must surrender his or her license to the DBPR.

The bill is not anticipated to have a significant fiscal impact on state or local governments.

The effective date of the bill is July 1, 2010.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Home Inspectors/Mold Services

Present situation

Section 20.165, F.S., establishes the organizational structure of the Department of Business and Professional Regulation (DBPR) and includes the Division of Professions. It also establishes other divisions to include the divisions of: Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Real Estate; Regulation; Technology; and Service Operations. This section also establishes the authority and structure of the various boards within the DBPR. The Florida State Boxing Commission is also housed within the DBPR pursuant to s. 548.003, F.S. Community association management (CAM) firms come under the oversight of the Regulatory Council of Community Association Managers.

Chapter 455, F.S., specifies the general powers of the DBPR. Each profession is administered either directly by the DBPR or through a separately appointed board, council, or commission. Section 455.01, F.S., defines the term "profession" to mean:

any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

Division of Professions administers 14 professional boards and one council pursuant to s. 20.165, F.S.

The DBPR websight¹ indicates that the Division of Regulation includes oversight of two specified programs. The "child labor program" pursuant to part I of chapter 450, F.S. The program has two primary components within its' mission: (1) the law limits the amount of hours that minors may work, so that minors will be able and available for school; and (2) the law restricts the types of jobs minors may perform for safety reasons.

¹ <http://www.myfloridalicense.com/dbpr/divisions.html>

The “farm labor program” pursuant to part III of chapter 450, F.S. The program is designed to ensure, through a system of compliance and enforcement, that Florida farm workers are protected from harmful work situations and exploitation.

Other programs are also administered under the DBPR.

- The DBPR is responsible for the oversight of asbestos licensing pursuant to chapter 469, F.S. There is no professional board.
- The DBPR is responsible for the oversight of athlete agents pursuant to part IX of chapter 468, F.S. There is no professional board.
- The DBPR is responsible for the oversight of talent agencies pursuant to part VII of chapter 468, F.S. There is no professional board.
- Pursuant to section 447.06, F.S., labor organizations must register with the DBPR before conducting activities.
- Pursuant to section 447.04, F.S., a person desiring to act as a business agent for a labor organization must obtain a license or permit by filing an application with the DBPR.

Home Inspectors

Present situation

The licensure and regulation of home inspection services are specified in part XV, chapter 468, F.S., and go into effect on July 1, 2010. This part provides for the creation of a regulatory program located in the DBPR. Part XV creates a regulatory scheme, provides definitions, scope of practice, employment guidelines, continuing education, accountability, rules, licensure, fees, and penalties. There is no professional board.

A building inspection is often confused with a home inspection. A building inspection is a legally required act, performed by a local governmental entity through the permitting process for the purpose of determining whether a structure complies with the appropriate building code standards. By contrast, a home inspection is a discretionary endeavor. A home inspection is typically conducted for a potential purchaser of a home, although home inspections are sometimes conducted for the current owner of a home to issue an opinion as to its condition. A home inspection is performed by private individuals rather than by local government inspectors.

“Home inspection” is defined to mean a limited visual examination of the following readily accessible installed systems and components of a home: the structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure, for the purposes of providing an opinion of the condition of the home².

Effect of proposed changes

The bill amends s. 20.165, F.S., to expand the statutory structure of professional boards established within the Division of Professions of the DBPR to include a home inspection “program” that is not regulated by a professional board.

The bill amends various provisions of the home inspection services licensing program. The changes include modification of the definition of home inspection services, elimination of the business license, referred to as a certificate of authorization, authority for applicants to take the licensure examination

² s. 468.8311(4), F.S.

without having to obtain DBPR approval, a requirement for a criminal history check for applicants, and authority for disciplinary action for failure to meet standards of practice adopted by the DBPR.

The bill amends s. 468.8319(1)(f), F.S., to preclude home inspectors, or home inspector businesses, from performing, or offering to perform, repairs to a home on which the home inspector or business prepared a home inspection report. The bill amends s. 468.8319(1)(g), F.S., to preclude home inspectors from inspecting any property in which the home inspector, or the home inspector's company, has a financial interest.

The bill amends s. 468.8324, F.S., to provide new grandfathering requirements. Qualifications include certification by a state or national association that requires successful completion of a proctored examination for certification and completion of at least 14 hours of verifiable education on home inspection, or three years' minimum experience as a home inspector, comprised of 120 home inspection reports at the time of application along with verifiable proof of completing 14 hours of education on home inspection.

In addition to one of the foregoing, the bill specifies that grandfather applicants must not have had a home inspector license or a license in a related field, as defined by the bill, revoked at any time, suspended within the past 5 years, or a fine assessed in excess of \$500 within the past 5 years.

The bill authorizes the DBPR to investigate validity of reports and take disciplinary action for filing of false reports. Grandfather applicants must comply with the criminal background, good moral character, and insurance requirements of this part. Grandfather applications must be postmarked no later than March 1, 2011.

The bill prohibits enforcement of unlicensed activity by home inspectors until July 1, 2011.

The bill specifies broad rule making authority of the DBPR to "adopt rules to administer this part."

Mold Assessors and Mold Remediators

Present situation

Currently, there are companies in Florida that hold themselves out to be mold assessors or mold remediators or conduct mold related services. The licensure and regulation of mold-related services are specified in part XVI, chapter 468, F.S., and go into effect on July 1, 2010. This part provides for the creation of a regulatory program in the DBPR. Part XVI creates a regulatory scheme, provides definitions, scope of practice, employment guidelines, continuing education, accountability, rules, licensure, fees, and penalties. There is no professional board.

"Mold assessment" means a process that includes the sampling and evaluation of data obtained from a building history and inspection to formulate an initial hypothesis about the origin, identity, location, and extent of mold growth.³ "Mold remediation" means the removal, cleaning, sanitizing, or demolition of mold or mold-contaminated matter that was not purposely grown at that location.⁴

Effect of proposed changes

The bill amends s. 20.165, F.S., to expand the statutory structure of professional boards established within the Division of Professions of the DBPR to include a mold services "program" that is not regulated by a professional board.

The bill amends various provisions of the mold services licensing program. It amends s. 468.8413(1) and (2), F.S., to authorize applicants to take the licensure examination without having to obtain prior DBPR approval. The bill amends s. 468.8413(2), F.S., to clarify that a mold remediator or mold assessor must have at least a 2 year associate of arts degree or the equivalent, with at least 30

³ s. 468.8411(3), F.S.

⁴ s. 468.8411(5)

semester hours in microbiology, engineering, architecture, industrial hygiene, occupational safety or a related field. The bill also creates s. 468.8413(4)(d), F.S., requiring applicants to submit fingerprints for criminal background checks.

The bill amends s. 468.8418, F.S., to eliminate the requirement for businesses offering mold-related services to obtain a certificate of authorization. It amends s. 468.8421(1), F.S., to require insurance coverage of at least \$1 million for both preliminary and post-remediation mold assessment. The bill amends s. 468.842, F.S., to provide a disciplinary violation for failing to meet standards of practice adopted by the DBPR.

The bill amends s. 468.8423, F.S., to provide new grandfathering requirements. Qualifications include certification by a state or national association that requires successful completion of a proctored examination for certification and completion of at least 60 hours of verifiable education for an assessor and 30 hours of education for a remediator, or demonstrate three years' minimum experience as a mold assessor or mold remediator; comprised of 40 invoices for mold assessments or remediation at the time of application.

In addition to one of the foregoing, grandfather applicants must not have had a mold assessor or mold remediator license or a license in a related field, as defined by the bill, revoked at any time, suspended within the past 5 years, or a fine assessed in excess of \$500 within the past 5 years.

The bill authorizes the DBPR to investigate validity of invoices and take disciplinary action for filing of false information. Grandfather applicants must comply with the criminal background, good moral character and insurance requirements of this part. Grandfather applications must be postmarked no later than March 1, 2011.

The bill prohibits unlicensed activity enforcement until July 1, 2011.

The bill specifies broad rule making authority of the DBPR to "adopt rules to administer this part."

Military Spouses/Professional Licensure

Present situation

Currently, section 455.02, F.S., applies to licensees who are members of the armed forces on active duty who are absent from the state and not practicing their profession in the private sector. This statute applies to numerous professions regulated by DBPR but not all professions.

The member/licensee is exempted from license renewal requirements for the duration of active duty while absent from the state of Florida, and for a period of six months after discharge or return to the state, and not practicing the profession.

Currently, many of the professions in Florida have an endorsement provision as a part of their licensing authority that allows for the acceptance of an active out-of-state practitioner in good standing to be qualified to be licensed in Florida based on the out-of-state license criteria, ie. barbering⁵. Similarly, many of the professions in Florida provide for "a reciprocal agreement" between professions in different states to allow licensure of out-of-state practitioners by reciprocity based on similar licensing qualifications, ie. construction contracting⁶.

Presently, there are no provisions to allow the spouses of active duty military personnel who are relocating to Florida an opportunity to practice their profession by using a temporary Florida license issued based on license qualification of the applicants' home state.

⁵ s. 475.144(5), F.S.

⁶ s. 489.115(3)(c), F.S.

Effect of proposed changes

The bill creates a temporary professional license for spouses of active duty members of the Armed Forces of the United States who have been assigned to a duty station in Florida pursuant to his or her spouse's official active duty military orders. The spouse must hold a valid out-of-state license and submit to a criminal background check. The nonrenewable temporary license allows the spouse to work in his or her respective profession for six months from the date of issuance of the temporary license.

Carbon Monoxide Detection

Present situation

Currently, s. 509.211, F.S., relates to "safety regulations" for public lodging establishments under the Division of Hotels and Restaurants of the DBPR. The State Fire Marshal of the Department of Financial Services implements the provisions of chapter 633, F.S., relating to fire prevention and control and chapter 554, F.S., which is the "Boiler Safety Act."

Section 509.211, F.S., requires enclosed spaces or rooms in public lodging establishments which contain a boiler that is heated by combustion of fuels, to be equipped with certified carbon monoxide sensor devices. The devices are required to be integrated with the public lodging establishment's fire detection system.

Currently, part IV of chapter 553, F.S., is the "Florida Building Code." Beginning July 1, 2008, s. 553.885, F.S., requires construction of new buildings that will contain a fossil-fuel-burning heater or appliance, a fireplace, or an attached garage must have an approved operational carbon monoxide alarm installed within 10 feet of each room used for sleeping purposes. The Florida Building Commission is required to adopt rules applicable to these installations and to incorporate the requirements into its next revision of the Florida Building Code.

Effect of proposed changes

The bill changes responsibilities for regulating carbon monoxide sensor devices and carbon monoxide mitigation in chapter 509, F.S., from the Division of Hotels and Restaurants of the DBPR to the State Fire Marshal of the Department of Financial Services. This change of responsibility places carbon monoxide sensor device and mitigation regulation located in public lodging establishments with the State Fire Marshal.

Florida State Boxing Commission

Present situation

Chapter 548, F.S., governs pugilistic matches in the state, which include boxing, kickboxing, and mixed martial arts. The Florida State Boxing Commission is authorized to administer the provisions of the chapter. By definition, "boxing" means to compete with the fists; "kickboxing" means to compete with fist, feet, legs, or any combination thereof; and "mixed martial arts" means unarmed combat involving the use, of a combination of techniques from different disciplines of the martial arts, including, but not limited to, grappling, kicking, and striking.

Chapter 548, F.S., prohibits certain matches unless sanctioned and supervised by an approved sanctioning organization. Additionally, amateur and professional matches are prohibited unless the requirements of law and rules are met, such as the availability of medical services.

The Florida State Boxing Commission does not have statutory authority to issue a notice to cease and desist to persons violating a provision of chapter 548, F.S.

Effect of proposed changes

The bill authorizes the Florida State Boxing Commission to issue a notice to cease and desist for violations of chapter 548, F.S.

Miscellaneous Provisions

Real Estate Appraisal Board

Section 475.613, F.S., currently provides the make-up of the Florida Real Estate Appraisal Board to consist of seven members. Four members of the board must be real estate appraisers who have been engaged in the general practice of appraising real property in this state for at least 5 years immediately preceding appointment. One member of the board must represent organizations that use appraisals for the purpose of eminent domain proceedings, financial transactions, or mortgage insurance. Two members of the board must be representatives of the general public and not be connected with the practice of real estate appraisal, real estate brokerage, or mortgage lending.

The bill allows a broader range of qualified candidates to be considered for appointment to the board by removing the statutory requirement that two members of the board represent the general public and not be connected in any way with the practice of real estate brokerage or mortgage lending. The consumer members would still be restricted from being connected with the practice of real estate appraisal.

On June 14, 2006 the Commission on Ethics issued an order (CEO-06-9) which can be summarized as: a prohibited conflict of interest would be created under section 112.313(7), F.S., were a member of the Florida Real Estate Commission to be employed as an instructor at a real estate school."

The bill addresses this "order" by amending s. 475.02, F.S., to allow a member of the Florida Real Estate Commission to teach courses approved by the Commission and allows a member of the Real Estate Appraisal Board to teach courses approved by the Board.

Veterinarians

Section 474.203(2), F.S., grants an exemption from licensure requirements for persons practicing as interns or resident veterinarians at Florida schools or colleges that are accredited by the American Veterinary Medical Association (AVMA) or a school recognized by the AVMA Commission for Foreign Veterinary Graduates. The interns or residents must be a graduate of a school or college accredited by the AVMA.

The bill amends s. 474.203(2), F.S., to expand the exemption to allow for veterinary interns or residents who are graduates in training to be a graduate of a school recognized by the Educational Commission for Foreign Veterinary Graduates of the AVMA.

Cosmetology

Section 477.019, F.S., allows cosmetology applicants to apply to take their examination when they are within the last 100 hours of training at a licensed cosmetology school or other approved school. Applicants are required to complete the final 100 hours and take the licensure examination within six months of filing their application. Currently, applicants who have completed their 1,200 hours prior to submitting their application do not have a time limit for taking the examination.

The bill removes the provision which allows applicants to apply to take their examination who are within the last 100 hours of training. The requirement that the examination must be taken within 6 months after approval is also removed.

Licensure Errors

Currently, there is no requirement for a licensee to surrender his or her license once a determination has been made that the license has been issued in error. Section 455.227(1)(h), F.S., provides that attempting to obtain, obtaining, or renewing a license to practice a profession by bribery, by fraudulent misrepresentation, or through an error of the DBPR or a board, constitutes grounds for which disciplinary action may be taken. Therefore, disciplinary proceedings to revoke licenses issued in error must be initiated by the DBPR.

The bill requires that upon a determination by the DBPR that a license was issued in error, or upon the revocation of a license by the applicable board, or by the DBPR when there is no board, the licensee must surrender his or her license to the DBPR.

Examinations

Section 455.2175, F.S., makes it a felony for anyone to reproduce or otherwise copy examination materials administered by the DBPR. In regards to situations where an applicant is accused of cheating on an examination, the DBPR conducts an investigation, then forwards the results of the investigation to the appropriate State Attorney's Office for possible prosecution.

The bill prohibits an examinee whose exam materials were confiscated based upon suspicion of theft or unlawful reproduction of examination materials from taking another exam until the criminal investigation determines if a violation occurred.

B. SECTION DIRECTORY:

Section 1. Amends s. 20.165, F.S., to expand the list of professional boards established within the Division of Professions of the DBPR to include two programs that are not regulated by a professional board: home inspection and mold services.

Section 2. Amends s. 215.37, F.S., to correct an out-dated reference.

Section 3. Amends s. 455.017, F.S., to correct an out-dated reference.

Section 4. Amends s. 455.02, F.S., to create a temporary professional license classification for spouses of active duty members of the Armed Forces of the United States who have been assigned to a duty station in Florida.

Section 5. Amends s. 455.213, F.S., to require a licensee to surrender a license to the DBPR if it was issued in error.

Section 6. Amends s. 455.217, F.S., to allow examination review for applicants who fail an examination.

Section 7. Amends s. 455.2175, F.S., to prohibit an examinee whose examination materials were confiscated based upon suspicion of theft or unlawful reproduction of examination materials from taking another examination until the criminal investigation determines if a violation occurred.

Section 8. Amends s. 455.227, F.S., to authorizes discipline by the DBPR against a license who enters a plea of guilty regardless of adjudication.

Section 9. Amends s. 455.228, F.S., to make a technical reference correction.

Section 10. Creates s. 455.274, F.S., to allow publication of notices through electronic dissemination via the DBPR website.

Sections 11 through 19. Amends part XV of chapter 468, F.S., and provides additional statutory requirements to operate as a home inspector.

Sections 20 - 29. Amends part XVI of chapter 468, F.S., and provides additional statutory requirements to operate as a mold assessor or mold remediator.

Section 30. Amends s. 474.203, F.S., to expand the exemption to allow for veterinary interns or residents who are graduates in training to be a graduate of a school recognized by the Educational Commission for Foreign Veterinary Graduates.

Section 31. Amends s. 475.02, F.S., to allow a member of the Florida Real Estate Commission to teach courses approved by the Commission.

Section 32. Amends s. 475.175, F.S., to change the verbiage of fingerprint cards to digital fingerprints for real estate license applicants.

Section 33. Amends s. 475.613, F.S., to remove the statutory requirement that two members of the Florida Real Estate Appraisal Board represent the general public and not be connected with the practice of real estate brokerage or mortgage lending and allows a member of the Board to teach courses approved by the Board.

Section 34. Amends s. 477.019, F.S., to eliminate a provision that allows cosmetology applicants to apply to take their exam within the last 100 hours of their required 1,200 hours of course work and the requirement that the examination must be taken within 6 months after approval is also removed.

Section 35. Amends s. 509.211, F.S., to transfer carbon monoxide regulation in public lodging establishments from the Division of Hotels and Restaurants to the State Fire Marshal.

Section 36. Amends s. 548.076, F.S., to authorize the Florida State Boxing Commission to issue a notice to cease and desist for violations.

Section 37. Amends s. 561.17, F.S., to eliminate the need for applicants for alcoholic beverage licenses to submit paper applications in duplicate.

Sections 38 – 49. Reenacts various provisions to reflect updated cross references as a result of changes made in the bill.

Section 50. Effective date – July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The DBPR specifies that “no (sections of the bill) will have a fiscal impact on the Division of Professions.”⁷

The DBPR fiscal analysis of the bill does not reflect a fiscal impact resulting from the implementation of the new home inspection or mold related programs.

2. Expenditures:

The DBPR fiscal analysis of the bill does not reflect a fiscal impact resulting from the implementation of the new home inspection or mold related programs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

⁷ Fiscal impact estimates were provided by the DBPR, Office of Legislative Affairs, 2010 Legislative Analysis Form, dated February, 2010, HB 713.

None anticipated.

2. Expenditures:

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not anticipated to be significant.

D. FISCAL COMMENTS:

The bill is not anticipated to have a significant fiscal impact on state or local governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

The bill specifies broad rule making authority of the DBPR to “adopt rules to administer this part” for both home inspection activities and mold related services.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 3, 2010, the Insurance, Business, & Financial Affairs Policy Committee took up the bill, adopted several amendments, and passed the bill as a Committee Substitute by a vote of 12-1.

The CS differs from the bill as filed in the following areas:

- removes language in the title and creates “An act relating to the Department of Business and Professional Regulation;
- removes language relating to inactive quota alcoholic beverage licenses and retains current law;
- removes provisions of the bill that authorizes the issuance of a special alcoholic beverage license to movie theaters that meet specified criteria.
- Prohibits DBPR enforcement of unlicensed activity against home inspectors, mold assessors and mold remediators until July 1, 2011; and
- allows a member of the Florida Real Estate Commission to teach courses approved by the Commission and allows a member of the Real Estate Appraisal Board to teach courses approved by the Board.