

**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 Committee on Regulated Industries

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BILL: SB 1272

INTRODUCER: Senator Brandes

SUBJECT: Professional Regulation

DATE: March 27, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	<b>Pre-meeting</b>
2.			MS	
3.			RC	

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**I. Summary:**

SB 1272, the “Occupational Opportunity Act,” grants and expands existing exemptions from professional licensure application and renewal requirements by certain boards in the Department of Business and Professional Regulation (DBPR) for active duty members of the Armed Forces.<sup>1</sup> The bill requires the waiver of payment of initial application fees to certain active duty members of the Armed Forces, and eligible spouses and surviving spouses of such active duty members. Current law does not apply to surviving spouses.

Eligible spouses and surviving spouses in good standing with a DBPR board who are absent from the state due to the active duty member’s duties with the Armed Forces are exempted from licensure renewal provisions. The bill eliminates a requirement that both the active duty member and the spouse be assigned to a duty station in Florida. The period of time that active duty members remain in good standing after discharge from active duty is expanded from six months to two years.

The DBPR is required to issue a professional license to an applicant who is or was an active duty member of the Armed Forces, or to a spouse or surviving spouse of an active duty member, if the application for such a license is accompanied by fingerprints for state and federal criminal history checks, with proof that the applicant is, or was, an active duty member of the Armed Forces, or is married to an active duty member of the Armed Forces.

The bill provides that any of the boards listed in s. 20.165, F.S., (i.e., the boards within the DBPR) rather than the “administrative boards of the state” must maintain any active duty members of the Armed Forces in good standing to engage in his or her profession without registering or paying fees or dues.

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<sup>1</sup> The term “Armed Forces” includes “the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.” See s. 250.01(4), F.S, and 5 U.S. Code § 2101 and 10 U.S. Code § 101(a)(4).

The bill has a negative fiscal impact to state government and to the revenue from the General Revenue service charge. See Section V, Fiscal Impact Statement.

The bill provides an effective date of July 1, 2017.

## II. Present Situation:

### Department of Business and Professional Regulation

Section 20.165, F.S., establishes the organizational structure of the Department of Business and Professional Regulation (DBPR), and provides for 12 divisions.<sup>2</sup>

Fifteen boards and programs exist within the Division of Professions,<sup>3</sup> two boards are within the Division of Real Estate,<sup>4</sup> and one board exists in the Division of Certified Public Accounting.<sup>5</sup>

The boards and programs within the Division of Professions, noted with the respective chapter in Florida Statutes concerning each, are the:

- Board of Architecture and Interior Design, part I of ch. 481;
- Florida Board of Auctioneers, part VI of ch. 468;
- Barbers' Board, ch. 476;
- Florida Building Code Administrators and Inspectors Board, part XII of ch. 468;
- Construction Industry Licensing Board, part I of ch. 489;
- Board of Cosmetology, ch. 477;
- Electrical Contractors' Licensing Board, part II of ch. 489;
- Board of Employee Leasing Companies, part XI of ch. 468;
- Board of Landscape Architecture, part II of ch. 481;
- Board of Pilot Commissioners, ch. 310;
- Board of Professional Engineers, ch. 471;
- Board of Professional Geologists, ch. 492;
- Board of Veterinary Medicine, ch. 474;
- Home Inspection Services Licensing Program, part XV of ch. 468; and
- Mold-related Services Licensing Program, part XVI of ch. 468, F.S.<sup>6</sup>

The boards within the Division of Real Estate are the Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and the Florida Real Estate Commission, created under part I of ch. 475, F.S.<sup>7</sup>

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<sup>2</sup> The divisions in the DBPR are: Administration, Alcoholic Beverages and Tobacco, Certified Public Accounting, Drugs, Devices, and Cosmetics, Florida Condominiums, Timeshares, and Mobile Homes, Hotels and Restaurants, Pari-mutuel Wagering, Professions, Real Estate, Regulation, Service Operations, and Technology.

<sup>3</sup> See s. 20.165(4)(a), F.S.

<sup>4</sup> See s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.

<sup>5</sup> See s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.

<sup>6</sup> See s. 20.165(4)(a), F.S.

<sup>7</sup> See s. 20.165(4)(b), F.S.

The board within the Division of Certified Public Accounting is the Board of Accountancy, created under ch. 473, F.S.<sup>8</sup>

The Florida State Boxing Commission is assigned to the DBPR for administrative and fiscal accountability purposes only.<sup>9</sup> The DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law pursuant to parts I and III of ch. 450, F.S.

Chapter 455, F.S., applies to the regulation of professions constituting “any activity, occupation, profession, or vocation regulated by the DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.”<sup>10</sup>

Under Florida law, regulation of professions is undertaken “only for the preservation of the health, safety, and welfare of the public under the police powers of the state.”<sup>11</sup> Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.<sup>12</sup>

However, “neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention,” or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.<sup>13</sup>

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.<sup>14</sup>

When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a “permit, registration, certificate, or license” to the licensee.<sup>15</sup>

Sections 455.203 and 455.213, F.S., establish general licensing authority for the DBPR, including the authority to charge license fees and license renewal fees. Each board within the DBPR must determine by administrative rule<sup>16</sup> the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.<sup>17</sup>

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<sup>8</sup> See s. 20.165(4)(c), F.S.

<sup>9</sup> Section 548.003(1), F.S.

<sup>10</sup> Section 455.01(6), F.S.

<sup>11</sup> Section 455.201(2), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Section 455.201(4)(b), F.S.

<sup>14</sup> See s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. See s. 455.221(1), F.S.

<sup>15</sup> Sections 455.01(4) and (5), F.S.

<sup>16</sup> The administrative rules of the DBPR and of each Board are available through the DBPR’s website at <http://www.myfloridalicense.com/dbpr/divisions.html> (last visited Mar. 10, 2017).

<sup>17</sup> Section 455.219(1), F.S.

A licensee may practice a profession only if the licensee has an active status license.<sup>18</sup> Generally, most licensees who practice a profession without an active status license<sup>19</sup> are subject to the imposition of discipline, fines, or assessments as described in s. 455.227, F.S. At least 90 days before the end of a licensure cycle, the DBPR must provide a licensure renewal notification to an active or inactive licensee, and a notice of pending cancellation of licensure to a delinquent status licensee.<sup>20</sup>

Each board, or the department when there is no board (board),<sup>21</sup> must permit a licensee to choose active or inactive status at the time of licensure renewal, and impose a fee for an inactive status license that does not exceed the fee for an active status license.<sup>22</sup> An inactive status licensee may change to active status at any time, if the licensee meets all requirements for active status, including payment of all required fees, and meeting all continuing education requirements. Failure of a licensee to renew a license before its expiration causes the license to become delinquent in the license cycle following expiration (delinquency cycle).<sup>23</sup>

A delinquent status licensee must re-apply for active or inactive status during the delinquency cycle. Failure by a delinquent status licensee to become active or inactive before the expiration of the delinquency cycle renders the license void, with no further action by the board.<sup>24</sup>

The DBPR may, at its discretion, reinstate a license that has become void (except public accountancy licenses issued under ch. 473, F.S.) if the DBPR determines that the individual failed to comply because of illness or economic hardship. The individual must apply to the DBPR for reinstatement, pay all required fees, including a reinstatement fee, meet all continuing education requirements, and otherwise be eligible for renewal of licensure.<sup>25</sup>

Section 455.271(7), F.S., provides that each board must impose an additional delinquency fee, not to exceed the biennial renewal fee for an active status license, when a delinquent status licensee applies for active or inactive status.

### **United States Armed Forces**

The term “Armed Forces” is defined in Florida law as “the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.”<sup>26</sup> The term “active duty” means full-time duty in active military service of the United States, and includes other federal duty such as full-time training, annual

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<sup>18</sup> Section 455.271(1), F.S.

<sup>19</sup> Section 455.271, F.S., on inactive and delinquent status of licenses, does not apply to a business establishment registered, permitted, or licensed by the department to do business or to a person licensed, permitted, registered, or certified pursuant to ch. 310, F.S. on Pilots, Piloting, and Pilotage, or ch. 475, F.S., on Real Estate Brokers, Sales Associates, Schools, and Appraisers.

<sup>20</sup> See s. 455.273, F.S.

<sup>21</sup> Whenever a board for a profession does not exist, the DBPR is generally authorized by law to act instead. See e.g., ss. 455.219 and 455.271, F.S., for multiple references to actions of “the board, or the department when there is no board.”

<sup>22</sup> The status or a change in status of a licensee does not alter the board’s right to impose discipline or to enforce discipline previously imposed on a licensee for acts or omissions committed by the licensee while holding a license, whether active, inactive, or delinquent. See s. 455.271(11), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See s. 250.01(4), F.S., and 5 U.S. Code § 2101 and 10 U.S. Code § 101(a)(4).

training, and attendance at a service school<sup>27</sup> while a person is in active military service. The term also includes the period during which a person in active military service is absent from duty as a result of illness, being wounded, being on leave, or other lawful cause, but does not mean full-time duty in the National Guard.<sup>28</sup>

Pursuant to s. 455.02(1), F.S., active duty members of the Armed Forces of the United States who, at the time they became active duty members, held a license in good standing with any state administrative board, must be kept in good standing and are exempted from performing any required act or paying any fee, during the period of active duty service and for six months after discharge from active duty. If the licensee engages in the licensed profession or vocation in the private sector for profit, the exemption does not apply.

Boards within the DBPR must adopt rules exempting a spouse of an active duty member of the Armed Forces from licensure renewal requirements, but only if the spouse is absent from the state due to the active duty member's duties with the Armed Forces.<sup>29</sup>

A six-month, nonrenewable temporary license may be issued to a spouse of an active duty member of the Armed Forces.<sup>30</sup> The application for such a license must be accompanied by the application fee and fingerprints for criminal history checks, with proof that the applicant:

- Is married to an active duty member of the Armed Forces;
- Holds a valid license issued by another state, the District of Columbia, any possession or territory of the United States, or any foreign jurisdiction; and
- The applicant's spouse is assigned to a duty station in Florida.<sup>31</sup>

Section 455.213(12), F.S. provides that the DBPR must waive the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for a military veteran or his or her spouse at the time of discharge, if application for a license is made within 60 months after the veteran is honorably discharged. Eligibility for the waiver is conditioned upon the veteran having been honorably discharged.

### **License Fee Waivers for Low-income Individuals**

Waivers of application fees for professional licenses issued in Florida are not based on the income of an applicant. The United States Department of Health and Human Services (HHS) has established the following federal poverty guidelines:<sup>32</sup>

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<sup>27</sup> See s. 250.01(1), F.S.; service schools must be designated by law or by the secretary of the applicable military department.

<sup>28</sup> *Id.*

<sup>29</sup> See s. 455.02(2), F.S.

<sup>30</sup> See s. 455.02(3)(a), F.S.

<sup>31</sup> *Id.*

<sup>32</sup> See <https://aspe.hhs.gov/poverty-guidelines> (last visited Mar. 24, 2017).

Persons in Family/Household	Poverty Guideline for 48 Contiguous States and the District of Columbia	Poverty Guideline for Alaska	Poverty Guideline for Hawaii
1	\$12,060	\$15,060	\$13,860
2	\$16,240	\$20,290	\$18,670
3	\$20,420	\$25,520	\$23,480
4	\$24,600	\$30,750	\$28,290
5	\$28,780	\$35,980	\$33,100
6	\$32,960	\$41,210	\$37,910
7	\$37,140	\$46,440	\$42,720
8	\$41,320	\$51,670	\$47,530

The term ‘public assistance’ refers to government aid to the poor, disabled, or aged, or to dependent children.<sup>33</sup> One example of an income-dependent public assistance program<sup>34</sup> is the Supplemental Nutrition Assistance Program (SNAP) for nutrition assistance and benefits to low-income individuals and families. Eligibility for SNAP benefits is dependent upon meeting certain gross income and net income limits.<sup>35</sup>

**III. Effect of Proposed Changes:**

**Section 1** of the bill provides that the act may be cited as the “Occupational Opportunity Act.”

**Section 2** of the bill revises a reference in s. 455.02(1), F.S., concerning licensure of active duty members of the Armed Forces<sup>36</sup> in good standing, to require good standing status with any “of the boards listed in s. 20.165, F.S. (the DBPR boards). Under current law, the reference is to “administrative boards of the state.”

The bill provides that a spouse married to an active duty member of the Armed Forces during a period of active duty, or a surviving spouse of a member who was on active duty at the time of death, is exempted from licensure renewal provisions and must be kept in good standing, provided the spouse is in good standing with a DBPR board and is absent from the state due to the active duty member’s duties with the Armed Forces.

The DBPR is required to issue a professional license to an applicant who is or was an active duty member of the Armed Forces, or to a spouse or surviving spouse of an active duty member, if the application for such a license is accompanied by the application fee and fingerprints for criminal history checks, with proof that the applicant is, or was, an active duty member of the Armed Forces, is married to an active duty member of the Armed Forces, or was married to an active duty member of the Armed Forces at the time of the member’s death.

<sup>33</sup> See <http://www.dictionary.com/browse/public-assistance> (last visited Mar. 24, 2017).

<sup>34</sup> Comprehensive lists of available public assistance programs per state are located on the official benefits website of the United States government; see Benefits.gov, *About Us*, at <https://www.benefits.gov/about-us> (last visited Mar. 24, 2017).

<sup>35</sup> See <https://www.fns.usda.gov/snap/eligibility#Income> (last visited Mar. 24 2017).

<sup>36</sup> The term “Armed Forces” includes “the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.” See s. 250.01(4), F.S, and 5 U.S. Code § 2101 and 10 U.S. Code § 101(a)(4).

The bill:

- Eliminates a requirement that both the active duty member and the spouse be assigned to a duty station in Florida.
- Retains the requirement in current law that proof that an applicant holds a valid license issued by another state, the District of Columbia, any possession or territory of the United States, or any foreign jurisdiction must be provided.
- Retains the requirement in current law requiring fingerprints of an applicant to be submitted for use in state and federal criminal history checks.
- Authorizes an applicant who is or was an active duty member of the Armed Forces, or a spouse or surviving spouse of an active duty member, who has been issued a license to renew the license upon completing all requirements for renewal under the applicable practice act, including but not limited to continuing education requirements.
- Provides that waiver of initial licensure requirements are not affected by the licensure renewal requirements for an applicant who is or was an active duty member of the Armed Forces, or a spouse or surviving spouse of an active duty member.

The restrictions in current law that a temporary license is not renewable and expires six months after the date of issuance are eliminated.

**Section 3** of the bill creates s. 455.219(7), F.S., to require the DBPR to waive the initial application fee for an exempted active duty applicant or a low-income individual. The bill requires that the application include the applicant's signature under penalty of perjury and the supporting documentation required by the DBPR.

The term "low income individual" is defined in the bill as a person:

- whose household income before taxes is at or below 130 percent of the federal poverty guidelines for the size of the family's household size, by the United States Department of Health and Human Services; or
- who is enrolled in a state or federal public assistance program, including but not limited to Temporary Assistance for Needy Families, Medicaid, or the Supplement Nutrition Association Program.

The DBPR, or the appropriate board, must process an application for a fee waiver within thirty days of receiving the application. The bill provides that the DBPR must adopt rules necessary to implement s. 455.219(7), F.S., created in the bill.

The bill provides an effective date of July 1, 2017.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Department of Business and Professional Regulation (DBPR) notes that SB 1272 will have an indeterminate impact upon fees because of the difficulty of estimating how many members of the Armed Forces, their spouses, surviving spouses, and low-income persons will apply for a waiver of initial license application fees.<sup>37</sup> The DBPR indicates that other “licenses may have to assume the additional cost of processing the applications [for those exempted by the bill from paying license fees].”<sup>38</sup>

B. Private Sector Impact:

The DBPR indicates there is no fiscal impact to the private sector.<sup>39</sup>

C. Government Sector Impact:

The DBPR indicates that the fiscal impact is indeterminate due to the unknown number of members of the Armed Forces, their spouses, surviving spouses, and low-income persons will apply for a waiver of initial license application fees.<sup>40</sup>

The DBPR now appears to estimate that expenditures of \$393,880 in Fiscal Year 2017-2018, \$346,340 in Fiscal Year 2018-2019, and \$346,340 in Fiscal Year 2019-2020 will be required to implement SB 1272.<sup>41</sup> How these estimates were calculated is not fully explained by the DBPR.<sup>42</sup> The DBPR indicates that specific technology infrastructure and licensing costs will result in non-recurring costs of \$16,943.03, and recurring costs of \$2,908.82. The DBPR does not provide an estimate for the costs of additional staff, but estimates that 6.5 positions (FTE) will be needed.<sup>43</sup>

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<sup>37</sup> See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for HB 615 (identical to SB 1272), dated Feb. 27, 2017, (on file with Senate Committee on Regulated Industries) at pages 4 - 5.

<sup>38</sup> *Id.* at page 5.

<sup>39</sup> *Id.* at pages 4-5.

<sup>40</sup> *Id.* at page 4.

<sup>41</sup> See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for CS/CS/HB 615, dated Mar. 13, 2017 (on file with Senate Committee on Regulated Industries) at page 4.

However, in the Agency Analysis of HB 615 and SB 1272 dated Feb. 27, 2017, (*supra* at note 37, at pages 4 and 6), the DBPR estimated that 11.5 additional staff positions would be needed, with expenditures of \$701,264 in Fiscal Year 2017-2018, \$624,834 in Fiscal Year 2018-2019, and \$624,834 in Fiscal Year 2019-2020. The substantive differences between CS/CS/HB 615 and SB 1272 do not appear to affect the implementation costs to the DBPR for the bills.

<sup>42</sup> *Id.* at pages 4 – 9. See also, Agency Analysis of HB 615 and SB 1272 dated Feb. 27, 2017 (*supra* at note 37, at pages 4 - 8).

<sup>43</sup> *Id.* at pages 4 – 9. Apparently, the balance of the recurring costs for the 6.5 positions that the DBPR indicates will be required to implement the bill is the difference between the \$393,880 of estimated expenditure to implement the bill in Fiscal Year 2017-2018 and the \$2,908.82 for recurring technology costs (i.e., \$390,971.08).



According to the Department of Business and Professional Regulation (DBPR), SB 1272 will require modifications to its software to address the various license types for all the professions it regulates, (Versa: Regulation (VR)) , including an application to identify active duty members of the Armed Forces, their spouses, surviving spouses, as well as low-income individuals, changes to fee calculations, and changes to application and renewal requirements.<sup>44</sup> According to the DBPR, these modifications can be made using existing resources.<sup>45</sup>

The Division of Professions in the DBPR indicates that, because the licensure requirements of other states and foreign governments may differ from those in Florida, the impact on the health, safety, and welfare of Floridians cannot be determined.<sup>46</sup> Furthermore, those licensed as permitted under SB 1272 “may be at a higher risk of non-compliance regarding professional standards of care and regulatory requirements.”<sup>47</sup>

The DBPR Office of the General Counsel notes that rulemaking is necessary to implement provisions in SB 1272.<sup>48</sup>

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

SB 1272 includes the term (lines 36-37) “any of the boards listed in s. 20.165, F.S.” and deletes the term “any administrative board of the state.” The terms in the bill and in current law do not include two programs administered by the Department of Business and Professional Regulation (DBPR), and therefore, the bill does not provide exemptions from initial licensure for those programs. These programs include the Home Inspection Services Licensing Program, and the Mold-related Services Licensing Program.

Proof of insurance or bonding is required at the time of application for licenses issued by the Construction Industry Licensing Board,<sup>49</sup> Electrical Contractors’ Licensing Board,<sup>50</sup> the Mold-related Services Licensing Program,<sup>51</sup> and the Home Inspection Services Program.<sup>52</sup> The bill does not address compliance with these insurance or bonding requirements.

SB 1272 requires that the initial application fee be waived for active duty members, their spouses, and surviving spouses fee for certain professional licenses, for a period of two years after discharge from active duty, provided he or she does not engage in the licensed profession or vocation in the private sector for profit. Under current law, honorably discharged military

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at pages 6-7.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at page 7.

<sup>49</sup> *See* s. 489.115(5)(a), F.S.

<sup>50</sup> *See* s. 489.521(3)(a), F.S.

<sup>51</sup> *See* s. 468.8414, F.S.

<sup>52</sup> *See* s. 468.8322, F.S.

veterans, and their spouses at the time of such discharge, are granted a waiver of all initial licensing fees, initial application fees, and initial unlicensed activity fees, if an application for initial licensure is made within 60 months of the discharge.<sup>53</sup> The different requirements for waiver of initial application and other fees for professional licensure for active duty members and certain spouses, and for honorably discharged veterans and their spouses, may cause confusion to active duty and retired members of the Armed Forces, their spouses, and the public.

On lines 48, 113, and 117 of the bill, reference is made to “Armed Services;” elsewhere in the bill refers to “Armed Forces.” Current law defines the term “Armed Forces.”<sup>54</sup> Consideration should be given to replacing references in the bill to “Armed Services” with the term “Armed Forces.”

#### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 455.02 and 455.219.

#### **IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>53</sup> See s. 455.213(12), F.S.

<sup>54</sup> See s. 250.01(4), F.S., and 5 U.S. Code § 2101 and 10 U.S. Code § 101(a)(4), which define the term as “the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.”