

**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 Rules

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BILL: CS/CS/SB 802

INTRODUCER: Rules Committee; Judiciary Committee; and Senator Passidomo

SUBJECT:: Regulated Professions and Occupations

DATE: May 1, 2017

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Kraemer	McSwain	RI	<b>Favorable</b>
2. Stallard	Cibula	JU	<b>Fav/CS</b>
3. Kraemer	Phelps	RC	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 802 reduces or eliminates the licensing and registration requirements for several occupations and professions, and otherwise reduces the role of the Department of Business and Professional Regulation (DBPR or Department) in regulating several of these, while maintaining and sometimes creating civil causes of action or criminal liability for wrongdoing by practitioners in these industries. More specifically, the bill eliminates:

- The requirement to have a license for each yacht or ship broker office;
- Required registration for labor organizations and licensing of labor organization business agents, while maintaining civil causes of action and criminal penalties;
- The requirement that an asbestos abatement contractor obtain a separate business license in addition to an individual license, yet increases accountability of asbestos contractors for the actions of their businesses;
- Required licensure or registration for hair braiders, hair wrappers, and body wrappers; and
- The requirement that landscape architects, architects, or interior designers obtain a separate business license in addition to individual license.

Additionally, the bill modifies the existing two-tiered barbering licensure for “barbers” and “restricted barbers.” Under the bill, restricted barbers are licensed to do most things that a barber may do under current law, with the exception of applying oils, creams, lotions, or other preparations to the face, neck or scalp.

## II. Present Situation:

The present situation relative to each section of the bill will be discussed in the Effect of Proposed Changes section of this bill analysis. But before proceeding to the Present Situation and Effect of Proposed Changes relative to each section of the bill, the following brief background information on the Department of Business and Professional Regulation (DBPR or Department) is presented to provide context for the discussion of the bill.

### Background

#### *Organization of the Department of Business and Professional Regulation*

Section 20.165, F.S., establishes the organizational structure of DBPR, which has the following 12 divisions:

- 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.

Within several of these divisions, there exists one or more boards or programs, of which there are fifteen in total.<sup>1</sup> For example, two boards are within the Division of Real Estate,<sup>2</sup> and one board exists in the Division of Certified Public Accounting.<sup>3</sup>

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<sup>1</sup> Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes: 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>2</sup> See s. 20.165(4)(b), F.S., (establishing the Florida Real Estate Appraisal Board and the Florida Real Estate Commission).

<sup>3</sup> See s. 20.165(4)(c), F.S., (establishing the Board of Accountancy).

The Florida State Boxing Commission is assigned to DBPR for administrative and fiscal accountability purposes only.<sup>4</sup> DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law.<sup>5</sup>

### ***Powers and Duties of the Department***

Chapter 455, F.S., sets forth the general powers of DBPR as to the regulation of “profession[s],” and the term “professions” is defined as “any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.” This Chapter also sets forth the procedural and administrative framework for the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation, and all of the professional boards within DBPR.<sup>6</sup>

The Department’s regulation of professions is to be undertaken “only for the preservation of the health, safety, and welfare of the public under the police powers of the state,”<sup>7</sup> and 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>8</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>9</sup>

### ***Permitting, Registration, Licensing, and Certification***

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 Department must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.<sup>10</sup>

When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a “license,” which may be referred to in different instances as a permit, registration, certificate, or license.<sup>11</sup> Those who are granted any of these licenses are referred to as licensees.<sup>12</sup>

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<sup>4</sup> Section 548.003(1), F.S.

<sup>5</sup> See Parts I and III of ch. 450, F.S.

<sup>6</sup> See s. 455.203, F.S. DBPR must also provide legal counsel for boards within 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>7</sup> Section 455.201(2), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 455.201(4)(b), F.S.

<sup>10</sup> Section 455.219(1), F.S.

<sup>11</sup> Section 455.01(4), F.S.

<sup>12</sup> Section 455.01(5), F.S.

In Fiscal Year 2015-2016, there were 39,216 people licensed by the Division of Accountancy, 349,668 people licensed by the Division of Real Estate, and 61,396 people licensed by the Board of Professional Engineers.<sup>13</sup> In Fiscal Year 2015-2016, there were 434,001 people licensed by the Division of Professions,<sup>14</sup> including:

- Architects and interior designers;
- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers;
- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors;
- Cosmetologists;
- Electrical contractors;
- Employee leasing companies;
- Geologists;
- Home inspectors;
- Landscape architects;
- Harbor pilots;
- Mold-related services;
- Talent agencies; and
- Veterinarians.<sup>15</sup>

The Department's Division of Florida Condominiums, Timeshares, and Mobile Homes provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.<sup>16</sup> This Division has limited regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowner's Associations (jurisdiction is limited to arbitration of election and recall disputes).<sup>17</sup>

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<sup>13</sup> See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2015-2016*, page 21, [http://www.myfloridalicense.com/dbpr/os/documents/ProfessionsAnnualReportFY2015-2016\\_Final.pdf](http://www.myfloridalicense.com/dbpr/os/documents/ProfessionsAnnualReportFY2015-2016_Final.pdf), (last visited Apr. 28, 2017).

<sup>14</sup> Of the total 415,207 licensees in the Division of Professions, 23,183 are inactive. *Id.* at page 22.

<sup>15</sup> *Id.* at pages 21-22.

<sup>16</sup> Department of Business and Professional Regulation, *Division of Florida condominiums, Timeshares, and Mobile Homes*, <http://www.myfloridalicense.com/dbpr/lsc/index.html> (last visited Apr. 28, 2017).

<sup>17</sup> *Id.*

### III. Effect of Proposed Changes:

#### **Yacht and Ship Broker Branch Office Licenses**

##### ***Present Situation:***

Chapter 326, F.S., governs the licensing and regulation of yacht and ship brokers, salespersons, and related business organizations in the state. The Yacht and Ship Broker's Section is a unit of the Division of Florida Condominiums, Timeshares and Mobile Homes of the Department of Business and Professional Regulation (DBPR or Department). This Section processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the yacht brokerage industry.<sup>18</sup>

A person may not act as a yacht or ship broker or salesperson unless licensed under ch. 326, F.S.<sup>19</sup> Each yacht or ship broker must maintain a principal place of business in Florida and may establish branch offices in Florida. A separate license must be maintained for each branch office."<sup>20</sup>

Applicants for a branch office license and renewal pay a \$100 fee; licenses must be renewed every two years.<sup>21</sup> A branch office has no regulatory obligations other than to obtain licensure. Additionally, branch offices are not subject to inspection requirements.

##### ***Effect of Proposed Changes:***

**Section 2** of the bill amends s. 326.004, F.S., to remove the requirement that separate branch office licenses be maintained by yacht and ship brokers in addition to a license for the principal office. Brokers and salespeople are required to maintain individual licensure, with a principal place of business in Florida tied to the broker's individual license.

#### **Labor Organizations**

##### ***Present Situation:***

Chapter 447, F.S., governs the licensing and regulation of labor organizations and related business agents in the state. The Department's Division of Regulation oversees the licensing and regulation of labor organizations. In addition to issuing licenses, this Division responds to consumer complaints and inquiries by monitoring activities and compliance within the labor organization industry.

A labor organization is defined as "[a]ny organization of employees or local or subdivision thereof, having within its membership residents of the state, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of

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<sup>18</sup> See Department of Business and Professional Regulation, *Yacht and Ship Brokers; Licensing and Enforcement*, <http://www.myfloridalicense.com/dbpr/lsc/YachtandShip.html> (last visited Apr. 28, 2017).

<sup>19</sup> Section 326.004(1), F.S.

<sup>20</sup> Section 326.004(13), F.S.

<sup>21</sup> Rule 61B-60.002, F.A.C.

pay, working conditions, or grievances of any kind relating to employment and recognized as a unit of bargaining by one or more employers doing business in this state.”<sup>22</sup>

In Florida, all labor organizations are required to register with the Department and all business agents of labor organizations must obtain a license.<sup>23</sup> Business agents are defined as “[a]ny person, without regard to title, who shall, for a pecuniary or financial consideration, act or attempt to act for any labor organization in:

- The issuance of membership or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization; or
- Soliciting or receiving from any employer any right or privilege for employees.”<sup>24</sup>

Applicants for a business agent license must pay a \$25 fee for licensure and must meet a number of licensure requirements.<sup>25</sup> A labor organization must register with the Department annually and pay a fee of \$1.<sup>26</sup>

### ***Effect of Proposed Changes:***

**Sections 3 through 10** of the bill amend Part I of ch. 447, F.S., eliminating the registration scheme relating to labor organizations and the licensing scheme relating to business agents. However, civil causes of action and criminal penalties for wrongdoing by labor organizations and business agents remain, as do provisions relating to the right to work and strike, recordkeeping requirements, and rights of franchise for labor organizations.

## **Building Code Administrators, Plans Examiners, and Inspectors Certifications**

### ***Present Situation:***

#### ***Building Code Inspector and Plans Examiner***

In order to take the examination for building code inspector or plans examiner certification, a person must be at least 18 years of age, be of good moral character, and meet one of the following eligibility requirements:

- Option 1: Demonstrate five years of combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought.
- Option 2: Demonstrate four years of a combination of postsecondary education in the field of construction or a related field and experience, with at least one year of experience in construction, building code inspection, or plans review.
- Option 3: Demonstrate four years of a combination of technical education in the field of construction or a related field and experience, with at least one year of experience in construction, building code inspection, or plans review.
- Option 4: Currently hold a standard certificate issued by the Florida Building Code Administrators and Inspectors Board (FBCAIB), or a fire safety inspector license issued

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<sup>22</sup> Section 447.02(1), F.S.

<sup>23</sup> Section 447.04(2), F.S.

<sup>24</sup> Section 447.02(2), F.S.

<sup>25</sup> Section 447.04(2), F.S.

<sup>26</sup> Section 447.06(2), F.S.

pursuant to ch. 633, F.S.; have a minimum of three years of verifiable full-time experience in inspection or plan review; and satisfactorily complete an approved building code inspector or plans examiner training program of at least 100 hours but not more than 200 hours in the certification category sought.

- Option 5: Demonstrate a minimum of two years combined experience in the field of building code inspection, plan review, fire code inspections and fire plans review of new buildings as a firesafety inspector, or construction; and the completion of an approved training program in the field of building code inspection or plan review of at least 200 hours but not more than 300 hours in the certification category sought, with at least 20 hours but not more than 30 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificate holder.
- Option 6: Currently hold a standard certificate issued by the FBCAIB or a firesafety inspector license if the person also:
  - Has at least five years of verifiable full-time experience as a building code inspector, plans examiner, or licensed firesafety inspector; and
  - Satisfactorily completes a building code inspector or plans examiner classroom training course or program that provides between 200 and 300 hours in the certification category sought, except for one-family and two-family dwelling training programs which are required to provide between 500 and 800 hours of training as prescribed by the FBCAIB.<sup>27</sup>

The FBCAIB must accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program.<sup>28</sup>

Under s. 468.609(7), F.S., the FBCAIB is required to provide for the issuance of provisional one-year certificate for certain newly employed or promoted building code inspectors or plans examiners; and to provide appropriate levels of such provisional certificates.

Additionally, a newly employed or hired person may perform the duties of the plans examiner or building code inspector for 120 days if a provisional certificate application has been submitted and the newly employed or hired person is under the direct supervision of a certified building code administrator who holds a standard certification and who has found the person qualified for a provisional certificate.<sup>29</sup>

### ***Building Code Administrator***

In order to take the examination for building code administrator certification, a person must be at least 18 years of age, be of good moral character, and meet one of the following eligibility requirements:

- Option 1: Demonstrate 10 years of combined experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent, with at least five years of experience in supervisory positions; or
- Option 2: Demonstrate 10 years of a combination of experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction

<sup>27</sup> Section 468.609(2), F.S.

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

<sup>29</sup> Section 468.609(7)(d), F.S.

superintendent, with at least five years of supervisory experience, and postsecondary education in the field of construction or related field, of which no more than five years may be applied. The individual must have also completed between 20 and 30 hours training in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificate holder.<sup>30</sup>

### ***Private Providers***

Section 553.791(1)(i), F.S., defines “private provider” as a licensed engineer or a licensed architect who performs inspections on residential buildings in certain circumstances and, for additions and alterations under 1,000 square feet, the term also applies to individuals who hold a standard license under part XII of Chapter 468, F.S.

Private providers are authorized to contract with property owners and local building departments to conduct plans review and building code inspections.<sup>31</sup>

### ***Construction Industry Workforce Task Force***

Single-family building permit activity, an indicator of new construction, reached its peak in Florida in 2005. During the recent recession, new construction declined significantly, bottoming out in 2009. New construction has increased in recent years, but there are anecdotal reports that contractors are having a hard time finding skilled labor.

Because of the skilled labor shortage, the Legislature created the Construction Industry Workforce Task Force within the University of Florida M.E. Rinker, Sr., School of Construction Management in 2016.<sup>32</sup> The goals of the task force were to:

- Address the critical shortage of individuals trained in building construction and inspection.
- Develop a consensus path for training the next generation of construction workers in the state.
- Determine the causes for the current shortage of a trained construction industry work force and address the impact of the shortages on the recovery of the real estate market.
- Review current methods and resources available for construction training.
- Review the state of construction training available in K-12 schools.
- Address training issues relating to building code inspectors to increase the number of qualified inspectors.

The task force consisted of 23 members, representing various construction industries and the Legislature. The task force elected a chair from among its members. The University of Florida M.E. Rinker, Sr., School of Construction Management was required to provide assistance to the task force in carrying out its responsibilities.

The task force submitted a final report to the Governor, the President of the Senate, and the Speaker of the House of Representatives in January 2017, which states that the construction and

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<sup>30</sup> Section 468.609(3), F.S.

<sup>31</sup> DBPR, Legislative Bill Analysis for SB 860, pp. 2-3, (March 9, 2017)

<sup>32</sup> Chapter 2016-129, s. 31, Laws of Fla.



building profession is attracting fewer construction related workers.<sup>33</sup> Florida requires five years of construction trade experience in order to obtain an inspector license.<sup>34</sup> Given the stringent educational requirements, contractors often prefer working in the construction trades rather than becoming inspectors.

In its final report, the taskforce recommended the development of the following initiatives:

- Creating an Alternative Internship Certification Program to the current standard qualifications;
- Adding residential inspector and plan examiner categories for all trades;
- Expanding the provisional and 120-day periods beyond newly hired or promoted staff;
- Authorizing interagency service agreement inspections and plan examination for standard certified building officials across jurisdictions with populations 50,000 or fewer;
- Having the FBCAIB streamline the application for certification process by providing for an electronic application process and combining the examination registration with the provisional application;
- Providing high school education guidance material for construction related careers;
- Supporting higher education code curriculum in engineering, architecture, and construction management degrees; and
- Comprehensively studying the compensation for building code compliance personnel.<sup>35</sup>

### ***Effect of Proposed Changes:***

**Section 11** of the bill amends s. 468.603, F.S. to revise the terms “building code administrator” or “building official” to include any person, contracted by a municipal or county government, with specified building construction regulation responsibilities, including plan review or inspection. The term “building code inspector” is revised to include any person, contracted by a local government or state agency, with specified building construction responsibilities, who conduct inspections for projects that require permitting.

**Section 12** of the bill amends s. 468.617(3), F.S., to allow for the use of contracting with any person or entity for services as a building code administrator, or building official. Current law allows such contracting only for building code inspection services.

## **Asbestos Abatement Business Organization**

### ***Present Situation:***

Chapter 469, F.S., governs the licensing and regulation of asbestos abatement. The Asbestos Licensing Unit is a program located under the Division of Professions. The program processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the asbestos abatement industry.

<sup>33</sup> Florida Workforce Taskforce Report, prepared by the University of Florida, p. 12, available at <http://www.cce.ufl.edu/wp-content/uploads/2016/12/6-Florida-Construction-Workforce-Taskforce-Address-training-issues-among-building-code-inspectors-to-increase-the-number-qualified-1.pdf> (Taskforce Report) (last visited Apr. 28, 2017).

<sup>34</sup> Section 468.609(2)(c)1., F.S.

<sup>35</sup> See the Taskforce Report, *supra* note 17 at page 14.

As a general matter, a person must be a licensed asbestos contractor in order to conduct asbestos abatement work.<sup>36</sup> A person must be a licensed asbestos consultant to:

- Conduct an asbestos survey;
- Develop an operation and maintenance plan;
- Monitor and evaluate asbestos abatement; or
- Prepare asbestos abatement specifications.<sup>37</sup>

An asbestos consultant's license may be issued only to an applicant who holds a current, valid, and active license as an architect, professional engineer, professional geologist, is a diplomat of the American Board of Industrial Hygiene, or has been awarded designation as a Certified Safety Professional by the Board of Certified Safety Professionals.<sup>38</sup>

If an applicant for licensure as an asbestos consultant or contractor intends to engage in consulting or contracting as a business organization, such as a corporation, or in any name other than the applicant's legal name, the business organization must be licensed separately as an asbestos abatement business. Each licensed business organization must have a qualifying agent who is licensed under ch. 469, F.S.,<sup>39</sup> is qualified to supervise the enterprise, and is financially responsible. If the qualifying agent terminates his or her affiliation with the business organization and is the only qualifying agent for the business organization, the business organization must be qualified by another qualifying agent within 60 days after the termination, and the business organization may not engage in the practice of asbestos abatement until it is qualified.

Applicants for an asbestos abatement business license pay an application fee of \$300, an unlicensed activity fee of \$5, an initial licensure fee of \$250, and a biennial renewal fee of \$250.<sup>40</sup> A branch office has no regulatory obligations other than to obtain licensure. Additionally, branch offices are not subject to inspection.

### ***Effect of Proposed Changes:***

**Sections 13 and 14** of the bill amend ch. 469, F.S., to remove the requirement that an asbestos abatement contractor obtain a separate business license in addition to an individual license. Nonetheless, asbestos abatement contractors must qualify the business organizations they supervise and they are liable for the actions of those businesses. Asbestos abatement contractors must inform the Department of any change in their relationship with the qualified business, and a qualified business has 60 days to obtain another asbestos abatement contractor to serve as qualifying agent.

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<sup>36</sup> Section 469.003(3), F.S.

<sup>37</sup> Section 469.003, F.S.

<sup>38</sup> Section 469.004(1), F.S.

<sup>39</sup> Section 469.006, F.S.

<sup>40</sup> Rule 61E1-3.001, F.A.C.

## **Barbering**

### ***Present Situation:***

The term “barbering” used in ss. 476.014 through 476.254, F.S., the Barbers’ Act, includes any of the following practices when done for payment by the public:<sup>41</sup> shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances.<sup>42</sup>

If a person wants to be licensed as a barber, he or she must pass an examination. However, to be eligible to take the examination, a person must be at least 16 years of age, pay the application fee, and either have been licensed in another state for at least 1 year or have 1,200 hours of specified training.<sup>43</sup> However, the Barber Board is authorized to establish by rule a procedure for a barber school or program to certify a person to take the licensure examination following completion of a minimum of 1,000 hours of training and for the licensure of such person who passes the examination.<sup>44</sup> Alternatively, under s. 476.144(6), F.S., a person may apply for and receive a restricted license to practice barbering, which does not require the same level of training and authorizes the licensee to practice only in areas in which he or she has demonstrated competency.<sup>45</sup>

### ***Effect of Proposed Changes:***

**Sections 15 and 16** of the bill amend ss. 476.034 and 476.114, F.S., to provide for licensure as a “restricted barber” who may engage in certain practices.” Restricted barbers are licensed to perform shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard, but may not apply oils, creams, lotions, or other preparations to the face, neck or scalp.

The bill provides that an applicant for a restricted barbering license must hold, or have held within the previous five years, an active, valid license to practice barbering in another state or country, or a Florida barbering license that is void for failure to renew the license, or has the required hours of training at a licensed school of barbering, a public school system barbering program, or a government-operated barbering program in Florida. An applicant for licensure as a restricted barber is required to have a minimum of 1,000 hours of training (instead of the 1,200 hours required for barbers).

**Section 17** of the bill repeals s. 476.144(6), F.S., concerning the procedure to apply for a “restricted license to practice barbering” available under current law. Also repealed is a provision disqualifying an applicant for a restricted license for barbering, if the applicant has been disciplined for a barbering violation in the last five years.

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<sup>41</sup> But not when done for the treatment of disease or physical or mental ailments.

<sup>42</sup> Section 476.034(2), F.S.

<sup>43</sup> See s. 476.114(2), F.S.

<sup>44</sup> Section 476.114(2), F.S.

<sup>45</sup> Section 476.144(6), F.S.

## **Nail and Facial Specialists, Hair Braiders; Hair Wrappers, and Body Wrappers**

### ***Present Situation:***

Chapter 477, F.S., governs the licensing and regulation of cosmetologists, hair wrappers, hair braiders, nail specialists, facial specialists, full specialists, body wrappers and related salons in the state. The Board of Cosmetology, within the Department's Division of Professions, processes license applications and responds to consumer complaints and inquiries by monitoring activities and compliance within the cosmetology industry.

Individuals are prohibited from providing manicures or pedicures in Florida without first being registered as a nail specialist, full specialist, or cosmetologist.

A "specialist" is defined as "any person holding a specialty registration in one or more of the specialties registered under [ch. 477, F.S.]."<sup>46</sup> The term "specialty" is defined as "the practice of one or more of the following:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive.
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet.
- Facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services."<sup>47</sup>

The term "cosmetologist" is defined as "a person who is licensed to engage in the practice of cosmetology . . . ."<sup>48</sup> "Cosmetology" is defined as "the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services."<sup>49</sup>

A nail specialist may complete manicures and pedicures. A full specialist may complete manicures, pedicures, and facials. Manicures and pedicures, as a part of cosmetology services, are required to be provided in a licensed specialty salon or cosmetology salon.<sup>50</sup> All cosmetology and specialty salons are subject to inspection by DBPR.<sup>51</sup>

To qualify for a specialist license, the applicant must be at least 16 years old, obtain a certificate of completion from an approved specialty education program, and submit an application for registration with DBPR with the registration fee.<sup>52</sup>

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<sup>46</sup> Section 477.013(5), F.S.

<sup>47</sup> Section 477.013(6), F.S.

<sup>48</sup> Section 477.013(3), F.S.

<sup>49</sup> Section 477.013(4), F.S.

<sup>50</sup> Section 477.0263, F.S.

<sup>51</sup> Section 477.025, F.S.

<sup>52</sup> Section 477.0201, F.S.

To qualify for a license as a cosmetologist, the applicant must be at least 16 years old, have received a high school diploma, have submitted an application with the applicable fee and examination fee, and have either a license in another state or country for at least 1 year, or have received 1,200 hours training including completing an education at an approved cosmetology school or program. The applicants must also pass all parts of the licensure examination.<sup>53</sup>

The act of painting nails with fingernail polish falls under the scope of manicuring, even if the individual is not cutting, cleansing, adding, or extending the nails. Therefore, individuals seeking to add polish to fingernails and toenails for compensation are required to obtain a registration as a specialist or a license as a cosmetologist. DBPR does not have a separate license for polishing nails.

***Effect of Proposed Changes:***

**Section 18** of the bill amends s. 477.013, F.S. to specify the activities that constitute the practice of a “nail specialty,” a “facial specialty,” and a “full specialty.” A nail specialty, includes:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands, including any procedure for the affixing of artificial nails, except those that are affixed solely by a simple adhesive; and
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet.

A facial specialty includes facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services. A full specialty includes all manicuring, pedicuring, and facial services.

**Section 19** of the bill repeals s. 477.0132, F.S., eliminating registration requirements for hair braiding, hair wrapping, and body wrapping.

**Sections 20 and 21** of the bill amend ss. 477.0135 and 477.019, F.S., to eliminate licensure or registration for a person whose occupation or practice is confined solely to hair braiding, to hair wrapping, or to body wrapping, and to exempt these persons from certain continuing education requirements.

**Section 22** of the bill deletes s. 477.026(1)(f), F.S, eliminating the registration fee for hair braiders, hair wrappers, and body wrappers.

**Architecture Business or Interior Design Organization**

***Present Situation:***

Chapter 481, Part I, F.S., governs the licensing and regulation of architects, interior designers, and related business organizations. The Board of Architecture and Interior Design exists under the Department’s Division of Professions. The board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the architecture and interior design industries.

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<sup>53</sup> Section 477.019(2), F.S.

“The practice of or the offer to practice architecture or interior design by licensees through a corporation, limited liability company, or partnership offering architectural or interior design services to the public, or by a corporation, limited liability company, or partnership offering architectural or interior design services to the public through licensees under this part as agents, employees, officers, or partners, is permitted, subject to the provisions of [ch. 481, Part I, F.S.].”<sup>54</sup> An architecture or interior design business corporation, limited liability company, or partnership, which is offering architecture or interior design service to the public, must obtain a certificate of authorization prior to practicing.<sup>55</sup>

Applicants for an architecture business certificate of authorization or interior design business certificate of authorization must pay an application fee of \$100, an unlicensed activity fee of \$5, and a biennial renewal fee of \$125.<sup>56</sup> A business entity has no regulatory obligations other than to obtain licensure.

According to DBPR, in recent years, the Board of Architecture and Interior Design disciplined licensed architecture businesses only six times in cases that did not also involve discipline against the supervising architect; generally, the licensed business was cited for operating without a supervising architect or for failure to include license numbers in advertisements.<sup>57</sup>

The Board of Architecture and Interior Design disciplined licensed interior design businesses only four times in recent years in cases that did not also involve discipline against the qualifying interior designer. In three of the four disciplinary cases, the business license was retained by the business after the qualifying interior designer had left the firm.<sup>58</sup>

### ***Effect of Proposed Changes:***

**Sections 23 through 26** of the bill amend ch. 481, F.S., to remove the requirement that architects and interior designers obtain a separate business license (certificate of authorization) in addition to an individual license. The bill provides that architects and interior designers qualify their business organizations with their individual licenses. The bill provides that architects and interior designers must inform DBPR of any change in their relationship with the qualified business, and the business has 60 days to obtain a replacement qualifying architect or interior designer. The executive director or chair of the Board of Architecture and Interior Design may authorize another registered architect or interior designer employed by the business organization to temporarily service as its qualifying agent for no more than 60 days.

The bill amends s. 481.219(2)(b), F.S., to provide that the Board of Architecture and Interior Design may deny an application to qualify a business organization if the applicant (or others identified in the application as partners, officers, directors, or stockholders who are also officers or directors) “has been involved in past disciplinary actions or on any grounds for which an individual registration or certification may be denied.”

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<sup>54</sup> Section 481.219(1), F.S.

<sup>55</sup> Section 481.219(2)-(3), F.S.

<sup>56</sup> Rules 61G1-17.001 and 61G1-17.002, F.A.C.

<sup>57</sup> *Id.* at 5.

<sup>58</sup> *Id.*

## **Landscape Architecture Business Organization**

### ***Present Situation:***

Chapter 481, Part II, F.S., governs the licensing and regulation of landscape architects and related business organizations in the state. The Board of Landscape Architecture, a board located within the Division of Professions, processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the landscape architecture industry.

A person may not knowingly practice landscape architecture unless the person holds a valid license issued pursuant to ch. 481, Part II, F.S.<sup>59</sup> A corporation or partnership is permitted to offer landscape architectural services to the public, subject to the provisions of ch. 481, Part I, F.S., if:

- One or more of the principals of the corporation, or partners in the partnership, is a licensed landscape architect;
- One or more of the officers, directors, or owners of the corporation, or one of more of the partners of the partnership is a licensed landscape architect; and
- The corporation or partnership has been issued a certificate of authorization by the board.<sup>60</sup>

Applicants for a landscape architecture business certificate of authorization must pay an application fee and initial licensure fee of \$450, an unlicensed activity fee of \$5, and a biennial, renewal fee of \$337.50.<sup>61</sup> A business entity has no regulatory obligations other than to obtain licensure.

### ***Effect of Proposed Changes:***

**Sections 27 through 32** of the bill amend Part II of ch. 481, F.S., to remove the requirement that landscape architects obtain a separate business license in addition to an individual license. The bill provides that landscape architects must qualify their business organization with their individual licenses and that they will be liable for the actions of the business organizations they qualify.

The bill repeals Department's authority to issue a certificate of authorization to an applicant wishing to practice as a corporation, limited liability company, or partnership offering landscape architectural services. Furthermore, the bill repeals the board's ability to grant a temporary certificate of authorization for a business organization that is seeking to work on one project in Florida for a period not to exceed 1 year to an out-of-state corporation, partnership, or firm.

The bill provides that a corporation or partnership is permitted to offer landscape architectural services to the public, subject to the provisions of ch. 481, Part I, F.S., if:

- One or more of the principals of the corporation, or partners in the partnership, is a licensed landscape architect; and
- One or more of the officers, directors, or owners of the corporation, or one of more of the partners of the partnership is a licensed landscape architect.

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<sup>59</sup> Section 481.323(1)(a), F.S.

<sup>60</sup> Section 481.319(1), F.S.

<sup>61</sup> Rule 61G10-12.002, F.A.C.

Under the bill, landscape architects must inform DBPR of any change in their relationship with the qualified business, and the business has 1 month to obtain another qualifying landscape architect. According to DBPR, the Board of Landscape Architecture and Design issued no disciplinary orders against landscape architecture businesses during the 3 previous fiscal years.<sup>62</sup>

## **State Boxing Commission**

### ***Present Situation:***

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing, and mixed martial arts by the Department's Florida State Boxing Commission.

The Commission has exclusive jurisdiction over every professional boxing match and professional mixed martial arts and kickboxing matches.<sup>63</sup> Professional matches held in this state must meet the requirements for holding the match set forth in ch. 548, F.S., and must accord with the rules adopted by the Commission.

However, as to amateur matches, the Commission's jurisdiction is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for boxing and kickboxing matches held in this state.<sup>64</sup> Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.<sup>65</sup> This jurisdiction does not extend to amateur sanctioning organizations for mixed martial arts.

Under current law, certain persons providing certain services related to professional and amateur boxing, kickboxing, and mixed martial arts must be licensed by the commission before directly or indirectly performing those services. Licensing is mandated for a participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician, matchmaker, or promoter.<sup>66</sup>

### ***Effect of Proposed Changes:***

**Section 33** of the bill amends s. 548.017, F.S., to eliminate the licensure requirement for persons serving as timekeepers and announcers for a match.<sup>67</sup>

## **Conforming Revisions**

**Section 1** of the bill amends s. 287.055, F.S., the Consultants' Competitive Negotiation Act, to conform references to "qualified" (rather than "certified") entities.

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<sup>62</sup> *Id.*

<sup>63</sup> Section 548.006(3), F.S.

<sup>64</sup> *Id.*

<sup>65</sup> Section 548.002(2), F.S.

<sup>66</sup> Section 548.017, F.S.

<sup>67</sup> Section 34 conforms s. 548.003(2)(i), F.S., to the substantive change made in Section 33.



**Effective Date**

The bill takes effect October 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:**

None.

**B. Private Sector Impact:**

According to the DBPR's analysis of the bill before it was amended by the Judiciary Committee, the bill would have resulted in a reduction of licensing fees, fees for renewal of licenses, and unlicensed activity fees paid by the private sector of approximately \$971,003 in Fiscal Year 2017-2018, \$1,123,148 in Fiscal Year 2018-2019, and \$970,828 in Fiscal Year 2019-2020.<sup>68</sup> However, CS/CS/SB 802, as amended in the Rules Committee, retains the current law regulation of talent agencies. In addition, the amendment adopted by the Judiciary Committee (reflected in CS/SB 802) retained the current law regulation of auctioneers and geologists. Accordingly, the reductions in licensing fees initially estimated by the DBPR will be smaller; the amount of these reductions is unknown.

The DBPR's Division of Condominiums (Yacht and Ship Brokers) estimates that the bill will result in a reduction of license and license renewal fees to be paid by the private sector of approximately \$4,300 in Fiscal Year 2017-2018, \$4,300 in Fiscal Year 2018-2019, and \$4,300 in Fiscal Year 2019-2020.<sup>69</sup>

The DBPR estimates that the bill will result in a reduction of the private sector's fees for licensing and renewal of licensing to be paid to the Florida State Boxing Commission of

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<sup>68</sup> Department of Business and Professional Regulation, *2017 Agency Legislative Bill Analysis (SB 802)*, page 9, Mar. 2, 2017 (on file with Senate Committee on Judiciary).

<sup>69</sup> *Id.* at page 10.

approximately \$1,000 in Fiscal Year 2017-2018, \$1,000 in Fiscal Year 2018-2019, and \$1,000 in Fiscal Year 2019-2020.<sup>70</sup>

### C. Government Sector Impact:

In short, the DBPR initially anticipated a reduction in the state government's revenue over the next three fiscal years of \$3,080,878. Also, as to the state government's expenditures in this same timeframe, the DBPR estimated \$246,470 less in General Revenue due to a reduction in the applicable 8% service charge.<sup>71</sup> The following chart displays these impacts in greater detail.<sup>72</sup> However, both the revenue and expenditure figures do not reflect changes made by amendments adopted in the Judiciary Committee and the Rules Committee, which restore the current law's licensing scheme as to three industries—talent agencies, auctioneering, and geological services. Both industries fall under the Division of Professions.

	FY 2017-2018	FY 2018-2019	FY 2019-2020
Revenues: License fees and Unlicensed Activity Fees	Condominiums (Yacht and Ship Brokers) (\$4,300)  Professions (\$971,003)  Boxing Commission (\$1,000)	Condominiums (Yacht and Ship Brokers) (\$4,300)  Professions (\$1,123,148)  Boxing Commission (\$1,000)	Condominiums (Yacht and Ship Brokers) (\$4,300)  Professions (\$970,828)  Boxing Commission (\$1,000)
Expenditures: Surcharge to GR (non-operating)	Condominiums (Yacht and Ship Brokers) (\$344)  Professions (\$77,680)  Boxing Commission (\$80)	Condominiums (Yacht and Ship Brokers) (\$344)  Professions (\$89,852)  Boxing Commission (\$80)	Condominiums (Yacht and Ship Brokers) (\$344)  Professions (\$77,666)  Boxing Commission (\$80)

### VI. Technical Deficiencies:

None.

### VII. Related Issues:

None.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at page 7. The sum of \$246,470 is 8% of \$3,080,878.

<sup>72</sup> Department of Business and Professional Regulation, *2017 Agency Legislative Bill Analysis (SB 802)*, page 9, Mar. 2, 2017 (on file with Senate Committee on Judiciary).

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 287.055, 326.004, 447.02, 447.09, 468.603, 468.617, 469.006, 469.009, 476.034, 476.114, 477.013, 477.0135, 477.019, 477.026, 481.203, 481.219, 481.221, 481.229, 481.303, 481.311, 481.317, 481.319, 481.321, 481.329, 548.003, and 548.017.

This bill repeals the following sections of the Florida Statutes: 447.04, 447.041, 447.045, 447.06, 447.12, 447.16, and 477.0132.

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

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

**CS/CS by Rules on April 28, 2017:**

The committee substitute:

- Retains current law dealing with the regulation of talent agencies;
- Allows local governments to contract with (in addition to employing) persons to perform building code duties (plans review and inspections of construction).
- Repeals a provision in s. 468.114(6, F.S., dealing with restricted barbering, in favor of a new s. 468.114(3), F.S. with *similar* provisions, but:
  - Adding requirements that a restricted barber be at least 16 years old and have a minimum of 1,000 hours of training; and
  - Deleting a current law requirement that an applicant for a restricted license for barbering not have been disciplined for a barbering violation in the last five years.

**CS by Judiciary on April 4, 2017:**

The committee substitute restores current law's requirement that a firm, corporation, or partnership that offers geological services to the public must first obtain a certificate of authorization from DBPR.

The bill would have lowered the number of hours of training a person must complete before taking the examination to become a barber by at least 200, but the committee substitute restores the training requirements in current law. The committee substitute also increases the required training before one may sit for the examination for "restricted barbering" licensure from 525 hours under the bill to 1,000 hours.

The committee substitute restores current law regarding licensing and regulation of auctioneers and auction businesses and restores the provisions creating and regulating the Auctioneer Recovery Fund. The recovery fund is used to reimburse persons who have lost money as a result of an auctioneer's or auction business's wrongdoing.

**B. Amendments:**

None.