

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.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/CS/SB 382

INTRODUCER: Governmental Oversight and Accountability Committee; Regulated Industries Committee and Senator Hooper

SUBJECT: Continuing Education Requirements

DATE: January 17, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 382 revises the continuing education requirements for all persons licensed by the Florida Department of Business and Professional Regulation (DBPR) or its regulatory boards by requiring that distance learning¹ courses be allowed as an alternate method of satisfying continuing education requirements. The bill maintains the prohibition in current law that a board, or the DBPR when there is no board, may not require centralized examinations for continuing education for persons licensed to engage in community association management services, home inspection services, mold-related services, real estate services (i.e., brokers, sales associates, and schools), and real estate appraisal services.

Under current law, whether distance learning courses must be approved to satisfy continuing education requirements depends upon the type of profession. Such approval is mandated for persons licensed to engage in community association management services, home inspection services, mold-related services, real estate services (i.e., brokers, sales associates, and schools), and real estate appraisal services. For all other licensees regulated by professional boards or the DBPR under ch. 455, F.S., distance learning courses may be, but are not required to be, approved as an alternate method of satisfying continuing education requirements.

¹ The terms “distance learning” and “distance-learning” appear infrequently in the Florida Statutes and administrative rules and are not defined in the Florida Statutes as of the date of this analysis.

Under the bill, a licensee renewing an active license with DBPR that has been held continuously for at least 10 years is exempted from the obligation to complete any continuing education, provided no disciplinary action is imposed on the license. This exemption from continuing education credits does not apply to engineers, certified public accountants, real estate appraisers, architects and interior designers, and contractors.

The bill requires rulemaking by the DBPR and the affected board, and authorizes emergency rulemaking by DBPR pending the adoption of permanent rules to implement the exemption from continuing education requirements granted to eligible licensees.

The impact on state revenues and expenditures is indeterminate. There is no impact expected on local government revenues and expenditures. See Section V.

The bill takes effect July 1, 2024.

II. Present Situation:

Chapter 455, F.S., provides for the regulation of professions by the Department of Business and Professional Regulation (DBPR).

Department of Business and Professional Regulation

Organization of the DBPR

Section 20.165, F.S., establishes the organizational structure of the DBPR, which has the following 11 divisions:

- Administration;
- Alcoholic Beverages and Tobacco;
- Certified Public Accounting;
- Drugs, Devices, and Cosmetics;
- Florida Condominiums, Timeshares, and Mobile Homes;
- Hotels and Restaurants;
- Professions;
- Real Estate;
- Regulation;
- Service Operations; and
- Technology.

The Florida Athletic Commission is assigned to the DBPR for administrative and fiscal accountability purposes only.² The DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law.³

² Section 548.003(1), F.S.

³ See Parts I and III of ch. 450, F.S.

Powers and Duties of the DBPR

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.”⁴ The chapter also provides the procedural and administrative framework for those divisions and the professional boards within the DBPR.⁵

The term “profession” means any activity, occupation, profession, or vocation regulated by the DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.⁶

The DBPR’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.”⁷ 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.⁸

However, the DBPR and its boards may not create a regulation that has an unreasonable effect on job creation or job retention or a regulation that unreasonably restricts the ability of those desiring to engage in a profession or occupation from finding employment.⁹

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.¹⁰

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.¹¹ 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 rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.¹²

⁴ Section 455.01(6), F.S.

⁵ 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 staff counsel of the DBPR. See s. 455.221(1), F.S.

⁶ Section 455.01(6), F.S.

⁷ Section 455.201(2), F.S.

⁸ *Id.*

⁹ Section 455.201(4)(b), F.S.

¹⁰ 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.

¹¹ Section 455.01(4) and (5), F.S.

¹² Section 455.219(1), F.S.

However, the general licensing provisions for professions were revised for Fiscal Years 2023-2024 and 2024-2025,¹³ to direct the DBPR to waive a portion of certain license fees for the professions regulated under ch. 455, F.S., as follows:

- 50 percent of the *initial licensing fee* for those applying for an initial license, up to \$200 per year per license; and
- 50 percent of the *license renewal fee* for those renewing licenses, up to \$200 per year per license.

The fee waivers may not include any applicable unlicensed activity or background check fees.

Division of Certified Public Accounting

In Fiscal Year 2021-2022, there were 38,541 active licensees in the DBPR's Division of Certified Public Accounting.¹⁴

Division of Professions

In Fiscal Year 2021-2022, the DBPR's Division of Professions, had 937,960 active licensees (of which 38,541 were licensed accountants; 66,936 were licensed engineers, and 345,026 were real estate-related licensees), including:¹⁵

- Accountants (CPAs);
- 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;
- Engineers;
- Geologists;
- Home inspectors;
- Pilot commissioners;
- Landscape architects;
- Mold-related services;
- Real estate appraisers;
- Real estate (brokers/associates);

¹³ See s. 455.213(15), F.S. For Fiscal Year 2023-2024, the sum of \$50 million in nonrecurring funds was appropriated from the General Revenue Fund to the DBPR to implement the fee waiver, with any unexpended funds to be used during Fiscal Year 2024-2025 for the same purpose. See ch. 2063-68, Laws of Fla.

¹⁴ See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2021-2022*, at page 18, at <http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2021-22.pdf> (last visited Jan. 9, 2024), which is the latest such Annual Report issued by the DBPR.

¹⁵ *Id.*

- Talent agencies; and
- Veterinarians.

As noted by the DBPR, most professions regulated by the Division of Professions include a governing professional board responsible for ultimate licensing and disciplinary decisions, but the DBPR is responsible for licensing and regulating asbestos consultants and contractors, athlete agents, community association managers, home inspectors, mold-related professionals, and talent agencies.¹⁶

Unlike most DBPR professions, the administrative, investigative, and prosecutorial services for the Florida Board of Professional Engineering (FBPE) are not provided by the DBPR. The DBPR has contracted with the Florida Engineers Management Corporation (FEMC) to provide such administrative, investigative, and prosecutorial services for the FBPE.¹⁷

Division of Real Estate

In Fiscal Year 2021-2022, there were 345,026 active real estate licensees and 6,988 active real estate appraisal licensees in the DBPR's Division of Real Estate.¹⁸

Prelicensure/Postlicensure Education Requirements

Section 455.2122, F.S., provides that a board, or the DBPR where there is no board:

- Must approve distance learning¹⁹ courses as an alternative to classroom courses to satisfy prelicensure or postlicensure education requirements, for community association management licenses or licensing of real estate brokers, sales associates, or schools;²⁰ and
- May not require centralized examinations for completion of continuing education requirements for persons licensed as community association managers, or as real estate brokers, sales associates, or schools.

The terms “distance learning” and “distance-learning” are not defined in ch. 455, F.S., or elsewhere in the Florida Statutes as of the date of this analysis. However, a rule adopted by the Florida Real Estate Appraisal Board provides the term “distance education” means “education that takes place when the learner is separated from the source of instruction by time and/or distance.”²¹

¹⁶ See the DBPR Annual Report at page 26, *supra* note 14, noting that the Regulatory Council of Community Association Managers is responsible for adopting rules relating to the licensure examination, continuing education requirements, continuing education providers, fees, and professional practice standards to assist the DBPR in carrying out its duties.

¹⁷ See s. 471.038, F.S., the Florida Engineers Management Corporation Act, for the duties and authority of the FEMC. See the Annual Report of the FEMC for FY 2022-2023, available at [FEMC-Annual-Report-2022-2023.pdf \(fbpe.org\)](https://fbpe.org/wp-content/uploads/2021/10/2021-25-DBPR-FEMC-Contract.pdf) (last visited Jan. 9, 2024), and the contract between the DBPR and the FEMC for the period between July 1, 2021 and June 30, 2025 at <https://fbpe.org/wp-content/uploads/2021/10/2021-25-DBPR-FEMC-Contract.pdf> (last visited Jan. 9, 2024).

¹⁸ See the DBPR Annual Report at page 18, *supra* note 14.

¹⁹ See Fla. Admin. Code R. 61J1-4.003(4)(a).

²⁰ See part VIII of ch. 468, F.S., relating to Community Association Management and part I of ch. 475, F.S., relating to Real Estate Brokers, Sales associates, and Schools.

²¹ In addition, the Florida Real Estate Commission (FREC) has issued its Distance Education Checklist at http://www.myfloridalicense.com/dbpr/re/documents/frec_distance_ed_chk_list.pdf (last visited Jan. 9, 2024), which lists the information required to be submitted by education providers seeking to offer FREC educational courses via distance education. The Checklist provides “[d]istance learning necessitates a high level of self-direction and should, therefore,

Continuing Education Course Requirements

Under s. 455.2123, F.S., a board, or the DBPR when there is no board, may provide by rule that distance learning may be used to satisfy continuing education requirements. However, a board or the DBPR must approve distance learning courses as an alternative to classroom courses to satisfy continuing education requirements for persons licensed to engage in community association management services,²² home inspection services,²³ mold-related services,²⁴ real estate services (i.e., brokers, sales associates, and schools),²⁵ and real estate appraisal services.²⁶ In addition, for these specified professions, a board or the DBPR may not require centralized examinations for completion of continuing education requirements.

The DBPR notes that there are no continuing education requirements for the Board of Geologists regulated under ch. 492, F.S., or for the following professions regulated as provided under ch. 468, F.S.:

- Auctioneers (part VI);
- Talent Agencies (part VII);
- Athlete Agents (part IX); and
- Employee Leasing Companies (part XI).²⁷

Continuing Education (Proration/Renewal)

Under s. 455.2124, F.S., a board, or the DBPR when there is no board, may:

- Prorate continuing education for new licensees by requiring:
 - Half of the required continuing education for an applicant who becomes licensed with more than half the renewal period remaining; and
 - No continuing education for any applicant who becomes licensed with half or less than half of the renewal period remaining; or
- Require no continuing education until the first full renewal cycle of the licensee.

These options also apply when continuing education is first required or the number of hours required is increased by law, the applicable board, or the DBPR when there is no board.

require students to read, conduct research, complete timed exams and similar assignments, designed to measure the student's competency relative to the required subject matter objectives." *See also* other rules referencing similar but undefined terms, such as Fla. Admin. Code R. 64B15-13.001 (a Board of Osteopathic Medicine rule that provides "CME courses may be obtained in any format, including in a distance learning format, provided that the format includes an ability to interact with the presenter of the course;" and Fla. Admin. Code R. 61G4-18.001, (a Construction Industry Licensing Board rule that requires "at least 14 classroom or interactive distance learning hours of continuing education in one or more courses from a continuing education provider approved by the Board.").

²² *See* part VIII of ch. 468, F.S.

²³ *See* part XV of ch. 468, F.S.

²⁴ *See* part XVI of ch. 468, F.S.

²⁵ *See* part I of ch. 475, F.S.

²⁶ *See* part II of ch. 475, F.S.

²⁷ *See* Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for SB 382* at page 2 (Nov. 21, 2023) (on file with the Senate Committee on Regulated Industries).

III. Effect of Proposed Changes:

Section 1 amends s. 455.2123, F.S., relating to continuing education requirements for all persons licensed under ch. 455, F.S., by professional regulatory boards or the Florida Department of Business and Professional Regulation (DBPR), to require that distance learning²⁸ courses be allowed as an alternate method of satisfying continuing education requirements.

Under current law, whether distance learning courses must be approved to satisfy continuing education requirements depend upon the type of profession. Such approval is mandated for persons licensed to engage in community association management services,²⁹ home inspection services,³⁰ mold-related services,³¹ real estate services (i.e., brokers, sales associates, and schools),³² and real estate appraisal services.³³ For all other licensees regulated by professional boards or the DBPR under ch. 455, F.S., distance learning courses may be, but are not required to be, approved as an alternate method of satisfying continuing education requirements.

The bill maintains the requirement in current law that a board or the DBPR when there is no board, may not require centralized examinations for continuing education for persons licensed to engage in community association management services, home inspection services, mold-related services, real estate services (i.e., brokers, sales associates, and schools), and real estate appraisal services.

Section 2 amends s. 455.2124, F.S., to create an exemption from continuing education requirements. The bill requires professional boards, or the DBPR if there is no board, to exempt an individual from completing the continuing education required for renewal of a license for a renewal period if:

- The individual holds an active license issued by the board or the DBPR to practice the profession;
- The individual has continuously held the license for at least 10 years; and
- No disciplinary action is imposed on the individual's license.

The exemption from continuing education requirements in the bill does not apply to engineers regulated under ch. 471, F.S., certified public accountants regulated under ch. 473, F.S., real estate appraisers regulated under part II of ch. 475, F.S., architects and interior designers regulated under ch. 481, F.S., or contractors regulated under ch. 481, F.S.

The bill requires the DBPR and each affected board to adopt rules³⁴ to implement the requirements of this section.

²⁸ The terms “distance learning” and “distance-learning” appear infrequently in the Florida Statutes and administrative rules and are not defined in the Florida Statutes as of the date of this analysis.

²⁹ See part VIII of ch. 468, F.S.

³⁰ See part XV of ch. 468, F.S.

³¹ See part XVI of ch. 468, F.S.

³² See part I of ch. 475, F.S.

³³ See part II of ch. 475, F.S.

³⁴ Section 120.536(1), F.S., provides that “a grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute.” Section 120.54, F.S., sets forth the rulemaking provisions that are applicable to all rules other than emergency rules.

Section 3 authorizes the DBPR to adopt emergency rules to implement the exemption from completing continuing education in the bill for eligible licensees, provides the emergency rules will be effective until permanent rules are adopted to implement the exemption, and provides the emergency rule authorization expires January 1, 2026.

Section 4 provides the bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Continuing education providers may experience a decrease in revenue associated with the exemption from required continuing education created in the bill. According to the Department of Business and Professional Regulation (DBPR), the fiscal impact is indeterminate.³⁵

³⁵ See Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for SB 382* at page 8 (Nov. 21, 2023) (on file with the Senate Committee on Regulated Industries).

C. Government Sector Impact:

According to the DBPR, the fiscal impact of the bill on state government is indeterminate. Any additional workload and costs will be absorbed within existing resources.³⁶

The DBPR notes the following with respect to expenditures related to its operations:³⁷

Prior to renewal cycles for each profession, the [DBPR] will need to determine whether license holders had disciplinary action imposed on their license to know which license holders will be required to submit continuing education [CE] hours for renewal. This would impact CE renewal notices; the Versa Regulation (VR) system; the Versa Online (VO) system; and renewal processing if a disciplinary case goes to the board during the renewal period because that would then change the need for CE, etc.

Additionally, the impact on the service operations division is indeterminate. The Continuing Education exemption for qualified licenses should reduce call volume to the Customer Contact Center during peak renewal times. [The DBPR staff is] unable to determine how many of the potentially exempted licensees have historically contacted the Customer Contact Center concerning reporting their continuing education to the [DBPR].

VI. Technical Deficiencies:**VII. None.****VIII. Related Issues:**

The Department of Business and Professional Regulation (DBPR) recommends that the following professions be excluded from the provisions of the bill, so that the affected licensees will be kept informed of laws, rules, and industry advancements to protect the health, safety, and welfare of the public, and the portability of such licensing for use in other jurisdictions will be maintained.³⁸

- Certified Public Accountants;³⁹
- Veterinary Medicine;
- Landscape Architecture;
- Cosmetology and Barbers;
- Building Code Administrators and Inspectors;

³⁶ *Id.* at page 7.

³⁷ *Id.* at page 7.

³⁸ *Id.* at page 9.

³⁹ The DBPR's General Counsel's Office indicates that 30 to 40 percent of prosecutions of certified public accountants (CPAs) involve the failure to meet continuing education requirements, so the elimination of the continuing education requirement for CPAs who have held active licenses continuously for at least 10 years with no disciplinary action imposed on the license could result in fewer violations and prosecutions. *Id.* at page 10.

- Community Association Managers; and
- Construction Contractors.

IX. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 455.2123 and 455.2124.

X. 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 Governmental Oversight and Accountability on January 16, 2024:

The committee substitute removes unnecessary language referencing the Department of Health and its regulatory boards. The committee substitute also excludes engineers regulated under ch. 471, F.S., from the continuing education exemption authorized in the bill. This means the engineers must complete the required continuing education credits to remain licensed under the law.

CS by Regulated Industries on December 12, 2023:

The committee substitute:

- Excludes individuals in the following professions from eligibility to be exempted from completing continuing education:
 - Certified public accountants regulated pursuant to ch. 473, F.S.;
 - Real estate appraisers regulated pursuant to part II of ch. 475, F.S.;
 - Architects and interior designers regulated pursuant to ch. 481, F.S.; and Contractors regulated pursuant to ch. 489, F.S.
- Authorizes the Department of Business and Professional Regulation to adopt emergency rules to implement the exemption from completing continuing education in the bill for eligible licensees and provides:
 - The emergency rules will be effective until permanent rules are adopted to implement the exemption; and
 - The emergency rule authorization expires January 1, 2026.

- B. **Amendments:**

None.