

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 991 Interpreters for the Deaf and Hard of Hearing
SPONSOR(S): Heller and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 926

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Business Regulation</u>	<u>9 Y, 0 N</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>Jobs & Entrepreneurship Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Sign-language interpreters are not currently licensed or regulated by the state.

The bill creates regulation of interpreters for the deaf and hard of hearing and provides for the creation of a regulatory program to be located in the Department of Business and Professional Regulation (DBPR). Part XV of chapter 468, F.S., is created. The bill creates the Board of Interpreters for the Deaf and Hard of Hearing (board) within the DBPR to consist of nine members appointed by the Governor and confirmed by the Senate.

The bill creates a regulatory scheme, provides definitions, scope of practice, employment guidelines, continuing education, accountability, rules, licensure, and fees. According to the proponents, the bill creates a system of regulation to safeguard the consumer. The bill provides for regulation of individuals who currently perform the duties of an interpreter for the deaf and hard of hearing.

Section 11.62, F.S., the "Sunrise Act," establishes criteria for evaluating proposals to create the expansion of government regulation. The Act states that it is the intent of the Legislature that no profession or occupation be subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage; and no profession or occupation be regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation. The Sunrise Act requires proponents of regulation to provide information to the Legislature that establishes the need and effects of regulation. The proponent for regulation that submitted this information is the Florida Registry of Interpreters for the Deaf.

Fiscal

According to the Department of Business and Professional Regulation (DBPR), the proposed legislation will have a fiscal impact that includes the addition of 3 full-time equivalent (FTE) positions and implementation costs of approximately \$250,000 in Fiscal Year 2007-2008. The legislation will carry a recurring cost of approximately \$250,000 in subsequent years as well. The department anticipates revenues estimated at \$166,500 in Fiscal Year 2007-2008, with roughly the same amount expected in subsequent years. The revenues are based on the estimated number of practicing interpreters who will be required to pay application and licensure fees in order to continue offering interpreting services.

See III. D. of this analysis: STATEMENT OF THE SPONSOR

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

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides limited government - The bill creates regulation of interpreters for the deaf and hard of hearing and provides for the creation of a regulatory program for this activity.

Ensure lower taxes – The bill creates a fee structure to fund the new regulatory program.

B. EFFECT OF PROPOSED CHANGES:

Present situation

Services for the deaf and hard of hearing

Sign-language interpreters are not currently licensed or regulated by state government.

Many different programs provide assistance in meeting the broad needs of individuals who are deaf or hard of hearing but many of the programs may have a limited scope of services. For instance, children may be served by Children's Medical Services. Adults who are deaf, hard-of-hearing, and late-deafened who have other disabilities may be served by the Developmental Disabilities Program or Adult Services Program of the Department of Children and Families. The Vocational Rehabilitation Program with the Department of Education serves qualifying individuals with disabilities including hearing impairment in securing and maintaining employment. The Americans with Disabilities Act (ADA) Working Group, a board appointed by the Governor, addresses disability issues generally regarding compliance and implementation of the ADA and other disability rights laws.

Various local community programs may provide assistance as well. There are deaf service centers in many areas of the state, which provide services including education and information and referral. Other organizations, such as Independent Living Centers, which serve the needs of individuals with a range of disabilities, also assist those who are deaf and hard-of-hearing.

The National Registry of Interpreters for the Deaf certifies interpreters who pass its exams and agree to comply with its code of ethics, among other requirements. The Florida affiliate is the Florida Registry of Interpreters for the Deaf.

Other specialized services for individuals who are deaf and hard of hearing include:

- Part I of ch. 468, F.S., regulates speech-language pathologists and audiologists through the Board of Speech-Language Pathology and Audiology in the Department of Health (DOH).
- Part II of ch. 484 provides for regulation of the dispensing of hearing aids; the Board of Hearing Aid Specialists in the DOH oversees that activity.
- In accordance with provisions of part II of ch. 427, the Florida Public Service Commission implements, promotes, and oversees the administration of a statewide telecommunications access system to provide access to telecommunications relay services.

Proviso language in the 2003 General Appropriations Act provided that the Department of Management Services, in consultation with advocacy groups and appropriate state agencies, prepare a report by January 1, 2004, providing recommendations regarding the needs of deaf, hard-of-hearing, and late-deafened persons. Specific issues to be addressed included state agency compliance with accessibility standards and licensure of sign-language interpreters.

The report was submitted by the Governor's Working Group on the Americans with Disabilities Act, which compiled the report in cooperation with the Florida Summit for Deaf, Hard of Hearing, and Late-Deafened Persons, a coalition of 12 statewide organizations involved in advocacy and services. The report's overall recommendation was to establish an oversight and policy body to address deaf, hard of hearing, and late-deafened issues.

In 2004, legislation was enacted to create the Florida Coordinating Council for the Deaf and Hard of Hearing sited in the DOH but as an independent council. The legislation provided for membership of 17 persons, including representatives of organizations of individuals who are deaf and hard of hearing and their families, organizations and professions serving those individuals, and state agencies. Members were appointed by the Governor. Among its duties, the council was to study the feasibility of and necessity for licensing interpreters. The council issued a report recommending, in part, to create a licensure and regulatory program for interpreters for the deaf and hard of hearing. The report did not document specific instances of harm but stated, in part,

"Legislation to regulate the qualifications of sign language interpreters in Florida is necessary to protect the health, safety and welfare of people who are deaf or hard of hearing."

Currently, s. 90.6063, F.S., provides, in part, for qualified interpreter services for deaf persons within the court system. It requires that

In all judicial proceedings and in sessions of a grand jury wherein a deaf person is a complainant, defendant, witness, or otherwise a party, or wherein a deaf person is a juror or grand juror, the court or presiding officer shall appoint a qualified interpreter to interpret the proceedings or deliberations to the deaf person and to interpret the deaf person's testimony, statements, or deliberations to the court, jury, or grand jury. A qualified interpreter shall be appointed, or other auxiliary aid provided as appropriate, for the duration of the trial or other proceeding in which a deaf juror or grand juror is seated.

Sunrise Act - s. 11.62, F.S.

According to s. 11.62, F.S., the "Sunrise Act," it is the intent of the Legislature that:

- No profession or occupation is subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power of the state be exercised only to the extent necessary for that purpose; and
- No profession or occupation is regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.

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

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

Effect of proposed changes

HB 991 defines "interpreting" to mean the process of providing accessible communication between persons who are deaf or hard of hearing and those who are hearing and includes, but is not limited to, communication between American Sign Language and English or other modalities that involve visual, gestural, and tactile methods of communication.

"Transliterating" is defined to mean the process of providing accessible communication between persons who are deaf or hard of hearing and those who are hearing primarily using a signed mode of English and spoken English.

The bill creates the board within the DBPR to consist of nine members appointed by the Governor and confirmed by the Senate.

The bill creates licensure as an interpreter or transliterator and creates categories of provisional license, temporary license, special limited license, deaf interpreters permit, registered permit, and temporary permit.

The bill specifies, the board shall establish by rule the fees to be paid, as follows:

- (1) Application fee, not to exceed \$35.
- (2) Examination fee, not to exceed \$100.
- (3) Reexamination fee, not to exceed \$100.
- (4) Initial license or permit fee, not to exceed \$150.
- (5) Annual license renewal fee, not to exceed \$150.
- (6) Permit extension fee, not to exceed \$50.
- (7) License reinstatement application fee, not to exceed \$70.

Exemptions apply for worship services, religious ceremonies, emergencies, actions under the Good Samaritan Act, while on a cruise ship, pro bono temporary services, interns, and students.

The bill specifies that a person who violates this part commits a misdemeanor of the first degree.

In the 2006 legislative session, HB 1333 was introduced but failed to pass. The bill proposed to license and regulate interpreters of the deaf and hard of hearing. HB 991 is nearly identical to the 2006 legislation.

Section 11.62, F.S., requires the proponents of regulation to submit information, which is structured as a sunrise questionnaire to document that proposed regulation meet specified statutory criteria. A sunrise questionnaire was submitted to the committee by the proponents of the legislation to assist the Legislature in determining the need for regulation and analyzing the proposed legislation seeking to establish regulation, both for HB 1333 in 2006 and HB 991. Similar to the House Principles section of this analysis, the following analysis includes identification of the Sunrise Principles.

The sunrise questionnaire response package included information relating to the Sunrise criteria:

I. Specific instances of harm -

The response provided by the proponents of this legislation states,

- there is a great deal of public testimony relating to the lack of communication access for deaf and hard of hearing Florida consumers in such arenas as medical, mental health, education, and other public services. This lack of communication access not only subjects the deaf and hard of hearing Floridians to risk, but also the sites from which they are receiving services.

The response to the sunrise questionnaire states,

- Florida Registry of Interpreters for the Deaf and Florida Association of the Deaf have depended on the state and national interpreter organizations grievance systems, and the ADA complaint process as alternatives and have still received complaints so numerous and disturbing that this proposed regulation was drafted.

Based on the response provided by the proponents of this legislation, no documented harm to the public and no instances of consumer injury were identified. The proponents for regulation were not able to provide estimated numbers of complaints against individuals practicing in this profession.

II. Skill or training is readily measurable or quantifiable -

Information provided

- refers to the National Association of the Deaf (NAD) and the Registry of Interpreters for the Deaf, Inc. (RID) who uphold high standards of professionalism and ethical conduct for interpreters. The documentation states this Code of Professional Conduct is sufficient to encompass interpreter roles and responsibilities in every type of situation (e.g., educational, legal, medical). A separate code [of professional conduct] for each area of interpreting is neither necessary nor advisable.

The bill creates licensure as an interpreter or transliterator and creates categories of provisional license, temporary license, special limited license, deaf interpreters permit, registered permit, and temporary permit.

III. Regulation will have an unreasonable effect on job creation or job retention -

The response to the sunrise questionnaire states,

- voluntary efforts are captured in the Code of Ethics for Interpreters which is a requirement of Florida Registry of Interpreters for the Deaf, Inc. and Registry of Interpreters for the Deaf, Inc., the current respective state and national credentialing bodies. Practitioners who are within the interpreting system can have their credentials revoked if they do not comply with the codes described. Signers who are not interpreters have never had exposure to this code of conduct, and therefore do not follow its tenets furthering the problems inherent in using a person with some knowledge of sign who is not a qualified interpreter.

Since the bill requires licensure, regulation, operating requirements for all levels of services, there may be impediments created by the provisions of the bill for job creation or job retention in lieu of the voluntary market.

IV. Public is or can be effectively protected by other means -

The response to the sunrise questionnaire states,

- the Americans with Disabilities Act and the Rehab Act of 1973 are federal laws designed to protect this constituency. There is a definition of "qualified interpreter" included in the law, but the hearing purchaser of such services has no mechanism for making this determination unless they are fluent in the language, which is rarely if ever the case.

The response points out that currently codes of professional conduct exist for practitioners by

- the NATIONAL COUNCIL ON INTERPRETING (NCI or NAD-RID), FLORIDA EDUCATIONAL INTERPRETER EVALUATION (EIE), EDUCATIONAL INTERPRETER PERFORMANCE ASSESSMENT (EIPA), TEACHING, EDUCATION, AND CERTIFICATION UNIT (TECUnit), and NATIONAL CONSORTIUM OF STATE COURTS (NCSC) - Model Code of Professional Responsibility for Interpreters in the Judiciary.

There appears to be alternatives to state regulation and licensure, currently utilized in different venues requiring different levels of competency.

V. Cost-effectiveness and economic impact of the proposed regulation will be favorable -

The response to the sunrise questionnaire states,

- the cost of regulation is contained in the cost of licensure or permitting for those who are currently within the system. The cost of testing or evaluation would be added to the cost of regulation for those who have not been within the system prior to regulation.

The response points out that

- the state currently offers free training for K12 interpreters through the Educational Interpreter Project, workshops and seminars are as low as \$25.00 per day, on- line courses are offered as well as independent study that is as low as \$35.00 for 2 points or 20 hours of continuing education.

The bill provides for the regulation of the profession by a board, requires credentialing and licensure, licensure renewal, enforcement for noncompliance to regulatory guidelines.

According to the DBPR, the proposed legislation will have a fiscal impact that includes the addition of 3 full-time equivalent (FTE) positions and implementation costs of approximately \$250,000 in Fiscal Year 2007-2008.

Concluding statement

The response to the sunrise questionnaire states,

“based on the information provided, the [proposed] regulation is:

- justified;
- the least restrictive;
- most cost effective scheme;
- adequate to protect the public.”

C. SECTION DIRECTORY:

Section 1. Amends s.20.165, F.S., to add the board to the list of boards within the Division of Professions under the DBPR.

Section 2. Creates part XV of chapter 468, F.S. to create licensure of interpreters for the deaf and hard of hearing and provides for the creation of a regulatory scheme for this profession.

Section 3. Effective date - July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The licensure fee has been established at \$150, resulting in a negative fiscal impact according to the department’s projections. The department anticipates the following revenues, based on the

current number of interpreters who will be required to become licensed and the estimated growth of 50 new licensees per year:

REVENUE			
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
License Fees: \$150 max.	135,000	142,500	150,000
Taxes:			
Other (identify): Application fee (\$35 max.)	31,500	1,750	1,750
TOTAL:	166,500	144,250	151,750

2. Expenditures:

The department anticipates the following expenditures, including costs associated with the addition of a board Executive Director, Government Analyst I, and a Regulatory Specialist I:

NON-RECURRING EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
Non-Recurring Effects	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
Operating Capital Outlay	3,900		
Other Personal Services	0		
Expenses	10,278		
Subtotal	14,178	0	0
RECURRING EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
Recurring Effects	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
Salaries/Benefits – 3 FTE positions	144,860	144,860	144,860
Expenses	61,931	61,931	61,931
Other – HR Assessment	1,203	1,203	1,203
Other Personal Services – Board member compensation	3,600	3,600	3,600
Application Management - .41 per account (ending 12/08)	4,428	2,337	0
Legal Services Contract – Contract with Attorney General for legal services rendered	Indeterminate increase	Indeterminate increase	Indeterminate increase
Subtotal	216,022	213,931	211,594
Non-Operating Expenditures	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
Service Charges (to General Revenue)	12,155	10,530	11,078
Other Indirect Costs – Administrative Assessment (does not include General Counsel costs)	7,968	7,968	7,968
Other Indirect Costs – Division of Service Operations	Indeterminate increase	Indeterminate increase	Indeterminate increase
Subtotal	20,123	18,498	19,046

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Cannot be determined.

D. FISCAL COMMENTS:

According to the department, this legislation will increase revenues by approximately \$166,500 in FY 2007-2008 and will carry recurring expenditures of roughly \$250,000, which will result in an overall negative fiscal impact based on the department's projections. The department will need to add a board Executive Director and Government Analyst I, which each professional board has, and a Regulatory Specialist I to process and maintain licensee applications as well as other functions.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill specifies:

The board shall adopt rules, pertaining to, but not limited to:

- (a) A code of professional conduct for licensees.
- (b) Performance requirements, including education and examination standards for interpreters.
- (c) Continuing education requirements.
- (d) Appropriate and acceptable testing tools to evaluate interpreters.
- (e) Fee schedules authorized under s. 468.906.
- (f) Procedures for acceptance of funds from federal and private sources to be used for the purposes of this part.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

This bill is intended to implement the recommendation of the Florida Coordinating Council for the Deaf and Hard of hearing. This Council created by the Legislature in 2004 has a membership of seventeen persons appointed by the Governor including representatives of organizations who are deaf and hard of hearing and their families, organizations, and professions serving those individuals and state agencies. Among the duties of the Council was a charge to study the feasibility and necessity of licensing interpreters for the deaf and hard of hearing. The Council upon completion of this study made the following recommendation.:

“Legislation to regulate the qualifications of sign language interpreters in Florida is necessary to protect the health, safety and welfare of people who are deaf or hard of hearing.”

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 22, 2007, the Committee on Business Regulation adopted three amendments and passed the bill out of committee by unanimous vote.

The amendments

- Clarify that the voluntary disclosure of privileged communications by an interpreter applies to the commission of a crime [the bill removes reference to “or harmful act”];
- Changes the definition of “interpreter” to require that services be for compensation; consequently, licensure would be required only if services are performed for compensation.
- Further clarifies services are for compensation by removing a reference to the statement “or on a voluntary basis” in relation to illegal acts specified in the bill.