

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 741 Department of Business and Professional Regulation Fees

SPONSOR(S): Trumbull

TIED BILLS: **IDEN./SIM. BILLS:** SB 514

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	13 Y, 0 N	Willson	Anstead
2) Government Operations & Technology Appropriations Subcommittee	10 Y, 0 N	Topp	Topp
3) Commerce Committee			

SUMMARY ANALYSIS

The Department of Business and Professional Responsibility (DBPR) regulates and licenses businesses and professionals in Florida through the establishment of professional boards and programs. As part of this regulatory system, DBPR and its boards impose licensing and renewal fees for such licenses.

DBPR imposes an additional fee on licensees that have fallen into delinquent status. This additional delinquency fee is established in rule by each board, and may be for an amount up to the price of the renewal fee charged to active, non-delinquent licensees. The bill reduces the additional delinquency fee to a flat rate of \$25.00.

DBPR also houses the Florida Building Commission, which enforces the Florida Building Code. All local building departments assess and collect a 1.5% surcharge on any building permit issued by their agency for the purpose of enforcing the Florida Building Code. The bill reduces the surcharge assessed on Florida building permits issued to 1.0%.

The bill will have a negative fiscal impact on revenues to state and local governments. See *Fiscal Analysis and Economic Impact Statement*.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Professional Licensing

DBPR licenses and regulates businesses and professionals in Florida. DBPR includes separate divisions and various professional boards that are responsible for carrying out the department's mission to license efficiently and regulate fairly.

Section 20.165, F.S., establishes the organizational structure of DBPR. There are 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.

There are 15 boards and programs established within the Division of Professions,¹ two boards within the Division of Real Estate,² and one board within the Division of Certified Public Accounting.³ The Florida State Boxing Commission (boxing commission) is also assigned to DBPR for administrative and fiscal accountability purposes only.⁴ DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law pursuant to parts I and III of ch. 450, F.S.

Chapter 455, F.S., applies to the regulation of professions constituting "any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation."⁵

Regulation of professions is limited by law, to be undertaken "only for the preservation of the health, safety, and welfare of the public under the police powers of the state."⁶ 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;

¹ 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.

² See s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.

³ See s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.

⁴ See s. 548.003(1), F.S.

⁵ See s. 455.01(6), F.S.

⁶ See s. 455.201(2), F.S.

- 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.⁷

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.⁸

Chapter 455, F.S., provides the general powers of DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.⁹ When a person is authorized to engage in a profession or occupation in Florida by DBPR, the department issues a “permit, registration, certificate, or license” to the licensee.¹⁰

In Fiscal Year 2013-2014, the Division of Accountancy had 37,513 licensees, the Division of Real Estate had 312,715 licensees, and the Board of Professional Engineers had 57,653 licensees.¹¹ In Fiscal Year 2013-2014, there were 413,401 licensees in the Division of Professions,¹² 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.¹³

Sections 455.203 and 455.213, F.S., establish general licensing provisions 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 its profession, based on estimates of the required revenue to implement regulatory laws.¹⁴

⁷ *Id.*

⁸ *See* s. 455.201(4)(b), F.S.

⁹ *See* s. 455.203, F.S. The department must also provide legal counsel for boards within the department by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing department staff counsel. *See* s. 455.221(1), F.S.

¹⁰ *See* s. 455.01(4) and (5), F.S.

¹¹ *See* Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2013-2014*, <http://www.myfloridalicense.com/dbpr/os/documents/FY2013-2014AnnualReportProRegCPARE.pdf> (last accessed 2015) at 22.

¹² Of the total 413,401 licensees in the Division of Professions, 22,859 are inactive, but all licensees, whether or not active, must pay the \$5 unlicensed activity fee. *Id.* at 21-22.

¹³ *Id.* at 13.

¹⁴ *See* s. 455.219(1), F.S.

DBPR may adopt rules to implement a waiver of renewal fees, when it determines that a profession's trust fund moneys exceed the amount required to cover the necessary functions of the board (or of DBPR, when there is no board). However, the waiver period may not exceed two years.¹⁵

Section 455.271, F.S., requires each professional licensing board, or DBPR when there is no board, to impose an additional delinquency fee for the renewal of a delinquent status license. The delinquency fee must be adopted by rule. The additional fee may be up to the same amount as the biennial renewal fee, potentially doubling the cost to renew a license that is in delinquent status. Currently, all boards have adopted delinquency fees, which vary by profession and range, from \$25.00 to \$260.00.

Florida Building Code

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act (Act)." The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single, unified state building code. The Florida Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction. It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdictions in protection of the public's health, safety, and welfare. Under current law, counties and local enforcement agencies have authority to enforce the Florida Building Code and issue building permits.

Section 553.721, F.S., requires that all local building departments assess and collect a 1.5% surcharge on any building permit issued by their agency for the purpose of enforcing the Florida Building Code. The surcharge assessment is paid directly by the individual or construction professional pulling the permit and is generally passed on to consumers through increased costs for construction. The local jurisdictions collect the assessment and remit the surcharge fees to DBPR to fund the activities of the Florida Building Commission and DBPR's Office of Codes and Standards. Local building departments are permitted to retain 10% of the surcharge amount they collect to fund participation of their agencies in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code.

Effect of the Bill

The bill sets a flat fee of \$25 for all additional delinquency fees imposed on a delinquent status licensee when the licensee applies for active or inactive status.

The bill reduces the surcharge assessed on Florida building permits issued from 1.5% to 1.0%.

B. SECTION DIRECTORY:

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| Section 1 | Amends s. 455.271, F.S., revising the delinquency fee that a professional board or the department imposes on a delinquent status licensee. |
| Section 2 | Amends s. 553.721, F.S.; revising the surcharge that the department assesses on building permits. |

¹⁵ *Id.* Each board (or the department when there is no board) must ensure that license fees will cover all anticipated costs and a reasonable cash balance will be maintained. If sufficient action is not taken by a board within one year of notification by the department that license fees are projected to be inadequate, the department must set license fees for the board, in order to cover anticipated costs and to maintain the required cash balance.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

DBPR estimates that local building departments would see a reduction of the surcharge revenues they are permitted to retain based on the lower amount of surcharge assessed against each building permit. The estimated loss of revenue to cities and counties would be approximately \$290,039 in FY 2017-18 and the same amount in FY 2018-19 and FY 2019-20.¹⁶

Cities and Counties Revenue Impact

	FY 2017-18	FY 2018-19	FY 2019-20
Revenues: 1.5% Surcharge (Current law) – 1.5%	870,118	870,118	870,118
NET Revenues: 1.0% Surcharge (with reduction)	580,079	580,079	580,079
Net Reduction to Cities and Counties	(290,039)	(290,039)	(290,039)

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce the expenditures associated with building permit fees and delinquency fees to maintain professional licensure.

D. FISCAL COMMENTS:

DBPR - Delinquency Fee Reduction Methodology:

Delinquent fees collected by boards in 2015-16 were recalculated by DBPR using the new proposed fee of \$25 rather than the current fee. Revenue decreases were summed for a total decrease in revenue.¹⁷

	FY 2017-18	FY 2018-19	FY 2019-20
Revenue Reduction:	(680,060)	(680,060)	(680,060)
8% Surcharge to GR Reduction	(54,405)	(54,405)	(54,405)

¹⁶ Department of Business and Professional Regulation, Bill Analysis, February 28, 2017, on file with the Government Operations & Technology Appropriations Subcommittee.

¹⁷ *Id.*

DBPR - Building Permit Surcharge Reduction Methodology:

Total surcharge fees were calculated by DBPR by taking surcharge revenues received by DBPR in Fiscal Year 2015-16. The prior year's total surcharge fees were then reduced by 1/3 to reflect the surcharge reducing from 1.5% to 1.0%. Therefore, projected savings were based on the 2016 surcharge fees.¹⁸

Building Permit Surcharge Reduction 1.5% to 1.0%	1.5 % NET from 6/30/16 Financial Statement		
	FY 2017-18	FY 2018-19	FY 2019-20
Revenues to TF: 1.5% Surcharge (Current law)	7,831,064	7,831,064	7,831,064
NET Revenues to TF: 1.0% Surcharge (with reduction)	5,220,709	5,220,709	5,220,709
Net Reduction in State Revenue	(2,610,355)	(2,610,355)	(2,610,355)
8% GR Surcharge Reduction	(208,828)	(208,828)	(208,828)

Total State Revenue Reductions

	FY 2017-18	FY 2018-19	FY 2019-20
Surcharge and Delinquency Fee	(3,290,415)	(3,290,415)	(3,290,415)
8% GR Service Charge	(263,233)	(263,233)	(263,233)

III. COMMENTS**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

Current law provides for DBPR and applicable boards to impose an additional delinquency fee, by rule, in an amount not to exceed the biennial renewal fee. To the extent that current fees are for an amount other than \$25, DBPR and applicable boards will need to amend their respective rules to reflect the flat \$25 fee established by the bill. Otherwise, there is no mandatory rulemaking or rulemaking authority in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹⁸ *Id.*