
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 3, 1998

Revised: 4/7/98 _____

Subject: Professional Regulation

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Masterton</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	<u>Nebelsiek</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/1 amendment</u>
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill amends part I of ch. 455, F.S., to make several administrative, technical, and clarifying changes, including: authorizing the Department of Business and Professional Regulation (DBPR) to make rules for professions directly under its jurisdiction; granting the DBPR authority to conduct inspections as necessary to determine compliance with regulations pursuant to board or department rules; and requiring the DBPR to issue a notice of noncompliance, in lieu of more severe disciplinary action, as a first response to a licensee's unintentional failure to meet continuing education requirements. In addition, the bill amends s. 11.62, F.S., to add evaluation of the effect of a regulatory proposal on jobs to the Sunrise criteria.

This bill substantially amends the following sections of the Florida Statutes: 11.62, 455.201, 455.225, and 455.517. This bill creates sections 455.2035 and 455.2237 of the Florida Statutes.

II. Present Situation:

Section 11.62, F.S., commonly referred to as the "Sunrise Act," provides a mechanism for reviewing proposals for the regulation of previously unregulated professions or occupations to determine if the need to protect the public through regulation outweighs the attendant restrictions on competition and costs of regulation. The act contains criteria for evaluating new regulatory proposals including: the threat of substantial public harm from the unregulated practice of the new profession; the measurability of the skills or training necessary to competently practice the new profession; other effective means of regulation; and the costs and competitive impact of a regulatory proposal.

The DBPR has jurisdiction over the regulation of 26 nonmedical professions and occupations. For the majority of these professions, the DBPR shares regulatory authority with boards composed

primarily of members of the regulated professions. Four professions are regulated directly by the DBPR, including talent agents, athlete agents, community association managers, and asbestos contractors.

Part I of chapter 455, F.S., sets forth the duties and authorities of DBPR regarding the professions under its jurisdiction. Section 455.201, F.S., provides legislative intent regarding the regulation of professions and occupations by DBPR and the regulatory boards that regulation should be imposed only to the extent necessary to protect the public and when the potential for public harm outweighs any anti-competitive impact. Section 455.517, F.S., contains identical language applicable to the health care professions regulated by the Department of Health.

Section 455.225, F.S., sets forth the procedures applicable to DBPR and the regulatory boards for the investigation and prosecution of licensees alleged to have committed acts constituting grounds for disciplinary action. Subsection (3) of s. 455.225, F.S., allows DBPR to issue a notice of noncompliance to a licensee for an initial offense of a minor violation, defined as a violation that does not demonstrate a serious inability to practice a profession or result in economic or physical harm to a person.

In the 1997 Session, the Legislature enacted ch. 97-261, F.S., relating to transferring the regulation of health care professions from the Agency for Health Care Administration to the Department of Health. Chapter 97-261, F.S., created part II of ch. 455, F.S., to govern the health care professions regulated by the Department of Health. (Previously, ch. 455, F.S., was not divided into parts and its provisions applied both to nonmedical and medical professions.) In deleting references to health care professions from part I of ch. 455, F.S., several technical errors occurred which need to be corrected.

III. Effect of Proposed Changes:

The bill amends part I of ch. 455, F.S., to make several administrative, technical, and clarifying changes. In addition, the bill amends s. 11.62, F.S., to add evaluation of the effect of a regulatory proposal on jobs to the Sunrise criteria.

Section 1 amends s. 11.62, F.S., to require the Legislature to consider the effect of a proposal for new regulation on job creation and retention and employment opportunities as part of the Sunrise review process.

Section 2 amends s. 455.201, F.S., to prohibit DBPR and the regulatory boards under its jurisdiction from creating regulation that has an unreasonably adverse effect on job creation or retention or an individual's ability to obtain employment.

Section 3 creates s. 455.2035, F.S., to authorize DBPR to adopt rules for the professions or occupations regulated directly by the department.

Section 4, 5, and 6 amend ss. 455.209, 455.213, and 455.218, F.S., to make technical corrections relating to the removal of language governing the regulation of health care professions.

Section 7 creates s. 455.2237, F.S., to allow boards to establish, by rule, explicit authority for DBPR to perform inspections and investigations of licensees' records, offices, or job sites to ensure compliance with regulatory provisions.

Section 8 amends s. 455.225, F.S., to restore language inadvertently deleted and remove language inadvertently added when part I was amended to move provisions relating to the regulation of health care professions to the newly created part II. In addition, s. 455.225, F.S., is amended to require that the first response to a violation of continuing education requirements must be a notice of noncompliance, unless the failure to comply was intentional.

Section 9 amends s. 455.2285, F.S., to make technical corrections related to moving the health care professions to the Department of Health.

Section 10 amends s. 455.517, F.S., to prohibit the Department of Health or the boards under its jurisdiction from creating regulation that has an unreasonably adverse effect on job creation or job retention or an individual's ability to obtain employment.

Section 11 makes the bill effective upon becoming a law, except as otherwise provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Licensees who inadvertently fail to comply with continuing education requirements will benefit from receiving a notice of noncompliance in lieu of more severe disciplinary action.

The bill should have a positive impact on the private sector by decreasing regulations that negatively affect job creation or retention and employment opportunities.

C. Government Sector Impact:

The effect on DBPR will be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The amendments to s. 11.62, F.S., (the “Sunrise Act”) and ss. 455.201 and 455.517, F.S., relating to the effects of regulation on jobs, are identical to the provisions in SB 238. SB 238 reflects the recommendations contained in Interim Project Report 97-P-07 by the Senate Regulated Industries Committee.

The bill authorizes the DBPR to make rules for the regulation of professions directly under its jurisdiction. The bill also authorizes DBPR and the regulatory boards under its jurisdiction to adopt rules relating to inspections. The bill provides adequate and appropriate standards and guidelines to direct the agency’s implementation of the proposed legislation.

VIII. Amendments:

#1 by Governmental Reform and Oversight:

Technical change to reference specific provisions of the Administrative Procedures Act that authorize the adoption of rules.