

1                   A bill to be entitled  
2           An act relating to professional regulation;  
3           amending s. 11.62, F.S.; adding criteria for  
4           evaluating new regulation; amending s. 455.201,  
5           F.S.; requiring the Department of Business and  
6           Professional Regulation to consider the impact  
7           on jobs when considering new regulation;  
8           creating s. 455.2035, F.S.; providing the  
9           department rulemaking authority; amending s.  
10          455.213, F.S.; requiring payment of certain  
11          fees or fines prior to the board or department  
12          renewing or issuing an initial license or  
13          registration; amending ss. 455.209, 455.218,  
14          F.S.; conforming provisions to a previous  
15          administrative reorganization; creating s.  
16          455.2237, F.S.; providing authority to inspect  
17          and investigate records, offices, and job  
18          sites; amending s. 455.225, F.S.; revising  
19          probable-cause provisions; prescribing  
20          authority of the department or a board in cases  
21          of failure to comply with continuing-education  
22          requirements; conforming provisions to a  
23          previous administrative reorganization;  
24          amending s. 455.2285, F.S.; conforming  
25          provisions to a previous administrative  
26          reorganization; amending s. 455.517, F.S.;  
27          requiring the Department of Health to consider  
28          the impact on jobs when creating new  
29          regulation; creating section 481.222, relating  
30          to architects providing building inspection  
31          services; creating 471.029, relating to

1 engineers providing building inspection  
2 services; providing effective dates.  
3

4 Be It Enacted by the Legislature of the State of Florida:  
5

6 Section 1. Effective October 1, 1998, subsections (3)  
7 and (4) of section 11.62, Florida Statutes, are amended to  
8 read:

9 11.62 Legislative review of proposed regulation of  
10 unregulated functions.--

11 (3) In determining whether to regulate a profession or  
12 occupation, the Legislature shall consider the following  
13 factors:

14 (a) Whether the unregulated practice of the profession  
15 or occupation will substantially harm or endanger the public  
16 health, safety, or welfare and whether the potential for harm  
17 is recognizable and not remote;

18 (b) Whether the practice of the profession or  
19 occupation requires specialized skill or training, and whether  
20 that skill or training is readily measurable or quantifiable  
21 so that examination or training requirements would reasonably  
22 assure initial and continuing professional or occupational  
23 ability;

24 (c) Whether the regulation will have an unreasonable  
25 effect on the job creation or job retention in the state or  
26 will place unreasonable restrictions on the ability of  
27 individuals who seek to practice or who are practicing a given  
28 profession or occupation to find employment;

29 (d)~~(c)~~ Whether the public is or can be effectively  
30 protected by other means; and  
31

1           ~~(d)~~ (e) Whether the overall cost-effectiveness and  
2 economic impact of the proposed regulation, including the  
3 indirect costs to consumers, will be favorable.

4           (4) The proponents of legislation that provides for  
5 the regulation of a profession or occupation not already  
6 expressly subject to state regulation shall provide, upon  
7 request, the following information in writing to the state  
8 agency that is proposed to have jurisdiction over the  
9 regulation and to the legislative committees to which the  
10 legislation is referred:

11           (a) The number of individuals or businesses that would  
12 be subject to the regulation;

13           (b) The name of each association that represents  
14 members of the profession or occupation, together with a copy  
15 of its codes of ethics or conduct;

16           (c) Documentation of the nature and extent of the harm  
17 to the public caused by the unregulated practice of the  
18 profession or occupation, including a description of any  
19 complaints that have been lodged against persons who have  
20 practiced the profession or occupation in this state during  
21 the preceding 3 years;

22           (d) A list of states that regulate the profession or  
23 occupation, and the dates of enactment of each law providing  
24 for such regulation and a copy of each law;

25           (e) A list and description of state and federal laws  
26 that have been enacted to protect the public with respect to  
27 the profession or occupation and a statement of the reasons  
28 why these laws have not proven adequate to protect the public;

29           (f) A description of the voluntary efforts made by  
30 members of the profession or occupation to protect the public

31

1 and a statement of the reasons why these efforts are not  
2 adequate to protect the public;

3 (g) A copy of any federal legislation mandating  
4 regulation;

5 (h) An explanation of the reasons why other types of  
6 less restrictive regulation would not effectively protect the  
7 public;

8 (i) The cost, availability, and appropriateness of  
9 training and examination requirements;

10 (j)(i) The cost of regulation, including the indirect  
11 cost to consumers, and the method proposed to finance the  
12 regulation;

13 (k) The cost imposed on applicants or practitioners or  
14 on employers of applicants or practitioners as a result of the  
15 regulation;

16 (l)(j) The details of any previous efforts in this  
17 state to implement regulation of the profession or occupation;  
18 and

19 (m)(k) Any other information the agency or the  
20 committee considers relevant to the analysis of the proposed  
21 legislation.

22 Section 2. Effective October 1, 1998, subsection (4)  
23 of section 455.201, Florida Statutes, is amended to read:

24 455.201 Professions and occupations regulated by  
25 department; legislative intent; requirements.--

26 (4)(a) Neither ~~No board, nor~~ the department nor any  
27 board may, shall create unreasonably restrictive and  
28 extraordinary standards that deter qualified persons from  
29 entering the various professions. Neither ~~No board, nor~~ the  
30 department nor any board may, shall take any action that ~~which~~  
31 tends to create or maintain an economic condition that

1 unreasonably restricts competition, except as specifically  
2 provided by law.

3 (b) Neither the department nor any board may create a  
4 regulation that has an unreasonable effect on job creation or  
5 job retention in the state or that places unreasonable  
6 restrictions on the ability of individuals who seek to  
7 practice or who are practicing a given profession or  
8 occupation to find employment.

9 (c) The Legislature shall evaluate proposals to  
10 increase regulation of professions or occupations that are  
11 already regulated to determine their effect on job creation or  
12 retention and job opportunities.

13 Section 3. Section 455.2035, Florida Statutes, is  
14 created to read:

15 455.2035 Rulemaking authority.--The department may  
16 adopt rules pursuant to ss. 120.54 and 120.536(1) to implement  
17 the regulatory requirements of any profession within the  
18 department's jurisdiction which does not have a governing  
19 board.

20 Section 4. Subsection (2) of section 455.209, Florida  
21 Statutes, is amended to read:

22 455.209 Accountability and liability of board  
23 members.--

24 (2) Each board member and each former board member  
25 serving on a probable cause panel shall be exempt from civil  
26 liability for any act or omission when acting in the member's  
27 official capacity, and the department, or the Department of  
28 Legal Affairs shall defend any such member in any action  
29 against any board or member of a board arising from any such  
30 act or omission. In addition, the department or the Department  
31 of Legal Affairs may defend the member's company or business

1 in any action against the company or business if the  
 2 department or the Department of Legal Affairs determines that  
 3 the actions from which the suit arises are actions taken by  
 4 the member in the member's official capacity and were not  
 5 beyond the member's statutory authority. In providing such  
 6 defense, the department, ~~the agency~~, or the Department of  
 7 Legal Affairs may employ or utilize the legal services of  
 8 outside counsel.

9 Section 5. Subsection (1) of section 455.213, Florida  
 10 Statutes, is amended and a new subsection (10) is added to  
 11 said section to read:

12 455.213 General licensing provisions.--

13 (1) Any person desiring to be licensed shall apply to  
 14 the department in writing. The application for licensure shall  
 15 be made on a form prepared and furnished by the department and  
 16 include the applicant's social security number. The  
 17 application shall be supplemented as needed to reflect any  
 18 material change in any circumstance or condition stated in the  
 19 application which takes place between the initial filing of  
 20 the application and the final grant or denial of the license  
 21 and which might affect the decision of the department ~~agency~~.  
 22 In order to further the economic development goals of the  
 23 state, and notwithstanding any law to the contrary, the  
 24 department may enter into an agreement with the county tax  
 25 collector for the purpose of appointing the county tax  
 26 collector as the department's agent to accept applications for  
 27 licenses and applications for renewals of licenses. The  
 28 agreement must specify the time within which the tax collector  
 29 must forward any applications and accompanying application  
 30 fees to the department. In cases where a person applies or  
 31 schedules directly with a national examination organization or

1 examination vendor to take an examination required for  
2 licensure, any organization- or vendor-related fees associated  
3 with the examination may be paid directly to the organization  
4 or vendor.

5 (10) The board, or the department when there is no  
6 board, shall not issue or renew a license to any applicant or  
7 licensee that the board, or the department when there is no  
8 board, has assessed a fine, interest, or costs associated with  
9 investigation and prosecution until the applicant or licensee  
10 has paid in full such fine, interest, or costs associated with  
11 investigation and prosecution, or until the applicant or  
12 licensee complies with or satisfies all terms and conditions  
13 of the final order.

14 Section 6. Subsection (6) of section 455.218, Florida  
15 Statutes, is amended to read:

16 455.218 Foreign-trained professionals; special  
17 examination and license provisions.--

18 (6) The department, for its boards, shall not issue an  
19 initial license to, or renew a license of, any applicant or  
20 licensee who is under investigation or prosecution in any  
21 jurisdiction for an action which would constitute a violation  
22 of this part or the professional practice acts administered by  
23 the department ~~or agency~~ and the boards until such time as the  
24 investigation or prosecution is complete, at which time the  
25 provisions of the professional practice acts shall apply.

26 Section 7. Section 455.2237, Florida Statutes, is  
27 created to read:

28 455.2237 Authority to inspect.--Any board, or the  
29 department when there is no board, may by rule authorize  
30 inspections and investigations of records, offices, or job  
31 sites at times when a licensee or the employee or agent of the

1 licensee, or any person suspected of unlicensed activity, is  
2 performing an activity regulated by this chapter or the  
3 applicable practice act. Such rule may establish more  
4 definitively the times and conditions of inspections and  
5 investigations and may authorize such inspections and  
6 investigations only to the extent necessary to determine  
7 whether a person is in compliance with the provisions of this  
8 chapter or of the regulated practice acts or any rule  
9 promulgated thereunder, to aid in the enforcement of the  
10 provisions of this chapter or of the regulated practice acts  
11 or any rule adopted thereunder, or to determine if any of the  
12 provisions of this chapter or of the regulated practice acts,  
13 or any rule adopted thereunder, is being or has been violated.

14 Section 8. Subsections (2), (3), (4), and (9) of  
15 section 455.225, Florida Statutes, are amended to read:

16 455.225 Disciplinary proceedings.--Disciplinary  
17 proceedings for each board shall be within the jurisdiction of  
18 the department.

19 (2) The department shall allocate sufficient and  
20 adequately trained staff to expeditiously and thoroughly  
21 determine legal sufficiency and investigate all legally  
22 sufficient complaints. ~~For purposes of this section, it is the~~  
23 ~~intent of the Legislature that the term "expeditiously" means~~  
24 ~~that the agency, for disciplinary cases under its~~  
25 ~~jurisdiction, shall complete the report of its initial~~  
26 ~~investigative findings and recommendations concerning the~~  
27 ~~existence of probable cause within 6 months after its receipt~~  
28 ~~of the complaint. The failure of the agency, for disciplinary~~  
29 ~~cases under its jurisdiction, to comply with the time limits~~  
30 ~~of this section while investigating a complaint against a~~  
31 ~~licensee constitutes harmless error in any subsequent~~



1 ~~disciplinary action unless a court finds that either the~~  
 2 ~~fairness of the proceeding or the correctness of the action~~  
 3 ~~may have been impaired by a material error in procedure or a~~  
 4 ~~failure to follow prescribed procedure.~~When its investigation  
 5 is complete and legally sufficient, the department shall  
 6 prepare and submit to the probable cause panel of the  
 7 appropriate regulatory board the investigative report of the  
 8 department. The report shall contain the investigative  
 9 findings and the recommendations of the department concerning  
 10 the existence of probable cause. At any time after legal  
 11 sufficiency is found, the department may dismiss any case, or  
 12 any part thereof, if the department determines that there is  
 13 insufficient evidence to support the prosecution of  
 14 allegations contained therein. The department shall provide a  
 15 detailed report to the appropriate probable cause panel prior  
 16 to dismissal of any case or part thereof, and to the subject  
 17 of the complaint after dismissal of any case or part thereof,  
 18 under this section. For cases dismissed prior to a finding of  
 19 probable cause, such report is confidential and exempt from s.  
 20 119.07(1). The probable cause panel shall have access, upon  
 21 request, to the investigative files pertaining to a case prior  
 22 to dismissal of such case. If the department dismisses a case,  
 23 the probable cause panel may retain independent legal counsel,  
 24 employ investigators, and continue the investigation and  
 25 prosecution of the case as it deems necessary.

26 (3)(a) As an alternative to the provisions of  
 27 subsections (1) and (2), when a complaint is received, the  
 28 department may provide a licensee with a notice of  
 29 noncompliance for an initial offense of a minor violation. A  
 30 violation is a minor violation if it does not demonstrate a  
 31 serious inability to practice the profession, result in

1 economic or physical harm to a person, or adversely affect the  
 2 public health, safety, or welfare or create a significant  
 3 threat of such harm. Each board, or the department if there is  
 4 no board, shall establish by rule those violations which are  
 5 minor violations under this provision. Failure of a licensee  
 6 to take action in correcting the violation within 15 days  
 7 after notice may result in the institution of regular  
 8 disciplinary proceedings.

9 (b) The department may issue a notice of noncompliance  
 10 for an initial offense of a minor violation, notwithstanding a  
 11 board's failure to designate a particular minor violation by  
 12 rule as provided in paragraph (a).

13 (c) In any instance in which a licensee is charged  
 14 with failure to comply with continuing-education requirements,  
 15 the department's or board's, as appropriate, initial response  
 16 may only be to issue a notice of noncompliance, including  
 17 granting the licensee a reasonable time to comply. However,  
 18 if the department finds that the licensee's failure to comply  
 19 was done knowingly, the department or board, as appropriate,  
 20 may levy any other penalty otherwise available to it under the  
 21 circumstances. This paragraph does not apply to any licensee  
 22 for which failure to comply with continuing-education  
 23 requirements is not grounds for discipline but is instead only  
 24 a prerequisite for renewal.

25 (4) The determination as to whether probable cause  
 26 exists shall be made by majority vote of a probable cause  
 27 panel of the board, or the department, as appropriate. Each  
 28 regulatory board shall provide by rule that the determination  
 29 of probable cause shall be made by a panel of its members or  
 30 by the department. Each board may provide by rule for multiple  
 31 probable cause panels composed of at least two members. Each

1 board may provide by rule that one or more members of the  
2 panel or panels may be a former board member. The length of  
3 term or repetition of service of any such former board member  
4 on a probable cause panel may vary according to the direction  
5 of the board when authorized by board rule. Any probable cause  
6 panel must include one of the board's former or present  
7 consumer members, if one is available, willing to serve, and  
8 is authorized to do so by the board chair. Any probable cause  
9 panel must include a present board member. Any probable cause  
10 panel must include a former or present professional board  
11 member. However, any former professional board member serving  
12 on the probable cause panel must hold an active valid license  
13 for that profession. All proceedings of the panel are exempt  
14 from s. 286.011 until 10 days after probable cause has been  
15 found to exist by the panel or until the subject of the  
16 investigation waives his or her privilege of confidentiality.  
17 The probable cause panel may make a reasonable request, and  
18 upon such request the department shall provide such additional  
19 investigative information as is necessary to the determination  
20 of probable cause. A request for additional investigative  
21 information shall be made within 15 days from the date of  
22 receipt by the probable cause panel of the investigative  
23 report of the department. The probable cause panel or the  
24 department, as may be appropriate, shall make its  
25 determination of probable cause within 30 days after receipt  
26 by it of the final investigative report of the department. The  
27 secretary may grant extensions of the 15-day and the 30-day  
28 time limits. In lieu of a finding of probable cause, the  
29 probable cause panel, or the department when there is no  
30 board, may issue a letter of guidance to the subject. If,  
31 within the 30-day time limit, as may be extended, the probable

1 cause panel does not make a determination regarding the  
2 existence of probable cause or does not issue a letter of  
3 guidance in lieu of a finding of probable cause, the  
4 department ~~agency~~, for disciplinary cases under its  
5 jurisdiction, must make a determination regarding the  
6 existence of probable cause within 10 days after the  
7 expiration of the time limit. In addition, if the probable  
8 cause panel finds no probable cause, the department may  
9 determine within 10 days thereafter that probable cause  
10 exists. If the probable cause panel finds that probable cause  
11 exists, it shall direct the department to file a formal  
12 complaint against the licensee. The department shall follow  
13 the directions of the probable cause panel regarding the  
14 filing of a formal complaint. If directed to do so, the  
15 department shall file a formal complaint against the subject  
16 of the investigation and prosecute that complaint pursuant to  
17 chapter 120. However, the department may decide not to  
18 prosecute the complaint if it finds that probable cause had  
19 been improvidently found by the panel. In such cases, the  
20 department shall refer the matter to the board. The board may  
21 then file a formal complaint and prosecute the complaint  
22 pursuant to chapter 120. The department shall also refer to  
23 the board any investigation or disciplinary proceeding not  
24 before the Division of Administrative Hearings pursuant to  
25 chapter 120 or otherwise completed by the department within 1  
26 year after the filing of a complaint. The department ~~agency~~,  
27 for disciplinary cases under its jurisdiction, must establish  
28 a uniform reporting system to quarterly refer to each board  
29 the status of any investigation or disciplinary proceeding  
30 that is not before the Division of Administrative Hearings or  
31 otherwise completed by the department ~~or agency~~ within 1 year

1 after the filing of the complaint. ~~Annually, the agency, for~~  
2 ~~disciplinary cases under its jurisdiction if there is no~~  
3 ~~board, or each board must establish a plan to reduce or~~  
4 ~~otherwise close any investigation or disciplinary proceeding~~  
5 ~~that is not before the Division of Administrative Hearings or~~  
6 ~~otherwise completed by the agency within 1 year after the~~  
7 ~~filing of the complaint.~~ A probable cause panel or a board  
8 may retain independent legal counsel, employ investigators,  
9 and continue the investigation as it deems necessary; all  
10 costs thereof shall be paid from the Professional Regulation  
11 Trust Fund. All proceedings of the probable cause panel are  
12 exempt from s. 120.525.

13 (9)(a) The department shall periodically notify the  
14 person who filed the complaint of the status of the  
15 investigation, whether probable cause has been found, and the  
16 status of any civil action or administrative proceeding or  
17 appeal.

18 ~~(b) In any disciplinary case under the jurisdiction of~~  
19 ~~the Agency for Health Care Administration for which probable~~  
20 ~~cause has been found, the Agency for Health Care~~  
21 ~~Administration shall provide to the person who filed the~~  
22 ~~complaint a copy of the administrative complaint, including:~~

23 1. ~~A written explanation of how an administrative~~  
24 ~~complaint is resolved by the disciplinary process.~~

25 2. ~~A written explanation of how and when the person~~  
26 ~~may participate in the disciplinary process.~~

27 3. ~~A written notice of any hearing before the Division~~  
28 ~~of Administrative Hearings or the regulatory board at which~~  
29 ~~final agency action is taken.~~

30 (c) ~~In any disciplinary case for which probable cause~~  
31 ~~is not found, the Agency for Health Care Administration shall~~

1 ~~so inform the person who filed the complaint and notify that~~  
2 ~~person that he or she may, within 60 days, provide any~~  
3 ~~additional information to the probable cause panel which may~~  
4 ~~be relevant to the decision. In any administrative proceeding~~  
5 ~~under s. 120.57, the person who filed the disciplinary~~  
6 ~~complaint shall have the right to present oral or written~~  
7 ~~communication relating to the alleged disciplinary violations~~  
8 ~~or to the appropriate penalty.~~

9 Section 9. Section 455.2285, Florida Statutes, is  
10 amended to read:

11 455.2285 Annual report concerning finances,  
12 administrative complaints, disciplinary actions, and  
13 recommendations.--The department is directed to prepare and  
14 submit a report to the President of the Senate and Speaker of  
15 the House of Representatives by November 1 of each year. In  
16 addition to finances and any other information the Legislature  
17 may require, the report shall include statistics and relevant  
18 information, profession by profession, detailing:

19 (1) The revenues, expenditures, and cash balances for  
20 the prior year, and a review of the adequacy of existing fees.

21 (2) The number of complaints received and  
22 investigated.

23 (3) The number of findings of probable cause made.

24 (4) The number of findings of no probable cause made.

25 (5) The number of administrative complaints filed.

26 (6) The disposition of all administrative complaints.

27 (7) A description of disciplinary actions taken.

28 (8) A description of any effort by the department  
29 ~~agency~~, for any disciplinary cases under its jurisdiction, to  
30 reduce or otherwise close any investigation or disciplinary  
31 proceeding not before the Division of Administrative Hearings

1 under chapter 120 or otherwise not completed within 1 year  
2 after the initial filing of a complaint under this chapter.

3 (9) The status of the development and implementation  
4 of rules providing for disciplinary guidelines pursuant to s.  
5 455.2273.

6 (10) Such recommendations for administrative and  
7 statutory changes necessary to facilitate efficient and  
8 cost-effective operation of the department and the various  
9 boards.

10 Section 10. Effective October 1, 1998, subsection (4)  
11 of section 455.517, Florida Statutes, is amended to read:

12 455.517 Professions and occupations regulated by  
13 department; legislative intent; requirements.--

14 (4)(a) Neither ~~No board, nor~~ the department nor any  
15 board may, shall create unreasonably restrictive and  
16 extraordinary standards that deter qualified persons from  
17 entering the various professions. Neither ~~No board, nor~~ the  
18 department nor any board may, shall take any action that which  
19 tends to create or maintain an economic condition that  
20 unreasonably restricts competition, except as specifically  
21 provided by law.

22 (b) Neither the department nor any board may create a  
23 regulation that has an unreasonable effect on job creation or  
24 job retention in the state or that places unreasonable  
25 restrictions on the ability of individuals who seek to  
26 practice or who are practicing a profession or occupation to  
27 find employment.

28 (c) The Legislature shall evaluate proposals to  
29 increase regulation of professions or occupations to determine  
30 their effect on job creation or retention and employment  
31 opportunities.

1           Section 11. Section 481.222, Florida Statutes, is  
2 created to read:

3           481.222 Architects performing building code inspector  
4 duties.--Notwithstanding any other provision of this part, a  
5 person currently licensed to practice as an architect under  
6 this part may provide building inspection services described  
7 in s. 468.603(6) and (7) to a local government or state agency  
8 upon its request, without being certified by the Board of  
9 Building Code Administrators and Inspectors under part XIII of  
10 chapter 468. When performing these building inspection  
11 services, the architect is subject to the disciplinary  
12 guidelines of this part and s. 468.621(1)(c)-(g). The  
13 complaint processing, investigation, and discipline shall be  
14 conducted by the Board of Architecture and Interior Design  
15 rather than the Board of Building Code Administrators and  
16 Inspectors. An architect may not perform plans review as an  
17 employee of a local government upon any job that the architect  
18 or the architect's company designed.

19           Section 12. Section 471.029, Florida Statutes, is  
20 created to read:

21           471.029 Professional engineers performing building  
22 code inspector duties.--Notwithstanding any other provision of  
23 this part, a person currently licensed to practice as a  
24 professional engineer under this part may provide building  
25 inspection services described in s. 468.603(6) and (7) to a  
26 local government or state agency upon its request, without  
27 being certified by the Board of Building Code Administrators  
28 and Inspectors under part XIII of chapter 468. When  
29 performing these building inspection services, the  
30 professional engineer is subject to the disciplinary  
31 guidelines of this chapter and s. 468.621(1)(c)-(g). The



1 complaint processing, investigation, and discipline shall be  
2 conducted by the Board of Professional Engineers rather than  
3 the Board of Building code Administrators and Inspectors. A  
4 professional engineer may not perform plans review as an  
5 employee of a local government upon any job that the  
6 professional engineer or the professional engineer's company  
7 designed.

8           Section 13. Except as otherwise provided in this act,  
9 this act shall take effect upon becoming a law.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31