

STORAGE NAME: h0625s1.brc

DATE: March 17, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 625

RELATING TO: Environmental Professionals

SPONSOR(S): Committee on Business Regulation and Consumer Affairs and Representative Fischer

COMPANION BILL(S): SB 622(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 4 NAYS 2
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I. SUMMARY:

The bill establishes a licensure requirement for anyone who practices professional biology. The regulation of these persons ("professional biologists") will be administered by a newly created "Board of professional Biologists" under the Department of Business and Professional Regulation (DBPR). The board will contain seven members, four of whom shall be licensed professional biologists.

"Professional biology" is defined as "the application of the scientific principles of biology to the sound management of living natural resources and their habitats *and the rendering of a biological opinion.*" The bill will initiate regulation for "advising, consulting, planning, teaching, researching, reporting, designing, and investigating as these activities relate to living natural resources and their habitats." Other regulated activities will be: "maintenance, conservation, protection, restoration, and enhancement of ecosystems and habitats." Also: wetland jurisdictional determinations; assessment of the biological impact of an environmental contamination hazard; assessment of impacts to living natural resources and their habitats; and design of biological components for the preservation, enhancement, restoration, and creation of habitats and ecosystems. A number of exceptions and exemptions from licensure and regulation are included in the bill (for details, see section-by-section).

Qualification for licensure includes a four year degree in the appropriate field, five years experience, and completion of appropriate continuing education requirements. The application fee shall not exceed \$100, and the biennial licensure fee shall not exceed \$250. Various other fees are established.

Applications may be made under the grandfathering provision made prior to September 1, 1999, and may not be awarded after March 1, 2000. Any person working as a professional biologist as of July 1, 1998, may continue to work until July 1, 1999 without licensure.

The bill has various other provisions standard to a regulatory practice act, and proponents of the bill indicate that the bill was roughly modeled on chapter 471, F.S., relating to professional engineers.

Based on information provided by the DBPR, the cost of regulating this profession is estimated at \$800,000 over the first two years. Revenues are estimated to be around \$140,000 during that same period. Revenues are expected to be so low due to the fact that government employees have been exempted from licensure requirements.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Presently, persons in Florida who are performing the activities covered under the definition of professional biology are not required to be licensed. There are no other states with a mandatory licensure program for professional biologists. Tentatively, it is estimated that the number of persons who will have to obtain licensure in order to continue their present activities is 1000.

It appears that the "practice of professional biology" is primarily engaged in by land development and construction interests in preparing plans seeking environmental permits, and by local government and state agency personnel who evaluate these applications.

Prior to a local jurisdiction or state agency issuing an environmental permit, a plan for the construction, development, cleanup, wetland mitigation, etc., is submitted. Usually this plan is required to be "sealed" (certified) by an engineer or other licensed professional. At least one local jurisdiction, Palm Beach County, allows a person certified as an environmental professional under one of the recognized voluntary certification plans to seal the plans. Specifically, that county's wetland protection ordinance provides that "all drawings or applications" must be sealed or certified by a licensed engineer, surveyor, architect, or "an environmental professional certified by the National Association of Environmental Professionals or the Florida Association of Environmental Professionals."

According to a 1989 House of Representatives interim sunrise report on the environmental permitting process, five departments (now four, with the merger of DNR and DER into a single department -- DEP) and two commissions have some responsibility for environmental regulation. Five water management districts hold regulatory responsibilities on a regional level, as do the eleven regional planning councils. Most counties and cities also have land-use regulations.

The Department of Environmental Protection (DEP) holds primary responsibility for protecting Florida's environment. DEP issues a myriad of permits, including permits for: discharges into surface and ground water; dredge and fill; public water systems; stormwater runoff; water well construction; air quality; and solid and hazardous waste facilities. In addition to DEP, the Department of Community Affairs (DCA) has responsibility for growth management and review of comprehensive plans. The Department of Agriculture and Consumer Services (DACS) is responsible for the regulation of pesticides and aquaculture and for the protection of endangered native plant species. The Department of Health (DOH) regulates septic tanks and monitors drinking water.

All of these state agencies have some regulatory authority in the environmental area, and all of them issue environmental permits of some sort. All of these state agencies, as well as the regional agencies and the local governments, would work with, and would employ, persons performing "environmental management."

HISTORY OF SIMILAR PROPOSALS

In 1988, preliminary efforts were undertaken by the Florida Association of Environmental Professionals (FAEP) to develop a legislative package aimed at regulating the practice of environmental professionals in Florida. This effort continued until December 1991 when a preliminary Practice Act for Environmental Professionals was developed. According to the proponents, since December 1991, the practice act has undergone 6 revisions.

In November 1994, prior to the 1995 regular session of the Florida Legislature, a sunrise study was completed for a proposal to regulate environmental professionals. In 1996, HB 625, a proposal to initiate regulation of environmental professionals was filed and referred to the House Committee on Business Regulation and Consumer Affairs. It was not heard during the 1997 regular session.

Subsequent to that time the proponents for such regulation revised their proposal, narrowing it from regulating environmental professionals, to regulating professional biologists, only. This Proposed Committee Substitute (PCS) for HB 625 comprises that revision.

THE 1994 SUNRISE REPORT

Much -- but not all -- of the information in the 1994 sunrise report on environmental professionals is probably applicable to professional biologists. The caveat is that the proposal for licensing "environmental professionals" is somewhat more narrow than the proposal to license "professional biologists." Apparently, the difference between the two is that the category "environmental professional" includes biologists, chemists, and "physical" scientists (engineers), while the category "professional biologist" includes only biologists. It is possible that this more narrow approach will remove some of the opposition that existed with regard to the proposal to regulate environmental professionals.

Nevertheless, facts and arguments that apply to environmental professionals generally will apply to professional biologists, as well.

Since local government and state agencies would employ environmental professionals in some instances, and evaluate the work of industry-employed environmental professionals in other instances, staff sent letters to each of the 67 counties, and to most of the state agencies likely to have an interest in the issue. The letter inquired as to their estimation of their capability of judging the competency or qualifications of such persons absent a mandatory licensure program, asked if they could identify any specific instances of harm resulting from the unregulated practice of environmental management, and asked their opinion on the issue of whether licensure of environmental professionals should be established.

Twenty-one (21) of the 67 counties responded. All 21 counties stated that they currently have no problem in selecting qualified people to perform environmental services. None of the 21 counties reported any instance of harm to the public in the unregulated practice of environmental management. Five (5) counties (Collier, Clay, Broward, Pinellas, and Palm Beach) indicated support for mandatory licensure of environmental professionals.

Staff also sent letters requesting input from each state agency or commission who might be involved in environmental management, as well as organizations identified as interested parties. The majority of state agencies and commissions indicated they oppose licensure. An overwhelming majority of the interest groups providing input also indicated they oppose licensure for environmental professionals.

It should be noted that those who oppose licensure consistently gave an expectation of "increased cost of the service under licensure" as a reason for their opposition.

The proponents justify any higher costs by arguing that the public is likely to be harmed by continued unlicensed practice of environmental (including biological) professionalism. They submitted seven letters from members of their association which alleged knowledge of four specific instances of harm or incompetent practices by persons providing environmental assessments or otherwise practicing environmental management. These letters also contained non-specific assertions that they often worked with (or heard of) incompetent persons practicing environmental management. In addition to complaints about unlicensed persons practicing environmental management, several of the letters complained that the licensed engineers they worked with were incompetent or seriously unknowledgeable in some areas of environment management.

In addition to these specific allegations, the proponents allege that more extensive environmental damage is likely to have occurred due to the unlicensed practice of environmental management, but note great difficulty of establishing specific instances of harm due to their assertion that:

Natural ecosystems rarely experience cataclysmic events.... Instead, they decline slowly until they reach a new equilibrium, with the cause of the decline obscured by time.

Although the proponents were largely unable to document a significant amount of specific harm, they did indicate several types of problems which exist and which may, in some instances, be connected to the unregulated practice of environmental professionals. The proponents assert:

The Florida Department of Environmental Protection has recently documented chronic problems with the success of permitted environmental restoration or mitigation projects, many of which can be traced to insufficient expertise and/or experience on the part of contractors and consultants. In addition, there is a significant component of the present work being conducted in the area of environmental audits for hazardous wastes which is suspect in its completeness and accuracy, and will be exposed through future litigation as problems become evident during land development activities....

B. EFFECT OF PROPOSED CHANGES:

The bill creates a new regulatory board (the Board of Professional Biologists) under the DBPR, and establishes a licensure requirement for persons who practice "professional biology." Land development interests and state and local governments will be required to hire only persons who are qualified (i.e., licensed) as a professional biologist to perform duties as a professional biologist.

Exceptions and exemptions are provided in the bill which may mitigate the extent of the adverse fiscal impact upon these private and governmental entities from having to hire from a smaller pool of prospective employees. There is a broad exemption for government employees who are working within the scope of their employment.

The "law of supply and demand" predicts that whenever the supply (number of possible employees) is reduced, and the demand remains the same, the cost will go up. proponents of the regulation assert that the benefits gained from assuring that professional biology is practiced only by qualified individuals will outweigh the increased cost (in higher salaries) of the services.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

Yes. It creates a licensure requirement for the practice of professional biology, and includes a variety of fees such as licensure, application, etc.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. As with all professional regulation, the licensees pay for the cost of regulation through application and licensure fees.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The bill requires licensure in order to practice professional biology. since no license is presently required, this "interferes" with an activity which is presently lawful.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 485.001, 485.003, 485.005, 485.007, 485.009, 485.0115, 485.013, 485.015, 485.017, 485.119, 485.0215, 485.023, 485.025, 485.027, 485.029, 485.0315, 485.033, 485.035, and 20.165, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Creates a new chapter 485, F.S., consisting of the following sections

s. 485.001, F.S., providing legislative intent that regulation of professional biologists is necessary to protect the public.

s. 485.003, F.S., establishing a requirement that persons practicing professional biology must obtain licensure; providing exemptions from licensure, exempting: (1) Persons performing professional biology on their own property; (2) Persons teaching biology; (3) Persons performing research in the field of professional biology; (4) Persons working for a corporation and operating "biological systems and works;" (5) Contractors; (6) Governmental officers or employees; and (7) Employees of a business, so long as they are working under the supervision of a licensee and are working within the scope of their employment.

s. 485.005, F.S., providing definitions; establishing (among other things) the activities which amount to "the practice of professional biology," which then requires licensure.

s. 485.007, F.S., establishing the Board of Professional Biologists, consisting of seven members, four of whom shall be professional biologists, two of whom shall be consumer members, and one who must be engaged in teaching a biological science; providing the board rule making authority; requiring the board to develop an examination and a code of ethics for practice as a professional biologist; and requiring the board to be located in Leon County.

- s. 485.009, F.S., establishing the fee requirement for application and initial licensees, examination grandfathering, renewal, late renewal, and C.E. provider approval, and requiring funds to be paid into trust fund and general revenue
- s. 485.0115, F.S. setting forth licensure qualifications, requiring an applicant to be 18 years of age or older, have a four year degree in the appropriate field and have five years experience; and provides basis for refusing licensure while any disciplinary proceedings are pending.
- s. 485.013, F.S., providing that an applicant can be licensed "by endorsement," pursuant to holding a license in a jurisdiction outside Florida.
- s. 485.015, F.S., providing that the board may issue a temporary license under certain circumstance.
- s. 485.017, F.S., providing for renewal of licenses, and requiring 24 hours of continuing education during each biennial licensure period.
- s. 485.019, F.S., providing for a licensee placing his license on inactive status, and for reactivation of the license.
- s. 485.0215, F.S., requiring that when a licensee practices professional biology through a corporation, partnership, association, or under a fictitious name, the license must obtain a "certificate of authorization" for that business entity; placing certain requirements on that business entity; and providing that the business entity may be disciplined in a fashion similar to the licensee.
- s. 485.023, F.S., providing that the board shall prescribe by rule for a method of signing or authenticating plans.
- s. 485.025, F.S., prohibiting the practice of professional biology, or the use of the term "licensed professional biologist, by an unlicensed person; prohibiting: the use of another's license as his own; giving false evidence; using a license which has been revoked or suspended; employing an unlicensed person to perform professional biology; concealing information relative to any violation relative to the chapter; providing that violation of the aforementioned is a second degree misdemeanor; and authorizing the board to adopt rules of conduct which may be disciplined pursuant to s. 485.027.
- s. 485.027, F.S., providing the grounds under which a licensed professional biologist may be disciplined, and the punishment available when the licensee is found guilty, with these grounds and penalties being the standard grounds and penalties established for other professionals such as engineers.
- s. 485.029, F.S., providing that the board shall report any criminal violation of the practice act to the proper prosecuting authority.
- s. 485.0315, F.S., providing that the establishment of the practice act does not limit a local government being able to regulate professional biologists in a more restrictive manner

s. 485.033, F.S., providing that nothing in the bill shall be construed as restricting the established job scope of licenses in other professions.

s. 485.035, F.S., providing for "grandfathering;" i.e., providing that the board shall initiate a program to issue licenses to persons who have sufficient experience in the field, but lack the required education credits. Also, the board shall accept "general" biology experience as fulfilling the experience requirement. Requires "testimonials" regarding the quality of the work when applying under this provision, and provides that applications under the grandfathering provision must be made prior to September 1, 1999, and may not be awarded after March 1, 2000. Provides that a person working as a professional biologist as of July 1, 1998, may continue to work until July 1, 1999.

Section 2. Amends s. 20.165, F.S., placing the Board of Professional Biologists within the Division of Professions in the Department of Business and Professional Regulation.

Section 3. Provides that the bill shall take effect July 1 of the year it is enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Department of Business & Professional Regulation	1998-99
Expenditures:	
Exam Testing Services	\$ 16,000
Operating Capital Outlay	<u>17,292</u>
Professional Regulation Trust Fund	33,292

2. Recurring Effects:

Department of Business & Professional Regulation	1998-99	1999-00	00-01
Expenditures:			
Salaries/Benefits *4 FTE Position	\$ 16,172	\$ 166,007	
Other Personal Services	72,568	72,568	
Expenses	70,335	70,335	
Data Processing Services	2,483	2,483	
TLT Overhead	63,957	63,957	
Exam Testing Services	22,067	22,067	
Service Charge to GR	<u>7,665</u>	<u>2,372</u>	\$ 8,760
Professional Regulation Trust Fund	400,247	399,789	\$411,157

Department of Business & Professional Regulation	1998-99	1999-00	00-01
Revenues:			
Application/License (300 @ \$350 each)	\$105,000	\$ 17,500	
Exam Fees (50 @ \$300)		15,000	
License Renewals (350 @ \$250 each)			<u>\$87,500</u>
Total	<u>\$105,000</u>	<u>\$ 32,500</u>	<u>\$120,000</u>

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

Department of Business &
Professional Regulation

Professional Regulation Trust Fund

Expenditures:	\$433,539	\$ 399,789	\$411,147
Revenues:	\$105,000	\$ 32,500	\$120,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Some private business interests will be required to employ licensed biologists in positions where they currently may employ anyone they wish. When licensure requirements are imposed, those employed in the position are generally able to command a higher salary.

2. Direct Private Sector Benefits:

Any potential for harm from having *unlicensed* persons practicing professional biology should be reduced by requiring only *licensed* persons to practice.

3. Effects on Competition, Private Enterprise and Employment Markets:

Persons not qualified to be licensed as professional biologists will have their capacity to obtain management positions in professional biology diminished.

D. FISCAL COMMENTS:

More detailed fiscal impact data may become available in forthcoming weeks.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

This Committee Substitute (CS) represents the sponsor's revised approach to the issue. The primary change appears to be moving from licensing "environmental professionals" to licensing "professional biologists." This change eliminates the proposal to license requirements for environmental professionals in the specialties of chemical environmental professionals and physical (physics) environmental professionals.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

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