

STORAGE NAME: h1977a.grr

DATE: April 8, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
ANALYSIS**

BILL #: HB 1977 (PCB BRCA 05-99)

RELATING TO: Privatization of Monitoring Continuing Education Compliance

SPONSOR(S): Committee on Business Regulation and Consumer Affairs, Representative Ogles and others

COMPANION BILL(S): Compare: SB 190, CS/SB 1168, and CS/HB 1063

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

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 9 NAYS 0
- (2) GOVERNMENTAL RULES AND REGULATIONS YEAS 5 NAYS 0
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

This bill would require that by the year 2002 the Department of Business and Professional Regulation (DBPR) monitor 100 percent of professional licensees for compliance with continuing education requirements. However, the DBPR is given the discretion of monitoring fewer than 100 percent of licensees in a particular profession if the profession has a compliance program in place that indicates at least 95 percent of the licensees are in compliance with continuing education requirements. Administrative fines are authorized, as well as direction that a license may not be renewed until the fine is paid and continuing education requirements are met. The DBPR is given rulemaking authority to implement the monitoring process.

The DBPR is given the discretion of contracting with a private vendor to provide the monitoring, and the bill includes specific direction for the responsibilities of the DBPR, the vendor and continuing education providers should the monitoring be privatized.

The cost of privatization is indeterminate. However, the bill provides for payment of not more than \$2 of the \$5 currently collected biennially from each licensee and earmarked, prior to this bill, solely for enforcement against unlicensed activity.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Approximately 400,000 professionals licensed by the Department of Business and Professional Regulation (DBPR) must complete continuing education requirements in order to renew their licenses. The DBPR audits approximately 3 percent of those licensees for continuing education compliance. It is a labor intensive, costly process and the results show that many licensees are not completing the required courses. However, the Board of Accountancy has in place a statistically sound, cost-effective monitoring program that indicates 95 percent of certified public accountants comply with continuing education requirements.

The Regulatory Council of Community Association Managers does not have rulemaking authority to codify its decisions regarding the approval of continuing education providers, nor the ability to remove approval once it is given. Additionally, the 1998 Legislature gave the Board of Cosmetology broad authority to privatize the monitoring of continuing education compliance. The act also made discipline for noncompliance with continuing education requirements actionable only if the noncompliance was discovered during an investigation of another violation. This provision, in essence, removed responsibly from DBPR to investigate licensees for continuing education compliance.

B. EFFECT OF PROPOSED CHANGES:

This bill requires that by the year 2002 the DBPR must monitor 100 percent of professional licensees for compliance with continuing education requirements. However, the DBPR may not monitor licensees of a profession that has a compliance program in place that indicates at least 95 percent of the licensees are in compliance with continuing education requirements. Therefore, those licensed by the Division of Certified Public Accounting would be exempt from this program.

Authority is given to the DBPR to impose sanctions for noncompliance: (1) an administrative fine of \$500, which would be reduced to \$250 if the licensee completes the continuing education requirements within 90 days, and (2) ineligibility for license renewal at the end of the current renewal period if the fine is not paid and continuing education requirements are not met. Certified Public Accountants licensed under chapter 473 are exempt from these sanctions, because that statute authorizes various, effective penalties. Rulemaking is authorized to implement the monitoring process.

The bill also provides for the DBPR, at its discretion, to contract with a private vendor to conduct the monitoring. If it chooses to privatize the activity, the bill provides for the responsibilities of the various parties.

Vendor Responsibilities

1. Receive from DBPR, within 30 days after the renewal period ends, a list of all licensees whose licenses were renewed in a particular renewal period.
2. Receive from continuing education providers verification of licensees' completion of continuing education courses, by electronic transmission.
3. Compare the lists to determine compliance or noncompliance of each licensee.
4. Send a letter to each licensee, determined to be out of compliance, indicating that the licensee has 45 days to correct any possible errors in the vendor's records and that the vendor must receive any new information from the continuing education provider within the time frame.
5. Send DBPR, after the records have been corrected and within 90 days from receipt of the original list from DBPR, a list of all licensees who are not in compliance.

DBPR Responsibilities

1. Notify licensees on the noncompliance list of the sanctions to be imposed and of the dispute resolution process available to resolve disputes between the licensee and the vendor or continuing education provider.
2. Impose sanctions for noncompliance, as stated above.
3. Adopt rules specifying a dispute resolution process.
4. Revoke approval of a continuing education provider for failure to comply with its obligations under this section, or for failure to provide appropriate courses.
5. Pay the monitoring vendor no more than \$2 of the \$5 fee currently collected from each licensee and earmarked, prior to this bill, solely for enforcement against unlicensed activity.

6. Prohibit continuing education providers from being vendors.

Continuing Education Provider Responsibilities

1. Provide, by electronic transmission to the vendor, verification of licensees' compliance with continuing education requirements within 48 hours of course completion.
2. Retain records for 4 years.
3. Agree in writing to provide such cooperation with vendors as the DBPR deems appropriate.
4. Other provisions (unrelated to the monitoring function):
 - a. Approval of a continuing education provider will be for a specified time period not to exceed 4 years.
 - b. The provider must provide continuing education courses that conform to the approved course material.

Additionally, the bill gives the Regulatory Council of Community Association Managers rulemaking authority relating to continuing education providers. Finally, the cosmetology act is amended to delete the privatization and discipline provisions because they conflict with the provisions of this bill.

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. DBPR is given authority to adopt rules specifying the contents of contracts, establishing a dispute resolution process, and implementing the various new sections of law.

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

No.

- (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?

A private entity would assume the responsibility for monitoring compliance with continuing education requirements.

- (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?

No. the cost would be borne by existing fees.

- 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?

The cost would be borne by existing fees paid by each professional licensee.

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?

No.

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?

N/A

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:

Creates ss. 455.2177, s. 455.2178, and s. 455.2179; and amends s. 455.2281, s. 455.224, s. 468.4315, and 477.019, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 455.2177, F.S., to establish the requirement that DBPR monitor compliance with continuing education requirements; to establish penalties; to allow privatization of the monitoring; to establish contract contents; to provide funding from existing fees for privatization; to provide for dispute resolution and to authorize rulemaking to adopt the procedure; to authorize rulemaking to implement the section; and to exempt licensed certified public accountants from the provisions of this section.

Section 2. Creates s. 455.2178, F.S., to establish the responsibilities of continuing education providers; to authorize DBPR to revoke approval of continuing education providers that do not provide information to a vendor; and to authorize rulemaking to implement the section.

Section 3. Creates s. 455.2179, F.S., to provide that approval of continuing education providers is limited to four years, and to require DBPR and the boards to revoke approval under certain circumstances; and to specify that DBPR may not override a board's decision to revoke an approval.

Section 4. Amends s. 455.2881, F.S., to conform language relating to unlicensed activity fees.

Section 5. Amends s. 455.224, F.S., to clarify DBPR's authority to issue citations.

Section 6. Amends s. 468.4315, F.S., to allow the Regulatory Council of Community Association Managers to adopt rules relating to continuing education providers.

Section 7. Amends s. 477.019, F.S., (1998 Supp), to delete provisions from the cosmetology act relating to privatization of continuing education monitoring and penalties for noncompliance of continuing education requirements that conflict with the provisions of this bill.

Section 8. Provides the act will take effect July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

See Comments section.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See Comments section.

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:

None. The cost of privatization will be borne through existing fees.

2. Direct Private Sector Benefits:

If the DBPR chooses to privatize continuing education compliance monitoring, the vendor will receive the additional income generated by the contract.

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

The contract will be awarded from competitive bids, therefore, competition will be guaranteed. Private enterprise and employment markets will all benefit, if the DBPR chooses to privatize this activity.

D. FISCAL COMMENTS:

Should the DBPR choose to privatize the monitoring of continuing education compliance, the cost will be borne through exiting fees paid by professional licensees. However, the amount is capped at no more than \$2 of the \$5 currently collected from each licensee and earmarked, prior to this bill, for enforcement against unlicensed activity.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This act 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 act does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

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

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

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Governmental Rules and Regulations adopted one amendment at its April 8, 1999, meeting, which increased the number of days from 2 to 5 that the continuing education vendor has to report that a professional licensee has completed a continuing education course. It is traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

Staff Director:

Rebecca R. Everhart

Rebecca R. Everhart

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

Staff Director:

David M. Greenbaum

David M. Greenbaum