

By Senator Clary

7-1128A-00

1 A bill to be entitled
 2 An act relating to privatization of
 3 professional licensing and investigative
 4 functions; creating s. 455.30, F.S.; creating
 5 the Management Privatization Act; allowing the
 6 Department of Business and Professional
 7 Regulation to contract with a private entity to
 8 provide specified support services for
 9 professional licensing boards, commissions, and
 10 councils; requiring such a contract on behalf
 11 of the Board of Architecture and Interior
 12 Design; providing powers and responsibilities
 13 of the department and the private entity;
 14 maintaining the confidentiality of information;
 15 establishing reporting and audit requirements;
 16 providing for sovereign immunity; providing an
 17 appropriation; providing for expiration of the
 18 act; providing an effective date.

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 20 Be It Enacted by the Legislature of the State of Florida:

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 22 Section 1. Section 455.30, Florida Statutes, is
 23 created to read:

24 455.30 Management Privatization Act.--

25 (1) This section may be cited as the "Management
 26 Privatization Act."

27 (2) At the request of any board, commission, or
 28 council assigned to the department, the department may
 29 contract with a corporation or other business entity to
 30 perform support services for that board, commission, or
 31 council. The contract must comply with this section and other

1 applicable laws and must be approved by the board, commission,
2 or council before the department enters into the contract. The
3 department shall retain responsibility for its duties relating
4 to its police powers and any other duty that is not provided
5 to the corporation by the contract. The contract must provide,
6 at a minimum, that:

7 (a) The corporation provide administrative,
8 investigative, examination, licensing, and prosecutorial
9 support services in accordance with this section and the
10 practice act of the profession. With approval of the
11 department, the corporation may subcontract for any of these
12 services.

13 (b) The corporation use computer technology,
14 compatible with that used by the department, to ensure
15 compatibility and availability to the public of information
16 provided for other professions by the department.

17 (c) The corporation submit an annual budget for
18 approval by the board, commission, or council and by the
19 department.

20 (d) The corporation keep financial and statistical
21 information necessary to disclose its financial and
22 operational condition when requested by the Office of Program
23 Policy Analysis and Governmental Accountability, the Auditor
24 General, or the department.

25 (e) Methods and procedures are established to resolve
26 any noncompliance by the corporation, as provided in
27 subsection (9).

28 (f) The corporation provide to the board, commission,
29 or council and to the department, by October 1 of each year, a
30 report describing all of the corporation's activities for the
31 previous fiscal year. The report must include:

- 1 1. The results of any audit performed under subsection
2 (8), including financial reports and performance audits;
- 3 2. The number of license applications received, the
4 number of applications approved and denied, the number of
5 licenses issued, and the average time required to issue a
6 license;
- 7 3. The number of examinations administered and the
8 number of applicants who passed and the number of applicants
9 who failed the examination;
- 10 4. The number of complaints received, the number of
11 complaints determined to be legally sufficient, the number of
12 complaints dismissed, and the number of complaints for which
13 probable cause was found;
- 14 5. The number of administrative complaints issued and
15 the status of those complaints;
- 16 6. The number and nature of disciplinary actions taken
17 by the board, commission, or council;
- 18 7. A listing of all revenue received and all expenses
19 incurred by the corporation during the previous 12 months; and
20 8. The status of the compliance of the corporation
21 with all performance-based program measures adopted by the
22 board, commission, or council.
- 23 (3) Section 768.28 applies to the corporation, which
24 is deemed to be a corporation primarily acting as an
25 instrumentality of the state, but which is not an agency
26 within the meaning of s. 20.03(11).
- 27 (4) The corporation shall be funded through
28 appropriations allocated to the regulation of the relevant
29 profession from the Professional Regulation Trust Fund.
- 30 (5) Whenever the corporation is no longer approved to
31 operate for the board, commission, or council or the board,

1 commission, or council ceases to exist, moneys and property
2 held in trust by the corporation for the benefit of the board,
3 commission, or council shall revert to the board, commission,
4 or council or to the state if the board, commission, or
5 council ceases to exist.

6 (6) An executive director, appointed pursuant to s.
7 455.203, shall supervise the activities of the corporation.
8 The executive director shall be an employee of the department
9 and shall serve as a liaison between the corporation and the
10 department and the board, commission, or council and shall
11 ensure that the corporation does not exercise the police
12 powers of the state.

13 (7) The corporation may not exercise any authority
14 assigned to the department or the board, commission, or
15 council under part I of chapter 455 or the practice act of the
16 relevant profession, including determining legal sufficiency
17 and probable cause to pursue disciplinary action against a
18 licensee, taking final action on license applications or in
19 disciplinary cases, or adopting administrative rules under
20 chapter 120.

21 (8) This section does not affect the duty of the
22 Auditor General to audit the corporation. The Auditor General
23 shall conduct annual audits, including financial reports and
24 performance audits. Additionally, the department may request
25 an independent audit at the expense of the corporation.

26 (9) The board, commission, or council and the
27 department shall annually certify that the corporation is
28 complying with the terms of the contract in a manner
29 consistent with the goals and purposes of the board,
30 commission, or council and in the best interest of the state.

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1 (10) This section does not limit the ability of the
2 corporation to enter into contracts and perform all other acts
3 incidental to those contracts that are necessary for the
4 administration of its affairs and the accomplishment of its
5 purposes.

6 (11) The corporation may acquire by lease, and
7 maintain, use, and operate, any real or personal property
8 necessary to perform its duties.

9 (12) By October 1, 2000, the department shall contract
10 for support services pursuant to subsection (2) to provide
11 services on behalf of the Board of Architecture and Interior
12 Design.

13 (13) The department shall retain independent authority
14 to open, investigate, or prosecute complaints to protect the
15 public health, safety, or welfare, and shall retain sole
16 authority to issue emergency suspension or restriction orders
17 pursuant to s. 120.60 and to prosecute unlicensed activity
18 cases pursuant to ss. 455.228 and 455.2281.

19 (14) Corporation records are public records subject to
20 s. 119.07(1) and s. 24(a) of Art. I of the State Constitution.
21 However, the public-records exemptions in ss. 455.217 and
22 455.229 for records created or maintained by the department
23 also apply to records created or maintained by the
24 corporation. The exemptions in s. 455.225 relating to
25 complaints and information obtained pursuant to an
26 investigation by the department apply to such records created
27 or obtained by the corporation only while the corporation or a
28 law enforcement agency or administrative agency is proceeding
29 with reasonable dispatch under a reasonable, good-faith belief
30 that it could lead to the filing of administrative, civil, or
31 criminal proceedings, and until either the case is dismissed

1 prior to a finding of probable cause and the board,
2 commission, or council has not exercised its option to pursue
3 the case or 10 days after the board, commission, or council
4 makes a determination regarding probable cause. All
5 information, records, and transcriptions regarding a complaint
6 that has been determined to be legally sufficient to state a
7 claim within the jurisdiction of the board, commission, or
8 council are available to the public when the investigation
9 ceases to be active, except information that is otherwise
10 confidential or exempt by law. However, in response to an
11 inquiry concerning the licensure status of an individual, the
12 corporation shall disclose the existence of an active
13 investigation if the nature of the violation under
14 investigation involves the potential for substantial physical
15 or financial harm. The department and the board, commission,
16 or council must be given access to all records of the
17 corporation necessary to exercise their authority to approve
18 and administer the contract.

19 (15) If any provision of this act is held to be
20 unconstitutional or is held to violate the state or federal
21 antitrust laws:

22 (a) The corporation shall cease exercising any powers
23 and duties enumerated in the act and the department shall
24 resume the performance of such activities. The department
25 shall regain and receive, hold, invest, and administer
26 property and make expenditures for the benefit of the board,
27 commission, or council.

28 (b) The Executive Office of the Governor,
29 notwithstanding chapter 216, may reestablish positions, budget
30 authority, and salary rate necessary for the department to
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1 carry out its responsibilities with respect to the board,
2 commission, or council.

3 (16) This section expires on October 1, 2005.

4 Section 2. The sum of \$500,000 is appropriated to the
5 Department of Business and Professional Regulation from the
6 Professional Regulation Trust Fund to be used to defray the
7 start-up costs incurred by a corporation in implementing any
8 contract executed pursuant to this act.

9 Section 3. This act shall take effect upon becoming a
10 law.

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13 SENATE SUMMARY

14 Creates the Management Privatization Act to allow the
15 Department of Business and Professional Regulation to
16 contract with a private entity to provide certain support
17 services for professional boards, commissions, or
18 councils. Requires the department to contract for the
19 provision of such services for the Board of Architecture
20 and Interior Design. (See bill for details.)

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