

**STORAGE NAME:** h1301s1.sgc.doc  
**DATE:** February 22, 2002

**HOUSE OF REPRESENTATIVES  
COUNCIL FOR SMARTER GOVERNMENT  
ANALYSIS**

**BILL #:** CS/HB 1301  
**RELATING TO:** Architecture and Interior Design  
**SPONSOR(S):** Council for Smarter Government and Rep. Berfield  
**TIED BILL(S):**

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

- (1) BUSINESS REGULATION YEAS 10 NAYS 0
  - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 12 NAYS 0
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

The "Management Privatization Act" establishes a privatization model for administrative functions of boards under the DBPR. The DBPR is allowed, upon request from a specific board, to contract out staff support services for that board. The Act statutorily specifies provisions relating to the contents of the contract. Presently, the only instance of privatized staff services under the Department of Business and Professional Regulation (DBPR) is for the Board of Professional Engineers.

This bill delegates specified responsibilities of the DBPR to the Board of Architecture and Interior Design (board). The responsibilities include matters relating to receiving complaints, investigations, discipline, prosecution, and unlicensed activity of architects and interior designers. The bill requires the board rather than the DBPR to contract with a corporation or other business entity to provide investigative, legal council, and prosecutorial services. Services of the corporation or other entity must comply with the recordkeeping and reporting requirements applicable to the scope of the contract as required under the "Management Privatization Act." The contractor must report to the board rather than the DBPR.

The bill specifies that the board may use funds in the unlicensed activity account to carry out the board's duties to combat and prosecute unlicensed activity in the architecture and interior design professions.

The bill specifically requires the board to submit an annual budget for funding the activities specified in the bill to the Legislature separately from the DBPR budget.

The bill is not anticipated to have a significant fiscal impact on state or local government. Funding for the operations of services should reflect a shift of appropriations from the DBPR to the board.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |  |   |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

1. Less Government - This program to be adopted by the board could be anticipated to be similar to the current requirements that would be adopted by the DBPR should the privatization of specific support services be implemented by DBPR for the board. The result appears to be a shift of costs and responsibilities, not necessarily the creation of a new program for purposes of savings or increased expenditures.

B. PRESENT SITUATION:

Presently, the only instance of privatized staff services under the Department of Business and Professional Regulation is for the Board of Professional Engineers (BPE). Section 471.038, F.S., created the Florida Engineers Management Corporation (FEMC) in 1997 as a private not-for-profit corporation providing staff support services for that single board. Though revised over the years, the operation of FEMC as the entity providing specified services to the BPE continues under this authority.

Currently, s. 455.32, F.S., is cited as the "Management Privatization Act." This section establishes a privatization model for administrative functions of boards under the DBPR. The DBPR is allowed, upon request from a specific board, to contract out staff support services for that board. It provides that a contract providing for privatization of such services must be approved by the specific board. This section statutorily specifies provisions relating to the contents of the contract.

The Management Privatization Act requires DBPR to contract for privatization of staff support services for the Board of Architecture and Interior Design (board) by October 1, 2000. The DBPR and the board have not contracted for these privatized services to date.

Chapter 455, F.S., provides general powers for the regulation of the areas of jurisdiction under DBPR. Among these powers is the authority to enforce unlicensed activity provisions pursuant to ss. 455.228 and 455.2281, F.S. Programs of DBPR are funded by fees paid by regulated professionals. Revenues collected from fees and fines are deposited into the Professional Regulation Trust Fund and are earmarked for funding specific programs as appropriated by the Legislature. Funding for unlicensed activity is generated from a \$5.00 special fee pursuant to s. 455.2281, F.S., imposed on all initial licenses and the renewal of licenses.

C. EFFECT OF PROPOSED CHANGES:

The bill delegates specified responsibilities of the DBPR to the Board of Architecture and Interior Design (board). The responsibilities include matters relating to receiving complaints, investigations, discipline, prosecution, and unlicensed activity of architects and interior designers.

The bill requires the board rather than the DBPR to contract with a corporation or other business entity to provide investigative, legal council, and prosecutorial services. Services of the corporation or other entity must comply with the recordkeeping and reporting requirements applicable to the scope of the contract as required under the "Management Privatization Act." The contractor must report to the board rather than the DBPR.

The bill specifies that the board may use funds in the unlicensed activity account pursuant to s. 455.2281, F.S., to carry out the board's duties to combat and prosecute unlicensed activity in the architecture and interior design professions.

The bill specifically requires the board to submit an annual budget for funding the activities specified in the bill to the Legislature separately from the DBPR budget.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See comments section below.

2. Expenditures:

See comments section below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See comments section below.

D. FISCAL COMMENTS:

This program to be adopted by the board could be anticipated to be similar to the current requirements that would be adopted by the DBPR should the privatization of specific support

services be implemented by DBPR for the board. The result appears to be a shift of costs and responsibilities, not necessarily the creation of a new program for purposes of savings or increased expenditures.

The bill does not appear to have an appropriations impact relating to unlicensed activity, though there is the possibility of funds being transferred between the operating account and the unlicensed activity account of the board.

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 take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities 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:

A. CONSTITUTIONAL ISSUES:

None noted.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

There are several types of privatization being used today. According to *The Revolution in Privatization* by Lawrence W. Reed, printed in the Journal of the James Madison Institute, Summer 2001, pp. 20-24, 32, the most common form of privatization is known as "out-sourcing" or "contracting out." The interim report by the staff of the House Committee on Health Regulation titled *Feasibility of Privatizing Certain Health Regulation Functions*, October 2001, p. 33, states "this form of privatization is already being used in health practitioner regulation with regard to licensure renewal, certain national examinations, and standardized credentialing." "Also, certain cases have been contracted out to private attorneys for prosecution if the Agency was unable or unwilling to prosecute."

In *Assessing Privatization in State Agency Programs*, Report No. 98-64, published by the Florida Legislative Office of program Policy Analysis and Government Accountability (OPPAGA), February 1999, there is a list and explanation of potential advantages and disadvantages to the privatization of public services.

The advantages of privatization noted in the OPPAGA report include cost savings (labor costs, reduced regulatory requirements, reduced overhead, more personnel flexibility, better equipment,

and faster reactions to changing conditions), staffing flexibility and obtaining needed expertise, political factors, and a shift in start-up costs to the private sector.

The disadvantages of privatization noted in the OPPAGA report include reduced public accountability, service quality problems, higher long-term costs, and workforce issues.

In addition, the OPPAGA report recommends that when considering privatization, the Legislature should consider whether it is appropriate to privatize the service and whether there is reason to believe that privatization will save money or improve services.

**VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

On February 19, 2002, the Council for Smarter Government adopted a Committee Substitute for the bill. The CS differs from the original bill in the following areas:

The CS amends chapter 481, F.S., the practice act for architects and interior designers, rather than s. 455.32, F.S., the "Management Privatization Act" and revises language relating to the authority to privatize specified activities. The CS includes receiving complaints as a responsibility of the board. It expands the specific activities of the board that may be conducted under this new authority, such as determining legal sufficiency. The scope of the application of the "Management Privatization Act" to the contractor's services is less broadly applied under the CS.

The CS specifically allows the board rather than the DBPR to submit an annual budget to the Legislature for purposes of funding the activities authorized under the CS.

The CS specifies the act shall take effect on July 1, 2002 rather than upon becoming a law.

**VII. SIGNATURES:**

**COMMITTEE ON BUSINESS REGULATION:**

Prepared by:

Alan W. Livingston

Staff Director:

Paul Liepshutz

**AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:**

Prepared by:

Alan W. Livingston

Council Director:

Don Rubottom