

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2042

SPONSOR: Governmental Oversight & Productivity Committee and Senators Clary and Crist

SUBJECT: Architecture & Interior Design Board

DATE: March 5, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vaccaro	Caldwell	RI	Favorable
2.	Rhea	Wilson	GO	Favorable/CS
3.			AGG	
4.			AP	
5.				
6.				

I. Summary:

Section 455.32(13), F.S., required the Department of Business and Professional Regulation (the “BPR”) to enter into a contract with a corporation for the provision of support services for architects and interior designers by no later than October 1, 2000. As of this date, BPR has not entered into a contract for the provision of support services to architects and interior designers.

The Committee Substitute for Senate Bill 2042 authorizes the Board of Architecture and Interior Design (the “board”) to contract with a corporation or business entity to provide investigative, legal, prosecutorial, and other services necessary to perform its duties. The committee substitute delegates the duties and authority of the BPR to investigate and discipline licensed architects and interior designers, and to deter the unlicensed practice of those professions, to the board. The committee substitute requires the board and the corporation or business entity with which it contracts to conform to certain standards and requirements provided in s. 455.32, F.S.

This committee substitute amends section 481.205 of the Florida Statutes.

II. Present Situation:

The Department of Business and Professional Regulation (the “BPR”) was created by the Legislature in s. 20.165, F.S. The BPR has ten divisions.¹ One of these divisions, the Division of Professions (the “division”), has a number of boards established within it. The Board of Architecture and Interior Design (the “board”), which is created under Part I of ch. 481, F.S., is one of the boards that is established in the division. The BPR licenses architects and interior

¹ Section 20.165, F.S., creates the following divisions in the BPR: (1) Administration; (2) Alcoholic Beverages and Tobacco; (3) Certified Public Accounting; (4) Florida Land Sales, Condominiums, and Mobile Homes; (5) Hotels and Restaurants; (6) Pari-mutuel Wagering; (7) Professions; (8) Real Estate; (9) Regulation; and (10) Technology, Licensure, and Testing.

designers under s. 481.213, F.S. Pursuant to s. 455.221, F.S., the BPR is required to provide the board with investigative and legal services necessary to regulate licensees.

The sole authority to prosecute the unlicensed practice of professions is granted to the department by s. 455.228, F.S. Pursuant to that statute, the department may:

- < issue notices to cease and desist; impose administrative penalties;
- < issue citations; and
- < seek enforcement of its actions and imposition of civil penalties in circuit court.

Funding to deter unlicensed activity is provided by s. 455.2281, F.S., through the imposition of a \$5 fee upon each license and license renewal. The \$5 fee is collected in addition to all other licensure fees collected.

In 2000, the Legislature created s. 455.32, F.S., the Management Privatization Act (the “act”), which authorizes the BPR to contract with a corporation or business entity to perform administrative, investigative, licensing, examination, and prosecutorial support services, *upon the request* of any board, commission, or council within the BPR. A contract for such support services must be in compliance with the act and other applicable laws and must be approved by the board before the BPR enters into the contract. The BPR retains responsibility for any duties it currently exercises relating to its police powers and any other current duty that is not provided to the corporation by the contract.

Among the minimum contractual requirements established in s. 455.32(3)(a), F.S., are those that direct a corporation to:

- < provide administrative, investigative, examination, licensing, and prosecutorial support services;
- < utilize computer technology compatible with the BPR;
- < submit an annual budget to the board and the BPR;
- < Keep financial and statistical information as necessary to completely disclose the financial condition and operation of the projects as requested by the Office of Program Policy Analysis and Government Accountability, the Auditor General, and the BPR;
- < Provide for methods and mechanisms to resolve noncompliance with certification requirements under s. 455.32(10), F.S.;²
- < provide an annual report to the BPR and the board describing all activities for the previous fiscal year;³ and

² Section 455.32(10), F.S., requires the board and the department shall annually certify that the corporation is complying with the terms of the contract in a manner consistent with the goals and purposes of the board and in the best interest of the state.

³ Section 455.32(3)(f), F.S., requires the report to include: (1) Any audit performed under subsection (9), including financial reports and performance audits; (2) The number of license applications received, the number of licenses approved and denied, the number of licenses issued, and the average time required to issue a license; (3) The number of examinations administered and the number of applicants who passed or failed the examination; (4) The number of complaints received, the number of complaints determined to be legally sufficient, the number of complaints dismissed, and the number of complaints determined to have probable cause; (5) The number of administrative complaints issued and the status of the complaints; (6) The number and nature of disciplinary actions taken by the board; (7) All revenue received and all expenses incurred by

< provide for an annual audit of its financial accounts and records.⁴

Under s. 455.32(4), F.S., sovereign immunity applies to the corporation, which is deemed to be a corporation primarily acting as an instrumentality of the state, but which is not an agency within the meaning of s. 20.03(11), F.S.

Funding for the corporation, under s. 455.32(5), F.S., shall be through appropriations allocated to the regulation of the relevant profession from the Professional Regulation Trust Fund.

Under the act, the board and the department must annually certify that the corporation is complying with the terms of the contract in a manner consistent with the goals and purposes of the board and in the best interest of the state. If the corporation is no longer approved to operate for the board or the board ceases to exist, moneys and property held in trust by the corporation for the benefit of the board shall revert to the board, or to the state if the board ceases to exist.

Section 455.32(7), F.S., provides for an executive director who is to supervise the activities of the corporation to ensure compliance with the contract and provisions of the act. The executive director of the board, who is appointed by the BPR, is an employee of the BPR and serves as a liaison between the BPR, the board and the corporation. The executive director is also required to ensure that the police powers of the BPR are not exercised by the corporation.

Section 455.32(8), F.S., expressly forbids the corporation from exercising any authority assigned to the department or board under the act or the practice act of the relevant profession, including determining legal sufficiency and probable cause to pursue disciplinary action against a licensee, taking final action on license applications or in disciplinary cases, or adopting administrative rules under ch. 120, F.S.

Section 455.32(13), F.S., however, *required* the BPR to enter such contract with a corporation or business entity to provide investigative, legal, prosecutorial, and other services on behalf of the board *by no later than October 1, 2000*. As of this date, BPR has not entered into a contract for the provision of support services to architects and interior designers.

Under s. 455.32(14), F.S., BPR retains the independent authority to open, investigate, or prosecute any cases or complaints, as necessary, to protect the public health, safety, or welfare. In addition, BPR retains sole authority to issue emergency suspension or restriction orders pursuant to s. 120.60 and to prosecute unlicensed activity cases pursuant to ss. 455.228 and 455.2281, F.S.

Section 455.32, F.S., is repealed on October 1, 2005, and must be reviewed prior to that date for the purpose of determining its continued existence.

the corporation over the previous 12 months in its performance of the duties under the contract; and (8) The status of the compliance of the corporation with all performance-based program measures adopted by the board.

⁴ Under s. 455.32(9), F.S., this annual audit report must include a management letter in accordance with s. 11.45 and a detailed supplemental schedule of expenditures for each expenditure category. This report must be submitted to the board, the BPR, and the Auditor General for review.

III. Effect of Proposed Changes:

Notwithstanding the provisions of ss. 455.225, 455.28, and 455.32, F.S., the committee substitute delegates to the board the duties and authority of the BPR to receive complaints, investigate and discipline architects and interior designers licensed under part I of ch. 481, F.S.; to retain legal counsel, investigators, and prosecutorial staff in connection with the practice of those professions; and to investigate and deter the unlicensed practice of architecture or interior design as provided in ch. 455, F.S.

The committee substitute requires the board, in lieu of the BPR, to contract with a corporation or business entity to provide services necessary to carry out the board's duties, and requires the corporation or business entity to comply with requirements of s. 455.32, F.S. The corporation or business entity must report directly to the board in lieu of the BPR.

The committee substitute authorizes the board to use funds in the unlicensed activity account under s. 455.2281, F.S. The committee substitute requires the board to submit an annual budget to the BPR for funding its activities under this subsection, which the BPR must separately itemize in its budget to the Legislature.

The committee substitute takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Under s. 455.32(15), F.S., corporation records are public records subject to the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Public records exemptions set forth in ss. 455.217 and 455.229, F.S., for records created or maintained by BPR, are explicitly stated to apply to the corporation. Further, the exemptions set forth in s. 455.25, F.S., relating to complaints and information obtained pursuant to an investigation by the BPR, apply to such records created or obtained by the corporation only until an investigation ceases to be active. The BPR and the board have access to all records of the corporations, as necessary, to exercise their authority to approve and supervise the contract.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The BPR reports that the committee substitute will have a neutral impact upon it. Estimated expenses for investigation and compliance related to the board total \$261,418. The BPR will reduce expenses by that amount, which the board will then utilize from the Regulatory Trust Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 455.32, F.S., is repealed effective October 1, 2005, unless reviewed and reenacted by the Legislature. It would be appropriate to link the requirements of the provisions created in this committee substitute with the review of s. 455.32, F.S.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
