

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/CS/SB 2026

SPONSOR: Governmental Oversight & Productivity Committee, Regulated Industries Committee, and Senator Pruitt

SUBJECT: Professions Regulation/DBPR

DATE: April 13, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.	Rhea	Wilson	GO	Fav/CS
3.	DeLoach	Hayes	AGG	Favorable
4.			AP	Withdrawn: Favorable
5.				
6.				

I. Summary:

Committee Substitute for CS/SB 2026 substantially rewords the provisions of the Management Privatization Act in s. 455.32, F.S., to establish a model for the privatization of the regulation of professionals when requested by any board of the Department of Business and Professional Regulation (DBPR or department). The bill defines “board” to mean any board, commission, or council created within the department pursuant to ch. 20, F.S. The bill defines corporation to mean any nonprofit corporation.

The bill defines the terms “performance standards and measurable outcomes,” “department,” “executive director,” and “secretary.” The bill requires that a board’s privatization request must contain a needs assessment and financial feasibility study.

The bill amends the provisions of the Management Privatization Act to provide that a corporation providing support services to a board must:

- Be a Florida corporation not for profit.
- Operate under a fiscal year July 1 through June 30.
- Have a five member board of directors whose members may be removed by the Governor for the same reasons that a member of a regulatory board may be removed. Three of the directors are appointed by the regulatory board and two by the department. No professional board member may also serve on the board of directors for the corporation.
- Have its articles of incorporation and bylaws approved by the department.
- Operate under a written contract with the department.
- Provide a faithful performance bond for all persons charged with receiving and depositing fee and fine revenue.

- Keep financial and statistical information.
- Be the sole source and depository for the board's records, which must be maintained in accordance with the guidelines of the Department of State.
- Provide by rule for the security and monitoring of licensure examinations.
- Maintain the current act's reporting requirements.
- Require methods and mechanisms to resolve any noncompliance of the contract.
- Return to the department all records, monies, properties held in trust, and data in the event the corporation is no longer approved to operate.
- Secure and maintain liability insurance coverages.
- Assume all insurance deductibles, all costs of representation, all costs related to the prosecution of cases, all costs for board counsel, and all direct and indirect costs related to the monitoring of the contract. The board in lieu of the department must retain the board counsel.

The bill provides that the corporation's staff are not public employees for the purposes of ch. 110 or ch. 112, F.S., except that the provisions of s. 112.061 F.S., and part III of ch. 112, F.S., do apply. It authorizes the corporation to select a president of the management corporation.

The bill requires a financial model and business case for the corporation with projected costs for the first two years. The business case must be approved by the Governor. It provides that the corporation may use interest derived by it to offset the costs associated with the use of credit cards.

The bill authorizes the corporation to initiate disciplinary investigations, and authorizes the department to delegate to the corporation the authority to issue emergency suspension or restriction orders.

The bill deletes the DBPR's authority to privatize continuing education monitoring, and establishes limits for fines that may be imposed for violations by licensees and providers. The bill provides for the approval of continuing education courses by the DBPR.

This bill would take effect on July 1, 2004.

This bill substantially amends the following sections of the Florida Statutes: 455.32, 455.2177, 455.2178, 455.2179, and 455.2281.

II. Present Situation:

Present Situation

The Department of Business and Professional Regulation (DBPR or department) is created in s. 20.165, F.S. The DBPR has ten divisions.¹ Pursuant to s. 455.221, F.S., the DBPR is required to provide its boards² 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., which provides that 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.

Management Privatization Act

In 2000, the Legislature created s. 455.32, F.S., the Management Privatization Act (the “act”),³ which authorizes the DBPR 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 DBPR. 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 DBPR enters into the contract. The DBPR 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), F.S., are those that direct the corporation to:

- provide administrative, investigative, examination, licensing, and prosecutorial support services;
- utilize computer technology compatible with the DBPR;

¹ Section 20.165, F.S., creates the following divisions in the DBPR: (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.

² Section 455.01(1), F.S., defines “board to mean:

...any board or commission, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the department, including the Florida Real Estate Commission; except that, for ss. 455.201-455.245, “board” means only a board, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the Division of Certified Public Accounting, the Division of Professions, or the Division of Real Estate.

³ Chapter 2000-356, s. 9 L.O.F.

- submit an annual budget to the board and the DBPR;
- 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 (OPPAGA), the Auditor General, and the DBPR;
- provide for methods and mechanisms to resolve noncompliance with certification requirements under s. 455.32(10), F.S;⁴
- provide an annual report to the DBPR and the board describing all activities for the previous fiscal year;⁵ and
- provide for an annual audit of its financial accounts and records.⁶

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.

Section 455.32(6) provides that 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 DBPR, is an employee of the DBPR and serves as a liaison between the DBPR, the board and the corporation. The executive director is also required to ensure that the police powers of the DBPR are not exercised by the corporation.

Moreover, s. 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.

Under s. 455.32(9), F.S., this annual audit report must include a management letter in accordance with s. 11.45, F.S., which defines a management letter as a statement of the auditor's comments

⁴ See also the annual certification requirement in s. 455.32(10), F.S.

⁵ 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 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.

⁶ See also the annual financial audit requirement in s. 455.32(9), F.S.

and recommendations, and a detailed supplemental schedule of expenditures for each expenditure category. This report must be submitted to the board, the DBPR, and the Auditor General for review.

Section 455.32(10), F.S., requires the board and the department to 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.

Section 455.32(13), F.S., however, required the DBPR to enter a contract with a corporation or business entity to provide investigative, legal, prosecutorial, and other services on behalf of the Board of Architecture and Interior Design by no later than October 1, 2000. The Board of Architecture and Interior Design, which is created under Part I of ch. 481, F.S., is one of the boards established in the Division of Professions (the “division”). The DBPR licenses architects and interior designers under s. 481.213, F.S. The Board of Architecture and Interior Design negotiated a contract for privatization with a vendor, but the board and the DBPR could not come to terms. According to DBPR officials, the department wanted to maintain oversight of the private vendor’s budget, while the board wanted to maintain full budget control over the vendor.⁷ Section 481.205(3)(b), F.S., delegates to the board, in lieu of the department, the authority to contract with a corporation or other business entity to provide investigative, legal, prosecutorial, and other services necessary to perform its duties. With this authority, the Board of Architecture and Interior Design contracted with a vendor to perform investigation and prosecutions. The vendor also has final order authority over unlicensed activities.

Under s. 455.32(14), F.S., DBPR 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, DBPR 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(15), F.S., provides that the corporation’s records are public records subject to the provisions of the public records law in s. 119.07(1), F.S., and s. 24(a), art. I, Fla. Const.

Section 455.32(16), F.S., addresses the consequences if any of the provisions of s. 455.32, F.S., are held unconstitutional or violative of state or federal antitrust laws. The principal consequence is that the corporation must cease and desist from exercising the enumerated powers and duties and the department must resume the performance of such activities.

Section 455.32(17), F.S., provides that s. 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.

⁷ See Office of Program Policy Analysis and Government Accountability (OPPAGA), *Florida Engineers Management Corporation Performs Well, But Department Of Business And Professional Regulation Has Not Implemented Privatization Recommendations*, Report No. 02-38, June 2002.

Board of Professional Engineers

Section 471.007, F.S., creates the Board of Professional Engineers, which regulates the engineering profession. The Florida Engineers Management Corporation Act (FEMCA), s. 471.038, F.S., creates the Florida Engineers Management Corporation (corporation) to provide administrative, investigative, and prosecutorial services to the Board of Professional Engineers in accordance with the provisions of chs. 455 and 471, F.S. this is the only professional board under the DBPR that has been privatized its support services.

The FEMCA provides for the staffing of the corporation, and specifies in detail its powers and duties.⁸ The corporation may not exercise any authority specifically assigned to the board under the mentioned chapters, including determining probable cause to pursue disciplinary action against a licensee, taking final action on license applications or in disciplinary cases, or adopting administrative rules.⁹

The corporation is the sole source and depository for the records of the board, including all historical information and records. The corporation must maintain those records in accordance with the guidelines of the Department of State and must not destroy any records prior to the limits imposed by the Department of State.¹⁰ The corporation's records are public records, and all meetings of the board of directors of the corporation must be open to the public.¹¹

The board is required to provide by rule procedures for the corporation to insure that all the corporation's licensure examinations are secure and that there is an appropriate level of monitoring during licensure examinations.¹²

Section 471.0385, F.S., provides that if any provision of the FEMCA is held to be unconstitutional or is held to violate Florida or federal antitrust laws, the corporation must cease and desist from exercising any powers and duties, and the DBPR must resume the performance of such activities.

Professional Board Privatization Background

In its 1999 review of the Florida Engineers Management Corporation, OPPAGA made the following findings and recommendations:

- Because privatizing an individual board may increase costs for the remaining boards, the department should conduct an analysis of the costs and benefits of privatization.
- The department should establish performance-based contracts with the privatized entities.

⁸ Section 471.038(3), F.S.

⁹ Section 471.038(4), F.S. DBPR retains the independent authority to open, investigate, or prosecute any cases or complaints necessary to protect the public health, safety, or welfare. Pursuant to ss. 471.038(5) and (6), F.S., DBPR also retains the power to issue emergency suspension order and prosecute unlicensed activity complaints.

¹⁰ Section 471.038(7), F.S. However, the corporation maintains any public records exceptions set forth in ss. 455.217 and 455.229, F.S.

¹¹ Section 471.038(8), F.S.

¹² Section 471.038(9), F.S.

- The department should consider increasing the specialization of the board's staff to increase the corporation's performance.¹³

A study of privatization by the Governor's Chief Inspector General made the following recommendations:

- monitor outsourcing practices for inadequacies and inconsistencies;
- establish a statewide training initiative;
- create a uniform vendor monitoring and rating system; and
- develop procedures for agencies to perform and document privatization needs assessments.

The report further recommended that the Department of Management Services, with the support of other state agencies' procurement staff, should propose legislative changes meant to strengthen agency contracting processes.¹⁴

In its recent review of privatization efforts, OPPAGA concurred in these recommendations and made the following additional recommendations for legislative action:

- mandate the use of "business cases," which is a structured analysis that aides in decision making for policy makers, for privatization proposals;
- strengthen the requirements for performance contracting; and
- strengthen the oversight of agency privatization initiatives.¹⁵

Monitoring Compliance with Continuing Education Requirements

Section 455.2177, F.S., requires the DBPR to establish a system to monitor licensee compliance with the applicable continuing education requirements and to determine each licensee's status. This provision allows the DBPR to phase in the monitoring system, but requires that the DBPR must establish this system for all professions regulated by the department no later than July 1, 2002.

The compliance monitoring system may be privatized, and s. 455.2177(2), F.S., provides detailed requirements governing private providers of continuing education monitoring.

Section 455.2177(3), F.S., limits the sanctions that can be imposed for the failure of a licensee to meet continuing education requirements to the sanctions in s. 455.2177(2)(b), F.S., which sets a \$500 administrative fine for failure to comply with continuing education requirements. However, the department may reduce the fine to \$250 if the licensee satisfies the requirement within

¹³ See OPPAGA, *Florida Engineers Management Corporation Performs Well, But Department Of Business And Professional Regulation Has Not Implemented Privatization Recommendations*, Report No. 02-38, June 2002; and *Performance Review: Privatizing Regulation of Professional Engineers Has Improved Services, But Increased costs*, Report No. 99-42, 2000.

¹⁴ Executive Office of the Governor's Chief Inspector General, *Road Map to Excellence in Contracting*, Report No. 2003-3, June 2003.

¹⁵ OPPAGA, *The Legislature Could Strengthen State's Privative Accountability Requirements*, Report No. 04-02, January 2004.

90 days of the imposition of the original fine. This provision applies whether the monitoring system is privatized or not.

Section 455.2177(4), F.S., requires that the department waive the continuing education monitoring requirements for any profession that demonstrates that it has a program in place that measures compliance with continuing education requirements through statistical sampling techniques or other methods and can indicate that at least 95% of its licensees are in compliance.

Continuing Education Providers

Section 455.2178, F.S., requires that the DBPR notify each approved continuing education provider of the name and address of all vendors that monitor compliance under s. 455.2177, F.S. If there is more than one vendor, the notice must specify the profession to be monitored by each vendor. Continuing education providers must also provide to the vendors information about the continuing education status of licensees. No later than five business days after a licensee's completion of a course, the provider must electronically submit to the vendor that information. Section 455.2178(6), F.S., authorizes the DBPR to adopt rules to implement this section.

Section 455.2179, F.S., requires each board, or the department if there is no board, to approve providers of continuing education. An approval may not exceed four years. However, s. 455.2179(1), F.S., provides that an approval that does not include such a time limitation may remain in effect until July 1, 2001, unless earlier replaced by an approval that includes such a time limitation. This provision does not provide for department approval of continuing education courses.

Unlicensed Activities Fee

Section 455.2281, F.S., establishes a \$5 fee per license to fund efforts to combat unlicensed activity. This fee is applied at initial licensure and at each renewal. The DBPR is required to directly credit to each profession revenues received from the department's efforts to enforce licensure provisions. Section 455.2281, F.S., also requires that all fines collected under s. 455.2177, F.S., must be directly credited to each profession.

III. Effect of Proposed Changes:

Section 1. The bill substantially rewords the provisions of s. 455.32, F.S., to establish a model for the privatization of the regulation of professionals. The bill provides that, at the request of any board, a nonprofit corporation may be established *by the department* to provide administrative, investigative, and prosecutorial services to any board created with the DBPR.

The bill defines "board" to mean any board, commission, or council created within the department pursuant to ch. 20, F.S. this definition is broader than the definition for board in s. 455.01(1), F.S.¹⁶ The bill defines corporation to mean any nonprofit corporation that the department contract with the corporation in accordance with s. 455.32(14), F.S.¹⁷

¹⁶ See *supra* note 1 for definition of "board" under s. 455.011(1); s. 20.03(7), F.S., defines "council" or "advisory council" to mean "... an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the

The bill defines the term “business case” to mean a needs assessment, financial feasibility study, and corporate financial model and specified in s. 455.32(4), F.S. The bill defines the term “performance standards and measurable outcomes” to include, but not be limited to, timeliness and quantitative criteria for activities specified in s. 455.32(6)(o), F.S. The bill also defines the terms “department,” “contract manager,” and “secretary.”

The bill makes the following substantive changes to s. 455.32, F.S.:

- It requires that a board’s privatization request must contain a business case that includes needs assessment and financial feasibility study with specific performance standards and measurable outcomes. The feasibility study must evaluate the department’s current and projected performance standards in regard to those standards. The financial model must include projected costs and expenses for the first two years of operation and specific performance standards and measurable outcomes. The business case must be approved by the Executive Office of the Governor and the Legislative Budget Commission.¹⁸
- The corporation’s staff are not public employees for the purposes of ch. 110 or ch. 112, F.S., which relate state employment and public officers, respectively. However, it provides that the provisions of s. 112.061 F.S., which relates to the per diem and travel expenses of public officers, employees, and authorized persons, and part III of ch. 112, F.S., which establishes a code of ethics for public officers and employees, do apply to the corporation’s staff.¹⁹
- The corporation must be a Florida corporation not for profit incorporated under ch. 617, F.S.²⁰
- The corporation must operate under a fiscal year that begins on July 1, of each year and ends on June 30 of the following year.²¹
- The corporation must have a five member board of directors. Three of the directors would be appointed by the board and are licensees regulated by that board. Two of the directors are appointed by the secretary and must be laypersons not regulated by that board. The bill provides for staggered terms for the corporation’s directors, establishes a

study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives”; s. 20.03(10), F.S., defines “commission” to mean “. . . unless otherwise required by the State Constitution, . . . a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and exercising limited quasi-legislative or quasi-judicial powers, or both, independently of the head of the department or the Governor”; s. 20.03(12), F.S., defines “board of trustees” to mean “. . . except with reference to the board created in chapter 253, means a board created by specific statutory enactment and appointed to function adjunctively to a department, the Governor, or the Executive Office of the Governor to administer public property or a public program.”

¹⁷ Section 455.32(3)(b), F.S.

¹⁸ Section 455.32(4), F.S.

¹⁹ Section 455.32(5), F.S.

²⁰ Section 455.32(6)(a), F.S.

²¹ Section 455.32(6)(e), F.S.

- two consecutive terms limitation, and provides that failure to attend three consecutive meeting shall be deemed a resignation from the board. No professional board member may serve on the board of directors.²²
- The corporation's officers must be selected in accordance with its bylaws.²³
 - The department must approve the corporation's articles of incorporation and bylaws.²⁴
 - The Governor may remove a member of the board of directors for the same reasons that a member of a regulatory board may be removed pursuant to s. 455.209, F.S.²⁵
 - The corporation may select a president of the management corporation to manage the operations of the corporation.²⁶ The bill does not define the term "management corporation."
 - The corporation may use interest derived by it to offset the costs associated with the use of credit cards to pay fees.²⁷
 - The corporation must operate under a written contract with the department.²⁸
 - The corporation must provide a faithful performance bond for all employees and nonemployees charged with receiving and depositing fee and fine revenue.²⁹
 - The corporation must keep financial and statistical information as necessary to completely disclose the financial condition and operation of the corporation.³⁰
 - The corporation would be the sole source and depository for the board's records and the corporation must maintain those records in accordance with the guidelines of the Department of State.³¹
 - The department may delegate to the corporation the authority to issue emergency suspension or restriction orders.

²² Section 455.32(6)(g), F.S.

²³ Section 455.32(6)(h), F.S.

²⁴ Section 455.32(14)(b), F.S.

²⁵ Section 455.32(6)(h), F.S. Section 455.209(1), F.S., provides that the Governor may suspend from office any board member for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform the member's official duties, or commission of a felony.

²⁶ Section 455.32(6)(i), F.S.

²⁷ Section 455.32(6)(j), F.S.

²⁸ Section 455.32(6)(k), F.S.

²⁹ Section 455.32(6)(m), F.S.

³⁰ Section 455.32(6)(n), F.S.

³¹ Section 455.32(12), F.S.

- The board must provide by rule for the security of licensure examinations, and that there is an appropriate level of monitoring during licensure examinations.³²

Section 455.32(6)(o), F.S., substantively maintains the reporting requirements in the current s. 455.32(3)(f), F.S., which requires that the corporation provide the department with a report of its activities on or before October 1 of each year, except that it adds a reporting requirement for the number of license renewals.

The department must annually certify that the corporation is complying with the terms of the contract. As part of the annual certification, s. 455.32(14)(e), F.S., expands upon the annual reporting requirement in the current s. 455.32(10), F.S., to require the department to make quarterly assessments of the corporations compliance with the contract. The contract must provide methods and mechanisms to resolve any noncompliance, including termination of the contract.

Section 455.32(14)(h), F.S., expands upon the current s. 455.32(6), F.S., to provide for the return of records, monies, properties held in trust, and data by the corporation to the department in the event the corporation is no longer approved to operate.

Section 455.32(14)(i), F.S., requires that the corporation must secure and maintain liability insurance coverages in an amount approved by the department. The corporation would also be liable for any deductible. A violation of this paragraph is grounds for terminating the contract.

Additionally, the bill requires that the corporation pay the department for the following costs:

- All costs of representation by the board's counsel, including salary, benefits and travel expenses. The board, in lieu of the department, must retain the board counsel.³³
- All costs incurred for the Division of Administrative Hearings of the Department of Management Services, and any other costs for the use of state services.³⁴
- All direct and indirect costs associated with monitoring the contract.³⁵

The provisions from the bill are substantively comparable to the provisions of the Florida Engineers Management Corporation Act, s. 471.038, F.S. However, s. 471.038, F.S., does not:

- Have a five member board. The Florida Engineers Management Corporation has a seven member board.
- Define the term "performance standards and measurable outcomes."
- Require a needs assessment as a requisite to privatization.

³² Section 455.32(13), F.S.

³³ Section 455.32(14)(j), F.S.

³⁴ Section 455.32(14)(k), F.S.

³⁵ Section 455.32(14)(l), F.S.

- Provide that the corporation's staff may be considered state employees or state officers for the purposes of part III of ch. 112, F.S.
- Require department approval of the corporation's bylaws and articles of incorporation.
- Require the corporation to keep financial and statistical information as necessary to disclose the financial condition and operation of the corporation.
- Provide for quarterly assessments of the corporation's compliance with the contract.
- Explicitly require the corporation to comply with the performance standards and measurable data developed by the corporation and department.

Section 2. The bill amends s. 455.2177, F.S., to delete the DBPR's authority to privatize continuing education monitoring, including the provisions in subsection (2) that establish detailed requirements governing private providers of such monitoring. The bill also deletes the administrative fine limitations for failure to satisfy a continuing education requirement. The bill provides that the department may refuse a licensee's renewal until all applicable continuing education requirements have been satisfied, and provides that the department is not precluded from imposing additional penalties authorized under the applicable practice act or rules of each profession.

The committee substitute continues to require the department to waive the continuing education requirement in s. 455.2177(4), F.S., for any profession that demonstrates that it has a program in place that measures compliance with continuing education requirements through statistical sampling techniques or other methods and can indicate that at least 95 percent of its licensees are in compliance. Additionally, the bill permits the department to waive the monitoring system requirement if the system places an undue burden on the profession. The bill does not establish standards by which to measure whether the monitoring system places an undue burden on the profession.

Section 3. The bill amends s. 455.2178, F.S., to delete the requirements relating to vendors who monitor continuing education under s. 455.2177, F.S. This amendment conforms the provisions of this section to the amendments to s. 455.2177, F.S., which deletes the DBPR's authority to privatize continuing education monitoring.

The bill extends from five days to 30 calendar days the providers deadline for electronically submitting to the department information about a licensee's completion of a course. If the licensee's renewal date is within 30 days of the course completion, the information must be submitted to the department before the renewal date. The bill provides that these reporting requirements do not apply if the monitoring requirement is waived pursuant to s. 455.2177, F.S.

In addition to its current authority to revoke its approval of a continuing education provider, the bill amends s. 455.2178(4), F.S., to authorize a fine or suspension and deletes the authority to "immediately" revoke the approval of the provider for failure to comply with its duties under this section. The bill limits the fine that may be imposed to \$500, and requires that investigations and prosecutions of violations must be conducted pursuant to s. 455.225, F.S., which provides the procedures for disciplinary proceedings for each board shall be within the jurisdiction of the department.

Section 4. The bill amends s. 455.2179, F.S., to provide for department approval of continuing education courses. The bill also deletes the provision in s. 455.2179(1), F.S. that provides that an approval of a continuing education provider without a four-year time limitation may remain in effect until July 1, 2001, unless earlier replaced by an approval that includes such a time limitation. In its place the bill provides that the approval may remain in effect pursuant to the applicable limitation in the practice act or rules of the profession.

The bill limits the fine for failure to provide appropriate continuing education services that conform to the approved course material to \$500. The bill also requires that investigations and prosecutions of violations must be conducted pursuant to s. 455.225, F.S.

The bill provides that postlicensure continuing education courses are subject to the reporting, monitoring, and compliance requirements of this section and ss. 455.2177 and 455.2178, F.S.

Section 5. The bill amends s. 455.2281, F.S., to delete the requirement that the department credit to each profession revenues received from fines collected under s. 455.2177, F.S.

Section 6. Deletes obsolete language.

Section 7. This bill would take effect on July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

On page 13, lines 3 through 16, the bill provides that three public records exemptions that currently apply to the department or a board “. . . shall apply to records held by the corporation.”³⁶ If the intent is to ensure that these confidential and exempt records retain their confidential and exempt status when in the hands of a corporation, it would be clearer to state that a record that is confidential and exempt pursuant to ss. 455.217, 455.225, and 455.229, F.S., retains its confidential and exempt status when held by a corporation and that a corporation that receives such information must maintain the confidential and exempt status of that information.

If the intention of the provision is to include other records of the corporation in the exemption, or to exempt meetings of the corporation, that could be considered an expansion of the exemption. An expansion of an exemption should be created in a separate bill to meet the requirements of Article I, s. 24 of the State Constitution.

³⁶ Section 455.217, F.S., creates a public meetings exemption for the department, the board, or commission, for the purpose of creating or reviewing licensure examination questions. Section 455.225, F.S., creates an exemption in the department for a report of a case that is dismissed prior to a finding of probable cause. Section 455.229, F.S., makes confidential and exempt certain financial, medical and other information required by the department and explicitly permits only the department, a board, or staff of same to have access to such information.

The bill reiterates that the department and the board “. . . shall have access to all records of the corporation *as necessary to exercise their authority to approve and supervise the contract.*” The records of the corporation, however, are explicitly stated to be public records on page 13, lines 3-5. Stating that the department and board may have access *as necessary to exercise their authority to approve and supervise the contract* appears to be a limitation on access as it states a narrower basis for access than what is authorized under the State Constitution. This provision, however, will not actually limit access as it is not created as an exemption. It should be also noted that the Auditor General and the OPPAGA already have access to confidential and exempt information in the performance of their duties and that reiteration of that authority is unnecessary.

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:

According to the department, the fiscal impact of privatization can only be determined when the privatization of a particular profession is proposed. The OPPAGA study of the Florida Engineers Management Corporation determined that regulatory costs may increase initially due to the economies of scale for the board that chooses to privatize and for the remaining boards within the department. However, OPPAGA also found that regulatory costs may stabilize after the first year.³⁷

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

Expanded definition of “board.” - The bill defines “board” to mean any board, commission, or council created within the department pursuant to ch. 20, F.S. This definition is considerably broader than the definition for board in s. 455.01(1), F.S. Section 455.01(1), F.S., defines “board” to mean:

³⁷ OPPAGA, *Florida Engineers Management Corporation Performs Well, But Department Of Business And Professional Regulation Has Not Implemented Privatization Recommendations*, Report NO. 02-38, June 2002.

. . . any board or commission or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the department, including the Florida Real Estate Commission; except that, for ss. 455.201-455.245, “board” means only a board, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the Division of Certified Public Accounting, the Division of Professions, or the Division of Real Estate.

It isn’t clear why this expanded definition is necessary, particularly in the case of councils. Councils are advisory bodies only and, as such, do not perform the types of executive functions that may be performed by boards and commissions.

Section 20.03(7), F.S., defines “council” or “advisory council” to mean

. . . an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.

Section 20.03(10), F.S., defines “commission” to mean

. . . unless otherwise required by the State Constitution . . . a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and exercising limited quasi-legislative or quasi-judicial powers, or both, independently of the head of the department or the Governor.

Section 20.03(12), F.S., defines “board of trustees” to mean

. . . except with reference to the board created in chapter 253, means a board created by specific statutory enactment and appointed to function adjunctively to a department, the Governor, or the Executive Office of the Governor to administer public property or a public program.

Corporate powers. - The bill states that the corporation has specific powers. For example, on page 4, line 29, the bill states “. . . [a]ny such corporation may hire staff as necessary to carry out its functions.” Further, on page 8, line 27, “. . . [t]he corporation may acquire by lease, and maintain, use, and operate, any real or personal property necessary to perform the duties provided by the contract and this section. As the bill provides that corporation must be a Florida nonprofit corporation, ch. 617, F.S., already establishes the powers of a nonprofit corporation. Reiterating corporate powers that are generally provided is unnecessary and could appear to limit the corporation’s powers because “the specific controls the general” and, by specifically stating which powers the corporation is granted, it could appear that this section is a limitation on ch. 617, F.S. It is generally preferable to designate those general corporate powers that the Legislature *does not want* the corporation to exercise instead of restating those that it already has.

VIII. Amendments:

None.

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