HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 851 w/CS Regulation of Professions under the Department of Business and Professional Regulation
SPONSOR(S): Goodlette
TIED BILLS: **IDEN./SIM. BILLS:** SB 2026

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation	35 Y, 0 N w/CS	Livingston	Liepshutz
2) State Administration			
3) Finance & Tax			
4) Appropriations			
5)			

SUMMARY ANALYSIS

Currently, the Department of Business and Professional Regulation (DBPR) is statutorily required to establish a system to monitor licensee compliance with the applicable continuing education requirements and to determine each licensee's status. The compliance monitoring system may be privatized, and detailed requirements governing private providers of continuing education monitoring are specified in statute.

The bill removes statutory authority for the privatization of monitoring services to determine compliance with continuing education requirements by practitioners of the various professions. These functions would only be performed by the DBPR and would not be contracted out to private sources.

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 with outside vendors to provide operational support services for that board. The Act statutorily specifies provisions relating to the contents of the contract. Presently, the privatized services under the DBPR have been implemented for the Board of Professional Engineers and the Board of Architecture and Interior Design. Responsibilities include matters relating to receiving complaints, investigations, discipline, prosecution, and unlicensed activity.

The bill substantially rewrites the Management Privatization Act. The rewrite provides that a corporation providing support services to a board must: be a not for profit Florida corporation; have its articles of incorporation and bylaws approved by the DBPR; create a five member board of directors; operate under a written contract with the DBPR; provide a performance bond; record and report financial and statistical information; maintain the board's records; establish procedures to resolve issues relating to noncompliance of the contract; maintain liability insurance; and assume and pay for specified operational costs.

The bill requires a business case for the corporation with projected costs for the first two years. The bill authorizes the corporation to initiate disciplinary investigations, and authorizes the DBPR to delegate to the corporation the authority to issue emergency suspension or restriction orders.

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 participating boards.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[X]	N/A[]
2. Lower taxes?	Yes[]	No[X]	N/A[]
3. Expand individual freedom?	Yes[]	No[]	N/A[X]
4. Increase personal responsibility?	Yes[]	No[]	N/A[X]
5. Empower families?	Yes[]	No[]	N/A[X]

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

1. Reduce government - This program when adopted by the DBPR and appropriate boards 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 a particular 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.

2. Lower taxes - The bill creates two new penalties both in the amount not to exceed $500 per violation. The new fines would apply to violations by a continuing education provider of statutory duties and failure to provide appropriate continuing education services to licensed professionals.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 455, F.S., provides general powers for the regulation of the areas of jurisdiction under the DBPR.

Section 455.2177, F.S., requires the DBPR to establish a system to monitor licensee compliance with the applicable continuing education requirements. 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(4), F.S., requires that the DBPR 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.

Section 455.2179, F.S., requires each board, or the DBPR if there is no board, to approve providers of continuing education. This provision does not provide for DBPR approval of continuing education courses.

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 operational 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 for services, supervisory responsibilities, appropriation processes, and reporting responsibilities.

Also among these powers is the authority to enforce unlicensed activity provisions pursuant to ss. 455.228 and 455.2281, F.S. Programs of the 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.

Presently, privatized services under the DBPR have been implemented 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.

Additionally, specified responsibilities of the DBPR have been delegated to the Board of Architecture and Interior Design pursuant to s. 481.205, F.S. The responsibilities include matters relating to receiving complaints, investigations, discipline, prosecution, and unlicensed activity of architects and interior designers.

Section 481,205, F.S., 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 entity contracting to provide these services must report to the board rather than the DBPR.

This section 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.

There are several types of privatization programs 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.” The report further states, “…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 identified by OPPAGA that relate 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.

Effect of Proposed Changes

Continuing Education

This bill addresses several aspects of continuing education requirements in chapter 455, F.S. The bill amends s. 455.2177, F.S., to remove 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 removes the administrative fine limitations for failure to satisfy a continuing education requirement by a licensed professional. The bill provides that the DBPR may refuse a licensee's renewal until all applicable continuing education requirements have been satisfied, and provides that the DBPR is not precluded from imposing additional penalties authorized under the applicable practice act or rules of each profession.

The bill removes the requirement in s. 455.2177(4), F.S., that the DBPR 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 and can indicate that at least 95% of its licensees are in compliance. In its place, the bill provides that the DBPR may waive the monitoring system requirement if the system places an undue burden on the profession.

Management Privatization Act

The bill substantially rewrites the provisions of the Management Privatization Act. The bill provides that, at the request of any board, a nonprofit corporation (corporation) may be established to provide administrative, investigative, and prosecutorial services to any board under the DBPR.

The bill requires that a board's privatization request contain a business case, to include a needs assessment, financial feasibility study and a corporate financial model with specific performance standards and measurable outcomes. The feasibility study must evaluate the DBPR's current and projected performance 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 bill requires the corporation to be a Florida corporation not for profit incorporated under chapter 617, F.S. 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. The DBPR must approve the corporation and the DBPR must approve the corporation's articles of incorporation and bylaws. The bill requires that the corporation have a five member board of directors with three of the directors being appointed by the board and must be licensees regulated by that board. It requires two of the directors to be appointed by the Secretary of DBPR and must be laypersons not regulated by that board. The corporation is authorized but not required by the bill to select a president of the corporation to manage the operations of the corporation.

Additional requirements of the bill specify: the corporation must operate under a written contract with the DBPR; the corporation must provide a performance bond; and the corporation must keep financial and statistical information, as necessary, to disclose the financial condition and operation of the corporation.

Section 455.32(6)(o), F.S., requires similar reporting requirements as are in the current Act, which require that the corporation provide the DBPR with a report of its activities on or before October 1 of each year.

The DBPR 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 DBPR 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)(i), F.S., of the bill requires that the corporation must secure and maintain liability insurance coverage in an amount approved by the DBPR. A violation of this paragraph is grounds for terminating the contract.

The bill requires that the corporation pay costs for representation by the board's counsel, including salary, benefits and travel expenses. The board rather than the DBPR must retain the board counsel. Costs incurred for the Division of Administrative Hearings of the Department of Management Services must be paid by the corporation and any other costs for the use of state services. All direct and indirect costs associated with monitoring the contract must also be paid by the corporation.

C. SECTION DIRECTORY:

Section 1. Amends s. 455.32, F.S., to substantially rewrite the provisions of the Management Privatization Act.

Section 2. Amends s. 455.2177, F.S., to delete the authority to outsource continuing education compliance monitoring services to private entities.

Section 3. Amends s. 455.2178, F.S., to further specify that the DBPR provide continuing education monitoring services rather than privatize this function.

Section 4. Amends s. 455.2179, F.S., to further address continuing education providers and courses.

Section 5. Amends s. 455.2281, F.S., to delete the authority to deposit fine revenues received from violations of continuing education requirements into the unlicensed activity account.

Section 6. Amends s. 481.205, F.S., relating to the Board of Architecture and Interior Design, to delete an outdated reference privatizing architectural services by October 1, 2000.

Section 7. Effective date - July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The DBPR does not project a fiscal impact on state government. The DBPR explains , "The fiscal impact of this legislation can only be determined based on the business case for each profession when a proposal for privatization is reviewed."

2. Expenditures:

   The DBPR does not project a fiscal impact on state government. The DBPR explains , "The fiscal impact of this legislation can only be determined based on the business case for each profession when a proposal for privatization is reviewed."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None anticipated.

2. Expenditures:

   None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

As noted in I. B. above: The disadvantages of privatization noted in the referenced 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 assess whether it is appropriate to privatize the service and whether there is reason to believe that privatization will save money or improve services.

D. FISCAL COMMENTS:

This privatization program 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 a particular 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 appear to have an appropriations impact relating to unlicensed activity. The bill deletes the authority of the DBPR to allocate from the unlicensed activity account of any profession an amount up to two dollars per licensee for the monitoring of that profession's licensees relating to unlicensed activity.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None noted.

2. Other:

   None noted.

B. RULE-MAKING AUTHORITY:

The bill requires that an appropriate board operating under the provisions of the Management Privatization Act adopt "by rule the procedures the corporation must follow to ensure that all licensure examinations are secure while under the responsibility of the corporation and that there is an appropriate level of monitoring during the licensure examinations."

C. DRAFTING ISSUES OR OTHER COMMENTS:

NA

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The CS:

Makes several clarifying and technical changes.

Requires a more extensive business case.

Requires the business case to be presented to the Executive office of the Governor and Legislative Budget Commission for approval.

States the legislature has the ability to require additional performance measures prior to approving a business case.

States the Auditor General and OPPAGA may review the records and operation of the corporation.