

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) <u>Business Regulation</u>	<u>35 Y, 0 N w/CS</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>State Administration</u>	<u></u>	<u>Brazzell</u>	<u>Everhart</u>
3) <u>Finance & Tax</u>	<u></u>	<u></u>	<u></u>
4) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill removes statutory authority for the Department of Business and Professional Regulation (DBPR) to contract out the monitoring of professional licensees' compliance with applicable continuing education requirements. The bill also removes the administrative fine limitations for a licensee's failure to satisfy a continuing education requirement. The bill amends the criteria for the DBPR's waiver of the requirement for a profession to have a continuing education monitoring system, instead allowing the DBPR to waive the requirement if that system places an "undue burden" on the profession.

The bill also substantially rewrites the existing Management Privatization Act, which provides a framework for professional boards to contract for administrative, investigative, examination, licensing, and prosecutorial support services. It requires the submission of a business case and financial analyses about the proposed contracting arrangement. It requires that the contractor be a non-profit corporation and provides criteria that contractors must meet. It also requires the inclusion of a larger number of contract provisions in the contract between the DBPR and the corporation.

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.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: March 29, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

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

B. EFFECT OF PROPOSED CHANGES:

Professional Regulation

Chapter 455, F.S., provides general powers for the regulation of the areas of jurisdiction under the Department of Business and Professional Regulation (DBPR). The DBPR exercises regulatory oversight of numerous businesses and professions in the state. Professional boards whose members are appointed by the Governor and which are established in law exercise regulatory or rulemaking functions regarding their individual professions.

The DBPR is funded by fees collected from the various professions and businesses that are regulated. The law establishes the Professional Regulation Trust Fund as the depository for all professional regulation fees and the source for paying all costs associated with regulating each profession.

Continuing Education Monitoring

Background:

Section 455.2177, F.S., requires the DBPR to establish a system to monitor licensee compliance with 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 compliance monitoring.

Section 455.2177(4), F.S., requires that the DBPR waive the continuing education monitoring system 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.

Proposed changes:

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. The bill also removes the specific administrative fines for failure to satisfy a continuing

education requirement by a licensed professional but provides that the DBPR is not precluded from imposing additional penalties authorized under the applicable practice act or rules of each profession. The bill provides that the DBPR may refuse a licensee's renewal until all applicable continuing education requirements have been satisfied.

The bill removes the requirement in s. 455.2177(4), F.S., that the DBPR waive the continuing education monitoring system 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. 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.

Privatization of Professional Boards

Background:

Currently, s. 455.32, F.S., is cited as the "Management Privatization Act" (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 support services for that board to a "corporation or other business entity." The act requires that such contracts shall provide, at a minimum, that:

- The contract between the corporation and the DBPR must be approved by the specific board.
- The corporation maintain certain statistical and financial information.
- The corporation submit an annual budget for the DBPR and board's approval.
- The corporation report certain statutorily-required information on or before October 1 of each year.
- The board's executive director supervise the corporation's activities.
- The corporation provide for an annual audit.
- The board and the DBPR annually certify the corporation's compliance with contract terms.
- The corporation may enter into other contracts as necessary.
- The corporation may acquire by lease and may use real or personal property as necessary.
- Corporation records are public records and must comply with certain requirements.
- The DBPR may resume the activities performed by the corporation under certain conditions and that certain items shall revert to the DBPR in that instance.

The DBPR and boards' ability to delegate functions is limited by the act as follows:

- The DBPR shall "retain responsibility for any duties it currently exercises relating to its policy powers and any other current duty that is not provided to the corporation by the contract."
- The corporation may not exercise any authority assigned to the DBPR or board under the act or the profession's practice act, 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.
- The DBPR shall retain independent authority to pursue cases or complaints as necessary to protect the public.
- The DBPR shall have sole authority to issue emergency suspension or restriction orders and to prosecute unlicensed activity cases in accordance with law.

The act is repealed on October 1, 2005, and shall be reviewed by the Legislature prior to that date.

Privatized services under the DBPR have been implemented for the Board of Professional Engineers (BPE). Prior to the passage of the act, s. 471.038, F.S., created the Florida Engineers Management Corporation (FEMC) in 1997 as a private non-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., including those relating to complaints, investigations, discipline, prosecution, and unlicensed activity. Section 481.205, F.S., requires the board rather than the DBPR (as the Management Privatization Act provides) to contract with a corporation or other business entity to provide investigative, legal counsel, and prosecutorial services.

Proposed changes:

The bill substantially rewrites the provisions of the Management Privatization Act. The rewrite addresses many of the provisions in the current act and incorporates new provisions. Key differences between the current act and the bill are:

- A board's privatization request must contain a business case including a needs assessment, financial feasibility study, and a corporate financial model with specific performance standards and measurable outcomes. Documents must evaluate the DBPR's current and projected performance standards related to the specific profession; they must also include projected costs and expenses for the proposed corporation's first two years of operation and proposed performance standards and measurable outcomes for the corporation.
- The DBPR may only contract with a nonprofit corporation (corporation) 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, and the DBPR must approve the corporation's articles of incorporation and bylaws.
- The corporation must have a five member board of directors. Three members, appointed by the board, must be licensees regulated by that board; two members, appointed by the Secretary of DBPR, must be laypersons not regulated by that board.
- The corporation may hire staff that are not state employees but are subject to certain provisions of law applying to state employees.
- The corporation must provide a performance bond and maintain liability insurance coverage in an amount approved by the DBPR.
- The corporation is required to use the DBPR's licensing and computerized database system.
- The DBPR is to make quarterly assessments of the corporation's compliance with the contract.
- The corporation must pay costs for representation by the board's counsel, including salary, benefits and travel expenses, and 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 in addition to 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.
- The corporation is the sole source and depository for the board's records.
- The corporation is to comply with performance standards and measurable outcomes, which must be specified in the contract.

Regarding key changes which DBPR and board functions the corporation may assume, the act specifically states that the corporation may pursue investigations leading to unlicensed practice complaints with the approval and at the direction of the relevant professional board. The corporation may also make a determination of legal sufficiency to begin the investigative process as provided in s. 455.225, F.S., a power that is non-delegable under the current act.

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. Provides an effective date of 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. According to DBPR staff, "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. According to DBPR staff, "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: Should additional boards and the DBPR choose to contract out those boards' investigative, examination, licensing, and prosecutorial support services, there will be an increase in purchases of services from newly-created nonprofit organizations.

D. FISCAL COMMENTS:

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. This fee is currently provided by law as the exclusive source of funding for contracts for the privatized compliance monitoring system.

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: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

HB 851 was amended by the Committee on Business Regulation on March 24, 2004. This amendment:

- 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.
- Provides that the Legislature has the ability to require additional performance measures prior to approving a business case.
- Provides that the Auditor General and OPPAGA may review the records and operation of the corporation.

This bill was reported favorably with a committee substitute.