

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 253 CS
Professional Regulation

Professions Regulated by the Department of Business and

SPONSOR(S): Littlefield

TIED BILLS:

IDEN./SIM. BILLS: SB 1012

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	<u>16 Y, 0 N, w/CS</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>State Administration Appropriations Committee</u>	<u></u>	<u>Rayman</u>	<u>Belcher</u>
3) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The statutorily specified general powers of the Department of Business and Professional Regulation (DBPR) allow a license holder to maintain the license in active or inactive status. A licensee is required to biennially renew an active license, as well as, an inactive license. Failure to renew before the expiration of the term of the license causes the licensee to be in delinquent status. If the licensee further fails to renew the status of the license as active or inactive before the expiration of the current licensure cycle, the license becomes null by operation of law. A person whose license has been nullified is required to meet all prerequisites for an initial license if subsequent licensure is desired.

Current law allows for reinstatement of a license that has become null and void under certain circumstances for a certified public accountant or a surveyor or mapper.

The bill provides each professional board within the DBPR, or the DBPR if there is no professional board, with the discretion to reinstate the license of an individual whose license has become void. The individual must have made a good faith effort to comply with licensure requirements, but failed to comply due to illness or unusual hardship. The bill excludes CPAs, as the Board of Accountancy currently has the authority to reinstate a license that has become void.

A positive fiscal impact to the DBPR is anticipated in an amount not to exceed the applicable license fees and the biennial payment of renewal fees.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present situation

Current regulation of professions is carried out, in part, by licensing practitioners by the DBPR. Each profession is administered either directly by the DBPR or through a separately appointed board, council, or a commission. Regulation is intended to protect the public by ensuring that licensed professionals meet prescribed standards of education, competency, and practice.

Chapter 455, F.S., provides general powers for the regulation of the areas of jurisdiction under the DBPR. Section 455.271, F.S., allows a licensee to maintain a license in active or inactive status. A licensee is required to biennially renew an active license, as well as, an inactive license. Failure to renew before the expiration of the term of the license causes the licensee to be in delinquent status. If the licensee further fails to renew the status of the license as active or inactive before the expiration of the current licensure cycle, the license becomes null by operation of law. A person whose license has been nullified is required to meet all prerequisites for an initial license if subsequent licensure is desired. These provisions do not apply to real estate licensees or to harbor pilots pursuant to exemptions provided in this section.

Chapter 472, F.S., requires the Board of Professional Surveyors and Mappers, under the DBPR, to license, regulate and discipline surveyors and mappers. Requirements for licensure include good moral character, a degree in surveying and mapping, experience as a subordinate to a registered surveyor and mapper, successful passage of an examination, and payment of applicable fees. Exemptions from licensure are specified in s. 472.003, F.S., to include certain government employees and certain contractors in specified lines of work, among others.

During the 2004 legislative session HB 1457 was passed into law. The provisions of the act were not codified in the statutes but remain in effect as chapter 2004-92, Laws of Florida. The act is scheduled to self-expire by its own provisions on July 1, 2005. The act provides that the DBPR reinstate the license of a surveyor or mapper when the license has become null if specified circumstances and qualifications are complied with. The applicant for reinstatement must pay an application fee in an amount equal to the fee paid by an applicant for new licensure.

The following statutory requirements must also be met: the license of the individual was scheduled to be renewed during the biennium period beginning in 2001; the license of the individual was in good standing at the time of the beginning of the renewal cycle; the individual properly petitioned the DBPR for relief relating to the circumstances under which the license became null; and no felony or practice act or unlicensed activity penalties have been imposed upon the individual for violations occurring during the period the license was null.

Chapter 473, F.S., provides for the regulation of CPAs under the jurisdiction of the Board of Accountancy within the DBPR, Division of Certified Public Accountants. Qualifications for licensure include meeting the requirements for good moral character, formal education, and successful completion of the licensure examination.

Currently, section 473.313, F.S., gives the Board of Accountancy, the discretion, notwithstanding the provisions of s. 455.271, F.S., to reinstate the license of a person whose license has become null if the person has made a good-faith effort to comply with licensure renewal provisions but has failed to

comply because of illness or unusual hardship. The board is authorized to establish by rule the procedure for applying for reinstatement and an application fee.

Effect of proposed changes

The bill provides each professional board and the DBPR, if there is no board, with the discretionary authority to reinstate and reactivate a license that has become void. The bill requires the former practitioner to attempt to comply with the statutory requirements for maintaining a license in inactive status but creates an exemption from the inactive status requirements if the failure to comply is a result of illness or unusual hardship.

The individual must apply to the board, or the department if there is no board, for reinstatement in a manner prescribed by rules of the board or the department and pay an applicable fee in an amount determined by rule. The individual must meet continuing education requirements prescribed by the appropriate practice act, pay appropriate licensing fees, and otherwise be eligible for renewal of a license.

The bill specifically excludes CPAs from the provisions of the bill. The Board of Accountancy currently has the authority to reinstate a license that has become void.

C. SECTION DIRECTORY:

Section 1. Amends s. 455.271, F.S., to provide a system for the reinstatement of a license that has become null and to provide for compliance criteria.

Section 2. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DBPR will have positive fiscal impact of the license fees and the biennial payment of renewal fees.

2. Expenditures:

Expected expenditures by DBPR will be the costs of processing an application for reinstatement and should be absorbed as a part of current funding and staffing levels.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None anticipated.

2. Expenditures:

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A licensed practitioner in a particular profession will be able to retain a license notwithstanding adverse circumstances such as illness or unusual hardship.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

NA

B. RULE-MAKING AUTHORITY:

The bill specifically provides "The individual must apply to the board, or the department if there is no board, for reinstatement in a manner prescribed by rules of the board or the department, as applicable, and shall pay an applicable fee in an amount determined by rule."

C. DRAFTING ISSUES OR OTHER COMMENTS:

The CS incorporates amendment language adopted by the Business Regulation Committee on February 22, 2005, to specify, in part, "This subsection does not apply to individuals licensed under chapter 473." Committee staff notes that reference to individuals "licensed" under chapter 473 may be confusing. The person applying for reinstatement of the license due to illness or undue hardship would no longer be licensed and the license would be null and void (thus no longer exist).

The Director of Governmental Affairs of the Florida Institute of Certified Public Accountants points out that s. 473.313, F.S., (chapter 473 is the public accounting licensure statute), provides under the hardship provision "the board may reinstate the license of an individual whose license has become null and void..." The Director states "this would lead me to believe that Chapter 473 considers 'null and void' to be a status of a license." The DBPR licensing portal shows a license number for those individuals with a "null and void" licenses.

The Director also indicated that a representative of the Board of Accountancy "indicated that he believes someone with a 'null and void' license still has a license under chapter 473."

Counsel for the DBPR concurs with this assessment.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The CS differs from the original bill as follows:

Corrects an inadvertent reference to "this section" and corrects the reference to "this chapter."

Specifies that the subsection created in the bill does not apply to public accountants licensed pursuant to chapter 473, F.S.