

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 873 CS

Talent Agencies and Advance-Fee Talent Services

SPONSOR(S): Legg

TIED BILLS:

IDEN./SIM. BILLS: SB 750

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	<u>13 Y, 3 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

Under s. 468.401, F.S., a "talent agency" is defined as "any person who, for compensation, engages in the occupation or business of procuring or attempting to procure engagements for an artist." An "artist" is defined as a "person performing on the professional stage or in the production of television, radio, or motion pictures; a musician or group of musicians; or a model."

Talent agencies are regulated by the Department of Business and Professional Regulation (DBPR). This regulation is of an industry, not a profession. There is no required testing for licensure, no continuing education requirement, and no professional regulatory board.

The bill eliminates the licensure and regulatory requirements for talent agencies. The DBPR would no longer have licensure enforcement authority; however, criminal violations will still be handled by the State Attorney's Office. Additionally, individuals will maintain the ability to seek civil action through the court system.

The bill also includes remedies against providers of advance fee talent services, to include a second-degree felony. The bill defines these services to include a person who provides specified career oriented development, assistance, or promotion and fees are charged to an artist or an aspiring artist for the services.

The bill will eliminate talent agencies program revenues and expenditures in the Professional Regulation Trust Fund at DBPR. However, due to the cash deficit in the program, the bill requires an appropriation of \$59,331 from the General Revenue Fund to make pro rata refunds to registrants. The Criminal Justice Estimating Conference estimates the bill will have an insignificant state prison bed impact as a result of the penalties added in the bill.

The bill provides an effective date of July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government-
Ensure lower taxes-
Safeguard individual liberty-
Promote personal responsibility-

The bill repeals the current regulatory provisions of part VII of chapter 468, F.S., and effectively rewrites the provisions with additions, deletions, and modifications to include statutory operational guidelines for talent agencies and creates new statutory operational guideline requirements for advance-fee talent services.

The bill eliminates the licensure and regulatory requirements for talent agencies. The DBPR would no longer have licensure enforcement authority; however, criminal violations could still be handled by the State Attorney's Office for talent agencies and advance-fee talent services. Additionally, individuals maintain the ability to seek civil action through the court system.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

"Theatrical employment agencies" were regulated by the state from 1947-1980; however, under the Regulatory Reform Act of 1976, chapter 449, F.S., was set for repeal on July 1, 1980. During the 1980 legislative session, legislation was introduced in the House and Senate to continue regulation of the industry, but the Legislature failed to adopt the legislation, thereby allowing regulation of these agencies to stand repealed effective July 1, 1980.

Each year, from 1981-1984, legislation providing for regulation of Talent, Modeling, or Theatrical Agencies within the Department of State failed passage. In 1985 and 1986, legislation was introduced placing regulation of Talent and Theatrical Agencies within the Department of Professional Regulation. Finally, in 1986, legislation was adopted and approved by the Governor reestablishing regulation of Talent and Theatrical Agencies within the Department of Professional Regulation (ch. 86-292, Laws of Florida).

Under s. 468.401, F.S., a "talent agency" is defined as "any person who, for compensation, engages in the occupation or business of procuring or attempting to procure engagements for an artist." An "artist" is defined as a "person performing on the professional stage or in the production of television, radio, or motion pictures; a musician or group of musicians; or a model."

Talent agencies are currently regulated by the DBPR. The DBPR is responsible for issuing and revoking licenses, taking disciplinary action against an agency for specific violations, establishing application, license, and registration fees, and promulgating rules for implementation of the law. This regulation is of an industry, not a profession. There is no required testing for licensure, no continuing education requirement, and no professional regulatory board.

Requirements for licensure include a \$5,000 surety bond; \$300 application fee; and biennial fees for initial licensing, renewal of license, and reinstatement of license, none of which fees may exceed \$400. In addition, the owner of a talent agency must submit: a set of fingerprints; a photograph taken within the last two years; proof of one year of direct experience in the industry; disclose parties with financial interests in the agency; and supply affidavits from at least five reputable persons attesting to the moral character of the applicant. The applicant cannot be a convicted felon.

Despite the application and renewal fees, the DBPR has been operating on a cash deficit from the inception of talent agency regulation. The licensure fees are at their statutory cap, and the DBPR has identified that a significant special assessment is necessary to bring the regulation of talent agents into compliance with s. 455.219(1) and (2), F.S., relating to the establishment of the appropriate level of fees and trust fund deficits.

Effect of proposed changes

The bill repeals the current provisions of part VII of chapter 468, F.S., and effectively rewrites the provisions with additions, deletions, and modifications to include statutory operational guidelines for talent agencies and advance-fee talent services. The bill does not recreate specific statutory sections but creates unnumbered sections to be cited by the Division of Statutory Revision when codified in the statutes if passed into law.

The bill eliminates the licensure and regulatory requirements for talent agencies. The DBPR would no longer have licensure enforcement authority; however, criminal violations will still be handled by the State Attorney's Office for talent agencies and advance-fee talent services. Additionally, individuals maintain the ability to seek civil action through the court system.

The provisions of the bill recreates and revises definitions, a bond, records, fees charged to clients, contract requirements, permanent office location requirements, prohibited acts, such as making false statements or charging unlawful fees, sexual misconduct, and penalties, among others.

C. SECTION DIRECTORY:

Section 1. Repeals part VII of chapter 468, F.S.; deregulates regulatory duties of the DBPR.

Section 2. Recreates and revises definitions and includes advance-fee talent services.

Section 3. Readdresses bonding requirements.

Section 4. Recreates office location and records requirements with changes.

Section 5. Addresses contracts and fee payments that may be charged.

Section 6. Recreates and expands the list of activities that constitute a violation of law, imposes specific penalties and removes the DBPR from responsibility for policing the industry.

Section 7. Specifies that a state attorney maintains jurisdiction over talent agencies and advance-fee talent services; provides for civil actions.

Section 8. Removes regulatory functions of the DBPR and transfers unused regulatory funds, if any due to the deficit status of the current operational fund, to the General Revenue Fund.

Section 9. States that the DBPR may continue certain legal responsibilities that are currently active.

Section 10. Effective date - July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: Loss of revenue.

REVENUE			
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
License Fees:	(127,651)	(43,351)	(127,651)
Special Assessment due May 2006	(489,600)	0	0
Other (identify): Fines & Miscellaneous	(3,600)	(3,600)	(3,600)
TOTAL:	(620,851)	(46,951)	(131,251)

2. Expenditures: Reduction in expenditures.

EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
Recurring Effects	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
Salaries/Benefits # of positions			
Expenses	(1,500)	(1,500)	(1,500)
License Maintenance Fee	(1,404)	(1,404)	(1,404)
Subtotal	(2,904)	(2,904)	(2,904)

Non-Operating Expenditures	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
Service Charges (to General Revenue)	(45,249)	(3,354)	(9,508)
FBI Fingerprint Charges	(9,000)	(2,000)	(9,000)
Subtotal	(54,249)	(5,354)	(18,508)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

NA

2. Expenditures:

NA

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires talent agencies no longer be licensed. The DBPR reports that there are 271 licensed talent agencies. Operations of advance-fee talent service providers (and talent agencies) would be subject to statutory operational guidelines.

D. FISCAL COMMENTS:

The DBPR reports

The bill will eliminate the revenue and expenditures related to the licensing and regulation of Talent Agencies. Due to the small number of licensees (271) and the absence of a Board the direct costs are minimal. Administrative costs of the department are allocated as indirect costs to all boards and professions. Workload of the central service areas relating to talent agencies is also minimal and would not justify reduction of positions. This will result in additional costs being allocated to the other boards and professions. The account for the regulation of talent agencies, maintained in the Professional Regulation Trust Fund, is in a deficit. The bill requires a pro rated rebate of license fees paid. As funds are not available in the Talent Agency account the rebate will require the use of General Revenue funds in an estimated amount of \$59,331. The projected deficit at June 30, 2005, is \$564,793. A special assessment has been made with a due date of May 2006 to bring the account out of the deficit. If deregulation occurs the special assessment will not be collected and General Revenue will be needed to balance the trust fund.

The Criminal Justice Estimating Conference indicates the bill will have an insignificant state prison bed impact as a result of the penalties added in the bill.

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:

None noted.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires an amendment for \$59,331 from non-recurring General Revenue to provide pro rata rebates of license fees.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 17, 2005, the Business Regulation Committee took up the bill and adopted one amendment. The bill was passed out of committee as a CS. The CS differs from the original bill by adding two words "obtain or." The amended sentence would then read, in part, If a person fails to obtain or maintain a bond according to this section,....