

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Governmental Operations Committee

BILL: CS/SB 2398

INTRODUCER: Regulated Industries Committee and Senator Posey

SUBJECT: Department of Business and Professional Regulation

DATE: April 9, 2007

REVISED: 04/12/07

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>McKay</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
3.	<u> </u>	<u> </u>	<u>GA</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

The bill makes changes to the different statutory provisions for professions regulated by the Department of Business and Professional Regulation (DBPR). It provides that:

- The department may refuse to issue, renew or revoke the certificate of a farm labor contractor who has been convicted of certain crimes;
- The department is authorized to contract to collect electronic fingerprinting when fingerprints or a criminal history is required;
- Continuing education providers must report continuing education credits electronically within 10 days of course completion;
- Real Estate Licensees are allowed to attend Florida Real Estate Commission (FREC) disciplinary case sessions for continuing education credit;
- The Division of Real Estate may grant a 6-month extension after the second renewal cycle or the effective date of the law for non-medical hardships;
- Licensed contractors must complete one hour of laws and rules;
- The Construction Industry Licensing Board (CILB) requires one hour of laws and rules education for contractors;
- The CILB may adopt rules that allow applicants demonstrate financial responsibility by providing minimum credit scores or bonds;
- Construction contractor licensure applicants must submit and pay for a complete set of fingerprints for the completion of a level 2 background check.

This bill substantially amends the following sections of the Florida Statutes: 450.31, 455.213, 455.2178, 475.182, 475.6175, and 489.115

II. Present Situation:

Farm Labor Registration

Section 450.271, F.S., provides that the department may enter into agreements with the Secretary of Labor of the United States to authorize the department to administer the Migrant and Seasonal Agricultural Worker Protection Act of 1983 within the state.

Farm labor contractors are persons who recruit, transports into or within the state, supplies, or hires at any one time in any calendar year one or more farm workers to work for, or under the direction, supervision, or control of, a third person or directs, supervises, or controls the work.¹

The department requires farm labor contractors to be registered with the department.² The department has the authority to issue, revoke, suspend and refuse to issue or renew a certificate of registration if they have committed in connection with, any farm labor contracting activities any felony under state or federal law involving robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault that inflicts grievous bodily injury, prostitution, peonage, or smuggling or harboring individuals who have entered the country illegally.³

General Licensing Provisions

Chapter 455, F.S., provides general licensing provisions for the Department of Business and Professional Regulation. The provisions of the chapter only apply to regulation by the department of professions.⁴ Section 455.213, F.S., provides for the general licensing provisions for the department. It provides for various applications and forms to be submitted to the department. Under s. 455.213, F.S., the department may allow for any submissions by a licensee be done by electronic means.

Continuing Education Providers

Under s. 455.2178(1), F.S. a continuing education provider must provide information regarding the continuing education status of a licensee in an electronic format no later than 30 calendar days after a licensee's completion of a course or prior to the licensee's renewal date, whichever occurs sooner.

Real Estate Brokers, Sales Associates, Schools, and Appraisers

Chapter 475; part I, F.S., regulates real estate brokers, sales associates, and real estate schools. The department is required to renew a license upon the receipt of the renewal application and fee.⁵ The renewal application is required to show proof satisfactory to the Real Estate

¹ Section 450.28(1), F.S.

² Section 450.30, F.S.

³ Section 450.31, F.S.

⁴ Section 455.017, F.S.

⁵ Section 475.182(1), F.S.

Commission that the applicant has satisfactory completed at least 14 classroom hours of 50 minutes each during each biennium license period as prescribed by the commission.

Currently, under s. 475.182(2), F.S., real estate licensee cannot obtain continuing education credits for attendance at a Florida Real Estate Commission (FREC) meeting.

Chapter 475, part II, F.S., regulates real estate appraisers. To be registered as a trainee appraiser, the applicant must present evidence to the Florida Real Estate Appraisers Board that he or she has successfully completed at least 100 hours of approved academic courses in:

subjects related to real estate appraisal, which shall include coverage of the Uniform Standards of Professional Appraisal Practice from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. The board may increase the required number of hours to not more than 125 hours. A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved on an hour-for-hour basis.⁶

Section 475.6175, F.S., provides that the board shall prescribe post-licensure “educational requirements in order for a person to maintain a valid registration as a registered trainee appraiser.” If the board prescribes the post-licensure educational requirements, they may not total more than the total educational hours required to qualify as a state certified residential appraiser.⁷ Section 475.6175(2), F.S., provides that the “registration of any registered trainee appraiser who does not complete the board-prescribed [post-licensure] educational requirements prior to the second renewal following initial registration is void without further administrative action.” A person whose registration is voided must retake the required education and meet the other requirements to re-qualify to be registered as a registered trainee appraiser.

Under s. 475.617(3), F.S., the Florida Real Estate Appraisal Board can grant licensees a six month extension in order to complete mandatory post licensing education. The extensions can only be granted for medical hardship.

Construction Contractors

Chapter 489, part I, F.S., governs the regulation of the construction industry. It regulates contractors who are defined as:

the person who is qualified for, and shall only be responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the subsequent paragraphs of this subsection. For the purposes of regulation under this part, “demolish”

⁶ Section 475.617(1), F.S.

⁷ Section 475.6175(1), F.S.

applies only to demolition of steel tanks over 50 feet in height; towers over 50 feet in height; other structures over 50 feet in height, other than buildings or residences over three stories tall; and buildings or residences over three stories tall.

Contractors are subdivided into two divisions, Division I and Division II. Division I are general contractors, building contractors and residential contractors. Division II are roofing contractors, class A, B and C air-conditioning contractors, mechanical contractors, commercial and residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractor, solar contractor, pollutant storage systems contractor, and specialty contractors.

Applicants for initial issuance or renewal of licensure must provide proof of financial responsibility by furnishing a nationally recognized credit report, and evidence of financial responsibility, credit, and business reputation. The Construction Industry Licensing Board is required to adopt rules “defining financial responsibility based upon the applicant's credit history, ability to be bonded, and any history of bankruptcy or assignment of receivers.” The rules are required to specify the grounds for disqualification based on lack of financial responsibility.⁸

Under s. 489.115(4)(b)1., F.S., there is no continuing education requirement on laws and rules for state licensed contractors. The Construction Industry Licensing Board (CILB) has established by rule that four hours of the 14 hours of continuing education required every two years for contractors shall include one hour each of workers compensation, business practices, workplace safety, and an advanced module approved by the Florida Building Commission.

Under s. 489.115(5)(b), F.S. there are no objective criteria currently utilized to determine the financial responsibility of contractor applicants. The CILB had previously established net worth standards for applicants by rule; however, the net worth standards were found to lack statutory authority by judicial review. Construction applicants are required to submit bank statements, credit reports, proof of satisfaction of any liens, suits or judgments, and financial statements.

III. Effect of Proposed Changes:

Farm Labor Registration

Issuance, revocation, and suspension of, and refusal to issue or renew, certificate of registration

The bill deletes language in s. 450.31(5)(b), F.S., that provided that the department can revoke or refuse to issue or renew a certificate of registration if within the preceding five years, the applicant or certificateholder committed a felony under state or federal law involving a violation of narcotics laws, murder, rape, assault with intent to kill, assault that inflicts grievous bodily injury, prostitution, peonage, or smuggling or harboring individuals who have entered the country illegally

⁸ Section 489.115(5)(b), F.S.

The bill creates s. 450.31(6), F.S., to provide that the department can permanently revoke or refuse to issue or renew a certificate of registration if the applicant or certificateholder has been convicted of a violation of narcotics law, murder, rape assault with intent to kill, assault that inflicts grievous bodily injury, prostitution, peonage, smuggling, or harboring individuals who have entered the country illegally.

This language takes away the five year requirement when considering certain felony violations and allows for the department to permanently revoke a person's license if the person has been convicted of any of the listed felonies.

General Licensing

The bill amends s. 455.213(11), F.S., to provide that any required written submissions for application of licensure may also be required to be submitted electronically. It allows the department to require and contract for the collection of electronic fingerprints, where fingerprints are required as part of the application process or where criminal history record checks are required.

According to the department, electronic fingerprint processing takes 2-3 days instead of the 6-8 weeks it currently takes for finger print cards. This time saving process will allow an applicant to get licensed more quickly and go to work sooner.

Continuing Education Providers

The bill amends s. 455.2178(1), F.S., to require the continuing education provider to electronically report to the department regarding the completion of a licensee's course within 10 business days beginning on the 30th day before the renewal deadline or before the renewal date, whichever occurs sooner.

According to the department, this will double the reporting frequency from continuing education providers in the last month of the renewal cycle and will provide more timely and accurate recordkeeping for the licensee and the department.

Real Estate Brokers, Sales Associates, Schools and Appraisers

Renewal of license; continuing education

The bill creates s. 475.182(2), F.S., to provide that the real estate commission may accept one full disciplinary case session as a substitute for three classroom hours once per renewal cycle. The licensee must notify the division seven days in advance of his or her intention to attend the session and must identify the continuing education requirement to be satisfied.

The department states that this will allow an opportunity for licensees to learn more about the laws of their profession and to witness discipline cases brought before the commission.

The bill amends s. 475.6175(3), F.S., to provide that the division, rather than the board, may allow an additional 6-month period after the second renewal following initial licensure or the

effective date of the act for completing post licensure education courses for registered trainee appraisers who have not completed or cannot complete the courses, due to individual hardship. The licensee may not earn any continuing education credit for attending a legal agenda session as a party to a disciplinary action.

According to the department, this amendment helps the nearly four thousand licensed real estate appraiser trainees whose licenses went null and void due to an education requirement change in the statute that was not properly communicated to the licensees.

Construction Contractors

Certification and registration; endorsement; reciprocity; renewals; continuing education

The bill amends s. 489.115(4)(b)1., F.S., to require one hour of laws and rules education for contractors. According to the department, a rules and law requirement will bring the construction profession in line with most of the other professions regulated by the department.

It amends s. 489.115(5)(b), F.S., to allow the construction industry licensing board to adopt rules that would allow applicants to demonstrate financial responsibility, by providing minimum credit scores or bonds payable as prescribed for financially responsible officers. This would be an alternative to supplying credit history, ability to be bonded, and bankruptcy history.

It creates s. 489.115(8), F.S. to require an initial applicant to submit a complete set of fingerprints in a manner required by the department. The fingerprints must be submitted to the Department of Law Enforcement who then must forward them to the Federal Bureau of Investigation for a level 2 background check. The applicant must pay for the fingerprint processing.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the department, the vendor that processes electronic fingerprints charges an additional fee of \$14 for doing so, increasing the cost to an applicant from \$47 to \$61. The department estimates that the electronic fingerprint processing requirement would affect approximately 16,161 applicants, for a total increase in costs to those applicants of \$226,254.

C. Government Sector Impact:

According to the department, transitioning to electronic fingerprinting will eliminate the receipt of fingerprint fees by the department and the subsequent non-operating transfer to the Florida Department of Law Enforcement, because the department would contract with a private vendor to remit those fees directly to the FDLE. The department further states that changes to the continuing education requirements will require system changes which can be absorbed within current resources. The costs are non-recurring but recurring efficiencies will be gained.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the department, financial misconduct is the primary source of harm to Florida consumers by state licensed contractors. The Construction Industry Licensing Board ordered \$8,800,000 in restitution to consumers injured by state licensed contractors in 2006 alone. The Florida Homeowners Construction Recovery Fund paid injured consumers \$3,076,443 in Fiscal Year 2005-2006. The establishment of minimum credit scores and bonds as standards for the determination of financial responsibility will provide a more meaningful threshold for construction licensure. These standards will give applicants fair notice of licensure requirements and increase the efficiency application processors of the department.

Pursuant to s. 119.071(f)(g)1., F.S., biometric information, which includes fingerprints, is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
