

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 445 Department of Business and Professional Regulation  
**SPONSOR(S):** Insurance, Business & Financial Affairs Policy Committee and Bullard  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 682

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Insurance, Business & Financial Affairs Policy Committee	18 Y, 0 N, As CS	Livingston	Cooper
2)	General Government Policy Council	13 Y, 0 N	Livingston	Hamby
3)	Government Operations Appropriations Committee	(W/D)		
4)	Full Appropriations Council on General Government & Health Care	(W/D)		
5)				

**SUMMARY ANALYSIS**

Chapter 455, F.S., specifies the general powers of the Department of Business and Professional Regulation (DBPR). Each profession is administered either directly by the DBPR or through a separately appointed board, council, or commission. In addition to administering the professional boards, the DBPR processes applications for licensure and license renewal and implements an examination and testing function. This function includes developing and administering examinations, managing contracts with private testing companies, reviewing and approving continuing education courses and vendors, and overseeing compliance with continuing education requirements for licensed professions.

Section 20.165, F.S., establishes the organizational structure of the DBPR and includes the following divisions: Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Florida Land Sales, Condominiums, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; and Technology, Licensure, and Testing. This section also establishes the authority and structure of the various boards within the DBPR.

The bill adds statutory reference to the Division of Service Operations to their organizational structure in chapter 20, F.S. and other cross-references where appropriate to reflect the organizational change.

The bill clarifies the specific statutory authority of the DBPR to use professional testing services for the development, preparation, and evaluation of examinations, when such services are available and approved by the respective board.

The bill removes reference to a 3 year pilot program and establishes procedures that gives a restaurant owner the discretion, with local approval by ordinance, to allow patrons to bring their dogs onto outside patio eating areas.

Fiscal - The bill is not anticipated to have an impact on revenues or expenditures.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present situation

Chapter 455, F.S., specifies the general powers of the Department of Business and Professional Regulation (DBPR). Each profession is administered either directly by the DBPR or through a separately appointed board, council, or commission. In addition to administering the professional boards, the DBPR processes applications for licensure and license renewal.

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The "scope of work" for which licensure is required is specified in statute by definition. Each definition of the various professions is known as the "practice act" for that profession and establishes the guidelines for the individual practitioners. The DBPR issues a "certificate" to those individuals who apply, show compliance with education and experience requirements, and pass an examination for a particular scope of practice.

DBPR budget documents indicate that the function of Education and testing – "develops and administers exams, manages contracts with private testing companies, reviews and approves continuing education courses and vendors, and oversees compliance with continuing education requirements for licensed professions."

Section 20.04(7)(b), F.S., provides in part:

Within the limitations of this subsection, the head of the department may recommend the establishment of additional divisions, bureaus, sections, and subsections of the department to promote efficient and effective operation of the department.

New bureaus, sections, and subsections of departments may be initiated by a department and established as recommended by the Department of

Management Services and approved by the Executive Office of the Governor, or may be established by specific statutory enactment.

In April of 2004, correspondence was received by the DBPR which stated, in part:

“The Governor’s Office of Policy and Budget (OPB) has approved your September 15, 2003 request and October 20, 2003 subsequent request to effect organizational changes as a result of comprehensive reengineering project and **to establish the Division of Service Operations.**” [emphasis supplied]

The statutes have not been amended to reflect this change.

The Division of Hotels and Restaurants (the “Division”) of the DBPR is authorized to administer laws and rules relating to the inspection and regulation of food service establishments for the purpose of safeguarding the public health, safety and welfare. Section 509.032(7), F.S., expressly limits the general home rule powers of a local government as it relates to the regulation of such businesses.

Pursuant to its rulemaking authority, the Division has adopted the 2001 Food Code published by the U.S. Food and Drug Administration (FDA). The Food Code is a reference document that “provides practical, science-based guidance and manageable, enforceable provisions for mitigating risk factors known to cause foodborne illness.”<sup>1</sup> Section 6-501.115 of the Code generally prohibits live animals on the premises of food service establishments. “Premises” is defined to mean “[t]he physical facility, its contents, and the contiguous land or property....”<sup>2</sup> There are limited exceptions to this prohibition including those for patrol dogs accompanying police or security officers and service animals controlled by disabled persons.<sup>3</sup>

Section 509.233, F.S., provides for a three-year pilot program that allows patrons’ dogs within designated outdoor areas of food service establishments. This section grants municipalities the authority to establish a local exemption procedure, by ordinance, to current Division rules that prohibit dogs on the premises of food service establishments. Interested establishments are required to apply for and receive a permit from the governing body of their municipality. Minimum requirements for the information supplied in the application process are outlined. Municipalities are authorized to include additional regulations and limitations to protect the health, safety and general welfare of the public.

This section had an effective date of July 1, 2006, and expires on July 1, 2009, unless reenacted by the legislature.

#### Effect of proposed changes

The bill adds statutory reference to the Division of Service Operations to their organizational structure in chapter 20, F.S. and other cross-references where appropriate to reflect the statutory change.

The bill clarifies the specific statutory authority of the DBPR to use professional testing services for the development, preparation, and evaluation of examinations, when such services are available and approved by the board.

The bill removes the automatic repeal date, deletes reference to the pilot program, and reenacts the provisions of this section on an ongoing basis.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 20.165(2), F.S., to add the Division of Service Operations to the list of divisions located within the DBPR.

<sup>1</sup> See, the FDA’s introduction to the Food Code at <http://www.cfsan.fda.gov/~dms/foodcode.html>, last viewed on March 14, 2009.

<sup>2</sup> See, s. 1-201.10(b)(67) at <http://www.cfsan.fda.gov/~acrobat/fc05-1.pdf>, last viewed on March 14, 2009.

<sup>3</sup> See, s. 6-501.115 at <http://www.cfsan.fda.gov/~dms/fc01-6.html#6-5>, last viewed on March 14, 2009.

Section 2. Amends s. 455.217, F.S., to correct cross references to the Division of Service Operations and to clarify reference to using independent testing services provided by companies outside of the DBPR.

Section 3. Amends s. 509.233, F.S., to remove the automatic repeal date, deletes reference to the pilot program, and reenacts the provisions of this section on an ongoing basis relating to allowing dogs on restaurant property.

Section 4. Effective date – July 1, 2009.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The DBPR estimates no impact on revenues.

#### **2. Expenditures:**

The DBPR estimates no impact on expenditure.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None anticipated.

#### **2. Expenditures:**

None anticipated.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Not anticipated to be significant.

### **D. FISCAL COMMENTS:**

Correspondence between the Governors' Office of Policy and Budget and the DBPR states, in part:

We have reviewed the Department of Business and Professional Regulation's (DBPR) request to effect organizational changes as a result of a comprehensive reengineering project proposing to establish the Division of Service Operations. Funds were appropriated, specifically Appropriations 2320 through 2433 of Chapter 2003-397, Laws of Florida, for the Reengineering and Technology Project, for an on-line licensing system and customer contact services.

DBPR is requesting to make organizational changes that will reengineer and streamline the department by consolidating and centralizing key department functions that were previously dispersed across ten (10) divisions. Additionally, this proposal will facilitate better management of staffing resources and workload efficiencies by reducing duplicative personnel, which would include office space consolidation.

### 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.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 27, 2009, the Insurance, Business, & Financial Affairs Policy Committee took up the bill, adopted two amendments, and passed the bill by a unanimous vote as a Committee Substitute.

The CS differs from the bill as filed in the following areas:

- Clarifies that the DBPR may use outside contractors (vendors) to provide testing services (development, preparation, and evaluation of examinations).
- Establishes procedures that give a restaurant owner the discretion, with local approval by ordinance, to allow patrons to bring their dogs onto outside patio eating areas.