

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Regulated Industries Committee

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BILL: SB 1120

INTRODUCER: Senator Jones

SUBJECT: Department of Business and Professional Regulation

DATE: January 27, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

**I. Summary:**

The bill repeals provisions related to the use of metering machines for placing tax stamps on cigarette packages to evidence payment of excise taxes. According to the Department of Business and Professional Regulation (department), such machines are no longer in use.

The bill repeals the following licensing requirements:

- The requirement that professional licensees of the department who change from inactive to active status during the renewal of their license must complete a licensure cycle on active status before they can return to inactive status;
- The license requirement for the chief administrators of real estate schools;
- The requirement that applicants for licensure as a nonresident real estate broker, sales associate, appraisal management company, and appraiser to file an irrevocable consent for service through which a plaintiffs may service process against the non-resident license by sending the process by certified mail with return receipt to the director of the agency as well as to the licensee’s principal place of business. This bill would require plaintiffs to obtain service of process against a nonresident licensee with a process server;
- The requirement that an applicant for a real estate professional’s license must apply with the department before taking a license examination; and
- The requirement that alcoholic beverages licenses be issued in duplicate.

The bill would take effect upon becoming law.

This bill substantially amends the following sections of the Florida Statutes: 210.01, 210.05, 210.07, 210.11, 210.12, 210.15, 210.18, 455.271, 475.02, 475.180, 475.451, 475.6235, 475.631, and 561.23. The bill repeals section 476.124, Florida Statutes.

## II. Present Situation:

### **Department of Business and Professional Regulation**

The Department of Business and Professional Regulation (department) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.<sup>1</sup> The department is created in s. 20.165, F.S. Section 20.165(2), F.S., creates the following eleven divisions within the department:

- Division of Administration.
- Division of Alcoholic Beverages and Tobacco.
- Division of Certified Public Accounting.
- Division of Florida Condominiums, Timeshares, and Mobile Homes.
- Division of Hotels and Restaurants.
- Division of Pari-mutuel Wagering.
- Division of Professions.
- Division of Real Estate.
- Division of Regulation.
- Division of Technology.
- Division of Service Operations.

### **Professional Boards**

Section 20.165(4)(a), F.S., establishes the following boards and professions within the Division of Professions:

- Board of Architecture and Interior Design, created under part I of ch. 481, F.S.
- Florida Board of Auctioneers, created under part VI of ch. 468, F.S.
- Barbers' Board, created under ch. 476, F.S.
- Florida Building Code Administrators and Inspectors Board, created under part XII of ch. 468, F.S.
- Construction Industry Licensing Board, created under part I of ch. 489, F.S.
- Board of Cosmetology, created under ch. 477, F.S.
- Electrical Contractors' Licensing Board, created under part II of ch. 489, F.S.
- Board of Employee Leasing Companies, created under part XI of ch. 468, F.S.
- Board of Landscape Architecture, created under part II of ch. 481, F.S.
- Board of Pilot Commissioners, created under ch. 310, F.S.
- Board of Professional Engineers, created under ch. 471, F.S.
- Board of Professional Geologists, created under ch. 492, F.S.
- Board of Veterinary Medicine, created under ch. 474, F.S.
- Home Inspection Services Licensing Program, created under part XV of ch. 468, F.S.
- Mold-Related Services Licensing Program, created under part XVI of ch. 468, F.S.

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<sup>1</sup> Chapter 93-220, L.O.F.

The Pilot Rate Review Committee is established under the Board of Pilot Commissioners.<sup>2</sup> Section 20.165(4)(b), F.S., establishes the following board and commission within the Division of Real Estate:

- Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S.
- Florida Real Estate Commission, created under part I of ch. 475, F.S.

Section 20.165(4)(c), F.S., establishes the Board of Accountancy, created under ch. 473, F.S., within the Division of Certified Public Accounting.

The Florida State Boxing Commission<sup>3</sup> and the Regulatory Council of Community Managers<sup>4</sup> are also housed within the department. The department also has regulatory oversight responsibilities over the following professions:

- Child labor under part I of ch. 450, F.S.
- Farm labor contractors under part III of ch. 450, F.S.
- Talent agencies under part VII of ch. 468, F.S.

In addition to administering the professional boards, the department processes applications for licensure and license renewal. The department also receives and investigates complaints made against licensees and, if necessary, brings administrative charges.

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative frame-work for all of the professional boards housed under the department, the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

### **Cigarette Regulation in Florida**

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (department) oversees the collection of excise taxes from the sale of cigarettes and other tobacco products. Part I, ch. 210, F.S., consisting of ss. 210.01-210.22, F.S., provides for the taxation of cigarettes. Part II, ch. 210, F.S., consisting of ss. 210.25-210.75, F.S., provides for the taxation of tobacco products other than cigarettes and cigars.

The sale and delivery of tobacco is governed by the division under the provisions of ch. 569, F.S. The division and the department, along with the Department of Health, are involved in the enforcement of the Florida Clean Indoor Air Act.<sup>5</sup> The division consults with the State Fire Marshall, the Division of Hotels and Restaurants with the department, and the Department of Health on rulemaking for the Florida Clean Indoor Air Act.<sup>6</sup>

### **Cigarette Metering Machines**

Section 210.011, F.S., levies a cigarette surcharge that varies based on the weight and length of

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<sup>2</sup> Section 310.151, F.S.

<sup>3</sup> Section 548.003, F.S.

<sup>4</sup> Section 468.4315, F.S.

<sup>5</sup> Part II, ch. 386, F.S.

<sup>6</sup> See s. 386.207, F.S.

the cigarettes or the quantity of cigarettes in a package. For example, packages containing 10 cigarettes or fewer require a surcharge of 50 cents and packages containing more than 10 but not more than 20 cigarettes require a surcharge of \$4.<sup>7</sup> Section 210.02, F.S., imposes an excise tax on the sale of cigarettes.

The excise tax also varies based on the weight and length of the cigarettes or the quantity of cigarettes in a packaged. For example, when cigarettes are packaged, packages containing 10 cigarettes or less are assessed a 33.9-cent tax and packages containing more than 10 but not more than 20 cigarettes are assessed a 135.6-cent tax.

Section 210.05(1), F.S., requires that the taxes imposed under part II of ch. 210, F.S., must be paid by affixing stamps in the manner prescribed in this section or affixing stamp insignia through the use metering machines. Cigarette wholesale dealers who are approved as stamping agents under s. 210.05(3)(a), F.S., are required to place adhesive stamps on packages of cigarettes. These stamps are evidence of payment of the applicable excise tax and surcharge prior to selling the cigarettes in Florida. According to the department, metering machines have not been used to place tax indicia on the cigarette packages for many years because the company that supplies the machines no longer makes them.

#### **Inactive and Delinquent Status**

Section 455.271(2), F.S., permits licensees of each board, or the department when there is no board, to choose an active or inactive status at the time of license renewal. A licensee who changes from inactive to active status during renewal of his/her license is ineligible to return to inactive status until the licensee completes a licensure cycle on active status.

#### **Chief Administrator Permits**

In the context of schools that teach real estate practice, s. 475.451(2)(b), F.S., defines the term “chief administrative person” to mean:

the individual who is responsible for the administration of the overall policies and practices of the institution or proprietary real estate school. A chief administrative person must also meet the requirements of a school instructor if actively engaged in teaching.

To be licensed, a chief administrator must remit to the department a \$20 application fee, an \$80 license fee,<sup>8</sup> and the \$5 unlicensed activity fee required by s. 455.2281, F.S.

The department characterizes the current licensing requirements for chief administrators as very minimal. The department does not approve any courses that they take, and the school is not required to have a chief administrator as a condition to operate. According to the department, there are currently 51 licensed chief administrators.

#### **Nonresident Real Estate Licenses-Irrevocable Consent**

Sections 475.180(1), F.S., relating to real estate professionals under part I of ch. 475, F.S., and

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<sup>7</sup> See s. 210.011, F.S.,

<sup>8</sup> Rule 61J2-1.011, F.A.C., specifies the applicable fees.

s. 475.631(1), F.S., relating to real estate appraisers under part II of ch. 475, F.S., permit nonresidents to be licensed as real estate professionals or appraiser, in this state without having to meet the pre-licensure and post licensure educational requirements if the Real Estate Commission or the Florida Real Estate Appraisal Board, as applicable, have entered into written agreements with similar licensing authorities of other states, territories, or jurisdictions of the United States or foreign national jurisdictions. These agreements must ensure that Florida-licensees receive licensure opportunities in those jurisdictions that are comparable to those afforded to nonresidents in this state.

Section 475.180(2)(a), F.S., requires applicants for licensure as a nonresident real estate professional to file an irrevocable consent that plaintiffs may serve any process or pleading in suits or actions against her or him by delivering the process or pleading to the director of the Division of Real Estate by certified mail, return receipt requested, and also to the licensee by registered mail addressed to the licensee at her or his designated principal place of business.

The bill repeals a similar requirement for an irrevocable consent for service of process for appraisal management companies in s. 475.6235(7), F.S., and for nonresident appraisers in s. 475.631(2), F.S.,

The procedure for serving process on a nonresident license defers from that required in other civil actions. The rules of civil procedure require that pleadings be served by a process server.<sup>9</sup> According to the department, it is not clear what the Division of Real Estate should do with a pleading once they are served as provided in ss. 475.180(1), 475.6235, or 475.631, F.S. The department states that the requirement that nonresident licensees sign irrevocable consent form has created more deficiencies with applications due to not being completed or not being completed correctly. This extends the time to process applications.

#### **Barbering-Application for Examination**

Section 476.124, F.S., requires that an applicant for examination as a barber to submit an application at least 30 days prior to examination on department forms, provide two signed photographs with their application, and pay the required fee to the department. The examination fee is \$150.<sup>10</sup>

#### **Duplicate Alcoholic Beverage Licenses**

Section 561.23, F.S., requires alcoholic beverages licenses to be issued in duplicate. The original license must be delivered to the licensee and one copy must be retained by the division. The original license must be displayed in conspicuous places on the licensed premises. The department states that it delivers the original license to the licensee through the US Postal Service and that that it previously kept a hard copy of the original license on file within the Division of Alcoholic Beverage and Tobacco. In June of 2009, the Division of Alcoholic Beverage and Tobacco implemented a document management system through which the division retains an electronic copy of the original license.

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<sup>9</sup> See rule 1.070, Fla.R.Civ.Pro.

<sup>10</sup> Rule 61G3-20.002(1), F.A.C.

### III. Effect of Proposed Changes:

#### **Cigarette Metering Machines**

The bill repeals the provisions relating to the use of metering machines in ss. 210.07(1) and (2), F.S.

To conform to the repeal of the metering machine provision in ss. 210.07(1) and (2), F.S., the bill amends the following provisions:

- The definition of the term “agent” in s. 210.01(9), F.S., to delete the reference to affixing tax stamps by meter;
- Section 210.05(1), F.S., to delete the reference to affixing stamp insignia through the device of metering machines authorized in part 1 of ch. 210, F.S.;
- Section 210.11, F.S., to delete references to the payment of taxes by metering machine;
- Section 210.12(1), F.S., to delete the reference to the meter impression of the stamp in the context of the requirement that cigarettes packages must be displayed and arranged so the that the tax stamp is clearly visible;
- Section 210.15(2), F.S., to delete the reference to the division’s authority to approve the use of meter machines to evidence the payment of taxes; and
- Section 210.18(3), F.S., to delete the prohibition against falsely or fraudulently making, forging, altering, or counterfeiting any impression die used in meter machines and against jamming, tampering, or altering a meter machine with the intent to evade taxes.

#### **Inactive and Delinquent Licenses**

The bill amends s. 455.271, F.S., to remove the provision that requires licensees who change from inactive to active status during the renewal of their license to complete a licensure cycle on active status before they can return to inactive status.

#### **Real Estate Professionals-Chief Administrators**

The bill repeals the requirement for a license by the chief administrators of real estate schools by deleting the definition for the term “chief administrative person” in s. 475.451(2)(b), F.S.

To conform to the repeal of the chief administrator definition in s. 475.451(2)(b), F.S., the bill amends s. 475.02(3), F.S., to delete the reference the chief administrator permit.

#### **Real Estate Nonresident Licenses-Irrevocable Consent**

The bill amends s. 475.180(2), F.S., to repeal the requirement that applicants for licensure as a nonresident real estate professional must file an irrevocable consent for process of service.

The bill also amends s. 475.6235,(7), F.S., to repeal the requirement that applicants for registration as real estate appraisal management company must file an irrevocable consent for process of service.

The bill also amends s. 475.631,(2), F.S., to repeal the requirement that applicants for licensure as a nonresident real estate appraiser must file an irrevocable consent for process of service.

This bill would require plaintiffs to obtain service of process with a process server instead of by serving the Division of Real Estate by certified mail, return receipt requested, and also to the licensee by registered mail addressed to the licensee at her or his designated principal place of business.

**Barbering-Application for Examination**

The bill repeals Section 476.124, Florida Statutes, which requires that an applicant submit an application at least 30 days prior to examination on department forms, provide two signed photographs with their application, and pay the required fee to the department.

**Duplicate Alcoholic Beverage Licenses**

The bill amends s. 561.23(1), F.S., to delete the requirement that alcoholic beverages licenses be issued in duplicate.

**Effective Date**

The bill would take effect upon becoming law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The chief administrators of real estate schools would save the cost of being licensed, which includes a \$20 application fee, the \$80 license fee, and a \$5 unlicensed activity fee.

**C. Government Sector Impact:**

The department anticipates a minimal fiscal impact due to the repeal of the license requirement for the chief administrators of real estate schools. There are currently 51 licensed chief administrator licensees. The department averages 5 applications for chief administrator annually. Due to the elimination of the \$20 application fee, the \$80 license fee, and the \$5 unlicensed activity fee, the department estimates initial license application fees, license fees, and unlicensed activity fees for this profession that total approximately \$483 in FY 2012-2013 and \$4,393 in FY 2013-2014. In determining its fiscal impact, the department's analysis does not consider the potential saving associated with the elimination its regulatory duties.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.