

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 517 Reducing and Streamlining Regulations

**SPONSOR(S):** Grant

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 762

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	11 Y, 0 N	Livingston	Creamer
2) Rulemaking & Regulation Subcommittee	15 Y, 0 N	Miller	Rubottom
3) Economic Affairs Committee			

### SUMMARY ANALYSIS

In addition to administering numerous professional boards, the Department of Business and Professional Regulation (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 professional boards housed under the department, as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation. Section 455.213, F.S., establishes general licensing provisions for the department, including the authority to charge licensing fees. Section 455.271(4), F.S., provides an inactive licensee may change his or her status to active provided the licensee meets all requirements for active status, pays the appropriate fees, and meets all continuing education requirements.

The bill reduces regulatory requirements for professions and businesses, and streamlines regulatory functions primarily for programs under the department.

Specifically, the bill:

- reduces the required continuing education requirements to reactivate an inactive license to only one cycle of hours required, instead of the hours required for the years the license was inactive;
- decriminalizes specified violations of several professional boards' rules and administrative requirements that currently carry second-degree misdemeanor fines and penalties; and
- amends appraisal regulations and deletes references to Uniform Standards of Professional Appraisal Practice and provides that the professional standards be adopted by board rule.

The bill may have an insignificant negative fiscal impact on state funds related to the reduction in fees, fines, and penalties.

The effective date of the bill is July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### **Continuing Education**

A licensee may practice a profession only if the licensee has an active status license.<sup>1</sup> At the time of license renewal a licensee may choose to an active or inactive status.<sup>2</sup> An inactive status licensee may change to active status provided the licensee meets requirements for active status, pays applicable fees and meets continuing education requirements.

Generally, a licensee with an inactive license may choose at any time to change to an active status but must meet all the requirements for an active license, pay any additional fees including applicable reactivation fees, and must complete enough continuing education to fulfill the continuing education requirement for each licensure cycle during which the license was inactive.<sup>3</sup> For example, a community association manager on inactive status for two biennial license cycles who then chose to make the license active must complete 40 hours of continuing education.<sup>4</sup>

#### Proposed Changes

The bill amends ss. 455.271(10),<sup>5</sup> 468.4338,<sup>6</sup> 468.8317,<sup>7</sup> 468.8417,<sup>8</sup> 477.0212,<sup>9</sup> 481.217,<sup>10</sup> 481.315,<sup>11</sup> 489.116,<sup>12</sup> and 489.519,<sup>13</sup> F.S., reducing the amount of continuing education a licensee must complete to the equivalent of one renewal cycle<sup>14</sup> before reactivating an inactive licensee.

#### Current Situation

##### **Decriminalization of Rule Violations**

Currently, Florida Statutes criminalize violations of rules and orders of several professions under the oversight of the department, including auctioneers, real estate professionals, real property appraisers, barbers, and cosmetologists.<sup>15</sup>

As a result, a licensee is subject to criminal sanctions for specified violations, including minor rule infractions.<sup>16</sup> In addition, violations are subject to imposition of administrative fines that can range from

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<sup>1</sup> Section 455.271(1), F.S.

<sup>2</sup> Section 455.271(2), F.S.

<sup>3</sup> Section 455.271(4), F.S.

<sup>4</sup> The continuing education requirement for biennial renewal of an active community association manager license is 20 hours. Section 468.4338, F.S.; Rule 61E14-4.001(1), F.A.C.

<sup>5</sup> General requirements for reactivating an inactive or delinquent license.

<sup>6</sup> Reactivation requirements for a community association manager license.

<sup>7</sup> Reactivation requirements for a home inspector license.

<sup>8</sup> Reactivation requirements for a mold assessor or remediator license.

<sup>9</sup> Reactivation requirements for a cosmetologist license.

<sup>10</sup> Reactivation requirements for an architect or interior designer license.

<sup>11</sup> Reactivation requirements for a landscape architect license.

<sup>12</sup> Reactivation requirements for a contractor license.

<sup>13</sup> Reactivation requirements for an electrical contractor license.

<sup>14</sup> "Renewal cycle" is not defined in the bill. The statutes use the term "licensure cycle" or "license cycle" when referring to the biennial period for license renewal.

<sup>15</sup> Sections 468.391, 475.42, 475.626, 476.194, and 477.0265, F.S., respectively.

\$500-\$5,000 per occurrence, depending on which practice act is violated, as well as the suspension or revocation of the license.

### Proposed changes

The bill decriminalizes violations of administrative rules and certain statutes by amending the criminal penalty provisions of specific practice acts. State attorneys may still file criminal charges against a licensee for more serious violations. The applicable regulatory board will still be able to impose administrative discipline against a licensee for violating administrative rules, under the following statutes:

- Florida Board of Auctioneers, under s. 468.389(1)(j), F.S.
- Florida Real Estate Commission, under s. 475.25(1)(e), F.S.
- Florida Real Estate Appraisal Board, under s. 475.624(4), F.S.
- Barbers' Board, under s. 476.204(1)(i), F.S.
- Board of Cosmetology, under s. 477.029(1)(i), F.S.

### Current Situation

#### **Appraisal regulations**

State-licensed or state-certified appraisers must be used in the performance of an appraisal for any federally-related transaction, and those appraisals must comply with the Uniform Standards of Professional Appraisal Practice (USPAP). A federally-related transaction is defined as any real estate related financial transaction which:

- involves the transfer of an interest in real property, the financing or refinancing of a transfer of an interest in real property, or the use of an interest in real property as security for a loan or for mortgage-backed securities or
- involves a federal financial regulatory agency or one of the specific agencies names in Title XI of the U.S.C. that require the services of a state-licensed or state-certified appraiser.

Chapter 475, Part II, F.S., (the Real Estate Appraisal Act), specifically incorporates, references, and requires compliance with the USPAP standards by all registered, licensed, or certified Florida real estate appraisers.<sup>17</sup> These standards apply to all real estate appraisal connected with all federally-related financial transactions (as defined above). Although the federal authorities have changed the USPAP guidelines several times since Florida first adopted the Act in 1991,<sup>18</sup> the Florida Statutes have not reincorporated the USPAP since 1998.<sup>19</sup> Under the doctrine of recent appellate and DOAH rulings, the 1998 version of USPAP is applicable in Florida as the last version specifically incorporated by our statutes.<sup>20 21</sup> The current USPAP is version 2010-2011.

### Proposed changes

The bill amends various references to appraisal regulations and deletes certain references to the Uniform Standards of Professional Appraisal Practice. The bill provides that the professional standards

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<sup>16</sup> Under the criminal penalty statutes listed in note 15, a conviction for violating a rule of the Florida Board of Auctioneers is sentenced as a third degree felony but a conviction for violating a rule of the Florida Real Estate Commission, Florida Real Estate Appraisal Board, Barbers' Board, or Board of Cosmetology would be sentenced as a second degree misdemeanor.

<sup>17</sup> Section 475.628, F.S.

<sup>18</sup> Chapter 91-89, F.S.

<sup>19</sup> Section 35, Chapter 98-250, Laws of Florida, amended and readopted s. 475.628, F.S.

<sup>20</sup> *Abbott Laboratories v. Mylan Pharmaceuticals, Inc.*, 15 So. 3d 642, 655 (Fla. 1<sup>st</sup> DCA 2009); *Department of Business and Professional Regulation v. Lester*, Agency Case No. 2008001566, Final Order dated May 17, 2010, adopting *in toto* Recommended Final Order rendered by DOAH in Case No. 09-0642PL, 2009 WL 4099146 (November 24, 2009).

<sup>21</sup> By rule the Florida Real Estate Appraisal Board presently applies the 2008-2009 version of the USPAP. Rule 61J-1.9001, Florida Administrative Code. The doctrine stated in *Abbott Laboratories* calls into question whether the Board has authority to adopt such a rule.

be adopted by applicable board rule. These sections of part II of chapter 475, F.S., include: 475.615, 475.617, 475.6175, 475.6235, 475.25, 475.624, 475.6245, 475.628, and 373.461 (relating to the restoration of water resources in the Lake Apopka Basin), F.S.

**B. SECTION DIRECTORY:**

Section 1 amends s. 455.271, F.S., to require only one renewal cycle of continuing education to reactivate a license.

Section 2 amends s. 468.4338, F.S., to reduce the required continuing education requirements to reactivate an inactive Community Association Manager license to only one cycle of hours required, instead of the hours required for the years the license was inactive.

Sections 3 and 4 amend ss. 468.8317 and 468.8417, F.S., to reduce the required continuing education requirements to reactivate an inactive home inspector license and a mold assessor or mold remediator license to only one cycle of hours required, instead of the hours required for the years the license was inactive.

Section 5 amends s. 475.615, F.S., to remove references to the Uniform Standards of Professional Appraisal Practice and provides the standards of professional practice will be established by board rule.

Sections 6 and 7 amend ss. 475.617 and 475.6175(1), F.S., to conform with other changes in the bill relating to the equivalency of board-adopted rules to the Uniform Standards of Professional Appraisal Practice.

Section 8 amends s. 477.0212(2), F.S., to provide the Board of Cosmetology shall require a licensee to complete one renewal cycle of continuing education requirements prior to renewing an inactive license.

Sections 9 - 12 amend ss. 481.217, 481.315, 489.116, and 489.519, F.S., to provide architects, interior designers, landscape architects, construction contractors, electrical contractors, and alarm system contractor licensees shall only be required to complete one renewal cycle of continuing education to reactivate a license.

Section 13 amends s. 475.6235(4), F.S., to remove references to the Uniform Standards of Professional Appraisal Practice and provides the standards of professional practice will be established by board rule. In addition, this section clarifies an application for registration of an appraisal management company shall expire one year after the date received "by the department".

Section 14 amends s. 468.391, F.S., to limit the application of criminal penalties relating to auctioneering.

Section 15 amends s. 475.25, F.S., to remove references to the Uniform Standards of Professional Appraisal Practice and provides the standards of professional practice will be established by board rule.

Section 16 amends s. 475.42, F.S., to eliminate rule violations of the Florida Real Estate Commission from the list of violations which may result in criminal penalties.

Section 17 amends subsection (14) of s. 475.624, F.S., to remove references to the Uniform Standards of Professional Appraisal Practice, to provide the standards of professional practice will be established by board rule.

Section 18 amends s. 475.6245(1), F.S., to provide the standards of professional practice will be established by board rule.

Sections 19 amends s. 475.626, F.S., to delete criminal penalties for persons who violate orders or rules of the Florida Real Estate Appraisal Board or related grounds for disciplinary action.

Sections 20 and 21 amend ss. 476.194 and 477.0265, F.S., to delete criminal penalties for persons who commit certain violations relating to barbering and cosmetology.

Sections 22 amends s. 475.628, F.S., to remove references to the Uniform Standards of Professional Appraisal Practice, to provide the standards of professional practice will be established by board rule.

Section 23 amends s. 373.461(5)(c), F.S., to remove references to the Uniform Standards of Professional Appraisal Practice as it relates to water resources and provides the standards of professional practice will be established by rule of the Florida Real Estate Appraisal Board.

Section 24. Provides an effective date of July 1, 2012.

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

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

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

The bill may have an insignificant negative fiscal impact on DBPR's Regulatory Trust Fund related to the reduction in fees, fines, and penalties.

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

None.

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

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

None.

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

None.

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

The bill provides a reduction in the continuing education requirements for activating an inactive license. The reduction in requirements and potential for fee waivers would decrease costs to licensees.

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

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

#### **2. Other:**

None.

### **B. RULE-MAKING AUTHORITY:**

The bill reduces the required continuing education requirements to reactivate an inactive license to only one cycle of hours required, instead of the hours required for the years the license was inactive. Section 11 of the bill requires licensed contractors who activate an inactive or delinquent license to "...meet all continuing education requirements prescribed by the board." The Construction Industry Licensing Board has adequate existing rulemaking authority under ss. 489.108 and 489.115(4)(b), F.S.

Section 22 of the bill provides the standards of professional practice for real estate appraisers will be established by board rule and creates adequate rulemaking authority in the amendment to s. 475.628, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.