

**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 Committee on Health Policy

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BILL: SB 1212

INTRODUCER: Senator Bean

SUBJECT: Behavior Analysts

DATE: March 29, 2014

REVISED: \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peterson</u>	<u>Stovall</u>	<u>HP</u>	<u>Pre-meeting</u>
2.	<u>                    </u>	<u>                    </u>	<u>RI</u>	<u>                    </u>
3.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

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**I. Summary:**

SB 1212 creates ch. 470, F.S., titled “Behavior Analysts,” for the purpose of regulating the practice of applied behavior analysis. The bill provides definitions of terms used in the chapter and creates a seven-member Board of Applied Behavior Analysis, which is appointed by the Governor and confirmed by the Senate.

The bill establishes eligibility criteria for persons applying for initial or renewal licensure as a behavior analyst or assistant behavior analyst which require board-certification and background screening for both. The board is authorized to issue a reciprocal license to a person licensed in another state under certain circumstances. The bill contains a lengthy series of exemptions from licensure.

The bill authorizes the board to discipline licensees as provided in ch. 456, F.S, and creates a duty for a licensee and his or her employer to notify the board when a licensee has engaged or is suspected of engaging in certain criminal behavior or has had action taken against a license in another state or his or her board certification.

**II. Present Situation:**

**Behavior Analysis**

Behavior analysis grew out of the scientific study of principles of learning and behavior. It has two main branches: experimental and applied behavior analysis. The experimental analysis of behavior is the basic science which provides the scientific foundation for applied behavior analysis.<sup>1</sup> Florida law defines applied behavior analysis as “the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to

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<sup>1</sup> Behavior Analyst Certification Board, *About Behavior Analysis*, <http://www.bacb.com/index.php?page=2> (last visited Mar. 29, 2014).

produce socially significant improvement in human behavior, including, but not limited to, the use of direct observation, measurement, and functional analysis of the relations between environment and behavior.”<sup>2</sup> Examples of applied behavior analysis practice include: building the skills and achievements of children in school settings and enhancing the development, abilities, and choices of children and adults with different kinds of emotional and behavioral disabilities.<sup>3</sup>

### **Certification of Behavior Analysts**

The Behavior Analyst Certification Board (BACB or board) is the exclusive entity that certifies behavior analysts. The board is a nonprofit 501(c)(3) corporation established in 1998 based on the behavior analysis certification program developed in Florida. Similar programs were established in California, Texas, Pennsylvania, New York and Oklahoma. All of these programs transferred their certificant and credentialing responsibilities to the board and closed.<sup>4</sup>

As part of its credentialing program, the BACB has developed:<sup>5</sup>

- Eligibility standards.
- Renewal and recertification standards to maintain certification.
- Guidelines for responsible conduct.
- Professional disciplinary standards with appeal procedures.
- A certificant registry.
- A process to approve university course sequences and practica.
- Procedures to approve continuing education providers.
- Certification examinations.

Currently, the BACB offers two certifications: Board Certified Behavior Analyst and Board Certified Assistant Behavior Analyst. The Board Certified Behavior Analyst conducts descriptive and systematic behavioral assessments, including functional analyses, and provides behavior analytic interpretations of the results. The Board Certified Behavior Analyst also designs and supervises behavior analytic interventions. To be eligible for certification as a behavior analyst, an applicant must have a master’s degree in behavior analysis or other natural science, education, human services, engineering, medicine or a field related to behavior analysis approved by the board. In addition, the applicant must have 225 hours of graduate level instruction; 1-year, full time faculty appointment at a college or university teaching behavior analysis; or a doctoral degree conferred 10 years prior to applying for certification and meet certain experience requirements.<sup>6</sup>

The Board Certified Assistant Behavior Analyst conducts descriptive behavioral assessments, interprets their results, and designs behavior analytic interventions under the supervision of a

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<sup>2</sup> Sections 627.6686(2)(a) and 641.31098(2)(a), F.S. The definitions are part of a mandate for health care coverage for individuals with autism spectrum disorder. Applied behavior analysis is one of the required services.

<sup>3</sup> *Supra* note 1.

<sup>4</sup> Behavior Analyst Certification Board, *About the BACB*, <http://www.bacb.com/index.php?page=1> (last visited Mar. 29, 2014).

<sup>5</sup> *Id.*

<sup>6</sup> Behavior Analyst Certification Board, *Standards for Board Certified Behavior Analysts (BCBA)*, <http://www.bacb.com/index.php?page=158> (last visited Mar. 30, 2014).

Board Certified Behavior Analyst.<sup>7</sup> To be eligible for certification as a Board Certified Assistant Behavior Analyst, an applicant must have a bachelor's degree and 135 hours of instruction, and meet certain experience requirements.<sup>8</sup>

Currently, there are 1,821 behavior analysts or assistant behavior analysts in Florida who are board-certified by the Behavior Analyst Certification Board.<sup>9</sup>

### **Florida-Certified Behavior Analysts**

Florida began training and certifying behavior analysts in 1983, through the Department of Health and Rehabilitative Services. In 2001, the Florida program was discontinued and all credentialing responsibilities were transferred to the BACB.<sup>10</sup> Behavior analysts certified through the Florida program are authorized to use only the designation Florida Certified Behavior Analyst. Recertification as a Florida Certified Behavior Analyst occurs every 3 years and requires 36 hours of continuing education.<sup>11</sup>

### **Recognition of Behavior Analysis in Florida Law**

Although Florida does not license behavior analysts, its laws do recognize them in ways that may provide for some oversight. Specific references are as follows:

- Section 381.75, F.S., requires that transitional living facilities that provide services to patients in the brain and spinal cord injury program must offer behavior analysis services. The law does not specify credentials, but the services will be provided under contract and by a facility that is subject to state licensure.
- Section 393.17, F.S., authorizes the Agency for Persons with Disabilities to establish a certification process for behavior analysts that serve its clients, and requires the agency to recognize the certification “awarded by a nonprofit corporation that adheres to the national standards of boards that determine professional credentials and whose mission is to meet professional credentialing needs identified by behavior analysts, state governments, and consumers of behavior analysis services.” This language describes the BACB.<sup>12</sup> The agency has opted not to create a separate certification process.<sup>13</sup>
- Section 393.18, F.S., requires that a behavior analyst who provides services as part of a comprehensive transitional education program for persons with developmental disabilities must be certified as provided under s. 393.17, F.S.
- Section 409.906(26), F.S., authorizes the Agency for Health Care Administration to obtain federal approval to provide behavior analysis services to children five years old and younger who have a developmental disability, autism spectrum disorder, or Down syndrome.

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<sup>7</sup> Behavior Analyst Certification Board, *About BACB Credentials*, <http://www.bacb.com/index.php?page=4> (last visited Mar. 29, 2014).

<sup>8</sup> Behavior Analyst Certification Board, *Standards for Board Certified Assistant Behavior Analysts (BCABA)*, <http://www.bacb.com/index.php?page=52> (last visited Mar. 31, 2014).

<sup>9</sup> Behavior Analyst Certification Board, *Certificant Registry*, <http://www.bacb.com/index.php?page=100155&by=state> (last visited Mar. 30, 2014).

<sup>10</sup> See *Infra* note 21 at 2.

<sup>11</sup> Behavior Analyst Certification Board, *Florida Behavior Analyst Certification Committee*, <http://www.bacb.com/index.php?page=100202> (last visited Mar. 29, 2014).

<sup>12</sup> See *Supra* note 4.

<sup>13</sup> Rule 65G-4.0011, F.A.C.

- Sections 627.6686 and 641.31098, F.S., mandate coverage for autism spectrum disorder that includes applied behavior analysis services. The services must be provided by a person who is licensed under ch. 490 or 491, F.S., or certified pursuant to s. 393.17, F.S.
- Section 1002.66, F.S., includes applied behavioral analysis among the specialized instructional services a parent may select for a child with disabilities who is eligible for prekindergarten.

As part of the exceptional student education legislation, the 2013 Legislature created a definition of private instructional personnel which includes persons certified under s. 393.17, F.S., or licensed under ch. 490 or 491, F.S., to provide behavior analysis.

### **Regulation of Health Care Professions**

The DOH is responsible for licensing and regulating health care practitioners in order to preserve the health, safety, and welfare of the public.<sup>14</sup> General licensing provisions applicable to health care practitioners are contained in ch. 456, F.S., which also sets out in more detail the policy framework for regulation. Specifically, regulation is to occur when:<sup>15</sup>

- Unregulated practice can harm or endanger the health, safety, and welfare of the public, and the potential for harm outweighs the potentially anticompetitive effect of regulation.
- The public is not adequately protected by other means, including other statutes, federal law, or local ordinances.
- Less restrictive means of regulation are not available.

The Division of Medical Quality Assurance (MQA) within the DOH has responsibility for licensing health care practitioners, and certain facilities and businesses; enforcing health care practitioner standards; and providing licensure and disciplinary information to enable health care consumers to make more informed health care decisions.<sup>16</sup>

Regulation of some professions occurs under the purview of a board or council. A board is a statutorily created entity that is authorized to exercise regulatory or rulemaking functions within the MQA.<sup>17</sup> In general, boards are responsible for approving or denying applications for licensure, establishing continuing education requirements, and disciplining practitioners for violations of the relevant practice act.<sup>18</sup> Currently, The MQA regulates seven types of facilities and 200-plus license types in 43 health care professions through coordination with 22 boards and six councils.<sup>19</sup>

### **The Sunrise Act**

Section 11.62, F.S., “The Sunrise Act,” sets forth policy and minimum requirements for legislative review of bills proposing regulation of an unregulated function. In general, the act states that regulation should not occur unless:

<sup>14</sup> Section 20.43(1)(g), F.S.

<sup>15</sup> Section 456.003(2), F.S.

<sup>16</sup> Fla. Dept. of Health, *Resource Manual for the Florida Department of Health*, 252 (FY 2012–2013) (on file with the Senate Health Policy Committee).

<sup>17</sup> Section 456.001(1), F.S.

<sup>18</sup> See, e.g. s. 491.004, F.S., creating the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling and authorizing it to adopt rules necessary to implement and enforce provisions of ch. 491, F.S.

<sup>19</sup> *Supra* note 17 at 167.

- Necessary to protect the public health, safety, or welfare from significant and discernible harm or damage;
- Exercised only to the extent necessary to prevent the harm;
- Limited so as not to unnecessarily restrict entry into the practice of the profession or adversely affect public access to the professional services.

The act directs the Legislature to consider the following factors:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and,
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The act requires proponents of legislation proposing new regulation to provide detailed information regarding the need and potential impact of the regulation. The act also requires the agency that will be responsible for its implementation to assess the cost of implementation, the technical sufficiency of the proposal, and whether alternatives to regulation exist.

In determining whether to recommend regulation, the legislative committee reviewing the proposal is directed to assess whether the proposed regulation is:

- Justified based on the statutory criteria and the information provided by both the proponents of regulation and the agency responsible for its implementation;
- The least restrictive and most cost-effective regulatory scheme necessary to protect the public; and,
- Technically sufficient and consistent with the regulation of other professions under existing law.

### **Summary of Sunrise Act Questionnaire and Responses**

The following summarizes information submitted by the proponent of the legislation in its responses to questions in the Sunrise Questionnaire.<sup>20</sup> The responses summarized relate to the five factors the Sunrise Act directs the Legislature to consider.

#### ***Substantial Harm or Endangerment***

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<sup>20</sup> The Sunrise Questionnaire is a questionnaire developed by Legislative staff to solicit the responses required by the proponent of new regulation pursuant to s. 11.62(4), F.S. A copy of the questionnaire is on file with the Senate Health Policy Committee. The legislation has been proposed by the Florida Association for Behavioral Analysis.

The proponent states that a majority of persons treated by applied behavior analysis services are highly vulnerable because of their age, the nature of their disability or illness, or the magnitude of the stress experienced by the caretaker. This makes them susceptible to fraudulent, ineffective practices, or unethical interventions. Because there is not a regulatory system currently in place, the proponent indicates that quantifying the need for regulation is difficult. The proponent uses complaints filed with the BACB as a proxy for need, but believes the number underestimates the problem. In the past 13 years, 26 events of unethical or improper practice have been investigated by the certifying agency in Florida. These violations involved negligence, incompetence, malpractice, or misconduct.<sup>21</sup>

### ***Specialized Skill or Training, and Measurability***

The proponent states that board certification defines and measures the requisite knowledge, skills, and abilities. These fall into 10 general content areas which are tested by examination in multiple-choice format with specific questions in each of the content areas. To be eligible for examination, a person must have at least a master's degree in behavior analysis or other natural science, education, human services, medicine or a field related to behavior analysis. Currently, nine universities in Florida offer programs that would qualify a person to sit for the certification exam.<sup>22</sup>

### ***Unreasonable Effect on Job Creation or Job Retention***

The proponent indicates that the requirements for licensure under the proposed legislation align with current credentialing requirements for certification as a behavior analyst. Thus, the legislation does not create a more onerous standard. Currently, this credentialing function is handled by the BACB.<sup>23</sup>

Other persons who may implement behavioral interventions and provide counseling services similar to that of behavioral analysts include schoolteachers, school psychologists, parents, physicians, school faculty, priests, and ministers. These persons are not required to obtain certification under the bill.<sup>24</sup> In addition, behavior analysis is an element of the practice of psychology, thus it may be provided by a psychologist.<sup>25</sup>

### ***Can the Public Be Effectively Protected by Other Means?***

The proponent indicates that the certification entity receives and responds to complaints it receives about board certified behavioral analysts and those who are fraudulently claiming to be board certified. Over the past 13 years, the certifying entity has investigated 26 claims of unethical or improper practice in Florida. The proponent indicates that the requirements for filing a complaint with the certifying entity, however, are time consuming, requiring consumers to produce written records of correspondence to the behavior analyst, correspondence to fiscal agencies or funding sources, and correspondence with state regulatory agencies (which is currently unavailable in Florida).<sup>26</sup>

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<sup>21</sup> *Id.* at 4 – 7.

<sup>22</sup> *Id.* at 19 – 23.

<sup>23</sup> *Id.* at 25.

<sup>24</sup> *Id.* at 18.

<sup>25</sup> Section 490.003(4), F.S.

<sup>26</sup> *Supra* note 21 at 4 – 5.

### ***Favorable Cost-effectiveness and Economic Impact***

The proponent does not anticipate that licensure will result in any changes to the current costs of services for consumers because the number of persons seeking certification as a behavioral analyst is growing.<sup>27</sup>

### **Statutory Creation of Advisory Bodies, Commissions, or Boards**

The statutory creation of any collegial body to serve as an adjunct to an executive agency is subject to certain provisions in s. 20.052, F.S. Such a body may only be created when it is found to be necessary and beneficial to the furtherance of a public purpose, and it must be terminated by the Legislature when it no longer fulfills such a purpose. The Legislature and the public must be kept informed of the numbers, purposes, memberships, activities, and expenses of any collegial or advisory bodies.

A board of trustees is defined as “a board created by specific statutory enactment and appointed to function adjunctively to a department, the Governor, or the Executive Office of the Governor to administer public property or a public program.”<sup>28</sup> Private citizen members of a board of trustees may only be appointed by the Governor, must be confirmed by the Senate, and are subject to the dual-office-holding prohibition of Art. II, s. 5(a) of the State Constitution.

Members of a board of trustees serve for 4-year staggered terms, unless expressly provided otherwise in the State Constitution, and are ineligible for any compensation other than travel expenses. Unless an exemption is specified by law, all meetings are public, and records of minutes and votes must be maintained.

### **III. Effect of Proposed Changes:**

SB 1212 creates ch. 470, F.S., titled “Behavior Analysts,” for the purpose of regulating the practice of applied behavior analysis.

The bill creates the following definitions:

- “Applied behavior analysis” means the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior and includes functional assessment and analysis.” The definition expressly excludes certain acts that are within the definition of “practice of psychology” in ch. 490, F.S. The definition is consistent with, but not identical to, the current definition in chs. 627 and 641, F.S., relating to health care coverage for persons with autism spectrum disorder.
- “Board” means the Board of Applied Behavior Analysis, as created by the bill, unless the term appears in the context of board certification.
- “Board-certified behavior analyst” and “Board-certified assistant behavior analyst” are practitioners certified by the BACB or its successor.

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<sup>27</sup> *Id.* at 23.

<sup>28</sup> Section 20.03(12), F.S.

- “Department” is the Department of Health.
- “Licensed behavior analyst” and “licensed assistant behavior analyst” are practitioners licensed by the board created by the bill.
- “Supervised experience” means completed training necessary for Behavior Analyst Accreditation Board certification.

The bill creates the Board of Applied Behavior Analysis, which is a seven-member board appointed by the Governor and confirmed by the Senate. Three members must be board-certified behavior analysts, at least two of whom are recommended by the Florida Association for Behavior Analysis. One member must be a board-certified assistant behavior analyst; one member a health care provider whose practice primarily includes treatment of behavior disorders; and two laypersons. The bill provides for staggered 3-year terms and requires that subsequent appointees be licensed. A person may not serve more than two consecutive terms.

The bill directs the board to adopt rules to implement the act, which must include rules related to:

- Standards of practice;
- Licensure, including suspension or revocation;
- Supervision;
- Competency;
- Physical and mental examination of behavior analysts and assistant behavior analysts who may be impaired; and,
- Fees, not to exceed \$100 for an application and \$300 for licensure. Fees must be based on the actual cost to regulate.

The bill specifies certain administrative responsibilities of the board, including: adopting a code of ethics; maintaining minutes and a registry and directory of licensees; and adopting a seal. In the event that the BACB discontinues certification, the board is directed to approve a successor entity that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute.

The bill requires a person applying for initial or renewal licensure as a behavior analyst to provide evidence that he or she:

- Is board-certified;
- Conducts his or her professional activities in accordance with accepted standards;
- Complies with all board rules;
- Has paid the licensure or renewal licensure fee; and
- Has passed a criminal background check.

A person applying for initial or renewal licensure as an assistant behavior analyst to provide evidence that he or she:

- Is board-certified;
- Conducts his or her professional activities in accordance with accepted standards;
- Complies with all board rules;
- Is supervised by a licensed behavior analyst;
- Has paid the licensure or renewal licensure fee; and,
- Has passed a criminal background check.

The bill authorizes the board to issue a reciprocal license to a person licensed in a state with standards comparable to Florida's standards and that offers reciprocity to Florida licensees. To be eligible, the out-of-state licensee must:

- Provide proof of licensure and board certification;
- Pass a background check; and,
- Pay the licensure fee.

The bill authorizes the board to discipline licensees as provided in ch. 456, F.S., but prohibits the board from putting a licensee on probation for longer than 5 years; imposing a fine greater than \$2,500; suspending a license for more than 5 years; or restricting a license indefinitely. The board may reinstate a license that has been suspended and may impose conditions, provided the board determines that the licensee is able to practice with reasonable competency and consistent with the code of ethics.

The bill creates a duty for a licensee and his or her employer to notify the board when a licensee:

- Has been charged or convicted of a felony that relates to the licensee's qualifications or his or her ability to practice safely;
- Is suspected of fraudulently procuring or attempting to procure a license, or negligence in the practice of applied behavior analysis;
- Has had a board certification or license to practice behavior analysis revoked, suspended, or otherwise restricted on grounds that would result in a disciplinary action in Florida; or,
- Is practicing without a license.

The bill prohibits the practice of applied behavior analysis or the use of the titles without first obtaining a license under ch. 470, F.S. Unlicensed practice is a third degree felony and unauthorized use of the title is a second degree misdemeanor. Both violations are punishable as provided in ch. 775, F.S. A third degree felony is punishable by a fine of up to \$5,000 or up to 5 years in prison. A second degree misdemeanor is punishable by a fine of up to \$500 or up to 60 days in prison.

The bill contains a lengthy series of exemptions from licensure, including:

- Psychologists licensed under ch. 490, F.S., for behavior analysis services within the scope of the licensee's education, training, and experience;
- A certified teacher, for behavior analysis services that are within the scope of the teacher's education, training, and experience, and a teaching assistant who is supervised by a qualified certified teacher;
- Applied behavior analysts who work with animals;
- A person who provides behavior analysis services under the direction of a licensed behavior analyst or assistant behavior analyst;
- A person who teaches behavior analysis or conducts related research not involving direct patient care;
- A college graduate or postdoctoral fellow, working under the direct supervision of a licensed behavior analyst or instructor in an accredited program, whose activities are part of a defined behavior analysis program of study or practicum;

- A person pursuing training experience required for board certification if supervised by a licensee who has been approved by the BACB to supervise;
- A board-certified behavior analyst or behavior analyst licensed in another state who provides services to a resident in this state for less than 12 days per year;
- A Florida-certified behavior analyst;
- A family member of a patient who implements procedures under the direction of a licensee;
- A behavior analyst who provides services to an organization and not to individuals;
- A health care practitioner licensed under ch. 458, 459, or 491, F.S., provided the practitioner does not hold him or herself out as a behavior analyst;
- An employee of a nonprofit organization that provides behavior analysis services to children at no charge, provided the person does not hold him or herself out as a behavior analyst;
- A certified school psychologist who performs behavior analysis as an employee of a public or private school; and,
- A member of the clergy acting within the scope of his or her religious duties.

The bill amends the definition of “health care practitioner” in ch. 456, F.S., to add practitioners licensed under to ch. 470, F.S.

The bill has an effective date of October 1, 2014.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 1212 will have a negative impact on persons who are providing behavior analysis services who do not meet the qualifications for licensure. Persons currently certified by the BACB will need to obtain a state license and pay the licensure fee to practice behavior analysis.

**C. Government Sector Impact:****Revenue<sup>29</sup>**

The DOH estimates it will receive 4,000 applications<sup>30</sup> which will be subject to an application fee of \$100; a licensure fee of \$300; and an unlicensed activity fee of \$5,<sup>31</sup> for a total of \$1,620,000 in fee. Collections are subject to the 8 percent general revenue surcharge, which results in estimated revenue to the DOH of \$1,490,400.

**Expenses<sup>32</sup>**

The DOH estimates it will need 4 FTE positions and 1 OPS position to implement the provisions of the bill. OPS expenses were computed at the base of the position plus 1.45 percent for Medicare tax. Salary was computed at base of the position plus 35 percent for benefits.

The OPS position and 1.5 FTE of the 4 total FTE positions will manage the licensing requirements. The requested expenses are 1.5 FTE Regulatory Specialist II, no travel (\$77,326) and 1 OPS Regulatory Specialist II, no travel (\$38,483) for a total cost of \$115,809.

The DOH estimates it will receive 61 complaints filed against certified behavior analysts and assistant behavior analysts and 25 of those complaints will be deemed legally sufficient for investigation and prosecution. The DOH requests expenses for 2 FTE: 1 Investigation Specialist II, medium travel, and 1 Senior Attorney, no travel, for a total of \$144,219.

The DOH estimates it will receive approximately 2,400 additional telephone calls in the Communication Center. It requests .5 Regulatory Specialist II, no travel, with total expenses of \$29,238.

The DOH anticipates holding four, 1.5 day meetings per year with seven board members and two staff. Total estimated meeting costs are \$34,641.

The DOH currently contracts for processing of initial and renewal applications and related fees. The cost of the contracted service is based on a \$7.69 per application for the estimated 4,000 applications for a total cost of \$30,760.

The DOH will incur non-recurring costs for rulemaking, which current budget authority is adequate to absorb.

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<sup>29</sup> Fla. Dept. of Health, *Senate Bill 1212 Fiscal Analysis* (Feb. 25, 2014) (on file with the Senate Committee on Health Policy).

<sup>30</sup> The proponent of the legislation estimates a considerably lower number of 1,700 initial applicants, then 125 – 150 applications annually thereafter, based on an average graduation rate of 10 – 15 students from each of the nine schools in Florida that have a behavior analysis program. (*See Supra* note 21 at 24–25.)

<sup>31</sup> Section 456.065(3), F.S.

<sup>32</sup> *See Supra* note 31.

Consistent with adding any new profession, the DOH will update the Customer Oriented Medical Practitioner Administration System (COMPAS) to accommodate the new Certified Behavior Analyst and Assistant Behavior Analyst license, which current resources are adequate to absorb.

The DOH will incur an increase in workload associated with the development and maintenance of a new website, online renewals, online applications, and related functions, which current resources are adequate to absorb.

Combined the total estimated costs to implement the bill are: \$354,667:

- Salary - \$189,237.
- OPS – \$31,172.
- Expense - \$78,972/Recurring + \$22,638/Non-Recurring.
- Contracted Services - \$30,760.
- Human Resources - \$1,888.

## **VI. Technical Deficiencies:**

A substantial portion of the bill is inconsistent with or duplicated by other provisions in Florida law, including the standard licensing requirements applicable to health care practitioners in ch. 456, F.S., the background screening requirements, and the requirements for creating a new board as set forth in s. 20.052, F.S. In addition, some of the provisions, in particular the scope of rulemaking required of the board (lines 106 – 128) are vague and create challenges for implementation.

The requirements for licensure contain conditions that could only be met by a person who has been licensed previously, not a person who is applying for initial licensure, because they require proof of compliance with the act, board rules and competence to practice. Regardless, it is not clear how an applicant for initial licensure would demonstrate these things.

## **VII. Related Issues:**

The DOH requests that the effective date of the bill be changed to October 1, 2014, to allow sufficient time for it to update the licensure database, which is currently being upgraded and unavailable for changes until then.<sup>33</sup>

The Legislature may wish to consider whether to amend the existing statutes for the provision of behavior analysis services and related to behavior analysts to cross-reference and require compliance with ch. 470, F.S., and the licensing standards created by this bill.

## **VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 470.40, 470.41, 470.415, 470.42, 470.43, 470.44, 470.45, 470.46, 470.47, 470.48, and 456.001.

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<sup>33</sup> Fla. Dept. of Health, *Senate Bill 1212 Bill Analysis* (Feb. 25, 2014) (on file with the Senate Committee on Health Policy).

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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

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