

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.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 514

INTRODUCER: Senator Stargel

SUBJECT: Fees of the Department of Business and Professional Regulation

DATE: March 15, 2017

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Kraemer | McSwain | RI | Favorable |
| 2. | | | AGG | |
| 3. | | | AP | |

I. Summary:

SB 514 provides, notwithstanding the professional practice acts administered by the Department of Business and Professional Regulation (DBPR), for a \$25 delinquency fee that must be imposed on a delinquent status licensee. Under current law, the delinquency fee for a profession regulated by the DBPR may not exceed the amount of the biennial renewal fee for an active status license.

The bill reduces from 1.5 percent to 1.0 percent, the surcharge assessed on building permit fees which is transferred to the DBPR to administer and carry out the purposes of the Florida Building Code. Under current law, the surcharge is allocated to fund the Florida Building Commission, the Florida Building Code Compliance and Mitigation Program, and the Florida Fire Prevention Code informal interpretations managed by the State Fire Marshal.

The bill has a negative fiscal impact to state government and to the revenue from the General Revenue service charge. See Section V, Fiscal Impact Statement.

The bill provides for an effective date of July 1, 2017.

II. Present Situation:

Department of Business and Professional Regulation

Section 20.165, F.S., establishes the organizational structure of the DBPR; the DBPR has 12 divisions:

- Administration;
- Alcoholic Beverages and Tobacco;
- Certified Public Accounting;
- Drugs, Devices, and Cosmetics;

- Florida Condominiums, Timeshares, and Mobile Homes;
- Hotels and Restaurants;
- Pari-mutuel Wagering;
- Professions;
- Real Estate;
- Regulation;
- Service Operations; and
- Technology.

Fifteen boards and programs exist within the Division of Professions,¹ two boards are within the Division of Real Estate,² and one board exists in the Division of Certified Public Accounting.³ The Florida State Boxing Commission is assigned to the DBPR for administrative and fiscal accountability purposes only.⁴ The DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law pursuant to parts I and III of ch. 450, F.S.

Chapter 455, F.S., applies to the regulation of professions constituting “any activity, occupation, profession, or vocation regulated by the DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.”⁵

Under Florida law, regulation of professions is undertaken “only for the preservation of the health, safety, and welfare of the public under the police powers of the state.”⁶ Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.⁷

However, “neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention,” or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.⁸

¹ Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes: Board of Architecture and Interior Design, part I of ch. 481; Florida Board of Auctioneers, part VI of ch. 468; Barbers’ Board, ch. 476; Florida Building Code Administrators and Inspectors Board, part XII of ch. 468; Construction Industry Licensing Board, part I of ch. 489; Board of Cosmetology, ch. 477; Electrical Contractors’ Licensing Board, part II of ch. 489; Board of Employee Leasing Companies, part XI of ch. 468; Board of Landscape Architecture, part II of ch. 481; Board of Pilot Commissioners, ch. 310; Board of Professional Engineers, ch. 471; Board of Professional Geologists, ch. 492; Board of Veterinary Medicine, ch. 474; Home Inspection Services Licensing Program, part XV of ch. 468; and Mold-related Services Licensing Program, part XVI of ch. 468, F.S.

² See s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.

³ See s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.

⁴ Section 548.003(1), F.S.

⁵ Section 455.01(6), F.S.

⁶ Section 455.201(2), F.S.

⁷ *Id.*

⁸ Section 455.201(4)(b), F.S.

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.⁹ When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a “permit, registration, certificate, or license” to the licensee.¹⁰

In Fiscal Year 2015-2016, the Division of Certified Public Accounting had 39,216 licensees, the Division of Real Estate had 349,668 licensees, and the Board of Professional Engineers had 61,396 licensees.¹¹ In Fiscal Year 2015-2016, there were 434,001 licensees in the Division of Professions,¹² including:

- Architects and interior designers;
- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers;
- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors;
- Cosmetologists;
- Electrical contractors;
- Employee leasing companies;
- Geologists;
- Home inspectors;
- Landscape architects;
- Harbor pilots;
- Mold-related services;
- Talent agencies; and
- Veterinarians.¹³

The Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) within the DBPR provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.¹⁴ The FCTMH has limited regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;

⁹ See s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. See s. 455.221(1), F.S. Sections 455.01(4) and (5), F.S.

¹¹ See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2015-2016*, at http://www.myfloridalicense.com/dbpr/os/documents/ProfessionsAnnualReportFY2015-2016_Final.pdf, (last visited Mar. 10, 2017) at page 21.

¹² Of the total 415,207 licensees in the Division of Professions, 23,183 are inactive. *Id.* at page 22.

¹³ *Id.* at pages 21-22.

¹⁴ Department of Business and Professional Regulation, *Division of Florida condominiums, Timeshares, and Mobile Homes*, <http://www.myfloridalicense.com/dbpr/lsc/index.html> (last visited Mar. 10, 2017).

- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowner's Associations (jurisdiction is limited to arbitration of election and recall disputes).¹⁵

Sections 455.203 and 455.213, F.S., establish general licensing authority for the DBPR, including the authority to charge license fees and license renewal fees. Each board within the DBPR must determine by administrative rule¹⁶ the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.¹⁷

A licensee may practice a profession only if the licensee has an active status license.¹⁸ Generally, most licensees who practice a profession without an active status license¹⁹ are subject to the imposition of discipline, fines, or assessments as described in s. 455.227, F.S. At least 90 days before the end of a licensure cycle, the DBPR must provide a licensure renewal notification to an active or inactive licensee, and a notice of pending cancellation of licensure to a delinquent status licensee.²⁰

Each board, or the department when there is no board (board),²¹ must permit a licensee to choose active or inactive status at the time of licensure renewal, and impose a fee for an inactive status license that does not exceed the fee for an active status license.²² An inactive status licensee may change to active status at any time, if the licensee meets all requirements for active status, including payment of all required fees, and meeting all continuing education requirements. Failure of a licensee to renew a license before its expiration causes the license to become delinquent in the license cycle following expiration (delinquency cycle).²³

A delinquent status licensee must re-apply for active or inactive status during the delinquency cycle. Failure by a delinquent status licensee to become active or inactive before the expiration of the delinquency cycle renders the license void, with no further action by the board.²⁴

¹⁵ *Id.*

¹⁶ The administrative rules of the DBPR and of each Board are available through the DBPR's website at <http://www.myfloridalicense.com/dbpr/divisions.html> (last visited Mar. 10, 2017).

¹⁷ Section 455.219(1), F.S.

¹⁸ Section 455.271(1), F.S.

¹⁹ Section 455.271, F.S., on inactive and delinquent status of licenses, does not apply to a business establishment registered, permitted, or licensed by the department to do business or to a person licensed, permitted, registered, or certified pursuant to ch. 310, F.S. on Pilots, Piloting, and Pilotage, or ch. 475, F.S., on Real Estate Brokers, Sales Associates, Schools, and Appraisers.

²⁰ *See* s. 455.273, F.S.

²¹ Whenever a board for a profession does not exist, the DBPR is generally authorized by law to act instead. *See* e.g., ss. 455.219 and 455.271, F.S., for multiple references to actions of "the board, or the department when there is no board."

²² The status or a change in status of a licensee does not alter the board's right to impose discipline or to enforce discipline previously imposed on a licensee for acts or omissions committed by the licensee while holding a license, whether active, inactive, or delinquent. *See* s. 455.271(11), F.S.

²³ *Id.*

²⁴ *Id.*

The DBPR may, at its discretion, reinstate a license that has become void (excepting those public accountancy licenses issued under ch. 473, F.S.) if the DBPR determines that the individual failed to comply because of illness or economic hardship. The individual must apply to the DBPR for reinstatement, pay all required fees, including a reinstatement fee, meet all continuing education requirements, and otherwise be eligible for renewal of licensure.²⁵

Section 477.271(7), F.S., provides that each board must impose an additional delinquency fee, not to exceed the biennial renewal fee for an active status license, when a delinquent status licensee applies for active or inactive status.

Florida Building Code and Building Permit Surcharge

Each fee for a building permit issued in the state includes a surcharge calculated at 1.5 percent of the permit fee amount, for administration and enforcement of the Florida Building Code²⁶ by the DBPR.

The minimum amount for a building permit fee is \$2, and the governmental authority responsible for collecting a building permit fee must collect and remit the surcharge to the DBPR each quarter for the preceding quarter.²⁷ Ten percent is retained by the governmental authority, to fund “the participation of building departments in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code.”²⁸

All funds remitted to the DBPR from the surcharge are allocated to fund the Florida Building Commission and the Florida Building Code Compliance and Mitigation Program (the Compliance and Mitigation Program).²⁹ Section 553.721, F.S., provides that the Compliance and Mitigation Program must be allocated \$925,000 each fiscal year and must fund the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup, dated April 8, 2013, from existing resources, not to exceed \$30,000 in the 2016-2017 fiscal year.³⁰

Funds collected from the surcharge also are used to fund Florida Fire Prevention Code informal interpretations managed by the State Fire Marshal; the amount used for this purpose is limited to \$15,000 each fiscal year.³¹ The funds collected from the surcharge may not be used to fund research on techniques for mitigation of radon in existing buildings.³²

²⁵ *Id.*

²⁶ Part IV of ch. 553, F.S. is cited as the “Florida Building Codes Act.”

²⁷ *See* s. 553.721(1)(a), F.S.

²⁸ *Id.*

²⁹ Pursuant to s. 553.841(2), F.S., the DBPR administers the Compliance and Mitigation Program to develop, coordinate, and maintain education and outreach to persons required to comply with the Florida Building Code (code) and related provisions and ensure consistent education, training, and communication of the code’s requirements, including methods for design and construction compliance and mitigation of storm-related damage. The Compliance and Mitigation Program must also operate a clearinghouse through which design, construction, and building code enforcement licensees, suppliers, and consumers in Florida “may find others in order to exchange information relating to mitigation and facilitate repairs in the aftermath of a natural disaster.”

³⁰ *See* s. 553.721(1)(a), F.S.

³¹ *Id.*

³² *Id.*

III. Effect of Proposed Changes:

Section 1 of the bill requires that a \$25 delinquency fee be imposed on delinquent status professional licensees, in lieu of the delinquency fee authorized under current law, which may not exceed the amount of the biennial renewal fee for an active status license.

Section 2 of the bill reduces from 1.5 percent to 1.0 percent, the surcharge assessed on permit fees assessed for the DBPR to administer and carry out the purposes of the Florida Building Code.

The bill provides for an effective date of July 1, 2017.

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:

The DBPR indicates that SB 514 will reduce professional licensure expenditures due to delinquency fees, which will be limited to \$25 for each delinquent licensee, and that expenditures associated with the payment of fees for a building permit will be reduced.³³

C. Government Sector Impact:

The DBPR estimates that the bill will reduce total revenues to state government by \$9,871,245, with a resulting reduction from the General Revenue service charge of \$791,699, during Fiscal Years 2017-2018 through 2019-2020, as follows:

- The revenue reduction to state government from the reduction in the building permit surcharge percentage from 1.5 percent to 1.0 percent will be \$7,831,065 during Fiscal

³³ See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for SB 514, dated Feb. 28, 2017, (on file with Senate Committee on Regulated Industries) at page 4.

Years 2017-2018 through 2019-2020; as a result, revenue from the General Revenue service charge will be reduced in total by \$626,484 in those fiscal years.³⁴

- The revenue reduction associated with the reduction in delinquency fees on delinquent licensees will be \$2,040,180 during Fiscal Years 2017-2018 through Fiscal Year 2019-2020; as a result, revenue from the General Revenue service charge will be reduced in total by \$163,215 in those fiscal years.³⁵

The DBPR also indicates it will experience an annual non-operating expense reduction of \$789,699 (\$263,233 annually) during Fiscal Years 2017-2018 through 2019-2020 due to smaller transfers to the General Revenue Fund for the General Revenue service charge.³⁶

In addition, the DBPR reports that the bill will reduce the amount of the building permit surcharge funds retained by local building departments because of the lower rate for the building permit surcharge.

The DBPR indicates that the cost of modifications to software to address fee configurations for each affected profession could be minimized by authorizing such changes to occur as part of a profession's renewal cycle, but that such modifications can be accomplished using existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 455.271 and 553.721.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

³⁴ See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for SB 514, dated Feb. 28, 2017, (on file with Senate Committee on Regulated Industries) at page 4.

³⁵ *Id.* at page 4.

³⁶ *Id.*

B. Amendments:

None.

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