

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 1041 Professional Regulation

**SPONSOR(S):** Judiciary Committee, Commerce Committee, Careers & Competition Subcommittee, Plakon and others

**TIED BILLS:** IDEN./SIM. BILLS: CS/SB 1114

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	15 Y, 0 N, As CS	Wright	Anstead
2) Appropriations Committee	24 Y, 0 N	Keith	Leznoff
3) Commerce Committee	17 Y, 8 N, As CS	Wright	Hamon
4) Judiciary Committee	12 Y, 6 N, As CS	Jones	Poche

### SUMMARY ANALYSIS

PCS for CS/CS/HB 1041 amends current law relating to certain professions and business organizations regulated by the Department of Business and Professional Regulation (DBPR) by:

- Removing the requirement that yacht and ship brokers obtain a separate license for each branch office;
- Removing labor organizations and business agents from DBPR regulation, but generally retaining the standards of operation, as well as civil and criminal causes of action;
- Requiring DBPR and the Department of Health (DOH) to compile a list of crimes that have been used to deny licensure and a list of crimes that do not bar licensure and requires these departments to keep the lists on their websites;
- Eliminating the requirement that asbestos abatement contractors and consultants, architects, interior designers, landscape architects, and geologists obtain a separate certificate of authorization for their business entities;
- Transferring the duties and responsibilities of the Florida Engineers Management Corporation to DBPR;
- Clarifying the definition of and scope of practice for restricted barbers, nail specialists, facial specialists, full specialists, and hair braiders;
- Reducing the hours of training required to obtain barber, restricted barber, nail specialty, facial specialty, and full specialty licenses;
- Removing hair braiders, hair wrappers, body wrappers, nail polishers, makeup applicators, boxing announcers, and boxing timekeepers from DBPR regulation; and
- Revising current application procedures for certain professions, including barber, cosmetology, and certain construction contracting licenses under DBPR; and for certified nursing assistant and septic tank contractor licenses under DOH by:
  - Expressly permitting a person to apply for a license while under incarceration or supervision;
  - Generally limiting the period during which the agency may consider criminal history as an impairment to licensure; and
  - Requiring the licensing agency and the Department of Corrections to make accommodations for applicants incarcerated or under supervision to appear by telecommunication at a licensing hearing.

The PCS will have a significant fiscal impact on DBPR due to a reduction of license fee revenues. On March 15, 2017, DBPR estimated CS/CS/HB 1041 would reduce revenues of \$1,025,771 in FY 2017-18, \$1,600,317 in FY 2018-19, and \$1,025,684 in FY 2019-20. DOH and DOC have indicated that any increase in workload or expenditures as a result of provisions in CS/CS/HB 1041 could be absorbed within existing resources. The PCS does not appear to have a fiscal impact on local governments. The PCS provides an effective date of July 1, 2018, except for certain sections which provide an effective date of October 1, 2018, or July 1, 2020.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1041e.JDC

DATE: 2/27/2018

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Department of Business and Professional Regulation (DBPR)**

DBPR, through various divisions, regulates and licenses businesses and professionals in Florida. The divisions established under DBPR include:

- The Division of Administration;
- The Division of Alcoholic Beverages and Tobacco;
- The Division of Certified Public Accounting;
- The Division of Drugs, Devices, and Cosmetics;
- The Division of Florida Condominiums, Timeshares, and Mobile Homes;
- The Division of Hotels and Restaurants;
- The Division of Pari-mutuel Wagering;
- The Division of Professions;
- The Division of Real Estate;
- The Division of Regulation;
- The Division of Technology; and
- The Division of Service Operations.<sup>1</sup>

The Division of Professions (Professions) licenses and regulates more than 434,000 professionals through the following professional boards and programs:

- Board of Architecture and Interior Design,
- Asbestos Licensing Unit,
- Athlete Agents,
- Board of Auctioneers,
- Barbers' Board,
- Building Code Administrators and Inspectors Board,
- Regulatory Council of Community Association Managers,
- Construction Industry Licensing Board,
- Board of Cosmetology,
- Electrical Contractors' Licensing Board,
- Board of Employee Leasing Companies,
- Home Inspectors,
- Board of Landscape Architecture,
- Mold-Related Services,
- Board of Pilot Commissioners,
- Board of Professional Geologists.
- Talent Agencies,
- Board of Veterinary Medicine, and
- Florida Board of Professional Engineers.<sup>2</sup>

The Division of Regulation (Regulations) is the enforcement authority for Labor Organizations and Business Agents, the Florida State Boxing Commission, Farm Labor Program, Child Labor Program, and any professional boards and programs housed within Professions.<sup>3</sup> To ensure compliance with

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<sup>1</sup> S. 20.165, F.S.

<sup>2</sup> Florida Department of Business and Professional Regulation, *Division of Professions*, <http://www.myfloridalicense.com/dbpr/pro/index.html> (last visited Feb. 20, 2017).

<sup>3</sup> Except the Board of Architecture and Interior Design, and the Florida Board of Professional Engineers. Florida Department of Business and Professional Regulation, *Division of Regulation*, <http://www.myfloridalicense.com/dbpr/reg/index.html> (last visited Feb. 20, 2017).

applicable laws and rules by those professions and related businesses, Regulations investigates complaints, utilizes compliance mechanisms, and performs inspections.<sup>4</sup>

The Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.<sup>5</sup> FCTMH has limited regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (jurisdiction limited to arbitration of election and recall disputes).<sup>6</sup>

DBPR imposes a \$5 unlicensed activity fee in addition to any initial license fee or renewal fee.<sup>7</sup>

## **Yacht and Ship Broker Branch Offices**

### Background

Chapter 326, F.S., governs the licensing and regulation of yacht and ship brokers, salespersons, and related business organizations. The Yacht and Ship Broker's Section, a unit of FCTMH, processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the yacht brokerage industry.

Each yacht and ship broker must maintain a principal place of business in this state and may establish branch offices. Each branch office must maintain a separate license.

Applicants for a branch office license or a biennial renewal pay a \$100 fee.<sup>8</sup> There are no requirements of the branch office other than to obtain licensure and there are no inspection requirements.

As of October 2015, there were 73 yacht and ship broker branch office licenses in active status and on average 13 new initial licenses issued annually during the 2012- 2015 fiscal years. There were no disciplinary cases brought against any yacht or ship broker branch office licenses during the 2012-2015 fiscal years.<sup>9</sup>

### Effect of Proposed Changes

The PCS amends s. 326.004(13), F.S., by removing the requirement for yacht and ship brokers to obtain a branch office license for each branch office. The PCS does not remove the requirement for a broker to be licensed or to maintain a principal place of business in Florida.

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<sup>4</sup> Florida Department of Business and Professional Regulation, *Division of Regulation*, <http://www.myfloridalicense.com/dbpr/reg/index.html> (last visited Feb. 20, 2017).

<sup>5</sup> Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, <http://www.myfloridalicense.com/dbpr/lsc/index.html>, (last visited January 8, 2017).

<sup>6</sup> Id.

<sup>7</sup> S. 455.2281, F.S.

<sup>8</sup> Rule 61B-60.002, F.A.C.

<sup>9</sup> Department of Business and Professional Regulation, *Eliminating Duplicative and Excessive Regulation* (October, 2015) (on file with the Business & Professionals Subcommittee).

## Labor Organizations

### Background

Part I of ch. 447, F.S., governs the licensing and regulation of labor organizations, and related business agents in the state.<sup>10</sup> The Labor Organizations Program is a program located under Regulations, which processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the labor organization industry.

A labor organization is defined as “[a]ny organization of employees or local or subdivision thereof, having within its membership residents of the state, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of pay, working conditions, or grievances of any kind relating to employment and recognized as a unit of bargaining by one or more employers doing business in this state.”<sup>11</sup> Current law requires all labor organizations to register with DBPR and all business agents of labor organizations must obtain a license.

Business agents are defined as “[a]ny person, without regard to title, who shall, for a pecuniary or financial consideration, act or attempt to act for any labor organization in:

- the issuance of membership or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization; and
- soliciting or receiving from any employer any right or privilege for employees.”<sup>12</sup>

Applicants for a business agent license must pay a \$25 licensure fee. Labor organization applicants must pay an annual fee of \$1.

The National Labor Relations Board (NLRB) provides the same type of union oversight as DBPR and is active in Florida, maintaining offices in Tampa and Miami. The United States Department of Labor, Office of Labor Management Standards also registers unions at the federal level.<sup>13</sup>

As of October 2015, there were 309 labor organizations registered and on average 15 new initial registrations issued annually during the 2012- 2015 fiscal years. Additionally, there were 469 business agents licensed and on average 48 new initial licenses issued annually during the 2012- 2015 fiscal years. There were no disciplinary cases brought against any labor organizations or business agents during 2012- 2015 fiscal years.<sup>14</sup>

### Effect of Proposed Changes

The PCS repeals certain provisions which require labor organizations and business agents to be licensed and regulated by DBPR. Specifically, the PCS repeals:

- S. 447.04, F.S., relating to licensure of business agents;
- S. 447.041, F.S., relating to hearings provided to licensees pursuant to ch. 120, F.S.;
- S. 447.045, F.S., relating to confidential information obtained by DBPR during an investigation;
- S. 447.06, F.S., relating to registration of labor organizations;
- S. 447.12, F.S., relating to fees for registration;
- S. 447.16, F.S., relating to renewal of business agent’s license renewal requirements.

Additionally, s. 447.02, F.S., removes the definition of “department,” and s. 447.09, F.S. removes disciplinary actions against a business agent regarding licensure.

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<sup>10</sup> This does not include certain public employee organizations, which are regulated by the Public Employees Relations Commission, an independent, quasi-judicial agency described in pt. II of ch. 447, F.S.

<sup>11</sup> S. 447.02(1), F.S.

<sup>12</sup> S. 447.02(2), F.S.

<sup>13</sup> DBPR, Agency Analysis of 2017 Senate Bill 802, p. 4 (March 2, 2017)

<sup>14</sup> Eliminating Duplicative and Excessive Regulation, supra note 9.

## Asbestos Abatement Business Organization

### Background

Chapter 469, F.S., governs the licensing and regulation of asbestos abatement. The Asbestos Licensing Unit is a program located under Professions. The program processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the asbestos abatement industry.

An asbestos consultant's license may be issued only to an applicant who holds a current, valid, active license as an architect, professional engineer, professional geologist, is a diplomat of the American Board of Industrial Hygiene, or has been awarded designation as a Certified Safety Professional by the Board of Certified Safety Professionals.

A person must be a licensed asbestos consultant in order to:

- conduct an asbestos survey;
- develop an operation and maintenance plan;
- monitor and evaluate asbestos abatement; and
- prepare asbestos abatement specifications.<sup>15</sup>

A person must be a licensed asbestos contractor in order to conduct asbestos abatement work.<sup>16</sup>

If an applicant for licensure as an asbestos abatement consultant or contractor seeks to engage in consulting or contracting as a business organization, the business organization must be licensed as an asbestos abatement business. Each licensed business organization must have a qualifying agent that is licensed under ch. 469, F.S. If the qualifying agent terminates his or her affiliation with the business organization and is the only qualifying agent for the business organization, another qualifying agent must qualify the business organization within 60 days after the termination, and may not engage in the practice of asbestos abatement until it is qualified.<sup>17</sup>

Applicants for an asbestos abatement business license pay an application fee of \$300, an initial licensure fee of \$250, and a biennial renewal fee of \$250 and there are no inspection requirements.<sup>18</sup>

As of October 2015, there were 239 asbestos abatement business licenses in active status and on average 12 new initial licenses issued annually during the 2012- 2015 fiscal years. There were no disciplinary cases brought against any asbestos business licenses during 2012- 2015 fiscal years.<sup>19</sup>

### Effect of Proposed Changes

The PCS removes the requirement for asbestos abatement licensees to obtain a separate license for an asbestos abatement business organization. Instead, if an applicant wants to practice under a firm offering asbestos abatement services, the qualifying agent must apply and have the license issued in his or her name and the business organization name must be noted on the license. The qualifying agent must still be a licensee pursuant to ch. 469, F.S., and must prove he or she is qualified to supervise and financially responsible.

The PCS does not amend the responsibilities of licensees under ch. 469, F.S., or otherwise effect the obligations of asbestos abatement consultants or contractors.

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<sup>15</sup> S. 469.003, F.S.

<sup>16</sup> S. 469.003(3), F.S.

<sup>17</sup> S. 469.006, F.S.

<sup>18</sup> Rule 61E1-3.001, F.A.C.

<sup>19</sup> Eliminating Duplicative and Excessive Regulation, supra note 9.

## Professional Engineers

### Background

Chapter 471, F.S., governs the licensing and regulation of professional engineers. Professional engineering means:

[A]ny service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, teaching of the principles and methods of engineering design, engineering surveys, and the inspection of construction for the purpose of determining in general if the work is proceeding in compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services.<sup>20</sup>

The practice of engineering is regulated by the Florida Board of Professional Engineers (FBPE) under Professions.<sup>21</sup> Unlike most DBPR professions, the administrative, investigative, and prosecutorial services for FBPE are not provided by DBPR.<sup>22</sup> Per s. 471.038, F.S., DBPR contracts with Florida Engineers Management Corporation (FEMC), a non-profit corporation, to provide such services.<sup>23</sup>

Some of the specific services FEMC performs on behalf of FBPE include:

- processing license applications, examinations, and renewals and collecting related fees;
- maintaining records and responding to public records requests;
- providing support staff services;
- scheduling, noticing, and planning FBPE meetings;
- receiving and investigating license complaints;
- preparing cases for presentation to a FBPE probable cause panel;
- drafting administrative complaints, citations, and notices of noncompliance and filing such documents with DBPR's agency clerk; and
- prosecuting complaints at disciplinary hearings and appellate cases.<sup>24</sup>

FEMC does not determine probable cause, take final action on license applications or disciplinary cases, adopt administrative rules, perform lobbying activities, or issue emergency suspension or restriction orders; these activities are reserved for DBPR and FBPE.<sup>25</sup>

Funding for FEMC services is provided through an appropriation allocated to the regulation of professional engineers from the Professional Regulation Trust Fund.<sup>26</sup> This appropriation for Fiscal Year 2016-2017 was \$2,170,875.00.<sup>27</sup> FEMC must reimburse DBPR for the costs of representation by

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<sup>20</sup> S. 471.005(7), F.S.

<sup>21</sup> S. 20.165(4)(a)11., F.S.

<sup>22</sup> S. 471.038(3), F.S.

<sup>23</sup> Id.

<sup>24</sup> DBPR and FEMC, *Contract No.: 13-00008, Renewal Number 1 to Contract Between DBPR and FEMC*, pp. 2-5 (July 1, 2017), available at file:///C:/Users/Wright.Kelly/Downloads/Contract\_2013-2018\_DBPR-FEMC.pdf.

<sup>25</sup> Id. at 5-6; s. 471.038(4), F.S.

<sup>26</sup> S. 471.038(3)(j)3., F.S.

<sup>27</sup> Supra note 5, at 20.

board counsel, fees incurred for the Division of Administrative Hearings, and fees associated with the DBPR contract monitor.<sup>28</sup>

FBPE and DBPR must certify annually that FEMC is complying with the terms of the contract in a manner consistent with the goals and purposes of FBPE and in the best interest of the state. This certification must be reported in the FBPE's meeting minutes. The contract must also provide for methods and mechanisms to resolve any situation in which the certification process determines noncompliance.<sup>29</sup>

FEMC records are public records available for public inspection and copying, subject to the certain exceptions.<sup>30</sup> Other DBPR professions are subject to the same requirements and exceptions.<sup>31</sup>

The FEMC's board of directors is comprised of seven members. Five of the members are professional engineers appointed by FBPE, and two of the members are laypersons appointed by the Secretary of DBPR.<sup>32</sup> The members select a president who also acts as the executive director for FBPE.<sup>33</sup> Members and employees for FEMC are not public employees.<sup>34</sup> FEMC must carry liability insurance to defend, indemnify, and hold harmless FEMC members, employees, DBPR, and DBPR employees against all claims arising from federal or state law.<sup>35</sup>

FEMC must prepare an annual budget and a report on the status of the corporation.<sup>36</sup> The report on the status of the corporation must outline statistics concerning licensing and prosecution rates.<sup>37</sup> FEMC must also provide for an annual financial audit by an independent certified public accountant which must be submitted to FBPE, DBPR, and the Auditor General for review.<sup>38</sup>

If FEMC is no longer approved to operate for FBPE, or if FBPE ceases to exist, moneys, records, data, and property held in trust by FEMC for the benefit of FBPE, revert to FBPE, or the state if FBPE ceases to exist. All records and data in a computerized database will be returned to DBPR in a form that is compatible with DBPR's computerized database.<sup>39</sup>

In Fiscal Year 2016-2017, FEMC reported 148 licensure complaints, 121 of which were legally sufficient, and 29 of which had a finding of probable cause to proceed with prosecution.<sup>40</sup> There are currently 60,409 licensed professional engineers.<sup>41</sup>

### Effect of Proposed Changes

The PCS repeals s. 471.038, F.S., on July 1, 2020. The administrative, investigative, and prosecutorial duties for FBPE would revert from FEMC to DBPR through a type two transfer.<sup>42</sup> Moneys, records, data, and property held in trust by FEMC will revert to FBPE.

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<sup>28</sup> S. 471.038(3)(j)6.-8., F.S.

<sup>29</sup> S. 471.038(3)(j)2., F.S.

<sup>30</sup> S. 471.038(7), F.S.; see also ss. 119.07(1), and 119.071, F.S.

<sup>31</sup> See ss. 119.07(1), and 119.071, F.S.

<sup>32</sup> S. 471.038(3)(f), F.S.

<sup>33</sup> S. 471.038(3)(h), F.S.

<sup>34</sup> S. 471.038(3), F.S.

<sup>35</sup> S. 471.038(3)(j)5., F.S.

<sup>36</sup> S. 471.038(3)(j)1., and (m), F.S.

<sup>37</sup> S. 471.038(m), F.S.

<sup>38</sup> S. 471.038(3)(k), F.S.

<sup>39</sup> S. 471.038(3)(j)4., F.S.

<sup>40</sup> FEMC, *2017 Annual Report*, p. 4 (Sept. 20, 2017), available at <https://fbpe.org/wp-content/uploads/2017/09/2016-17-FEMC-Annual-Report-FINAL.pdf>.

<sup>41</sup> DBPR, *Annual Report 2016-2017 Fiscal Year*, p. 21 (2017), available at <http://www.myfloridalicense.com/dbpr/os/documents/DivisionAnnualReport.pdf?x40199>

<sup>42</sup> A type two transfer occurs where either an existing agency or department, program, activity, or function is merged into another agency or department; or identifiable units are removed from the existing agency or department or abolished, and the remaining part of the existing entity is merged into another agency or department. S. 20.06(2), F.S.

The PCS requires FEMC to develop a detailed plan for its termination and the return of all regulatory functions to DBPR. The plan must detail the process for, effect of, and financial impact of such transfer. The plan must be provided to the President of the Senate and the Speaker of the House on or before January 1, 2019.

## **Barbering**

### Background

Chapter 476, F.S., governs the licensing and regulation of barbers, restricted barbers, and barbershops in the state. The Barbers' Board is located under Professions. The board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the barbering industry.

'Barbering' means any of the following practices when done for remuneration and for the public, but not when done for the treatment of disease or physical or mental ailments: shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances."<sup>43</sup>

A 'restricted barber' is a person who has a restricted license to practice barbering. The restricted license limits the licensee's practice to those specific areas in which the applicant has demonstrated competence pursuant to rules adopted by the board. An applicant may obtain a restricted license if he or she:

- has successfully completed an approved restricted barber course; or
- holds or has within the previous 5 years held an active valid license to practice barbering in another jurisdiction or has held a Florida barbering license which has been declared null and void for failure to renew the license, and the applicant fulfilled the requirements for initial licensure; and has not been disciplined relating to the practice of barbering in the previous 5 years; and
- passes a written examination on the laws and rules governing the practice of barbering in Florida.

Barbers and restricted barbers must complete 1,200<sup>44</sup> hours of training to be eligible for licensure, in addition to passing the applicable exam and paying a \$223.50 fee.<sup>45</sup>

### Effect of Proposed Changes

The PCS reduces and restricts the amount of training for barbers and restricted barbers from 1,200 to 600 for barbers and from 1,200 to 325 for restricted barbers. The type of training prescribed is limited to sanitation, safety, and laws and rules.

The PCS also clarifies the definition of 'restricted barber' as performing the following services for remuneration:

- hair cutting and styling, including the application of hair tonics and hair spray, but not including the application of other chemical preparations or solutions to the hair;
- full facial shaves;
- mustache and beard trimming; and
- shampooing hair, including the application of shampoos and conditioners and blow drying the hair.

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<sup>43</sup> S. 476.034(2), F.S.

<sup>44</sup> Under certain circumstances, an applicant may take the exam after completing 1,000 hours of training. If he or she passes the exam, no more training is required. S. 476.114(c)2., F.S.

<sup>45</sup> Rule 61-35.006, F.A.C.



## Cosmetology

### Background

Chapter 477, F.S., governs the licensing and regulation of cosmetologists, hair wrappers, hair braiders, nail specialists, facial specialists, full specialists, body wrappers, and related salons in the state. The Board of Cosmetology is under Professions. The board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the cosmetology industry.

The term 'cosmetology' is defined as "the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services."<sup>46</sup> Becoming licensed as a cosmetologist requires 1,200 hours of training, which typically costs between \$5,000 and \$20,000.<sup>47</sup>

### Specialty Registrations

A 'specialist' is defined as any person holding a specialty registration in one or more of the cosmetology specialties. The term 'specialty' is defined as "the practice of one or more of the following:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive;
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet; and
- Facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services."<sup>48</sup>

A nail specialist may complete manicures and pedicures. A facial specialist may complete facials. A full specialist may complete manicures, pedicures, and facials.

To qualify for a specialist registration, the applicant must:

- be at least 16 years old;
- obtain a certificate of completion from an approved specialty education program, consisting of:
  - 240 hours of training for a nail specialty,
  - 260 hours of training for a facial specialty, and
  - 500 hours of training for a full specialty;<sup>49</sup> and
- submit an application for registration with DBPR with a \$63.50 registration fee.<sup>50</sup>

Currently, a person who applies polish or paint to fingernails and toenails or makeup<sup>51</sup> for compensation needs a cosmetology or specialty license. Texas currently allows makeup application for compensation without a license.<sup>52</sup>

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<sup>46</sup> S. 477.013, F.S.

<sup>47</sup> BeautySchools.com, *The Cost of Beauty School*, <https://beautyschools.com/the-cost-of-beauty-school/> (last visited March 3, 2017).

<sup>48</sup> S. 477.013, F.S.

<sup>49</sup> Ch. 61G5-22, F.A.C.

<sup>50</sup> S. 477.0201, F.S.

<sup>51</sup> "Makeup" is generally defined as the application of certain cosmetic products such as lipstick, mascara, and foundation to color the face or body. It does not include the application of permanent makeup, which is considered cosmetic tattooing and requires licensure as a tattoo artist from the Florida Department of Health. Merriam-Webster, Inc., *Makeup*, <https://www.merriam-webster.com/dictionary/makeup> (last visited April 20, 2017); Rule 64E-28.002(20), F.A.C.

<sup>52</sup> Tex. Occ. Code Ann § 1602.003(b)(3) (West 2015).

### Hair Braiding, Hair Wrapping or Body Wrapping Registrations

Hair braiding, hair wrapping, and body wrapping are limited scope cosmetology registrations.<sup>53</sup>

‘Hair braiding’ means the weaving or interweaving of natural human hair for compensation without cutting, coloring, permanent waving, relaxing, removing, or chemical treatment and does not include the use of hair extensions or wefts.”

Persons whose occupation or practice is confined solely to hair braiding must:

- register with DBPR,
- pay the applicable \$25 registration fee, and
- take a two-day board-approved 16-hour course, consisting of 5 hours of HIV/AIDS and other communicable diseases, 5 hours of sanitation and sterilization, 4 hours of disorders and diseases of the scalp, and 2 hours of studies regarding laws affecting hair braiding.<sup>54</sup>

‘Hair wrapping’ means the wrapping of manufactured materials around a strand or strands of human hair, for compensation, without cutting, coloring, permanent waving, relaxing, removing, weaving, chemically treating, braiding, using hair extensions, or performing any other service defined as cosmetology.

Persons whose occupation or practice is confined solely to hair wrapping must:

- register with DBPR,
- pay the applicable \$25 registration fee, and
- take a one-day board-approved 6-hour course, consisting of education in HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the scalp, and studies regarding laws affecting hair wrapping.

‘Body wrapping’ means a treatment program that uses herbal wraps for the purposes of cleansing and beautifying the skin of the body, but does not include the application of oils, lotions, or other fluids to the body, except fluids contained in presoaked materials used in the wraps, or manipulation of the body’s superficial tissue, other than that arising from compression emanating from the wrap materials.

A person whose occupation or practice is body wrapping must:

- register with DBPR,
- pay the applicable \$25 registration fee, and
- take a two-day board-approved 12-hour course, consisting of education in HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the skin, and studies regarding laws affecting body wrapping.

Hair braiding, hair wrapping, and body wrapping are not required to be practiced in a cosmetology salon or specialty salon.

Continuing education is not required of hair braiders, hair wrappers, and body wrappers.<sup>55</sup>

The Board of Cosmetology issued 28 disciplinary orders against licensed hair braiders, hair wrappers, and body wrappers during the 2012- 2015 fiscal years. These actions generally did not involve consumer injury, but were technical scope of practice violations (e.g. practicing with an expired license

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<sup>53</sup> Described in ss. 477.013 and 477.0132, F.S.

<sup>54</sup> Courses for hair braiding, hair wrapping, and body wrapping generally cost between \$75 and \$250. Examples include: 1STOPCEU.com, *Home*, <http://www.floridahairbraider.com/> (last visited March 4, 2017); and JT’s Beauty Shop, Inc., *Florida State Certified Courses (Theory)*, [http://www.jtbeautysalon.com/certified\\_classes.html](http://www.jtbeautysalon.com/certified_classes.html) (last visited March 4, 2017).

<sup>55</sup> S. 477.019(7)(b), F.S.

or failing to timely renew the license). This constitutes a little over one percent of the 2,690 disciplinary orders issued by the Board of Cosmetology during these fiscal years.<sup>56</sup>

### Effect of Proposed Changes

The PCS clarifies which services can be performed by specialty registration holders, which are outlined as follows:

- Nail specialists can perform: manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive, pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet;
- Facial specialists can perform: facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services; and
- Full specialists can perform: manicuring, pedicuring, and facial services, including all services within the definition of nail specialty and facial specialty.

The PCS reduces the amount of training hours required for specialty registrations, which must focus primarily on sanitation and safety, from:

- 240 hours to 150 hours for nail specialists,
- 260 hours to 165 hours for facial specialists, and
- 500 hours to 300 hours for full specialists.

The PCS adds weaving or interweaving commercial hair, including the use of extensions or wefts, to the scope of 'hair braiding.'

The PCS removes all licensure and regulatory requirements for hair braiders, hair wrappers, body wrappers, nail polishers, and makeup applicators and makes conforming changes to cross-references.

## **Architecture and Interior Design Business Organizations**

### Present Situation

Chapter 481, pt. I, F.S., governs the licensing and regulation of architects, interior designers, and related business organizations. The Board of Architecture and Interior Design is a board located under Professions. The board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the architecture and interior design industries.

An architecture business corporation, limited liability company, or partnership, which is offering architecture service to the public, must obtain a certificate of authorization prior to practicing.<sup>57</sup> One or more of the principal officers of the corporation or limited liability company, or one or more partners of the partnership, must be a licensed architect. Applicants for an architecture business certificate of authorization must pay an application fee of \$100, an unlicensed activity fee of \$5, and a biennial renewal fee of \$125.<sup>58</sup> There is no requirement on the business entity other than to obtain licensure and there are no inspection requirements.

Interior design businesses must also obtain a certificate of authorization. At least one principal officer or partner and all personnel who act on the business entity's behalf in the state must be registered interior designers. The initial license fee for a certificate of authorization is \$100 and the biennial renewal fee is \$125.<sup>59</sup>

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<sup>56</sup> Agency Analysis of 2017 Senate Bill 802, supra note 13, at 4-5.

<sup>57</sup> S. 481.219(2)-(3), F.S.

<sup>58</sup> Rules 61G1-17.001 and 61G1-17.002, F.A.C.

<sup>59</sup> Rule 61G1-17.002, F.A.C.

As of October 2015, there were 2,747 architecture business licenses and 1,047 interior design business licenses in active status and on average 203 new initial architecture business licenses and 98 interior design business licenses issued annually during the 2012- 2015 fiscal years.

There were 17 disciplinary cases brought against architecture business licenses during the 2012- 2015 fiscal years.<sup>60</sup> Typically, the disciplinary actions taken were for operating without a supervising architect and for failing to use a license number in advertisements. During the 2012-2015 fiscal years, the Board of Architecture and Interior Design disciplined licensed interior design business licenses only 4 times without also taking disciplinary action against the qualifying interior designer. In 3 of the 4 disciplinary cases, the business license was retained by the business after the qualifying interior designer had left the firm.<sup>61</sup>

### Effect of Proposed Changes

The PCS removes the requirement that architects and interior designers obtain a separate business license (certificate of authorization) in addition to an individual license. The PCS provides that architects and interior designers qualify their business organizations with their individual licenses. The PCS provides that architects and interior designers must inform DBPR of any change in their relationship with the qualified business, and the business has 60 days to obtain a replacement qualifying architect or interior designer. The executive director or chair of the Board of Architecture and Interior Design may authorize another registered architect or interior designer employed by the business organization to temporarily service as its qualifying agent for no more than 60 days.

The PCS amends s. 481.219(2)(b), F.S., to provide that the Board of Architecture and Interior Design may deny an application to qualify a business organization if the applicant (or others identified in the application as partners, officers, directors, or stockholders who are also officers or directors) “has been involved in past disciplinary actions or on any grounds for which an individual registration or certification may be denied.”

The PCS requires the qualifying agent to provide notice to DBPR when he or she begins to conduct business in his or her own name or with another business organization following the previous termination. The qualifying agent or the new business organization must submit the required application information.

The qualifying agent must ensure responsible supervising control of all projects of the business organization and upon termination of his or her employment with a business organization for which he or she qualifies, the agent must notify DBPR of the termination within 30 days.

## **Landscape Architecture Business Organization**

### Background

Chapter 481, pt. II, F.S., governs the licensing and regulation of landscape architects and related business organizations in the state. The Board of Landscape Architecture is a board located under the Professions. The board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the landscape architecture industry.

A corporation or partnership is permitted to apply for a certificate of authorization if:

- One or more of the principles of the corporation, or partners in the partnership, is a licensed landscape architect;
- One or more of the officers, directors, or owners of the corporation, or one of more of the partners of the partnership is a licensed landscape architect;

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<sup>60</sup> Eliminating Duplicative and Excessive Regulation, supra note 9.

<sup>61</sup> Agency Analysis of 2017 Senate Bill 802, supra note 13, at 5.

- The corporation or partnership has been issued a certificate of authorization by the board.<sup>62</sup>

Applicants for a landscape architecture business certificate of authorization must pay an application fee and initial licensure fee of \$450.00 and a biennial renewal fee of \$337.50.<sup>63</sup> There is no requirement on the business entity other than to obtain licensure and there are no inspection requirements.

As of October 2015, there were 347 landscape architecture business licenses in active status and on average 31 new initial licenses issued annually during the 2012- 2015 fiscal years. There were no disciplinary cases brought against any landscape architecture business licenses during the 2012-2015 fiscal years.<sup>64</sup>

### Effect of Proposed Changes

The PCS repeals all provisions which require licensees to obtain a certificate of authorization to practice landscape architecture through a business organization. Instead, a licensed landscape architect must apply to qualify the business organization as a qualifying agent if he or she proposes to engage in the practice of landscape architecture as a business organization.

The PCS repeals DBPR's authority to issue a certificate of authorization to an applicant wishing to practice as a corporation, limited liability company, or partnership offering landscape architectural services. Furthermore, the PCS repeals the board's ability to grant a temporary certificate of authorization for a business organization that is seeking to work on one project in Florida for a period not to exceed a year to an out-of-state corporation, partnership, or firm.

The PCS provides that a corporation or partnership is permitted to offer landscape architectural services to the public if:

- one or more of the principles of the corporation, or partners in the partnership, is a licensed landscape architect; or
- one or more of the officers, directors, or owners of the corporation, or one of more of the partners of the partnership is a licensed landscape architect.

The qualifying agent must provide notice to DBPR within one month of any change in the information contained in the license application.

The PCS removes disciplinary actions against certificates of authorization for business organizations. The PCS does not modify the liability of a landscape architect for his or her professional acts.

## **Geology Business Organization**

### Background

Chapter 492, F.S., governs the licensing and regulation of geologists and related business organizations. The Board of Professional Geologists is a board located under Professions. The board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the geology industry.

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<sup>62</sup> S. 481.319(1), F.S.

<sup>63</sup> Rule 61G10-12.002, F.A.C.

<sup>64</sup> Eliminating Duplicative and Excessive Regulation, supra note 9.

An individual may not practice geology through a firm, corporation, or partnership offering geological services to the public unless the firm, corporation, or partnership has been issued a certificate of authorization.<sup>65</sup> A firm, corporation, or partnership is permitted to offer geological services to the public if:

- at all times, the entity has on file with DBPR the name and license number of one or more licensed geologists serving as a geologist with the entity;
- the entity has been issued a certification of authorization by DBPR;
- all final geological documents prepared or approved for the use of the entity shall be dated and signed and sealed by the licensed geologist;
- the entity is not relieved of personal liability due to the fact that a licensed geologist practices at the entity; and
- the entity files an application with DBPR.<sup>66</sup>

Any change in the business operating relationship between the business organization and the qualifying geologist must be reported to DBPR within 30 days.

Applicants for a geology business certificate of authorization must pay an application fee of \$350.00 and a biennial renewal fee of \$350.<sup>67</sup> There is no requirement on the business entity other than to obtain licensure and there are no inspection requirements.

As of October 2015, there were 373 geology business licenses in active status and on average 27 new initial licenses issued annually during the 2012- 2015 fiscal years. There were no disciplinary cases brought against any geology business licenses during the 2012-2015 fiscal years.<sup>68</sup>

### Effect of Proposed Changes

The PCS repeals all provisions which require a certificate of authorization to practice geology through a business organization. Instead, a licensed geologist must apply to qualify the business organization as a qualifying agent if he or she proposes to engage in the practice of geology as a firm, corporation, or partnership.

The qualifying agent is required to update DBPR of any changes in the relationship between himself or herself and the business organization within 30 days.

The PCS repeals DBPR's authority to issue a certificate of authorization to an applicant wishing to practice as a firm, corporation, or partnership offering geological services.

## **Pugilistic Timekeepers and Announcers**

### Background

Chapter 548, F.S., governs the Florida State Boxing Commission, which is under Regulations. The function of the Commission is to license and regulate professional boxing, kickboxing, and mixed martial arts. The Commission ensures that all matches are conducted in accordance with provisions of state laws and rules. It also makes certain that health and safety requirements are met and that matches are competitive and physically safe for participants. The Commission designates employees to attend the matches, appoints match officials, and ensures the matches are held in a safe and fair manner.

A 'timekeeper' is an individual who is assigned the duties to maintain the time for each round during a pugilistic event.<sup>69</sup>

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<sup>65</sup> S. 492.111(2), F.S.

<sup>66</sup> S. 481.319(1), F.S.

<sup>67</sup> Rule 61G10-12.002, F.A.C.

<sup>68</sup> Eliminating Duplicative and Excessive Regulation, supra note 9.

An ‘announcer’ is an individual who has the authority to make all announcements, including the result of the event, during a pugilistic event.<sup>70</sup>

In order to obtain a license, a timekeeper or announcer applicant must:

- be at least 18 years of age, and
- pay an application fee of \$50.

Currently, there are 5 licensed timekeepers and 2 licensed announcers.<sup>71</sup>

### Effect of Proposed Changes

The PCS deletes all licensure and regulatory requirements for boxing announcers and boxing timekeepers and makes conforming changes to cross-references.

## **Licensing Applications, Procedures and Criminal History**

### Background

Section 112.011, F.S., outlines guidelines for considering criminal convictions during licensure determinations. Generally, a person may be denied a professional license, permit, or certification for prior conviction for a crime if the crime was a felony or first-degree misdemeanor that is directly related to the standards determined by the regulatory authority to be necessary and reasonably related to the protection of the public health, safety, and welfare for the specific occupation, trade, vocation, profession, or business for which the license, permit, or certificate is sought.<sup>72</sup> Notwithstanding any law to the contrary, a state agency may not deny an application for a license, permit, certificate, or employment based solely on the applicant’s lack of civil rights.<sup>73</sup>

Specifically, for DBPR license applicants, DBPR or an applicable board may deny a license application for any person having been “convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee’s profession”<sup>74</sup> or for other reasons in the applicable practice act. There are no statutory provisions or rules that prohibit individuals from applying for licensure while they are still incarcerated or under some form of supervised release, nor are such individuals charged any additional fees.<sup>75</sup>

Specifically, for Department of Health (DOH) licensed applicants, DOH or an applicable board may deny a license application for any person having been “convicted of or pled guilty or nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession regulated by this state”<sup>76</sup> or related to certain types of fraud,<sup>77</sup> or for other reasons in the applicable practice act. There are no statutory provisions or rules that prohibit individuals from applying for licensure while they are still incarcerated or under some form of supervised release.<sup>78</sup>

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<sup>69</sup> Rule 61K1-3.0001(19), F.A.C.

<sup>70</sup> Rule 61K1-3.0001(1), F.A.C.

<sup>71</sup> Email from Andrew Forst, Legislative Coordinator, Florida Department of Business and Professional Regulation, RE: Timekeeper and Announcer license counts (March 3, 2017).

<sup>72</sup> S. 112.011(1)(b), F.S.

<sup>73</sup> S. 112.011(1)(c), F.S.

<sup>74</sup> S. 455.227(1)(c), F.S.

<sup>75</sup> Florida Department of Business and Professional Regulation, Agency Analysis of 2018 Senate Bill 1114, p. 2 (Jan. 8, 2018).

<sup>76</sup> SS. 456.024(3)(c); 456.072(1)(c), (x), (ii), (ll); and 456.072(2)(a), F.S.

<sup>77</sup> S. 456.0635, F.S.

<sup>78</sup> Florida Department of Health, Agency Analysis of 2018 House Bill 1041, p. 2 (Jan. 24, 2018).

### Barbers

The practice act for barbers does not provide a specific basis for denial of a license application based on a person's criminal background. However, a person may be denied a license application as a barber for any violation of s. 455.227, F.S., which authorizes the denial of a license on the basis of a criminal background related to the practice of, or the ability to practice, a licensee's profession.<sup>79</sup> Fingerprints are not required to be submitted to DBPR for a formal background check for barber license applicants.

For Fiscal Years 2011-12 through 2014-15, 18 out of 8,691 applicants for a barbering license were disqualified based on criminal history.<sup>80</sup>

### Cosmetologists and Specialists

The practice act for cosmetologists does not provide a specific basis for denial of a license application based on a person's criminal background. However, the board may deny a license or application for any violation of s. 455.227, F.S., which authorizes the denial of a license on the basis of a criminal background related to the practice of, or the ability to practice, a licensee's profession.<sup>81</sup> Fingerprints are not required to be submitted to DBPR for a formal background check for cosmetology license applicants.

For Fiscal Years 2011-12 through 2014-15, 18 out of 95,715 applicants for a cosmetology license were disqualified based on criminal history.<sup>82</sup>

### Construction Contracting Professionals

#### *CILB and ECLB*

The Construction Industry Licensing Board (CILB) within the DBPR is responsible for licensing and regulating the construction industry under pt. I of ch. 489, F.S.<sup>83</sup> The CILB is divided into two divisions with separate jurisdictions:

- Division I is comprised of the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.
- Division II is comprised of the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.

A specialty contractor is one whose scope of work and responsibility is limited to a particular phase of construction as detailed in an administrative rule adopted by the CILB. Jurisdiction is dependent on the scope of work and whether Division I or Division II has jurisdiction over such work in accordance with the applicable administrative rule.<sup>84</sup>

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<sup>79</sup> See s. 455.227(1)(c), F.S.

<sup>80</sup> Department of Business and Professional Regulation, *Response to Senate Bill 146 Ex-Offender Report*, p. 40 (2015), (on file with the Careers and Competition Subcommittee).

<sup>81</sup> See s. 477.029(1)(h), F.S.

<sup>82</sup> DBPR, *supra* note 80, at 50.

<sup>83</sup> See s. 489.107, F.S.

<sup>84</sup> For example, specialty swimming pool contractors have limited scopes of work for the construction of pools, spas, hot tub, and decorative or interactive water displays. See Rule 61G4-15.032 (2016), F.A.C.



The Electrical Contractors' Licensing Board (ECLB) within the DBPR is responsible for licensing and regulating electrical contractors and alarm system contractors in this state under pt. II of Ch. 489, F.S.<sup>85</sup>

The CILB and ECLB may deny a license application for any person who it finds guilty of any of the grounds for discipline set forth in s. 455.227(1), F.S., or set forth in the profession's practice act.<sup>86</sup> Specifically, the CILB may deny a license application for any person having been convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of, or the ability to practice, a licensee's profession.<sup>87</sup>

CILB and ECLB contractors must be of good moral character. In considering good moral character, DBPR may consider any matter, including criminal background, that has a substantial connection between the good moral character of the applicant and the professional responsibilities of such a contractor by clear and convincing evidence.<sup>88</sup>

For Fiscal Years 2011-12 through 2014-15, 6 out of 7,575 applicants for an ECLB license, and 29 out of 22,934 applicants for a CILB license, were denied based on criminal history.<sup>89</sup>

### *Septic Tank Contracting*

Septic tank contracting is the practice of working with onsite sewage treatment and disposal systems.<sup>90</sup> Master septic tank contractors and septic tank contractors are regulated by the DOH under pt. III of ch. 489, F.S. Septic tank contractors must pass an examination and register with the DOH.<sup>91</sup> A master septic tank contractor" must have at least 3 years' experience as a registered septic tank contractor or a plumbing contractor certified under part I of ch. 489, F.S., who has provided septic tank contracting services for at least 3 years.

To be eligible for registration by the DOH, master septic tank contractors and septic tank contractors must be of good moral character. In considering good moral character, the DOH may consider any matter, including criminal background, that has a substantial connection between the good moral character of the applicant and the professional responsibilities of a registered contractor.<sup>92</sup> This includes crimes which affect the profession of septic tank contracting.<sup>93</sup>

### *Lookback Considerations for CILB, ECLB, and Septic Tank Contractors*

The CILB must consider length of time since the commission of a crime and the rehabilitation of the applicant in denying or approving licensure.<sup>94</sup> The CILB may not deny licensure to an applicant based solely upon a felony conviction or the applicant's failure to provide proof of restoration of civil rights.<sup>95</sup> For licensing electrical or septic tank contractors, the ECLB or DOH, respectively, are not specifically required to consider the passage of time between the disqualifying criminal offense and the time of application before denying or granting a license or registration.

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<sup>85</sup> S. 489.507, F.S.

<sup>86</sup> S. 455.227(2), F.S.

<sup>87</sup> SS. 489.129(1)(b) and 489.553(1)(d), F.S., providing the disciplinary grounds for construction contractors and electrical contractors, respectively.

<sup>88</sup> SS. 489.111(2)(b), (3)(a) and 489.513(1)(b), (c), F.S.

<sup>89</sup> DBPR, supra note 80, at 55. The numbers for CILB licenses include Div. I contractors who are not the subject of this bill, but the numbers in the report are inextricable.

<sup>90</sup> S. 489.551(4), F.S.

<sup>91</sup> SS. 489.552 and 489.553, F.S.

<sup>92</sup> S. 489.553(4)(a), F.S.

<sup>93</sup> Id.

<sup>94</sup> S. 489.115(6), F.S.

<sup>95</sup> Id.

## DOH Certified Nursing Assistants

The Board of Nursing within DOH is responsible for licensing and regulating certified nursing assistants under pt. II of ch. 464, F.S.<sup>96</sup> In Fiscal Year 2015-2016, there were 146,495 active certified nursing assistants.<sup>97</sup>

The “practice of a certified nursing assistant” means:

[P]roviding care and assisting persons with tasks relating to the activities of daily living. Such tasks are those associated with personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, safety and cleanliness, data gathering, reporting abnormal signs and symptoms, postmortem care, patient socialization and reality orientation, end-of-life care, cardiopulmonary resuscitation and emergency care, residents’ or patients’ rights, documentation of nursing-assistant services, and other tasks that a certified nurse assistant may perform after training beyond that required for initial certification and upon validation of competence in that skill by a registered nurse.<sup>98</sup>

To be certified, a person must have a high school diploma, or its equivalent; or be at least 18 years of age; and pass a nursing assistant competency examination. Alternatively, a person may be certified if they have been licensed in another state and not have been found to have committed abuse, neglect, or exploitation in that state.<sup>99</sup>

Although the practice act for certified nursing assistants does not specifically reference a person’s criminal background, applicants for certification may be disqualified based on crimes related to the practice of certified nurse assisting.<sup>100</sup> Additionally, as with all health practitioner licenses, pursuant to s. 456.0635, F.S., CNA applicants will automatically be disqualified for felonies related to health care fraud or violent crimes under chs. 409, 817, and 893, F.S., or similar offenses in other jurisdictions, and certain federal offenses, until the sentence and any subsequent probation has ended and for a certain time frame afterward, ranging from 5 to 15 years.<sup>101</sup>

The applicant also must successfully pass a required background screening,<sup>102</sup> either pursuant to s. 400.215, F.S., which requires the personnel of nursing homes and related healthcare facilities to pass a level 2 background screening, or pursuant to s. 408.809, F.S., which requires level 2 background screening for specified persons, including employees of medical facilities.<sup>103</sup> The background screening must be completed every five years following licensure, employment, or entering into contract in a capacity that requires background screening.<sup>104</sup> Both of these background screenings include checking for crimes related to various types of fraud, in addition to violent crimes.<sup>105</sup>

Section 435.04, F.S., prohibits the licensure of any person based on 52 prohibited offenses listed in s. 435.04(2), F.S., which include violent crimes, property crimes, and sexual offenses.<sup>106</sup> A level 2 background screening is meant to ensure a person subject to the screening has not been arrested for, is not awaiting final disposition of, has not been found guilty of (regardless of adjudication), not entered

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<sup>96</sup> See s. 489.107, F.S.

<sup>97</sup> See Florida Department of Health, Division of Medical Quality Assurance, *Annual Report & Long-range Plan, Fiscal Year 2016-2017*, at <http://mqawebteam.com/annualreports/1617/#1/z> (last visited February 12, 2018) at page 13.

<sup>98</sup> S. 464.201(5), F.S.

<sup>99</sup> S. 464.203, F.S.

<sup>100</sup> Supra note 76, and s. 464.204(1)(b), F.S.

<sup>101</sup> S. 456.0635(2)(a), F.S.

<sup>102</sup> S. 464.203(1), F.S.

<sup>103</sup> S. 408.809(1), F.S.

<sup>104</sup> S. 408.809(2), F.S.

<sup>105</sup> SS. 400.215 and 408.809(4)(a), F.S.

<sup>106</sup> See s. 435.04(2), F.S.

a plea of nolo contendere or guilty to, has not been adjudicated delinquent, and has not had a sealed or expunged record for, any of the listed offenses. Both CNA background screening procedures use ch. 435, F.S., as a guide.

A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement (FDLE) and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies. Once the background screening is completed, and FDLE receives the information from the FBI, the criminal history information is transmitted to DOH. DOH then determines if the screening contains any disqualifying information for employment.<sup>107</sup>

If a person is disqualified from employment due to failing the required background screening, the DOH may grant an exemption from disqualification for:

1. Felonies for which at least three years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying felony;
2. Misdemeanors prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court;
3. Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court; or
4. Findings of delinquency.<sup>108</sup>

However, if the delinquency would be a felony if committed by an adult and the record has not been sealed or expunged, the exemption may not be granted until at least three years have elapsed since completion or lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying offense.<sup>109</sup>

To be granted an exemption, a person must have paid any court-ordered amount for any fee, fine, fund, lien, civil judgment, application, costs of prosecution, trust, or restitution as part of the judgment and sentence for the disqualifying crime.<sup>110</sup>

However, DOH may not grant an exemption to an individual who is found guilty of, or who has entered a plea of nolo contendere or guilty to, regardless of adjudication, any felony covered by s. 435.03 or s. 435.04, F.S., solely by reason of any pardon, executive clemency, or restoration of civil rights.<sup>111</sup>

An exemption may also not be granted to anyone who is a sexual predator, career offender, or sexual offender (unless not required to register as such).<sup>112</sup> The agency may not grant an exemption from disqualification to persons with a criminal history that includes other violent felonies, crimes against children, and sex-related crimes, such as felony domestic violence, luring or enticing a child, sexual battery, child pornography, and child abuse.<sup>113</sup>

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<sup>107</sup> S. 435.04, F.S.

<sup>108</sup> S. 435.07(1)(a), F.S.

<sup>109</sup> Id.

<sup>110</sup> S. 435.07(1)(b), F.S.

<sup>111</sup> S. 435.07(4)(a), F.S.

<sup>112</sup> S. 435.07(4)(b), F.S.

<sup>113</sup> S. 435.07(4)(c), F.S.

## **Effect of Proposed Language - Licensing Applications, Procedures and Criminal History**

The PCS requires the Barbers' Board, Board of Cosmetology, ECLB, and CILB (collectively "boards") to list on DBPR's website the crimes that if committed by an applicant, do not impair a person's qualifications for licensure and update it annually. Beginning October 1, 2018, the boards must compile a list of crimes that although reported by an applicant for licensure, were not used as a basis for denial in the past 2 years. The list must identify the crime reported and the date of conviction, plea, adjudication or the date of sentencing for each such license application.

The PCS requires DBPR to identify the crimes that do impair a person's qualifications for licensure. Starting October 1, 2018, and updated quarterly thereafter, the boards must compile a list of crimes that have been used as a basis for denial of a license in the past 2 years, which shall be made available on DBPR's website. For each crime listed, the board must identify the date of conviction, plea, adjudication, or date of sentencing. Such denials must be available to the public upon request.

The PCS also requires the Board of Nursing and DOH to perform the above procedures for CNAs and septic tank contractors.

The PCS revises current application procedures for specified professions or occupations regulated by DBPR and DOH. The PCS amends s. 455.213, F.S., dealing with the general licensing provisions of DBPR, s. 464.203, F.S., dealing with the certification requirements for CNAs, and s. 489.553, F.S., dealing with certification requirements for septic tank contractors.

The license application provisions in the PCS apply to the following professions and occupations:

- CNAs.
- Barbers.
- Cosmetologists and cosmetology specialists.
- Construction Professionals:
  - Electrical Contractors;
  - Alarm System Contractors;
  - Septic Tank Contractors;
  - Swimming pool and spa contractors;
  - Sheet metal contractors;
  - Roofing contractors;
  - Air-conditioning contractors;
  - Mechanical contractors;
  - Plumbing contractors;
  - Underground utility and excavation contractors;
  - Solar contractors;
  - Pollutant storage systems contractor; and
  - Other specialty contractors whose scope of work and responsibility is limited to a particular phase of construction, e.g. drywall, glazing, swimming pool excavation, etc.

The PCS:

- Expressly permits a person to apply for a license while under criminal confinement, incarceration or supervision.
- Limits the period during which the agency may consider criminal history as an impairment to licensure to a criminal conviction less than 5 years prior to application for barbers, cosmetologists, and certain contractors, or less than 7 years prior to application for CNAs but does not change license qualifications based on the applicant's moral character for CILB or ECLB applicants.
- Allows DOH to continue to consider an applicant's criminal history related to violent felonies, crimes against children, or sexual offenses identified in s. 435.04, F.S., or health care fraud-related crimes pursuant to s. 456.0635, F.S., even if the application is longer than 7 years from the date of the crime.

- Allows DBPR to continue to consider an applicant's criminal history related to certain violent felonies, crimes against children, burglary, or sexual offenses, listed in ss. 435.04 or 775.21(4)(a)1., F.S., even if the application is longer than 5 years from the date of the crime.
- Allows DBPR to continue to review applicants for contracting licenses for good moral character as provided in ss. 489.111((2)(b) and 489.511(1)(b)1., F.S.
- Requires the licensing agency to permit applicants who are incarcerated or under supervision to appear by teleconference or video conference at a meeting of a board or the agency for a hearing concerning the person's license application.
- Requires the Department of Corrections (DOC) to cooperate and coordinate with the board or department, as applicable, to facilitate the appearance of the license applicant at the hearing in person, by teleconference, or by video conference, as appropriate.

The PCS provides an effective date of July 1, 2018, except for bill sections 11, 12, 13, and 38, which provide an effective date of October 1, 2018.

## B. SECTION DIRECTORY:

- Section 1:** Amends s. 326.004, F.S., deleting requirement for yacht broker branch office licenses.
- Section 2:** Amends s. 447.02, F.S., conforming provisions.
- Section 3:** Repeals s. 447.04, F.S., relating to licensure requirements for business agents.
- Section 4:** Repeals s. 447.041, F.S., relating to hearings for labor organizations or business agents denied licensure.
- Section 5:** Repeals s. 447.045, F.S., relating to confidential application information.
- Section 6:** Repeals s. 447.06, F.S., relating to required registration of labor organizations.
- Section 7:** Amends s. 447.09, F.S., deleting certain actions relating to right of franchise of a member of a labor organization.
- Section 8:** Repeals s. 447.12, F.S., relating to fees.
- Section 9:** Repeals s. 447.16, F.S., relating to applicability.
- Section 10:** Amends s. 447.305, F.S., deleting provision requiring notification to DBPR.
- Section 11:** Amends s. 455.213, F.S., providing specific standards for certain DBPR professional licenses regarding an applicant's criminal background.
- Section 12:** Amends s. 464.203, F.S., providing specific standards for certified nursing assistant licenses regarding an applicant's criminal background.
- Section 13:** Amends s. 400.211, F.S., making a conforming change.
- Section 14:** Amends s. 469.006, F.S., revising licensure requirements for asbestos abatement business entities.
- Section 15:** Amends s. 469.009, F.S., conforming provisions.
- Section 16:** Creates an unnumbered section of Florida Statutes requiring the Florida Engineering Management Corporation to develop a plan for the repeal of s. 471.038, F.S.
- Section 17:** Amends s. 471.0035, F.S., relating to instructors in postsecondary educational institutions.
- Section 18:** Amends s. 471.005, F.S., relating to definitions.
- Section 19:** Amends s. 471.005, F.S., relating to definitions.
- Section 20:** Amends s. 471.011, F.S., relating to fees.
- Section 21:** Amends s. 471.015, F.S., relating to licensure.
- Section 22:** Amends s. 471.017, F.S., relating to renewal of license.
- Section 23:** Amends s. 471.021, F.S., relating to engineers and firms of other states.
- Section 24:** Amends s. 471.023, F.S., relating to certification of business organizations.
- Section 25:** Amends s. 471.033, F.S., relating to disciplinary proceedings.
- Section 26:** Repeals s. 471.038, F.S., relating to the Florida Engineers Management Corporation.
- Section 27:** Repeals s. 471.0385, F.S., relating to court action and effect.
- Section 28:** Creates an unnumbered section of Florida Statutes transferring all duties and responsibilities of the Florida Engineering Management Corporation to the Department of Business and Professional Regulation.
- Section 29:** Amends s. 476.034, F.S., defining 'restricted barber' and 'restricted barbering.'

- Section 30:** Amends s. 476.114, F.S., revising barber training requirements.
- Section 31:** Amends s. 476.144, F.S., requiring DBPR to license qualified restricted barbers.
- Section 32:** Amends s. 477.013, F.S., revising and providing definitions.
- Section 33:** Repeals s. 477.0132, F.S., relating to the registration of hair braiding, hair wrapping, and body wrapping.
- Section 34:** Amends s. 477.0135, F.S., exempting hair braiders, hair wrappers, body wrappers, nail polishers, and makeup applicators from licensure.
- Section 35:** Amends s. 477.019, F.S., conforming provisions.
- Section 36:** Amends s. 477.0201, F.S., providing requirements for specialty licenses.
- Section 37:** Amends s. 477.026, F.S., conforming provisions.
- Section 38:** Amends s. 477.0265, F.S., conforming provisions.
- Section 39:** Amends s. 477.029, F.S., conforming provisions.
- Section 40:** Amends s. 481.203, F.S., revising definitions for 'certificate of authorization' and 'business organization.'
- Section 41:** Amends s. 481.219, F.S., relating to provision relating to regulation of businesses related to interior design.
- Section 42:** Amends s. 481.221, F.S., conforming provisions.
- Section 43:** Amends s. 481.229, F.S., conforming provisions.
- Section 44:** Amends s. 481.303, F.S., deleting the definition of 'certificate of authorization.'
- Section 45:** Amends s. 481.311, F.S., conforming provisions.
- Section 46:** Amends s. 481.317, F.S., conforming provisions.
- Section 47:** Amends s. 481.319, F.S., deleting the requirement for a certificate of authorization and authorizing practice through a corporation or partnership.
- Section 48:** Amends s. 481.321, F.S., revising requirements for the display of a certificate number.
- Section 49:** Amends s. 481.329, F.S., conforming a cross-reference.
- Section 50:** Amends s. 287.055, F.S., conforming a provision.
- Section 51:** Amends s. 489.553, F.S., providing specific standards for septic tank contracting licenses regarding an applicant's criminal background.
- Section 52:** Amends s. 492.104, F.S., making conforming and technical changes.
- Section 53:** Amends s. 492.111, F.S., deleting the requirements for a certificate of authorization for a professional geologist.
- Section 54:** Amends s. 492.113, F.S., conforming provisions.
- Section 55:** Amends s. 492.115, F.S., conforming provisions.
- Section 56:** Amends s. 548.003, F.S., deleting the requirement for the Florida State Boxing Commission to adopt rules relating to a timekeeper.
- Section 57:** Amends s. 548.017, F.S., deleting the licensure requirement for timekeepers and announcers.
- Section 58:** Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

Related to reduced licensure fees, DBPR's revenue is anticipated to be reduced by \$824,780 in Fiscal Year 2018-19, \$575,305 in Fiscal Year 2019-20 and \$937,855 in Fiscal Year 2020-21.<sup>114</sup>

#### 2. Expenditures:

Related to reduced licensure fees for DBPR, the 8% service charge to general revenue is anticipated to be reduced by \$65,982 in Fiscal Year 2018-19, \$46,024 in Fiscal Year 2019-20 and \$75,028 in Fiscal Year 2020-21.<sup>115</sup>

<sup>114</sup> DBPR Agency Analysis of 2018 House Bill 15, p. 6 (Oct. 10, 2018).

<sup>115</sup> Id.

There is an insignificant negative fiscal impact on the DBPR, DOH, and DOC related to costs associated with providing new teleconferencing methods for licensure hearings. Additionally, DBPR and DOH will see a slight increase in workload and technology expenditures related to displaying the new crime listing requirements established in the PCS to their respective websites. DBPR, DOH, and DOC have indicated that any increase in workload and expenditures associated with rulemaking or technology modifications can be absorbed within existing resources.<sup>116</sup>

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

1. Revenues:

None.

2. Expenditures:

None.

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

Labor organizations, pugilistic announcers, pugilistic timekeepers, hair braiders, hair wrappers, body wrappers, nail painters, and makeup artists will no longer need to pay costs associated with professional licensure.

Nail specialists, facial specialists, full specialists, barbers, and restricted barber applicants will require less training to obtain licensure, which may lead to a reduced training cost.

Asbestos abatement consultants and contractors, landscape architects, geologists, interior designers, and architects will no longer need to pay costs associated with retaining certificates of authorization for business organizations.

There may be an increase in applicants for barber, cosmetology, contracting, and CNA licenses with a criminal background who will be able to practice their chosen profession.

**D. FISCAL COMMENTS:**

As of June 30, 2016, the fund balance for the Board of Professional Geologists was negative.

The proposed elimination of the license fees for boards that have a deficit balance will result in the fund accounts closing with a negative balance. Funds with negative balances have borrowed from the other Board Funds during the years they have operated to address the negative balances.<sup>117</sup>

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

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<sup>116</sup> DBPR, Agency Analysis of 2018 Senate Bill 1114, p. 6 (Jan. 8, 2018); DOH, Agency Analysis of 2018 House Bill 1041, p. 4 (Jan. 24, 2018); and, DOC, Agency Analysis of 2018 Senate Bill 1114, p. 5 (Jan. 30, 2018).

<sup>117</sup> Supra note 13, at 9, 10.

## B. RULE-MAKING AUTHORITY:

Application, forms, rules, and rule chapters will need to be updated related to the following licensure programs:

- Condominiums (Yacht and Ship Brokers) – Rules 61B-60.001, 61B-60.002, 61B-60.003, 61B-60.005, F.A.C.;
- Asbestos – Rule 61E1, F.A.C.;
- Barbers – Rule 61G3-16 and 15, F.A.C.;
- Cosmetology Specialties – Rules 61G5-31, 61-35.011, F.A.C.;
- Architecture and Interior Design – Rule 61G1, F.A.C.;
- Landscape Architects – Rules 61G10, 61-35.017, F.A.C.;
- Professional Geologists – Rule 61G16, F.A.C.;
- Labor Organizations – Rule 61E1-4.001; and
- Boxing Announcers and Timekeepers – Rules 61K1-3.002, 61K1-3.009, and 61K1-3.010, F.A.C.

DBPR and DOH will need to promulgate rules to reflect changes in how the criminal background of an applicant is considered.

Current rulemaking authority is sufficient.

## C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 22, 2018, the Commerce Committee considered a proposed committee substitute, adopted one amendment to the proposed committee substitute, and reported the bill favorably as a committee substitute.

The committee substitute:

- Deregulated certain DBPR professions;
- Removed the requirement that certain DBPR professionals have additional business licenses;
- Reduced the hours of training required for certain DBPR licenses; and
- Clarified which crimes that DBPR or DOH may consider without a time limitation during licensure for barbers, cosmetologists, certain construction contractors, and CNAs.

On February 27, 2018, the Judiciary Committee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute:

- Transferred the duties and responsibilities of the Florida Engineers Management Corporation (FEMC) to DBPR, effective July 1, 2020;
- Required FEMC to develop and submit a plan by January 1, 2019, for its termination and the return of all regulatory functions to DBPR; and
- Made other technical changes clarifying the bill.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.